

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

CYNTHIA Y. DAVIS,

Plaintiff,

v.

CITY OF MARION,

Defendant.

Civil Case No.

2:08-cv-00436-KD-M

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, Cynthia Y. Davis ("Ms. Davis"), commenced this action in the United States District Court for the Southern District of Alabama, alleging that Defendant, the City of Marion ("City"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* ("USERRA"), by failing to reemploy Ms. Davis because of her membership and service in the United States Army National Guard ("National Guard").

2. As a result of settlement discussions, Ms. Davis and the City have resolved their differences and have agreed that this action should be settled 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 alleged against the City, and any and all claims that could have been alleged in the Complaint filed in this action. By Ms. Davis' signature to both this Decree

and the "Release of Claims" attached hereto as Appendix A, Ms. Davis has indicated her acceptance of the terms and conditions contained in this Decree.

STIPULATIONS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Southern District of Alabama over the subject matter of this action and of the parties to this case for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. The City agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the 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 Ms. Davis and the City 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 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, being entered with the consent of Ms. Davis and the City, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by the City of any violations of USERRA.

NON-RETALIATION

7. The City shall not take any action against Ms. Davis or any person that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance, or participated in any manner, in any investigation or proceeding in connection with this case.

REMEDIAL RELIEF

8. The City shall reemploy Ms. Davis as a full-time dispatcher, starting on the earliest possible day after the date this Consent Decree is entered by the Court, but no later than the next pay period after the Decree is entered by the Court. The City shall reemploy Ms. Davis at the level of seniority, status, pay, and benefits that she would have enjoyed had she remained employed continuously with the City until the present, including during the time of her active duty service in the National Guard. Ms. Davis' seniority date shall reflect her original hire date with the City of April 6, 2006.

9. At the time Ms. Davis is reemployed with the City, she shall:
- a. earn at least \$7.50 an hour (and be eligible for future pay increases based on her hire date of April 6, 2006);
 - b. accrue annual and sick leave in accordance with the City's policy for full-time employees;

- c. be eligible for medical insurance at the same rate applied to all full-time City employees; and
- d. be eligible to participate in the Retirement Systems of Alabama's Employees' Retirement System in the same manner applied to all full-time City employees.

10. The City and the Perry County Emergency Communication District ("Perry County E-911 Board") entered into a Memorandum of Understanding, dated May 22, 2009, that calls for the transfer of the City's full-time dispatchers to full-time Perry County E-911 Telecommunicator positions on or about July 1, 2009. As confirmed by a letter to Ms. Davis' counsel from the Perry County E-911 Board Chairperson dated June 12, 2009 (a copy of which is attached hereto as Appendix B), the Perry County E-911 Board will hire Ms. Davis as a full-time Telecommunicator beginning July 1, 2009, with at least forty (40) hours of work per week, and at a starting salary of \$8.50 per hour. In addition, and as confirmed in the May 4, 2009 Perry County E-911 Board's Information on Dispatcher Employment, when Ms. Davis is hired by the Perry County E-911 Board and her employment is transferred from the City to the Perry County E-911 Board, the terms of employment offered to her shall also include the following:

- a. be eligible for future pay increases;
- b. accrue annual and sick leave per the Perry County E-911 Board policy;
- c. be eligible for medical insurance with Blue Cross Blue Shield of Alabama; and
- d. be eligible to participate in the Retirement Systems of Alabama's Employees' Retirement System.

11. Until the time Ms. Davis is hired by the Perry County E-911 Board and her employment is transferred from the City to the Perry County E-911 Board, she shall be a full-

time employee of the City. If the City dispatchers are not transferred to the Perry County E-911 Board in accordance with the Memorandum of Understanding between the City and the Perry County E-911 Board, Ms. Davis shall remain employed by the City as a dispatcher at the same rate of pay and benefits that she earned at the time of reemployment with the City under this Decree.

12. If the Memorandum of Understanding between the Perry County E-911 Board and the City to Support the Perry County Emergency Communication District is voided or terminated during the duration of this Decree, and as a result Ms. Davis' employment with the Perry County E-911 Board is terminated, and the City reinstates its dispatcher services, then the City shall reemploy Ms. Davis as a full-time dispatcher at the same rate of pay and benefits that she earned at the time of reemployment with the City under this Decree.

13. The City, within fifteen (15) calendar days after the entry of this Decree, shall provide documentary evidence of having reemployed Ms. Davis pursuant to the provisions of this Decree, and that Ms. Davis has been hired by the Perry County E-911 Board and that her employment has been transferred from the City to the Perry County E-911 Board pursuant to the provisions of this Decree, by mailing the same to the following address via overnight or express mail:

Maria Hortensia Rios
Senior Trial Attorney
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Civil Rights Division
Employment Litigation Section, PHB, Room 4014
Washington, D.C. 20530

14. If Ms. Davis is not hired by the Perry County E-911 Board and her employment is not transferred to the Perry County E-911 Board within the time frame described in the preceding paragraphs, the City shall submit reports every sixty (60) days to counsel for Ms. Davis, at the same address listed in Paragraph 13 above, providing the status of Ms. Davis' employment with the City, and information as to the Perry County E-911 Board's plan to open and operate a county-wide E-911 Communication Center.

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

15. The Court shall retain jurisdiction of this action and shall have all available equitable powers, including the power to order injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall give notice to each other ten (10) business days before moving for review by the Court. The parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

EXPIRATION OF THE DECREE

16. This Decree shall expire, and this action shall be dismissed, without further order of this Court one year from the date Ms. Davis has been reemployed by the City or Ms Davis has been hired by the Perry County E-911 Board and has had her employment with the City transferred to the Perry County E-911 Board, or after any dispute arising under this Decree has been finally resolved by the Court, whichever is later. Ms. Davis may move, for good cause, to

extend the Decree if the remedial relief called for herein has not been effectuated. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Decree.

MISCELLANEOUS

17. The parties shall bear their own costs and expenses of litigation, including attorneys' fees.

18. 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 Ms. Davis in this action. The Court, however, retains jurisdiction over this matter for the purpose of entering appropriate orders interpreting and enforcing this judgment.

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 will remain in full force and effect.

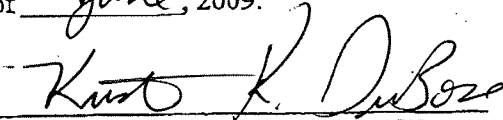
20. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Ms. Davis and upon the heirs, successors, and assigns of the City.

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 Ms. Davis and the City, and approved by the Court.

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

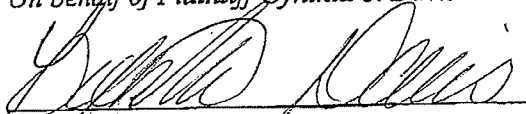
Court.

APPROVED and ORDERED this 22nd day of June, 2009.

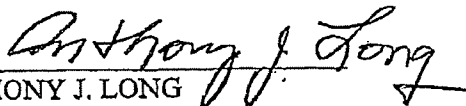

UNITED STATES DISTRICT JUDGE


AGREED AND CONSENTED TO:

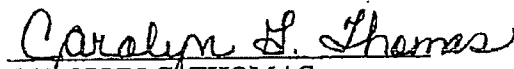
On behalf of Plaintiff Cynthia Y. Davis

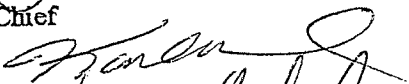


CYNTHIA Y. DAVIS
Plaintiff


On behalf of Defendant the City of Marion


ANTHONY J. LONG
Mayor, City of Marion


JOHN M. GADZICHOWSKI
(WI Bar No. 1014294)
Chief


CAROLYN G. THOMAS
Clerk, City of Marion
Attesting to the Mayor's signature



KAREN D. WOODARD, Deputy Chief
(MD Bar)
MARIA HORTENSIA RIOS, Trial Attorney
(PR Bar No. 10908)
United States Department of Justice
Civil Rights Division
Employment Litigation Section
PHB Room 4014
950 Pennsylvania Avenue, NW
Washington, DC 20530
Telephone: 202-616-9750
Facsimile: 202-514-1005


COLLINS PETTAWAY, JR.
(PETTC9796)
Chesnut, Sanders, Sanders
& Pettaway, L.L.C.
P.O. Box 1290
Selma, Alabama 36702-1290
Telephone: 334-875-9264
Facsimile: 334-875-0414