

Veterans' Preference for State Employees in Washington

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

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Since the end of World War II the State of Washington has provided a preference to any qualified veteran in obtaining a state or local government job or in getting promoted. This is Revised Code of Washington (RCW) section 41.04.010. Please see Law Review 1132 (April 2011), by Major (now Lieutenant Colonel) Matthew Z. Crotty, ARNG.³

Recently ROA Life Members Matthew Crotty and Thomas Jarrard brought a class action lawsuit against the Washington State Patrol (WSP), the State of Washington, and individual WSP

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.

³Colonel Crotty is a life member of ROA and an attorney in Spokane, Washington.

supervisors for violations of USERRA's anti-discrimination, seniority, and benefits provisions as well as 42 U.S.C. 1983, the federal statute that allows individuals to sue the government for improper deprivation of a property right. Plaintiffs alleged that the property right at issue in this case is the RCW 41.04.010 benefit. Immediately after plaintiffs filed the lawsuit, the defendants moved to dismiss the action, arguing that the plaintiffs' case did not plead a viable legal relief remedy. Specifically, the defense argued that the (a) plaintiffs' sole avenue relief was a state mandamus statute (b) USERRA had a statute of limitations pre-2008, (c) USERRA did not allow for an action against individual state-employee supervisors (d) USERRA did not provide a means for the plaintiffs' to obtain veteran preference points because USERRA is not a "veterans preference" statute and (e) one could not bring a 1983 and USERRA claim based on the same fact pattern.

The Spokane County Superior Court denied the defendants' motion. The Court found that mandamus was not the exclusive remedy by which one could sue to enforce the veteran preference statutes, that USERRA had no statute of limitations, that USERRA was a proper means to sue to obtain legislatively conferred veterans preference points as such points were a "benefit of employment" as defined by USERRA, that USERRA allowed for claims to be brought against individual state-employee supervisors, and that the RCW 41.04.010 veterans preference points were a "property right" protected by the substantive and procedural due process clauses of the 14th Amendment of the US Constitution.

The case now moves forward. We will keep the readers informed of developments in this important case.

Update – May 2022

The case discussed in the article is *Martin v. Washington*.⁴ On May 5, 2017, the parties reached a Settlement Agreement worth about \$15 million in both monetary and non-monetary relief.⁵ The State of Washington will pay \$13 million to cover claims for back pay and benefits and will contribute additional funds to the Washington State Department of Retirement Services for retirement contributions lost in the hiring or promotions process of Class members.⁶

For more information on the case, see Law Review 17052 (May 2017).

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This article is one of 1800-plus "Law Review" articles available at <https://www.roat.org/page/lawcenter>. The Reserve Officers Association, now doing business as

⁴No. 14-2-00016-7 (Wash. Sup. Ct.

⁵*Martin v. State of Washington and the Washington State Patrol, No. 14-2-00016-7 (Wash. Super Ct.) – Class Settlement of Approximately \$15 million*, EMPLOYMENT RIGHTS FOR RESERVISTS, SERVICEMEMBERS, AND VETERANS <https://www.userrights.com/case/martin-v-state-washington-and-washington-state-patrol-no-14-2-00016-7-wash-super-ct-class> (last visited May 5, 2022).

⁶*Id.*

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:

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