UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MARK ALBRIGHT, *on behalf of himself and all others similarly situated*, Plaintiffs, vs. GENERAL DIE CASTERS, INC., Defendant.	CASE NO. 5:10-CV-480 OPINION & ORDER [Resolving Doc. No. 11]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Mark Albright alleges that Defendant General Die Casters, Inc. has improperly denied the Plaintiff and other similarly-situated employees compensation for work they performed before their shift start-times and after their shift end-times and moves this Court for conditional certification of a collective action under the Fair Labor Standards Act ("FLSA") § 16(b), 29 U.S.C. § 216(b). [Doc. 11.] The Defendant opposes the Plaintiff's motion and argues that the Plaintiff has not made the "modest factual showing," *Comer v. Wal-Mart Stores*, 454 F.3d 544, 548 (6th Cir. 2006), required for conditional certification. [Doc. 13.] The Plaintiff has replied. [Doc. 14.]

For the reasons stated below, this Court holds that the Plaintiff has demonstrated the modest factual showing required for conditional certification of a collective action. Accordingly, the Court **GRANTS** the Plaintiff's motion for conditional certification.

I. Background

Plaintiff Mark Albright filed this proposed collective action complaining that his employer, Defendant General Die Casters, Inc., improperly failed to compensate him and other employees for work they did before and after their paid shifts. [Doc. 1.] Defendant General Die Casters is a manufacturing company that performs die casting, CNC machining, and finishing services. [Doc. 1 at 3.]

The Plaintiff claims that the Defendant requires him and other hourly, non-exempt manufacturing employees to perform certain tasks before their scheduled paid shifts begin and after their shifts end, including changing into and out of uniforms, obtaining instructions, consulting with employees on the previous and following shifts, and operating certain equipment. [Doc. 1 at 3-4.] The Plaintiff claims that because General Die Casters did not pay him and other similarly situated employees for this work, the Defendant failed to pay them owed overtime wages in violation of the FLSA. [Doc. 1 at 4.]

Plaintiff Albright sues on behalf of himself and other similarly situated General Die Casters employees. The Plaintiff seeks to bring this suit as a collective action and to certify a class of "[a]ll former and current manufacturing employees of Defendant General Die Casters, Inc. at any time between March 5, 2007 and the present." [Doc. 1 at 4.] The Plaintiff estimates that the proposed class consists of at least fifty people. [Doc.1 at 4.]

II. Legal Standard

Under the FLSA, one or more employees may bring an action against an employer "for and in behalf of himself and other employees similarly situated. No 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).

A collective action furthers several important policy goals. First, the collective action "allows . . . plaintiffs the advantage of lower individual costs to vindicate rights by the pooling of resources." *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989). Second, "[t]he judicial system benefits by efficient resolution in one proceeding of common issues of law and fact arising from the same alleged discriminatory activity." *Id.*

As described in § 216(b), a plaintiff alleging a FLSA violation can bring a representative action for similarly situated persons if the plaintiffs meet two requirements: "1) the plaintiffs must actually be 'similarly situated,' and 2) all plaintiffs must signal in writing their affirmative consent to participate in the action." *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 545 (6th Cir. 2006) (citations omitted). This FLSA representative action is called a collective action and is different from the Civil Rule 23 representative action: under Rule 23 a putative plaintiff has the opportunity to opt-out of the class, but under the FLSA a putative plaintiff must affirmatively opt-in to the class. *Id.* Because of this opt-in requirement, the Supreme Court has held that, to efficiently adjudicate a FLSA collective action, "district courts have discretion, in appropriate cases, to implement [FLSA § 16(b),] 29 U.S.C. § 216(b)[,] . . . by facilitating notice to potential plaintiffs." *Hoffmann-La Roche*, 493 U.S. at 170.

The Supreme Court has also noted the "wisdom and necessity for early judicial intervention in the management of litigation." *Hoffmann-La Roche*, 493 U.S. at 171. When dealing with a collective action, a "trial court can better manage [the] action if it ascertains the contours of the action at the outset." *Id.* Additionally, "[b]y monitoring preparation and distribution of the notice, a court can ensure that it is timely, accurate, and informative. Both the parties and the court benefit from settling disputes about the content of the notice before it is distributed." *Id.* at 172. But the

Court in *Hoffmann-La Roche* also noted a "potential for misuse of the class device." *Id.* at 171.

In response to the Supreme Court's holding in *Hoffmann-La Roche*, courts have developed a two-stage approach to collective actions. The Sixth Circuit, in *Comer v. Wal-Mart Stores*, 454 F.3d at 546-547, approved the two-stage process. The first stage is a notice stage and occurs at the beginning of discovery. Before conditional certification at the notice stage, a plaintiff must make a "modest factual showing" and needs to show "only that his position is similar, not identical, to the positions held by the putative class members." *Id.* (citations and internal quotations omitted). Because the court has limited evidence at this stage, this standard is "fairly lenient," *id.* at 547, and "typically results in 'conditional certification' of a representative class." *Hipp v. Liberty Nat'l Ins. Co.*, 252 F.3d 1208, 1218 (11th Cir. 2001) (quoting *Mooney v. Aramco Servs. Co.*, 54 F.3d 1297, 1204 (5th Cir. 1995)). The second stage determination usually occurs after discovery is largely complete and is "typically precipitated by a motion for 'decertification' by the defendant." *Id.* At this stage, the court has more information on which to base its decision and makes a factual determination on the similarly situated question. *Id.*

While the required level of proof is minimal and lenient at the first stage, this Court will exercise some caution because the Sixth Circuit has held "that a conditional order approving notice to prospective co-plaintiffs in a suit under § 216(b) is not appealable." *Comer*, 454 F.3d at 549. Certification at this first stage, however, is "by no means final." *Id.* at 546 (citation omitted). "At the second stage, following discovery, trial courts examine more closely the question of whether particular members of the class are in fact, similarly situated." *Id.* at 547.

III. Analysis

As described above, with his Complaint, Plaintiff Albright alleges that Defendant General

Die Casters requires him and other hourly, non-exempt manufacturing employees to perform certain tasks before their scheduled shifts begin and after their shifts end, including changing into and out of uniforms, obtaining instructions, consulting with employees on the previous and following shifts, and operating certain equipment. [Doc. 1 at 3-4.] The Plaintiff claims that by failing to pay him and other similarly situated employees for this work, the Defendant has violated the FLSA. [Doc. 1 at 4.] In support of his motion for conditional certification, Plaintiff Albright submits a declaration that he has personal knowledge that he and the proposed class members all: (1) are or were manufacturing employees of the Defendant; (2) are or were classified as non-exempt hourly employees by the Defendant; (3) performed certain work before and after their scheduled shifts; and (4) have not been paid for the work they did outside of their scheduled shift times. [Doc. 11-2 at 2.] Further, over 30 individuals who are members of the proposed class have already filed notices of consent with the Court and have "opted-in" to this action pursuant to 29 U.S.C. § 216(b). [*See* Doc. 3, Doc. 5, Doc. 8, Doc. 15.] With their notices, these "opt-in" Plaintiffs have all submitted declarations in which they allege that they are similarly situated to Plaintiff Albright for the above listed reasons. These allegations and declarations are sufficient to warrant conditional treatment of this case as a collective action.

The Defendant argues that the Court should deny the Plaintiff's motion because he has failed to present evidence of any corporate policy of the Defendant that violates the FLSA. [Doc. 13 at 5.] However, the Sixth Circuit has held that a Plaintiff is not required to present evidence of a unified policy in order to show that the opt-in plaintiffs are "similarly situated" under the FLSA. *O'Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567, 584 (2009); s*ee also Douglas v. GE Energy Reuter Stokes*, 2007 WL 1341779, at *7 (N.D. Ohio April 30, 2007). The Defendant also says that Albright

has failed to show that he is similarly situated to the class he seeks to represent, particularly those manufacturing employees who do not share his job title. [Doc. 13 at 7-11.] However, the Court properly undertakes factual determination of whether the individual opt-in Plaintiffs are in fact similarly situated to the representative Plaintiff at the second-stage, following discovery. *Hipp*, 252 F.3d at 1218; *Douglas*, 2007 WL 1341779, at *6. If the Court then concludes that the opt-in Plaintiffs are not similarly situated based upon the evidence before it, it can grant a motion by the Defendant to de-certify the class. *Hipp*, 252 F.3d at 1218. Plaintiff Albright's and the opt-in Plaintiffs' declarations are sufficient to show that they are similarly situated for conditional certification. Finally, the Defendant argues that the Court should deny the Plaintiff's motion because certifying a class in this case would not serve judicial efficiency and because doing so would prejudice the Defendant. However, these considerations are not properly undertaken at the first-stage conditional certification determination. *See* *Douglas*, 2007 WL 1341779, at *7; *see also* *O'Brien*, 575 F.3d at 584 (FLSA only requires Plaintiff to show that opt-in plaintiffs are "similarly situated").

The Plaintiff has made a sufficient showing that the opt-in Plaintiffs in this case are similarly situated under the FLSA for conditional certification of the proposed class.

IV. Conclusion

The Court will **GRANT** conditional certification of Plaintiff Albright's proposed collective action, and will conditionally certify a class consisting of:

> All current and former manufacturing employees of Defendant General Die Casters, Inc. at any time between March 5, 2007 and the present.

The certification ordered here is conditional, and this Court will reexamine this certification at the second stage.

The Court **ORDERS** the Defendant to provide the Plaintiff the name, last known home

address (including zip code), last known telephone number, and dates of employment of all individuals within the above-defined class. [*See* Doc. 11-3.] The Defendant is to provide this information to the Plaintiff within 15 days.

Additionally, the Court **ORDERS** that, within 15 days of the date of this Order, the parties shall submit to the Court proposed language for notification and consent forms to be issued by the Court apprising potential plaintiffs of their rights under the FLSA to opt-in as parties to this litigation. In drafting the proposed notification language, the parties should "be scrupulous to respect judicial neutrality" and "take care to avoid even the appearance of judicial endorsement of the merits of the action." *Hoffmann-LaRoche*, 493 U.S. at 174.

IT IS SO ORDERED.

Dated: July 14, 2010

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE