

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID D. SWEATT,

Plaintiff,

v.

AMERICRAFT CARTON, INC.,

Defendant.

No. 1:09-cv-227 GJQ

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of plaintiff David D. Sweatt ("Sweatt") and defendant Americraft Carton, Inc. ("Americraft"), to effectuate a final compromise and settlement of all claims raised in the Complaint.

1. Sweatt commenced this action in the United States District Court for the Western District of Michigan, alleging that Americraft willfully violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by discriminating against him, terminating him, and failing or refusing to reinstate him because of his membership, service, application to perform service, and/or obligation to perform service in a uniformed service. In addition, the Complaint alleges that Americraft failed to promptly reemploy Sweatt after his military service, and in the alternative, terminated him without cause within the protected period of reemployment under USERRA.

2. As a result of settlement discussions, Sweatt and Americraft (collectively 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

Sweatt in this action. By the signature of Melissa Sweatt, Sweatt's attorney-in-fact, to this Decree, Sweatt agrees that the relief provided in this case is a satisfactory resolution of his USERRA claims raised in Department of Labor Case No. MI-2008-00028-10-G and the Complaint filed in this case, and adequately compensates him for those claims.

STIPULATIONS

3. The parties acknowledge the jurisdiction of the United States District Court for the Western District of Michigan over the subject matter of this action and of the parties to this case for the purpose of entering 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. The parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the 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 provisions 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 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 Americraft of any violations of USERRA.

GENERAL RELIEF

7. Americraft shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on the military service obligation, application for military service, or past or present military service of such individual or employee, in violation of USERRA.

8. Americraft shall not take any action against any person, including but not limited to Sweatt, 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.

9. Within forty-five (45) days after the date of entry of this Decree, Americraft shall modify its employment policies to comply with USERRA. These policies shall include provisions expressly permitting its employees (1) to apply for and engage in voluntary military service; and (2) to provide verbal or written advance notice of military service in order to qualify for reemployment rights according to USERRA Section 4312. The policies shall also include a provision treating service in the military the same as all other leaves of absence for purposes of joining any union that represents employees at Americraft's Sturgis, Michigan plant.

10. Within ten (10) days after the date on which Americraft implements the modified policies set forth in Paragraph 9, supra, Americraft shall distribute copies of such modified policies to all employees and managers in Americraft's Sturgis, Michigan plant, and post such

modified policies in all places used for posting general information to employees in Americraft's Sturgis plant.

11. Within sixty (60) days after the date of entry of this Decree, Americraft shall submit the modified policies, described in Paragraph 9, supra, along with a certification that Americraft has distributed the modified policies in compliance with Paragraph 10, supra, to counsel for Sweatt at:

Sarah Canzoniero Blutter
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4916
950 Pennsylvania Avenue, NW
Washington, DC 20530

SPECIFIC RELIEF

12. Americraft promptly shall reemploy Sweatt pursuant to USERRA Section 4312(e)(1)(D) after his return from his current active duty military assignment (expected to end at the end of June 2009) at a level of seniority, status, compensation, and benefits that Sweatt would have enjoyed had he been reemployed by Americraft upon his return from military service in April 2008. If Sweatt falls ill or is injured during his performance of military service, USERRA Section 4312(e)(2) shall apply. If Sweatt elects not to accept reemployment at Americraft, he shall notify Americraft in writing. Sweatt's decision not to accept reemployment at Americraft shall not affect his entitlement to other relief in this Decree.

13. Within ten (10) business days from the date of entry of this Decree, Americraft shall pay Sweatt a total monetary award of \$6,075 (comprised as follows: \$4,050 in back pay and \$2,025 in liquidated damages), less those employee tax withholdings and employee contributions on the back pay component of the total monetary award as required by law. Americraft shall timely pay all monies withheld to the appropriate governmental agencies on

behalf of Sweatt. Americraft shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the total monetary award; i.e., the employer's contribution shall not be deducted from any part of the monetary award to Sweatt. Americraft shall pay the monetary award to Sweatt by mailing a certified or bank check, payable to "David D. Sweatt, in care of his attorney-in-fact Melissa Sweatt," to:

David D. Sweatt
c/o Melissa Sweatt, attorney-in-fact
1002 Greenlawn Dr.
Sturgis, Michigan 49091

14. Within thirty (30) calendar days following the date of entry of this Decree, Americraft shall provide counsel for Sweatt with documentation of having paid Sweatt the monetary award due him pursuant to Paragraph 13, supra, by mailing such documentation to:

Sarah Canzoniero Blutter
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section, PHB 4916
950 Pennsylvania Avenue, NW
Washington, DC 20530

15. For and in consideration of the relief being provided to him described in paragraphs 12 and 13, supra, of this Decree, Sweatt releases and discharges Americraft from the claims identified in the Complaint filed in this case and the complaint Sweatt filed with the Department of Labor, complaint number MI-2008-00028-10-G. This release and discharge of claims is subject only to Americraft's compliance with the terms of this Decree.

RETENTION OF JURISDICTION
DISPUTE RESOLUTION AND COMPLIANCE

16. The entry of this 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 or that could have been asserted by Sweatt in this action. The Court, however, shall retain jurisdiction over this matter and shall have all equitable powers, including injunctive relief, to enforce this Decree.

17. 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.

EXPIRATION OF THIS DECREE

18. This Decree shall expire, and this action shall be dismissed, without further order of this Court two (2) years from the date of its entry by this Court, provided that Americraft has provided Sweatt with the relief to which he is entitled pursuant to this Decree and Americraft has otherwise complied with the provisions of this Decree.

MISCELLANEOUS

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

20. 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.

21. The terms of this Decree are and shall be binding upon current, former, and future officers, directors, managers, employees, agents, trustees, administrators, successors, representatives, and assigns of Americraft and upon heirs, successors, and assigns of Sweatt.

22. 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

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

APPROVED and ORDERED this 1st day of May, 2009.

/s/ Gordon J. Quist
UNITED STATES DISTRICT JUDGE

Agreed and consented to on behalf of plaintiff
David D. Sweatt:

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

John M. Gadzichowski
William B. Fenton
Sarah Canzoniero Blutter

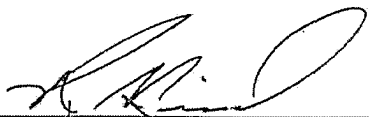
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M. D. Sweatt signed as attorney in fact
DAVID D SWEATT
By: Melissa Sweatt
Attorney-in-Fact
for David D. Sweatt

Agreed and Consented to on Behalf of defendant
Americraft Carton, Inc.:



ROGER A. BIRD

Bird, Svendsen, Brothers, Scheske & Pattison, P.C.
227 West Chicago Road
Sturgis, MI 49091
rbird54269@aol.com



ERIC HANSEN

General Manager
Americraft Carton, Inc.