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

Richard J. Behnke, Julius Ruud,
and David P. Sikkink,

Petitioners,

v.

Independent School District No. 233,

Respondent

FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on September 14, 1995, in the Fillmore County Courthouse in Preston, Minnesota. The hearing was held pursuant to three separate Notices of Petitions and Orders for Hearing issued by the Commissioner of the Minnesota Department of Veterans Affairs with respect to each of the above three Petitioners on August 3, 1995. The parties agreed that the three matters should be consolidated for hearing. The record remained open until September 27, 1995, for the submission of post-hearing materials by the parties.

Charles O'Connor, Rural Route 1, Box 105A, Harmony, Minnesota 55939, appeared as a non-attorney representative on behalf of the Petitioners. James E. Knutson, Attorney at Law, Knutson, Flynn, Deans & Olsen, 30 Seventh Street East, Suite 1900, St. Paul, Minnesota 55101-4900, appeared on behalf of the Respondent.

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 the record and 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 Gerald Bender, Veterans Preference Office, Minnesota Department of Veterans Affairs, 20 West 12th Street, St. Paul, Minnesota 55155-2079, (612) 397-5828, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF THE ISSUES

The issues in this case are as follows:

1. Whether the Petitioners are veterans within the meaning of the Veterans Preference Act who were removed from their employment without being notified of their hearing rights under Minn. Stat. § 197.46 (1994);
2. Whether the Petitioners are entitled to a hearing under the Veterans Preference Act where they were terminated under Minn. Stat. § 179A.19 (1994) based upon their alleged participation in an illegal strike and they failed to notify the School District that they elected to proceed with a Veterans Preference hearing within ten days after notice of termination was served upon them; and
3. Whether the Petitioners are entitled to any relief under Minn. Stat. § 197.481, subd. 1 (1994), as a result of the Respondent's actions.

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

FINDINGS OF FACT

1. The Petitioners are veterans within the meaning of the Veterans Preference Act, as defined in Minn. Stat. § 197.447 (1994).^[1]
2. The Petitioners were employed as school bus drivers by the School District during the 1994-95 school year.
3. During the course of the Petitioners' employment with the School District, there was a dispute between the bus drivers and the School District concerning seven snow days. The bus drivers wanted to receive pay for those seven days.
4. The School Board decided on April 25, 1995, that the bus drivers were not going to be paid for the seven snow days.
5. Charles O'Connor, the bus drivers' spokesman, notified the bus drivers of the School Board's decision and had meetings with the bus drivers prior to April 28, 1995. At those meetings, the bus drivers voted not to drive their buses on April 28, 1995, if they were not paid for the snow days.
6. Charles Aug, Chair of the School Board, told Mr. O'Connor that the bus drivers would be terminated if they did not drive on April 28, 1995.
7. David Trende, the Director of Transportation/Bus Foreman for the School District during the 1994-95 school year, called Mr. O'Connor and the Petitioners during

the evening of April 27, 1995, and told them that they would be terminated if they did not drive on April 28th.

8. The Petitioners did not drive their buses on the morning of April 28, 1995.

9. Petitioners Ruud and Behnke were notified by Mr. Aug in separate letters sent by certified mail on May 3, 1995, that their employment as drivers with the School District was terminated effective April 28, 1995. Exs. 1, 2; ^[2] Affidavit of Denise Schultz, ¶ 2 (attached to Respondent's post-hearing submission). The letters indicated that the reason for the termination was their failure to perform their duties and their participation in an illegal strike on April 28, 1995. The letters contained the following information regarding hearing rights:

Pursuant to Minnesota Statutes Section 179A.19, Subdivision 6, you may request an opportunity to establish that you did not participate in an illegal strike. If you wish this opportunity, you must file a written request for a hearing with the Chairperson of the School Board within ten (10) days of receipt of this letter. The School Board, or its designee, will commence a proceeding within ten (10) days, at which time you will be entitled to be heard for the purpose of determining whether you have violated the provisions of Minnesota Statute Section 179A.19.

Exs. 1, 2. The letter did not notify Mssrs. Ruud or Behnke of any right to a hearing under the Veterans Preference Act.

10. The May 3, 1995, letter containing the notice of termination was delivered to Mr. Ruud on May 4, 1995. Ex. 1. Mr. Behnke did not pick up the letter from the post office. Ex. 2; Affidavit of Denise Schultz, ¶ 3. Mr. Aug sent Mr. Behnke another letter dated June 9, 1995, which contained a text identical to that of the May 3, 1995, letter. This letter was served personally on Mr. Behnke on June 10, 1995. Ex. 3.

11. The School Board of Independent School District No. 233 met on June 27, 1995, and adopted resolutions sustaining the termination of the employment of Petitioners Behnke and Ruud. Exs. 4, 6. A letter dated June 28, 1995, notifying Mr. Ruud of the School Board's action was sent to Mr. Ruud by certified mail on June 30, 1995, and was received by him on July 1, 1995. Ex. 5. A letter dated June 28, 1995, notifying Mr. Behnke of the School Board's action was personally served upon him on July 3, 1995. Ex. 7.

12. At approximately the end of March, 1995, Petitioner Sikkink informed Kenneth Doty, the Superintendent of the School District, that he was going to resign from his position as a school bus driver for the School District and that his last day of work would be April 28, 1995. Mr. Sikkink was never discharged or terminated by the School District. Ex. 11. No notice of termination was ever sent to him.

13. The Petitioners did not tell Mr. Doty or any other administrator of the School District that they were veterans. There is nothing in the Petitioners' personnel files indicating that they were veterans. Exs. 11-13. Mr. O'Connor did, however, inform Mr. Aug on May 12, 1995, that Mssrs. Behnke, Ruud, and Sikkink were veterans and had decided to take care of the matter through a veteran's proceeding.

14. On June 27, 1995, the Petitioners signed separate Petitions for Relief under the Veterans Preference Act. See attachments to the Notices of Petition and Orders for Hearing in this matter. The Commissioner of Veterans Affairs issued separate Notices of Petition and Orders for Hearing with respect to each of the three Petitioners on August 3, 1995, which were served by mail on the Respondent on that date. This hearing followed.

CONCLUSIONS

1. Under Minn. Stat. §§ 197.481 and 14.50 (1994), the Administrative Law Judge and the Commissioner of Veterans Affairs are authorized to determine if the Petitioners are entitled to a veterans preference hearing or any other relief as a result of their termination from employment.

2. The Petitioners and the Respondent received timely and proper notice of the hearing.

3. The Department of Veterans Affairs has complied with all relevant substantive and procedural requirements of law.

4. The Petitioners are veterans within the meaning of Minn. Stat. §§ 197.46 and 197.447 (1994).

5. Minn. Stat. § 197.46 (1994) 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. Public employers may also abolish positions notwithstanding the Veterans Preference Act if the abolition of the position is in good faith. Young v. City of Duluth, 386 N.W.2d 732 (Minn. 1986); State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (1923).

6. The burden of proof is upon the Petitioners to prove by a preponderance of the evidence that they are veterans within the meaning of the Veterans Preference Act who were terminated in violation of Minn. Stat. § 197.46.

7. Petitioners Behnke and Ruud were removed from their positions as bus drivers for the School District within the meaning of Minn. Stat. § 197.46 (1994) when the Respondent's School Board decided to terminate them effective April 28, 1995. Petitioner Sikkink was not removed from his position as a bus driver for the School District within the meaning of Minn. Stat. § 197.46 (1994) since he had previously informed the School District that he intended to resign on April 28, 1995.

8. The Respondent has denied Petitioners Behnke and Ruud rights provided to them by the Veterans Preference Act in that it removed them in violation of Minn. Stat. § 197.46, and failed to provide them with the notice of hearing rights required by that statute.

9. Petitioners Behnke and Ruud are entitled to be reinstated as of April 28, 1995, and receive all status, back pay, and benefits they would have received consistent with such employment.

10. These Conclusions are reached for the reasons discussed in the Memorandum below, which is hereby incorporated by reference.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs order:

1. That the petition of David P. Sikkink be DENIED.
2. That the petitions of Richard J. Behnke and Julius O. Ruud be GRANTED.
3. That Respondent Independent School District No. 233 immediately reinstate Petitioners Behnke and Ruud to their positions as bus drivers.
4. That the Respondent reimburse Petitioners Behnke and Ruud the amount of pay they would have received had they been employed since April 28, 1995, plus the value of any benefits they would have received, together with interest thereon at the statutory rate from the date such payments should have been made.

Dated this ____ day of October, 1995

BARBARA L. NEILSON
Administrative Law Judge

Reported: Taped (tapes number 20,404 and 21,948)

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.

MEMORANDUM

Under Minn. Stat. § 197.46, “[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.” The Minnesota Supreme Court has also recognized that the Veterans Preference Act is not intended to prevent public employers from abolishing positions in good faith. Young v. City of Duluth, 386 N.W.2d 732 (Minn. 1986); State ex rel. Boyd v. Matson, 155 Minn. 137, 193 N.W. 30 (1923).

The parties stipulated that the Petitioners are veterans within the meaning of the Veterans Preference Act. See Minn. Stat. § 197.447. The School District emphasized during the hearing and in its brief that the veterans had never formally notified the District of their status as veterans and that there was nothing in their personnel files indicating that they were veterans. The Veterans Preference Act “does not prescribe or require formal notice to the employer of the status of an employee under the act.” State ex rel. Lund v. City of Bemidji, 209 Minn. 91, 295 N.W. 514 (1941). At a minimum, it is evident that Mr. Aug, chair of the Board, was informed by Mr. O’Connor on May 12, 1995, that Msrs. Ruud, Sikkink, and Behnke were veterans. The knowledge of even one board member that an employee has been in the military service is sufficient to trigger the obligation to provide the employee with notice and an opportunity for a hearing prior to discharge. Pawelk v. Camden Township, 415 N.W.2d 47, 51 (Minn. App. 1987).

As set forth in the findings above, it has been determined that Petitioner Sikkink was not in fact removed from his position within the meaning of the Veterans Preference Act. Mr. Sikkink had told his superiors in late March, 1995, that he intended to resign at the end of April and that April 28, 1995, would be his last day. Mr. Sikkink admitted that it was “very possible” that he again indicated to Mr. Trende that his last day of work would be April 28 when he was called by Mr. Trende during the evening of April 27. In any case, there was no claim by Mr. Sikkink that he had ever withdrawn his notice of resignation or changed its effective date. Moreover, Mr. Sikkink was not provided with a notice of termination, as were the other Petitioners, and there is no other indication that the School District in fact discharged Mr. Sikkink from his employment on April 28. The School District thus did not take away Mr. Sikkink’s employment; rather, he resigned. See Johnson v. County of Anoka, No. CX-95-625 (Minn. App. Aug. 16, 1995) (the demand that a veteran resign or be terminated “constituted a removal because it had the effect of taking away [the veteran’s] employment”); Myers v. City of Oakdale, 409

N.W.2d 848, 850-51 (Minn. 1987) (a veteran is deemed to have been removed from his employment “when the effect of the employer’s action is to make it unlikely or improbable that the veteran will be able to return to do the job”). Because Mr. Sikkink was not “removed” from his employment by the Respondent, the Veterans Preference Act is inapplicable to his situation. See Southern Minnesota Municipal Power Agency v. Schrader, 380 N.W.2d 169 (Minn. App. 1986), rev’d on other grounds, 394 N.W.2d 796 (Minn. 1986) (the Veterans Preference Act does not apply to employees who voluntarily resign).

The District contends that Mssrs. Behnke and Ruud are not entitled to a Veterans Preference hearing under the rationale of the Minnesota Supreme Court in Garavalia v. City of Stillwater, 168 N.W.2d 336 (1969). In Garavalia, the Minnesota Supreme Court considered whether three fire fighters whose employment had been terminated after they walked off their jobs during a dispute with the City regarding wages and working conditions were entitled to a hearing before removal under the Veterans Preference Act. A different version of the Minnesota Public Employees Labor Relations Act was in effect at the time. It was codified in Minn. Stat. §§ 179.50 to 179.58. Minn. Stat. §§ 179.50-179.58 and was repealed effective July 1, 1972. The statute prohibited public employees from participating in strikes and provided that, “[n]otwithstanding any other provision of law, any public employee who violates the provisions of sections 179.51 to 179.58 **shall thereby abandon and terminate his appointment or employment . . .**” Minn. Stat. § 179.54 (1965) (emphasis added). The Court held in Garavalia that the lower court had improperly found that the veterans had been discharged “when in fact they abandoned and terminated their own employment by their own acts.” Id. at 343. Based upon the language of Minn. Stat. § 179.54, the Court found that the veterans’ employment was “automatically terminated without any action by or on behalf of the city.” Id. The Court thus concluded that the requirement of the Veterans Preference Act that a hearing be held before removal was inapplicable “since that act controls the city’s power to terminate the veteran’s employment, and in this case the veteran-plaintiffs’ employment was terminated by their own act and by operation of law.” Id. The Court determined that there was no conflict between Minn. Stat. §§ 179.51-179.58 and the Veterans Preference Act because Minn. Stat. § 179.51-179.58 did not give public employers any authority to discharge and “it is the arbitrary abuse of authority to discharge against which the Veterans Preference Act guards . . .” Id. at 344.

The Administrative Law Judge is not persuaded that the result reached by the Supreme Court in Garavalia would be reached under the current version of the Public Employees Labor Relations Act, and thus rejects the Respondent’s argument that the Veterans Preference Act is inapplicable in situations involving illegal strikes. There are significant differences between the wording of the current version of PELRA and the version at issue in Garavalia. Most notably, the current version of PELRA no longer includes language requiring that a public employee who violates the statute be deemed to have abandoned and terminated his or her own employment. This language was critical to the Court’s decision in Garavalia. In contrast, the version of PELRA applicable in the present case specifies that “public employees who strike in violation of this section **may have their appointment or employment terminated by the**

employer effective the date the violation first occurs.” Minn. Stat. § 179A.19, subd. 2 (1994) (emphasis added). Thus, the current statute does, in fact, give public employers the authority to discharge employees who engage in illegal strikes. This provision of the current version of PELRA is in direct conflict with the Veterans Preference Act, which generally requires that veterans be terminated only after they have received written charges and proper notice of their right to a veterans hearing. See Minn. Stat. § 197.46 (“[n]o person . . . who is a veteran . . . 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”).

The School District asserts that the PELRA provision supersedes the requirements of the Veterans Preference Act and that, accordingly, the termination of Petitioners Behnke and Ruud was effective on the date they participated in an illegal strike and thereby violated the PELRA provisions. The District relies in this regard upon the language in Minn. Stat. § 179A.19, subd. 2 (1994), which specifies that, “[n]otwithstanding any other law, public employees who strike . . . may have their . . . employment terminated . . . effective the date the violation first occurs.” (Emphasis added.) The District’s argument overlooks specific provisions contained in the Veterans Preference Act addressing the impact of other statutes. Minn. Stat. § 197.46 (1994) provides that “[a]ll officers, boards, commissions, and employees shall conform to, comply with, and aid in all proper ways in carrying into effect the provisions of section 197.455 and this section **notwithstanding any laws**, charter provisions, ordinances or rules to the contrary.” In addition, Minn. Stat. § 197.48 (1994) states in relevant part:

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

Minn. Stat. § 197.48 (1994) (emphasis added).

According to the canons of construction, words and phrases used in statutes are generally to be construed “according to their common and approved usage.” Minn. Stat. § 645.08 (1994). Moreover, “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. § 645.16 (1994). The above-quoted language of the Veterans Preference Act clearly sets forth the Legislature’s intent that the Veterans Preference Act would not be overridden by a later law unless that later law expressly provided that particular provisions of the Veterans Preference Act shall not be applicable or shall be superseded, modified, amended, or repealed. The term “expressly” is defined in New Webster’s Dictionary and Thesaurus of the English Language 334 (1991) to mean “explicitly; specially, with a special or avowed intention.” The term is defined in Black’s Law Dictionary 692 (Rev. 4th Ed. 1968) to mean “[i]n an express manner; in direct or unmistakable terms; explicitly; definitely;

directly.” It is clear that the broad “notwithstanding any other law” language contained in PELRA does not “expressly” provide that certain sections of the Veterans Preference law are to be superseded, and thus does not meet the requirements of Minn. Stat. § 197.48. See, e.g., Gorecki v. Ramsey County, 437 N.W.2d 646, 649 (Minn. 1989) (a reclassification decision under Minn. Stat. § 383A.285, to the extent inconsistent with Minn. Stat. § 197.46, is, in accordance with Minn. Stat. § 197.48, subject to the considerations of § 197.46); State ex rel. Caffrey v. Metropolitan Airports Commission, 310 Minn. 480, 246 N.W.2d 637, 640 (Minn. 1976) (a statute providing that MAC employees were “removable at the pleasure of” the commissioner was not intended to repeal or supersede veterans preference rights granted to MAC employees; application of the general principle that a statute supersedes any inconsistent provisions of prior law would “[give] no effect to § 197.48” and would “[make] probable abrogation of veterans preference rights by legislative inadvertence a hazard which, at the very least, § 197.48 was designed to prevent”); Shoen v. County of St. Louis, 448 N.W.2d 112, 114-16 (Minn. App. 1989) (the legislature had specifically indicated its intent that the St. Louis County civil service provisions superseded the hearing requirements of the VPA by referring specifically to the provisions of VPA; the legislature enacted Minn. Stat. § 197.48 “to protect against the inadvertent supersession of the [VPA] by subsequently enacted statutes” and the “courts have been reluctant to rule that the VPA protections do not apply unless the legislature specifically indicates that the protections should not apply”). Accordingly, the PELRA provision permitting immediate termination does not supersede the conflicting provisions of the Veterans Preference Act.

As an alternative argument, the District contends, based upon the language of Minn. Stat. § 179A.19, subd. 6 (1994), that Mssrs. Behnke and Ruud waived their rights to a Veterans Preference hearing because they failed to notify the District in writing of their election to have such a hearing within ten days after they received their notices of termination. Minn. Stat. § 179A.19, subd. 6, provides as follows:

Any public employee is entitled to request the opportunity to establish that the employee did not violate this section. The request shall be filed in writing with the officer or body having the power to remove the employee, within ten days after notice of termination is served upon the employee. The employing officer or body shall within ten days commence a proceeding at which the employee shall be entitled to be heard for the purpose of determining whether the provisions of this section have been violated by the public employee. If there are contractual grievance procedures, laws or rules establishing proceedings to remove the public employee, the hearing shall be conducted in accordance with whichever procedure the employee elects. The election shall be binding and shall terminate any right to the alternative procedures. The same proceeding may include more than one employee’s employment status if the employees’ defenses are identical, analogous, or reasonably similar.

The proceedings shall be undertaken without unnecessary delay.

Any person whose termination is sustained in the administrative or grievance proceeding may appeal in accordance with chapter 14.

It is evident based upon this language that a proceeding under section 179A.19 must be requested within ten days after the notice of termination is served and that the employee may elect to proceed with a hearing under other “laws . . . establishing proceedings to remove the public employee.”^[3] There is, however, no clear specification in § 179A.19 that the employee must notify the employing officer or body of his or her election to proceed with a Veterans Preference hearing within ten days. As noted below, veterans are generally permitted to request a hearing within 60 days of receipt of a notice of intent to discharge. In the absence of a specific mention in § 179A.19 that the 60-day limitations period set forth in the Veterans Preference Act was to be superseded or repealed with respect to public employees who engage in an illegal strike, the Veterans Preference Act provision remains in effect and is controlling. In addition, the May 3, 1995, letters sent by Mr. Aug to the Petitioners merely notified them that they had to request a hearing under Minn. Stat. § 179A.19 “to establish that [they] did not participate in an illegal strike” and had to file a written request within ten days if they “wish[ed] this opportunity.” The May 3, 1995, letters did not mention their right to a hearing challenging their removal under the Veterans Preference Act or even quote the language of Minn. Stat. § 179A.19 relating to the election of remedies. Even if Minn. Stat. § 179A.19, subd. 6, could appropriately be construed to require an election of either a PELRA hearing or a Veterans Preference hearing within ten days, it would be manifestly unfair under the circumstances of this case to apply the requirement to veterans who were never notified by their employer of their right to a veterans hearing or informed of the statutory language relating to election of remedies. Accord Young v. City of Duluth, 386 N.W.2d 732, 738 (Minn. 1986) (time limitation under the VPA for the commencement of a hearing or writ of mandamus does not begin to run if no notice is given to the veteran, even if the veteran in fact was aware of his VPA rights). By analogy to Young, even if the ten-day period were deemed to be applicable where the employee elects a VPA hearing, the period should not commence running in the absence of proper notification of rights.

The School District also asserts that Mssrs. Behnke and Ruud should be precluded from proceeding with a Veterans Preference Act hearing due to their alleged failure to request a hearing within sixty days of their receipt of the notice of intent to discharge. The Veterans Preference Act specifies that a “veteran who has been notified of the intent to discharge the veteran from an appointed position or employment . . . 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.” Minn. Stat. § 197.46 (1994). The request for a hearing is to be “made in writing and submitted by mail or personal service to the employment office of the concerned employer or other appropriate office or person.” Id. The Act further specifies that the veteran’s “failure . . . to request a hearing within the provided 60-day period shall constitute a waiver of the

right to a hearing” as well as a waiver of “all other available legal remedies for reinstatement.” *Id.* Because Mssrs. Behnke and Ruud were never served with notice of their right to request a hearing, the 60-day period never began to run with respect to them. See *Young v. City of Duluth*, 386 N.W.2d 732, 738 (Minn. 1986) (holding that the time limitation for the commencement of a hearing or writ of mandamus does not begin to run if no notice is given to the veteran, regardless of whether the veteran was in fact aware of his rights under the Act). Accordingly, they are not precluded from proceeding with a hearing under the Veterans Preference Act.

Mssrs. Behnke and Ruud were, in fact, discharged by the School District based upon their refusal to drive on April 28 and thus were “removed” within the meaning of the Veterans Preference Act. They are entitled to reinstatement, back pay, and the reasonable value of fringe benefits that would have otherwise been received, pending the outcome of their hearing under the Veteran’s Preference Act. See, e.g., *Young v. City of Duluth*, 410 N.W.2d 27, 30 (Minn. App. 1987); *Pawelk v. Camden Township*, 415 N.W.2d 47, 51-52 (Minn. App. 1987).

B.L.N.

^[1] At the hearing, the parties stipulated that the Petitioners were veterans within the meaning of the Veterans Preference Act. They also stipulated to the facts set forth in Findings 3 through 8.

^[2] Foundation objections were posed by the Petitioners to Exhibit 2 during the hearing, and the exhibit was not received at that time. The Respondent was given an opportunity after the hearing concluded to provide an affidavit that the letter had been mailed to Mr. Behnke. The Respondent has since submitted an affidavit from Denise Schultz, secretary to the Superintendent of Schools, attesting that she mailed the letter to Mr. Behnke by certified mail. Exhibit 2 thus is received.

^[3] This language provides further support for an interpretation that the Legislature did not intend that Minn. Stat. § 179A.19, subd. 6, would provide the exclusive remedy for challenging terminations stemming from allegations that the employee participated in an illegal strike.