

Updated Questions and Answers on the Lawsuit against Rowland and Ryan

On May 31, 2013, the Second Circuit granted summary judgment to a coalition of plaintiffs lead by SEBAC and its constituent unions in a case challenging former governor John Rowland's 2003 lay off of nearly 3000 unionized state employees. The Court held that by singling out union members instead of including managers and other unrepresented employees, the Rowland Administration punished employees for exercising their fundamental right of free association, a right protected by the First Amendment to the United States Constitution. Effectively, the Court held that when a governor punishes people because of the group to which they belong - whether it's a union or a political party, or a religion - he or she violates our Constitution's most cherished provisions protecting free speech. This October, Attorney General George Jepsen on behalf of the State, and John Rowland and Marc Ryan, as individuals, filed separate petitions for certiorari to the United States Supreme Court seeking to overturn the Second Circuit's decision. On December 9, 2013, the Attorney General announced that he was withdrawing his petition, while Rowland and Ryan have indicated they will continue to pursue theirs. The questions and answers below provide some additional information about the case.

Question

Answer

1. What does it mean that Attorney General Jepsen has announced that he has withdrawn his Petition for Certiorari to the United States Supreme Court?

The Attorney General has agreed that it is best for the case to be settled, and that cannot be done while the Attorney General's petition is pending at the Supreme Court. Settlement discussions will begin sometime soon, but can be expected to be complex and protracted because they involve the rights of thousands of individuals. If settlement discussions failed, the case would proceed to trial, and no further Petition for Certiorari would be possible by the Attorney General until the matter proceeds all the way through the trial court and back to the Second Circuit.

2. How long will settlement discussions take and what are we looking for?

It is impossible to say for sure. The parties will need to gather information about all the effected individuals in order to have meaningful discussions. It will certainly be many months before any discussions were completed. As for what we are looking for, we will seek to get as close as possible to remedy we believe we would get if we went to trial. Those remedies are discussed in later questions and answers below.

3. What does it mean that Rowland and Ryan have their own Petition for Certiorari?

We think it is extremely unlikely the Court will decide to hear a case from an ex-Governor whose only real interest in the matter is to make sure he gets indemnified (i.e. the that the State pays) for his own misconduct. We should know the Court's conclusion on whether they will take the case in the late Winter or early Spring. In the unlikely event the Court hears the case, a decision is unlikely until Spring of 2015.

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<i>Question</i>	<i>Answer</i>
4. Will Rowland and Ryan’s decision to continue their petition delay the settlement discussions?	No.
5. Who made this decision to file the petition, and the decision to withdraw? Attorney General Jepsen, or the Governor?	The decision to file the petition, and to withdraw it, was made by the Attorney General who has the state constitutional and statutory responsibility to represent the State in these matters. The Governor has issued a statement supporting the Attorney General’s decision to withdraw the petition, and criticizing former Governor Rowland for having created liability for the state.
6. What does the Second Circuit’s decision mean to members that were laid off by Governor Rowland?	Once it is upheld, the decision directs the lower court to fashion appropriate equitable relief. That would typically involve reinstatement for laid off workers who are still laid off, and appropriate job adjustments for those who are working but in lower positions.
7. Are the damages just a make whole remedy, compensatory and/or punitive? Which leads to what is a make whole remedy, compensatory and punitive?	The grant of summary judgment is against the State in the federal court proceeding. No damages are available against the State in federal court. John Rowland and Marc Ryan are sued in their individual capacities, and damages are available against them in federal court if we prevail. In addition, there is a companion case pending in state court which does provide for damages against the state. Those damages would typically include lost pay, attorney’s fees, and in some cases punitive damages.
8. What about an employee not laid off but who was put into a lower classification or transferred a significant distance from his/her home?	Reimbursement of lost pay due to the involuntary demotion would be a normal part of damages if they are awarded. Travel expenses are less typically awarded.
9. Some employees elected to retire instead of being laid off, what happens to them?	This is still an open question. We will certainly argue that they should be offered reinstatement since the decision to retire wasn’t truly voluntary. But that argument has not yet been made or ruled upon.
10. What happens to employees that lost grievance arbitrations over their layoffs including decisions that the decision to retire was a voluntary decision and their grievance was denied on this basis?	See the answer above.

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11. Didn't SEBAC file a case in State court on this the same issue? What is the status of that case?	Yes. That case has been on hold pending the decision on the First Amendment issues in the federal case. The State and we agreed that whatever the final ruling is in the federal action on the First Amendment claims will control in the state action as well. So, if the Second Circuit's decision stands, that means we should be entitled to recover damages in the state court action.
12. What does it mean that former Governor Rowland and former OPM Secretary Ryan were sued as individuals?	This means that we are seeking damages against them personally. Those damages, if awarded, could be reimbursed by the state or not, depending on the Attorney General's assessment of whether the wrong doing was intentional.