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## **IT Workers Win \$3M In Suit Against WSSC**

December 16, 2013

A Prince George's County jury on Monday awarded damages totaling more than \$3 million to 13 information-technology workers who lost their jobs at the Washington Suburban Sanitary Commission in a 2006 restructuring.

The fired workers argued that WSSC had abolished their positions in order to hire non-merit-system employees, who could be fired at will without the statutory protections of the merit system.

"This is vindication of these employees' rights under the merit system," said the plaintiffs' attorney, [Timothy F. Maloney](#) of Joseph, Greenwald & Laake P.A. in Greenbelt. "What WSSC did was a ploy to avoid giving merit system rights to its IT employees, many of whom had given decades of service to the agency. The jury was asked to find it was a subterfuge to avoid giving them merit system rights, and it was."

After a trial that was spread out over a month in Prince George's County Circuit Court, the jury deliberated for most of the day Monday before finding WSSC had violated the IT workers' constitutional right not to be deprived of property - their public-sector jobs - without due process of law.

The jury, however, rejected Maloney's other argument that WSSC had fired the workers because they were nearing retirement age and would soon qualify for costly retirement benefits.

"Obviously, we are disappointed in the verdict," WSSC spokesman Jim Neustadt stated in an email. "We are looking at what options we have and don't have any further comment at this time."

If WSSC chooses to appeal, one issue it can raise is whether WSSC, as a local government commission, has absolute legislative immunity for its decision to restructure a department pursuant to Maryland's legislative budget review process.

That issue had been presented to Maryland's top court during an earlier phase of the litigation, after the trial court rejected WSSC's immunity claim. The Court of Appeals found, in 2009, that the ruling on immunity was not subject to an appeal while the rest of the case was pending.

The jury's \$3.03 million award of back and front pay to the 13 workers eliminates that procedural obstacle.

"We're going to look at our options," said WSSC attorney Kenneth L. Thompson, of Venable LLP in Baltimore. "We'll be filing motions accordingly."

The workers, fired in summer 2006, filed their lawsuit Oct. 13, 2006, in Prince George's County Circuit Court, alleging violations of Article 24 of the Maryland Constitution's Declaration of Rights and of the state law prohibiting age discrimination in employment. They initially sought only a court order restoring them to their former merit system employment but later added claims for lost past and future wages.

On Jan. 3, 2007, WSSC moved to have the case dismissed, arguing that the commission had legislative immunity from suit. In support, WSSC argued that abolishing the workers' jobs was accomplished via a "budgetary process spelled out by the General Assembly" and approved by the Maryland Department of Budget and Management and the councils of Montgomery and Prince George's counties.

"Eliminating public-sector jobs under these circumstances constitutes legislative activity to which the doctrine of absolute legislative immunity squarely applies," WSSC argued in its motion for dismissal.

When the circuit court denied the motion in June 2007, WSSC sought review by the Court of Special Appeals.

The intermediate court held on Sept. 4, 2007, that WSSC's appeal was premature. The Court of Appeals agreed in an Aug. 26, 2009, opinion, permitting the fired workers' lawsuit to proceed.

COLLEEN BOWEN ET AL. V. WASHINGTON SUBURBAN SANITARY  
COMMISSION

Court: Prince George's County Circuit Court

Case No.: CAL-06-22334

Judge: Beverly J. Woodard

Outcome: Jury verdict for plaintiffs (\$3.03 million)

Dates: Event: Summer 2006.

Suit filed: Oct. 13, 2006

Trial: Nov. 12, 2013-Dec. 13, 2013.

Jury Verdict: Dec. 16, 2013.

Plaintiffs' Attorneys: [Timothy F. Maloney](#) of Joseph, Greenwald & Laake P.A. in Greenbelt.

Defendant's Attorneys: Todd J. Horn and Kenneth L. Thompson of Venable LLP in Baltimore.

Count: Due-process violation.

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