



Case No. 1:15-CV-1917  
Gwin, J.

finds that Plaintiffs lack standing and that the FLSA claims are not ripe and therefore **DISMISSES** those claims with prejudice as to these Plaintiffs.

### I. Background

On September 2, 2015, Plaintiffs filed their complaint in the Cuyahoga County Court of Common Pleas.<sup>5/</sup> With their complaint, Plaintiffs alleged that Cleveland's decision to move new police cadet training from Cleveland to Columbus would violate several Ohio statutes and the Ohio constitution, as well as the FLSA. Plaintiffs sought damages and injunctive relief on behalf of the cadets of the 135th Cleveland Police Department Cadet Academy Class, who would have their training in Columbus rather than Cleveland.

On September 17, 2015, Defendants removed the case to federal court on federal question jurisdiction<sup>6/</sup> and filed their answer.<sup>7/</sup>

On December 2, 2015, this Court dismissed without prejudice Plaintiffs' state law claims and retained the FLSA claims.<sup>8/</sup> This Court also ordered supplemental briefing on the issues of standing and ripeness for the remaining FLSA claims.<sup>9/</sup>

On December 16, 2015, Defendants filed a supplemental brief in which they argued that Plaintiffs lack standing to bring the FLSA claims and that the FLSA claims are not yet ripe.<sup>10/</sup> Plaintiffs did not file a supplemental brief.

---

<sup>5/</sup>Doc. [1-1](#).

<sup>6/</sup>Doc. [1](#).

<sup>7/</sup>Doc. [3](#).

<sup>8/</sup>Doc. [13](#).

<sup>9/</sup>*Id.*

<sup>10/</sup>Doc. [14](#).

Case No. 1:15-CV-1917  
Gwin, J.

Instead, on December 17, 2015, Plaintiffs filed a notice of dismissal with the Court.<sup>11/</sup> On December 21, 2015, Plaintiffs re-filed and clarified that they intended to dismiss the case without prejudice.<sup>12/</sup> Defendants opposed such a resolution and asked this Court to resolve the case after ruling on the standing and ripeness issues.<sup>13/</sup>

## II. Discussion

### *Plaintiffs' Notice of Dismissal*

Under [Federal Rule of Civil Procedure 41](#), once Defendants file an answer to the complaint, Plaintiffs can dismiss their claims without prejudice only with consent of all the parties or by court order. A district court judge may order a dismissal without prejudice “on terms that the court considers proper.”<sup>14/</sup>

In this case Plaintiffs filed a notice of dismissal without prejudice. However, Plaintiffs filed the notice after Defendants filed an answer to the complaint, and Plaintiffs do not consent to a dismissal without prejudice. This Court does not find these to be proper terms for a dismissal without prejudice, and therefore **DENIES** Plaintiffs’ notice of dismissal.

### *Statutory Standing*

Plaintiffs’ claims are dismissed with prejudice because Plaintiffs lack statutory standing to bring FLSA claims. A plaintiff must have standing to sue in order to bring her case in federal court.<sup>15/</sup> Unions and workers’ associations do not have standing to bring FLSA claims on behalf of individual

---

<sup>11/</sup>Doc. [15](#).

<sup>12/</sup>Doc. [18](#).

<sup>13/</sup>Doc. [16](#).

<sup>14/</sup>[Fed. R. Civ. P. 41\(a\)\(2\)](#).

<sup>15/</sup>[Roberts v. Hamer, 655 F.3d 578, 581 \(6th Cir. 2011\)](#).

Case No. 1:15-CV-1917  
Gwin, J.

members.<sup>16/</sup> The president of a worker's association does not have standing to bring FLSA claims unless she has been harmed in her individual capacity.

Plaintiffs in this case are the Cleveland Police Patrolmen's Association and Steve Loomis, the CPPA president. Neither Plaintiff has standing to bring an FLSA claim on behalf of the individual cadets of the 135th Cleveland Police Department Cadet Academy Class.

*Ripeness*

Even if Plaintiffs had standing to bring FLSA claims on behalf of individual cadets, these FLSA claims are not yet ripe. Plaintiffs may not bring claims that are not ripe for judicial review.

In performing the ripeness inquiry, we must weigh three factors when deciding whether to address the issues presented for review: 1) the likelihood that the harm alleged by the plaintiffs will ever come to pass; 2) whether the factual record is sufficiently developed to produce a fair adjudication of the merits of the parties' respective claims; and 3) the hardship to the parties if judicial relief is denied at this stage in the proceedings.<sup>17/</sup>

In this case Plaintiffs claim that Cleveland's decision to move cadet training from Cleveland to Columbus will cause Cleveland to violate the FLSA's overtime provisions. However, there is no evidence that such a violation has occurred or will inevitably occur as a result of the move.

At this point in the litigation, the record is undeveloped as to the harm the cadets have suffered as a result of the move. At the time the complaint was filed, the start of training was several months away.

Finally, there is little hardship in denying relief at this point, since the individual cadets can

---

<sup>16/</sup>[\*United Food & Commercial Workers Union, Local 1564 of N.M. v. Albertson's, Inc.\*, 207 F.3d 1193, 1201 \(10th Cir. 2000\).](#)

<sup>17/</sup>[\*K.Y. Press Ass'n, Inc. v. Kentucky\*, 454 F.3d 505, 509 \(6th Cir. 2006\)](#) (quoting [\*Adult Video Ass'n v. United States Dep't of Justice\*, 71 F.3d 563, 568 \(6th Cir.1995\)](#)) (internal quotations omitted).

Case No. 1:15-CV-1917  
Gwin, J.

sue to recover damages for any future FLSA violations if they ever occur. The alleged FLSA violations in this case, and therefore the harm to the cadets, are speculative at this point and not ripe for judicial review.

### **III. Discussion**

For the foregoing reasons, this Court **DENIES** Plaintiffs' notice of dismissal without prejudice and **DISMISSES** Plaintiffs' remaining FLSA claims with prejudice. All other outstanding motions are **DISMISSED** as moot.

IT IS SO ORDERED.

Dated: January 6, 2016

*s/ James S. Gwin*  
\_\_\_\_\_  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE