



From left: Attorneys Jennifer Schilling and Maureen Salas | Littler; Werman Salas P.C.

CHICAGO — Assistant store managers at Jewel supermarkets could be poised to take part in a class action accusing their employer of shorting them overtime pay, even though they are salaried employees.

U.S. District Judge Mary Rowland issued an opinion Feb. 3 in a Fair Labor Standards Act complaint against Jewel-Osco and its parent company, New Albertsons.

Plaintiff Lisa Piazza, who has been an assistant store director since February 2019, alleged the chain improperly classified her as exempt from overtime requirements under the federal FLSA law and the Illinois Minimum Wage Law.

According to Rowland, Piazza alleged that although ASDs — and “comparable salaried employees with different titles” — are classified as management, they nonetheless spend most of their working hours performing the same duties as employees who qualify for overtime pay, such as direct customer interaction, register duty, inventory, shelving and displays, and cleaning.

Unlike managers, Piazza said, ASDs don’t have significant independent discretion or judgment, and aren’t “responsible for hiring, firing, making employment-related recommendations, scheduling or disciplining employees,” Rowland wrote. Still, Piazza said she works 50-60 hours a week without getting any overtime pay.

Piazza said a class action is appropriate based on her experience working at four Jewel



In her motion for conditional class certification, Piazza included a letter from Jewel-Osco offering her the job, noting it included language about participation in a New Albertsons retirement plan. Rowland said that establishes the entity “maintained business records and a benefit program for Jewel-Osco employees.” She denied the motion to dismiss without prejudice.

In opposing certification, the defendants argued Piazza didn’t adequately allege a common policy that violated the laws in question, or that there are similarly situated employees. However, Rowland noted Piazza’s materials included four affidavits of other ASDs, “which demonstrates a likely case of misclassification” and satisfying the requirement to make a “modest factual showing” to attain conditional certification.

Rowland said the same documents are useful in demonstrating similar employee situations, as the employees in question worked at one or more Jewel stores and “they all report that the role of an ASD did not vary significantly from one store to another, and that all stores operated using a common handbook of procedures.”

The defendants countered with 11 affidavits contrasting those Piazza submitted and said the role of an assistant manager varies based on the size and location of each store, or whether an employee works for a Jewel or an Osco.

“They also claim that Piazza and the opt-in plaintiffs were atypical because they either moved from store to store frequently, or did not hold their jobs long enough to take on the managerial duties of an ordinary ASD,” Rowland wrote. “These are quintessential examples of ‘happy camper’ declarations, and the Court need not consider them at this stage in the litigation.”

Since the present motion is only for conditional certification, Rowland said, decisions about which workers’ experiences are more typical should wait until after discovery.

Piazza is represented in the case by attorneys Douglas Werman, Maureen Salas and others with the firm of Werman Salas P.C., of Chicago.

New Albertsons and Jewel are represented by attorney Jennifer L. Schilling and others with the firm of Littler Mendelson, of Chicago.