

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

MICHAEL V. CRIVELLO,

Plaintiff,

v.

CITY OF MILWAUKEE, WISCONSIN

Defendant.

Civil Action No. 09-cv-0673

**CONSENT DECREE**

1. Plaintiff Michael V. Crivello (“Crivello”) commenced this action in the United States District Court for the Eastern District of Wisconsin, alleging that defendant City of Milwaukee, Wisconsin (“City”) violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”), when it did not allow him the opportunity to take a make-up promotional examination he missed while on active duty military service.

2. The City denies that it has violated USERRA. Nevertheless, as a result of settlement discussions, Crivello and the City (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. By Crivello’s signature to both this Decree and the “Release of all Claims” attached hereto as Appendix A, Crivello accepts the terms of this Decree.

### **STIPULATIONS**

3. The Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Wisconsin 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 Crivello, 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 Crivello, the City shall, within twenty-eight days from the date of entry of this Decree, retroactively adjust Crivello's date of promotion to the position of Detective to December 7, 2003, and, accordingly, grant Crivello all of the rights, benefits, status and compensation that flow from that seniority, except for time-in-grade requirements for the purpose of effectuating future promotions. Accordingly, within this twenty-eight day period, the City shall pay Crivello \$21,189.93 in backpay. All pension benefit adjustments due to Crivello will be provided to the Employees' Retirement System within five business days of the backpay payment. Crivello 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 employer-side taxes due on the monies paid to Crivello. The City and Crivello each shall provide to the other the appropriate tax-related documents necessary to calculate deductions and timely file tax returns.

9. The City has no present intention to administer another examination for the position of Lieutenant of Detectives, and nothing in paragraphs 9 or 10 of this Decree obligates it to do so. However, in lieu of providing a make-up examination for the September 2008

Lieutenant of Detectives examination, which Crivello would have been eligible to take had he originally been promoted to Detective on December 7, 2003, the City shall do the following if the City does administer a promotional examination for the position of Lieutenant of Detectives within one year of the date of entry of this Decree. If Crivello meets the qualifications required of all other candidates for such Lieutenant of Detectives examination, applies for, takes and passes the next administration of the Lieutenant of Detectives examination (“the next Lieutenant of Detectives examination”), if one is given, based on his score on the next Lieutenant of Detectives examination, the City shall interfile his name in rank order on the eligible list that resulted from the September 2008 Lieutenant of Detectives examination (“September 2008 examination”). If Crivello’s score is as high as any individual promoted to Lieutenant of Detectives from the September 2008 examination, the City shall grant Crivello the level of seniority, status, compensation and benefits (except for calculation of time-in-grade requirements for the purpose of effectuating subsequent promotions) in the Lieutenant of Detectives position that Crivello would have received had the City provided him the opportunity to take the September 2008 examination and had he achieved that same score. Crivello’s proper seniority date as a Lieutenant of Detectives shall be equivalent to the date on which the City promoted to Lieutenant of Detectives any other Detective who had the same score as Crivello on the September 2008 examination. If Crivello achieves a unique score, Crivello shall have the same level of seniority of the individual with the score immediately below his.

10. All appropriate seniority, status, compensation and benefit adjustments due Crivello after the administration of the next Lieutenant of Detectives examination, if one is given, shall be provided by the City within 20 calendar days of the scoring of that examination. If Crivello’s score would not have merited a promotion based on his interfiled position on the

eligible list from the September 2008 examination, it shall be interfiled on the eligibility list resulting from the Lieutenant of Detectives examination Crivello takes, if one is given, and he shall be treated as all other applicants for promotion on that list.

11. The relief provided in paragraphs 9 and 10 of this Decree applies only to the Lieutenant of Detectives promotional examination, should one be given, and does not apply or transfer to any other examination or any other position, including any examination for a position that is reclassified or retitled from the Lieutenant of Detectives position.

12. Within 14 days of compliance with each of paragraphs 8, 9 and 10 of this Decree, the City shall provide written confirmation of its compliance to the following counsel for Crivello by overnight delivery service to:

Chief  
Employment Litigation Section  
Civil Rights Division, PHB  
601 'D' Street, N.W., Fourth Floor  
Washington, DC 20530  
Facsimile: (202) 514-1005

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

13. 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 Crivello 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.

14. 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**

15. 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.

**MISCELLANEOUS**

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

17. 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.

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

19. 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 Crivello and the City.

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

APPROVED and ORDERED this 21st day of January 2010.

s/ C.N. Clevert, Jr.  
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C. N. CLEVERT, JR.  
CHIEF U.S. DISTRICT JUDGE

Agreed and consented to by and on behalf of  
plaintiff Michael V. Crivello:

/s/ Michael V. Crivello  
MICHAEL V. CRIVELLO  
Plaintiff

/s/ John Gadzichowski  
JOHN GADZICHOWSKI  
(WI Bar No. 1014294)  
Chief

/s/ Jodi B. Danis  
JODI B. DANIS  
(DC Bar No. 453493)  
Deputy Chief

/s/ Leslie Gardner  
LESLIE GARDNER  
(CA Bar No. 228693)  
Senior Trial Attorney  
U.S. Department of Justice  
Civil Rights Division, PHB  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Telephone: (202) 307-3925  
Facsimile: (202) 514-1005  
Email: leslie.gardner@usdoj.gov

Attorneys for plaintiff Michael V. Crivello

Agreed and consented to by and on behalf  
of defendant City of Milwaukee:

GRANT F. LANGLEY  
City Attorney  
City of Milwaukee

By:  
/s/ Marynell Regan  
MARYNELL REGAN  
(WI Bar No. 1023264)  
Assistant City Attorney  
200 East Wells Street  
Milwaukee, WI 53202  
Telephone: (414) 286-2601  
Facsimile: (414) 286-8550  
Email: mregan@milwaukee.gov

Attorneys for defendant City of Milwaukee

**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 Milwaukee, Wisconsin, pursuant to the provisions of the Consent Decree (“Decree”) entered by the United States District Judge in Michael V. Crivello v. City of Milwaukee, Wisconsin, I, Michael V. Crivello, forever release and discharge the City of Milwaukee and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of the City of Milwaukee 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, Department of Labor USERRA Case Number 5-WI-2006-00014-20-G.

I understand that the relief to be given to me does not constitute an admission by the City of Milwaukee 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 constitutes the entire agreement between the City of Milwaukee and me, without exception or exclusion.

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<sup>th</sup> day of January, 2010.

/s/ Michael V. Crivello  
Signature

Subscribed and sworn to before me this  
13<sup>th</sup> day of January, 2010

/s/ Lisa Gonzalez  
Notary Public

My Commission expires: 9/8/13