

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CINAGRO FARMS, INC.,	)	Case No. 2017-CE-008-SAL
	)	
Respondent,	)	ORDER REQUESTING
	)	SUPPLEMENTAL BRIEFING
and	)	RE: MISCLASSIFICATION OF
	)	EMPLOYEES
MARISOL JIMENEZ,	)	
	)	
Charging Party.	)	Administrative Order No. 2022-01
	)	
	)	(March 28, 2022)
	)	

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**ORDER**

The Agricultural Labor Relations Board (ALRB or Board) has decided to invite briefs from the parties and interested amici to consider whether the misclassification of agricultural employees as independent contractors constitutes an unfair labor practice in violation of section 1153, subdivision (a) of the Agricultural Labor Relations Act (ALRA or Act) and the scope of the remedies available to the Board in cases of misclassification.<sup>1</sup>

This 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 issued by Chief Administrative Law Judge Mark R. Soble (ALJ). Insofar as is relevant here, the ALJ concluded Cinagro violated section 1153, subdivision (a) by terminating a

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<sup>1</sup> The Act is codified at Labor Code section 1140 et seq. Subsequent statutory citations are to the Labor Code unless otherwise indicated.

crew of workers for engaging in concerted activity protected under the Act. Specifically, the employees complained to Cinagro about their paychecks not including proper paystubs after Cinagro directly hired the employees. The employees' paychecks lacked various statutorily required information and deductions, such as taxes and social security. (See § 226.) The lack of deductions and information accompanying the employees' paychecks derives from Cinagro's classification of the crew as independent contractors rather than employees. Indeed, the record evidences a practice by Cinagro of misclassifying agricultural employees as independent contractors from at least the time of the underlying events at issue in this case, beginning in 2016, to the time of the hearing before the ALJ in February 2021.

Misclassification of employees as independent contractors is a serious violation of California law and presents important issues under our Act. Accordingly, the parties and any interested amici are invited to file briefs addressing the following questions:

- (1) Is the ALRB bound by 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 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 section 226.8, if any?

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. The Board will make available on its website information regarding this case and a list of case participants.

DATED: March 28, 2022

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member