

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

PAMELA HERRINGTON,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WATERSTONE MORTGAGE CORPORATION,

Defendant.

ORDER

11cv-779-bbc

In this proposed collective action, plaintiff Pamela Herrington contends that defendant Waterstone Mortgage Corporation failed to pay its loan officers for overtime that they worked, in violation of the Fair Labor Standards Act and state law. Since plaintiff filed her complaint at the end of the November 2011, the parties have filed several motions.

The motion I must decide first is defendant's motion to dismiss or stay the case on the ground that plaintiff's claim is subject to an arbitration agreement. Although plaintiff does not deny that her claim falls within the agreement, she argues that the agreement is unenforceable. Among other reasons, she contends that it violates 29 U.S.C. § 158(a)(1) of the National Labor Relations Act. Both sides failed to address a potentially dispositive

question, which is whether this court has authority to has authority to enforce § 158 in this case. Generally, the National Labor Relations Board has exclusive jurisdiction to make those determinations. Amalgamated Utility Workers v. Consolidated Edison Co. of New York, 309 U.S. 261, 264 (1940) (“Congress declared that certain labor practices should be unfair, but it prescribed a particular method by which such practices should be ascertained and prevented. By the express terms of the Act, the Board was made the exclusive agency for that purpose.”); San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon, 359 U.S. 236, 244-45 (1959) (“It is essential to the administration of the Act that these determinations [under § 157 and § 158] be left in the first instance to the National Labor Relations Board.”). Because neither side addressed this issue, I will give them an opportunity to do so now.

ORDER

IT IS ORDERED that both parties may have until March 9, 2012, to file supplemental briefs addressing the question whether this court has authority to entertain

the parties' dispute about the validity of the arbitration agreement under 29 U.S.C. § 158(a)(1).

Entered this 2d day of March, 2012.

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