

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

AZTECA FARMS, INC.,)	Case No. 91-CE-74-SAL
)	
Respondent,)	
)	
and)	18 ALRB No. 15
)	(December 14, 1992)
FAUSTINO ACEVEDO,)	
)	
Charging Party.)	
)	

DECISION AND ORDER

On September 11, 1992, Administrative Law Judge (ALJ) James Wolpman issued the attached Order Granting Motions for Default and Decision and Recommended Order in this matter. Thereafter, Respondent Azteca Farms, Inc. (Azteca or Respondent) timely filed exceptions to the ALJ's Order and Decision along with a supporting brief, and General Counsel filed a motion to strike/dismiss Respondent's exceptions and, alternatively, a responsive brief

The Agricultural Labor Relations Board has considered the record and the ALJ's Order and Decision in light of the exceptions¹ and briefs of the parties and has decided to affirm

¹ We deny General Counsel's motion to strike Respondent's exceptions on grounds that they do not conform to Title 8, California Code of Regulations, section 20282, which requires that exceptions state the ground for each exception, identify by page number the part of the ALJ's decision to which exception is taken, and cite to portions of the record which support the exception. We admonish Respondent for failing to cite specific portions of the ALJ Decision to which it took exception. However, Respondent's exceptions brief is divided by subject matter and does clearly state the bases for its disagreement with the ALJ's rulings.

the ALJ's rulings, findings and conclusions,² and to issue the attached Order.

ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board hereby orders that Respondent Azteca Farms, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against agricultural employees because of their participation in protected concerted activity;

(b) In any like or related manner, interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

² The ALJ properly rejected Respondent's argument concerning lack of prejudice from its failure to file timely answers to the complaint and backpay specification, since lack of prejudice will be taken into account only where there is some excuse for the delay in question. (Benjamin v. Dalmo Mfg. Co. (1948) 31 Cal.2d 523 [190 P.2d 593].) Therefore, it is unnecessary to determine if there was any prejudice from the untimely filings. We note, however, that the ALJ incorrectly found that Respondent was responsible for the continuance of the scheduled hearing date from August 25, 1992, to September 22, 1992. The scheduled hearing date was actually changed by the Executive Secretary on his own motion because General Counsel had consolidated the complaint with a backpay specification. We also note that the ALJ's decision mistakenly reflects that the Respondent was required to file an answer to the specification within 10 days of service, while the pertinent regulation actually allows 15 days. As the answer was not filed until September 4, the ALJ's mistake is of no consequence.

(a) Offer Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortez, Felix Cortes, and Juan Cortez immediate and full reinstatement to their former positions of employment, or if their former positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges of employment;

(b) Reimburse Faustino Acevedo in the amount of \$1,496.04, Gertulio Sanchez in the amount of \$3,573.09, Natalia Sanchez in the amount of \$2,333.16, Irene Cortes in the amount of \$1,820.39, Felix Cortes in the amount of \$1,263.57, and Juan Cortes in the amount of \$3,502.90 for the losses of pay and other economic losses each suffered up until August 31, 1992, as a result of their being discharged, plus any additional and similar economic losses which each may suffer thereafter as a result of his or her discharge, plus interest computed in accordance with the Board's decision in E. W. Merritt Farms (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to the Board and its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay due under the terms of this Order;

(d) Sign the attached Notice to Agricultural Employees ("Notice") and, after its translation by a Board agent

into all appropriate languages, make sufficient copies in each language for the purposes set forth in this Order;

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this Order to all agricultural employees in its employ from May 4, 1991, to May 3, 1992;

(f) Provide copies of the signed Notice to each employee hired by it during the twelve (12) months following the remedial Order;

(g) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed;

(h) Arrange for a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all piece-rate employees in order to compensate them for the time lost at the reading and question-and-answer period;

(i) To facilitate compliance of paragraphs (g) and (h) above, upon request of the Regional Director or his designated Board agent, provide the Regional Director with the dates of Respondent's next peak season. Should Respondent's peak season have begun at the time the Regional Director requests peak season dates, Respondent will inform the Regional Director of when the present peak season began and when it is anticipated to end in addition to informing the Regional Director of the anticipated dates of the next peak season; and

(j) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request of the Regional Director, until full compliance is achieved.

DATED: December 14, 1992

BRUCE J. JANIGIAN, Chairman³

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

³ The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board members in order of their seniority.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board by Faustino Acevedo, the General Counsel of the ALRB issued a complaint which alleged that we, Azteca Farms, Inc., had violated the law. The Board subsequently determined that we did violate the law by the discharging of Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes on May 4, 1991, for engaging in protected concerted activity, namely, protesting certain terms of their employment.

The ALRB has directed us to post and publish this Notice.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you or to end such representation;
4. To bargain with your employer about your wages and working conditions through a bargaining representative chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT discharge or otherwise discriminate against employees because they protest about wages or other terms and conditions of their employment.

WE WILL restore Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes to their former positions and we will reimburse them with interest for the loss in pay or other economic losses which the Board has and may determine they suffered as a result of our unlawful acts.

DATED:

AZTECA FARMS, INC.

By: _____
Representative Title

If you have questions about your rights as a farm worker or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907-1899. The telephone number is (408) 443-3161.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Azteca Farms, Inc.
(Faustino Acevedo)

18 ALRB No. 15
Case No. 91-CE-74-SAL

ALJ Decision

The complaint alleged that the Employer had discharged Faustino Acevedo and other members of his crew because they complained about wages and working conditions. After the Employer failed to file a timely answer to the complaint, General Counsel filed a formal backpay specification and a notice of hearing. Thereafter, General Counsel filed motions for default judgment on the complaint and the specification. The ALJ thereafter issued orders to show cause re the Employer's failure to answer the complaint and backpay specification. The orders stated that default judgment would be granted unless Respondent filed proposed answers and a declaration establishing good cause for its failure to file timely answers. The Employer thereafter filed proposed answers to the complaint and specification in which it denied all substantive allegations and asserted various affirmative defenses. A declaration attached to the Employer's proposed answer to the complaint alleged that Respondent's owner speaks Spanish and very little English and does not read English, and that he did not understand that a written answer to the complaint was required within a certain time limit.

The ALJ on September 11, 1992 issued a decision in which he granted General Counsel's motions for default. The ALJ found that the complaint and specification had been properly served and that the Employer had not established good cause for its failure to answer. He rejected the Employer's defense that owner Jaime Cardenas neither speaks nor reads English, since Cardenas acknowledged taking the complaint to William Abeytia, the Employer's designated agent for service of process, who is fluent in English. Further, the ALJ found, the action was filed against a California corporation, not an individual, and a corporation may not assert a linguistic disability in defense or mitigation. The ALJ rejected the Employer's argument that no prejudice resulted from its failure to file a timely answer, noting that valuable time and resources were expended in preparing, issuing and serving the various motions and orders. He also cited caselaw holding that lack of prejudice will not be taken into account unless there is some excuse for the delay in question.

Board Decision

The Board affirmed the rulings, findings and conclusions of the ALJ with some modifications, and issued an Order requiring the Employer to reinstate the discriminatees with backpay and to take other specified actions to remedy its unfair labor practices.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *

STATB OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Hatter of:

AZTECA FARMS, INC.,

Respondent,

and

FAUSTIMO ACEVEDO

Charging Party.

Case No.91-CE-74-SAL

Appearances:

Marvin Brenner
Salinas, California
for the General Counsel

Roger M. Hubbard,
Santa Maria, California
for the Respondent

Before:

James Wolpman
Chief Administrative Law Judge

ORDER GRANTING NOTICE FOR DEFAULT AND
DECISION OF THE ADMINISTRATIVE LAW JUDGE

Dated: September 11, 1992

STATEMENT OF THE CASE

This is an action against a California Corporation. The original Complaint was issued in March 1992, service was undertaken in late July, and the matter was assigned a hearing date of August 25th. In early August, the General Counsel issued a Backpay Specification, as provided in Title 8, California Code of Regulations, section 20292, and consolidated it with the original complaint; service of the Specification was undertaken shortly thereafter.

Receiving no answer to either its original complaint or its later specification, the General Counsel filed two motions: (1) a Motion to Make Allegations in Compliant True and for Default Judgment, filed August 12th, and (2) a Motion to Make Allegations in Formal Backpay Specification True and for Default Judgment, filed August 25th. In response, I issued two Orders to Show Cause, one directed at the alleged failure to answer the original complaint, dated August 11th; the other, at the failure to answer the backpay specification, dated August 27th. Meanwhile, to accommodate resolution of the pending motions, the Executive Secretary continued the hearing to September 22nd.

Both orders to Show Cause indicated that the Motions for Default would be granted unless, by specified dates, Respondent served and filed declarations establishing good cause for its failure to answer the complaint and the specification; the Orders also directed that proposed answers be filed along with the declarations.

On August 18, 1992, Respondent, through counsel, filed its

declarations and its proposed answer to the complaint; this was followed, on September 4, 1992, by the filing of a declaration and a proposed answer to the backpay specification.

The two motions and the responsive declaration raise two issues: (1) were the original complaint and the later backpay specification properly served on the Respondent, and (2), if so, has the Respondent established good cause for its failure to file timely answers. (John Gardoni (1982) 6 ALRB No. 62.)

Based on the entire record of these proceedings, including all motions, declarations and pleadings filed herein, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. THE MOTIONS TO MAKE THE ALLEGATIONS OF THE COMPLAINT
AND BACKPAY SPECIFICATION TRUE AND FOR DEFAULT JUDGMENT

A. Service of the Original Complaint

1. On July 21, 1992, a copy of the original Complaint in this matter was personally delivered to the principal office of the Respondent Corporation at the location set forth in the Statement of Domestic Stock Corporation which it had filed with the California Secretary of State.

2. On July 29, 1992, an agent of Mr. William Abeytia, the designated agent of the Respondent for the Service of Process, acknowledged that his office had received a copy of the original complaint, which had been sent to him by certified mail at the location set forth in Respondent's Articles of Incorporation and in the Statement of Domestic Stock Corporation filed with the California Secretary of State.

3. Title 8, California Code of Regulations, §20230 requires that "the Respondent shall file an Answer within 10 days of the service of the complaint." The "Fact Sheet for Persons and/or Entities Named as Respondents in the Complaint", which was served along with the Complaint, indicates that a written answer is to be filed within 10 days of the service of the complaint.

4. No answer was filed by August 1, 1992 [the tenth day following delivery to Respondent's principal place of business], or by August 10, 1992 [the tenth day following receipt acknowledged by Respondent's agent for service of process].

5. Thereafter, General Counsel filed its Motion to Make Allegations of the Complaint True and for Default Judgment. In response, I issued an Order to Show Cause why the Motion should not be granted.

B. Analysis and Conclusions

1. Respondent, as a California Corporation, was properly served on July 21, 1992 by the personal delivery of the complaint to its principal place of business. It failed to file its required answer by August 1, 1992.

2. Respondent corporation was again properly served on July 29, 1992, when the office of its designated agent for the service of process acknowledged receipt of the Complaint, but again failed to file a timely answer.

3. In Response to my Order to Show Cause, the Respondent filed two declarations, one by the Jaime Cardenas, the owner of Azteca Farms, Inc., and another by its attorney, Roger M. Hubbard. The Declarations do not dispute the two services, as

described above, but instead attempt to establish good cause for the Respondent's failure to answer the complaint.

a. Mr. Cardenas states that he neither speaks nor reads English, but acknowledges that he took the complaint he had received to Mr. Abeytia, who does. According to Mr. Hubbard, neither believed that a written answer was required.

Board regulations clearly require the filing of a written answer; the Fact Sheet served on the Respondent clearly notified it of that requirement. Thus, there was no reasonable basis for their belief that a written answer was unnecessary. (See Lu-Ette Farms, Inc. (1985) 11 ALRB No. 4, fn. 2.) Furthermore, this is not an action against an individual who can neither speak nor read English, it is an action against a California Corporation. Such a corporation may not assert linguistic disability in defense or mitigation.

b. Mr. Cardenas next asserts that he was not called to participate in the Prehearing telephone conference call scheduled for August 4, 1992.

This contention is both false and irrelevant. On July 31, 1992 and again on August 3, 1992, my office telephoned Mr. Cardenas' office to confirm his participation in the scheduled conference call and to inform him that we would provide a Spanish interpreter if he so desired. On both occasions we were informed by his English speaking secretary that she would advise him and return our call. On neither occasion was our call returned. We therefore advised the telephone company's Western Regional Conference Center that he would not be participating in the call.

In any event, the issue here is the failure file a written answer to the complaint; Mr. Cardenas participation or non-participation the in the conference call is beside the point.

c. Counsel for Respondent also indicates his client was not served with a copy of the charge.¹ Again, this is irrelevant to the requirement that Respondent file a written answer to the complaint.² Counsel also makes the point that the General Counsel's Motion and supporting documents were not attached to the Order to Show Cause and that the Order spoke of an "amended complaint" rather than of the original, unamended complaint. Neither of these "defects" were of consequence. Counsel quite correctly responded to the original complaint and his response took into account all of the matters contained in the General Counsel's Motion.

d. Finally, Counsel argues that no prejudice has resulted from Respondent's failure to file a timely answer. That is not so. Had Respondent promptly answered, the matter would have proceeded to hearing as originally scheduled instead of requiring a one month continuance; nor would valuable time and resources been expended in presenting and serving the motion for default and in preparing and issuing an order to show cause and a

¹The proper response would have been to file an answer denying that the charge had been served as alleged in paragraph 1 of the complaint; not to fail to file any answer whatsoever.

²I further note that this denial does not appear in Mr. Cardenas' Declaration, but in that of his counsel where, contrary to the requirement of the Order to Show Cause, it constitutes inadmissible hearsay.

ruling on the motion. Moreover, lack of prejudice will only be taken into account where there is "at least...some excuse for the delay in question. (Benjamin v. Dalmo Mfg. Co. (1948) 31 Cal.2d 523, 531-32.) Here, no reasonable excuse was forthcoming. (See Lu-Ette Farms. Inc., *supra*, ALJ Decision p. 8.)

4. I therefore conclude that the Respondent was properly served with the complaint, that it failed to file a timely answer, and that it has not established good cause for its failure. The Motion to Make Allegations of the Complaint True and for Default Judgment is granted.

C. Service of the Backpay Specification

1. On August 3, 1992, the Salinas Regional Director issued a Formal Back pay Specification in the matter pursuant to Title 8, Cal. Admin. Code, §20292(b).

2. On August 7, 1992, a copy of the Backpay Specification, together with its attachments, was personally delivered to the principal office off the Respondent Corporation.

3. On the same day, a copy of the Backpay Specification, together with its attachments, was personally delivered to Mr. William Abeytia, the designated agent of the Respondent for the Service of Process.

4. Title 8, California Code of Regulations, section 20292(a) requires that a Respondent shall file an Answer within 15 days of the service of the Specification. The introductory paragraphs to the Specification provide that answer must be filed in accordance with that section.

5. No answer was filed by August 17, 1992 [the tenth day following delivery to Respondent's principal place of business and to its agent for service of process].

6. Thereafter, General Counsel filed its Motion to Make Allegations in Formal Backpay Specification True and for Default Judgment. In response, I issued a Order to Show Cause why the Motion should not be granted.

D. Analysis and Conclusions

1. Respondent, as a California Corporation, was properly served on August 7, 1992 by the personal delivery of the backpay specification at its principal place of business.

2. Respondent corporation also properly served on August 7, 1992, by the personal delivery of the backpay specification to its designated agent for the service of process.

3. It failed to file its required answer by August 17, 1992.

4. In Response to my Order to Show Cause, the Respondent filed a declaration from its attorney, Roger M. Hubbard and a proposed Answer. The Declaration does not dispute the service of the Specification, as described above, but instead attempts to establish good cause for the Respondent's failure to answer the specification.

a. Counsel first objects that, despite his efforts he was not afforded proper discovery with respect to the original complaint.

This contention irrelevant. At issue here is the failure file a written answer to the specification; Respondent's

discovery rights under the original complaint are beside the point.³

b. Counsel next objects that the backpay specification was issued and consolidated without prior notice to the Respondent. There is no requirement of prior notification, either in the Board's regulations or as a matter of administrative due process; proper service of the specification is proper notice.

c. Counsel again points out that the General Counsel's Motion to Make the Allegations of the Complaint True and supporting documents were not attached to the Order to Show Cause. That argument has already been considered and rejected. (See ¶13 (c), above.)

d. Counsel next argues that "specification are generally not filed until liability has been established." The Regulations clearly provide for their earlier issuance in appropriate cases. (Cal. Code Regs., tit. 8, §20290(b).) This is just such a case.

e. Finally, Counsel argues that no prejudice resulted from the failure to file a timely answer to the specification. That is not so. Had the Respondent promptly answered the specification, the matter would have proceeded to hearing without the necessity expending valuable time and resources in presenting and serving the motion for default and in preparing and issuing an order to show cause and a ruling on the motion. Because none of

³Moreover, they would only have come into play if its proposed answer to the complaint were accepted; i.e., only if Respondent prevailed on the default issue.

that would have been necessary if Respondent had abided the regulations, "[i]t is not therefore possible to assert lack of prejudice as a legitimate consideration." (Lu-Ette Farms, Inc., *supra*, ALJ Decision p. 8.) Moreover, as pointed out earlier, lack of prejudice will only be taken into account where there is at least...some excuse for the delay in question" (Benjamin v. Dalmo Mfg. Co., *supra*, 31 Cal.2d at 531-32.)." Here, once again, no reasonable excuse was forthcoming.

5. Moreover, the proposed Answer to the Backpay Specification is nothing more than a general denial with two conclusionary affirmative defenses.⁴ As such, it is subject to being stricken for failure to meet the minimum requirements for an answer as set forth in Title 8, Cal. Admin. Code, §20292(b) & (c). At the very least, the failure to file a proper Answer will result in further delay and the additional expenditure of valuable time and resources in ascertaining, prior to hearing, Respondent's precise position on gross backpay; the accuracy of the facts, figures, and methodology used by the General Counsel; and the facts underlying its conclusionary affirmative defenses. (See §20292(b).) All of this serves to further prejudice the prompt disposition of this matter.

6. I therefore conclude that the Respondent was properly served with the backpay specification, that it failed to file a timely answer, and that it has not established good cause for its

⁴Affirmative defenses SEVENTH and EIGHTH. The remaining defenses are directed to the underlying complaint, not the specification.

failure. The Motion to Make Allegations of the Formal Backpay Specification True and for Default Judgement is granted.

II. SUBSTANTIVE FINDINGS AND CONCLUSIONS

A. Violations of the Act

Pursuant to the above rulings and based upon Section 20232 of the Board's Regulations, providing that any allegation not denied shall be deemed admitted, and upon the Declaration of Faustino Acevedo, attached to the General Counsel's Motion for Default, I find the operative allegations of the original complaint to be true and correct, as follows:

1. A true and correct copy of the original charge was filed on June 17, 1991 and served by the Charging Party on June 13, 1991.⁵

2. Respondent was, at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of California, with an office and principal place of business located in Santa Maria, California, where it engaged in agriculture.

3. Respondent was, at all times material herein, an agricultural employer engaged in agriculture within the meaning of Labor Code section 1140.4, subsections (a) and (c).

⁵The Complaint shows a service date of "June 13, 1990". This is obviously a clerical error since the events in question all occurred in 1991. I have therefore corrected the error.

4. Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes⁶ were, at all times material herein, agricultural employees within the meaning of Labor Code section 1140.4(b). All worked in the same crew.

5. At all times material herein, Jamie Cardenas was the Owner, Jorge [last name unknown] was a foreman, and Jose Luis [last name unknown] was another foreman for the Respondent; each of them was a supervisor within the meaning of Labor Code section 1140.4(j) and an agent acting on behalf of the Respondent.

6. On or about May 4, 1991, Faustino Acevedo, along with other members of his crew, concertedly complained to Foreman Jorge regarding the wages and working conditions of Respondent's employees.

7. On or about May 4, 1991, Respondent, through its agent Jaime Cardenas, discharged Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes.

8. Respondent engaged in the conduct described in paragraph 7 because Faustino Acevedo and other members of his crew engaged in protected concerted activity as described in Paragraph 6 above.

9. By the acts and conduct described in paragraph 7 and 8, and each of said acts, Respondent did interfere with,

⁶At the Prehearing Conference, I granted General Counsel's motion to include crew member Juan Cortes as an additional discriminatee.

restrain and coerce its employees in the exercise of the rights guaranteed in Section 1152 of the Act, and Respondent did thereby commit unfair labor practices within the meaning of Section 1152(a) of the Act.

B. Backpay

Pursuant to the above rulings and based upon Section 20292(c) of the Board's Regulations, providing that any allegation not denied shall be deemed admitted, and upon the Declaration of Shirley Trevino, attached to the General Counsel's Motion for Default, I find the operative allegations of the Formal Backpay Specification to be true and correct, as follows:

1. The backpay period runs from May 4, 1992 through August 1992.
2. The information and methodology utilized by the General Counsel and explained on page 2 of the Specification is a reasonable and proper means of ascertaining the amount of gross backpay due to each discriminatee.
3. The method used by the General Counsel for obtaining information on interim earnings, as explained on page 3 of the Specification, is a reasonable and proper means of ascertaining the amount of interim earnings of each discriminatee.
4. The calculation of backpay due to each discriminatee, as reflected in the Attachments to the Specification, is accurate and correct.

5. The total backpay and due to each discriminatee is as follows:

Faustino Acevedo	\$1,496.04
Gertulio Sanchez	\$3,573.09
Natalia Sanchez	\$2,333.16
Irene Cortes	\$1,820.39
Felix Cortes	\$1,263.57
Juan Cortes	\$3,502.90

RECOMMENDED ORDER

Upon the basis of the entire record, the foregoing findings of fact and the conclusions of law, and pursuant to section 1160.3 of the Act, I hereby recommend that Respondent Azteca Farms, Inc., its officers, agents, labor contractors, successors and assigns, be ordered to:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee with regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in concerted activity protected by §1152 of the Act.

(b) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act.

(a) Offer Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes full reinstatement to their former or to substantially equivalent positions, without prejudice to their seniority and other rights

and privileges of employment; and reimburse Faustino Acevedo in the amount of \$1,496.04, Gertulio Sanchez in the amount of \$3,573.09, Natalia Sanchez in the amount of \$2,333.16, Irene Cortes in the amount of \$1,820.39, Felix Cortes in the amount of \$1,263.57, and Juan Cortes in the amount of \$3,502.90 for the losses of pay and other economic losses each suffered up until August 31, 1992, as a result of their being discharged, plus any additional and similar economic losses which each may suffer thereafter as a result of his or her discharge, plus interest computed in accordance with the Board's decision in E. W. Merritt Farms, (1988) 14 ALRB No. 5.

(b) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying and otherwise copying, all payroll and social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of any further backpay liability which may be due under the terms of this Order.

(c) Sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purpose set forth in this Order.

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this order to all agricultural employees in its employ from May 1, 1991 to April 30, 1992.

(e) Post copies of the attached Notice in all appropriate languages, for 60 days, in conspicuous places on its property, the exact period(s) and places(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(f) Upon request of the Regional Director or his designated Board agent, provide the Regional Director with the dates of its next peak season. Should the peak season have already begun at the time the Regional Director requests peak season dates, inform the Regional Director of when the present peak season began and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season.

(g) Arrange for a representative or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and places(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all piece-rate employees in order to compensate them for time lost at the reading and question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request of the Regional Director, until full compliance is achieved.

DATED: September 11, 1992



JAMES WOLPMAN
Chief Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board by Faustino Acevedo, the General Counsel of the ALRB issued a complaint which alleged that we, Azteca Farms, Inc., violated the law. The Board subsequently determined that we did violate the law by the discharging Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes on May 4, 1991, and that this was due to the fact that they had been involved in protesting certain terms of their employment. The Board has told us to post and publish this notice. We will do what the Board has ordered us to do.

We also want you to know that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, and help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT DO anything in the future that forces you to do or stops you from doing any of the things listed above.

WE WILL NOT discharge or otherwise discriminate against any agricultural employee because he or she has acted together with other employees to protest the terms and conditions of their employment.

WE WILL restore Faustino Acevedo, Gertulio Sanchez, Natalia Sanchez, Irene Cortes, Felix Cortes, and Juan Cortes to their former positions and we will reimburse them with interest for the loss in pay or other economic losses which the Board has and may determine they suffered because we discharged them.

DATED:

AZTECA FARMS, INC.

By: _____
Representative Title

If you have questions about your rights as a farm worker or about this Notice, you may contact any office of the Agricultural labor Relations Board. One office is located at 112 Boronda Road, Salinas, CA 93907. The telephone number is (408) 443-3161.

DO NOT REMOVE OR MUTILATE