

1979

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

WASATCH FRONT REGIONAL COUNCIL, :

Plaintiffs-Appellants, :

-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-Respondents. :

BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE
THIRD DISTRICT COURT FOR SALT LAKE COUNTY
THE HONORABLE G. HAL TAYLOR, JUDGE

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FILED

JUL 9 1979

IN THE SUPREME COURT OF THE STATE OF UTAH

WASATCH FRONT REGIONAL COUNCIL, :

Plaintiff-Appellant,

vs. : Case No. 16340

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the State of Utah; and JOHN

RAY McEVILLY, :

Defendants-Respondents.

BRIEF OF RESPONDENTS

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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 Annotated, 1953.

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

Respondents seek affirmance of the Order entered on February 2, 1979, by Judge G. Hal Taylor.

STATEMENT OF FACTS

Respondents basically accept the statement of facts submitted by Appellant except for the assertion that "several other agencies, organizations and governmental subdivisions had similar policies of supplementing pay of individuals on military leave." As to governmental subdivisions or agencies this is obviously not true in the State of Utah and respondents respectfully take issue with such allegation.

POINT I

WASATCH FRONT IS SUBJECT TO THE PROVISIONS OF SECTIONS 39-1-35 OR 39-3-2, UTAH CODE ANNOTATED, 1953.

Appellant argues that employees of Wasatch Front Regional Council are not state employees for purposes of either sections 39-1-35 or 39-3-2 of the Utah Code. (See Point III of Appellant's Brief) Section 11-13-1 of the Utah Code specifically states that a separate legal entity formed pursuant to the Act (Utah Interlocal Cooperation Act) is deemed a "political subdivision of the State."

Appellant refers to Section 11-13-3 and specifically the definition of "public agency" and then asserts that since that term includes all political subdivisions of the State that respondents are asserting that the employees of a "public agency" are "state employees" and that this is an absurd result since it would make employees of all "public agencies" state employees.

This is a case of setting up a "straw man" so it can be demolished with no reference to the actual argument advanced by respondents.

Since Wasatch Front is specifically defined to be a "political subdivision of the State," employees thereof are either "state employees," or employees of a "political subdivision of the State." The member organizations of Wasatch Front are "political subdivisions" of the State and in this case, either municipalities or counties. It is logical to

assume that the employees of Wasatch Front would fall into the category of either "municipal" or "county employees." The fact is that Section 11-13-24 Utah Code Annotated, 1953, seems to imply this by stating that officers and employees of contracting agencies "shall be deemed officers and employees of said public agencies." In the case of Wasatch Front, the "contracting agencies" are either municipalities (cities) or counties and thus subject to the obligations imposed on cities and counties including specifically the requirement to pay military leave pay. To conclude otherwise would lead to an "absurd" result. For instance, if a city desired to relieve itself of certain responsibilities it could presumably enter into a contract with another "public agency" under the Interlocal Act and employ that agency to perform city services without the necessity of performing any requirements or responsibilities the city felt were burdensome, onerous or otherwise disadvantageous to the city. Certainly the Legislature in adopting the Interlocal Cooperation Act did not intend it to be a vehicle for "public agencies" to circumvent the law and legal requirements otherwise applicable to a "public agency."

Respondents submit that employees of Wasatch Front either qualify as "state employees" by virtue of Section 11-13-1 or they fall into the category of employees of a "city or county"

and they would in either event be entitled to the benefits of "military leave" as provided in Section 39-1-35 or 39-3-2 Utah Code Annotated, 1953.

Wasatch Front Regional Council is funded by tax revenues of cities and counties within the geographical area of Wasatch Front. Federal grant in aid money is received as well under certain federal aid programs. Respondents submit that so long as the Board of Directors are made up of city and county officials and funding is supplied by cities and counties, there is no justification for a finding that appellant is not responsible to pay military leave pay as specified in Section 39-1-35 or Section 39-3-2.

POINT II

SECTION 39-3-2 APPLIES TO THE NATIONAL GUARD AS WELL AS THE OTHER RESERVE COMPONENTS.

Appellant mistakenly asserts that the National Guard is not a "reserve component" or that in some way the Legislature intended to create a distinction between the coverage contemplated in Section 39-3-2 for the "organized reserve" as it applies to other than state employees and the more restrictive coverage afforded in Section 39-1-35.

As can be seen by a simple reading of Section 39-1-35, enacted in 1917, the intent of that Section was to encourage membership in the National Guard by state employees. At

that time in our history the National Guard was for all intents and purposes the "reserve," at least as far as this State was concerned. It was also just prior to entry by the U. S. in World War I when national mobilization was beginning. This was one year after the National Congress passed the National Defense Act of 1916, which among other things provided for funding of the National Guard by the United States and provided for its inclusion as a "reserve" force. (See 39 Stat. at Large 166)

In 1955 the Legislature obviously recognized the inequity which then existed of granting military leave only to state employees who belonged to the National Guard and apparently decided to extend the benefit of military leave to not only state employees but to county and municipal employees as well, and to extend the benefit to members of the "organized reserve of the U.S. Army, Navy, Air Force and Marines."

Since the obvious intent of the Legislature in 1955 was to extend the scope of military leave and its application, it is not reasonable to conclude as appellant asserts, that the Legislature did not intend for 39-3-2 to apply to the National Guard, as well as the "organized reserve." If appellant were correct, it would mean that a National Guardsman employed by a city or county would not be entitled to

military leave while a fellow employee who was a reservist would. This is not reasonable and plainly was not the intent of the Legislature.

Ever since the National Defense Act of 1916, the National Guard has been funded by the U.S. Government, has trained pursuant to requirements originating with the U.S. Government and has been considered within the terms "organized reserve" or "reserve component" of the United States. This has been formalized by definition in the United States Code since July 9, 1952, when the definition now found in 10 U.S.C., 26 was adopted. (See 66 Stat. at Large 483.)

Obviously, the Utah State Legislature was aware that the National Guard of the State of Utah, both Army and Air were included within the category of the "organized reserve of the U.S. Army, Navy, Air Force and Marines" when they enacted Section 39-3-2. To conclude otherwise is totally unrealistic.

In 10 U.S.C., 261 the Reserve Components of the United States are designated and this designation includes both the "Army National Guard of the United States" and "the Air National Guard of the United States." These terms are defined in 10 U.S.C. 101 and clearly provide that members of the National Guard, both Army and Air are also concurrently members of the "Reserve Components."

There is no difference between a National Guardsman and a reservist as far as training standards, pay and allowances, promotion standards or uniform requirements. The only distinction is that a guardsman is technically under control of the Governor while a reservist is not. To conclude that the Legislature in enacting 39-3-2 intended to restrict its application to "members of the organized reserves" without including the National Guard, or to in any way restrict its application is not realistic. They obviously were extending the benefits of military leave, not restricting it as appellant's position would effectively do.

Appellant is too concerned with trying to distinguish between the language of a statute and terms then used to designate reserve organizations with today's definition of the "reserve components." Regardless of name, the Reserve Components as defined today in 10 U.S.C. 261, all had their predecessors, who were designated somewhat differently but who had essentially the same function. It is also obvious that these "reserve organizations" were all intended to be encompassed within the term used by the State Legislature in the language now incorporated in 39-3-2 Utah Code Annotated, 1953.

POINT III

THE PROVISIONS OF 39-1-35 AND 39-3-2 CAN BE HARMONIZED.

In addition to the argument set out in Point II of this brief, respondents allege further that there is no conflict in fact between Sections 39-3-2 and 39-1-35. Section 39-3-2 is merely an amplification of 39-1-35 and extends the coverage already a part of the law to employees of cities or counties and to "reservists" as opposed to only state employees who belonged to the National Guard.

Appellant's argument about giving both statutes "meaning" thus defeating benefits to guardsmen employed by cities or counties was obviously not intended and is an unreasonable interpretation. The past practices of Wasatch Front show this to be the case since they have paid military leave to guardsmen and even their new clearly erroneous policy of paying the pay differential does not distinguish between guardsmen and "reservists." This Court has commented on the weight to be given an administrative determination when a question of statutory interpretation is presented in the case of Salt Lake City vs. Salt Lake County, 568 P.2d 738 (1977):

Nevertheless, we further observe that the correctness of the trial court's decision also finds support in this

additional proposition: that in case of any uncertainty or ambiguity in a statute, a reasonable administrative interpretation and practice should be given some weight, and this is particularly true when such an administrative interpretation and practice has persisted for a long time without any legislative correction or change.

The Court then went on to state with reference to the long practice followed by Salt Lake County in this case:

As we have observed in other fields of the law, if there is to be any abrupt about-face in policy, that should be done by the legislature rather than by the county officials adding in the self interest of the county.

See also Allison v. U.S., 301 F.2d 670 (1962) and cases cited therein on this proposition.

During the recent General Session of the Utah State Legislature a bill to amend both Sections 39-1-35 and 39-3-2 was before the House of Representatives as House Bill No. 18. (See Appendix for copy of Substitute House Bill No. 18 for reference.) The main thrust of this Bill was to provide for payment of only the differential between military pay and the pay otherwise due the employee from his regular employment as a state, county or municipal employee referred to as "full pay." This Bill was debated extensively and soundly defeated by the House of Representatives. The Legislature did not see fit to remove any alleged "ambiguity" between the two statutes in question.

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While it can be argued that the enactment of Section 39-3-2 renders Section 39-1-35 somewhat unnecessary, it does not render that section inapplicable, nor does it conflict. It is obvious that 39-3-2 was not intended to conflict with 39-1-35 and to adopt Appellant's theory as urged in its argument creates an unreasonable effect and theoretically creates a discriminatory effect which was obviously not intended as already urged.

While the Supreme Court of Utah has not had an opportunity to speak out as yet with respect to 39-1-35 and 39-3-2 it did have such an opportunity with respect to 39-3-1 in the Critchlow v. Monson, 102 U. 378, 131 P.2d 794 (1942):

One of the apparent objects of the statute as well as that of similar statutes in other states, is to have a position or job open to the ones who are compelled to leave them temporarily because of the call to the armed forces. Among other things, the act was designed to aid morale. . . . The plaintiff has misconceived the objectives of the act. (p. 802, Pacific Rptr. cite.) (Emphasis supplied.)

It has long been the law of this state that if there is a lack of clarity in a statute the entire statute should be looked to and to the purposes for which the statute was sought to accomplish. Salt Lake City v. Salt Lake County, ^{sup} op cit. The Utah Supreme Court observed:

An even more fundamental rule of statutory interpretation helpful here is that the

statute should be looked at in its entirety and in accordance with the purpose which was sought to be accomplished.
(Citing authority)

POINT IV

"FULL PAY" AS USED IN SECTIONS 39-1-35 AND 39-3-2 MEANS THE PAY OTHERWISE DUE THE EMPLOYEE BY THE PUBLIC ENTITY WITHOUT ANY REDUCTION FOR PAY RECEIVED FROM MILITARY SERVICE.

As already commented upon in Point III, in the recent General Session of the Legislature in 1979, the House of Representatives rejected H.B. 18 which would have reduced the pay entitlement of public employees of the State and its subdivisions during periods of military leave from "full pay" to only the differential between the military pay and their regular full time pay. (See Appendix for copy of House Journal of February 9, 1979 detailing this action.)

Again, past precedent has been for public agencies of the State to pay "full pay" to members of the National Guard and the Reserve Components while in the status of military leave. The policy of the State of Utah since prior to 1965 has been to pay "full pay" in addition to any military pay the employee receives and to grant eleven working days of military leave to state employees. (R. 37-38)

Appellant's reference in Point V of its brief to the Militia Act of 1917, the Amendment of 1919 and to present Sections 39-1-51 and 39-1-52, Utah Code Annotated, 1953, and the various prohibitions regarding double payment demonstrate

a basic misunderstanding of what the legislature intended by these sections. The Legislature was merely making reference to the fact that when the National Guard or "militia" was in a status where payment was made for their service by the federal government, no state payment for that service was to be made. This is the distinction between "state duty" and duty in a federal "active duty for training" status which has long been recognized. Nearly all National Guard service and active duty is on a regularly scheduled basis and is conducted under provisions of 32 U.S.C. 502, 503 or 504. Payment is made for this service by the federal government.

On infrequent emergency situations the National Guard may be called into state service for such emergencies as fire, floods or insurrection. In these instances they would be compensated by state funds. Thus the prescription of the sections cited by appellant is to guard against double payment when the guard is in a federal status. It has nothing to do with an employee of the State who is granted military leave pay as an inducement to belong to a reserve component.

That the Legislature understood the distinction between double pay for service and military leave pay for state employees is obvious since the same Legislature enacted both

Sections in 1917. (Section 43, Chapter 99, Laws of Utah 1917 and Section 27, Chapter 99, Laws of Utah 1917, respectively.)

Thus, Appellant's argument is totally frivolous and should be rejected.

As pointed out previously, the policy of the State of Utah and all cities and counties who have paid military leave, historically has been to pay the employee his "full salary" for that time involved in annual training referred to variously as "summer camp," "annual encampments," "active duty for training," etc., up to a maximum of 15 days annually. Traditionally, this payment has not been reduced, as Appellant urges, to reflect the pay differential between "full" military pay and pay due from the employer. This universal interpretation by public agencies generally of the plain statutory language is reasonable and should be strongly considered by this Court in reviewing this matter.

CONCLUSION

Respondents respectfully submit that the ruling of the District Court granting Respondents' Motion for Summary Judgment should be sustained by this Court. The provisions of Sections 39-1-35 or 39-3-2, Utah Code Annotated, 1953, do not conflict and it is apparent that Section 39-3-2 was intended to amplify and extend the benefits of military leave to members of reserve

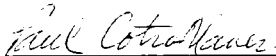
components generally rather than only to State employees belonging to the National Guard.

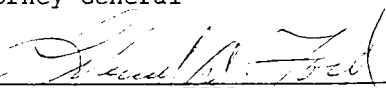
Respondents further submit that Wasatch Front Regional Council is an organization of cities and counties and enjoys no immunity from the lawful obligation of cities and counties to pay military leave pay to its employees who belong to the "organized reserve."

Respondents therefore urge this Court to finally declare that Appellant must compensate Respondent John Ray McEvilly and others similarly situated for their full pay otherwise due during periods of military leave in addition to any military pay entitlement.

Respectfully submitted,

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Attorney General


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Attorney for McEvilly

By 
LELAND D. FORD
Assistant Attorney General
Attorney for Respondents

CERTIFICATE OF MAILING

This is to certify that two copies of the foregoing Respondents' Brief were mailed, postage prepaid, to Harold G. Christensen and Paul C. Droz, Attorneys for Appellant, 700 Continental Building, Salt Lake City, Utah 84101, this 9th day of July, 1968.



Approved _____

Disapproved _____

Ordered _____

RLF

(PAY FOR PUBLIC EMPLOYEES IN MILITARY SERVICE)

1979

GENERAL SESSION

Substitute

H. B. No. 18

By Lee W. Farnsworth

AN ACT AMENDING SECTION 39-1-35, UTAH CODE ANNOTATED 1953, AND SECTION 39-3-2, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 63, LAWS OF UTAH 1955; RELATING TO GOVERNMENTAL EMPLOYEES IN MILITARY SERVICE; PROVIDING THAT STATE EMPLOYEES IN THE MILITARY SERVICE SHALL HAVE THEIR MILITARY PAY, EXCLUSIVE OF ALLOWANCES, SUPPLEMENTED ONLY UP TO THEIR FULL REGULAR SALARY FOR ALL TIME NOT IN EXCESS OF 15 DAYS PER YEAR; PROHIBITING DEDUCTION OF VACATION TIME FOR TIME SPENT ON ACTIVE DUTY; AND PROVIDING AN EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 39-1-35, Utah Code Annotated 1953, is amended to read:

39-1-35. ~~(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-)~~ If the national guard of this state is called into the service of the state or the United States, the state shall provide for the dependents of state employees who are enlisted members of the national guard so called into service. The board of examiners shall cause an examination to be made into the merits of all cases of alleged dependency, and upon finding that any mother, father, grandfather, grandmother, wife, sister, brother or child of such

1 Substitute
2 H. B. No. 18
3 member of the national guard, or any or either of them, are
4 dependent upon such member for support, the board of examiners
5 shall determine the amount to be paid by the state to any such
6 dependent, and shall cause the state auditor to draw his warrant
7 on the state treasurer for such sum in favor of such specific
8 and determined dependents, payable out of any amounts available
9 for military purposes or for the maintenance and support of the
10 national guard. If there are not sufficient funds available to
11 pay for the necessary support of all the dependents determined
12 and specified by the board of examiners, the funds available
13 shall be prorated among the dependents specified by the board of
14 examiners. The board of examiners in specifying the amounts to
15 be paid to such dependents may provide for a payment on a weekly
16 or monthly basis and on such conditions as it may deem best in
17 each particular case.

18 Section 2. Section 39-3-2, Utah Code Annotated 1953, as
19 enacted by Chapter 63, Laws of Utah 1955, is amended to read:

20 39-3-2. All state employees and all employees of any county
21 and municipality thereof who are or shall become members of the
22 organized reserve of the United States [~~army--navy--air--force--and~~
23 ~~marines~~] armed forces, including the national guard of this
24 state, shall [~~be--allowed--full--pay~~] have their base military pay,
25 exclusive of allowances for housing and subsistence, supplemented
26 up to their full regular salary for all time not in excess of
27 [~~fifteen~~] 15 days per year spent on duty at annual encampment or
28 rifle competition or other duties in connection with the Reserve
29 training and instruction requirements of the [~~army--navy--air--~~
30 ~~force--and--marines~~] armed forces of the United States including
31 the national guard of this state. This leave shall be in
32 addition to annual vacation leave with pay. State employees of
33 the national guard of this state who spend time on active duty in
34 connection with other duties of the national guard not in service

1 Substitute
2 H. B. No. 18
3 shall not have that additional time deducted from any vacation
4 those employees may be entitled to. The provisions of this
5 section shall apply only to enlistments and reenlistments
6 following June 30, 1979.
7 Section 3. This act shall take effect July 1, 1979.

H.B. No. 213, as amended, transmitted to the Senate for its action.

* * *

COMMITTEE REPORT CORRECTION

February 7, 1979

Mr. Speaker:

Your Committee on Business, Industrial Development and Consumer Concerns, to which was referred H.B. No. 18, by Mr. Farnsworth, et al, PAY FOR PUBLIC EMPLOYEES IN MILITARY SERVICE, has carefully considered said bill and recommends that it be deleted in title and body and **Substitute H.B. No. 18** be inserted in lieu thereof and reports the same out favorably.

SHERMAN D. HARMER
Chairman

Report filed.

On motion of Representative Harmer, the report of the Business, Industrial Development and Consumer Concerns Committee was adopted.

Substitute H.B. No. 18 read the second time by short title, (refer to Day 31, Page 52). Substitute H.B. No. 18 was reported in error.

* * *

CONSIDERATION OF BILLS ON THIRD READING

H.B. No. 18, PAY FOR PUBLIC EMPLOYEES - MILITARY SERVICE read the third time and placed on its final passage.

H.B. No. 18 then failed on the following roll call:

Yeas, 22; Nays, 48; Absent or not voting, 5.

Those voting in the affirmative were: Representatives:

Atwood	Harrison	Palmer
Brockbank	Humberstone	Richards
Brown	McAllister	Rogers
Christiansen	McKeachnie	Rowe
Evans	Mecham	Saunders
Farnsworth	Olsen	Schmutz
Gardner	Pace	Wilcox
Garff		

Those voting in the negative were: Representatives:

Allred	Holbrook	Rawson
Arrington	Hollingshaus	Redd
Bangerter	Irvine	Reese
Cannon	Johnson	Selleneit
Christensen	Jones	Smith
Davis	Jorgensen	Starr
Dmitrich	Judd	Stephens
Doane	Leavitt	Strong
Florez	LeFevre	Sykes
Fox	Livingston	Taylor
Free	McMullin	Wahlstrom
Garr	Money	White, J.
Harmer	Nielsen	White, B.
Harward	Peterson, C.	Whitesides
Hawkes	Peterson, G.	Wimmer
Heslop	Peterson, L.	Speaker Hansen

Absent or not voting: Representatives:

Bishop	Parkin	Watt
Knowlton	Patterson	

H.B. No. 18 filed.

* * *

H.B. No. 88, EDUCATIONAL CERTIFICATES, read the third time and placed on its final passage.