

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.:	86-6 (CE)
)		87-7 (CE)
UNITED FOOD & COMMERCIAL)		87-8 (CE)
WORKERS UNION, LOCAL 480,)		87-9 (CE)
)		
Complainant,)	DECISION NO.	286
)		
and)	FINDINGS OF FACT, CONCLU-	
)	SIONS OF LAW AND ORDER	
HAWAIIAN MILLING CORPORATION)		
(HAWAII MEAT COMPANY FEEDLOT),)		
)		
Respondent.)		
)		

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On December 5, 1986, the UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480 [hereinafter referred to as Complainant or Union] filed an unfair labor practice complaint with the Hawaii Labor Relations Board [hereinafter referred to as Board], in Case No. 86-6(CE). Complainant alleged that the HAWAIIAN MILLING CORPORATION [hereinafter referred to as Respondent, Company or Employer] had engaged in or was engaging in unfair labor practices in violation of Subsections 377-6(1), (3), and (8), Hawaii Revised Statutes [hereinafter referred to as HRS]. Complainant alleged that the Employer had discriminated against its employee Raymond Cardus in his employment because of his union activities. The Complainant charged that this discrimination occurred on or about June 18, 1986 when the Employer allegedly forced Cardus to take a medical leave after returning from a hand injury, while other employees were granted light duty work.

On December 24, 1986, Respondent, who was then represented by John Kelly, generally denied all the allegations in the unfair labor practice complaint. A hearing was held on January 12, 1987 on the foregoing complaint. Thereafter, on February 17, 1987, Complainant filed a Motion For Leave to File First Amended Complaint. The First Amended Complaint attached to the motion indicates that in addition to the foregoing charges, that on or about January 29, 1987, the Employer terminated Cardus because of his union activities and because he filed his complaint with the Board and testified in hearings before the Board. Also, on February 19, 1987, Complainant filed a Motion to Reopen Hearing to permit testimony on the termination of Cardus.

On March 24, 1987, Complainant filed an unfair labor practice complaint in Case No. 87-7(CE). Complainant alleged that on or about January 20, 1987 and thereafter, the Employer through its agent, cowboy foreman Chuck Uhlir, threatened the continuous employment of Cardus. Cardus allegedly was questioned about filing charges against the Company and was threatened with a change of classification which provoked the employee to self-terminate. On April 6, 1987, Respondent, represented by Richard M. Rand, Esq., denied the allegations of the complaint, represented that Respondent's statements were protected under Section 377-16, HRS, as an exercise of free speech and in addition, if Cardus resigned from Respondent's employ, he did so voluntarily and thus waived any claims against Respondent. At a hearing held on April 23, 1987, Complainant moved to amend the complaint in Case No. 87-7(CE) to correct the allegations to

indicate that Uhlir's actions provoked the employee's termination. The complaint was amended over Respondent's objections with the understanding that a continuance could be requested because of the change in the theory of the case.

At a prehearing conference held on April 13, 1987, Case Nos. 87-5(CE), 87-6(CE), and 87-7(CE) were consolidated. However, it subsequently became apparent that Case No. 87-7(CE) would be more appropriately consolidated with Case No. 86-6(CE), since the cases both involved alleged discrimination against employee Raymond Cardus. Hence, Order No. 621 issued on April 30, 1987, severed Case No. 87-7(CE) from Case Nos. 87-5(CE) and 87-6(CE). Also, on April 30, 1987, the Board issued an order granting Complainant's motions to reopen hearing and for leave to file the first amended complaint. Order No. 622 further ordered the consolidation of Case Nos. 86-6(CE) and 87-7(CE).

On May 1, 1987, Complainant filed an unfair labor practice complaint in Case No. 87-8(CE). Complainant alleged that on or about March 5, 1987, while employee Anthony Sedeno was participating in picketing of the Employer's premises, he was struck by a vehicle driven by Uhlir as he sped through the picket line. Upon returning to the picket line, Uhlir then challenged Sedeno to a fist fight and threatened his employment. On May 13, 1987, Respondent filed an answer indicating, inter alia, that Sedeno willfully and intentionally struck a truck belonging to Uhlir, the complaint was barred by the doctrine of laches, and any statements made by Respondent's agents were protected as an exercise of free speech under Section 377-16, HRS.

In addition, on May 1, 1987, Complainant filed an unfair labor practice complaint in Case No. 87-9(CE). Complainant alleged that on or about February 24, 1987, Uhlir and employee Robert Loscalzo engaged in a discussion at which time Uhlir asked Loscalzo if he was going to call the Union and Loscalzo responded, "do you want me to call the union, they are right outside." Uhlir then allegedly threatened to discipline Loscalzo if he brought the Union in. On May 13, 1987, Respondent filed an answer indicating, inter alia, that the complaint was barred by the statute of limitations since any conversation between Loscalzo and Uhlir occurred on or about January 24, 1987 and was time-barred, any statements by Respondent's agents were protected under Section 377-16, HRS, the complaint was barred by the doctrine of laches and since Loscalzo threatened Uhlir, Loscalzo was barred from recovery because of the doctrine of unclean hands.

Hearings were held before the Board on January 12, 1987 regarding Case No. 86-6(CE), and April 23, May 15, May 29 and July 9, 1987 regarding the remaining cases. At the hearing on May 15, 1987, the Board consolidated Case Nos. 87-8(CE) and 87-9(CE) upon Complainant's motion. Thereafter, briefs were filed by the respective parties addressing first Case Nos. 87-8(CE) and 87-9(CE) and secondly, Case Nos. 86-6(CE) and 87-7(CE).

Based on a 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 is duly certified by this Board to represent eligible employees of the HAWAIIAN MILLING CORPORATION (HAWAII MEAT COMPANY FEEDLOT) for the purposes of collective bargaining.

Respondent HAWAIIAN MILLING CORPORATION is an employer as defined in Subsection 377-1(2), HRS.

Raymond Cardus worked for Respondent for five years as a cowboy. Transcript [hereinafter referred to as Tr.] I¹, p. 11. As a cowboy, his duties were to check on cattle, work cattle, take care of incoming cattle, and feed and maintain the cattle that came in. Tr. I, pp. 9-10.

In March 1986, Cardus injured his right hand. Tr. I, p. 48. Cardus missed two weeks of work, from March 13, 1986 to March 27, 1986. Id. Cardus testified when he returned to work with a doctor's slip, he was limited to light duty. He gave the note to his foreman, Chuck Uhlir. Tr. I, p. 13. At the time, he had a half cast on. Tr. I, pp. 14-15. Cardus later stated that he went back to work on full duty. Tr. I, p. 48.

Thereafter, in April 1986, Cardus reinjured his hand while off the job. Tr. I, p. 14. He had a full cast put on his

¹As used herein, "I" refers to the transcript of the hearing dated January 12, 1987; "II" refers to the transcript of the hearing held on April 23, 1987; "III" refers to the transcript of the hearing held on May 15, 1987; "IV" refers to the transcript of the hearing held on May 29, 1987; and "V" refers to the transcript of the hearing held on July 9, 1987.

arm and was sent back to work. Tr. I, pp. 13-15. The return-to-work slip excusing Cardus from work from April 22, 1986 to April 24, 1986, Respondent Exhibit 1, stated, "Out of work due to fractured R hand." Tr. I, p. 49. The note contained no restrictions. Id. He was put back on the horse again after giving the slip to Uhlir and did all of his normal duties. Cardus testified that the doctor told him the more he could use his hand, the faster the healing process would be. However, the return-to-work slip, dated May 28, 1986, issued by Dr. Kobayashi specifically states, "Don't use right hand." Tr. I, pp. 50-51; Respondent Exhibit 2. After approximately six to eight weeks, the doctor removed the cast and found the center part of the bone had not yet healed. Tr. I, p. 17. A note was issued by the doctor on June 10, 1986 stating, "Raymond Cardus still has fractured hand--should not use right hand for two more weeks." Respondent Exhibit 3.

Cardus was assigned to different light duty jobs. Since he was not able to ride the horse as he could possibly jerk his hand and pull the bone apart, he worked on the loader for approximately one to two weeks, cleaned pens, drove the dump truck, cleaned water tanks, worked cattle off of the chute, unloaded cattle trailers, inoculated cattle and welded. Tr. I, pp. 18-21. The only difference was that he could not ride his horse. Tr. I, p. 21.

The note from Dr. Kobayashi, dated July 11, 1986, states, "No use of right hand fr. 1 month." Respondent Exhibit 5. Cardus admits that he was advised by Dr. Kobayashi not to use

his right hand "because he did not want me to reinjure it." Tr. I, p. 52.

Cardus testified that on June 16, 1986, Corky Bryan gave Cardus Complainant Exhibit 3 on his way home from work. The letter indicated that since Cardus' right hand wasn't healing he should be off of work since the doctor said he could not use his right hand for one month. Tr. I, pp. 22 and 52. The letter states:

Dear Raymond,

As I expressed to you last Friday, June 11, 1986, I am quite conerned [sic] about the slow recovery of your broken hand. It has been almost three months since the injury and from the x-rays you showed me, there seems to be a lot more healing to take place.

The note from doctor Kobayashi dated June 11, 1986 says that the right hand should not be used and, while we appreciate your effort to stay on the job, I feel that it may be hurting the healing process.

I have reviewed the situation with the personnel people at Hawaii Meat Company, Ltd. We are putting you on sick leave as of Thursday, July [sic] 18, 1986, (you have 40 hours available) for as long as you wish and then onto TDI until the one month, as requested by doctor Kobayashi, is up or he releases you for regular duty.

²Cardus testified that the date of July 18, 1986 is a clerical error and the date he was put on leave was actually June 18, 1986. Tr. I, p. 26. However, since the letter refers to a June 11, 1986 note from Doctor Kobayashi and the Board was presented only with one dated July 11, 1986, Respondent Exhibit 5, which restricts the use of Cardus' hand for one month, we conclude the clerical error is with the note, "dated June 11, 1986." We believe that the letter refers to a note, dated "July 11, 1986" and that Cardus was actually put on leave on July 18, 1986. However, the one month difference is immaterial to the outcome of this case but may reflect on Cardus' credibility or recollection of relevant events.

I am enclosing a TDI form for your convenience, and hope the rest will allow your hand to heal properly and you can resume your regular work.

Sincerely,

HAWAIIAN MILLING CORPORATION

CORKY BRYAN
Manager

Thus, Cardus testified the Employer placed him on sick leave as of June 18, 1986. Tr. I, p. 26. Bryan estimated that Cardus would be on TDI for approximately one month or when released by the doctor for regular duty. However, Cardus went on TDI for approximately six to six-and-one-half months after June 16, 1986 or until January 1987. Tr. I, pp. 28 and 60. While on TDI, an employee only receives 55% of his wages and may only receive benefits for a maximum of 26 weeks in a benefit year. Tr. I, p. 28. Cardus testified that when he was given the letter the Company specified to the doctors that it wanted Cardus' right hand 100% before they accepted him back. Tr. I, p. 53. Cardus testified that he was never told by Dr. Kobayashi that he had to have complete rest of his hand for it to heal properly. Tr. I, p. 61.

Cardus testified that Loscalzo had recently been on light duty working at the Company. He also indicated that Mark and Uhlir had been back to work on light duty after injuries while they were restricted from riding horses for approximately two or three months. Tr. I, pp. 46-47.

Cardus testified that he served on the negotiating team for the Union during 1986 but denied attending any meetings while he was on TDI. Tr. I, p. 42. Cardus was also the petitioner in the decertification proceedings before the Hawaii Employment Relations Board involving Amalgamated Meat Cutters and Allied Workers Union of Hawaii. Complainant Exhibit 6.

With regard to previous disciplinary actions, Cardus received Complainant Exhibit 5 on approximately September 23, 1985. The memo indicates Cardus' refusal to work overtime and contains a warning about abusing his sick leave benefits. Tr. I, pp. 32-33. The letter from Cody Lee Mark, Superintendent, states:

SUBJECT: Absence from work September 19th
thru 21st

Raymond,

As you may well know, in a Livestock Operation there will be days when yourself, and of the rest of the crew must work overtime to complete a particular task.

Last Wednesday, September 18, 1985, the Cowboy crew, including yourself, demonstrated just that; processing the newly arrived cattle from the day before. At the end of that day after the task had been completed and during your afternoon break, you stated to other employees that you will not report to work on Saturday, because of the fact you had to work overtime. The following morning, Thursday, September 19, 1985, you phoned to inform us that you were ill. Later that afternoon you phoned again after an apparent doctors visit to tell us you had the flu and will not be back until the following Tuesday.

The doctors note you bring on Tuesday will not validate your reason for absence from work on September 19th thru 21st. You gave your real reason on Wednesday afternoon.

The management of Hawaiian Milling Corporation will not tolerate such behavior from any employee, and if such behavior persists, we will terminate his or her employment. Working overtime, coming in an hour early or working on your days off is part of the responsibility of the position you accepted. If this aspect of the job does not agree with you, management of this company suggest you end your employment with us or we take steps to do so ourselves.

/s/ Codylee Mark

Thereupon, Cardus wrote a letter dated September 25, 1985 to Herbert Tanigawa, Department of Labor and Industrial Relations, complaining that the Company was discriminating against him because of his union activities. Tr. I, pp. 34-35; Complainant Exhibit 5, p. 3. The letter states:

September 25, 1985

Mr. Herbert Tanigawa
Dept of Labor and Industrial Relations
888 Mililani Street Rm 400
Honolulu, HI 96813

Dear Mr. Tanigawa:

Please find enclosed a letter received from Hawaiian Milling Corporation, Hawaii Meat Company Feedlot. I feel that this letter is a direct threat to my job security as well as my personal integrity.

I believe that this is the result of my involvement with organizing a new union.

I am requesting that this letter be entered against the company for on-the-job harassment and discrimination.

Prior to my involvement I did not receive any letters of this nature. Heresay

[sic] should not outweigh a doctors certificate.

Thanking you in advance.

Sincerely,

/s/ Raymond Cardus
Raymond Cardus

Cardus testified that at that time he had talked to Uhlir and Mark about his reasons for wanting the old union out. Cardus told them that the union was not representing the employees and was cheating them. Tr. I, p. 33. Although Cardus could not recall if Mark replied to him directly, the employees were "more or less told to let it die." Tr. I, pp. 33-34.

At a later time, Cardus apparently embellished the above statements. He stated that Uhlir and Mark approached him and told him to stay away from union activities because they didn't want the union (ostensibly the Meat Cutters) broken up. Uhlir told him to stay away from the Union. Tr. III, p. 15. Cardus stated that Mark told him involvement with the Union would be a problem. Tr. III, p. 16.

In addition, Cardus received Complainant's Exhibit 9, a letter from Corky Bryan on August 21, 1986, the letter indicates that employees who are on TDI cannot purchase feed from the Company. Tr. I, pp. 44-45. The letter also admonishes Cardus because of alleged threatening remarks made to a secretary. The letter states:

Dear Raymond:

I understand that there was a communication problem regarding the purchase of feed by employees that are on TDI or Workman's

Comp. My understanding of the company policy is that employees who are not working and on either one of the programs are not eligiable [sic] to purchase feed from the feedyard. Apparently you were not aware of the policy and purchased feed and then were told of the policy by Cody.

I have no problem with your purchasing feed with out [sic] knowing the policy. However, your threatening remarks to Stephanie regarding the use of the feed and taking me " down [sic] the road" with you will not be tolerated. Any further threats of that kind will be dealt with severely.

I hope that your attitude will be more positive when you return to work when your hand has healed completely.

Sincerely,

/s/Corky Bryan
Corky Bryan, Manager
HAWAIIAN MILLING CORP.

Robert Loscalzo testified that he was a cowboy for approximately thirteen years but, because of a back injury, took a reduction in pay and became a laborer. Tr. I, p. 68. He has been working for the Company for approximately 16 years. Tr. I, p. 62. His regular job is washing water troughs. Tr. I, p. 65. He was involved in an automobile accident in April 1986 and suffered neck and lower back injuries. He returned to work in August 1986 with a light duty paper and he is still on light duty. Tr. I, pp. 62-64. Previously, however, Loscalzo had a light duty restriction from an industrial accident at the time he was involved in the automobile accident. Tr. I, pp. 72-73. When questioned, Loscalzo admitted that his work requires the use of two hands. Tr. I, pp. 65 and 75.

Anthony Sedeno testified that he has worked for Respondent for approximately 19 years and is a cattle feeder. Tr. I, p. 77. He was recently out of work for approximately four months because of an industrial injury caused when Cody Lee Mark backed into him with another feed trough. He suffered a neck injury. Tr. I, pp. 78-79. He also previously had a back injury in 1982 and is going to the doctor for that. Tr. I, p. 79. Since his injury, he has a restriction on climbing and lifting which the Employer accommodated through equipment modification. Tr. I, pp. 81-82. Sedeno basically just drives the feed truck around. Tr. I, p. 80.

Cowboy foreman, Chuck Uhlir, testified that there were many attempts made to accommodate Cardus' restrictions limiting and prohibiting the use of his right hand. Uhlir testified that Cardus ran the loader with the cast on his right hand; drove the dump truck; welded; unloaded hay; inoculated cattle; and cleaned out water troughs. Tr. I, pp. 96-97. Uhlir explained that when Cardus had the semi-cast on his hand he told Uhlir that he had to take it easy with that hand. Uhlir thereupon assigned him to check cattle. This involved settling the horse, riding through each pen, opening the gate and walking through each pen and checking to see if the cattle were sick. Cardus rebroke his hand at home and said that opening the gates caused undue pressure to his hand. Cardus was assigned other cowboy tasks but was later assigned to yard utility work since he was not able to perform the cowboy tasks. Tr. I, pp. 98-100. Cardus also brought in notes and x-rays to the Employer to show that his hand wasn't

healing. Tr. I, p. 101. Uhlir testified that he was not the person who decided that Cardus could no longer work. Tr. I, p. 104.

Gregory Souza has worked for HAWAIIAN MILLING CORPORATION for 14 years. He has been the yard foreman for three or four years. Tr. I, pp. 106-107. Souza testified that he put Cardus to work on the loader but he was having some difficulty so Souza told Uhlir and Bryan that the jarring of the machine was hard on Cardus. Tr. I, pp. 107-108. Souza put Cardus to work as a welder for a few weeks. However, Souza reassigned him because Cardus was having problems with his eyes and developing headaches because of the use of the equipment. The only other light duty was to wash the water troughs. Tr. I, p. 108. Other employees had light duty restrictions. Tr. I, p. 110. Souza indicated that he believes that Cardus could drop hay off a flatbed truck. However, this is not daily work. Tr. I, pp. 111-12.

Cardus testified that he didn't file unfair labor practice charges earlier than he did in the instant case since he did not know his rights, notwithstanding his previous letter to Tanigawa regarding harassment and discrimination in 1985. Tr. I, pp. 53-54. Wayne Miyashiro, President of the Union, testified that the Union did not file the instant unfair labor practice complaint for discrimination earlier since the facts weren't clear and they thought they could secure a contract. Tr. I, p. 84.

The complaint in Case No. 87-7(CE) charges that on or about January 20, 1987 and thereafter Respondent's agent Chuck

Uhlir threatened the continuous employment of Cardus. Cardus allegedly was questioned about filing charges against the Company and was also threatened with a change of classification. This provoked the employee's termination. The facts in the record indicate that on or about January 20, 1987, Cardus had a conversation with Uhlir at approximately 6:30 in the morning outside of the cowboy shack. Tr. III, p. 33; Tr. V, p. 5. Uhlir told Cardus that he had to wear hard shoes or cowboy boots to work instead of tennis shoes. Tr. V, p. 6. This rule was applicable to all cowboys. Tr. V, p. 7. Uhlir also allegedly told Cardus that, since Cardus was now released for regular duty, Uhlir needed him to bring in a horse to work as a cowboy because the Company horse that Cardus was supposed to ride was lame. Tr. V, pp. 7-8. Cardus admitted that at the time of the conversation, there was no Company horse for him to ride. Tr. III, p. 126. Cardus, however, objected to bringing in his own horse because he did not believe the Company would feed it properly or take care of its medical needs. Tr. III, p. 36.

Cardus complained that another employee was riding a Company horse and that he should be given a horse to ride. Tr. V, p. 8. Uhlir reminded Cardus that since there was only one horse, if Cardus insisted on not bringing in his own horse, he could not perform the cowboy work and Uhlir might as well change his classification to laborer. Cardus told Uhlir to write him a letter changing his classification and Uhlir agreed to do so if Cardus would write Uhlir a letter stating that he refused to bring in a horse so that he could do cowboy work. Tr. V, p. 9.

Subsequently, Uhlir and Cardus discussed prior charges that Cardus had brought against Uhlir, specifically, the testimony given at the hearing held a few days before. Tr. V, pp. 9-10. Cardus told Uhlir not to take things personally, but that he felt it was harassment for the Company to send him to a doctor after returning from his injury. Tr. V, p. 10.

Cardus also claimed that Uhlir told him that he changed his days off from Saturday and Sunday to Friday and Saturday. Tr. III, p. 38. Cardus testified that Uhlir was aware of the fact that Cardus usually roped on Sunday. Uhlir allegedly told Cardus that his days off were changed because Cody Lee Mark refused to work with him. Tr. III, pp. 38-39. However, Cardus testified that Uhlir told him "everybody was being changed over" (Tr. III, p. 129) and this was not just a change for him. Prior to this time, Cardus had been off of work on TDI for approximately six-and-one-half to seven months. Cardus also testified that most of the time he had worked there, he had always had Sundays off. Tr. III, p. 39. Cardus testified that there had been a Company policy that Saturdays and Sundays would be days off for senior cowboys. Thus, Cardus testified that he was the most senior cowboy and suggested that he should get Saturday and Sunday off. The next closest to him in seniority was James Hardin who had been there only approximately one-and-a-half years. Tr. III, p. 39. Cardus' complaint regarding the change in his day off was that he used to rope on Sundays and that he felt a change would prevent him from roping. Tr. III, pp. 40-41. Cardus testified that he told Uhlir that on Sundays, "my horse

goes to church." Id. However, Cardus did not suffer any reduction in pay or fringe benefits or more onerous working conditions as a result of the conversation with Uhlir.

In addition, Cardus testified that when he returned to work he worked the full day on Tuesday and then on Wednesday was sent to the Company doctor for x-rays and further examinations. Tr. III, p. 41. At another time, Cardus testified that he returned to work on Monday the week prior to his testimony on January 12, 1986. Uhlir testified that the decision was made by Bryan to send Cardus to the Company doctor because in December, a mere two weeks prior to Cardus being released for full duty, the doctor had indicated to Uhlir that Cardus was still on restricted activity. Tr. V, pp. 12-13. Uhlir explained, "It was our concern that maybe Ray had talked the doctor into giving him a clearance or something so we sent him to our own company doctor to verify it." Tr. V, pp. 12-13. The cost of the visit and Cardus' time were paid for by Respondent. Tr. V, p. 13.

Cardus recalled on another occasion when he had broken a rib, he was also sent to the Company doctor before returning to work but this occurred prior to his actually returning to work. Tr. III, pp. 42 and 44.

Chuck Uhlir testified that he was told to inform Cardus that he had to wear the proper shoes. He indicated that his boss told him that there was going to be a crackdown on safety. Tr. V, p. 6. Uhlir testified that Cardus wanted the Company to supply a horse for him to ride since the other cowboys have horses supplied for them. Tr. V, p. 8. Uhlir testified that

instead of telling Cardus he would see about getting a horse, he told Cardus that unless he brought his horse in he would have to put him on labor work and that was not what Uhlir wanted. Tr. V, p. 8. Uhlir testified that he asked Cardus why he was bringing discrimination charges against the Company and Cardus told him not to take it personally. However, Uhlir told him that he did take it personally since he was part of the Company and it affected him also. Tr. V, p. 9. Uhlir testified that when Cardus came back to work from the TDI leave, he was instructed by his boss to send him to a doctor to have his hand checked to make sure it was good enough for him to return to work. Tr. V, p. 10. Uhlir confirmed that Cardus had told him that it was harassment and he replied that if he wasn't satisfied with what was going on he stated, "Raymond, why don't you just quit?" Tr. V, pp. 10-11.

On January 25, 1987, the first Sunday after the January 20, 1987 conversation with Uhlir, Cardus called the office and said, "He wouldn't be in today because he had the runs from the stomach flu and if I would let Chuck know." Tr. III, p. 198. Respondent's mill foreman, Patrick Good, took the call and made a notation of it on a calendar which was kept in the office to record such calls and other information regarding employee absences. Tr. III, p. 199; Tr. V, pp. 41-42; Respondent Exhibit 4. Cardus testified that he specifically told Good that he would keep him informed of what was happening. Tr. III, p. 131.

On Monday, January 26, 1987, Cardus testified that he went to Dr. Kobayashi who issued a slip stating that he would be

out of work until January 30, 1987. Tr. III, pp. 164-65; Petitioner Exhibit 8. On that day, Cardus did not call into the Company to tell them either that he was still sick or that he had visited Doctor Kobayashi and would be out for the rest of his weekly schedule. Id. The calendar for January 26, 1987 notes that Cardus is a "no-show" and also that another employee, Ronald Joseph, "called in sick 7:20." Respondent Exhibit 5.

Bryan did not work on Sunday, January 25, 1987 but when he arrived at work on Monday, January 26, he noted that Cardus had not worked on Sunday and was not at work on Monday. Tr. V, pp. 42-43. Bryan testified that since Sunday was Super Bowl Sunday he thought it was suspicious that several people called in sick. Tr. V, p. 56. Because Cardus had not called in on the 26th, Bryan prepared a letter, Petitioner Exhibit 1, telling Cardus that his failure to call in "is a violation of Company policy. It is your responsibility to keep us informed daily of your situation in order to set up work schedules." Bryan testified, if Cardus was going to be out on the 26th:

He should of called us and let us know whether he was going to be coming in.

And if he wasn't, if he was going to be gone one, two, ten--you know, give us an indication of when he'd be back to work. Tr. V, p. 45.

On Tuesday, January 27, 1987, Bryan observed that Cardus again had failed to report to work and had not called in as required. Tr. V, p. 46. The calendar for that day shows that at 6:15 a.m. Ronald Joseph had called in sick and another employee, Poxy Leong, called in at 6:30 a.m. Cardus is again

listed as a "no-show". Respondent Exhibit 5. When Bryan learned that Cardus was again absent without any communication to the Company, he prepared another letter, Petitioner Exhibit 3. The letter states:

On Tuesday, January 27 you again failed to call in as required. We hope that you will call in tomorrow if you are unable to work, as we have people on vacation and need to schedule our work accordingly.

Bryan testified that he mailed both the January 26 and the January 27 letters on the 27th because he believed that if Cardus called in on the 27th "I'd be willing to waive that day (the 26th) and have no problems with that." Tr. V, p. 46. However, since Cardus did not call in, both the 26th and 27th letters were mailed on the 27th but in different envelopes. Id.

On Wednesday, January 28, 1987, Bryan discovered that Cardus had again failed to report to work and again failed to call in and inform the company of his status. Tr. V, p. 49. Relevant calendar entries indicate Cardus as a "no-show" and that Ronald Joseph called in sick at 7:40 a.m. and again at 12:45 p.m. to say he would be in on Thursday. Respondent Exhibit 5. Thereupon, Bryan prepared the following letter terminating Cardus' employment:

On Wednesday, January 28, 1987, you again did not call in as required. This is the third day that you have failed to do so. As I mentioned in my letter to you on January 26, 1987, it is your responsibility to call in daily to let us know your work status.

You have been an employee for five years and certainly know what is required for employment here. Another employee has been sick over the same period and has called in each morning.

Your lack of responsibility in this regard leaves me no choice but to terminate your employment at Hawaiian Milling Corporation as of this date. Any accrued vacation pay will be forward (sic) to you by mail.

Petitioner Exhibit 5.

At this time Bryan was also aware of and considered another incident which occurred in August 1986 in which Bryan had to write Cardus a letter after he had threatened to take Bryan and a secretary "down the road." Petitioner Exhibit 6. Bryan then noted, "I hope that your attitude would be more positive when you return to work when your hand is healed completely." Id. Bryan was also aware of and considered the contents of a memorandum issued on September 3, 1985 by Cody Lee Mark regarding an incident where Cardus had failed to report to work because he knew there would be overtime work. Respondent Exhibit 7. In that memorandum, Mark outlined the fact that on Thursday, September 19, 1985 Cardus telephoned to report that he was ill and "later that afternoon, [he] phoned in again after an apparent doctor's visit to tell us [he] had the flu and will not be back until the following Tuesday." Bryan testified that this memorandum indicated that Cardus "obviously" was aware of Respondent's policy of having employees call in to keep the Company informed of their status. Tr. V, p. 74. Bryan testified that Cardus' involvement with the Union had no effect on his decision. Tr. V, p. 51.

Cardus testified that on January 29, 1987, he talked to Poxxy Leong at approximately 8:30 or 9:00 in the morning and told her that the doctor released him and that he would be back to

work on Sunday morning, February 1, 1987. Tr. III, pp. 66-67. The calendar entry indicates that Cardus called at 11:20 a.m. Respondent Exhibit 5. Ms. Leong never told Cardus that he had been terminated the day before. Tr. III, pp. 140-41. Cardus provided the Board with a certificate for his return to work from Dr. Kobayashi which was placed into evidence. Complainant Exhibit 8.

Cardus testified that Ronald Joseph delivered Cardus' check on January 29, 1987 at approximately 2:30 or 3:25 p.m. Tr. III, pp. 57-58. The attachment on the check indicated that he was "terminated 1-28-87". Cardus testified that he did not call anyone at HAWAIIAN MILLING CORPORATION to find out what was going on after he received the check. He did, however, call the Union. Tr. III, pp. 61 and 135. Cardus testified that he received Complainant Exhibit No. 1, the letter dated January 26, 1987, on January 29, 1987. Tr. III, p. 50. This was one-half hour after he received the termination check. Tr. III, p. 61. Cardus testified that he received Complainant Exhibit 5, the termination letter dated January 28, 1987 on January 30, 1987. Tr. III, p. 61. Although he indicated that he signed for the registered letter, the postal form indicates that his father actually signed for the letter. Tr. III, pp. 135 and 137. Cardus did not call the office after receiving the termination letter on the 30th. Tr. III, pp. 61-62.

Cardus testified that he received Complainant Exhibit No. 3, the letter dated January 27, 1987 on January 31, 1987. Tr. III, p. 52.

Cardus also testified, contrary to his previous testimony, that he was at the doctor on the 30th to get a return-to-work slip. The note, dated January 26, 1987, indicates that Cardus is able to return to work on January 30, 1987. Petitioner Exhibit 8. When questioned on the discrepancy, Cardus testified that he was at the doctor on January 30, 1987. When asked why the doctor's note is dated January 26, 1987, Cardus indicated that he may have gotten the note on the 26th. When questioned as to whether the doctor told him to go back on the 30th, Cardus testified that he believed that the doctor or secretary made an error on the return date. Tr. III, pp. 138-39.

Cardus testified that the previous procedure was to call in prior to the work shift and call in one or several days prior to returning to work to be rescheduled. Tr. III, p. 48. He never had to call in every day. Tr. III, pp. 63-64. Cardus testified further that he was not aware of any policy requiring him to call in every day and the failure to do so would result in dismissal. Tr. III, pp. 65-66. Cardus further testified that there are no House Rules on calling in. Tr. III, p. 49. Cardus testified that he knew no regular employee or probationary employee that was fired because he did not call in sick every day he was absent. Tr. III, p. 152. Cardus reported that he refused to give the Company his home phone number since he considers it his "personal phone". Tr. III, p. 130. The Company had contacted him in the past by either Cody Lee Mark or Greg Souza coming to his house or having one of the other employees, a neighbor Ronald Joseph, stop by. Tr. III, p. 46. Cardus confirmed that

if Ronald Joseph isn't at work either, the Company had to send a letter or someone to the house. Tr. III, p. 131. Cardus, however, acknowledged that employees are required to call one hour before the start of the shift. Tr. III, p. 165. Previously, Bob Johnson told him to bring a doctor's note every time he is absent from work. Tr. III, p. 91. Johnson told him to call in a half-hour or hour before the shift and to call back to notify him so he could reschedule the job. Tr. III, p. 92. Cardus testified that he would call in to let the Company know that he would be seeing a doctor and he would keep them informed. He testified that he didn't necessarily call in every day. Sometimes he would call and tell them that the doctor said he could come back on a certain date and sometimes he didn't. Tr. III, pp. 92-95.

Upon questioning by former Board Member Clark, Cardus testified that when there was an industrial accident, the employee was not required to call in every day but if ill, the Company expected him to call in every day. There was indeed a difference between an industrial injury and regular sick leave. Tr. III, p. 158. Cardus further indicated that he could have called the Company but he did not since he was not feeling too well. Tr. III, pp. 165-66.

Bryan testified that shortly after he became the manager in October 1985, he was given a set of Respondent's House Rules, Respondent Exhibit 2, which he had posted at the feed yard. Bryan testified that special efforts were made to insure that the rules were posted so that all employees were familiar

with the rules and knew what was expected of them. Tr. V, p. 38.

With regard to Complainant Exhibit 2, Cardus testified that he never saw the employees' pamphlet regarding sick leave. Tr. I, pp. 36-37. As to the House Rules, Cardus testified that he had seen pages 8, 9 and 10 previously on the bulletin board but not pages 1 through 7. Tr. I, p. 38. The House Rules consist of Rules 1 through 27. Complainant Exhibit 2. The House Rules provides in pertinent part:

THE FOLLOWING ACTS ARE CONSIDERED TO BE VIOLATIONS OF COMPANY HOUSE RULES. Study the list and be sure you know what they mean, since any of the following acts will be subject to discipline or discharge:

* * *

26. Failure of an employee to notify Plant Superintendent or Immediate Supervisor before scheduled starting work hour of reasons for not reporting to work that day.
27. Failure of reporting to Supervisor by 12:00 noon of the day preceding returning to work of employee's intention to return to work. Each employee returning from sick leave or industrial-injury leave must have doctor's release before he will be accepted for duty.

Foreman Uhlir confirmed that the complete set of House Rules, Respondent Exhibit 2, are posted both at the mill and at the cowboy shack. Tr. V, p. 27. Uhlir testified that they were posted shortly after Bryan took over pursuant to Bryan's instructions. Id. Uhlir confirmed the Company's policy to have the employees keep the Company informed of their absentee status. "You call in every day unless you got doctor's notes stating you're going to be out for a certain amount of days." Tr. III, p. 200.

Cardus claimed that he had never seen the House Rules, including Rules 26 and 27, until his unemployment hearing. Tr. III, pp. 72-73, 77 and 114. Cardus produced a copy of the original House Rules that he had received in 1982 which was entered into evidence as Union Exhibit 9. Tr. III, p. 75. Cardus' set of House Rules ended with number 25. There was another set of House Rules that show an additional number 26 and 27. Tr. III, p. 77. Cardus testified that Bryan produced the enlarged Company rules at his unemployment hearing but, as indicated supra, Cardus testified that he never saw them before. Tr. III, pp. 72-73, 77.

Section 21, of the contract dated 10/1/79 through 10/1/82 between the United Food and Commercial Workers Union, Local 594, AFL-CIO and the Company which was later observed by Amalgamated Meat Cutters, indicates that employees shall notify the manager no later than one hour before the start of scheduled shift of the first day of illness and keep the manager advised sometime during working hours each subsequent day of absence unless there are extenuating circumstances. Tr. III, pp. 83-84; Respondent Exhibit 1. Failure to notify the Company shall be deemed a waiver of sick leave benefits for that day and each subsequent day until proper notification is made. Tr. III, pp. 84-85.

Patrick Good stated that his understanding was that when you're sick, you call in every day unless you get a doctor's note stating that you're going to be out for a certain number of days. Tr. III, p. 200.

Robert Loscalzo testified that the first day he's sick he calls in if possible before he goes to the doctor to let them know that he's not coming in and that he is going to the doctor. Then he calls them back at some time during that day and lets them know what the status is. He always tries to keep the Company informed. Tr. IV, pp. 33-35. However, Loscalzo testified that he was not required to call in every day to report in sick; he never saw the House Rules to call in every day; and he hadn't seen the old contract regarding calling in. Tr. IV, p. 6. Loscalzo testified that he had never seen provisions 26 and 27 of the House Rules before. Tr. IV, p. 42. Loscalzo also testified that he never knew an employee to call up every day when sick. Tr. IV, p. 43.

Ronald Joseph testified that Cardus had asked him to pick up his check and bring it home since he was out sick. He therefore asked Stephanie Pauline for the check and she did not tell him anything about Cardus' being terminated when she gave him the check. Tr. IV, p. 53. Joseph's understanding of the Company procedure is that you call in when you are going to be out on the first day and let them know that you're going to the doctor. When you go to the doctor since you know more or less when you'll return to work, you call back and let them know when you're returning. Tr. IV, pp. 33-35, 65. Relevant calendar entries indicate that despite his denial (Tr. I, p. 64), Joseph called in on January 25th and every day thereafter until his return on January 29, 1986. Respondent Exhibit 5.

Anthony Sedeno testified that he was told to call in when he was sick and when he was ready to come back. Tr. IV, p. 167. He testified that he was never told to call in every day when out sick. Tr. III, p. 168. Upon cross-examination by Rand, Sedeno indicated to the Board that when you get sick you first call in and tell the Company that you're going to the doctor. Thereafter, you always call after you go to the doctor and tell them when you're coming back. Tr. III, pp. 188-191. Sedeno testified that he had seen Respondent Exhibit 9 posted on the cowboy shack bulletin board before. Sedeno also testified that he never saw House Rules with paragraphs 26 and 27 attached prior to that time. Tr. IV, p. 168. Sedeno stated that the House Rules posted in the cowboy shack don't have paragraphs 26 and 27 attached. Tr. IV, p. 169. Sedeno also testified with regard to footwear, that he always used to wear tennis shoes and so did most of the other employees including the cowboys. He never heard of a new policy regarding footwear until after Cardus was terminated and Souza told him that from then on they had to wear regular shoes. Tr. IV, pp. 173-174.

Corky Bryan testified that his understanding was that if an employee was going to be out and had seen a doctor, he would let the Company know how long he would be out on his absence. An employee was not required to call every day if he had already advised the Company of a longer absence. Tr. V, p. 41. Bryan testified that he was aware that Cardus was a supporter of the Union. Tr. V, p. 51. Under cross-examination Bryan also admitted that he knew who the supporters for the Union

were and he named Loscalzo and Sedeno as additional supporters besides Cardus. Tr. V, p. 53. Bryan testified in response to questions from the Chairperson, that it was not a requirement for Cardus to bring in his horse to perform as a cowboy. And he did not regard Cardus as a problem employee. Tr. V, p. 58. Bryan admitted to the Chairperson that the new House Rules were drafted by the personnel department of Hawaii Meat Company and that they were never handed out to each employee. Further, he did not know whether anyone at HAWAIIAN MILLING CORPORATION ever told the employees of the new rules. Tr. V, pp. 75-76.

Wayne Miyashiro, President of the Union, testified that Cardus and Loscalzo were the inside organizers for the UFCW. Tr. IV, p. 77. The negotiating team involved Cardus, Loscalzo and occasionally Sedeno. Tr. IV, p. 78. According to Miyashiro, Cardus attended just about every hearing before Tanigawa, the mediation sessions and all negotiation sessions. Tr. IV, p. 79. Under cross-examination, Miyashiro admitted that negotiations began in May or June of 1986 and mediation began in July-August 1986 and Cardus was on TDI during the time of the negotiations and mediation. Tr. IV, pp. 80-81.

With respect to Case No. 87-8(CE), Complainant contends that Respondent has engaged in unfair labor practices in violation of Subsection 377-6(1), HRS, through its agent Chuck Uhlir, who allegedly struck Anthony Sedeno while on a picket line and subsequently challenged Sedeno to a fist fight and thereby threatened his employment because of his Union activity.

Anthony Sedeno has been employed by Respondent for approximately 19 years and is a cattle feeder. Tr. I, p. 6. Sedeno testified that on or about March 5, 1987, he was picketing the premises of Respondent from 5:00 a.m. until 4:00 p.m. Tr. III, p. 174. At approximately 3:45 to 4:00 p.m., he was talking to Patrick Good, foreman, who was stopped in his car with the engine running in the middle of the driveway of the main entrance to the premises. Sedeno was talking to Good on the driver's side of the vehicle. He was approximately four feet from Good. According to Sedeno, he heard the Union international representative, Sidney Lee say, "Watch out Tony." As he turned away from Good's car, he hit his left hand on the rear side of the truck. Tr. III, p. 175. The truck, a half-ton Chevy pickup, was driven by Uhlir, who proceeded to Island Commodities next door. Tr. III, p. 182; Tr. V, p. 24. According to Sedeno, Uhlir returned speeding back into the Respondent's driveway and he told Uhlir to slowdown. Uhlir then told him, "come on. You want to fight? Come on. Come on in here and fight." Sedeno then allegedly told Uhlir that he hit his hand. Uhlir accused him of lying. Sedeno indicated that he was so angry that he was going into the lot and he started to cry. Lee held him back. Tr. III, pp. 181-82.

A police officer was called to the scene and issued a ticket to Uhlir for not carrying an insurance card in the truck. Tr. V, p. 26.

Sedeno stated that he had spent one night in Wahiawa General Hospital because of cuts on his knuckles and other hand

injuries, which required him to wear a cast for about a month. Tr. III, p. 183.

Sedeno's injury was more traumatic to him because he has already a severely damaged right hand. Tr. III, p. 185.

Sidney Lee, Complainant's current international representative, has held that position for approximately nine years. Tr. III, p. 85. Lee was present picketing on March 5, 1987 when Sedeno had his left hand injured at approximately 3:00 or 3:30 p.m. Lee testified that when Patrick Good came out, he stopped his vehicle approximately in the middle of the driveway halfway between the entrance gate and the street. He and Sedeno went to the vehicle with Sedeno on the driver's side and he on the passenger side. John Tripp and Jerry Sonson were in the general area. Tr. III, p. 90. Lee testified that he heard a truck screeching and coming out fast towards the gate. He heard somebody yell, "Watch out for the truck." When Sedeno turned around, he yelled out to him, "Look out for the truck." When he had just turned the truck came by and hit Sedeno on his hand. Tr. III, p. 93. After approximately three to five minutes, Uhlir drove back into the lot. Upon entering the gate, he stopped his truck and he and Sedeno had some words. Sedeno told Uhlir that Uhlir had hit his good hand and what was he going to do. Uhlir stepped out of his truck and said that he did not hit Sedeno's hand. He said Sedeno hit his hand on the truck. Uhlir jumped into his truck again and proceeded behind the gate. Uhlir then by gestures challenged Sedeno to come into the lot and fight him and Lee held Sedeno back. Tr. IV, pp. 94-95.

While Lee did not actually see Sedeno's hand contact the truck, he indicated that contact was made when Sedeno turned around. Tr. IV, pp. 100-101. Lee testified that Uhlir at one point jumped the curb. When this occurred, the truck appeared to fishtail. Tr. IV, pp. 99-100. Lee testified that Sedeno got hit because of the angle of the truck when it was driven towards Good's car. Lee stated that Uhlir lost control and that is why he jumped the curb although this happened after the truck and Sedeno made contact. Tr. IV, p. 99.

Uhlir testified that as he came out of Respondent's property and down the driveway, there was no formal picket line and that the picketers were scattered over the area. Tr. V, pp. 22-23. Uhlir testified that he neither saw nor attempted to hit Sedeno and was only driving 20 to 25 miles per hour. After Uhlir exited the driveway, he went next door into Island Commodities and did not know that any contact had been made between the truck and Sedeno. When Uhlir returned to the driveway, the employees who had been picketing were yelling and screaming at him, accusing him of having hit Sedeno. Tr. V, pp. 24-25. The employees were swearing at Uhlir and Sedeno approached Uhlir, took his picket sign off and screamed that Uhlir had hit him with the truck. Uhlir denied hitting Sedeno and admitted that the conversation deteriorated into a shouting match. Uhlir denied inciting a fist fight with Sedeno since he felt outnumbered by the picketers. Tr. V, p. 26.

Patrick Good, mill foreman for approximately one year, has been employed by the Company for approximately two years.

Tr. III, p. 194. Good testified that he was finished with work and heading home sometime after 3:00 p.m. and stopped his car in the middle of the driveway to have a conversation with some of the picketers, including Sedeno. Tr. III, pp. 195-96. Good testified that he did not see Uhlir's truck coming out of the yard but saw it as it was going past him. He saw the truck bounce a little bit because it jumped the curb and as Sedeno turned around he saw one of Sedeno's hands hit the backside of the truck. He testified that he could not hear anything because he had his radio on. Tr. III, p. 196. Good testified he saw Sedeno's hand hit the backside of the vehicle somewhere near the rear wheel well by the topside of the bed. Tr. III, p. 204. Good testified that after Uhlir's vehicle went past him, he said, "Oh, the maniac he almost hit my car too." Good left the premises shortly thereafter. Tr. III, p. 205. Good testified that Uhlir did not swerve his truck to hit Sedeno. Tr. III, p. 196. Good stated that if Sedeno had not turned around, there would not have been any contact between him and the truck. Tr. III, p. 197.

In Case No. 87-9(CE), Complainant contends that on or about February 24, 1987, Uhlir and Loscalzo engaged in a discussion in which Uhlir threatened to discipline Loscalzo "if he brought the Union in".

Robert Loscalzo has worked for Respondent for approximately 16 years. He was a cowboy for 13 years and because of an injury he has worked since that time as a laborer. Tr. IV, p. 5. On or about February 24, 1987, Loscalzo testified that he was

with Ronald Joseph and David Rodrigues in the cowboy shack on their morning break. Loscalzo claims that Uhlir told Rodrigues that he was late on his break at which time Loscalzo told Joseph that they should also leave. Loscalzo testified that Joseph told him that they had two more minutes left and therefore they remained in the cowboy shack. When he went back to work, Sedenio who had thought it was "funny or something" said that he had heard Loscalzo's name over the radio. Uhlir had called the office and said somebody should talk to Loscalzo about abusing his break. Tr. IV, p. 8.

This bothered Loscalzo throughout the day and at approximately 2:45 p.m., time for the afternoon break, he called to Joseph as he approached the cowboy shack and asked him in a loud voice what time it was because he did not want to abuse his break. Upon hearing this, Uhlir came out of the cowboy shack with his hands on his hips and asked Loscalzo if he had a problem. Loscalzo claimed that Uhlir told him to call the Union at which point Loscalzo said the Union was right outside. Whereupon Uhlir stated, "You call the Union and I'll write you up for abusing your break this morning." Loscalzo thereafter went to see manager Corky Bryan. Tr. IV, p. 9.

On cross-examination, Loscalzo admitted that he had not personally heard Uhlir's alleged statements over the radio. Tr. IV, p. 12. Loscalzo testified that he was bothered because he felt Uhlir had been picking on him for a number of years and that he had not, in fact, overstayed his break. Tr. IV, p. 13. Loscalzo claims that he asked Joseph what time it was because he

wanted to make sure he did not abuse his break, and not to incite an argument with Uhlir. Tr. IV, pp. 16-17. But, Loscalzo also stated that he can't really remember what Uhlir said or what Loscalzo said to him. Tr. IV, p. 21.

Loscalzo stated that he gets upset every time he feels that Uhlir pushes him around and threatens him. He feels that Uhlir has been doing that for years. Tr. IV, p. 23.

Every time Loscalzo gets upset he thinks about a previous incident where Uhlir put his face next to his and told him to punch him. Tr. IV, p. 25. Loscalzo testified that he saw Superintendent Cody Lee Mark about the confrontation and Mark told him not to worry about Uhlir. Tr. IV, pp. 23-25. Loscalzo was never written up for abusing his break. Loscalzo spoke to Bryan and asked Bryan if he wanted Loscalzo to see the Union. Bryan told him no. Tr. IV, p. 28.

When Loscalzo went to meet with the Union, they appeared to already know about the incident since other employees had told them what happened. Tr. IV, p. 31.

Ronald Joseph has been a cowboy for approximately 5½ years. Tr. IV, p. 47. Joseph testified that he recalled a conversation between Uhlir and Loscalzo regarding breaks. Joseph indicated that he heard Uhlir tell Rodrigues that he was running late on his break. Tr. IV, p. 55. Later that day when he was through unloading equipment from the truck and was walking back to the cowboy shack, Loscalzo yelled at him, "Ron, what time is it? Because I don't want to abuse my break." Joseph indicates that he looked at his watch and said, "No. It's break time."

Tr. IV, pp. 55-56. Uhlir, who was inside the cowboy shack came out with his hands on his hips and said, "What's the matter, Bob? You got a problem?" Tr. IV, pp. 56-57. Loscalzo said, "Yeah. My problem is you." Uhlir said, "Oh, why am I your problem?" Loscalzo responded, "You calling in on the radio and turning me in on my break. Ron and I took breaks at the same time. I didn't hear his name." Uhlir said, "Look, if you got a problem, you want to go see your union, go for it." Loscalzo said, "You want me to see my union? My union is right outside." Uhlir stated, "Go see your union, and I'll write you up." Joseph then walked away. Tr. IV, p. 57. Loscalzo then went to see the manager anyway. Tr. IV, pp 57-58.

Uhlir testified that at 8:30 a.m. that morning he observed Loscalzo and Rodrigues taking their breaks. At approximately 8:45 a.m., he went to the cowboy shack and told Rodrigues, "That the truck had come in and we had to go and load it up." Tr. V, p. 15. Uhlir also noted that Loscalzo did not end his break at 8:45. Because he and Loscalzo are not the best of friends he felt it would be better to inform other management personnel to know that Loscalzo was abusing his break instead of confronting him directly. Id. Thus, Uhlir radioed to Mark that Loscalzo was abusing his break because he felt that Loscalzo had been on break for half an hour. Tr. V, p. 16.

At 2:45 p.m., Uhlir was in the cowboy shack and heard Loscalzo ask Joseph in a loud voice what time it was. Upon learning that it was a quarter to three, Loscalzo told Joseph that he wanted to make sure that he did not abuse his break.

According to Uhlir, Loscalzo was speaking in a very sarcastic tone of voice. Tr. V, p. 16. Uhlir walked out the door and asked Loscalzo if he had a problem. Loscalzo said no, and Uhlir told him, "If you have a problem with me, you tell me." Tr. V, p. 17.

Uhlir stated that Loscalzo then started haranguing him about not being his boss and not having any power to tell him what to do. Tr. V, p. 17. According to Uhlir, Loscalzo threatened him and when Uhlir didn't respond, Loscalzo told him it was harassment. Uhlir responded, "Oh, you, too. Well, if it's harassment, why don't you go see your union about it." Loscalzo responded, "Yeah, I will. I'm going to talk to the union." Then Uhlir responded, "Well, if you go to the union about that, then I could just as well write you up for what happened this morning." Tr. V, p. 18.

Uhlir went to the office and asked that Loscalzo be written up for threatening him and for abusing his break. After Bryan talked to Loscalzo and had cooled off Uhlir, Bryan felt it wasn't enough to write Loscalzo up. Tr. V, p. 19.

Corky Bryan testified that Loscalzo came to see him and was very upset. Loscalzo complained that Uhlir was always on his back trying to cause trouble with him. Bryan told him that he would talk to Uhlir. Tr. V, p. 37.

CONCLUSIONS OF LAW

Complainant charges in Case Nos. 86-6(CE) and 87-7(CE) that Respondent violated Sections 377-6(1), (3) and (8), HRS, by

various discriminatory acts against Raymond Cardus which culminated in his termination. The complaint in Case No. 86-6(CE) alleges that the Employer improperly discriminated against Cardus' continuous employment by forcing him to take a medical leave after accepting him back from sick leave while other employees were granted light duty work. The complaint, filed on December 5, 1986, alleges that the violation occurred on or about June 18, 1986. In Case No. 87-7(CE), Complainant alleges that on or about January 20, 1987 and thereafter the Employer through its agent Chuck Uhlir threatened Cardus' continuous employment. The complaint alleges that Cardus was questioned about filing charges against the Company and was also threatened with a change of classification causing Cardus to be terminated.

With respect to the claims by employee Raymond Cardus, according to Complainant's brief the relevant issues as stated is whether the Respondent in Case No. 87-7(CE) has engaged in and is now engaging in unfair labor practices contrary to the provisions of Sections 377-6(1) and (3), HRS, because the Respondent, through its agents, including Chuck Uhlir, foreman, threatened the continuous employment of employee Raymond Cardus eventually succeeding in his termination through discrimination with regard to his tenure and other terms and conditions of employment because of his Union activities.

Subsections 377-6(1), (3), and (8), HRS, provide 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;

* * *

- (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;

* * *

- (8) To discharge or otherwise discriminate against an employee because the employee has filed charges or given information or testimony under the provisions of this chapter; . . .

Section 377-4, HRS, defines the rights of employees guaranteed in Chapter 377, HRS, and provides:

377-4 Rights of employees. 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).

At the outset, Respondent contends that the charges in Case No. 86-6(CE) are barred by the 90-day statute of limitations provided for in Subsection 377-9(1), HRS.

That subsection provides as follows:

377-9 Prevention of unfair labor practices.

* * *

- (1) No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence.

It is undisputed that the subject charge alleges the violation of discrimination occurred on or about June 18, 1986. However, the charge was not filed with the Board until December 5, 1986. The filing therefore is well beyond the limitations period provided under the applicable law. Complainant's brief does not even address this point. We find that contrary to his testimony, Cardus was well aware of his rights provided by law since previously he had written a letter to Hawaii Employment Relations Board Hearings Officer Herbert Tanigawa in 1985

alleging that he was being discriminated against because of his union involvement. This is evidenced by Respondent Exhibit 4 which he wrote after receiving Cody Lee Mark's September 23, 1985 memorandum regarding sick leave abuse. Moreover, at the critical time in question, Cardus was in contact with the Complainant Union as they were in negotiations and mediation with Respondent in June through August of 1986. Further, Complainant's President Miyashiro indicated that he knew Cardus had been placed on TDI and the reason why a discrimination charge was not filed at that time was because "the facts of it wasn't really clear, we thought we could secure a contract." Tr. I, p. 85. Accordingly, finding no basis upon which to toll the applicable statute of limitations, the charges in Case No. 86-6(CE) are hereby dismissed for lack of jurisdiction.

However, even if these charges were not dismissed on jurisdictional grounds, the Board concludes that Respondent's actions in putting Cardus on TDI was not a violation of Chapter 377, HRS. The record indicates that Cardus injured his hand on the job and was absent from work for several weeks. He then reinjured his hand off the job. Testimony indicates that after his return to the job, Respondent attempted to accommodate the limited use of his right hand in a variety of jobs. However, Cardus was either unable to perform the job, complained about the job assignment, or did not perform the job assignment to the satisfaction of Respondent. Moreover, it appeared as if his hand was not healing properly as evidenced by the notes from Cardus' physician. It eventually took approximately six months or the

total time allowable under the TDI law for Cardus' hand to eventually heal. Given these circumstances, if the Board were to rule on the merits of Complainant's allegations, the Board would conclude that no violation of Chapter 377, HRS, occurred because the Employer acted reasonably in putting Cardus on sick leave and/or TDI and did not unlawfully discriminate against Cardus because of his involvement with the Union. Complainant ultimately failed to establish here, by a preponderance of evidence, that other employees in like situations were treated more favorably. Hence, assuming arguendo, that the Board had jurisdiction over the merits of Cardus' discrimination claim regarding his TDI status, the Board would have dismissed such claim on the merits.

Case No. 87-7(CE) involves essentially two claims. One is a conversation between Cardus and Uhlir where Complainant alleges that Uhlir improperly interrogated Cardus about filing discrimination charges with the Board and threatened him with a change in classification. The second claim, involves Cardus' termination because of his failure to call the office every day as required by the House Rules.

The evidence indicates that Uhlir and Cardus had a conversation shortly after he returned to his work in January 1987. During that conversation, Uhlir informed Cardus about management's new policy of wearing cowboy boots to work for safety reasons; asked Cardus to bring in his horse for work which Cardus refused to do; told Cardus about a change in his days off, and, among other things, asked Cardus why he brought charges against the Company. Cardus, in response to that question,

assured Uhlir that there was nothing personal in his complaint against the Company. However, Uhlir indicated that since he was part of the Company, he felt that the charges were still being made against him. Uhlir testified that after Cardus told him that he would not bring his horse in for work, Uhlir told Cardus that he might as well change Cardus' classification to that of a laborer. Cardus testified that he did not want to bring his horse in to work for the Company since he didn't think the Company would feed the horse properly or would care for it medically if the horse became injured because of the job. He glibly responded to Uhlir that his horse went to church on Sundays so he wouldn't bring the horse in.

The Board concludes that based on the conversation as testified to, that Uhlir did not unlawfully interrogate Cardus as to pending discrimination charges by threatening him with a change in classification. The evidence does not support the claim that Cardus was threatened because of his Union involvement or the pending charges against the Employer. We believe, rather, that mention of the change in classification was in response to Cardus' refusal to bring in his horse for work. Uhlir testified that if there was no horse for Cardus to ride he might be forced to downgrade him. In fact, there was no other Company horse available and Cardus was never downgraded although he did not bring his horse in. We conclude that this conversation did not constitute unlawful interrogation nor did it amount to any interference or restraint in the exercise of Cardus' Chapter 377, HRS, rights.

Cardus was thereafter terminated for failing to call in "daily to let us know your work status." Petitioner Exhibit 5. The evidence indicates that on Sunday, January 25, 1987, the Sunday following the conversation referenced above, Cardus called the Company and told Patrick Good that he "had the runs" and would not be coming in to work that day. Cardus, however, did not specify when he would be returning to work. According to his testimony, Cardus visited his doctor on Monday the 26th, and received a doctor's note which excused him from work until January 30, 1987. He did not call in to work to inform the Employer of this on Monday, January 26, Tuesday, January 27, and Wednesday, January 28. His reason was because he wasn't feeling "too good." On Thursday, January 29, office records indicate that he called the Company at approximately 11:20 a.m. to inform them that he would be returning to work the following Sunday. Cardus testified that he received his check indicating termination later that afternoon when his neighbor, Ronald Joseph dropped it off. Cardus testified that he received the letter on January 26, 1986 and the termination letter on the next day. The other letter, dated January 27, 1987 arrived on the following day.

Cardus testified that he had never seen House Rules 26 and 27 previously. This contradicted testimony from the hearing on January 12, 1987 where he indicated that he had seen these provisions. The other employees also testified that they had not seen these rules previously either. However, we note that the exhibit was introduced by Complainant at the January 12, 1987

hearing. Hence, the Board concludes that the rules were properly in effect at the time of Cardus' discharge. Whether the employees were notified of the rules is another matter.

A prior contract between the Employer and the United Food & Commercial Workers, Local 594, AFL-CIO, Respondent Exhibit 1, dated 10/1/79 to 10/1/82, which was recognized by the Amalgamated Meat Cutters, contains Section 21 regarding Annual Sick Leave which states, in part:

THE EMPLOYEE, UPON EACH OCCASION OF ABSENCE FROM WORK, SHALL NOTIFY THE MANAGER AS EARLY AS PRACTICABLE, BUT NOT LATER THAN ONE (1) HOUR BEFORE THE START OF THE SCHEDULED SHIFT OF THE FIRST DAY AND KEEP THE MANAGER ADVISED SOMETIME DURING WORKING HOURS EACH SUBSEQUENT DAY OF ABSENCE, UNLESS THERE ARE EXTENUATING CIRCUMSTANCES, CAUSES, AND/OR EVIDENCE WHICH ARE ACCEPTABLE TO THE COMPANY.

FAILURE TO NOTIFY THE COMPANY SHALL BE DEEMED A WAIVER OF SICK LEAVE BENEFITS (OR A WAIVER OF CREDIT TOWARD THE WAITING PERIOD, AS THE CASE MAYBE) FOR THAT DAY AND EACH SUBSEQUENT DAY UNTIL PROPER NOTIFICATION OF ABSENCE IS GIVEN, UNLESS THE FAILURE TO GIVE NOTICE IS JUSTIFIED BY REASONS ACCEPTABLE TO THE COMPANY.

Cardus testified that Respondent's Exhibit 1 was the contract he received when he started employment. Tr. II, p. 82.

Although employees, Sedeno, Loscalzo and Joseph testified that they had never previously seen the pertinent House Rules, they testified to a recognized practice regarding sick leave "when an employee is ill, the employee calls in prior to the work shift. If the employee knows that he will be out for a specific period of time, he would tell the Employer, and no further call is required. If the employee is unsure of the

length of absence, the employee calls the Company back after going to the doctor to let them know when he would be returning." Calendar entries during the same period when Cardus was considered a "no-show" indicate employees Joseph and Rodrigues called in every day to inform the Employer of their status. Respondent Exhibit 5. Although Joseph denies that he called in every day, the calendar indicates otherwise. Tr. V, pp. 80 and 83.

In the instant case, Cardus failed to inform Respondent of his work status for three working days and explained this failure by stating, "I wasn't feeling too good." Tr. III, p. 166. Cardus does not cite as his reason for not calling in that he was not required to or that he was not aware of any requirement to call. Moreover, we agree with Respondent's argument that minimal physical effort was necessary to telephone the Company. Since the testimony also suggests that Cardus does not live at the house by himself, it also appears possible that someone could have called for him. Hence, we believe that Cardus's actions were unreasonable and constituted misconduct leading inevitably to his discharge. Such conduct is not protected under Chapter 377, HRS. Accordingly, Complainant's Subsection 377-6(1), HRS, charge is dismissed.

In considering whether Respondent's termination of Cardus constituted discrimination in violation of Subsection 377-6(3), HRS, we are guided by the analysis proposed by the First Circuit Court of Appeals in NLRB v. Wright Line, A Division of Wright Line, Inc., 662 F.2d 899, 904-05, 104 LRRM 2513 (1st

Cir. 1981). Under the Wright Line test, the proponent initially must demonstrate that anti-union animus contributed to the decision to discharge the employee. If this burden is satisfied, the Employer must then show by a preponderance of the evidence that the employee would have been discharged even if he had not been engaged in protected activity. We note here, that a union advocate does not cloak himself with protection from discipline or discharge by his involvement with the union. While Respondent's union animus may be apparent from the record, this does not mean that Respondent cannot discharge a union adherent so long as the discharge was not based on the adherent's union activity.

The evidence in this case clearly establishes that Cardus was an active Union supporter and was involved heavily in negotiations. Moreover, Cardus testified before the Board in unfair labor practice proceedings against the Company approximately two to three weeks prior to his discharge. These facts were clearly known to the Employer. Although Bryan testified that these facts did not motivate his action in discharging Cardus, Cardus' involvement with the Union gives rise to an inference of violative discrimination. We believe the closeness in time between the protected activity and the discharge is relevant and may be considered as evidence of unlawful motivation. The burden thus shifts to the Employer to establish by a preponderance of evidence that Cardus would have been discharged even if he had not been engaged in protected activity.

After carefully weighing the evidence, the Board concludes that the evidence falls short of sustaining the Employer's burden. While we tend to believe that the House Rules, as amended, were promulgated by the Company, however, the Employer failed to affirmatively establish that this was properly done, when this was done, whether the employees were properly notified of these additional House Rules and whether they were properly notified that their failure to comply with the Rules would result in their discipline. While there apparently is an established practice or understanding that the employees are to properly advise management when they are sick, we do not believe the employees were properly advised of the change in the House Rules and that the failure to comply with such rules would result in discipline or discharge. In this particular case, the Employer acted swiftly in a summary fashion discharging Cardus without applying the principles of progressive discipline. While Cardus' work record is not unblemished, there is no more severe penalty in his work history than two written reprimands. Cardus was terminated on Wednesday after failing to call in three consecutive days. Bryan, however, wrote two letters containing warnings to Cardus, but these were both mailed on Tuesday. It appears unreasonable for Bryan to expect that Cardus would have been able to receive the letters and call in on Wednesday morning before 7:00 a.m. The prior contract provision, although not controlling here, indicates that the failure to call in daily results in a forfeiture of sick leave benefits rather than a termination of

employment. Moreover, it appears that the practices employed by Respondent were rather lax³, except where Cardus' misconduct was involved. While there may be some insubordination involved in Cardus' conduct, he was not discharged for this reason. The reason stated in the termination letter indicates that Cardus' discharge was based upon the improper enforcement of the House Rule. Hence, the Board finds that the Employer violated Subsection 377-6(3), HRS, by discharging Cardus.

However, the Board is mindful of Cardus' flippant attitude in his relations with his supervisor Uhlir and also that he brought about these circumstances. The evidence clearly establishes that Cardus failed to call in to the Employer to inform them of his absentee status for no good reason. Given the fact that he brought about these consequences, we agree that reinstatement with full backpay and benefits would be a windfall for Cardus. Hence, as we believe that the Employer's action of discharge was too severe in this case, we order the discharge reduced to a two-week suspension. The suspension period shall run from the time Cardus would have returned to his job. He should be reimbursed from that time until the onset of the strike.

³We note from relevant calendar entries that employees call in to report absences but not necessarily prior to their scheduled starting work hour as required by the House Rule which Cardus allegedly violated. There is no evidence of any employee being disciplined for such a violation. Moreover, Bryan testified that an employee is not required to call in every day if they already advised the Company of a longer absence. Tr. V, p. 41. Thus, we conclude that the House Rules are not strictly interpreted nor applied.

Complainant alleges in Case No. 87-8(CE) that Respondent violated Subsection 377-6(1), HRS, by interfering with Sedeno's lawful right to picket and, in effect restrained and coerced other employees from picketing because of his reckless and wanton driving.

Complainant contends that Uhlir's reckless and careless conduct in speeding through the picket line with the knowledge that there was a picket line out front picketing the driveway shows a careless disregard for the rights of the picketers to engage in protected concerted activity. Complainant argues that in effect, it was an attempt to disband the picketers or have them flee because of his speeding vehicle. Because of this careless disregard, Complainant contends that Sedeno was seriously injured. Complainant contends that Uhlir's conduct was intentional and calculated to disrupt the peaceful picketing at Respondent's premises. Moreover, it is contended that Uhlir's conduct violated Section 377-6(1), HRS, because it not only interfered with the lawful right to picket but in effect, he restrained or coerced the same employees from picketing. Because of this perceived fear which Complainant argues that Uhlir has instilled in all of them by his reckless and wanton conduct, anytime a picketer hears Uhlir start his truck and begins to drive out of the parking lot, they'll be restrained from picketing anywhere near the driveway in fear that they might be struck or run over by a speeding or uncontrolled vehicle.

Respondent submits that the facts are relatively clear in this case that Sedeno hit his hand on the truck as he turned

away from Patrick Good's vehicle. All of the witnesses who saw the incident confirm that the impact between Sedeno's hand and Uhlir's truck occurred only when Sedeno turned towards the truck and away from the vehicle driven by Pat Good. Sedeno himself indicates that if he had moved towards Good's car instead of away from it, there would have been no contact. It is also undisputed that Sedeno and the other employees at the time of the incident were not actively engaged in picketing, a protected concerted activity.

Moreover, Respondent submits that the ensuing conversation did not threaten Sedeno's employment. Respondent cites May Cohen dba Best Dress Co., 245 NLRB 949 (1979), where the National Labor Relations Board indicated that a violation of the National Labor Relations Act which amounts to an interference and restraint of an employee's rights turns on whether the conduct reasonably tends to interfere with the free exercise of employee rights. Based upon the record before this Board, the Board concludes that Uhlir's conduct did not tend to interfere with Sedeno's rights. In this regard, the Board notes that at the time of the incident, Sedeno was talking to the mill foreman in the middle of the driveway and although he carried a picket sign was not involved in anyway with picketing at the time. Further, there was no picket line established at that particular instant and the testimony indicates that the picketers were casually walking around the area. Most convincing, we find that since Sedeno's hand hit Uhlir's truck on the right rear side of the truck and this occurred only because Sedeno had turned into the

path of the truck, we believe that Uhlir did not intend to hit Sedeno. Had Uhlir contacted Sedeno's hand with the front of his truck, it would be more compelling to find that Uhlir caused this "accident." However, there is no other testimony which indicates that Uhlir attempted to run over any of the other picketers who were clearly in the vicinity of Sedeno. The testimony indicates that Uhlir was trying to avoid Good's vehicle and did not swerve into it.

With respect to the argument which occurred subsequent to Uhlir's reentering the driveway, the evidence indicates that Uhlir and Sedeno had some words at Uhlir's truck. At that time, Sedeno accused Uhlir of hitting his good hand which Uhlir emphatically denied. Thereafter, Uhlir proceeded into the lot and according to witnesses challenged Sedeno to come into the lot to fight him. While this is denied by Uhlir, he indicates that it would have been stupid for him to provoke a fight with Sedeno when he was so grossly outnumbered by the picketers. While we tend to believe that there were angry words exchanged between the two men, we agree with Respondent's contention that no statements were made threatening Sedeno's employment as alleged. Hence, we find no interference or restraint of Sedeno's or any other employees' rights by this incident.

With regard to Case No. 87-9(CE), Complainant argues that there can be no doubt that Uhlir's statement of reprisal if Loscalzo went to the Union constitutes a violation of Subsection 377-6(1), HRS. Complainant contends that this was a calculated threat by Uhlir which was implemented when Uhlir saw Bryan and

requested that Loscalzo be written up for abusing his break and threatening a supervisor. Complainant argues that it is immaterial that Bryan refused to follow through with Uhlir's request since the threat still existed to Loscalzo and interfered with his rights under Section 377-4, HRS, thus violating Subsection 377-6(1), HRS.

Respondent argues that the evidence does not support Complainant's allegations. Put into context, Respondent argues that Loscalzo incited the entire incident because of the long standing personal animosity between the two employees. Assuming arguendo, that Uhlir made the statement that he would write Loscalzo up for abusing his break if he saw the Union, this was immediately repudiated by Bryan's statements to Loscalzo. Respondent relies upon NLRB case law to indicate that such repudiation removes the taint of the alleged statements made by Uhlir.

The Board agrees with Respondent that when put into the proper context, Loscalzo incited the confrontation with Uhlir. According to the record in this case, Loscalzo was aware that Uhlir was concerned with Rodrigues overstaying his break which prompted Loscalzo to ask Joseph whether it was time to leave. After listening to Joseph, the pair remained and it appears that Uhlir radioed Cody Lee Mark that Loscalzo had abused his break. While Uhlir had the opportunity to address Loscalzo at that point, he decided not to confront Loscalzo because of the strained personal relationship with him. When Loscalzo returned to work from his break, Sedeno apparently chided Loscalzo about

abusing his break. According to Loscalzo he was upset all day and we believe he was still upset at 2:45 p.m. when the incident occurred. We do not believe that Loscalzo's statement was made to assure that he was not overstaying his break. We believe that Loscalzo's statement was made in a loud enough tone of voice so that individuals inside the cowboy shack would be sure to hear him. It is clear that Uhlir came out of the cowboy shack and asked Loscalzo whether he had a problem. Loscalzo states that he told Uhlir that he did have a problem, "You're my problem." Thereafter, Loscalzo claims that Uhlir had a tantrum. Tr. IV, p. 19. By contrast, Uhlir testified that Loscalzo started yelling at him.

At some point, Uhlir suggested that Loscalzo contact the Union. Loscalzo claims that Uhlir told him that if he did see the Union, then he would have him written up for abusing his break in the morning. In any event, Loscalzo pursued the matter with manager Corky Bryan who calmed Loscalzo down and said that he would talk to Uhlir about this. No subsequent disciplinary action was issued to Loscalzo about overstaying his break nor for threatening Uhlir. Loscalzo appeared to be convinced that the manager would talk to Uhlir about it to resolve the situation. Hence, even if Uhlir's statement was arguably violative of Sub-section 377-6(1), HRS, we conclude that there was no violation because Uhlir's statement was repudiated by Bryan. No discipline was meted out to Loscalzo. Hence, we find no unfair labor practice here.

ORDER

Based upon the foregoing, the unfair labor practice charges in Case No. 86-6(CE) are dismissed for lack of jurisdiction. Further, the charges in Case Nos. 87-8(CE) and 87-9(CE) are found to be without merit and are hereby dismissed.

The charges in Case No. 87-7(CE) are sustained, in part: the Employer is hereby ordered to cease and desist from discriminating against Cardus because of his union activities. Further, the Board orders that Cardus be reinstated with backpay computed until the commencement of the strike, except for a two-week disciplinary suspension as detailed, supra. Any backpay award will be mitigated by monies received through jobs and unemployment compensation for the affected time period. In addition, the Employer shall immediately post copies of this decision in conspicuous places at its worksite where employees of the bargaining unit assemble, and leave such copies posted for a period of sixty (60) consecutive days from the initial date of posting.


DATED: Honolulu, Hawaii, October 28, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 480 and HAWAIIAN
MILLING CORPORATION (HAWAII MEAT COMPANY FEEDLOT); CASE NOS.:
86-6(CE), 87-7(CE), 87-8(CE), 87-9(CE)
DECISION NO. 286
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



GERALD K. MACHIDA, Board Member

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