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You Are Not Required To Arbitrate Your USERRA Complaint!

By CAPT Samuel F. Wright, JAGC, USNR*

LtCol Michael Garrett, USMCR, a n ROA member, worked for Circuit City Stores, Inc., for a number of years. He was fired under circumstances he believed unfair and motivated by his Reserve status. He had experienced resentment that he believed was due to his Marine Corps Reserve obligations. Colonel Garrett retained an attorney and sued Circuit City in the United States District Court for the Northern District of Texas, Dallas Division.

Some years before his termination, Circuit City mailed to each employee (including Garrett) an official notice. Each employee was required to respond within 30 days, if he or she objected to an "agreement" to submit to arbitration any future disputes with the employer. In the lawsuit, Circuit City has filed a motion to compel arbitration, based on Garrett's failure to opt out. The Supreme Court has held that pre-dispute arbitration agreements in the employment context are, generally speaking, enforceable. *Circuit City Stores, Inc. v. Adams,* 532 U.S. 105 (2001).

Under Circuit City's arbitration system, a claimant is limited in the number of depositions he or she can take. Moreover, Bolonel Garrett has multiple witnesses all over the country. Colonel Garrett and his attorney are concerned that they may not be able to prove their case in artibration because of the discovery limitations.

Colonel Garrett's attorney (Robert E. Goodman Jr., of Dallas) has opposed Circuit City's motion to compel arbitration, and the attorney contacted me. I agree with his position that USERRA is different from other federal laws regarding labor-management relations and that Garrett is not required to arbitrate his USERRA dispute with Circuit City. Congress has provided an enforcement mechanism for USERRA, and arbitration is not part of it. USERRA has a special provision making that clear.

On behalf of ROA, I filed an *amicus curiae* ("friend of the court") brief supporting Colonel Garrett's position. You can find the brief on the ROA Web site, as an attachment to this article. On August 17, 2004, Judge Barbara Lynn heard oral arguments on the motion to compel arbitration, and my colleague Col John S. Odom Jr., USAF (Ret.), spoke for ROA at that hearing. I will keep you informed as to how this turns out.