

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

KEVIN KASTEN and JAMES POOLE
individually and on behalf of other
similarly situated individuals,

Plaintiffs,

v.

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION,

Defendant.

ORDER

07-cv-449-bbc

This is a civil action for monetary relief in which plaintiffs Kevin Kasten and James Poole, individually and on behalf of others similarly situated, contend that defendant Saint-Gobain Performance Plastics Corporation violated the Fair Labor Standards Act, Wisconsin wage statutes and regulations and state common law. Jurisdiction is present. 28 U.S.C. §§ 1331 and 1367. Currently before the court is plaintiffs' motion for leave to amend their complaint, which will be denied.

BACKGROUND

Plaintiffs' initial complaint was filed on August 15, 2007. On September 18, 2007, Judge John C. Shabaz issued a preliminary pre-trial conference order that set March 14, 2008, as the deadline for all dispositive motions, including motions for summary judgment and class certification. On January 17, 2008, Judge Shabaz conditionally certified plaintiffs' FLSA claims as a collective action and authorized plaintiffs' proposed notice and consent form. This form was sent to similarly situated individuals to provide them with an opportunity to opt-in to plaintiffs' FLSA claims. The conditionally certified class is

all individuals who performed manufacturing and/or production work at defendant's Portage, Wisconsin facility during any time between August 15, 2004 and December 31, 2006, paid hourly by defendants or by a temporary employment agency.

Judge Shabaz's authorization of plaintiffs' notice and consent form carried with it two important dates: (1) January 25, 2008, as the date that the notice and consent forms were to be mailed to potential plaintiffs and (2) March 10, 2008, as the date that all opt-in plaintiffs must have their consent forms filed with the court.

On March 11, 2008, three days before all dispositive motions were due, plaintiffs' filed their motion for leave to amend their complaint. Plaintiffs provided two reasons for filing their motion: (1) to incorporate claims resulting from defendant's time clock, punch time editing practices and automatic lunch break deductions and (2) to expand the scope of

the putative class to include all hourly-paid non-exempt workers who have worked at defendant's Portage, Wisconsin plant until the present time. On March 14, 2008, both parties filed summary judgment motions, plaintiffs filed a motion for class certification of their state law claims under Federal Rule of Civil Procedure 23 and defendant filed a motion for decertification of plaintiffs' FLSA collective action.

DISCUSSION

Fed. R. Civ. P. 15(a)(2) provides that pleadings may be amended by leave of court and directs the courts to give leave freely "when justice so requires." "The terms of [Rule 15], however, do not mandate that leave be granted in every case." Airborne Beepers & Video, Inc. v. AT&T Mobility LLC, 499 F.3d 663, 666 (7th Cir. 2007) (quoting Park v. City of Chicago, 297 F.3d 606, 612 (7th Cir. 2002)). Leave should not be granted for several reasons, including "undue delay, bad faith or dilatory motive on part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment[or] futility of amendment" Id. (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). Furthermore, a "decision to grant or deny a motion for leave to file an amended pleading is 'a matter purely within the sound discretion of the district court.'" Guise v. BWM Mortgage, LLC, 377 F.3d 795, 801 (7th Cir. 2004) (quoting J.D. Marshall International, Inc. v. Redstart, Inc., 935 F.2d 815, 819 (7th Cir. 1991)).

Plaintiffs characterize their new claims concerning defendant's time clock rounding and editing and lunch break practices as similar to their original claims concerning compensation for time workers spent donning and doffing. Because both arise under the FLSA and Wisconsin wage statutes, plaintiffs argue, justice requires that both the original and new claims be addressed in the same case. Although it is true that the new claims arise under the FLSA and Wisconsin wage statutes as the original claims do, the new claims also involve new plaintiffs, issues, facts and collective and class actions that are separate and distinct from the issues, facts and collective and class actions regarding plaintiffs' original claims. Plaintiffs themselves lend support to the distinctiveness of the new and original claims by alleging each claim in their amended complaint with respect to separate and distinct classes of individuals. Stated another way, plaintiffs' amended complaint establishes that there would have to be one collective action and class action encompassing all hourly-wage employees affected by defendant's time keeping practices and a second collective action and class action encompassing all maintenance and production employees who were not paid for donning and doffing. Requiring defendant to address these new distinct claims after it has filed its motion for summary judgment and approximately one month before the close of discovery would cause it undue prejudice.

Moreover, if plaintiffs were permitted to amend their complaint as requested, defendant would be forced to address a new set of issues that essentially forms an entirely

new case. Defendant would be forced to file another decertification motion against a new FLSA collective action with only a month of discovery left in which to discover whether plaintiffs and all opt-in plaintiffs are similarly situated regarding the new FLSA claims. Additionally, defendant would be forced to file a new motion for summary judgment. I conclude that granting plaintiffs' motion would cause undue prejudice to defendant. Accordingly, I will deny plaintiffs' motion.

ORDER

IT IS ORDERED that plaintiffs Kevin Kasten's and James Poole's motion for leave to file an amended complaint (dkt. #87) is DENIED.

Entered this 25th day of March, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge