

LAW REVIEW¹ 09003

January 2009

Eleventh Supreme Court Case Relating to Reemployment Statute *Eagar v. Magma Copper Co.*, 389 U.S. 323 (1967)

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.3.2.11—Vacations, Holidays, and Days Off

1.10—Vacation Benefits

10.1—Supreme Court Case on Reemployment

Stephen R. Eagar was employed by Magma Copper Co. from March 12, 1958, until March 6, 1959, when he left his job for military service. He left active duty under honorable conditions three years later, and he returned to work at Magma on May 2, 1962.

The collective bargaining agreement (CBA) between Magma and the International Union of Mine, Mill & Smelter Workers provides as follows concerning vacations: “An employee who has been continuously employed by the company for at least one year immediately preceding the date of his application for vacation and who has not had a vacation within said year and who has worked at least 75 percent of his available shifts within said year and who is an employee of

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.

the company on the day his vacation commences shall be entitled to a vacation with pay as hereinafter set forth."

The CBA provides as follows concerning holiday pay: "Employees covered by this agreement shall be paid the straight time rate, exclusive of shift differential, for the named holidays when not worked, subject to the following terms and conditions: ... An employee must have been on the company's payroll continuously for three months prior to the holiday in question."

Mr. Eagar had worked more than 75 percent of available shifts between March 1958, when he began his employment with Magma, and March 1959, when his Magma employment was interrupted by military service. After returning to work on May 2, 1962, he worked the last scheduled shift prior and first scheduled shift after the Memorial Day and Independence Day holidays in 1962. He requested holiday pay for those two days and a vacation sometime during the year from March 1962 to March 1963.

Magma turned him down on both requests, and he filed suit, asserting that denying him those benefits was inconsistent with the reemployment statute. The District Court ruled in his favor, and Magma appealed. The Court of Appeals reversed the District Court judgment in favor of Mr. Eagar. *Magma Copper Co. v. Eagar*, 380 F.2d 218 (9th Cir. 1966). This appellate decision was released on Jan. 31, 1966.

Just a month later (Feb. 28, 1966), the Supreme Court decided *Accardi v. Pennsylvania Railroad Co.*, 383 U.S. 225 (1966). (*Accardi* is the tenth case in this series of Supreme Court reemployment rights case notes.) Mr. Eagar filed a motion for rehearing with the Court of Appeals, suggesting that its decision was inconsistent with *Accardi*. The Court of Appeals denied the motion for rehearing. Judge Madden of the Court of Claims (sitting by designation on this 9th Circuit panel) dissented, writing: "I think that our decision is contrary to *Accardi* and that we should grant the motion for rehearing."

The other two judges would have been well advised to follow Judge Madden's lead, because the Supreme Court granted *certiorari* and reversed in a terse *per curiam* decision: "The petition for writ of *certiorari* is granted and the judgment is reversed. *Accardi v. Pennsylvania Railroad Co.*, 383 U.S. 225."

Please join or support ROA

This article is one of 1800-plus "Law Review" articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

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.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

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:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002