

The UFW Abandoned the Gerawan Employees More Than 25 Years Ago

Setting the Record Straight

The UFW makes false statements as part of an effort to deflect criticism of the union's long abandonment of Gerawan's employees. The union wants to divert attention away from the [massive, historic worker protests](#) against UFW's representation. The Gerawan employees want to choose for themselves whether the UFW can bind them to a contract. Gerawan favors choice, the UFW does not.

The facts are now clear: The UFW seeks to entrench itself, bar decertification challenges, enjoin worker protests, and demand that any employee who refuses to pay dues be fired. As the Fresno Superior Court held, “[n]early every aspect of their work lives could be dictated by the collective bargaining agreement: wages, hours, breaks, meal periods, grievances, supervision etc. [The worker’s] interest is not adequately represented by the UFW, which [the worker] does not affirm as his representative and which has done nothing for him in 20 years.”

The UFW Abandoned Gerawan's Workers

- The UFW was certified as the bargaining representative for Gerawan's agricultural employees in July 1992. This certification came as a result of a 1990 election in which the UFW received 564 votes out of 1,077 cast. Of Gerawan's current workforce, only 1-2% voted in the 1990 election. Some were not even born when that election took place.
- The UFW and Gerawan held one preliminary negotiating session in February 1995. At that session, Gerawan asked, and the UFW agreed, to submit a proposed contract relevant to Gerawan's operations and industry. But the UFW never did.
- Following that initial meeting, the UFW did not contact Gerawan regarding representation or negotiation matters until October 2012. For almost two decades, there was no UFW presence at Gerawan and no union activity.
- During its absence, the UFW never negotiated a single wage increase for any Gerawan worker. It did not bargain for a contract. It did not ask for a seat at the bargaining table. It did not collect dues or file a single grievance on behalf of Gerawan's workers.

- While the UFW was absent, Gerawan on its own chose to offer the highest wages and best overall compensation in the industry. All of this happened without the UFW's involvement.

The UFW Cannot Explain or Justify Its Near 20-Year Absence

- As a certified union, the UFW was given extraordinary powers by the ALRB. These powers include the right to take access to Gerawan's fields, to file unfair labor practice charges, to request ALRB intervention to protect organizational activities by the union, and to obtain financial recoveries on behalf of workers for violations of the labor laws. **Yet not once in the 20 years after it was certified did the UFW attempt to use these powerful tools or to bring any complaint concerning Gerawan.**
- The UFW has consistently refused to explain why it abandoned Gerawan workers or failed to contact Gerawan for almost 20 years. It claims that it has no "legal obligation to explain to the employer anything about the last 20 years," deeming Gerawan's claims of abandonment to be "irrelevant."
- Instead, in court filings it offered excuses for its inaction. These include:
 - It walked away from the bargaining table in 1995 because it believed Gerawan made a "patently unacceptable," "take it or leave it" proposal concerning the use of farm labor contractors. While not explaining what was "patently unacceptable" about the proposal, the UFW cannot justify why it refused to participate in the bargaining process.
 - It claims that Mike Gerawan told them in 1995 that he does not want nor need the union. Gerawan denies ever saying it, but if he really did, and the union truly believed it meant Gerawan would never sign a contract, then why did not the UFW immediately file an unfair labor practice charge for bad faith bargaining instead of running away and abandoning the employees for nearly two decades?
 - Although the UFW could have sought to compel compulsory arbitration against Gerawan as early as 2003, it decided to do nothing, and now offers the dubious justification of that it "would be better to wait until the law was better established to invoke it." This cannot explain why the UFW, which championed this law, waited a decade to ask for compulsory arbitration against Gerawan.

The UFW Repeats False Claims Because It Cannot Explain Its Abandonment

- On September 30, 2013, the UFW told KFSN-TV (ABC 30) that it "has been representing the workers and it's because of their efforts that they have health benefits and have seen a wage increase."
- That same day the UFW falsely blamed Gerawan for the union's near two decade failure to represent the workers. On September 30, 2013, KSEE 24 News in Fresno reported that the UFW made following statement: "The UFW says it's always tried to work out a contract, but ran into roadblocks for the last 20 years."
- The UFW has in the past made false statements as part of an attempt to deflect criticism by concocting and repeating the untrue story that Gerawan has somehow been "fighting" or "objecting" or throwing up "roadblocks" for the last 20 years. When called on these false statements, the UFW has retracted or "corrected" its statements, or claimed not to have made them. For example:
 - On January 18, 2013, the UFW told the Fresno Business Journal that "it tried to negotiate with Gerawan many times over the years but it was not cooperative. "Instead of negotiating, they continued fighting for 20 years," stated Maria Machuca, UFW spokesperson. "It's been so long because they've been raising so many objections."
 - These statements were false. Armando Elenes, National Vice-President of the UFW, claimed that it "appears" that the UFW spokesperson was misquoted, thus accusing the reporter of unprofessionalism. The Fresno Business Journal responded: "Elenes asserts that The Business Journal misquoted UFW spokesperson Maria Machuca. We maintain that Machuca was quoted accurately."
 - When confronted with the September 30 statements attributed to the UFW by two network news channels, the UFW again denied making these statements, again accusing the reporters of sloppy reporting, and claiming that "our experience is that reporters often use imprecise language."
 - The UFW has yet to ask these reporters to immediately correct what it claims were misattributions and "imprecise language," even after Gerawan pointed out these false statements to the union's attorney.

The UFW’s false statements constitute a continuing pattern of deception designed to misdirect the conversation, obfuscate its own failures, and distract the ALRB and many other interested parties from answering the only question that really matters: **If the UFW truly believes that Gerawan “workers have already benefited from having the union here,” then why is not the UFW asking for the ballots to be counted?**

In May, 2015, the California 5th District Court of Appeal unanimously held that the Board’s “blanket refusal” to consider allegations of UFW abandonment was “arbitrary and capricious.” The court concluded that union abandonment is a defense to state-compelled forced contracting under the MMC statute because such longstanding absence would show that “the union has effectively abdicated its statutory role by gross abandonment” of the workers. The court explained why allowing the *employer* to raise this defense would protect *worker* freedom of choice:

It is clear that the employees' right to a representative of their own choosing would be seriously jeopardized in the situation of abandonment by a union where, as here, the absentee union suddenly reappeared on the scene to demand the MMC process. A union that has had little or no contact with the employees or the employer over many years (here, decades) would be unlikely to have an adequate working knowledge of the employees' situation or their wishes. From the employees' standpoint, that union would be reappearing on the scene as something of a stranger. Most importantly, during the union's long absence, the employees' working conditions, wages and attitude toward the union (if they even knew they had a union) may have significantly changed over the years. Indeed, it may be the case that the employees do not want to be represented by that union or any other union, which Gerawan asserts was the situation here. Against that potential backdrop is the prospect that, in the MMC process, a CBA will be imposed whether the employees want it or not; and it will be imposed with the formerly absent union, whether the employees want its representation or not. For these reasons, as the present case illustrates, where a union has arguably abandoned the employees but later returns to invoke the MMC process, that situation may create a crisis of representation. Accordingly, it is appropriate to allow the employer to raise the abandonment issue at that stage, because only that result will preserve the ALRA's purpose of protecting the employees' right to choose.

On November 27, 2017, the California Supreme Court reversed the Fifth District Court of Appeal’s unanimous decision striking down the MMC statute as unconstitutional. The court deems the UFW’s failure to explain its disappearance, or the fact of its abandonment, irrelevant to the ALRB’s order imposing forced contracting on Gerawan and its workers. Gerawan will ask the U.S. Supreme Court to review this decision.

The right to choose – through the secret ballot – is the best way for the workers to decide whether they have “benefited” from the UFW. The employees deserve to have the choice before they are forced to pay three percent of their wages to the UFW or lose their job if they do not. As Gerawan has stated repeatedly, the company supports free and fair employee choice. Gerawan will accept the outcome of a secret-ballot vote.

What are the UFW and ALRB afraid of?