

LAW REVIEW 902

(January 2009)

1.1.1.7—Application of USERRA to State and Local Governments

1.2—USERRA—Discrimination Prohibited

1.4—USERRA Enforcement

Naval Reservist Wins USERRA Case Against San Diego Police Department

By CAPT Samuel F. Wright, JAGC, USN (Ret.)

Wallace v. City of San Diego, 479 F.3d 616 (9th Cir. 2007).

James D. Wallace served as a police officer for the City of San Diego Police Department (SDPD) from March 1975 until October 2000, when he resigned. The jury found that his resignation was forced by the abuse imposed upon him by his SDPD supervisors, motivated by their animus against him on account of his Naval Reserve service. (The Naval Reserve became the Navy Reserve after the facts that give rise to this case.) Mr. Wallace joined the Naval Reserve in 1982.

Through the 1980s, his Naval Reserve service was generally limited to one weekend of drills per month and two or three weeks of annual training per year. In 1991, he was called to active duty for seven months for Operation Desert Storm. In the late 1990s, he was called to active duty several times, for lengthy periods, for military operations in the Balkans.

The jury found that SDPD leaders engaged in a series of truly outrageous acts of discrimination against Mr. Wallace because of his Naval Reserve service. The discrimination included refusing to consider him for promotion beyond the rank of sergeant, inventing pretexts to try to fire him, and transferring him to the least desirable SDPD job assignments, all in violation of section 4311(a) of the Uniformed Services Employment and Reemployment Rights Act (USERRA), the jury found. The jury also found that his October 2000 resignation was forced by the mistreatment and amounted to a constructive discharge. The jury awarded him \$256,800 in damages.

The District Court judge granted the city's motion for judgment notwithstanding the verdict, finding that there was *no evidence* to support the jury's verdict for Mr. Wallace. The Court of Appeals reversed the District Court and reinstated the jury's verdict. The District Court also conditionally granted the city's motion to set aside the jury's verdict as *against the great weight and preponderance of the evidence* and to order a new trial. The Court of Appeals found that the District Judge abused his discretion in setting aside the jury's verdict as against the great weight and preponderance of the evidence. The bottom line is that the jury's verdict was upheld, and Mr. Wallace received his \$256,800.

Before the 1994 enactment of USERRA, it had been held that a jury trial was not available in a reemployment rights case. *See, e.g., Troy v. Hampton*, 756 F.2d 1000, 1003 (4th Cir. *en banc*), *cert. denied sub nom. Blackmon v. Observer Transportation Co.*, 474 U.S. 864 (1985). USERRA changed this, and that is a positive development. The American people are deeply divided about the wisdom and conduct of particular military operations, but they overwhelmingly support the troops. As jurors, as customers, and as voters, the American people show little patience with employers who flout USERRA.

I also invite the reader's attention to Law Review 0737 (July 2007), titled "Right to Trial by Jury under USERRA," which, along with the rest of the ROA Law Review library, is available at www.roa.org/law_review.