

May 4, 2007 Volume 108 Number 9

Fired Portland school custodians settle for \$14.5 million

By **DON McINTOSH**, Associate Editor

Portland Public Schools (PPS) will pay about \$37,000 each to 280 custodians it fired in summer of 2002, as part of a \$14.5 million [settlement](#) to a class-action lawsuit.

The out-of-court settlement was negotiated by lawyers for the two sides and approved by the School Board at a special April 23 meeting.

The firings came about when the district outsourced its custodial jobs to a lower-wage, lower-benefit private janitorial contractor.

The union representing the custodians — Service Employees International Union (SEIU)—challenged the firings in court, and in October 2005 the Oregon Supreme Court agreed that the outsourcing violated a 1937 law requiring PPS custodians to be hired through civil service procedures.

The [ruling](#) in that case, known as *Walter v. Scherzinger*, meant the district would be liable for back pay in the class-action lawsuit, known as *McWilliams v. Public School District*. PPS' liability continued to grow until October 2006 — when the district rehired 124 custodians who accepted an offer of recall.

At that point, custodians' attorneys met with over 200 individuals to tally up damages, which came to \$25.5 million. The figure included four-plus years of the wages and benefits they would have made at the district, minus whatever they had earned elsewhere during that period, plus whatever health care costs they'd had to pay because they weren't on the district's health plan.

In January, PPS hired Resolution Counsel, a law firm specializing in out-of-court settlements. On the other side, Mark Griffin, the lead attorney for the plaintiffs, brought in Portland class-action specialist Robert Stoll to lead settlement negotiations.

When the two sides sat down to bargain a settlement, the district had its own estimate of the damages — \$3 million — based on a model worked up by economists hired by the district's lawyers.

"Their position was that everybody should have gotten a job after about 100 days," Stoll said, "and that the pay would have been \$1.50 an hour less. That's only \$3,000 a year per person."

The final amount, \$14.5 million, was a compromise between the two sides' figures. Out of that sum:

- About \$3.3 million — 25 percent — will pay plaintiffs' attorney fees. [25 percent is standard in class-action lawsuits, where lawyers work for years and only get paid if they win an award for their clients.]
- Up to \$140,000, subject to court approval, will reimburse plaintiffs' attorneys for out-of-pocket legal costs, including \$7,400 to each of the four lead plaintiffs for their services.
- A \$370,000 "Extraordinary Health Care Claim Fund" will reimburse a handful of custodians for any amount over \$15,000 that they paid for health care costs or insurance premiums.

The remainder will be divided up among the 280 custodians, amounting to about \$37,000 each. After payroll taxes, income tax withholding and employee retirement plan contributions are taken out, custodians can expect a check of about \$26,000, to be issued sometime before September 2007. A handful of custodians died before the suit was resolved, and in their cases, the district will make the payment to their estates.

Under the terms of the settlement, the amount of the district's offer decreases \$50,000 for every custodian who chooses to "opt out," and if more than 20 of the 280 opt out, the district can back out of the settlement altogether.

Among custodians, reactions were mixed at an April 23 meeting to discuss the settlement.

"Some people were really happy and some were really unhappy," said Steve Armony, former custodian union leader and one of the four lead plaintiffs who sat through the settlement negotiations. Still, Armony says, he doesn't expect many custodians will choose to opt out of the settlement — which would mean they'd have to find a new attorney and fight on alone.

"You gotta ask yourself, 'Do I still want to be dealing with this five years from now?'" Armony said. "The district has

unlimited funds — our tax dollars — to fight this and drag it out.”

Stoll, who is also one of the lead attorneys in the Exxon Valdez class action lawsuit, agreed, and gave custodians some sobering perspective — the Prince William Sound, Alaska, fishermen he represents have yet to get a settlement check 18 years after the oil spill cost them their livelihoods.

While it might seem custodians’ right to back pay is cut and dried, Stoll said they could face an unsympathetic judge if they went to trial; thus far, only the Oregon Supreme Court ruled in custodians’ favor, and that by a split 3-2 majority. And it could take three years or more to get a decision if the two sides go to trial.

“Given everything,” Armony said, “this is probably the best deal we could get.”

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