

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL A. BAETZ,

Plaintiff,

Case No. 2: 12-cv-10617

v.

HON. PAUL D. BORMAN

CITY OF HIGHLAND PARK, MI

Defendant.

CONSENT DECREE

1. Plaintiff Paul A. Baetz ("Baetz") commenced this action in the United States District Court for the Eastern District of Michigan, alleging that defendant City of Highland Park, Michigan (the "City") violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* ("USERRA"), when it failed to reemploy Baetz in the position of full-time firefighter upon his return from military service, and failed to provide all of the benefits, including seniority, status, and pay, that flow from such a position.

2. The City denies that it has violated USERRA. Nevertheless, as a result of settlement discussions, Baetz and the City (collectively, the "Parties") have resolved their dispute and have agreed that this Decree be a final and binding settlement in full disposition of any and all claims which have been or could have been asserted in the Complaint filed in this action based on the complaint Baetz filed with the U.S. Department of Labor, complaint No. MI-2011-00005-20-V. By Baetz's signature to both this Decree and the "Release of all Claims" attached hereto as Appendix A, Baetz accepts the terms of this Decree. By the City's signature, by and through its authorized representative, to this decree, the City accepts the terms of this Decree.

STIPULATIONS

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

4. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree. While denying any and all wrongdoing alleged in the Complaint, and without constituting an admission of liability, the City agrees that all conditions precedent to the institution of this action have been fulfilled.

FINDINGS

5. Having examined the 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 provisions of this Decree are lawful, fair, reasonable, and just. The rights of the Parties are adequately protected 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. The entry of the Decree is in the best interest of the Parties.
- d. This Decree shall have no binding or precedential effect on any other case or controversy.

NOW, THEREFORE, IT IS HEREBY ORDERED:

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 action or be construed as an admission by the City of any violations of USERRA, or any other law, rule or regulation dealing with equal employment opportunity.

NON-RETALIATION

7. The City shall not take any action against any person, including but not limited to Baetz, that constitutes retaliation or interference with the exercise of such person's rights under USERRA.

REMEDIAL RELIEF

8. Without admitting the allegations set forth in the complaint, and in settlement of the claims of Baetz, the City shall, within twenty-eight (28) days from the date of entry of this Decree, retroactively adjust Baetz's date of promotion to full-time firefighter to April 5, 2009, and, accordingly, grant Baetz all of the rights, benefits, status, and compensation that flow from that seniority, including any in-time requirement for eligibility to take future promotional examinations.

9. Baetz's retroactive seniority date of April 5, 2009 shall also be used to determine time-in-rank requirements for actual promotion to the next higher rank, unless the City can demonstrate that a specific minimum amount of time served in the full-time firefighter rank is a genuine period of observation necessary to ensure Baetz is qualified for such promotion. If the City makes this demonstration, and if Baetz is otherwise qualified for promotion to the next higher rank, the City may delay Baetz's promotion to the next higher rank until he has fulfilled

the minimum identified time period, but shall then retroactively adjust his seniority date in that rank to the date Baetz would have first qualified for promotion absent the delay.

10. Should any promotional opportunities arise when Baetz is absent from his City employment due to active military duty, including training, the City shall consider Baetz for any such promotions for which he already may be qualified, or could have become qualified if he were not absent for military duty, despite his absence. Moreover, upon Baetz's return from military duty, the City immediately shall inform Baetz of any promotional opportunities that arose during his absence, regardless of the outcome, and offer him the opportunity to participate in a make-up promotional examination if one was offered in his absence.

11. Starting with the first regular pay period for City employees following the Court's entry of this Decree, the City shall pay Baetz a total amount of \$19,238.80, made in equal bi-weekly installments of not less than \$739.95 per payment, so that full payment to Baetz is completed over a period that does not exceed one year. The payments shall be made through electronic funds transfer to an account specified by Baetz or his counsel, in writing, and provided to the City, within seven days of the Court's entry of the Decree. The City may choose to make larger bi-weekly payments of equal amounts to accelerate the completion of its payments to Baetz. This total amount of \$19,238.80 includes backpay and the present value of the benefits that Baetz would have received as a member of the Highland Park Fire Fighters Association, Local 822 ("the Union") pursuant to its collective bargaining agreement with the City dating back to his retroactive seniority date of April 5, 2009, as well as other damages. Baetz is responsible for payment of all applicable employee income taxes on the backpay received. The City is separately and additionally responsible for paying all applicable federal, state, and local employee-side taxes due on the monies paid to Baetz. The City and Baetz each shall provide to

the other the appropriate tax-related documents necessary to calculate deductions and timely file tax returns.

12. Starting with the first regular pay period for City employees following the Court's entry of this Decree, the City also shall contribute the total amount of \$5,191.20 to the City's Defined Contribution Plan on behalf of Baetz, to be made in equal bi-weekly installments of no less than \$199.66 per contribution so that the full contribution has been made over a period not to exceed one year. The City may choose to make larger bi-weekly contribution payments of equal amounts to accelerate the completion of its contributions on behalf of Baetz. The total contribution amount of \$5,191.20 constitutes the present value of the City's pension contributions that Baetz would have received as a member of the Union dating back to his retroactive seniority date of April 5, 2009.

13. Within five (5) days of the entry of this Decree, the City will recognize that Baetz shall also be included in the class of firefighters entitled to the remedy provided by the Arbitration Opinion and Award entered on September 12, 2011, relating to out-of-class pay, and that Baetz's remedy shall be commensurate with the average remedy awarded to firefighters Galvin, Hillman, and Reynolds. The City will memorialize its recognition of Baetz' inclusion in this class by written letter or memorandum, to be placed in his City personnel file, a copy of which shall be provided to Baetz through his counsel at the address listed below in paragraph 14.

14. Within ten (10) days of its compliance with Paragraph 8, the City shall provide written confirmation of its compliance to counsel for Baetz. The City shall also provide written confirmation to counsel for Baetz of each bi-weekly installment payment made pursuant to Paragraphs 11-12, within ten (10) days of each such payment. All such written confirmation shall be provided by overnight delivery service, or electronic mail to:

Susan K. DeClercq
United States Attorney's Office
Eastern District of Michigan
211 W. Fort Street, Ste. 2001
Detroit, Michigan 48226
Email: susan.declercq@usdoj.gov

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

15. 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 Baetz in this action. The Court, however, shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Decree.

16. In the event of a dispute, the Parties shall give notice to each other 14 days before seeking resolution of the dispute by the Court. The parties shall engage in good faith efforts to resolve any dispute regarding this Decree, and may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree.

EXPIRATION OF THIS DECREE

17. This Decree shall expire and this action shall be dismissed with prejudice, without further order of this Court, two years from the date of entry of this Decree by the Court.

MISCELLANEOUS

18. The Parties shall bear their own costs and expenses in this action, including attorneys' fees.

19. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

20. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Baetz and upon the present and future elected and appointed officials, officers, directors, employees, agents, representatives, successors, and assigns of the City.

21. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by Baetz and the City.

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

APPROVED and ORDERED this 13 day of February 2012.


UNITED STATES DISTRICT JUDGE

Agreed and consented to by and on behalf of:

Plaintiff Paul A. Baetz:

/s/ Paul A. Baetz
PAUL A. BAETZ
Plaintiff

Dated: February 9, 2012

/s/ Susan K. DeClercq
SUSAN K. DeCLERCQ
Assistant United States Attorney

Dated: February 9, 2012

Agreed and consented to by and on behalf of:

Defendant City of Highland Park, MI

/s/ DeAndre Windom
DeANDRE WINDOM
Mayor, City of Highland Park

Dated: February 9, 2012

/s/ Todd R. Perkins
TODD R. PERKINS
City Attorney, City of Highland Park

Dated: February 9, 2012

APPENDIX A

INDIVIDUAL RELIEF AND RELEASE OF CLAIMS

For and in consideration of the acceptance of all or any part of the relief offered to me by the City of Highland Park, Michigan, pursuant to the provisions of the Consent Decree ("Decree") entered by the United States District Judge in *Paul A. Baetz v. City of Highland Park, Michigan*, Civil No. 2:12-cv-10617 (E.D. Mich), I, Paul A. Baetz, forever release and discharge the City of Highland Park and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of the City of Highland Park from all legal, statutory and equitable claims, which have been or could have been asserted in the Complaint filed in the above-captioned civil action, and U.S. Department of Labor USERRA Case Number MI-2011-00005-20-V.

I understand that the relief to be given to me does not constitute an admission by the City of Highland Park of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing of liability under applicable federal law or regulation.

This release and the Decree submitted by the parties in this case constitutes the entire agreement between the City of Highland Park and me, without exception or exclusion.

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

Signed this 9th day of February, 2012

/s/ Paul A. Baetz

PAUL A. BAETZ