



## Advisory to Interested Parties

**Date:** Monday, March 28, 2022

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### **ALRB Invites Briefs Regarding Treatment of Misclassification Under the Agricultural Labor Relations Act**

SACRAMENTO, Calif. – In an Administrative Order issued today in *Cinagro Farms, Inc.*, case no. 2017-CE-008-SAL, the Agricultural Labor Relations Board (ALRB or Board) invited the parties and amici to submit briefs addressing several issues related to how misclassification of workers should be handled under the Agricultural Labor Relations Act (Act).

The case is before the Board on exceptions filed by both the General Counsel and respondent Cinagro Farms, Inc. (Cinagro) to the Decision and Recommended Order of an administrative law judge (ALJ). The ALJ found Cinagro violated the Act by discharging a crew of workers who had complained about the form of their paychecks after being hired directly by Cinagro. The workers' paychecks lacked certain statutorily required information as a result of Cinagro's treatment of the workers as independent contractors rather than employees.

Because the misclassification of employees as independent contractors is a serious violation of California law and presents important issues under the Act, the Board invited the parties and any interested amici to file briefs addressing the following questions:

- (1) Is the ALRB bound by Labor Code section 1148 to follow the National Labor Relations Board decision, *Velox Express, Inc.* (2019) 368 NLRB No. 61?
- (2) If the ALRB is not bound to follow *Velox Express*, should the Board adopt a rule finding an agricultural employer's misclassification of agricultural employees as independent contractors constitutes a per se violation of Labor Code section 1153, subdivision (a)?

(3) If the Board finds an agricultural employer willfully misclassified agricultural employees as independent contractors, what is the scope of the Board's authority to assess civil penalties pursuant to Labor Code section 226.8, if any?

Chair Hassid and Members Broad, Flores, Hall, and Lightstone issued the Order and invitation.

The parties and any interested amici shall file briefs not exceeding 20 pages in length on or before May 27, 2022. The parties (but not amici) may file responsive briefs not exceeding 30 pages in length no later than June 13, 2022. No other briefs will be accepted. Motions for extensions of time will not be granted absent extraordinary circumstances. All briefs shall be filed with the Board electronically pursuant to Board regulation 20169 (Cal. Code Regs., tit. 8, § 20169). The parties and amici are reminded to serve all case participants.

Information about the case and a listing of case participants is available on the Board's website at <https://www.alrb.ca.gov/cinagro/>.

If assistance is needed in E-filing, please contact the Office of Executive Secretary at (916) 224-3806.

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