

33 (Pro-Tech 33), an organization the Teamsters allege is not a bona fide labor organization.¹ As this is the Board's first labor peace agreement complaint under Business and Professions Code section 26051.5, subdivision (a)(5)(D), on March 30 we issued Administrative Order No. 2023-02-P delegating investigation of the complaint to the General Counsel and providing guidance regarding the relevant inquiries to be made in determining whether an organization is a bona fide labor organization for purposes of the labor peace agreement licensing requirements under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), codified at Business and Professions Code section 26000 et seq.² Finding the Teamsters' complaint was not properly served on Three Habitat or Pro-Tech 33, we also instructed the Teamsters to refile and serve the complaint in accordance with instructions set forth in our order. The Teamsters did so on April 7, and the General Counsel thereupon commenced its investigation.

Pro-Tech 33 answered the complaint on May 4. The General Counsel subpoenaed records from both Pro-Tech 33 and Three Habitat. Pro-Tech 33 produced some responsive records, while failing and refusing to produce other requested information. Pro-Tech 33 also produced its president and vice president, as well as five union stewards of other locals affiliated with the National Production Workers Union

¹ According to the Cannabis Unified License Search page on the Department of Cannabis Control's (DCC) web site, Three Habitat holds a provisional license, no. C10-0000675-LIC, effective from January 14, 2020, to January 13, 2024. (See <<https://search.cannabis.ca.gov/results/13094>>, as of July 5, 2023, archived at <<https://perma.cc/ABG7-94PX>>.)

² *Professional Technical Union, Local 33* (Mar. 30, 2023) ALRB Admin. Order No. 2023-02-P (*Pro-Tech 33*).

(NPWU) — the national union with which Pro-Tech 33 also is affiliated, for investigative interviews with General Counsel staff.³ Pro-Tech 33’s counsel, Patrick Calihan, also provided some information to the General Counsel during the course of the investigation.

Three Habitat completely failed and refused to participate in this proceeding. It did not answer the Teamsters’ complaint nor did it respond in any manner to the subpoena served on it by the General Counsel.⁴

Pursuant to instructions set forth in our prior administrative order, the General Counsel filed its report and recommendations with the Board on June 8. The General Counsel recommends in its report the Board find Pro-Tech 33 “to not be a bona

³ General Counsel staff interviewed (1) Joe Senese, who serves as president of Pro-Tech 33 and also vice president of NPWU; (2) Jose Diaz, who serves as vice president of Pro-Tech 33 and also recording secretary of NPWU; (3) Kevin Burns, the chief union steward at Pacific Rail Services in Illinois where NPWU Local 707 is the bargaining representative; (4) Phil Gonzalez, an assistant union steward at Parsec, Inc. at the Los Angeles Transportation Center and a member of Truck Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 707 (Local 707); (5) Miguel Jesus Cedillo, a chief union steward with Local 707 at Parsec, Inc. in the City of Industry; (6) Bryan Christopher Thomas, a chief union steward with Local 707 at Koch Foods’ distribution center at their Illinois facility; and (7) Fermin Gomez, a union steward with Local 707 at Koch Foods.

⁴ A Google search for “One Plant Palm Springs” produces results indicating this business is “temporarily closed.” (Archived at <<https://perma.cc/36TW-2M7H>>, as of July 5, 2023.) And although Three Habitat appears to operate “One Plant” stores in different cities across California, its web site does not include Palm Springs among its locations. (See <<https://www.oneplant.life/weed-dispensary/locations/california>>, as of July 5, 2023, archived at <<https://perma.cc/6M4U-K4YL>>.) The second hit on the Google search described above is a “Yelp” page about the One Plant Palm Springs store, and the most recent review posted on that page, dated March 30, 2023 -- about two weeks after the Teamsters filed its complaint -- states the business is closed and there is a note on the door stating “closed until further notice.” (See <https://www.yelp.com/biz/one-plant-palm-springs-palm-springs?sort_by=date_desc>, as of July 5, 2023, archived at <<https://perma.cc/4ZHM-69VY>>.)

fide labor organization as contemplated by the labor peace agreement requirements under MAUCRSA for California employees at this time.” Pro-Tech 33 timely filed a response to the report on June 16.⁵

For the following reasons, we find Pro-Tech 33 is not a bona fide labor organization for purposes of the labor peace agreement and licensing requirements under the MAUCRSA within the meaning of Business and Professions Code sections 26001, subdivision (aa), and 26051.5, subdivision (a)(5)(D). In addition, there appear to be serious questions about Three Habitat, including whether it continues to conduct business. (See p. 3, fn. 4, *supra*.) Furthermore, the record before us establishes the labor peace agreement between Three Habitat and Pro-Tech 33 expired as of June 1, 2023. Therefore, assuming Three Habitat does still operate, it appears it is doing so without a valid labor peace agreement in effect. (Cf. Bus. & Prof. Code, § 26051.5, subd. (a)(5)(B) [providing that maintenance and compliance with a labor peace agreement is a condition

⁵ As a general matter, although Pro-Tech 33 disputes the General Counsel’s recommendation as stated in its report, as well as the rationale on which the recommendation is based, Pro-Tech 33 does not dispute the facts set forth in the General Counsel’s report or the accompanying declaration in support of it. In its response, Pro-Tech 33 also includes several “requests for relief,” ranging from rejecting the General Counsel’s recommendations outright to limiting the scope of any finding of non-bona fide labor organization status to the MAUCRSA’s licensing requirements specifically and without effect on Pro-Tech 33’s other representational functions. Pro-Tech 33 also attaches a “notice” to its response which it purports to be a letter Pro-Tech 33 will send to employees of licensees with whom it has entered labor peace agreements to inform them of Pro-Tech 33’s organizing efforts. Our prior administrative order clearly stated we will not consider any evidence or argument a party does not first submit to the General Counsel during the course of its investigation (*Pro-Tech 33, supra*, ALRB Admin. Order No. 2023-02-P, pp. 15-16), and we thus do not consider this new evidence submitted by Pro-Tech 33.

of licensure].)⁶

DISCUSSION

I. Bona Fide Labor Organization Status Under the MAUCRSA.

In *Pro-Tech 33*, *supra*, ALRB Administrative Order No. 2023-02-P, at page 10, we concluded 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.” We found this approach most faithfully reflected 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,” as opposed to employer-sponsored or other groups that may nonetheless meet the statutory definition of a “labor organization” under Section 2(5) of the National Labor Relations Act (NLRA)⁷

⁶ Although no party has asserted this matter has become moot by virtue of the expiration of the labor peace agreement between Three Habitat and Pro-Tech 33, we have considered the issue and have determined the expiration of the underlying agreement does not render this matter moot. In short, we cannot say on the record before us the parties either could not or would not extend the current agreement or enter into a new agreement if this matter was dismissed. (See *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.* (2000) 528 U.S. 167, 189; *San Francisco Baykeeper v. Tosco Corp.* (9th Cir. 2002) 309 F.3d 1153, 1159-1160; *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 151-152 [recognizing “the general principle that ‘voluntary cessation of allegedly illegal conduct ... does not make the case moot,’ but with the caveat that a ‘case may nevertheless be moot if the defendant can demonstrate that “there is no reasonable expectation that the wrong will be repeated””], quoting *U.S. v. W.T. Grant Co.* (1953) 345 U.S. 629, 632-633.)

⁷ 29 U.S.C. § 152(5).

or Labor Code section 1140.4, subdivision (f) under the Agricultural Labor Relations Act (ALRA). (*Id.* at pp. 9, 11.)

Accordingly, this is the framework that guides our inquiries in determining whether Pro-Tech 33 constitutes a bona fide labor organization within the meaning of the MAUCRSA's licensing requirements.

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

A. Pro-Tech 33 Refused to Provide Basic Information Regarding Its Labor Peace Agreement with Three Habitat.

The Teamsters' complaint includes a copy of the labor peace agreement between Three Habitat and Pro-Tech 33.⁸ The agreement purports to be signed by authorized representatives of Three Habitat and Pro-Tech 33, dated June 1, 2022, and states it is valid for one year from the date of execution.

Pro-Tech 33 failed and refused to provide information regarding the circumstances under which it obtained its labor peace agreement with Three Habitat. Senese stated he believes Three Habitat's attorneys contacted Pro-Tech 33. He provided no information regarding whom Three Habitat contacted at Pro-Tech 33, or who was most likely to have been contacted. Nor did he identify whom at Three Habitat initiated the contact or how. Pro-Tech 33 refused to produce any emails, communications, or records relating to the labor peace agreement and the circumstances under which it was reached.

⁸ Pro-Tech 33 does not dispute this is an accurate copy of its labor peace agreement with Three Habitat.

Senese admitted Pro-Tech 33 had no contact with Three Habitat or any employees there during the one-year period covered by the labor peace agreement. Senese further represented Pro-Tech 33 has no intention of renewing the labor peace agreement after it expired June 1, 2023.

Pro-Tech 33's failure to respond to basic inquiries regarding the labor peace agreement it has with the licensee named in this matter is both frustrating and disconcerting. This agreement lies at the heart of the dispute presently before us, and Pro-Tech 33's efforts to conceal such information suggest the types of improprieties the Legislature was concerned with when it adopted the labor peace agreement complaint procedure codified in Business and Professions Code section 26051.5, subdivision (a)(5)(D). (Legis. Counsel's Dig., Assem. Bill No. 195 (2021-2022 Reg. Sess.) Stats. 2022, ch. 56.)⁹

Pro-Tech 33's lack of presence in California, including its lack of visibility or accessibility to individuals who would even know to seek it out (see pages 16-17, *infra*), buttresses an inference of impropriety in the arrangement between Three Habitat

⁹ Although Business and Professions Code 26051.5, subdivision (a)(5)(D) charges our Board with responsibility for administering this labor peace agreement complaint procedure, the statute unfortunately provides us no enforcement authority to compel parties to comply with our investigations when a labor peace agreement complaint is filed. Pro-Tech 33's conduct throughout the General Counsel's investigation exploits this fact, and likely provides a glimpse at the type of conduct or tactics we are likely to encounter in these matters unless and until the Legislature amends the statutory scheme to provide us the tools necessary to enforce our investigative efforts. Notwithstanding our inability to seek judicial enforcement of investigative subpoenas in these proceedings, for example, we nonetheless may rightly infer Pro-Tech 33's noncompliant behavior is attributable to the fact the information it refused to provide would have been unfavorable or adverse to its position or contentions in this proceeding.

and Pro-Tech 33. Pro-Tech 33 has no offices or any organizing presence in California. Nor does it have any meaningful online presence where individuals could easily identify it or learn about it, let alone contact it or any of its officers. A basic internet search for “Professional Technical Union, Local 33” produces results primarily related to another labor organization, but does identify a single hit for a Facebook page for “Protech Local 33 – Home.”¹⁰ This Facebook page is a dearth of information.¹¹ It contains no information about Pro-Tech 33. There is no contact information or identification of its officers, nor is any physical address information listed. The last posting on the site is dated January 7, 2020, at 12:07 p.m., and the postings generally involve news articles related to the cannabis industry, as opposed to articles or information about Pro-Tech 33, labor organizing, or employee rights or representation. The only reference to the fact Pro-Tech 33 purports to be a labor organization is the statement “Labor Union” in small-type under its name after scrolling down past the massive home page graphic, which contains a headline that reads: “helping businesses and employees they love thrive in cannabis.” And although scrolling down further leads to a hyperlinked web site for <<http://www.protech33.com/>>, clicking on the link produces this message: “This site can’t be reached [¶] www.protech33.com’s DNS address could not be found.”¹² This is

¹⁰ Archived at <<https://perma.cc/4X47-V5HN>>, as of July 5, 2023. A Google search for “Protech 33” did produce the referenced Facebook page as a first hit. (Archived at <<https://perma.cc/HNQ6-97RQ>>, as of July 5, 023.)

¹¹ See <<https://m.facebook.com/Protech-Local-33-351202315573647/>>, as of July 5, 2023. Senese admitted the Facebook page is not monitored, and stated it should have been deactivated a long time ago.

¹² See <<http://www.protech33.com/>>, as of July 5, 2023.

consistent with Senese's admission Pro-Tech 33 maintains no website.

In short, it is entirely unclear how anyone could identify Pro-Tech 33, any officers of Pro-Tech 33, or how to contact Pro-Tech 33, its officers, or anyone associated with it. Pro-Tech 33's refusal to respond to basic questions about the circumstances under which it obtained its labor peace agreement with Three Habitat coupled with Three Habitat's complete refusal to participate and cooperate in these proceedings warrant an inference, in Pro-Tech 33's words, that these parties entered into a "sham relationship" to deprive Three Habitat's employees "real representation, by a real labor union" and for the purpose of Three Habitat being able to clear a licensing requirement on its application with DCC. (See Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A)(i); Cal. Code Regs., tit. 4, § 15002, subd. (c)(19).) As the California Supreme Court has explained, "A defendant is not under a duty to produce testimony adverse to himself, but if he fails to produce evidence that would naturally have been produced he must take the risk that the trier of the fact will infer, and properly so, that the evidence, had it been produced, would have been adverse." (*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.) Stated differently, "[t]he nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause." (*Breland, supra*, 52 Cal.App.2d at p. 426, quoting 2

Wigmore, Evidence (3rd ed.), § 285.)¹³

B. Pro-Tech 33 Refused to Provide Information Regarding Its Other Labor Peace Agreements in California.

Senese was reluctant to answer questions relating to other labor peace agreements in California to which Pro-Tech 33 is a party. When asked how many other labor peace agreements Pro-Tech 33 has in California, Senese responded only that there were between 20 and 100. Senese also did not know how many of those businesses with which Pro-Tech 33 entered into labor peace agreements obtained licenses. Pro-Tech 33's counsel later informed General Counsel staff that it has 64 labor peace agreements in California. However, Pro-Tech 33 refused to identify the licensees or businesses with which it had entered into labor peace agreements.

An applicant seeking to conduct commercial cannabis activity in this state, who has the requisite number of employees and has entered into a labor peace agreement, must include with its license application to DCC the signature page of its labor peace agreement. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A); Cal. Code Regs., tit. 4, § 15002, subd. (c)(19).) These are public records which any person may request from DCC under the California Public Records Act, codified at Government Code section 7920.000

¹³ The National Labor Relations Board (NLRB) imposes various forms of evidentiary sanctions, including adverse inference sanctions, against parties that do not comply with administrative subpoenas. (See, e.g., *International Union, United Auto., etc. v. NLRB* (D.C. Cir. 1972) 459 F.2d 1329, 1336-1339; *NLRB v. C.H. Sprague & Son Co.* (1st Cir. 1970) 428 F.2d 938, 942; *NLRB v. American Art Industries, Inc.* (5th Cir. 1969) 415 F.2d 1223, 1229; *The Smithfield Packing Co., Inc.* (2004) 344 NLRB 1, 8; *McAllister Towing & Transportation Co., Inc.* (2004) 341 NLRB 394, 396; *Bannon Mills, Inc.* (1964) 146 NLRB 611, 613, fn. 4, 633-634.)

et seq.¹⁴ There is no basis for Pro-Tech 33’s refusal to furnish this basic information requested during the course of the General Counsel’s investigation.¹⁵

Pro-Tech 33’s obstructionist behavior in response to basic requests regarding the labor peace agreements to which it is a party in California warrants an inference that these other agreements are subject to the same concerns articulated above, namely that such other agreements similarly are sham relationships designed to allow those other businesses to clear a licensing application requirement and with no good faith or sincere intention to organize or seek to represent the affected employees. (*Williamson, supra*, 21 Cal.3d at p. 835, fn. 2; *Breland, supra*, 52 Cal.App.2d at p. 426.)¹⁶

¹⁴ The Teamsters do not describe how they obtained the labor peace agreement between Three Habitat and Pro-Tech 33, but it may have been obtained through a Public Records Act request, possibly to DCC or the County of Riverside. We note local government licensing or permitting authorities also may require applicants to enter into labor peace agreements and retain them as public records. For example, an article on MJBizDaily includes an embedded link to various labor peace agreements obtained from the City of Santa Ana and available on a “NextRequest” web page, a system used by various local government entities to facilitate requests for and productions of public records. (Chris Roberts, *Suspect Unions’ Effort to Evade State Law Could Hurt Marijuana Workers* (Mar. 31, 2023) available at <<https://mjbizdaily.com/suspect-unions-effort-to-evade-state-law-could-hurt-cannabis-workers/>>, as of July 5, 2023, archived at <<https://perma.cc/ZS9S-T783>>, citing City of Santa Ana Public Records Requests, Request No. 22-1122, Upload Date June 30, 2022, available at <<https://cityofsantaanaca.nextrequest.com/documents/14200199>>, as of July 5, 2023.)

¹⁵ In the future we urge the General Counsel to pursue alternative routes for obtaining this type of information when confronted with a party’s stonewalling tactics, including Public Records Act requests to DCC or local government entities who may possess such records.

¹⁶ It is unclear from the record before us whether the Teamsters has attempted to organize workers at Three Habitat or at other entities where Pro-Tech 33 may have a labor peace agreement and has been denied access to the workers. The Legislature intended the MAUCRSA’s labor peace agreement requirements to facilitate efforts to inform workers of their labor rights and ability to organize to obtain representation in the

C. Pro-Tech Has Not Demonstrated Any Good Faith or Sincere Intent to Organize and Represent Workers in California’s Cannabis Industry.

Notwithstanding Pro-Tech 33’s insistence that it performs representative functions, the record before us makes corroboration of its claims difficult, at best. Indeed, the record suggests a pattern of Pro-Tech 33 complying with document or other information requests from the General Counsel only to the extent such materials -- at least on a superficial level -- appear to support its claims, yet refusing to produce records or information that could undermine Pro-Tech 33’s positions or assist in corroborating its allegations.

When viewed in light of Pro-Tech 33’s lack of presence in California, and its lack of visibility or accessibility generally, Pro-Tech 33’s obstructionist and noncompliant behavior bolsters our finding it is not a bona fide labor organization under the MAUCRSA.

1. *Pro-Tech 33’s Claims of Representative Status and Functions Are Rife with Inconsistencies and Plagued by a Lack of Corroborating Information.*

Pro-Tech 33 alleges it represents workers at Clinton’s Ditch Cooperative Company, Inc., in Cisero, New York. Pro-Tech 33 produced a collective bargaining agreement recently negotiated at Clinton’s Ditch, but the collective bargaining agreement

workplace, and the fact an employer has entered into a labor peace agreement with one labor organization does not preclude or bar other labor organizations from seeking access to and attempting to organize those employees, at least until the point one labor organization is certified as the employees’ exclusive bargaining representative. (See *Maryland Live Casino* (Jan. 28, 2013) NLRB Gen. Counsel Advice Memo., case no. 05-CA-083966, pp. 10-12 [2013 NLRB GCM LEXIS 28, *24-26], available at <<https://www.nlr.gov/case/05-CA-083966>>, as of July 5, 2023.)

states it is between “National Production Workers Union and Affiliated Local Unions.” No mention of Pro-Tech 33 is made anywhere in the agreement. Senese attempted to explain this discrepancy by claiming that NPWU executes collective bargaining agreements on behalf of all its affiliated locals. However, Pro-Tech 33 also produced a collective bargaining agreement between Parsec, Inc. and Local 707, another affiliate of NPWU but which is named in its own right as the collective bargaining representative for the workers covered by that agreement.

Pro-Tech 33 also asserts it recently obtained recognition from, and a collective bargaining agreement with, a cannabis employer in Illinois. Yet, Pro-Tech 33 refused to identify the name of the employer. And although Pro-Tech 33 produced the recently negotiated collective bargaining agreement with that employer (which, contrary to Senese’s representation above, does specifically reference “Professional Technical Union”), the employer’s name is redacted from the document. Pro-Tech 33 also produced a voluntary recognition notice allegedly issued by the NLRB, but Pro-Tech 33 again redacted the employer’s name from the document. Additionally, the voluntary recognition notice names NPWU, not Pro-Tech 33, as the labor organization recognized by the employer.¹⁷ These facts, as with the Clinton’s Ditch collective bargaining agreement described above, cast serious doubt over Pro-Tech 33’s claim it is recognized

¹⁷ The “Date of Posting” field on the last page of the NLRB notice document is blank, leaving it unclear if the notice ever was posted at the employer’s worksite. It also is unclear if Pro-Tech 33 or the employer filed a Notice of Voluntary Recognition form with the NLRB. (See NLRB Form-5581, available on the NLRB’s web site at https://www.nlr.gov/sites/default/files/attachments/pages/node-195/5581_7-20.pdf), as of July 5, 2023.)

or appropriately represents employees at either employer. (*United Elec., Radio & Mach. Workers v. NLRB* (4th Cir. 1993) 986 F.2d 70, 75 [“[L]ocal union chapters are separate and distinct entities from their international parents. [citations omitted] While an uncertified international union can, of course, aid a local during the collective bargaining process, it cannot displace it”]; *Whisper Soft Mills, Inc. v. NLRB* (9th Cir. 1984) 754 F.2d 1381, 1385 [“For purposes of determining the identity of the authorized representative, the local union is distinguishable as a legal entity from its international parent”].) The NLRB has explained:

[C]ertification of one union is not certification of two unions [Fn. omitted.] Nor may we close our eyes to the fully recognized distinction between an International union and its affiliated local unions. One is not the other. The contractual rights and liabilities of one are not those of the other The same is true with respect to status as certified bargaining representative and 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.

(*Standard Oil Co.* (1962) 137 NLRB 690, 709, *Mail Contractors of America, Inc.* (2005) 346 NLRB 164, 166 [“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”].)

In a similar vein, Pro-Tech 33 alleges it currently is engaged in negotiations for a collective bargaining agreement with a cannabis employer in Ohio, as well as four in Michigan (which are part of the same holding company). Yet, Pro-Tech 33 refused to identify these employers with whom it allegedly is authorized to serve as the exclusive

collective bargaining representative of their employees.

In sum, Pro-Tech 33 refused to provide full and complete information to General Counsel staff charged with investigating the labor peace agreement complaint filed against it. These failures are not attributable to any lack of understanding, confusion, naïveté, or sophistication in discerning what was being asked of it. The record demonstrates Pro-Tech 33's failures and refusals to cooperate and comply fully with the General Counsel's investigation were intentional and by design, no doubt with an aim towards frustrating our search for the truth and a complete understanding of Pro-Tech 33's functioning as a labor organization.

To be clear, we understand the hesitancy of labor organizations to disclose or announce information concerning ongoing or pending organizing efforts, or information that may shed light on the labor organization's strategies regarding when and where it may choose to devote its efforts and resources. The information Pro-Tech 33 insists on concealing does not fit within these categories or areas of concern. There is no legitimate privacy or confidentiality claim in the name of an employer where a labor organization is certified or otherwise recognized as the employees' exclusive bargaining representative, nor does Pro-Tech 33 even attempt to articulate a legal basis for its refusal to disclose this basic information. The voluntary recognition notices issued by the NLRB are public records and are intended to be posted at the worksite.

Accordingly, we find the record before us fails to corroborate Pro-Tech 33's claims regarding the scope of its representative functions, including the employers where it claims to be recognized and represent employees.

2. *Pro-Tech 33 Has No Discernable Presence or Organizing Activity in California.*

We arrive now at the heart of our inquiry in the present matter, i.e., whether Pro-Tech 33 has demonstrated any sincere or good faith effort to organize and represent cannabis workers in California, including its capacity and ability to do so. It has not. Nor does the record suggest it has any real intention of organizing workers in California's cannabis industry. These findings compel our conclusion Pro-Tech 33 does not constitute a bona fide labor organization within the meaning of MAURCRSA's labor peace agreement and licensing requirements.

Pro-Tech 33 maintains no physical presence in California. It has no office in California. Senese claimed Pro-Tech 33 previously opened an office in Bakersfield in 2018, but it was not staffed, was intended only to receive mail, and the office closed after only a year or two. Pro-Tech 33 produced no records related to this office. Given the general intermingling and interchanging between NPWU and the various locals allegedly affiliated with it, we are unable to corroborate or verify Senese's claims the office actually belonged to Pro-Tech 33 and not another local union purportedly affiliated with NPWU.

As described above, Pro-Tech 33 also maintains no online presence. It is a wonder how anyone would know how to contact Pro-Tech 33 or any of its officers, including Three Habitat, any other applicant for a license to conduct commercial cannabis activity in this state, or employees who would be interested in organizing. (See *Int'l Brotherhood of Service Station Operators of America* (1974) 215 NLRB 811, 815

[organization not a bona fide collective bargaining representative when, among other things, it concealed its contact information or made its availability or whereabouts “a mystery”].) In fact, it is entirely unclear from the record whether the employees at Three Habitat even knew their employer had a labor peace agreement with Pro-Tech 33 or that Pro-Tech 33 is a labor organization, and Pro-Tech 33 admits not contacting anyone at Three Habitat during the one-year period covered by their labor peace agreement.

Pro-Tech 33’s protestations it does maintain a presence in California because Local 707 represents workers at Parsec, Inc. in the Los Angeles area is not persuasive or well-taken. Local 707 and Pro-Tech 33 are separate and distinct entities, even if affiliated with the same national or parent union. Thus, whether Local 707 or NPWU represents workers at Parsec, Inc. has no bearing on whether Pro-Tech 33, in its own right, represents workers in California or maintains any presence here. (See *Overnite Transportation Co.* (2001) 334 NLRB 1074, 1077 [“although the Locals share a common affiliation with the International, the six Locals and the International are each separate and distinct labor organizations within the meaning of Section 2(5) of the Act”].)¹⁸

¹⁸ According to Senese, NPWU and its affiliated locals all share one physical office in Illinois. Aside from the officers, NPWU employs only one administrative assistant and one information technology employee. Pro-Tech 33’s officers all serve on the NPWU board, as well as the boards of all NPWU’s affiliated locals. As vice president of NPWU, Senese states he oversees the business of the affiliated locals. However, notwithstanding this intermingling and the fact the same individuals hold offices across these various entities, as well as Senese’s claim he oversees the separate locals, the national union and its affiliated locals remain separate legal entities. (See *Intl. Brotherhood of Electrical Workers, AFL-CIO* (1958) 121 NLRB 143, 147, fn. 6 [the fact an international union has the right to supervise or control some of the affairs of an affiliated local “is not inconsistent with the premise of the International that its affiliated local unions are separate entities, whose business activities are distinct”].)

Although Pro-Tech 33 alleges Senese made two visits to California in the past year, it produced no information or records to corroborate this allegation of travelling to California to meet with cannabis workers. Pro-Tech 33 alleges Senese visited employees of five employers on these two trips. He did not distribute literature, brochures, or flyers to the workers. He claims he met with workers away from the worksite and talked to them about the union. Unable to obtain authorization cards or support from more than 30% of the employees at any location, Senese admittedly gave up because he believed workers were not interested in organizing. He has not since visited any other employer in California with whom Pro-Tech 33 allegedly has a labor peace agreement.

As described by Senese, it appears he showed up one day to meet with workers who likely had no familiarity with or knowledge of Pro-Tech 33 -- including the fact it purports to be a labor union -- and expected them to pledge their support to him on the spot. This, quite literally, would seem to be the least Pro-Tech 33 could do in terms of “organizing,” and it is difficult to think what less Pro-Tech 33 could have done, absent not doing anything at all (assuming these trips actually occurred as described). Moreover, Senese’s statement he believed workers in California were not interested in organizing and thus has not made any further visits here sounds in the nature of a relinquishment or disclaimer of any intention to continue efforts at organizing cannabis workers in this state. Notably, Pro-Tech 33 does not dispute these representations as set forth in the General Counsel’s report.

In sum, the record evidence before us (or lack thereof) fails to substantiate any claim Pro-Tech 33 is a bona fide labor organization within the meaning of the MAUCRSA's licensing requirements. 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. (See, e.g., Lab. Code, § 923, 1140.2.) 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. (Cf. p. 11, fn. 16, *supra*.) It is reasonable to believe the Legislature added these requirements to support workers in the nascent cannabis industry which was emerging from an underground illegal marketplace and transforming into a legal, above-ground professional industry. The aim of the provisions added by AB 195 authorizing us to investigate and make a determination about whether a union is "bona fide" are not about policing unions but about ensuring workers in an emerging industry have access and obtainable means to learn of and exercise their labor rights if they choose to do so. The real harm of sham labor peace agreements isn't 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 be at a minimum *aware* of their employment rights. The record before us does not demonstrate the realization of these rights and opportunities to the employees of Three Habitat or any of the other licensees with whom Pro-Tech 33 has a labor peace agreement.

CONCLUSION

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

1. Professional Technical Union, Local 33, is not a bona fide labor organization within the meaning of Business and Professions Code sections 26001, subdivision (aa), and 26051.5, subdivision (a)(5)(D); and further that

2. Three Habitat Consulting Palm Springs LLC dba One Plant Palm Springs (i) appears not to be currently operating, or (ii) if operating, is not doing so in compliance with a valid and effective labor peace agreement as required under Business and Professions Code section 26051.5, subdivision (a)(5)(B).

By operation of Business and Professions Code section 26051.5, subdivision (a)(5)(D)(iii), the labor peace agreement between Professional Technical Union, Local 33, and Three Habitat Consulting Palm Springs LLC dba One Plant Palm Springs is null and void, even assuming its renewal or continued effectiveness beyond the June 1, 2023 expiration date.

The findings stated herein are confined to whether Professional Technical Union, Local 33, constitutes a bona fide labor organization under the MAUCRSA and shall not be interpreted or construed as making any finding whether Professional Technical Union, Local 33, is a “labor organization” within the meaning of NLRA Section 2(5) or Labor Code section 1140.4, subdivision (f). (See *Pro-Tech 33, supra*, ALRB Admin. Order No. 2023-02-P, p. 11, fn. 9.)

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 Professional Technical Union, Local 33.

DATED: July 6, 2023

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member