

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. 00-1(CE)
)	
LUIS Q. BALLERA,)	ORDER NO. 1884
)	
Complainant,)	ORDER GRANTING COMPLAIN-
)	ANT'S MOTION TO AMEND
and)	UNFAIR LABOR PRACTICE
)	COMPLAINT AND DENYING
DEL MONTE FRESH PRODUCE HAWAII,)	RESPONDENT DEL MONTE'S
INC.,)	MOTION FOR SUMMARY JUDGMENT
)	
Respondent.)	
)	

ORDER GRANTING COMPLAINANT'S MOTION TO
AMEND UNFAIR LABOR PRACTICE COMPLAINT AND DENYING
RESPONDENT DEL MONTE'S MOTION FOR SUMMARY JUDGMENT

On February 22, 2000, Respondent DEL MONTE FRESH PRODUCE HAWAII, INC. (Employer) filed a motion for summary judgment in the instant matter with the Hawaii Labor Relations Board (Board). The Employer contends that the instant complaint is barred by the applicable statute of limitations and as such, the complaint should be dismissed with prejudice.

On February 28, 2000, Complainant LUIS Q. BALLERA (BALLERA) filed a reply to the Employer's motion for summary judgment with the Board. Thereafter, on March 2, 2000, Respondent Employer filed a reply memorandum in support of its motion for summary judgment.

On March 13, 2000, Complainant filed a motion to amend his unfair labor practice complaint with the Board. Complainant seeks to add the ILWU, Local 142 (ILWU or Union) as a Respondent in

this case alleging a failure to investigate; failure to arbitrate and abandonment.

Thereafter on April 10, 2000, Respondent Employer filed an opposition to Complainant BALLERA's motion for leave to amend unfair labor practice complaint.

The Board conducted a hearing on the instant motions on April 18, 2000. Also on April 18, 2000, BALLERA filed a notice of appearance of counsel with the Board. In addition, BALLERA, by and through his counsel, filed a supplemental memorandum in opposition to Respondent Employer's motion for summary judgment with the Board. After noting the appearance of BALLERA's counsel, all parties had full opportunity to present evidence and arguments on the foregoing motions.

After reviewing the record in this case, the Board finds that BALLERA was terminated by Respondent Employer by letter on April 14, 1999. The ILWU filed a grievance on behalf of BALLERA on April 26, 1999. The grievance was processed through the contractual procedure and on November 9, 1999 the ILWU issued a Notice of Decision Not to Arbitrate Grievance to BALLERA indicating that the Union would advise the Employer of the withdrawal of its previous notice to arbitrate. The ILWU's Notice indicated that BALLERA could appeal such decision not to arbitrate by filing an appeal with the ILWU's International Vice President within ten days. BALLERA filed an appeal with the ILWU's International and by letter dated January 10, 2000, the ILWU denied BALLERA's appeal.

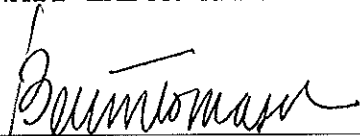
After considering the arguments presented, pursuant to Administrative Rules § 12-41.1-80 the Board in its discretion


hereby grants BALLERA's motion to amend his complaint to include the ILWU as a Respondent in this matter. BALLERA is directed to file the original and four copies of the Amended Unfair Labor Practice Complaint with the Board forthwith.

With respect to the Respondent Employer's motion to dismiss the complaint, the Board finds that BALLERA alleges that he was improperly terminated and that the ILWU breached its duty to fairly represent him. The complaint was filed within 90 days of the ILWU's alleged improper denial of BALLERA's request to arbitrate his grievance. Based on the record before the Board, BALLERA exhausted his contractual grievance rights and internal union procedures and thereafter filed this complaint. As such, the Board hereby denies the Respondent Employer's motion for summary judgment.

DATED: Honolulu, Hawaii, June 16, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

Copies sent to:

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