



Employment Issues

Veteran's Preference Law Hearing Requirements Settled by Iowa Supreme Court

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General Information

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The Iowa Supreme Court has settled the question of what is required in order to satisfy the pre-termination hearing requirements of the Iowa Veterans Preference Law, *Iowa Code* §35C.6. *Iowa Code* §35C.6 has been a part of Iowa law since before 1939. The purpose of the law is to insure veterans permanency of employment and protect them from removal from public employment except for their own incompetence or misconduct. *Edwards v. Civil Service Commission*, 287 N.W. 285, 287 (1939). It is similar to the constitutional right of due process, but it is a separate and distinct right.

In *Kern v. Saydel Community School District*, ___ N.W.2d ___ (Iowa 2001), the Iowa Supreme Court was presented with the case of a school custodian who had served in the U.S. Navy during the Viet Nam Conflict. He was hired by the school district in January 1996, and by September his supervisors had begun procedures to notify him that his performance needed to improve. He received written performance appraisals noting deficiencies in October 1996. He also met with his supervisor.

In May 1997, his performance apparently had not improved, so he was advised that there would be a meeting to discuss his continued employment.

At the meeting on June 2, Kern, who was represented by the union, was informed that the building principal intended to recommend his termination to the superintendent and that he was suspended without pay until then. A meeting was then held with the superintendent and Kern was given the opportunity to review his personnel file, dispute or ask questions and express concerns. After the meeting, the superintendent recommended to the school board that his employment be terminated.

A union grievance was filed and it went before an arbitrator, who found no contract violation. Kern sued in district court, alleging that his termination was illegal because he was not given a pre-termination hearing as required in *Iowa Code* §35C.6.

The Iowa Supreme Court noted that the term “hearing” is not defined by statute or case law. The attorney general had provided guidance in a 1909 opinion, stating that there should be a written statement of the reason for removal provided to the employee, as well as a time and opportunity to be heard and show any reason why he ought not be discharged.

The constitutional requirement of due process only requires a notice of deficient performance and an opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). The Iowa Supreme Court held, however, that the type of hearing required is not governed by the constitution.

What is required? The Iowa Supreme did not specify in detail. In its opinion, the court stated that “some flexibility is called for in determining the type of pre-discharge hearing that must be afforded under §35C.6. As is the case with the requirements of the due process clause, the type of hearing required must necessarily vary with the circumstances.... Because the school district was aware of plaintiff’s post discharge rights under the collective bargaining agreement, which included a complete evidentiary hearing before an independent arbitrator, we are satisfied the purpose of section 35C.6 was fully satisfied by the type of notice and opportunity to respond that was afforded to plaintiff.”

The Iowa Supreme Court used the purpose of the law in determining that Kern’s rights had not been violated. In other words, it was the court’s opinion that the procedure used by the Saydel District was designed to ensure permanency of employment and protect veterans from removal from public employment except for their own incompetence or misconduct.

In this case, Kern had several “bites at the apple.” He had the chance to present his case to the principal and superintendent prior to termination, and he was able to present witnesses and evidence before an arbitrator after termination. The only step not afforded Kern was the opportunity to present his case to the school board. The Iowa Supreme Court apparently did not feel that extra bite was required by law.

The lesson learned from Kern is that fairness dictates a reasonable opportunity for an employee to respond to charges of incompetence or misconduct prior to termination. Reasonable does not necessarily mean every person in authority must listen to the employee’s side of the story,

particularly when the employee also has the right to have hearing after termination.

Conclusion

There is much to remember when a district makes a decision to sever the employment of an employee. It is clear from this case that the Supreme Court recognizes that a veteran is entitled to a pre-discharge hearing. However, the Supreme Court has not been prescriptive in suggesting what that hearing should be. Before making a decision to terminate, review the following to make sure you have afforded the employee the rights contemplated by Section 35C.6 of the *Iowa Code*.

Points to Remember When Terminating a Veteran

Review, if applicable, the collective bargaining agreement covering the employee. Discharge and discipline are permissive subjects of bargaining, but many support units have aggressively bargained to include a termination process in the collective bargaining agreement. That process appears to satisfy the requirements of *Iowa Code* section 35C.6.

Review the board’s policy, if any, for terminating a support staff employee. The policy may provide for some type of hearing. Check with your local attorney to determine whether the hearing afforded in the policy meets the requirements of *Iowa Code* section 35C.6.

If the employee is a veteran and the district does not have a collective bargaining agreement or policy outlining a specified hearing procedure, meet with local counsel and determine what kind of hearing must be afforded the employee.