

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LORI BEJVANCESKY,)
))
Plaintiff,)
))
vs.)
))
AMBASSADOR HOLDING)
COMPANY,)
))
Defendant.)

8:10CV3083

ORDER

Plaintiff filed this action in the District Court of Lancaster County, Nebraska, alleging violations of the Fair Labor Standards Act. Defendant removed the case to federal court and requested that trial be held in Omaha. Now pending is the plaintiff's "MOTION AND BRIEF IN SUPPORT OF DESIGNATION OF TRIAL TO BE IN LINCOLN, NEBRASKA AND OBJECTION TO DEFENDANT'S DESIGNATION OF OMAHA TRIAL LOCATION" (#7).

Under NECivR 40.1(b)(1), the court must consider "the convenience of the litigants, witnesses, and attorneys" in resolving conflicting requests for place of trial. The motion was timely filed under NECivR 40.1, and plaintiff has substantially complied with the requirements of NECivR 7.0.1.

The affidavit of counsel (#8-1), submitted in support of the plaintiff's motion, states that plaintiff resides in Lincoln and worked in defendant's facility in Lincoln; all the actions giving rise to this action occurred in Lincoln; the primary witnesses in this case are located in Lincoln; plaintiff's counsel is located in Lincoln; and the defendant's registered agent and corporate office is located in Nebraska City, Nebraska.

In response (#11), the defendant complains that plaintiff did not strictly comply with the local rules of practice and advises that the its primary witness, Debra Kuhn, resides in Nebraska City, Nebraska and works in the defendant's corporate office in Nebraska City as the Director of Human Resources. The defendant's corporate offices are 9.2 miles closer to

the federal courthouse in Omaha than the federal courthouse in Lincoln, and defense counsel is located in Omaha.

The convenience to the removing defendant's counsel does not support keeping trial in Omaha, Nebraska. For the plaintiff, her counsel, and the majority of potential witnesses, Lincoln appears to be a more convenient location for trial. None of the underlying events occurred in Omaha. There has been no showing that any witness resides in Omaha or would suffer particular burden by having to travel to Lincoln instead of Omaha for trial.

The court finds that, upon consideration of all factors pursuant to NECivR 40.1(b)(1), the place of trial should be Lincoln, Nebraska.

IT IS ORDERED:

1. Plaintiff's Motion for trial in Lincoln, Nebraska (#7) is granted.
2. The Clerk of Court shall amend the docket in this matter to reflect the place of trial is Lincoln, Nebraska.
3. The Clerk of Court shall present this case to the Chief Judge for reassignment, in accordance with NEGenR 1.4(a)(2) and (3), for reassignment of this case to one of the participating judges from the docket for which this case would be assigned on a random basis if it had originally been filed in Lincoln, Nebraska.
4. Plaintiff's MOTION FOR LEAVE TO FILE AMENDED MOTION AND AMENDED BRIEF IN SUPPORT OF PLAINTIFF'S DESIGNATION OF TRIAL IN LINCOLN, NEBRASKA (#12) is denied as moot.

DATED June 23, 2010.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**