

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF VETERANS AFFAIRS

Brian K. Peterka,

Petitioner,

v.

City of Grove City,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on May 30, 2003 at the Meeker County Family Service Center in Litchfield, Minnesota. The record closed on June 23, 2003 with the filing of the parties' closing arguments and reply briefs.

Jon C. Saunders, Attorney at Law, Anderson, Larson, Hanson, and Saunders, PLLP, 331 Southwest Third Street, P.O. Box 130, Willmar, Minnesota 56201, appeared on behalf of Brian K. Peterka ("Petitioner"). Julie Fleming-Wolfe, Attorney at Law, 1010 Degree of Honor Building, 325 Cedar Street, St. Paul, Minnesota 55101, appeared on behalf of Grove City ("City", "Respondent").

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Veterans Affairs will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. The Commissioner shall not make his final decision until after this Report has been made available to the parties for at least ten days.^[1] 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 the office of Jeffrey L. Olson, Commissioner, Minnesota Department of Veterans Affairs, Veterans Service Building, St. Paul, MN 55155-2079, (651) 296-2562 to find out how to file exceptions or present argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Whether Petitioner was removed from a position of employment within the meaning of the Veterans Preference Act, Minn. Stat. § 197.46, when the City reduced his hours of employment and abolished its police department?
2. If the Petitioner was removed from a position of employment, was the removal done in good faith or was it a pretext to remove him for misconduct without providing him a hearing in violation of the Veterans Preference Act?

For reasons detailed below, the ALJ concludes the Petitioner was removed for financial reasons that were not pretextual.

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

FINDINGS OF FACT

1. Petitioner is an honorably discharged veteran.^[2]
2. Grove City ("City") is a political subdivision of the State of Minnesota.
3. Grove City is located nine miles to the west of Litchfield and has a population of approximately 600. Its high school serves Grove City, the neighboring cities of Cosmos and Atwater and a large farming area surrounding the three towns.^[3] The high school has approximately 500 students and 100 employees.^[4]
4. The City hired Petitioner as a part-time police officer in 1996 at 25 hours per week. At the time he was hired, Grove City employed one full-time police officer named Steven Schultz. Officer Schultz was later named Grove City's police chief.^[5]
5. In addition to the services provided by Grove City's police department, Meeker County's Sheriff's Department has always provided the City with police protection services on an on-call basis.^[6]
6. At the September 12, 1995 City Council meeting, Grove City police officer Steven Schultz raised the issue of contracting with Meeker County for law enforcement services. The Council discussed the proposal and decided to invite Meeker County Sheriff Mike Hirman to the next Council meeting to discuss the idea further.^[7]
7. Sheriff Hirman attended the Grove City Council meeting on October 10, 1995 and discussed the option of contracting with the County for police protection services. The City Council decided to hold a public hearing on the issue on November 14, 1995.^[8]
8. About 15 people attended the November 14, 1995 public hearing on whether to keep the City police department or to contract with Meeker County's Sheriff's Department. Sheriff Hirman was present at the hearing and answered questions from the public and the City Council regarding costs and the actual hours of coverage to be provided. After a lengthy discussion, the City Council decided against contracting with the County for police protection services.^[9]
9. In July of 1997, Grove City was awarded a federal Community Oriented Policing Services (COPS) hiring grant of \$63,948. The City used this grant to increase

Petitioner's hours to 40 per week. The COPS grant was paid out in diminishing installments over 3 years and, by accepting it, the City agreed to fund the full-time police officer position for one more year after the COPS grant ended. Thus, while the COPS grant ended on March 31, 2000, the City was committed to keeping Petitioner employed full-time until March 31, 2001.^[10]

10. At the August 15, 2000 City Council meeting, Council member Rueckert raised the issue of contracting with Meeker County for police protection services. Rueckert requested (then) Mayor Lindstrom and other Council members to check with the Sheriff's Department and report back on the hourly contracting costs.^[11]

11. At the September 12, 2000 City Council meeting, Council member Rueckert made a formal motion to have Council member Bredeson and Mayor Lindstrom meet with the Meeker County Sheriff's Department to determine the cost of contracting with the county for police protection services. The motion was seconded and carried unanimously.^[12]

12. In a memo to all Meeker County employees dated November 20, 2000, Meeker County Sheriff Mike Hirman clarified that the Mayor of Grove City and a Grove City Councilperson had approached his office to discuss the option of contracting for police service. Sheriff Hirman explained that, regardless of whether the City contracted with the County or not, the County's Sheriff's Department would continue to respond to calls in Grove City when the Grove City Police Department was off duty or on vacation. However, if the City did contract with the County, Sheriff Hirman explained that the County would station a police car in Grove City for the contracted number of hours. Sheriff Hirman stated further that the reason the City was considering contracting for police coverage was "due to their current and projected budget."^[13]

13. On November 28, 2000, the Grove City Council held a special meeting to allow the public to voice their opinion on the proposal to dissolve the City's police department and to contract with Meeker County for police services. About 70 people attended the meeting and the majority was in favor of keeping the City's police department and opposed to contracting with the County. The Council adjourned the meeting without making a decision.^[14]

14. At the December 12, 2000 Grove City Council meeting, the Council voted against abolishing its police department and contracting with Meeker County.^[15]

15. At the March 13, 2001 Grove City Council meeting, the Council decided to hold a special election to let the public decide how much police protection they wanted. The Council was concerned about the City's ability to fund two full-time officers once the COPS grant ran out in March 2001. In the end, a special election was not held but a public meeting on the issue took place on April 10, 2001.^[16]

16. At the April 10, 2001 Grove City Council meeting, the Council discussed cutting the size of the police department. A number of residents attending the meeting voiced their opposition to downsizing the police department. Council member Lease moved to maintain the police department at two full-time members. This motion died for lack of a second. Grove City Police Chief Schultz stated on the record that he would not be able to effectively police Grove City with only one full-time and one-part-time

officer. A decision was made to table the discussion until the May City Council meeting.^[17]

17. At the May 8, 2001 Grove City Council meeting, Council member Rueckert made a motion to cut Petitioner's hours to 30 per week beginning the second week of November 2001. The motion was seconded and carried with one opposing vote by Council member Lease.^[18]

18. Since June 2001, Michael Bredeson has been mayor of Grove City. Prior to becoming mayor, Mr. Bredeson served on Grove City's City Council for 13 years.^[19]

19. On or about November 1, 2001, Mayor Bredeson wrote a letter to Petitioner notifying him of the Council's decision to reduce his hours from 40 hours per week to 30 hours per week. The letter further notified Petitioner of his right to request a veterans' preference hearing.^[20]

20. Former Grove City City Clerk Sharon Larsen was unable to determine if Petitioner received the Mayor's letter of November 1, 2001 because her copy of the letter was missing from her files. On December 12, 2001, she delivered an unsigned and undated copy of the letter to Petitioner's work mail slot. Ms. Larsen made a handwritten notation of the delivery date on the copy of the letter.^[21] She also attached a second copy of the letter to Petitioner's paycheck.^[22] The Petitioner did not request a veterans' preference hearing.

21. Janell Johnson was hired as the City Clerk on April 1, 2002, replacing Sharon Larsen.^[23]

22. On September 13, 2002, Ms. Johnson distributed preliminary budgets to the Council members. Attached to the budget information was a memo from Ms. Johnson informing the Council members of the City's General Fund deficit and reminding them that the City's Electric Fund could not be used to support the General Fund because it is a separate enterprise fund.^[24]

23. For the period ending September 24, 2002, Grove City had a deficit of approximately \$200,000 in its General Fund and a balance of over \$600,000 in its Electric Fund. The funds are placed in the same bank account, but for accounting purposes they are treated as separate funds.^[25]

24. At the November 19, 2002 Grove City Council meeting, the Council discussed making final cuts to the General Fund budget for 2003. The Council decided to cut Police Chief Schultz's hours to 40 per week and to cut Petitioner's hours to 25 per week. Chief Shultz had been working 5 hours of overtime a week for the past several years.^[26]

25. In a letter to Petitioner dated November 22, 2002, Mayor Bredeson informed Petitioner that the Council had voted to reduce Petitioner's hours from 30 per week to 25 per week effective January 1, 2003. The mayor explained that this decision was based "solely on management and budgetary concerns and in no way should be construed by anyone to reflect upon the Police Department or employee performance." Mayor Bredeson also notified Petitioner of his right to request a veterans' preference hearing.^[27]

26. Petitioner received Mayor Bredeson's letter of November 22, 2002 and he did not request a veterans' preference hearing at that time.^[28]

27. In a memo to the Council members dated December 6, 2002, Ms. Johnson suggested cutting from the City's capital improvement fund for parks in order to save money. Ms. Johnson stated that given the City's serious budget "crunching" situation, the park dollars should be considered for general spending. Ms. Johnson also expressed concern about recent news reports that suggested cities would be receiving even deeper cuts in state Local Government Aid (LGA) than originally thought. According to Ms. Johnson, such cuts would put Grove City in "an even worse position."^[29]

28. Based on the City's deficit and the proposed cuts in LGA, Mayor Bredeson directed all City departments to review their budgets and propose cuts to the Council for the 2003 budget.^[30]

29. In a letter to Meeker County Sheriff Mike Hirman dated December 18, 2002, Mayor Bredeson requested a quote for the cost of County police protection for 40 hours per week. Because of Grove City's budget deficit and potential cuts in Local Government Aid, Mayor Bredeson was interested in finding out if the County could provide law enforcement services at a savings to the City. The Mayor did not discuss his inquiry with the City Council prior to sending this letter.^[31]

30. In late December 2002, Mayor Bredeson asked City Clerk Johnson to put together a spreadsheet identifying what it cost the City to run its police department. The mayor explained that he was checking with the County to see what it would cost to contract for police services.^[32]

31. Grove City had a deficit of approximately \$200,000 in its general fund at the end of 2002. The deficit was due in part to the City's decision to develop an area by platting lots and putting in a street at a cost of \$120,000. This cost had not been planned for in the budget. In addition, Governor Pawlenty initially proposed cuts in LGA that would have resulted in a \$12,000 reduction in aid for Grove City in 2003 and a \$28,000 reduction in state aid in 2004.^[33]

32. At a Special Council Meeting on December 17, 2002, the Council approved a resolution for the 2003 budget. This budget included cuts totaling over \$46,000 from various departments, including nearly \$13,000 from the police department.^[34]

33. Sometime in early January 2003, Ms. Johnson and Mayor Bredeson met with Meeker County staff to determine the hourly costs of contracting with the County for police protection services.^[35]

34. Ms. Johnson created a one-page document comparing the cost of running the City's police department with the cost of contracting with Meeker County. Ms. Johnson included projected costs for the years 2003 through 2005. Ms. Johnson based her data on information maintained by the prior City Clerk, city records, and a spreadsheet obtained from the County. Ms. Johnson estimated that by 2005, the City would save approximately \$33,700 a year by eliminating its police department and

contracting with the County. This estimate was based on comparing the City's 65 hours per week of coverage to the County's proposed 40 hours per week of coverage.^[36]

35. In a letter to Petitioner dated January 7, 2003, Mayor Bredeson again informed Petitioner that the Council had decided to reduce his employment hours from 30 to 25 per week effective January 1, 2003. And Mayor Bredeson notified Petitioner again of his right to request a veterans' preference hearing.^[37] Petitioner received this letter on or about January 7, 2003 and he requested a hearing on or about February 14, 2003.^[38]

36. At the January 14, 2003 Grove City Council meeting, Mayor Bredeson and the Council members discussed the option of contracting with Meeker County for police coverage services. Mayor Bredeson introduced the discussion by telling the Council that, because of the City's "budget crunch", he had looked into what it would cost to contract with the County. The Mayor handed out to the Council members Ms. Johnson's cost comparison data and the County's estimated patrol costs for 40 hours per week of police coverage. The County proposed charging the City \$28 per hour for its coverage. The Mayor believed that the City could save a substantial amount of money by eliminating its police department and contracting with the County for police coverage. The Mayor stated at the meeting that by contracting with the County, the City could save close to \$40,000 a year.^[39]

37. At the January 14, 2003 Council meeting, the Mayor also complained about the quality of the 65 hours of weekly coverage the City currently got from its own police department. In particular, the Mayor pointed out that he frequently sees the City's police squad car parked for long periods of time in front of the local convenience store or houses of the police officers' friends. In addition, the Mayor noted that the police department was averaging 7 ½ hours a week of internet usage. The record implies that these problems were attributable to Police Chief Schultz and not to Petitioner.^[40]

38. During the January 14, 2003 City Council meeting, Council member Lease complained that the City's police officers were not performing their jobs satisfactorily. Other members of the Council and City Clerk Johnson responded in agreement. For example, Ms. Johnson stated: "If I did my job like that, I would have been out of here months ago." Council member Lease suggested that the City could rid itself of the problem police officers by either eliminating the police department or cutting it down to one part-time officer.^[41] Despite this comment by Lease, however, and the Mayor's introductory remarks regarding performance problems with the City's police department, the main focus of the discussion regarding eliminating the police department was on budgetary concerns, particularly the City's deficit, cuts in state aid and the potential cost savings of contracting with the County.^[42]

39. As the City Clerk, Ms. Johnson is not a voting member of the Council.^[43]

40. The Council decided to put the issue of eliminating the police department and contracting with Meeker County on the agenda for February's City Council meeting. Mayor Bredeson directed Ms. Johnson to put together information on what the City was currently spending for police services and what it would cost to contract with Meeker County.^[44]

41. In gathering information, Ms. Johnson learned that other cities in Kandioyhi and Wright counties contract with their County Sheriff Departments for police coverage. For example, the city of Spicer contracts with Kandioyhi County's Sheriff's Department for 30 hours per week of law enforcement services in the summer when their population grows to approximately 10,000, and 20 hours per week in the winter. Kandioyhi County charges Spicer \$31 per hour for law enforcement services.^[45]

42. At the February 3, 2003 Grove City Council meeting, City Clerk Johnson presented a new document comparing the cost of keeping the City's police department with the cost of contracting for police coverage with Meeker County. This new document projected savings for the years 2004 through 2007 based on the City's current 65 hours per week of coverage as well as 40 hours per week of coverage. According to Ms. Johnson's calculations, the City would save approximately \$10,000 per year when comparing 40 hours per week of police coverage by the City against 40 hours per week of police coverage by the County. When comparing the current 65 hours of coverage per week by the City with 40 hours per week of coverage by the County, Ms. Johnson estimated savings of over \$36,000 per year. Ms. Johnson believed these numbers to be more accurate than the numbers presented at the January City Council meeting.^[46]

43. No action was taken at the February meeting on the proposal to contract with the County for police services. Instead, the Council decided that the Mayor and members of the police commission, which was made up of two Council members, should negotiate a contract with Meeker County.^[47]

44. Sometime in February 2003, Mayor Bredeson, City Clerk Johnson, and Council member Alderink met with Meeker County staff and negotiated a contract for police protection services. According to the terms of the contract, the City would pay \$28 per hour for law enforcement services for the year 2003 and \$29.50 per hour for the year 2004. After 2004, the County could raise its hourly rate at its discretion. However, the County indicated during its negotiations with the City that it would only raise its rate by a \$1.50 per hour for 2005. The contract would be extended automatically for successive one-year periods unless the City notifies the County in writing of its desire to terminate the contract by August 15th of each year.^[48]

45. The City Council held a public hearing on March 18, 2003 to consider whether to eliminate the City's police department and contract with Meeker County for police coverage services. Approximately 75 people attended the meeting. The majority of the public favored keeping the City's police department with approximately 30% in favor of contracting with the County. Ms. Johnson had prepared another cost comparison sheet that she handed out to the Council members prior to the meeting. This document showed that the City would save approximately \$33,000 per year over a five-year period if the County provided 40 hours per week of coverage, as compared to the City's 65 hours per week of coverage. Her analysis also showed that the City would save approximately \$6,500 per year when comparing 40 hours per week of coverage by both the City and County. Included in Ms. Johnson's assumptions regarding the cost of running the City's police department, was a four-year \$7,500 cost to cover the purchase of a new police car, which she believed the City would need by 2007.^[49]

46. At the March 18, 2003 City Council meeting, Ms. Johnson also presented the Council with a document listing proposed budget cuts and increases for 2003. The budget cuts included: (1) \$10,000 from the Clerk's office; (2) \$12,889 from the police department; (3) \$8,927 from the Highway/Maintenance fund; (4) \$3,130 from Recreation and (5) \$11,600 from Parks. Budget increases amounted to approximately \$31,000 to cover general fund shortfalls, building repair, tree replacement and local library costs.^[50]

47. At the end of the discussion and prior to voting on the motion to contract with the County for police protection services, Council member Lease presented the Council with a document analyzing Ms. Johnson's numbers and identifying potential savings the City could undertake that would make contracting with the County less cost effective. First, Council member Lease objected to Ms. Johnson's comparison of the City's 65 hours per week coverage with the County's 40 hours per week coverage. Lease argued that it was unfair to compare different amounts of hourly coverage. Instead, he proposed reducing the City's coverage to 40 hours per week and comparing that with the County's 40 hours per week coverage. Lease noted that, according to Ms. Johnson's calculations, the City would save only \$6,786.29 in 2003 by contracting with the County (when comparing 40 hours per week coverage by both).^[51] Council member Lease suggested that by implementing certain cost savings measures, such as reducing training costs, eliminating the police department's cell phone, and reducing car maintenance expenses, the City could ultimately provide less expensive coverage than that proposed by the County. Based on Council member Lease's numbers, if the City implemented all of his suggested savings measures and reduced its own coverage to 40 hours per week, it would cost \$563.44 less in 2003 to keep the City's police department than to contract with the County. In addition, Council member Lease objected to the fact that no police state aid was accounted for in Ms. Johnson's projections and he felt that spreading out the cost of a new police vehicle at \$7,500 per year for four years was excessive. Council member Lease suggested instead that \$6,000 per year for five years for capital replacement was more accurate.^[52]

48. No discussion was held on Council member Lease's financial data. Instead, Council member Rueckert called for a vote on the proposal to contract with the County and eliminate the City's police department. Council members Cram and Rueckert voted for eliminating the City's police department and Council members Lease and Alderink voted against the proposal. Council member Alderink voted against the motion because she wanted more time to consider Council member Lease's financial data. Mayor Bredeson cast the tie-breaking vote and the motion to eliminate the City's police department and contract with Meeker County passed.^[53]

49. In a letter to Petitioner dated March 19, 2003, Mayor Bredeson informed Petitioner that the City Council had passed a motion to dissolve the Grove City Police Department and to contract with Meeker County Sheriff's Department for law enforcement services. Mayor Bredeson explained that the decision was based solely on management and budgetary concerns and was not a reflection upon the City's police department or employee performance. The Mayor also notified Petitioner of his right to request a veterans' preference hearing. The Mayor further informed Petitioner that his last day of active employment would be March 31, 2003 and that the City would pay out his full year of vacation pay, accumulated sick pay and one month's salary.^[54]

50. Following the March 18, 2003 City Council hearing, Ms. Johnson drafted a rebuttal to Council member Lease's proposal to reduce the City's police department coverage to 40 hours per week and to implement other cost saving measures. Ms. Johnson challenged the accuracy of Council member Lease's figures. In particular, she explained that, on the advice of the City accountant, she designated \$7,500 per year for four years for the capital replacement fund because no depreciation or capital replacement monies had been designated in 2002. By doing this, Ms. Johnson was assuming that the police department would buy a new police car by 2007. She also pointed out that the training costs had already been reduced from \$1,750 to \$1,000 and that the cell phone cost of \$40 per month was deemed a necessity by the police department. Finally, Ms. Johnson conceded that she had not accounted for any state police aid in her final cost comparison document because she did not know what that amount would be given Governor Pawlenty's proposed cuts.^[55]

51. As of March 31, 2003, Grove City had a balance of \$277,206.00 in its bank account. This amount included monies belonging to the City's Electric Fund.^[56]

52. In 2001 and 2002, Grove City received approximately \$7,000 annually in police state aid. This figure was based on the City having two full-time police officers in 2001 and one full-time and one 30 hour per week officer in 2002.^[57]

53. In the final tax bill passed by the legislature, Grove City saw a 7½ percent decrease in its Local Government Aid amounting to a \$13,000 loss in aid for both 2003 and 2004.^[58]

54. During his employment with the City, Petitioner was never alleged to have engaged in misconduct beyond some minor complaints that were not specified in the record and which the Council disregarded. Petitioner was never disciplined during his employment with the City.^[59]

55. On April 18, 2003, Petitioner filed a petition for relief under the Veterans Preference Act with the Department of Veterans Affairs.

CONCLUSIONS

1.The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50 and 197.481 (2002).

2.The Department has complied with all relevant substantive and procedural requirements of law and rule including providing proper notice of the hearing in this matter.

3.The Petitioner is a veteran within the meaning of Minn. Stat. § 197.46 and 197.447 (2002).

4.Grove City is a political subdivision of the State of Minnesota within the meaning of Minn. Stat. § 197.46 (2002).

5.Minn. Stat. § 197.46 (2002) prohibits the removal of a veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice and upon stated charges in writing.

6.The prohibitions against removal do not apply if the position was eliminated in good faith for some legitimate purpose.^[60]

7.The Petitioner has the burden of proof to establish by a preponderance of the evidence that he was removed from his position of employment in violation of Minn. Stat. § 197.46.^[61]

8. The Petitioner has proven that he was removed from his position within the meaning of the Veterans Preference Act when his hours were reduced from 30 to 25 per week.^[62]

9.The Petitioner has also proven that he was removed from his position within the meaning of the Veterans Preference Act when the City abolished its police department and eliminated his position.

10. Whether a veteran's position has been eliminated in good faith for a legitimate purpose is an affirmative defense for which the public employer has the burden of proof.^[63]

11. Grove City has established that it removed Petitioner in good faith for a legitimate purpose.

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

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Veterans Affairs DENY Brian K. Peterka's petition for relief.

Dated this 23rd day of July 2003.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Tape-recorded (5 tapes).
No transcript.

NOTICE

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. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

Petitioner contends that Grove City reduced his hours and later eliminated his position in violation of the Veterans Preference Act (VPA). Petitioner claims that the City's proffered good faith financial reasons for reducing his hours and abolishing the police department are a subterfuge and that Petitioner was really removed without a hearing for perceived misconduct. In support of his argument, Petitioner maintains that the City's cost saving analysis, used to support its decision to contract with Meeker County, was inflated by faulty comparisons and unreasonable assumptions. And Petitioner points to a January 2003 Council meeting at which the performance of the City's police department was criticized. In response, the City argues that it reduced Petitioner's hours and abolished its police department for good faith budgetary reasons taken for the legitimate purpose of addressing the City's financial shortfalls. And the City asserts that this action, which resulted in the elimination of Petitioner's position, was not a mere subterfuge to oust the Petitioner.

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.^[64]

Under the Veterans Preference Act and governing case law, public employers have only three grounds on which to base a termination or removal of a veteran. The Act allows a termination only for "incompetency" or "misconduct". And judicial precedent authorizes the abolishment of a position held by a veteran if the public employer acts in good faith.^[65] Thus, a veteran is entitled to hold his or her job, absent a showing of incompetency or misconduct, so long as the job exists. When the reason for removal is incompetency or misconduct, the veteran is entitled to a hearing. A public employer is not, however, required to continue a job in existence simply to benefit the veteran. And the Act cannot be viewed as fully restricting the government's exercise or control over its administrative affairs.^[66] But if the veteran is removed or the job is abolished for no good reason other than to get rid of the veteran, the Veteran's Preference Act, and all the rights afforded thereunder, will apply.^[67]

For purposes of the VPA, the term "removal" is considered to embrace a demotion.^[68] A demotion is a reduction to a lower rank, grade or lower type of position.^[69] Demotions also include reductions of a veteran's hours and compensation.^[70] The burden of proof is on the Petitioner to establish, by a preponderance of the evidence, that he was removed from a position or employment in violation of the Veterans Preference Act. Here, the Petitioner has established that he was "removed" within the meaning of the VPA when his hours were reduced from 30 to 25 per week and the reduction in hours resulted in a loss of pay and benefits. Petitioner has also established that he was "removed" when the City abolished the police department and eliminated his position. Once the Petitioner establishes that he was

removed for purposes of the VPA, it is the City's burden to establish that it removed Petitioner in good faith for a legitimate purpose.^[71]

In *Caffrey v. Metropolitan Airports Commission*,^[72] the court held that an employer may terminate the employment of a veteran by abolishing the office or position which he held "if the action abolishing it be taken in good faith for some legitimate purpose, and is not a mere subterfuge to oust him from his position." In determining whether a position has been abolished in good faith, courts have looked at several factors, including: (1) whether the reasons articulated by the employer have a legitimate, factual basis,^[73] (2) whether the job duties previously performed by the veteran have been reassigned to others,^[74] and (3) whether the substance of the decision to abolish the veteran's position was an objective and reasonable exercise of administrative discretion.^[75] In *Caffrey*,^[76] the Minnesota Supreme Court found that Metropolitan Airport Commission (MAC) failed to establish that it acted in good faith where the plaintiff showed that the abolition of his office did not result in significant economic savings or any substantial change in the operation of MAC's program as claimed.

In this case, Petitioner argues that the City failed to act in good faith when it claimed that it would save approximately \$33,000 per year by contracting with the County for police services based on a comparison of the City's 65 hours per week of service against 40 hours per week by the County. According to Petitioner, the City had a duty to compare 40 hours per week of coverage by both the City and the County in order to accurately analyze the costs of each. Petitioner contends that by comparing the City's 65 hours per week of coverage with 40 hours per week by the County, the City overstated its potential savings. In addition, Petitioner argues that some of the assumptions made by City Clerk Janell Johnson in her cost comparisons were unreasonable and resulted in unfairly inflated projections of savings. For example, state police aid was not reflected in Ms. Johnson's final spreadsheets, even though the City got approximately \$7,000 in such aid in both 2001 and 2002. And Petitioner contends that Ms. Johnson's decision to spread out \$30,000 for capital replacement in \$7,500 installments over four years was excessive and based on the assumption that the police department would replace its vehicle within the next five years. Petitioner maintains that if the City's police department hours had been reduced to 40 per week, state aid factored in, and cost savings measures imposed, the City's police department would have been less expensive to run than contracting with the County.

Petitioner also claims that the tape and transcript of the January 14, 2003 City Council meeting establish that the Council's true reason for abolishing the police department was to terminate the police chief and Petitioner for perceived misconduct. During this meeting, performance problems on the part of the police department were discussed. Although the tape of the meeting, which was admitted into evidence, is of poor quality and the transcripts submitted by both sides are incomplete, it appears that at one point City Clerk Janell Johnson said, in reference to the police department, "if I did my job like that, I would have been out of here months ago."^[77] And Council member Lease said more than once that there was a problem with the police department and that the City should "get rid of the problem."^[78]

Whether a public employer abolished a position in good faith is a question of fact.^[79] The burden is on the City to establish this affirmative defense by a preponderance of the evidence.^[80] Unlike *Caffrey*, the Administrative Law Judge finds that the City in this case has put forward sufficient evidence that its decision to reduce Petitioner's hours and ultimately abolish the police department was done in good faith for legitimate budgetary reasons. Although there were some comments during the January 2003 Council meeting about the poor performance of the City's police department, they were almost exclusively made by Council member Lease, who in the end voted against contracting with the County. And, because Ms. Johnson is not a voting member of the Council, her comment that she would be "out of here" if she did her "job like that" is not particularly relevant. More importantly, apart from Lease's comments, the majority of the discussion regarding contracting with the County centered on the City's financial concerns. And discussions at subsequent Council meetings regarding contracting with the County for police services were likewise dominated by budget issues and cost comparisons and not performance.^[81]

In addition, Petitioner's attempt to discredit the financial analysis that the City relied on in making its decision to contract with the County is not persuasive enough to establish that the abolition of the police department was a subterfuge to oust him for misconduct. Instead, the ALJ finds that Ms. Johnson's financial analysis was credible and the majority of the Council accepted her conclusion that the City would save money by eliminating its police department and contracting with the County. Even if Ms. Johnson's cost-savings analysis was flawed or incomplete, this alone does not establish that the City's decision to abolish the police department was made in bad faith. Petitioner's only evidence that the City reduced his hours and abolished the police department as a means of terminating him without a hearing is the tape and transcript of the January 14, 2003 City Council meeting. As already discussed, the ALJ does not find this to be convincing evidence of a bad faith motive on the part of the City. Rather, the City has demonstrated that its articulated financial reasons for reducing Petitioner's hours and eliminating his position have a legitimate, factual basis. And the decision to abolish the police department came after months of Council meeting discussions focusing on the City's budget shortfall and other financial concerns. The City has shown that its decision to abolish the police department and remove Petitioner was taken in good faith and was an objective and reasonable exercise of its administrative discretion.

The Administrative Law Judge finds that the City has proven by a preponderance of evidence that it reduced the Petitioner's hours and ultimately abolishing his position in good faith. The record does not support finding that the City was motivated by bad faith to oust Petitioner from his position without a hearing. Based on all of the evidence presented, the ALJ concludes that the Petitioner was not removed from his position in violation of the Veterans Preference Act. The ALJ recommends that the Commissioner deny the petition for relief filed by the Petitioner.

R.C.L.

- [\[1\]](#) Minn. Stat. § 14.61 (2002).
- [\[2\]](#) Stipulation of the parties.
- [\[3\]](#) Cosmos has a population of approximately 600 and Atwater has a population of approximately 1,000.
- [\[4\]](#) Testimony of Bredeson and Johnson.
- [\[5\]](#) Testimony of Bredeson.
- [\[6\]](#) Testimony of Bredeson.
- [\[7\]](#) Testimony of Bredeson; Ex. R-1.
- [\[8\]](#) Ex. R-2.
- [\[9\]](#) R-3.
- [\[10\]](#) R-4; Testimony of Bredeson.
- [\[11\]](#) Ex. R-5; Testimony of Bredeson.
- [\[12\]](#) Ex. R-6.
- [\[13\]](#) Ex. R-7.
- [\[14\]](#) Exs. R-7, R-8.
- [\[15\]](#) Ex. R-9; Testimony of Bredeson.
- [\[16\]](#) Ex. R-10; Testimony of Bredeson.
- [\[17\]](#) Ex. R-11.
- [\[18\]](#) Ex. R-12.
- [\[19\]](#) Testimony of Bredeson; Ex. R-12.
- [\[20\]](#) Ex. R-31.
- [\[21\]](#) Ex. R-30.
- [\[22\]](#) R-31(2).
- [\[23\]](#) Testimony of Johnson.
- [\[24\]](#) Ex. R-13.
- [\[25\]](#) Exs. R-13, R-14; Testimony of Johnson.
- [\[26\]](#) Ex. R-16; Testimony of Bredeson.
- [\[27\]](#) Ex. R-32.
- [\[28\]](#) Testimony of Peterka.
- [\[29\]](#) Ex. R-15.
- [\[30\]](#) Testimony of Bredeson.
- [\[31\]](#) Ex. R-17; Testimony of Bredeson.
- [\[32\]](#) Testimony of Johnson.
- [\[33\]](#) Ex. P-28; Testimony of Johnson.
- [\[34\]](#) Exs. R-28, R-33; Testimony of Johnson.
- [\[35\]](#) Testimony of Johnson.
- [\[36\]](#) Ex. R-19; Testimony of Johnson.
- [\[37\]](#) Ex. R-33.
- [\[38\]](#) Testimony of Peterka.
- [\[39\]](#) Exs. R-18, R-19, R-27; Testimony of Bredeson and Johnson.
- [\[40\]](#) Ex. R-18.
- [\[41\]](#) Ex. R-18 at pp. 17 and 20.
- [\[42\]](#) Exs. R-18 and P-10; Testimony of Bredeson, Johnson, Alderink and Lease; Joint Ex. 1 (tape).
- [\[43\]](#) Testimony of Johnson.
- [\[44\]](#) Testimony of Bredeson.
- [\[45\]](#) R-7; Testimony of Johnson.
- [\[46\]](#) Ex. R-20; Testimony of Bredeson and Johnson.
- [\[47\]](#) Testimony of Johnson.
- [\[48\]](#) Ex. R-26; Testimony of Johnson and Lease.
- [\[49\]](#) Ex. 21(1), R-21(2); Testimony of Johnson and Lease.
- [\[50\]](#) Ex. R-28; Testimony of Johnson.
- [\[51\]](#) Ex. R-21(2).
- [\[52\]](#) Ex. R-22; Testimony of Bredeson, Johnson, Lease.
- [\[53\]](#) Testimony of Bredeson and Alderink.
- [\[54\]](#) Ex. R-34.
- [\[55\]](#) Ex. R-23; Testimony of Johnson.
- [\[56\]](#) Ex. P-26; Testimony of Johnson.

- [57] Ex. R-19.
- [58] Ex. P-28; Testimony of Johnson.
- [59] Testimony of Bredeson and Alderink.
- [60] State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (Minn. 1923); Young v. City of Duluth, 386 N.W.2d 732, 737 (Minn. 1986).
- [61] Minn. Rules 1400.7300, subp. 5 (2001).
- [62] See, Gorecki v. Ramsey County, 437 N.W.2d 646 (Minn. 1989); Myers v. City of Oakdale, 409 N.W.2d 848 (Minn. 1987); Young v. City of Duluth, 386 N.W.2d 732, 737 (Minn. 1986).
- [63] State ex rel. Caffrey v. Metropolitan Airports Commission, 246 N.W.2d 637, 641 (Minn. 1976).
- [64] Minn. Stat. § 197.46.
- [65] Gorecki v. Ramsey County, 437 N.W.2d 646, 649-50 (Minn. 1989); Young v. City of Duluth, 386 N.W.2d 732, 738 (Minn. 1986).
- [66] See, State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (1923).
- [67] Young v. City of Duluth, 386 N.W.2d 732, 737 (Minn. 1986), *citing*, State ex rel. Tamminen v. City of Eveleth, 189 Minn. 229, 234, 249 N.W. 184, 186 (1933).
- [68] Myers v. City of Oakdale, 409 N.W.2d 848, 850 (Minn. 1987).
- [69] Ammend v. County of Isanti, 486 N.W.2d 3 (Minn. App. 1992).
- [70] Although the Minnesota Supreme Court ultimately held that no demotion had occurred in either case, *State ex rel. Maki v. Village of Hibbing*, 14 N.W.2d 343 (Minn. 1944) and *Gorecki v. Ramsey County*, 437 N.W.2d 646 (Minn. 1989) suggest that reduction of work hours and compensation are important indicators of a demotion.
- [71] *In re Schrader*, 394 N.W.2d 796, 802 (Minn. 1986); Leininger v. City of Bloomington, 299 N.W.2d 723, 726 (Minn. 1980).
- [72] 310 Minn. 480, 487, 246 N.W.2d 637, 641 (1976), *quoting* State ex rel. Boyd v. Matson, 155 Minn. 137, 141, 193 N.W. 30, 32 (1923).
- [73] See, *Caffrey*, 246 N.W.2d at 641 (Minn. 1976).
- [74] See, Young v. City of Duluth, 386 N.W.2d 732, 738-739 (Minn. 1986).
- [75] See, Gorecki v. Ramsey County, 437 N.W.2d 646, 650 (Minn. 1989).
- [76] 246 N.W.2d at 641.
- [77] Ex. P-10.
- [78] Exs. P-10, R-18.
- [79] State ex rel. Niemi v. Thomas, 223 Minn. 435, 438, 27 N.W.2d 155, 157 (1947).
- [80] *Caffrey*, 246 N.W.2d at 641.
- [81] Testimony of Johnson, Alderink.