STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480, AFL-CIO, CLC, Complainant, and HAWAIIAN MILLING CORPORATION, Respondent.	CASE NO. 87-2(CE) DECISION NO. 275 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
In the Matter of UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480, AFL-CIO, CLC, Complainant, and HAWAIIAN MILLING CORPORATION, Respondent.	CASE NO. 87-3(CE)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On February 20, 1987, the UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480, AFL-CIO, CLC [hereinafter referred to as the Complainant], filed an Unfair Labor Practice Complaint with the Hawaii Labor Relations Board [hereinafter referred to as the Board], in Case No. 87-2(CE). In its complaint, Complainant alleged that Respondent HAWAIIAN MILLING CORPORATION [hereinafter referred to as Respondent] engaged in or was engaging in unfair

labor practices in violation of Sections 377-6(1), (2), (3) and (4), Hawaii Revised Statutes [hereinafter referred to as HRS]. More particularly, these included Respondent violating the rights of its employees, Tony Sedeno, Jerry Sonson and John Tripp, by its agent, Cody Lee Mark, by:

1. Telling employee Tony Sedeno on or about February 18, 1987, at approximately 9:30 am at pen #112, "Because you joined the Union, that's why you got a wage cut."

2. On or about February 11, 1987, employee Jerry Sonson was questioned in the mill by Cody Lee Marks (sic) about the results of the Union meeting held on February 10, 1987. Employee Sonson gestured, "thumbs down" at which time Cody Lee Marks (sic) replied, "You guys went with the Union, that's why you guys got cutbacks."

3. On or about February 11, 1987, employee John Tripp at pen #605, was told by Cody Lee Marks (sic), "You should not go to the Union, if you vote the Union out your pay will stay the same."

On March 17, 1987, Respondent filed a Motion for Leave to File Answer Out of Time together with a Memorandum in Support of Motion for Leave to File Answer Out of Time. Also, on March 17, 1987, Respondent filed an Answer of Respondent to the Unfair Labor Practice Complaint, wherein Respondent denied every allegation made by Complainant in its complaint. Respondent further alleged that, assuming arguendo, any statements were made, such statements are protected by Section 377-16, HRS, as proper exercises of Respondent's right to freedom of speech. The Respondent also alleged that the complaint failed to state a cause of action under Section 377-6(4), HRS, since none of the alleged conversations occurred between the Respondent and

Complainant or agents of Complainant during the course of collective bargaining. Respondent further alleged that the complaint failed to state a cause of action under Section 377-6(3), HRS, since there was no allegation of discrimination in regard to the terms and conditions of employment and it does not allege that any of the employees were suspended, discharged or otherwise discriminated against. Respondent also alleged that the complaint further failed to state a cause of action under Section 377-6(2), HRS, since there were no allegations that Respondent initiated, created, dominated or interfered with the formation or administration of any labor organization and thus the complaint, insofar as it alleges a violation of Sections 377-6(2), (3) and (4), HRS, should be summarily dismissed.

On February 20, 1987, Complainant also filed an Unfair Labor Practice Complaint against the Respondent in Case No. 87-3(CE) alleging that the Respondent engaged in unfair labor practices contrary to the provisions of Sections 377-6(1) and (4), HRS, in particular, that the Respondent failed to bargain in good faith with the duly certified bargaining representative of its employees by newly discovered evidence indicating there would be no cuts in wages and benefits. In addition, Complainant alleges that on or about February 11, 1987 and thereafter, Respondent, through its agent, Cody Lee Mark, threatened and implied after discussing with employees, Tony Sedeno, Jerry Sonson and John Tripp the reason the company cut their wages and benefits was due to their union activity. The complaint requested that the Board issue a bargaining order to compel

the Respondent to bargain in good faith with the union and to have the Respondent cease and desist the implementation of all wage and benefit cuts and make whole all employees who were affected by said reduction of wages, benefits and working conditions.

On March 17, 1987, Respondent filed a Motion for Leave to File Answer Out of Time together with a Memorandum in Support of Motion for Leave to File Answer Out of Time. In addition, on March 17, 1987, Respondent filed an Answer of Respondent to Unfair Labor Practice Complaint. In its answer, Respondent denied that it violated the provisions of Section 377-6(1), HRS, on the grounds that the newly discovered evidence is a memo dated November 14, 1985 and thus any allegations based upon it are time-barred pursuant to Section 377-9(1), HRS. Further, Respondent stated that the allegations of this complaint with respect to alleged statements made by Cody Lee Mark are the subjects of the unfair labor practice complaint in Case No. 87-2(CE) and therefore should be considered solely in connection with that proceeding. Respondent further alleged that the allegation in the complaint of a violation of Section 377-6(4), HRS, is barred by the doctrine of res judicata since this Board has already determined in Case No. 86-5(CE) that Respondent has not refused to bargain collectively with the Complainant. Finally, Respondent contended that the allegations of Section 377-6(4), HRS, violations are barred by the doctrine of res judicata, are untimely, and on their face fail to state a claim upon which relief can be granted. Respondent submitted that the unfair

labor practice complaint be dismissed in its entirety and that it be awarded such other relief as the Board may deem just and equitable.

On March 20, 1987, the Board ordered a consolidation of cases for disposition and issued a Notice of Rescheduled Hearing, in Order No. 616, on the basis that the two unfair labor practice complaints involved substantially the same parties and issues. Therefore, the Board found that consolidation of the proceedings would be conducive to the proper dispatch of business and the ends of justice and will not unduly delay the proceedings. Hence, for good cause shown, the complaints and the proceedings thereon were consolidated for disposition. A hearing on the consolidated complaints was held on March 27, 1987. Briefs were filed by the parties on April 20, 1987.

On February 23, 1988, the Board issued Proposed Findings of Fact, Conclusions of Law and Order in this case. Thereafter, on March 4, 1988, Complainant filed exceptions thereto. Respondent filed a memorandum in response to the exceptions on March 31, 1988. A hearing on Complainant's exceptions was held on May 11, 1988.

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 is and was, for all times relevant, an employer as defined in Subsection 377-1(2), HRS.

Jerry Sonson testified on behalf of the Complainant regarding allegations that the employer engaged in a conduct which interfered with, restrained and coerced the employees in the free exercise of their rights. Sonson was employed by the Respondent for two years and worked prior to the strike as a mill utility worker. According to the complaint, it is alleged:

> On or about February 11, 1987, employee Jerry Sonson was questioned in the mill by Cody Lee Marks (sic) about the results of the Union meeting held on February 10, 1987. Employee Sonson gestured, "thumbs down" at which time Cody Lee Marks (sic) replied, "You guys went with the Union, that's why you guys got cutbacks."

Sonson testified that his immediate supervisor was Mark and his foreman was Patrick Good. Transcript [hereafter referred to as Tr.] 41-43. Sonson testified that Mark came into his working area one day supposedly looking for Mr. Good and told Sonson, "Jerry, see? You like join the Union, you guys get cut in pay. If you guys never joined the Union, you guys wouldn't have cut in pay." Tr. 44-45.

Sonson also testified that after receiving a subpoena, Mark approached Sonson and said, "Jerry, I heard that you guys went file suit against me, eh?" Tr. 48. Whereupon, Sonson did not respond but left the area immediately. Finally, Sonson

testified that Mark spoke to him prior to attending a union meeting and stated that the Respondent was going to cut wages and benefits. Tr. 51-53. Sonson testified that the alleged conversation with Mark occurred prior to any meeting attended concerning ratification of a proposed contract. Tr. 51-52, 55. Sonson specifically denied allegations of the Complaint regarding Mark questioning him about the results of the union meeting held and that he indicated with a thumbs down gesture. Tr. 54-55.

John Tripp was also an employee of the Respondent and have been working for the Respondent approximately three months prior to the current strike. He testified that he was a laborer for about 2½ months and was promoted to a yard utility position. His immediate supervisors were Greg Souza and Patrick Good, and Cody Lee Mark was his superintendent. Tr. 56-57.

In February 1987, Tripp was laying shade screens to keep the sun off the cattle with Superintendent Mark. The two worked together for four days and talked about various subjects including "just regular, like family kind of stuff and what we would like to do and things like that." Tr. 63. On approximately Wednesday, February 11, 1987, as he was laying the shade screen, he testified that Mark was telling him about pay cuts, and if the guys would vote the union out, the pay would stay the same and they wouldn't get any cuts. He testified that Mark also told him that he should not go near the union or anything like that, and just to stay away from things. Tripp also testified that Mark told him that he did not want to see him out by the union and if he did, Mark would not be his friend anymore. He

also testified that Mark told him that the Respondent wanted to get rid of the troublemakers so that Tripp could keep his job. Mark defined the troublemakers as the guys who are into the union, like Raymond Cardus and Robert Loscalzo. Tr. 59-61. Tripp also testified that Mark called the guys that were for the Union "assholes" to depend upon the union for help and protection.

Tripp testified that Mark came up and talked to him on the day that the union had called for a meeting with the workers. Tripp testified that Mark said that he had heard about the meeting and that is why he was talking to him. Tripp also testified that Mark never said that it was his opinion as to why the Respondent was cutting the pay of the workers. Also, Tripp testified that Mark brought this up over and over again, day by day. Tr. 65-66.

Tripp admitted that the comments regarding the pay reductions were directed toward other employees since his pay would not be reduced under Respondent's latest contract proposal. Tr. 62. In cross-examination, Tripp claimed there were two separate conversations, the first regarding a statement by Mark that if the employees had "voted out the Union," their pay would stay the same and the next regarding Mark's statement that if he saw Tripp at a union meeting he would not be his friend. Tr. 66-67. Tripp admitted that even after Mark had told him about not attending a union meeting, the two worked together and had friendly conversations. Id.

Anthony Sedeno, an employee for over 19 years and currently a feeder with Respondent, also testified on behalf of the Complainant. Sedeno testified that on or about February 19, 1987, Mark joined him while he was feeding cattle and a conversation commenced. Sedeno said to him, "Hey, you know, I don't think so that's fair, because I started here with a $1.75 an hour back in 1968." Mark allegedly told him, "Well, Tony, if you guys didn't go Union, you guys wouldn't get a cut in pay." Tr. 72. Sedeno further testified that Mark came up to him, sat in his truck, and started talking about the Respondent's position on pay cuts. Tr. 73-74. Sedeno also testified that Mark came a second day and said the same thing to him, "Tony, if you didn't go Union, you wouldn't get a cut in pay." Tr. 76.

Sedeno admitted that Mark told him that the company could not give him special consideration. Tr. 78. Specifically, Sedeno admitted that Mark told him that Respondent could not give special consideration to an hourly employee. Tr. 79.

In rebuttal, Cody Lee Mark, a six-year superintendent with Respondent, testified on its behalf. When Mark first joined Respondent, the employees were represented by the Amalgamated Meat Cutters, which continued until 1985. Tr. 90. Mark takes no role in negotiations. Id. With regard to the allegations made by Sonson, Mark specifically denied speaking with him about wage cuts or voting in a union. Tr. 91. Mark further testified that on several occasions he had given Sonson verbal warnings about tardiness and absences without informing the company that he was going to be absent. In addition, Mark has also given Sonson a

letter concerning infractions of other company policy. Tr. 91-92.

With respect to the allegations made by Sedeno, Mark testified that Sedeno had parked his truck and was outside of it shoveling mold out of the feed bunk. As Mark approached, Sedeno stopped shoveling and approached Mark with a troubled look on his face and told him that he did not feel right about the wage cut because of the fact that he was a long-term employee of the company. Mark allegedly told Sedeno that it was a subject that he could do nothing about. Sedeno responded by telling Mark that it was not right for Sedeno to take a wage cut and that he wanted Mark to speak to the company for him, that Sedeno did not care about the other employees but that since he was a long-term employee, he should not take a wage cut. Mark told him that, "I'll try to do what I can." Tr. 94. The next day, Mark allegedly went back to Sedeno who again was outside of his truck and told him that he could not give him any special consideration because "you guys are represented by Union." Id. Mark also testified that he had ridden with Sedeno in the truck on other occasions and in fact rode with him in February 1987 because he wanted to be prepared in the event there was a strike by the employees. Tr. 96.

With regard to the testimony of John Tripp, Mark admitted that he worked with employee Tripp for approximately five days over a two-week period when they were putting up shade screen to protect the cattle. Tr. 97. Because of the close proximity, there were numerous conversations on many subjects,

all of which were friendly. Tr. 98. On one occasion, Mark recalls mentioning that "if the employees had voted with the company, they probably wouldn't have gotten a wage cut." Tr. 98. Tripp allegedly did not respond to Mark's statement and Mark specifically denied having any other conversations with Tripp regarding attendance at union meetings, voting out the union, or anything else to do with the union. Tr. 99. Mark also testified that he only had one brief conversation with Tripp about the subject of wage cuts. Id.

After the complaint in this case was filed, Mark allegedly approached Tripp and told him that because of the allegations, the company would have to go to a hearing and said further, that "if I did say anything to you, it was because I care about the employees." Tr. 100.

With regard to Case No. 87-3(CE), the issue is whether there was newly discovered evidence, Board Exhibit 1, a letter dated November 14, 1985, which is submitted as additional evidence that the Respondent failed to bargain in good faith. The letter, from M. "Corky" Bryan - Manager, states in pertinent part:

> Bob:
>
> At the pre-election conference held today November 13, 1985 at the Dept. of Labor & Industrial Relations, we were informed that the Amalgamalted (sic) Meat Cutters & Allied Workers Union of Hawaii, your bargaining agent, filed a DISCLAIMER OF INTEREST on November 12, 1985. This means that there is no union representation for the employees of Hawaiian Milling Corporation.
>
> Therefore, there will be no union dues withheld from your pay as of November 12, 1985.

I want to assure you that there will be NO DOWNWARD revision of wages or benefits that are now in existence. The only changes that will be made will be in regards to New Employee wages for employees hired after November 12, 1985 and work rules flexability (sic). When these two points are finalized, we will let you know the exact situation.

We are going to be working on making the retirement program more comprehesive (sic) and I want to look into the prossibility (sic) of some kind of profit sharing plan for us.

The most important point I want to make to you is that your situation here at Hawaiian Milling Corporation will not change, except for the better.

It is a pleasure for me to be working with a group of people like you, and I want to thank all of you for the help you have given me this past month. I know this good working relationship will continue.

Regards,

/s/ Corky

M. "Corky" Bryan
Manager

Complainant alleges that this exhibit is directly related to the unfair labor practice complaints filed in Case Nos. 86-5(CE) and 86-6(CE) to establish a pattern of bargaining in bad faith and interference with, restraint and coercion of employees in the selection of their collective bargaining representative and continued representation by the union. Complainant asserts that the employer wrongfully made cuts in wages and benefits after previously giving employees written promises that it would not cut wages and benefits.

Robert Loscalzo testified on behalf of the Complainant, stating that he received the letter dated November 14, 1985 with

his paycheck but set it aside and thought it was not of any value. Only when he received a copy of the last contract offer in the mail did he begin a search for the letter. Once he found it, he turned it over to the union president, Wayne Miyashiro, sometime in February 1987. Tr. 27.

CONCLUSIONS OF LAW

Complainant alleges that Respondent employer violated Subsections 377-6(1), (2), (3) and (4), HRS. These provisions state as follows:

> 377-6 Unfair labor practices of employers. It shall be an unfair labor practice for an employer individually or in concert with others:
>
> (1) To interfere with, restrain or coerce the employer's employees in the exercise of the rights guaranteed in section 377-4;
>
> (2) To initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with the employer, nor from cooperating with representatives of at least a majority of the employer's employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where the activities or use create no additional expense to the employer;
>
> (3) To encourage or discourage membership in any labor organization by discrimination in regard to hiring,

tenure, or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representative of the employer's employees in a collective bargaining unit, unless the board has certified that at least a majority of the employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one year preceding the date of the agreement. No employer shall justify any discrimination against any employee for nonmembership in a labor organization if the employer has reasonable grounds for believing that:

(A) Such membership was not available to the employee on the same terms and conditions generally applicable to other members;

(B) Or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership.

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

* * *

Section 377-4, HRS, defines the rights of employees as follows:

> Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall also have the right to refrain from any and all such activities, provided that employees may be required to join a union under an all-union agreement as provided in section 377-6(3).

In Case No. 87-2(CE), Complainant alleges that statements made by Cody Lee Mark, an agent of the Respondent, violated the rights of employees Jerry Sonson, John Tripp and Anthony Sedeno. After carefully reviewing the testimony presented in this case, the Board summarily dismisses the charges based upon alleged violations of Subsections 377-6(2), (3) and (4). Complainant has failed to establish a cause of action under Subsection 377-6(2), HRS, as there are no allegations that Respondent initiated, created, dominated or interfered with the formation or administration of any labor organization or contributed financial support to it. Complainant has also failed to establish a cause of action under Subsection 377-6(3), HRS, since there is no evidence of Respondent encouraging or discouraging membership in any labor organization by discrimination with regard to hiring, tenure, or other terms or conditions of employment. Likewise, Complainant has failed to state a cause of action under Subsection 377-6(4), HRS, since the alleged statements and conversations occurring between Respondent's agent and the employees do not amount to a refusal to bargain. With respect to the allegations of interference and restraint of the

employees' exercise of their rights guaranteed in Section 377-4, HRS, we will more closely examine the testimony presented before the Board.

With respect to the testimony presented by employee Sonson, Superintendent Mark completely denies making any statements to him about wage cuts, union meetings or any other related subjects. Respondent argues that Sonson's testimony should be discredited since there is no viable reason for Mark to approach Sonson and comment spontaneously without provocation with regard to the issue of pay cuts. Further, Respondent contends that Sonson's testimony is inconsistent and replete with contradictions. Moreover, Sonson has been disciplined on numerous previous occasions by Mark and, therefore, has a motive for providing false testimony against him. Most importantly, however, the Board finds Sonson's testimony directly contradicts the allegations in the Complaint in Case No. 87-2(CE). He specifically denied being questioned by Mark about the results of the union meeting and any action taken on the ratification of the contract proposal. He specifically denied making a thumbs down gesture as alleged in the Complaint. As such, the allegations of the Complaint have not been sustained and Complainant has failed to prove its allegations by a preponderance of evidence. Moreover, the Complaint was not amended to include the other alleged statements made by Mark to Sonson as a basis for a finding of an unfair labor practice. Hence, no purpose would be served in discrediting Sonson's testimony at this stage.

With respect to the alleged statements made to Sedeno, Respondent argues that his testimony is also internally inconsistent and omits salient details. After considering the testimony and demeanor of Sedeno and Mark, the Board finds Mark's version of the alleged conversation to be more convincing. With regard to Sedeno's requesting special consideration as long-term employee, Sedeno was initially silent, then denied that he had requested a special accommodation and finally, testified that he did not recall the conversation. Sedeno, moreover, admits that Mark told him that the company could not give him any special consideration. We believe such statement was made in response to an inquiry by Sedeno for a special consideration as a long-term employee. Hence, based upon the credible evidence before us, we conclude that Complainant failed to establish an unfair labor practice by Sedeno's allegations.

With respect to the testimony of John Tripp, Mark does not dispute that he told Tripp "if the employees had voted with the company, they probably wouldn't have gotten a wage cut." Tr. 98. Tripp also claimed that Mark told him that he did not want him to go to the union meeting and that if he did, he would not speak to him. Tr. 66. However, Tripp admitted that on the next day they worked together and Mark still talked to him as if nothing had occurred. Tr. 67.

Respondent contends that Tripp embellished the conversations with Mark and provided contradictory testimony. The Respondent admits, however, that at best the statements by Mark

were made but were de minimus and purely his own opinion, and not that of the Respondent.

The Board concludes that Respondent has not committed an unfair labor practice since we do not believe that his statement tended to interfere with any employee's exercise of rights guaranteed in Section 377-4, HRS. Mark's statements regarding the wage cuts were not applicable to Tripp and as Tripp testified, Mark's demeanor and relationship did not deviate or deteriorate after Tripp's apparent attendance at the union meeting. Moreover, there is no evidence that these statements were repeated to other employees. Hence, the Board concludes that Mark's statement to Tripp did not constitute an unfair labor practice on the part of the Respondent for interfering with, restraining, or coercing the employees in the exercise of their protected rights.

With regard to Case No. 87-3(CE), the Complainant alleges violations of Subsections 377-6(1) and (4), HRS. Complainant alleges that the Respondent has failed to bargain in good faith by newly discovered evidence, Board Exhibit 1, a letter dated November 14, 1985, indicating there would be no cuts in wages and benefits. Further, the Complaint alleges that the Respondent, through its agent, Cody Lee Mark, foreman, threatened and implied through discussions with Tony Sedeno, Jerry Sonson and John Tripp that the reason the company cut wages and benefits was due to their union activities.

Insofar as the Complaint contains allegations of implied threats and coercion, these matters have been addressed,

infra, and are accordingly dismissed. Respondent contends that the Complainant failed to show that the November 1985 letter constitutes newly discovered evidence and is, therefore, barred by the 90-day statute of limitations provided in Section 377-9, HRS, as the basis of an unfair labor practice charge. Respondent relies upon the case of Orso v. City and County of Honolulu, 56 Haw. 241, 534 P.2d 49 (1975), which set the standard for considering newly discovered evidence. Therein, the Hawaii Supreme Court stated that three criteria must be met in order for evidence to be considered newly discovered.

(1) The evidence must have been previously undiscovered even though due diligence was exercised.

(2) The evidence must otherwise be admissible and credible.

(3) The evidence must be of such a material and controlling nature as will probably change the outcome and not merely be cumulative or tending to impeach or contradict a witness.

With regard to the first criteria, Respondent contends that neither the union nor the employees exercised any diligence in locating the letter of November 1985. First, Loscalzo testified that he believed all employees had received such a memo, put it somewhere and did not search for it until January or February 1987. However, Loscalzo knew of the proposed wage and benefit reductions as early as June 1986. Second, the union president never asked any of the employees whether they received the memo of November 1985. Third, both Tony Sedeno and Raymond Cardus

were on the union's negotiating team from May 1986 to the present time and neither of them mentioned the November 1985 letter.

With regard to the admissibility and credibility of the letter, Respondent contends that it has doubtful relevance because the employer was under no obligation to bargain with any union and was free to make any statements on the terms and conditions of employment in November 1985. Further, the Respondent states that the letter was not relevant nor material to show an unlawful refusal to bargain by the employer.

As to the third criteria, Respondent contends that the letter would not change the outcome of the Board's prior ruling in Case Nos. 86-5(CE) and 86-6(CE) where the Board dismissed the Complainant's unfair labor practice complaints alleging a failure to bargain in good faith.

After consideration of Mr. Loscalzo's testimony regarding his search for the subject letter, the Board hereby finds that diligence was not exercised by the witness and the letter should not be considered by the Board as the basis for an unfair labor practice finding as it is well outside the 90-day statute of limitations established by Section 377-6(9), HRS. Even if the Board was to consider the subject letter to be timely, however, the Board is not persuaded that the letter is of any probative value. On its face, the letter explains that the Amalgamated Meat Cutters and Allied Workers Union of Hawaii had filed a disclaimer of interest as the employees' bargaining agent. The letter goes on to state that there would be no downward revision of wages and benefits that were in existence. The letter does

not imply that the company's position would remain such ad infinitum. Hence, this letter standing alone is insufficient to support a finding of the Respondent's alleged refusal to bargain in good faith.

Finally, having carefully considered the exceptions filed by Complainant and Respondent's arguments in response thereto, we find such exceptions to be without merit. Complainant's exceptions are hereby overruled.

ORDER

These complaints are hereby dismissed.

DATED: Honolulu, Hawaii, June 15, 1988.

HAWAII LABOR RELATIONS BOARD

Mack H. Hamada
MACK H. HAMADA, Chairperson

James R. Carras
JAMES R. CARRAS, Board Member

Gerald K. Machida
GERALD K. MACHIDA, Board Member

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