

Union, Law Firm Partner to Pursue Reservists' Benefit Claims

The American Federation of Government Employees has teamed up with a New York law firm to help federal employee reservists collect thousands of dollars in back pay.

The union and Tully, Rinckey & Associates will co-represent about 10,000 AFGE members who claim they were improperly charged leave for reserve duties, even if such duties occurred on weekends, federal holidays or other days when they were not regularly scheduled to work.

"Our partnership with AFGE shows true national leadership within the legal field by attorneys within our firm," said founding partner Mathew Tully. "The opportunity to connect with such a respected union and assist thousands of members is one which we are proud to have."

By law, federal employee reservists are given 15 days of military leave annually, with the ability to carry any unused leave into the following year. But prior to a 2000 amendment, the government's standard practice was to charge reservists with military leave for every day they were on reserve duty, even if a portion of the leave occurred on days when they were not regularly scheduled to work. This forced many federal employees to dip into annual and sick leave and leave without pay to perform reserve duties.

In 2003, the U.S. Court of Appeals for the Federal Circuit ruled in *Butterbaugh v. Department of Justice* that the government's practice of charging military leave constituted the denial of a benefit of employment in violation of the 1994 Uniformed Services Employment and Reemployment Rights Act.

AFGE, which brought the *Butterbaugh* suit, experienced a surge of claims from union members after the decision, said Joe Henderson, assistant general counsel for AFGE. "Obviously, the claims we initiated were the tip of the iceberg . . ." Henderson said. "We thought [the partnership] would be in the best interest of our members, especially with the facilities this law firm has developed in moving these claims."

Meanwhile, the federal circuit also ruled in August that one of Tully's clients -- retired civilian Air Force mechanic Jose Hernandez -- was entitled to back pay for improperly charged leave from 1980 to 2001.

The court affirmed that the Merit Systems Protection Board has the authority to order relief for violations of USERRA, even for service prior to the law's enactment. As a result, federal employee reservists now can seek credit for improperly charged leave dating back to 1980.

Tully estimated that 300,000 federal employees could be affected by the Hernandez decision, with the average amount of compensation per employee totaling more than \$3,000.

"Our firm is completely dedicated to the protection of veterans' rights," Tully said. "This is only the beginning."

The Senate Veterans' Affairs Committee will hold a hearing Wednesday to examine how the

Labor Department and the Office of Special Counsel have been enforcing the USERRA law.