

LAW REVIEW¹ 0820
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Third Supreme Court Case Relating to Reemployment Statute: *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U.S. 521 (1949)

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1.1.2.3—Employees Who Have Been Laid Off

1.3.2.2—Continuous Accumulation of Seniority—Escalator Principal

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Under the collective bargaining agreement between the union and the employer (Lockheed Aircraft Corporation), layoffs caused by reduced need for employees were based strictly on seniority, except that certain elected officers of the union were given "super seniority" while holding those offices. The idea was that these officers needed to be present and working in order to represent the interests of all employees in the bargaining unit represented by the union. If the officers were laid off, they might not be able to represent the employees

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

effectively. The super seniority only applied to layoff protection, and a union officer lost his super seniority upon leaving office.

After the end of World War II, the need for Lockheed's products dropped dramatically and many employees were laid off, in accordance with seniority. This suit was brought by three veterans who were reemployed by Lockheed and then laid off, in accordance with seniority, along with hundreds of other employees who were not veterans. As in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), these veterans *would have been laid off anyway*, even if their Lockheed careers had not been interrupted by military service. These veterans were given Lockheed seniority credit for the time they worked for the company before entering military service, and also for the time that they were away from work for such service. Even with such seniority credit, they did not have enough company seniority to avoid being included in the mass layoffs after the end of World War II.

The three veterans asserted that laying them off while retaining union officers who had less overall company seniority violated the reemployment statute. The Supreme Court rejected this argument: "Of course, the Selective Service Act restricts a readjustment of seniority rights during the veteran's absence to the disadvantage of the veteran. But it would be an undue restriction of the process of collective bargaining (without compensating gain to the veteran) to forbid changes in collective bargaining arrangements which secure a fixed tenure for union chairmen, whereby veterans as well as nonveterans are benefited by promoting greater protection of their rights and smoother operation of labor-management relations. All this presupposes, obviously, that an agreement containing the 1945 provisions expresses honest desires for the protection of the interests of all members of the union and is not a skillful device of hostility to veterans. There is not the remotest suggestion that the 1945 agreement was other than what it purported to be—the means for securing both to veterans and to nonveterans better working conditions through elected leaders not subject to the contingencies of a labor turnover." *Aeronautical Industrial District Lodge 727*, 337 U.S. at 529.

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ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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