

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES E. SINES and FELIX WILLIAMS,
Individually, and as Class Representatives, on
Behalf of All Others Similarly Situated,

03 Civ. 5465 (PKC)

Plaintiffs

ORDER GRANTING
CLASS CERTIFICATION

-against-

SERVICE CORPORATION INTERNATIONAL,
and its majority held, dominated, controlled and
consolidated subsidiary corporate and partnership
entities in the State of New York, including, but
not limited to, SCI MANAGEMENT L.P., SCI
FUNERAL SERVICES INC., SCI FUNERAL
SERVICES OF NEW YORK, INC., and NEW
YORK FUNERAL CHAPELS, INC.,

Defendants.
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P. KEVIN CASTEL, District Judge:

The parties have jointly moved to certify a class of persons employed during a specified period in New York by defendants in non-exempt positions within the meaning of the Fair Labor Standards Act ("FSLA"), 29 U.S.C. § 201 et seq. The parties also seek to have this action proceed as a collective action under the FSLA, 29 U.S.C. § 216(b), for persons employed by defendants in non-exempt positions on or after July 1, 2001. Section 216(b) provides in part that "[a]n action to recover the liability . . . may be maintained against any employer . . . in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

Discussion

In the first instance, I will consider the application under Section 216(b) and under Rule 23, Fed. R. Civ. P., through the lens of Rule 23, recognizing that, textually,

Section 216(b) only requires that the “other employees” be “similarly situated”. Rule 23(a), Fed. R. Civ. P., states as follows:

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.

I will refer to these four criteria as (1) numerosity, (2) commonality, (3) typicality, and (4) adequate representation. The court must rigorously analyze whether the proposed class satisfies the Rule 23(a) criteria, but such analysis does not require or permit an evaluation of the relative strength of the merits of the case. Caridad v. Metro-North Commuter R.R., 191 F.3d 283, 291 (2d Cir. 1999), cert. denied, 529 U.S. 1107 (2000).

If Rule 23(a) is satisfied, the district court then considers the appropriateness of class certification as set forth in Rule 23(b). In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 290 (2d Cir. 1992). The plaintiffs in this action move for certification pursuant to Rule 23(b)(3). Rule 23(b)(3) requires me to find that (1) questions of law or fact common to class members predominate over questions affecting individual members, and (2) a class action is superior to other available methods for fair and efficient adjudication of the controversy.

1. Rule 23(a)

A. Numerosity

The numerosity requirement is satisfied when joinder is “impracticable.” Rule 23(a); Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993). The parties agree that the number of class members total in the “hundreds”. Plaintiffs need not set forth an exact class size as a precondition to show numerosity. Robidoux, 987 F.2d at 935. The Second Circuit

has found that numerosity is presumed when a class consists of forty or more plaintiffs, Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir.), cert. denied, 515 U.S. 1122 (1995).

B. Commonality

Commonality is satisfied “if plaintiffs’ grievances share a common question of law or fact.” Robinson v. Metro-North Commuter R.R., 267 F.3d 147, 155 (2d Cir. 2001). Defendants, it is alleged, followed common compensation practices throughout its present and former facilities in New York, with some facility-level differences; thus, common factual questions are presented. The legality of the compensation practices presents a common question of law.

I conclude that the plaintiffs share common questions of law and fact, and that commonality is satisfied.

C. Typicality

Rule 23(a)(3) requires that the class representatives have claims typical of those shared by the class members. “Rule 23(a)(3) is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar arguments to prove the defendant’s liability.” In re Drexel, 960 F.2d at 291. When the same unlawful conduct was directed at or affected both the named plaintiff and the prospective class, typicality is usually met. Robidoux, 987 F.2d at 936-37. Typicality does not require factual identity between the named plaintiffs and the class members, only that “the disputed issues of law or fact occupy essentially the same degree of centrality to the named plaintiff’s claim as to that of other members of the proposed class.” Caridad, 191 F.3d at 293 (quotation marks omitted).

Plaintiff James Sines has been employed by defendants as a non-exempt licensed funeral director and has been subject to the same wage and hour practices as other non-exempt funeral directors. Sines also has an individual retaliation claim against defendants but in all other respects his claim is typical. Plaintiff Felix Williams has been employed as a driver and has been subjected to the same wage and hour practices as other non-exempt employees. His claim and those of the absent class members meet the "typicality" requirement.

Adequate Representation

Rule 23(a)(4) dictates that the "adequacy of representation entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interests of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct litigation." Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 60 (2d Cir. 2000). I conclude that the individual plaintiffs' claims are not antagonistic to those of their fellow class members. Based upon my review of a statement of Richard T. Seymour's Professional experience, I am satisfied that the plaintiffs' attorneys are qualified, experienced, and capable of acting as lead counsel in this action. Mr. Seymour has a very impressive resume of prior representations in class actions and has vast experience in the employment and civil rights arena. Alan L. Fuchsberg has extensive experience as a plaintiffs' lawyer in the tort field and also in the fields of employment and civil rights law.

2. Satisfaction of Rule 23(b)(3)

Having found that the plaintiffs satisfy Rule 23(a), I now turn to the requirements set forth by Rule 23(b)(3). The Supreme Court has held that Rule 23(b)(3)'s "common questions" analysis "trains on the legal or factual questions that qualify each class

member's case as a genuine controversy. . . ." Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623 (1997).

A. Common Questions Predominate

Rule 23(b)(3) requires the Court to find that "questions of law or fact common to the members of the class predominate over any question affecting only individual members. . . ." A common question predominates when "resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." Moore v. PaineWebber, Inc., 306 F.3d 1247, 1252 (2d Cir. 2002). The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation". Amchem, 521 U.S. at 623, 625.

The common issues in this action include the application of across-the-board compensation practices to employees. I recognize that there are individual issues as to damages but common issues nevertheless predominate. In re Visa Check/MasterMoney Antitrust Litigation, 280 F.3d 124, 139 (2d Cir. 2001), cert. denied, 536 U.S. 917 (2002) ("Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues.").

B. Class Action is Superior to Other Methods

In addition to predominance, Rule 23(b)(3) requires the court to find that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Factors relevant to determining superiority 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.

Rule 23(b)(3), Fed. R. Civ. P. These factors are "nonexhaustive." Amchem, 521 U.S. at 615.

A class action is superior to other alternative methods of adjudicating this controversy. Many of the class members' claims will be too small to pursue individually. Given the potential class size and the likelihood that individual recovery may be relatively modest, class certification is appropriate. Litigating each claim individually would likely result in wasteful and repetitive lawsuits, thus ineffectively utilizing the resources of the judiciary and the parties. The existence of multiple lawsuits would also threaten disparity and inconsistent outcomes. Moreover, I do not foresee any atypical difficulties in the management of this class action, or discern any reason why this District is not the proper forum for this action.

Class Definition

Having concluded that the plaintiffs satisfy the criteria of Rule 23(a) and Rule 23(b)(3), I now turn to the plaintiffs' proposed class definition, which I adopt. The plaintiffs' proposed class is defined as:

All persons who have been employed in New York State, by defendants or any of their predecessors, in non-exempt positions within the meaning of the Fair Labor Standards Act, at any time on or after July 23, 1997, or who shall be so employed within the term of this Consent Decree, for the periods of time in which they were or will be employed in such positions.

The definition of the scope of the collective action under the FSLA is adopted as follows:

All persons who have been employed in New York State, by defendants or any of their predecessors, in non-exempt positions within the meaning of the Fair Labor Standards Act, at any time on or after July 1, 2001, or who shall be so employed within the term of this Consent Decree, for the periods of time in which they were or will be employed in such positions.

Conclusion

The joint motion for class certification is GRANTED. The joint motion to proceed as collective action under the FSLA is GRANTED. Counsel of record for plaintiffs are appointed as class counsel.

Dated: New York, New York
February 10, 2006



P. Kevin Castel
United States District Judge