

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ELLIOT FERRELL,

Plaintiff,

v.

LABORERS' LOCAL NO. 1149,

Defendant.

CIVIL NO.: 5:16-cv-55

**CONSENT DECREE**

1. Plaintiff Elliot Ferrell ("Plaintiff"), a U.S. Army National Guardsman, commenced this action in the United States District Court for the Northern District of West Virginia, alleging Defendant Laborers' Local No. 1149 ("Defendant" or "Union") violated his reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* ("USERRA"), when, in 2014, it failed to reinstate him as an apprentice laborer following his return from military service, thereby disqualifying him from receiving job assignments with employers through the Union's hiring hall.

2. As a result of their settlement discussions, Plaintiff and Defendant (collectively, the "Parties") have resolved their dispute and have agreed that this action should be resolved 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 which have been or could have been asserted in the Complaint filed in this action.

**STIPULATIONS**

3. The parties acknowledge the jurisdiction of the United States District Court for the Northern District of West Virginia over the subject matter of this action and over 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 Defendant 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.
- 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 into 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 Defendant of any violations of USERRA.

**COMPLIANCE WITH USERRA**

7. Defendant, by and through its officials, agents, and employees, (a) shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against Plaintiff or any employee, based on his or her past present military service obligations, in violation of USERRA; (b) shall not take any action against any person, including but not limited to Plaintiff, that constitutes retaliation or interference with the exercise of such person's rights under USERRA or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case; and (c) shall not violate any person's reemployment rights under USERRA, including in regard to the Union's operation of its hiring hall.

**REMEDIAL RELIEF**

8. Without admitting the allegations set forth in the Complaint, and in settlement of the claims of Plaintiff, who, by his signature to the release attached as Appendix A, accepts the relief given him under this Decree and agrees not to seek reinstatement in the Union's apprenticeship program, Defendant agrees to provide the relief specified below.

9. Defendant shall pay Plaintiff a total of \$13,000.00 in compensation for releasing his claims and issue him a corresponding Internal Revenue Service Form 1099 for that amount. Plaintiff shall be solely responsible for the payment of any income taxes owed on such amount

received from Defendant. Within fourteen (14) days of the date of entry of this Decree, Defendant shall make that payment by an electronic transfer to a bank account designated by Plaintiff or by mailing via overnight delivery service a check payable to "Elliot Ferrell" to the following address:

Elliot Ferrell  
1 Northern Exposure Drive  
Triadelphia, West Virginia 26059.

Within fourteen (14) days of that payment to Plaintiff, Defendant shall provide written confirmation of payment to the United States Department of Justice ("DOJ"), as Plaintiff's attorneys in this matter, by overnight delivery service or electronic mail, to the attention of:

Helen Altmeyer  
Assistant U.S. Attorney  
Chief, Civil Division  
Office of the U.S. Attorney  
1125 Chapline Street, Suite 3000  
Wheeling, WV 26003  
Email: Helen.Altmeyer@usdoj.gov

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

10. The Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Decree. In the event of a dispute arising under this Decree, the Parties shall give at least 14 days' notice to each other before seeking resolution of the dispute by the Court.

**MISCELLANEOUS**

11. The Parties shall bear their own costs and expenses in this action, including attorney's fees.

12. 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 in this action.

13. 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.

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

15. 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 Plaintiff and Defendant.

**EFFECTIVE DATE**

16. The effective date of this Decree shall be the date upon which it is entered by the Court. This Decree shall expire and this action shall be dismissed with prejudice, without further order of this Court, one year from the date of entry of this Decree by the Court.

APPROVED, ORDERED, and ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2016.

BY THE COURT:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

AGREED TO:

WILLIAM J. IHLENFELD, II  
U.S. Attorney  
Northern District of West Virginia

BY: /s/ Helen Campbell Altmeyer  
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/s/ Yolonda G. Lambert  
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## **APPENDIX A**

### **INDIVIDUAL RELIEF AND RELEASE OF CLAIMS**

I, Elliot Ferrell, for and in consideration of acceptance of the relief offered to me by Laborers' Local No. 1149, pursuant to the provisions of the Consent Decree ("Decree") filed with the United States District Court for the Northern District of West Virginia in *Elliot Ferrell v. Laborers' Local No. 1149*, forever release and discharge Laborers' Local No. 1149 and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of Laborers' Local No. 1149 from all legal statutory and equitable USERRA claims that have been or could have been asserted in the Complaint filed in the above-captioned civil action or the earlier USERRA complaint filed with the U.S. Department of Labor in USERRA Case No. WV-2015-00002-10-G-R2, upon the entry of the Decree by the Court, and agree not to seek reinstatement in Laborers' Local No. 1149's apprenticeship program.

I understand that the relief to be given to me does not constitute an admission by the Laborers' Local No. 1149 of the validity of any claim raised by me or on my behalf, nor does it constitute a finding of any wrongdoing or liability under applicable federal law or regulation.




This release and the Decree submitted by the parties in this case constitute the entire agreement between Laborers' Local No. 1149 and me, without exception or exclusion.

I acknowledge that a copy of the Decree filed in this action has been made available to me.

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

Signed this 13 day of April 2016.

  
\_\_\_\_\_  
ELLIOT FERRELL