

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

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| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND<br/>WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT<br/>SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-03 (CE)</p> <p>ORDER NO. 3731</p> <p>MINUTE ORDER DIRECTING<br/>COMPLAINANT TO SUBMIT PROPOSED<br/>FINDINGS OF FACT AND<br/>CONCLUSIONS OF LAW</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND<br/>WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT<br/>SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-04 (CE)</p>  |

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| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p style="text-align: center;">Complainant(s),</p> <p style="text-align: center;">and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p style="text-align: center;">Respondent(s).</p> | <p>CASE NO(S).    19-05 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p style="text-align: center;">Complainant(s),</p> <p style="text-align: center;">and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p style="text-align: center;">Respondent(s).</p> | <p>CASE NO(S).    19-06 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p style="text-align: center;">Complainant(s),</p> <p style="text-align: center;">and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p style="text-align: center;">Respondent(s).</p> | <p>CASE NO(S).    19-07 (CE)</p> |

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| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-08 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-09 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-10 (CE)</p> |

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| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-11 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-12 (CE)</p> |
| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p>Complainant(s),</p> <p>and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p>Respondent(s).</p> | <p>CASE NO(S). 19-13 (CE)</p> |

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| <p>In the Matter of</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142,</p> <p style="text-align: center;">Complainant(s),</p> <p style="text-align: center;">and</p> <p>HAWAIIAN MACADAMIA NUT SERVICES, LLC,</p> <p style="text-align: center;">Respondent(s).</p> | <p>CASE NO(S).     19-14 (CE)</p> |
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**MINUTE ORDER DIRECTING COMPLAINANT TO  
SUBMIT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**1.     Introduction**

This unfair labor practice case arises from the 2019 negotiations between Complainant INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142 (Complainant, ILWU, or Union) and Respondent HAWAIIAN MACADAMIA NUT SERVICES, LLC (Respondent, Hawaiian Mac Nut, or Employer) regarding new collective bargaining agreements to succeed the last executed collective bargaining agreements for each of Hawaiian Mac Nut’s locations. After several bargaining sessions, ILWU believed that Hawaiian Mac Nut failed to negotiate in good faith when it: 1) refused to conduct in-person negotiations; 2) failed to produce requested information; and 3) demanded that ILWU accept the Employer’s first, last, and best final offer and presented the offer to the membership.

Due to other events in that same time period, ILWU believed that Hawaiian Mac Nut unilaterally interfered with the applicable collective bargaining agreements by: 1) failing to notify ILWU that Hawaiian Mac Nut utilized outside contractors; 2) failing to enroll bargaining unit members in the Health and Welfare Trust when the members became eligible; and 3) making changes to the bargaining unit members’ pension benefits without reaching a tentative agreement with ILWU.

Based on ILWU’s beliefs, from June 19, 2019 through June 21, 2019, ILWU filed twelve different unfair labor practice complaints with the Hawai‘i Labor Relations Board (Board), each one regarding one of the six issues mentioned above for one of Hawaiian Mac Nut’s two locations, one at Kea‘au and one at Ka‘ū, and alleging violations of Hawai‘i Revised Statutes (HRS) §§ 377-6(1), (3), (4), and (6). The Board consolidated the twelve cases on July 2, 2019

and held hearings on the merits (HOMs) in the consolidated cases on July 17, 18, and 19, 2019. After the HOMs, the parties submitted post-hearing briefs on August 23, 2019.

After a full and complete review of the record and the HOMs, based on the reasons set forth below, the Board holds that Hawaiian Mac Nut committed unfair labor practices in violation of HRS § 377-6(1), (3), and (4) by refusing to conduct in-person negotiations, failing to provide requested information, and demanding that ILWU accept Hawaiian Mac Nut's first, last, and best final offer. Further, the Board finds that Hawaiian Mac Nut committed unfair labor practices in violation of HRS § 377-6(1), (3), and (4) by failing to enroll members in the Health and Welfare Trust and by unilaterally making changes to the employees' pension benefits.

The Board holds that Hawaiian Mac Nut committed unfair labor practices by failing to negotiate in good faith with ILWU and interfering with the collective bargaining agreement. The "totality" of Hawaiian Mac Nut's conduct in the negotiations does not reveal "a present intention to find a basis for agreement and a sincere effort to reach a common ground." *See Del Monte Fresh Produce, Inc. v. International Longshore and Warehouse Union, Local 142*, 112 Hawai'i 489, 500, 146 P.3d 1066, 1077 (2006).

However, the Board finds that Hawaiian Mac Nut did not commit an unfair labor practice by failing to communicate with ILWU on the issue of utilizing outside contractors after the relevant CBAs expired.

## **2. Specific Rulings**

As to Case No. 19-03, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on refusing to conduct in-person negotiations with regard to the Ka'ū Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-04, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to provide information with regard to the Ka'ū Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-05, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to provide information with regard to the Kea'au Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-06, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on refusing to conduct in-person negotiations with regard to the Kea'au Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did

not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-07, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to negotiate in good faith and demanding ILWU accept Hawaiian Mac Nut's last and final offer with regard to the Ka'ū Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-08, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to negotiate in good faith and demanding ILWU accept Hawaiian Mac Nut's last and final offer with regard to the Kea'au Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-09, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to notify ILWU of the utilization of outside contractors with regard to the Ka'ū Division. The Board finds that ILWU prevailed on none of these counts.

As to Case No. 19-10, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to notify ILWU of the utilization of outside contractors with regard to the Kea'au Division. The Board finds that ILWU prevailed on none of these counts.

As to Case No. 19-11, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to enroll members to the Health and Welfare Trust upon reaching eligibility with regard to the Ka'ū Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-12, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on a failure to enroll members to the Health and Welfare Trust upon reaching eligibility with regard to the Kea'au Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-13, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on unilaterally making changes to the employees' pension benefit without reaching a tentative agreement with ILWU with regard to the Ka'ū Division. The Board finds that ILWU prevailed on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

As to Case No. 19-14, ILWU alleged violations of HRS § 377-6(1), (3), (4), and (6) based on unilaterally making changes to the employees' pension benefit without reaching a tentative agreement with ILWU with regard to the Kea'au Division. The Board finds that ILWU prevailed

on the alleged violations of HRS § 377-6(1), (3), and (4). ILWU did not prevail on the alleged violation of HRS § 377-6(6) due to failure to exhaust contractual remedies.

**3. Minute Order**

Hawai‘i Administrative Rules § 12-42-8(g)(17)(C) provides that the “[B]oard may direct...filing of...proposed findings of facts, conclusions of law, or both, when it deems the submission of...proposed findings...is warranted by the nature of the proceeding or the particular issues therein.”

Accordingly, this Minute Order directs ILWU to submit to the Board proposed findings of fact and conclusions of law based on the Board’s specific rulings above. The Board orders ILWU to file these proposed findings of fact and conclusions of law to the Board with a copy to Hawaiian Mac Nut no later than the close of business at 4:30 pm on May 31, 2021.

Hawaiian Mac Nut may file objections to ILWU’s proposed findings of fact and conclusions of law, based on this Minute Order, within ten days of service of ILWU’s proposed findings of fact and conclusions of law.

After receiving ILWU’s proposed findings of fact and conclusions of law, the Board will issue its own final findings of fact, conclusions of law, decision and order, which may or may not incorporate all, some, or none of ILWU’s proposed findings of fact and conclusions of law.

DATED: Honolulu, Hawai‘i, \_\_\_\_\_ April 6, 2021 \_\_\_\_\_.

HAWAI‘I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J N. MUSTO, Member

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