

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. 86-5 (CE)
	)	
UNITED FOOD & COMMERCIAL	)	DECISION NO. 239
WORKERS UNION, LOCAL 480,	)	
AFL-CIO, CLC,	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER
Complainant,	)	
	)	
and	)	
	)	
HAWAIIAN MILLING CORPORATION	)	
(HAWAII MEAT CO. FEEDLOT),	)	
	)	
Respondent.	)	

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On May 15, 1986, Complainant UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480, AFL-CIO, CLC [hereinafter referred to as Complainant or Union], filed an Unfair Labor Practice Complaint with the Hawaii Labor Relations Board [hereinafter referred to as Board]. Complainant alleged that Respondent HAWAIIAN MILLING CORPORATION (HAWAII MEAT CO. FEEDLOT) [hereinafter referred to as Employer] violated Subsections 377-6(1) and (4), Hawaii Revised Statutes [hereinafter referred to as HRS], by failing to meet and bargain in good faith with the duly certified bargaining representative. In addition, Complainant alleged that Respondent improperly unilaterally changed certain working conditions during the pendency of negotiations.

A prehearing conference was held on July 9, 1986. The hearing in this matter was conducted on August 20, 1986. Briefs were filed by parties on September 10, 1986.

Based upon a full review of the record in this case, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

Complainant UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480, AFL-CIO, CLC, is a labor organization which was duly certified by this Board on February 7, 1986 as the exclusive bargaining representative of Respondent's eligible employees located at 91-319 Olai Street, Ewa Beach, Hawaii, 96706.

Respondent HAWAIIAN MILLING CORPORATION (HAWAII MEAT CO. FEEDLOT) is and was, for all times relevant, an Employer as defined in Subsection 377-1(2), HRS.

On or about February 6, 1986, Complainant, by its President Wayne M. Miyashiro, sent a request to Orville Bert, Respondent's President and General Manager, for information to assist in the formulation of bargaining proposals. Specifically, Complainant requested the following:

1. Employees name, date of hire, birthday and home addresses.
2. Current wage rates, job classifications and description.
3. Amount of last merit increase and date.
4. Amount of employees/employers contributions for all benefits, e.g., medical,

dental, drugs, pension annuity and profit sharing as well as type of coverage.

5. Number of holidays, vacations, sick leave and amount of accumulation, if any. Complainant's [hereinafter referred to as Comp.] Ex. 1.

Thereafter, on or about February 20, 1986, Complainant received a letter dated February 19, 1986, from Mr. Bert acknowledging receipt of Complainant's letter requesting information. The letter further indicated that Respondent was working on the information request and the information would be forwarded as soon as it was completed. (Comp. Ex. 2)

Complainant received information setting forth the current employees, their wage rates and their date of hire. (Comp. Ex. 3) Respondent's documentation indicates that the requested information was provided by the Employer although Mr. Miyashiro had no recollection of the receipt of additional information. Respondent's [hereinafter referred to as Resp.] Ex. 1. Based upon this testimony, Complainant withdrew any allegations regarding the Employer's failure or refusal to provide information necessary for collective bargaining purposes. Brief of Complainant, p. 3.

On or about April 1, 1986, Complainant sent a set of contract proposals to the Respondent and requested that Respondent contact Mr. Miyashiro by the close of business April 8, 1986 to schedule a meeting to commence negotiations. (Comp. Ex. 4) Having received no response from the Respondent, Complainant called the Respondent on or about April 12, 1986 to determine the reason for the delay in scheduling the negotiations meeting.

Transcript [hereinafter referred to as Tr.], p. 17. The testimony of Mr. Miyashiro indicates that he made various telephone calls to the Respondent's representative in an attempt to schedule the contract negotiations. (Tr., pp. 17-18)

Thereafter, Complainant and Respondent met for the first time on June 5, 1986 at the Hawaii Employers Council. (Tr., p. 19) Persons at the meeting on behalf of Complainant were Sidney Lee, representative from Complainant's international organization; Robert Ryder, collective bargaining representative of the Complainant; Charles Shinagawa, secretary-treasurer of Complainant; Mr. Miyashiro, President of Complainant; Ray Cardus, an employee; and Steven Cardoso, representative of the local. The Employer's representatives were John Kelly from the Hawaii Employers Council, Orville Bert and Corky Bryan of the Hawaiian Milling Corporation. The meeting lasted for approximately one-half hour to an hour. The Union's proposals were reviewed and the Respondent indicated that it wished to return with counter-proposals. (Tr., p. 20)

Additionally, Respondent mentioned that a "Union warranty" had to be incorporated into the contract. Respondent explained that the warranty would act to hold the local union as well as the international union liable up to and in excess of 10.5 million dollars should anything happen with regard to the care of the livestock at the company. (Tr., p. 21)

On July 8, 1986, the second meeting between Complainant and the Respondent took place at the Hawaii Employers Council. At this time, Complainant informed Respondent that there was no



way it could agree to a union warranty clause in the contract. Respondent indicated that it was a provision they needed in the contract as part of the final settlement. (Tr., p. 22)

By letter dated June 30, 1986, Respondent, by its manager, Corky Bryan, issued a notice to employees of an increase in medical plan costs. (Comp. Ex. 6) This information was not provided to the Union nor was the Union given the opportunity to bargain about this information prior to the Employer dealing directly with the employees. (Tr., pp. 23-24)

On or about July 3, 1986, a memo was sent to Respondent's employees regarding the increase in medical plan costs. (Comp. Ex. 7) This information was not provided to the Union prior to dissemination to the employees. (Tr., p. 25)

On July 8, 1986, Complainant met with the Respondent and submitted some written counterproposals. This meeting lasted less than an hour. (Tr., pp. 25-27)

On July 9, 1986, Complainant and Respondent, by their representatives, met before this Board for a prehearing conference. After the prehearing conference was completed, Mr. Kelly informed Mr. Miyashiro that he was cancelling the negotiations meeting scheduled for July 14, 1986 because of the unfair labor practice charges being pursued and there was no sense in negotiating. (Tr., p. 28) Mr. Miyashiro wrote to Mr. Kelly confirming the cancellation of negotiations. (Comp. Ex. 8)

On July 15, 1986, Complainant met before the Federal Mediator. This meeting with the Federal Mediator lasted approximately three hours. (Tr., pp. 28-29) On July 16, 1986,

Complainant and Respondent met again with the Federal Mediator. This meeting lasted approximately two hours. (Tr., p. 29)

Thereafter, Respondent gave Complainant a written set of proposals which was agreed to. (Comp. Ex. 9) The Employer indicated its proposed final agreement was its "final proposal" and the Union indicated that it would take it to the Union membership for ratification. (Tr., p. 30)

On August 1, 1986, Respondent sent a memo to its employees regarding their visitation to physicians for treatment. The substance of the memo was never communicated to the Union prior to its issuance to employees nor was it ever bargained over. (Comp. Ex. 10; Tr., pp. 30-31)

On July 31, 1986, the parties met with the Federal Mediator. The Employer's proposal was the addition of a new group of employees and a new wage rate. At that time, the Union gave the Employer a proposal in order to reach a settlement. The Union took the wage proposal back to the membership on August 6, 1986 for ratification and again, it was unanimously rejected. By letter dated August 11, 1986, Complainant notified Respondent that the employees had rejected the last proposal. (Comp. Ex. 11; Tr., pp. 32-33)

On or about August 13, 1986, Complainant received a letter from Mr. Kelly of the Hawaii Employers Council, dated August 12, 1986, informing Complainant that the company had given its last and final offer on July 31, 1986. Since that time, there have been no other proposals to the Complainant nor

any other offers to meet and negotiate. (Comp. Ex. 12; Tr., pp. 33-34)

Previously, the employees of the HAWAIIAN MILLING CORPORATION were represented by the United Food & Commercial Workers Union, LOCAL 594. The collective bargaining agreement was effective October 1, 1979 until October 1, 1982. (Comp. Ex. 14)

Section 37, Duration, of the Agreement above-referenced, states as follows:

This agreement shall remain in effect from October 1, 1979 to and including October 1, 1982. It shall be deemed renewed year to year after the expiration date unless either party hereto gives written notice to the other of its desire to amend, modify, or terminate the same, which notice shall be served not earlier than seventy-five (75) days no later than sixty (60) days prior to said expiration date of its desire to amend, modify, or terminate this agreement.

On March 8, 1982, a unit determination petition was filed and on June 15, 1982, the National Labor Relations Board Regional Director certified that the successor union, United Food & Commercial Workers, Local 594, had lost the authority to require union membership as a condition of employment. On September 23, 1982, it was stipulated that the Amalgamated Meat Cutters and Allied Workers Union was certified to represent the employees.

Pursuant to the above-stated contract provision, Herbert Tanigawa, Hearings Officer for the Hawaii Employment Relations Board, concluded that there was a valid collective bargaining agreement in existence between the parties and that

the parties intended that the agreement would continue to exist until such time as contract negotiations were completed. Hence, the Hearings Officer concluded that there could be no union representation election conducted during the existence of the prior collective bargaining agreement. The hearings officer, however, suggested that a decertification proceeding should be initiated if the majority of employees were dissatisfied with the representation of the Amalgamated Meat Cutters Union.

On November 12, 1985, the Amalgamated Meat Cutters Union disclaimed representation of the employees covered by the collective bargaining agreement. (Comp. Brief, p. 9)

#### CONCLUSIONS OF LAW

Complainant alleges that Respondent Employer violated Subsections 377-6(1) and (4), HRS. These provisions state as follows:

It shall be an unfair labor practice for an employer individually or in concert with others:

- (1) To interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 377-4;

\* \* \*

- (4) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit provided that if the employer has good faith doubt that a union represents a majority of the employees, he may file a representation petition for an election and shall not be deemed guilty of refusal to bargain; . . .



Complainant alleges that Respondent Employer unilaterally changed wages, hours or conditions of work prior to or during the course of bargaining and these actions constitute per se violations of the Employer's duty to bargain unless it is shown that there is a genuine need for immediate action or unless the parties have reached impasse. Complainant alleges that health care benefits of the employees were changed without bargaining first with the Complainant. As further evidence of the absence of good faith bargaining, Complainant alleges that the Employer was stalling negotiations by unexplained delays and postponements. In addition, Complainant alleges that there were only three short sessions prior to the Employer's presentation of its final proposal. Hence, there was hardly any give-and-take among the parties before the Employer submitted its last and final offer. Moreover, Complainant alleges that the contract executed between the Employer and the United Food & Commercial Workers Union, Local 594, is still in effect notwithstanding the Amalgamated Meat Cutters Union's disclaimer of interest.

In response, the Employer alleged that the difficulty in scheduling of negotiation sessions was in part due to the Union's organizing efforts on Maui. In addition, the Employer takes the position that there was no union contract in effect when the Amalgamated Meat Cutters Union filed the disclaimer of interest on November 13, 1985. Therefore, the Employer was under no obligation to notify the Union as to the pay rates of new hires or work rules which were established thereafter.

Subsection 377-1(5), HRS, defines collective bargaining

as:

The negotiating by an employer and a majority of employees in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

In Decision No. 82, George R. Ariyoshi, et al. vs. Hawaii Firefighters Association, 1 HPERB 747 (1977), the Board discussed good faith bargaining as being defined as:

[T]he connotation of the phrase "duty to bargain collectively" . . . is the obligation of the parties to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement, and a sincere effort must be made to find a common ground. NLRB v. Montgomery Ward & Co., 133 F.2d 676, 686, 12 LRRM 508 (9th Cir. 1943).

"Good faith" means more than merely going through the motions of negotiating; it is inconsistent with a predetermined resolve not to budge from an initial position. But it is not necessarily incompatible with stubbornness or even with what to an outsider may seem unreasonableness. A determination of good faith or of want of good faith normally can rest only on an inference based upon more or less persuasive manifestations of another's state of mind. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination. NLRB v. Truitt Mfg. Co., 351 U.S. 149, 154-155, 38 LRRM 2042 (1956), (J. Frankfurter, concurring and dissenting opinion).

A finding of good faith bargaining is based upon consideration of the totality of circumstances, or the respondent's entire course of conduct. General Electric Co., 150 NLRB 192, 57 LRRM 1491, 1500 (1964); NLRB v. Stevenson

Brick & Block Co., 393 F.2d 234, 68 LRRM 2086 (1968).

Further, as discussed in Decision No. 24, Board of Education v. Hawaii State Teachers Association, 1 HPERB 278 (1972), the Board stated:

It is the opinion of this Board that, with respect to the charge of failure to bargain in good faith, it must consider all the facts in the case and that while often a single fact standing alone will not support a finding of failure to bargain in good faith, accumulative array of facts evincing an attitude, for example, unreasonable adamancy will, under some circumstances, support a charge of a failure to bargain in good faith.

The leading statement on the question of making the determination as to whether there has been a failure to bargain in good faith is found in the case of NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131 (1st Cir. 1953), 33 LRRM 2133, enforcing, 32 LRRM 2225. The delicate issue is a mixed question of fact and law; and the appropriate test is whether the party charged with a failure to bargain had no sincere desire to reach an agreement.

Delay itself standing above (sic) often is not enough to justify a finding of a failure to bargain. (32 LRRM 2225)

Id. at pp. 284-85.

After carefully considering the evidence presented at the hearing, the Board concludes that the Union has failed to prove that the Respondent Employer has violated Chapter 377, HRS, by refusing to bargain in good faith. The Union complains that the Respondent stalled negotiations by not agreeing to meet at suggested times and by cancelling scheduled meetings. In support of its contentions, the Union submitted a telephone log sheet which it believes evidences the difficulty Complainant had in arranging negotiation sessions. However, pursuant to Subsection



377-9(c), HRS, no hearsay evidence shall be admitted or considered by the Board in unfair labor practice proceedings. The Board is cognizant that Respondent's representative failed to make the proper objections to the introduction of evidence. However, the Board believes that it would be improper, given the statutory provisions cited, to rely solely upon the telephone log sheets in finding that the Employer committed a prohibited practice here. Moreover, the evidence indicated that during the critical time period involved, the Union's chief spokesman was conducting organizing programs on another island. Further, there was no testimony from Employer negotiators to explain the reasons for the delays. Hence, the Board is unable to find an unfair labor practice with regard to the delays in the scheduling of negotiation sessions on the facts presented.

The Union also alleges that the Employer's adamance on the inclusion of the union warranty clause in the contract evidences their lack of good faith in the negotiations. While Mr. Miyashiro's testimony was not rebutted by the Employer, reviewing Comp. Ex. 11, a letter dated August 11, 1986 from Mr. Miyashiro to Mr. Kelly setting forth the Union's final proposal, it is clear that the union warranty clause is not the sole outstanding issue remaining in negotiations. Without more substantive evidence of the Respondent Employer's alleged bad faith, the Board is unable to conclude that the Employer's insistence upon the union warranty clause constitutes an unfair labor practice.



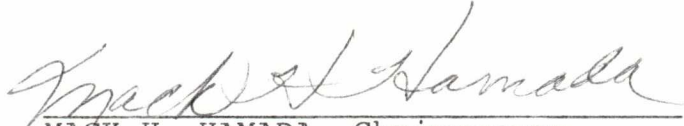
Additionally, the Union charges that the Respondent unilaterally changed the terms and working conditions of employment regarding health care benefits of the employees without first bargaining with the Complainant. While Complainant correctly states that unilateral changes of working conditions prior to or during the course of bargaining are per se violations of the Employer's duty to bargain collectively unless the Employer can show a genuine need for immediate action, or unless the parties have already reached an impasse, the evidence presented at the hearings does not support such a finding. Again, the Union relies upon two memos issued to the employees regarding medical coverage, the testimony in the record from Mr. Miyashiro, however, indicates only that the memorandums were issued by company representatives, that the Union received them from employees, and that these issues were not discussed with the Union prior to issuance of the memorandums. There is no testimony in the record from Union or Employer witnesses which discusses the present medical plan coverage nor the impact of the memorandums issued by the Employer. As the Board is unable to rely solely upon the substance of the memorandums as they constitute hearsay evidence, the Board reluctantly concludes that the Union has failed to prove by probative evidence in the record that the Employer is engaging in a course of conduct which constitutes an unfair labor practice as a refusal to bargain in good faith.

ORDER

In accordance with the foregoing, the Board hereby dismisses the subject complaint.

DATED: Honolulu, Hawaii, January 22, 1987.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

CONCURRING OPINION

Notwithstanding the difficulties with the evidence in this case, I feel that the Employer is embarking on a course of conduct which does not evince a sincere desire to reach an agreement.

  
JAMES K. CLARK, Board Member

Copies sent to:

Randall Harakal, United Food & Commercial Workers Union  
John Kelly, Employers Council  
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