

NO. A10-528

State of Minnesota
In Supreme Court

William A. Eldredge,

Appellant,

vs.

City of St. Paul,

Respondent,

Nancy Dudley Kelly, William Carter, and Mark Quayle,
individually and as members of the
Saint Paul Civil Service Commission,

Respondents.

**APPELLANT WILLIAM A. ELDREDGE'S BRIEF,
ADDENDUM AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

Does a city employer subject to the Minnesota Veteran's Preference Act have a right to appeal a Verteran's Preference panel decision made in favor of a veteran employee pursuant to Minnesota Statutes Section 197.46, and, if so, within what time period and to which court must a city file its appeal?

The District Court, hearing Respondent City of St. Paul's appeal of a Veteran's Preference panel ruling in favor of Appellant William A. Eldredge, a veteran employee, held that Minnesota Statutes Section 197.46 was the proper and sole source of a city employer's right of appeal under the Minnesota Veteran's Preference Act; and that its 15-day appeal deadline applies to both city employers and veteran employees. (ADD-12).¹

The Court of Appeals reversed, holding that employers have no right to appeal a Veteran's Preference decision under Minnesota Statutes Section 197.46; instead the City of St. Paul's right to appeal exists under Minnesota Statutes Section 484.01, subd. 2, which contains a 60-day appeal deadline to the Minnesota District Court. (ADD-1).

APPOSITE AUTHORITIES:

Minn. Stat. § 197.46

Minn. Stat. § 645.16

Matter of Schrader, 394 N.W.2d 796 (Minn. 1986)

¹ "ADD-__" refers to the attached Addendum. "APP-__" refers to the attached Appendix.

STATEMENT OF THE CASE AND FACTS

The relevant facts are not contested. Appellant William A. Eldredge (“Eldredge”) is a long-time firefighter employed by Respondent City of St. Paul (“the City”). (ADD-2). As an honorably discharged veteran of the armed services, he is entitled to rights under the Minnesota Veteran’s Preference Act, Minnesota Statutes Section 197.46 (“the VPA”). Accordingly, he has the right to contest before a Veteran’s Preference board any proposed termination, at which the City bears the burden of demonstrating incompetence or misconduct on his part. *Id.*

In November 2006, the City notified Eldredge of its intent to terminate his employment based on an alleged vision-related medical condition, which, in the City’s view, rendered him “incompetent” to perform his duties as firefighter. (ADD-24). Eldredge filed a timely request for a hearing under the VPA. (ADD-24). At the subsequent Veteran’s Preference hearing, the St. Paul Civil Service Commission (“the Commission”) sat as Veteran’s Preference board under the VPA.² (ADD-23). On December 3, 2007, it issued a ruling that the City failed to meet its burden of proving that Eldredge was unfit to serve as a firefighter, and ordered that he be reinstated. (ADD-23).

² The VPA essentially conscripts established civil service commissions or boards to serve as Veteran’s Preference panels for hearings involving employees of government subdivisions having such bodies. Minn. Stat. § 197.46. For employees of the large majority of Minnesota cities and towns that do *not* have such commissions, the VPA provides for *ad hoc* Veteran’s Preference panels consisting of three panel members: one each chosen by the municipality and the veteran and the third selected by agreement of the other two. *Id.*

In early 2009, the City again tried again to fire him, giving him another notice of intent to terminate employment due to the same medical condition it had previously alleged rendered him medically incompetent to perform his job duties as firefighter. (ADD-17). Eldredge timely filed another request for a Veteran's Preference hearing, and the matter was referred a second time to the Commission, sitting (as before) as the VPA-designated Veteran's Preference board. (ADD-17).

Eldredge promptly moved for summary disposition before the Veteran's Preference board on the grounds of collateral estoppel, which was granted on July 31, 2009. (ADD-16). On September 18, 2009, forty-nine days after service of the board's order, the City filed its attempted certiorari appeal to the District Court. (ADD-14). The City's notice purported to be under the civil service commission statute, Minnesota Statutes Section 484.01, subd. 2, which provides for a sixty-day appeal deadline. (ADD-14).

Eldredge thereupon moved to dismiss the City's appeal as untimely filed under the VPA. (ADD-12). On January 18, 2010, the District Court granted Eldredge's motion, holding that the City's sole avenue of appeal was the VPA, and as such, the City was subject to that statute's 15-day appeal deadline. (ADD-12); Minn. Stat. § 197.46.

The City appealed the District Court's ruling to the Court of Appeals. (ADD-1). In its September 15, 2010 decision, the Court of Appeals reversed the District Court's dismissal, holding that Minnesota Statutes Section 484.01, subd. 2, with its sixty-day appeal deadline, was the proper source of the City's right to appeal a determination of a

Veteran's Preference board. *City of Saint Paul v. Eldredge*, 788 N.W.2d 522 (Minn. Ct. App. 2010).

Eldredge petitioned for review of the Court of Appeals' decision, and this Court accepted review of the case by Order dated December 14, 2010. (APP-1).

SUMMARY OF ARGUMENT

Appeal rights for both veteran employees and public sector employers subject to the Minnesota Veteran's Preference Act, Minnesota Statutes Section 197.46 (the "VPA") arise under the VPA itself. The Court of Appeals erroneously held that employer appeals of decisions by civil service commissions sitting as Veteran's Preference board are governed by deadlines applicable to appeals of garden-variety civil service decisions. The Court of Appeals' holding creates a convoluted scheme in which some cities have six times as long to appeal a VPA decision as others, and some cities have no rights of appeal at all. The fairest and most logical interpretation of the VPA requires extending that statute's 15-day appeal deadline to all parties.

In the alternative, the Supreme Court should apply a uniform appeal standard arising from the general certiorari statute, recognizing that decisions by *all* Veteran's Preference panels (be they *ad hoc* boards or borrowed civil service commissions) are quasi-judicial in nature.

This case allows the Supreme Court the opportunity to clarify a law that presently works to the detriment of Minnesota veterans. For the reasons set forth below, Eldredge respectfully requests that this Court reverse the decision of the Court of Appeals and

affirm the District Court's determination that Minnesota Statutes Section 197.46 provides the appeal rights for all parties to a Veteran's Preference appeal.

ARGUMENT

I. STANDARD OF REVIEW

This appeal asks the Court to determine the statutory deadline applicable to a city-employer's appeal of a Veteran's Preference board's decision under the VPA, Minnesota Statutes Section 197.46. As such, it involves purely legal questions of statutory construction. The construction of a statute is a question of law, reviewed *de novo* by this Court. *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010).

II. THE VPA'S 15-DAY LIMITATIONS PERIOD APPLIES TO THE CITY'S APPEAL.

The VPA contains a 15-day deadline for appealing decisions made by a Veteran's Preference board. However, the statute references only the veteran's right of appeal: "The veteran may appeal from the decision of the board" *Id.* The Court of Appeals found that this language does not provide for a right of appeal on behalf of employers subject to the VPA. *City of Saint Paul v. Eldredge*, 788 N.W.2d 522, 525-26 (Minn. Ct. App. 2010). Concluding the VPA was unambiguous, the Court of Appeals declined to interpret the VPA to recognize such a right. *Id.*

The VPA's silence as to a public employer's right of appeal might reasonably be taken to mean that the City has *no* right to appeal a Veteran's Preference board's decision. In that case, Eldredge's successful motion for summary disposition would stand as final.

However, this Court has specifically recognized that a city-employer does have a right of appeal. See *In the Matter of Schrader*, 394 N.W.2d 796, 802 (Minn. 1986) (“[B]oth the veteran and the employer may appeal to the district court from the decision of the hearing board.”). The issues to be determined, then, are the source and nature of that right. There are a few possibilities, but only one of them results in a logical, consistent, and coherent outcome: the VPA itself.

A. The VPA is the proper and recognized source for a city-employer’s right of appeal under the Act.

Although the VPA is silent as to a public employer’s right to appeal the decision of a Veteran’s Preference board, stating only that “[t]he veteran may appeal,” Minnesota courts and commentators have interpreted the statute to provide “the same” rights to both employers and veteran employees. That was the holding of this Court in *Schrader*.

In *Schrader*, this Court, as part of a broader discussion of the procedures to be used in appeals under the VPA, explained that a public employer, like a veteran, may appeal a decision under the statute.³ 394 N.W.2d at 802. The reference to the employer’s

³ The Court of Appeals correctly noted that in *Schrader*, the employer appealed the Veteran’s Preference board’s decision by a petition for a writ of certiorari from the district court, rather than under the VPA itself. *Eldredge*, 788 N.W.2d at 526 (citing *S. Minn. Mun. Power Agency v. Schrader*, 380 N.W.2d 169, 172 (Minn. Ct. App. 1986)). The court considered that fact persuasive in its holding that the City could not appeal under the VPA. However, at another point the Court of Appeals regarded *Schrader* as unhelpful to *Eldredge*’s cause because *Schrader* did not deal with the same issue: the deadline for a city-employer’s appeal. See *id.* at 527. That logic applies to the court’s first point, as well: *Schrader* did not deal with the proper procedure to challenge a VPA decision. Therefore, the fact that the employer in *Schrader* appealed by writ of certiorari is inapposite as to proper appeal procedure, and the Court of Appeals’ reliance on it was misplaced.

appeal right came in the middle of a broader discussion of the procedures to be used in appeals under the VPA – the *Schrader* Court mentioned no other potential statutory basis for such an appeal right. *Id.*

The Court of Appeals later discussed *Schrader* in two unpublished decisions, interpreting that case to hold that employers' rights under the Act are identical to those of veterans, and thus subject to the same 15-day deadline. *See City of Elk River v. Rollins*, No. C0-96-2393, 1997 WL 370461, at *4 (Minn. Ct. App. July 8, 1997) (“While the statute specifically allows the veteran’s right to appeal, both parties have the same right to appeal.”) (citing *Schrader*, 394 N.W.2d at 801–02) (unpublished) (APP-27); *Stafne v. City of Center City*, No. C1-98-835, 1998 WL 778931, at *3 (Minn. Ct. App. Nov. 10, 1998) (“[A city-employer’s] appeal from a VPA board’s decision may be taken to district court within 15 days after notice of the decision.”) (citing Minn. Stat. § 197.46; *Schrader*, 394 N.W.2d at 802) (unpublished) (APP-22).

The oft-cited and well-respected *Minnesota Practice Guide*, by Professor Stephen F. Befort, likewise interprets the VPA as providing a 15-day appeal deadline for public employers as well as veteran employees. Professor Befort states: “Either the employee or the public employer may appeal the hearing body’s decision to the district court within 15 days after notice of the removal panel’s decision, and by filing the original notice of appeal with proof of service within 10 days after service.” 17 Stephen F. Befort, *Minnesota Practice—Employment Law & Practice* § 12.37(e) (2d ed. 2003). The *Minnesota Practice Guide* is accorded significant weight by Minnesota courts, and has been cited approvingly in several recent cases before this Court. *See, e.g., Kratzer v.*

Welsh Cos., LLC, 771 N.W.2d 14, 19 n.7 (Minn. 2009); *Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 579 (Minn. 2008).

The decisions of the Court of Appeals in *Rollins* and *Stafne* – and the authoritative interpretation by Professor Befort – were natural and logical interpretations of this Court’s guidance in *Schrader*, insofar as *Schrader* specifies that governmental employers have a right to appeal Veteran’s Preference board decisions without referencing any other statutory source of appeal.

Beyond this precedent, considerations of fairness and the public policy that underlie the VPA justify having the same appeal deadline for both employees and employers. There is no reason to imply into existence a longer appeal deadline for employers than the one by which veterans must abide. It is ironic that the legislature’s deliberate decision, as found by the Court of Appeals below, to only allow for employee appeals – a decision which clearly and on its face favors employees and disfavors employers – would be subverted by the same court in holding that an employer has *four times* as long as an employee in which to appeal, whatever the ultimate source of the right.

Holding veteran employees and public employers to the same procedural rules under the VPA is logical and promotes the virtues of coherence, consistency and fairness – characteristics not to be found in any of the other potential options before the Court. The Court should therefore follow its precedent, reverse the Court of Appeals, and reinstate the decision of the District Court by holding that the VPA provides the sole avenue of appeal and the same 15-day deadline for veteran employee and employer alike.

Because the City's District Court appeal did not meet this deadline, that appeal is time-barred and the VPA's decision in Eldredge's favor must stand.

B. The Court of Appeals erred in holding that the City may appeal under the statute governing appeals from decisions of civil service commissions.

The Court of Appeals incorrectly held that the appeal rights of city-employers arise under statutes governing civil service appeals, Minnesota Statutes Sections 484.01, subd. 2 and 44.09, subd. 1. This ruling both misinterprets the Commission's status when adjudicating Veteran's Preference hearings and invites chaos and confusion rather than clarifying the law applicable to future appeals of Veteran's Preference decisions across the state.

- 1. The ruling below is based on the erroneous premise that statutes governing civil service commissions rules apply to Veteran's Preference boards.*

The Court of Appeals held that the City's appeal of the Eldredge's Veteran's Preference determination was subject to the sixty-day appeal deadline applicable to employment-related decisions made by civil service commissions. Minn. Stat. § 484.01, subd. 2; *Eldredge*, 788 N.W.2d at 529. At the outset, this holding grants cities of the first class – Minneapolis, St. Paul, and Duluth – an appeal period four times longer than that of a veteran employee, an outcome inconsistent with the policy considerations underlying the VPA.

More importantly, the Court of Appeals' holding rests on a faulty premise. The Court erroneously presupposed that the rules governing civil service commission

proceedings apply to a VPA matter in the first place. The civil service commission appeal statute grants a district court “jurisdiction to review a final decision or order of a *civil service* commission or board upon the petition of an employee or appointing authority in any first-class city.” Minn. Stat. § 484.01, subd. 2 (emphasis added). As all parties acknowledge, Eldredge’s initial hearing was a Veteran’s Preference hearing, and not a garden variety appeal by a non-veteran city employee of an adverse employment decision. The civil service commission appeal statute accordingly has no bearing on the parties’ respective appellate rights because, stated simply, this case did not involve a decision by a civil service commission.

When the St. Paul Civil Service Commission heard Eldredge’s case, it was sitting by designation as a Veteran’s Preference board pursuant to authority granted to it by the VPA. The fact that the panel was composed of individuals holding the title “civil service commissioner” is purely a product of administrative convenience in Veteran’s Preference cases that arise in large cities with established civil service commissions. When the commissioners heard and decided Eldredge’s case, their substantive powers were defined solely by the VPA. *See Leininger v. City of Bloomington*, 299 N.W.2d 723, 728 (Minn. 1980) (“The hearing was held pursuant to the Veterans Preference Act, specifically s 197.46, so we must turn to that statute in order to determine the scope of the Merit Board’s power.”). The result would have been the same if Eldredge’s appeal took place in a smaller city without an established civil service commission. *See Schrader*, 394 N.W.2d at 801 (“We hold that an ad hoc hearing board, sitting pursuant to the [VPA], has the same authority *as an* established board”) (emphasis added).

The VPA itself makes clear that the parties' procedural and substantive rights derive solely from that statute, providing:

All officers, boards, commissions, and employees shall conform to, comply with, and aid in all proper ways in carrying into effect the provisions of section 197.455 and this section notwithstanding any laws, charter provisions, ordinances or rules to the contrary.

Minn. Stat. § 197.46. *See also* Minn. Stat. §§ 197.48 and 197.455 (voiding any local law or rule inconsistent with VPA). To characterize Eldredge's hearing as a "Civil Service" appeal rather than a "Veteran's Preference" hearing does violence to the clear intent of this statutory provision.

That the St. Paul Civil Service Commission in Eldredge's appeal sat in its capacity as a VPA board, and not as a civil service commission, is confirmed by the case law as well:

Appellant demanded a hearing pursuant to the VPA. The St. Paul Civil Service Commission ("the hearing board") *was designated as an appropriate hearing board under the VPA* for appellant's grievance.

City of St. Paul v. Carlisle, No. C1-00-884, 2000 WL 1847716, at *1 (Minn. Ct. App. Dec. 19, 2000) (emphasis added) (unpublished) (APP-18). *See also Brown v. St. Paul Dep't of Fire & Safety Servs.*, No. A04-757, 2004 WL 2940873, at *2 (Minn. Ct. App. Dec. 21, 2004) (unpublished) ("Brown appealed the chief's decision to the Saint Paul Civil Service Commission, and, following a two-day hearing, the commission, acting as the Veterans Preference Board, upheld Brown's termination.") (APP-14). The same applies to other cities with civil service commissions. *See Wagner v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 569 N.W.2d 529, 531 (Minn. 1997) ("The ALJ submitted

the findings, conclusions, and recommendation to the Minneapolis Civil Service Commission, sitting as a Veterans Preference Board.”); *State ex rel. Laux v. Gallagher*, 527 N.W.2d 158, 161 (Minn. Ct. App. 1995) (“The state appealed to the [Minneapolis] Civil Service Commission, sitting as a veterans preference board.”); *Lewis v. Minneapolis Bd. of Educ., Special Sch. Dist. No. 1*, 408 N.W.2d 905, 906 (Minn. Ct. App. 1987) (“This appeal is from an order of the district court affirming an order of the Minneapolis Civil Service Commission sitting as a veteran’s preference hearing panel . . . pursuant to the Veteran’s Preference Act, Minn. Stat. § 197.46[.]”); *Hanson v. City of St. Cloud*, No. C3-94-1993, 1995 WL 265073, at *1 (Minn. Ct. App. May 9, 1995) (unpublished) (“The [St. Cloud] Civil Service Board, acting as a veterans preference board conducted a six-day hearing . . . [and] approved the termination.”) (APP-10).

The notion that an individual or body can “sit” by statutory or constitutional designation as a different individual or body is well known in the law. For example, the Minnesota Constitution allows for the seating of district court judges as appellate judges by designation. MINN. CONST. art. VI, § 2. When sitting by designation on the Court of Appeals, no one seriously doubts that these district judges have the full powers and duties of “regular” Court of Appeals judges. Similarly, a city council is statutorily authorized to sit as a municipal board of appeals and adjustments to resolve zoning issues. *See Hinz v.*

City of Lakeland, No. A06-1872, 2007 WL 2481021, at *3 (Minn. Ct. App. Aug. 31, 2007) (unpublished) (APP-2).⁴

The same is true in this case. While the Civil Service Commissioners during Eldredge's hearing remained civil service commissioners, they were "borrowed" under the VPA for use as Veteran's Preference panelists and acted solely in that capacity. There is nothing unprecedented or even unusual in the idea of having the same group of officials act in different capacities, and subjecting them to different rules and regulations depending upon the capacity in which they are serving.

Eldredge's position also is supported by the language of civil service appeal statute itself, which specifically states, "[t]his subdivision does not alter or amend the application of [the VPA]." Minn. Stat. § 484.01, subd. 2. No exception to this VPA carve-out is made for the VPA's 15-day appeal deadline. Accordingly, when Veteran's Preference matters happen to be heard by established civil service commissions, the legislature intended to exclude those matters from all conflicting requirements (substantive and procedural) of the civil service statute, including its sixty-day deadline for appealing garden-variety civil service claims.⁵

⁴ Another familiar example is the United States Vice President's dual role as successor to the President in the executive branch and President of the Senate in the legislative branch. Although Vice President Biden would retain the status and emoluments of his office at all times, while "sitting as" a Senator if called upon to cast a tie-breaking vote his vote would carry no more or less weight than that of (say) Senator Klobuchar.

⁵ Similarly, any legislative effort to supersede a VPA provision of must be expressly stated by statute. *See* Minn. Stat. § 147.48. By applying the 60 day civil service appeal deadline, the Court of Appeals arguably ran afoul of this directive as well, insofar as the only VPA-mandated appeal deadline is the 15-day deadline set forth in the VPA.

Nonetheless, the Court of Appeals held, *without citation to any authority*, that the civil service commission appeal statute, with its 60-day deadline, provided the City's avenue for appeal, on the basis that the St. Paul Civil Service Commission "was still acting in its capacity as a civil service commission." *Eldredge*, 788 N.W.2d at 527. As established under applicable case precedents and the VPA itself, the Court of Appeals erred in reaching this unsupported conclusion. To the contrary, the Commission was acting *strictly* in its capacity as a VPA panel. This error of law led to the court's improper application of the civil service statute's appeal provision, and should be reversed.

2. *The ruling below creates an unintended and untenable scheme of disparate appeal deadlines for different cities.*

The holding by the Court of Appeals allowing appeal under Section 484.01, subd. 2 also has the undesirable effect of replacing a clear, logical, and consistent appeal framework with a bizarre, convoluted, and Byzantine statutory scheme for appealing Veteran's Preference decisions. Under that holding, veteran employees must look to Chapter 197 of the Minnesota Statutes for a 15-day appeal deadline, while cities of the first class look to Chapter 484 for a 60-day deadline.⁶ As to all other cities, the Court of Appeals explained in a footnote that their VPA appeal rights arise under Chapter 44,

⁶ The Minnesota legislature categorized Minnesota cities into four classes, based upon population. Cities of the first class are those with more than 100,000 inhabitants. Minn. Stat. § 410.01. Cities of the second class have between 20,000 and 100,000 inhabitants. *Id.* Cities of the third class have between 10,000 and 20,000 inhabitants. *Id.* Cities of the fourth class have fewer than 10,000 inhabitants.

which contains a miniscule 10-day appeal deadline. *Eldredge*, 788 N.W.2d at 527 n. 1. The resulting patchwork of appeal rights, based on the happenstance of where the veteran is employed, is as unworkable as it is unfair.

This framework is all the more untenable upon close examination of Minnesota Statutes Section 44.09, subd. 1. As with Section 484.01, subd. 2, it addresses appeal rights from the decisions of civil service commissions. Unlike Section 484.01, subd. 2, those rights are not limited by a city's size. Cities not of the first class, in the Court of Appeals' framework, would thus look to Section 44.09, subd. 1, to challenge a VPA decision, ignoring the fact that decisions of a Veteran's Preference board are not governed either substantively or procedurally by the rules of civil service commissions. *See supra*. That section carries with it a much shorter appeal deadline of a mere ten days. *Id.*

The holding by the appellate court thus creates an arbitrary distinction between Veteran's Preference appeals by large first-class cities such as St. Paul and those by smaller municipalities. To be sure, Minnesota law provides for such a distinction in appeals of general *civil service commission* matters, properly so called. *Compare* Minn. Stat. §§ 484.01, subd. 2, and 44.09, subd. 1. However, no authority supports such a distinction concerning matters falling within the VPA's purview. Nonetheless, the Court of Appeals has created that very distinction with its decision in this case. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. Ct. App. 1987) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to [the Court of Appeals].”).

An even more fundamental practical problem exists with the scheme devised by the appellate court of disparate statutory deadlines. By its terms, Minnesota Statutes Section 44.09, subd. 1 allows appeals only as to decisions of a personnel board created under a city's civil service or merit system: "The employee or the appointing authority may appeal to the district court *from an order of the board ...*" (emphasis added). *See also* Minn. Stat § 44.01, subd. 3 ("Board' means the [merit system] personnel board provided for in section 44.04."). The VPA recognizes that not all cities will have an established civil service or merit system, and thus no established board. Accordingly, the VPA provides for the creation of *ad hoc* Veteran's Preference boards under those circumstances. *See* Minn. Stat. § 197.46.

The error in the reasoning below is evident in the following example. A veteran employee is employed by a third-class city that lacks an established merit system or civil service commission. The city provides the veteran with a notice of intent to terminate him or her. Because it has no civil service board, the city forms an *ad hoc* Veteran's Preference board, as it is required to do by the VPA. The board decides the matter in favor of the employee, and the city wishes to appeal. If the Court of Appeals is correct, the city cannot appeal under the VPA, because the VPA only allows the *veteran* a right of appeal. The city also cannot appeal under Minn. Stat. § 484.01, subd. 2, because it is not a city of the first class. The city's option per the Court of Appeals – Minnesota Statutes Section 44.09, subd. 1 – is also unavailable, because the city's *ad hoc* Veteran's Preference board falls outside the statutory definition of a merit system personnel board. Thus, the hypothetical third-class city has absolutely no right to appeal the VPA decision

at all. Such an outcome is not only unfair and inconsistent, it is at odds with this Court's holding in *Schrader*, which provides all public employers subject to the VPA an appeal right, without limitation. 394 N.W.2d at 802.

Nothing in the VPA or its underlying policy suggests a legislative intent for different sized cities to have different appeal deadlines. It makes even less sense to presume the legislature intended for some cities to have appeal rights but not others. This Court should find, as did the District Court below, that Minnesota Statutes Section 484.01, subd. 2 (and, by extension, Section 44.09, subd. 1), has no applicability to employer appeals arising under the VPA which happen to be heard by civil service commissions.

C. The general certiorari statute, Minnesota Statutes Section 606.01, is superior to Minnesota Statutes Section 484.01, subd. 2 as a source of city-employer appeal rights under the VPA.

Eldredge, in agreement with earlier decisions by the Court of Appeals and Professor Befort, respectfully submits that public employers' appeal rights are set forth on the face of the VPA itself. If, however, the Court determines the VPA's 15-day appeal deadline for veterans does not extend to public employers, the only remaining,

legally plausible candidate is Minnesota Statutes Section 606.01, the general certiorari statute.⁷

If the VPA in fact provides no avenue of appeal for employers, the City would always have a default right to seek certiorari review under Section 606.01. This follows from the fact that St. Paul Civil Service Commission (*qua* Veteran's Preference board) rendered a quasi-judicial decision in its ruling to reinstate Eldredge. *See Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (quasi-judicial decisions involve (1) an investigation into a disputed claim and weighing of evidentiary facts; (2) an application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim).

The general certiorari statute (Section 606.01) has significant legal and practical advantages over the approach embraced by the Court of Appeals. First, it does not require a court to transform by judicial fiat a Veteran's Preference board into a civil service commission in order to apply the civil service statutes (Sections 484.01, subd. 2 or 44.09, subd. 1) and their attendant appeal rights. Second, Section 606.01 would create a single appeal deadline from a single source, applicable to cities of the first, second,

⁷ The Court of Appeals erroneously observed that Eldredge did not raise the issue of Minnesota Statute § 606.01 to the District Court. Based on that misconception, the court declined to address the issue in its decision. *See Eldredge*, 788 N.W.2d at 528. In fact, Eldredge did specifically raise the issue in his briefing to the District Court, rendering it an appropriate subject for appellate review. Respondent William A. Eldredge's Reply Memorandum of Law in Support of His Rule 12.03 Motion to Dismiss, p. 5, n. 4. (APP-31).

third and fourth classes, whether or not they have established civil service or merit boards.

The general certiorari statute is far superior to the scheme outlined by the Court of Appeals, with its attendant flaws, inconsistencies, and traps for the unwary, including wildly-differing appeal deadlines and, for some cities, potentially no right of appeal at all. In addition to resting on a misreading of the VPA, the Court of Appeals' holding results in the least desirable consequences of all available interpretations of the VPA, unfairly burdening both veterans and many city-employers. *See* Minn. Stat. § 645.16(6) (the consequences of a particular statutory construction may be indicative of the legislature's intent).

Accordingly, Minnesota Statute Section 606.01 must be sole source of a city's Veteran's Preference appeal rights, should this Court determine that the VPA's 15-day appeal period does not extend to government entities. Section 606.01 requires that appeals be made to the Court of Appeals. Since the City did not do so, the Veterans Preference board's determination should be affirmed because the City appealed to the incorrect court.

III. BOTH THE EQUITIES AND THE REMEDIAL NATURE OF THE VPA FAVOR ELDREDGE.

As a general matter, the VPA has been held to be a remedial statute that is to be liberally construed to accomplish its legislative purpose of aiding honorably-discharged veterans of our country's armed forces. *Winberg v. Univ. of Minn.*, 499 N.W.2d 799, 801 (Minn. 1993); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649 (Minn.

Ct. App. 2002). In contrast, statutory deadlines for appeal must be strictly construed and adhered to. *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. Ct. App. 1986), *review denied* (Minn. Aug. 13, 1986).

In light of these well-established policy preferences favoring veterans and disfavoring untimely appeals, there is no reason in logic or fairness to give the City four times as long as an honorably-discharged veteran to appeal an adverse VPA decision. The 15-day period for appealing a Veteran's Preference decision reflects a clear legislative judgment favoring a fast return to work for honorably discharged veterans.⁸ There can be no other reasonable basis to account for this short time period; a sixty-day period goes far beyond that. Indeed, in light of the fact that Eldredge still has yet to be returned to work as a firefighter⁹ despite having prevailed before the Veteran's Preference board in July of 2009, this case presents a textbook example of the evil that the Minnesota legislature evidently was trying to avoid when it granted these rights to veterans of our country's armed forces.

⁸ Underscoring the legislative purpose of favoring veterans, the same statute provides a full sixty days during which a veteran may request a Veteran's Preference hearing to challenge an adverse employment action. *See* Minn. Stat. § 197.46.

⁹ In its decision, the Court of Appeals suggested that Eldredge is not prejudiced by the delay because the VPA provides that he continue to be paid his salary while his appeal is pending. *Eldredge*, 788 N.W.2d at 525. This suggestion fails to take into account lost advancement, training, and overtime opportunities, along with Eldredge's simple and unsurprising desire to expeditiously remove this cloud from his career and continue serving his community as a firefighter.

Eldredge has earned every right granted to him by the legislature in the VPA in recognition of his honorable service, including the right to be returned to work in a timely manner after he prevailed in his VPA proceeding. The Court should acknowledge the remedial nature of the VPA, construe any ambiguities contained therein in Eldredge's favor, affirm the District Court's ruling that the City missed its appeal deadline, and order that Eldredge be reinstated to his rightful position.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be reversed.

MANSFIELD, TANICK & COHEN, P.A.



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