

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-60960-CIV-COHN

LEONARD ACKLEY, on his own
behalf and all others similarly situated,

Magistrate Judge Seltzer

Plaintiffs,

vs.

CITY OF FORT LAUDERDALE,

Defendant.

**ORDER DENYING MOTION TO STRIKE OPT-IN PLAINTIFFS
WAYNE STRAWN, ROBERT PIGNATARO AND LINDA NIGG**

_____ THIS CAUSE is before the Court upon Defendant's Motion to Strike Opt-in Plaintiffs Wayne Strawn, Robert Pignataro and Linda Nigg [DE 69]. The Court has carefully considered the motion, response and the reply thereto. The motion became ripe on September 23, 2008.

Plaintiff Leonard Ackley ("Plaintiff") filed his complaint asserting a single claim for unpaid overtime under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216, for employees who were employed as code enforcement officers with the City of Fort Lauderdale ("City" or "Defendant"). Plaintiff alleges in this case that he and other similarly situated current and former employees were not paid for the time it took to pick up and drive their city vehicle to their job site and then return the city vehicle at the end of the day. Plaintiff alleges that this practice systematically excluded some amount of overtime on a daily basis for the relevant period from April of 2005 through September 27, 2006. Defendant denies it violated the FLSA.

Plaintiff filed a motion to allow notice to prospective opt-in class members similarly situated to him. The Court granted that motion, over Defendant's opposition,

on January 24, 2008. Defendant complied with the Court order by turning over a list of approximately 57 “code enforcement officers.” Subsequently, twelve such employees filed their opt-in notices, with one of them later withdrawing their consent to join. On June 25, 2008, Defendant moved to strike two of the remaining eleven opt-in plaintiffs as not being similarly situated to Plaintiff because they are building inspectors, not code enforcement officers. Plaintiff did not respond to the motion, so the Court struck these two plaintiffs, James Truesdell and Gregory Hamilton [DE 62]. On August 26, 2008, Defendant moved to strike another opt-in plaintiff, Luis Albelo [DE 65]. Plaintiff withdraw Albelo’s Notice of Consent [DE 67], leaving eight opt-in plaintiffs, plus name Plaintiff Leonard Ackley.

Defendant has now moved to strike another three plaintiffs, Wayne Strawn, Robert Pignataro and Linda Nigg, because Strawn and Pignataro were building inspectors, while Nigg was a license inspector. Defendant supports its motion with personnel records and an organization chart showing the different job titles. Plaintiff opposes the motion because these opt-in plaintiffs performed similar work in a similar manner, with a similar claim for failure to pay overtime wages. In addition, these opt-in plaintiffs were on the list provided by Defendants as “code enforcement officers” for purposes of Court-mandated notification of this lawsuit.

This Court concludes that a factual dispute exists as to whether these employees were similarly situated to the code enforcement officers. Therefore, the Court will deny the motion to strike, without prejudice to renewal of the motion at trial. The parties should be prepared to put on evidence at trial on this issue.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Strike Opt-in Plaintiffs Wayne Strawn, Robert Pignataro and Linda Nigg [DE 69] is hereby **DENIED**, as described above.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 7th day of October, 2008.


JAMES I. COHN
United States District Judge

Copies furnished to:

Kelly Amritt, Esq.
Carmen Rodriguez, Esq.