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11 STATE OF CALIFORNIA
12 AGRICULTURAL LABOR RELATIONS BOARD
13 SALINAS REGIONAL OFFICE

14 In the Matter of:

CASE NO. 2017-CE-008-SAL

15 CINAGRO FARMS, INC.,

RESPONDENT'S POST-HEARING BRIEF
[8 C.C.R. § 20278]

16 Respondent,

17 And

18 MARISOL JIMENEZ,

19 Charging Party.

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CASE NO. 2017-CE-008-SAL

RESPONDENT'S POST-HEARING BRIEF
[8 C.C.R. § 20278]

20 In accordance with the ALJ's Order, Respondent, Cinagro Farms, Inc., submits its Post-Hearing
21 Brief to Administrative Law Judge, Mark Soble.

22 **I. PRELIMINARY STATEMENT**

23 A hearing was conducted in the above-entitled matter on March 22, 2021, until April 3,
24 2021. The Administrative Law Judge, Mark Soble, ordered Post-Hearing Briefs to be E-filed with
25 a copy to his attention. He further ordered the Parties to file Reply Briefs which will be due no
26 later than May 28, 2021.

27 **II. BACKGROUND FACTS**

28 Cinagro Farms is a vegetable growing and harvesting operation located in Ventura County,
California. During the operative period of the Complaint, it conducted harvest operations in both

1 Fillmore and the Tierra Rejada (Moorpark) areas. [RT/5:45:247-25; 81:3-5; 100:5-23; 103:19-25;
2 103:1-21] When the Respondent started operations it utilized the services of Mr. Rene Macias to
3 oversee the harvest crew. The company grew a variety of small vegetables such as parsley, kale,
4 and spinach. In the summer of 2016, it operated with a harvest crew from Mike's Farm Labor, a
5 local farm labor contractor. This crew consisted, in part, with some of the Charging Parties, along
6 with a foreman named Victor Mendoza. [RT/4:76:13-17] That operation continued later into 2016,
7 at which time another farm labor contractor, Art Vasquez Farm Labor, started representing Cinagro
8 Farms. [RT/5:30:1-3] According to witness testimony, the Art Vasquez contractor crew worked
9 only for a few days. [RT/5:30-31; RT/1:81-82] Marisol Jimenez testified she worked at Art's
10 Farm Labor Service for about three or four weeks. [RT/1:39:12-17] Thereafter, most of the
11 employees in the crew, which included all of the current Charging Parties, were directly hired by
12 Cinagro Farms, Inc. This occurred sometime in either late November or early December 2016.
13 [RT/4:78-79; RT/5:30-31; 73:21-23]

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17 At the time of hire, there was a meeting with all of the employees, including the owner,
18 Mr. Dighera, and Rene Macias the supervisor, and Foreman Victor Mendoza. On direct
19 examination, Foreman Mendoza testified in early January 2017, the workers raised the issue that
20 they were not receiving a payroll paystub along with their check. They also complained that the
21 checks were "personal", as opposed to a "company check". This issue was brought up in the
22 presence of Mr. Rene Macias and the Foreman Victor Mendoza. Foreman Mendoza explained
23 that a "personal" check is one that is made out in handwriting and signed. [RT/5:30:10-20] Mr.
24 Mendoza conveyed this question to the company's owner and was advised that the company had
25 not been involved previously in such payroll issues and was "working on it". [RT/4:136:13-19]

26
27 According to one Charging Party, additional issues were raised with Foreman Mendoza
28

1 involving an alleged lack of water at the field and that the company did not have any workers'
2 compensation insurance or provide work tools.

3 These concerns were conveyed to the Foreman Mendoza who, in-turn, conveyed them to
4 Mr. Macias. Following requests in the second and third weeks of January 2017, the employees
5 received the same response that the company was "working on it".
6

7 At all times material, during this period of time, Mr. Mendoza listened to the workers and
8 always conveyed their concerns to Mr. Macias. At no time did he engage in any personal
9 complaints concerning his working conditions nor did he negotiate on behalf of the workers'
10 concerns. In essence, he merely conveyed their concerns to management which remained
11 unanswered. He did not seek any resolution of the employees' concerns. [RT/5:62:9-16]
12

13 The last day of work for the Charging Parties was Saturday, March 4, 2017. The company
14 had already employed an additional harvest crew a few weeks prior that was harvesting similar
15 vegetable products. According to the testimony, the second crew was a separate and distinct crew
16 with no crossover between the employees in the crew of Foreman Mendoza. Although they
17 worked at the same ranches, they were supervised by a different foreman named Cesar Miranda.
18 After work ended on Saturday, March 4, 2017, the separate crew continued to work with only six
19 harvest members. The second crew continued in this capacity until its crew was increased the
20 week of March 27, 2017, to 10 workers. [See, GCX 4]
21

22 Following the end of work on Saturday, March 4, 2017, Mr. Mendoza checked with Mr.
23 Macias to see when the crew would be working again. Mr. Macias informed Foreman Mendoza
24 that he would let him know, as there were insufficient vegetables to be harvested. [RT/1:61:21-
25 25; 62:1-6; RT/2:59:24-25; 60:1-5; RT/5:88:20-25; 89:1-2] Mr. Macias also stated to Foreman
26 Mendoza that "there was no more [harvest] work until further notice". [RT/5:17-24] Foreman
27
28

1 Mendoza was also advised that there was weeding work available. [RT/7:137:9-14; RT/7:143:4-
2 13] It was clear from the employee testimony that none of the Charging Parties desired to do
3 weeding work although they had done it previously following excessive rains and muddy field
4 conditions. [RT/7:15:12-18]
5

6 On Monday, March 6, 2017, Charging Parties, Marisol Jimenez, Hector Cruz, her
7 significant other, and fellow employee, Maria Duarte, testified that they went to one of the
8 company's fields in Moorpark and saw the second crew working. Photos of this crew were taken
9 by Ms. Jimenez on her cellphone camera, but they did not conclusively demonstrate that this was
10 the second harvest crew in the employ of Respondent. [RT/2:63-68] According to Ms. Jimenez,
11 she contacted Supervisor Macias to see if there was work that day. [RT/1:73:6-19]
12

13 Earlier that same morning on March 6, 2017, Marisol Jimenez, her significant other, Hector
14 Cruz, and Maria Duarte, all went to the adjacent blueberry farm, referred as "Silent Springs", to
15 make applications for blueberry harvest work. [RT/2:60:17-25; 61:1-2] This fact was unknown
16 to Foreman Mendoza and Supervisor Macias at the time. [RT/5:49:3-7] Relevant testimony
17 revealed that virtually all of the employees sought employment at Silent Springs blueberry harvest
18 operation that same week [RT/1:95:15-25; RT/2:21-24] with the exception of Yolanda Antonio
19 and her husband, Rigoberto Perez Martinez. According to the couple's testimony, they both
20 obtained employment at Deardorff Family Farms on or about March 13, 2017, where they had
21 previously found work during 2016 and earlier occasions. [RT/2:146:18-25; 147:1-25]
22
23

24 Corroboration that most of the employees in Foreman Mendoza's crew had sought work at
25 the adjacent berry farm was provided by some of the Charging Parties, including fellow crew
26 members, Maria Lauriano and Ignacia Sanchez. Following March 4, 2017, Supervisor Macias
27 who was coming back from the company's office in Fillmore, observed both of them coming
28

1 across the street along Highway 118. He stopped to talk to them. They advised him that they were
2 both working for the blueberry operation, along with Marisol Jimenez, her significant other, Hector
3 Cruz Vasquez, and most of the other crew members. Mr. Dighera contacted the owner of Silent
4 Springs, an individual named Josh, who confirmed that the Cinagro crew members were working
5 there. [RT/7:75:10-14] When the owner of the company found out this fact, he testified that he
6 did not specifically call back any of the workers who had “already been working thirty feet across
7 the road”. Upon examination by the ALJ, Mr. Dighera admitted that he probably heard about the
8 alternative work from Rene. [RT/7:76:20-24]

9
10 On March 10, 2017, Foreman Mendoza met with Supervisor Macias to collect the payroll
11 checks for the payroll period ending on March 4, 2017. This occurred in Fillmore at the
12 Respondent’s office. He took the paychecks to a park in Oxnard where he met with some of the
13 workers to provide them with their payroll check. Rene Macias did not provide the paychecks to
14 Maria Lauriano or Ignacia Sanchez who went to the company’s office in Fillmore to obtain their
15 checks themselves on the following day. [RT/7:135-136] The checks were provided by
16 Supervisor Macias. Friday, March 10, 2017, was the usual payday for the subject crew.] [RT/5:22-
17 24]

18
19 Mendoza testified that when he gave the payroll checks to the crew members who were
20 present the crew members assumed that they would not be called back work and they would look
21 for work elsewhere. [RT/5:49:24-25; 50:1-6] On further discussion with the Interpreter, the word
22 “assumed” was changed to “understood” [RT/4:136-144]

23 **III. MATERIAL ALLEGATIONS IN FIRST AMENDED COMPLAINT**

24
25 In reviewing the allegations and the First and Second Causes of Action in the First
26 Amended Complaint, General Counsel (GC) alleges that by “terminating the discriminates
27
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1 employment because they complained about not receiving drinking water and not receiving
2 paystubs with their paychecks, Cinagro unlawfully retaliated against the discriminates due to their
3 protect concerted activity. [GCX: (First Cause of Action) at page 4, lines 17-24] Secondly, it is
4 alleged that Cinagro committed an unfair labor practice in violation of Section 1153(a) of the Act
5 when it terminated Foreman Mendoza's employment because Foreman Mendoza's termination
6 was the means by which Cinagro discriminated against the employees, citing to Sequoia Orange
7 Company (1985) 11 ALRB No. 21.

9 For the reasons set forth hereinafter, both of these Cause of Action fail as they are not
10 supported by a preponderance of the evidence on the record as a whole. [Labor Code Section
11 1160.2] Furthermore, there is no causal connection between the alleged protected activities of the
12 employees and the alleged termination of their employment, as no employees were discharged as
13 weeding work was available for them while waiting to see if the harvest work would begin.
14 However, rather than wait for such, all of the Charging Parties sought alternative employment with
15 a blueberry harvest operation, except for Yolanda Antonio and her husband, Rigoberto Perez
16 Martinez, who were employed at Deardorff Farms, where they had worked previously before
17 coming to Cinagro Farms.

18 As to the Second Cause of Action involving Foreman Mendoza, at no time did he engage
19 in any protected concerted activity as a matter of law, nor was his alleged termination the means
20 by which Cinagro discriminated against the employees by reason of their alleged protected
21 concerted activities. The general rule of law is that the discharge of supervisors merely because
22 of their participation in union or concerted activity is not unlawful because supervisors (unlike
23 employees) are not protected by the National Labor Relations Act. [See, e.g., Parker-Robb
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1 Chevrolet, Inc. (1982) 262 NLRB 402.]¹

2 **IV. SUPERVISORY STATUS OF VICTOR MENDOZA AND RESPONDENT'S**
3 **MOTION TO DISMISS**

4
5 ¶ Respondent submitted a verbal Motion to Dismiss the Second Cause of Action in the
6 Complaint on the basis that Foreman Mendoza was a statutory supervisor and a preponderance of
7 the evidence taken demonstrated that he was not terminated from his employment. [RT/6:5-8]
8 Although the ALJ took the Motion under consideration, it is raised herein with additional legal
9 citations and relevant portions of the administrative record to demonstrate Mr. Mendoza should
10 not have been included in the First Amended (Second Cause of Action) Complaint in the first
11 instance.
12

13 A. Pertinent Provisions of the General Counsel's First Amended Complaint

14 General Counsel's Second Cause of Action states that the Respondent committed an unfair
15 labor practice in violation of Section 1153(a) of the Act when it "terminated Foreman Mendoza's
16 employment because Foreman Mendoza's termination is (was) the means by which Cinagro
17 discriminated against the employees". The GC cited to the ALRB case of Sequoia Orange
18 Company (1985) 11 ALRB No. 21.
19

20 B. Pertinent Testimony of Mr. Mendoza and Other Crew Members on his Alleged
21 Protected Activities

22
23 There was no evidence presented to support Foreman Mendoza engaging in any form of
24 protected activities. It was clear from the entire record, that when employees had a complaint
25 about work conditions, Foreman Mendoza was asked to convey those concerns to Mr. Macias for
26 resolution. [RT/5:37:10-13] Mr. Mendoza testified that he never negotiated on behalf of the
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¹ The ALRA mandates that the ALRB follow applicable NLRA precedents. [Section 1148].

1 employees. [Id. at 37:21-24] Indeed, he also admitted that he merely acted as a conduit to convey
2 the questions, concerns, and complaints of crew workers to Mr. Macias. At no time did Mr. Macias
3 obtain any resolution of their concerns. [RT/5:3-23; 37:10-24] Further, Foreman Macias never
4 stopped the crew from making complaints, including the lack of paystubs and drinking water.
5 [RT/5:62:17-23]
6

7 Therefore, based upon the administrative record taken as a whole, it is clear that Mr.
8 Mendoza merely conveyed the concerns of the crew members to this boss, Rene Macias, to see if
9 they could be resolved. At no time did Mr. Mendoza engage in any form of protected concerted
10 activity.
11

12 V. LEGAL ANALYSIS

13 It is generally known that terminating a supervisor merely because he participated in union
14 activity is not unlawful because supervisors is not protected by Section 7 of the NLRA. This is
15 because employers are allowed to insist on the loyalty of their supervisors. Discharging a
16 supervisor may constitute an unfair labor practice in violation of Section 8 only in certain limited
17 circumstances – when it directly interferes with non-supervisory employees’ Section 7 rights to
18 organize, [or engage in protected concerted activities].
19

20 Specifically, the NLRB has held that an employer violates Section 8 by terminating a
21 supervisor for:
22

- 23 1. Giving testimony that is adverse to the employer’s interest either at an NLRB
24 proceeding or during the processing of an employee’s grievance;
- 25 2. Refusing to commit unfair labor practices; or
- 26 3. Failing to prevent unionization.

27 In each of these situations, the NLRB has opined that termination directly interferes with
28

1 the Section 7 rights of other employees to organize [or engage in protected concerted activities.]
2 [See, e.g., Parker-Robb, *supra*, (1982) 262 NLRB 402, 404, affirmed, Automobile Salesmen Union
3 v. NLRB (D.C.Cir. (1983) 711 F.2nd 383]

4
5 Thus, the discharge of supervisors merely because of their participation in union or
6 concerted activity is not unlawful, because supervisors (unlike employees) are not protected by
7 Section 7 or the NLRA. [Id. at 262 NLRB 402, 404] Even when the termination of a supervisor
8 is part of “a pattern of conduct aimed at coercing employees in the exercise of their Section 7 rights”
9 there will be no violation, unless the discharge “directly” interferes with their Section 7 rights of
10 the statutorily protected employees. [Automobile Salesmen, 711 F.2nd 383 386-388]

11
12 This issue has also been litigated before the Agricultural Labor Relations Board (ALRB)
13 on numerous occasions.

14 For example, in the case of Ruline Nursery, 7 ALRB No. 21 (1982) the Board adopted the
15 position “the fact that a supervisor’s discharge may have a tendency to restrain or coerce
16 employees in the exercise of protected rights does not establish a violation of Section 1153(a).
17 [Stop and Go Foods, Inc. (1979) 246 NLRB No. 170, 103 LRRN 1046]

18
19 The Board went on to hold in this seminal case the **exceptions** that must be demonstrated
20 by the General Counsel to prove such a violation.

21 First of all, to make out a prima facie case within the first category of exceptions, it must
22 be shown that a supervisor was discharged for having refused to engage in activities proscribed by
23 the Act. [Ruline at page 9 and NLRB cases cited therein.] In the present case, there are no facts
24 in the administrative record demonstrating that Foreman Mendoza was discharged for a refusal or
25 failure to prohibit the employees’ engagement in protect concerted activities. Indeed, the opposite
26 was the rule. The Charging Parties were consistently allowed to complain about a variety of issues
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1 that were conveyed to management. [RT/5:62:17-23] None of the Charging Parties were ever
2 disciplined while employed with the Respondent. [RT/5:201-202]

3 The second exception to the general rule that supervisors may be discharged, at will, occurs
4 when the supervisor is discharged for having engaged in conduct designed to protect employee
5 rights, such as giving testimony adverse to the employer in an NLRB proceeding. [Id. At page 10
6 citing to NLRB applicable precedent.] Here, there is no allegation in the First Amended Complaint
7 nor evidence in the administrative record that Foreman Mendoza's testimony conduct served as a
8 basis for Foreman Mendoza's discharge. Foreman Mendoza's testimony occurred over five (5)
9 years after his employment ended at Cinagro Farms. Therefore, this exception has no application
10 to the present case. As a result, no prima facie Section 1153(a) violation has been made out for
11 this second category.
12

13
14 The third exception to the general rule is based on the discharge being the means by which
15 the employer unlawfully discriminates against its employees. This third exception is contained in
16 the General Counsel's Second Cause of Action citing to Sequoia Orange Co. (1985) 11 ALRB No.
17 21. In addressing the inapplicability of Sequoia Orange Co. it should be noted that a prima facie
18 case is made out in this category when the crew employees' tenure is expressly conditioned on the
19 continued employment of their supervisor, employees have engaged in protected concerted
20 activities, and their supervisor has been discharged as a means of terminating the employees
21 because of their concerted activity. [Id. at page 11 and NLRB cases cited therein.] Once again,
22 this exception to the general rule does not apply because there was absolutely no evidence offered
23 to show that the employment of any of the Respondent's employees was conditioned on the
24 continued employment of their supervisor, Foreman Mendoza. Thus, Mendoza's alleged
25 termination does not fall within this third category of exceptions.
26
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1 Sequoia Orange Co., supra, relied upon by the General Counsel in her Second Cause of
2 Action, involved facts demonstrating that the employer's failure and refusal to recall three foremen
3 was done with the intent, and had the "effect" of avoiding the recall of agricultural employees
4 because of their union activities and support. Thus, Sequoia is not an appropriate legal precedent
5 and does not bear any resemblance to the factual record before the ALJ. Substantial evidence from
6 both employees and the Foreman Mendoza demonstrates that none of them had been informed that
7 they were terminated from Respondent. More importantly, the mere fact that many members of
8 the crew had worked in the past at Mike's Farm Labor, Cinagro and Art's Farm Labor, with the
9 same Foreman Mendoza, does not require an inference that employment of these employees was
10 conditioned upon the continued employment of Mr. Mendoza. For all these reasons, a prima facie
11 Section 1153(a) violation has not been proven in this category.

12 The Ruline case also referred to yet a fourth exception, in which a supervisor's discharge
13 is found to be an integral part of the employer's scheme aimed at penalizing employees for having
14 engaged in concerted activities. A prima facie Section 1153 violation could be made out in this
15 category provided the supervisor's discharge is effected along with the unlawful discharge of union
16 employees or other widespread employer misconduct, the discharge is aimed at employees who
17 have engaged in union activities, and the employer has created such a pervasive atmosphere of
18 coercion that employees cannot reasonably be expected to proceed with distinction between the
19 employer's right to discharge its supervisors for certain conduct and the employees' right to engage
20 in the same activities freely without fear of retaliation. Once again, this fourth exception is clearly
21 inapplicable here.²

26 //

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//

28 ² See, Ruline Nursery, 7 ALRB No. 21 at page 12, footnotes 6 and 7; M. Caratan, Inc., (1978) 4 ALRB No. 73.

1 **VI. CONCLUSION**

2 For all the foregoing reasons, it is clear that Foreman Mendoza’s mere act of passing along
3 worker complaints to his superior, Supervisor Rene Macias, without more, does not constitute a
4 protected concerted activity. [Parker-Robb, *supra*, (1982) 262 NLRB 402, 404] More importantly,
5 Mr. Mendoza’s actions do not qualify for any of the recognized exceptions to this general rule.
6 [Ruline, pages 13-14] Thus, Respondent’s Motion to Dismiss the Second Cause of Action in the
7 First Amended Complaint must be granted.
8

9 **VII. GENERAL COUNSEL’S FIRST CAUSE OF ACTION HAS NOT BEEN**
10 **PROVEN BY A PREPONDERANCE OF EVIDENCE**
11

12 Respondent now addresses the General Counsel’s First Cause of Action which alleges, in
13 part, “by terminating discriminatees’ employment because they complained about not receiving
14 drinking water and not receiving paystubs with their paychecks, Respondent unlawfully retaliated
15 against the discriminates due to their protected concerted activity”. [First Amended Complaint; 4
16 22-24]
17

18 For the reasons stated hereafter, Respondent submits that there is no causal connection
19 between the alleged protected concerted activity of the Charging Parties and their alleged
20 discharges. None of the Charging Parties, including Foreman Mendoza, were informed they were
21 “discharged” by the Respondent! Furthermore, within a week following their last day of
22 employment, while they were waiting to hear back from Supervisor Macias on when there would
23 be additional harvest work, virtually all of the Charging Parties obtained employment with better
24 wages and benefits. As a result, they relinquished their employment rights at the Respondent’s
25 operation.
26

27 // // //

1 A. Credibility Determinations on the Alleged Protected Concerted Activity

2 All of the employees in the crew supervised by Foreman Mendoza testified in this hearing,
3 along with Mr. Mendoza. There was testimony on worker complaints concerning (1) the lack of
4 payroll stubs or paystubs; and (2) lack of potable drinking water in the workplace.
5

6 Testimony on these concerns was, at best, inconsistent. Even the testimony of Foreman
7 Mendoza who was very supportive of the workers was different from employee accounts on the
8 alleged lack of available water.

9 For example, the main Charging Party, Marisol Jimenez, claimed that they “never brought
10 us water... no, never”. [RT/1:55 2-6] When asked if Supervisor Rene Macias ever brought water
11 for her or crew, her response was similar: “Water, no, never. He never brought us any”. [RT/1:59:
12 24-25]
13

14 On cross examination, Ms. Jimenez was asked whether her Foreman Mendoza had yellow
15 water coolers on his truck with cups, she responded “yes” that such water was available, Ms.
16 Jimenez responded “yes, but we would buy it”. On further clarification, she confirmed that the
17 water in the yellow jugs was paid for by her. When questioned further, as to how often she filled
18 up the water jugs, she responded “every day”. [RT/1:83:18-23; 84:5-14]
19

20 When pushed further, as to whether the water was purchased by Ms. Jimenez every day,
21 she responded: “Yes. We would purchase it among the whole group”. [RT/1:85:19-22]
22

23 When questioned whether in January 2017 if there was water at the worksite, she responded
24 “There was because we purchased it” she also confirmed the same pattern for February 2017. [RT/
25 1: 87: 14-19]

26 Interestingly, the partner of Ms. Jimenez, Mr. Hector Cruz Vasquez, testified his foreman,
27 Mendoza, had ten-gallon yellow canisters in his truck for water and that he also provided cups.
28

1 [RT/2:37:16-20] The next witness, Ms. Maria Duarte, a fellow Charging Party, testified that the
2 workers would talk among themselves that they needed better water and they needed the correct
3 paycheck stubs. [RT/2:29:11-19] She testified on cross examination that Foreman Mendoza
4 brought water to the crew everyday in his truck along with drinking cups. [RT/2:111:6-18]
5

6 Maria Duarte Melgoza on cross-examination confirmed that Victor [Mendoza] brought
7 water to the crew everyday in his truck. [RT/2:111: 6-9] He also provided the crew with cups for
8 drinking the water. [Id. at 13-18] She did not know whether anybody ever asked her to pay any
9 money for the water on Victor's truck. [Id. 111:24-25; 112:1-2] Witness, Rigoberto Perez
10 Martinez confirmed that he personally never gave cash to Victor to pay for water. [RT/3:132:15-
11 16]
12

13 Next witness, Maria A. Santiago, testified to the contrary. On direct examination, she said
14 "No one ever brought water". She testified that "We would bring our own water" that she had no
15 problem with bringing her own water. [RT/3:155: 8-23] However on cross examination, she
16 recanted her testimony that the company did not bring water for the crew and stated that Foreman
17 Mendoza would bring some on his truck. [RT/4:18: 9-22]
18

19 Lastly, General Counsel called Victor Mendoza. On direct examination, Foreman
20 Mendoza testified that when he worked with the former farm labor contractor, he [Vasquez] was
21 paid one extra hour to move the bathroom and set the water. However, at Cinagro, they were not
22 paying him for the water. He was allegedly paying for the water out of his own pocket.
23 [RT/4:88:1-9] On cross examination, Foreman Mendoza, once again, testified that he was not
24 compensated for bringing water. Yet, he admitted that he provided water to the crew everyday in
25 plastic yellow jugs in his truck and also provided drinking cups. [RT/5:34:4-13]
26

27 Maria Lauriano, a fellow crew member of the Charging Parties, testified there was always
28

1 water available, that they were never without water and no one asked her to pay for the water. [Id.
2 46:6-8]

3 Of major significance was the testimony of Ignacia Sanchez, another fellow worker in the
4 Charging Parties' crew, who had a very disturbing telephone conversation initiated by Marisol
5 Jimenez (main Charging Party) about the availability of water! [See generally, RT/6:102-104]

7 Ms. Sanchez, who had not seen or heard from the Charging Party, Marisol Jimenez,
8 since March 4, 2017, received a call on or about February 9, 2021, and returned the call on
9 February 10, 2021, Ms. Jimenez informed Ms. Sanchez that if somebody asked her questions for
10 her to mention the fact that "we didn't have water". Ms. Sanchez responded that she couldn't tell
11 lies because "we did have water". According to Ms. Sanchez, Jimenez then requested that if she
12 could just say that Victor [Mendoza] had to go and get bottled water. Once again, Ms. Sanchez
13 responded that that was not true. [RT/6:102:7-25; 103:10-17; 104-105]

15 As noted above, this was a very disturbing phone call by Marisol Jimenez. First question
16 is how did she know that Ms. Lauriano, who had been served with a subpoena by Respondent, was
17 going to be a Respondent witness? Respondent believes that after the Respondent's attorney sent
18 Ms. Jessica Arciniega, the Assistant General Counsel, on the evening of February 9, 2021, a payroll
19 exhibit that contained the names of Sanchez and Lauriano, Jimenez called both of them within
20 hours of that transaction. Respondent submits that not only is this transaction inappropriate in that
21 the Charging Party was attempting to solicit testimony that was untrue, but that the ALRB served
22 as an accomplice in providing the names of Ms. Sanchez and Maria Lauriano, two of Respondent's
23 witnesses under subpoena.
24
25

26 Looking at this transaction from the macro sense, why would Ms. Jimenez contact fellow
27 workers who were not part of the litigation and who had never been investigated by the ALRB to
28

1 water available, that they were never without water and no one asked her to pay for the water. [Id.
2 46:6-8]

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21 witnesses under subpoena.

22 Looking at this transaction from the macro sense, why would Ms. Jimenez contact fellow
23 workers who were not part of the litigation and who had never been investigated by the ALRB to
24
25
26
27
28

1 solicit false testimony for the hearing? Secondly, Ms. Jimenez could not have known the names
2 of Respondent's two potential worker witnesses, unless someone at the ALRB office had
3 communicated this fact to her. They were not disclosed to the ALRB until 7:17P.M. on February
4 7th.

5
6 Indeed, in reviewing the testimony of Ms. Sanchez and Marisol Jimenez, it is clear that this
7 telephonic conversation did occur between Jimenez and Sanchez and that Jimenez admitted that
8 someone from the ALRB spoke to her about two weeks before the hearing at the time she spoke
9 with Sanchez and Lauriano. [RT/1:103; 105; 107-112]

10
11 Respondent makes no observation as to whether there was an ethical violation with regard
12 to the release of a previously unknown witness under subpoena, but clearly, the disclosure resulted
13 in the main Charging Party seeking unlawful, false testimony. In any event, the foregoing evidence
14 demonstrates the questionable credibility of Marisol Jimenez!

15
16 Finally, Mr. Tony Dighera, on direct examination indicated that Victor Mendoza was
17 responsible to bring water to the field each day and that he was compensated an extra hour as is
18 standard for the industry for every day. He noted that this was the same process that applied to
19 Foreman Mendoza when he worked for the contractor, Art Vasquez, in 2016. [RT/7:10:13-20;
20 11:8-17]

21
22 Based upon the foregoing collection of testimony, it is clear that most of the Charging
23 Parties admitted that there was water at the field located on the truck of Foreman Mendoza, along
24 with paper cups. The testimony was confirmed by employer witnesses, Maria Lauriano, Ignacia
25 Sanchez and the Respondent's owner, Tony Dighera.

26
27 Therefore, to the extent that the General Counsel relied upon this as one of the subjects of
28 the employees' complaints about work conditions, this aspect of the alleged protected concerted

1 activity was not supported by substantial evidence on the record.

2 B. Alleged Lack of Paystubs or Payroll Statements

3 General Counsel's complaint alleges at paragraph 18 that "Cinagro did not provide the
4 discriminatees with a paystub or documentation with their paychecks". [First Amended Complaint
5 at p. 3, lines 4-5] Based upon the testimony of the General Counsel's witnesses, including
6 Foreman Mendoza, the company's bookkeeper, Ms. Barbara Ito, Respondent, did not provide
7 [standard] paystubs or payroll statements. The company did, however, provide after three weeks,
8 a payroll stub. [RT/4:117:16-19; see also, RT/6:52:4-16]³

9
10 Employee justifications for these requests varied between needing such information in
11 order to demonstrate to a government agency that they were employed in order to obtain
12 governmental benefits or for medical reasons. [See, e.g., testimony of Maria Duarte at
13 RT/2:127:15-19; Maria Angelica Santiago at RT/3:159:6-18]

14
15 It appears that the employees' requests for payroll stubs or statements began around the
16 first week of January 2017, after the employee's were employed as direct-hire employees in late
17 November 2016. [RT/7:12-20; 7:9-14] These concerns were brought up by a number of
18 employees. The concerns were raised to the crew's foreman, Victor Mendoza, who merely
19 conveyed those concerns to his supervisor, Rene Macias. [RT/5:3-8] Mendoza did not negotiate
20 or try to resolve them. [RT/5:62:13-16] More importantly, Foreman Mendoza never prohibited
21 or prevented the crew from making complaints about their working conditions, which included
22 paystubs and an alleged lack of water. [Id. at 62:17-23]

23
24
25 However, the workers' concern regarding the lack of a paystub/statement were never
26 resolved during their employment. Employee's were advised that the company was "working on

27
28 ³ The General Counsel failed to produce any evidence or proof as to what was specifically required to define a
"paystub" or "payroll statement" under Labor Code Section 226.

1 it". [RT/7:64:21-23] Mr. Dighera testified that the crew was happy in making the transition from
2 Art Vasquez to Cinagro and, at that time, they voiced no concern whatsoever over any pay [stub]
3 issue. [RT/7:69:1-5]

4
5 According to Victor Mendoza, workers complained about this during the first three weeks
6 of January 2017. [RT/5:38:9-12] Foreman Mendoza also testified that the workers' complaints
7 concerning a lack paystubs stopped for the next month or so because the crew was awaiting for
8 Mr. Macias' answer. [RT/5:38:9-15] Thereafter, it appears that the workers became frustrated in
9 their hopes of getting the paystubs. [RT/5:39:3-6] Respondent's witnesses from the same harvest
10 crew, Maria Lauriano and Ignacia Sanchez, both testified that they had not heard these complaints
11 made by other crew members. [RT/6:36:3-7; RT/6:51:25; 52:1-3; 11-16] According to Ms.
12 Lauriano, they [crew members] never made any complaints about work conditions to Mr. Mendoza.
13 [RT/6:47:24-25; 48:1-5] She also testified that she never heard any of her co-workers complain
14 that they did not get medical insurance. [RT/6:84:16-19]

15
16
17 As one can readily see, the issue of employee protected concerted activity on the issue of
18 a lack of paystubs with the employees' paychecks is supported by some of the testimony of the
19 Charging Parties, yet two of the employees in the harvest crew either did not hear or were not part
20 of the alleged employee discussions. This finding will have to be resolved by the Administrative
21 Law Judge. At the very least, these concerns that were raised by the crew members to Foreman
22 Mendoza and were raised only during the first three weeks of January 2017. [RT/5:38:9-12] The
23 complaint remained unresolved through March 4, 2017. Foreman Mendoza did not negotiate any
24 resolution of these concerns. [RT/5:37:21-24] The workers, however, continued working
25 thereafter believing that their complaint would be resolved in some way by the Respondent.
26 [RT/5:38:13-15]

1 Assuming, solely **arguendo**, that the ALJ finds there was sufficient evidence of protected
2 concerted activity by the harvest crew, Respondent submits that there is no “causal connection”
3 between protected concerted activity and the failure of the company to return the crew back to
4 work. This discussion will occur in the legal analysis to follow.

6 C. Other Alleged Employee Complaints Concerning Lack of Health Insurance, Workers’
7 Compensation Insurance and Tools.

8 The above issues were not alleged in the General Counsel’s Complaint as some of the
9 reasons supporting the alleged protected concerted activities of the Charging Parties. As such,
10 they should not be considered by the ALJ because the employer lacked sufficient notification of
11 these issues to form a defense. The issue of no workers’ compensation insurance was raised only
12 by Foreman Mendoza [RT/4:94:13-15] The only employee to raise another issue was Rigoberto
13 Perez Martinez who testified that Respondent didn’t “provide us with tools”. There was no
14 evidence that the Charging Parties, as a group, had appointed this individual to act on their behalf
15 to make this complaint to management. Lastly, Maria Lauriano testified she never heard any of
16 her co-workers complain that they did not get medical insurance. [RT/6:84:16-19] [RT/6:131:24-
17 25] Once again, there is no evidence in the record to corroborate that those topics were the subject
18 of any group action. As such, the incidental statements in the testimony of Victor Mendoza and
19 Rigoberto P. Martinez should not be utilized as a basis of any alleged protected concerted activity.
20
21

23 D. Additional Issues Raised in Testimony Not Alleged in the Complaint

24 In reviewing the Complaint, as a whole, it is clear that the main and only allegations of
25 protected concerted activity involved the failure of the Respondent to provide paystubs/statements
26 and a lack of water for the crew at the field. [See, GC Exhibit – First Amended Complaint at
27 paragraphs numbers 16, 19, 22 and 23] Nowhere in the Complaint does the General Counsel allege
28

1 a lack of workers' compensation insurance, health insurance or work tools.

2 It is generally accepted that the General Counsel must plead specific violations of the Act
3 in the Complaint in order to afford a Respondent due process in order adequately provide
4 Respondent with opportunity to address those allegations. [See, e.g., J.R. Norton, Co. v. ALRB
5 (1987) 192 Cal. App. 3rd 824, 888; Sunnyside Nurseries, Inc. v. ALRB (1979) 93 Cal. App. 3rd
6 922, 933] The Board has held that violations of the Act may be found even where they are not
7 alleged in the Complaint where the incident is fully litigated at the hearing and is closely related
8 to the allegations in the Complaint. [See, Marion J. Radovich (1983) 9 ALRB No. 16 citing to
9 Prohoroff Poultry Farms (1977) 3 ARLB No. 87, enforced (1981) 07 Cal. App. 3rd 622] The
10 Board has also held where the issue has not been fully litigated in the proceeding, it is not able to
11 conclude whether Respondent's conduct constituted a violation of the Act. [See, e.g., John Elmore,
12 Inc. 4 ALRB No. 98 p. 3 (Slip Opinion) (complaint makes no allegation concerning a discharge),
13 Signal Produce, Co. (1981) 7 ARLB No. 4 at p. 2 (Slip Opinion) (testimony relating to a unilateral
14 wage increase was received for the limited purpose of background information as to the surface
15 bargaining allegation and that the wage increase was not fully litigated as a possible separate
16 violation of Labor Code Section 1153(e) of the Act)] In the present case, apart from not being
17 specifically pleaded in her First Amended Complaint, these issues were not fully litigated at the
18 hearing as evidence of alleged protected concerted activities. For example, Foreman Mendoza,
19 testified that the company did not have workers' compensation insurance. [RT/4:94:13-15] When
20 questioned by the General Counsel how did he know that, he said he noticed when a person that
21 came looking for work had a cut. He further stated that the person did not work at Cinagro in the
22 crew. [RT/4:94:13-19; 28:11-12] One of the workers, Maria Santiago, testified that she cut her
23 finger on the last day of work on March 4, 2017. She received immediate First-Aid at the field.
24
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28

1 [RT/3:160-162] She also went to the Urgent Care Clinic. [Id. at 162:7-14] This individual was
2 off work for approximately two weeks. [Id. at 162]

3 A review of the foregoing evidence does not reveal that the company did not have workers'
4 compensation insurance. There is no evidence submitted by Foreman Mendoza that he spoke to
5 management regarding the existence of workers' compensation insurance.
6

7 As noted above, this particular issue was not part of the alleged protected concerted activity
8 nor was it alleged in the complaint. More importantly, there was no discussion among the workers
9 to Victor Mendoza concerning the lack of workers' compensation insurance. Lastly, and most
10 importantly, the issue was not fully litigated at the hearing since it was merely a speculative
11 comment by the foreman under circumstances where he had no specific knowledge as to whether
12 the company had a workers' compensation policy or not.
13

14 Based upon all the foregoing reasons, this issue of a lack of workers' compensation
15 insurance should not be considered as part of the employees' alleged protected concerted activities.
16

17 The same can be said with regard to a lack of medical insurance [Victor Mendoza,
18 RT/5:94:13-19] and the alleged failure to provide the crew with tools. [RT/3:131:22-25]

19 As in the case of workers' compensation insurance, there is no evidence that these ancillary
20 issues were raised by the General Counsel's First Amended Complaint nor were they fully-litigated
21 at the hearing. As such, these additional items voluntarily raised by two witnesses at the hearing
22 were not concerted and should not be used as a further basis for additional items of protected
23 concerted activity.
24

25 **VIII. LEGAL ANALYSIS OF WORKER DISCHARGES**

- 26 A. General Counsel Failed to Prove by a Preponderance of the Evidence taken that the
27 Charging Parties were Discharged from their Employment.
28

1 General Counsel's First Amended Complaint alleges that on March 10, 2017, when
2 Foreman Mendoza went to pick up the alleged discriminatees' paychecks⁴, Supervisor Macias told
3 Foreman Mendoza that there was "no more work for him and the discriminatees at Cinagro". This
4 legal conclusion is not supported by a preponderance of the evidence taken nor is it an accurate
5 portrayal of what Mr. Macias informed Foreman Mendoza of on March 10, 2017.
6

7 All of the alleged discriminatees testified that they were never informed that they were
8 discharged from Cinagro. [See, e.g., RT/4:16-18] Additionally, Foreman Mendoza stated that he
9 had never been discharged by Rene Macias. [RT/5:50:14-24] Thus, there is no overt evidence of
10 a discriminatory discharge present in the administrative record.
11

12 Nevertheless, Respondent expects that the General Counsel will rely upon circumstantial
13 evidence to demonstrate that the workers, because of the fact that Supervisor Macias did not get
14 back to them with a date to restart work, "understood" that they had been terminated. However,
15 none of the alleged discriminatees testified that they understood that they had been terminated.
16 This testimony was provided only by Foreman Mendoza who was not instructed to inform workers
17 that they had been discharged. [RT/5:90:8-13] Indeed, at the time of issuing their checks from
18 the prior work week that ended on March 4, 2017, Mr. Mendoza speculated that they assumed or
19 [understood] that there was no further work and they should look for alternative work.
20 [RT/5:49:24-25; 50:1-6], which many of the crew members did beginning on Monday, March 6,
21 2017.
22
23

24 This self-serving statement by Foreman Mendoza does not constitute a preponderance of
25 the evidence taken on this issue. Indeed, virtually all of the workers by March 10, 2017, had found
26 alternative employment or applied for alternative employment, most of them doing so at the
27
28

⁴ These were the payroll checks for the prior work week that ended on March 4, 2017. [RT/5:42:19-24]

1 beginning of the week following March 4, 2017. They did not convey this to Mr. Mendoza nor to
2 Supervisor Macias. However, Ignacia Sanchez did convey to Foreman Mendoza that she had
3 obtained “another job”. [RT/6:10:25; 102:1-6]
4

5 Mr. Macias testified that there was work available that week for weeding. However, he
6 was aware that there was difficulty in getting the crew members to perform weeding work and not
7 many of them would show up for such work when it was available. [RT/7:15:12-18] Thus, the
8 ALJ is confronted with the following scenario: (1) no one was informed they were discharged from
9 Respondent; (2) there was available [weeding] work; and (3) virtually all of the crew members had
10 obtained alternative work at the adjacent blueberry farm. Also, the following week, Yolanda
11 Antonio and her significant other, Mr. Rigoberto Perez Martinez, also obtained employment at
12 Deardorff Family Farms. [RT/3:115:1-23]
13

14 It is interesting to note, that on cross examination of **some** of the employee witnesses, when
15 confronted with the fact that their alternative employment provided paycheck stubs, medical
16 insurance, proper water facilities, workers’ compensation insurance, and better wages, some
17 responded that they wanted to come back to Cinagro. Respondent submits that this is a very
18 disingenuous and self-serving response on the motive of the Charging Parties to prove their case.
19 Respondent believes that this self-serving testimony about returning to the Respondent’s operation,
20 even in light of the better benefits and wages at their alternative employment, was proffered to
21 further buttress the General Counsel’s theory that they had been discharged and were otherwise
22 available for work.
23
24

25 Supervisor Macias testified that he ran into two members of the crew, Maria Lauriano and
26 Ignacia Sanchez, the days following the March 4, 2017, and they were already working at the
27 adjacent blueberry farms known as Silent Springs. [RT/6:139:14-25; 140:1-11] Supervisor
28

1 Macias was informed that many of the Charging Parties were also employed at Silent Springs,
2 including Marisol Jimenez, her significant other, Hector Cruz, Maria Duarte, Maria Lauriano,
3 Ignacia Sanchez, and others. [Id.] Mr. Macias conveyed this information to the owner, Mr.
4 Dighera. [RT/7:76:20-24] Mr. Dighera's response to the General Counsel's question as to why
5 he never instructed Rene Macias to make any offers of reinstatement, Mr. Dighera responded: "No,
6 and I specifically didn't because they had already been working right (sic) thirty feet across the
7 road. [RT/7:20-25; 75:1] He subsequently confirmed the employment of the Respondent's harvest
8 crew with Josh, the owner of Silent Springs. [Id. at 75:8-14] Mr. Dighera testified that he
9 remembers asking Josh about the specific employees by name because they were listed in the
10 Complaint. [RT/7:77:3-10]

13 B. Legal Standard for Determining Whether Adverse Employment Actions Violate the

14 ALRA

15 In cases under Labor Code Section 1153(a), the General Counsel has the initial burden of
16 establishing a prima facie case. The General Counsel must show by a preponderance of the
17 evidence that the employees engaged in a protected concerted activity, the employer knew of or
18 suspected such activity, and there was a causal relationship between the employees' protect
19 activity and the adverse employment action on the part of the employer. In other words, the
20 employee's protected activity was a "motivating factor" for the adverse action. [See, e.g.,
21 Kawahara Nurseries, Inc. (2014) 40 ALRB No. 11, p. 11, citing California Valley Land Co., Inc.
22 (1991) 17 ALRB No. 8, pp. 6-7; Woolf Farming Company of California, Inc. (2009) 35 NLRB
23 No. 2, pp. 1-2; and Wright Line, a div. of Wright Line, Inc. (1980) 251 NLRB 1083, 1087]

26 With respect to the third element of "causal connection" the Board may infer a
27 discriminatory motive from direct or circumstantial evidence. [New Breed Leasing Corp. v.
28

1 NLRB (9th Cir. 1997) 111 F.3d 1460, 1465] Where a discriminatory motive is not apparent from
2 direct evidence, there are a variety of factors that the Board and Courts have considered in order
3 to infer the true motive for the adverse employment action. Such factors *may* include: (1) the
4 timing or proximity of the adverse action to the activity; (2) disparate treatment; (3) failure to
5 follow established rules or procedures; (4) cursory investigation of alleged misconduct; (5) false
6 or inconsistent reason given for the adverse action or the belated addition of reasons for the adverse
7 actions; (6) the absence of prior warnings; and (7) the severity of punishment for alleged
8 misconduct. [See, e.g., Aukeman Farms (2008) 34 ALRB No. 2, p. 5, citing Miranda Mushroom
9 Farm, Inc. et.al. (1980) 6 ARLB No. 22 and H&R Gunlund Ranches, Inc. (2013) 39 ALRB No.
10 21, pp. 3-4]

13 Once the General Counsel has established a prima facie case of discrimination, the burden
14 shifts to the employer to prove that it would have taken the same action in the absence of the
15 protected activity. [Gerawan Farming, Inc. (2019) 35 ALRB No. 3, p. 12; H&R Gunlund Ranches,
16 supra, 39 ALRB No. 21, p. 4; Wright Line, supra, 251 NLRB 1083, 1087] It is not sufficient for
17 the employer to simply produce a legitimate basis for the action in question. It must persuade by
18 a preponderance to the evidence that it would have taken the same action in the absence of
19 protected conduct. [Conley (2007) 349 NLRB 308, 322, enfd. Conley v. NLRB (6th Cir. 2008)
20 520 F.3d 629, 637, 638; and David Abreu Vineyard Management, Inc. (2019) 45 ALRB No. 5, p.
21 4, fn. 6]

24 Where it is shown that the employer's proffered reasons are pretextual the employer fails,
25 by definition, to show that it would have taken the same action for those reasons absent the
26 employee's conduct, and there is no need to perform the second part of the Wright Line analysis.
27 [See, e.g., Premiere Raspberries, LLC, dba Dutra Farms (2013) 39 ARLB No. 6, p. 8, citing
28

1 Limestone Apparel Corp. (1981) 255 NLRB 722, enfd. (6th Cir. 1981) 705 F.2d 799; Conley, supra.
2 349 NLRB 308 322]

3 It must be emphasized, however, that the General Counsel still must prove a connection or
4 nexus between the employer's animus and the adverse action. [See, e.g., Gerawan Farming, Inc.
5 (2019) 45 ALRB No. 7, citing to Tschiggfrie Props. v. NLRB (8th Cir. 2013) 896 F.3d 880, 886-
6 887]

7
8 In Gerawan Farming, Inc., the Board re-enforced the principle that “in order to establish a
9 prima facie case of unlawful discrimination, [the] General Counsel must show protected concerted
10 or union activity, employer knowledge of such activity, and a causal connection between the
11 activity and the adverse action of the employer”. [Gerawan, supra, at p. 7, and cases citing therein]

12
13 C. Conclusion on No-Violation of Section 1153(a)

14 Taking the foregoing principles and applying them to the factual record before the ALJ,
15 Respondent submits that the ending of employment of the Charging Parties was not the result of
16 their alleged protected activities nor was it the reason for not returning the workers back to work.
17 There was simply no pretext for unlawful retaliation.

- 18
19 1. None of the Charging Parties were informed that they were discharged from their
20 employment.
21
22 2. The Charging Parties all received their last payroll check the following week on Friday,
23 March 10, 2017, which was their regular payday for the prior work week. [RT/5:42:19-
24 24; 84:3-14]
25
26 3. The Charging Parties did not receive any disciplinary actions preceding March 4, 2017.
27 [RT/1:143:25; 144:1-2]
28

- 1 4. There was available weeding work for the Charging Parties in the week following
2 March 4, 2017. [RT/7:137:10-14; 143:9-13; 144:17-20]
- 3 5. On March 6, 2017, and continuing until the following week, all the Charging Parties
4 obtained alternative employment with an adjacent blueberry ranch and a local vegetable
5 company called Deardorff Family Farms, thereby relinquishing their right to continued
6 employment.
- 7
8 6. There was no “causal connection” between the failure to recall the Charging Parties
9 and their alleged protected concerted activities which occurred in early January 2017,
10 especially since the Charging Parties continued work thereafter until March 4, 2017,
11 with no retaliation.
- 12
13 7. A secondary crew that worked at the same ranch as the Charging Parties prior to March
14 4, 2017; was a separate and distinct crew with no cross-over of employees that
15 continued to work with only six employees.⁵ No work was available in the Charging
16 Parties’ crew while they were waiting to hear back from Supervisor Macias as to
17 available work for their crew, nor was the Respondent obligated to displace crew
18 members in the second crew.⁶
- 19
20 8. No evidence was introduced that the Charging Parties had seniority or preferential
21 status to displace members of the second harvest crew. Indeed, the company had no
22 need to displace the second crew members to make room for the Foreman Mendoza
23 crew. Testimony clearly reviewed that the Mendoza crew did not like to perform the
24 available weeding work while waiting for harvest work [RT/7:137:10-14] and, the
25

26
27 ⁵ (RT/7:12:15-25; 16:1-15; RT/7:130-132)

28 ⁶ This second crew continued to work with only six workers (excluding Foreman Miranda) until the week of March 27, 2017, at which time, the crew was increased to ten workers. [GCX-4] Thus, it continued its usual harvest [or weeding] with a smaller crew that it had prior to March 4, 2021.

1 second crew routinely performed either weeding and or harvesting work, as ordered by
2 the company. The foregoing evidence demonstrates a reasonable business justification
3 for not displacing any members of the second harvest crew.
4

5 All of the foregoing reasons demonstrate that the Respondent had a reasonable good faith
6 belief that the Charging Parties had relinquished their employment. Indeed, Ms. Ignacia Sanchez
7 testified that after the last day of work [March 4, 2021], she had a conversation with Foreman
8 Mendoza and informed him that she had obtained employment elsewhere. [RT/5:102:4-6]
9 Foreman Mendoza denied that he had any knowledge that the employees had obtained employment
10 elsewhere. [RT/5:48:24-25; 49:1-2] Nevertheless, Ms. Sanchez conversation with Foreman
11 Mendoza demonstrates that some of the employees had relinquished their employment with the
12 Respondent and let it be known to Foreman Mendoza.
13

14 **IX. GENERAL CONCLUSIONS**

15 For all the foregoing reasons, Respondent respectfully submits that the General Counsel
16 has failed to prove, by a preponderance of the evidence taken, the First and Second Causes of
17 Action in her First Amended Complaint.
18

19 **WHEREFORE**, the Administrative Law Judge should dismiss the Complaint in its
20 entirety.
21

22 DATED: May 12, 2021

23 Respectfully submitted,

24
25 BY: 

26 Robert P. Roy
27 Michael P. Roy
28 Attorneys for Respondent

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PROOF OF SERVICE

I, Aggie Salanoa, declare as follows:

I am a citizen of the United States, employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 916 W. Ventura Blvd., Camarillo, CA 93010.

On May 12, 2021, I served the attached:

RESPONDENT'S POST-HEARING BRIEF
[Case No. 2017-CE-008-SAL]

By Electronic File: The above referenced documents were "e-filed" today to the following parties at the listed e-file address; and

By Certified Mail: The above-referenced documents were mailed to the specified parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Camarillo, California; and

By Electronic Mail: The above-referenced documents were e-mailed, as noted, to the following parties at the listed e-mail addresses.


DISTRIBUTION LIST

Santiago Avila-Gomez Executive Secretary Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-File: Efile@alrb.ca.gov	Tony Dighera Cinagro Farms, Inc. 1547 Riverside Avenue Fillmore, CA 93015 E-Mail: tdighera@vahoo.com
Mark R. Soble Administrative Law Judge Agricultural Labor Relations Board 1325 J Street, Suite 1900 Sacramento, CA 95814 E-Mail: mark.soble@alrb.ca.gov	Marisol Jimenez 1201 W. Gonzalez Rd., Apt. 30 Oxnard, CA 93033 Certified Mail # 70150640000198015995
Jessica Arciniega, Assistant General Counsel Agricultural Labor Relations Board 1901 N. Rice Avenue, Suite 300 Oxnard CA 93030 E-Mail: jessica.arciniega@alrb.ca.gov	

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 12, 2021, at Camarillo, California.



Aggie Salanoa