

1979

Wasatch Front Regional Council v. Scott M. Matheson et al : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

- - - - -

WASATCH FRONT REGIONAL COUNCIL,

Plaintiff and
Appellant,

vs.

Case No. 16340

SCOTT M. MATHESON, Governor of
the State of Utah, ROBERT B.
HANSEN, Attorney General of
the State of Utah, and JOHN
RAY McEVILLY,

Defendants and
Respondents.

- - - - -

BRIEF OF APPELLANT

An Appeal from the Judgment of the Third
Judicial District Court of Salt Lake County
The Honorable G. Hal Taylor, Judge

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WASATCH FRONT REGIONAL COUNCIL,

Plaintiff and
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vs.

Case No. 16340

SCOTT M. MATHESON, Governor of
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HANSEN, Attorney General of
the State of Utah, and JOHN
RAY McEVILLY,

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Respondents.

BRIEF OF APPELLANT

NATURE OF THE CASE

This is a declaratory judgment action seeking construction of the provisions of Sections 39-1-35 and 39-3-2, Utah Code Ann.

DISPOSITION IN LOWER COURT

Motions for summary judgment were filed by all parties and were argued before the Honorable G. Hal Taylor on December 15, 1978. The court entered its Order on February 2, 1979, granting Defendants' Motions for Summary Judgment and denying Plaintiff's Motion for Summary Judgment.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the Order entered below on February 2, 1979.

STATEMENT OF FACTS

Wasatch Front is a regional council of the governments in the metropolitan area along the geographical Wasatch Front area. Its purpose is to provide a forum for study and discussion of regional problems of mutual interest to the County Councils of Government within the region, and to prepare comprehensive plans for the growth and development of the region. (R. p.22).

Wasatch Front is a voluntary association having the separate legal status necessary to carry out its functions. It was created pursuant to the Utah Interlocal Co-operation Act, §§ 11-13-1 et seq., Utah Code Ann. (R. p.23).

Membership of Wasatch Front is currently comprised of the Salt Lake County Council of Governments, Davis County Community Correlation Council, Weber Area Council of Governments, Tooele County Council of Governments, and the Morgan County Council of Governments. (R. p. 23).

Wasatch Front currently employs 24 individuals. One of its employees, defendant John Ray McEvelly, is also a member of the Utah Air National Guard (Guard). Two other Wasatch Front employees, Michale Coulam and Douglas Hatterly, are

members of the organized Reserves of the United States military forces (Reserves). (R. p. 24).

It has been, and continues to be, the policy of Wasatch Front to allow its employees, who are also members of the Reserves or Guard, leaves of absence from their jobs for their required annual training with the Reserves or Guard. (R. p. 24).

Prior to March 23, 1978, Wasatch Front paid such Reserve and Guard personnel the full pay they would have received for such annual training periods had they been performing their duties for Wasatch Front in addition to the pay they received from the Guard or Reserves. (R. p.24).

On March 23, 1978, Wasatch Front adopted a resolution changing its military leave pay policy for all of its employees. This new policy provides that Wasatch Front will supplement the employee's military pay to the level of his full Wasatch Front pay, by paying the difference between what the employee would have earned had he been performing his duties for Wasatch Front, rather than in military service for the Reserves or Guard, and the pay received by the employee from the Reserves or Guard. (R. pp. 24-25).

At the time Wasatch Front adopted this new policy, several other agencies, organizations and governmental subdivisions had similar policies of supplementing pay of individuals on military leave. The new policy was adopted

in the good faith belief that Wasatch Front was not an organization subject to the provisions of §§ 39-1-35 or 39-3-2, Utah Code Ann., or if subject thereto, that the policy thus adopted was in accordance with the provisions of said statutes. (R. p. 25).

Defendant McEvilly brought suit in U.S. District Court, District of Utah, against Wasatch Front and its individual members, claiming that Wasatch Front's policy regarding military leave pay violated the provisions of §§ 39-1-35 and 39-3-2, Utah Code Ann., and thereby violated his civil rights under 42 U.S.C. §§ 1983 and 1985, and his veteran's reemployment rights under 38 U.S.C. § 2024(d). He claims that the Utah statutes entitle him to his full pay as an employee of Wasatch Front for the period of time in which he participated in Guard training in addition to his Guard pay.

The instant declaratory judgment action was commenced by Wasatch Front to resolve these disputed state law issues, which have not been addressed in any reported cases of this state. United States District Judge A. Sherman Christensen ordered that the federal court retain jurisdiction over the federal case but abstain from proceeding further pending a final determination in state court of these issues of state law.

Motions for summary judgment in the instant case were filed by all parties, and were argued before the Honorable

G. Hal Taylor on December 15, 1978. There was no court reporter present. Judge Taylor granted defendants' motions and denied plaintiff's.

Counsel for defendant McEvilly prepared and submitted a proposed Order for approval by the parties. As counsel for plaintiff could not approve said proposed Order, they filed their objections. (R. pp. 70-72). On February 2, 1979, Judge Taylor signed and entered the order prepared by counsel for defendant McEvilly, and on March 1, 1979, plaintiff filed a Notice of Appeal.

ARGUMENT

POINT I

SECTIONS 39-1-35 and 39-3-2 EACH APPLY TO
DIFFERENT CLASSIFICATIONS OF EMPLOYEES, AND
TO MEMBERS OF DIFFERENT MILITARY ORGANIZATIONS.

Section 39-1-35 was originally enacted in 1917. Its material language has not changed since that time, and presently provides:

All state employees who are or shall become members of the national guard of this state shall be allowed full pay for all time spent on duty at annual encampments or rifle competitions or other duties in connection with the national guard not in service and such time shall not be deducted from any vacations such employees may be entitled to. . . .

This section clearly applies to state employees who are members of the national guard.

In 1941, with the impetus of World War II, § 39-3-1, Utah Code Ann., was adopted. It also has not changed in its material parts since its enactment, and presently provides:

Every officer and employee of the state or of any county, municipal corporation, or governmental district who enlists or is called or inducted into and enters active service in the state militia or any branch of the federal military, naval, or marine service shall be entitled to absent himself from his duties or service while engaged in the performance of active military or naval duty and while going to and returning from such duty. No such officer or employee shall be subjected by any person directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuances in office, employment, reappointment to office, or re-employment.

This section is applicable to a broader range of employees than § 39-1-35, as it covers both employees of the state and also those of any county, municipal corporation, or governmental district. Further, the coverage extends beyond service in the state militia to also include service in any branch of the federal military, naval or marine service. It was intended to ensure that the enumerated public employees would not suffer any diminution of benefits upon their return from active duty.

The title of this 1941 act clearly denotes the scope of both the public employees covered and the military organizations included in this section:

GOVERNMENTAL EMPLOYEES IN MILITARY SERVICE

An Act relating to State Officers and Employees in Military Service and to Provide That All Officers and Employees of the State or Any Municipal Corporation or Political Subdivision of the State Who Are Members of the National Guard, Naval Militia, Members of the Reserve Corps of the United States Army or Forces in the Federal Military, Naval, or Marine Service May Be Absent From Their Places of Employment. Chapter 105, Laws of Utah 1941 (emphasis added).

Thus the distinction is made between employees of the state, of a municipal corporation, and of a political subdivision of the state. The distinction is also made between members of the National Guard and members of the Reserve Corps.

In 1955 the legislature enacted § 39-3-2, Utah Code Ann., which has not been altered since its enactment, and which provides:

All state employees and all employees of any county and municipality thereof who are or shall become members of the organized reserve of the United States army, navy, air force and marines, shall be allowed full pay for all time not in excess of fifteen days per year spent on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction requirements of the army, navy, air force and marines of the United States. This leave shall be in addition to annual vacation leave with pay.

Thus the legislature again changed the scope of individuals covered in this statute from the 1917 and 1941 acts. The 1955 act covers both state employees and employees of

counties and municipalities, but does not include the employees of governmental districts and political subdivisions which were included in the 1941 statute. Further, the 1955 act does not cover members of the National Guard, as did both the 1917 and 1941 statutes.

POINT II

SECTION 39-1-35 APPLIES ONLY TO MEMBERS OF THE GUARD, AND SECTION 39-3-2 APPLIES ONLY TO MEMBERS OF THE RESERVE

Defendants contend that members of the Guard are covered by both the 1917 statute (§ 39-1-35) and the 1955 statute (§ 39-3-2). As discussed above, the language of § 39-1-35 does expressly cover members of the National Guard. However, defendants claim that the National Guard is one branch of the "organized reserve of the United States army, navy, air force and marines," and therefore is included under that provision of §39-3-2. They base their claim upon a federal definition contained in 10 U.S.C. § 261(a):

The reserve components of the armed forces are:

- (1) The Army National Guard of the United States.
- (2) The Army Reserve.
- (3) The Naval Reserve.
- (4) The Marine Corps Reserve.
- (5) The Air National Guard of the United States.
- (6) The Air Force Reserve
- (7) The Coast Guard Reserve.

Nevertheless, §39-3-2 uses the terms "organized reserve of the United States army, navy, air force and marines" (emphasis added). Those organizations are specifically listed as items

(3), (4) and (6) above, and it is doubtful that the Utah Legislature intended to include the three unnamed organizations by naming four others.

Even though the federal definition of reserve components does include the Guard, the state is in no way bound by such a definition, and it is not precluded from utilizing different definitions or terminology.

Further, defendants' interpretation leads to an untenable conclusion. If, as defendants contend, § 39-3-2 applies to state employees who are members of the Guard, then it is totally duplicative of parallel provisions in § 39-1-35, and there is therefore no meaning left in much of § 39-1-35. Rules of statutory construction suggest just the opposite result: that the statutes be read together giving meaning to the provisions of both.

This rule of construction was stated by the court in In re Utah Savings and Loan Ass'n., 21 Utah 2d 169, 442 P.2d 929 (1968):

If the latter statute could be looked at separately as the whole law on the subject, the contestants' position might have merit. But that is not the way statutes are to be interpreted and applied. It is true here, as it is in so many areas of the law, that one statute has been enacted at one time with a particular purpose in mind, and that another has been enacted at another time with a different purpose in mind. When this has been done and there is an apparent conflict, it is not proper to put all the emphasis to

one statute, as though it stated all of the law on the subject to the exclusion of the other. They should be looked at together, in their relationship to each other, with a view to reconciling any such apparent conflict and giving each its intended effect insofar as that can be accomplished without nullifying the other. 442 P.2d at 931-32 (emphasis added).

The historical discussion earlier indicates that the terms "National Guard" and "Reserves" were used by the legislature to connote different organizations, and that legislative intent should prevail over the federal definition. By following this approach, each statute retains meaning with no duplication, and each can be given its intended effect.

Thus, §39-1-35 is only applicable to members of the Guard, and § 39-3-2 is only applicable to members of the Reserve. As defendant McEvelly is a member of the Guard, §39-3-2 is inapplicable to him.

POINT III

NEITHER § 39-1-35 OR § 39-3-2 IS APPLICABLE TO EMPLOYEES OF WASATCH FRONT

As discussed above, § 39-1-35, which applies to members of the Guard, affords military leave pay only to state employees. Section 39-3-2, which applies to members of the Reserves, affords military leave pay to state employees and employees of any county and municipality thereof. Section 39-3-1 is broader still, giving leave of absence and protec-

tion against any diminution of benefits to both the Guard and reserves when called to active duty, and it applies to employees of the state, any municipal corporation, political subdivision or governmental district.

Defendants contend that Wasatch Front's employees are state employees for purposes of §§ 39-1-35 and 39-3-2. They base this claim upon the Utah Interlocal Co-operation Act, §§ 11-13-1 et seq., Utah Code Ann., which provides that a separate legal entity formed pursuant to said act "is deemed a political subdivision of the state." § 11-13-5.5, Utah Code Ann.

They then claim that employees of political subdivision of the state are state employees. This argument is unsound under the terms of both the Interlocal Co-operation Act and the three military benefit statutes discussed earlier.

The definitional section of the Interlocal Co-operation Act, § 11-13-3, provides:

Definitions. --The following terms wherever used or referred to in this act, shall have the following meanings:

(1) "Public agency" shall mean any political subdivision of this state, including but not limited to cities, towns, counties, school districts and special districts of various kinds; any agency of the state government or of the United States; and any political subdivision of another state.

Thus, the term "public agency" includes political subdivisions such as cities, towns, counties, school districts, and special districts of various kinds. As already discussed, under §11-13-5.5 Wasatch Front is deemed to be a political subdivision.

However, under defendants' contention that an employee of a political subdivision of the state is a state employee, every city employee, county employee, school district employee, and special district employee would also be a state employee. Such a result is absurd, and would make those separate terms meaningless as they are used in the military benefit statutes.

The logical conclusion is again that the legislature used different terms in the different military benefit statutes intending to cover different groups of public employees.

Accepting defendants' contention would also ignore the specific use of the term "governmental district" in the 1941 act (§39-3-1) and the specific use of the term "political subdivision of the state" in the title to that same statute, and would nullify the separate meaning of those terms. Obviously, if the legislature had intended § 39-1-35 to cover more than state employees, or for § 39-3-2 to cover more than state, county, and municipal employees, they could have used the

additional language found in § 39-3-1. That different terms are specifically used in each statute precludes the defendants' contention that "state employees" means "employees of a political subdivision of the state;" to hold otherwise would be to ignore an obvious legislative intent.

As the employees of Wasatch Front are not state employees, nor employees of a county or municipality, they are not included within the scope of §§ 39-1-35 or 39-3-2.

POINT IV

AT MOST ONLY § 39-3-2, AND NOT § 39-1-35,
IS APPLICABLE TO EMPLOYEES OF WASATCH FRONT

For purposes of the Governmental Immunity Act, §§ 63-30-1 et seq., the Interlocal Co-operation Act, § 11-13-24, provides in part:

Officers and employees performing services for two or more public agencies pursuant to contracts executed under the provisions of this act shall be deemed to be officers and employees of the public agency employing their services. . . .

In the instant case, the individual public agency members of Wasatch Front are various "county councils of government." Arguably, under the provisions of § 11-13-24, cited above, employees of Wasatch Front are thereby deemed to be employees of councils, at least for some purposes.

In the instant case, § 11-13-24 provides, at best, an awkward result. Defendants' use of this approach in the instant case requires a conclusion that "employees of county councils of government" are equivalent to "county employees." This is

not the type of situation for which § 11-13-24 was intended or should be used. It is a clearer and more satisfactory result to apply § 11-13-5.5, cited earlier, and thereby conclude that Wasatch Front's employees are deemed employees of "a political subdivision of the state."

However, even assuming that Wasatch Front's employees are deemed county employees in the instant case, only § 39-3-2, and not § 39-1-35, purports to cover county employees. And, as discussed earlier, § 39-3-2 is not applicable to members of the Guard, but only to members of the Reserve. Therefore, as defendant McEvilly is a Guard member, he cannot claim coverage under § 39-3-2 even if Wasatch Front's employees are deemed county employees under the provisions of § 11-13-24.

POINT V

WASATCH FRONT'S POLICY OF DIFFERENTIAL PAY IS
THE FULL PAY REQUIRED BY §§ 39-1-35 AND 39-3-2.

If Wasatch Front is subject to §§ 39-1-35 or 39-3-2, the question remains as to what is meant by "full pay." In deciding such questions of statutory construction the court must again look at the entire statute to determine the intent of the legislature. In Grant v. Utah State Land Board, 26 Utah 2d 100, 485 P.2d 1035 (1971), the court stated:

[T]here is also this principle to be considered: that where there is ambiguity or uncertainty in a portion of a statute, it is proper to look to the entire act in order to discern its meaning and intent; and if it is reasonably susceptible of different interpretations, the one should be

chosen which best harmonizes with its general purpose. 485 P.2d at 1037 (emphasis added).

Section 43 of the State Militia Act, Ch. 99, Laws of Utah 1917, enumerated specific dollar amounts for the pay of state militia in the service of the state. Section 43 included the following restriction:

Provided: that this State shall make no payments to members of the militia in the case of service for which the United States government makes payment. The annual encampment of the national guard will be considered as in the service of the State.

Thus, duplicate federal-state payments were prohibited. As the annual encampment was considered state service, there was no federal payment involved. Therefore, no violation of the duplicate payment prohibition occurred when the state paid salaries of men in the militia.

However, in 1919 the statute was amended as follows:

Encampments of the National Guard shall be such as provided for by the Secretary of War, under Section 94 of the Acts of Congress, approved June 3, 1916, known as the National Defense Act. The cost and maintenance, transportation, subsistence and expense for such encampment and maneuvers shall not be paid by the State, but as provided for by Section 94, Act of Congress, approved June 3, 1916. Ch. 75, Laws of Utah 1919 (emphasis added).

Thus the expenses of annual encampment were no longer paid by the state, but by the federal government. As such, the duplicate federal-state payment prohibition would bar any state payment, such as that provided in § 39-1-35, where the services were compensated by the federal government.

The present statutes provide:

39-1-51. Pay of national guard members. -- When called into the service of the state and not in the service of the United States, the members of the national guard shall receive the same pay and allowance as members of the regular army or regular air force of like rank and length of service. In addition to the above pay, officers and enlisted personnel shall receive one ration per day; provided, that this state shall make no payments to members of the national guard in the case of service for which the United States government makes payment. (Emphasis added).

39-1-52. Encampments.--Encampments of the national guard shall be such as may be provided for by the national guard bureau and under authority of Congress. The cost of maintenance, transportation and subsistence, and other expenses of such encampments and maneuvers, shall not be paid by the state, but as provided for by Congress. (Emphasis added).

Thus, the additional pay claimed by defendants is prohibited by the statutory language that the state make "no payment" to members of the Guard where the federal government has compensated them for their services. Wasatch Front's policy of supplementing Guard or Reserve pay to the level of full civilian pay more closely complies with the legislative intent of prohibiting a double payment, as it only represents a supplement to the federal pay, and not a duplication thereof. In view of the rules of statutory construction prescribed in Utah Savings, supra, and Grant, supra, Wasatch Front's differential pay approach appears to be the best solution to the otherwise ambiguous and conflicting statutes.

Further § 39-3-1 provides for protection against any diminution of employment benefits for public employees called

to active duty. There is no provision for additional benefits. This is also the intent of § 39-1-35, which provides that time spent at National Guard annual encampments "shall not be deducted from" vacations, and of § 39-3-2, which provides that leave for Reservists "shall be in addition to annual vacation leave with pay."

In accordance with this intent to prevent diminution in employment benefits, and with the direct prohibition of duplicate federal-state payments found in §§ 39-1-51 and 52, the term "full pay" as used in §§ 39-1-35 and 39-3-2 should be construed as requiring at most that the employer supplement the employees' military pay to the level of his full civilian pay.

CONCLUSION

The employees of Wasatch Front Regional Council are not state, county, or municipal employees within the meaning of §§ 39-1-35 or 39-3-2, Utah Code Ann., and therefore defendant McEvilly has no claim for more military leave pay than he has already received.

Defendant McEvilly, a Guard member, is at most only covered by § 39-1-35, and not by § 39-3-2 which deals with members of the Reserves. However, Wasatch Front is at most subject only to the provisions of § 39-3-2, if its employees be deemed county employees under § 11-13-24 of the Interlocal

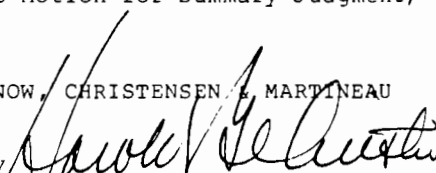
Co-operation Act. Again the conclusion is that defendant McEvilly has no claim for more military leave pay than he has already received.

Even if defendant McEvilly is entitled to "full pay" under either or both §§ 39-1-35 of 39-3-2, Wasatch Front has paid him all he is entitled to receive by reason of said statutes, as they have supplemented his Guard pay to the level of his full Wasatch Front pay.

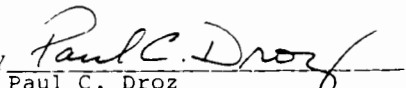
For the foregoing reasons, the lower court's Order of February 2, 1979, granting defendants' Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment, should be reversed.

SNOW, CHRISTENSEN & MARTINEAU

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CERTIFICATE OF SERVICE

I hereby certify that I personally delivered two (2) copies of the foregoing Brief of Appellant to each counsel for Respondents this 24 day of May, 1979.


Paul C. Droz