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NO. CAAP-24-0000486

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

UNIVERSITY OF HAWAI'I, Respondent-Appellant-Appellant, v.
HAWAI'I LABOR RELATIONS BOARD, Agency-Appellee-Appellee
and LENORA L. ASATO; JENNIFER E. HALASZYN; JEFF IBARA;
YOSHIAKI IINUMA; CHARLES LUK; JOY MAGARIFUJI;
SIIRI AILEEN WILSON; and GANG YUAN,
Complainants-Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-23-0001175)

SUMMARY DISPOSITION ORDER

(By: Hiraoka, Presiding Judge, McCullen and Guidry, JJ.)

In this secondary appeal, the University of Hawai'i (UH) appeals from the *Final Judgment* entered by the Circuit Court of the First Circuit,¹ which affirmed Hawai'i Labor Relations Board (HLRB) *Decision No. 517*. We reverse the Final Judgment because the HLRB proceeding was a hybrid action, and the claimants failed to prove their labor union breached its duty of fair representation in the handling of their grievance against UH. We vacate Decision No. 517 and remand to the HLRB with instructions to dismiss the claimants' amended prohibited practice complaints.

Claimants Lenora L. Asato, Jennifer E. Halaszyn, Jeff Ibara, Yoshiaki Iinuma, Charles Luk, Joy Magarifuji, Siiri Aileen Wilson, and Gang Yuan held temporary positions in the Office of

¹ The Honorable John M. Tonaki presided.

Research Services, part of UH's Office of the Vice President for Research and Innovation. They were members of Hawaii Government Employees Association (**HGEA**) Bargaining Unit 8 (**BU8**). Their temporary positions had an end date of June 30, 2018.

During July 2017 the claimants were told they would be terminated on December 31, 2017. They filed a grievance against UH, under the BU8 collective bargaining agreement (**CBA**), over UH's early termination of their positions. Dwight **Takeno**, also a BU8 member, represented UH in the grievance proceedings. HGEA ultimately declined to arbitrate the grievance.

The claimants filed a prohibited practice complaint against HGEA with the HLRB on September 14, 2018. They claimed HGEA violated Hawaii Revised Statutes (**HRS**) § 89-13(b)(1)² by failing to object to Takeno representing UH in the grievance proceedings, and by "determining that [their grievance] is not worthy of arbitration."

On October 17, 2018, each complainant filed an amended complaint adding UH as a respondent. They claimed that UH violated HRS § 89-6(f)(5)³ by allowing Takeno to be responsible for their early terminations, and that UH committed a prohibited

² HRS § 89-13 (2012) provides:

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

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter[.]

³ HRS § 89-6 (2012) provides:

(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

. . . .

(5) Individual [sic] concerned with confidential matters affecting employee-employer relations[.]

practice under HRS § 89-13(a)(8)⁴ by terminating them in violation of the CBA.

On August 10, 2023, the HLRB filed Decision No. 517. It determined that HGEA did not breach its duty of fair representation. It also determined: "Due to UH's improper usage of Mr. Takeno in the termination process, the Board finds that the [early] terminations were improper."

UH appealed Decision No. 517 to the circuit court. The claimants did not appear. The HLRB defended its decision. The court entered the *Order Denying Appellant University of Hawai'i's Appeal* on June 26, 2024. The Final Judgment was entered on July 8, 2024. This secondary appeal by UH followed.

Our review of the circuit court's decision denying UH's appeal from Decision No. 517 is a secondary appeal; we must determine whether the circuit court was right or wrong by applying the standards in HRS § 91-14(g) (Supp. 2022) to the HLRB decision. See Flores v. Bd. of Land & Nat. Res., 143 Hawai'i 114, 120, 424 P.3d 469, 475 (2018). We may affirm the decision; remand the case with instructions for further proceedings; or reverse or modify the decision and order if the substantial rights of the appellant were prejudiced because the agency's findings, conclusions, decision, or order: (1) violate provisions of the constitution or a statute, (2) are beyond the agency's statutory authority or jurisdiction, (3) used unlawful procedure, (4) were affected by other error of law, (5) were clearly erroneous, or (6) were arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id. at 121, 424 P.3d at 476.

We struck UH's opening brief because its statement of the points of error didn't comply with Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28(b)(4). UH's amended opening brief also

⁴ HRS § 89-13 (2012) provides:

(a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

. . . .

(8) Violate the terms of a collective bargaining agreement[.]

failed to comply; UH contends the HLRB's findings of fact were clearly erroneous and its conclusions of law wrong, but the statement of the points of error doesn't quote the challenged findings or conclusions. Decision No. 517 was appended to UH's brief, but the points of error improperly cite to page ranges instead of the specific findings or conclusions UH purports to challenge.

The HLRB's answering brief is also noncompliant. Its statement of the case cites Decision No. 517 and the allegations in the amended prohibited practice complaints, instead of evidence in the record, to support its statement of material facts. Its argument states purported facts without citing to evidence in the record.

Despite the parties' noncompliance with HRAP Rule 28, we are able to dispose of this appeal by applying existing case law to the record.

The amended complaints before the HLRB alleged:

(1) HGEA breached its duty of fair representation; and (2) UH violated HRS § 89-6(f)(5) by allowing Takeno to be responsible for their early terminations, and by terminating them in violation of the CBA. The HLRB proceeding was a "hybrid action." See Lee v. United Public Workers, AFSCME, Local 646, 125 Hawai'i 317, 321, 260 P.3d 1135, 1139 (App. 2011).

[A]n 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.

The two claims are inextricably interdependent. To prevail against either the company or the Union, employee-plaintiffs must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.

. . . .

Based on analogous federal cases previously cited by this court and the policy considerations articulated in

them, we hold that an employee who is prevented from exhausting his or her contractual remedies may bring an action against an employer for breach of a collective bargaining agreement provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance.

Poe v. Haw. Lab. Rels. Bd., 105 Hawai'i 97, 102-04, 94 P.3d 652, 657-59 (2004) (cleaned up).

The HLRB determined that HGEA did not breach its duty of fair representation. No one challenges that ruling. Once the HLRB made that determination, it should have dismissed the amended complaints against UH. Poe, 105 Hawai'i at 104, 94 P.3d at 659; Lee, 125 Hawai'i at 321, 260 P.3d at 1139. Not doing so was an error of law. HRS § 91-14(g)(4).

The circuit court's July 8, 2024 Final Judgment is reversed. HLRB Decision No. 517 is vacated. This case is remanded to the HLRB with instructions to dismiss the claimants' amended prohibited practice complaints with prejudice.

DATED: Honolulu, Hawai'i, September 22, 2026.

On the briefs:

Kendra K. Kawai,
D. Elliot Gonzalez,
Arynn R. Nagahiro,
for Respondent-Appellant
-Appellant University
of Hawai'i.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge

Amy M.H. Chan,
for Agency-Appellee
-Appellee Hawai'i Labor
Relations Board.