

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EARL E. HOFFMAN, SR., *et al.*, :
Plaintiffs :
 :
v. : CIV. NO. AMD 06-1882
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FIRST STUDENT, INC., :
Defendant :
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MEMORANDUM OPINION and ORDER

In this action removed from state court, former employees of defendant First Student, Inc., allege claims for unpaid wages, including but not limited to failure to pay plaintiffs at time and a half of their normal rate for overtime work, under federal and state law. The court has previously granted plaintiffs' motion for collective action under the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., ("FLSA"), and plaintiffs' motion for class certification for claims brought pursuant to the Maryland Wage and Hour Law, Md. Code Ann. Lab. & Empl. § 3-401 et seq., ("MWHL") and the Maryland Wage Payment and Collection Law, Md. Code Ann. Lab. & Empl. § 3-501 et seq., (MWPCL"). Now pending are cross-motions for partial summary judgment. A hearing was held on May 28, 2009, and counsel were heard at length. For the reasons stated on the record, as elaborated herein, the cross-motions are granted in part and denied in part.

I.

Defendant First Student is a subsidiary of a publicly-traded corporation that provides school bus transportation services to public and private schools in the United States and Canada. Defendant no longer does business in Maryland but formerly had contracts with at

least two school districts in the state. Plaintiffs are former employees of defendant who worked as bus drivers, driver-aides, and lot workers. They performed a number of jobs not encompassed by their specific job titles. For example, some plaintiffs trained other drivers, acted as dispatchers, performed mechanic work, and fueled buses.

Plaintiffs allege that defendant engaged in a “pattern and practice” of under-paying employees in violation of law, through the following standard operating philosophies and procedures:

(1) Defendant did not aggregate time in calculating the 40-hour-per-week overtime threshold for employees who performed different tasks. For example, according to plaintiffs, an employee who drove a bus for 30 hours in a week and trained drivers for 20 hours in that same week did not receive the overtime rate of pay for 10 hours, in violation of the FLSA;

(2) Defendant did not aggregate regular driving (i.e., transporting students from home to school and back) and so-called charter driving (i.e., transporting students on field trips, sporting events, etc.) such that a driver could drive for more than 40 hours in a week but earn no overtime pay;

(3) Defendant did not pay employees more than 15 minutes per day for certain pre-trip and post-trip tasks (e.g., bus inspections, cleaning buses, returning keys and paperwork to the dispatch office, etc.) although the time spent on such tasks normally added up to 40 minutes or more a day, thereby violating state law; and

(4) Defendant did not pay promised safety and attendance bonuses.

II.

Cross motions for summary judgment “do not automatically empower the court to dispense with the determination whether questions of material fact exist.” *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341, 349 (7th Cir. 1983), *cert. denied*, 464 U.S. 805 (1983). “[T]he court must evaluate each party’s motion on its own merits, taking care in each instance to draw all reasonable inferences against the

party whose motion is under consideration.” *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1391 (Fed. Cir. 1987). The court must then “rule on each party’s motion on an individual and separate basis, determining, in each case, whether a judgment may be entered in accordance with the Rule 56 standard.” *Towne Mgmt. Corp. v. Hartford Acc. and Indem. Co.*, 627 F. Supp. 170, 172 (D. Md. 1985) (*quoting* Wright, Miller & Kane, *Federal Practice and Procedure: Civil* 2d § 2720 (2d ed. 1993)); *see also* *Federal Sav. and Loan Ins. Corp. v. Heidrick*, 774 F. Supp. 352, 356 (D. Md. 1991). The court may grant summary judgment in favor of one party or deny both motions. *See Shook v. United States*, 713 F.2d 662, 665 (11th Cir. 1983).

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). An issue is genuine if, considering all evidence, no reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may affect the outcome of the case. *Id.* “[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met this initial burden, the non-moving party must set out specific facts showing a genuine issue for trial to avoid summary judgment. Fed.R.Civ.P. 56(e)(2).

III.

I consider first issues relevant to plaintiffs' overtime claims and next the state law claims.

A.

1.

Defendant contends that for some members of the plaintiff class, overtime rates of pay need not be paid by virtue of the so-called "motor carrier exception" to the FLSA and parallel provisions of state law. The factual predicate for this contention is as follows: some percentage of defendant's school bus drivers volunteered to drive on so-called "charter trips," e.g., to provide transportation in respect to after-school activities or school-day field trips, in addition to their normal duties ferrying students from home to school and back home. On occasion (the parties vigorously dispute the actual frequency) these "charter trips" required drivers to transport students to locations outside of Maryland, say, to Washington, D.C., or to Philadelphia. As to those drivers, defendant insists that no overtime need be paid by operation of the "motor carrier exception" to the FLSA.

Defendant presents its arguments in the following fashion:

First Student acknowledges that it does not pay overtime for charter work when charter drivers work in excess of 40 hours in a week [because] employees for whom the United States Department of Transportation sets qualifications and maximum hours of service are excluded from the FLSA's and Maryland's overtime requirements. *See* 29 C.F.R. § 782.1; Md. Lab. and Empl. Code Ann. § 3-415(c)(1).

* * * *

According to the U.S. Department of Labor, only one federal agency

may control an employee's hours of work. If no other federal agency controls an employee's hours of work, then that employee's work is governed by the FLSA. However, section 13(b)(1) of the FLSA states that the overtime provisions of the FLSA *shall not apply* to "any employee with respect to whom the Secretary of Transportation has *power* to establish qualifications and hours of service . . ." *See* 29 U.S.C. § 213(b)(1) (emphasis added). Thus, if an employee's work is potentially or actually subject to the U.S. Department of Transportation's hours of service regulations, then the FLSA's overtime provisions are not applicable. The test for FLSA exemption is: "does the Secretary of Transportation have power to regulate: a) Driver Qualification, and, b) Maximum Hours of Service." *See* 29 C.F.R. 782.1.

First Student's school bus drivers, when engaged in charter bus service, were subject to the Federal Motor Carrier Safety Regulations ("FMCSR") including, but not limited to, the driver qualifications and the hours of service restrictions. *See* 49 C.F.R. Parts 382, 383, 387, 390-96. Therefore, First Student's school bus drivers who performed charter bus service were exempt from the FLSA's overtime provisions.

Under the FMCSR, First Student was a "for-hire" private motor carrier of passengers, and its school bus drivers were subject to the federal safety regulations contained in 49 C.F.R. Parts 382, 383, 387, 390-96. The FMCSR's regulatory guidance, which can be found on the Federal Motor Carrier Safety Administration's ("FMCSA") website at www.fmcsa.dot.gov, sets forth the types of school bus services covered by the regulations. The FMCSA mandates that "anyone operating school buses under contract with a school is a for-hire motor carrier," and when a "for-hire motor carrier transports children to school-related functions other than 'school bus operation' (as defined in 49 C.F.R. § 390.5), such as for "sporting events, class trips, etc., and operates across State lines," the carrier is covered by the safety regulations. *See* FMCSR Regulatory Guidance Part 390.3, Question 14, available at www.fmcsa.dot.gov. Normal "school to home and home to school" driving activities are not covered. *Id.* In full accordance with this guidance, it was Defendant's policy to pay its Baltimore bus drivers pursuant to the FLSA for "school to home and home to school" trips, but not for charter trips.

The U.S. Department of Transportation has determined that "if in the regular course of employment a driver is, or could be, called upon to transport a shipment in interstate commerce the driver would be subject" to the Department of Transportation's jurisdiction and "even a minor involvement in interstate commerce as a regular part of an employee's duties will subject that employee to the jurisdiction" of the Department of Transportation. *See* FMCSR Regulatory Guidance, Part 390.3, Question 24, at www.fmcsa.dot.gov. Furthermore, the U.S. Department of Labor states that:

Where safety affecting employees have not made an actual interstate trip, they may still be subject to DOT's jurisdiction if: (1) the employer is shown to have involvement in interstate commerce; and (2) it can be established that the employee could have, in the regular course of employment, been reasonably expected to make an interstate journey.

See U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Fact Sheet #19: The Motor Carrier Exemption Under the Fair Labor Standards Act (FLSA), available at www.dol.gov.

Def's. Memo. at 6-8.

Thus, First Student posits that the drivers who volunteer to join its "charter pool" are categorically ineligible for overtime pay under the statutory and regulatory regime described above because: (1) FLSA's overtime provisions do not apply to "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and hours of service," 29 U.S.C. § 213(b)(1), and (2) the Secretary of the Department of Transportation is authorized to prescribe the "qualifications" and "hours of service" of drivers in the "charter pool."

Plaintiffs seek to avoid this result with two arguments. First, they point to an exception set out in the Motor Carrier Act which plausibly creates a categorical exclusion for school bus drivers from the jurisdiction of the Secretary of Transportation. Second, plaintiffs contend that even if they are not categorically excluded from coverage under the Motor Carrier Act, First Student has not established the motor carrier defense as a matter of law (and summary judgment must be denied) because defendant has failed to demonstrate that, as a matter of law, plaintiffs' involvement with interstate commerce is other than "trivial" and de minimis, or that interstate travel was a "natural, integral and . . . inseparable part of

the position plaintiffs held,” *Dauphin v. Chestnut Ridge Transportation, Inc.*, 544 F.Supp.2d 266, 275 (S.D.N.Y. 2008), and that proper evaluation of that defense must await trial.

As explained herein, I conclude that while defendant correctly contends that the motor carrier exemption defense is available, the record does not establish the elements of that defense as a matter of law. Accordingly, defendant’s motion for summary judgment as to the overtime claims is granted in part and denied in part.

2.

The Motor Carrier Act (hereafter, “the MCA”) is found at 49 U.S.C. § 13501 et seq. Section 13501 gives the Secretary of the Department of Transportation (hereafter, “the Secretary”) jurisdiction over interstate motor carriers, and a separate section, 49 U.S.C. § 31502(b)(2), empowers the Secretary to set “qualifications” and “hours of service” for employees of interstate motor carriers. As a matter of law, First Student is a form of “motor carrier” within the jurisdiction of the MCA. However, certain types of interstate travel are not within the Secretary’s jurisdiction because they are exempted from the MCA.

One exemption excludes from the Secretary’s jurisdiction “a motor vehicle transporting only school children and teachers to or from school.” 49 U.S.C. § 13506(a)(1). On its face, this exemption from the Act seems to mean that the routine carriage of students by the drivers employed by contract motor carriers such as defendant on behalf of local school districts renders the drivers eligible for overtime under the FLSA, i.e., that such employees *are not* within the class of employees “with respect to whom the Secretary of Transportation has power to establish qualifications and hours of service.” 29 U.S.C. §

213(b)(1). And, the statutory term “to or from school” could reasonably be interpreted to include not only transportation “to or from [home to] school [and back],” but also “to or from school[, including any trips from school to other locations related to the educational mission of the school, such as school-sponsored field trips, and back to school.”] Put differently, one might justifiably infer that students on field trips and/or being transported to and from athletic contests *almost always depart from and return to the school location at the beginning and end of such transportation.*

Mielke v. Laidlaw Transit, Inc., 102 F.Supp.2d 988, 992 (N.D. Ill. 2000), essentially adopted the above interpretation of the term “to or from school” in the MCA and reasoned that, categorically, “school bus operation” (which is the Secretary’s regulatory term, meaning “the use of a school bus to transport school children and/or school personnel from home to school and from school to home,” 49 C.F.R. § 390.5), is outside of the Secretary’s jurisdiction and thus is not encompassed by the FLSA’s motor carrier exception. Specifically, the *Mielke* court concluded that “the phrase ‘to and from school’ includes transportation to or from school sponsored events.” 102 F.Supp.2d at 990 (citation omitted).

In reaching its conclusion that school bus drivers who drove on so-called “charter trips” were entitled to overtime notwithstanding the FLSA’s motor carrier exception, the *Mielke* court flatly rejected defendant’s argument that the MCA’s exception for “a motor vehicle transporting only school children and teachers to or from school” applied “only to tariff, licensing, and rate regulations” governing motor carriers, and not to the Secretary’s authority to prescribe school bus drivers’ “qualifications and maximum hours of service.” *Id.*

At the time the case at bar was filed in June 2006, *Mielke* was the sole opinion by a federal court interpreting and harmonizing the FLSA motor carrier exception with the MCA's exclusion from the Secretary's authority "a motor vehicle transporting only school children and teachers to or from school." In *Mielke*, the former gave way to the latter and school bus drivers were deemed by the court entitled to overtime pay under the FLSA.

There is now a second case elucidating this somewhat convoluted statutory and regulatory regime treating school bus drivers' entitlement to overpay pay under the FLSA. *Dauphin v. Chestnut Ridge Transportation, Inc.*, 544 F.Supp.2d 266 (S.D.N.Y. 2008). In *Dauphin*, the court declined to follow *Mielke* and reached a contrary conclusion, namely, that the FLSA motor carrier exception potentially applied to school bus drivers (essentially on a week-by-week, employee-by-employee basis, *see* 544 F.Supp. 2d at 275 ("However, because this testimony fails to establish whether interstate travel was part of either plaintiff's job duties during the entire period at issue in this litigation, the Court cannot determine whether the motor carrier exemption applies to them for all the relevant workweeks.")). Thus, the motor carrier exception would exonerate the defendant in *Dauphin* provided that it could show "either that the activities of the individual plaintiffs involved interstate travel of a character that was more than de minimis or that interstate travel was a 'natural, integral and . . . inseparable part' of the position plaintiffs held." *Id.*

Specifically, the *Dauphin* court concluded, contrary to *Mielke*, that the limitation on the Secretary's jurisdiction to regulate "school bus operations" had no bearing on the Secretary's ability to set "qualifications and maximum hours of service" for school bus

drivers who operated school buses in interstate commerce. *Id.* at 272. That is, the court reasoned that § 13506’s limitation on the Secretary’s jurisdiction applies only to the economic and licensing authority (found in Subtitle IV of the MCA), and not to the issue of qualifications and maximum hours of service (found in Subtitle VI of the MCA). *Id.* (citing *Bilyou v. Dutchess Beer Distribs., Inc.*, 300 F.3d 217, 229 (2d Cir.2002)).

Dauphin readily acknowledged that, consistent with the statutory language in the MCA, the Federal Motor Carrier Safety Regulations except from certain regulations “[a]ll school bus operations,” pursuant to 49 C.F.R. § 390.3(f). *See* 544 F.Supp.2d at 274. Nevertheless, the court concluded that this regulatory exclusion is not an indication that the Secretary does not have the authority to regulate school bus transportation; rather, it concluded, the exclusion reflects the Secretary’s determination that regulating home-to-school and school-to-home transportation is not necessary for public safety. *Id.* (citing 53 Fed. Reg. 18,043 (May 19, 1988)).

I have carefully considered the conflicting approaches of the only two federal courts to have examined this awkward statutory regime. To be sure, *Mielke*’s approach is fully consistent with the well-settled doctrine that FLSA exemptions and exceptions are to be construed narrowly against the employer seeking to assert them, *e.g.*, *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960) (citing *Mitchell v. Kentucky Fin. Co.*, 359 U.S. 290, 295 (1959)). Nonetheless, I am persuaded that some deference is owed to the Secretary’s interpretation of his authority, acquiesced in by the Department of Labor, *see* 29 C.F.R. § 782.2(a), to regulate the qualifications and hours of service of interstate school bus

drivers. Furthermore, I am persuaded by Judge Stein's analysis in *Dauphin* that the broadly-worded exception set forth in the MCA does not extend to the qualifications and hours of service of interstate school bus drivers employed by motor carriers within the jurisdiction of the Secretary. Accordingly, as in *Dauphin*, and contrary to *Mielke*, I conclude that the motor carrier defense is potentially applicable here.

Nevertheless, again as in *Dauphin*, the motor carrier exception defense cannot be applied on this record as a matter of law. Because an employee's exempt status is an affirmative defense to a claim for non-payment at an overtime rate, the employer bears the burden of proving the exemption by clear and convincing evidence. *Stricker v. Eastern Off Road Equip., Inc.*, 935 F.Supp. 650, 654 (D. Md. 1996). Viewed in the light most favorable to plaintiffs, the evidence in the record shows that fewer than two interstate trips per year, on average, were worked by the employees in the First Student "charter pool" during the pendency of defendant's contracts in Maryland. Moreover, as disclosed during the hearing in this case, each such driver seems to have had the option whether to accept an assignment to operate a vehicle outside of Maryland. *See Dauphin*, 544 F.Supp. 2d at 274-76. Thus, to paraphrase *Dauphin* "whether the activities of [First Student's] [former] drivers involve[d] interstate transportation of passengers in a way that would bring them within the scope of the motor carrier exemption from the FLSA" cannot be determined as a matter of law. *Id.*(alterations added).

Accordingly, I conclude that, as a matter of law, although the Secretary of Transportation is authorized to regulate the qualifications and hours of service of those

members of the plaintiff class who volunteered for the “charter pool,” genuine disputes of material fact preclude a determination as a matter of law whether the FLSA motor carrier exception applies to any particular member of the plaintiff class for any particular work week. Therefore, as to the motor carrier exception, plaintiffs’ motion for partial summary judgment is denied, and defendant’s motion for partial summary judgment is granted in part and denied in part.

3.

Defendant seeks summary judgment on the issues of willfulness and good faith with regard to its failure to pay overtime for “charter work.” The FLSA, 29 U.S.C. § 216(b), provides for liquidated damages equal to back pay. Under 29 U.S.C. § 255(a), the statute of limitations provision for bringing a FLSA claim is two years after the cause of action accrues; however, where the FLSA violation is willful, the limitations period is three years. To prove willfulness, a plaintiff must show that the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.” *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988).

On the issue of good faith, the employer has the burden: “if the employer shows to the satisfaction of the court that the act or omission giving rise to [a FLSA violation] was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation . . . the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16 of such Act.” 29 U.S.C. § 260. The employer “bears the burden of establishing, by ‘plain and substantial evidence, subjective good faith and reasonableness.’” *Reich v. Southern New England Telecomms.*,

Corp., 121 F.3d 58, 71 (2d. Cir. 1997) (citing *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 907 (3d Cir. 1991)).

Here, genuine issues of material fact preclude summary judgment on the issues of willfulness and good faith. Whether defendants acted willfully or in good faith are factual questions proper for a jury or judge during trial. In a 2003 investigation of defendant's Baltimore branch, the Department of Labor concluded that the company was not committing any violations of federal wage and hour laws. However, in two subsequent DOL investigations, one in Massachusetts and one in New Hampshire, the DOL concluded to the contrary and ordered defendants to pay overtime wages to the affected drivers. Defendant's corporate representative testified that he was aware of the New Hampshire investigation, which cited *Mielke*. It is unclear whether and to what extent defendant's operations in Massachusetts and New Hampshire were similar to its Baltimore operations and whether Woods' knowledge establishes that defendant "either knew or showed reckless disregard . . . [that their] conduct was prohibited by the statute." *McLaughlin*, 486 U.S. at 133.

Defendant clearly knew of the *Mielke* decision from the Northern District of Illinois as the only judicial exposition of the law from 2000 until 2008, when the Southern District of New York issued *Dauphin*. But it appears that defendant ceased operations in Maryland before the *Dauphin* opinion issued. In any event, faced with differing DOL studies and conflicting cases from non-binding jurisdictions, a reasonable trier of fact could conclude either way: that defendant acted willfully or in reckless disregard of its obligations under the FLSA. Similarly, a reasonable fact finder might conclude that defendant acted in good faith.

Summary judgment is inappropriate on these issues.

B.

Apart from the issue of “charter work,” plaintiffs seek summary judgment on the issue whether defendant violated the FLSA by failing to aggregate all time worked at various tasks by members of the plaintiff class and to compensate employees at a rate of time and one-half for hours worked over 40 per week. Plaintiffs’ evidence tends to show that defendant did not aggregate hours worked for non-charter driving and other, non-driving, miscellaneous work. The result of this omission is that some payroll records show that employees were not paid at the overtime rate for hours worked over 40 per week. Pls’ Mot. for Summ. J., Exh.9.

Defendant’s response to this showing by plaintiffs is, by its own admission “quirky.” In short, defendant asserts that it was its practice to pay employees overtime for all (non-charter) work performed over 40 hours per week, but that the person responsible for preparing payroll *routinely converted overtime hours into regular hours using a formula of 1.5 hours for each overtime hour*. Thus, as I understand defendant’s assertion, a payroll record which shows regular pay for 46 hours, is, in fact, a record that the employee really worked only 44 hours: 40 hours of straight time, and four hours of overtime, for which she was paid six hours at the straight time rate.

Quirky, indeed. In any event, the summary judgment record is sufficiently inexplicable on this score that final calculations must await trial. Accordingly, plaintiffs’ motion for partial summary judgment on defendants’ liability under the FLSA for failure to aggregate all time worked and to compensate employees at a rate of time and one-half for

hours worked over 40 per week is denied.

C.

Defendant seeks partial summary judgment on the claims asserted under the MWHL. Defendant contends that plaintiffs' claims under the MWHL are preempted by the FLSA. This contention is rejected.

First, "every Circuit that has considered the issue has reached the same conclusion – state overtime wage law is not preempted by ... the FLSA." *Overnite Transp. Co. v. Tianti*, 926 F.2d 220, 222 (2d Cir. 1991); *see also Cent. Delivery Serv. v. Burch*, 355 F.Supp. 954, 959-60 (D. MD. 1973), *aff'd mem.*, 486 F.2d 1399 (4th Cir. 1973).

Second, "[t]here is no indication that Congress, in enacting the FLSA's savings clause, intended to preempt states from according more generous protection to employees [T]he purpose behind the FLSA is to establish a national floor under which wage protections cannot drop." *Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1418, 1425 (9th Cir. 1990) (itals. omitted). Here, the FLSA and the MWHL require the same thing of employers – that they pay their employees at a rate of time and one half for hours worked over 40. *See* 29 U.S.C. § 216(B); Md. Code Ann., Labor & Empl. § 3-415(a).

The FLSA, however, does not preempt the MWHL because the protections of the latter may presumably exceed those of the former. Under the FLSA, an employer's failure to pay time and one-half for overtime work can result in the employee's recovery for the amount owed, plus liquidated damages and costs. 29 U.S.C. § 216(b). If the court finds that the employer acted in good faith and that the employer had reasonable grounds to believe

that its actions did not violate the FLSA, then the court may refuse to award liquidated damages. 29 U.S.C. § 260. Under the MWHL, an employer's failure to pay time and one-half for overtime work can result in the employee's recovery for the amount owed, plus interest, costs, reasonable attorney's fees, and any other relief deemed appropriate by the court.

Finally, while there is no Fourth Circuit case directly on point, there is ample persuasive support for the conclusion that the MWHL is not preempted by the FLSA. In *Anderson v. Sara Lee Corp.*, 508 F.3d 181, 193 (4th Cir. 2007), the Fourth Circuit remanded the case with instructions to dismiss as preempted by the FLSA state common law claims for fraud, breach of contract, and negligence. Those claims had been asserted in order to enforce the substantive provisions of the FLSA because North Carolina statutory law provided no remedy for non-payment of overtime. *Id.* However, the Court specifically noted that states have the power to set overtime provisions that are more stringent than the FLSA. *Id.* (“[T]he mere existence of a federal regulatory or enforcement scheme’ – even if the scheme is an appreciably detailed one – ‘does not by itself imply preemption of state remedies.’”) (quoting *English v. Gen. Elec. Co.*, 496 U.S. 72, 87 (1990)); see also *Williams v. Maryland Office Relocators, LLC*, 485 F.Supp.2d 616, 619 (D. Md. 2007).

This case fits comfortably among those in which state statutory claims reside alongside and are consonant with the remedial scheme fashioned in the FLSA. Accordingly, defendant's motion for summary judgment under the MWHL is denied.

D.

Plaintiffs bring two MWPCL claims: (1) failure to pay wages for straight-time hours worked, and (2) failure to pay bonuses to which plaintiffs claim they were entitled by satisfying all conditions to earn them. Defendant, understandably concerned with the treble-damage provision in the MWPCL, seeks summary judgment on these claims, apparently on the view that such claims are “minimum wage” and “overtime” claims that are not recoverable under the MWPCL. But these claims are not minimum wage or overtime claims.

Plaintiffs’ theory is simple. Defendant compensated plaintiffs (at the agreed rate) for 15 minutes per day for performing various tasks before and after their bus runs, such as safety investigations, checking the busses for sleeping children, and ensuring that the busses were clean. Plaintiffs allege, however, that these tasks took longer than the 15 minutes for which they were compensated; thus, plaintiffs contend, they are entitled to compensation for the time worked under § 3-501 of the MWPCL (and, similarly, for their vested bonuses), and they have properly and timely filed their claims here under the statute.

The MWPCL requires employers to pay employees wages for all work performed before the termination of employment, on or before the day on which the employee would have been paid had the employee not been terminated. Md. Code Ann. Lab. & Empl. § 3-505. Furthermore, under the MWPCL, an employee may recover treble damages from a liable employer. Md. Code Ann., Labor & Empl. § 3-507(a)- (b). Here, plaintiffs allege in effect that they worked for more than 15 minutes on days to be identified by evidence and that defendant has “withheld” the compensation due them for the time they worked. They

