

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

GEORGE LAWTON,

Plaintiff,

v.

NEWARK PUBLIC SCHOOLS

Defendant.

Civil Action No. 2:09-cv-02491-DRD-MAS

CONSENT DECREE

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

1. Plaintiff, George Lawton ("Lawton"), commenced the above entitled action in the United States District Court for the District of New Jersey, alleging that the Defendant Newark Public Schools ("NPS") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by failing to re-employ Lawton in the position he would have held had his employment not been interrupted by military service.

2. The NPS denies that it has violated USERRA.

3. Nevertheless, Lawton and the NPS (collectively referred to as the "Parties"), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent

Decree be a final and binding settlement in full disposition of all claims alleged in the Complaint filed in this case.

**STIPULATED FACTS**

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

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

**FINDINGS**

6. Having examined the terms and provisions of the Consent Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of the action and the parties to this action.
- b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the parties are protected adequately by this Decree.
- c. This Consent 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 Consent Decree will further the objectives of the USERRA and other applicable laws and will be in the best interest of the parties.

THEREFORE, IT IS ORDERED AS FOLLOWS:

**NON-ADMISSION**

7. This Decree is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by the NPS of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities.

**NON-RETALIATION**

8. The NPS shall not take any action against any person which 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.

**REMEDIAL REQUIREMENTS**

9. Without admitting the allegations as set forth in the Complaint, and in settlement of the claims of Lawton, the NPS shall, within thirty (30) business days from the date of entry of this Decree, pay Lawton \$6,125.00 of which \$2,520.00 shall be attributed to back pay. The NPS shall withhold all employee tax withholdings and employee contributions on the \$2,520.00 back pay component of the total monetary award as required by law, which the NPS shall timely pay to the appropriate governmental agencies on behalf of Lawton. The NPS shall separately pay to the appropriate governmental agencies the appropriate employer's contribution due on the \$2,520.00 back pay portion of the total monetary award; i.e., the employer's contribution shall not be deducted from any part of the monetary award to Lawton. The NPS shall pay the required amounts to Lawton by mailing the checks addressed as follows:

George Lawton  
375 Mt. Prospect Avenue, Unit 1C  
Newark, NJ 07104

The NPS shall provide documentary evidence of having paid Lawton by mailing a photocopy of the check evidencing payment together with proof of payment to the following address within twenty one (21) days of payment to Lawton:

Robert L. Galbreath  
Senior Trial Attorney  
Civil Rights Division  
Employment Litigation Section  
United States Department of Justice  
950 Pennsylvania Ave., N.W. PHB, Room 4028  
Washington, D.C. 20530

10. Within thirty (30) business days from the date of entry of this Decree, the NPS shall extend to Lawton an offer of employment as a full-time Teacher of Students with Disabilities at the Academy of Vocational Careers for the 2012-2013 school year. With respect to terms, conditions, salary requirements, and benefits of employment, the NPS shall treat Lawton consistent with its current practice in 2012 in extending such offers of employment to other individuals in the same or comparable positions to Lawton's. In order to accept the position, Lawton must notify NPS by no later than June 1, 2012, of his acceptance and further confirm that he has met, or will meet by the commencement of the 2012-2013 school year, all applicable New Jersey licensing and content area certification requirements for the position of full-time Teacher of Students with Disabilities. In the event Lawton does not accept the position as a full-time Teacher of Students with Disabilities at the Academy of Vocational Careers by June 1, 2012, or cannot confirm by that date that he will timely meet the licensing and content area certification requirements for the position, NPS' obligations under this paragraph are fully satisfied. However, consistent with the requirements of USERRA, in the event Lawton is unable to begin employment with NPS for the 2012-2013 school year because of Lawton's further

service in the Uniformed Services, NPS acknowledges it may need to further extend its offer of employment.

11. Once employed by NPS as a full-time Teacher of Students with Disabilities at the Academy of Vocational Careers, Lawton will be subject to the same terms and conditions of employment as all other full time NPS teachers.

#### **RELEASE OF CLAIMS**

12. For and in consideration of the relief being provided to him as described in paragraphs 9 and 10 of this Decree, Lawton forever releases and discharges the NPS and all current, former and future agents, employees, officials, designees, predecessors, and successors in interest of the NPS from all legal and equitable claims, arising out of the Complaint filed in the above-captioned civil action and Department of Labor, Complaint No. NJ-2008-00029-20-R that have accrued prior to the date of this release. This release and discharge of claims is subject only to the NPS's compliance with the terms of this Decree.

#### **DISPUTE RESOLUTION AND COMPLIANCE**

13. This Court shall retain jurisdiction over this matter and will have all available equitable powers, including 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 a resolution of such dispute by the Court. In the event of a dispute, 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.

**MISCELLANEOUS**

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

14. This Consent 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 this action. This Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders enforcing this Decree.

15. The terms of this Consent Decree shall be binding upon the present and future directors, employees, agents, administrators, successors, representatives, and assigns of the NPS and upon the heirs, successors, and assigns of Lawton.

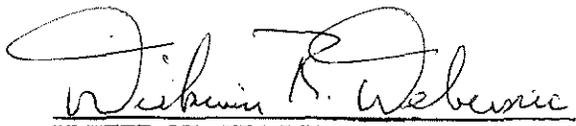
16. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing by all parties.

**EFFECTIVE DATE**

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

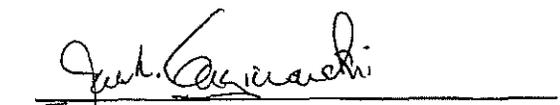
18. This Decree shall expire, and this action shall be dismissed without further order of the Court, either in three years from the date of entry, or upon the fulfillment by both parties of the obligations set forth in paragraph 10 regarding Lawton's employment as a Teacher of the Handicapped at the Academy of Vocational Careers, whichever is later. Lawton may move, for good cause shown, to extend the decree prior to its expiration. The Decree will not be extended, however, unless the Court grant's Lawton's motion. 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.

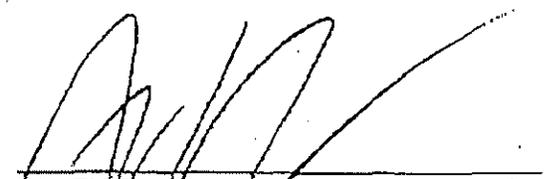
APPROVED and ORDERED this 2nd day of <sup>December</sup> ~~November~~, 2009.

  
UNITED STATES DISTRICT JUDGE

  
GEORGE LAWTON

  
NEWARK PUBLIC SCHOOLS  
By: Dr. Clifford B. Janey, Superintendent

  
JOHN M. GADZICHOWSKI  
[WI Bar No. 1014294]  
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ESTHER LANDER  
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*On Behalf of Defendant Newark Public Schools*

*On Behalf of Plaintiff George Lawton*