

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

Larry M. Lloyd,

Petitioner,

vs.

County of Faribault,

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jan Craig Nelson (hereinafter "ALJ") on October 26, 1995 in the Commissioner's Meeting Room in the Faribault County Courthouse, Blue Earth, Minnesota 55965.

Jesse Gant, III, Attorney at Law, Grain Exchange Building, 400 South Fourth Street, Suite 915, Minneapolis, Minnesota 55415, appeared on behalf of the Petitioner, Larry M. Lloyd. Scott M. Lepak, Attorney at Law, Barna, Guzy & Steffen, Ltd., 400 Northtown Financial Plaza, 200 Coon Rapids Boulevard, Minneapolis, Minnesota 55433, appeared on behalf of the Respondent, Faribault County.

The record closed upon receipt of the Final Memoranda on November 16, 1995.

This report is a recommendation, not a final decision. the Commissioner of Veterans Affairs will make the final decision after a review of the record which 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 recommended decision 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 recommended decision to file exceptions and present argument to the Commissioner. Parties should contact Gerald Bender, Department of Veterans Affairs, 200 Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155, ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent removed the Petitioner from his position in bad faith and without notice.

PROCEDURAL HISTORY

At the commencement of this action, the parties each filed cross motions seeking a recommendation for Summary Disposition in their favor. Following the filing of Memorandums by each party, the Administrative Law Judge recommended that the claimed violations of the Veterans Preference Act occurring prior to July 31, 1989 be summarily dismissed because they were barred by the six year statute of limitations. By agreement of the parties, the alleged violation of the Veterans Preference Act occurring in 1995 relating to the County's decision to "freeze" the Petitioner's salary was withdrawn from consideration by the Administrative Law Judge due to the fact that said matter would proceed before an ad hoc, three (3) member board, pursuant to Minn. Stat. § 197.46. The remaining alleged violations occurring after July 31, 1989 and before the alleged violation in 1995, were considered by the Administrative Law Judge at this hearing.

Based upon the evidence presented at the hearing, and based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Larry M. Lloyd (hereinafter "Petitioner") served on active duty in the United States Navy from 1960 to 1963 and is an honorably discharged veteran entitled to the protection of the Veterans Preference Act. (Ex. N)

2. Petitioner was employed by Faribault County (hereinafter "Respondent") as Assistant County Auditor and Park and Recreation Administrator on June 28, 1972. Petitioner was appointed as Deputy County Auditor for Respondent on December 27, 1972.

3. Petitioner was appointed County Park and Zoning Administrator on May 7, 1974 by the Respondent's Board of County Commissioners effective May 1, 1974 and a job description was developed for that position. (Ex. E) The Petitioner at the time of his appointment, and for some time thereafter, was under the supervision of the Faribault County Auditor. (See Attachment 5A to

Petitioner's Petition for Relief under the Veterans Preference Act.)

4. Petitioner was appointed County Agricultural Inspector by the Respondent's Board of County Commissioners on December 21, 1982, effective January 1, 1983. (Ex. H) A job description for this position was developed. (Ex. F and Attachment 4 to Petitioner's Petition for Relief under the Veteran's Preference Act) By Statute the Petitioner was supervised in his regulatory responsibilities by the Department of Agriculture's Agronomy District Coordinator and was at the time of his appointment, and for some time thereafter, under the supervision of the Faribault County Auditor. (See Attachment 5A to Petitioner's Petition for Relief under the Veterans Preference Act.)

5. As a result of the 1985 comparable worth and pay equity study completed for the Respondent by Arthur Young and Company, the Parks and Zoning Administrator/Agricultural Inspector position was classified as C-4-2. (See Attachment 5 to Petitioner's Petition for Relief under the Veterans Preference Act.)

6. In 1984, the Petitioner suffered a cranial aneurysm, and almost died. As a result of this near death experience, and realizing life could be short, the Petitioner sought a 4 month unpaid leave of absence from the Board of County Commissioners to do some traveling from December 1, 1985 through March 31, 1986. This leave of absence was approved by the Respondent's Board of County Commissioners. This was the only occasion he ever requested such a leave of absence.

7. On January 7, 1986 while the Petitioner was on his leave of absence, the Respondent's Board of County Commissioners placed the Faribault County Planning and Zoning Department, the County Parks Department, and the position of Faribault County Ag Inspector into the Faribault County Public Works Department which was established January 1, 1986. (See Synopsis of Employment History attached to Petition for Relief Under the Veteran's Preference Act)

8. After returning to work in April 1986, and learning of the Board of County Commissioners' decision, the Petitioner filed a grievance with the Respondent due to the fact that while he worked in the Courthouse, the Petitioner worked a 37.5 hour work week, and the Public Works Department was on a 40 hour work week. The Petitioner alleged that this resulted in an additional 130 hours per year of work without due compensation. In addition, the Petitioner grieved the reduction of his accumulated sick and

vacation time due to the fact that the Public Works Department based their calculations on hours worked versus calculations for Courthouse employees based on days worked. These grievances were heard by the Respondent's Board of County Commissioners on May 29, 1986 and resolved pursuant to a letter sent to Petitioner on May 30, 1986. (See Ex. B-1, B-1(a), B-1(b), and B-1(c))

9. On June 6, 1986, the Faribault County Auditor revoked the appointment of the Petitioner as Deputy County Auditor for Respondent. The Petitioner received no notice of this revocation which was apparently done to accomplish the County Commissioners' decision to transfer the positions the Petitioner held to the Department of Public Works. (See Attachment 6 to Petition for Relief Under the Veteran's Preference Relief)

10. By letter dated October 20, 1986, the Petitioner was informed by the Public Works Director that the Respondent's Board of County Commissioners had decided to reduce the position of Parks Supervisor and Planning and Zoning Administrator to that of a part-time position. The Petitioner was informed that effective January 1, 1987, he would be employed on a full-time basis during the months of April through November only. (Ex. C)

11. The October 20, 1986 letter to the Petitioner stated in part:

"You are a veteran, and as such, have certain rights under the Veteran's Preference Law (M.S. 197.46, et. seq.). Since you are not being discharged from your position, the Veteran's Preference Law may or may not be applicable. None the less, you are advised of the existence of the Veteran's Preference Law which gives veterans who are discharged from a position certain rights."

12. Since January 1, 1987, the Petitioner has been employed full-time by the Respondent only during the months of April through November of each year.

13. In 1987 the Petitioner applied for and received unemployment compensation and in subsequent years he looked for employment in other places, but was unsuccessful due to the fact that he was available only 4 months per year. The Petitioner even looked into establishing a business in the Cook Islands, but was unsuccessful because of restrictions imposed by the government due to high unemployment.

14. Because of accumulated vacation and compensatory time accrued by the Petitioner during the 8 months of full-time employment each year, the Petitioner was able to stay in "paid status" each year for varying periods of time when he was not actively employed. During this "paid status" the Petitioner would continue to receive paychecks for the vacation time and compensatory time which he had accrued during the preceding 8 months, as well as health insurance benefits.

15. Following the Petitioner's reduction to full-time only during the months of April through November of each year, duties normally performed by the Petitioner as Parks and Zoning Administrator during the months of December through March were performed by Bonita Hagedorn, Roger Peterson or Gary Isakson. (Ex. M)

16. Bonita Hagedorn who was hired on November 22, 1976, Roger Peterson, who was hired on September 18, 1972, and Greg Isakson, who was hired on July 21, 1991 all had less seniority than the Petitioner who was hired on June 28, 1972. Bonita Hagedorn, Roger Peterson, and Greg Isakson did not claim to be veterans on their employment applications. (Ex. M)

17. On March 31, 1989, the Respondent posted an in-house position opening to fill a full-time position of Coordinator for Planning and Zoning and Solid Waste. This notice indicated that it was being offered as a promotional opportunity to Faribault County Employees. (Ex. L)

18. The Petitioner applied for that position, along with other Faribault County employees, including Bonita Hagedorn, who was then employed as a Clerk in the Public Works Department. The Petitioner was interviewed, along with Bonita Hagedorn and one other prospective candidate. However, the Respondent decided not to fill the position when it made arrangements with a neighboring county to hire a Joint Solid Waste Coordinator.

19. On December 12, 1989, during the period of time that Petitioner was not employed by the Respondent, the Respondent's Board of County Commissioners voted to authorize posting in-house the position of Planning and Zoning Administrator/Clerk. (Ex. J) The in-house posting apparently involved placing a notice on a bulletin board at the County Courthouse and at the Department of Public Works. There were no letters sent to existing employees and no public advertisement in any newspapers. No one sent the Petitioner a letter advising him of the posting of this position.

20. The Petitioner was never aware of this in-house job posting in December of 1989, nor was he aware that the Respondent was considering taking his planning and zoning duties from him, and giving them to someone else.

21. Robert Witty, Director of Public Works at the time, did not re-interview any persons to fill the position of Planning and Zoning Administrator/Clerk. Mr. Witty recommended to the Respondent's Board of County Commissioners that Bonita Hagedorn be hired as the full-time Planning and Zoning Administrator/Clerk.

22. On January 16, 1990, the Respondent's Board of County Commissioners voted unanimously to authorize appointment of Bonita Hagedorn to the full-time position of Zoning Administrator/Clerk, effective January 16, 1990 at \$9.53 per hour with a 6 month probation period. (Ex. K)

23. Bonita Hagedorn began her employment with the Respondent on November 22, 1976 and therefore has less seniority than the Petitioner. Bonita Hagedorn is not a veteran, and was a member of the Union at the time of her appointment as Zoning Administrator/Clerk.

24. Prior to the time Bonita Hagedorn was appointed as full-time Zoning Administrator/Clerk, the position of Zoning Administrator was classified as C-4-2. The position of Zoning Administrator/Clerk was classified as B-2-3 (a lower classification of job with a lower pay) when Bonita Hagedorn was appointed.

25. When the Petitioner returned to work on April 1, 1990, he was notified by Robert Witty that he no longer was the Planning and Zoning Administrator, and that those duties were now being performed by Bonita Hagedorn. The Petitioner was informed that he was being re-assigned to Traffic Services duties which was also classified as a B-2-3 position (a lower classification with lower pay). However, the Petitioner's actual pay was not reduced to be commensurate with the lower classification.

26. At the time the Petitioner's position as Planning and Zoning Administrator was taken from him, and given to Bonita Hagedorn, as full-time Zoning Administrator/Clerk, the Petitioner was not given any notice of his rights to a Veteran's Preference Hearing pursuant to Minnesota Statute § 197.46.

27. After the Petitioner's position as Planning and Zoning Administrator had been given to Bonita Hagedorn, the Petitioner

was given a new job description which deleted "Zoning Administrator" and replaced that with "Traffic Services". (Ex. O) The Traffic Services position involved more physical work than Planning and Zoning Administrator, and involved putting up traffic signs, barricades, painting and marking No Passing Zones, etc.

28. In April of 1991, the Petitioner was notified that he no longer had Traffic Services responsibilities as part of his job. That position had been assigned to another person, and the Petitioner became his assistant to teach him the job.

29. Following the Traffic Services position being given to someone else, the Petitioner was assigned to do general highway maintenance, i.e. shovel and broom types of work, assisting in highway surveys, conducting bituminous inspections, obtaining gravel samples, and assisting in 911 signing.

30. The Petitioner's base pay each year, based on a full-time position at the C-4-2 Classification, was set forth on Page 2 of Exhibit M.

31. The value of Petitioner's vacation and sick leave which would have accrued each pay period beginning with the pay period ending December 15, 1986, through the pay period ending April 8, 1995, was set forth in Exhibit S.

32. The Parks and Zoning Administrator and Agricultural Inspector were classified as C-4-2 while occupied by the Petitioner. The Zoning Administrator/Clerk was classified as B-2-3 when Bonita Hagedorn was hired to fill the position. Traffic Services/Maintenance Worker positions are classified as B-2-3. A B-2-3 classification is compensated at a lower rate of pay than a C-4-2 classification.

33. In April of 1994, the Union requested that the Petitioner become a member of the Union or be required to pay his fair share of Union dues, due to the fact that the Petitioner performed more than 35% of his normal work week performing duties covered by the Union contract.

34. On September 13, 1994, Greg Isakson, Director of Public Works at that time, sent the Petitioner a letter notifying him that effective September 30, 1994, the Petitioner would be required to join the Union or pay his fair share of Union dues. (Ex. P) That same letter notified the Petitioner that his job title was being changed from Parks Supervisor to Parks Coordinator

due to the fact that in Mr. Isakson's opinion, the Petitioner had no supervisory duties as Parks Supervisor.

35. Given the Petitioner's current duties and responsibilities, if the Petitioner was in a non-supervisory position, it was clear that he would have to be in the Union. On the other hand, if the Petitioner was in a supervisory position, he would have been exempt from the Union. Greg Isakson alone decided to change the Petitioner's job title on September 13, 1994 to avoid any conflict with the Union contract.

36. As a result of the changes to the Petitioner's job titles and duties, the Petitioner has been required to pay a fair share to the Union, and was informed that his compensation structure would be governed by the compensation plan in the Highway Department Collective Bargaining Unit, rather than the general County Compensation Plan which the Petitioner had been under previously.

37. The Petitioner was further notified in a letter dated June 12, 1995, that because his current compensation is considerably above that called for by his position in the Union contract, he would not receive a wage adjustment in July of 1995. (Ex. A) In this same letter, Petitioner was given notice of his right to demand a hearing Pursuant to Minnesota Statutes § 197.46.

38. It was not until after the Petitioner received the June 12, 1995 letter from Greg Isakson, that he realized that he may have had Veteran's Preference Rights dating back to the period of time when his Zoning Administrator duties were taken away from him, and given to a less senior and non-veteran employee.

39. The Petitioner filed a Petition for Relief under the Veteran's Preference Act with the Commissioner of the Department of Veterans Affairs on July 31, 1995.

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

CONCLUSIONS OF LAW

1. That the Administrative Law Judge and the Commissioner of Veteran's Affairs have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50 and 197.481.

2. That the Notice of Hearing issued by the Department of Veteran's Affairs was proper and that all substantive and procedural requirements of law and rule have been met.

3. Petitioner's Petition to the Commissioner of Veteran's Affairs was timely as to any events occurring on or after July 31, 1989.

4. Petitioner is an honorably discharged veteran entitled to the protections of Minnesota Statutes § 197.46, the Veteran's Preference Act.

5. That Faribault County is a political subdivision of the State of Minnesota covered by Minnesota Statutes § 197.46, the Veteran's Preference Act.

6. Minnesota Statutes § 197.46 prohibits 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. The burden of proof is upon the Petitioner to prove by a preponderance of the evidence that he was terminated in violation of Minnesota Statutes § 197.46.

7. Public employers may abolish positions notwithstanding the Veteran's Preference Act if the abolition of a position is in good faith. State ex. rel. Boyd vs. Matson, 155 Minn. 137, 193 NW 30 (1923); Young vs. City of Duluth, 386 NW2d 732 (Minn. 1986). Respondent's claim that Petitioner's position was abolished in good faith is an affirmative defense for which Respondent has the burden of proof. Minn. R. 1400.7300, subp. 5.

8. Petitioner was not terminated for incompetency or misconduct.

9. The Petitioner's job as Zoning Administrator was abolished and the Petitioner was demoted on January 16, 1990 when the Petitioner's duties as Zoning Administrator were taken from him and given to a less-senior and non-veteran employee, Bonita Hagedorn.

10. The abolishment of Petitioner's job as Zoning Administrator and demotion to a lower type position was not done in good faith by the Respondent.

11. The Respondent's abolishment of the Petitioner's job as Zoning Administrator and demotion to a lower type of position on January 16, 1990, entitled the Petitioner to notice of his right to a Veteran's Preference Hearing pursuant to Minnesota Statutes § 197.46, to contest the appropriateness of such abolishment and

demotion in his job to which he had been appointed by the Respondent's Board of County Commissioners in 1974.

12. The Respondent's abolishment of the Petitioner's job as Zoning Administrator and demotion to a lower type or position on January 16, 1990, without notice of a right to a Veteran's Preference Hearing was in violation of Minnesota Statutes § 197.46.

13. Because the Respondent increased the position of Zoning Administrator/Clerk to a full-time status on January 16, 1990, the Petitioner is entitled to reinstatement to his former position as full-time Zoning Administrator (in addition to his position as Parks Coordinator and Agricultural Inspector which he currently holds) at the C-4-2 classification, and is entitled to damages in the amount of back wages, including benefits for the months of December through March each year beginning January 16, 1990. The Petitioner is also entitled to pre-judgment interest in accord with Minnesota Statutes § 344.01, calculated from the time each paycheck was due. See Young vs. City of Duluth, 410 NW2d 27 (Minn. App. 1987); Henry vs. MWCC, 401 NW2d 401 (Minn. App. 1987).

14. Petitioner is entitled to damages for lost wages calculated as follows:

1990

40 hours per week x \$12.36/hr. = \$494.40 x 15 weeks = \$7,416.00 (1-16-90 to 3-31-90 and 12-1-90 to 12-31-90)

1991

40 hours per week x \$12.73/hr. = \$509.20 x 17 weeks = \$8,656.40 (1-1-91 to 3-31-91 and 12-1-91 to 12-31-91)

1992

40 hours per week x \$13.11/hr. = \$532.40 x 17 weeks = \$9,050.80 (1-1-92 to 3-31-92 and 12-1-92 to 12-31-92)

1993

40 hours per week x \$13.76/hr. = \$550.40 x 17 weeks = \$9,356.80 (1-1-93 to 3-31-93 and 12-1-93 to 12-31-93)

1994

40 hours per week x \$14.48/hr. = \$579.20 x 17 weeks = \$9,846.40 (1-1-94 to 3-31-94 and 12-1-94 to 12-31-94)

1995

40 hours per week x \$15.08/hr. = \$603.20 x 13 weeks =
\$7,841.60 (1-1-95 to 3-31-95)

and \$603.20 for each week thereafter that Petitioner is unemployed until the Petitioner is reinstated to his position on a full-time basis. Pre-judgment interest must be paid from the time each payment was due.

15. Petitioner is entitled to damages for the value of his vacation time which would have accrued during his periods of unemployment after January 16, 1990 at the rates calculated by the County in Exhibit S. For the period beginning January 16, 1990 through March 31, 1995 the Petitioner is entitled to \$4,559.27. Pre-judgment interest must be paid from the time each payment was due.

16. Petitioner is entitled to all contributions from the Respondent which would have been made toward his retirement/pension fund for the periods referred to in Paragraph 14 above.

17. Petitioner is entitled to accrued sick leave which would have been earned during his periods of unemployment after January 16, 1990 as calculated by the County in Exhibit S, provided that said sick leave does not exceed the maximum sick leave employees are allowed to accrue under the County's Personnel Policy. The Petitioner shall not be compensated monetarily for such time but it may be used as sick leave by the Petitioner in accordance with the County's Personnel Plan.

18. The Administrative Law Judge's Memorandum attached hereto is made a part of these Conclusions of Law and is incorporated herein by reference.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs issue an Order reinstating Larry M. Lloyd to his position as full-time Planning and Zoning Administrator for Faribault County, and award him compensatory damages consistent with the Conclusions set forth above.

Dated this 11th day of December, 1995.

JAN CRAIG NELSON
Administrative Law Judge

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.

Reported:Taped, no transcript prepared. Tape Numbers: 21,257, 21,258, 21,259 and 21,671.

MEMORANDUM

Under Minn. Stat. § 197.46, a political subdivision may only discharge a veteran for incompetency or misconduct. However, our Supreme Court has recognized that the Veteran's Preference Act is not intended to prevent public employers from abolishing positions in good faith. State ex. rel. Boyd vs. Matson, 155 Minn. 137, 193 NW 30 (1923). A lack of good faith is proved when it is established, after a hearing, that the public employer, under the pretext of abolishing a veteran's position, actually continued it under other some name or reassigned the veteran's duties to a less-senior employee. Young vs. City of Duluth, 386 NW2d 732 (Minn. 1986). In Young, the Court stated:

If the City merely reassigned Young's duties to non-veteran employees less-senior than he, his position is not abolished in good faith, and he is entitled to reinstatement with back pay. Id. at 386 NW2d at 738-739.

We are presented with identical facts in this case. In reviewing the evidence, it is clear to the Administrative Law Judge (hereinafter "ALJ") that the Petitioner was not terminated from his position as Planning and Zoning Administrator for incompetency or misconduct. But, in 1990, when the Respondent took the "Zoning Administrator" duties completely away from the Petitioner and gave them to a less-senior and non-veteran employee, Bonita Hagedorn, this constituted the abolishment of Petitioner's job and demotion therefrom. As a result, the

Petitioner was entitled to notice of his right to a Veteran's Preference Hearing under Minn. Stat. § 197.46 to contest the appropriateness of such an abolishment and demotion in his job to which he had been appointed by the Respondent's Board of County Commissioners in 1974.

In the case of Ammend vs. County of Isanti, 486 NW2d 3 (Minn. App. 1992) the Minnesota Court of Appeals held that a change in job duties which lowers a veteran's rank, grade or position constitutes a demotion. The Court of Appeals relied upon Black's Law Dictionary which defined demotion as a "reduction to lower rank or grade, or to a lower type of position." In Ammend, the Court held that the County's changing Ammend's job duties was, in substance, a demotion. Id. at 486 NW2d 3, 6 (Minn. App. 1992).

In this case, it is not only clear that the Petitioner's position was abolished by the Respondent, but he was demoted as well by being assigned duties which had a lower classification pursuant to the Respondent's comparable worth and pay equity study which had been completed by Arthur Young and Company in 1985 and revised thereafter.

Prior to the abolishment of the Petitioner's position as Zoning Administrator, and his subsequent demotion, his position was classified at a C-4-2 level. Following the abolishment of the Petitioner's job as Zoning Administrator, the Petitioner was assigned Traffic Services/Highway Maintenance duties. Both of these positions were classified by the Arthur Young and Company study as B-2-3 classifications. A B-2-3 classification is a lower job classification that would normally result in a lower pay for the work performed. Although the Petitioner continued to receive pay at the higher classification of C-4-2, his assignment to the duties of Traffic Services/Highway Maintenance were very different from his duties as Planning and Zoning Administrator. The Traffic Services/Highway Maintenance duties involved much more physical labor not requiring the education or administrative skills which the position of Planning and Zoning Administrator did. Furthermore, the position of Planning and Zoning Administrator was primarily an administrative position requiring education and experience, and involved office work as opposed to physical labor.

The Respondent argued that the Petitioner's position was not abolished, nor was he demoted, but simply that he had some of his duties re-assigned. In fact, Greg Isakson, who began employment on July 21, 1991 as Director of Public Works for the Respondent, testified that since the Petitioner experienced no reduction in pay or hours, he believed that the Petitioner's duties could be

reduced or re-assigned by the Respondent as they wished. Greg Isakson and Charles Pingry, a former County Commissioner, both testified that this re-assignment was not a demotion and that the Traffic Services/Highway Maintenance duties were equally as important as the Planning and Zoning position. The Respondent's arguments are not persuasive and the ALJ does not agree. The Petitioner was a college graduate and had several years of experience as Zoning Administrator at the time his duties were abolished. A review of the Petitioner's job description as Planning and Zoning Administrator versus Traffic Services confirms the ALJ's conclusions that the Petitioner was, in fact, demoted.

Conflicting testimony was received at the hearing regarding whether or not the Petitioner was offered full-time employment in the Fall of 1989. Robert Witty, the then Director of Public Works for the Respondent, testified that sometime in the fall of 1989, he spoke with the Respondent about returning to 12 month employment, a status he had held prior to 1986. Mr. Witty testified that the Petitioner declined to return to 12 month employment, because he wished to continue to take his winters off to travel. This testimony was directly contradicted by the Petitioner testifying that he did not recall any such offer to return to 12 month employment, and that he was not notified that his position of Planning and Zoning Administrator was going to be re-assigned to another individual if he did not return to full-time employment.

The ALJ in this particular case believes the Petitioner's testimony as opposed to that of Robert Witty. It is undisputed that the Petitioner did apply for full-time employment in March of 1989 when the Respondent posted a position for a full-time Coordinator for Planning and Zoning and Solid Waste. It is further undisputed that the Petitioner was interviewed for that position, but that the position was not filled when the Respondent made arrangements with a neighboring county to hire a joint Solid Waste Coordinator. It is incredible for the ALJ to believe the Respondent would have applied for a full-time 12 month position in March of 1989, and then decline full-time employment, if in fact it had been offered to him, in the fall of 1989.

There is no doubt in the ALJ's mind that the Petitioner is entitled to reinstatement to his position and duties as Planning and Zoning Administrator. The essential issue for the ALJ was whether or not the Petitioner was entitled to reinstatement to that position on a full-time basis. Based upon the evidence in this case, the ALJ has concluded that the Petitioner is entitled to reinstatement as a full-time Planning and Zoning Administrator.

Charles Pingry, who served as County Commissioner for the Respondent from 1982 to 1990, testified that the Petitioner held the position of Planning and Zoning Administrator during those years. He testified that the Petitioner's position as Zoning and Parks Administrator was reduced from full-time in 1986 because there was not enough work to justify a full-time position year around. Robert Witty, who was Director of Public Works at the time Bonita Hagedorn was appointed full-time Zoning Administrator/Clerk, testified that the position warranted full-time status at that time. Greg Isakson, the current Director of Public Works testified that the Planning and Zoning Administrator's duties do need full-time year around attention, and are in fact full-time. Furthermore, he testified that the Petitioner had requested to be re-instated to his position of full-time Planning and Zoning Administrator.

If the Respondent had not abolished the position occupied by the Petitioner in 1990, and re-assigned the duties to Bonita Hagedorn, the Petitioner would have been assigned a year around full-time position as Planning and Zoning Administrator to perform those duties full-time in conjunction with his Agricultural Inspection and Parks Coordinator jobs. Because it is clear that the County did appoint a less-senior, non-veteran employee to fill the position of Zoning Administrator/Clerk on a full-time basis in January of 1990, the Petitioner is entitled to reinstatement to his duties as Planning and Zoning Administrator on a full-time basis retroactive to that date.

Based upon the Petitioner's entitlement to reinstatement retroactive to January 16, 1990, the Petitioner is entitled to damages for lost wages and vacation time for the periods that the Petitioner was unemployed from January 16, 1990 to the present. In addition, the Petitioner is entitled to all contributions from the Respondent which would have been made toward his retirement/pension fund for the same periods. Although the Petitioner sought monetary damages for sick leave and compensatory time, the ALJ is not recommending that the Commissioner award such monetary damages for these items. Although the Petitioner is entitled to accrue sick leave which he would have earned during his periods of unemployment, said sick leave should be accumulated as time which the Petitioner could later use if in fact he becomes sick, and no monetary damages should be awarded with regard to sick leave at this time.

With regard to claimed damages for compensatory time, the ALJ is also recommending that the Commissioner not award such

damages. There is no guarantee that the Petitioner would have earned compensatory time during the periods of unemployment. It would be too speculative for the Administrative Law Judge to calculate such damages, and therefore it is recommended that the Commissioner not award such damages.

The Petitioner also sought to have the Petitioner's position as Planning and Zoning Administrator removed from the Department of Public Works and placed back under the direct supervision of the Respondent's Board of County Commissioners. The ALJ is not so recommending. The Veteran's Preference Act does not preclude a local government's reasonable exercise of control over its administrative affairs. Gorecki vs. Ramsey County, 436 NW2d 646, 650 (Minn. 1989). The Respondent's Board of County Commissioners were not prohibited by Minnesota Statutes § 394.29 from placing the Planning and Zoning Administrator under the Department of Public Works if it so wished, especially if it did not change the Petitioner's duties.

Lastly, the Petitioner sought a recommendation from the ALJ that the Commissioner remove the Petitioner from the Union or from any requirement that he pay his fair share. The ALJ is declining to make such a recommendation because the issue does not appear ripe for determination at this time.

It appears to the ALJ that the Petitioner's duties as Zoning and Parks Administrator involved supervisory work at the time he was initially appointed to these positions. (See Attachment 2 to Petitioner's Petition for Relief Under the Veteran's Preference Act) It also appears to the ALJ that the Petitioner has supervisory duties as County Agricultural Inspector. (See Attachment 4 to Petitioner's Petition for Relief Under the Veteran's Preference Act) In addition, the job description given to the Petitioner in 1990 after he was relieved of his duties as Planning and Zoning Administrator, appeared to still involve supervisory work. (Ex. O) From a review of the Petitioner's job description as full-time Planning and Zoning Administrator (Ex. E), it appears that the Petitioner will have supervisory duties once he has been reinstated, and may therefore not be appropriate for inclusion in the Union. Furthermore, following reinstatement, if the Petitioner is performing less than 35% of his time doing work covered by the Union Contract, he again may not be appropriate for inclusion in the Union.

The Respondent's Board of County Commissioners should review this matter once the Petitioner has been reinstated to his full-time position as Planning and Zoning Administrator. If it appears

to the Board of County Commissioners that the Petitioner's duties following reinstatement involve supervisory duties, or that he is no longer covered by the Union Contract, then they should remove him from the Union and/or lift the requirement that he pay fair share. However, this is a decision which ought properly to be left for determination by the Respondent's Board of County Commissioners based on a review of the Petitioner's job description following the his reinstatement.

Although the ALJ's Findings of Fact address issues occurring prior to July 31, 1989, said Findings are important in providing a historical perspective of the Petitioner's employment relationship with the Respondent, his job duties and responsibilities, seniority, and related issues. Although these Findings are being made, ALJ has specifically declined to make any conclusions as to whether or not the Petitioner's Veteran's Preference rights were violated prior to July 31, 1989, having previously found that such violations, if they occurred, are time barred.

J.C.N.