

NO. A10-528

State of Minnesota
In Court of Appeals

City of Saint Paul,

Appellant,

vs.

William A. Eldredge,

Respondent,

and

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

Respondents.

**APPELLANT CITY OF SAINT PAUL'S
 REPLY 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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REPLY ARGUMENT

I. THE 15 DAY TIME PERIOD SET FORTH IN MINN. STAT. § 197.46 DOES NOT APPLY TO THE APPELLANT EMPLOYER IN THIS CASE.

Examining the language of Minn. Stat. § 197.46 with respect to the procedure for appeal from a decision of a veteran's preference board, the plain meaning is clear. It provides a mechanism for appeal only to the veteran, and doesn't provide for any appeal by the employer or appointing authority. That mechanism, for cities of the first class, is found in Minn. Stat. § 484.01.

Minnesota Statute § 197.46 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). Minn. Stat. § 197.46 doesn't grant any rights to the employer or appointing authority at all at all. It speaks only to the rights of the veteran employee. When a statute speaks with clarity in limiting its application to specifically enumerated subjects, its application shall not be extended to other subjects by process of construction. *Martino v. Hastings*, 265 Minn. 490, 495, 122 N.W.2d 631, 637 (1963); *Griswold v. County of Ramsey*, 242 Minn. 529, 65 N.W.2d 647 (1954); *see also*, *Maytag Co. v. Comm. of Taxation*, 218 Minn. 460, 17 N.W.2d 37 (1944)(where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others) and *State ex. rel. Verbon v. St. Louis County*, 216 Minn. 140, 12

N.W.2d 193 (1943)(where legislature provided method for suspension or removal of two classes of county employees but made no provision as to third class, court would not supply the omitted legislation).

The 15 day time period is only triggered following a veteran's preference hearing. *State ex. rel. Sprague v. Heise*, 243 Minn. 367, 67 N.W.2d 907 (1954). In *Sprague*, the Village of Crystal, the employer, discharged Sprague, a veteran, without affording him a hearing. The Village maintained that the provisions of Minn. Stat. § 44.08 required Sprague to make a written request that charges be filed against him and a hearing be held on such charges. In dismissing the Village's argument, the supreme court found that as a veteran, the provisions of Minn. Stat. § 197.46 were applicable and stated:

[P]etitioner's rights are governed by M.S.A. § 197.46 rather than by § 44.08. Under § 197.46 he is entitled to a hearing before discharge. He is entitled to appeal within 15 days after notice of a decision after such hearing. He was never given any hearing consequently, there has been no notice of decision based on such hearing and the provisions relating to a 15-day limitation on his right to appeal have no application.

Sprague, 243 Minn. at 370, 67 N.W.2d at 910.

Here, like in *Sprague*, the hearing did not occur, as the Civil Service Commission dismissed the matter on Respondent Eldredge's motion for summary disposition.

Without the matter coming to a hearing, the court's holding in *Sprague* is applicable, and § 197.46 does not apply to an appeal.

Examination of the plain meaning of § 197.46 further dictates that it 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 the appeal is commenced by an employer or appointing authority, following the directives of this language leads to an unreasonable conclusion – the employer appeals by serving itself? Applying this statute to the Appellant as urged by Respondent creates the absurdity.

Respondent has urged that the supreme court’s statement in *Matter of Schrader*, 394 N.W.2d 796 (Minn. 1986) somehow interprets Minn. Stat. § 197.46 to expand the right to appeal to employers. The 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. In making this statement, the supreme court did not engage in statutory interpretation, and if it did it would have been guided by the rules of interpretation refusing to expand a clear statute to parties not enumerated therein. The employer’s right to appeal must be and is found elsewhere. Indeed, in *Schrader*, the employer appeal via writ of certiorari. See *S. Minnesota Mun. Power Agency v. Schrader*, 380 N.W.2d 169, 172 (Minn. Ct. App. 1986) (SMMPA petitioned for writ of certiorari from the district court).

Respondent has also relied 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, Stephen F. Befort, *Minnesota Practice - Employment Law and Practice* § 12.37(e) (2d ed. 2003). The *Guide* references Minn. Stat. § 197.46 for its authority and

for reasons explained above and in Appellant's initial brief, the statute is inapplicable to appeals brought by the employer.

Finally, in maintaining that the employer or appointing authority's right to appeal emanates from Minn. Stat. § 197.46, Respondent insists that "No contrary opinion has been found in any case, treatise, scholarly journal, bar periodical, or other printed publication." However, Respondent's counsel, Charles Horowitz, has written:

The veteran may appeal an adverse decision to the District Court by filing a notice within 15 days of the notice of the decision. The Act, however, does not give the public employer a comparable right.

Charles Horowitz: *Minnesota Veteran's Preference Act: A View from the Front Lines*, <http://www.mansfieldtanick.com/CM/Articles/Minnesota-Veteran-Preference.asp> (last visited April 7, 2010). A 5. Counsel, in authoring this article interpreted Minn. Stat. § 197.46 correctly, the Act does not provide a public employer with a right to appeal, that right emanates from other sources.

II. MINN. STAT. § 484.01 PROVIDES THE VEHICLE FOR AN APPEAL BY THE EMPLOYER OR APPOINTING AUTHORITY 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 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 may take an appeal to district court. Respondent has confused the applicability of Minn. Stat. § 44.01, et. seq. to cities of the first class and stated erroneously, that Minn. Stat. § 484.01 applies to all cities.

Minn. Stat. § 484.01 was amended in 1993 to include subdivision 2 following the Supreme Court's decision in *St. Paul v. LaClair*, 479 N.W.2d 369 (Minn. 1992). In *LaClair*, the Supreme 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.* 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. *Id.* 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.

Id.

Following this decision Minn. Stat. § 484.01 was amended to include the following subdivision:

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.

Minn. Stat. § 484.01, subd.2.

Here pursuant to Minn. Stat. § 197.46, the hearing relating to the discharge of a veteran preference board is held before the civil service commission. The statute does not convert the civil service commission into an alternate persona. It continues to be the civil service commission. As under *LaClair*, the Commission was created by City Charter and operates under civil service rules. The same arguments which applied in *LaClair*, could be applied to a commission hearing a veteran's preference matter. Therefore, the City cannot not be an aggrieved party. Thus, under the Court's decision in *LaClair*, the City must find statutory authority to appeal. That authority is found in Minn. Stat. § 484.01, subd. 2.¹

¹ 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.

III. THE APPLICATION OF MINN. STAT. § 484.01 TO VETERAN'S PREFERENCE CASES DOES NOT CREATE AN ABSURDITY.

Respondent also argues that the application of Minn. Stat. § 484.01 to veteran's preference cases and only to cities of the first class creates an absurdity. The legislature has provided that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16. To interpret a statute, the court must first assess "whether the statute's language, on its face, is clear and unambiguous." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the law is free from ambiguity, the plain meaning controls and is not "disregarded under the pretext of pursuing the spirit." 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."). The supreme court has held that a statute may be deemed absurd "only in rare cases where the plain meaning 'utterly confounds a clear legislative purpose.'" *Hyatt v. Anoka Police Dep't*. 691 N.W.2d 824, 827 (Minn. 2005)(quoting *Mutual Serv. Cas. Ins. Co. v. League of Minnesota Cities Ins. Trust*, 659 N.W.2d 755, 761 (Minn. 2003)). Absurdity warranting the court in adopting harmonious construction of a statute must be so gross as to shock general moral or common sense. *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S.Ct. 49, 50 (1930).

In *State v. Basal*, 763 N.W.2d 328 (Minn. Ct. App. 2009) this court has stated:

Ordinary definitions of the word "absurd" also set forth a stringent standard: "[r]idiculously incongruous or unreasonable" or "manifesting the

view that there is no order or value in the universe,” *The American Heritage Dictionary* 6 (4th ed.2007), and “obviously and incomprehensibly inconsistent with manifest truth, opinions generally held, or the plain dictates of common sense,” *Webster's New Int'l Dictionary* 11 (2d ed.1946). The existence of an absurdity in a statute is not a basis for a court to substitute its judgment concerning the wisdom of the statute. Rather, under Minnesota law, if the plain meaning of a statute is absurd, a court is permitted only to “ ‘deviate a little from the received sense and literal meaning of the words, and interpret the instrument in accordance with what may appear to have been the intention and meaning of its framers.’ ”

State v. Basal, 763 N.W.2d at 333 (quoting *Kellerman v. City of St. Paul*, 211 Minn. 351, 353, 1 N.W.2d 378, 380 (1941) (quoting *Taylor v. Taylor*, 10 Minn. 107, 121, 10 Gil. 81, 93 (1865))).

This guidance can lead to only one conclusion, the plain meaning of Minn. Stat. § 484.01 applies to appeals in veteran’s preference cases taken by the employer or appointing authority from a decision of a civil service commission. It cannot be said that this interpretation “utterly confounds a clear legislative purpose.” *Hyatt*, 691 N.W.2d at 827. Including appeals taken in veteran’s preference matters is not “[r]idiculously incongruous or unreasonable” or suggestive of a universe with no “order or value,” *see, The American Heritage Dictionary* 6 (4th ed. 2007) and is not “obviously and incomprehensibly inconsistent with manifest truth, opinions generally held, or the plain dictates of common sense.” *Webster's New Int'l Dictionary* 11 (2d ed. 1946).

CONCLUSION

For the above stated reasons, the Appellant respectfully requests this Court reverse the decision and judgment of the District Court, vacate the award of costs and disbursements, and remand this case for further proceedings.

Respectfully submitted,

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