



Rupp, Anderson, Squires & Waldspurger, P.A. Newsletter
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Veterans' Preference Rights for Temporary Employees

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Veterans who serve as temporary or seasonal employees are not entitled to notice and a hearing prior to the termination of that temporary or seasonal employment. However, this exception can be confusing for school districts and municipalities due to the application of the Public Employment Labor Relations Act ("PELRA") 67-day rule, which makes temporary employees who have worked at least 67 days in their position "public employees" for the purposes of that statute. This issue of whether a public employer must provide notice and a hearing prior to terminating the employment of a temporary public employee was the subject of a recent decision issued by an Administrative Law Judge ("ALJ") from the Minnesota Office of Administrative Hearings to the Sauk Rapids-Rice School District.

PELRA contains what is commonly referred to as the "67-day rule." PELRA defines "public employee" as "any person appointed or employed by a public employer except . . . employees whose positions are basically temporary or seasonal in character and: (i) are not for more than 67 working days in any calendar year . . ." Minn. Stat. § 179A.03, subd. 14(a)(6). This 67-day rule means that temporary or seasonal employees who work more than 67 days are considered "public employees," but temporary employees who work fewer than 67 days per calendar year are not public employees.

As a public employee under PELRA, an individual receives the protections outlined in that statute, including, for example, the right to the expression of views, the right to organize, the right to meet and confer, and the right to meet and negotiate. See Minn. Stat. § 179A.06. Generally, this means that temporary employees who work more than 67 days must be included as a member of the union that represents the permanent employees serving in the same job classification.

Minnesota courts have long held that temporary and seasonal employees are not covered under the Veterans' Preference Act, meaning that they are not entitled to notice and a hearing before they are terminated by an employer, and temporary employees may be terminated for reasons other than misconduct or incompetence. However, Minnesota courts have never examined the intersection of temporary employment and the PELRA 67-day rule for veterans.

In the Sauk Rapids-Rice case, the School District hired a Veteran to serve in a substitute custodian position

while another employee was on leave. During his first stint as a substitute, the Veteran worked more than 67 days in the position and was made a member of the union. Subsequently, the Veteran's temporary employment was terminated without providing notice and a hearing due to the return of the other employee from leave. The Veteran was later hired again as a long-term substitute for an employee on leave, the Veteran again served more than 67 days, became a member of the union, had union dues deducted from his paycheck, and received employee benefits outlined in the collective bargaining agreement.

The District again terminated the Veteran's employee upon the anticipated return of the employee for whom the Veteran was serving as a substitute. The Veteran then filed a complaint with the Department of Veteran Affairs claiming that his Veterans' Preference Rights had been violated because he had been terminated without being provided with notice and a hearing under the Veteran's Preference Act. The Veteran acknowledged that temporary employees do not have a right to notice and a hearing before being terminated, but he claimed that he was no longer a temporary employee and was instead a permanent employee due to his placement in the union based on the PELRA 67-day rule.

The District argued that the Veteran's employment was not transformed from temporary to permanent when he was placed in the union after working 67 days, and that the PELRA definition simply made this employee a "public employee," but did not change his status as a "temporary employee" under the Veteran's Preference Act. The District never treated the Veteran as a permanent employee, and had not posted a full-time vacancy or followed the hiring process for a vacant position when hiring the Veteran to serve as a substitute. The Veteran argued that the receipt of benefits under the union contract meant that he was no longer a temporary employee.

The ALJ ultimately ruled for the District and dismissed the complaint, finding that "the [Veteran's] union membership did not change his status from a temporary employee into a permanent employee." The ALJ found that the Veteran was aware that he was serving as a substitute in a temporary position, that the District did not follow the normal posting and interview process for hiring a permanent employee when the Veteran was hired for the substitute position, and that the substitute position was temporary because the employment was only for a fixed term (the length of the other employee's leave of absence), despite the fact that the exact duration of the fixed term was unknown. The fact that the Veteran was a "public employee" under PELRA did not change his employment status from temporary to permanent.

The take home message from this case is that temporary employees who are veterans are not entitled to Veterans' Preference Rights, including pre-termination notice and a hearing, even if they meet the definition of "public employee" under the PELRA 67-day rule. While "public employees" are entitled to be members of a union and may receive union benefits, temporary "public employees" are not transformed into permanent employees after working more than 67 days for purposes of the Veterans' Preference Act.

If faced with this type of situation, public employers should make sure to clearly notify the employee that he or she is being hired for a temporary position. If the temporary employee works more than 67 days in that temporary position, the public employer should explain the application of the 67 day rule, and make sure the employee understands that his or her employment is still temporary in nature.

This can be a very confusing area of law, and the application of these laws is often fact-specific. If you are facing a similar situation or have any questions about these issues, contact us at (612) 436-4300.
