

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SHARON HAMILTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 00-635 GMS
	)	
CITY OF WILMINGTON, a political	)	
subdivision of the State of Delaware, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

**I. INTRODUCTION**

On October 25, 2001, the parties in the above-captioned matter filed a joint motion for temporary class certification and a request for a hearing on the proposed settlement. For the reasons that follow, the court concludes that it is unable to certify this settlement class based solely on the information available to it at this time. It will therefore order the parties to appear before it at a hearing and present evidence on these issues.

**II. BACKGROUND**

The plaintiffs commenced the above-captioned action on July 7, 2000. In their complaint, they seek relief on behalf of themselves and all current and former employees of the defendant, the City of Wilmington (the “City”), who have been designated by the City as “temporary employees.” The plaintiffs maintain that the designation “temporary employees” violates Section 7-100 and 101 of the City Charter by depriving them of the benefits guaranteed to City employees. These benefits include healthcare insurance, sick pay, vacation pay, pension benefits, holiday pay, and job protection.

On August 24, 2001, the parties agreed to settle the case. In accordance with that agreement, they

filed a joint motion for class certification. The court will now address this motion.

### III. DISCUSSION

Settlement classes are not mentioned in Federal Rule of Civil Procedure 23. *See* FED. R. CIV.P. 23. Rather, such classes are a judicially crafted procedure. *See In re: General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 777 (3d Cir. 1995). Although the debate over whether Rule 23 permits settlement classes continues to this day, the Third Circuit has definitively answered this question in the affirmative for this Circuit. *See id.* at 778. In so holding, the Third Circuit was clear that “there is no lower standard for the certification of settlement classes than there is for litigation classes.”<sup>1</sup> *See id.* More succinctly stated, “[n]either the existence of a settlement nor the terms of settlement affect the nature of this important inquiry.” *Id.* at 796. Therefore, a court may not appropriately certify a settlement class unless and until the four requirements of Rule 23(a) and the relevant requirements of 23(b) are met. *See id.*

Additionally, before sending notice of the settlement to the class, the court will usually preliminarily approve the settlement. *See id.* at 785. Before it approves a settlement, the court is charged with protecting absentees by ensuring that the settlement represents adequate compensation for the release of the class claims. *See id.* at 804. The court’s “preliminary determination establishes an initial presumption of fairness when the court finds that:(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small

---

<sup>1</sup>Indeed, the Third Circuit noted that courts adopting the view that the formal class certification determinations are not necessary for settlement class certifications may be contravening both Rule 23 and the Supreme Court’s holding in *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982). *See id.* at 797.

fraction of the class objected.” *Id.* Furthermore, the settlement evaluation involves two types of evidence: (1) a substantive inquiry into the terms of the settlement relative to the likely rewards of litigation; and (2) a procedural inquiry into the negotiation process. *See id.*

**A. Certification**

The parties in the present case offer no evidence in their motion from which the court can make the requisite Rule 23 findings. Absent such information, the court will not certify a class, for settlement purposes or otherwise. Accordingly, the court orders the parties to appear before it at a hearing and present comprehensive information on the following issues:

1. Whether the numerosity, commonality, and typicality requirements of Rule 23(a) are satisfied;
2. Whether the named plaintiffs’ interests are sufficiently aligned with the absentees’ interests; and
3. Counsel’s qualifications to represent the class by demonstrating vigorous prosecution of the action and arm’s length dealing.

**B. Proposed Settlement**

At the time of the certification hearing, the court also orders counsel for both parties to be prepared to address whether the court should give the proposed settlement final approval. In addition to any information the parties wish to present, the court requests that the parties address the following issues:

1. The nature and process of the negotiations. Specifically, evidence tending to show that they occurred at arm’s length and whether the parties simultaneously negotiated on attorney’s fees and class relief;

2. The sufficiency of any discovery taken,
3. The reaction of the proposed class representatives to the settlement;
4. Whether major causes of action or types of relief sought in the complaint have been omitted from the settlement;
5. The complexity, expense and likely duration of the litigation;
6. The risks of establishing liability and damages at trial; and
7. The range of reasonableness of the settlement fund in light of the best possible recovery at trial.

The above requests for information are not exclusive. Accordingly, the court reserves the right to elicit any information or evidence at the hearing that will enable it to better judge the propriety of certifying this proposed settlement class and its proposed settlement.

#### **IV. CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. A hearing on the matters of settlement class certification and the proposed settlement will be held on **Tuesday, March 26, 2002**, at **10:00 a.m.**, in Courtroom 4A, 4th Floor, Boggs Federal Building, 844 King Street, Wilmington, Delaware.

Date: February 2, 2002

\_\_\_\_\_  
Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE