

Judge awards \$42.4 million in back pay suit

Judgment believed to be the largest of its kind in state history.

By Michael W. Hoskins

mhoskins@bj.com

Indiana officials had almost 16 years to settle a lawsuit filed by a class of current and former state workers who claimed they didn't receive equal pay for work they'd done over two decades.

But the settlement didn't materialize and now the state's been slammed with one of the largest – if not the biggest – judgments it's ever seen: a \$42.4 million bench judgment that slightly surpasses what Indiana spends in one day of operating the government.

Whether that amount stays intact remains to be seen, as the Indiana Attorney General's Office has appealed the ruling and asked the judgment be stayed.

On July 28, Marion Superior Judge John Hanley dealt a serious blow to the already financially bruised state, awarding the multi-million judgment to as

many as 15,000 past and present state employees who'd fought to recover back pay for unequal wages earned between 1973 and 1993.

Issuing a 27-page ruling in *Paula Brattain, et al. v. Richmond State Hospital, et. al.* No. 49D11-0108-CP-1309, Judge Hanley found in favor of four subclasses of plaintiffs who'd sued about 16 years ago and nearly reached a settlement last year. The judge found that by requiring plaintiffs and others to work 40 hours a week while other state workers worked only 37 ½ hours a week for the same pay, the state violated the "equal pay for comparable work" regulation and breached its employment contracts with plaintiffs.

Their award: \$42,422,788.

In his ruling, Judge Hanley noted a recent legislative special session estimate showing Indiana spends approximately \$38 million per day every day to operate.

"The Court takes judicial notice of the present economic conditions in this country and the possibility that entry of a judgment in this amount will not be widely appreciated for that reason," the

judge wrote. "However, these are political considerations and not legal ones. The parties have had numerous opportunities to resolve this litigation over an extended number of years, in good economic times as well as bad, without the necessity of judicial intervention, and they have failed to do so. This decision today is the necessary result of that failure."

The case almost reached a settlement last summer for \$8.5 million, but that fell through and Judge Hanley held a four-day bench trial in March. A plaintiffs' expert had estimated damages between \$40 million and \$82 million.

"I haven't done the research, but I don't know of any state judgment that's reached this magnitude," said Indianapolis attorney John Kautzman, a lead plaintiffs' attorney on the case. "This is a tremendous win for the state workers who were discriminated against and have been long overdue to receive this pay."

Representing the plaintiffs were Kautzman and Bill Hasbrook with Ruckelshaus Kautzman Blackwell Bemis & Hasbrook, as well as three attorneys

from Texas-based litigation firm Susman Godfrey that were brought on last year as co-trial counsel.

If the judgment is upheld on appeal, a distribution plan would have to be approved by the judge for any claims. Each claim for payment of the extra 2.5 hours each week will differ depending on how long employees worked and their salaries.

The state AG's office appealed July 31 to the Indiana Court of Appeals and asked the judgment be stayed during that appellate process, according to the agency's litigation spokesman Bryan Corbin. He said the state purse probably would be on the hook if the judgment's upheld, since Indiana law bars the state from purchasing liability insurance that might cover such a judgment.

"Frankly, I think the judge's decision clearly spells out his disappointment that this case was not settled," Attorney General Greg Zoeller said. "This matter has taken far too long and truly should have been resolved back in 1993. Only now are we able to have the Court of Appeals address this matter based on the law."



Hanley