

CSC Update

State Personnel Board of Review

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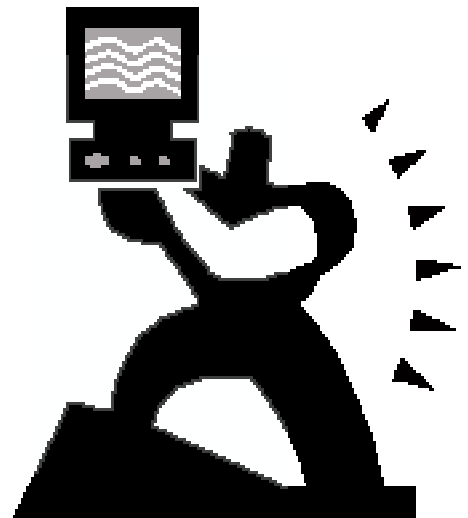
SPBR Hosts Statewide Civil Service Law Seminar

The State Personnel Board of Review (SPBR) held its first statewide civil service law seminar in Columbus in March 2001. Due to an overwhelming response, the one-day seminar was presented on two dates in order to accommodate more than one hundred and thirty participants. Civil service commission members and staff, city law directors and staff, and city management members attending the seminar gained valuable information on civil service law. Topics covered included an overview of Ohio's civil service law, police and firefighter issues, and conducting an employee hearing.

SPBR would like to thank participants who provided feedback on the quality of the seminar. Some of the suggestions made were: scheduling a more lengthy seminar in order to cover subjects in more detail; breaking into groups based upon city size; conducting separate seminars for statutory and charter cities; allowing participants to submit written questions in advance of the presentation; and, providing CLE credit for attorneys. SPBR is currently pursuing approval from the Ohio Supreme Court for CLE for this first seminar and hopes to incorporate as many suggestions as possible into future presentations. Information regarding the status of CLE credits as well as plans for future seminars will be made available as soon as possible. If you are interested in sponsoring a seminar on civil service law in your area, please contact Elaine Stevenson at 614/466-7046. ■

Civil Service Commission Information Available Online

SPBR is pleased to announce that it has added a new section to its web site that contains information and resources for civil service commissions. Visit our website at www.state.oh.us/pbr/ and follow the navigational links to access up-to-the minute information on upcoming educational seminars, view and download available resource materials such as SPBR's Hearing Procedures Manual and Guidelines for Conducting Employee Hearings, and find online copies of past and present issues of CSC Update. ■



Collective Bargaining Agreements' Effect on Public Employees' Statutory Rights

Elaine Stevenson, State Personnel Board of Review

Can the language of a collective bargaining agreement preempt public employees' statutory rights? If a collective bargaining agreement speaks in general terms about a specific statutory right, such as layoff procedures, has that agreement preempted other statutory rights pertaining to layoffs found in Chapter 124 of the Ohio Revised Code?

The Ohio Public Employees' Collective Bargaining Act, R.C. Chapter 4117., effective April 1, 1984, created a comprehensive framework for the resolution of public-sector labor disputes by creating a set of new rights with procedures and remedies to enforce those rights. R.C. 4117.08(A) states, in part: "An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a

final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and to determine any appeal relating to matters that were the subject of a final and binding grievance procedures. Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to wages, hours, and terms and conditions of employment for public employees."

As discussed by the Ohio Supreme Court, R.C. Chapter 4117. mandates that courts follow the language of the agreement recognizing that the parties stand on equal footing with one another, and that if a collective bargaining agreement provides for a final and binding arbitration of grievances, the parties are limited to the arbitration procedure. The Court further stated that a provision in a collective bargaining agreement prevails over a conflicting statute. (See *Cuyahoga Falls Edn. Assn. V. Cuyahoga Falls City School Dist. Bd. of Edn.* (1991), 61 Ohio St.3d 193; *State ex rel. Rollins v. Cleveland Hts.-Univ. Hts. Bd. of Edn.* (1988), 40 Ohio St.3d 123)

As case law developed, two notable Supreme Court decisions addressed the interplay between public employees' statutory rights and provisions of a collective bargaining agreement that claim to preempt those statutory rights pursuant to R. C. 4117.10(A). In *State ex rel. Clark V. Greater Cleveland Regional Transit Auth.* (1990), 48 Ohio St.3d 19, the Court held,



that despite a provision in the pertinent collective bargaining agreement addressing the computation of vacation leave, the provision did not specifically address the question of prior service vacation credit; therefore, the employees were entitled to their previously earned vacation credit pursuant to R.C. 9.44. The Court noted that when the agreement makes no specification about a matter (*i.e.*, no clear conflict between a law and the agreement) pertaining to wages, hours and terms and conditions of employment, the parties are governed by all state or local laws addressing such terms and conditions of employment. In *Naylor v. Cardinal Local School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 162, the Court again addressed the applicability of R.C. 4117.10(A) in relation to public employees' statutory rights. *Naylor* dealt with the statutory evaluation procedures for school teachers pursuant to R.C. 3319.11 and R.C. 3319.111. The Court held that a collective bargaining agreement must specifically exclude statutory rights in order to negate application of those rights, and that in the instant case, the collective bargaining agreement was entered into before the effective date of R.C. 3319.111, thus, the agreement could not have specifically excluded or negated the rights contained in the statute.

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The CSC Update is provided by the State Personnel Board of Review to raise awareness regarding issues related to Ohio civil service law. The contents of this newsletter should not be considered legal advice. Readers are encouraged to contact SPBR at 614/466-7046 for specific questions.

Collective Bargaining (continued)

In *State ex rel. Ohio Assn. of Pub. School Emp./AFSCME, Local 4, AFL-CIO v. Batavia Local School Dist. Bd. of Edn.* (2000), 89 Ohio St.3d 191, the Court applied its decisions in *Clark* and *Naylor*. *Batavia* involved a layoff provision in the collective bargaining agreement and statutory rights for non-teaching employees under R.C. 3319.081. In *Batavia*, non-teaching employees' positions were abolished and the employees laid-off, Appellee then entered into a contract with a private company to provide the identical services that had been provided by the laid-off employees. The Court considered the layoff provision in the collective bargaining agreement to be a general layoff and recall provision; failing to address employees' statutory rights under R.C. 3319.081. The Court concluded that,

because the collective bargaining agreement failed to specifically exclude the employees' statutory rights, no clear conflict exists between the agreement and the statute, so effect could be given to both R.C. 3319.081 and the layoff provision. As a result, the Court granted the requested writ of mandamus compelling the reinstatement of the appellants to their former positions pursuant to their statutory rights under R.C. 3319.081.

Consequently, the *Clark/Naylor/Batavia* line of cases indicates that the intent of the parties to preempt statutory rights might be determined from specific exclusionary or negating language, or by a "conflict" between the provisions of the agreement and the statute. Failure to expressly negate statutory rights in a collective bargaining agreement may circumvent a binding arbitration clause the

parties intended as the exclusive remedy for enforcing an employee's rights under the agreement. Moreover, it is not apparent from the *Batavia* decision what might constitute a conflict between a provision in a collective bargaining agreement and relevant statutory rights. For instance, it is common practice to incorporate statutory civil service layoff provisions by reference with or without some specific changes. It remains to be determined whether a "conflict" exists if the general layoff provisions differ slightly, or the differences affect the actual layoff, or the differences affect employees individually, or whether all three situations may constitute a conflict. (See "Ohio Supreme Court Shifts Fundamentals of Ohio Collective Bargaining Law" Attorney General of Ohio, Employment Law News (2000).) ■

Veterans Preference Revisited

Elaine Stevenson, State Personnel Board of Review

Since the Civil War, veterans have received some type of preference in appointments in federal civil service system. Traditionally, the purpose of veterans preference was to compensate for the economic loss suffered by citizens who had served their country in the military and to recognize a duty to assist disabled veterans. By awarding veterans preference, Congress sought to restore veterans to a favorable competitive position in government employment. Historically, veterans preference in federal civil service employment has been reserved for those who were either disabled or who served in combat areas. (See CFDA: 17.806: Veteran's Preference in Federal Employment) At the state level, the majority of states provide for some type of veterans preference in state civil service employment; however, the statutes addressing veterans preference vary greatly.

Ohio Revised Code Section 124.23 currently provides that: . . . "any soldier, sailor, marine, coast guarder, member of the auxiliary corps as established by congress, member of the army nurse corps or navy nurse corps, or red cross nurse who has served in the army, navy, or hospital service of the United States, and such other military service as is designated by congress, including World War I, World War II, or during the period beginning May 1, 1949, and lasting so long as the armed forces of the United States are engaged in armed conflict or occupation duty, or the selective service or similar conscriptive acts are in effect in the United States, whichever is the later date, who has been honorably discharged therefrom or transferred to the reserve with evidence of satisfactory service, and is a resident of Ohio, may file with the director of administrative services a certificate of service or honorable discharge, whereupon the person shall receive additional credit for twenty per cent of the person's total grade given in the regular examination in which the person receives a passing grade. . . ."

Generally, the statute has been interpreted to mean that an individual must have served in active duty status; be discharged or separated (honorably), or transferred to the reserve with evidence of satisfactory active duty service; be able to produce a DD Form 214 establishing his or her honorable separation or discharge from active duty; be an Ohio resident;

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SPBR Investigations of Civil Service Commissions Under R.C. 124.40

Elaine Stevenson, State Personnel Board of Review

Ohio Revised Code Section 124.40(A) outlines the duties imposed upon civil service commissions in the State of Ohio, specifically: “. . . Such municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with this chapter for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein; and for standardizing positions and maintaining efficiency therein. The municipal civil service commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state. . . .”

R.C. 124.40(A) also outlines SPBR’s investigative authority over civil service commissions, specifically: “. . . . Whenever the board has reason to believe that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform his duties as a member of the commission, it shall institute an investigation , and if, in the judgment of the board, it finds any such violation or failure to perform the duties imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city , which report shall be a public record.”

Pursuant to Ohio Administrative Code Section 124-1-03, investigation requests must be filed in writing within six months of knowledge of the alleged violations. This time period may be extended within the discretion of the board where the violation is ongoing or there is a pattern of violation over an extended period of time; however, extending the time period beyond six months is a rare occurrence.

An investigation request under R.C. 124.40 is initiated upon receipt of a written request with SPBR. After receiving the investigation request, a case file is created and a notice of request for investigation is mailed to the parties. The investigation case is then assigned to an administrative law judge, who conducts the investigation by an exchange of correspondence between SPBR and the parties. In rare instances, an investigation case may be set for hearing. The exchange of correspondence usually begins with a letter from the administrative law judge requesting a response to the allegations. After the record has been adequately developed, the administrative law judge will issue a report and recommendation determining if actual civil service law violations have occurred and, depending upon the findings in the report, make a recommendation to either correct the situation or terminate the investigation. The parties then have an opportunity to file objections to the report and recommendation if they so choose.

After the time for objections has transpired, the entire case file, the report and recommendation, and any objections are given to the Board, the Board either adopts, modifies, or rejects the report and recommendation. Should the Board find a civil service commission member violating or failing to perform duties imposed upon him or her by law, the Board will give the commission member an opportunity to correct the situation as an alternative to making a report to the chief executive authority. Generally, the investigation process takes approximately six months to conclude. If any questions arise during the investigation, parties are encouraged to contact SPBR.

While it is clear that R.C. 124.40 is applicable to statutory municipalities, it is unclear whether or not SPBR has any investigative authority over charter municipalities pursuant to R.C. 124.40. Case law has held that SPBR does not have authority to investigate or remove a charter city’s civil service commission members when the charter has established their own removal procedures; however, general law may supercede a municipality’s home-rule authority if the subject matter involved has significant extraterritorial effects and it affects the general public of the state as a whole more than it does the local inhabitants. If the latter situation exists, it is conceivable that SPBR would have authority to investigate pursuant to R.C. 124.40. (See, *State Personnel Board of Review v. City of Bay Village Civil Service Commission* (1986), 28 Ohio St.3d 214; *State, ex rel. Evan v. Moore* (1982), 69 Ohio St.2d 88); *Kettering v. State Employment Relations Board* (1986), 26 Ohio St.3d 50).

The key points to remember in any investigation case are: 1) thoroughly respond to the allegations contained in the investigation request; 2) provide any pertinent documentation to support your position and; 3) communicate promptly with SPBR if any items in the allegations are unclear or if you have any other questions.



Veterans Preference

Revisited *continued from page 3*

and have received a passing score on an open competitive examination. Notwithstanding this interpretation, several issues remain. For example, 1) Is “service” limited to exclude types of duty that may be considered “active duty,” such as training? 2) What constitutes active duty? 3) Does the statute limit veterans preference eligibility to those who served during armed conflict or occupation? 4) What service members constitute “auxiliary corps as established by congress?” 5) Do members of the Reserve and National Guard with proof of prior active military service qualify for veterans preference?

This Board’s recent research of veterans preference in federal law indicates that Congress did not intend to preempt state veterans preference statutes. Although R.C. 124.23 language such as “auxiliary corps as established by congress” and “such other military service as designated by congress” clearly impacts who is eligible for veterans preference in Ohio’s civil service system and may necessitate looking to federal law to define certain terms, federal law specifically addressing veterans preference in the federal civil service system does not appear to override state law. Therefore, federal law criteria for veterans preference in the federal system, such as 180 days of active duty requirement, appear to be inapplicable at the state level. (See 5 USCS § 2108)

It is important to note that providing veterans preference under the provisions of R.C. 124.23 is mandatory for statutory cities. However, for cities with a charter form of government pursuant to Article XVIII, Section 7 of the Ohio Constitution, case law has held that, because the appointment and promotion of city employees is an exercise of local self-government, a charter city has authority in public employee situations. Consequently, it appears that charter cities

are not required to follow Revised Code provisions governing veterans preference. (See *Taylor v. Middletown* (1989), 58 Ohio App.3d 88).

Keeping in mind that R.C. 124.23 veterans preference language remains open to interpretation, listed below are some points to remember on the subject. ■

Nature of Veterans Preference

- Veterans preference is added only to open competitive examinations.
- Veterans preference is never added to promotional examinations.
- Veterans preference is a 20% bonus added to a passing score.

Eligibility for Veterans Preference

- Individuals who served in [active duty] status in the U.S. Armed Forces who can provide a copy of their DD Form 214 clearly showing their honorable discharge or separation under honorable circumstances (e.g. general discharge/condition: honorable).
- Individuals in U.S. Reserve Armed Forces who can establish their transfer to the reserve with a copy of their DD Form 214 clearly showing their honorable discharge or separation under honorable circumstances from active duty to the reserve.
- Individuals who are residents of the State of Ohio.
- Individuals who can produce all the necessary paperwork (i.e., DD Form 214) prior to sitting for an open competitive civil service examinations (Department of Administrative Services’ requirement).

What Do You Want To See?

The articles appearing in these first few issues of CSC Update have resulted from your responses to the survey conducted by SPBR in July 2000.

We want to continue to inform you about topics that are interesting and useful to you in the performance of your responsibilities as civil service commissions.

If you would like to suggest a topic to be covered in a future issue of CSC Update, please contact Elaine Stevenson at:

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*Please send us your
comments, questions and
suggestions regarding
CSC Update.*
■

In the Next Issue

Municipal Authority: Civil Service Commissions v. City Administration

Sunshine Law Update: Public Meetings and Executive Sessions.

House Local Government and Townships Committee

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Jim Carmichael	01	R	Wooster	614/466-1474
Diana Fessler	43	R	New Carlisle	614/466-8114
Larry L. Flowers	24	R	Canal Winchester	614/466-4847
Jim Hughes	27	R	Columbus	614/466-2473
Amy Salerno	23	R	Columbus	614/466-1896
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