

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARIA GUZMAN MORALES and)
MAURICIO GUAJARDO, on behalf of)
themselves and all other similarly)
situated individuals,)
))
Plaintiffs,)
))
v.)
FARMLAND FOODS, INC., a Delaware)
Corporation and subsidiary of)
Smithfield Foods,)
))
Defendant.)
_____)

8:08CV504

MEMORANDUM AND ORDER

Before the court is the Findings and Recommendation of United States Magistrate Judge Thomas D. Thalken, Filing No. 408. Defendant has filed an objection to the Findings and Recommendation. Filing No. 413. Pursuant to NECivR 72.2 and 28 U.S.C. § 636(b)(1)(C), the court has conducted a de novo review of the record and adopts the Findings and Recommendation in its entirety.

The plaintiffs in this case are the defendant’s current and former employees who worked at some time during the period November 13, 2005, to the present. The plaintiffs allege violations of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201 to 219 (2006), and seek to collect wage and overtime compensation for pre- and post-activities including donning and doffing times. The plaintiffs initially moved to conditionally certify the class and defendant objected. Ultimately, the parties stipulated to an order conditionally certifying a class. See Filing Nos. 74, 81, and 82. Defendant now moves to decertify the class. Filing No. 364. The plaintiffs objected. Filing No. 375. Defendant argues that the plaintiffs are not similarly situated. In particular, defendant contends that plaintiffs are not

similarly situated because: they have three different pay systems; have distinct categories of workers; have significant differences in the clothing they wear; have unique defenses depending on the category of plaintiff; and the defendant will suffer prejudice if these claims are tried collectively. The magistrate judge carefully reviewed the issues and the contentions by the defendant and found these arguments to be without merit.

The court first notes that trial in this matter is scheduled for March 19, 2012. Discovery has concluded and multiple dispositive motions have been denied. The court has carefully reviewed the record, and in particular the filings related to this issue including the Findings and Recommendation and the objections and the relevant briefs as well as the relevant case law. The court finds the magistrate judge is correct that the plaintiffs have met their burden of presenting evidence to support maintaining class certification. In addition, the court concurs with the analysis of the magistrate judge disagreeing as to each of the reasons set forth by the defendant for decertification. Accordingly, the court will adopt the Findings and Recommendation of the magistrate judge in its entirety.

THEREFORE, IT IS ORDERED:

1. The Findings and Recommendation, Filing No. 408, is adopted in its entirety.
2. The objections to the Findings and Recommendation, Filing No. 413, are overruled.
3. The motion to decertify the class, Filing No. 364, is denied.

DATED this 24th day of January, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge