

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

MARK GOLDMAN, Individually and on : CIVIL ACTION
behalf of all others similarly situated :
 :
v. : NO. 03-0032
 :
RADIOSHACK CORPORATION :

MEMORANDUM AND ORDER

Juan R. Sánchez, J

May 9, 2005

Plaintiff Mark Goldman, a former Store Manager for Defendant RadioShack, claims he was denied overtime wages and asks this Court to certify a class of all others so situated under Fed.R.Civ.P. 23.

Goldman filed a complaint against RadioShack in the Court of Common Pleas of Philadelphia County on December 17, 2002, claiming he was denied overtime wages in violation of the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 *et seq*; Pennsylvania's Minimum Wage Act (MWA), 43 P.S. § 333.102 *et seq.*; and Pennsylvania's Wage Payment and Collection Law (WPCL), 43 P.S. § 260.1 *et seq.* RadioShack removed the action to this court in January 2003.¹ On February 14, 2003, Goldman filed a Motion for Conditional Certification of his FLSA Claim and Facilitation of Notice pursuant to 29 U.S.C. § 216(b), and for class certification of the MWA and WPCL claims pursuant to Fed.R.Civ.P.R. 23. On April 16, 2003, Judge Van Antwerpen granted

¹The Fair Labor Standards Act confers federal question jurisdiction.

Goldman's Motion for Conditional Certification of the FLSA claim, but deferred ruling of Goldman's Motion for Class Certification on the state law claims until after the close of discovery. Judge Van Antwerpen stated Goldman's proposed state law class action met all the requirements of Fed.R.Civ.P.R. 23(a) and the superiority requirement of Fed.R.Civ.P.R. 23(b)(3), but discovery was necessary to determine if the wage claim predominated for each member of the proposed class. *See Fed.R.Civ.P.R.23(b)(3)*. On March 15, 2005, following discovery, Goldman again moved to for class certification of the state law claims under Rule 23(b)(3). I held oral argument on this issue on April 27, 2005. I now grant Goldman's Motion for Class Certification.

FACTS²

Goldman worked as a "Y" store Manager at the Park City RadioShack store in Lancaster, Pennsylvania from November 1984 to September 2001.³ *See Goldman Aff'd ¶ 1*. The gravamen of Goldman's complaint is that RadioShack required Store Managers to work at least 54 hours a week without overtime compensation. *See Judge Van Antwerpen's Opinion, 4/17/03, p.2*. He claims Store Managers were actually Sales Associates, with limited management responsibilities. He alleges a Store Manager's most important task was selling, but Store Managers, like Sales Associates, also restocked shelves and cleaned.

Goldman states Store Managers were required to keep their managerial activities to less than

² In a motion to certify class the court, "is bound to take the substantive allegations of the complaint as true." *Cullen v. Whitman Med. Corp.*, 188 F.R.D. 226, 228 (E.D. Pa. 1999). I also adopt the facts found by Judge Van Antwerpen in his April 16, 2003 Memorandum and Order.

³ "Y" stores are stores which generate at least \$500,000 in sales revenue. Y store revenue range from \$500,000 to over \$2.7 million. *See Michael Castelli Affidavit ¶ 8*.

22% of their work week through the RadioShack “7-1-1 ” management plan. *Opinion at 1*. The “7-1-1 ” plan required Store Managers to work as sales associates for seven out of every nine hours worked. The “1-1 ” in the plan referred to one hour of paperwork and one hour of training Store Managers should complete each day.⁴ *See Pl. ’s Motion for Conditional Certification: Exs. 6 & 7, filed on Feb. 14, 2003.*

Goldman argues Store Managers also lacked the discretionary powers of an executive or managerial position. For example, Store Managers were not permitted to design store layout; select merchandising techniques; independently hire or fire sales associates; determine employee salaries; control inventory levels; set store hours, or, independently train employees. *See Opinion at 1*.

Goldman claims although Store Managers had few actual management responsibilities, RadioShack put an executive label on the Store Managers to avoid paying overtime wages. Goldman claims he, and all other “Y” Store Managers are entitled to overtime wages for the hours they worked in excess of 40 hours a week. He seeks class certification for all persons who were employed by RadioShack as a “Y” store manager in Pennsylvania at any time on or after December 11, 1999, and during at least one workweek during that period worked in excess of 40 hours without receiving overtime pay. *See Def. ’s Notice of Removal Exhibit: Pl. ’s Complaint filed on Jan. 3, 2003.*

RadioShack claims Store Managers are exempt from both federal and Pennsylvania overtime pay requirements because they are exempt executive personnel under 29 U.S.C. § 213(a)(1), or

⁴ Michael Castelli, Division Vice President for the Northeast Division of RadioShack, acknowledged that the 7-1-1 method of management was contained in Store Manager training materials. (Aff’d. ¶ 19)

former 29 C.F.R. §§ 541.1- 541.119.⁵ Former C.F.R. § 541.1 defines an “executive” employee as an employee:

- (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and (b) Who customarily and regularly directs the work of two or more other employees therein; and
- (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
- (d) Who customarily and regularly exercises discretionary powers; and
- (e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, or his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section:

Former 29 C.F.R.541.103 provides guidance on how to determine if an employee’s primary duty is management:

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee’s time. . . . Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

29 C.F.R.§ 541.103

⁵ New Department of Labor regulations became effective in August, 2004. The new regulations are not applicable here.

RadioShack argues class certification is inappropriate because the prospective class fails to meet the predominance requirement of Rule 23(b)(3). RadioShack argues the day to day job performed by each “Y” Store Manager is too varied to meet the predominance test. RadioShack claims although some Store Managers performed numerous managerial tasks, other did not perform these tasks, or their performance of these tasks varied based on the District Manager for their district. Consequently, RadioShack argues, individual issues predominate over common questions and class certification is not appropriate.

DISCUSSION

Class relief is “peculiarly appropriate” when the “issues involved are common to the class as a whole” and when they “turn on questions of law applicable in the same manner to each member of the class.” *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 155, 102 S.Ct. 2364, 2369 (1982). If proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable. *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 172 (3d Cir. 2001)(affirming the denial of class certification in a securities case in which individual issues regarding economic losses from the manner in which their trades were transacted predominated over issues common to the class).

The first step in class certification is to determine whether the proposed class satisfies the four prongs of Fed.R.Civ.P. 23(a): numerosity, commonality, typicality and protection of the rights of the class.⁶ *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d

⁶ **Fed.R.Civ.P. 23. Class Actions**
(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on

689 (1997); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 794 (3d Cir.1995). I adopt Judge Van Antwerpen's well reasoned decision stating Goldman's state law class action meets all the requirements of Fed.R.Civ.P.R. 23(a) and the superiority requirement of Fed.R. Civ.P.R.23(b)(3). I must now determine if the proposed class action meets the predominance test of Fed.R.Civ.P.R. 23(b)(3).⁷

The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Amchem Prods.*, 521 U.S. at 623. Rule 23(b)(3) states an action can be maintained as a class action if, "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." Fed.R.Civ.P.R.23(b)(3). Rule 23(b)(3) offers a non-exhaustive list of factors the court should consider when determining if the predominance and superiority prongs are met, "(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

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.

⁷ **Fed.R.Civ.P. 23. Class Actions**

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

(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.

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.”

District courts have broad discretion to determine class certification under Rule 23. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 345 (1979). The party seeking class certification has the burden of proving the class should be certified. *Barabin v. ARAMARK Corp.*, 210 F.R.D. 152, 157 (E.D. Pa. 2002). The court however, “is bound to take the substantive allegations of the complaint as true.” *Cullen v. Whitman Med. Corp.*, 188 F.R.D. 226, 228 (E.D. Pa. 1999)(citing *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976)). “[P]laintiffs have no obligation to prove their case at this point and the court's resolution of the class motion is limited to ascertaining whether the requirements of Rule 23 . . . are met.” *Barabin*, 210 F.R.D. at 157. The court must conduct a “thorough examination of the factual and legal allegations” and it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.” *Newton*, 259 F.3d at 166 (citations omitted). If the court finds “individual issues overwhelm[] common questions among the class,” or “each individual plaintiff's claim raises radically different factual and legal issues from those of other plaintiffs,” the predominance prong is not satisfied. *Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 187 (3d Cir. 2001); *see also Barnes v. American Tobacco Co.*, 161 F.3d 127, 143 (3d Cir. 1998)(affirming decertification of a conditionally-certified statewide class of smokers because individual issues such as, nicotine addiction, causation, the need for medical monitoring, contributory/comparative negligence and the statute of limitations overwhelmed common questions). Prospective class members, however, “need

not be identically situated as to all issues, so long as their claims are not in conflict with each other.” *O’Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 290 (E.D. Pa. 2003)(citations omitted).

The predominate legal issue in this action is whether “Y” store managers were wrongfully classified as exempt and denied overtime wages. RadioShack argues there are vast differences in each Store Manager’s experiences and each Store Manager has his or her own personal management style. *See Def.’s Mem. in Opp. to Class. Cert. at 6*. I find, however, the elements of proof are common to all prospective class members, RadioShack’s burden of proof is identical for all Plaintiffs and sufficient common factual circumstances predominate.

RadioShack is a large corporation with many standardized procedures governing the Store Manager’s position. Goldman and the other “Y” Store Managers required to adhere RadioShack’s procedures in their roles as Store Managers. The evidence shows Store Managers commonly claim RadioShack’s corporate policies and procedures limited their managerial discretion and dictated they spend the majority of their time on sales and other non-exempt employment activities.⁸ I find the predominance prong of Rule 23(b)(3) is met and enter the following:

⁸ Affidavits of RadioShack Y store managers support Goldman’s claim that the Manager’s primary duty is to sell. *See Fitzpatrick Aff’d ¶4*. According to Damon Gulli, selling took 80-90% of time his everyday. *Gulli Aff’d. ¶37*. Steven Fitzpatrick likewise stated only about 20% of his day was spent on managerial duties. *Fitzpatrick Aff’d ¶ 37*. In Goldman’s affidavit he too claimed he spent less than 20% of his time on managerial duties. *Goldman Aff’d. ¶37*. Wayne Stoeffler, a former RadioShack District Sales Manager, states RadioShack wanted Managers to spend at least 7 hours per day on the sales floor, but he usually spent more time on the sales floor. *Stoeffler Aff’d. ¶ 26*.

ORDER

And now, this 9th day of May, 2005, it is hereby ORDERED that Plaintiff's Second Motion to Certify Class (Doc. 129) is GRANTED. Plaintiff's proposed opt-out period of 30 days is also GRANTED.

BY THE COURT:

S/ Juan R. Sánchez, J.
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