

2006 WL 2830015
Only the Westlaw citation is currently available.
United States District Court,
D. Minnesota.

Gwen D. CARLSON, et al., Plaintiffs,
v.
C.H. ROBINSON WORLDWIDE, INC., Defendant.
Trevor Johnson, et al., Plaintiffs,
v.
C.H. Robinson Worldwide, Inc., Defendant.

Civ. Nos. 02-3780 (JNE/JJG), 02-4261 (JNE/JJG). | Sept. 26, 2006.

Attorneys and Law Firms

Michael Lieder, Esq., and Steven Sprenger, Esq., Sprenger & Lang PLLC, appeared for Plaintiffs Gwen Carlson, et al.

Seymour Mansfield, Esq., and Charles Horowitz, Esq., Mansfield, Tanick & Cohen, PA, appeared for Plaintiffs Trevor Johnson, et al.

Janet Evans, Esq., and Thomas Hatch, Esq., Robins, Kaplan, Miller & Ciresi L.L.P., appeared for Defendant C.H. Robinson Worldwide, Inc.

Opinion

ORDER

JOAN N. ERICKSEN, District Judge.

*1 In consolidated actions, past and present employees of C.H. Robinson Worldwide, Inc. (CHR), assert on behalf of themselves and others similarly situated that CHR owes them overtime pay because CHR allegedly misclassified them as exempt under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219 (2000). On May 20, 2003, the Court conditionally certified both cases-*Carlson v. C.H. Robinson Worldwide, Inc.*, Civ. No. 02-3780, and *Johnson v. C.H. Robinson Worldwide, Inc.*, Civ. No. 02-4261-to proceed as collective actions. CHR now moves to decertify the putative collective actions. For the reasons set forth below, the Court grants CHR's motion.

I. BACKGROUND

CHR is a transportations logistics company with more than 100 branches located in more than forty states. It divides its business into six "lines": Produce (buys, sells, and transports produce-includes Corporate Procurement Distribution Services (CPDS) which specializes in large national customers' inventory and logistics of their businesses); Transportation (general trucking services); ROSS (transportation and management of time sensitive printed materials); Intermodal (transportation by rail); International Sales (transportation by ocean freight, air freight, rail freight, trucking, and rail); and T-Chek (a wholly owned subsidiary that operates credit services for drivers).

CHR's basic business structure grants a large amount of autonomy to each branch. Each branch operates based on its formulation of "profit centers." A profit center is an individual group that accounts for its own profits and losses. A branch may incorporate several profit centers, each distinguished by its line, or a branch may operate as one profit center that services several lines. Typically, if a branch contains more than one profit center, each profit center has its own manager, and the branch has an overall manager.

CHR salaried employees are generally categorized as sales, operations, or support. Salaried employees have individualized compensation packages that are reviewed annually and are comprised of four elements: base salary, contractual bonus, growth pool bonus, and stock option grants. The annual compensation review process begins with a meeting between the branch manager and the employee to review and amend each employee's compensation package and contract. This typically includes reviewing the employee's past performance and discussing the employee's future goals.

After developing the compensation packages, the branch manager submits them to a CHR compensation manager for review. At that point, the CHR compensation manager and the branch manager discuss and review each employee's compensation package. In a meeting that may last several hours depending on how many employees are in the branch, the branch manager describes the choices and decisions he has made with regard to compensation. At least five minutes are spent discussing each employee.

Branch managers are responsible for determining whether an employee is paid on a salaried or hourly basis and whether employees are classified as exempt under the FLSA. These decisions are made at an employee's initial hiring, as well as on-going reassessments when employees are promoted or transfer positions. An employee's exemption status may be adjusted as a result of the compensation review process. Branch managers are also responsible for setting their branch policy with regard to sick leave and employees' hours.

*2 In early October 2002, Gwen Carlson and several other women (*Carlson* Plaintiffs) brought suit against CHR alleging that CHR had misclassified them as exempt under the FLSA. In early November 2002, Trever Johnson and several other men (*Johnson* Plaintiffs) filed similar claims against CHR. In February 2003, the Court denied the *Carlson* Plaintiffs and the *Johnson* Plaintiffs' Joint Motion for Leave to Send Notices to Putative Classes. After revising the definition of the putative collective actions, the *Carlson* Plaintiffs and the *Johnson* Plaintiffs (collectively, Named Plaintiffs) again moved for leave to send notice to members of the putative collective actions. In May 2003, the Court granted the Named Plaintiffs' motion. In *Carlson*, the Court approved a definition based on CHR's categories for salaried employees:

All present and former female salaried employees of C.H. Robinson located in the United States who are/were employed in a sales, operations or support position in the transportation (including intermodal and international), produce, Ross Division, T-Chek or CPDS units, and who worked more than forty hours in any week without receiving overtime pay at any time between October 2, 1999 and the present.

The definition approved in *Johnson* was identical except that it applied to males and extended to November 7, 1999. More than 700 individuals (Opt-in Plaintiffs) consented to join the putative collective actions.

After extensive discovery, the parties filed motions for partial summary judgment. CHR filed motions directed toward Carlson and another *Carlson* Plaintiff, Tricia Porter. The Named Plaintiffs and the Opt-in Plaintiffs asserted that they were entitled to summary judgment on the issues of whether CHR misclassified them as exempt, whether CHR's alleged violations of the FLSA were willful, and whether the alleged violations of the FLSA were made in good faith. In their motion for partial summary judgment, the Named Plaintiffs and the Opt-in Plaintiffs divided themselves into four groups: (1) individuals who worked in sales and operations in the transportation logistics and sourcing branches; (2) support employees in those branches; (3) replenishment analysts in CPDS; and (4) individuals who worked in T-Chek. The Court granted CHR's motion as to Carlson and denied its motion as to Porter. The Court also denied the Named Plaintiffs and the Opt-in Plaintiffs' motion for partial summary judgment. Several months later, CHR moved to decertify the putative collective actions.

II. DISCUSSION

The FLSA requires employers to pay employees overtime pay for hours worked in excess of forty hours per workweek. 29 U.S.C. § 207(a). Similarly situated employees may bring collective actions against employers to recover unpaid overtime compensation:

Any employer who violates [29 U.S.C. § 207] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.... An action to recover [such] liability ...

Carlson v. C.H. Robinson Worldwide, Inc., Not Reported in F.Supp.2d (2006)

may be maintained against any employer ... by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

*3 *Id.* § 216(b). To determine whether plaintiffs are similarly situated, a district court typically employs a two-stage analysis:

The first determination is made at the so-called “notice stage.” At the notice stage, the district court makes a decision-usually based only on the pleadings and any affidavits which have been submitted-whether notice of the action should be given to potential class members.

Because the court has minimal evidence, this determination is made using a fairly lenient standard, and typically results in “conditional certification” of a representative class. If the district court “conditionally certifies” the class, putative class members are given notice and the opportunity to “opt-in.” The action proceeds as a representative action throughout discovery.

The second determination is typically precipitated by a motion for “decertification” by the defendant usually filed after discovery is largely complete and the matter is ready for trial. At this stage, the court has much more information on which to base its decision, and makes a factual determination on the similarly situated question. If the claimants are similarly situated, the district court allows the representative action to proceed to trial. If the claimants are not similarly situated, the district court decertifies the class, and the opt-in plaintiffs are dismissed without prejudice. The class representatives-i.e. the original plaintiffs-proceed to trial on their individual claims.

Mooney v. Aramco Servs., Inc., 54 F.3d 1207, 1213-14 (5th Cir.1995) (footnote omitted), *overruled on other grounds by Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); *see Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546-47 (6th Cir.2006); *Cameron-Grant v. Maxim Healthcare Servs., Inc.*, 347 F.3d 1240, 1243 n. 2 (11th Cir.2003) (per curiam); *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1102-03 (10th Cir.2001). At the second stage, the district court conducts a fact-intensive inquiry of several factors, including: (1) the extent and consequence of disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to defendant which appear to be individual to each plaintiff; and (3) fairness and procedural considerations. *See Thiessen*, 267 F.3d at 1102-03. Employees bear the burden of demonstrating that they are similarly situated. *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1217 (11th Cir.2001). The decision to certify or decertify a collective action under section 216(b) is within the district court's discretion. *See Thiessen*, 267 F.3d at 1102; *Mooney*, 54 F.3d at 1213.

CHR asserts that decertification is appropriate. It maintains that the dominant issue at trial will be whether CHR properly classified employees as exempt from the FLSA's overtime provisions. CHR relies primarily on the administrative exemption. *See* 29 U.S.C. § 213(a)(1). “This exemption is an affirmative defense on which an employer has the burden of proof.” *Fife v. Harmon*, 171 F.3d 1173, 1174 (8th Cir.1999). Under the applicable regulations, CHR will have to prove three facts to establish that the administrative exemption applies to an employee: (1) the employee was paid on a salary basis of at least \$250 per week; (2) the employee's primary duty consisted of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; and (3) the employee's performance of such primary duty included work requiring the exercise of discretion and independent judgment. *See McAllister v. Transamerica Occidental Life Ins. Co.*, 325 F.3d 997, 1000 (8th Cir.2003); 29 C.F.R. § 541.214(a) (2004).¹

*4 An employee is paid on a salary basis if he receives a predetermined amount of compensation each pay period that is not subject to reduction because of the “quality or quantity of work performed.” 29 C.F.R. § 541.118(a); *see Guerrero v. J.W. Hutton, Inc.*, 458 F.3d 830, 835 (8th Cir.2006). If the employee absents himself from work for a day or more for personal reasons, other than sickness or accident, deductions may be made without affecting the employee's salaried status. 29 C.F.R. § 541.118(a)(2); *see Guerrero*, 458 F.3d at 835. “Deductions may also be made for absences of a day or more occasioned by sickness or disability ... if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability.” 29 C.F.R. § 541.118(a)(3).

Identification of administrative work is not a straightforward exercise. *See Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1126 (9th Cir.2002) (discussing regulations that attempt to “clarify the elusive meaning of ‘administration’”). In general, administrative work may be distinguished from the “production” work of a company. *See* 29 C.F.R. § 541.205(a). More specifically, “[t]he administrative operations of the business include the work performed by so-called white-collar employees engaged in ‘servicing’ a business as, for, example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. ‘Servicing’ denotes employment activity ancillary

Carlson v. C.H. Robinson Worldwide, Inc., Not Reported in F.Supp.2d (2006)

to an employer's principal production activity." *Id.* § 541.205(b); *see Haywood v. N. Am. Van Lines, Inc.*, 121 F.3d 1066, 1072 (7th Cir.1997); *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 904-05 (3d Cir.1991). These activities are considered exempt whether they service the business of the employer or of the employer's customers. *See* 29 C.F.R. § 541.205(d) ("Management policies or general business operations' may be those of the employer or the employer's customers.").

In assessing an employee's "primary duty," the amount of time spent performing administrative activities is relevant but not dispositive. *Spinden v. GS Roofing Prods. Co.*, 94 F.3d 421, 427 (8th Cir.1996); 29 C.F.R. § 541.206(b) (incorporating 29 C.F.R. § 541.103). Other appropriate factors include the "relative importance of the [administrative] duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the [administrator]." 29 C.F.R. § 541.103.

According to CHR, the duties performed by employees within the groups identified in the Named Plaintiffs and the Opt-in Plaintiffs' motion for partial summary judgment vary substantially. CHR also maintains that factual variations preclude collective adjudication of whether the Named Plaintiff and the Opt-in Plaintiffs are paid on a salary basis. Consequently, CHR argues, collective adjudication of their FLSA claims is not appropriate.

*5 The Named Plaintiffs and a subset of the Opt-in Plaintiffs respond to CHR's motion. The Named Plaintiffs and the subset explain that approximately 130 Opt-in Plaintiffs "have withdrawn from the litigation, are not represented by counsel, are not encompassed in the collective action definition, or intend to proceed separately from the collective action." The Named Plaintiffs and the subset explain the "unrepresented" Opt-in Plaintiffs' exclusion on the ground that their counsel have no authority to represent the "unrepresented" Opt-in Plaintiffs.² Although the Named Plaintiffs and the subset do not incorporate the "unrepresented" Opt-in Plaintiffs into the opposition to CHR's motion, the Named Plaintiffs and the subset maintain that the "unrepresented" Opt-in Plaintiffs should be allowed "to proceed collectively."

The Named Plaintiffs and the subset propose a three-stage trial covering five issues. In the first stage, the parties would contest two issues: (1) whether the duties of the Named Plaintiffs and the Opt-in Plaintiffs fall within the administrative exemption; and (2) if not, whether CHR's violation of the FLSA was willful or in good faith. The second stage would also encompass two issues: (1) whether CHR paid the Named Plaintiffs and the Opt-in Plaintiffs who worked in certain branches on a salary basis; and (2) if not, whether CHR's violation of the FLSA was willful or in good faith. Finally, the third stage would determine the number of hours worked by the Named Plaintiffs and the Opt-in Plaintiffs in excess of forty per week.

The Named Plaintiffs and the subset contend that four groups are similarly situated with respect to the first two issues. The four groups are: (1) Transportation Sales Plaintiffs; (2) Produce Sales Plaintiffs; (3) Support Plaintiffs; and (4) Replenishment Analyst Plaintiffs. The Named Plaintiffs and the subset contend that employees within these groups perform similar duties. The Named Plaintiffs and the subset characterize eight groups of employees as similarly situated for the purposes of the second stage. The groups consist of employees at the following branches: (1) Chicago Central; (2) Detroit; (3) Minneapolis North; (4) Nashville; (5) New Orleans; (6) Portland; (7) Rochester; and (8) T-Chek.³ The Named Plaintiffs and the subset propose to try the third stage based on a representative sample.

The Named Plaintiffs and the subset, having allegedly formed groups of similarly situated employees, contend that the dominant issue at trial, whether the administrative exemption applies, can be adjudicated fairly and efficiently in a collective action. They contend that CHR's defense based on the statute of limitations will become "a largely clerical matter" after the jury determines whether CHR willfully violated the FLSA. They also contend that individualized assessments of the number of hours worked by an employee will not be necessary because CHR will be able to contest the issue based on a representative sample or on a branch-by-branch basis. The Named Plaintiffs and the subset conclude by arguing that their claims can be tried efficiently only on a collective basis, that decertification would result in several hundred actions, and that decertification would be grossly unfair, inefficient, and costly.

A. Employment and factual settings

*6 Having summarized the parties' arguments, the Court turns to whether the Named Plaintiffs and the Opt-in Plaintiffs are similarly situated. With regard to the employment and factual settings, a substantial number of the Named Plaintiffs and the Opt-in Plaintiffs either did not attempt to demonstrate that they perform duties similar to those performed by other plaintiffs or conceded that their job duties differ from those of other plaintiffs. For example, the "unrepresented" Opt-in Plaintiffs comprise eighty individuals. No attempt to articulate their job duties has been made. In addition, most of the Named Plaintiffs and the Opt-in Plaintiffs who worked in T-Chek acknowledged that their "duties were dissimilar to the duties" of other

plaintiffs. Accordingly, approximately 100 of the more than 700 Named Plaintiffs and Opt-in Plaintiffs either have not articulated what they do or acknowledged significant differences in their duties. The Court turns to the remaining Named Plaintiffs and Opt-in Plaintiffs.

1. Transportation Sales Plaintiffs

The Transportation Sales Plaintiffs include approximately 500 individuals, the vast majority of the remaining Named Plaintiffs and Opt-in Plaintiffs. The group describes itself as individuals “who worked in transportation logistics branches whom [CHR] classified as salaried sales employees and 61 [individuals] who worked in the transportation logistics branches whom [CHR] classified as operations or support employees.” The individuals worked in approximately 100 branches. Many characterize their work as including most or all of the following duties: (1) receive communication from a customer about the customer’s freight needs, typically on a load-by-load basis; (2) enter information about the load into CHR’s computers; (3) determine appropriate mode of transportation for the load; (4) contact carriers from CHR’s approved list and obtain a carrier’s commitment to provide transportation at a price; (5) inform the customer of CHR’s price; and (6) monitor the freight to its destination and assist the carrier with problems that arise.

Notwithstanding the general characterization of the duties of the Transportation Sales Plaintiffs, the record reveals that many individuals within the group performed duties other than or in addition to these six duties. For example, in her capacity as a domestic drayage coordinator, Gwen Carlson spent a significant portion of her time advising sales employees as to best methods for drayage logistics and recommending solutions for their drayage needs. She also analyzed carrier lanes, created performance metrics, and appraised warehouse facilities. Indeed, the Named Plaintiffs and the Opt-in Plaintiffs now concede that Carlson had “unique duties.”

CHR also points to Robert Ainza to highlight distinctions in the duties performed by the Transportation Sales Plaintiffs. According to CHR, he spent at least 50% of his time acting as quality control manager at his branch. In response, the Named Plaintiffs and the Opt-in Plaintiffs state that Ainza “no longer seeks to proceed collectively because his primary duties, while nonexempt, did not fit within the sales or support rubric.”

*7 Connie Shew provides yet another example of the variations in the employment of the Transportation Sales Plaintiffs. From June 2000 to March 2001, she worked on-site at one of CHR’s customers as the liaison between CHR, the customer, and the carriers. While working on-site, she states that her responsibilities did not change. Nevertheless, she typically worked approximately fifteen hours per week more than she worked while working in CHR’s branch office.

Armond Kocsis’s declaration reveals further variations in the duties of the Transportation Sales Plaintiffs. He worked in CHR’s St. Louis branch. In addition to the six duties set forth above, Kocsis devoted 5% to 10% of his time to collecting past-due payments from CHR’s customers and to resolving problems his colleagues experienced with their computers. Moreover, once or twice per year, his manager assigned “special projects” to him. He described one project as an analysis of the cost factors for moving freight on rail. Although Kocsis characterized the time devoted to special projects as insignificant, he acknowledged that they “took up some time” while he performed them.

The Transportation Sales Plaintiffs also differ with regard to solicitation of new customers. Some of the Transportation Sales Plaintiffs did little to no solicitation of new customers. For instance, in her affidavit, Dhyia Thompson, employed in CHR’s Chicago Central branch, states that she “did no business building or soliciting of accounts, but built relationships with open carriers that were already in the [CHR] carrier system.” In his affidavit, Thomas Hagan states that he worked in CHR’s Chicago South and Atlanta San Antonio branches. His manager in San Antonio did not require anyone to solicit new customers. While in Chicago South, Hagan spent approximately one hour per week making cold calls. Similarly, Kristi Hamlin, who worked in CHR’s Fort Wayne branch, states that she spent less than 5% of her time soliciting new customers and cultivating the customer base. Richard Harper, who worked in CHR’s Atlanta branch, stated that he did not solicit new customers.

Other Transportation Sales Plaintiffs devoted more time to solicitation of new customers. For instance, Courtney Collins, who worked in CHR’s Chicago Central branch, states in her affidavit that she spent up to five hours per week soliciting new customers. Andrew Carne, formerly employed in CHR’s Iowa City branch, states that he spent up to 25% of his time each week on miscellaneous tasks such as contacting potential customers, handling customer complaints, and responding to damage claims. Craig Bowden spent as much as 85% of his time outside of the office in pursuit of new customers. In response, the Named Plaintiffs and the Opt-in Plaintiffs admit that Bowden “did have an additional primary duty.” They also state that Bowden “wishes to pursue his [FLSA] claim, if at all, outside the collective action.”

In short, the Court's review of the record reveals substantial variations in the duties performed by the Transportations Sales Plaintiffs. Many within the group performed duties other than or in addition to the six duties set forth above.

2. Produce Sales Plaintiffs

*8 The Produce Sales Plaintiffs include approximately forty individuals who worked in CHR's produce sourcing branches. CHR classified most of them as sales employees; a few were classified operations or support employees. The Produce Sales Plaintiffs assert they that have similar employment settings for essentially the same reasons as the Transportation Sales Plaintiffs. The Produce Sales Plaintiffs contend that they perform some or all of the six duties performed by the Transportation Sales Plaintiffs plus the purchase and sale of produce. The record reveals substantial variations in the duties of the Produce Sales Plaintiffs.

In his affidavit, Monty McHugh, who was employed at CHR's Cleveland branch, states that he spent approximately three hours each morning calling customers to determine what products the customers wanted to buy and the price they were willing to pay. He spent the next four hours calling growers and packers to purchase products to fill the customers' orders. He called truckers on CHR's approved list for the next two to three hours to arrange transportation for the products. On some evenings and nights, he received calls seeking assistance with loading trucks, orders that were not ready, and incorrect purchase order numbers. He also received calls in the early morning hours about problems with deliveries. He estimates that the foregoing duties occupied approximately 70% to 75% of his time each week. He spent his remaining time at work by assisting CHR's central office with inputting information about carriers, repacking product at a customer's location, and addressing damage claims.

In his affidavit, Jeffery Cichosz, who was employed at CHR's Eden Prairie branch, states that he spent the first part of his day checking messages from customers, calling drivers, and "put[ting] out any fires these drivers may have encountered during shipment of the load." He then called one of CHR's customers to determine what shipments the customer needed to make. He obtained rates from carriers and set up the shipment. Cichosz also addressed claims arising out of rejected loads. He asserts that the foregoing duties occupied 90% to 95% of his time. Cichosz also served as "Ambassador" with one other employee. In that capacity, he acted as a liaison between branch management and other sales representatives. He spent approximately 5% to 10% of his time relaying concerns between branch management and sales representatives.

Jeffrey Salmon, another employee at the Eden Prairie branch, describes his typical duties as follows. Upon arriving at work, he first checked for customer orders or price quotes from growers. He then assessed the market prices for the fruits for which he was responsible and researched associated freight costs. After compiling relevant pricing information, Salmon contacted customers. If a customer placed an order, Salmon bought fruit from a grower. Although he did not set up transportation for the fruit, Salmon addressed problems encountered by the carrier during shipment or by the customer upon delivery of the fruit. He assisted his customers with accounts receivables. Approximately once per month, Salmon compiled business reviews for customers or growers.

*9 Like the Transportation Sales Plaintiffs, the Produce Sales Plaintiffs differ with regard to solicitation of new customers. Some of the Produce Sales Plaintiffs did not solicit new customers. For example, Cichosz states the he "was not responsible for acquiring new customers." Similarly, James Kiehn, who works in CHR's Seattle branch, states that he does not engage in "outside sales." On the other hand, some of the Produce Sales Plaintiffs solicited new customers. For instance, Shane Jernigan, who worked in CHR's branches in Minneapolis, Miami, and Calgary, states that he spent approximately 10% to 15% of his time on miscellaneous tasks, including sales calls to potential customers.⁴

In short, the Court's review of the record reveals substantial variations in the duties performed by the Produce Sales Plaintiffs. Many within the group performed duties other than the six duties set forth above.

3. Support Plaintiffs

The Support Plaintiffs describe themselves as fifty-six individuals "who worked in the transportation logistics, produce (including CPDS), and T-Chek branches whom [CHR] classified as salaried support employees ... [or] operations employees." They assert that they primarily performed clerical and other support functions. Although they acknowledge that the "nature of the clerical work varied somewhat from one branch to another," they assert they should proceed collectively.

Carlson v. C.H. Robinson Worldwide, Inc., Not Reported in F.Supp.2d (2006)

Some Support Plaintiffs engaged primarily in data entry. For instance, Stephanie Smith, who worked in CHR's Dallas branch, states that she spent the vast majority of her time entering shipping orders and delivery information into CHR's computer system. Occasionally, she called carriers for information about a claim for damaged freight. She also answered calls to the branch telephone and prepared reports on orders and loads. Like Smith, Tammy Penwell, formerly employed at CHR's Eden Prairie branch, states that data entry occupied most of her time.

Other Support Plaintiffs performed several duties in addition to data entry. For example, Kelley Lyons, formerly employed at CHR's Eden Prairie branch, states that she entered information into CHR's computer system about orders for shipping freight that was smaller than a truckload. Another employee secured transportation for the order. Lyons and the other employee then monitored the freight to its delivery. Lyons then generated bills and sent them to CHR's customer. Like Lyons, Donna Rosch entered data into CHR's computer system. Rosch also worked in a "call center handling customer service calls," prepared shipping labels, and covered for a receptionist.

Other duties performed by the members of the Support Plaintiffs include processing accounts payable or receivable; assisting trucking companies with vehicle licenses and permits, fuel tax reports, audits of trip logs, and the processing of trip reports; assisting importers with paperwork; and providing quotations for less-than-load shipments to CHR's sales representatives. In short, the Support Plaintiffs perform a wide variety of duties.

4. Replenishment Analyst Plaintiffs

*10 The Replenishment Analyst Plaintiffs describe themselves as seven individuals who worked as replenishment analysts in CPDS. In very general terms, their duties consisted of maintaining produce inventory in distribution centers. For example, Nicholas Brandt described his duties as follows:

The first thing I would do is check out the inventory in my assigned distribution centers. I would review how long the produce had been in place and assess whether I believed more inventory needed to be ordered. I then would speak with the distribution center's buyer, the person who ultimately decided whether or not to purchase additional produce inventory, and inform the buyer how much inventory I believed needed replenishment. Once a decision had been made as to what inventory to replenish, I contacted growers on [CHR's] list to find out the selling price of a particular product. I did not bargain or negotiate rates with the grower's representative. I would then contact a carrier and coordinate the carrier's shipment of the product from the grower to the distribution center. I generally did not negotiate rates with the carriers I used.

The duties of other Replenishment Analyst Plaintiffs varied with respect to ordering produce or contacting carriers. For instance, Jennifer Halpaus neither located the produce to fill orders nor contacted carriers. Like Halpaus, Deborah Syverson does not call carriers. For the past several years, however, Syverson states that she has "done a little produce sourcing." Nevertheless, she maintains that she is "at the beginning level of calling growers to order produce." Syverson also assisted new replenishment analysts "by showing them the ropes and answering their questions while they learned the job." In short, the duties of the Replenishment Analyst Plaintiffs vary.

4. Salary basis

Earlier in this litigation, the Court concluded that CHR, on a company-wide basis, had neither engaged in an actual practice of improper deductions nor adopted a policy that created a significant likelihood of such deductions. Accordingly, the practice at each branch must be examined to determine whether employees were subject to improper deductions.

B. CHR's defenses

As noted above, the administrative exemption will be the dominant issue at trial. The regulations summarized above reveal that a fact-intensive inquiry determines whether the administrative exemption applies to an employee. In this case, the factual and employment settings of the Named Plaintiffs and the Opt-in Plaintiffs vary considerably. Given the failure to articulate the job duties of approximately eighty of the Opt-in Plaintiffs; the admitted differences in the duties of approximately twenty of the Named Plaintiffs and the Opt-in Plaintiffs; the substantial differences in the job duties performed by the Transportation Sales Plaintiffs, the Produce Sales Plaintiffs, the Support Plaintiffs, and the Replenishment Analysts; and the variations

across branches with respect to deductions from salaries, the Court concludes that the administrative exemption cannot be adjudicated collectively.

B. Fairness and procedural considerations

*11 Having concluded that substantial differences exist in the employment and factual settings of the Named Plaintiffs and the Opt-in Plaintiffs such that the dominant issue at trial-whether the administrative exemption applies to an employee-cannot be adjudicated collectively, the Court reaches the inevitable conclusion that fairness and procedural considerations also favor decertification. The Court cannot fairly and efficiently administer collective actions that require individualized inquiry into the exempt status of several hundred individuals.

In short, the Court finds that the Named Plaintiffs and the Opt-in Plaintiffs are not similarly situated. The Court therefore grants CHR’s motion. In fairness to the Opt-in Plaintiffs, the Court stays the decertification of the collective actions for thirty days. The Court anticipates that counsel for the Named Plaintiffs and the Opt-in Plaintiffs will use this period to advise the Opt-in Plaintiffs of the Court’s decision to grant CHR’s motion to decertify.

III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. CHR’s Motion to Decertify Plaintiffs’ Claims under the Fair Labor Standards Act [Docket No. 729 in Civ. No. 02-3780; Docket No. 524 in Civ. No. 02-4261] is GRANTED.
2. The Opt-in Plaintiffs are DISMISSED WITHOUT PREJUDICE.
3. This Order is STAYED for thirty (30) days.

Footnotes

¹ Revisions to the regulations that define the administrative exemption took effect on August 23, 2004. *See* 29 C.F.R. § 541.200 (2006). Other than requiring that the employee be paid on a salary basis of at least \$455 per week, the revised regulations articulate the administrative exemption in terms similar to those set forth above. *See id.* The Court cites the regulations applicable before August 23, 2004.

² At the motion hearing, counsel for the Named Plaintiffs and the subset discounted the alleged failure to execute retainer agreements as a reason for excluding the “unrepresented” Opt-in Plaintiffs from the opposition to CHR’s motion. Counsel instead advanced the “unrepresented” Opt-in Plaintiffs’ alleged failure to communicate their job duties as a reason for their exclusion. The Court notes that the Named Plaintiffs and the Opt-in Plaintiffs’ motion for partial summary judgment did not distinguish the Opt-in Plaintiffs who had executed a retainer agreement from those who had not.

³ According to the Named Plaintiffs and the subset, eleven of the fourteen employees who worked in T-Chek do not seek to challenge their exempt status based on their job duties in this collective action because many of their duties differed from the duties of other plaintiffs. The Named Plaintiffs and the subset ask that the FLSA claims of the eleven employees be dismissed without prejudice if the eleven employees do not prevail on their salary-basis challenge.

⁴ Although Jernigan is not one of the Produce Sales Plaintiffs, he was eligible to join the collective action. Jernigan states that his colleagues performed the same duties he did. Consequently, the record reveals that some of the Produce Sales Plaintiffs engaged in outside sales calls.