

# Farm Says DOL Overreached With H-2A Enforcement Trial

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By **Ethan Beberness**

Law360 (September 8, 2021, 6:37 PM EDT) -- A New Jersey family farm seeking to dodge a \$582,000 fine claimed on Wednesday the U.S. Department of Labor"appointed itself prosecutor, judge and jury" when it concluded that the farm was violating laws governing H-2A visas.

Sun Valley Orchards, operated by the Marino family in Swedesboro, New Jersey, argued in a complaint filed in New Jersey federal court that the DOL failed to give the farm a fair trial when it decided Sun Valley unlawfully caused workers to buy into a company-managed meal plan at about \$80 per week instead of providing cooking facilities as stated on its job order submitted to the agency to secure H-2A workers for the 2015 harvest season.

It isn't unusual for a government agency to handle matters related to its own enforcement actions in its own administrative courts, but giving an agency such a high level of control over its those actions undermines the independent judiciary, says Robert E. Johnson, an attorney from the Institute for Justice, which contributed to Sun Valley's complaint.

"The right to have an independent judge is what ultimately stands between anybody and the government," Johnson said. "If the government accuses you of doing something wrong, the Constitution gives you the right to have your day in court with a real judge — not in front of an agency bureaucrat."

The farm notes that it is "entirely legal" for it to operate a meal plan for its workers and that the cost of its own meal plan falls within the limits established by the Labor Department regarding how much employers may charge for meals, as well as the fact that it has continued to operate the meal plan since the 2015 season without objections from the agency.

"Nobody has any complaints about this meal plan," Johnson said. "Nobody has said that it is unlawful."

Sun Valley did not, however, list the wage deductions made for the meal plan on the job order given to the workers, thereby "depriving the workers of the wage promised to them," according to a related administrative court order issued in May.

The DOL Administrative Review Board judge who authored the May decision also stated that Sun Valley asserted in its job order for H-2A workers that it would "furnish free cooking and kitchen facilities" to those workers living in company-owned lodging. Upon inspection, the

agency found that the kitchen at the workers' lodging "was not large enough to allow the workers to cook their own meals after returning from their shifts."

Sun Valley claims this assertion by the DOL and the related portion of the fine is the result of a "mistake" in its job order to the H-2A program and notes that the error occurred during the farm's first year participating in the program.

"I wouldn't really contest that the farm made an error," Johnson said. "I think the question is: What's an appropriate sanction for that? Is it appropriate to destroy a business because they made a mistake in their first year filling out this paperwork?"

For Johnson, the fee is too high. "\$550,000 for this farm — they don't have \$550,000. If they have to pay that, it could very well put them out of business," he states.

The DOL assessed \$346,000 of the total fine — equivalent to the cost paid by all workers who used the meal plan — as back wages owed to the workers. The remainder of the fine results from civil penalties.

This suit is the latest development in Sun Valley's five-year-long challenge to the DOL's decision, which was first issued in June 2016.

The farm is seeking an injunction to stop the agency from enforcing its ruling and declarations by the court that the DOL's fine violated the Constitution's Excessive Fines Clause and the Administrative Procedure Act. Sun Valley also seeks compensation for costs and expenses associated with its challenge.

Sun Valley Orchards is represented by Scott M. Wilhelm of [Winegar Wilhelm Glynn & Roemersma PC](#) and Robert E. Johnson of the Institute for Justice.

Counsel information for the Labor Department was not available on Wednesday.

The case is Sun Valley Orchards LLC v. U.S. Department of Labor et al., case number [1:21-cv-16625](#), in the [U.S. District Court for the District of New Jersey](#).

--Editing by Jay Jackson Jr.

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