

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INTERNATIONAL)	Case No. 2023-LPA-002
BROTHERHOOD OF TEAMSTERS,)	
)	
Complaining Party,)	
)	
and)	49 ALRB No. 4
)	
)	(October 25, 2023)
NC3 SYSTEMS, INC.; NC3)	
SYSTEMS, INC. dba CALIVA; NC3)	
SYSTEMS, INC. dba DELI BY)	
CALIVA BELLFLOWER; CALIVA)	
CAMISJ2, INC. dba DELI BY)	
CALIVA SAN JOSE; COASTAL)	
DISPENSARY, LLC,)	
)	
Licensees,)	
)	
and)	
)	
NATIONAL AGRICULTURAL)	
WORKERS UNION,)	
)	
Challenged Labor Organization.)	
)	

DECISION

On July 27, 2023, complaining party International Brotherhood of Teamsters (Teamsters) filed a complaint with the Agricultural Labor Relations Board (ALRB or Board) pursuant to Business and Professions Code section 26051.5, subdivision (a)(5)(D). The complaint alleges that the National Agricultural Workers Union (NAWU) is not a bona fide labor organization for the purposes of the Medicinal and Adult-Use Cannabis

Regulations and Safety Act (MAUCRSA)¹, and that NAWU has entered into labor peace agreements (LPAs) with multiple licensees, including Nc3 Systems, Inc.; Nc3 Systems, Inc. dba Caliva; Nc3 Systems, Inc. dba Deli by Caliva; Caliva Camisj2, Inc. dba Deli by Caliva San Jose; and Coastal Dispensary, LLC (collectively referred to as the Licensees).

According to the Cannabis Unified License Search page² on the Department of Cannabis Control's (DCC) web site, Nc3 Systems, Inc. holds the following active licenses listed in the Teamsters' complaint: C10-0000441-LIC, C11-0000819-LIC, CCL18-0000036,³ CCL18-0000037,⁴ CCL18-0000038,⁵ CCL18-0000047,⁶ and CCL19-0000316.⁷ Nc3 Systems, Inc. dba Caliva holds the following active licenses listed in the Teamsters' complaint: C9-0000135-LIC and CDPH-10002244; Nc3 Systems, Inc. dba Deli by Caliva Bellflower holds the following license listed in the Teamsters' complaint: C10-0000627-LIC; and Caliva Camisj2, Inc. dba Deli by Caliva San Jose holds the following license listed in the Teamsters' complaint: C12-0000216- LIC. The Teamsters

¹ The MAUCRSA is codified at Business and Professions Code section 26000 et seq.

² Available at < <https://search.cannabis.ca.gov/> >.

³ Both the Teamsters' complaint and Caliva's website (< <https://caliva.com/licenses> >) list this license number as PML18-0000036.

⁴ The Teamsters' complaint lists this license as PAL18-0000037, but it is listed on Caliva's web site as PML18-0000037.

⁵ The Teamsters' complaint lists this license as MAL18-0000038, but it is listed on Caliva's web site as PAL18-0000038.

⁶ Both the Teamsters' complaint and Caliva's web site list this license number as PAL18-0000047.

⁷ Both the Teamsters' complaint and Caliva's web site list this license number as PAL19-0000316.

also served its complaint on Coastal Dispensary, LLC, which holds the following license according to the DCC’s Cannabis Unified License Search page: C10-0000062-LIC.

The MAUCRSA requires every applicant for a state license to attest that it has or will enter into an LPA with a bona fide labor organization after a threshold number of employees have been hired. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A)(i).)⁸ Under the MAUCRSA, labor organizations, or any current or former employee of a licensee, may file a complaint with the ALRB alleging that a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)(i).) Following receipt of such a complaint, the statute directs the Board to “consider all relevant evidence provided or obtained in rendering a decision” whether the challenged organization is a bona fide labor organization, and to issue a report to the DCC no later than 90 days after receipt of the complaint. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)(ii).) The Board has delegated to the General Counsel authority to investigate the complaint and to report to the Board its findings regarding whether an entity is a bona fide labor organization under the MAUCRSA. (See *Professional Technical Union, Local 33* (Mar. 30, 2023) ALRB Admin. Order No. 2023-02-P, pp. 2, 15.)

On August 18, 2023, the Board ordered that the General Counsel investigate the Teamsters’ complaint and file a report with the Board stating its findings and recommendations with respect to whether NAWU is a bona fide labor organization. The Board’s order also directed NAWU and the Licensees to answer the complaint and produce all evidence and authority upon

⁸ This threshold currently is 20 or more employees, but beginning July 1, 2024, is lowered to 10 or more employees.

which they rely in asserting NAWU is a bona fide labor organization. In addition, the order directed NAWU and Licensees to file with their answers unredacted copies all LPAs into which they have entered, and further directed NAWU additionally file all collective bargaining agreements that it has executed with any employer. (*National Agricultural Workers Union* (Aug. 23, 2023) ALRB Admin. Order No. 2023-07, pp. 3-4.)

On August 31, 2023, the Licensees filed an answer to the Teamsters' complaint. The answer asserts that the Licensees complied with all obligations necessary to apply for, receive, and maintain a license to conduct commercial cannabis activities, including entering into LPAs with NAWU, which "represents itself as an organization in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for employees." The Licensees deny that they "dominate" NAWU, as alleged by the Teamsters. The Licensees did not provide any evidence and authority upon which they rely in asserting NAWU is a bona fide labor organization as ordered by the Board.

NAWU did not file an answer, but on August 28, 2023, counsel for NAWU sent a letter to the General Counsel denying all allegations in the Teamsters' complaint.⁹ Counsel for NAWU states in his letter that NAWU is a "grassroots" labor organization formed in January 2020, but that organizing has been "excessively difficult" due to the COVID-19 pandemic and "workers' lack of interest." Despite entering into multiple LPAs,

⁹ NAWU asserts in its letter that its correct name is the "National Ag Workers Union." However, we note NAWU's constitution and bylaws refer to it as the "National Agricultural Workers Union." The LPA included with the Licensees answer similarly refers to NAWU as the "National Agricultural Workers Union."

NAWU asserts it “has been forced to shut down” due to “obstacles and associated costs.” NAWU thus claims “any further investigation into this matter is moot” because NAWU will be notifying all employers with which it has entered LPAs that it is withdrawing from them.¹⁰

Before NAWU’s August 28 letter, the General Counsel subpoenaed records from NAWU. NAWU did not respond to the subpoena or produce any responsive documents. The General Counsel also subpoenaed records from the Licensees. None of the Licensees responded to the subpoenas or produced responsive records.¹¹

During the investigation of the complaint, the General Counsel reviewed filings with the U.S. Department of Labor Office of Labor Management Standards (OLMS). These included the Labor Organization Annual Report (LM-4) forms for the years 2020, 2021, and 2022, and the Labor Organization Information Report (LM-1) with NAWU’s constitution and bylaws. According to these documents NAWU has only one officer, Sean McNally, who is both president and secretary-treasurer. McNally previously was licensed to practice law in California and currently serves as Chair of the California Commission on

¹⁰ According to the LPA search page on the DCC’s web site (< <https://cannabis.ca.gov/2023/08/labor-peace-agreements/> >), NAWU has entered into at least 18 LPAs with cannabis licensees.

¹¹ The General Counsel separately subpoenaed records from another employer, Flor East Bay, LLC, which is not named in the complaint, but which also had entered into an LPA with NAWU. According to the General Counsel, Flor East Bay, LLC indicated that it would cooperate with the subpoena, but needed additional time. The General Counsel withdrew this subpoena after receiving NAWU’s August 28, 2023 letter.

Health & Safety & Workers' Compensation (CHSWC).¹² NAWU has no employees, and only one member (presumably McNally). The forms indicate the amount of total receipts, including dues, was zero for all three years. There is an address in Bakersfield listed on the OLMS forms and one phone number -- both of which are the same information provided for McNally on The State Bar of California's attorney search page.¹³ NAWU does not have a web site or any other social media presence.

Pursuant to instructions set forth in our prior administrative order, the General Counsel filed its report and recommendations with the Board on September 7, 2023. The General Counsel recommends the Board find that NAWU is not a bona fide labor organization under MAUCRSA. Neither NAWU nor any of the Licensees filed a response to the General Counsel's report.

For the following reasons, we find NAWU is not a bona fide labor organization for purposes of the LPA and licensing requirements under the MAUCRSA within the meaning of Business and Professions Code sections 26001, subdivision (ab), and 26051.5, subdivision (a)(5)(D).¹⁴

¹² McNally's CHSWC member profile page is available on the Department of Industrial Relations' web site at < <https://www.dir.ca.gov/chswc/McNally.htm> >. We note McNally's profile page lists his involvement in various organizations but does not include any reference to NAWU.

¹³ Available at < <https://apps.calbar.ca.gov/attorney/Licensee/Detail/154253> >.

¹⁴ NAWU previously asserted that any further investigation into its status under MAUCRSA is moot by virtue of its representation that it was shutting down. Although neither NAWU nor the Licensees have asserted a mootness defense in response to the General Counsel's report, we have considered the issue and have determined that NAWU's bare assertion that it is ceasing operations and is withdrawing from all LPAs with cannabis employers does not render this matter moot. (*Professional Technical Union, Local 33* (2023) 49 ALRB No. 3, p. 5, fn. 6.)

DISCUSSION

I. Bona Fide Labor Organization Status Under the MAUCRSA.

The Board has found that the term “bona fide labor organization” in the MAUCRSA was intended to refer to labor organizations demonstrating “a sincere and good faith intent to organize and represent employees as a collective bargaining representative, including the capacity or ability to do so.” (*Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 5, citing *Professional Technical Union, Local 33, supra*, ALRB Admin. Order No. 2023-02-P, pp. 10-11.) This reflects the Legislature’s intent in requiring licensees enter into LPAs with labor unions that truly exist for the purpose of organizing and representing employees, as opposed to employer-sponsored or other groups that may nonetheless meet the statutory definition of a “labor organization” under the National Labor Relations Act (NLRA) or Agricultural Labor Relations Act (ALRA). (*Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 5; see 29 U.S.C. § 152(5); Lab. Code, § 1140.4, subd. (f).)

The record contains no evidence demonstrating NAWU has ceased operating, including any effort to withdrawal from any of its LPAs or notify any employer it will not renew an expired LPA. In fact, the Licensees’ answer -- filed after NAWU asserted it is shutting down and withdrawing from all LPAs -- makes no mention of NAWU’s claimed cessation of activity. As of the date of this decision NAWU remains listed on the DCC’s web site as having several unexpired LPAs. (Cf. p. 5, fn. 10, *supra*.) Accordingly, we will address the merits of this matter.

II. The Record Does Not Establish NAWU Is a Bona Fide Labor Organization Under the MAUCRSA.

A. NAWU Failed to Provide Information Regarding its Labor Peace Agreements with the Licensees and its Organizing Efforts.

NAWU failed to answer the LPA complaint as directed by the Board, and also failed to respond to the General Counsel's subpoena *duces tecum*. NAWU provided no evidence regarding the execution of its LPAs with the Licensees, no evidence of communication with any worker(s) covered by the LPAs, and no evidence to corroborate its claim that it attempted to organize workers. NAWU provided only a one-page letter denying all allegations in the complaint.

NAWU claimed that after it was founded as a "grassroots" labor organization in early 2020, it attempted to organize workers using volunteers, but was met with obstacles such as the COVID-19 pandemic and cannabis workers' lack of interest. However, NAWU did not provide any evidence to support its claim that it made efforts to organize and represent cannabis workers, such as literature, brochures, or flyers distributed to the workers. NAWU failed to show that it had any meaningful online presence where individuals could have learned about the organization, contacted NAWU, McNally (NAWU's only officer), or any of its alleged "volunteer" organizers (assuming there ever were any). Generally speaking, a union consists of some kind of group of workers, or at least more than one worker, to advocate, negotiate, and represent the workforce as a whole. NAWU presents no interest of anyone other than President/Secretary-Treasurer McNally in the alleged work of NAWU to represent cannabis workers.

This complete lack of information, coupled with the Licensees' failure to

participate in these proceedings in any meaningful way warrants an inference of impropriety in the arrangement between NAWU and the Licensees. (*Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 9; *Williamson v. Superior Court* (1978) 21 Cal.3d 829, 835, fn. 2, quoting *Breland v. Traylor Engineering & Mfg. Co.* (1942) 52 Cal.App.2d 415, 426; *Martinez v. City of Beverly Hills* (2021) 71 Cal.App.5th 508, 522; Evid. Code, § 413.)

B. NAWU Failed to Provide Evidence of Any Good Faith or Sincere Intent to Organize and Represent Workers in California’s Cannabis Industry.

Notwithstanding NAWU’s and the Licensees’ insistence that NAWU exists for the purpose of representing workers, the record before us does not support a finding that NAWU is a bona fide labor organization that fulfills the MAUCRSA’s LPA requirements, which exist for the purpose of ensuring workers in the emerging cannabis industry have access and obtainable means to learn of and exercise their labor rights if they choose to do so. (*Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 19.)

1. *NAWU Lacks the Characteristics of True Grassroots Labor Organizations.*

NAWU alleges that it was founded as a “grassroots” labor organization in early 2020. As the Board has previously explained, “we are mindful that new or grassroots organizations must not be excluded from the definition [of bona fide labor organization] just because they have not yet won representation rights or do not currently represent employees.” (*Professional Technical Union, Local 33, supra*, ALRB Admin. Order No. 2023-02-P, p. 11, citing *Coinmach Laundry Corp.* (2002) 337 NLRB 1286.) However, NAWU has failed to provide any evidence showing that it was formed for the purpose of representing employees rather than purely as a business opportunity of some kind. In fact, NAWU does not even meet

the bare minimum statutory requirements to be deemed a “labor organization” under MAUCRSA, let alone a “bona fide” one. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(E)(ii) [defining “labor organization” as, among other things, an organization “in which employees participate”]; *Professional Technical Union, Local 33, supra*, ALRB Admin. Order No. 2023-02-P, p. 10.) As previously stated, there is no evidence that any workers participated in, or even were members of, NAWU.

“Start-up” or “grassroots” labor unions typically involve organic, employee-led movements epitomizing a true exercise of employees’ right to self-organization. (29 U.S.C. § 157; Lab. Code, § 1152.) A recent example of a grassroots union is the Amazon Labor Union (ALU). Amazon employees founded the ALU and began a campaign to organize Amazon workers at its Staten Island fulfillment center. (See *Amazon.com Services LLC* (Jan. 30, 2023) 2023 NLRB LEXIS 33, *4-5.) An administrative law judge noted that Amazon employees “have held leadership positions in the [ALU], obtained authorization cards, circulated petitions, and otherwise engaged in organizing.” (*Id.* at *5.) Organizing efforts at Starbucks stores in recent years also illustrate these principles. (See, e.g., *Starbucks Corp.* (Mar. 1, 2023) 2023 NLRB LEXIS 99, *35-38; *Siren Retail Corp. dba Starbucks* (Jan. 31, 2023) 2023 NLRB LEXIS 35, *8-9.)

National Labor Relations Board (NLRB) precedent involving start-up labor unions further reflect this notion that such grassroots movements begin with, or at least rely upon, the employees themselves. For example, *Coinmach Laundry Corp.* involved a union started by three individuals, at least one of whom was a current employee, and which grew to about 50 employee members. (*Coinmach Laundry Corp., supra*, 337 NLRB 1286, 1287.)

Similarly, in *Betances Health Unit, Inc.* an employee association started by a group of employees was found meet the basic requirements to be a labor organization. (*Betances Health Unit, Inc.* (1987) 283 NLRB 369, 374-375.) Other NLRB decisions are in accord. (See *Yale New Haven Hosp.* (1992) 309 NLRB 363, 363-364; *Roytype, Div. of Litton Business Systems, Inc.* (1972) 199 NLRB 354, 355; *Comet Rice Mills* (1972) 195 NLRB 671, 674; *The East Dayton Tool & Die Co.* (1971) 194 NLRB 266.)

In contrast, NAWU appears to have been established by an individual, McNally, without any connection to organized labor or actual workers. It was apparently a ghost entity whose sole purpose was to enter into LPAs with cannabis employers so they could meet licensing conditions.¹⁵

2. *The Record Lacks Evidence of NAWU's Representative Functions and Membership Participation*

Evidence of an entity's representative functions is a key factor in determining whether a labor union is bona fide. (*Professional Technical Union, Local 33, supra*, ALRB Admin. Order No. 2023-02-P, p. 11, citing *Int'l Brotherhood of Service Station Operators of America* (1974) 215 NLRB 811, 813-815; See *Douglas Oil Co.* (1972) 197 NLRB 308, 311; *McDonald's of Canoga Park Cal., Inc.* (1966) 162 367, 368.)

¹⁵ We note that 29 U.S.C. § 186(a) proscribes bribery, graft, and conflict-of-interest payments of money and other prohibited things of value to representatives of employees, labor union officials, and labor organizations by employers or persons acting in the interest of employers, whose labor-management relations are governed by the Labor Management Relations Act. (29 U.S.C. Sec. 141, et seq.) The maximum term of imprisonment for a violation is five years plus a fine. (29 U.S.C. § 186(d).) To be clear, we have no evidence that money or any prohibited thing of value was exchanged in this case, however, we offer this information to help educate the industry generally that being a labor union is not a for-profit business opportunity and treating it like one can have adverse consequences.

The forms filed with the OLMS indicate that NAWU has a single officer, McNally, serving as both president and secretary-treasurer. NAWU's constitution and bylaws are not signed or dated, calling into question how they were ratified. There are no financial records, meeting minutes or meeting agendas. Moreover, there is no evidence that workers participate in NAWU. NAWU provided no evidence to support the claim that it attempted to organize workers using volunteers. It is curious why the leader of an organization would take steps to file LM-4 forms with the U.S. Department of Labor detailing organizational information over trying to see if any cannabis employee was interested in joining or developing NAWU. It is even more curious that NAWU was sophisticated enough to sign LPAs with multiple different employers but cannot produce any evidence demonstrating a history of representing workers or even trying to incentivize workers to join the organization.

The lack of such evidence weighs heavily against finding that NAWU exists for the purpose of representing employees.

3. *NAWU Lacks the Ability and Capacity to Represent Workers*

NAWU failed to provide evidence showing that it was accessible to workers or to the general public. NAWU does not have a website or any other social media presence. There is an address in Bakersfield listed on the OLMS forms, and one phone number, but there is no evidence that this information was made available to workers. It is entirely unclear how anyone, including employees who would be interested in organizing, could contact NAWU or even know of its existence. (*Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 11, citing *Int'l Brotherhood of Service Station Operators of America, supra*, 215 NLRB 811, 815.) There is no evidence that NAWU contacted any employee of any

Licensee to inform them that their employer had an LPA with NAWU.

Finally, NAWU has indicated that it plans to cease operations. This is a clear indication that it lacks the ability, capacity and intent to represent employees as a collective bargaining representative.

In sum, NAWU has not demonstrated any sincere or good faith effort to organize and represent cannabis workers in California, including its capacity and ability to do so. Nor does the record suggest it had any real intention of organizing workers in California's cannabis industry. These findings compel our conclusion that NAWU does not constitute a bona fide labor organization within the meaning of MAURCRSA's LPA and licensing requirements.

CONCLUSION

In accordance with the foregoing discussion, the Board hereby finds:

1. The National Agricultural Workers Union is not a bona fide labor organization within the meaning of Business and Professions Code sections 26001, subdivision (ab), and 26051.5, subdivision (a)(5)(D); and further that
2. By operation of Business and Professions Code section 26051.5, subdivision (a)(5)(D)(iii), the labor peace agreements between the National Agricultural Workers Union and Nc3 Systems, Inc.; Nc3 Systems, Inc. dba Caliva; Nc3 Systems, Inc. dba Deli by Caliva; Caliva Camisj2, Inc. dba Deli by Caliva San Jose; and Coastal Dispensary, LLC are null and void.

The findings stated herein are confined to whether the National Agricultural Workers Union constitutes a bona fide labor organization under the MAUCRSA and shall not

be interpreted or construed as making any finding whether the National Agricultural Workers Union is a “labor organization” within the meaning of NLRA Section 2(5) or Labor Code section 1140.4, subdivision (f). (See *Professional Technical Union, Local 33, supra*, 49 ALRB No. 3, p. 20.)

This decision will be transmitted immediately to the Department of Cannabis Control so that it may take action pursuant to Business and Professions Code section 26051.5, subdivision (a)(5)(D)(iii) with regard to all licensees that have signed labor peace agreements with the National Agricultural Workers Union.

DATED: October 25, 2023

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

AMENDED PROOF OF SERVICE
(Code Civ. Proc., §§ 1013a, 1013b, 2015.5)

Case Name: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Complaining Party;
and
NC3 SYSTEMS, INC.; NC3 SYSTEMS, INC. dba CALIVA; NC3 SYSTEMS,
INC. dba DELI BY CALIVA BELLFLOWER; CALIVA CAMISJ2, INC. dba
DELI BY CALIVA SAN JOSE; COASTAL DISPENSARY, LLC, Licensees,
and
NATIONAL AGRICULTURAL WORKERS UNION, Challenged Labor
Organization

Case No.: 2023-LPA-002

I am over the age of 18 years and not a party to this action. I am employed in the County of Sacramento. My business address is 1325 J Street, Suite 1900-B, Sacramento, California 95814.

On October 25, 2023, I served this **DECISION (49 ALRB No. 4)** on the parties in this action as follows:

- **By Email** to the parties pursuant to Board regulation 20169 (Cal. Code Regs., tit. 8, § 20169) from my business email address angelica.fortin@alrb.ca.gov:

Julia L. Montgomery
General Counsel

Julia.Montgomery@alrb.ca.gov

Franchesca C. Herrera
Deputy General Counsel

Franchesca.Herrera@alrb.ca.gov

Renee Sanchez
Hayes, Ortega & Sanchez, LLP
Counsel for Complaining Party International Brotherhood of Teamsters

rqs@sdlaborlaw.com

Michael Pedhirney, Esq.
Littler Mendelson

mpedhirney@littler.com

Counsel for Licensees Nc3 Systems, Inc.; Nc3 Systems, Inc. dba Caliva; Nc3 Systems, Inc. dba Deli by Caliva; Caliva Camisj2, Inc. dba Deli by Caliva San Jose; and Coastal Dispensary, LLC

Kevin B. Piercy, Esq.
Raimondo | Miller

kbp@raimondomiller.com

Counsel for Challenge Labor Organization National Agricultural Workers Union

Executed on October 25, 2023, at Sacramento, California. I certify under penalty of perjury that the foregoing is true and correct.

Angelica Fortin

Angelica Fortin
Legal Secretary