IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ZAIDA ESPANA and VITALIA MERO, Plaintiffs, v. MID-WEST WIRE SPECIALTIES, INC., Defendant.	Case No. 01 C 0210 Judge Rebecca R. Pallmeyer Magistrate Judge Sidney I. Schenkier

JOINT MOTION TO
CONDITIONALLY CERTIFY SETTLEMENT CLASSES,
AND PRELIMINARILY APPROVE PROPOSED SETTLEMENT

Plaintiffs Zaida Espana and Vitalia Mero and Defendant Mid-West Wire Specialties, Inc. ("MWWS") here jointly move for conditional certification of two classes for settlement purposes, and preliminary approval by the Court of their settlement agreement. The parties also request that Plaintiffs be permitted to amend their Complaint so as to add two named Plaintiffs and class representatives. In support of their Joint Motion, the parties here state as follows:

1. The parties have agreed to the composition of two Rule 23(b)(3) classes for settlement purposes, and a proposed settlement agreement. Should this Court approve the proposed settlement agreement, Defendant will not contest class certification on these terms.

2. The Settlement Classes would consist of:

(1) All current and former full-time female employees of Mid-West Wire Specialties, Inc., 4545 West Cortland Avenue, Chicago, Illinois, who worked at Mid-West at any time between January 1, 1995 and December 31, 2001; and

(2) All female workers who were sent by a temporary agency to perform services at Mid-West Wire Specialties, Inc., and performed services there for any 20 consecutive work-days between January 1, 1998 and December 31, 2001.

The proposed classes satisfy the requirements of Fed. R. Civ. P. 23(b)(3).

3. The parties also have negotiated a settlement agreement, attached as Exhibit 1.

4. The parties now seek this Court's conditional certification of the Settlement Classes and preliminary approval of the settlement agreement, and entry of the proposed Order attached to the Settlement Agreement as Exhibit C. This Order would stay further proceedings, require class counsel to provide court-approved notice of the proposed settlement to class members, provide an opt-out date, and establish a hearing date for final approval of the settlement agreement.

5. Following the hearing on final approval of the settlement agreement, if the Court determines that the agreement is in the best interests of the classes, the parties will ask the Court to enter a Final Judgment in the form attached to the Settlement Agreement as Exhibit D.

6. The terms of the settlement agreement, reached after extensive, good faith negotiations, are summarized in the attached Memorandum. The parties believe that the settlement agreement is clearly in the best interests of the members of the classes.

WHEREFORE, the parties respectfully request that this Court enter the attached Order which permits amendment of the Complaint, conditionally certifies the Settlement Classes, and preliminarily approves the proposed settlement.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ZAIDA ESPANA and VITALIA MERO, on behalf of themselves and all others similarly situated,	)	Case No. 01 C 0210
Plaintiffs,	)	Judge Rebecca R. Pallmeyer
v.	)	Magistrate Judge Sidney I. Schenkier
MID-WEST WIRE SPECIALTIES, INC.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR CONDITIONAL CERTIFICATION OF SETTLEMENT CLASSES AND PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

I. INTRODUCTION

Plaintiffs and Defendant Mid-West Wire Specialties, Inc. ("MWWS") jointly have moved for an order which both (1) conditionally certifies two settlement classes, and (2) preliminarily approves the parties' settlement agreement. The parties here submit this memorandum in support of their motion.

II. SUMMARY OF THE TERMS OF THE SETTLEMENT AGREEMENT

The Settlement Agreement will be in the form of an enforceable final Court Order. Following final Court approval of the proposed Settlement Agreement, MWWS will pay the following:

1. The gross sum of $500 (five hundred dollars) to each of approximately 47 female temporary workers who rendered services at MWWS for at least 20

continuous work-days during the period from January 1, 1998 to December 31, 2001.

2. The gross sum of $2,000 (two thousand dollars) to each of the approximately 75 females who were full-time employees at MWWS at any time from January 1, 1995 to December 31, 2001.

3. The gross sum of $20,000 (twenty thousand dollars) to each of Virginia Munoz and Roselia Casildo, who have filed charges alleging sexual harassment during the pendency of this action and who will be added as named Plaintiffs and class representatives.

4. The gross sum of $35,000 (thirty-five thousand dollars) to each of the original named Plaintiffs, Zaida Espana and Vitalia Mero.

5. Subject to the approval of the Court, MWWS will also pay attorney fees and costs to Class Counsel in the amount of $130,000 (one hundred and thirty thousand dollars).

In addition, MWWS will tender the following non-monetary consideration:

1. Promise not to re-hire alleged harasser Roberto Anzures.

2. Purge of Anzures-generated discipline from personnel files of currently-employed class members.

3. Hire of Spanish-speaking administrator who will report directly to the President and have responsibility for enforcing the harassment policy, including investigations.

4. Enforcement of the new harassment policy that was promulgated in February, 2002.

In exchange for these commitments, MWWS and related parties will be released from any and all claims that any Class Member or anyone claiming on behalf of or through a Class Member may have arising prior to the date of the Final Judgment. Each Class Member and anyone claiming on behalf of or through a Class Member will be barred from suing or prosecuting any action or claim against MWWS and related parties for claims arising prior to the date of the Final Judgment.

III. THE PROPOSED CLASSES ARE APPROPRIATE FOR CONDITIONAL CERTIFICATION

A. RULE 23(a) IS SATISFIED

The four threshold requirements for Rule 23 class certifications are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Keele v. Wexler, 149 F.3d 589 (7th Cir. 1998). In addition, parties must show that the action is maintainable under one of the subsections of Rule 23(b). Amchem Prod., Inc. v. Windsor, 512 U.S. 591, 614 (1997).

1. Numerosity

As forty plaintiffs is generally sufficient, this standard is met by the number of putative settlement class members in each of the two classes. Steinbrecher v. Oswego Police Officer Dickey, 138 F. Supp.2d 1103 (N.D. Ill. 2001).

2. Commonality

When discrimination is alleged, commonality exists "where the defendant has engaged in some standardized conduct toward the proposed class members." Daniels v. Federal Reserve Bank of Chicago, 194 F.R.D. 606, 613 (N. D. Ill. 2000). Plaintiffs here allege such standardized conduct: that Mid-West had a pattern and practice of permitting a pervasively hostile environment at its one facility, chiefly created by one purported supervisor and the Plant Manager throughout the class period. Commonality is satisfied if there is but one common issue. Adams v. R.R. Donnelley & Sons, 2001 U.S. Dist. LEXIS 4247 (4/9/01 N.D. Ill.). Sexual harassment cases thus qualify for class treatment, despite individual questions of how people reacted, because the common question of law is whether a reasonable woman would have found the environment hostile. Jenson v. Evelth Taconite Co., 139 F.R.D. 657, 665 (D. Minn. 1991).

3. Typicality

Typicality is satisfied if the class representative's claims arose from the same course of conduct that gives rise to the other claims, and are based upon the same legal theory. De La Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983). Claims can be typical even though various fact patterns would be adduced to support them. Jenson v. Evelth Taconite Co., 139 F.R.D. 657, 665 (D. Minn 1991).

4. Adequacy of Representation

Named plaintiff's counsel must be adequate. No question is here raised about such adequacy. Moreover, the named plaintiffs must be able to protect the separate and distinct interests of class members. Retired Chicago Police Association v. City of Chicago, 7 F.3d

584, 598 (7th Cir. 1993). A representative plaintiff is adequate if her claims are not antagonistic to those of class members. Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992), cert. denied, 506 U.S. 1051 (1993). No antagonism exists here.

Adequacy is not defeated because the class representatives are less than completely fluent in English. Rugumbwa v. Better Motor Sales, 200 F.R.D. 358 (W. D. Mich. 2001).

B. RULE 23(b)(3) IS SATISFIED

Rule 23(b)(3) certification is appropriate when a class action suit may be "convenient and desirable," even though not as clearly called for as (b)(1) or (b)(2). Adv. Comm. Notes; Amchem Products, Inc. v. Windsor, 521 U.S. 591, 615 (1997). Rule 23(b)(3) requires that: common questions of law or fact "predominate over any questions affecting only individual members," and class resolution is "superior to other available methods for the fair and efficient adjudication of the controversy." The rule lists several factors, of which the relevant are: "(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; [and] (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum." See Amchem, 521 U.S. at 620 (the manageability of trial factor in Rule 23(b)(3)(D) is not germane to certification of a settlement class.)

"Predominance" concerns "whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623. A Northern District of Illinois decision has held that a hostile environment class action is not defeated by the fact that the claim contains a subjective, as well as an objective, prong. Rather, common issues

predominate because pattern or practice liability would be premised not upon the subjective experiences of each claimaint, but rather upon the "existence of a company's policy of tolerating sexual harassment." Warnell v. Ford Motor Co., 188 F.R.D. 383, 387 (N.D. Ill. 1999), quoting EEOC v. Mistubishi Motor Mfg. Co. of America, Inc., 990 F. Supp. 1059, 1074 (C.D. Ill. 1998). Accord Jenson v. Evelth Taconite Co., 139 F.R.D. 657, 662-63 (D. Minn. 1991) (certifies Title VII sexual harassment under Rule 23(b)(2)).

Only two unnamed class members, Virginia Munoz and Roselia Casildo, filed EEOC charges of discrimination during the pendency of this case. However, both obtained Notice of Right to Sue on these charges, and Plaintiffs plan to amend the Complaint to name these Plaintiffs and include these charges.

IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. THE APPLICABLE STANDARDS

Fed. R. Civ. P. 23(e) provides that "[a] class action shall not be dismissed or compromised without the approval of the Court". A court has a duty to ensure that the proposed settlement is "fair, reasonable, and adequate." Bailey v. Great Lakes Canning, Inc., 908 F.2d 38, 42 (6th Cir. 1990); In re Warner Communications Securities Litigation, 798 F.2d 35, 37 (2d Cir. 1986). The law encourages settlement of disputes. Prandani v. National Tea Co., 557 F.2d 1015, 1021 (2d Cir. 1977). The Court should also inquire as to whether the proposed settlement is consistent with the public interest. Bailey v. Great Lakes Canning, Inc., 908 F.2d at 42; Williams v. Vukovich, 720 F.2d 909, 921 (6th Cir. 1983).

The Court's role is to ensure that Class Members' interests have been adequately represented. "There is a strong initial presumption that the compromise is fair and reasonable." In re Saxon Securities Litigation, [1985-86] Fed. Sec. L. Rep. (CCH) ¶ 92.414 at 92.525 (S.D.N.Y. 1985). It is nevertheless appropriate for the Court to analyze the settlement in light of the following factors:

1. The complexity, expense and likely duration of the litigation;
2. The reaction of the class to the settlement;
3. The stage of the proceedings and the amount of discovery completed;
4. The risks of establishing liability;
5. The risks of establishing damages;
6. The risks of maintaining the class action through trial;
7. The ability of the defendants to withstand a greater judgement;
8. The range of reasonableness of the settlement fund in light of the best possible recovery; and
9. The range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

See, e.g., Granada Investments, Inc. v. DWG Corp., 962 F.2d 1203, 1205 (6th Cir. 1992); City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974).

In addition, the Court must ensure that the settlement is the product of good faith, arm's-length negotiations and that there has been no fraud, overreaching or collusion on the part of the negotiating parties. Williams v. Vukovich, 720 F.2d at 923; In re Ivan F. Boesky Securities Litigation, 948 F.2d 1358 (2d Cir. 1991); In re Warner, 798 F.2d at 37.

B. THE STANDARDS ARE SATISFIED HERE

1. Complexity, Expense and Likely Duration of Further Litigation

This litigation involves complicated legal and factual issues.

The contested nature of the legal and evidentiary issues make an appeal a virtual certainty absent settlement. If the case is appealed, years could pass before the ultimate resolution of this litigation. Given that many of the class members are not citizens of the United States and thus may chose to re-locate in their native countries, the passage of time threatens to deprive them of benefits even in the event that they ultimately were successful. Thus, the complexity and expected duration of this litigation weigh strongly in favor of approval of the proposed Settlement Agreement.

2. Reaction of the Class to the Settlement

The Class Representatives strongly favor the proposed Settlement Agreement and many Class Members have informally advised Class Counsel that they favor the proposed Settlement Agreement. However, the reaction of the Class to the proposed Settlement Agreement cannot be determined until the Court grants preliminary approval and orders that the proposed notice be sent to Class Members, informing them of the proposed Settlement Agreement, their rights to object and to attend a fairness hearing.

3. The Stage of Proceedings and Extent of Discovery

The relevance of this factor is to allow the parties to accurately assess their chances at trial in order to objectively view the value of settlement. Williams v. Vukovich, 720 F.2d 902, 922-23 (6th Cir. 1983); Flinn v. FMC Corp., 528 F.2d 1169,1173 (4th Cir. 1975); United Founders Life Ins. Co. v. Consumers National Life Ins. Co., 447 F.2d 647, 655 (7th Cir. 1971); Anderson v. The Torrington Co., 755 F.Supp. 834, 846-47 (N.D. Ind. 1991). Here, discovery on all except class issues has been completed, and the parties have a full view of their chances of prevailing at trial.

4-6. The Risks of Litigation

The Class Representatives firmly believe in the strength of their case. MWWS just as firmly believes the exact opposite. MWWS has litigated this case vigorously and, absent settlement, will continue to do so. The path to an ultimate determination on the merits of appeal, however, is necessarily uncertain. Given the quality of the Settlement, there is no reason for the Class Plaintiffs to risk the possibility of an adverse result on appeal.

As noted by the Court in In re Washington Public Power, "the essence of settlement is compromise." 720 F.Supp. 1379, 1387 (D. Ariz.1989). The parties believe that settlement negotiations produced a fair compromise.

7. Defendant's Ability to Withstand a Greater Judgment

Here, MWWS is a small, family-owned job shop. It has few assets. For example, it does not own the building where it is located. MWWS will be required to drain its cash reserves in order to pay this settlement amount, as well as to incur debt. Should a greater liability be imposed at trial, it is unlikely that Plaintiffs could fully collect on that judgment.

8-9. The Range of Reasonableness of the Settlement

Although the Class Representatives believe that the Settlement Agreement is fair, adequate and reasonable, its terms cannot be viewed in isolation. It "must be considered in the proper context -- that of probable recovery, even assuming a finding of liability in Plaintiff's favor." In re Washington Public Power, 720 F. Supp. at 1391. Thus, the Court must weigh the settlement amount against both the likelihood of a judgment adverse to Plaintiffs on appeal and, even assuming a favorable judgment after appeal, against the range of recoverable damages.

Under the circumstances, the proposed Settlement Agreement is certainly fair, reasonable and in the best interests of the Class. One relevant factor used by courts when considering final approval of class action settlements is the plaintiffs' need for immediate relief. See, e.g., Kirkorian v. Borelli, 695 F.Supp. 446, 450 (N.D. Cal. 1988). Here, immediate relief is needed because the foreign citizenship of the members of the Plaintiff class and their mobility may render them difficult to locate in the future.

C. THE EXPERIENCE AND VIEWS OF COUNSEL

Class Counsel, based on his combined experience in handling complex class action cases similar to this case, hold a strong and considered opinion that the settlement is fair, reasonable and adequate. The views of experienced counsel should be given great weight by the Court. Williams v. Vukovich, 720 F.2d at 922-23; Weinburger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982). When, as here, there is a total absence of any collusion, this factor points strongly in favor of granting final approval.

D. THE SETTLEMENT IS THE PRODUCT OF GOOD FAITH, ARM'S LENGTH NEGOTIATIONS AND IS FREE FROM FRAUD, OVERREACHING AND COLLUSION

As the preceding discussion of the final approval factors demonstrates, the settlement is fair, reasonable and adequate to the Class. That, in turn, is a direct result of the lengthy good faith, arm's length, collusion-free negotiations leading to the settlement. See Malchman v. Davis, 761 F.2d 893, 903 (2d Cir. 1985); Weinburger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982); Romstadt v. Apple Computer, Inc., 948 F.Supp. 701, 706 (N.D. Ohio 1996).

As the Court knows, the parties were tenacious opponents on all matters except their shared goal of effecting a mutually advantageous compromise. At all times, the interests of the Class Members were the only focus of the efforts of Class Counsel.

Both the benefits obtained for the Class in the Settlement Agreement itself and the collusion-free atmosphere in which its terms were negotiated clearly show that the settlement is free from fraud or overreaching and was negotiated in good faith and at arm's length. Therefore, the Court should grant preliminary approval of the proposed Settlement Agreement.

V. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court certify for settlement purposes a class as described in their joint Motion. The parties also respectfully request that the Court preliminarily determine that the settlement is fair, reasonable and adequate, and issue an Order of Preliminary Approval in the form of Exhibit C to the Settlement Agreement.

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