

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JEFFREY P. RAWSON,

Plaintiff,

v.

CITY OF PITTSFIELD,  
MASSACHUSETTS,

Defendant.

Civil Action No. \_\_\_\_\_

COMPLAINT FOR VIOLATIONS OF THE  
UNIFORMED SERVICES EMPLOYMENT  
AND REEMPLOYMENT RIGHTS ACT

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Jeffrey P. Rawson ("Rawson"), by the undersigned attorneys, alleges the following:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4334 ("USERRA").

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2) because defendant City of Pittsfield ("City") is a political subdivision of the Commonwealth of Massachusetts located in the District of Massachusetts, and the events giving rise to this lawsuit occurred in this judicial district.

### CLAIMS FOR RELIEF

4. Rawson began his employment as a firefighter with the City of Pittsfield Fire Department (“PFD”) in 1990.

5. Rawson served in the Massachusetts Army National Guard from March 2001 to April 2002. From April 2002 to the present, Rawson has served in the Navy Reserve.

6. Rawson was called to active duty military service from October 2007 to November 2008, February 2009 to June 2009, and mid-July 2009 through September 2009.

7. Prior to November 2009, PFD officials subjected Rawson to numerous acts that demonstrated disregard for his rights under USERRA and hostility towards his military obligations.

8. For example, in or about March 2001, PFD informed Rawson that he would have to use accrued vacation for his military drills and training, in violation of 20 C.F.R. § 1002.153. Rawson objected to this requirement and offered a copy of USERRA to his supervisor.

9. Additionally, in or around February 2002, PFD Deputy Chief Richard Marchetto (“Marchetto”) informed Rawson that after every drill weekend he would need to bring a letter from his unit confirming his attendance. Under USERRA, Rawson was only required to provide his drill schedule for the year, which he had already done. Rawson objected and contacted Employer Support for the Guard and Reserve (“ESGR”), which intervened by contacting the PFD to explain USERRA.

10. Rawson’s supervisors complained on numerous occasions that Rawson’s military service was harming the PFD.

**Count I**

**Bypassing Rawson for Promotion to Lieutenant in Violation of 38 U.S.C. § 4311(a)**

11. Rawson repeats the allegations contained in paragraphs 1-10.

12. In November 2009, Rawson took the City's promotional examination for the position of fire lieutenant. Rawson scored a 78 on the exam. Thomas Sammons ("Sammons") scored a 79 on the exam, while Clarence Gunn ("Gunn") scored a 77 on the exam.

13. In May 2010, the Massachusetts Human Resources Division certified the list of individuals eligible for promotion to the position of fire lieutenant in the PFD. At that time, Sammons, Rawson, and Gunn ranked first, second, and third on the list, respectively, based on their scores on the promotional examination.

14. In or around June 2010, PFD Acting Chief Robert Czerwinski ("Czerwinski") informally interviewed Rawson for a PFD Lieutenant promotion. During the interview, Czerwinski informed Rawson that Pittsfield Mayor James Ruberto ("Ruberto") had given Czerwinski final approval to make promotions from the eligibility list for the lieutenant position. Also at that interview, Czerwinski asked Rawson whether he had any upcoming military deployments.

15. Upon information and belief, the past practice of the PFD has been to promote lieutenant candidates in rank order from the eligibility list.

16. On July 12, 2010, after already promoting Sammons, Czerwinski informed Rawson that he was being bypassed for promotion in favor of Gunn. Czerwinski told Rawson that he was never at work and needed to stop volunteering for military assignments, or words to that effect. Czerwinski further stated that Rawson needed to decide if he worked for the Navy or the PFD.

17. Mayor Ruberto refused to meet with either Rawson or Roseanne Frieri, the Director of the City's Department of Veterans Services, to discuss Rawson's bypass, despite their requests for a meeting.

18. On or about July 19, 2010, Rawson filed a USERRA complaint against the City with the United States Department of Labor ("DOL"), alleging that his rights under USERRA were violated when he was bypassed for promotion to lieutenant.

19. On September 3, 2010, the City submitted a letter to the Massachusetts Human Resources Division explaining the reason for Rawson's bypass, as was required by Massachusetts General Laws, c. 31, § 27 ("bypass letter"). The bypass letter stated that the City had bypassed Rawson in favor of Gunn because Gunn "exhibited an exemplary work record with minimal use of sick leave" in 2007-2009.

20. The City's bypass letter cited Rawson's supposed absenteeism from 2007-2009 as the justification for bypassing him for promotion. As part of its justification, the City stated that "Rawson was on military leave for the year 2008."

21. During his 21-year career with the PFD, the City has never accused Rawson of abusing sick or any other type of non-military leave, nor has Rawson ever been disciplined for such an infraction.

22. On September 7, 2010, Gunn was formally promoted to Lieutenant.

23. DOL's Veterans Employment and Training Service ("VETS") investigated the complaint Rawson had filed on July 19, 2010, found that it had merit, and referred it to DOL's Solicitor's Office. DOL's Solicitor's Office concurred that the complaint had merit, and referred the matter to the U.S. Department of Justice.

24. The City violated 38 U.S.C. § 4311(a) when it bypassed Rawson for promotion on the basis of his military service.

25. The City's violation of its obligations under USERRA with respect to Rawson's promotion was willful.

**Count II**  
**Retaliation Against Rawson in Violation of 38 U.S.C. § 4311(b)**

26. Rawson repeats the allegations contained in paragraphs 1-25.

27. For most of his tenure at the PFD, Rawson has been on the Assuming Additional Responsibilities ("AAR") list, which authorizes him to serve as an acting lieutenant on his shift when any PFD lieutenants are excused from duty during that shift.

28. On multiple occasions, the PFD has used the AAR list as a means to express its hostility towards Rawson's military service. For example, in or around March 2002, Marchetto removed Rawson from the AAR list without explanation approximately one month after ESGR intervened in the incident involving his drill schedule, as described in paragraph 9. Rawson filed a union grievance regarding the removal, and as a result he was reinstated to the AAR list.

29. In or around January 2009, following Rawson's return from active military duty, Czerwinski required him to attend drill school before he would be returned to the AAR list, even though Rawson was a 19-year veteran of the PFD and had served as an acting lieutenant through the AAR list for several years.

30. In or around June 2009, after Rawson returned from four months of military training, Czerwinski again required him to attend drill school before reinstating him to the AAR list.

31. The City did not require at least one non-servicemember who did not exercise rights under USERRA to attend drill school before being returning to work despite the fact that

the non-servicemember had been absent from work at PFD for over one year and had only been employed by the PFD for approximately three years. In addition, two non-servicemember lieutenants who did not exercise rights under USERRA were not required to attend drill school before re-assuming their lieutenant duties after they returned to work following injury-related leaves of absence lasting at least eleven months.

32. Between October 1, 2009 and February 10, 2011, Rawson worked almost exclusively as an acting lieutenant. Rawson received an extra \$50 per shift (usually \$100 per week) performing these additional duties.

33. On or around February 10, 2011, PFD Acting Deputy Chief Andrew Stephenson (“Stephenson”) informed Rawson that he needed to use accrued vacation for one day of military leave, a requirement that was in violation of 20 C.F.R. § 1002.153 and to which Rawson had objected (see paragraph 8). Rawson informed Stephenson that USERRA prohibited the PFD from imposing such a requirement. The conversation escalated into an argument.

34. Stephenson informed Czerwinski that he was removing Rawson from the AAR list due to Rawson’s alleged “lack of respect” towards PFD officers during the February 10, 2011 incident.

35. Later in February 2011, Rawson and Stephenson resolved their differences regarding the February 10, 2011 incident, and Stephenson told Czerwinski that Rawson should be placed back on the AAR list. However, Czerwinski disagreed, and Rawson was not reinstated to the list.

36. As of the date of this filing, Rawson still has not been returned to the AAR list, and as a result he has not served as an acting lieutenant or received the additional pay associated with those duties.

37. The City has reinstated at least firefighter who did not exercise rights under USERRA to the AAR list despite the fact that his transgressions were more severe than those Rawson allegedly committed. That firefighter was reinstated to the AAR list after only thirty days.

38. The City violated 38 U.S.C. § 4311(b) when it retaliated against Rawson for exercising his rights under USERRA by failing to reinstate him to the AAR list in February 2011.

39. The City's violation of its obligations under USERRA by undertaking retaliatory actions against Rawson was willful.

40. All conditions precedent to the filing of this suit have been performed or have occurred.

#### **PRAYER FOR RELIEF**

Rawson prays that the Court enter judgment against the City and the Commonwealth and grant the following relief:

- a. declare that the City's decision to bypass Rawson for promotion to Lieutenant was in violation of USERRA;
- b. declare that the City's refusal to reinstate Rawson to the AAR list after his February 2011 removal was in violation of USERRA;
- c. declare that the City's violations of USERRA were willful;
- d. order the City to comply with USERRA by promoting Rawson to Lieutenant retroactive to September 7, 2010, ahead of Gunn in seniority, with all of the rights, benefits (including, but not limited to, back pay and retirement), and seniority that he would have enjoyed if he had been promoted on September 7, 2010;

e. order the City to comply with USERRA by, if necessary, reinstating Rawson to the AAR list with all of the rights, benefits (including, but not limited to, back pay), and seniority that he would have enjoyed if he had been reinstated to the list in February 2011;

f. award Rawson prejudgment interest on the amount of lost wages and benefits found due;

g. award Rawson liquidated damages authorized under 38 U.S.C. § 4323(d)(1)(c);

h. enjoin the City from taking any action in violation of USERRA; and

i. award such additional relief as justice may require, together with the costs and disbursements in this action.

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