Labor Law—Veterans’ Right to Reemployment under Selective Training and Service Act—“Super-seniority”—[Federal].—The plaintiff corporation, a manufacturing concern whose activities had greatly expanded during the war-time emergency, but whose employees had been reduced over two-thirds since the cessation of hostilities, brought suit for declaratory judgment to determine the respective rights to employment of four returning veterans and four non-veteran employees. The veterans based their claim to reemployment on the Selective Training and Service Act, although each of them would displace a non-veteran with greater seniority, while the non-veterans claimed rights under the collective bargaining agreement in effect with the plaintiff guaranteeing seniority rights with respect to lay-offs, reemployment, demotions, and promotions. It was admitted by the non-veterans that the veterans were entitled to seniority accrued during military service in addition to that accrued during their actual employment with the plaintiff. Held, three of the veterans are not entitled to reemployment since they had held merely “temporary” positions with the plaintiff, their employment being subsequent to the expansion begun by the plaintiff in 1939 because of the emergency. The fourth veteran, who had been employed prior to 1939, may not be employed to the prejudice of one with greater seniority, thus advancing him beyond the seniority he would have possessed had he not entered military service. In any event it would be unreasonable to require that he replace the senior employee in view of the employer’s changed circumstances. The considerations applied to the case of the fourth veteran were also held applicable to the cases of the first three veterans.

Olin Industries, Inc. v. Barnett. On the face of the act it would at first appear that the veterans’ claim of an “absolute right to reemployment” or “super-seniority” is sound. The condi-
tions on which a veteran's right to reemployment is predicated do not include seniority; \(^7\) seniority is used only as a measure of an alternative position, and the subsequent provision that the veteran shall suffer no loss in seniority\(^8\) applies to his status after restoration. The Director of Selective Service has taken this position.\(^9\) The Department of Labor, on the other hand, has stated that there is no basis for an interpretation that would require displacement by a veteran of an employee with greater seniority,\(^10\) and the same conclusion has been reached in several arbitration cases.\(^11\) It is pointed out that under these conditions a veteran's restoration to a particular job would result in an advancement in his seniority rather than his placement in a position of "like seniority."\(^12\) Furthermore, the veteran must be considered "as having been on furlough or leave of absence"; an employee who returns from such leave does not displace an employee with greater seniority.\(^13\)

In a recent case, decided in another circuit, it was held that a veteran reemployed under the Selective Training and Service Act is subject after reemployment to lay-off in the order of ordinary seniority although the act provides that he shall not be discharged without cause within one year after his

---

7 The comparable English and Canadian Acts provide specifically that the veteran's right to reemployment is subject to seniority. Reinstatement in Civil Employment Act 1944, 7 & 8 Geo. VI, c. 15, § 5; Reinstatement in Civil Employment Act 1942 (Canada), 6 & 7 Geo. VI, c. 31, § 3.

8 "8(c). Any person who is restored to a position . . . . shall be considered as having been on furlough or leave of absence during his period of training and service . . . . [and] shall be so restored without loss of seniority . . . ." 54 Stat. 890 (1940), 50 U.S.C.A. (Appendix) § 308 (c) (1944).

9 Selective Service Local Board Memorandum 190-A, Part IV, 1(d) (May, 1944); Guides to Veterans' Reemployment Rights, 14 Lab. Rel. Rep. 379 (1944); see also Absolute Guarantee of Veterans' Jobs, 16 Lab. Rel. Rep. 349 (1945); Selective Service System Handbook, Veterans Assistance Program, Part III—Statutory Reemployment Rights, 2 C.C.H. Lab. Law Serv. ¶19,300, at pp. 20,711, 20,713. The National Association of Manufacturers has supported this view; Reemployment Rights of Veterans, 7 NAM Law Digest 17 (1944).


13 Couper, op. cit. supra, note 5, at 113.
It might seem absurd, assuming an absolute right of the veteran to reemployment, to say that a senior non-veteran laid off or demoted by reason of the reemployment of a veteran could immediately claim his job back on the basis of the principle of seniority, to which the veteran is subject after his reemployment. But if the supposedly displaced senior non-veteran were not laid off at the time, the veteran would be the one laid off upon a subsequent reduction of personnel, because of his lower seniority; or if the displaced non-veteran were rehired or promoted back to his old position soon afterwards, the veteran would again be displaced on a reduction. Thus the right to reemployment would apparently mean very little apart from the question of seniority, in spite of the apparent attempt of Congress to evade the question.

The court's holding that the positions of the first three veterans were merely "temporary" offers a tempting avenue of escape from the problem of "super-seniority" in many cases. By this means employees hired while the plant was still on a peace-time footing are protected from displacement by veterans hired after the emergency expansion of the plant, although the more difficult problem of the older veteran who was "permanently" employed is not solved. It does not appear, however, that there was any understanding at the time when the first three veterans were hired that they were to be "temporary," since the holding of the court was based solely on their hiring during the period of emergency expansion. Thus a large class of veterans who might well have expected at the time that the first three veterans were hired that they were to be "temporary," since the holding of the court was based solely on their hiring during the period of emergency expansion. Thus a large class of veterans who might well have expected at the time of hiring that they would be "permanent" (as much as any job is permanent) would be removed entirely from the protection of these provisions of the act, which do not apply to "temporary" employees. It would seem that they should at least be permitted to assert their claims as against employees junior in point of service.


15 Note 8, supra.


17 The seniority problem in reemployment was before Congress in its debates on the act, see 86 Cong. Rec. 10108, 10109 (1940), and the National Association of Manufacturers requested a clarification of these provisions while the act was under consideration by the House Military Affairs Committee, H. Rep. 10132, at 632, 76th Cong. 3d Sess. (1940). Nevertheless Congress left the applicable sections in the present ambiguous condition; compare the Department of Justice's neutral stand in interpretation of the act, Dept. of Justice Circ. no. 3851, Supp. 3, May 10, 1945, 2 C.C.H. Lab. Law Serv. ¶19,204, 16 Lab. Rel. Rep. 485 (1945).


19 Note 18, supra.
Probably the best solution of the problem is found in the "impossible or unreasonable" clause in the act. It would not be impossible to reinstate the veteran defendants, but it would appear to be unreasonable to require their reinstatement when the employer’s operations have been so reduced that senior employees would have to be displaced. Industrial and labor practices which have been built up over many years would be disrupted and a solution of employment problems according to procedures which have been established in industry would no longer be possible. A policy bound to arouse antagonism within the plant would be substituted and the result would be harmful to both labor and management. If veterans are given seniority out of proportion to that which they would have possessed had they not gone into military service, older workers with perhaps greater responsibilities would be deprived of a status on which they have come to rely; among those displaced may be veterans of the first World War. It is conceivable that some employers might have to operate almost entirely with relatively unskilled personnel. Those who have served their country in the armed forces are entitled to compensating benefits, but these should not be at the expense of a particular class.

Taxation—Constitutionality of Community-Property Estate Tax Amendments—[United States].—The plaintiffs, sole beneficiaries under the will of a Louisiana testator, filed a federal estate tax return reporting only one-half the value of the community property and one-half the proceeds of insurance policies on the decedent’s life, premiums for which had been paid out of community funds. The decedent had been the sole contributor to the community fund. The Commissioner of Internal Revenue under the authority of the 1942 community-property estate tax amendments to the Revenue Code levied a deficiency assessment, including in the gross estate the entire value of the community property and the entire proceeds from the insurance policies. The

An employer must restore a qualified person to “such position or to a position of like seniority, status, and pay unless the employer’s circumstances have so changed as to make it impossible or unreasonable to do so.” 54 Stat. 890 (1940), as amended 58 Stat. 798 (1944), 50 U.S.C.A. (Appendix) § 308 (b) (B) (Supp., 1945). The constitutionality of this section of the act was upheld in Hall v. Union Light, Heat and Power Co., 53 F. Supp. 817 (Ky., 1944). See also Kay v. General Cable Corp., 144 F. 2d 653 (C.C.A. 3d, 1944), with regard to interpretation of this provision.

In the instant case one of the veterans was attempting to displace his former foreman.

The American Veterans of World War II have contended that this would mean robbing Peter to pay Paul. Veterans Body’s “No” to Superseniority, 15 Lab. Rel. Rep. 198, 199 (1944).
