

NO. A10-528

State of Minnesota  
**In Supreme Court**

William A. Eldredge,

*Appellant,*

vs.

City of Saint Paul,

*Respondent,*

and

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

*Respondents.*

**RESPONDENT CITY OF SAINT PAUL'S BRIEF 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

**1. DOES MINN. STAT. § 197.46 PROVIDE ANY AVENUE FOR APPEAL BY AN EMPLOYER FOLLOWING AN ADVERSE DECISION BY THE BOARD?**

District Court Holding: In granting Appellant's motion to dismiss the District Court held Minn. Stat. § 197.46 was the proper and sole avenue for appeal by the employer under the Minnesota Veteran's Preference Act. Add 12-15.

Court of Appeals Holding: Minn. Stat. § 197.46 is silent with respect to appeals brought by employers and is therefore inapplicable. Add. 1-11.

Apposite Cases and Authority:

Minn. Stat. § 197.46

Minn. Stat. § 645.08(1)

*Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273 (Minn. 2000)

**2. CAN AN EMPLOYER WHICH IS A CITY OF THE FIRST CLASS BRING AN APPEAL UNDER MINN. STAT. § 484.01, SUB.2 WHEN THE DECISION WAS RENDERED BY ITS CIVIL SERVICE COMMISSION SITTING AS A BOARD PURSUANT TO THE VETERAN'S PREFERENCE ACT?**

District Court Holding: In granting Appellant's motion to dismiss the District Court held that Minn. Stat. § 484.01, subd. 2 did not apply. Add. 12-15.

Court of Appeals Holding: In reversing the District Court the Court of Appeals held that Minn. Stat. § 484.01, subd. 2 is the avenue for appeal by an employer in a veteran's preference case. Add. 1-11.

Apposite Cases and Authority:

Minn. Stat. § 484.01, subd. 2

*Leininger v. City of Bloomington*, 299 N.W.2d 723 (Minn. 1980)

## STATEMENT OF THE CASE AND FACTS

Respondent, City of Saint Paul, employs the Appellant, William A. Eldredge, as a firefighter. Add. 12. Appellant is an honorably discharged veteran within the meaning of Minnesota law. Add. 12. On February 9, 2009, Respondent's Fire Chief sent Appellant a notice of intent to terminate his employment alleging he was unfit to perform the duties of a firefighter due to a visual impairment. RA- 1. Pursuant to the Veteran's Preference Act, Minn. Stat. § 197.46, Appellant requested a hearing regarding the Fire Chief's decision to terminate his employment. Add. 17. That hearing was scheduled to be held before the Saint Paul Civil Service Commission. Prior to that hearing, Appellant brought a motion for summary disposition, alleging Respondent's action to terminate was barred by the doctrine of collateral estoppel. App. 31-38. The Civil Service Commission issued its decision on the motion on July 31, 2009, finding that collateral estoppel applied and dismissed Respondent's intent to terminate. Add. 16-22. It is from that decision that Respondent petitioned for a writ of certiorari from the district court. RA-2.

Respondent filed the Petition for Writ of Certiorari pursuant to Minn. Stat. § 484.01, subd. 2 on September 18, 2009. RA-2. The district court issued the writ on September 22, 2009. RA-3, 4. On December 22, 2009, Appellant brought a motion to dismiss the appeal pursuant to Rule 12, Minn. R. Civ. P. Appellant maintained that Respondent's Petition for Writ of Certiorari was untimely. App. 31-38. Appellant argued that the sole avenue for appeal of a veteran's preference matter was governed by Minn.

Stat. § 197.46, and because Respondent did not file the Petition within 15 days of the Commission's decision the matter was time barred. App. 31-38. The District Court, the Honorable Dale B. Lindman, heard arguments on January 13, 2010. Add. 12. On January 18, 2010 the District Court granted Appellant's motion, dismissing the action, holding the Respondent's Petition was untimely pursuant to Minn. Stat. § 197.46. Add. 12-15. Judgment was entered on January 21, 2010. RA-5.

Respondent appealed the District Court's ruling to the Court of Appeals. RA-6, 7. On September 15, 2010, the Court of Appeals ruled that Minn. Stat. § 484.01, subd. 2, governs appeals by cities of the first class in veteran's matters. Add. 1-11. Appellant sought review of this matter by this Court. Review was granted on December 14, 2010. App. 1.

## SUMMARY OF THE ARGUMENT

When language of a statute is clear and unambiguous, the courts role is to apply the language of the statute and not explore the spirit and purpose of the law. Courts are prohibited from providing words or phrases to statutes which are either intentionally or inadvertently omitted by the legislature.

Minn. Stat. § 197.46 is silent with respect to appeals by employers. It clearly provides the avenue for an appeal by a veteran following a decision by a hearing board. However, in this case, the appeal from the hearing board's decision was brought by an employer, the City of Saint Paul, which is a city of the first class as defined by statute. Minn. Stat. § 484.01, subd. 2 provides an avenue of appeal to district court to the Respondent from an adverse decision made by its own civil service commission.

Here looking at the plain meaning of each of these statutes leads to but one conclusion, the Respondent has properly brought its appeal under the authority and procedures provided in Minn. Stat. § 484.01, subd. 2. The Respondent has met all the requirements to secure the writ. That petition was filed within 60 days after the date of mailing notice of the decision to the party applying for the writ.

## ARGUMENT

### I. STANDARD OF REVIEW.

The construction of a statute is a question of law that is reviewed de novo by this Court. *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010).

### II. THE COURT OF APPEALS DID NOT ERR IN FINDING MINN. STAT. § 197.46 PROVIDES NO RIGHT TO APPEAL TO AN EMPLOYER OR APPOINTING AUTHORITY.

Both parties to this appeal agree that the employer has a right to appeal the decision of the veteran's preference hearing board.<sup>1</sup> This Court has stated “[u]pon issuance of the hearing board's report, both the veteran and the employer may appeal to the district court from the decision of the hearing board.” *In re Matter of Schrader*, 394 N.W.2d 796, 802 (Minn. 1986). The question before this court then is how does the Respondent, as an employer and a city of the first class, perfect an appeal in a veteran's preference matter following an adverse decision from its own civil service commission?

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<sup>1</sup> In this matter below, Appellant moved for summary dismissal based upon the theory of collateral estoppel. One element of the collateral estoppel doctrine is that the agency decision must be final and subject to judicial review. *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 116 (Minn. 1991). Appellant argued that the 2007 decision of the Civil Service Commission rendered under the Veteran's Preference Act was final and subject to judicial review. RA-8-23. The Civil Service Commission granted Appellant's motion finding that their decision in a veteran's preference matter was subject to judicial review. Add. 16-22 . Appellant now argues that a reasonable interpretation of Minn. Stat. § 197.46 could be that the employer has no right to appeal, and Appellant's successful motion for summary disposition would be final. *App's Br p. 5*. Should the Court hold this to be true, this case must be remanded to the Saint Paul Civil Service Commission with an Order reversing the decision that collateral estoppel applies and to proceed to hearing under Minn. Stat. § 197.46.

**A. The Process for Appeal Set Forth in Minn. Stat. § 197.46 Does Not Apply to an Employer's Appeal.**

The Minnesota Veteran's Preference Act, Minn. Stat. § 197.46, prohibits a public employer from removing an honorably discharged veteran from employment "except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges in writing." Minn. Stat. § 197.46. With regard to the hearing, the Act describes how the right to the hearing is invoked, and the board before whom the hearing is held. *Id.* It also provides the statutory right of appeal from a decision of the board to the veteran. *Id.* It provides in relevant part:

The **veteran** may appeal from the decision of the board upon the charges to the district court by causing written notice of appeal, stating the grounds thereof, to be served upon the governmental subdivision or officer making the charges within 15 days after notice of the decision and by filing the original notice of appeal with proof of service thereof in the office of the court administrator of the district court within ten days after service thereof.

Minn. Stat. § 197.46 (*emphasis added*). Appellant asks this Court to extend Minn. Stat. § 197.46 by holding that the employer is required to bring its appeal under this statute. Inviting this Court to extend the Veteran's Preference Act to govern the right of an employer to appeal violates the principles of law regarding statutory construction.

- 1. Rules of statutory construction prohibit this Court from construing Minn. Stat. § 197.46 to include the right to appeal by an employer.**

When construing a statute, the goal of the court is to ascertain and give effect to the intention of the legislature. Minn. Stat. § 645.16; *Am. Family Ins. Group v. Schroedl*,

616 N.W.2d 273, 278 (Minn. 2000). To interpret a statute, the court must first assess “whether the statute’s language, on its face, is clear or ambiguous.” *Id.* at 277. Words and phrases are construed according to their plain and ordinary meaning. *Id.*; *see also*, Minn. Stat. § 645.08(1). A statute’s meaning is ambiguous if it is subject to more than one reasonable interpretation. *Schroedl*, 616 N.W.2d at 277. When the language of the statute is clear and free from ambiguity, the court’s role is to apply the language of the statute and not to explore the spirit and purpose of the law. Minn. Stat. § 645.16; *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) (“Where the intention of the legislature is clearly manifested by plain unambiguous language ... no construction is necessary or permitted.”).

Minnesota Statute § 197.46 clearly and unambiguously addresses the veteran’s right to appeal. A “veteran” as defined by statute is:

a citizen of the United States or a resident alien who has been separated under honorable conditions from any branch of the armed forces of the United States after having served on active duty for 181 consecutive days or by reason of disability incurred while serving on active duty, or who has met the minimum active duty requirement as defined by Code of Federal Regulations, title 38, section 3.12a, or who has active military service certified under section 401, Public Law 95-202.

Minn. Stat. § 197.447.

The Respondent, as a City, is not a “veteran.” The Respondent is the employer. Minn. Stat. § 197.46 does not control the employer’s process to appeal the decision. The plain reading of § 197.46 affords the honorably discharged veteran a right to appeal and

sets forth the process. Examination of the plain meaning of the statute as a whole dictates that the right to appeal contained therein is inapplicable to the employer or appointing authority. The statute provides that the appeal process is commenced by the veteran by “causing a written notice of appeal, stating the grounds thereof, to be served upon the governmental subdivision or officer making the charges within 15 days after notice of the decision.” Minn. Stat. § 197.46. If Minn. Stat. § 197.46 is read to apply to an appeal by the employer, how can the appeal be commenced? Applying this statute to appeals on behalf of the employer as urged by Appellant creates confusion and absurdity. The reasonable conclusion drawn from the plain language of the statute must be that Minn. Stat. § 197.46 doesn’t grant any right to appeal to the employer or appointing authority at all.

Application of the appeal provisions of Minn. Stat. § 197.46 to the Respondent violates a basic tenet of construction. The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out. *Phelps*, 537 N.W.2d at 274. “When a question of statutory construction involves a failure of expression rather than an ambiguity of expression, “courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.” *Botler v. Wagner Greenhouses*, 754 N.W.2d 665, 671 (Minn. 2008) (citing *Genin v. 1996 Mercury Marquis*, VIN No. 2MEBP95F9CX644211, License No. MN 225 NSG, 622 N.W.2d 114, 117 (Minn. 2001)). Had the legislature wanted to include a right to appeal by the

employer or appointing authority within the statute, it could have done so. Since the statute expressly provided for the veteran's right to appeal, there is an implicit exclusion of other entities and the courts cannot change that exclusion. *See Martinco v. Hastings*, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963) (“[I]f there is to be a change in the statute, it must come from the legislature, for courts cannot supply that which the legislature purposely omits or inadvertently overlooks.”).

**2. Appellant's reliance upon prior court decisions and practice guides does not support the position that the employer's right to appeal emanates from Minn. Stat. § 197.46.**

In supporting his proposition that the Respondent must appeal pursuant to Minn. Stat. § 197.46, Appellant relies upon this Court's decision in *In re Matter of Schrader*, 394 N.W.2d 796 (Minn. 1986). In *Schrader*, this Court simply stated: “Upon issuance of the hearing board's report, both the veteran and the employer may appeal to the district court from the decision of the hearing board.” *Id.* at 802.<sup>2</sup> The statement itself is a recognition of both parties right to appeal, but does not set forth the procedure for the appeal by the employer. The procedural history of *Schrader* reveals that the case was brought to the district court pursuant to writ of certiorari and not pursuant to Minn. Stat § 197.46. *See, S. Minnesota Mun. Power Agency v. Schrader*, 380 N.W.2d 169, 172 (Minn.

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<sup>2</sup> This statement does not constitute the holding of the court. The holding of the Court was set forth as “a hearing board, proceeding under the Veteran's Preference Act, has the power to modify the employer's disciplinary sanction upon a finding of extenuating circumstances.” *Id.*

Ct. App. 1986) (SMMPA petitioned for writ of certiorari from the district court). While referring to the Court of Appeals' reliance upon this fact as "misplaced," *App's Br p. 6, n. 3*. Appellant refuses to acknowledge that this Court and the Court of Appeals may consider that there are other sources of appeal rights for the employer in a veteran's preference matter.

Urging this Court to amend Minn. Stat. § 197.46 to provide for an appeal by the employer, Appellant relies upon two unpublished Court of Appeals' decisions and the *Minnesota Practice Guide*, mistakenly referring to these decisions and materials as precedent. Unpublished opinions of the Court of Appeals are not precedential. Minn. Stat. § 480A.08. Even published decisions of the Court of Appeals do not constitute precedent for the purpose of this Court's jurisprudence. *McClain v. Begley*, 465 N.W.2d 680, 682 (Minn. 1991). Further, guides and treatises do not provide any precedent to the court as they are intended to summarize law, and are authoritative only to the extent that they are supported by case law.

Review of the unpublished decisions in *Stafne v. City of Ctr. City*, C1-98-835, 1998 WL 778931 (Minn. Ct. App. Nov. 10, 1998) (App. 22-26), and *City of Elk River v. Rollins*, C0-96-2393, 1997 WL 370461 (Minn. Ct. App. July 8, 1997) (App. 27-30), further undermine that Appellant's assertion that they are precedential is mistaken. Neither *Stafne* nor *Rollins* involved the issue presented to this Court; whether the appeal timelines in Minn. Stat. § 197.46 apply to an appeal by an employer. In both of these

opinions, the court, in dicta, cite *Schrader* as authority that an employer's right to appeal stems from Minn. Stat. § 197.46. Dicta is not binding precedent. *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 208, 74 N.W.2d 249, 266 (1956) (“‘Dicta,’ or more properly ‘obiter dicta,’ generally is considered to be expressions in a court's opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in subsequent cases.”). Further, in this case the appeal below was brought pursuant to Minn. Stat. § 484.01, subd. 2 which provides the avenue for appeal for cities of the first class. Neither Center City or Elk River are a cities of the first class. The decisions in *Stafne* or *Rollins* cannot be read to be dispositive of the issue before this Court.

Appellant also relies upon the *Minnesota Practice Guide*, authored by Prof. Stephen F. Befort for authority that the employer must bring the appeal under Minn. Stat. §197.46. *See*, 17 Stephen F. Befort, *Minnesota Practice - Employment Law and Practice* § 12.37(e) (2d ed. 2003). The *Guide* simply states “[e]ither 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 the appeal and proof of service within 10 days after service.” *Id.* Professor Befort references Minn. Stat. § 197.46 for his authority. For reasons explained above the statute is inapplicable to appeals brought by the employer. The author was not construing the statute, merely citing it. It cannot be said that the author has authority to construe the statute contrary to its

plain language. As such the guide provides no authority to this Court to construe the statute as argued by Appellant.

**III. MINN. STAT. § 484.01 PROVIDES THE VEHICLE FOR AN APPEAL BY THE EMPLOYER OR APPOINTING AUTHORITY UNDER THE VETERAN'S PREFERENCE ACT IN CITIES OF THE FIRST CLASS.**

Minn. Stat. § 484.01, subd 2 provides the process by which an employer or appointing authority in a first-class city may take an appeal under the Veteran's Preference Act. Following this Court's decision in *City of St. Paul v. LaClair*, 479 N.W.2d 369 (Minn. 1992), Minn. Stat. § 484.01 was amended in 1993 to include subdivision 2. In *LaClair*, this Court held that the City lacked standing to appeal a decision of its own civil service commission. *Id.* at 371. Reasoning that standing to appeal is conferred either by statute or by status as an aggrieved party, and an aggrieved party is one outside the decisional process, the court held that the City was not outside of the decisional process. *Id;* see also, *Minnesota State Bd. of Health v. Governor's Certificate of Need Appeal Bd.*, 304 Minn. 209, 230, N.W.2d 176 (1975). The court found the City plays a part in the decisional process when it chooses to discipline or discharge an employee, and also acts in a quasi-judicial manner as the Commission. *LaClair*, 479 N.W.2d at 371. It found the Civil Service Commission was created by the City pursuant to its charter, and the City has the power to modify the Commission and the rules under which it operates. *Id.* The Court stated:

In other words the City created the Police Department and the Civil Service Commission. It created the Commission to provide a vehicle for review of

employee grievances. The City, through its Charter, sets rules and procedures under which the Commission operates. As long as the Commission operated within its own rules and procedures, drawn up and approved by the City Council, the City is not harmed by the decision of its own Commission. Moreover, no statute confers standing on the City to appeal a decision of its own Civil Service Commission.

*LaClair*, 479 N.W.2d at 371. Minn. Stat. § 484.01, subd. 2 provides:

Notwithstanding any law to the contrary, the district court has 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. The employee and appointing authority have standing to seek judicial review in all these cases. Review of the decision or order may be had by securing issuance of a writ of certiorari within 60 days after the date of mailing notice of the decision to the party applying for the writ. To the extent possible, the provisions of rules 110, 111, and 115 of the Rules of Civil Appellate Procedure govern the procedures to be followed. Each reference in those rules to the Court of Appeals, the trial court, the trial court administrator, and the notice of appeal must be read, where appropriate, as a reference to the district court, the body whose decision is to be reviewed, to the administrator, clerk, or secretary of that body, and to the writ of certiorari, respectively. This subdivision does not alter or amend the application of sections 197.455 and 197.46, relating to veterans preference.

Pursuant to the Veteran's Preference Act, in "all governmental subdivision having an established civil service board or commission, or merit system authority, such hearing for removal or discharge shall be held before such civil service board or commission or merit system authority." Minn. Stat. § 197.46. The Act does not convert the civil service commission into something other than a civil service commission. The plain reading of the statute states it continues to be the civil service commission. *Id.* As under *LaClair*, the commission, sitting as a veteran's preference board, was created by city charter and

operates under civil service rules. Thus, the Appellant cannot be an aggrieved party and must find statutory authority to appeal. That authority is found in Minn. Stat. § 484.01, subd. 2.

Appellant asserts that “all parties acknowledge that Eldredge’s initial hearing was a Veteran’s Preference hearing and not a garden variety appeal.” *App’s Br p. 10*. This is not true. This matter arises from Appellant’s motion for summary disposition brought before the Saint Paul Civil Service Commission on the legal theory of collateral estoppel. RA-8-23. Under the Minnesota Rules, summary disposition is the equivalent of summary judgement. *Pietsch v. Minnesota Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. 1400.5500(K) (2009).<sup>3</sup> The matter below was not a hearing as contemplated under the Veteran’s Preference Act. Minn. Stat. § 197.46.<sup>4</sup>

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<sup>3</sup> The Rules requires an administrative law judge to make recommendations regarding the motion for summary disposition to an agency, but in this matter the Commission, a lay panel, accepted written submissions without a hearing.

<sup>4</sup> In reviewing a discharge of a veteran this Court has held the 15 day time period in Minn. Stat. § 197.46 is only triggered following a veteran’s preference hearing. *State ex. rel. Sprague v. Heise*, 243 Minn. 367, 370, 67 N.W.2d 907, 910 (1954). In *Sprague*, the Village of Crystal, the employer, discharged Sprague, a veteran, without affording him a hearing. The Court interpreted Minn. Stat. § 197.46, as requiring a hearing before discharge before an appeal timeline can be triggered. Here, like in *Sprague*, the hearing did not occur, as the Civil Service Commission dismissed the matter on Appellant’s motion for summary disposition. Without the matter coming to a hearing as contemplated by Minn. Stat. § 197.46, the court’s holding in *Sprague* is applicable. Of note, when the Respondent raised this issue in the Court of Appeals a question from the court arose whether or not the issue had been raised in the district court below. Respondent did in fact raise the issue, however did not cite the decision in *Sprague* as authority. RA-28. *Sprague* provides additional grounds for this Court to affirm the Court of Appeals decision.

**A. In Hearing Matters under Minn. Stat. § 197.46, the Civil Service Commission Retains its Identity as a Civil Service Commission or Board and Rules of the Commission Apply to the Process.**

Appellant also asserts that when an established board “sits” as a veteran’s preference board, it no longer retains identity or authority as a civil service commission, rather it acts solely in the capacity of a “veteran’s preference board.” As explained above, this is clearly not the case. The plain reading of Minn. Stat. § 197.46 directs the composition of the board in this case to be members of the Saint Paul Civil Service Commission, the Commission is not transformed into something other than the Commission. Minn. Stat. § 197.46. The plain reading of the statute supports this. “In governmental subdivisions having an established civil service board or commission, or merit system authority, such hearing for removal or discharge shall be held before such civil service board or commission or merit system authority.” *Id.* (emphasis added). If the legislature intended for the board or commission to no longer serve in its capacity as a civil service board or commission and act solely and exclusively under the Veteran’s Preference Act, it would have indicated such intent in the statute’s language. The only reasonable interpretation of this language is the established boards, commissions and authorities retain their identity and authority as civil service boards, commissions or merit system authorities.

Appellant asserts that employing a civil service commission is veteran’s preference matters is “purely a product of administrative convenience.” *App’s Br p. 10.* Employing

established commissions or boards to hear veteran's preference matters recognizes not only the economy of the matter but a mutually related purpose of the Veteran's Preference Act and established civil service systems. This Court has recognized that the "legislature has manifested its intent that veteran's enjoy security in public employment, protected from 'the ravages and insecurity of a political spoils system.'" *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 298 (Minn. 1984) (citing, *Johnson v. Village of Cohasset*, 263 Minn. 425,435, 116 N.W.2d 692, 699 (1962)). Similarly, the court has also recognized that:

The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office. Civil service laws are not penal in nature, but are designed to eradicate the system of making appointments primarily from political considerations with its attendant evils, to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments, to establish a merit system of fitness and efficiency as the basis of appointments, and to prevent discrimination in appointments to public service based on any consideration other than fitness to perform its duties.

*Anderson v. City of St. Paul*, 308 Minn. 121, 124, 241 N.W.2d 86, 88 (1976) (citing 15 Am. Jur. 2d, Civil Service, s 1). Further, in cases of discharge under the Veteran's Preference Act a "just cause" standard is employed, *Leininger v. City of Bloomington*, 299 N.W.2d 723, 726 (Minn. 1980); *Ekstedt v. Village of New Hope*, 292 Minn. 152, 162-63, 193 N.W.2d 821, 826 (1972), similarly the "just cause" standard is employed in dismissal cases before the civil service commissions. See, *id.*; *Thoreson v. Civil Service Commission of the City of St. Paul*, 308 Minn. 357, 360, 242 N.W.2d 603, 605 (1976)

(citing the St. Paul City Charter, Sec 12. 03.3) (RA-30) (all non-probationary classified employees shall not be discharged except for cause and upon such hearing as the civil service rules or other law prescribe).

Citing *Leininger* as authority, Appellant argues that the substantive powers of the Civil Service Commission are governed solely by the Veteran's Preference Act. *App's Br p. 10*. This is clearly not the holding of the court in *Leininger*. This Court has recognized that in veteran's preference matters, the civil service commissions are guided not only by their own established rules, but also the Veteran's Preference Act itself. *Leininger*, 299 N.W.2d at 728-29; *see also, AFSCME Council 96*, 356 N.W.2d at 298; and *Ramsey County Cmty. Human Services Dept. v. Davila*, 387 N.W.2d 421 (Minn. 1986). It is only when the rules of the commission are inconsistent are they declared void to the extent of such inconsistency. *Leininger*, 299 N.W.2d at 729; *AFSCME Council 96*, 356 N.W.2d at 298; Minn. Stat. §§ 197.46 and 197.48.

In *Leininger*, this Court had opportunity to examine a hearing held before an established board, the Bloomington Merit Service Board. *Leininger*, 299 N.W.2d at 725-26. The Board concluded that a section of the Bloomington Home Rule Charter and the Merit System Rules restricted the Board to either sustaining or not sustaining the City's dismissal of *Leininger*. *Id.* at 728. In reviewing the decision, this Court observed that § 197.46 does not contemplate "that the commission serve merely as a body which reviews findings by appointing authorities or department heads." *Id.* at 729, (citing *City of*

*Minneapolis By Johnson v. Singer*, 253 N.W.2d 150 (Minn. 1977)). But, because the pertinent section of the Bloomington Home Rule Charter and the Merit System Rules conflicted with a particular state civil service rule allowing the state civil service board to formulate alternative disciplinary sanctions, under Minn. Stat. § 197.455, the Home Rule Charter and the Merit Rules were void to the extent that they were inconsistent with the state civil service rule. *Id.* The Court found that reading state civil service statutes together with the Veteran's Preference Act, the Bloomington Merit Board was impliedly authorized to fashion a remedy other than that determined by the City, if the evidence presented extenuating circumstances. *Id.* The Court's holding that the Charter and Rules were *void to the extent of inconsistency* with the Veteran's Preference Act, and the court's reading the Act together with the state's merit based personnel system does not lead to the conclusion, as argued by Appellant, that civil service commissions or boards are bound solely by Minn. Stat. § 197.46 in veteran's matters.

**B. Minnesota Statute §§ 197.46 and 484.01 Do Not Conflict and Each Statute must Be Given its Effect as Intended by the Legislature.**

Appellant also argues that the deadlines contained in Minn. Stat. § 197.46 are applicable because Minn. Stat. § 484.01, subd.2 states “[t]his subdivision does not alter or amend the application of sections 197.455 and 197.46, relating to veterans preference.” Minn. Stat. § 484.01, subd.2. As established above, Minn. Stat. § 197.46 is silent with respect to the right and procedure for appeal by an employer and as such cannot be construed to apply to the appeal. Minnesota Statute § 484.01 addresses an employer right

to appeal decisions from its own civil service commission. The two statutes are mutually exclusive and each can be given their full effect. In making this argument, Appellant continues to invite this Court to engage in impermissible statutory construction by amending § 197.46 to include “employer.” As noted above, “when a question of statutory construction involves a failure of expression rather than an ambiguity of expression, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.” *Botler*, 754 N.W.2d at 671.

Further, by giving effect to Minn. Stat. § 484.01, subd.2 this court does not run afoul of the legislature’s directives in Minn. Stat. § 146.48. Minnesota Statute § 146.48 provides:

No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed as inconsistent herewith or with any provision of sections 197.455 and 197.46 unless and except only so far as expressly provided in such subsequent act that the provisions of these sections shall not be applicable or shall be superseded, modified, amended, or repealed. Every city charter provision hereafter adopted which is inconsistent herewith or with any provision of these sections shall be void to the extent of such inconsistency.

Construing Minn. Stat. § 484.01 to apply to the employer’s appeal in matter under the Veteran’s Preference Act is not inconsistent with either Minn. Stat. §§ 197.455 or 197.46.

**C. The Differing Avenues of Appeal Presented in Statutes Do Not Compel this Court to Overlook the Clear Intent of the Legislature.**

Appellant also argues that the ruling of the Court of Appeals creates an unintended, untenable scheme of disparate appeal deadlines for different cities and the

holding of the Court of Appeals has “the undesirable effect of replacing a clear logical and consistent appeal framework with a bizarre, convoluted and Byzantine statutory scheme.” *App’s Br p. 14*. Again, by making this argument, the Appellant invites this court to engage in unwarranted statutory interpretation when the plain meaning of both Minn. Stat. §§ 197.46 and 484.01 is clear. *See generally*, Minn. Stat. § 645.16 (providing that legislative intent may be determined by looking to the object to be attained by law’s enactment, consequences of a particular interpretation, and contemporaneous legislative history); *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004).

Calling the disparate appeal deadlines as applied to cities of first class verses cities of the second third or fourth class<sup>5</sup> as “unworkable and unfair,” Appellant argues that the Court of Appeals has impermissibly extended existing law. This is clearly not the case. Minnesota Statute § 484.01, subd. 2 clearly provides the process by which an employer or appointing authority in a first-class city may take an appeal to district court in veteran’s cases. Similarly, under Minn. Stat. § 44.09, the appointing authority in cities of the second, third or fourth class having a merit system clearly may take an appeal to district

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<sup>5</sup> By statutory definition, a cities of the first-class have more that 100,000 inhabitants, a second-class city has more than 20,000 and not more than 100,000 inhabitants, a third-class city has more than 10,000 and not more than 20,000 inhabitants and a fourth-class city has not more than 10,000 inhabitants. Minn. Stat. § 410.01.

court. The difference is one of the timeline of the appeal.<sup>6</sup> The holding of the Court of Appeals below does not change existing law in any way.

Appellant also questions the holding of the court below with regard to cities which do not have an established merit system authority or civil service board. Under this Court's holding in *LaClair*, the political subdivision, municipality or other public agency would have status as an "aggrieved party." *LaClair*, 479 N.W.2d at 371. That status alone provides standing to appeal. This was the very circumstance presented in *Schrader* where the appeal was brought before the district court on a writ of certiorari. *See, S. Minnesota Mun. Power Agency*, 380 N.W.2d at 172 (employer petitioned for a writ of certiorari from the district court). The holding of the Court of Appeals does not leave public bodies without merit system authorities or civil service boards without an avenue of appeal.

Even if the Court were to agree that the statutory scheme as it currently exists creates unfairness, this Court is required to take the statutes as they are found. *McNeice v. City of Minneapolis*, 250 Minn. 142, 147, 84 N.W.2d 232, 236-37 (1957) (It is not for the court to encroach upon the legislative field by an interpretation which would in effect

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<sup>6</sup> Under Minn. Stat. § 44.09 cities of the second, third and fourth class may appeal from decisions of their merit system authority by serving a written notice of appeal upon the secretary of the board within ten days after receiving written notice of the board's order.

rewrite a statute to accomplish a result which might be desirable and at the same time conflict with the expressed will of the legislature.).

**D. Minn. Stat. § 606.01 does not create a superior avenue for appeal by employers in matters under the Veteran's Preference Act.**

Appellant also argues that an appeal by an employer may properly be brought under Minn. Stat. § 606.01 providing for a writ of certiorari to the Court of Appeals. Appellant, introduces this argument asserting the superior nature of Minn. Stat. § 606.01 again arguing the legislature must not have meant what the clear language of Minn. Stat. § 484.01, subd. 2 states. Further, this argument ignores this Court's statement in *Schrader*, 394 N.W.2d at 802 (both the veteran and the employer may appeal to the district court from the decision of the hearing board). Proceedings under Minn. Stat. § 606.01 are unavailable when there is statutory authority for a different process. *See, In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989); *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996). In order to accept this argument, this Court must overlook the plain language and clear intent of the legislature with regard to Minn. Stat. § 484.01.

**IV. WHERE STATUTORY LANGUAGE IS CLEAR AND UNAMBIGUOUS, REVIEW OF THE PURPOSE OF THE STATUTE OR EQUITIES AS URGED BY APPELLANT IS INAPPROPRIATE.**

Appellant makes one final argument again urging this Court to look to the intent of the Veteran's Preference Act and its underlying policies. As stated numerous times above, inviting this court to look to legislative intent when a the statute is clear and unambiguous is improper and unnecessary.

Further, as recognized by the Court of Appeals, the policies behind the Veteran's Preference Act favoring a veteran are not implicated when the veteran prevails in the hearing and the employer appeals. In this case, as with others where the veteran prevails, removal has not occurred. In such cases the veteran retains his or her position, along with the corresponding salary and benefits until such time as the veteran's preference boards determines that removal is warranted. Minn. Stat. § 197.46; *Mitlyng v. Wolff*, 342 N.W.2d 120, 123 (Minn. 1984). Appellant argues that he has lost advancement, training and overtime opportunities along with the ability to remove the cloud from his career and serve his community as a firefighter.<sup>7</sup> The record does not support any tangible loss by the Appellant. Further, Appellant has not filed a petition for enforcement pursuant to Minn. Stat. § 197.481 asserting a denial of any rights under the Veteran's Preference Act.

### CONCLUSION

Minn. Stat. § 197.46 provides a process for appeals by the veterans themselves. It is silent and inapplicable to an appeal brought by the employer or appointing authority. In enacting Minn. Stat. § 481.01, subd. 2, the legislature has expressly provided an avenue of appeal for cities of the first class. The statute is unambiguous and this Court must give

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<sup>7</sup> Appellant asserts that he has not been "reinstated" to his position as a firefighter. Respondent submits that to return him to a position where he is actively engaged in fighting fires would endanger not only his life, but that of his co-workers and the public. Indeed three physicians have declared Appellant unfit for duty placing restrictions upon him from performing work in safety sensitive positions. RA-1. This is punctuated by the fact that the Civil Service Commission cautioned it does not find Appellant "competent." Add. 20.

full effect to the legislature's intent and apply the plain meaning of both statutes and not engage in further statutory construction.

Respondent respectfully requests this Court affirm the decision of the Court of Appeals and remand this case to the District Court for further proceedings.

Respectfully submitted,

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