

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN BERNDT, ERIC HOLEVATZ,
MIKE HARMON, RYAN STEERE, and
RAYMOND PETERSON,

Plaintiffs,

v.

OPINION AND ORDER

11-cv-791-wmc

CLEARY BUILDING CORP.,

Defendant.

Pursuant to a joint motion, the parties seek final approval of their settlement of this hybrid action, which alleges wage and hour violations (1) as a collective action under 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”) and (2) as class actions pursuant to Federal Rule of Civil Procedure 23 under the wage and hour laws of Iowa, Wisconsin, Illinois and Minnesota. (Dkt. #432.) For the reasons that follow, as well as those set forth in the court’s opinion and order granting preliminary approval of this settlement (dkt. #421), the court will give final approval of the settlement terms and approve the enhanced payments, attorney fees and costs, as well as certify a Rule 23 class for that purpose.

A. Settlement

Based on today’s fairness hearing at which only the parties’ counsel appeared, as well as on their representations, the parties’ written submissions, the lack of any

objections, and the entire record in this case,¹ the court concludes that the parties' settlement is fair, reasonable and adequate pursuant to Federal Rule of Civil Procedure 23(e) and that the settlement represents a fair and reasonable resolution of a bona fide dispute over FLSA provisions. The modest enhancement payments to the initial and later named plaintiffs and to those class members who were required to stand for deposition are also reasonable.

B. Attorneys' fees

Also before the court is class counsel's petition for attorneys' fees and costs, which will be approved. (Dkt. #424.) Class counsel seeks \$277,500.00 in attorneys' fees, representing 30% of the settlement fund, as well as their costs in the amount of \$50,303.06. The court has reviewed class counsel's arguments in support of this award (Br. in Supp. of Mot. for Atty's Fees, (dkt. #425)), the declaration of Attorney William E. Parsons and attached time entries and incurred costs (dkt. ##426, 426-1, 426-2), and declarations by three third-party attorneys (dkt. ##427-429). Class counsel expended considerable resources litigating this matter over two years, including more than 1900 attorney hours, which total approximately \$446,275.00 if billed hourly. Counsel also entered into a contract with the named plaintiff upfront in which he agreed to a payment of 33.33% of the gross recovery plus costs.

¹ Among other considerations, the court notes that only 2 individuals, representing less than 0.2% of the 850 total members across the three classes, excluded themselves from the settlement and no individuals objected to the settlement.

Although the latter agreement is not binding absent advance approval by the court, the court is separately satisfied a 30% fee request is reasonable given: (1) the relatively advanced stage of this case at the time of settlement (significant discovery, including numerous depositions, an opposed collective action certification, plaintiffs' motion for certification of four class actions and defendant's motion for decertification of the collective action); (2) the factual and legal uncertainties regarding plaintiffs' claims; (3) market rates; (4) awards for similar hybrid FLSA and Rule 23 class actions in this district; and (5) a resolution of the entire case is in the best interest of the class members, none of whom have objected to the fee request.² The court further finds class counsel's request for reimbursement of actual costs in the amount of \$50,303.06 to be reasonable and well-documented. (Dkt. #426-2.) Accordingly, the court will award attorney's fees and costs in the total amount of \$327,803.06.

ORDER

IT IS ORDERED that:

- 1) The parties' joint motion for final approval of the settlement agreement (dkt. #432) is GRANTED and the parties are directed to carry out its terms and provisions;
- 2) the enhancement payments of \$5,000 to Steven Berndt, \$2,500 to Eric Holevatz, \$1,000 each to Ryan Steere, Raymond Peterson, and Michael Harmon, and \$500 each to Ryan Simonson, Adam Bubke, Dan Lamke, Jesse Kolosik, Curtis Sitzman, Mitch Schultze, Nick Wojtanek, Nicholas Ashman, and Ryan Dziedzic are APPROVED;

² As indicated at the hearing, the court urges class counsel to consider seeking approval of a fee schedule earlier in cases of this kind. *See Silverman v. Motorola Solutions, Inc.*, Nos. 12-2339, 12-2354, 2013 WL 4082893, at *1 (7th Cir. Aug. 14, 2013).

- 3) class counsel's petition for costs and attorneys' fees (dkt. #424) is GRANTED in the requested amount of \$327,803.06;
- 4) settlement payments described in the Exhibit C to the parties' joint motion for preliminary approval of settlement agreement (dkt. #416-2) with any modifications to account for those class members who excluded themselves from the settlement are APPROVED; and
- 5) this action is dismissed, the court expressly retains jurisdiction to enforce the terms of settlement and the clerk of the court is directed to close this case subject to reopening upon good cause shown.

Entered this 4th day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge