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NO. CAAP-24-0000482

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE MATTER OF STEPHANIE C. STUCKY,
Complainant-Appellant/Appellant, v.
WILFRED OKABE, President, Hawai'i State Teachers Association;
WILBERT HOLCK, UniServ, Hawai'i State Teachers Association;
ERIN NAGAMINE, Maui UniServ, Hawai'i State Teachers Association;
DAVID FORREST, O'ahu UniServ, Hawai'i State Teachers Association;
and HAWAI'I STATE TEACHERS ASSOCIATION,
Respondents-Appellees/Appellees, and
HAWAI'I LABOR RELATIONS BOARD,
Agency-Appellee/Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-21-0000228)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, Leonard and McCullen, JJ.)

Complainant-Appellant/Appellant Stephanie C. Stucky

(**Stucky**) appeals from the June 21, 2024 Final Judgment (**Judgment**) entered in the Circuit Court of the Second Circuit (**Circuit Court**).¹ Stucky raises two points of error, contending that the Circuit Court: (1) clearly erred in entering findings of fact (**FOFs**) 59 and 62, because Stucky proved her case by a preponderance of the evidence that her termination from employment was without just and proper cause and in retaliation

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The Honorable Kelsey T. Kawano presided.

for protected activity; and (2) erred in entering conclusions of law (**COLs**) 25-32 based on essentially the same reasons, and therefore, Stucky contends that the Circuit Court erred in affirming her administrative appeal from Agency-Appellee/Appellee Hawai'i Labor Relations Board (**Board**).

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised, we resolve Stucky's points of error as follows.

Prior to her termination, Stucky was employed by the Department of Education, State of Hawai'i (**DOE**) as a teacher and member of Respondent-Appellee/Appellee Hawai'i State Teachers Association (**HSTA**). HSTA is and was an employee organization and Stucky's exclusive bargaining representative, as defined in Hawaii Revised Statutes (**HRS**) § 89-2 (2012).² After receiving an "unsatisfactory rating" from her employer, Stucky was discharged. In accordance with the operative collective bargaining agreement (**CBA**), HSTA filed a grievance on Stucky's behalf, contesting her discharge, which the DOE denied. HSTA then requested arbitration, and the parties selected Frank Yap, Jr. to serve as the arbitrator. Yap entered a decision and award sustaining Stucky's termination (**Yap Award**). Stucky then requested that HSTA file a motion to vacate the Yap Award. After considering her request, and the likelihood of success of such a motion, HSTA declined.

² HRS § 89-2 provides, in relevant part: "'Exclusive representative' means the employee organization certified by the board under [HRS] section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership."

Stucky then filed a prohibited practice complaint with the Board, alleging that HSTA, its President, and its UniServ directors (together, **HSTA Parties**) committed prohibited practices as defined in HRS § 89-13(b)(3), (4), and (5) (2012).³ On September 20, 2016, HSTA moved for a decision against Stucky for failing to meet her burden of proof at the conclusion of her case-in-chief. On June 30, 2021,⁴ the Board issued its Findings of Fact, Conclusions of Law, Decision and Order denying the complaint, and finding that Stucky "did not carry her burden of proof" that HSTA Parties violated HRS § 89-13(b)(3)-(5). Stucky appealed to the Circuit Court, which affirmed. This appeal followed.

We construe Stucky's arguments on appeal as follows.⁵ Stucky maintains that at arbitration, she objected to Principal

³ HRS § 89-13(b) provides, in relevant part:

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

.

- (3) Refuse to participate in good faith in the mediation and arbitration procedures set forth in section 89-11;
- (4) Refuse or fail to comply with any provision of this chapter; or
- (5) Violate the terms of a collective bargaining agreement.

⁴ None of the parties explain why the Board took nearly five years to enter its decision and order.

⁵ Stucky's argument does not address the challenged FOFs and COLs identified in her points of error. See Hawaii Rules of Appellate Procedure Rule 28(b)(7) ("Points not argued may be deemed waived"); Hussey v. Say, 139 Hawaii 181, 191, 384 P.3d 1282, 1292 (2016) (holding that the appellate court is "not obliged to address matters for which the appellants have failed to present discernible arguments"); see, e.g., Interest of KJ-I, No. CAAP-20-0000715, 2021 WL 3855772, at *5 n.3 (Haw. App. Aug. 30, 2021) (SDO) ("We decline to address the individual FOFs and COLs Mother challenges as she fails to present argument on each."). Accordingly, our review is limited to what is addressed in her arguments.

Catherine Kilborn (**Kilborn**) rating her because Stucky had filed grievances against Kilborn and her predecessor. Stucky believed Kilborn would be biased. HSTA argued that Kilborn was retaliating against Stucky for her prior protected activity, but Stucky argues that the arbitrator "downplayed the evidence of retaliation." Stucky points to HSTA's duty to represent her in good faith and to not allow the DOE to retaliate against her for pursuing grievances and argues that HSTA breached that duty by declining to file a motion to set aside the Yap Award. Stucky argues that HSTA's decision not to do so was arbitrary, as it "failed to adequately consider Stucky's arguments and the potential grounds for vacating the award under HRS [§] 658A-23." Stucky further argues that the Board erred in relying solely on the absence of HSTA's bad faith conduct, as arbitrary conduct also constitutes a breach. Stucky argues that she established a prima facie case for pretextual termination, which shifted the burden to the DOE and HSTA failed to set forth any evidence that Stucky was terminated for good cause. Stucky also maintains that the Board erred in concluding Stucky could not prevail in a "hybrid" claim under Poe v. Haw. Lab. Rels. Bd., 105 Hawai'i 97, 94 P.3d 652 (2004). Stucky argues that the Board was bound by the Yap Award, in which the arbitrator determined the DOE did not violate the CBA because the Board's approach is inconsistent with the principle that hybrid claims are inextricably linked. Finally, although acknowledging that she was given notice and an opportunity to be heard, Stucky submits that the Board's delay in ruling on the motion undermined the fairness of the process.

"Review of a decision made by [a] circuit court upon its review of an agency's decision is a secondary appeal. The standard of review is one in which this court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in HRS § 91-14(g) [1993] to the agency's decision."

Flores v. Bd. of Land & Nat. Res., 143 Hawai'i 114, 120, 424 P.3d 469, 475 (2018) (citing Paul's Elec. Serv., Inc. v. Befitel, 104 Hawai'i 412, 416, 91 P.3d 494, 498 (2004) (brackets in original)).

Pursuant to HRS § 91-14(g) (Supp. 2023), an agency's conclusions of law are reviewed de novo, while under HRS § 91-14(g) (5), an agency's factual findings are reviewed for clear error. Paul's Elec. Serv., 104 Hawai'i at 420, 91 P.3d at 502 (internal citation omitted). The appellate court answers "questions of constitutional law by exercising [its] own independent judgment based on the facts of the case . . . under the 'right/wrong' standard." City & Cnty. of Honolulu v. Sherman, 110 Hawai'i 39, 49, 129 P.3d 542, 552 (2006).

In Poe, the Hawai'i Supreme Court held that

an employee who is prevented from exhausting the remedies provided by the collective bargaining agreement may, nevertheless, bring an action against his or her employer. Under federal precedent, such an action consists of two separate claims: (1) a claim against the employer alleging a breach of the collective bargaining agreement and (2) a claim against the union for breach of the duty of fair representation.

105 Hawai'i at 102, 94 P.3d at 657 (citation omitted). Here, arbitration is the last step identified in the grievance process, contained in Article V of the CBA. Unlike in Poe, HSTA demanded arbitration on Stucky's behalf, but did not prevail. Thus, Stucky was not prevented from exhausting the remedies provided by the CBA, which was a key issue in Poe. However, we need not

reach whether or how the Poe "hybrid" analysis would apply because, as discussed below, Stucky fails to show that HSTA breached a duty of fair representation in declining to move to set aside the Yap Award. See, e.g., Asato v. Haw. Gov't Emps. Ass'n, No. CAAP-22-0000339, 2025 WL 502738, *1, *7-8 (Haw. App. Feb. 14, 2025) (mem. op.) (concluding that the union did not breach its duty of fair representation in deciding not to move to vacate an arbitration award against the employee), cert. rejected, No. SCWC-22-0000339, 2025 WL 2017493 (Haw. Jul. 18, 2025), cert. denied, 146 S.Ct. 1486 (2026).

A union breaches its duty of fair representation when its conduct towards a member of a collective bargaining unit is arbitrary, discriminatory, or in bad faith. Poe, 105 Hawai'i at 104, 94 P.3d at 659. "Whether a union acted arbitrarily, discriminatorily or in bad faith requires a separate analysis, because each of these requirements represents a distinct and separate obligation." Simo v. Union of Needletrades, Indus. & Textile Emps., 322 F.3d 602, 617 (9th Cir. 2003). Here, we construe Stucky's arguments as contending that the Board erred in concluding that HSTA did not act arbitrarily or in bad faith.

The Ninth Circuit Court of Appeals has discussed examples of when a union acts arbitrarily, including when a union fails to:

- (1) disclose to an employee its decision not to submit her grievance to arbitration when the employee was attempting to determine whether to accept or reject a settlement offer from her employer;
- (2) file a timely grievance after it had decided that the grievance was meritorious and should be filed;
- (3) consider individually the grievances of particular employees where the factual and legal differences among them were significant; or
- (4) permit employees to explain the events which led to their discharge before deciding not to submit their grievances to arbitration.

Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985) (cleaned up).

A union does not act in an arbitrary manner when the union's challenged conduct involves the union's judgment as to how best to handle a grievance. Id. A union's conduct is not arbitrary simply because it erred "in evaluating the merits of a grievance, in interpreting particular provisions of a collective bargaining agreement, or in presenting the grievance at an arbitration hearing." Id. "Only when the challenged conduct was procedural or ministerial does arbitrariness become controlling." Moore v. Bechtel Power Corp., 840 F.2d 634, 636 (9th Cir. 1988).

Here, HSTA's UniServ directors reviewed Stucky's request that HSTA move to set aside the Yap Award and recommended against it. HSTA also retained legal counsel to assess the likelihood of prevailing on such a motion. Counsel opined that:

Given the narrow confines to which a court will review an arbitral award and the very limited terms by which a motion to vacate the award would be successful, **even based on a public policy argument**, it is our opinion that there may be insufficient grounds for vacating the award.

(Emphasis added).

After HSTA informed Stucky it declined to file a petition, Stucky filed an Application for Legal Services Program for the HSTA/DUSHANE Legal Appeal Services Program. HSTA convened a three-member panel to consider her appeal. After allowing Stucky to appear and present her arguments, the panel ultimately declined, explaining that "there is no basis upon which to grant your appeal for legal services. No reasons were presented refuting the statutory requirements . . . for vacating

an arbitration award[.]" On this record, it appears HSTA offered Stucky multiple opportunities to explain her request, and the justification therefor, which it considered, including a public policy argument. The UniServ directors, HSTA's counsel, and the three-member panel each evaluated the merits of her request. HTSA ultimately exercised its judgment in declining to pursue further remedies. Therefore, HSTA did not act arbitrarily.

"To establish that the union's exercise of judgment was in bad faith, the plaintiff must show 'substantial evidence of fraud, deceitful action or dishonest conduct.'" Beck v. United Food & Com. Workers Union, Loc. 99, 506 F.3d 874, 880 (9th Cir. 2007) (citation omitted). "[M]ere negligence and erroneous judgment calls cannot, by themselves, support an inference of bad faith." Demetris v. Transp. Workers Union of Am., AFL-CIO, 862 F.3d 799, 808 (9th Cir. 2017) (citation omitted). Courts should afford substantial deference to the union's decisions regarding whether and to what extent to pursue a particular grievance. Dutrisac v. Caterpillar Tractor Co., 749 F.2d 1270, 1273 (9th Cir. 1983). A disagreement between a union and an employee over a grievance does not alone constitute evidence of bad faith, even when the union is ultimately shown to be mistaken. Moore, 840 P.2d at 637.

Stucky identifies no evidence of fraud, deceitful action or dishonest conduct by HSTA in deciding not to move to set aside the Yap Award. Even if HSTA was wrong in deciding that a public policy argument would not have succeeded, that is not enough to infer bad faith.

As to Stucky's remaining arguments, whether she was terminated pretextually or for good cause was determined in the Yap Award, "which is not properly before [the court] in this appeal." See Asato, 2025 WL 502738, at *8. Stucky points to no authority that HSTA was obligated to move to vacate the Yap Award on public policy grounds, based on the argument of pretext. HSTA's decision whether to pursue such relief is reviewed for a breach of its duty of fair representation.

As to her due process argument, procedural due process requires "notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of property interest." Ito v. Inv'rs Equity Life Holding Co., 135 Hawai'i 49, 73, 346 P.3d 118, 142 (2015). Stucky admits she was given notice and an opportunity to be heard. The Board announced its decision more than four years after HSTA moved for a decision. However, Stucky fails to address why the decision was delayed, whether she opposed or stipulated to the delay, or how the delay prejudiced her. "Where an appellant makes general assertions of a due process violation, without further elaboration or citation to authority, the court cannot reach a reasoned conclusion, and the due process argument is deemed waived." Id. at 74, 346 P.3d at 143. Also, an appellant may not claim a due process violation based on delay where the appellant was responsible for or agreeable to the delay. In re Doe, 99 Hawai'i 522, 542, 57 P.3d 447, 467 (2002). Stucky fails to demonstrate that the Board violated her due process rights.

For these reasons, the Circuit Court's June 21, 2024
Judgment is affirmed.

DATED: Honolulu, Hawai'i, August 24, 2026.

On the briefs:

/s/ Karen T. Nakasone
Chief Judge

Shawn Luiz,
for Complainant-Appellant/
Appellant

/s/ Katherine G. Leonard
Associate Judge

Keani Alapa
(Alapa & Otake, LLC),
for Respondents-Appellees/
Appellees

/s/ Sonja M.P. McCullen
Associate Judge