

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

David J. Crego, Ronald J. Saukko, and
Roger B. Smith

Petitioners,

vs.

St. Louis County,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATIONS**

Administrative Law Judge Bruce H. Johnson (the ALJ) conducted a hearing in this contested case proceeding at 9:30 a.m. on Friday, May 21, 2004, at the Office of Administrative Hearings (OAH), Room 711, 320 West Second Street, Duluth, Minnesota. The record closed on May 21, 2004, when the hearing ended.

Petitioners Ronald J. Saukko, P.O. Box 203, Melrude, Minnesota 55746, and Roger B. Smith, 4229 Fayre Road, Duluth, Minnesota 55803, were not represented by attorneys and appeared at the hearing on their own behalf. Petitioner David J. Crego, 3155 Newton Road, Hibbing, Minnesota 55746, did not appear at the hearing. Amy H. Kuronen, Assistant St. Louis County Attorney, Suite 501, 100 North 5th Avenue West, Duluth, Minnesota 55802-1298, appeared at the hearing for the Respondent, St. Louis County (the County).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Veterans Affairs will make the final decision after reviewing this Report and the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions of Law, and Recommendations. Under Minnesota Law,^[1] the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument to him. Parties should contact the office of Jeffrey L. Olson, Commissioner, Minnesota Department of Veterans Affairs, 2nd Floor, Veterans Service Building, 20 W. 12th Street, St. Paul, Minnesota 55155-2006, to find out how to file objections or present argument.

The record of this contested case proceeding 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. 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.^[2]

STATEMENT OF THE ISSUES

The issues to be determined in this proceeding are:

1. Whether Petitioner Roger B. Smith's withdrawal of his petition should be accepted.
2. Whether Petitioner David J. Crego is in default, and whether his petition for relief should therefore be dismissed for failure to prosecute it.
3. Whether the County demoted Mr. Saukko in good faith and for a legitimate purpose.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Claim of Roger B. Smith:

1. Roger B. Smith lives at 4229 Fayre Road, Duluth, Minnesota 55803. He is currently employed by the County's Public Works Department as an equipment operator (junior).^[3]
2. From May 22, 1968, until May 21, 1970, Mr. Smith served on active duty in the United States Army, after which he was honorably discharged.^[4]
3. On February 27, 2004, Mr. Smith submitted a petition for relief to the Commissioner's office, and this contested case proceeding ensued.^[5]
4. On May 21, 2004, Mr. Smith appeared at the hearing in this matter and stated on the record that he was withdrawing his petition for relief.^[6]

Claim of David J. Crego:

5. David J. Crego lives at 3153 Newton Road, Hibbing, Minnesota 55746. He is currently employed by the County's Public Works Department as a bridge worker (junior).^[7]

6. From June 22, 1972, until December 28, 1973, Mr. Crego served on active duty in the United States Navy, after which he was honorably discharged.^[8]

7. On March 3, 2004, Mr. Crego submitted a petition for relief to the Commissioner's office, and this contested case proceeding ensued.^[9]

8. On March 23, 2004, the Commissioner's office began this contested case proceeding by issuing a Notice of Petition and Order for Hearing (Notice of Hearing), to which Mr. Crego's Petition for Relief was attached. That Notice advised Mr. Crego "that a contested case hearing concerning [his matter] will be held at 9:30 a.m. on May 21, 2004, in the Office of Administrative Hearings, 320 West Second Street, Suite 714, Duluth, MN 55802, to determine whether Petitioner's veterans preference rights have been denied."^[10]

9. On March 23, 2004, the Commissioner's office served Mr. Crego with a copy of the Notice of Hearing in this matter by U. S. Mail directed to the address that appeared on his petition for relief, namely: 3153 Newton Road, Hibbing, Minnesota 55746.

10. The Notice of Hearing contained the following warning:

"Should a party fail to appear at the hearing, the allegations made in this order may be taken as true and the Commissioner of Veterans Affairs may order such relief as he finds justified."

11. Neither David J. Crego nor anyone representing him appeared at the May 24, 2004, hearing, nor did he make a request to the ALJ to be excused from appearing at that hearing or to have it rescheduled for a later date.

Claim of Ronald J. Saukko:

12. Ronald J. Saukko lives at P.O. Box 203, Melrude, Minnesota. He is currently employed by the County's Public Works Department as an equipment operator (junior).^[11]

13. From August 11, 1970, until March 11, 1972, Mr. Saukko served on active duty in the United States Army, after which he was honorably discharged.^[12]

14. On March 11, 2004, Mr. Saukko submitted a petition for relief to the Commissioner's office, and this contested case proceeding ensued.^[13]

15. On March 23, 2004, the Commissioner's office began this contested case proceeding by issuing a Notice of Petition and Order for Hearing, to which Mr. Saukko's Petition for Relief was attached.^[14]

16. St. Louis County is a political subdivision of the state. The County's personnel practices are governed by a merit system and by rules and regulations that have been adopted by its Civil Service Commission.^[15]

The County's Public Works Department:

17. The County operates a Public Works Department (the Department) that is responsible for constructing and maintaining the County's 3,000 miles of roads, 1000 bridges, and other public works. Marcus Hall has been the Department's director since May 2003.^[16]

18. To carry out its responsibilities, the Department maintains six maintenance districts and a work force of employees who possess the various job skills necessary to perform the Department's work.^[17] Those job classifications include blacksmith, heavy equipment mechanic, equipment operator senior, and equipment operator junior.^[18]

19. Employees in the blacksmith job classification primarily perform structural repairs on the heavy equipment that the County owns and uses to maintain its roadways and bridges. Among other things, employees in the blacksmith classification use acetylene and arc welding equipment to perform major structural repairs on heavy equipment. Prior to January 2004, some, but not all, of the Department's maintenance districts had blacksmiths on staff.^[19] Passing a written qualifying examination is required for appointment to a position in the blacksmith job class.^[20]

20. Employees in the heavy equipment mechanic job classification perform difficult and skilled mechanical work while repairing the Department's heavy and other motorized equipment. That work includes maintenance and repair of gasoline and diesel engines, transmissions, differentials, and clutches on heavy and other motorized equipment. It is an essential job function for heavy equipment mechanics to be able to use acetylene and arc welding equipment when performing their duties.^[21] The County Board first approved that particular job classification requirement on March 24, 1980.^[22] Passing a written qualifying examination is also required for appointment to a position in the heavy equipment mechanic job class.^[23]

21. Employees in equipment operator job classification operate the County's heavy and other motorized equipment while constructing and maintaining the County's roadways, bridges, and other public works. The equipment operator job class is subdivided into "junior" and "senior" sub-classes. An experiential examination is required for appointment in the equipment operator junior job classification. An equipment operator junior is eligible for promotion to the senior subclass after two years of satisfactory service and after passing a qualifying examination.^[24]

22. Except for clerical, supervisory, and confidential employees, all of the Department's employees, including Mr. Saukko, are covered by a collective bargaining agreement between the County and the Minnesota Teamsters Public and Law Enforcement Employees Union, Local No, 320.^[25]

The Department's FY 2004 Budget:

23. County budgeting is by fiscal year, which begins on July 1st and ends on June 30th of the following year. The Department's director prepares a proposed departmental budget for approval by the County Board. In preparing that budget, the

County Board provides budgeting guidance, assumptions, and advice to the director either by formal resolution or by informal communication.^[26]

24. Revenue for the Department's operating budget comes from four sources: (1) allocation by the County board of a portion of the County's local tax levy; (2) trunk highway funds allocated to the county by the state; (3) a portion of the local government aid that the County receives from the state; and (4) federal funds that have been earmarked for County projects.^[27]

25. In February 2003, the County was notified that it would be receiving less revenue from the state than was anticipated, and that it would have to assume costs that had been previously borne by the state. These two developments would result in a \$14 million shortfall in the County's annual budget.^[28]

26. Contemplating that layoffs of County employees would be necessary to balance the budget, the County Board passed three resolutions designed to mitigate the hardships for affected employees. The first resolution established a hiring freeze.^[29] The second directed department heads to make every effort to provide alternative county employment for persons whose positions would be eliminated.^[30] The third resolution established an early retirement incentive plan as a means of reducing the number of potential layoffs.^[31]

27. On April 14, 2003, the Department's director, Mr. Hall, made a presentation to the County Board that would balance the Department's budget for the last few months of FY 2003, and that identified three options for meeting the Department's \$4,146,289 target for budget reductions in FY 2004.^[32] Plan A involved no employee layoffs but rather was based on not filling eleven current vacancies, on not spending \$1 million in the equipment budget, and on deferring construction on several roadway and bridge construction projects. Plan B left all equipment purchases and construction projects intact and relied on elimination of 66 positions to meet the budget target. Plan C was a blend of the approaches in Plans A and B. It made some reductions to the equipment budget, deferred some construction projects, and involved elimination of 38 positions. Plan C involved elimination of all four of the Department's blacksmith positions. After the presentation was completed, the County Board directed Mr. Hall to pursue the approach in Plan C, but with certain modifications and other planning parameters.^[33]

28. On June 17, 2003, Mr. Hall made a second, updated budget presentation to the County Board that incorporated the Board's previous guidance. That presentation focused on a single plan that involved a blend of layoffs, deferred equipment purchases, and deferred construction projects. The June 2003 plan contemplated elimination of 45 positions that would result in actual layoffs. More specifically, it contemplated elimination of all four of the Department's blacksmith positions and outsourcing all major equipment repairs to the private sector. The specific layoffs proposed in the plan would have resulted in some service delivery cuts for County residents.^[34]

29. After the June 2003 presentation, the County Board directed Mr. Hall to make certain revisions to the plan. Specifically, the Board indicated that the plan needed to have minimal impact on the general public. Consequently, the Department was only to eliminate positions that were unrelated to its core functions. And it was to avoid eliminating any positions that would reduce the existing level of services to County residents—for example, positions like equipment operators and mechanics who would be needed for snow plowing services in the winter.^[35]

30. The Department presented a revised budget reduction plan to the County Board on December 1, 2003. As a result of unanticipated additional revenue, the Department's reduction target for FY 2004 had been reduced from \$4,146,289 to \$3,172,999. The revised plan therefore called for elimination of 13 positions with resultant layoffs. As the County Board had directed, no equipment operator or heavy mechanic positions were identified for elimination, since eliminating those positions would result in service reductions. But with that exception, the proposed reductions in force affected the entire range of the Department's job classifications and included professional and supervisory positions as well as skilled trade positions.^[36]

31. The plan presented on December 3, 2003, involved elimination of three of the Department's four blacksmith positions. The one blacksmith position that would be unaffected was at the Department's Pike Lake Garage, which was relatively new and uniquely constructed and equipped for major structural repairs of heavy equipment. The plan contemplated transporting heavy equipment to Pike Lake for repairs or outsourcing the work to local private companies, whichever was most cost-effective.^[37]

32. After some minor modifications of the plan were made on December 8, 2003, the County Board approved the Department's budget reduction plan for FY 2004.^[38] And on February 3, 2004, the Board made some additional modifications that are not germane to this proceeding as the result of a projected increase in state aid apportionment.^[39]

Mr. Saukko's Layoff:

33. The budget reduction plan that the County Board approved on December 8, 2003, involved elimination of Mr. Saukko's blacksmith position at the Hibbing Maintenance Garage. Even before Mr. Saukko was formally notified of a layoff, the Department and its assigned personnel officer began counseling him about other county employment opportunities.^[40]

34. On January 11, 2004, the Department sent Mr. Saukko a written notice of layoff effective February 3, 2004. In addition to advising him of his rights under the County's civil service rules and under his collective bargaining agreement, the notice contained the following paragraph:

Pursuant to Minnesota Statutes 197.46, you are hereby notified that you have a right to petition the St. Louis County District Court for a writ of mandamus or to petition the Commissioner of Veteran's Affairs for a

hearing to determine whether your layoff was in good faith. If you wish to pursue either of these remedies, you must do so within 60 days of receipt of this notice. Your failure to petition a hearing within 60 days shall constitute a waiver of your right to contest your layoff under the Veteran's Preference Act.^[41]

35. Both before and after Mr. Saukko received the layoff notice, the County provided him with information about postings of vacant positions in County service that were still budgeted, and it gave him the opportunity to take the qualifying examinations for those positions.^[42]

36. On January 28, 2004, Mr. Saukko took and passed the qualifying examination for the position of building maintenance helper at Chris Jensen Nursing Home in Duluth, but he declined appointment to the position. That position was at lower pay grade than the position of blacksmith.^[43]

37. On January 28, 2004, Mr. Saukko also took and passed the qualifying examination for the position of building maintenance worker at the Department's Hibbing Maintenance Garage, but he also declined appointment to the position. That position was at the same pay grade as the position of blacksmith, involved the same compensation and benefits, and amounted to a lateral transfer within the County's civil service system.^[44]

38. On March 4, 2004, Mr. Saukko took and passed the qualifying examination for the position of bridge worker at the Department's Pike Lake Garage, but he declined appointment to the position. That position was at lower pay grade than the position of blacksmith.^[45]

39. On April 20, 2004, Mr. Saukko took and passed the qualifying examination for the position of equipment operator junior at the Virginia Garage. Although that position is at lower pay grade than the position of blacksmith and currently involves lower compensation, he was offered an appointment to that position^[46] and accepted that appointment.^[47]

40. Mr. Saukko continues to be employed by the County as an equipment operator junior. In the course of that employment, he has seen heavy equipment mechanics performing welding work on trucks.^[48] That welding work is of a minor nature, and any major welding work on the Department's equipment is either performed by the Department's remaining blacksmith at Pike Lake or by local private contractors.^[49]

41. Having the Department's major heavy equipment repairs performed by the blacksmith at Pike Lake or by local private contractors costs less than employing four blacksmiths.^[50]

Other Findings:

42. The Memorandum that follows explains the reasons for these Findings, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Findings.

43. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

44. The Memorandum that follows explains the reasons for these Findings of Fact, and to the extent that the Memorandum may contain additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

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

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law^[51] gives the Administrative Law Judge and the Commissioner of the Department of Veterans Affairs authority to conduct this proceeding under the Veterans Preference Act^[52] and to make findings, conclusions, and either recommendations or orders, as the case may be.

2. The Department gave proper and timely notice of the hearing in this proceeding, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Because Mr. Smith withdrew his Petition for Relief under the Veterans Preference Act, the matters raised in his petition are no longer at issue, and his withdrawal of his petition should be accepted.

4. Minnesota Rules, part 1400.8560 provide in pertinent part:

If the agency appears at a hearing but the party against whom the agency intends to take action does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence.

5. Mr. Crego violated Minnesota Rules, part 1400.8560 by failing to appear at the hearing. He is therefore in default, and his petition should therefore be dismissed with prejudice.

6. Mr. Saukko is an honorably discharged veteran within the meaning of the Veterans Preference Act^[53] and is therefore entitled to all of the Act's protections and benefits.

7. The County is a political subdivision of the state within the meaning of the Veterans Preference Act,^[54] and its personnel practices are therefore subject to the Act's provisions.

8. Before a public employer takes any action that removes a veteran from his or her position, the Veterans Preference Act^[55] requires the employer to give the veteran written notice of an intent to discharge and of the veteran's right to request a hearing.

9. On January 11, 2004, the County gave Mr. Saukko the notice described in Conclusion No. 8.

10. The Veterans Preference Act^[56] also provides a veteran with a right to a hearing on whether cause existed for his or her dismissal or demotion before being discharged or demoted. But that requirement does not apply when a public body eliminates a position in good faith for some legitimate purpose, such as when it is part of a good faith reduction in force.^[57]

11. Whether a veteran's position has been eliminated in good faith for a legitimate purpose is an affirmative defense for which a veteran's public employer has the burden of proof.^[58]

12. The County established by a preponderance of the evidence that its decision to balance its FY 2004 budget, in part, by eliminating Mr. Saukko's blacksmith position was part of a necessary, good faith reduction in force and for a legitimate public purpose.

13. On January 28, 2004, Mr. Saukko passed the qualifying examination for the position of building maintenance worker at the Department's Hibbing Garage, a position that was comparable in terms of pay and benefits to his position as a blacksmith. Because Mr. Saukko declined to accept a lateral transfer to that position in lieu of layoff, his subsequent acceptance of the position of equipment operator junior at lower pay was a voluntary demotion and not a "removal" from employment by the County within the meaning of Minnesota Statutes, section 197.46.

14. The County had not denied Mr. Saukko any right provided to him by Minnesota Statutes, section 197.46.

15. The Memorandum that follows explains the reasons for these Conclusions, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

16. The Administrative Law Judge adopts as Conclusions any Findings, which are more appropriately described as Conclusions.

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

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner:

- (1) ACCEPT Petitioner Roger B. Smith's withdrawal of his Petition;
- (2) DISMISS Petitioner David J. Crego's Petition, with prejudice, for failure by Mr. Crego to take reasonable steps to prosecute his claim for relief; and
- (3) DISMISS Petitioner Ronald J. Saukko's Petition with prejudice and on the merits.

Dated this 27th day of May 2004.

S/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Recorded: 1 tape – no transcript prepared.

NOTICE

Under Minnesota law,^[59] the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

Pursuant to his authority under Minn. Stat. § 197.481, the Commissioner of Veterans Affairs initiated this proceeding on March 23, 2004 by issuing a Notice of Petition and Order for Hearing. The Notice encompassed three separate Petitions for Relief under the Veterans Preference Act that had been filed by David J. Crego, Ronald J. Saukko, and Roger B. Smith, all three of whom were employees of the County's Public Works Department. The Notice scheduled the hearing in this matter for 9:30 a.m. on May 21, 2004. Because all three petitions for relief involved common questions of law and fact and met the other criteria of Minnesota Rules, part 1400.6360, the ALJ proposed to consolidate all three petitions for hearing.

When the hearing convened, Mr. Smith indicated on the record that he was satisfied with the steps the County had taken to mitigate his layoff and withdrew his petition for relief. After being duly served with a Notice of Petition and Order for Hearing, Mr. Crego did not appear at the hearing and had not made a request to the ALJ to be excused from appearing at that hearing or to have it rescheduled for a later date. Mr. Crego is therefore in default and has failed to take reasonable steps to prosecute his claim. The ALJ has therefore recommended that the Commissioner dismiss Mr. Crego's petition with prejudice. Mr. Saukko did appear at the hearing and did not withdraw his petition. So his claim is the only one of the three that requires adjudication on the merits.

Under Minnesota law,^[60]

[n]o 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. [Emphasis supplied.]

Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge.

For purposes of the Act's notice requirement, the term "removal" is considered to embrace a demotion.^[61]

Mr. Saukko's *Prima Facie* Case

Minn. Stat. § 197.46 (1996) 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. [Emphasis supplied.]

Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge.

The parties both agree that Mr. Saukko is an honorably discharged veteran who is entitled to the protection of Minnesota Statute § 197.46. There is also no dispute about the facts that the County abolished Mr. Saukko's position as a blacksmith as of February 3, 2004, and that the County had issued a lay-off notice on January 11, 2004, removing him from that position. Finally, there is no dispute over the fact that the County did not inform Mr. Saukko pursuant to Minnesota Statute § 197.46 that he had a right to a hearing at which the County was required to show incompetency or misconduct on his part before terminating his employment as a blacksmith. In short, Mr. Saukko established a *prima facie* case that the County may possibly have violated rights afforded him under the Minnesota Veteran's Preference Act.

Mr. Saukko's Demotion Was Voluntary

At the time Mr. Saukko's layoff notice was issued on January 11, 2004, the Department had a vacancy for a building maintenance worker at its Hibbing garage. The pay grade for that position was J18, the same as Mr. Saukko's blacksmith position. The County notified him of that vacancy and on January 28, 2004, Mr. Saukko passed the qualifying examination for that position. The County offered to appoint him to that position in lieu of layoff. Because there was no difference in compensation or benefits from his blacksmith position, the County was, in effect, offering Mr. Saukko a lateral transfer and change in job classification. But Mr. Saukko declined to accept a lateral transfer to building maintenance worker position as an alternative to layoff. In determining whether a violation of the Veterans Preference Act has occurred, a reviewing tribunal is obliged to examine the substance of the action and not just the form.^[62] The Veterans Preference Act provides veterans protection against reductions of pay and benefits; it does not guarantee that a veteran will continue to be employed in the same job classification. Mr. Saukko's decision not to accept an appointment as a building maintenance worker and his subsequent acceptance of the position of equipment operator junior at lower pay was, in substance, a voluntary demotion and not a "removal" from employment by the County within the meaning of Minnesota Statutes, section 197.46.

Good Faith Elimination of Mr. Saukko's Position

The County, however, also raised as a defense the claim that it had eliminated Mr. Saukko's employment as a blacksmith as part of a good faith, countywide reduction in force. The County therefore argues that under existing law, it was not required to provide him with, a hearing at which it was required to show incompetency or misconduct on his part.

On its face Minnesota Statutes, section 197.46, appears to apply to any action by a public body to terminate the public employment of an honorably discharged veteran, regardless of whether or not the termination is part of a *bona fide* reduction in force. However, beginning with *State ex rel. Boyd v. Matson*,^[63] the Minnesota Supreme Court has established a line of authority indicating that the Veterans Preference Act does not prevent public employers from eliminating positions, and incidentally the employment of veterans who may occupy them, so long as those positions are being eliminated in good faith for legitimate purposes:

The purpose of this section [the Veterans Preference Act] is to take away from the appointing officials the arbitrary power, ordinarily possessed, to remove such appointees at pleasure; and to restrict their power of removal to the making of removals for cause. But it is well settled that statutes forbidding municipal officials from removing appointees except for cause are not intended to take away the power given such officials over the administrative and business affairs of the municipality, and do not prevent them from terminating the employment of an appointee 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. [Citations omitted.] The municipal authorities may abolish the position held by an honorably discharged soldier and thereby terminate his employment, notwithstanding the so-called veteran's preference act.^[64]

An assertion by the public body that a veteran's position has been eliminated as the result of a good faith reduction in force is an affirmative defense for which the public body has the burden of proof.^[65] Whether action to eliminate the position has been taken in good faith or whether the reasons given by the public body are merely a subterfuge to oust the veteran from his position is a question of fact to be determined by the trier of fact by a preponderance of the evidence.^[66]

A preponderance of the evidence established that it was necessary for the County to make some very substantial budget cuts in its Public Works Department as the result of state funding cuts. The County Board reviewed various approaches to cutting the Department's budget and concluded that it would be contrary to the public

interest to do more substantial cutting of public works projects or to cut positions in the Department that would result in significant reductions of services to the public. Those were good faith legislative judgments of where the public interest lies. And the budget reduction plan for the Department that the County Board ultimately approved was based on those good faith legislative conclusions. The County's good faith is also supported by the fact that positions identified for elimination were not confined to Mr. Saukko's job classification; they also involved professional and supervisory employees. Finally, the County's good faith is shown by the measures it has taken to find alternative county employment for persons whose positions have been eliminated. In sum, the ALJ concludes that the County established by a preponderance of the evidence that elimination of Mr. Saukko's position was part of a good faith reduction in force and for a legitimate purpose.

Mr. Saukko's argument concerning his demotion is that the County's lack of good faith is evidenced by the fact that after the elimination of his blacksmith position, he saw heavy equipment mechanics doing some welding that blacksmiths previously might have done. The Minnesota Supreme Court's decision in *State ex rel. Niemi v. Thomas* first explored the dimensions of work reassignments as evidence of bad faith:

Of course, the village council could not, under the pretext of abolishing the position, continue it under some other name. There would have to be a real, not a sham or pretended, abolishment. Where the abolishment of an office or position has been held to be a sham and pretended, it generally has appeared that there was prompt re-creation of the office or position under a different name or assignment of the work thereof to another department, followed by appointment of a new appointee to perform the work formerly done by the incumbent of the office or position claimed to have been abolished.^[67]

And in *Young v. City of Duluth*, the Supreme Court elaborated on that situation:

If the city merely reassigned Young's duties to nonveteran employees less senior than he, his position was not abolished in good faith, and he is entitled to reinstatement with back pay. The Veterans Preference Act is applicable to cases in which public employers reassign duties in times of revenue shortfalls and budget cuts. No exception in the Act exists for such situations. Thus, veterans have a preference over nonveteran employees less senior than they to continue to perform duties for which they are qualified if the public employer continues to need such duties performed.^[68]

However, the principles that the Court articulated in *Niemi* and *Young* are not applicable here. A preponderance of the evidence established that the kind of minor welding activities that the County's heavy equipment mechanics now perform is not work out of class but rather the use of skills that the class specifications and job description for heavy equipment mechanics expressly require incumbents to have.^[69] Moreover, a preponderance of the evidence also established that the types of major

equipment repairs that were formerly done by the blacksmiths whose positions were eliminated are now either being done by the remaining blacksmith at the Pike Lake Garage or by local private contractors at a lower aggregate cost, In other words, the evidence falls well short of establishing that Mr. Saukko's former duties have been reassigned to nonveteran employees less senior than he.

Conclusion

For the reasons described above, the ALJ concludes that the Commissioner should accept Mr. Smith's withdrawal of his petition and should dismiss Mr. Crego's petition for his failure to follow through with and prosecute his claim. As to Mr. Saukko's claim for relief, the ALJ concludes that he had the opportunity for a lateral transfer with no reduction in pay and declined it. Mr. Saukko's subsequent acceptance of a lower paying position was therefore a voluntary demotion and not a removal from a position within the meaning of the Veterans Preference Act. Moreover, even if Mr. Saukko's demotion had not been voluntary, he still would not be entitled to relief because the County established by a preponderance of the evidence that the layoff from his blacksmith position was part of a good faith reduction in force and for a legitimate purpose.

B.H.J.

^[1] Minnesota Statutes, section 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 2002 edition.)

^[2] See Minnesota Statutes, section 14.62, subdivision 2a.

^[3] Petition for Relief of Roger B. Moore and Exhibit 13.

^[4] Petition for Relief of Roger B. Moore.

^[5] Petition for Relief of Roger B. Moore.

^[6] Testimony of Roger Smith.

^[7] Petition for Relief of David J. Crego; Exhibit 13.

^[8] Petition for Relief of David J. Crego.

^[9] Petition for Relief of David J. Crego.

^[10] Notice of Petition and Order for Hearing.

^[11] Petition for Relief of Ronald J. Saukko and Exhibit 13.

^[12] Petition for Relief of Ronald J. Saukko.

^[13] Petition for Relief of Ronald J. Saukko.

^[14] Notice of Petition and Order for Hearing.

^[15] Exhibit 10.

^[16] Testimony of Marcus Hall.

^[17] Testimony of David Skelton.

^[18] Exhibits 13, 14, C, and D.

^[19] Testimony of David Skelton.

^[20] Testimony of Peggy Fecker.

- [21] Exhibit 14.
- [22] Exhibit 14.
- [23] Testimony of Peggy Fecker.
- [24] Testimony of David Skelton and Peggy Fecker.
- [25] Exhibit 11.
- [26] Testimony of Marcus Hall.
- [27] Testimony of Marcus Hall.
- [28] Testimony of Marcus Hall.
- [29] Exhibit 1.
- [30] Exhibit 2.
- [31] Exhibit 3.
- [32] Testimony of Marcus Hall; Exhibit 4.
- [33] Testimony of Marcus Hall; Exhibit 4.
- [34] Testimony of David Skelton.
- [35] Testimony of Marcus Hall; Exhibit 5.
- [36] Testimony of Marcus Hall; Exhibit 6.
- [37] Testimony of Marcus Hall and David Skelton; Exhibit 6.
- [38] Exhibit 7.
- [39] Exhibit 8.
- [40] Exhibit 13; testimony of David Skelton and Peggy Fecker.
- [41] Exhibit 12.
- [42] Exhibit 13; testimony of Peggy Fecker.
- [43] Exhibit 13.
- [44] Exhibit 13; testimony of Peggy Fecker.
- [45] Exhibit 13.
- [46] Exhibits A and B.
- [47] Exhibit 13 and B.
- [48] Testimony of Ronald Saukko.
- [49] Testimony of David Skelton.
- [50] Testimony of David Skelton.
- [51] Minnesota Statutes, section 14.50 and section 197.481.
- [52] Minnesota Statutes, section 197.46.
- [53] Minnesota Statutes, section 197.447 and section 197.46.
- [54] Minnesota Statutes, section 197.46.
- [55] Minnesota Statutes, section 197.46.
- [56] Minnesota Statutes, section 197.46.
- [57] *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).
- [58] *State, ex rel. Caffrey v. Metropolitan Airport Commission*, 246 N.W.2d 637 (Minn. 1976); cf. *Southern Minnesota Municipal Power Agency v. Schrader*, 394 N.W.2d 796, 802 (Minn. 1986).
- [59] Minnesota Statutes, section 14.62, subdivision 1.
- [60] *Id.*
- [61] *Leininger v. City of Bloomington*, 299 N.W.2d 723 (Minn. 1980).
- [62] *Myers v. City of Oakdale*, 409 N.W.2d 848, 850 (Minn. 1987).
- [63] 155 Minn. 137, 193 N.W. 30 (Minn. 1923),

^[64] See also, *Young v. City of Duluth*, 386 N.W.2d 732, 737 (Minn. 1986).

^[65] See, e.g., *State ex rel. Caffrey v. Metropolitan Airport Commission*, 246 N.W.2d 637 (Minn. 1976); *cf. Southern Minnesota Municipal Power Agency v. Schrader*, 394 N.W.2d 796, 802 (Minn. 1986).

^[66] *Caffrey*, *supra*, 246 N.W.2d at 641; *State ex rel. Niemi v. Thomas*, 27 N.W.2d 155, 157, 223 Minn. 435, 438 (Minn. 1947).

^[67] 27 N.W.2d 155, 158 (Minn. 1947).

^[68] 386 N.W.2d at 738-39.

^[69] See Exhibit 14.