

Updated Questions and Answers on the Lawsuit against Rowland and Ryan

On Tuesday, April 28, 2015 the Plaintiffs in the Lawsuit of SEBAC v. Rowland announced a settlement agreement after nearly 12 years of litigation. We are proud of our members and their unions for showing the courage and tenacity to stand up for the rights of free speech not just themselves but for all of us. Truly, when a governor punishes people for the group to which they belong -- whether it be a union, a religion, or a political party – that governor shows disdain for our Constitution, and the democratic rights upon which we all depend. Below we discuss why the settlement is the best choice for both sides, what it means, and how it will be finalized.

Question

Answer

1. Who is covered by the Settlement?

All state employees and former state employees who were affected by John Rowland's unlawful acts and threats are eligible to participate in the settlement. That includes union-represented employees who worked for the State as of November 17, 2002 (when Rowland made his first unlawful layoff threat) and people who were in training at that time for placement in union-represented positions. Obviously the more people were injured, the more they will recover through the settlement process.

2. What are the highlights of the Agreement's financial provisions for members?

If you were economically harmed by Rowland's unlawful acts, you will be **made whole** for lost wages and benefits, subtracting "mitigation" (such as earnings from another employer or unemployment), minus a 30% settlement discount, but adding 5% interest from the time of the loss. (There is a short cut method of determining mitigation for the first year of layoff). You will also receive the equivalent of \$1500 extra for emotional distress if you were laid off, or \$700 if you were otherwise economically injured. Other state workers will receive the equivalent of \$100 as a symbolic reflection of the harm Rowland did to all unionized workers by unlawfully threatening them and their unions.

3. Is our financial relief in something other than cash?

For most workers, financial relief is paid in vacation days and/or personal days. This allows the State to pay off the 12 years of damages over time, while protecting members from losing value because the value of such days increase over time with pay increases. The State is forbidden to force members to use these days or subject them to maximum accrual limits. Workers with extreme hardship will be able to request the money immediately, and workers no longer employed by the State, or not eligible for vacation or personal days, will also get their payments in cash.

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4. Will we owe attorneys' fees for our recovery?

Attorneys' fees will be paid by the State. Class counsel will also further assist members in getting their recoveries without charging either the State or the member.

5. What happens if we are still out of work or not where we would have been without Rowland's unlawful acts? Will we be put where we belong?

If the State does not make an offer to place you where you would have been absent Rowland's unlawful act, you may seek up to 10 years of front pay in addition to the "make whole" relief discussed above.

6. How will we show our individual damages.

The parties have agreed on a neutral claims examiner who will decide each claim. While the process will vary somewhat depending on how you've been injured, in each case where there is lost pay the State will share its calculations of what has been lost, as well as its view of where you should be placed. If you disagree, any part of the offer with which you do agree will be implemented while the neutral claims examiner decides the disputed issues. In unusual cases, there will be an opportunity to appeal to a neutral panel of three for final decision. In all cases, there will be plenty of time between each step and assistance for members if needed, and those members who did not submit pre-settlement questionnaires will be able to participate fully in the process.

7. The Second Circuit has already held that Rowland and Ryan violated the constitution when they chose to layoff and threaten layoff to people because they joined a union. Why does it make sense to settle this case?

We believe we have a very strong case, but in any litigation there is an element of risk – in this case that the Second Circuit could eventually be overruled by the Supreme Court – and there is also the risk of tremendous delay. When we entered settlement discussions, we sought a reasonable compromise or settlement discount that would reflect the strength of our case, provide justice for the workers who were most injured, and produce a resolution in a reasonable time frame. Once we achieved that, it would be imprudent to risk it for and delay it on continued litigation.

8. In that case, why would the State choose to settle it?

We don't speak for the State, but certainly they were aware that our case was strong and that the most likely outcome of further litigation was increasing costs for the State, and only delaying rather than denying recovery. From settlement, as we describe below, the State gets a reasonable settlement discount, an expedited and less costly claims procedure, and a way to pay the proceeds of a dozen years of damages out over time, instead of (as a court would require), a single large payment all in one budget year.

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9. Is the Agreement final?

No. First the General Assembly has 30 days to overrule the Attorney General and vote to reject the Settlement. Given that the Settlement is fair to both sides, that is very unlikely. Once the 30 days have passed, the Settlement will be submitted to the Federal Court for preliminary approval by the Judge. That preliminary approval will set the process for all class members to be notified of the settlement, and then opt out (if they wish to file their own lawsuit, which is very rare), or object to a term of the settlement. Usual that takes about 90 days. After that time, the Court would rule on any objections and then issue final approval of the Settlement. After that, there is a process providing plenty of time for individuals to file and collect their claims which is described a little later.

10. Do we need to hire an attorney to pursue our individual claims for relief?

No. Class Counsel David Golub and his office will represent you in these claims at no charge.

11. Some employees elected to retire instead of being laid off, what happens to them?

People who retired to avoid layoff or bump down to a lower position are eligible to seek financial relief and reinstatement. Whether this is in their individual interest will vary.

12. Are there other aspects of the settlement?

Yes. There are many standard legal provisions, as well as provisions for the calculation of the fees the State owes plaintiff's counsel, and for modest payments to class representatives. The full settlement agreement will be available to all members of the class, as well as to the General Assembly and the public.