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COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHEN DISTRICT OF ALABAMA

William A. Harbin Plaintiff, v. LB&B Associates, Inc., Defendant.	Civil Action No. _____ CV-08-P-1777-S

COMPLAINT

Plaintiff, William A. Harbin ("Harbin"), by the undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("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). A substantial part of the events giving rise to the claim occurred in this district. In addition, Defendant, LB&B Associates, Inc. ("LB&B"), owned and operated a business that conducted business in this judicial district at the time of the events that led to this action.

PARTIES

4. Harbin resides in Decatur, Alabama which is within the jurisdiction of this Court.

5. LB&B is a North Carolina corporation, headquartered in Columbia, Maryland.

COUNT I (PENSION BENEFITS)

6. In 1971, Harbin enlisted in the Alabama Army National Guard ("National Guard"). Over his thirty-five career, Harbin rose to the rank of Staff Sergeant and was honorably discharged on March 10, 2005.

7. Harbin began working as a pipefitter in 1985 in service of the National Air and Space Administration ("NASA") at the George C. Marshall Space Flight Center located at the Redstone Armory in Huntsville, Alabama (hereinafter "Redstone").

8. During the entirety of his employment at Redstone, Harbin has been a member of the bargaining unit represented by Local 377 of the Plumbers and Steamfitters Union ("the Local").

9. The Local represents employees of the private employers who hold contracts with NASA for services at Redstone.

10. The Local sponsored the retirement plan ("the Plan") into which the private companies with services contracts at Redstone paid. The Plan designated the Local as the Plan Administrator.

11. Harbin commenced employment with LB&B in 1998 when the company won the pipefitting services contract at Redstone.

12. From 1998 through December 2003, LB&B made all appropriate contributions on behalf of Harbin into the Plan.

13. In November 2003, Harbin was notified that he was going to be called up for

active duty with the United States Army. On November 24, 2003 Harbin completed a leave of absence form indicating that he would be away for approximately eighteen months on active duty commencing on December 7, 2003.

14. Harbin was deployed in December 2003, and stationed in Irbil, Iraq for six months and Dahuk, Kurdistan for six months, in both case serving as team chief for a signal unit.

15. Harbin served on active duty with the Army until March 10, 2005, when he was honorably discharged.

16. On information and belief, LB&B lost the services contract at Redstone in May 2003 to Jacob Sverdrup, Inc. ("Sverdrup"), however due to a bid protest filed by LB&B, LB&B maintained control of the Redstone operations until August 30, 2004. Sverdrup took over operations of the services contract on September 1, 2004.

17. On information and belief, when Harbin began his military leave from his work with LB&B, LB&B stopped making payments on behalf of Harbin to the Plan.

18. On information and belief, when Sverdrup took over operations it hired all former LB&B employees working at Redstone and contracted to honor all employer/employee agreements, including making pension payments pursuant to the Plan.

20. Sverdrup officially rehired Harbin in May 2005 and made all of the employer contributions to the Plan on behalf of Harbin, dating back to September 2004.

21. On information and belief, LB&B did not make any contributions to the Plan on behalf of Harbin for the period of December 7, 2003 through August 30, 2004.

22. On information and belief, LB&B's failure to pay Harbin's pension payments during his active service in the United States Uniformed Services was in violation of USERRA, 38 U.S.C. § 4318.

23. On information and belief, because of LB&B's failure to pay Harbin's pension payments, Harbin has monetary damages in an amount to be proven later at trial.

24. On information and belief, LB&B has denied that any failure to make payments into the Plan on behalf of Harbin is in violation of USERRA, 38 U.S.C. § 4318.

PRAYER FOR RELIEF

WHEREFORE, Harbin prays that the Court enter judgment against LB&B as follows:

25. Declare that LB&B's failure to pay Harbin's pension payments during his active military duty was in violation of USERRA, 38 U.S.C. § 4318;

26. Require that LB&B fully comply with the provisions of USERRA by paying Harbin all amounts due to him for his loss of pension payments caused by LB&B's failure to comply with the provisions of this law;

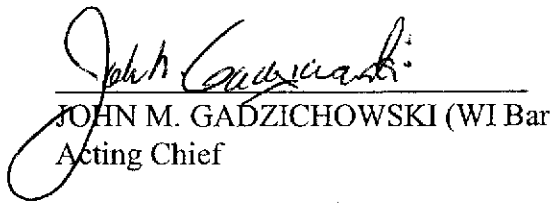
27. Enjoin LB&B from taking any action against Harbin that fails to comply with the provisions of USERRA;

28. Award Harbin prejudgment interest on the amount of lost pension payments found due; and

29. Grant such other and further relief as may be just and proper.

Respectfully submitted,

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

BY: 

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CERTIFICATE OF SERVICE

I hereby certify that today I served the foregoing **Complaint** on the counsel of the defendant via U.S. first-class mail, postage prepaid, to the following address:

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C/O Jennifer M. Miller
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Dated this 26 Day of September, 2008

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