

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 12, 2017

UNITED STATES DISTRICT COURT SEAN F. McAVOY, CLERK
EASTERN DISTRICT OF WASHINGTON

SPOKANE VALLEY FIRE
DEPARTMENT,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS AFL-CIO
LOCAL 3701,

Defendant.

No. 2:17-CV-0250-SMJ

**ORDER DENYING
DEFENDANT’S MOTION TO
DISMISS AND STAYING
PROCEEDINGS**

I. INTRODUCTION

In this case Plaintiff Spokane Valley Fire Department (the Department) seeks declaratory judgment that battalion chiefs and fire marshals, who are members of Defendant International Association of Fire Fighters AFL-CIO, Local 3701 (Local 3701), are exempt from certain wage and hour provisions of the Fair Labor Standards Act (FLSA). Local 3701 moves to dismiss, arguing principally that the FLSA does not provide any mechanism for employers to enforce provisions of the FLSA, and that it cannot be liable under the FLSA

1 because it is not the Department’s employer.¹ This argument is misplaced
2 because the Department does not seek relief directly under the FLSA. Instead,
3 it seeks relief under the Declaratory Judgment Act. Local 3701 also argues that
4 this court lacks jurisdiction to hear the Department’s claim because the
5 Declaratory Judgment Act does not provide an independent basis for
6 jurisdiction. It is correct that the Declaratory Judgment Act does not create an
7 independent basis for jurisdiction, but because the members of Local 3701
8 could bring FLSA wage and hour claims against the Department, the Court has
9 jurisdiction over the Department’s request for declaratory judgment on the
10 parties’ rights under those same provisions of the FLSA.

11 The Court has jurisdiction in this case. However, the parties also have
12 the option of seeking an opinion from the U.S. Department of Labor’s Wage
13 and Hour Division on this question. Because an opinion from the Department
14 of Labor may facilitate a more expeditious resolution of this dispute, this case

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16 ¹ The Department argues that the Court should not consider Local 3701’s motion to
17 dismiss because Local 3701 included material outside the pleadings in its motion.
18 ECF No. 9 at 2–3. Rule 12(d) provides that “if matters outside the pleadings are
19 presented to and not excluded by the court, the motion must be treated as one for
20 summary judgment under Rule 56.” Local 3701 included and cited to the
declaration of union president Richard Llewellyn. If the Court considered this
material, it would be appropriate to convert this motion to a motion for summary
judgment. But no information beyond the pleadings is required to resolve the legal
questions presented here. Accordingly, all material submitted outside the pleadings
is excluded.

1 is stayed for 90 days to permit the parties to discuss how to proceed in this
2 matter, including whether to seek an opinion from the Department of Labor.

3 **II. BACKGROUND**

4 The Department employs fire-department personnel including battalion
5 chiefs and fire marshals who are members of Local 3701. ECF No. 1 at 2. The
6 Department alleges that the battalion chiefs and fire marshals primary duties
7 are “directing and supervising 31 departmental divisions; organizing,
8 managing, and maintaining [the Department]’s training programs; supervising
9 the operations of all crews including the enforcement of rules, directives and
10 regulations; and participation in hiring, firing and disciplinary decisions
11 relating to other [Department] employees,” and that they “regularly exercise
12 discretion and independent judgment with respect to matters of significance
13 within [the Department].” ECF No. 1 at 2–3. The Department alleges that
14 because of the nature of their duties, the battalion chiefs and fire marshals are
15 exempt from certain FLSA wage and hour rules. ECF No. 1 at 2. The
16 Department further alleges that labor agreements between the parties,
17 including the labor agreement presently in place between the Department and
18 Local 3701, expressly recognize the battalion chiefs and fire marshals as
19 “exempt civil service positions.” ECF No. 1 at 3–4.

1 The Department alleges that “Local 3701 now claims battalion chiefs
2 and fire marshals are non-exempt employees under the FLSA.” ECF No. 1 at
3 4. The Department seeks declaratory judgment under the Declaratory
4 Judgment Act, 28 U.S.C. §§ 2201–2202, that battalion chiefs and fire marshals
5 are executive and/or administrative employees under the FLSA, and are
6 exempt from wage and hour requirements. ECF No. 1 at 5.

7 III. LEGAL STANDARD

8 A claim may be dismissed pursuant to Rule 12(b)(6) either for lack of a
9 cognizable legal theory or failure to allege sufficient facts to support a cognizable
10 legal theory. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015). “To survive a motion
11 to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
12 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662,
13 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim
14 is plausible on its face when “the plaintiff pleads factual content that allows the
15 court to draw the reasonable inference that the defendant is liable for the misconduct
16 alleged.” *Id.* A court must “‘accept all factual allegations in the complaint as true
17 and construe the pleadings in the light most favorable to the nonmoving party.’”
18 *Taylor*, 780 F.3d at 935 (quoting *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028,
19 1029–30 (9th Cir. 2009)). However, “[t]hreadbare recitals of the elements of a cause
20 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S.

1 at 678. “Where the well-pleaded facts do not permit the court to infer more than the
2 mere possibility of misconduct, the complaint has alleged—but has not ‘show[n]’—
3 ‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

4 IV. DISCUSSION

5 A. The Court has jurisdiction over the Department’s claim.

6 Local 3701 spends much of its briefing arguing that the FLSA’s
7 enforcement provisions do not provide any mechanism for an employer to take
8 enforcement action, and that it cannot be liable under the FLSA because it is not
9 the Department’s employer. ECF No. 6 at 5–15. This is entirely correct—an
10 employer cannot bring a claim against a union (or anyone) under the FLSA’s
11 enforcement provisions, *see* 29 U.S.C. § 216—but it is also irrelevant. The
12 Department acknowledges it has not made any claim directly under the FLSA.
13 ECF No. 9 at 10. Instead, the Department asks the Court to interpret provisions of
14 the FLSA under the Declaratory Judgment Act. *See* ECF No. 1 at 4–5.

15 Accordingly, the dispositive question is whether the Court has jurisdiction over
16 the Department’s Declaratory Judgment Act claim.

17 Local 3701 argues that the Declaratory Judgment Act does not
18 independently confer jurisdiction. ECF No. 6 at 16. This is correct. *See Janakes v.*
19 *United States Postal Serv.*, 768 F.2d 1091, 1093 (9th Cir. 1985) (“The use of the
20 declaratory judgment statute does not confer jurisdiction by itself if jurisdiction

1 would not exist on the face of a well-pleaded complaint brought without the use of
2 28 U.S.C. § 2201.”). But Local 3701 is wrong that the Court has jurisdiction only
3 if the Department could independently bring a claim under the FLSA. Instead, “[a]
4 person may seek declaratory relief in federal court if the one against whom he
5 brings his action could have asserted his own rights there.” *Standard Ins. Co. v.*
6 *Saklad*, 127 F.3d 1179, 1181 (9th Cir. 1997) (citing *Franchise Tax Bd. of Cal. v.*
7 *Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 19 (1983)); *see also*
8 *Janakes*, 768 F.2d at 1093 (“If . . . the declaratory judgment defendant could have
9 brought a coercive action in federal court to enforce its rights, then we have
10 jurisdiction . . .”). Here, because the Court would have jurisdiction over claims
11 by Local 3701 members against the Department for violation of the FLSA’s wage
12 and hour provisions, *see* 29 U.S.C. § 216(b), the Court has jurisdiction to consider
13 a declaratory judgment claim on the same subject by the Department.

14 It is not necessary to decide whether Local 3701 would have standing to
15 bring an FLSA wage and hour claim on behalf of its members. The members of
16 Local 3701 unquestionably could bring FLSA wage and hour claims against the
17 Department either individually or collectively. *See* 29 U.S.C. § 216(b). Local 3701
18 is representing its members in negotiating a labor agreement with the Department.
19 It is in the context of that negotiation that an actual controversy exists concerning
20

1 whether the battalion chiefs and fire marshals are exempt from FLSA wage and
2 hour requirements.

3 **B. This matter is stayed to permit the parties to consider seeking an**
4 **opinion from the Department of Labor.**

5 Neither the FLSA nor its implementing regulations set a formal
6 administrative process for obtaining an advisory opinion from the Department of
7 Labor on FLSA wage and hour questions. However, the Department of Labor's
8 Wage and Hour Division has historically issued opinion letters explaining what
9 the FLSA requires in fact-specific situations at the request of employers or
10 employees. *See Wage and Hour Div. Rulings and Interpretations*, U.S. Dep't of
11 Labor, <https://www.dol.gov/whd/opinion/guidance.htm> (last visited Oct. 12,
12 2017). These opinion letters are affirmative agency "rulings" that the parties may
13 rely on. 29 C.F.R. 790.13, 790.17. The Department of Labor stopped issuing
14 opinion letters for a period beginning in 2010, but it reinstated the practice earlier
15 this year. *See Michael Trupo, US Dep't of Labor Reinstates Wage and Hour*
16 *Opinion Letters*, U.S. Dep't of Labor, (June 27, 2017), [https://www.dol.gov/](https://www.dol.gov/newsroom/releases/whd/whd20170627)
17 [newsroom/releases/whd/whd20170627](https://www.dol.gov/newsroom/releases/whd/whd20170627).

18 Because an opinion from the Department of Labor may facilitate a more
19 expeditious resolution of this dispute, this case is stayed for 90 days to permit
20 the parties to consider how to proceed in this matter, including whether to seek
an opinion from the Department of Labor.

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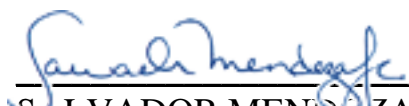
V. CONCLUSION

For the reasons discussed, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss, **ECF No. 6**, is **DENIED**.
2. This case is stayed for a period of **90 days**.
3. The parties shall file a status report on or before **January 5, 2018**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 12th day of October 2017.



SALVADOR MENDOZA, JR.
United States District Judge