

There Is No Contract

Setting the Record Straight

The majority of Gerawan employees petitioned for an election to decertify the United Farm Workers, and thousands of our employees have [gone on strike repeatedly](#) to protest the UFW's and the Agricultural Labor Relations Board's attempts to force a government-drafted "contract" on them against their will. Among other things, the so-called contract would prohibit the employees from continuing to strike to protest the UFW and ALRB. Unlike all other unionized workers in the United States, our employees are not allowed to have a ratification vote to decide whether to approve or reject this contract.

We and our employees are challenging that so-called contract in court. The UFW and ALRB's general counsel want to force it on our employees against their will, even though the employees knew the terms and conditions of it when they voted in their November 2013 election (the ballots of which remain uncounted).

Most of the employees were never told by the UFW that it was seeking to impose a contract on them that would require them to pay three percent of their pre-tax earnings to the union or lose their jobs, or that it would strip them of the right to work or not work as they please from the company. There is a serious moral and ethical question as to whether the UFW may legitimately claim to represent our employees, or to bind them to a so-called contract that the employees cannot ratify and were not allowed to be involved in the process when it was created.

Late in 2012, when the UFW resurfaced after disappearing for almost two decades, the union demanded to bargain even though 99 percent of current Gerawan employees did not vote to elect UFW. Four months after negotiations began, and still without having made an economic proposal, the UFW invoked a process known as Mandatory Mediation and Conciliation through the Agricultural Labor Relations Board.

MMC is a forced-contracting process by which the ALRB is trying to dictate the terms of a binding union contract on Gerawan and its employees. It is not collective bargaining, nor is it mediation as the name implies. Neither Gerawan nor the employees can opt out, and the employees are not allowed to vote on it. According to the UFW, this forced contract not only imposes the UFW on our workers; it also bars the workers' ability to obtain an election to oust the UFW for two years.

MMC provisions were added to the Agricultural Labor Relations Act in 2003. MMC requires the parties to submit to mediation based on the passage of time, rather than the status of negotiations. The "mediation" component transitions quickly to *arbitration* leading to a state imposed "contract."

California is the only state in the nation that allows a state agency to impose contractual terms on a single private employer and employees. While originally intended to prevent employers from stonewalling collective bargaining, in our case, the UFW never attempted to bargain in good faith, and waited more than a decade after MMC became law to invoke this process. It did so notwithstanding the fact that the process itself shuts out Gerawan employees from having a ratification vote like every other unionized employee in the nation.

In fact, the employees are not even allowed to attend the MMC sessions. When veteran Gerawan employees tried to attend one of the “on the record” MMC sessions, the ALRB prohibited their entry unless they were pro-union.

While the post-election proceedings dragged on, the UFW and general counsel of the ALRB went to court repeatedly and unsuccessfully to attempt to force the so-called contract on the employees. At one of those attempts, several hundred employees protested outside the courthouse while inside the ALRB brazenly asked the judge to impose the contract on the employees against their will.

UFW also tried to change the law, and successfully lobbied passage of legislation (SB 25) that would have allowed contracts to be forced on employees without prior judicial review. Governor Brown vetoed the bill, saying that “contract enforcement and election disputes should be dealt with so the process is balanced and fair.”

UFW claims that we have refused to “to implement the state-issued union contract,” but they never mention that the Superior Court ruled that it would not be “just and proper” to implement such a so-called “Collective Bargaining Agreement” at this time.

“Requiring Gerawan to implement the CBA is a blatant departure from the existing status quo of no operative CBA. In particular, the CBA would invoke a long term bar to an employee election. Such an election, however, is, at this point, a clear objective of numerous Gerawan employees. Additionally, the evidence presented at both hearings described the UFW’s lengthy absence from Gerawan as well as the disputed mediation procedure giving rise to the CBA now under review by the Fifth District Court of Appeals.”

On May 14, 2015, the California 5th District Court of Appeal in [Fresno unanimously declared the MMC statute unconstitutional](#) and set aside the Agricultural Labor Relation Board’s order to force a “collective bargaining agreement” and to impose the UFW on Gerawan and its employees. The case was appealed by the ALRB and was reversed on limited grounds by the California Supreme Court and remanded the case back to the 5th District Court of Appeal to consider the remaining grounds of Gerawan’s challenge to the MMC-imposed contract. Gerawan is also petitioning the United States Supreme Court to review the California Supreme Court’s decision.

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