

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIA FELIX DE ASENCIO, MANUEL	:	CIVIL ACTION
A. GUTIERREZ, ASELA RUIZ, EUSEBIA	:	
RUIZ, LUIS A. VIGO, LUZ CORDOVA	:	
and HECTOR PANTAJOS, on behalf of	:	
themselves and all other similarly	:	
situated individuals,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-CV-4294
	:	
TYSON FOODS, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JULY 17, 2002

Presently before this Court is the Plaintiffs’ Motion for Class Certification of the Pennsylvania Wage Payment and Collection Law Claims. For the reasons that follow, the Motion will be granted.

I. BACKGROUND

On August 22, 2000, the named Plaintiffs filed a representative action for the purpose of obtaining monetary, declaratory, and injunctive relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et. seq., and the Pennsylvania Wage Payment and Collection Law (“WPCL”), 42 P.S. § 260.1, et seq. The Plaintiffs are or were employed by the Defendant, Tyson Foods, Inc. (“Tyson”), as production employees in Tyson’s New Holland, Pennsylvania poultry processing facility (“New Holland Facility”). The Plaintiffs allege that Tyson has failed to pay its production employees at its New Holland Facility their minimum hourly pay rate for all

hours of work performed up to forty hours per week and has failed to pay them overtime for hours worked in excess of forty hours per week as required by the FLSA and WPCL.

Specifically, the Plaintiffs claim that Tyson paid, and continues to pay, its New Holland, Pennsylvania production employees only during the time that the production lines are in operation. Plaintiffs further allege that production employees are required to spend unpaid time, when the production lines are not in operation, donning, doffing and cleaning various pieces of safety and sanitary equipment such as aprons, gloves, coveralls, boots, et cetera, and to spend unpaid time on other company mandated activities such as reporting to group leaders and cleaning out their lockers. Because these activities are performed while the production lines are not in operation, the Plaintiffs allege that they are not paid for these activities.

The time period for potential plaintiffs to opt-in to the FLSA collective action ended July 24, 2001 and the collective action was defined at 504 members. In this current Motion, the Plaintiffs request class certification of the WPCL claim. The potential class for this claim is approximately 3,400 production employees.

II. STANDARD

In order for a court to certify a class under Federal Rule of Civil Procedure 23 (“Rule 23”), the moving party must satisfy the requirements of Rule 23(a) and any one of the requirements of Rule 23(b). Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 55-56 (3d. Cir. 1994). Rule 23(a) and (b) provide:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are

typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. P. 23. The requirements under Rule 23 should be given a liberal rather than a restrictive construction. Stewart v. Assocs. Consumer Disc. Co., 183 F.R.D. 189 (E.D. Pa. 1998).

III. DISCUSSION

The Plaintiffs allege that all of the requirements of Rule 23(a) and every section of Rule 23(b) have been met in the instant case. Therefore, the Plaintiffs claim that class

certification is appropriate. Tyson, does not counter the Plaintiffs' arguments that the requirements of Rule 23 are met in this case. Instead, Tyson raises several arguments that the Motion should be denied for other reasons. Based upon the Plaintiffs' arguments and the Court's own analysis, we find that the Rule 23 requirements have been met in this case. Furthermore, as discussed below, we do not find Tyson's arguments compelling. Therefore, we will grant this Motion and certify the class.

A. The Requirements of Rule 23(a) Have Been Met

First, the class is so numerous that joinder of all members is impracticable because the potential class consists of approximately 3,400 production employees. Fed. R. Civ. P. 23(a)(1).

Second, common questions of law and fact exist. Fed. R. Civ. P. 23(a)(2). "The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." Baby Neal, 43 F.3d at 56. Here, the common questions of law and fact revolve around the allegations that Tyson has violated the WPCL by not paying the New Holland facility production workers for all work performed prior and subsequent to "line time," particularly the time spent donning, doffing, and cleaning protective equipment and garments.

Third, the named Plaintiffs' claims are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). "Typicality entails an inquiry whether the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perform be based." Baby Neal, 43 F.3d at 57-58 (internal citations and quotations omitted). "[C]hallenging the same

unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.” Id. at 58. Here, the Plaintiffs’ claims are “typical” because they, as well as all the production employees at the New Holland Facility, allege that they are not paid for the donning, doffing, and cleaning of protective equipment which they are required to wear.

Fourth, the Plaintiffs will fairly and adequately protect the interests of the proposed class. Fed. R. Civ. P. 23(a)(4). In order to meet this factor, “(a) the plaintiff’s attorney must be qualified, experienced and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class.” Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 923 (3d. Cir. 1992)(internal quotations omitted). Here there is no suggestion that the Plaintiffs’ counsel is inadequate and there is no conflict between the interests of the named Plaintiffs and the interests of any other production worker. The named Plaintiffs share the same interest as the other production workers, which is being paid for time spent donning and doffing protective equipment.

B. The Requirements of Rule 23(b)(3) Have Been Met

Because we find that Rule 23(b)(3) is met, we will not discuss the other sections of Rule 23(b), as only one of the sections needs to be met in order for a class to be certified. Baby Neal, 43 F.3d at 55-56. First, common questions predominate over individual questions because the Plaintiffs’ only allegation is that Tyson refuses to pay all production employees in the New Holland Facility for all hours worked, including time spent donning, doffing and cleaning safety and sanitary equipment and clothing. Furthermore, all of the production workers share the WPCL as a common remedy. If the potential class members each brought individual

cases, this same question would be needlessly re-litigated using the same evidence, numerous times. See, e.g. Joseph v. General Motors Corp., 109 F.R.D. 635, 642 (D. Colo. 1986)(finding common questions predominated over individual questions).

Second, the class action is superior to other means of adjudication. In fact, according to the Plaintiffs, a class action is the only method that most of the production workers can utilize to seek redress. Here, the potential class members are mostly Spanish speaking immigrants, which, without class litigation, would force them to individually confront Tyson, a multi-billion dollar-a-year corporation. The Court in Weeks v. Bareco Oil Company, 125 F.2d 84 (7th Cir. 1941), recognized that this is the type of situation that class actions were designed to address and stated that “[t]o permit the defendants to contest liability with each claimant in a single, separate suit, would, in many cases give defendants an advantage which would be almost equivalent to closing the door of justice to all small claimants.” Id. at 90.

Last, we find that the non-exclusive factors embodied in Rule 23(b)(3) also weigh in favor of class certification. First, as explained above, all of named Plaintiffs and the potential class members share the same interest in the proceedings because they all seek a common finding that Tyson violated the WPCL by failing to pay them for all work performed. Furthermore, none of the production employees have adverse interests which would require separate suits and they have little incentive or ability to prosecute their claims against Tyson in individual actions. Second, there is no other pending litigation. Third, Pennsylvania is a desirable forum because the New Holland Facility is located in this district and for reasons of judicial economy, it is desirable to concentrate all of the similar claims into one forum and into one suit. Fourth, there does not appear to be any overwhelming difficulties present in dealing with this class of

approximately 3,400 Plaintiffs in a case involving only two claims. Therefore, because the Plaintiffs have shown that Rule 23 has been met, we will certify the class.

C. Tyson's Arguments against Class Certification

While Tyson does not argue that the requirements of Rule 23 have not been met, they do present several arguments as to why the Motion for Class Certification should be denied. Tyson also states that it does not oppose the Plaintiffs' present Motion to Certify to the extent that the WPCL class is limited to the 504 Plaintiffs who opted-in to the FLSA claim. (See Def.'s Supp. Brief Contra Class Certification/Mot. for Partial Summ. J., p.3, n.2). First, Tyson argues that the WPCL does not create a substantive right to compensation; but is only a statutory remedy when an employer breaches a contractual obligation to pay earned wages. See Wildon v. Kraft, 896 F.2d 793, 801 (3d Cir. 1990). Tyson argues that any production employees without a FLSA claim would not be asserting any substantive right that could provide them with a remedy. However, in this case, the WPCL claim is separate and independent from the FLSA claim. The WPCL claim is not grounded in the FLSA claim, but instead is grounded in the allegation that Tyson breached an implied contract by failing to pay the production employees for work which they have performed for Tyson's benefit. Therefore, it is unnecessary for the WPCL claim to be supported by an FLSA claim because the WPCL claim is self supporting and, as discussed below, it is proper to exercise supplemental jurisdiction over the claim.

Second, Tyson claims that because Rule 23 does not apply to FLSA claims, it also does not apply to WPCL claims. In support of this assertion, Tyson cites Pirrone v. North Hotel Association, 108 F.R.D. 78, 83 (E.D. Pa. 1985). We find the reasoning presented by Tyson on this issue unpersuasive. 29 U.S.C. Section 216(b) provides a procedure where plaintiffs must

affirmatively opt-in to a FLSA collective action. Specifically, Section 216(b) states “[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.” 29 U.S.C. § 216(b). In a standard class action under Rule 23, however, the individuals within a class are class members unless they affirmatively opt-out of the class. Unlike the FLSA, the WPCL has no such provision mandating an opt-in approach, and thus, it is appropriate to utilize the opt-out procedures of Rule 23 in order to facilitate a class action.

Third, Tyson claims that the opt-out procedures of the standard Rule 23 class action are inconsistent with the opt-in procedures under 29 U.S.C. Section 216(b) the FLSA. However, because the FLSA claims and the WPCL claims are separate and distinct claims, they do not conflict and thus, they are not inconsistent with each other. Tyson cites LaChapelle v. Ownes-Illinois, Incorporated, 513 F.2d 286 (5th Cir. 1975) for the proposition that “[t]here is a fundamental, irreconcilable difference between the class action described by Rule 23 and that provided for by FLSA [§] [2]16(b).” Id. at 288. However, in LaChapelle the plaintiffs were attempting to utilize the opt-out procedures of Rule 23 in a federal ADEA case, which by its own language specifically adopts the opt-in procedures of 29 U.S.C. Section 216(b). Id. at 289. Here, the WPCL is not governed by 29 U.S.C. Section 216(b), and because it is a separate and independent claim from the FLSA claim, the two class procedures are reconcilable.

Alternatively, Tyson argues that the WPCL class should be limited to those who already have opted-in to the FLSA collective action. However, as stated, the Plaintiffs’ WPCL claim is not premised on their FLSA claim. Both claims, while arising from the same situation, are separate and independent of each other. The WPCL claim, unlike the FLSA claim, alleges

that Tyson fails to pay its production workers for non-overtime hours spent donning, doffing and cleaning sanitary and safety equipment and clothing. On the other hand, the FLSA claim only involves overtime hours. As discussed below, exercising supplemental jurisdiction over the WPCL claim is appropriate. Furthermore, it is appropriate to exercise supplemental jurisdiction over all of the WPCL class members, including those who lack an FLSA claim. See Ansoumana v. Gristede's Operating Corp., 201 F.R.D. 81, 91-93 (S.D.N.Y. 2001). Common sense and concepts of judicial economy dictate that both claims be tried in one forum rather than have some of the WPCL claims and all of the FLSA claim tried in this Court, while a separate WPCL suit is commenced by the remainder of the potential class members in state court. Otherwise, we risk conflicting judgments and the wasting of judicial resources. Therefore, we will not limit the class as Tyson directs.

Fourth, Tyson argues that this Court should decline to exercise supplemental jurisdiction over the WPCL claim because the state law WPCL claims would predominate over the federal FLSA claims. In support of this argument, Tyson notes that there would be 504 class members with both FLSA and WPCL claims and approximately 2,896 class members who would only have a WPCL claim. A district court may exercise supplemental jurisdiction over state law claims “that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). In order for the court to exercise supplemental jurisdiction, “[t]he state and federal claims must derive from a common nucleus of operative fact.” United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). Here, the FLSA claim and the WPCL claim are entirely premised on the same conduct by Tyson. In a case such as this, where “the same acts violate

parallel federal and state laws, the common nucleus of operative facts is obvious and federal courts routinely exercise supplemental jurisdiction over the state law claims.” Lyon v. Whisman, 45 F.3d 758, 761 (3d. Cir. 1995).

The FLSA claim and the WPCL claim are premised on the same events, and the two claims, while distinct, parallel one another. It is likely that the two claims will either prevail or fail together. Furthermore, adding extra class members alone, whose interests will be represented by the named Plaintiffs, will not make the state law claims predominate. Regardless of the number of class members, the named plaintiffs will represent all of those with an FLSA claim or a WPCL claim. In this case, it is appropriate to exercise supplemental jurisdiction as “considerations of judicial economy, convenience and fairness to litigants’ weigh in favor of hearing the state law claims at the same time as the federal law claims.” Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995)(quoting Gibbs, 383 U.S. at 726). Moreover, we do find a compelling reason for this Court to decline to exercise supplemental jurisdiction over the WPCL claim.

For the foregoing reasons, the Plaintiffs’ Motion for Class Certification of the WPCL claim will be granted. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIA FELIX DE ASECIO, MANUEL	:	CIVIL ACTION
A. GUTIERREZ, ASELA RUIZ, EUSEBIA	:	
RUIZ, LUIS A. VIGO, LUZ CORDOVA	:	
and HECTOR PANTAJOS, on behalf of	:	
themselves and all other similarly	:	
situated individuals,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-CV-4294
	:	
TYSON FOODS, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 17th day of July, 2002, upon consideration of the Plaintiff's Motion for Class Certification of the Pennsylvania Wage Payment and Collection Law Claims (Dkt. No. 68), and any Responses and Replies thereto, it is hereby ORDERED that the Motion is GRANTED and the Plaintiff Class is hereby certified and defined as consisting of the following persons:

All current and former hourly employees of Tyson Foods, Inc.'s New Holland, Pennsylvania processing facility who have been employed as employees engaged in chicken processing at any time from August 22, 1997 to the present.

It is hereby further ORDERED that Plaintiffs Melania Felix de Ascensio, Manuel A. Gutierrez, Asela Ruiz, Eusebia Ruiz, Luis A. Vigo-Ramos, Luz Cordova, and Hector Pantajos are designated as the class representatives and that the attorneys of record for the said named Plaintiffs are authorized to serve as counsel for the class in this action.

It is hereby further ORDERED that Tyson shall mail the Notice of Certification of the WPCL Class attached to this Order to the last known address of all putative class members as

soon as possible, but not later than twenty (20) days from the date of this Order.

It is hereby further ORDERED that in view of prior disputes with regard to translations from English to Spanish, and for sake of convenience, counsel for Tyson shall work with Plaintiffs' counsel to develop a mutually agreeable translation of the attached Notice into Spanish. Tyson shall promptly file with the Court, and serve a copy to Plaintiffs' counsel written certification confirming it has fully complied with the Court's Order including the date(s) that it complied with the instant Order.

BY THE COURT:

ROBERT F. KELLY, Sr. J.