

# Summary of the History between Gerawan Farming and the United Farm Workers

---

Gerawan Farming is a family grower of peaches, citrus, and almonds in the Fresno area. The farm is known as the preferred employer for up to 5,000 workers. Gerawan has a history of paying the highest wages, being hyper-compliant with labor laws, and providing the best overall compensation package in the industry.

**1990:** The United Farm Workers (“UFW”) win a contested election at Gerawan.

**1992:** After legal challenges by both sides, the Agricultural Labor Relations Board (“ALRB”) certifies the UFW as the employees’ bargaining representative. Gerawan responds to the UFW’s request for negotiations and explains that it is “anxious to commence negotiations” to “reach an early agreement.”

**1994-95:** More than two years later, the UFW responds to Gerawan by sending a boilerplate proposal without any economic proposal. A brief meeting is held during which Gerawan requests a proposal that would be relevant to Gerawan’s operations and include economic provisions. The UFW agrees to do so, but never does. The ALRB, following a decision by the National Labor Relations Board, rules that Gerawan’s packinghouse employees are not part of the bargaining unit represented by the UFW. The UFW makes no further attempt to unionize the packinghouse employees.

**1995 – 2012:** UFW does not contact Gerawan whatsoever. During all those years:

- UFW does not send any letters, faxes, emails, nor make any phone calls to Gerawan.
- UFW does not file any unfair labor practice charges.
- UFW does not make any inquiries on behalf of employees.
- UFW does not file any grievances.
- UFW does not take access to the fields to visit the employees.
- UFW makes no attempt to negotiate a contract.
- UFW never proposes economic terms for a collective bargaining agreement.

**2012:** In October, as the season is ending and **seventeen years** after the its last contact with Gerawan, the UFW sends a letter to Gerawan to request negotiations and demand detailed information about Gerawan’s operations and employees. Even though 99% of current Gerawan employees were not employed at Gerawan in 1990 and did not vote to elect the UFW, Gerawan agrees in good faith to bargaining sessions.

**2013:** Negotiations begin in January. The UFW proposes that employees pay 3% of their wages to the UFW or be fired, even though the UFW was absent for almost 20 years and had done nothing for the employees.

- After ten bargaining sessions over a three-month period, during which the UFW never makes an economic proposal, in late March the UFW invokes Mandatory Mediation and Conciliation (“MMC”), a controversial 2003 law that allows the government to write and impose a “contract” on the employer and employees against their will.
- Gerawan is compelled by the ALRB into MMC on April 16. Gerawan participates in this process, while protesting the constitutionality of this forced contracting procedure.
- The ALRB bars Gerawan employee Lupe Garcia and other Gerawan employees from attending the MMC hearings. On October 28, Gerawan (and later, Garcia) file a First Amendment challenge in Superior Court to the Board’s “no-public access” policy. In 2014, the Superior Court dismisses this action, based on a provision in the Labor Code that bars the right of any party to file a challenge to the ALRB’s orders in Superior Court. In May, 2016, the Fifth District Court of Appeal struck down this “jurisdiction stripping” statute, and sent the case back to Superior Court to decide the First Amendment issue raised by Gerawan and Garcia. A ruling on the First Amendment issue is pending from the Superior Court.
- On August 21, the ALRB asks the Superior Court to intervene in the pending decertification petition drive. The basis for this request are allegations that on three separate occasions a Gerawan crew boss “assisted” the petitioners in gathering signatures. The Court issues orders protective of the petitioning process, thus granting the ALRB’s request that the court supervise the petitioning process.
- In late August, the ALRB’s Regional Director Silas Shawver provides in-person training to Gerawan’s field supervisory personnel. Shawver and ALRB staff then conduct company-wide “noticing” and education to employees as to their rights to a free and fair election, without any interference from their employer, the union, or the ALRB. Over 2,100 Gerawan supervisors and employees receive training and education from the ALRB staff. This is done at the invitation of Gerawan, without any Gerawan management present. On September 11, the ALRB advised the Superior Court that it was satisfied with the process, and that no further noticing would be required.
- In late September, [over 2,600 Gerawan employees](#) (more than half its work force at that time) ask the ALRB to conduct an election so that the employees can decide whether to decertify the UFW as their ALRB-imposed representative. ALRB’s Shawver, who is [and a friend of UFW](#), dismisses the petition, alleging that approximately 100 signatures (out of over 2,600) were forged. Shawver does not disclose whether the employees had submitted enough uncontested signatures required for an election, even without counting the 100 contested signatures. While Shawver does not say that Gerawan was responsible for any of these alleged forged signatures, he concludes that there is a “shadow of doubt” over the legitimacy of the entire petitioning process, due to Gerawan’s alleged interference. Gerawan *and* the employees say the allegations are false. The ALRB never concludes any investigation into the alleged forgeries.

- Gerawan employees react angrily. On September 30, two-thousand Gerawan employees [go on strike to protest the ALRB](#). Three days later, eight busloads of Gerawan farmworkers travel to Sacramento to ask the ALRB to let them vote. The ALRB refuses to hear their request, claiming that the matter is subject to “litigation.” Workers then take their protest to Governor Jerry Brown’s office.
- A second petition drive is initiated by the employees. In late October they present over 2,000 signatures to support their request for an election. Once again, Shawver blocks the election, claiming that the alleged misconduct which preceded the first petition warrants dismissal of this second petition. Shawver did this even though he personally conducted the in-person training and education, and told the Superior Court that he was satisfied with this process.
- Immediately after dismissing the second petition, 1,000 employees go on strike and travel [Visalia to protest at the ALRB office](#).
- Hours later, the ALRB Board reverses Shawver’s decision and orders the election to proceed. The ALRB determines that Shawver’s claims are not sufficient grounds to block the election.

**November 5, 2013:** Thousands of Gerawan employees cast ballots to decide for themselves whether to oust the UFW. It is the first election in almost a quarter century at Gerawan. The ballots are impounded while the ALRB staff “investigates” eleventh-hour charges made by the UFW. The UFW wants their charges cause the votes to never be counted. [UFW’s friend](#) Shawver, the same ALRB regional director who twice rejected the employees’ petitions for an election, is put in charge of the investigation.

**November 13, 2013:** Gerawan asks the ALRB to temporarily stay the forced MMC contract pending the outcome of the UFW’s challenges to the election. Gerawan argues that the ALRB cannot simultaneously order an election to decertify the UFW and then impose the UFW on employees with a forced contract without first counting the ballots.

Since the election was conducted *after* the ALRB wrote the MMC contract, *and* the contract was then publicized to the employees, Gerawan argues that the employees – not the Board – are better situated to decide whether to retain the UFW (and the MMC contract) or to oust the UFW (and thereby not accept the MMC contract). The ALRB denies this request in a one sentence order the following day.

**November 26, 2013:** With the ballots impounded, the ALRB issues its MMC Order to force a government-written “contract” on the employees and Gerawan, [without allowing the employees to vote on it](#). The UFW immediately seeks an order from a Superior Court judge to compel the “contract” against the employees’ will.

**December, 2013:** Gerawan appeals the ALRB’s MMC Decision to the Fifth District Court of Appeal.

**February 2014:** Gerawan employee Silvia Lopez files a federal civil rights lawsuit against ALRB for the agency's systematic interference with the employees' right to have their votes counted. ALRB tries to get the case dismissed, but U.S. District Court Judge Lawrence O'Neill rules that the employees have a First Amendment claim based on the ALRB's interference with their right to decide whether to associate with the UFW.

**August 26, 2014:** A thousand Gerawan employees [storm the Visalia ALRB office](#) to protest the agency's refusal to count their votes. At the protest the employees deliver to ALRB 800 declarations signed by the employees. The documents tell the ALRB that the employees do not want UFW as their representative, and they were not pressured or forced to oppose the UFW.

**September 29, 2014:** Following months of delay by the ALRB's General Counsel, the ALRB begins a hearing on post-election objections and unfair labor practice charges. The hearing will determine whether the ballots will be opened and counted. The ALRB's directive is to conclude the hearing by the end of 2014.

**March 2015:** The 105-day hearing concludes five and a half months after it began. A total of 130 witnesses and thousands of pages of evidence entered into the record.

**May 14, 2015:** California's Fifth District Court of Appeal in Fresno [unanimously declares](#) the MMC Statute unconstitutional and sets aside the ALRB's order to force a "collective bargaining agreement" and to impose the UFW on Gerawan and its employees. The court also holds that the ALRB's "blanket refusal" to consider allegations of the UFW's two-decade abandonment was arbitrary and capricious. The ALRB subsequently files an appeal with the California Supreme Court, where the matter is currently pending.

**June 2015:** The ALRB's General Counsel asks a Superior Court judge to order Gerawan to rehire an employee discharged for insubordination. The employee is a pro-UFW leader. As this is happening, an ALRB employee sends a letter to the Chairman of the ALRB alleging unethical conduct by the ALRB's General Counsel, including changing an employee's statement in order to build a case against Gerawan. The Superior Court denies the requested relief. Gerawan subsequently files a Public Records Act request with the ALRB to obtain information about the General Counsel's investigation. The ALRB refuses to turn over documents, citing its need to protect the whistleblower.

**April 15, 2016:** The ALRB issues its Decision on the post-election objections and unfair labor practice charges and rules that the employees' decertification election ballots should be destroyed. Gerawan files an appeal with the Fifth District Court of Appeal, where the matter is currently pending.

**November 2016:** The ALRB conducts a hearing over unfair labor practice charges alleging bad faith bargaining, against only Gerawan and not the UFW. These allegations overlap with the factual charges now before the Court of Appeal in the election case. The ALRB, over Gerawan's objections, refuses to stay this action, notwithstanding the pending election appeal. (On April 15, 2017, an ALRB administrative law judge issues recommended findings, based on his conclusion that Gerawan failed to bargain in good faith, notwithstanding the fact that it had been compelled into the forced-contracting MMC process.)

**January 2017:** Despite significant expenditures of time and money by ALRB and Gerawan to prepare for hearing, ALRB's new Visalia Regional Director Chris Schneider abruptly dismisses an administrative complaint filed by the ALRB's General Counsel, which alleges that Gerawan terminated an employee for engaging in pro-union activities. Gerawan later learns that the ALRB "whistleblower" employee filed a lawsuit against the ALRB and its most senior enforcement officials.

The 30-year veteran ALRB investigator declares that the allegations of retaliation against Gerawan were fabricated by Silas Shawver, the UFW friend and same regional director who repeatedly dismissed the employees' decertification petitions.

The ALRB Board knew of the whistleblower's allegations when it decided to destroy the employees' ballots anyway.

**January 2017:** ALRB Chairman William Gould resigns. [In his resignation letter](#), Gould tells Governor Brown that the ALRA is no longer relevant to California farm workers. Gould noted that only one petition for unionization had come before the board during his years there, and that 99% of workers are not unionized.

The following day, Governor Brown appoints Isadore Hall to the ALRB. Hall, a former legislature from Compton who lost in a congressional bid in 2016, is confirmed after a contentious confirmation hearing and Senate floor debate, where facts surfaced that Hall had [publicly supported the UFW's efforts to condemn Gerawan and its employees](#) in a matter now before the ALRB. In exchange, Hall received UFW's endorsement for his campaign.

**April 2017:** Gerawan [moves to disqualify ALRB Board Member Hall](#) from being involved in any Gerawan-related matters. The ALRB, with Hall's voting as to his own fitness to hear the matter, and, dismisses the motion.

**May 2017:** A third-party comes forward with [testimony that Hall told him he intends to "get" Gerawan and its employees](#) for opposing his confirmation as an ALRB member.

Several agricultural associations provide information critical of the ALRB and its budget requests for the 2017-2018 fiscal year. The subcommittee passes the funding requests but adds reporting requirements at the midpoint of the fiscal year concerning the ALRB's use of public funds for staffing and the new offices.

**June 2017:** The ALRB again rejects Gerawan's motion to disqualify Hall, while taking the position that it need not consider sworn testimony from a third party that Hall is going to "get" Gerawan. Hall again participates in deciding his own disqualification motion.

**June 2017:** The ALRB's Regional Director issues three consolidated complaints against Gerawan in the very last days in June (and the very last days of the ALRB's 2016-2017 fiscal year) alleging a variety of allegations ranging from bargaining to discrimination, and which include unfair labor practice charges from as old as 2013. These last-minute complaints against Gerawan, as well as a few other

employers, greatly increase the number of pending complaints and hearings for the 2016-2017 fiscal year, which was the subject of the budget hearings in March and May.

**August 2017:** Gerawan and most of the state’s agricultural associations provide evidence and testimony at a Joint Legislative Audit Committee in support of a request to audit the ALRB’s use of public funds and its actions that hinder the rights of the farmworkers it was established to protect. All three ALRB Board Members, its General Counsel and its Executive Secretary appear at the hearing. Despite predictions that the audit request would be soundly defeated, it comes within one vote of being ordered.

**November 27, 2017:** California Supreme Court reverses the Fifth District Court of Appeal’s unanimous decision striking down the MMC statute as unconstitutional. Gerawan asks the U.S. Supreme Court to review on March 28, 2018.

The 5th District Court of Appeal is also currently considering the Board’s decision to invalidate the workers’ decertification election of November 2013 in which the Board impounded the ballots, and which remain uncounted to this day. Gerawan is asking the 5th District Court of Appeal to decide the election case in favor of the workers’ right to have their ballots counted.

**January 22, 2018:** The ALRB (in a decision joined by Isadore Hall despite Gerawan’s Motion to disqualify Mr. Hall) finds that Gerawan failed to “bargain” in good faith in the first half of 2013 before the forced contracting process (MMC). Gerawan appeals this decision on February 20, 2018 and asks the Court of Appeal to reverse and hold that Isadore Hall should be disqualified from participating in decisions involving Gerawan, due to his conflicts of interest in violation of his ethical responsibilities.

**February 1, 2018:** Pursuant to a request filed by Gerawan, the FCC’s Enforcement Bureau fines the Cesar Chavez Foundation \$115,000 for repeated violation of broadcasting regulations, including violations relating to the broadcasting of commercials on two “non-profit” stations owned and operated by the Cesar Chavez Foundation. It is the largest fine in FCC history for underwriting violations. The FCC’s consent decree and press release are attached below and linked [here](#) and [here](#).

**April 23, 2018:** Court of Appeal for the Fifth District receives oral argument in the election appeal filed by Gerawan, which asks the court to reverse the ALRB’s decision to set aside the election and to count the ballots.

**May 30, 2018:** The Fifth District vacates a majority of the ALRB’s ULP findings in the election case, and remands it back to the ALRB with directions that the Board open the ballot boxes and count the votes. [In its Decision](#), the Court was highly critical of the Board’s failure to open the ballots and consider the tally in its decision-making process. “Something seems greatly amiss when a statutory election process has been commenced and secret ballot votes have been duly cast by the workers, but all pertinent information about what happened in the election—i.e., the vote tally—is suppressed or

concealed by the government agency entrusted with that statutory process.” (Fifth District’s Decision at p. 110, n. 106) More from the Decision:

- “The Board so narrowly focused on punishing the employer that it effectively lost sight of the correlative statutory value of protecting the farmworkers’ right to choose, which was and is a fundamental part of the Board’s mission under the ALRA.” (p. 7)
- “Contrary to the Board’s heavy-handed approach to this issue, it has long been recognized that although the state has power to regulate unions and labor relations, it must not trespass upon the domains set apart for free speech and free assembly’ in how it applies such laws.” (p. 81)
- “[T]he Board sought to justify its result with the perplexing statement that ‘it is impossible to know whether the signatures gathered in support of the decertification petition represented the workers’ true sentiments.’ The . . . Board’s inability to divine the employees’ subjective motives for signing the petition is not a basis to either strike the petition or nullify the election.” (p. 131, n. 120).
- “We find the Board’s secretive approach troubling, especially in light of the fundamental principle that open and transparent government are an essential check against the arbitrary exercise of official power.” (p. 110, n. 106)
- “In view of these serious concerns that may arise where (as here) the Board refuses to tally election ballots, we call upon the Legislature to consider whether legislative action is needed to prevent such occurrences in future cases.” (p. 110, n. 106)
- “[W]e are convinced that the [Board’s] approach is fatally inconsistent with the ALRA because it fails to accord sufficient value, weight and importance to the employees’ fundamental right to choose via secret ballot election. Indeed, it virtually ignores that right.” (p. 123)
- “[T]he failure to provide a vote tally should be corrected by the Board, and the tally and size of the margin of victory should be weighed as a significant factor in its reconsideration of the election question on remand.” (p. 137)

**July 2018:** Despite that strong rebuke and order to count the workers’ ballots, the ALRB and UFW persist trying to destroy the ballots and force a non-negotiated ALRB-written contract on the workers against their will. ALRB and UFW have appealed the loss to the California Supreme Court. The California Supreme Court will decide by October 8, 2018 whether to accept the case. Previously, that court ruled that unwanted contracts could be forced on workers against their will since workers can decertify the union if they want. So, it remains to be seen if that court will now amend their decision to include, “...unless we destroy the workers’ votes.”

**September 12, 2018:** The California Supreme Court denies the petitions for review filed by the ALRB and the UFW. That lets stand the Fifth District’s May 30, 2018 Decision vacating most of the findings made by the ALRB, and its direction to the ALRB to open the ballots.

**September 18, 2018:** The ballots from the November 5, 2013 election are finally counted, and the unchallenged vote tally is:

No Union	1,098
Union	197
Voided	18
<u>Challenged</u>	<u>660</u>
Total Votes Cast	1,973

Because the vote spread was so large (901 votes), the quantity of challenged ballots (660 votes) were too few to affect the outcome of the election. The challenged ballots will remain unopened. Most of the challenged ballots were from an effort by ALRB Regional Director Silas Shawver for a backup plan to stop the workers from ousting UFW. The night before the election, UFW asked Shawver to challenge more than 600 workers because the UFW knew those workers did not want UFW. Without any reason other than UFW’s desire, Shawver had those workers herded aside, interrogated, and asked for two forms of ID when they arrived at polling stations. But, Shawver’s effort failed, it still wasn’t enough to throw the decertification.

2,645 workers were eligible to vote based on the payroll period immediately before the filing of the petition in October 2013, which equates to a 75% voter turnout.

**September 27, 2018:** The ALRB follows the directive of the Fifth District and finds that:

“IT IS CERTIFIED that a majority of the valid ballots have been cast for ‘No Union’ in the representation election conducted on November 5, 2013, among the agricultural employees of Gerawan Farming, Inc., in the State of California, and that the United Farm Workers of America thereby lost its prior status as the exclusive representative of the employees for the purpose of collective bargaining, as defined in Labor Code section 1155.2, subdivision (a).”

**October 1, 2018:** The US Supreme Court denies Gerawan’s request that it review the California Supreme Court’s upholding of the MMC statute. Because the UFW is decertified as of the date of the election (November 5, 2013), the ALRB’s Decision to implement the MMC forced contract comes (November 19, 2013) is moot and has no effect on the working relationship between Gerawan and its workers.

###