



Certain Cannabis Workers Are Not Protected By The NLRA

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In a recent advice memo, the National Labor Relations Board determined that a Pennsylvania cannabis grower did not violate the NLRA when it fired two workers who attempted to organize their coworkers. The decision held that because the workers (a cultivation associate and a trimmer) were agricultural workers, they were not protected under the NLRA.

Since the enactment of the NLRA, agricultural laborers have been excluded from the [NLRA's definition of "employee,"](#) and are thus not protected by the NLRA. Congress has instructed that the NLRB use the expansive definition of "agriculture" supplied by Section 3(f) of the FLSA. Under the FLSA, when determining whether a worker is an "agricultural employee" or a statutory "employee," the NLRB must look to whether the workers "perform a substantial amount of agricultural functions," "i.e., cultivating, growing, harvesting, and preparing for market the raw plants, a horticultural commodity."

The NLRB Office of the General Counsel held that the workers at issue in this case performed a substantial amount of agricultural functions, and thus were not entitled to the NLRA protections. Indeed, the cultivation associate "spent approximately 70 percent of work time harvesting, de-fanning, and skirting the plants, which included cutting plants from their stalks, taping on labels, hanging plants to be cured, pruning the plants by removing large leaves, and removing the bottoms of the plants." Likewise, the trimmer "cleaned, planted, harvested, and packaged the plants and spent a substantial amount of time hand-sorting buds based on their salability. The two employees both worked by hand" and there was "no evidence either employee used a machine" or engaged in the processing of the plants from their raw state. Because the NLRB determined these workers were agricultural workers and not

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employees, the charge was required to be dismissed.

This ruling is a welcome sign from the NLRB to employers in the cannabis industry, as most states do not protect the right of agricultural workers to unionize. Without federal protection, these cannabis industry workers may not be able to organize at all.