Michigan Law Review

Volume 51 | Issue 4

1953

LEGISLATION-MICHIGAN VETERANS' RE-EMPLOYMENT ACT

William Andrew Bain, Jr. S.Ed.
University of Michigan Law School

LEGISLATION—MICHIGAN VETERANS' RE-EMPLOYMENT ACT—A recent Michigan statute[1] provides for the re-employment of former employees[2] of the state or the subdivisions thereof who left their positions, voluntarily or involuntarily, for service in the armed forces of the United States and have been honorably discharged. No opinion as to the interpretation or effect of the statute has been rendered by the Michigan courts or by any official state agency, but an examination of the very similar federal statute,[3] and the litigation which it has fostered, indicates that a number of problems may arise. An insight into some typical problems and their possible solutions may be obtained from an examination of the federal decisions.

The primary purpose of the statute is to insure that the returning veteran will not be retarded in his civilian occupation because of his absence on military duty and, therefore, it will be interpreted liberally in his favor.[4] However, the language of the statute will be given its ordinary and usual meaning[5] and will not be construed to put the veteran in a more favorable position than he would have been in if he had not entered the service.[6] The provisions of the federal act are mandatory[7] and give the returning veteran a right to be restored to his former position, *or* to a position of like seniority, status and pay, for a period of one year, provided he is still qualified, the position still exists, and it is feasible to re-employ him.[8] Under the federal act, the employer may restore the veteran to his former position *or* to a position of like seniority, status and pay at his option,[9] but a different result may obtain under the Michigan act. The Michigan act provides that the veteran shall "be restored to such position if it exists and is not held by a person with greater seniority, *otherwise* to a position of like seniority, status and pay."[10] The use of the mandatory word "shall," and the conditions imposed, that is, if the position exists and is not held

[1] Mich. Pub. Acts (1951) No. 263; Mich. Stat. Ann. (Cum. Supp. 1951) §4.1486.

[2] The statute would appear to apply to civil service and non-civil service employees.

[3] 62 Stat. L. (1949) 604, as amended, 50 U.S.C. App. (Supp. V, 1952) §459.

[4] Fishgold v. Sullivan Drydock and Repair Corp., 328 U.S. 275, 66 S.Ct. 1105 (1946); Kay v. General Cable Corp., (3d Cir. 1944) 144 F. (2d) 653.

[5] McCarthy v. M. and M. Transp. Co., (1st Cir. 1947) 160 F. (2d) 322.

[6] Meehan v. National Supply Co., (10th Cir. 1947) 160 F. (2d) 346; Siaskiewicz v. General Electric Co., (2d Cir. 1948) 166 F. (2d) 463; Congregation of Brothers of St. Francis Xavier v. Grone, (6th Cir. 1947) 164 F. (2d) 689.

[7] Hilton v. Sullivan, 334 U.S. 323, 68 S.Ct. 1020 (1948).

[8] 50 U.S.C. App. (Supp. V, 1952) §459(b)(c)(e).

[9] Major v. Phillips-Jones Corp., (2d Cir. 1951) 192 F. (2d) 186; cert. den. 343 U.S. 927, 72 S.Ct. 760 (1952); Bova v. General Mills, (6th Cir. 1949) 173 F. (2d) 138.

[10] Mich. Stat. Ann. (Cum. Supp. 1951) §4.1486(2). (Italics added).

by a person of greater seniority, would allow a finding that the veteran is entitled to his old position *unless* these conditions are present. Further, the use of "otherwise," as contrasted with the use of "or" in the federal act, would make it more difficult to find that the old position and the position of like seniority, status and pay were intended as alternatives. However, the Michigan act does provide in another section that where it is not feasible to restore the veteran to a position in a certain department or agency, he shall be appointed to a position for which he is qualified in another department or agency, if such position is vacant or is held by a person with less seniority.[11] While this provision would appear to be in conflict with the foregoing provisions, it seems likely that it is intended to cover cases where the public employer has undergone a change of circumstances such that re-employment of the veteran in the same position or a similar position is not feasible. The provision would cover cases where economic or other conditions necessitated a reduction of force so that the position was abolished. In such a case, it would not appear that the employer should create a useless position just because the former incumbent was a veteran.[12] But a mere loss of efficiency or increase in the cost of operation,[13] or a desire to continue the present employee in the position due to a more harmonious employer-employee relationship,[14] would not generally be such a change of circumstances. Where a veteran is re-employed, he does not acquire a super-seniority, but is placed in the same position with relation to his fellow employees as if he had never been absent.[15] Although he is entitled to all benefits which accrue because of his accumulated seniority, he is not entitled to those benefits which require actual on-the-job experience.[16] Under the Michigan act, the veteran may not be discharged without cause for a period of one year,[17] but, if the act is interpreted as the federal act has been, he is subject to the same rules and discipline as other employees and may be discharged for a violation.[18] In the case where the former position no longer exists or is held by a person of greater seniority, the question arises as to the meaning of "like seniority, status and pay." The federal decisions indicate that no special connotation is given these terms; therefore, if the veteran is given a position substantially similar in opportunity, skills, pay and seniority to that which he would have had if he had not been absent, the requirements of the act will be satisfied.[19] Again, he would not be entitled to benefits which require on-

[11] Mich. Stat. Ann. (Cum. Supp. 1951) §4.1486(2)b2. Although there is a similar provision in the federal act, 50 U.S.C. App. (Supp. V, 1952) §459(e)1B, there apparently has been no litigation involving it.

[12] Ruesterholtz v. Titeflex, Inc., (3d Cir. 1948) 166 F. (2d) 335.

[13] Van Doren v. Van Doren Laundry Service, (3d Cir. 1947) 162 F. (2d) 1007.

[14] Kay v. General Cable Co., supra note 4.

[15] Fishgold v. Sullivan Drydock and Repair Co., supra note 4.

[16] Altgens v. The Associated Press, (5th Cir. 1951) 188 F. (2d) 727.

[17] Mich. Stat. Ann. (Cum. Supp. 1951) §4.1486(3).

[18] Manowitz v. Einhorn Wholesale Grocery, (D.C. N.Y. 1946) 68 F. Supp. 907.

[19] Bowen v. Home Beneficial Life Ins. Co., (4th Cir. 1950) 183 F. (2d) 376; Bova v. General Mills, supra note 9; Schwetzler v. Midwest Dairy Products Corp., (7th Cir. 1949) 174 F. (2d) 612.

the-job experience.[20] Despite the mandatory character of the act and the liberal interpretation it is accorded, it is quite probable that all benefits could be waived, in the absence of fraud,[21] by an acceptance without reservation of a different position[22] or the same position at less pay.[23] While this analysis is clearly not authoritative because of the complete absence of Michigan authority, it does indicate the course which has been followed by the federal courts and it is possible that the Michigan court, when faced with similar problems, may arrive at the same conclusions.

William Andrew Bain, Jr., S.Ed.

[20] Altgens v. The Associated Press, supra note 16.

[21] Loeb v. Kivo, (2d Cir. 1948) 169 F. (2d) 346, cert. den. 335 U.S. 891, 69 S.Ct. 246 (1948).

[22] Walsh v. Chicago Bridge and Iron Co., (D.C. Ill. 1949) 90 F. Supp. 322.

[23] But it is probably required that there be an express waiver of the benefits of the act. Loeb v. Kivo, supra note 21.