

File No. 150126

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Public Safety & Neighborhood Services Date March 19, 2015

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Derek Evans Date 3/13/15

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Supporting Gerawan Farm Workers]

2
3 **Resolution supporting Gerawan farm workers their right to be represented by the**
4 **United Farm Workers, and urging Gerawan Farming to implement the terms of their**
5 **contract.**

6
7 WHEREAS, In 1990, during the last major organizing drive under Cesar Chavez's
8 leadership, farm workers at Gerawan Farming voted in a state-conducted secret-ballot
9 election for representation by United Farm Workers (UFW), with the Agricultural Labor
10 Relations Board (ALRB) subsequently certifying UFW as the farm workers' union
11 representative; and

12 WHEREAS, In the following twenty-three years, Gerawan mounted various legal
13 challenges to the elections results, was found by the ALRB to have fired crew employees and
14 closed six farm labor camps in retaliation for their UFW support, petitioned the National Labor
15 Relations Board to find some Gerawan employees ineligible for UFW representation, and is
16 now engaged in a hearing regarding allegations it repeatedly and illegally campaigned to
17 decertify the UFW; and

18 WHEREAS, Because of Gerawan's punitive practices and ongoing refusal to negotiate
19 a contract, the UFW invoked California's Mandatory Mediation Law in 2013 to hammer out
20 contract terms - with the state-appointed mediator issuing a three-year contract that was
21 finalized in November 2013 by the ALRB, which ordered it to take effect right away; and

22 WHEREAS, The terms of the contract included retroactive wage increases and holiday
23 compensation payments from July 2013 - July 2014 of approximately \$1,700 for most of
24 Gerawan's 5,000 employees, which Gerawan still refuses to implement - a refusal resulting in
25

1 the loss of millions of dollars in increased wages to Gerawan's employees over the course of
2 the contract's entirety and lost revenue to the California economy; and

3 WHEREAS, Upon extensive investigations by the state, the ALRB chief prosecutor
4 issued a 28-page complaint detailing the actions taken by Gerawan "to undermine the UFW's
5 status as its employees bargaining representative; to turn its employees against the union; to
6 promote decertification of the UFW; and to prevent the UFW from ever representing its
7 employees under a collective bargaining agreement"; and

8 WHEREAS, The regional director of the ALRB dismissed two Gerawan attempts at
9 UFW decertification; and

10 WHEREAS, The ALRB General Counsel is prosecuting Gerawan for specific hostile
11 management practices which included supervisors encouraging employees during and after
12 work hours to sign the decertification petition, cancelling work and directing employees to pro-
13 decertification protests, and allowing employees supportive of decertification to arrive late to
14 work, leave early, and miss work altogether to engage in signature-gathering while enforcing
15 strict attendance policy measures against employees not supportive of decertification; and

16 WHEREAS, Gerawan Farming is the most recent example in the agriculture industry's
17 obstructionist practices toward employee organizing efforts; and

18 WHEREAS, Gerawan is being supported by extremist right groups that include the
19 Center for Constitutional Jurisprudence and Grover Norquist's Center for Worker Freedom, a
20 project of his Americans for Tax Reform underwritten by Crossroads GPS and the Koch
21 brothers, which fought workers in recent UAW organizing battles in Tennessee and that is
22 orchestrating a sophisticated media campaign on Gerawan's behalf to oust the UFW in the
23 Central Valley; now, therefore, be it

1 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
2 formally calls upon Gerawan Farming to implement the UFW union contract issued by the
3 neutral mediator and the State of California, to cease its hostile working environment, and to
4 acknowledge through action the basic human rights of fair compensation and non-
5 discriminatory treatment.

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**Background: Gerawan Farming's refusal to implement a state mandated contract with UFW
Public Help Needed**

Giant Fresno, California based Gerawan Farming, with over 5000 workers at peak harvest season, sells peaches, nectarines, plums, apricots and grapes under its **Prima** label.

The California Agricultural Labor Relations Act (ALRA) provides California farm workers legal protections to organize and bargain for union contracts. Yet entrenched industry opposition to farm workers' exercising their rights under the ALRA, including industry violations of the law, remains a major challenge. Gerawan is a prime example.

The United Farm Workers (UFW) won an election to represent the workers at Gerawan twenty four years ago. At that time, Gerawan attempted unsuccessfully to have the election thrown out and the State of California found that Gerawan illegally fired a crew of workers for supporting the union and unlawfully closed down six of its farm labor camps in retaliation for workers backing the UFW.

After numerous attempts to negotiate a contract with Gerawan, in 2013 the UFW invoked California's Mandatory Mediation Law which provides for a neutral mediator to work out the terms of a contract when growers cannot reach agreement with union representatives. (Gerawan, for example, rejected basic proposals from the workers' negotiating team regarding wage increases, a seniority system, or a "just cause" requirement for termination.) The state appointed mediator issued a UFW/Gerawan contract that was finalized by the Agricultural Labor Relations Board in November of 2013, with wage increases retroactive to July, 2013. Yet, per a recent complaint filed by the ALRB's General Counsel, Gerawan illegally refuses to implement the contract.

In 2013 and '14 the State of California issued complaints against Gerawan that include accusing the grower of illegally instigating and supporting drives to get rid of the UFW; illegally interrogating and spying on workers; illegally proposing to exclude its Farm Labor Contractor workers from receiving union contract benefits; illegally intimidating workers exercising their right to participate in negotiations; failing to bargain in good faith; and illegally refusing to implement the state-issued contract.

Gerawan continues to engage in an expensive campaign to discredit the union, including paying \$3,000 plus per day for anti-union labor consultants! Yet in light of the complaints against Gerawan by the state and more, Gerawan's campaign rings hollow. Gerawan's refusal to abide by the law and to implement the contract has deprived Gerawan farm workers of millions of dollars in wage increases and other benefits established by the state mediator in the contract.

Gerawan is able to carry on business without penalty thus far as the legal process is slow! Gerawan workers are now turning for justice to concerned consumers and the court of public opinion.

Gerawan-UFW Chronology

Updated 8-25-14

Gerawan Farming - which markets its fruits under the Prima brand - is a multi-million dollar company employing over 5,000 farm workers in the San Joaquin Valley. The United Farm Workers (UFW), with the participation of a 25 member negotiating committee obtained a legally binding union contract through the Mandatory Mediation Process of the State of California calling for improved wages, benefits and additional rights but Prima has illegally refused to implement.

May 4, 1990 — At the request of Gerawan farm workers and in a drive led by Cesar Chavez and Dolores Huerta, the United Farm Workers of America intervened in the Gerawan Farming Inc. union representation election—organizing workers and demonstrating enough support to get on the ballot—after another union, the Independent Union of Agricultural Workers/International Brotherhood of Painters and Allied Trades, AFL-CIO initially files for an election at the huge Fresno-based grape and tree fruit company. Gerawan insisted on including its packinghouse workers in the balloting in an effort to swing the election against the unions.

May 9, 1990 — The Gerawan election is conducted by the state Agricultural Labor Relations Board. The choices on the ballot are the Independent Union of Agricultural Workers, the UFW and no union.

(ALRB case 16 90-RC-2-VI) The results are:

IUAW	178
UFW	479
No Union	581
Challenged Ballots	55
Total	1,293

May 10, 1990 — The state of California (ALRB general counsel) accuses Gerawan of illegally laying off farm workers in 32 crews in order to prevent the workers from voting for the UFW, all in an effort to affect the outcome of election. Gerawan is later ordered to pay all the laid-off workers lost wages with interest to make them whole for the economic losses they suffered as a result of unlawful Gerawan's actions. (ALRB case 90-CE-15-VI)

May 15, 1990 — A run-off election is held between the two top vote getters (Gerawan and the UFW), but challenged ballots will determinative the outcome. (ALRB case 16 90-RC-2-VI) The results are:

UFW	536
No Union	374
Challenged Ballots	211
Total	1,121

June 1990 — The state of California (ALRB general counsel) accuses Gerawan of illegally firing crew boss Pedro Lopez's crew because its members are union supporters.

June 29, 1990 — The ALRB makes a decision on which of the challenged ballots should be counted, resulting in UFW election victory. (ALRB case 16 90-RC-2-VI)

July 8, 1992 — After rejecting lengthy legal challenges to the election results by Gerawan, the ALRB certifies the UFW as the Gerawan employees' union representative.

July 21, 1992 — Cesar Chavez sends a letter to Gerawan requesting negotiations.

August 13, 1992 — Gerawan agrees to negotiate, but then never makes a legal contract proposal.

November 1992 — In an effort to delay bargaining for a union contract, Gerawan reverses its position and files a petition with the National Labor Relations Board Oakland office asking its regional director to determine that Gerawan's packinghouse workers were subject to the NLRB's jurisdiction and therefore ineligible to be represented by the UFW under California's farm labor law. In May 1990, Gerawan had previously insisted that the packinghouse workers were eligible to vote and should be included in the state-held election under California law. (NLRB case No. 32-RM-700).

December 30, 1992 — Gerawan is found guilty by the state of California (ALRB) of closing down six farm labor camps in retaliation for workers' support of the UFW and the company is ordered to compensate workers for their loss of housing.

March 9, 1993 — The NLRB regional director issues a decision, determining that the Gerawan packinghouse workers are commercial rather than agricultural employees and therefore ineligible to be represented by the UFW, even though Gerawan had previously argued they should be included in the vote.

April 23, 1993 — Cesar Chavez passes away.

July 6, 1994 — UFW President Arturo Rodriguez (who succeeds Cesar Chavez) sends Gerawan a letter once again requesting negotiations on behalf of Gerawan workers.

Summer and fall 1994 — UFW organizers and negotiators work with the elected union negotiating committee composed of worker leaders at the massive company and extensively consult with workers in Gerawan's many crews to re-organize the employees and involve them in formulating a complete UFW bargaining proposal.

November 22, 1994 — UFW Central Valley Regional Manager Tanis Ybarra submits the comprehensive bargaining proposal to Gerawan and proposes ground rules for the negotiations. Shortly thereafter, the UFW's Ybarra meets with the company attorney and Mike Gerawan, taking them through the union bargaining proposal. The company agrees to prepare a counter-proposal. It is never received.

Early 1995 — The Union's Ybarra, UFW President Rodriguez and union executive board member Cecilia Ruiz meet with Mike Gerawan to discuss negotiations. During the meeting, Gerawan says, "I don't want the union and I don't need the union." Gerawan signals it will never sign a contract acceptable to UFW. That ends the session. No more meetings are held.

1995 - 2002 — Gerawan workers and UFW continue working to improve their working conditions, all while the ALRB stops enforcing the law and provides no support for continued organizing.

2001-2002 — UFW works with farm workers from across the state, including Gerawan workers, for development and passage of Mandatory Mediation law. Farm workers from across the state, including Gerawan workers, march on the state capitol, urging the Governor to sign the bill into law.

January 1, 2003 — The 2002 UFW-sponsored Mandatory Mediation law goes into effect. This law permits neutral state mediators to hammer out union contracts when growers refuse to sign them.

July 2003 — UFW begins testing mediation law at various farms, including at Pictsweet Mushroom Farms

November, 2003 — First grower challenges constitutionality of mediation law in the Third District Court of Appeal (Hess Collection Winery v. Agricultural Labor Relations Board)

March, 2004 — Several grower organizations, included many supported by Gerawan, file amicus briefs asking that the Court of Appeal rule that the Mediation law is illegal

April, 2004 — UFW files amicus brief and assists other unions in support of upholding the constitutionality of Mediation law before the Third District Court of Appeal

May 2004 — At the urging of Gerawan workers, the UFW launches a new campaign to re-organize Gerawan workers and opens a union office in the Fresno County town of Reedley to aide in that effort.

July 2004 — Briefing is completed in the Court of Appeals in the Hess case

August 5, 2004 — Farm workers receive a wave of nasty anti-UFW leaflets that are mailed out to farm worker communities where Gerawan employees live, threatening workers with job loss if they support the union. UFW and workers believe Gerawan is responsible for the "anonymous" mailings.

2002-2006 — UFW tests out Mandatory Mediation Law and awaits courts of appeal to uphold the law in the face of grower challenges.

2005 — With the help of Gerawan workers and other workers across the state, UFW urges Governor Schwarzenegger to sign emergency heat regulations requiring growers like Gerawan to provide shade and cool water to employees.

August, 2011 — UFW and workers from Gerawan and other farms stage a 150 mile march to Sacramento to secure additional rights for farm workers to organize.

January 1, 2012 — Another law takes effect that is crafted in 2011 by Governor Jerry Brown creating new remedies for workers when their employers break the law during union organizing or election campaigns.

October 12, 2012 — The UFW sends another request for negotiations to Gerawan.

January 17 - July 29, 2013 — Despite numerous negotiating sessions, Gerawan refuses to agree to a collective bargaining agreement with the union and the worker leader negotiating committee.

March 29, 2013 — The UFW files for Mandatory Mediation under provisions of the 2002 binding mediation law.

May 17, 2013 — The first new complaint—tantamount to an indictment—is filed by the state of California (ALRB general counsel) against Gerawan because the company illegally proposes to exclude some of its farm workers from the protections of a union contract because they are supplied by farm labor contractors and because Gerawan is “insisting that the UFW agree to an unlawful contract proposal that contravenes the purposes of the [law],” according to the complaint. (ALRB case 2013-CE-10-VIS)

August 15, 2013 — A second complaint is filed by the state of California (ALRB general counsel), accusing Gerawan supervisors of illegally circulating petitions to decertify the UFW. California and national labor laws make it patently illegal for an employer to have any involvement in a campaign by its workers to decertify the union. (ALRB case 2013-CE-27-VIS)

August 21, 2013 — Fresno Superior court judge issues a temporary restraining order (TRO) against Gerawan for the August 15, 2013 complaint.

September 16, 2013 — Fresno Superior court judge issues injunction against Gerawan.

September 18, 2013 — The first illegal petition for a decertification election is filed at Gerawan, with the unlawful assistance of Gerawan crew bosses.

September 25, 2013 — The ALRB regional director dismisses the Gerawan decertification petition after a thorough investigation reveals widespread forgery, illegal company support for the decertification drive and because the petition does not contain enough worker signatures to qualify for an election.

September 28, 2013 — The neutral state mediator issues an official report to the three-member ALRB board (amounting to a union contract) that is appealed by Gerawan.

October 25, 2013 — The second complaint filed by the state of California (ALRB general counsel) against Gerawan is amended. It now accuses Gerawan of “instigating and encouraging the gathering of signatures for a decertification petition,” having supervisors circulate petitions and telling workers to sign them, “unlawfully interrogating workers about their union activities,” threatening employees with job loss if they support the UFW, and “surveiling” its workers. It also states that an attorney for some of Gerawan’s farm labor contractors—and therefore an agent of Gerawan—illegally represents the petitioner and other workers behind the decertification effort. (ALRB case 2013-CE-27-VIS)

October 25, 2013 — Despite having the authority to issue a final ruling, Governor Brown’s appointees to the three-member ALRB board promote further delay by sending the mediator’s decision back to him in order for him to revise six very minor issues that are quickly and easily resolved. No decertification petition would have been permitted once the ALRB board had implemented the union contract.

October 25, 2013 — The ALRB’s delay in implementing the mediator’s decision allows time for a second illegal Gerawan decertification petition to be filed, the first one having been dismissed the previous month.

October 30, 2013 — A third complaint is filed by the state of California (ALRB general counsel) against Gerawan, accusing the company of “failing to bargain in good faith with its employees’ union,” “impeding its employees ability to communicate with their union” and “failing to provide relevant and accurate employee information” to the UFW so it can communicate with union members. Gerawan has “intimidat[ed] [its employees] in the exercise of their right to participate in negotiations,” the complaint states. Gerawan has also taken credit for a “significant” pay hike for its workers without mentioning the UFW or that the raise was “negotiated with the union,” according to the complaint. (ALRB cases 2012-CE-41; 2012-CE-47; 2013-CE-07; 2013-CE-09; 2013-CE-25)

October 31, 2013 — The ALRB regional director dismisses the second decertification petition at Gerawan, citing the outstanding three complaints issued against the company over repeated multiple violations of the law in the last five months. The regional director states that it is “impossible” to conduct a free and fair election given Gerawan’s lawbreaking.

November 1, 2013 — In an unprecedented action, the governor’s three appointees on the ALRB board ignore California law and quickly vacate the regional director’s dismissal of the second decertification election and order the election held anyway despite numerous blatant violations of the law by Gerawan and Gerawan crew boss involvement in the request for the election. The ballots are impounded and not counted so that the Board can investigate the extent of Gerawan’s violations of the ALRA.

November 19, 2013 — The Gerawan workers’ long-awaited union contract is finalized by the ALRB, but the company refuses to implement it in violation of the law.

December 23, 2013 — The UFW files unfair labor practice charges with the ALRB over Gerawan’s failure to recall a number of worker leaders, including members of the union negotiating committee, in retaliation for their support of the UFW and for engaging in union activities protected by California law.

April 4, 2014 — 4th Complaint filed by State of California against Gerawan Farming (2014-CE-003) for Bad Faith Bargaining and Unlawful Restraint and Interference by illegally refusing to implement the legally binding contract ordered by the neutral mediator and approved by the ALRB.

April 9, 2014 — ALRB General Counsel takes Gerawan to court for violating the law and refusing to implement the collective bargaining agreement ordered by the State of California.

June 23, 2014 — LM10 reports filed with the Department of Labor reveal that Gerawan paid anti-union labor consultant \$3,000 a day plus travel and other expenses to campaign against the UFW.

August 4, 2014 — Gerawan fires a worker leader for taking a photograph at work. Charges are filed with the ALRB.

August 12, 2014 — Anti-Union and far right Republican group, Center for Worker Freedom, launches a billboard campaign against UFW along Highway 99 near Delano.

Prepared by the United Farm Workers of America, August, 2014.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Campos

Subject:

Resolution in Support of Gerawan Farm Workers

The text is listed below or attached:

[]

Signature of Sponsoring Supervisor: *David Campos*

For Clerk's Use Only: