

AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT
VOLUME 49 (2023)

***Note New Sections:**

- 800.00** *Labor Peace Agreement Complaints; Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)*
- 800.01** *In General*
- 800.02** *Service of Labor Peace Agreement Complaints*
- 800.03** *MAUCRSA Definitions; Labor Peace agreements, Labor Organizations*
- 800.04** *Bona Fide Labor Organization Status Under MAUCRSA*
- 800.05** *General Counsel Investigations; Adverse Inferences*
- 800.06** *Defenses; Mootness*

ZABALA FARMS OF SALINAS
(Berenice Vargas Martinez)

49 ALRB No. 1
Case No. 2021-CE-018-SAL

- 457.01 The Board may review and correct errors in an administrative law judge’s recommended remedy sua sponte. ZABALA FARMS OF SALINAS, LLC, 49 ALRB No. 1.
- 466.04 The Board’s standard unfair labor practice notice remedies include posting the notice at the worksite for 60 days, mailing notices to agricultural employees employed during a one-year period commencing on the date of the violation, reading the notice to employees on company time, and provision of the notice to employees hired by the respondent during the one-year period after the order becomes final. ZABALA FARMS OF SALINAS, LLC, 49 ALRB No. 1.

GERAWAN FARMING, INC.
(United Farm Workers of America)

49 ALRB No. 2
Case No. 2012-CE-0041-VIS

- 464.01 The Board may reject or modify a regional director’s method for calculating makewhole where a charging party or respondent can demonstrate the method used is arbitrary, unreasonable, or inconsistent with Board precedent, or that some other method of determining the makewhole amount is more appropriate. This standard is disjunctive, and the Board is not required to find the regional director’s formulas or calculations to be arbitrary, unreasonable, or inconsistent with precedent before exercising our discretion to determine whether a different

computation submitted by a respondent is a preferable alternative. GERAWAN FARMING, INC., 49 ALRB No. 2.

464.01 The Board has never demanded perfect concurrency between a comparable contract and a makewhole period, and the Board has approved the use of contracts as comparable where they were in effect during part of the makewhole period. Unlike situations where a proffered comparable contract bears no temporal proximity to a makewhole period, a mandatory mediation and conciliation contract was deemed to bear a sufficient temporal relationship to a makewhole period that was deliberately defined to abut and terminate immediately upon the commencement of the contract's effective date. GERAWAN FARMING, INC., 49 ALRB No. 2.

464.01 The Board consistently rejects the use of contracts reached after findings of bad faith bargaining for purposes of calculating the amount of a bargaining makewhole remedy. The reasons underlying this rule cannot be understated. Such tactics undermine the union's status in the eyes of the employees, lead to a loss of support by virtue of the union's perceived ineffectiveness in achieving a contract for the employees who selected it, and force the union to deal with the employer from a weakened position. GERAWAN FARMING, INC., 49 ALRB No. 2.

464.01
701.10 The mandatory mediation and conciliation process includes numerous safeguards and protections to foreclose the undue effects of an employer's bad faith negotiating tactics, equalize the parties' bargaining strength, and ensure a level playing field to enable the efficient conclusion of a collective bargaining agreement. In doing so, the process sufficiently insulates parties, particularly labor organizations seeking to achieve a first collective bargaining agreement, from the typical types of bad faith tactics employers use to delay or prevent finalization of a contract and to weaken a union's standing. GERAWAN FARMING, INC., 49 ALRB No. 2.

464.04 Our precedent clearly states a preference for calculating the amount of bargaining makewhole owed based on comparable contracts with similarly situated employers. GERAWAN FARMING, INC., 49 ALRB No. 2.

464.04 For purposes of calculating makewhole a detailed showing of contract comparability is not required, and the inquiry whether a contract is comparable for purposes of measuring makewhole focuses on a similarity of operations with regard to such factors as crops, locale, nature of the industry, methods of operations, and work force. The Board also

considers the time period covered by a contract in assessing whether it is comparable. GERAWAN FARMING, INC., 49 ALRB No. 2.

- 464.04 When no comparable contract exists, alternative formulas may be used to determine the amount of a makewhole remedy, such as the contract averaging method. The Board has found contract averaging to be an effective method for calculating makewhole awards where comparable contracts do not exist, and has concluded that this approach of averaging wages and benefits over a larger sampling of contracts effectively mitigates concerns over the contracts not being comparable for makewhole purposes. GERAWAN FARMING, INC., 49 ALRB No. 2.
- 464.04 Reflecting our preference for efficient proceedings and to avoid time-consuming delays in calculating a fair approximation of what the employees reasonably may have received had a timely contract been negotiated by their employer in good faith, we have rejected the use of more complex alternative methods for calculating makewhole where there exists only a single comparable contract, even if negotiated by a different union. GERAWAN FARMING, INC., 49 ALRB No. 2.
- 464.04 Use of a mandatory mediation and conciliation contract for the purpose of measuring a bargaining makewhole remedy involving the same parties is consistent with the purpose of the remedy, which is designed to give an employee the benefit of a collective bargaining agreement that would have been entered into but for the employer's bad faith. GERAWAN FARMING, INC., 49 ALRB No. 2.
- 464.04 A collective bargaining agreement achieved through mandatory mediation and conciliation is not an inferior contract, and a mandatory mediation and conciliation contract stands on the same footing and holds the same value as a collective bargaining agreement voluntarily reached through negotiations between a union and employer. GERAWAN FARMING, INC., 49 ALRB No. 2.
- 464.04 The threshold inquiry regarding whether a comparable contract exists or whether resort to an alternative formula is necessary has nothing to do with what wages and benefits are contained within the proffered comparable contract. Instead, the Board focuses its attention on the similarities of the employers and their operations. If the subject employer and its operations are deemed similar, the contract (with whatever its wages and benefits happen to be) then is applied to the makewhole employer. GERAWAN FARMING, INC., 49 ALRB No. 2.

205.01 The NLRB has interpreted the term “labor organization” broadly to
800.03 include any organization in which (1) employees participate, (2) for the
purpose, at least in part, of dealing with employers, (3) concerning
grievances, labor disputes, or other terms and conditions of employment.
PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No.
2023-02-P.

205.01 A new union that has not yet won representation rights may be found to
800.03 be a labor organization under NLRA Section 2(5) if it otherwise meets
the statutory criteria. Similarly, an organization that lacks a formal
constitution or bylaws, or has not complied with certain Department of
Labor filing requirements may be found to be a labor organization
because such structural formalities are not a statutory prerequisite to labor
organization status. PROFESSIONAL TECHNICAL UNION, LOCAL
33, Admin. Order No. 2023-02-P.

205.01 While a broad interpretation of labor organization status under the ALRA
800.03 and NLRA makes sense in light of the Congressional history and intent
behind the statutory language, such an approach does not comport with
our Legislature’s intent in adopting the labor peace agreement licensing
requirements under the MAUCRSA or in enacting AB 195.
PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No.
2023-02-P.

205.01 Congress intended its broad definition of labor organization in NLRA
800.03 Section 2(5) to include employee committees or groups dominated,
sponsored, formed, or organized by employers. This is necessary to give
effect to the NLRA’s proscription against employer-organized groups. In
this regard, it is an unfair labor practice for an employer to “dominate or
interfere with the formation or administration of any labor organization or
contribute financial or other support to it,” and the remedy for such an
unfair labor practice is disbandment of the employer-dominated labor
organization. PROFESSIONAL TECHNICAL UNION, LOCAL 33,
Admin. Order No. 2023-02-P.

800.01 Under the MAUCRSA, an applicant for a license to conduct commercial
cannabis activities and who has 20 or more employees — or 10 or more
beginning July 1, 2024 — must “provide a notarized statement that the
applicant will enter into, or demonstrate that it has already entered into ...
a labor peace agreement” with a bona fide labor organization.

- 800.01 AB 195 establishes a process by which labor organizations, or any current or former employee of a licensee, may complain to the ALRB that a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. 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 Department of Cannabis Control no later than 90 days after receipt of the complaint. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.01 If the Board finds the challenged organization is not a bona fide labor organization, the labor peace agreement between the licensee and organization “shall be null and void.” The Department of Cannabis Control then is required to “promptly notify all licensees that have signed labor peace agreements with the [non-bona fide labor organization]” and provide those licensees a reasonable time, not to exceed 180 days, to enter into new labor peace agreements with bona fide labor organizations.” A licensee’s failure to do so will be deemed a violation of the MAUCRSA’s licensing requirements. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.02 Where a corporation is designated as a business entity’s agent for service, Corporations Code section 515, subdivision (a) requires that corporation to identify the street address of any office it maintains in this state and the names of individuals employed there authorized to receive and accept service on behalf of the designating entity. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.02 Service on a labor organization generally must be made “on an officer or agent” of the labor organization. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.03 The MAUCRSA’s definition of the term “labor organization” largely tracks the definition of “labor organization” found in the NLRA and ALRA. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.

- 800.03 We do not believe the Legislature intended to allow applicants for cannabis licenses to satisfy applicable licensing requirements by entering into labor peace agreements with employer-sponsored groups or organizations that do not truly exist for the purpose of representing employees for collective bargaining purposes. The statutory definition of labor peace agreement includes references to a bona fide labor organization's efforts to "organize and represent" the applicant's employees, discussing with the employees "their right to representation," and further contemplates methods by which the bona fide labor organization may be elected or certified as the employees' exclusive bargaining representative. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.04 While the MAUCRSA defines the term labor organization specifically for purposes of Business and Professions Code section 26051.5, subdivision (a)(5), it does not separately define what constitutes a bona fide labor organization under the MAUCRSA. Under settled rules of statutory construction, we must presume the Legislature intended the term "bona fide labor organization" to mean something different than what is encompassed in the provision generally defining the term "labor organization." PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.04 The NLRB has drawn a distinction between an organization that may fall within the NLRA Section 2(5) definition of labor organization and an organization that may be found to be a "bona fide collective bargaining representative." The NLRB has found an organization to be a "labor organization" within the meaning of NLRA Section 2(5) but not a bona fide collective bargaining representative where the record established it was "indifferent to employee interests, unwilling or unable to represent the employees fairly, impartially and in good faith," and "lack[ed] the capacity to act as the representative of the employees." We find this distinction relevant to our inquiry under the MAUCRSA whether a licensee has entered into a labor peace agreement with an organization that does not constitute a bona fide labor organization. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.
- 800.04 In addition to the emphasis placed on employee participation in order to be deemed a labor organization, to constitute a bona fide labor organization within the meaning of the MAUCRSA there must be evidence of a sincere and good faith intent to organize and represent employees as a collective bargaining representative, including the

capacity or ability to do so. Evidence of an organization's representative functions are highly probative in this regard. This approach reflects the Legislature's intent in requiring licensees enter into labor peace agreements with bona fide labor organizations that truly exist for the purpose of organizing and representing employees for collective bargaining purposes. PROFESSIONAL TECHNICAL UNION, LOCAL 33, Admin. Order No. 2023-02-P.

PROFESSIONAL TECHNICAL UNION, LOCAL 33 49 ALRB No. 3
(Intl. Brotherhood of Teamsters) Case No. 2023-LPA-001

205.01 Local union chapters are separate and distinct entities from their international parents and from each other. Even though several local chapters share a common affiliation with an international union, the locals and international are each separate and distinct labor organizations. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

205.01 While an uncertified international union can aid a local during the collective bargaining process, it cannot displace it. Certification of one union is not certification of two unions. Thus, with respect to a union's status as a certified bargaining representative we may not assume that certification of an international union or a local union is without significant distinction or that in certifying one, the Board thereby certifies its parents or affiliates, as the case may be. It is well settled that for purposes of the Act a local union is a separate legal entity apart from the parent union with which it is affiliated and that it is not a mere branch or administrative arm of the latter. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

800.01 The MAUCRSA's labor peace agreement requirements are consistent with the general public policy of this state to encourage labor organizing and workers' access to labor organizations to represent them in dealings with their employers. Labor peace agreements are a tool by which workers may be introduced to a labor organization and otherwise learn about their labor and employment rights in the workplace. The real harm of sham labor peace agreements is not giving legitimacy to a non-bona fide labor organization, it is depriving workers that may be particularly vulnerable to exploitative practices of their right to learn about or be made aware of their employment rights. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

600.17 An organization's refusal to respond to basic questions during the course
800.05 of the General Counsel's investigation about the circumstances under which it obtained its labor peace agreement with a licensee, coupled with

the licensee’s complete refusal to participate in the investigation, warrants an inference that the parties entered into a “sham relationship” to deprive the employees “real representation, by a real labor union” and for the purpose of the licensee being able to clear a licensing requirement on its application with the Department of Cannabis Control. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

600.17 A party’s refusal to produce information responsive to a request or that
800.05 naturally would have been produced by an honest and fearless claimant permits an inference that the information is unfavorable and adverse to the party’s interests. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

800.04 The Legislature’s use of 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, consistent with the Legislature’s intent in requiring licensees enter into labor peace agreements with bona fide labor organizations that truly exist for the purpose of organizing and representing employees for collective bargaining purposes. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

800.04 An organization’s lack of physical presence in California and lack of any meaningful online presence, including its lack of visibility or accessibility to the employees, buttresses an inference of impropriety in the arrangement between a licensee and an organization with which has entered a labor peace agreement. Pro-Tech 33 has no offices or any organizing presence in California. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

800.06 Expiration of a labor peace agreement during the pendency of an investigation into a labor organization’s alleged non-bona fide status, standing alone, will not render a matter moot. PROFESSIONAL TECHNICAL UNION, LOCAL 33, 49 ALRB No. 3.

NATIONAL AGRICULTURAL WORKERS UNION 49 ALRB No. 4
(Intl. Brotherhood of Teamsters) Case No. 2023-LPA-002

205.01 Employee participation is critical to a finding of labor organization
800.03 status, and an organization in which employees do not participate do not fall within the statutory definition of a “labor organization.” NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

- 205.01 “Start-up” or “grassroots” labor unions typically involve organic,
800.03 employee-led movements reflecting the exercise of employees’ rights to self-organization, as opposed to an individual with no connection to the workers or organized labor who one day begins calling himself a “labor organization.” NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

- 600.17 A party’s failure to cooperate and participate in the general counsel’s
800.05 investigation of its status as a labor organization warrants an inference of impropriety. NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

- 800.04 New or grassroots organizations must not be excluded from the definition of a bona fide labor organization just because they have not yet won representation rights. NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

- 800.04 Evidence of an organization’s representative functions is a key factor in determining whether a labor union is bona fide. NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

- 800.06 A party’s bare assertion it is ceasing operations does not render a matter moot. NATIONAL AGRICULTURAL WORKERS UNION, 49 ALRB No. 4.

GERAWAN FARMING, INC.
(United Farm Workers of America)

Admin. Order No. 2023-12-P
Case No. 2012-CE-041-VIS

- 460.05 The filing of a bankruptcy petition will not operate to automatically stay administrative proceedings before the Agricultural Labor Relations Board, which constitute a proceeding by a governmental agency to enforce its police and regulatory power within the meaning of 11 U.S.C. § 362(b)(4). GERAWAN FARMING, INC., Admin. Order No. 2023-12-P.

- 460.05 Proceedings to fix the amount of a monetary remedy owed by an employer fall within the 11 U.S.C. § 362(b)(4) automatic stay exemption. GERAWAN FARMING, INC., Admin. Order No. 2023-12-P.

- 460.05 Proceedings to determine the amount of bargaining makewhole owed by an employer can continue unabated up to and including the point of entry of a court judgment with respect to the amount of the monetary remedy owed, but any further proceedings to actually enforce a monetary award

are subject to the bankruptcy stay. GERAWAN FARMING, INC.,
Admin. Order No. 2023-12-P.

460.05 When a case is exempt from the automatic bankruptcy stay, it is not
necessary to request an exemption or otherwise seek relief from the
bankruptcy court as a prerequisite to conducting further proceedings in
the matter exempt from the stay. GERAWAN FARMING, INC., Admin.
Order No. 2023-12-P.