

Last week, an Administrative Law Judge rejected the attempt by Robert Fowler, attorney for the Minnesota Public Employees Association (MNPEA), to reinterpret the Minnesota Veterans Preference Act (VPA). Mr. Fowler was retained by Steele County Sergeant Todd Schwanke, whom the Steele County Sheriff had removed from his assignment on the interdepartmental SWAT team operated by the South Central Drug Investigation Unit.

The VPA provides that when an honorably discharged veteran has been removed from a position of public employment, he must be notified of his right to a hearing to determine whether the removal was for incompetence or misconduct. The Minnesota Supreme Court has held that the same rights apply to a veteran who has been demoted, if the demotion is the functional equivalent of removal from a job. Before retaining Mr. Fowler, Sergeant Schwanke had approached LELS to inquire whether his removal from the SWAT team was a demotion that could be challenged under the VPA. After careful consideration, we advised Sergeant Schwanke that his participation on the SWAT team was an assignment, not a position, and that the VPA would not apply. However, this did not stop Mr. Fowler from petitioning the ALJ on Sergeant Schwanke's behalf.

In his decision last week, ALJ Kevin Snell recommended dismissal of Sergeant Shwanke's petition. ALJ Snell's analysis of the issue was much the same as LELS' had been: under the terms of the Drug Investigation Unit's Joint Powers Agreement, Sergeant Schwanke's participation on the SWAT team was always intended as a temporary extra duty assignment and not a position within the meaning of the VPA – Sergeant Schwanke was appointed to and could be removed from the SWAT team at the discretion of the Sheriff. ALJ Snell concluded that Mr. Fowler's arguments regarding Sergeant Schwanke's VPA rights "would cause an absurd result".