

SEP 19 2011

JULIA C. DUDLEY, CLERK
BY: *Julia C. Dudley*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

JON FULTZ)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:11-cv-00029
)	
CITY OF WINCHESTER, VIRGINIA,)	
)	
Defendant.)	
)	

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of Plaintiff Jon Fultz ("Fultz") and Defendant City of Winchester, Virginia ("the City") to effectuate a final compromise and settlement of all claims raised in the complaint filed by Fultz in the above captioned case.

1. Fultz, a U.S. Marine Corps reservist, commenced this action in the United States District Court for the Western District of Virginia, alleging that the City violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by failing to properly reemploy him when he returned from military service.

2. As a result of settlement discussions, Fultz and the City ("the Parties") have resolved their differences and have agreed that this action should be settled 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 Fultz in this action.

STIPULATIONS

3. The Parties acknowledge the jurisdiction of the United States District Court for the Western District of Virginia 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 district for the purposes of this Decree and proceedings related to this Decree only. 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. The rights of the Parties are protected adequately by this Decree.
- c. This 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. The City denies each and every allegation of a violation of USERRA made against it by Fultz.

NON-DISCRIMINATION

7. The City, by and through its officials, agents, and employees, shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on his or her past 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 Fultz, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENT

9. Without admitting the allegations in the Complaint, and in settlement of the claims of Fultz, who, by his signature to the release attached as Appendix A, accepts the relief to be given him pursuant to this Decree, the City shall provide the following relief: The City shall pay Fultz the total amount of \$32,000 in back pay. The City shall make all appropriate income tax withholdings and other statutory deductions at the time of payment. The City shall separately pay its portion of any Social Security tax on the back pay, and shall not deduct its portion of such tax from the amount paid to Fultz. Within the time required by the Internal Revenue Service (IRS), the City shall issue to Fultz the appropriate IRS tax forms reflecting the amount paid to

Fultz and the amount withheld by the City on behalf of Fultz, including a W-2 wage and tax statement.

10. The City shall make the payment described in Paragraph 9 above within thirty (30) days following the date of this Decree by mailing a check payable to "Jon Fultz" and the accompanying pay stub and withholding information to the following address:

Jon Fultz
4500 Rosewood Drive
Kokomo, Indiana 46901

11. Within ten (10) calendar days of the City's compliance with paragraph 9, the City shall provide written documentation of its compliance to Fultz's attorney at the following address:

Louis Whitsett
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4035
950 Pennsylvania Avenue, NW
Washington, DC 20530

**RETENTION OF JURISDICTION DISPUTE RESOLUTION AND
COMPLIANCE**

12. The Court shall retain jurisdiction over this matter and shall have all 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) business days before moving for review by the Court. 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.

RE-EMPLOYMENT AND EMPLOYMENT REFERENCES FOR PLAINTIFF

13. In exchange for the relief provided to Fultz under this Decree, he agrees that he shall not seek re-employment with the City.

14. The City shall not provide a negative employment reference for Fultz and shall not refer in any way to Fultz's filing of this lawsuit, to his filing of the USERRA complaint with the Department of Labor, or to his filing of an EEOC charge against the City, when communicating with prospective employers or any third party seeking a reference for Fultz. The City shall place documentation in the appropriate personnel files indicating Fultz's separation from City employment was a resignation, and, for all purposes, the City shall treat Fultz's separation as a resignation.

NOTICE OF RIGHTS AND DUTIES UNDER USERRA

15. The City shall provide each of its employees a notice of the rights, benefits, and obligations of uniformed service members and the City in accordance with Section 4334 of USERRA. No later than ninety (90) days from the date this Decree is entered, the City shall provide its Human Resources Director with mandatory training on the rights, benefits, and obligations of persons covered under USERRA and their employers. All training materials shall be provided to Fultz's attorney for review and approval at least twenty (20) days before such mandatory training is scheduled. Within twenty (20) days of such training, the City shall provide Fultz's attorney a written confirmation that the training was conducted in compliance with this paragraph. Within thirty (30) days of receiving the mandatory training described in this paragraph, the Human Resources Director shall provide training to all of the heads of the City's departments on the rights, benefits, and obligations of persons covered under USERRA and their employers.

MISCELLANEOUS

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

17. This Consent 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.

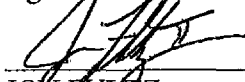
EFFECTIVE DATE

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, six months from the date of this Decree.

DATED AND ENTERED this 19th day of September, 2011.

1st Michael P. Urbanowski
UNITED STATES DISTRICT COURT

Agreed and consented to on behalf of Jon Fultz:



JON FULTZ
Plaintiff

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW
Chief
Employment Litigation Section
Civil Rights Division

/s/ Karen Woodard
/s/ Louis Whitsett
KAREN WOODARD (MD Bar / No number issued)
Deputy Chief
LOUIS WHITSETT (DC Bar No. 257626)
Senior Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4035
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TIMOTHY J. HEAPHY
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Attorneys for Plaintiff

Agreed and consented to on behalf of the City of Winchester

/s/ Rosalie P. Fessier
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Counsel for the City of Winchester

APPENDIX A

RELEASE

I, Jon Fultz, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Consent Decree entered in Jon Fultz v. City of Winchester, Virginia, Civ. No. 5:11-cv-00029, release and discharge the City of Winchester, Virginia ("the City") and its current, former, and future officials, employees and agents from all legal and equitable claims which have been or could have been asserted in the complaint filed in that case, the complaint filed with the U.S. Department of Labor in USERRA Case No. VA-2010-00022-20-R-R, and the complaint filed with the Equal Employment Opportunity Commission (EEOC Charge No. 570-2011-00793). I have consulted with attorneys for the United States regarding the USERRA claim that I am releasing and I was further advised by them to consult with an attorney regarding all other claims herein released by me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF,
AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 1st day of September, 2011.



Jon Fultz