



VETERANS PREFERENCE and OTHER PROPERTY RIGHTS HEARINGS



Hugh J. Cain
Brent L. Hinders
Eric M. Updegraff

2700 Grand
Avenue, Suite
111
Des Moines,
Iowa 50312-5213
Phone: 515-244-
0111
Fax: 515-244-
8935

Quad Cities
Office
Northwest Bank
Tower
100 E. Kimberly
Road, Suite 400
Davenport, Iowa
52806-5944
Phone: 563-445-
2264
Fax: 563-445-2267

Adel Office
1009 Main Street
P. O. Box 99
Adel, Iowa
50003-1454
Phone: 515-993-
4545
Fax: 515-993-5214

VETERANS PREFERENCE



Who is a Veteran?

- ☞ Honorably discharged from armed services who served during Vietnam, Lebanon, Granada, Panama, or Persian Gulf (after 08/02/90)
- ☞ Former members of the reserved forces who were honorably discharged after serving at least 20 years in reserve forces or active 90+ days (excluding training).
- ☞ DD214 Forms
- ☞ Iowa Code § 35C.1

IDENTIFICATION OF VETERANS FOR APPOINTMENT



- ❧ Veterans have preference for appointment over applicant of no greater qualification § 35C.1
- ❧ All jobs for State of Iowa and its political subdivisions require an application
- ❧ Application shall ask about military service during wars or conflicts
Iowa Code 35C.1(2)(a)



✧ In all jobs of political subdivision which are filled by competitive exam or appointment, public notice of application deadline must be posted at least 10 days before deadline in same manner as notices of meetings under Iowa Code § 21.4

Iowa Code 35C.1(3)



⌘ For jobs in political subdivisions that are filled through point rated examination, preference granted pursuant to Iowa Code 400.10 (5 percentage points to score and another 5 percentage points if service connected disability.)

Iowa Code § 35C.1(4)

REMOVAL PROTECTION



- Remove only for *incompetency or misconduct*, after hearing upon due notice upon stated charges
- Right of review by Certiorari.
ICA § 35C.6.
- Problems of “impartiality” with Board seeking a removal could be a due process violation. Burke v. City of Lansing, IA

INCOMPETENCY



- ❧ Collins v. Iowa Liquor Control Com., 110 N.W.2d 548 (Iowa 1961)
- ❧ A person who habitually fails to perform his work with a degree of skill or accuracy usually displayed by other persons employed in such work is incompetent.
- ❧ Substantial evidence showing is required.

MISCONDUCT



- ❧ Edwards v. Civil Service Com., 287 N.W. 285 (Iowa 1939)
 - ❧ Police officer guilty of misconduct not entitled to Veterans Preference
 - ❧ Misconduct found when officer violated department rules that prohibited intoxication, unbecoming or disorderly conduct, negligent of duty, and maltreatment of any person (officer, allegedly intoxicated, got into fight while off duty at racing event)

FAILURE TO GIVE HEARING IS LIKELY A 42 U.S.C. § 1983 VIOLATION



❧ Winter v. Cerro Gordo Conservation Bd., 925 F.2d
1069 (8th Cir. 1991)

CIVIL SERVICE CAN TRUMP VETERANS PREFERENCE



- ⌘ Andreano v. Gunter, 110 N.W.2d 649 (Iowa 1961) (noting that special civil service statute prevails over general Veterans Preference statute if the two cannot be reconciled).
- ⌘ However, due to changes § 400.18 to civil service law, misconduct is no longer a necessary basis for termination. [Exception certain public safety employees and sheriff deputies under Chapter 341A]

COLLECTIVE BARGAINING AGREEMENT CAN TRUMP VETERAN'S PREFERENCE



- ❧ Kern v. Saydel Cmty. Sch. Dist., 637 N.W.2d 157 (Iowa 2001);
Devine v. Des Moines, 366 N.W.2d 580 (Iowa 1985)
- ❧ However, changes to Chapter 20 may impact this.

ABOLISHMENT-VETERANS PREFERENCE



- ☞ Under Veterans Preference law, municipalities are not obligated to keep employees who have such rights if it is decided in good faith, either because of financial necessity or the dictates of good business management, that the employees position should be abolished.
- ☞ Wood v. Loveless, 58 N.W.2d 368 (Iowa 1953)

EXCEPTIONS TO VETERANS PREFERENCE



- ❧ Private secretary
- ❧ Deputy of any official or department
- ❧ Any person holding strictly confidential relation to appointing person

Iowa Code § 35C.8

CAN VETERANS PREFERENCE RIGHTS BE WAIVED



☞ Veterans Preference Rights may be waived by written contract providing for at-will employment. Walk v. St. Ansgar Community School District, unpublished Iowa Ct. of Appeals, December 23, 2015.

WHO HOLDS REMOVAL HEARING?



- ❧ § 35C.6 is silent on who holds hearing
- ❧ § 35C.8 says that Veterans Preference does not apply to person in “strictly confidential relation” to appointing officer
- ❧ § 35C.3 says it is duty of “officer, board, or person” who appoints to investigate qualifications for appointment.
- ❧ So who is “appointing authority?”
 - ❧ Look to ordinance, statutes to see who has authority to appoint to position.

WHAT ABOUT CONFLICTS WHEN APPOINTING AUTHORITY IS PERSON MOVING TO TERMINATE EMPLOYMENT?



- ❧ Burke v. City of Lansing, 898 N.W.2d 204 (Iowa Ct. App. 2017)
- ❧ Is there a procedural due process violation if the hearing body has previously made by their collective minds?

REMOVAL HEARINGS



- ⌘ Due notice of hearing
- ⌘ Written Notice of Charges
- ⌘ Hearing before removal
- ⌘ Burden of proof on employee
- ⌘ Review in district court by certiorari

Iowa Code § 35C.6 and .7

CERTIORARI REVIEW



- ❧ Iowa Rules of Civil Procedure 1.1401-1412
- ❧ Petition must be filed within 30 days I.R.C.P. 1.1402
- ❧ Judge must order issuance of writ. Writ is issued by Clerk of Court. Writ commands defendant to certify to court at specific time and place a transcript of defendant's records and proceedings, together with facts of case, described with reasonable certainty. I.C.R.P. 1.1404
- ❧ Sheriff serves writ unless acceptance of service. I.R.C.P. 1.1407
- ❧ Return of writ made by presiding officer, clerk or secretary of board or tribunal. I.R.C.P. 1.1408

OTHER PROPERTY RIGHTS AND HEARINGS



When does a property right exist?

❧ Contract

❧ State law right-state law defines when “property right” exists

❧ Reputational injury

❧ Not in “at-will” employment

PRE-TERMINATION HEARING



- ❧ Public employees with a property right to continued employment are entitled to a pre-termination hearing.
 - ❧ Board of Regents v. Roth, 408 U.S. 564 (1972)
 - ❧ Cleveland Board of Education v. Loudermill, 470 U.S. 532(1985)
- ❧ If fail to give pre-termination hearing, then violation of 42 U.S.C. § 1983

CIVIL SERVICE LAW



- ❧ Burmeister v. Muscatine County Civil Service, 583 N.W. 2d 877 (Ia Ct of App. 1995)
- ❧ Sieg v. Civil Service Comm of West Des, 342 N.W 2d 824 (Iowa 1983)
- ❧ No Pre Termination Hearing
- ❧ However, consider changes to Chapter 400 in 2017 legislation for municipal employees

REPUTATIONAL AND LIBERTY INTEREST INJURIES



- Results if firing is for a reason that would damage reputation
- Jones v. University of Iowa, 839 N.W.2d 127 (Iowa 2013)
“An employee’s liberty interests are implicated where the employer levels accusations at the employee that are so damaging as to make it difficult or impossible for the employee to escape the stigma of those charges. The requisite stigma has generally been found when an employer has accused an employee of dishonesty, immorality, criminality, racism, and the like.”



- ❧ Entitlement to Pre-Termination hearing giving employee opportunity to respond.
- ❧ Hearing need not be elaborate
- ❧ “Informal meeting with supervisors may constitute a sufficient pre-termination hearing”