IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNETH E. KING,

Plaintiff,

v.

DAVID L. DITTER,

Defendant.

ORDER

06-C-257-C

Before the court is plaintiff's motion to compel more complete answers to his requests for production of documents (RFPs) and his interrogatories in this prison retaliation lawsuit. *See* dkt. 18. Defendant stands by his answers to plaintiff's discovery requests. Having considered both sides' submissions, I am granting in part and denying in part plaintiff's motion.

I consider plaintiff's contentions in the order in which he raised them in his motion:

RFP 1: Plaintiff seeks disclosure of all inmate complaints and grievances against defendant. Defendant contends that although it can provide (and has provided) plaintiff with copies of his own complaints, other inmates' complaints are confidential by regulation, and in any event, plaintiff's request is broad and ambiguous. Defendant's objections are well-taken as far as they go, but if other inmates have complained against defendant on similar grounds, the existence of such complaints is discoverable, even if the complaints themselves, and the identity of the complainer, are presumed confidential. Defendant must disclose to plaintiff whether any inmates at CCI ever have filed complaints or grievances

against him in which they allege that defendant has retaliated against them in any fashion for any reason, as well as all complaints or grievances in which inmates allege that defendant has incorrectly or unfairly accused them of not doing their job correctly. Defendant should not disclose any identifying information to plaintiff but must provide the month and year the complaint or grievance was filed, must synopsize the allegations of the complaint, and must disclose the final disposition of the complaint. If no such complaints or grievances exist, then defendant must so aver. Defendant should be prepared to provide to the court for *in camera* review unredacted copies of any responsive documents.

RFP 2: Plaintiff asks for an interoffice memoranda regarding formal complaints filed against defendant in the past five years. After making some objections for the record, defendant responds that there are no such memoranda. Plaintiff contends otherwise, asserting that he knows that complaints have been filed. If plaintiff has specific information to back up his assertion, then he must provide it to the court. Absent that, there are no documents for the court to order defendant to produce.

RFP 3: Plaintiff asks for copies of all staff grievances against defendant contained in defendant's personnel file. After making some objections for the record, defendant responds that there are no such grievances. Plaintiff responds by broadening his request to include "occurrences of discipline, suspensions, warnings, etc., etc." I surmise that defendant's initial

search was all-encompassing so that "No" means "No," but defendant should confirm this. If there are other types of discipline in defendant's file that are not "grievances," defendant should so aver, provide a brief explanation of each entry, and be prepared to provide to the court for *in camera* review unredacted copies of any responsive documents.

RFP 7: Plaintiff seeks copies of all job documentation on which plaintiff worked that a customer returned because of errors. Defendant provided evidence of one such complaint. Plaintiff replies that this is evidence of fraud because at the time of the events leading to this lawsuit, defendant accused plaintiff of screwing up two large print jobs, not one. Plaintiff fears that defendant's witnesses will jump back up to two later in this case. That fear is unfounded: defendant is stuck with his current answer absent leave of court to amend it later. No party may sandbag another with intentionally incomplete discovery responses. Therefore, the court presumes that defendant's current answer to RFP reports the actual situation. To the extent anyone claimed otherwise previously, this contradiction is subject to appropriate impeachment by plaintiff.

RFP 10: Plaintiff seeks copies of all BSI pay sheets from December 2004 to March 2006. Defendant responds that plaintiff has access to his own pay sheets but that other inmates' pay sheets are confidential. Plaintiff claims that this information is relevant to his claim of retaliation because it shows the prison officials' true motivation for removing

plaintiff from his job. Theoretically the requested pay sheets–which *are* confidential–could be relevant to this lawsuit, but what other inmates actually were paid is not as relevant as whether BSI instituted across the board cuts, whether plaintiff actually complained about these cuts, whether defendant cut plaintiff's hourly wage, and if so, whether his reason was to retaliate against plaintiff for complaining. Therefore, I will not require defendant to produce the requested confidential pay sheets. Plaintiff may attempt to craft more targeted discovery demands on this general topic.

RFP 11: Plaintiff seeks all conduct reports involving disruptive conduct by inmates Michael Whipp and Da Vang at BSI in and around January 2005. Defendant refuses, claiming this information is confidential and irrelevant. Although the court can concoct a thin argument in favor of relevance, this is more akin to comparing apples and oranges where the oranges have privacy rights that they have not waived. If plaintiff can obtain this information directly from Whipp and Vang, then he can attempt to convince the court it is relevant. But absent a showing that he cannot obtain the information on his own, this court will not entertain plaintiff's request to compel defendant to provide it.

Int. 1: Plaintiff asks if defendant ever was a defendant in a state court civil action filed by two correctional officers seeking a restraining order against defendant. Defendant declines to answer on grounds of relevance. Plaintiff claims that this is public information

and that it is relevant to illustrate "defendant's harassment/retaliatory type behaviors." Putting a slash between the words "harassment" and "retaliatory" doesn't make the terms synonymous. If plaintiff has some evidence that defendant was sued previously for retaliatory conduct, then he might be on to something; as matters stand, he is propounding a non sequitur. Since plaintiff claims the harassment case is in the public domain, he can obtain it directly from the clerk of the county court without seeking vague admissions from defendant. If plaintiff uncovers from the state case file some ore worth mining, he can proffer its admissibility to the court at the appropriate time.

Interrogatory 3: Plaintiff seeks defendant's explanation for why defendant reduced his pay on October 30, 2005. Defendant provided a three paragraph explanation. Plaintiff argues that defendant is being self-serving, which is not a ground for this court to compel a further response. Plaintiff also asks defendant to identify the workers with whom plaintiff allegedly had problems. This is fair followup and defendant must provide it.

Interrogatory 5: Plaintiff contends that defendant did not follow the disciplinary dictates governing BSI when defendant reduced his pay, and he wants to know why not. Defendant claims that he does not understand what plaintiff is asking. Neither does the court. Plaintiff should tighten up this interrogatory if he expects a substantive answer.

Interrogatory 8: Plaintiff refers to an administrative regulation relating to documentation, then asks defendant "to provide the documentation that authorized and listed the date when [defendant] told the entire shop about the arbitrary changes in pay." Plaintiff also asks for an explanation why defendant changed the position classification of jobs at BSI and wants defendant to produce a copy of the new classification. Defendant objects to the form of this interrogatory but reports how he announced the pay changes, denies that this was a new classification, and avers that he has no paperwork. Plaintiff doesn't like this answer, claiming that defendant acted on "whim" and "caprice," and should be compelled to provide a better answer. Plaintiff doesn't have to like defendant's answer, but this doesn't provide a basis to order defendant to change his answer. At the appropriate time plaintiff may argue the implications of defendant's interpretation of what happened, but he is not entitled to any discovery relief.

ORDER

For the reasons and in the manner stated above, it is ORDERED that plaintiff's motion to compel discovery is GRANTED IN PART and DENIED IN PART.

Entered this 20th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge