

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION ("ILWU"),
LOCAL 142,

Complainant,

and

HAWAIIAN MACADAMIA NUT
SERVICES, LLC, (KA'U
DIVISION),

Respondent.

CASE NO. 2019-15 (CE)

ORDER NO. 3555

PRETRIAL ORDER AND NOTICES;

(1) NOTICE TO RESPONDENTS OF
UNFAIR LABOR PRACTICE
COMPLAINT;

(2) NOTICE OF FILING
REQUIREMENTS;

(3) NOTICE OF ACCESS;

(4) NOTICE OF PREHEARING
CONFERENCE;

(5) NOTICE OF HEARING ON THE
MERITS (HOM) AND HEARING
ON DISPOSITIVE MOTION(S);
AND

(6) SCHEDULE OF HEARINGS,
CONFERENCES, AND
DEADLINES

PRETRIAL ORDER AND NOTICES; (1) NOTICE TO RESPONDENT(S) OF
UNFAIR LABOR PRACTICE COMPLAINT; (2) NOTICE OF FILING
REQUIREMENTS; (3) NOTICE OF ACCESS; (4) NOTICE OF PREHEARING
CONFERENCE; (5) NOTICE OF HEARING ON THE MERITS (HOM)
AND HEARING ON DISPOSITIVE MOTION(S);
AND (6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS
PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose
appropriate monetary or other sanctions upon parties or attorneys who do not comply with this
Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to
comply or a good faith effort to comply.

This document shall control the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

(1) NOTICE TO RESPONDENTS OF AN UNFAIR LABOR PRACTICE COMPLAINT

The attached unfair labor practice complaints (Complaints) were filed with the Board by the above-named Complainant on: August 30, 2019.

PURSUANT TO HAWAII REVISIED STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-41-7: NOTICE IS HEREBY GIVEN TO RESPONDENT that the above-named COMPLAINANT filed an unfair labor practice Complaint with the Board, a copy of which is attached, alleging that the Respondent have engaged in or are engaging in unfair labor practices in violation of HRS Chapter 377.

YOU ARE DIRECTED to file a written answer to the applicable Complaint within ten (10) days after service of the Complaint. One copy of the answer shall be served on the Complainant, and the original with certificate of service on the party served shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If a Respondent fails to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Complaint and a waiver of hearing. (HRS 377-9(b); HAR § 12-41-8)

(2) NOTICE OF FILING REQUIREMENTS

Electronic Filing:

The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress. There is no charge to the parties for use of this electronic filing service.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

Filing in Person or by Mail

A party may mail or file in person an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawai'i, 96813. The Board's office is open on the weekdays (excluding state holidays) between 7:45 a.m. to 4:30 p.m.; the office may occasionally be closed from 12:00 p.m. to 1:00 p.m. The date of receipt by the Board shall be deemed the date of filing.

Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party shall make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" shall include social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party shall submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party shall by motion request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document.

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(3) NOTICE OF ACCESS

All parties have the right to appear in person and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

The parties should be aware that the Board is located in a secured State of Hawai'i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

(4) NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: September 19, 2019 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai'i 96813

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference in person or telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(5) NOTICE OF PRETRIAL CONFERENCE AND HEARING ON DISPOSITIVE MOTIONS

PURSUANT TO HRS § 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference and hear arguments on any dispositive motion on the date listed below and in the Schedule in this document.

DATE AND TIME: Monday, September 30, 2019 at 10:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai'i 96813

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board on or by September 25, 2019 at 4:30 p.m., as listed in the Schedule set forth below. The Pretrial Statement shall include the following:

1. Statement of Issues
2. Witness List

The witness lists shall include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability. The summary for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1).

If a party intends to file a request for a subpoena for a witness, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the witness list.

3. Exhibit List

The exhibit lists shall include copies of the proposed exhibits. The parties are encouraged to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. A party's exhibits or Joint exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes with each exhibit bookmarked and bates-stamped at the top right corner. Alternatively, a party may file exhibits in person or by mail to the Board; the date of receipt by the Board shall be deemed the date of filing.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the exhibit list.

The Union Complainant shall identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.). Employer Respondent(s) shall identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.). In the event that there are multiple Complainants or Respondents in a particular case, the Board shall specify the designation for each Complainant or Respondent.

If there are any duplicative exhibits, the parties shall designate them as Joint Exhibits, the parties shall designate one party to file these exhibits, and the Exhibits shall be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents shall be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc.

2) Pretrial Conference

At the pretrial conference, the Parties shall be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference in person or telephonically and to be represented by counsel or any other authorized person, **all parties are required to either appear in person or have a representative appear in person.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(6) NOTICE OF THE HEARING ON THE MERITS (HOM)

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, and HAR §§ 12-41-7 that the Board will conduct a HOM on the instant Complaints at the place, time and date listed below and listed in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondents committed unfair labor practices as alleged by Complainant.

DATE AND TIME: October 3, 2019 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai'i 96813

All parties have the right to appear at the HOM in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the HOM.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(7) **SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	9/19/2019	9:00 a.m.
<u>Pretrial Statement; Exchange of Exhibit & Witness List and Exhibits; Application for Subpoena</u>	9/25/2019	4:30 p.m.
<u>Dispositive Motion(s)</u>	9/19/2019	4:30 p.m.
<u>Response to Dispositive Motion(s)</u>	9/26/2019	4:30 p.m.
<u>Pretrial Conference and Hearing on Dispositive Motion(s)</u>	9/30/2019	10:00 a.m.
<u>Hearing on the Merits</u>	10/3/2019	9:00 a.m.

All submissions shall be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, September 3, 2019.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro
MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono
SESNITA A. D. MOEPONO, Member

J.N. Musto
J.N. MUSTO, Member

Enclosure: UNFAIR LABOR PRACTICE COMPLAINT

Copies sent to:
Lowell K. Y. Chun-Hoon, Esq.
Stephanie McNamara, HR Director



**EFiled: Aug 30 2019 03:25PM HAST
Transaction ID 64150741
Case No. 19-15 (CE)**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

**FORM HLRB-11
UNFAIR LABOR PRACTICE COMPLAINT**

CASE NO. _____

INSTRUCTIONS. File the original¹ electronically, by U.S. Mail, or in person, with the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Petitioner alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to the Hawaii Revised Statutes Sections 377-6, 377-7, 377-8 and 377-9, and its Administrative Rules, to determine whether there has been any violation of Hawaii Revised Statutes Chapter 377.

2. COMPLAINANT

a. Name, address, email address and telephone number.

**International Longshore and Warehouse Union ("ILWU"), Local 142
451 Atkinson Drive
Honolulu, Hawaii 96814
(808) 949-4161**

b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

**Lowell K. Y. Chun-Hoon
King Nakamura & Chun-Hoon
220 S. King Street, Suite 980
Honolulu, HI 96813
808-521-8042**

c. Name and address of national or international affiliate if Complainant is a labor organization.

**International Longshore and Warehouse Union
1188 Franklin Street, 4th Floor
San Francisco, CA 94109**

¹ Notwithstanding Board rule 12-41-5, the Board only requires the original of the complaint.

3. **RESPONDENT** Please select one that describes the Respondent:

a. Name, address, email address and telephone number.

Hawaiian Macadamia Nut Services, LLC (Ka'u Division)
P.O. Box 130
Pahala, Hawaii 96777
Tel: (808) 928-8342

b. Name, address, email address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Stephanie McNamara, HR Director (Email: smcnamara@rhomac.com)
Hawaiian Macadamia Nut Services, LLC
P.O. Box 130
Pahala, Hawaii 96777
Tel: (808) 928-8342

4. **ALLEGATIONS**

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in unfair labor practice or practices within the meaning of the Hawaii Revised Statutes, Sections 377-6, 377-7 or 377-8. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 377-6 and 377-7, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

Please see Attached.

5. Provide a clear and concise statement of any other relevant facts.

Please see Attached.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- the Complainant
 the Complainant's principle representative
 the person described below

I, Lowell K. Y. Chun-Hoon,
do declare under penalty of law that the foregoing is true and correct.

Date: August 30, 2019

Lowell K. Y. Chun-Hoon

Signature

The person signing above agrees that by electronically signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

lchunhoon@knchlegal.com

Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

Your phone number: _____

Your relationship to the Complainant:

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then email the completed Board Agreement to E-File, FORM HLRB-25, to dlir.laborboard@hawaii.gov. Form HLRB-25 is on the "Form" page of the HLRB Website.

4. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in unfair labor practice or practices within the meaning of the Hawaii Revised Statutes, Sections 377-6, 377-7 or 377-8. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 377-6 and 377-7, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper).

The Employer has engaged in and/or is continuing to engage in unfair labor practices within the meaning of HRS §377-6. Specifically, the Employer has committed the following violations:

In violation of HRS §377-6(1), the Employer interfered with, restrained, and/or coerced employees from exercising their right to join and/or assist the Union, when on June 21, 2019; the Employer issued a Notice of No Work Offered for 2019/2020 Harvesting Season and Termination of Employment with Hawaiian Macadamia Nut Services, LLC to all of its Non-Covered Seasonal Employees.

In violation of HRS §377-6(6), the Employer violated and/or continues to violate the terms of the collective bargaining agreement by contracting out for hand harvesters and equipment operators; work that has historically been done and is done by the non-covered seasonal employees that were terminated on June 21, 2019. The Employer has not given the Union notice of its contracting out of work historically done by covered employees.

The Employer has also violated the terms of the collective bargaining agreement by filling job vacancies with new hires, part-time or other seasonal persons without first offering work opportunity to employees covered under the contract.

In violation of HRS §377-6(3), and motivated by anti-union animus, the Employer discouraged union membership when it discriminatorily terminated all non-covered seasonal employees on June 21, 2019.

5. Provide a clear and concise statement of any other relevant facts.

Around May of 2018, the Union increased its organizing, mobilizing, and recruiting efforts among macadamia nut field workers. In response to an increase of ESL Micronesian workers they hired Micronesian interpreters to engage non-covered seasonal employees in their own language. Some non-covered seasonals felt that (1) they were being discriminated against in the Employer's incentive program, (2) their pay rates were incorrect, (3) and they were concerned because they were asked by their immediate supervisor to distribute a petition among other Micronesian co-workers to end the union.

On June 21, 2019, the Employer issued a Notice of No Work Offered for 2019/2020 Harvesting Season and Termination of Employment with Hawaiian Macadamia Nut Services, LLC to all of its Non-Covered Seasonal Employees. (Attachment A).

Upon receiving termination notices, employees inquired about why they were terminated. Some were told that the Employer did not know why they were terminated, others were told to re-apply through Hi Employment agency in a few weeks.

Hi Employment agency posted an advertisement for “Immediate Hire for Macadamia Hand Harvesters and Equipment Operators!” (Attachment B). On or about August 12, 2019, some of the non-covered seasonal employees that were terminated on June 21, 2019, were rehired as Hi Employment employees to work at the Employer’s Kā’ū and Kea’au orchards. The Employer also went through Hi Employment to contract out for crew members to assist an arborist from a company named Apical Bud, also hired through Hi Employment.

Under the terms of the collective bargaining agreements, Exhibit C; after one year of employment, non-covered seasonal employees become covered seasonal employees. Covered seasonal employees receive certain benefits; including, but not limited to automatic union membership, and enrollment into the Union’s Health & Welfare Trust.

Briel Pilius



Date: June 21, 2019

From: Hawaiian Macadamia Nut Services, LLC (HMNS)

To: All Non-Covered Seasonal Employees

RE: Notice of No Work Offered for 2019/2020 Harvesting Season and termination of Employment with Hawaiian Macadamia Nut Services, LLC

This notice is to inform you that Hawaiian Macadamia Nut Services, LLC will not be offering you work for the upcoming 2019/2020 Harvesting season and that your seasonal employment and temporary assignment will end effective today; June 21, 2019.

If eligible, you may continue to file for and collect unemployment benefits. Contact information for the Big Island unemployment offices listed below:

Hilo Claims and Benefits

1990 Kinoole St., Ste. 101 (808) 974-4086 (808) 974-4085 dhir.ui.hilo@hawaii.gov
Hilo, HI 96720-5293

Kona Claims and Benefits

81-990 Halekii St., Rm 2090 (808) 322-4822 (808) 322-4828 dhir.ui.kona@hawaii.gov
Kealahou, HI 96750

You can register for employment opportunities with: <https://www.hireneathawaii.com>

We would like to take this opportunity to thank you for your contribution to our 2018/2019 harvesting season and we wish you all the best in your future endeavors.

Hilo Corporate Office
688 Kinoole St. Ste. 207
Hilo, HI 96720

Ka'u Orchards
96-3258 Maile St.
Pahala, HI 96777
(808) 928-8341

Kea'au Orchards
16-703 Macadamia Road
Kea'au, HI 96749

Attachment A *dh*



HiEmployment

IMMEDIATE HIRE FOR MACADAMIA HAND-HARVESTERS and EQUIPMENT OPERATORS!

Aloha! We are seeking Macadamia Nut Hand-Harvesters and Equipment Operators in the Pahala area. Courtesy transportation is available to and from the Hilo & Keauau area. Call or visit us at our Hilo Office for more details:

308 Kamehemehe Ave. Suite #109 -- S. Hahaione Bldg.
(808)238-3741

Full Time - 40 hours a week

Applicants Must:

- Possess two forms of valid Identification (i.e. State I.D., Driver's License, Social Security Card, etc.)
- Be physically capable to bend and pick up macadamia nuts from ground over extended periods of time
- Be available to work Monday thru Friday



HiEmployment