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State 850 Guards Get Back Pay for Scheduling Abuses (Times Union)

John Caher

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STATE

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B-2

850 guards get back pay for scheduling abuses

■ \$4.2 million will be paid out after 12-year-old lawsuit crawled through system

BY JOHN CAHER
Staff writer

ALBANY — Tom Forrest has made a list and checked it twice, and now he's sending out more than \$4 million to 850 nice prison guards who were shortchanged by naughty New York.

You could call Forrest the Santa of State Street, for between now and Christmas the Albany lawyer will be joyfully doling out a fortune — in taxpayers' money — to his clients. Forrest has a stack of checks, some for as much as \$19,000, that will make this holiday season a little brighter, or maybe even a lot brighter, for hundreds of current and former correction officers, and in some cases their heirs.

"I'll tell you, it's a great feeling," Forrest said.

"I'm glad we hung in there and stuck with it. This was a long and hard fight, but it had a happy ending."

For 12 years, Forrest's State Street firm, Rowley, Forrest, O'Donnell & Hite, has been battling the state in federal courts over a complicated, can-of-worms case involving compensation for prison guards. A few weeks ago, when the U.S. Supreme Court declined to hear the matter, the issue was finally put to rest.

Forrest said the checks, \$4.2 million worth, have been delivered to his office by the state and are being distributed to about 850 plaintiffs in the class-action suit.

The fight began in April 1982, when the state Department of Correctional Services started tinkering with days off for officers who were members of U.S. military reserve or New York National Guard units and were obligated to complete an annual training regimen, which usually consisted of weekend drills and a

two-week summer program.

Under New York military law, the state must grant paid leave to employees committed to the reserves or National Guard.

But the Department of Correctional Services, eager to curb what it deemed abuses, began scheduling days off to coincide with military leave. For instance, if a guard's regular days off were Wednesday and Thursday and he had military leave scheduled for Saturday and Sunday, the department would switch the off days to the weekend to avoid having to pay the officer.

Council 82 of American Federation of State, County and Municipal Employees, the union representing the guards, argued that the switching violated contractual provisions. No other state employees were subjected to the policy, according to Council 82 spokesman Bob Lawson.

For years, the case meandered through the

courts. Federal Judge Roger J. Miner threw out the lawsuit, but eventually reversed himself and sent the case to trial before U.S. District Judge Con. G. Cholakis in 1986.

Cholakis ordered the state to compensate the guards with overtime pay for every day that was switched, and also told New York to pick up Forrest's bill. The state appealed, and on appeal the 2nd U.S. Circuit Court of Appeals in Manhattan essentially upheld Cholakis on the damages part of his decision, but cut out the part about attorney fees.

Then, New York appealed to the U.S. Supreme Court on a jurisdictional question and Forrest also filed a petition to get the case before the high court. But last month, the justices in Washington turned down both petitions and, 12 years after it began, the battle is over.

"It was a 12-year battle, but it was sure a battle worth fighting," Lawson said.