

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Todd E. Schwanke,
Petitioner,

v.

Steele County,
Respondent.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge M. Kevin Snell on October 18, 2011, at the Steele County Administrative Center, 630 Florence Avenue, Owatonna, Minnesota. The OAH record closed on November 18, 2011 upon receipt of the post-hearing closing briefs and supplemental exhibits.

Karen K. Kurth, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota, appeared on behalf of Steele County. Robert Fowler, Fowler Law Firm, L.L.C., Roseville, Minnesota, appeared on behalf of the Petitioner, Sergeant Todd E. Schwanke.

STATEMENT OF ISSUE

Whether Petitioner was removed or demoted from a position of employment within the meaning of the Veterans Preference Act, Minn. Stat. § 197.46 (“VPA”), when the Steele County Sheriff removed him, without notice, from the South Central Drug Investigation Unit (“SCDIU”)?

The Administrative Law Judge concludes that Petitioner’s removal from the SCDIU was not a demotion that was the functional equivalent of removal from a position of employment, and the County therefore did not violate the Veterans Preference Act by failing to give him notice of a right to a hearing on whether there was cause to justify his reassignment.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner is a decorated and honorably discharged Army veteran within the meaning of the VPA.¹ Petitioner's most recent active duty assignment, with the rank of Sergeant First Class, was in Afghanistan where he served in a billet designated for a commissioned officer with the rank of Captain.²

2. Petitioner was hired as a patrol deputy for the Steele County Sheriff's Department in 1994. Petitioner performed well as a patrol deputy and was promoted to Patrol Sergeant in March of 2005.³

3. Among many other specified duties, the written job description for Sergeant provides in relevant part as follows:

- 1) Perform all duties and responsibilities of the Patrol Deputy. . . .

These examples are intended only as illustrations of various types of work performed and are not necessarily all-inclusive.⁴

4. Among many other specified duties, the written job description for Patrol Deputy provides in relevant part as follows:

Perform related miscellaneous duties as directed by the Sheriff or Chief Deputy Sheriff.⁵

5. Steele County is one of a dozen local units of government that are parties to a Joint Powers Agreement ("JPA"), pursuant to Minn. Stat. § 471.59, for operation of the South Central Drug Investigation Unit, and has been a party to JPAs for the SCDIU since it became operational on January 1, 1988.⁶

6. A Board of Directors governs operation of the SCDIU. SCDIU Board members are selected and removed pursuant to the following language in article 5.1 of the JPA:

The police chief or sheriff of each party shall appoint one board member to serve at the chief's or sheriff's pleasure.⁷

7. Article 8.1 of the JPA provides as follows:

¹ Exhibit A. The parties also Stipulated to this fact on the hearing record.

² *Id.*; Testimony of Todd E. Schwanke.

³ Test. of T. Schwanke.

⁴ Ex. 1.

⁵ Ex. 2.

⁶ Exs. K and M; Test. of T. Schwanke and Lon Thiele, Steele County Sheriff.

⁷ Ex. M.

Agents shall not be employees of the SCDIU. Agents shall remain employees of the members that has assigned them to the SCDIU and shall be paid by that member, not the SCDIU.⁸

8. Article 11.2, (a) of the JPA provides as follows:

The SCDIU is a separate and distinct public entity to which the parties have transferred all responsibility and control for actions taken pursuant to this Agreement.⁹

9. Article 12. 4 of the JPA provides, in relevant part, as follows:

Any party to the Agreement may withdraw from this agreement following thirty (30) days written notice to the SCDIU.¹⁰

10. The SCDIU operates an emergency response team known at the Unit Special Weapons and Tactics Team (“SWAT Team”). The SWAT Team acts as a support unit for law enforcement and is specially trained and equipped to resolve critical high-risk situations. Member agencies may assign officers to the SWAT Team and are responsible for equipping and paying the assigned officers.¹¹ SWAT Team members recommended for the SWAT Team Commander position must be approved by the SCDIU Board.¹²

11. Recognizing the hazardous nature of SWAT operations, ongoing training is a key component of serving on the SWAT Team. Members of the team meet on a monthly basis for ongoing training for a minimum of twelve training days per year. Team members are also encouraged to attend additional training. At various times all team members are assigned to cover an area of training for the entire tactical team including a written lesson plan with training objectives, training method and time line for the training.¹³ The training received by SWAT Team members is extensive, extremely valuable, and is some of the most useful training available to law enforcement officers.¹⁴

12. The SWAT Team members may have various job assignments based on the needs of the team, the situations the team responds to, and the officers’ training, experience and expertise. SWAT Team members receive training in as many areas as possible with duties/responsibilities including the reconnaissance team; entry team; munitions/gas/delivery/perimeter; sniper/marksman; arrest team; and medical team.¹⁵

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ex. K at 9; Ex. 8 at 9.

¹² Test. T. Schwanke.

¹³ *Id.*; Ex. K at 38; Ex. 8 at 28.

¹⁴ Test. of L. Thiele, T. Schwanke, and Jon Lentz, Lieutenant with Stearns County Sheriff’s Office.

¹⁵ Ex. K at 5-6, Ex. 8 at 5-6.

13. Most law enforcement officers consider participation on any SWAT team extremely prestigious.¹⁶

14. The Sheriff initially selects Steele County Deputies assigned to the SCDIU SWAT Team. There is no formal interview or “selection” procedure within the County for the assignment, although the SWAT Team Operating Manual in effect prior to January 1, 2011 recommended that assigning agencies “conduct an oral interview, weapons proficiency and physical fitness assessments of prospective SCDIU Tactical Team personnel.” The SCDIU may decline acceptance of the Sheriff’s choices.¹⁷ Any interview and final selection process to the SWAT Team is conducted within the SCDIU.¹⁸

15. All Steele County deputies have multiple opportunities to earn extra-duty compensation in the form of compensation time (“comp time”), up to a maximum of 80 hours, for “assigned extra duties” in accordance with the Steele County Sheriff’s Office’s October 2, 2008 General Order GO 74-24, Compensation for Extra Duty (“GO 74-24”). These assigned extra duties include serving as a field training officer (“FTO”), K-9 Deputy, SCDIU SWAT team member, Safety Camp, Investigator’s month meetings, and DARE preparation.¹⁹

16. SCDIU membership or participation is not a “position” listed and approved by the Steel County Board.²⁰

17. GO 74-24 provides specifically as follows for K-9 Deputy and SCDIU Tactical Team Members:

II. K-9 DEPUTY AND SCDIU TACTICAL TEAM MEMBERS:

Training time will be compensated as pay or comp time at a straight rate, to include travel time to and from training. Call out time will be 2 hours minimum to be taken as comp time or pay at 1 ½ rate, to include travel time to and from the incident location. In addition the K-9 Deputy will be given ½ hour of straight time pay per day to be used for maintenance.²¹

18. Article 22.3 of the 2010-2011 labor agreement between the County and Law Enforcement Labor Services, Inc. (LELS), the union representing the patrol sergeants, provides:

TEAM COMMANDER: Any individual assigned to and performing the duties of a Team Commander of the Swat Team will receive an additional

¹⁶ Test. of L. Thiele, T. Schwanke, and J. Lentz.

¹⁷ Exs. K, K Supplemental, and M; Test. of L. Thiele Test, S. Hanson and T. Schwanke.

¹⁸ Test. of T. Schwanke.

¹⁹ Ex. 6; Test. of L. Thiele, S. Hanson, and T. Schwanke.

²⁰ Ex. 4; Test. of Patty Krueger, Steele County Human Resources Director.

²¹ Ex. 6.

1 hour of compensatory time for each shift the employee works Team Commander duties.²²

This is the only reference in the LELS Agreement to the SCDIU SWAT Team Commander.

19. The SCDIU SWAT Team Operating Manual in effect prior to January 1, 2011, which was drafted by Petitioner, provides that “each member agency may provide officers to the SCDIU Tactical Team.”²³

20. SCDIU SWAT Team members approached petitioner in 1998 about becoming a member of the team. He agreed and was selected by then Sheriff Hildebrandt for the SWAT Team at that time. Petitioner was selected because Sheriff Hildebrandt believed Petitioner would be a good team member.²⁴

21. As a member of the SCDIU, Petitioner took numerous training courses between 1998 and 2005, including Basic and Advanced Tactical Courses from the Special Operations Training Association (“SOTA”).²⁵

22. In 2002, Petitioner was also assigned the extra duty of Field Training Officer (“FTO”), in which capacity he created the Steele County Sheriff’s first field policy program and manual.²⁶

23. In 2005, Petitioner was selected by the SCDIU Board to be the SWAT Team Commander. A significant factor in his selection was his extensive military experience, including his leadership experience and knowledge of weapons and tactics.²⁷ Petitioner is clearly fit to command the SCDIU Swat Team.²⁸

24. Petitioner had the following duties as Commander of the SWAT Team:

- in charge of a four county, 18 person Tactical Team and negotiators;
- managing and planning annual budget;
- coordinating monthly training sessions;
- coordinating SWAT school for members
- coordinate assisting police chiefs, sheriffs and law enforcement supervisors with SWAT operations;
- order equipment and supplies;
- maintain inventory;

²² Ex. 9 at 20.

²³ Ex. K Supplemental at 2; Test. of T. Schwanke.

²⁴ Test. of T. Schwanke.

²⁵ *Id.*; Ex. F.

²⁶ Test. of T. Schwanke; Ex. 15.

²⁷ Test. of T. Schwanke.

²⁸ Test. of Scott Hansen, Chief Deputy for the Steele County Sheriff’s Office.

- coordinate raids with local, state and federal agencies;
- devise tactical plans;
- function as overall tactical commander at incidents;
- assign and read reports
- testify in court
- attend monthly drug task force meetings and make recommendations to the board;
- review and write policies; and
- report to multi-jurisdictional task force board.²⁹

25. Petitioner's duties as SWAT Team Commander were numerous and required a substantial amount of time.³⁰

26. In November of 2010, Steele County Patrol Sergeant Lon Thiele was elected Steele County Sheriff.³¹

27. In December of 2010, then Sheriff-elect Thiele requested Petitioner and Patrol Sergeant Youngquist provide him with a list of the duties they were performing which were in addition to their normal duties as Sergeant. At that time Sergeant Youngquist had also been a member of the SWAT Team for a number of years.³²

28. Sheriff Thiele's election caused a need for the duties Petitioner had been performing as a Patrol Sergeant to be reassigned. With three Steele County deputies – Bennett, Schwanke and Youngquist – as members of the SCDIU SWAT Team, Sheriff-elect Thiele determined that there was a need for the remaining two Patrol Sergeants, both of whom were on the SWAT Team (Schwanke and Youngquist), to take up his former duties, and follow through with certain other Patrol Sergeant training duties that were not being fulfilled, e.g., Peace Officers and Standards Board requirements on driving skills.³³

29. On December 22, 2010, Sheriff-elect Thiele sent Petitioner and Sergeant Youngquist the following e-mail:

Gentlemen,

I will be sworn in as Steele County Sheriff on Monday January 3rd, 2011. Which means my current responsibilities as sergeant will be split between the 3 sergeants.

Todd, Bill has already sent me his list, but could you send me your current responsibilities. I already know the sergeant's task, so if you could just list the additional roles you have.

²⁹ Ex. 10; Test. of T. Schwanke.

³⁰ Id; Test. of L. Thiele; Exs. G and G Supplemental.

³¹ Test. of L. Thiele.

³² *Id.*; Ex. 11.

³³ Test. of L. Thiele, S. Hanson.

With the new sergeant coming in I will keep it simple for that person for the probation period. I want that person to be up to speed with responsibilities as sergeant before giving him additional assignments.

As of now, the new responsibilities will be...

- Vehicle Forfeitures
- Predatory Offender Registration (POR)
- Safe and Sober Coordinator
- Schedule
- Training

Thank you,
Sheriff-elect Lon Thiele #7415³⁴

30. Petitioner responded 3 ½ hours later with the following e-mail response:

Lon,

Here they are:

SWAT Commander

Rifle Instructor

Rifle Armorer

FTO Coordinator

Find and arrange training for deputies

Todd³⁵

31. Sheriff-elect Thiele communicated with SCDIU Board Chairman, Owatonna Police Chief Keith Hiller, about his intention to terminate the SWAT Team membership of Sergeants Schwanke and Youngquist. Chief Hiller expressed his reservations about losing Petitioner as SWAT Commander and suggested to Thiele that he give it some time before taking any action.³⁶

32. Sheriff Thiele assumed his duties as Steele County Sheriff on January 3, 2011.³⁷

33. On January 5, 2011, Sheriff Thiele called Petitioner and Sergeant Youngquist into a meeting. Sheriff Thiele started the meeting by talking about the need for them to be "on board" with him. He then accused Petitioner and Sergeant Youngquist of abusing the use of their County cell phones. He stated he had

³⁴ Ex. 11.

³⁵ *Id.*

³⁶ Test. of L. Thiele, T. Schwanke.

³⁷ *Id.*; Ex. 11.

researched their telephone records and discovered who they had been calling and monitored their cell phone usage. Believing the meeting was concluded, Petitioner and Sergeant Youngquist then got up to leave. Sheriff Thiele then said, "Oh here, by the way" and handed each of them a letter advising them that:

your assignment with the SWAT Team will be terminated effective immediately and all SWAT issued equipment (pagers, phones, keys, etc.) will need to be returned to the SCDIU SWAT Team.³⁸

34. Sheriff Thiele did not share with Petitioner or Sergeant Youngquist any reasons for their termination from the SWAT Team. Sheriff Thiele then asked, "So who do you think will be good on the team? Well, what do you think." Petitioner responded by commenting, "This is pretty shitty. You're the boss," and then walked out to his squad car, retrieved the SCDIU gear, turned it in, and left.³⁹

35. On January 6, 2011, Sheriff Thiele sent the following e-mail to all in the Sheriff's Department:

Subject: Swat Reassignment

AN UPDATE FOR EVERYONE:

AS YOU PROBABLY KNOW, MY ELECTION TO SHERIFF WILL BRING CHANGES TO EVERYONE'S DUTIES INCLUDING THE SERGEANTS. THEIR SUPERVISORY ROLE IS NEEDED EVEN MORE THAN IT HAS BEEN IN THE PAST.

THEREFORE, SGTS. SCHWANKE & YOUNGQUIST WILL NO LONGER BE ASSIGNED TO THE SWAT TEAM. WE THANK THEM BOTH FOR THEIR ROLE ON THE SWAT TEAM AND THE COUNTLESS HOURS THEY PUT IN.

SWAT DUTIES HAVE NOW BEEN REASSIGNED TO DEPUTY GUZMAN AND DEPUTY SKILLESTAD. WE LOOK FORWARD TO THE ADDITIONAL KNOWLEDGE AND EXPERIENCE THEY WILL BRING BACK TO US FROM THEIR SWAT INVOLVEMENT.

**THANK YOU.
SHERIFF LON THIELE.⁴⁰**

36. These SWAT Team reassignments were made for the following additional reasons:

- SWAT Team members risk suffering from "burn out" if on the team too long; and

³⁸ Test. of T. Schwanke; Ex. 12.

³⁹ Test. of T. Schwanke, L. Thiele.

⁴⁰ Ex. 13.

- SWAT Team members can lose sight of their primary duties as Steele County Deputies; and
- SWAT call outs occasionally prevent the availability of shift supervising Patrol Sergeants; and
- The importance to the County to have more deputies receive the valuable and diversified training and experience that comes with SWAT team participation.⁴¹

37. LELS declined to file a grievance against the County over Petitioner's removal from the SCDIU and the resulting loss of comp time.⁴²

38. On May 20, 2011, Petitioner filed a petition for relief under the Veterans Preference Act with the Department of Veterans Affairs.⁴³

39. Petitioner remains a patrol sergeant with the Steele County Sheriff's Department.

CONCLUSIONS

1. Minnesota law gives the Commissioner of Veterans Affairs and the Administrative Law Judge authority to consider the Veterans Preference Act issues that have been raised in this contested case proceeding.⁴⁴

2. The Notice of Petition and Order for Hearing was proper in all respects, and the Department of Veterans Affairs has complied with all of the law's substantive and procedural requirements.

3. The Department gave the County proper and timely notice of the hearing in this matter.

4. Sergeant Schwanke is an honorably discharged veteran within the meaning of the Minnesota Veterans Preference Act, and he is entitled to all of the protections and benefits of that Act.⁴⁵

5. The County is a political subdivision of the state within the meaning of the Veterans Preference Act and its personnel practices are therefore subject to the provisions of that Act.⁴⁶

⁴¹ Test. of L. Thiele, S. Hanson.

⁴² Test. of T. Schwanke.

⁴³ Ex. 17.

⁴⁴ Minn. Stat. §§ 14.50, 197.46. Minnesota Statutes are cited to the 2010 Edition.

⁴⁵ Minn. Stat. §§ 197.447, and 197.46.

⁴⁶ Minn. Stat. § 197.46.

6. Minnesota law requires a public employer to give a veteran notice of the right to a hearing to establish incompetency or misconduct prior to any action to remove the veteran from his or her job.⁴⁷

7. Failing to give a veteran notice of a right to a hearing when demoting him violates the Veterans Preference Act if the demotion “is the functional equivalent of removal from a job.”⁴⁸

8. The County has never notified Sergeant Schwanke of his right to have a hearing to establish incompetence or misconduct nor of any other right under the Veteran’s Preference Act.

9. Under the Joint Powers Agreement for the SCDIU, Steele County has the legal responsibility to compensate deputies the Sheriff has assigned to the SCDIU.⁴⁹

10. Sergeant Schwanke’s removal from the SCDIU was not a demotion that was the functional equivalent of a demotion or removal from a position of employment, and the County therefore did not violate the Veterans Preference Act by failing to give him notice of a right to a hearing on whether there was cause to justify his reassignment.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

12. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

13. These Conclusions are made for the reasons set out in the attached Memorandum, which is incorporated by reference in these Conclusions.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

⁴⁷ *Id.*

⁴⁸ *Smith v. City of Champlin*, No. C8-97-2118 (Minn. App. July 21, 1998).

⁴⁹ Finding 7; Op. Atty. Gen., 785d, May 9, 1968.

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the Commissioner of Veterans Affairs dismiss the petition of Todd E. Schwanke.

Dated: January 4, 2012

s/M. Kevin Snell

M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation and not a final decision. After a review of the record, the Commissioner of the Minnesota Department of Veterans Affairs will make the final decision, in which he may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Larry W. Schellito, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155-2079, telephone (651) 297-5828 to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Petitioner is a Patrol Sergeant with the Steele County Sheriff's Department and an honorably discharged veteran. On May 20, 2011, Petitioner filed a petition with the Department of Veterans Affairs alleging that his removal from the SCDIU was either removal from a position or a demotion within the meaning of Minn. Stat. § 197.46, and that his compensation was reduced without being advised of his veterans preference rights. There are no allegations of incompetence or misconduct on the part of Petitioner.

Applicability of the Veterans Preference Act

The Veterans Preference Act provides in pertinent part:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.⁵⁰

There is no dispute that Petitioner was not given notice of a right to a hearing on his removal from the SCDIU. The issue presented in this contested case proceeding is whether or not Petitioner's role with the SWAT Team was in fact a "position" within the meaning of the Veterans Preference Act, or a temporary assignment.

Burden of Proof

The Petitioner has the burden of proof to establish by a preponderance of the evidence that he is a veteran within the meaning of the Veteran's Preference Act who was removed from his position of employment without a hearing in violation of Minn. Stat. § 197.46. In support of his claim that the SCDIU assignment was a position within the meaning of the VPA, Petitioner's evidence established that: (1) an interview process was used to select the officers attached to the SCDIU; (2) Petitioner's selection as SWAT Team Commander was done by the Board of Directors of the SCDIU, not the Steele County Sheriff; (3) Petitioner, as SWAT Team Commander, received additional compensation for that capacity in the form of "comp time" under the terms of the collective bargaining agreement for Sergeants between the County and Law Enforcement Labor Services, Inc.; (4) the SWAT Team Commander supervised 18 team members; (5) when performing as SWAT Team Commander, Petitioner was supervised and subject to the control of the SCDIU Board, not the County Sheriff; (6) as the SWAT Team Commander Petitioner bore a significant range of duties beyond that of a team member; and Petitioner held a SWAT Team position through the tenure of four Steele County Sheriffs over a period of 15 years. However, the sum of those facts does not establish that SCDIU participation is a "position" or "appointment within the meaning of the VPA. Nor can those facts overcome the fact that SWAT Team membership is one of several "assigned extra duties" in accordance with County policy, substantively no different than that of FTO, K-9 Officer or other assigned extra duties under GO-74-24.⁵¹

SCDIU SWAT Team Participation is an Assignment, Not a Position Subject to the VPA

Based on all the evidence presented, however, the Administrative Law Judge concludes that the record supports the County's contention that participation in SCDIU

⁵⁰ Minn. Stat. § 197.46.

⁵¹ Findings 15 and 16.

was an assignment given to Petitioner and another Sergeant and not a position within the meaning of the Veterans Preference Act. The evidence presented at the hearing demonstrated that, from the initial formation of the SCDIU in 1994, the assignments to SCDIU are intended to be temporary and members serve at the pleasure of the Sheriff or Chief of Police that assigned them to the SCDIU. Notwithstanding the prestige associated with participation in SWAT units within the law enforcement community, the SCDIU assignments are not promotions and have no tenure.

The Veterans Preference Act does not apply to employment that is occasional or temporary in nature.⁵² The fact that it is not necessary for the County Board to approve the Sheriff's selection of deputies to participate in SCDIU is further evidence that those assignments are not considered permanent positions. As the ultimate hiring authority for the County, the County Board is required to approve appointments to permanent positions. The evidence presented established that the SCDIU assignments were never intended to be permanent positions. And the fact that the Petitioner's assignment lasted 12 years does not change this outcome. Petitioner's contention notwithstanding, Petitioner's SCDIU assignment was not transformed into a permanent position due to his selection and exemplary service as the SWAT Team Commander.

Analysis of the Facts and Applicable Law

The facts of this case are somewhat analogous to the facts presented in a prior contested case matter entitled *Markuson and Coudron v. County of Minnetonka*.⁵³ In that case, two patrol officers for the Minnetonka Sheriff's Department claimed that their removal from the job of Corporal violated the Veterans Preference Act. The Corporal job was a non-classified, supervisory assignment that involved additional responsibilities and offered a nominal monthly pay differential. The Corporal assignment involved in *Markuson* was initiated in 1977 out of a need for more mid-line supervision on the force. Corporals had the authority to assign work, provide direction, and recommend commendations. Corporals could also recommend disciplinary action, but they lacked the authority to hire, fire, promote, take disciplinary action or adjust grievances. The Corporals' supervisory functions were subject to the direction of the Sergeant. In addition, the Corporals remained in the same bargaining unit as non-supervisory police officers, while the Sergeants belonged to a separate supervisory bargaining unit. In 1989, language was added to the police officer contract providing that "[a]ssignments are not permanent or promotional and may be revoked at the sole discretion of the Sheriff." This language specifically applied to the assignments of Corporal, Investigator, Canine Officer, and a few others.

The ALJ found in *Markuson* that the removal of the officers from the Corporal assignments was not a discharge from an appointed position of employment that was protected by the Veterans Preference Act. He determined that the Corporal assignment was just one of the assigned functions of a police officer and not a separate job

⁵² *Crnkovich v. Independent School Dist. No. 701*, 273 Minn. 518, 521, 142 N.W.2d 284, 286 (Minn. App. 1966).

⁵³ OAH Docket Nos. 4-3100-6408-2 and 4-3100-6409-2 (1992).

classification. The ALJ emphasized that the Corporal job was always treated as an assignment within the Sheriff's Department and that only an interview and not a civil service examination was required to be selected for the job. Consequently, it was concluded in *Markuson* that no removal occurred within the meaning of the Act when the petitioners in that case were reassigned to regular Police Officer functions.

The Administrative Law Judge finds the reasoning in *Markuson* to be persuasive. Like *Markuson*, SCDIU assignments have always been viewed as a temporary extra duty assignments. Law enforcement officers participating in SCDIU remain in the employment of their assigning units of government and are expected to continue to perform their required duties within those units of government. Finally, the SCDIU operatives are not selected based on a formal examination process. The Administrative Law Judge concludes that Petitioner was not removed from a position or employment within the meaning of the Veterans Preference Act. Although Petitioner's SWAT Commander duties were reassigned to another, and both Petitioner and Sergeant Youngquist were replaced on the SCDIU by deputies lacking experience or veterans' status, the Petitioner retained his permanent position of employment -- that of a Sergeant in the Steele County Sheriff's Department.

Exercise of Governmental Administrative Discretion

The Veterans Preference Act does not preclude a local government's reasonable exercise of control over its administrative affairs.⁵⁴ The evidence presented amply supports the County's contention that the SCDIU assignments were always intended to be temporary extra duty assignments. Petitioner's argument that he could not be removed from the SCDIU except for misconduct or incompetency is unpersuasive because it would cause an absurd result. The JPA provides that the members of the Board of Directors may be appointed and removed at the pleasure of the member Chief of Police or Sheriff. In this case, that would be the Steele County Sheriff. Petitioner has committed no misconduct and is far from incompetent. Followed to its logical conclusion, acceptance of Petitioner's argument would lead to the unreasonable result that Petitioner could be removed from the SCDIU by the County only if the County withdrew from the JPA entirely. Minn. Stat. § 645.17 (1) of the rules of statutory construction provides that a court, when reviewing a statute, assumes that the legislature does not intend absurd or unreasonable results.⁵⁵ Likewise, the Administrative Law Judge assumes that the parties to the JPA did not intend for its operation to be applied in a fashion to produce such results. For the Sheriff to be able to appoint and remove the board member of the SCDIU, one of the individuals that supervises and directs the actions of the SWAT Commander, yet be unable to remove a Steele County deputy from the SCDIU just because he is the SWAT Commander and a veteran, is an absurdity.

⁵⁴ *Gorecki v. Ramsey County*, 437 N.W.2d 646, 650 (Minn. 1989) (reclassifying veterans into new job class with lower salary range did not necessarily trigger rights under VPA.); See also, *Young v. City of Duluth*, 386 N.W.2d 732, 737 (Minn. 1986), and *State ex rel. Boyd v. Matson*, 155 Minn. 137, 193 N.W. 30 (Minn. 1923).

⁵⁵ *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000).

Finally, the evidence presented demonstrates that the County's reasons for removing two sergeants from SCDIU and replacing them with junior deputies are sound and were reasonable exercises of its administrative discretion.

Issues Raised and Not Considered or Decided

The County argues that Petitioner's position as SWAT Team Commander was that of a Department Head, within the meaning of the VPA, and therefore his removal from that position is not subject to the requirement of a Veterans Preference Hearing. While that argument is attractive, it is not necessary to address and rule on that issue because this matter has been decided on another ground.

While the Petitioner is an exceptionally well qualified and experienced law enforcement officer, the Administrative Law Judge cannot conclude that the County may not utilize Petitioner's exceptional experience, training and skills exclusively for Steele County. Whether or not Petitioner's abrupt removal was: handled with an appropriate degree of respect, notice and explanation; in the best interests of the other eleven units of government that are parties to the SCDIU Joint Powers Agreement; is not relevant to this proceeding and not for the ALJ to decide.

Conclusion

Based on all of the evidence presented, the Administrative Law Judge concludes that the Petitioner was not demoted or removed from a position of employment in violation of the Veterans Preference Act. The ALJ recommends that the Commissioner of Veterans Affairs dismiss the petition for relief filed by the Petitioner.

M. K. S.