

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MICHAEL SCHUTZ,

Civil No. 11-2841 (JRT/JSM)

Plaintiff,

v.

CONSENT DECREE

CITY OF TRUMAN, MINNESOTA,

Defendant.

Ana Voss, Assistant United States Attorney, **OFFICE OF THE UNITED STATES ATTORNEY**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415; Joseph Sperber, IV, **U.S. DEPARTMENT OF JUSTICE**, Civil Rights Division, Employment Litigation Section, 950 Pennsylvania Avenue NW, PHB, ELS, 4th Floor, Room 4035, Washington, DC 20530, for plaintiff.

Jon Iverson and Susan Tindal, **IVERSON REUVERS, LLC**, 9321 Ensign Avenue South, Bloomington, MN 55438, for defendant.

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Michael Schutz (“Schutz”) commenced this action in the United States District Court for the District of Minnesota, alleging that defendant the City of Truman, Minnesota (the “City”), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq. (“USERRA”) by failing to properly reemploy Schutz upon his return from deployment to Kuwait in the United States Naval Reserves and retaliated against Schutz after he filed his USERRA complaint.

2. The City denies that it has violated USERRA and asserted that it properly reemployed Schutz upon his return from deployment and did not retaliate against him.

3. Nevertheless, as a result of settlement discussions, Schutz 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. It is the intent of the Parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this action. By Schutz’s signature to both this Consent Decree and the “Release of all Claims” attached hereto as Appendix A, Schutz accepts the terms of this Consent Decree.

STIPULATIONS

4. The Parties acknowledge the jurisdiction of the United States District Court for the District of Minnesota over the subject matter of this action and of the Parties to this action for the purpose of entering and, if necessary, enforcing this Consent Decree.

5. Venue is proper in this judicial district for purposes of entering this Consent Decree and any proceedings related to this Consent Decree. The City agrees that all conditions precedent to the institution of this action have been fulfilled.

FINDINGS

6. Having examined the provisions of this Consent 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 Consent Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Consent 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 the Consent Decree will further the objectives of USERRA and will be in the best interest of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

7. This Consent 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.

8. The City shall not take any action against any person, including but not limited to Schutz, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

9. Schutz and the City shall comply at all times with the City's Personnel Policy Manual and the Police Department's Policy Manual.

REMEDIAL RELIEF

10. Subject to the terms of a separate Release agreement between the

Parties, the City shall, within ten (10) business days from the date of entry of this Consent Decree, pay Schutz a monetary award as follows:

a) \$11,211.29 (eleven thousand, two hundred and eleven dollars and twenty-nine cents) shall be wage income attributable to back pay;

b) \$2,788.71 (two thousand seven hundred eighty eight dollars and seventy one cents) shall be non-wage income attributable to unpaid benefits; and,

c) \$1614.43 (one thousand, six hundred and fourteen dollars and forty-three cents) shall be non-wage income paid by the City to Schutz's PERA account based on the \$11,211.29 back pay amount paid to Schutz in item (a), above. The City will process the payment of the above-listed back pay amount in paragraph (a), above, and unpaid benefits in paragraph (b), above, through its payroll system and the payment of the above-listed PERA payment in (c), above, for Schutz's benefit with PERA. The City shall separately pay the appropriate employer's contribution to the Social Security and Medicare funds due on the wage income award on behalf of Schutz, *i.e.*, the employer's contribution shall not be deducted from the wage income award to Schutz.

In addition, the City will assign to Schutz 40 (forty) additional hours of vacation time in calendar years 2012 and 2013. The City will pay directly \$2157.00 (two thousand one hundred and fifty seven dollars) to Michael Tow, representing Schutz's portion of the bill for Tow's service on the arbitration panel in the Minnesota Veteran's Preference Hearing held on February 27, 2012.

11. The Parties shall file this Consent Decree with the Court no earlier than the date of execution by Schutz of the attached Release of Claims.

12. Within ten (10) business days from the date of entry of the Consent Decree, the City shall remove any reference to Schutz's proposed termination from all of Schutz's personnel files, as well as any of its third-party employment verification vendors. The City shall ensure that neither the proposed termination nor facts and circumstances leading to the proposal are available for reference in the event the City is called upon to

provide an employment reference for Schutz in the future, and shall not refer to Mr. Schutz's exercise of USERRA rights or this lawsuit in any employment reference it provides.

13. Within fourteen (14) days of compliance with paragraphs nine (9) and eleven (11) of this Consent Decree, the City shall provide written confirmation of its compliance to the following counsel for Schutz:

Ana H. Voss
Assistant United States Attorney
600 U.S. Courthouse
300 S. Fourth Street
Minneapolis, MN 55415
Ana.voss@usoj.gov

14. The City will conduct one hour of mandatory training regarding the rights, benefits, and obligations of persons and employers covered under USERRA to the City's Mayor, Police Chief, City Attorney, Police Commissioner, and any other employee who takes responsibility for hiring within the City's police department, annually for two years. Within fourteen (14) business days of such training, the City shall provide Schutz's attorney a written confirmation that the training was conducted in compliance with this paragraph along with a list of attendees, by name and position. Proposed training presentations or materials must be provided to Schutz's attorney for review and approval at least twenty (20) business days before such mandatory training is scheduled.

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

15. The entry of 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 or that could have been asserted by Schutz 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 Consent Decree.

16. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Consent Decree. In the event of a dispute, the Parties shall give notice to each other fifteen (15) days before seeking resolution of the dispute by the Court, and may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Consent Decree.

EXPIRATION

17. The terms of this Consent Decree shall expire and this action shall be dismissed with prejudice without further order of this Court eighteen (18) months from the date of entry hereof. The Parties agree, however, that the terms of the Release of Claims do not expire, but rather, survive the expiration of the terms of the Consent Decree.

MISCELLANEOUS

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

19. If any provision of this Consent 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.

20. The terms of this Consent Decree are and shall be binding upon the heirs, successors, and assigns of Schutz and upon the present and future councils, employees,

agents, representatives, successors, and assigns of the City.

21. This Consent Decree and its Release of Claims constitute the entire agreement and commitments of the Parties. Any modifications to the Consent Decree must be mutually agreed upon and memorialized in writing signed by Schutz and the City.

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

DATED: August 14, 2012
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

Agreed and Consented to by and on behalf of Plaintiff:

s/ Michael Schutz
MICHAEL SCHUTZ
Plaintiff

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division
United States Department of Justice

DELORA KENNEBREW
Chief
Employment Litigation Section
Civil Rights Division
United States Department of Justice

JODI B. DANIS
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Email joseph.sperber@usdoj.gov
United States Department of Justice
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B. TODD JONES
United States Attorney for the
District of Minnesota

By: s/ Ana H. Voss
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ATTORNEYS FOR PLAINTIFF MICHAEL SCHUTZ

Agreed and Consented to by and on behalf of Defendant:

s/ Monte Rohman

Monte Rohman

Truman City Clerk-Treasurer

s/ Susan M. Tindal

Jon K. Iverson, #146389

Susan M. Tindal, #330875

Iverson Reuvers

9321 Ensign Avenue South

Bloomington, MN 55438

(952) 548-7200

APPENDIX A

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 Truman pursuant to the provisions of the Consent Decree (the "Decree") that is to be entered in the case of Michael Schutz v. the City of Truman, Minnesota in the United States District Court for the District of Minnesota (Case No. 11-cv-2841), I, Michael Schutz, forever release and discharge the City of Truman (the party released), including all law enforcement officers under its jurisdiction, direction and control, the League of Minnesota Cities Insurance Trust, all of their past, present and future officers, directors, officials, attorneys, principals, representatives, insurers, administrators, executors, successors and assigns, employees and agents, from all actions, at law or in equity, whether arising by statute, common law or otherwise, which could have been asserted in the Complaint.

I understand that the relief to be given to me does not constitute an admission by the City of Truman 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 Truman and the League of Minnesota Cities Insurance Trust, and me, and the terms of this agreement are contractual and not a mere recital.

I further state that I have carefully read the foregoing release and know the contents thereof, and sign the same as my own free act, and it is my intention to be legally bound hereby.

SIGNATURE: s/ Michael Schutz

DATE: 07/10/12