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When we met here last year I spoke at length about what the future could hold under MAUCRSA for cannabis cultivators, unions, labor relations and the ALRB. Since that point both CDFA and BCC implemented temporary regulations and neither contained the requirement essential to establishing the union employer relationship that would foster, hopefully, a new era in labor relations that being the labor peace agreement process (aka LPA). This was a surprise to me and from what I heard an even greater surprise to the unions that have been eagerly awaiting that process. So there is no data to share on how many LPAs have been signed with cultivators or what problems in implementation have arisen and whether the problems have been resolved and how they've been resolved. No union representation elections have occurred; no unfair labor practice

complaints have issued thus none of the possible litigable issues I highlighted then have yet to arise and come before our Board.

However, the UFCW, undeterred by this regulatory inaction, has proceeded to file Notices of Intent to Take Access (aka NAs) at 8 separate Cannabis cultivators in the Salinas Valley employers. An NA is the existing method under the ALRB for unions to obtain worksite access to farmworkers. This is an avenue always open to all unions seeking to reach cultivator employees regardless of the LPA process.

Even after LPA implementation occurs, our existing access processes will still be an option for unions as LPAs are not mandatory. Concededly, NAs may be of little use to unions in an LPA environment. However, our NO process, the Notice of Intent to Organize, should be a process unions may still want to avail themselves of as it grants them the right to obtain the home

addresses of each employee and provides the union the ability to be even more open and free to discuss union goals and representation elections.

So, I've had to refocus and fortunately this past February the California Growers Association (aka CGA) came, as it were, to the rescue when it issued a paper entitled: An Emerging Crisis: Barriers to Entry in California Cannabis. The conclusions reached by the paper are that the combination of regulatory requirements and implementation costs to employers, specifically small cultivators, coupled to the high federal, state and local tax rates are the key reasons behind the low numbers of cultivators seeking licenses around the State. CGA bases their conclusions on an analysis of the results of a survey done of their membership which is largely if not exclusively cultivators and of data from the regulators and from counties and

cities. It is a thought provoking paper aimed, I think, at the legislature, the Administration and the regulators. I highly recommend it and you can find it on their website: www.calgrowersassociation.org under the resources tab look for publications.

For the ALRB, the data CGA provides will help us frame the potential for labor relations and the likelihood for union elections and the geographical locations for those efforts.

CGA reports that California produces more than 15 million pounds of cannabis per year but that the State consumes less than 3 million pounds per year. California has 58 counties and of those, 25 counties have placed a ban on commercial cannabis activity; currently, only 13 counties allow it, 6 more counties appear to be pending approval while the final 14 remain studying the issue. CGA contemplates that without growth in

the number of counties permitting commercial cultivation the number of illicit grows will not decrease. They estimate that for 2018 as little as 25% of the cannabis consumed in the State will be purchased from licensed retailers.

CGA calculates that there are roughly sixty-eight thousand cannabis farmers currently operating around the state providing an estimated 258,000 jobs. This averages out to about 3.6 employees per farm. Most cultivators fall into the very small farmer category and a license category was created for that group and it is called cottage license. My feeling is that CGA's reported number of jobs per farm only takes into account pre-harvest activity at these smaller farmers. Harvest and the post-harvest trimming operations, which are considered agriculture, certainly employs more people than that when in operation.

But by itself, that employee figure of 3.6 employees should give us pause and it must certainly have implications for unions in their calculations about where they should be focusing their efforts once LPAs come into effect which should be when the permanent regulations are issued.

In gauging the optimism of their members about entering the legal market, CGAs members indicated that despite strong desire to enter the regulated market place only 15% were very confident that they would be able to do so 35% were somewhat confident with the remaining 50% not very confident or not confident at all. As of this past February, only .78% of cultivators had been licensed. (I saw another estimate this past month and the figure was still less than 1%).

If the market remains dominated by illegal cannabis cultivators then a question I posed last year which I then thought might not

be significant is how will the ALRB decide to handle issues of unfair labor practices and unionization efforts, if any, in illegal cannabis operations and how quite literally dangerous that might be.

As to legal cultivation, the warning CGA gives that if the illegal market remains predominant then the legal market will be composed of a small number of large consolidated businesses.

As if on cue, to give a preview of what that world might look like, the Sacramento Bee yesterday had a front page article regarding the emergence of large corporate cannabis operations in the Salinas Valley and Central Coast. Apparently, these operations are very well financed and are taking advantage of CDFA failing to place restrictions on the aggregating of cultivator licenses by one licensee and for a total aggregate size of greater than one acre and of BCCs regulations concerning

vertical integration through the microbusiness license. As a microbusiness, they can own and can combine cultivation, manufacturing and retailing or several other permutations and quite ably fill the, literal and figurative, available space for cannabis businesses. The Bee reported, as an example, that just one of these microbusinesses is 20 acres in size. If that becomes typical then there will be slim to no pickings for the types of farmers CGA represents but who currently are the majority of the farmers that exist and who individually do not have the financial wherewithal to exist let alone compete against such large enterprises in the legal market.

In such a future world, for unions it would mean that in the agricultural sector of the industry the pie of available union certifications would be much smaller and I imagine decisions

will have to be made by each union on whether they want to compete against the others for such a small pie.

Under this scenario, I would anticipate that the deluge of work we, at the ALRB, have been anticipating would not materialize as there would be fewer elections and a smaller number of unfair labor practices. Where these large companies thrive, I do believe we would see larger units but because of the vertical integration of such companies, we might not see ALRB elections because of issues involving so-called mixed work where the same individual employees are performing duties that are not agricultural and making it more likely that the NLRB would have jurisdiction.

Earlier I mentioned that the LPA process remains on hold and is pending implementation. But this holding pattern has not stopped labor and management from seeking to cast their own

spins on what LPA agreements are about and what the parameters of the language and the duties and responsibilities contained therein can be or must be.

In my view, the statute does not provide any parameters or limitations about what can be included into an LPA. It is required that the employer must agree to provide the union with access at reasonable times to meet with employees at the worksite. The employer must also agree not to disrupt the union's efforts to communicate with, and attempt to organize and represent the employees. In exchange for which, the union concomitantly agrees to forgo using its economic weapons (boycotts, strikes, picketing, etc.).

It is left up to the parties to determine what constitutes reasonable times and what constitutes employer disruption. I believe that an employer's failure to agree over the taking of

access and the when and where of it or failing to agree not to disrupt the (actual) union meetings will likely be denied a license by CDFA.

However, if the dispute arises over additional union requirements or over an expansive union view of what non-disruption means it is my guess that CDFA will, in my view quite properly interpret the statute as not giving it any authority to resolve that dispute and probably won't deny a license on that basis.

Once CDFA either denies or grants a license over the objection of one of the parties. The wronged party will be left with the choice between two forums, the superior courts or the ALRB, in which to seek to have CDFA's decision overturned. Presently, it is unclear which forum is more appealing to the unions but to me it is also unclear if a superior court judge has the expertise

needed to resolve issues that are very peculiar or exclusive to agricultural labor law. Inevitably, such litigation will revolve around whether the ALRB believes it has jurisdiction over such LPA access questions and, if so, can the agency convince the courts that its jurisdiction over that issue is exclusive.

An area begging for inclusion into an LPA is what do about the presence of surveillance cameras during the taking of access. Although CDFA rules have no requirement for the presence of surveillance cameras in growing areas, BCC does have a surveillance camera requirement and it may be that, at least, in a microbusiness which includes cultivation, such cameras will be located in or near areas where a union meets with employees.

Under MAUCRSA, the purpose of the surveillance equipment is for purposes of security and the track and trace system ensuring that product is not stolen or otherwise diverted out of the legal

cannabis stream. Laudable purposes, I'm sure, but the unintended consequence is that it sets up the potential for unlawful surveillance, by employers, of meetings between employees and union organizers. Even the mere presence of such cameras in the vicinity of a union meeting may create a chilling effect on such meetings and could by itself result in the filing of an unfair labor practice charge. Under both the ALRA and NLRA, employer surveillance of union meetings is an unfair labor practice. Any employee fired after a union meeting conducted in the shadow of such cameras will as a result have a union filing a charge against the employer. In any event, it would seem a legitimate use of the LPA to make some sort of arrangements regarding the cameras during union meetings. But this is an industry-wide problem and because of the wording of the regulations it may be that, as a whole, the industry and the unions will have to first obtain the blessings of BCC and/or

CDFA before the parties can agree to turn the cameras off during the meetings.

Last year, I mentioned the very real negative consequences for undocumented workers employed in the cannabis industry who are picked up either in raids or by other happenstance and reveal their employment. It is an issue that has not gained much traction in the media nor in the cannabis industry. ICE has progressively and aggressively stepped up its efforts to round-up undocumented workers in California and the US Department of Justice has renounced previous hands-off policies when it comes to legal cannabis. The dangers of arrest at the work place have increased for the undocumented workers including workers in the process of adjusting their status. Deportation without a hearing or the cancellation of any status adjustment process are very real consequences for employment in cannabis, especially

because of the federal status of cannabis as a schedule 1 drug and that possession remains an automatic felony.

I believe it is incumbent on the industry, unions, regulators and the Hispanic community to be transparent and let people know what the risks of employment in cannabis are for the undocumented so that they can weigh the risks vs. benefits and make informed choices.

In Colorado, the industry is working with Servicios de la Raza to achieve such transparency. They have put together a PSA explaining the immigration hazards from working in cannabis. Additionally, some Colorado employers are proactively advising all job applicants of these dangers. I think we have something to learn from Colorado and hope the various cannabis stakeholders take that road.

Finally, in its paper CGA offers a variety of proposals to correct or eliminate the barriers it identified. Among those proposals were urging the various regulatory agencies, which they named, to do more on outreach. ALRB was not named in that group and I would like to think that it is because the ALRB has devoted time and energy into reaching out to cultivators and unions from one end of the State to the other to discuss the ALRA and MAUCRSA's access innovation.