

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JEFFREY P. RAWSON,

Plaintiff,

v.

CITY OF PITTSFIELD,
MASSACHUSETTS,

Defendant.

Civil Action No. 11-30250-KPN

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of Plaintiff Jeffrey P. Rawson (“Rawson”) and Defendant City of Pittsfield, Massachusetts (“City”) (collectively the “Parties”) to effectuate a final compromise and settlement of all claims raised in the complaint by Rawson in the above-captioned case.

1. Rawson, a Navy reservist, commenced this action in the United States District Court for the District of Massachusetts, alleging that the City violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4334 (“USERRA”) by bypassing him for promotion to Fire Lieutenant in the Pittsfield Fire Department and failing to reinstate him to the Assuming Additional Responsibilities List.

2. The City denies that it has violated USERRA and does not admit the allegations in the complaint. Nevertheless, as a result of settlement discussions, the

Parties have resolved their dispute and have agreed that this action should be resolved by entry of this Consent Decree (“Decree”). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the complaint filed by Rawson in this action.

STIPULATIONS

3. The Parties acknowledge the jurisdiction of the United States District Court for the District of Massachusetts over the subject matter of this action and over the Parties for purpose of entering, and, if necessary, enforcing this Decree.

4. Venue is proper in this judicial district for the purposes of this Decree and proceedings relating to this Decree. The Parties agree that all statutory conditions precedent to the institution of the lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of this Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and conditions of this Decree are fair, reasonable, and just.
- c. The Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.
- d. The entry of this Decree will further the objectives of USERRA and other applicable law, and will be in the best interests of the Parties.

NOW THEREFORE, IT IS 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 of the merits of the case or be construed as an admission by the City of any violations of USERRA.

NON-DISCRIMINATION

7. The City, by and through its officials, agents, and employees, shall not fail or refuse to hire or promote any individual, discharge any employee, or take any adverse action against any employee, based on his or her past or present military service obligations, in violation of USERRA.

NON-RETALIATION

8. The City, by and through its officials, agents, and employees, shall not take any action against any person, including but not limited to Rawson, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person asserted his/her rights under USERRA, or gave testimony or assistance or participated in any manner in any investigation or proceeding under USERRA.

REMEDIAL RELIEF

9. The City shall provide the following relief to Rawson:
- a. The City shall promote Rawson to the position of Fire Lieutenant/EMT, step 3, in the Pittsfield Fire Department, on April 1, 2012 or by the start of the first pay period following the Court's entry of this Decree, whichever

is later. For pay, benefits, seniority, and all other purposes, the City will treat Rawson as though he had been promoted to Fire Lieutenant/EMT, step 1, on September 7, 2010; to Fire Lieutenant/EMT, step 2, on March 7, 2011; and to Fire Lieutenant/EMT, step 3, on March 7, 2012. Rawson shall be given all back credits to his pension and other benefit plans as though he had received the foregoing promotions on the foregoing dates and made the required mandatory contributions. For all purposes for which the Pittsfield Fire Department considers seniority, Rawson shall be considered to have been promoted to Fire Lieutenant/EMT before Pittsfield Fire Department employee Clarence Gunn ("Gunn"). The City has entered into a separate agreement with Gunn regarding his employment with the Pittsfield Fire Department, a copy of which is attached as Exhibit "A."

- b. The City shall allow Rawson to sit for the next examination for the position of fire captain in the Pittsfield Fire Department, which should occur no later than November 2012. For purposes of the eligibility list created pursuant to this examination, Rawson shall be considered to have worked 10 shifts as an acting Captain since September 7, 2010, and his experience points shall reflect these 10 shifts.
- c. No later than ten (10) business days after the effective date of this Decree, the City shall pay Rawson the following amounts: (i) \$19,431.09, which reflects the difference between the amount of salary and employer benefit contributions that Rawson would have received had he received the

promotions described in Paragraph 9(a) on the dates set forth in that paragraph, and the amount of salary and benefit contributions which he received as a Firefighter/EMT in the Pittsfield Fire Department, through March 31, 2012; and (ii) \$831.13 in interest. In the event that the Court enters this Decree after April 1, 2012, the City shall also pay Rawson any additional difference between the amount of salary and employer benefit contributions that he would have received had he received the promotions described in Paragraph 9(a), and the amount of salary and benefit contributions which he received as a Firefighter/EMT in the Pittsfield Fire Department from April 1, 2012 to the date of his promotion. The City shall make all appropriate employee income tax withholdings at the time of payment. The City shall separately pay its portion of any Social Security tax and any other employer contributions on the back pay, and shall not deduct its portion of such taxes or contributions from the amount paid to Rawson.

- d. The City shall also contribute to Rawson's pension plan account with the City the amount of \$1,943.10, representing the increased mandatory pension contribution amount Rawson would have contributed had he been receiving the higher rate of pay since September 7, 2010.
- e. Within the time required by the Internal Revenue Service ("IRS"), the City shall issue to Rawson the appropriate IRS tax forms reflecting the amount paid to Rawson and the amount withheld by the City on behalf of Rawson, including a W-2 wage and tax statement.

10. The City shall make the payment to Rawson described in Paragraph 9(c) by check via overnight delivery service to the following address, with a copy of the check sent by facsimile or email to his counsel of record, Assistant U.S. Attorney Christine J. Wichers (christine.wichers@usdoj.gov; fax: 617-748-3969):

Jeffrey P. Rawson
532 Plunkett Reservoir Road
Washington, MA 01223

11. Within ten (10) calendar days after the City's compliance with Paragraphs 9 and 10, the City shall provide written documentation of its compliance to AUSA Wichers via email or facsimile.

12. For and in consideration of the above relief, Rawson releases and discharges the City from all legal and equitable claims arising out of this complaint and the complaint filed with the U.S. Department of Labor in USERRA Case No. MA-2010-00019-20-R. Rawson has consulted with his attorneys regarding the USERRA claim that he is releasing.

**RETENTION OF JURISDICTION, DISPUTE RESOLUTION,
AND COMPLIANCE**

13. The Court shall retain jurisdiction over this matter and shall have all equitable powers, including injunctive relief, to enforce this Decree.

14. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The 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.

NOTICE OF RIGHTS AND DUTIES UNDER USERRA

15. The City shall provide each of the employees in its Fire Department and Human Resources Department a notice of the rights, benefits, and obligations of uniformed service members in accordance with Section 4334 of USERRA. No later than ninety (90) days after the date this Decree is entered, the City shall provide one hour of mandatory training to the City Solicitor, all Pittsfield Fire Department supervisors and managers, and all other Pittsfield Fire Department employees with authority to hire, promote, and/or approve or deny leave, regarding the rights, benefits, and obligations of persons covered under USERRA and their employers. Rawson's attorney and counsel for the City shall confer about the appropriate content and materials to be used for the training, and the City shall provide a draft of the proposed training presentation and materials for review by Rawson's counsel. All training materials shall be provided to Rawson's attorney for review and approval at least twenty (20) business days before such mandatory training occurs. Within ten (10) days after such training, the City shall provide AUSA Wichers a written confirmation that the training was conducted in compliance with this paragraph, and a list of all attendees.

MISCELLANEOUS

16. The Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

17. This Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure as to all claims asserted in this action.

18. If any provision of this 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.

19. This Decree constitutes the entire agreement and commitment of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by the Parties.

EFFECTIVE DATE

20. The effective date of this Decree shall be the date upon which it is entered by the Court. The Decree shall expire, and this action shall be dismissed without further order of the Court, one year after the date of this Decree.

DATED AND ENTERED THIS 23 day of April, 2012.


KENNETH P. NEIMAN
UNITED STATES MAGISTRATE JUDGE

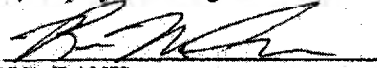
We hereby agree to the terms and conditions of the foregoing Consent Decree.

(This document may be signed in counterparts, and may be signed via facsimile and/or portable document format (.pdf). A copy of a signature shall be as valid as the original.)

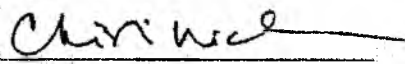

JEFFREY P. RAWSON
Plaintiff


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Civil Rights Division
U.S. Department of Justice

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Counsel for the City of Pittsfield

EXHIBIT A

AGREEMENT BY AND AMONG THE
CITY OF PITTSFIELD, PITTSFIELD FIREFIGHTERS
ASSOCIATION, LOCAL 2647, IAFF AND MR. CLARENCE GUNN

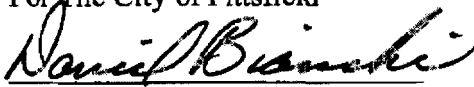
The City of Pittsfield and Mr. Clarence Gunn hereby agree to the following terms, conditions, and understandings:

1. Mr. Gunn was promoted to the position of Fire Lieutenant on or about September 7, 2010.
2. When Mr. Gunn received this promotion another Firefighter, Jeffrey Rawson, was bypassed on the Civil Service Commission eligibility list for promotion to Fire Lieutenant.
3. Mr. Rawson contested the City's action in United States District Court, Jeffrey P. Rawson v. City of Pittsfield, Massachusetts, Civil Action No. 11-30250-KPN alleging a violation of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4334 (USERRA) by bypassing him for promotion to fire lieutenant and failing to reinstate him to the Assuming Addition Responsibilities (AAR) list.
4. There is a signed "Consent Decree" in the above-referenced District Court Action which places Mr. Rawson in Mr. Gunn's Lieutenant's position retroactive to September 7, 2010.
5. As a result of said Consent Decree the City will be laying off Mr. Gunn from his position as a Lieutenant with the Pittsfield Fire Department.
6. Mr. Gunn will be offered a firefighter position with the Pittsfield Fire Department.
7. The effective date of the layoff will be the date that Mr. Rawson assumes the duties of a lieutenant in the Pittsfield Fire Department.
8. If Mr. Gunn agrees to assume the firefighter position there will be no break in service in his employment with the Pittsfield Fire Department.
9. Mr. Gunn does not lose his time in service as a Lieutenant in the Fire Department. Mr. Rawson will, however, be considered to have more seniority in the position of Lieutenant over Mr. Gunn in accordance with the terms of the "Consent Decree."
10. When Mr. Gunn is promoted back to Lieutenant, he will not have to start at the bottom of the pay scale and will pick up where he left off in terms of steps and compensation according to the then existing collective bargaining agreement. (So, for example, if he already has one (1) year and ten (10) months on the job as Lieutenant, then he would be paid under the terms of the then existing cba as though he had one (1) year and ten (10) months on the job as Lieutenant as soon as he started back).
11. The City agrees that Mr. Gunn has preferential rights to any vacant or newly created Lieutenant position as a result of his layoff from a Lieutenant position in accordance with


the regulations of the Human Resources Division (H.R.D.) and Civil Service Commission.

12. This Agreement is attached to the "Consent Decree" in the Federal District Court Action referenced in paragraph 3 above.
13. There are no other agreements or understandings concerning this matter between the City of Pittsfield and Mr. Clarence Gunn except as specifically referenced in this Agreement.
14. This Agreement shall not constitute a future precedence in any other situation or circumstance, between the City and the Firefighters Association.

For The City of Pittsfield

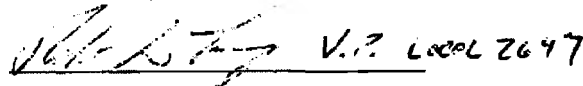

Mayor Daniel Bianchi

Dated: 3-8-12


Mr. Clarence Gunn

Dated: 3/8/2012

Pittsfield FireFighters
Association,
Local 2647, IAFF


V.P. Local 2647

Dated: 3-8-12