

SUPREME COURT OF OREGON

Multnomah County Sheriff's Office v. Edwards

361 Or. 761 (2017) · No. SC S064109 · Decided August 10, 2017

SUMMARY

The Oregon Supreme Court affirmed the Court of Appeals and the Bureau of Labor and Industries' final order concerning Multnomah County's failure to apply disabled-veteran preference in a promotion process that did not produce a score. The court held that ORS 408.230(2)(c) requires a public employer to devise in advance and apply a standard, regular procedure for giving veterans and disabled veterans special consideration. The court declined to address the validity of BOLI's administrative rules and the county's challenge to emotional-distress damages because those issues were unnecessary or unpreserved.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Landau, J.; Balmer, Chief Justice; Kistler, Justice; Walters, Justice; Landau, Justice; Flynn, Justice; Duncan, Justice; Ortega, Judge of the Court of Appeals, Justice pro tempore
JURISDICTION	Oregon
DECIDED	August 10, 2017
DOCKET	SC S064109
DISPOSITION	affirmed
PROCEDURAL POSTURE	Judicial review of a final order of the Oregon Bureau of Labor and Industries in an administrative proceeding concerning veterans' preference in public employment; review was taken from the Court of Appeals.
STANDARD OF REVIEW	On judicial review of an agency final order, unchallenged agency findings constitute the facts for review, and challenged findings are binding if supported by substantial evidence in the record as a whole. Questions of statutory interpretation are decided without deference when the statutory terms are inexact rather than precisely defined or broadly delegative.
PRECEDENTIAL VALUE	binding

PARTIES

Multnomah County Sheriff's Office v. Rod Edwards, Bureau of Labor and Industries

TOPICS

employment law

administrative law

judicial review of agency action

statutory interpretation

remedies

PRACTICE AREAS

employment law

administrative law

municipal law

remedies

QUESTIONS PRESENTED

1. Whether ORS 408.230(2)(c) requires a public employer using an unscored hiring or promotion process to devise a standard or regular procedure in advance for giving special consideration to veterans and disabled veterans.
2. Whether BOLI's rule requiring application of a veterans' preference method at each stage of the hiring process was valid.
3. Whether the county could raise for the first time on judicial review its challenge to BOLI's authority to award emotional-distress damages.

HOLDINGS

1. When a public employer uses a hiring or promotion process that ranks applicants by a method that does not result in a score, ORS 408.230(2)(c) requires the employer to devise and apply a discernible, standard or regular procedure developed in advance for giving special consideration to veterans and disabled veterans.
2. Because the county did not challenge BOLI's factual findings, those findings were binding on judicial review and established that the county had not adopted a consistent method for granting veterans' preference.
3. The county's challenge to BOLI's authority to award emotional-distress damages was not preserved and could not be raised for the first time on judicial review because it challenged the lawfulness of the agency's exercise of authority, not the agency's subject-matter jurisdiction.

KEY QUOTATIONS

“Nothing in the legislative history suggests that the legislature intended to afford public employers the “flexibility” to avoid devising a process for granting the preference at all.” (at 775)

“In contrast with the county’s version of events, BOLI found that the county had not adopted a consistent method of granting veterans preference in the hiring process.” (at 776)

FACTUAL BACKGROUND

Multnomah County Sheriff's Office conducted an internal promotion process from sergeant to lieutenant involving a letter of interest, resume, 360-degree review, and command-staff interview, none of which produced a score. Rod Edwards, one of three qualified applicants, was a disabled veteran entitled to a statutory preference, but the job announcement did not mention veterans' preference. The county had no written policy explaining how the preference would be applied, and county personnel gave conflicting accounts about when, how, and by whom Edwards's preference was applied. Edwards was ranked third by each interviewer and was not promoted.

PROCEDURAL HISTORY

Rod Edwards, a disabled veteran, filed a BOLI complaint alleging that Multnomah County Sheriff's Office failed to provide the veterans' preference required by ORS 408.230(2)(c) in a promotion process. BOLI found a violation, ordered the county to adopt a written preference method, train its staff, cease and desist from violations, and pay Edwards \$50,000 in emotional-distress damages. The Court of Appeals affirmed, and the Oregon Supreme Court affirmed both the Court of Appeals decision and BOLI's final order.

DISPOSITION

affirmed

CASES CITED

- Multnomah County Sheriff's Office v. Edwards, 277 Or. App. 540, 373 P.3d 1099 (2016)
- Springfield Education Assn v. School Dist., 290 Or. 217, 223-24, 621 P.2d 547 (1980)
- OR-OSHA v. CBI Services, Inc., 356 Or. 577, 585, 341 P.3d 701 (2014)
- State v. Gaines, 346 Or. 160, 171-72, 206 P.3d 1042 (2009)
- State v. Dickerson, 356 Or. 822, 829, 345 P.3d 447 (2015)
- Younger v. City of Portland, 305 Or. 346, 356, 752 P.2d 262 (1988)
- Jefferson County School Dist. No. 509-J v. FDAB, 311 Or. 389, 393 n. 7, 812 P.2d 1384 (1991)
- Waddill v. Anchor Hocking, Inc., 330 Or. 376, 384, 8 P.3d 200 (2000)
- SAIF v. Shipley, 326 Or. 557, 561 n. 1, 955 P.2d 244 (1998)
- State v. Nix, 356 Or. 768, 780, 345 P.3d 416 (2015)
- Wink v. Marshall, 237 Or. 589, 592, 392 P.2d 768 (1964)
- PGE v. Ebasco Services, Inc., 353 Or. 849, 856, 306 P.3d 628 (2013)
- State v. McDonnell, 343 Or. 557, 562-63, 176 P.3d 1236 (2007)
- Diack v. City of Portland, 306 Or. 287, 293, 759 P.2d 1070 (1988)
- Planned Parenthood Assn v. Dept. of Human Res., 297 Or. 562, 565, 687 P.2d 785 (1984)
- O'Hara v. Board of Parole, 346 Or. 41, 47-49, 203 P.3d 213 (2009)
- State v. Serrano, 355 Or. 172, 179, 324 P.3d 1274 (2014)

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