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BeLeaf Medical, LLC and United Food & Commercial Workers Local 655. Case 14–RC–325871

April 23, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

The Employer’s Request for Review of the Regional Director’s Decision and Direction of Election (pertinent portions of which are attached as an appendix to this Order) is denied as it raises no substantial issues warranting review.¹

Dated, Washington, D.C. April 23, 2026

James R. Murphy, Chairman

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MAYER, concurring.

Member Mayer concurs in the denial of review and agrees that the Employer has not shown the Post-Harvest employees fall within the FLSA Section 3(f) agricultural exemption and are therefore Section 2(3) employees covered by the Act. He emphasizes, however, that the distinction between “agricultural laborers” and statutory employees is inherently a fact-intensive, case-by-case inquiry. As the Department of Labor’s regulations recognize, identifying which activities are performed “as an incident to or in conjunction with” farming operations is a nuanced exercise not susceptible to rigid or precise definition. Whether particular tasks constitute agricultural activity “must be determined by examination and evaluation of all the relevant facts and circumstances in the light of

¹ Sec. 2(3) of the National Labor Relations Act excludes from the definition of “employee” any individual employed as an agricultural laborer. Since 1947, Congress has added an annual rider to the Board’s appropriation measure directing it to apply the definition of agriculture set forth in Sec. 3(f) of the Fair Labor Standards Act, 29 U.S.C. Sect. 201, et seq. (FLSA), in determining whether an individual is an agricultural laborer, in any matters concerning either organizing activity by agricultural laborers or bargaining units consisting of such employees. The Board’s policy is to be guided in this regard by the interpretation of Sec.

the pertinent language and intent of the Act.” 29 C.F.R. § 780.145; see also *Mitchell v. Budd*, 350 U.S. 473, 475–482 (1956) (holding that workers engaged in the transformative “bulking” of harvested tobacco were not exempt agricultural laborers); *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254, 264–270 (1954) (finding, based on “all the facts,” that employees engaged in milling harvested sugar were covered by the Act). In Member Mayer’s view, the Board should continue to apply this established case-by-case approach with particular care in matters, such as the one presented here, involving emerging or rapidly evolving industries whose operational processes may give rise to novel considerations.

Dated, Washington, D.C. April 23, 2026

Scott A. Mayer, Member

NATIONAL LABOR RELATIONS BOARD
APPENDIX

DECISION AND DIRECTION OF ELECTION

BeLeaf Medical, LLC (Employer) operates a vertically integrated cannabis company in Missouri that operates three cultivation facilities as well as five dispensaries. On September 15, 2023,² United Food & Commercial Workers Local 655 (Petitioner) filed a representation petition seeking to represent Packaging, Lab/Kitchen, and Fulfillment employees working at the Employer’s facility located at 1315 Cherokee St., St. Louis, Missouri 63118 (the Cherokee Street facility). The Employer contends that the Packaging employees are actually Harvest Technicians and Post-Harvest Technicians, all of whom are agricultural workers and are exempt from the National Labor Relations Act (NLRA or Act). While Petitioner concedes that the proper titles for the employees should be Post Harvest Technician, Post Harvest Lead, Post Harvest Trim Lead, and Post Harvest METRC Specialist (collectively Post-Harvest employees), Petitioner contends that they are not agricultural employees and are not exempt from the NLRA. The Post-Harvest employees account for 13 of the 18 petitioned-for employees.

3(f) of the FLSA adopted by the Department of Labor (DOL). We agree with the Regional Director, for the reasons provided in her decision, that none of the workers employed in the classifications at issue here are agricultural laborers under the secondary definition of agriculture. The activities of the Post-Harvest employees generally are not performed by ordinary farm employees, and the activities in question have only an attenuated relationship to farming in the traditional sense. See 29 C.F.R. 780.145.

² All dates are in 2023, unless otherwise noted.

The parties agree that any unit found appropriate should include order fulfillment specialists, order fulfillment specialist leads, infusion technicians, and infusion leads and exclude office clerical employees, professional employees, guards and supervisors as defined in the Act.

A hearing officer of the National Labor Relations Board (the Board) held a videoconference hearing in this matter on October 6, and took evidence on this issue. Petitioner and Employer filed posthearing briefs.

As explained below, based on the record, the parties' briefs, and relevant Board law, I find the Post-Harvest employees are not agricultural employees and are therefore included in the bargaining unit.

I. RECORD EVIDENCE:

EMPLOYER'S OPERATIONS

The Employer operates three cannabis cultivation facilities and five retail or dispensary facilities in the state of Missouri. The largest of their cultivation facilities is the Cherokee facility which has six flower rooms where marijuana plants are grown. The plants are then harvested, dried, destemmed, sorted, graded, weighed, and processed into preroll joints or packaged in various per-gram units and sent off to the fulfillment department to be sold under the Employer's Sinse, Cucu, or Culture Collective brands. The Cherokee facility also houses a kitchen where cannabis infusion is performed to create products like edibles, tinctures and other items under the Employer's Amend brand and various other brands. The Employer supplies its five Swade dispensary locations as well as wholesales marijuana across the State of Missouri.

Cultivation and Harvest:

The Cherokee facility employs twenty-nine cultivation employees in the Cultivation department. The duties of the cultivation employees include the transplanting, growing, pest control, and management of the plants. Downstream from the Cultivation department is the Harvest department which is made up of a five-person harvest team, whose duties are to cut the mature cannabis plants and hang them to dry. The marijuana plants hang to dry for 9 to 14 days.

Post-Harvest:

Next in the process is the Post-Harvest team which consists of 13 Post-Harvest employees. Within the Post-Harvest group there are four job classifications: Post-Harvest Technicians, Post-Harvest Leads, Post-Harvest Trim Leads, and Post-Harvest METRC Specialists. There are 9 or 10 Post-Harvest technicians, one or two Post-Harvest leads, one Post-Harvest Trim Lead, and finally one Post-Harvest METRC specialist.

The Post-Harvest employees take down the plants from where they hang and then begin the de-stemming process,

in which the 3-to-5-foot-tall, dried plant has its branches sheared off. After which each branch is 'bucked' by hand so that the buds come off and the fan leaves are removed, though in the past an auto-bucker had been used to perform the task mechanically. This process occurs in a trim room on the first floor in a separate room from where cultivation takes place. The process takes up anywhere from 25 percent to 30 percent of Post-Harvest employees' time.

Per Missouri state law's trace and track regulatory regime, the biomass of the plant—held in a tote bag—is weighed on a large scale and tagged by the Post-Harvest METRC Specialist.

The Post-Harvest METRC Specialist spends anywhere from 70 percent to 90 percent of their time on a computer ensuring compliance with the Missouri regulatory scheme by logging into and inputting information on the METRC site. The keying in of such information is done at each stage of the Post-Harvest process. All the information keyed into the METRC site is also placed on a spreadsheet so the Employer can keep track of weights internally as well. The Post-Harvest METRC Specialist also sends material out to a third party for testing as required prior to packaging. When the Post-Harvest METRC Specialist is unable to perform their duties, the task of tagging sometimes falls to a supervisor or a Post-Harvest Lead.

After destemming, the marijuana plants are trimmed, which takes around 25 percent to 30 percent of employees' time. The marijuana is run through Mobius, a tumbler trimmer akin to a rock tumbler. The machine vibrates to separate out the buds from the rest of the plant material. The Mobius machine processes anywhere from 100 to 120 pounds of cannabis a day by slowly filling the machine's conveyor with plant material from 8 to 10 pound tote bags. It is sorted into A-bud and smaller B-bud also termed 'popcorn.' The marijuana is then cured in the curing room for anywhere from 10 to 14 days depending on cultivar.

Finally, the marijuana is either packaged or processed into preroll joints. The Post-Harvest Specialists package the cannabis into 1 gram, 3.5 gram (eighths), 7 gram, or 14 gram packages. The packaging takes place in a separate room on the second floor and is usually performed by five to seven Post-Harvest Technicians plus a Post-Harvest Lead. Packaging takes anywhere from 35 to 50 percent of the Post-Harvest employees' time. The Post-Harvest employees are expected to keep track of weights and accurately log them on an Excel spreadsheet, which each employee updates around four times in a given shift. The Post-Harvest Lead in the packaging room in turn has a spreadsheet of their own which supervisors can view. Cannabis is also input into a knock-box, a device that vibrates to fill paper cones with exactly one gram of bud to create marijuana cigarettes. The knock-box fills joints 100

at a time and is found in a separate room within the facility. The facility produces anywhere from 900 to 1200 prerolls a day, which is considerably less than the amount produced at the Employer's Lakefront facility which employs a machine termed a Blackbird that creates around 4300 prerolls a day.

After the machine has filled the paper funnels with a gram of cannabis the Post-Harvest employees take them out, seal them, and put them in packaging. When Post-Harvest employees are finished with their primary tasks of either trimming or packaging, they use that time to fill prerolls.

Kitchen and Fulfillment:

Some of the cannabis cultivated at the facility is diverted to the Employer's Lakefront facility where the cannabinoids are extracted and then sent back to the Cherokee facility. The Cherokee Kitchen employees take extractions of cannabis and use them to create edibles and tinctures labeled under the Employer's Amend brand. There are three employees in the Kitchen. All the products from packaged gram units of bud and prerolls to tinctures and edibles then pass through Fulfillment. There are two employees in Fulfillment where they take various finished goods from either the Kitchen (e.g., edibles and Amend line) or from the Post-Harvest Team (e.g., packaged flower buds) and place it into varying-sized cases. They also align the inventory with METRC tags in satisfaction of the track and trace requirements of Missouri, and create manifests, both internal and external, to ensure proper distribution.

II. APPLICABLE BOARD STANDARD

The Act applies only to statutory "employees" and Section 2(3) of the Act excludes from that definition "agricultural laborers." 29 U.S.C. 152(3). Per Congressional direction, the definition of "agricultural laborer" in 2(3) of the Act is tethered to the parallel definition in 3(f) of the Fair Labor Standards Act (FLSA). 29 U.S.C. 203(f). See also *Bayside Enterprises, Inc. v. N.L.R.B.*, 429 U.S. 298, 300 fn. 6 (1977), and *Jack Frost, Inc.*, 201 NLRB 659, 660 (1973). Section 3(f) of the FLSA provides:

agriculture includes farming in all its branches and among other things includes . . . the production, cultivation, growing and harvesting of any agricultural . . . commodities . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

The definition has "two distinct branches": first, the "primary meaning" of agriculture and second, "the broader meaning" which encompasses incidents to farming. *Farmers Reservoir*

& *Irrigation Co. v. McComb*, 337 U.S. 755, 763 (1949); See also *Jack Frost* at 660.

Department of Labor regulations provide guidance on how to distinguish between secondary agricultural activities and nonagricultural activities under 3(f) of the FLSA. The DOL has stated that a practice is secondarily agricultural "only if it constitutes an established part of agriculture, is subordinate to the farming operations involved, and does not amount to an independent business." 28 CFR 780.144. The secondary agricultural practices can include "preparation for market" but does not include "preparation for sale." 29 CFR 780.150. Additionally, "[c]onsideration should also be given to the value added to the product as a result of the practice." 29 CFR 780.147. Finally, the determination will depend on a number of factors related to the overall operation:

[t]he general relationship, if any, of the practice to farming as evidenced by common understanding, competitive factors, and the prevalence of its performance by farmers . . . should be considered. Other factors to be considered . . . include the size of the operations and respective sums invested in land, buildings and equipment . . . the amount of payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. . . . 29 CFR 780.145.

In assessing whether a given practice is agricultural in the secondary sense or nonagricultural, Federal courts look particularly at whether the practice "substantially changes the physical properties and chemical content" of the agricultural product. *Mitchell v. Budd*, 350 U.S. 473, 475 (1956). The issue is whether the product has undergone a change from its "raw and natural state" such that the "change is more akin to manufacturing than to agriculture." *Maneja v. Waiialua Agr. Co.*, 349 U.S. 254, 265 (1955).

The line between secondary agricultural activity and nonagricultural activity "is not susceptible to precise definition." See *Holly Farms Corp. v. N.L.R.B.*, 517 U.S. 392, 408, 116 S. Ct. 1396, 1406, 134 L. Ed. 2d 593 (1996) (quoting 29 CFR 780.144). The First Circuit, for example, held that the process of deveining tobacco leaves in a stemmery produced enough of change in form to constitute a nonagricultural practice. *Puerto Rico Tobacco Mktg. Co-op. Assn v. McComb*, 181 F.2d 697, 698–699 (1st Cir. 1950). The court held that "the leaf certainly was not in its natural state after its central vein or rib was removed." *Id.* at 702. Conversely, the Board held that

mushroom slicing at a mushroom farm was a secondary agricultural activity. *Pictsweet Mushroom Farm*, 329 NLRB 852 (1999). In that case the Board noted that slicing was “functionally and physically integrated” in the farming operation and was not a “separate administrative franchise” nor capable of being a separate independent slicing business. *Id.* at 853. Indeed, the Board noted that slicing was a small part of the operation for the farm which sold mushrooms both whole and sliced. *Id.* Further, slicers “routinely” engaged in work that was otherwise secondarily agricultural. *Id.* The actual practice of placing the mushrooms in the slicing machine was not deemed to be “factory-like” such that it lost its agricultural character and was found to be more akin to “sorting and grading.” *Id.* Finally, the Board noted that the slicing did not change the character of the mushroom and that they remained in their “raw natural state.” *Id.*

If tasks are divided between both agricultural and non-agricultural activities, the Board will determine whether the non-agricultural activities are regular or substantial enough that the agricultural exemption will not apply. In *Olaa Sugar Co.*, 118 NLRB 1442 (1957), the Board determined that a truckdriver who spent part of his time transporting his employer’s sugarcane to the employer’s mill and part of his time transporting other farmer’s sugarcane to the mill was an employee under the Act. The Board fashioned a “rule that employees who perform *any regular amount* of nonagricultural work are covered by the Act with respect to that portion of the work which is nonagricultural.” *Id.* at 1443; See also *Produce Magic*, 311 NLRB 1277 (1993) (“[W]here employees perform both primary agricultural and nonagricultural work, the proper focus is whether the nonagricultural work is ‘substantial.’”).

III. DETERMINATION:

The Board places the burden of proving a agricultural status upon the one asserting the exemption. *AgriGeneral L.P.*, 325 NLRB 972, 972 fn. 1 (1998). Furthermore, the Board applies a totality of circumstances approach that analyzes the applicability of the exemption classification-by-classification rather than on an employer-wide basis. *Id.* As such each class within the Post-Harvest group will be analyzed in turn. None of the Post-Harvest group are engaged in primary agricultural activities and will therefore all be examined as to whether they are secondary agricultural activities “incident to or in conjunction with” farming operations. See *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 763 (1949).³

Post-Harvest Technicians:

Post-Harvest Technicians are employees under Section 2(3) of the Act. Weighing all the factors under a totality of circumstances approach, the Post-Harvest employees are not engaged in secondary agriculture under 3(f) of the FLSA.

First, the Post-Harvest department is not wholly subordinate to the marijuana farming practices that occur in the facility. The Post-Harvest group is a separate department from the Cultivation and Harvest departments who do the primary growing and harvesting activities. See 29 CFR 780.145. The Post-Harvest department has neither overlapping functions nor interchange of employees with either of those departments, and the Post-Harvest department works in separate rooms or floors from the Cultivation and Harvest departments. See *Id.* Additionally, the Post-Harvest department is a substantial operation in its own right, though not as large as Cultivation. It has 13 people which is less than half of the 29-person Cultivation team but is more than double the five-person Harvest team. See *Id.* Also, the production activities of the Post-Harvest department increases the value of the raw plant material that comes out of the cultivation activities upstream in the production process. See 29 CFR 780.147. Although unprocessed biomass can and is wholesaled, the processing of plants into bud fit for immediate consumption clearly adds value for consumers.

Second, the process transforming a three- to five-foot tall plant into cured buds is undoubtedly a physical transformation. The question is whether, standing alongside all other factors, it is substantial enough of a transformation to remove the Post-Harvest practices from the ambit of secondary agricultural activities. Removing the veins from tobacco leaves and fermenting the leaves has been held to be outside the definition of agriculture under 3(f) of the FLSA on the grounds that they transformed the product from its raw and natural state. See *Puerto Rico Tobacco Mktg. Co-op. Assn. v. McComb*, 181 F.2d 697, 698–699 (1st Cir. 1950), and *Maneja v. Waialua Agr. Co.*, 349 U.S. 254, 265 (1955). Marijuana processing bears enough resemblance to tobacco processing that the comparison is compelling and weighs in favor of finding them eligible for inclusion in the unit as statutory employees. But the process of destemming, bucking, and trimming bears some resemblance as well to the trimming and cutting of nursery stock which has been deemed to be agricultural activity under the FLSA See 29 CFR 780.151(h) (citing *Mitchell v. Huntsville Wholesale Nurseries, Inc.*,

³ I note also that the Employer does not argue that the Post-Harvest employees are engaged in primary agricultural activity and confines its argument to only secondary agricultural activity.

267 F.2d 286, 290 (5th Cir. 1959)). But the trimming of a live-plant in a nursery is distinguishable from the trimming of marijuana in order to separate out the detritus of a harvested plant from the valuable buds with the latter being more a process of extraction.

The transformation wrought by the curing process is a somewhat borderline factor. In the context of tobacco, Supreme Court dicta in *Mitchell v. Budd* suggests that curing alone is not substantial enough of a transformation.⁴ But one lower court held regarding alfalfa that through the curing of hay, there “has been a change in the chemical content of the commodity, the change being due to the dehydration process.” *Wyatt v. Holtville Alfalfa Mills, Inc.*, 106 F. Supp. 624, 631 (S.D. Cal. 1952). It is certainly a chemical transformation from the natural state, and, though not a substantial enough a transformation in isolation, as a single factor in a larger constellation it tips in favor of finding the Post-Harvest activities are not incident to or in conjunction with agriculture. The change in form caused by trimming is slightly “more akin to manufacturing than to agriculture.” *Maneja v. Waialua Agr. Co.*, 349 U.S. 254, 265 (1955).

One of the strongest arguments in favor finding 2(3) employee status is the prerolling and packaging activities performed by the Technicians. The prerolling and packaging activities are certainly not secondary agricultural activities under 3(f) of the FLSA. Even if the time spent on industrial-type tasks were so short in duration or so non-transformative in result as to be categorized agricultural labor, the amount of time spent performing nonagricultural packaging and prerolling work is so substantial as to place the employees outside the agricultural exemption. See *Produce Magic*, 311 NLRB 1277 (1993) (“[W]here employees perform both primary agricultural and nonagricultural work, the proper focus is whether the nonagricultural work is ‘substantial’”).

The task of creating pre-rolls is undoubtedly non-agricultural. It is a mechanized process more akin to factory work that occurs in a separate area. The process produces a finished product that adds value to the marijuana and could be its own independent business. See 29 CFR 780.144–145. But it is generally considered a secondary task to be worked on when trimming and packaging are complete. Even still it is clearly a manufacturing activity and a preparation for sale rather than a preparation for market. In isolation this might not appear as strong a factor as it only accounts for around 5 percent of employees’ time; however, it gains strength when added to the 50

percent of working time spent on packaging which as shown below is also nonagricultural.

The task of packing of marijuana in 1 gram, 3.5 gram, 7 gram, and 14 gram packages is a preparation for sale that is outside of secondary agricultural activity. Packing here is distinguishable from fruit packing activities, which the Board has held to be a “preparation for market,” and therefore a secondary agricultural activity. *Bodine Produce Co.*, 147 NLRB 832, 837 (1964). The process in the instant matter is less like the boxing of produce for market and more akin to the precise dosing out of a product in preparation for sale. This is bolstered by the fact that employees in the packaging room update detailed logs of weights of each package. If any activity in the Cherokee facility were to resemble traditional produce packing, it would be the fulfillment department which fills cases with these packages of various grams in a grocery-style distribution model.

All of these factors weigh strongly in favor of finding that the Post-Harvest Technicians are employees under the Act and I find that they should be included in the unit.

Post-Harvest Leads and Post-Harvest Trim Leads:

For much of the same reasons set forth above, I find that the Post-Harvest Leads are not engaged in agriculture work under Section 3(f) of the FLSA. The Post-Harvest Leads and Post-Harvest Trim Leads work side-by-side with Post-Harvest Technicians a majority of the time.

They engage in the mechanical trimming process and engage in the packaging and prerolling processes. The Post-Harvest Trim Lead, though usually found in the trim room at the Mobius, also helps with prerolls and packaging as needed.

Additionally, the Post-Harvest Lead is who works the packaging room and has the responsibility of maintaining spreadsheet logs of weights being packaged. The Post-Harvest Lead in packaging sometimes must even fill in for the Post-Harvest METRC Specialist, a job class that—as shown below—is nonagricultural. Thus, I find that the Post-Harvest Leads and Post-Harvest Trim Leads are employees under the Act and they should be included in the unit.

Post-Harvest METRC Specialists:

The Post-Harvest METRC Specialist is also not engaged in agriculture work pursuant to 3(f) of the FLSA and is eligible to be included in the unit. The bulk of their time is spent ensuring compliance with Missouri’s track and trace regulatory scheme by weighing and tagging cannabis.

⁴ The Court contrasts the transformation caused by fermentation with the “natural state of the freshly cured tobacco,” suggesting the curing

was not enough of a transformation for the court. *Mitchell v. Budd*, 350 U.S. 473, 475 & 481 (1956).

To that end, they spend 70 to 90 percent of their time on a computer either keying in information in METRC or inputting similar information for the Employer's internal records. The rest of their time is spent weighing the product. Administrative tasks such as logging data in compliance with Missouri's cannabis selling regulations are not incidents to nor in conjunction with agriculture. Therefore, I find that the Post-Harvest METRC Specialists are employees under the Act and should be included in the unit.

In sum, the Employer's Post-Harvest production process is not a mere preparation for market but a process that utilizes industrialized processes to transform the marijuana from its natural state into finished products prepared for sale. I therefore find that the Post-Harvest employees are statutory employees under the Act and are not exempted as agricultural laborers. As the employees in the petitioned-for unit are statutory employees, the unit sought is appropriate.