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USERRA Applies to Union Hiring Hall

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Q: I am an active life member of ROA and a department officer, and a loyal reader of your Law Review column. My son completed a lengthy apprenticeship program with the Plumbers and Pipefitters Union but went for many months without a plumbing assignment because of sparse construction in mid-winter. Now he is in the final stages of being accepted by the National Guard for basic training, which will be followed by two years of active duty specialty training. However, he recently was notified to expect, any day now, his first plumbing job assignment through the union hiring hall. When he receives it, he will have to decline it, because his basic training date is imminent.

He has been told that if he declines the job assignment he will lose his union seniority, the union will blacklist him, he will never receive a subsequent job assignment, and he will have to repay many thousands of dollars in training he received as part of his initial contract with the union. This means that all the time and effort that he has put into the apprenticeship program will have been wasted.

I contacted the union on his behalf, and they informed me that if my son declines a job referral he will not receive any further job referrals. I suggested that such a policy might constitute a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). The union's business agent asserted that USERRA only applies to employers, not unions. I have researched your back Law Review columns, on ROA's Web site, and I did not find anything on point. Help!

A: I have touched on this sort of situation in Law Reviews 28 and 139. I also invite your attention to Law Review 36. Go to www.roa.org. Click on "Legislative Affairs" then "ROA Law Reviews."

Section 4303 of USERRA defines 16 terms, including the word "employer." The definition expressly includes "a person, institution, organization, or other entity to whom the employer [in the traditional sense] has delegated the performance of employment-related responsibilities." [38 U.S.C. 4303(4) (A)(i)] The unionized construction industry employers in your state have delegated the job assignment responsibility to the union and its hiring hall. Thus, the union is your son's "employer" as defined by USERRA, and the union is bound by USERRA.

USERRA's legislative history expounds upon the congressional intent behind this language, as follows: "Section 4303(4) would define 'employer' and is to be broadly construed. It includes not only what may be considered a 'traditional' single employer relationship, but also (1) those under which a servicemember works for several

employers in industries such as construction, longshoring, etc., where the employees are referred to employment, and (2) those where more than one entity may exercise control over different aspects of the employment relationship. See, e.g., *Adams v. Mobile County Personnel Board*, 115 LRRM 2936 (S.D. Ala. 1982); *Magnuson v. Peak Technical Services, Inc.*, 808 F. Supp. 500, 507-511 (E.D. Va. 1992).

This definition would also include potential employers in the case of a failure to hire an applicant as well as entities to which certain employment-related responsibilities have been delegated, such as pension funds. See *Imel v. Laborers' Pension Trust Fund*, 904 F.2d 1327 (9th Cir.), cert. denied, 111 S. Ct. 343 (1990); *Akers v. Arnett*, 597 F. Supp. 557 (S.D. Tex. 1983), affirmed, 748 F.2d 283 (5th Cir. 1984). House Report No. 103-65, 1994 United States Code Congressional & Administrative News 2449, 2454.

The bottom line is that the union and its hiring hall are subject to USERRA. O

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