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Lawsuit targets overtime funds for RG&E staff

By WILL ASTOR

Rochester Gas and Electric Corp. is targeted in a lawsuit seeking double damages for hourly workers allegedly shorted on overtime pay.

If the case—filed Aug. 17 in U.S. District Court in Rochester on behalf of a former RG&E dispatcher and others similarly situated—wins class-action status, much of the roughly 1,000-employee local utility's current and former work force could be eligible for payments, said plaintiffs attorney Nelson Thomas of Dolin, Thomas & Solomon LLP in Rochester.

The suit accuses RG&E of illegally substituting compensatory time for overtime pay. The practice violates U.S. and state labor laws, which call for non-exempt hourly workers to be paid time and a half for any hours worked over 40 in a week, the court complaint states.

The charges do not involve RG&E's Maine-based parent Energy East Corp., Thomas said.

RG&E spokesman Richard Marion said the company would not comment on charges leveled in the complaint. He cited a policy against speaking on pending litigation.

Federal Fair Labor Standards Act provisions allow workers shorted on overtime to collect double the amount originally owed

Continued on page 11

RG&E LAWSUIT

Continued from page 1

plus interest and attorney fees. New York labor law has similar provisions and allows for former employees who worked for an offending employer within the six years prior to an overtime complaint's filing to join an action.

Eastman Kodak Co. last year settled a similar class-action complaint that alleged comp time for overtime substitution. In that case, filed against the photo giant in a Rochester federal court in 2002, Kodak agreed—without admitting wrongdoing—to set up a \$13.9 million fund to pay allegedly short-changed workers. The amount includes \$4 million to cover plaintiffs' legal fees.

The company stated in court papers that it decided to settle after battling the class-action complaint for four years "to avoid further expense, inconvenience and interference with ongoing business and to dispose of burdensome litigation."

The \$13.9 million that Kodak agreed to pay to settle the overtime claim compares favorably to damages plaintiffs might have reasonably expected to collect if the case had gone to trial, District Judge Michael Telesca said in a November 2006 order approving the settlement.

The lead plaintiff in the RG&E overtime suit is Greece resident Lynn Comfort, a former RG&E trouble monitor dispatcher who worked for the utility from 1990 to 1995. Current and former RG&E office, clerical and customer-service staff and line workers, as well as dispatchers, could be eligible to sign on to the suit, Thomas said. Any of the company's non-exempt hourly workers who took comp time instead of

overtime pay could join, he said.

If a judge certifies the complaint as a class action, RG&E would be required under federal provisions to provide Dolin, Thomas with names of potentially eligible current or past workers. The law firm could then send notices to workers advising them of their right to join the suit. Under New York law, Thomas said, additional plaintiffs can sign on at any time regardless of whether the complaint has been certified as a class action.

While RG&E might pay overtime in some instances, Thomas said, it is his understanding the company widely offers comp time as an overtime alternative and that the utility's hourly employees have for some years routinely agreed to forgo overtime. Time off that a worker might have taken in trade for overtime pay would have no bearing on the class-action complaint, he said.

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Comfort in May filed a discrimination complaint against RG&E, accusing the company of sex discrimination and failing to make proper accommodations for a medical disability.

Comfort's discrimination complaint—also filed by Dolin, Thomas in a Rochester federal court—is not directly related to the overtime complaint, Thomas said. RG&E has not yet filed an answer to the discrimination complaint, and no court dates have yet been scheduled in the suit.

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