UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	*	CIV 97-4160
Plaintiff,	*	
-vs-	*	ORDER
TACO BELL CORP., d/b/a TACO BELL EXPRESS, and DOUBLE-D, INC.,	*	
Defendants.	*	

On Monday, July 6, 1998, the Court held a motion hearing and pretrial conference in this case. Attorneys for the parties argued the pending motions for summary judgment. As stated orally on the record at the conclusion of argument, taking all facts in the light most favorable to plaintiff, the Court applied the factors set out in Baker v. Stuart Broadcasting Co., 560 F.2d 389, 392 (8th Cir. 1977), and determined that defendants Taco Bell Corporation, d/b/a Taco Bell Express, and Double-D, Inc., were joint employers of the charging parties, Karla Zick and Brenda Handegard, in this Title VII action brought on their behalf by the Equal Employment Opportunity Commission (EEOC). Further, taking the facts in the light most favorable to the plaintiff, and applying the recent United States Supreme Court cases of Faragher v. City of Boca Raton, --- S.Ct. ---, 1998 WL 336322 (June 26, 1998), and Burlington Indus., Inc. v. Ellerth, --- S.Ct. ---, 1998 WL 336326 (June 26, 1998), the Court determined that there are genuine issues of material fact for trial on the affirmative defense that may be asserted by the defendants in light of Faragher and Ellerth. Accordingly,

IT IS ORDERED:

(1) that the EEOC's "Motion To Strike Defendant Taco Bell Corp.'s Motion For Summary Judgment And Defendant Double-D, Inc.'s Motion For Summary Judgment" is denied. (Doc. 58.)

(2) that defendant Taco Bell Corporation's "Motion For Summary Judgment" is denied. (Doc. 45.)

(3) that defendant Double-D, Inc.'s "Motion For Summary Judgment" is denied. (Doc. 49.)

(4) that the Court's Amended Rule 16 Scheduling Order filed on May 29, 1998, remains in effect.

Dated this 15 day of July, 1998.

BY THE COURT:

Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Sharon Soucy
(SEAL) DEPUTY