Thermal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BRIGHTON FARMING CO., INC., AND FELIZ VINEYARDS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 89-CE-59-EC 90-CE-14-EC 90-CE-32-EC 90-CE-33-EC (18 ALRB No. 4) 20 ALRB No. 20 (December 20, 1994)

DECISION AND ORDER

This matter is before the Agricultural Labor Relations Board (ALRB or Board) on exceptions filed by Brighton Farming Co., Inc. (Brighton) to the attached decision issued October 17, 1994 by Administrative Law Judge (ALJ) Thomas Sobel with regard to the General Counsel's Motion To Make Allegations In Backpay Specification True And For Default Judgment. While the ALJ did not expressly grant a default judgment, he did find the » specification to be a reasonable and appropriate measure of backpay owed by Brighton. The General Counsel's motion was filed after Brighton failed to file an answer to the backpay specification which issued on July 28, 1994.[1]

[1]The backpay specification was issued in order to effectuate the remedy ordered by the Board in *Brighton Farming Company, Inc.* (1992) 18 ALRB No. 4. In addition to alleging the amounts of backpay owed to various employees, the specification alleges that Feliz Company, Inc. (Feliz) is a successor to Brighton and, therefore, also liable for amounts owed. Feliz filed a timely answer to the specification and a hearing has been scheduled to begin on March 14, 1995.

On September 29, 1994, the ALJ issued an order to show cause why the General Counsel's motion should not be granted. On October 5, 1994, Brighton filed a response in which it asserted that it was no longer in business, had no assets, and would not participate in any hearing on the specification. However, Brighton objected to the. entry of *a* default judgment, arguing that it instead should be entitled to the benefit of any reductions in the amounts owed that are adjudicated in the scheduled hearing involving Feliz. On November 7, 1994, Brighton filed its exceptions to the ALJ's ruling of October 17, 1994. No response was filed by the General Counsel. The Board has considered the record and the ALJ's ruling in light of the exceptions and supporting argument filed by Brighton and affirms the ALJ's ruling and recommended order, as explained below.

DISCUSSION

In its exceptions, Brighton assumes that the effect of the ALJ's ruling is, in essence, a default judgment which by its nature fixes the amount owed by Brighton so that it is not subject to any relevant reduction that may occur as a result of the hearing involving Feliz.[2] Brighton asserts that the circumstances warrant only the entry of a default on its part, so that by law it may benefit from any reductions arising from the adjudication involving Feliz. Indeed, Brighton asserts that it

[2]Feliz' answer to the specification contains numerous affirmative defenses, some of which are peculiar to Feliz and some of which would by their nature pertain to both Feliz and Brighton.

is improper under California law to enter a default judgment in this situation, which it argues is analogous to a default by a joint tortfeasor.[3]

In our view, the authority cited by Brighton stands for the proposition that, where one respondent has defaulted, the Board has the discretion to either issue a final order in the nature of a default judgment or to defer a final order until the case is concluded as to any remaining respondent. (See *Kooper* v. *King* (1961) 195 Cal.App.2d 621, 629 [15 Cal.Rptr. 848].) In the circumstances present here, we believe the latter course is the more appropriate.

Moreover, we do not read the ALJ's ruling as the entry of a default judgment, or as precluding any adjustment in the amounts owed that results from the hearing involving Feliz. Nor do we believe that the ALJ had any such intent. In fact, the ALJ entitled his decision "Ruling Re: General Counsel's Motion to Take Default" and the ALJ's recommended order does not mention a default judgment or expressly grant the General Counsel's motion requesting a default judgment. However, to eliminate any doubt

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[3]In its response to the General Counsel's motion, Brighton purported to be making only a special appearance to ensure that only a default was taken against it. The ALJ found that Brighton's arguments with regard to default converted the appearance to a general one because they necessarily imply personal jurisdiction over Brighton. While Brighton did not except to the ALJ' conclusion that it had in fact made a general appearance in this matter, we note our belief that personal jurisdiction over Brighton was already established by virtue of the liability proceeding and did not have to be reestablished in tnxs compliance proceeding, which is supplementary in nature.

or possible ambiguity, we shall clarify in our order that it is not in the nature of a default judgment against Brighton and that Brighton may be entitled to the benefit of any adjudication that results in the reduction of the amount of backpay alleged in the specification. However, we note that any reduction or elimination of liability that rests on a ^theory peculiar to Feliz will not relieve Brighton of any of the terms of the specification as issued.

ORDER

Pursuant to the attached recommended order of the ALJ and the discussion above, General Counsel's specification issued July 28, 1994 is found to reflect a reasonable and appropriate calculation of the amount of backpay owed to each discriminatee by Brighton. This order is not in the nature of a default judgment or final order against Brighton, which has voluntarily defaulted in this matter. Therefore, Brighton may be entitled to the benefit of any adjudication involving Feliz that results in the reduction of the amount of backpay alleged in the specification. However, any reduction or elimination of liability that rests on a theory peculiar to Feliz shall not relieve Brighton of any of the terms of the specification as issued.

DATED: December 20, 1994

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

BRIGHTON FARMING CO., INC.
and FELIZ VINEYARD, INC.
(UFW)

20 ALRB No. 20
Case Nos. 89-CE-59-EC
90-CE-14-EC
90-CE-32-EC
90-CE-33-EC

Background

On November 7, 1994, Brighton Farming Co., Inc. (Brighton) filed exceptions to a decision issued October 17, 1994 by Administrative Law Judge (ALJ) Thomas Sobel with regard to the General Counsel's Motion To Make Allegations In Backpay Specification True And For Default Judgement. Brighton admitted that it had defaulted in this matter, but claimed that the ALJ improperly issued an order in the nature of a default judgment. The General Counsel's motion was filed after Brighton failed to file an answer to the backpay specification which issued on July 28, 1994. On September 29, 1994, the ALJ issued an order to show cause why the General Counsel's motion should not be granted. On October 5, 1994, Brighton filed a response in which it asserted that it was no longer in business, had no assets, and would not participate in any hearing on the specification. However, Brighton objected to the entry of a default judgment, arguing that its default should not preclude entitlement to the benefit of any reductions in the amounts owed that are adjudicated in the scheduled hearing involving Feliz Vineyard, Inc., alleged in the specification to be a successor to Brighton.

Board Decision

The Board found that the authority cited by Brighton stands for the proposition that it has the discretion whether or not to issue an order in the nature of a default judgment where one respondent has defaulted. In the circumstances present in this case, the Board concluded that it was more appropriate not to issue a final order in the nature of a default judgment. Moreover, the Board did not read the ALJ's ruling as the entry of a default judgment, or as precluding any adjustment in the amounts owed that might result from the hearing involving Feliz. In order to eliminate any doubt or possible ambiguity, the Board clarified that its order affirming the ALJ is not in the nature of a default judgment against Brighton and that Brighton may be entitled to the benefit of any adjudication that results in the reduction of the amount of backpay alleged in the specification. However, the Board noted that any reduction or elimination of liability that rests on a theory peculiar to Feliz will not relieve Brighton of any of the terms of the specification as issued.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: BRIGHTON FARMING CO., INC., AND FELIZ VINEYARD, INC Respondent, and UNITED FARMWORKERS OF AMERICA, AFL-CIO Charging Party.	Case Nos. 89-CE-59-EC 89-CE-14-EC 89-CE-32-EC 89-CE-33-EC (18 ALRB No.4) RULING RE: GENERAL COUNSEL'S MOTION TO TAKE DEFAULT

On September 26, 1994 General Counsel filed a Motion to Make Allegations in Backpay Specification True and for Default Against Brighton Farming Co., Inc. By order dated September 1994, I issued an Order requiring Respondent Brighton to show cause by October 12, 1994 why the motion should not be granted.

General Counsel based her motion on Title 8 Code of California Regulations Section 20292(b) and (c) which essentially provides that a Respondent in a backpay case must file a detailed answer sufficient to put the General Counsel on notice of the nature of its disagreement with the Specification and that a failure to file such an answer may be grounds for finding the allegations in the Specification true and for issuing a Recommended Order based upon it.

Respondent Brighton Inc has failed to file such detailed answer. In response to the Order to Show Cause, Respondent has purported to enter a special appearance solely for

the purpose of explaining that it is out of business, has no assets, and for that reason has chosen "not to appear or contest the sums sought by General Counsel" even though "Brighton Farming Co., Inc. believes [them] to be excessive." Respondent Brighton further urges that it is entitled to the benefit of any reductions to which Respondent Feliz Vineyard, Inc succeeds in demonstrating it is entitled, or to the extent later acknowledged by General 8. Counsel to be appropriate.[1]

Respondent Brighton has offered no specific reasons not. to take the Specification as true since it has not provided any specific grounds to contest the allegations in it. With respect to Respondent Brighton's further argument that it ought to be entitled to any reductions in backpay either found, or later conceded, to be appropriate against Feliz Vineyard, there has been no showing at this time that any such reductions claimed by Respondent Feliz Vineyard are appropriate. It is thus premature to speak of any equitable adjustment that ought to be made. To the extent Respondent Brighton wished to keep such questions alive as to it, it had simply to file an appropriate answer.

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[1] 'This request converts the purported special appearance by Respondent Brighton into a general appearance. When a party raises] any kind of question, or asks any relief, which can only be granted upon the hypothesis that the court has jurisdiction of his person, then he has made a general appearance. Armstrong v Superior Court (1956) 144 Cal App 2d 420, 423

RECOMMENDED ORDER

1. The ALRB issued its Decision and Order in Brighton Farming Co., Inc., 18 ALRB No. 4 on June 5, 1992. Therein, the Board ordered Respondent Brighton Farming Co., Inc. to take certain affirmative actions, including the following: Offer Norma J. Castro, Rosaura Arguello, Florinda Montoya, Juliana Alverez, Arturo Espinoza, Juan Almanza, Manuela Almanza, Norma Montoya, Julian Delgadillo, Santos Marin, Ernesto Garcia, Ruben Franco, Vicente Rios, Margarito Cortes, Jose M. Zuniga, Francisco Mazari, Jorge Enrique Valdez, Lourdes Dorame, Eliseo Moctezuma, Luz Maria Mazari Lazaro Arriaga, Vicente Ruiz, Francisco Resales, Carlos Corella, Ramiro Mendoza, Antonio Ortiz, Jesus Corella, Yolanda Aguiano, and Antonia Mendoza immediate and full reinstatement to their former, or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges of employment, and reimburse them for all losses of pay and other economic losses have suffered as a result of their being discharged, the amounts to be computed in accordance with established Board precedents., plus interest computed in accordance with the Board's decision in E.W. Merritt Farms (1988) 14 ALRB No. *5*

2. The backpay liability period for the following employees commences on January 2, 1990: Juan Almanza, Manuela Almanza, Juliana Alvarez, Rosaura Arguello, Norma J. Castro, Margarito Cortez, Julian Delgadillo, Arturo Espinoza, Ruben Franco Ernesto Garcia, Santos Marin, Florinda Montoya, Norma Montoya, Vicente Rios, and Jose M. Zuniga. The backpay liability for the

Lazaro Arriaga, Carlos Corella, Jesus Corella, Lourdes Dorame, Francisco Mazari, Luz Maria Mazari, Antonia Mendoza, Ramniro Mendoza, Eliseo Moctezuma, Antonio Ortiz, Francisco Resales, Vicente Ruiz, and Jorge Enrique Valdez.

3. On July 28, 1994 the Regional Director issued a backpay specification which was duly served upon Respondent.[2] On September 15, 1994 the Executive Secretary granted Respondent Brighton until September 21, 1994 to file its answer.

4. Respondent Brighton did not file an answer and, in response to the Order to Show Cause, has further indicated that it will not appear to contest any of the allegations in the Specification. The information and methodology utilized by the General Counsel on pages 4 and 5 of the Specification for ascertaining the amount of backpay due each discriminatee, including the methodology for offsetting interim earnings, is reasonable and appropriate.

5. The total net backpay owed by Respondent is $117338.85. The interest owed through August 31, 1994 is $3.1606.41 The total backpay owed is $148,945.26. Attachment A of Backpay Specification, which is hereby incorporated by reference, lists the total amount of backpay owing to each discriminatee

DATED: October 17, 1994

THOMAS SOBEL
Chief Administrative Law Judge

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[3]Respondent's filing of what is, in effect, a general appearance, constitutes an admission that the Board has personal jurisdiction.