

See.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. 87-12(CEE)
HAWAIIAN MILLING CORPORATION,	)	DECISION NO. 279
Complainant,	)	FINDINGS OF FACT, CONCLU-
and	)	SIONS OF LAW AND ORDER
RAYMOND CARDUS,	)	
Respondent.	)	

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In the Matter of	)	CASE NO. 87-13(CEE)
HAWAIIAN MILLING CORPORATION,	)	
Complainant,	)	
and	)	
ANTHONY SEDENO,	)	
Respondent.	)	

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In the Matter of	)	CASE NO. 87-14(CEE)
HAWAIIAN MILLING CORPORATION,	)	
Complainant,	)	
and	)	
RONALD JOSEPH,	)	
Respondent.	)	

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In the Matter of	)	CASE NO. 87-15(CEE)
HAWAIIAN MILLING CORPORATION,	)	
Complainant,	)	
and	)	
EDGARDO FUENTES,	)	
Respondent.	)	

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In the Matter of	)	CASE NO. 87-16 (CEE)
	)	
HAWAIIAN MILLING CORPORATION,	)	
	)	
Complainant,	)	
	)	
and	)	
	)	
ROBERT LOSCALZO,	)	
	)	
Respondent.	)	

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In the Matter of	)	CASE NO. 87-17 (CU)
	)	
HAWAIIAN MILLING CORPORATION,	)	
	)	
Complainant,	)	
	)	
and	)	
	)	
WAYNE MIYASHIRO,	)	
	)	
Respondent.	)	

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On October 15, 1987, the HAWAIIAN MILLING CORPORATION [hereinafter referred to as the Complainant or Employer] filed six unfair labor practice complaints with the Hawaii Labor Relations Board [hereinafter referred to as the Board]. In five identical cases, Case Nos. 87-12(CEE), 87-13(CEE), 87-14(CEE), 87-15(CEE) and 87-16(CEE) brought against RAYMOND CARDUS, ANTHONY SEDENO, RONALD JOSEPH, EDGARDO FUENTES and ROBERT LOSCALZO, respectively, Complainant alleges violation of Section 377-6(6), Hawaii Revised Statutes [hereinafter referred to as HRS], for engaging in mass picketing and obstructing and interfering with the free and uninterrupted use of public roads, streets or other ways of travel and/or obstructing or interfering with the

entrance to or egress from a place of employment. The allegations against FUENTES indicate that this occurred on September 30, 1987, while the allegations against the other individuals indicate that the picketing occurred on September 30 and October 2, 1987.

In Case No. 87-17(CU) against WAYNE MIYASHIRO, Complainant alleges violations of Sections 377-7(6) and 377-8, HRS, for mass picketing on October 2, 1987. By Board Order No. 651, issued on November 24, 1987, the six unfair labor practice complaints were consolidated for disposition. Thereafter, a hearing was held on January 11, 1988. Briefs were filed by the Complainant on February 8, 1988 and by Respondents on February 9, 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 HAWAIIAN MILLING CORPORATION is an employer as defined in Subsection 377-1(2), HRS.

Respondents ANTHONY SEDENO, RONALD JOSEPH, EDGARDO FUENTES and ROBERT LOSCALZO are and were, for all times relevant, employees as defined in Subsection 377-1(3), HRS.

Respondent WAYNE MIYASHIRO is and was, for all times relevant, president of the United Food & Commercial Workers Union, Local 480, AFL-CIO, CLC. The union is a labor organization which was duly certified by this Board to represent Complainant's eligible employees.



Respondent RAYMOND CARDUS was previously employed by Complainant and currently pickets at Complainant's worksite on various occasions. CARDUS was, for all times relevant, an employee as defined in Subsection 377-1(3), HRS.

Complainant alleges that on two separate occasions, September 30, 1987 and October 2, 1987, respectively, Respondents violated provisions of Chapter 377, HRS. Specifically, Complainant charges that Respondents engaged in mass picketing which prevented vehicles from entering and leaving Complainant's premises, or obstructed or interfered with the entrance to or egress from a place of employment, or obstructed or interfered with the free and uninterrupted use of public roads and streets.

Complainant's superintendent, Cody Lee Mark [hereinafter referred to as Mark] testified that on September 30, 1987, he first observed picketing in front of Complainant's main gate at approximately 6:30 a.m. Transcript [hereinafter referred to as Tr.] 10. Mark went home and returned with his video cassette camera and started taping the picketing at approximately 7:00 a.m. Tr. 11. The video tape, Complainant's Exhibit 1, shows two trucks at the entrance to the main gate of the Employer's premises. The first truck, a cattle trailer, was at the driveway to the Employer's premises presumably to load cattle. Tr. 12-14. A second truck was carrying grass cubes as feed for the cattle and was parked on the side of the road behind the first truck. Tr. 12-15. Mark identified Respondents CARDUS, SEDENO, JOSEPH, FUENTES and LOSCALZO as picketers. Tr. 13-14.

Mark filmed the events at the entrance for approximately 20 minutes. Tr. 16. However, the battery in Mark's camera died and, therefore, he did not film the entire picketing incident which continued for approximately 15 minutes after his camera became inoperative. The truck entered the premises after a policeman had been called by the Employer. Tr. 16-17.

On cross-examination, Mark testified that the truck at the entrance to the facility was owned by Richard Lee Trucking Company and had the engine running during the picketing. Tr. 23. Mark further testified that the second truck on the side of the road was also owned by Richard Lee Trucking Company and had its engine turned off. Tr. 24.

While reviewing the film, Mark testified that even though the pickets are not directly in front of the truck, the truck drivers would not cross the picket line as long as there are people picketing. Tr. 16. The occasions where he observed the trucks come through the picket line are when the pickets go to one side of the road and clear the way for the drivers. Ibid.

Charles Uhlir, Complainant's cattle foreman, was present during the video taping of the picketing in Complainant's Exhibit 1. Tr. 33. Uhlir testified that usually picketers walk back and forth across the front entrance and when someone calls for a break, they would go over to one side and the rest would line up one behind the other. Tr. 33. Uhlir testified that he was concerned on that morning that the truck was late to pick up the cattle, so he went to the main gate at approximately 6:40 a.m. to look for the cattle truck and noticed that the picketers

had already established the picket line and the truck was waiting. Tr. 34. Uhlir also testified that the first truck was driven by a nonunion driver named Larry. Tr. 35. Uhlir confirmed that the nonunion drivers will not go through the gate unless the picketers actually go to the side of the road. Tr. 35-36. Uhlir further testified that many times a union driver will show up and stops on the side of the road and the driver waits for the nonunion driver to show up. Then the trucking company would send a nonunion driver to take over the truck and bring it through the gate. Tr. 38. He also testified that sometimes the nonunion driver will actually bring the truck through from the baseyard. Tr. 39.

Upon questioning by Member Machida, Uhlir testified that based on the months and months of picketing, the driver usually pulls over to the side to get out of the way of other people using the roadway and if they do not see any picketers or picket signs, the drivers drive into the feedlot. If the drivers see a picket sign, they pull over to the side and either call for a nonunion driver or have a nonunion driver waiting for them. Tr. 39-40. The drivers are actually observing the picket line and not even attempting to get across. This is true even for the nonunion drivers. Tr. 40.

Uhlir testified that they were told by a policeman that the picketers were allowed to complete one circle and then would have to break to allow the trucks to come in. Tr. 40. Uhlir testified that at first the picketing was conducted all day long. Thereafter, the picketing became sporadic and reached a point



where the picketers did not even walk, they merely sat at the gate. They usually show up for a few hours in the morning. Tr. 40. In the past six months or so, Uhlir testified that the main thing the picketers held up were the cattle trucks. When the cattle hauling was finished by 10:00 a.m., they would leave. Tr. 41.

On redirect examination, Uhlir testified that when there is a policeman, it normally takes a few minutes for the picketers to complete a circle. However, even with the policeman there, it could take up to 10-15 minutes if the picketers walk slow enough. Tr. 42.

Uhlir testified that cattle pickup normally begins around 5:30 a.m. and that the cattle are trucked to Hawaii Meat Co. at Middle Street for slaughtering. Uhlir testified that there are two trucks and they take anywhere from one to three loads a day to the slaughterhouse. Tr. 42-45.

Respondent RAYMOND CARDUS testified that he was present at the picketing on September 30, 1987. Tr. 50.

CARDUS testified that normally a picket line captain would designate where the line begins and where it ends. However, on that particular morning, there was no designated captain. Tr. 52. CARDUS also testified that normally the picketers ask the driver if he is going to come through, and the majority of the time the driver tells the picketers that he is going to wait for a police officer. On that morning, CARDUS did not recall if the picketers talked to him, but indicated that the picketers gave him an opportunity to come in. Instead of coming

forward, he reversed his truck and waited until the police officer showed up. Tr. 53.

CARDUS further testified that drivers of Richard Lee's trucks always wait for a police officer to show up. Tr. 53. CARDUS also testified that Greg Souza, former foreman at Complainant's mill, told the picketers that the drivers would not cross the picket line unless a police officer arrived to call a break. Tr. 51-53. CARDUS also testified that Souza, who had a Type 7 PUC license, always waited for a police officer before he would drive a trailer through the picket line and, if there were no police officers around, he would wait until one showed up. Tr. 54, 63.

Upon questioning by the Chairperson, CARDUS testified that unionized drivers of the Richard Lee Trucking Company would not drive a truck through the picket line but that the nonunion drivers would. Tr. 80-81. CARDUS testified that on September 30, 1987, he knew the driver inside the truck was a nonunion driver because he had pulled up to the gate instead of waiting on Kalaeloa Boulevard for a nonunion driver to arrive. Tr. 83. CARDUS also stated that nonunion drivers would drive through the picket line without a police officer present when the picketers moved to the side. Tr. 84.

With respect to the picketing which occurred on September 30, 1987, CARDUS testified that he had seen that driver drive across the picket line where no police officer was present. Tr. 91.



CARDUS testified in response to Member Machida's questions that the majority of the time there are only three or four people on the picket line. In response to Mr. Rand's recross-examination, CARDUS testified that on most days there are only two or three picketers. Tr. 90.

CARDUS also admitted that on previous occasions, the picketers would walk the picket line without a break and no driver would be able to cross the line until a police officer arrived. Tr. 97. This occurred on several occasions. Tr. 96.

The second incident of picketing occurred on October 2, 1987 and involved a truck which was loaded with cattle attempting to leave the feedyard by the side gate. Tr. 18. Mark testified that the picketing was in progress for approximately 15 minutes prior to his taping the incident and identified Respondents MIYASHIRO, CARDUS, JOSEPH, LOSCALZO and SEDENO as picketers. Tr. 19-20. According to Mark, the picketers were not on HAWAIIAN MILLING's property while they were picketing. Tr. 20-21. The counter on the tape indicates that Mark filmed the picketing from 9:16 a.m. until 9:35 a.m. when a policeman arrived. Tr. 18, 21. Unlike the main gate which can accommodate two vehicles, the road at the side gate is only wide enough for one vehicle to pass through. Tr. 19.

Respondent CARDUS testified that MIYASHIRO was present at the picketing because he brought checks down from the union for the individuals who were picketing. CARDUS testified that the tractor trailer driver came up to the gate and stopped, shut

off his engine and waited. CARDUS also testified that while picketing, the picketers maneuvered in such a way that there was enough room for a driver to drive through, but the driver did not make any attempt to do so. Tr. 68-69.

CARDUS testified that a PRI truck carrying propane came to the side gate and the tractor trailer driver started his truck and the picketers broke the line for him to come through. However, the Richard Lee driver reversed the truck to let the PRI truck in and pulled the tractor back up to the line and waited for a police officer to arrive. Tr. 69. When told that the incident was not on the tape of the October 2, 1987 picketing, CARDUS testified that the incident took place on September 30, 1987. Tr. 69-71.

CARDUS testified further that on October 2, 1987, when the police officer came to the picket line, picketers made their one turn around and the officer called a break. The truck drove through when the picketers broke the picket line. Tr. 71-72. On cross-examination, CARDUS indicated that on September 30, 1987, the picketers pulled off to one side so that the driver could come through if he wanted to but instead remained parked with his engine running, so the picketers kept walking. Tr. 75.

CARDUS also testified that on occasion Mark and Uhler would drive through the line although they were not properly licensed. Tr. 82.

Respondent RONALD JOSEPH testified that Souza would normally not drive the truck through the picket line unless there was a police officer present. Tr. 103. Additionally, JOSEPH

testified that Mark and Uhler would normally only drive the trucks through when there were no policemen around and there was no picketing going on. Tr. 104. He denied Souza telling him anything about making one circle and breaking in order to drive the truck through. Tr. 107. He also testified that Souza would drive trucks through without police officers being present when the picketers were sitting down and playing cards and not walking the picket line. Tr. 113. JOSEPH indicated that there was an understanding that the picketers stay until a police officer comes. Tr. 115.

Respondent WAYNE MIYASHIRO testified that the strike began on March 2, 1987 when there were approximately 13 people on strike. However, since September 1987, the picket line has contained approximately four to five picketers at any one time. Tr. 123. MIYASHIRO also testified that police officers told them they can walk the picket line and that upon instructions from the officers, they would then break the line. Tr. 124. The union gave instructions to picketers to not picket certain trucks such as L & L Trucking Company which hauled manure; however, since Richard Lee trucks were the direct cattle carrier from HAWAIIAN MILLING CORPORATION to Hawaii Meat Co., those trucks should be picketed. Tr. 124.

MIYASHIRO testified that on October 2, 1987, the Richard Lee truck driver was in his truck with the engine idling attempting to leave when a PRI propane truck came up to enter the gate. Tr. 128-129. The picket line broke to allow the Richard Lee truck driver out. However, instead of exiting the premises,



the Richard Lee truck driver reversed his truck and allowed the PRI truck to enter. After the PRI truck passed, the Richard Lee truck driver drove back up to the gate again and parked his vehicle. Tr. 129-130. This incident does not appear on the tape. Complainant's Exhibit 1.

MIYASHIRO testified that once a police officer arrived at the picket line, the line broke after making a complete circle. Tr. 131. Further, MIYASHIRO testified that prior to the police officer's arrival, picketers broke the line for 45 seconds to 1 minute and waited on the side for the Richard Lee truck to come out but that he never did. Tr. 135.

Respondent CARDUS submitted a video cassette which contained a video tape of the picket line on November 10, 1987 beginning at approximately 6:30 a.m. Tr. 55. CARDUS testified that the video tape demonstrated the usual circumstances of picketing. Respondents' Exhibit A. The tape indicates that the Richard Lee truck and trailer came to the intersection of Kalaeloa Boulevard and Olai Street and parked on the right side of the curbing and the drivers either sit in their trucks or leave their trucks and wait for a police officer to arrive. Tr. 57-58. The video tape also indicates that other vehicles go in and out through the picket line including other delivery trucks and workers. Tr. 58-59. The video tape also indicates once a police officer arrived, Souza drove the truck up to the picket line, the picketers make one rotation, and the officer calls for a break and lets the truck in. Tr. 64.

Corky Bryan, Complainant's manager, testified that Souza drove trucks through "innumerable times" when picketers were present and no police officers were present. Tr. 138. He further stated that he had no knowledge of any understanding between Souza and the picketers to the effect that he would not drive a truck through without a police officer present. Tr. 139. There was, however, an arrangement with Richard Lee that "as long as we did not have a person that could drive the truck through the picket line, that he would have to provide a nonunion driver." Tr. 139.

#### CONCLUSIONS OF LAW

Complainant alleges that Respondents CARDUS, SEDENO, JOSEPH, FUENTES and LOSCALZO violated Subsection 377-7(6), HRS, by their misconduct on the picket line. That subsection provides:

Unfair labor practices of employees.  
It shall be an unfair labor practice for  
an employee individually or in concert with  
others:

\* \* \*

- (6) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance; . . .

Complainant further alleges that Respondent MIYASHIRO violated Section 377-8, HRS, by his participation in the picket line. That provision reads as follows:

Unfair labor practices of any person.  
It shall be an unfair labor practice for any person to do or cause to be done, on behalf or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by sections 377-6 and 377-7.

Complainant argues that the Respondents, on September 30 and October 2, 1987, conducted their picket line in a manner which hindered or prevented the pursuit of lawful work or employment by mass picketing, threats, intimidation, force or coercion, obstructed or interfered with the entrance to or egress from a place of employment, or obstructed or interfered with the free and uninterrupted use of the public road or way of travel, by preventing the Richard Lee Trucking Company vehicles from entering or exiting Complainant's premises. Respondents do not deny that they participated in the picketing conducted on those two days. Respondents argue that there is insufficient evidence upon which to base a finding of mass picketing since the truck driver should have been produced to testify why he did not cross the picket line. Without such testimony, Respondents argue that the Complainant has failed to prove its case. Respondents further contend that mass picketing is not enjoinable without a showing of actual violence or the imminent threat thereof. Moreover, Respondents rely upon an understanding between a company employee and the picketers, where the picketers are allowed to complete one circle in the presence of a police



officer. When the police officer instructs the picketers to break, they do so.

Chapter 377, HRS, does not provide a definition of "mass picketing." Complainant submits, without citation, that mass picketing can connote either a large number of pickets or a concentrated group of picketers who conduct their picketing in such a manner as to prevent orderly ingress and egress to a premises. Respondents define "mass picketing" as that which "strikers are massed in such a way as to block ingress and egress" also without citation. A labor text refers to mass picketing as belly-to-back picketing, or where the individual pickets are so numerous and stationed so close together that access to the plant is blocked. Gorman, Labor Law-Basic Text, 1976, p. 217.

While the cases decided in the federal sector and cited by Respondents may be instructive, we do not find them controlling in this matter as our state statute differs from the text of the federal Labor Management Relations Act. The cases which arise under the Labor Management Relations Act involve either issues of restraint or coercion of non-striking employees who seek to exercise their right to work by crossing the picket line or secondary boycotts. Hence, discussions in those cases center around acts of violence or the imminent threat thereof.

In closely examining the provisions of Subsection 377-7(6), HRS, it is reasonable to interpret that any hindrance or prevention or obstruction or interference with ingress and egress must be by mass picketing, threats, intimidation, force,

or coercion. The evidence submitted in this case clearly indicates that there were no verbal threats, or any demonstrable intimidation or coercion. The key issue then is whether the picketers' conduct constituted mass picketing.

The evidence indicates that the strike began on March 2, 1987. At the beginning of the strike, there were approximately 11 picketers and the number varied thereafter. On the mornings in question, there were five picketers who permitted trucks from a neutral employer to enter or leave the premises after approximately 35 to 40 minutes and after a police officer had been called to the scene. Relatively speaking, this is approximately 15 to 20 minutes longer than it would take for the picketers to slowly complete one full circle. There is also credible evidence of a practice recognized by the pickets to be lawful. At the commencement of this strike, police officers on the scene instructed the picketers to complete one circle before breaking to allow vehicles into the facility. Over the course of the strike, it appears that trucks operated by union drivers approach the facility and upon encountering a picket line pull over to the side of the road and wait until someone drives the truck in for them. The nonunion drivers more often will approach the gate to the facility and either wait there until the picket line permits them to enter or someone from the facility drives the truck through. Witnesses differ on whether police officers are present when the mill foreman used to drive the truck through.

On the two days in question, the same nonunion driver was involved. The evidence in the record suggests that even though the pickets were not directly in front of the truck, the truck driver would not cross the picket line. The testimony of management representatives indicates that the nonunion drivers will not go through the gate unless the picketers actually go to the side of the road. It appears that the drivers are actually observing the picket line and not attempting to get across. This is true even for the nonunion drivers. This fact is confirmed by a management representative. The testimony of Respondent CARDUS indicates that on both mornings the driver had the opportunity to go through the line, but instead of crossing the line, the truck remained at the picket line.

Respondents CARDUS and MIYASHIRO related an incident involving a PRI truck. Apparently, on one of the days in question, a PRI truck was attempting to enter the premises as a Richard Lee Trucking Company truck was waiting at the picket line. The witnesses testified that the Richard Lee truck reversed and permitted the PRI truck to enter, then the truck pulled up to the line and waited until a police officer arrived. There is a discrepancy in the evidence since CARDUS indicates that the event took place on September 30, 1987 when MIYASHIRO was not present. Given the fact that the Richard Lee truck was testified to as attempting to leave the premises, this would suggest that the event took place on October 2, 1987 and CARDUS was confused as to the dates. While this incident is not on the video tape provided by Complainant, since it was testified



to in such detail, there is no reason to believe that the incident was fabricated for our benefit.

However, we find more significant the absence of the testimony of the truck driver. We agree with the contentions of Respondents that such testimony should have been produced to confirm or deny whether he had the opportunity to cross the line and whether he chose to or was prevented from crossing the line by the pickets. The state of the evidence is such that there are varying understandings of the practice as to when the drivers choose to cross and when they do not. These discrepancies could have easily been addressed by the driver of the truck.

We do not believe it is necessary in this case to define any hard-and-fast rules of whether picketing by five men can constitute mass picketing. The number of pickets has relevance only as it tends to establish the potential or calculated effect of the pickets. It should be clear that in the proper instance, picketing by a relatively small group of people can constitute mass picketing and be deemed an unfair labor practice. Moreover, it should be clear that violence or threats of violence need not accompany picketing to establish a Subsection 377-6(6), HRS, violation. W. T. Rawleigh Co. v. NLRB, 190 F.2d 832, 28 LRRM 2324 (7th Cir. 1951). However, in this case, we are unable to reach that conclusion since it appears that aside from pulling up to the picket line, the truck driver made no attempt to cross. He appears to have decided to wait. Given the practice that the truck drivers will not cross the line until the active picketing

stops or a police officer arrives, there is insufficient evidence upon which to base an unfair labor practice here.

ORDER


The subject unfair labor practice complaints are hereby dismissed.

DATED: Honolulu, Hawaii, July 22, 1988.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

  
GERALD K. MACHIDA, Board Member

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