

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL A. BAETZ,

Plaintiff,

Case No.

v.

HON.

CITY OF HIGHLAND PARK, MI

Defendant.

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COMPLAINT

Plaintiff, Paul A. Baetz (“Baetz”), by his undersigned attorneys, alleges as follows:

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).

4. Defendant City of Highland Park, Michigan (“the City”), is a corporate, governmental body and a political subdivision of the State of Michigan, established pursuant to the laws of Michigan. The City is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. §4303(A).

5. Plaintiff Paul A. Baetz resides in Ferndale, Michigan, within the jurisdiction of this Court.

CLAIM

6. Baetz was hired as an auxiliary firefighter by the City of Highland Park, MI on or about February 20, 2003. Auxiliary firefighters work similar hours and duties as full-time firefighters, including driving fire trucks when a full-time firefighter is not available.

7. As a member of the United States Army Reserve, Baetz was called to active duty and served in Afghanistan in support of Operation Enduring Freedom from July 6, 2008 to July 1, 2009.

8. Baetz timely notified the City of his military duty prior to leaving for his deployment to Afghanistan.

9. When he returned from overseas, Baetz reported back to the City in a timely manner and was reemployed as an auxiliary firefighter on July 2, 2009.

10. On or about April 6, 2009, while Baetz was deployed overseas, three auxiliary firefighters possessing less seniority than Baetz were promoted to full-time firefighters.

11. In Highland Park, full-time firefighters, unlike auxiliary firefighters, are represented by the Highland Park Fire Fighters Association, Local 822 ("the Union"). Full-time firefighters receive pay and benefits negotiated by the Union pursuant to its collective bargaining agreement with the City, such as premium overtime pay, retirement benefits, personal, sick, and funeral leave, a clothing allowance, and medical, dental, and disability insurance. Full-time firefighters are subject to discipline or discharge only for just cause, whereas auxiliary firefighters are at-will employees. Only full-time firefighters have the opportunity to advance in rank and position, with commensurate increases in pay, within the Highland Park Fire Department.

12. Auxiliary firefighters are not eligible to join the Union, and do not receive any of the negotiated pay or fringe benefits that the full-time firefighters receive.

13. Since the time that Baetz has been employed by the City to the present, the City's practice has been to promote full-time firefighters from the ranks of auxiliary firefighters based solely on seniority.

14. After learning of the promotions of the less senior auxiliary firefighters upon his return to work on July 2, 2009, Baetz requested that he be promoted to a full-time firefighter position, which is the position he would have attained had he not been deployed to active military service overseas.

15. Baetz reiterated his request for promotion in July 2010, when his active duty commitment was officially completed and the pay discrepancy and lack of City-provided benefits became more significant.

16. All of Baetz's requests to be reemployed in the position of full-time firefighter were denied by the City.

17. On or about November 15, 2010, Baetz filed a complaint under USERRA with the United States Department of Labor.

18. The United States Department of Labor's Veterans' Employment and Training Service conducted an investigation and the Department of Labor's Solicitor's Office concluded that Baetz's claim had merit. Baetz requested referral of his complaint to the U.S. Attorney General.

19. The City of Highland Park has violated 38 U.S.C. §§4312-13 of USERRA by, *inter alia*, failing to reemploy Baetz in the position of full-time firefighter upon his return from

military service, and failing to provide all of the benefits, including seniority, status, and pay, that flow from such a position.

20. Because of the City's conduct, Baetz has suffered monetary damages, including lost wages and benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Paul A. Baetz prays that the Court enter judgment against the City of Highland Park as follows:

- A. Declare that the City's failure to reemploy Baetz in the position of full-time firefighter was unlawful and in willful violation of USERRA;
- B. Order the City to promote Baetz to the position of full-time firefighter, with retroactive seniority to the date that he would have been promoted to the position but for his military service, and to provide all the benefits, including seniority, status, and compensation that flow from such a promotion;
- C. Award Baetz liquidated damages for the City's willful violation of USERRA;
- D. Enjoin the City from taking any action against Baetz that fails to comply with the provisions of USERRA;
- E. Award any such additional relief as justice may require, together with pre-judgment interest, costs, and fees of this action.

Respectfully submitted this 13th day of February, 2012.

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