

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BRENDON K. MCKEAGE

Plaintiff,

vs.

Civil Action No. 07-cv-76-PB

TOWN OF STEWARTSTOWN

Defendant.

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, Brendon McKeage ("McKeage"), commenced the above entitled action in the United States District Court for the District of New Hampshire, alleging that the Defendant, the Town of Stewartstown, New Hampshire, violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by (a) failing to reemploy McKeage in his prior position, or a legally appropriate alternative position, upon his return from active duty; (b) considering McKeage's military obligation as a motivating factor in its decision to eliminate his position as part-time police chief and offer him a patrolman position; and (c) unlawfully establishing prerequisites to McKeage's reemployment.

2. As a result of settlement discussions, McKeage and Defendant have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It

is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of all claims alleged in the Complaint filed in this case.

STIPULATED FACTS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the District of New Hampshire over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. Defendant agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of the action and the parties to this action.
- b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the parties are protected adequately by this Decree.
- c. This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of the USERRA and other

applicable laws and will be in the best interest of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Decree is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by the Defendant of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities.

NON-RETALIATION

7. Defendant shall not take any action against any person which constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENTS

8. Defendant shall pay McKeage the amount of twenty five thousand dollars (\$25,000.00) in back wages, subject to the terms of a separate release agreement between McKeage and Defendant. Defendant shall be responsible for withholding appropriate federal and state employment-related taxes from McKeage's back-wage payment. Defendant shall provide documentary evidence of having paid McKeage by mailing proof of payment to the following

address within fourteen (14) days from entry of this Consent Decree:

Esther Tamburo
United States Department of Justice
950 Pennsylvania Ave., NW
Civil Rights Division
Employment Litigation Section, PHB, Room 4908
Washington, DC 20530

DISPUTE RESOLUTION AND COMPLIANCE

9. The Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall be required to give notice to each other ten (10) days before moving for review by the Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

MISCELLANEOUS

10. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

11. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action. This Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders interpreting and enforcing this judgment.

12. If any provision of this Consent Decree is found to be unlawful, only the specific

provision in question shall be affected and the other provisions will remain in full force and effect.

13. The terms of this Consent Decree shall be binding upon the heirs, successors, and assigns of the parties.


14. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing by all parties.

EFFECTIVE DATE

15. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.


16. This Consent Decree shall expire, and this action shall be dismissed, without further order of this Court, one year after entry of this Consent Decree. McKeage may move, for good cause, to extend the consent decree if the remedial relief called for herein has not been effectuated. The Consent Decree will not be extended, however, unless the Court grants McKeage's motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Decree.

BRENDON MCKEAGE

By: 
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Chief

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TOWN OF STEWARTSTOWN

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COUNSEL for DEFENDANTS

IT IS SO ORDERED this 27th day of March, 2007.



UNITED STATES DISTRICT JUDGE