

U.S. COURTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

2002 SEP 27 A 10:20

DN

KIMBERLY SMITH and MICHAEL)
B. HINKLEY, Individually and on Behalf)
of those Similarly Situated,)
)
Plaintiffs,)
)
v.)
)
MICRON ELECTRONICS, INC.,)
a Minnesota Corporation,)
)
Defendant.)

Case No. CV-01-244-S-BLW

MEMORANDUM DECISION
AND ORDER

INTRODUCTION

Plaintiffs filed this suit as a Fair Labor Standards Act (FLSA) collective action on behalf of computer sales representatives employed by subsidiaries of defendant Micron. The Court heard oral argument on plaintiffs' motion for conditional class certification, and that motion is now at issue. The Court will grant the motion, and explains this decision below.

LITIGATION BACKGROUND

Plaintiffs assert that defendant's sales representatives were subjected to a common *de facto* policy of encouraging off-the-clock work in violation of the FLSA. In addition, plaintiffs assert that defendant had a common policy of inaccurately calculating the premium rate for payment of overtime. There are currently six named plaintiffs. About forty other individuals have filed notices that they want to opt-in. Defendant Micron Electronics Inc. (MEI) estimates that between 1998 and 2001, its subsidiaries employed about 528 sales representatives.

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MEI was a direct vendor of computer systems and related services. It had three sales and marketing subsidiaries that employed sales representatives and targeted different customer markets: (1) MicronPC, Inc (MPC); (2) Micron Commercial Computer Systems, Inc., (MCCS); and (3) Micron Government Computer Systems, Inc. (MGCS). The named plaintiffs, and the class sought by plaintiffs, were all employed by one of these three subsidiaries.

Plaintiffs assert that MEI, by performing the payroll and human resources functions for these three subsidiaries, developed a *de facto* policy of encouraging and accepting off-the-clock work by its sales force. Plaintiffs point out that the compensation for the sales force was comprised of both commissions and an hourly wage, with commissions making up about 40% of their total compensation. This combination, plaintiffs assert, drove the sales force to work the long hours necessary to increase their commissions.

In support of these allegations, plaintiffs submit the testimony of Tawni Weaver, among others. Weaver was a supervisor with MPC who became concerned with her team's compliance with the FLSA. She claims that another supervisor told her not to worry about it, and that her own supervisor, and an MEI human resources representative, became angry with her for bringing up the issue. This response prompted her to do her own investigation, which, she alleges, uncovered widespread off-the-clock work by the sales force. She claims that she was later criticized by her superiors for this investigation.

Plaintiffs also allege that on those occasions when sales representatives did record more than the allowed amount of overtime, their supervisors reduced the time on MEI's computer timekeeping program. Employees Kimberley Smith, Ryan Keen, and Michael Moser, all testified that their time was altered.

ANALYSIS

On the basis of these assertions, and others, plaintiffs seek a collective class of all inside sales representatives who worked off-the-clock or had their overtime premiums inaccurately calculated. Section 16(b) of FLSA authorizes an employee to bring an action on behalf of similarly situated employees, but requires that each employee opt-in to the suit by filing a consent to sue with the district court. *See* 29 U.S.C. § 216(b). To facilitate this process, a district court may authorize the named plaintiffs in a FLSA collective action to send notice to all potential plaintiffs, *see Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989), and may set a deadline for plaintiffs to join the suit by filing consents to sue, *id.* at 172. Accordingly, plaintiffs in this suit moved the district court to authorize notice to be sent to all potential plaintiffs.

The FLSA certification process typically proceeds in a two-step manner. In the first step, the court makes a preliminary determination, under a lenient standard, whether the plaintiffs have made an initial showing that potential class members are similarly situated so that notice should be sent out and the class at least conditionally certified. During this preliminary determination, “courts appear to require nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan.” *Mooney v. Aramco Services Co.*, 54 F.3d 1207, 1214 n. 8 (5th Cir. 1995).

The second step comes after notice and discovery, where the court takes a hard look at its conditional certification to determine if it remains appropriate. *See Vaszlavik v. Storage-Technology Corp.*, 175 F.R.D. 672, 678 (D.Colo. 1997). If the Court finds that the claimants are not similarly situated, the Court may decertify the class, or take other appropriate action. *Id.*

The Court finds here that plaintiffs have made a sufficient showing, under the lenient

standard, that they are similarly situated. Their allegations of a company-wide policy, in combination with the specific testimony related above, is sufficient to warrant conditional certification.

MEI asserts that the testimony of plaintiffs such as Weaver should not be believed. However, at this preliminary phase, the Court cannot judge credibility. *See generally, Anderson v. Liberty Lobby*, 477 U.S. 242, 255(1986) (stating that credibility cannot be resolved on summary judgment). Instead, the Court must accept their truth. *Neitzke v. Williams*, 490 U.S. 319 (1989).¹

MEI contends that there is no evidence of a company-wide policy. Plaintiffs respond that MEI handled the payroll and human resources functions for all three of the subsidiaries. Moreover, the evidence discussed above contains allegations that the off-the-clock "policy" was wide-spread. These allegations at least raise questions whether there was a *de facto* policy emanating from MEI through the payroll and human resources functions that it performed for the subsidiaries.

MEI questions the application of the lenient standard, and contends that a stricter standard should be employed since discovery has taken place here. However, the discovery that has been done appears relatively narrow in scope. The Court's Scheduling Order in this case set up a discovery schedule for "conditional certification" issues only. While MEI has taken the

¹ MEI has moved to strike portions of the affidavits of Laura Anderson, Alan Garcia, Deborah Monahan, and Tracy Scott Wells. MEI claims that certain testimony in these affidavits is inconsistent with deposition testimony. Because the Court has not relied on these affidavits in granting the conditional certification motion, the Court will deem this motion to strike moot, without prejudice to MEI's right to file a similar motion in the second phase of the certification process.

depositions of the named plaintiffs and opt-in claimants, plaintiffs have not had an opportunity for the full discovery they need to prepare for the second phase of the certification process. For these reasons, the Court will apply the lenient standard, and allow the parties to conduct further discovery to prepare for the more rigorous second phase.

MEI also complains that the class definition is too open-ended. Plaintiffs' proposed class would consist of all sales representatives who worked for MPC, MCCA, or MGCS beginning on June 1, 1998. Apparently, plaintiffs propose that the class continue up to the present date, although they do not so state in their briefing. MEI points out that it sold the computer part of its business in May of 2001, and then merged in August of 2001 with Interland. MEI contends that the class should be closed as of May 31, 2001. As plaintiffs did not respond to this argument, the Court concludes that plaintiffs have no objection thereto.

The Court will therefore conditionally certify a class defined as follows: All hourly-wage inside sales representatives who worked for MPC, MCCA, or MGCS, from June 1, 1998, to May 31, 2002, and who worked off-the-clock or were subjected to an inaccurate calculation of overtime pay. The Court will direct counsel to meet together to fine-tune this definition if necessary. In addition, counsel should be able to agree on a form of notice that they can present to the Court for approval, and a schedule for discovery and the presentation to the Court of the second phase of the certification process. The Court will give counsel thirty days to reach these agreements. If that deadline becomes burdensome, counsel may contact the Court's law clerk, Dave Metcalf, to discuss the matter. However, due to potential statute of limitations concerns, the Court will expect counsel to work together to provide notice as quickly as possible.

ORDER

In accordance with the Memorandum Decision set forth above,

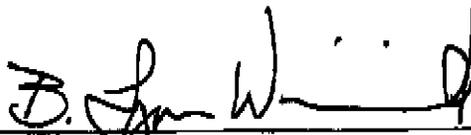
NOW THEREFORE IT IS HEREBY ORDERED, that the motion for conditional certification (docket no. 75) is hereby GRANTED with the class defined as stated in the Memorandum Decision.

IT IS FURTHER ORDERED, that counsel shall meet together and agree to a form of notice that they shall submit to the Court on or before November 1, 2002.

IT IS FURTHER ORDERED, that during their meeting, counsel agree on a schedule for discovery and further proceedings so that the second phase of the conditional certification process may be presented to the Court expeditiously.

IT IS FURTHER ORDERED, that the motion to strike (docket no. 105) is deemed MOOT.

Dated this 27th day of September, 2002.



B. LYNN WINMILL
CHIEF JUDGE, UNITED STATES DISTRICT COURT

United States District Court
for the
District of Idaho
September 27, 2002

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:01-cv-00244

I certify that a copy of the attached document was mailed or faxed to the following named persons:

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- Chief Judge B. Lynn Winmill
- Judge Edward J. Lodge
- Chief Magistrate Judge Larry M. Boyle
- Magistrate Judge Mikel H. Williams

Cameron S. Burke, Clerk

Date: 9-27-02

BY: 
(Deputy Clerk)