

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 23491

IN THE SUPREME COURT OF THE STATE OF HAWAII

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LEWIS W. POE, Appellant-Appellant

vs.

HAWAII LABOR RELATIONS BOARD, State of Hawai'i, Appellee-Appellee

and

LINDA LINGLE<sup>1</sup>, Governor, State of Hawai'i,  
Appellee-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 99-4200)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Appellant-appellant Lewis W. Poe appeals from the May 5, 2000 judgment of the circuit court of the first circuit, the Honorable Eden Elizabeth Hifo presiding, finding in favor of Hawai'i Labor Relations Board (HLRB), and against Poe. On appeal, Poe argues that: (1) he did not fail to exhaust all contractual remedies and Employer admitted as much; (2) HLRB cannot alter the express terms of the grievance process; (3) federal law does not apply; and (4) "HLRB's 'de minimus' characterization and condoning of the employer's prohibited practice undermine[s] the law and the integrity of the grievance procedure and of the collective bargaining agreement."

Conversely, HLRB argues that: (1) Poe failed to comply with HRAP Rule 28(b)(4); (2) the complaint was properly dismissed for failure to exhaust contractual remedies; (3) HLRB correctly found

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<sup>1</sup>The party has been substituted pursuant to HRAP Rule 43(c)(1).

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that any untimely response to Poe's grievance was de minimus; and (5) Poe's remaining arguments are without merit.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that this court may address Poe's arguments despite partial noncompliance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4). See Housing Finance and Development Corp. v. Ferguson, 91 Hawai'i 81, 979 P.2d 1107 (1999). This court further holds that the circuit court did not err by affirming HLRB's decision because: (1) Poe failed to establish that he attempted to exhaust all contractual remedies or that requesting the Union to proceed with step four was futile, see Poe v. Hawai'i Labor Relations Bd., 97 Hawai'i 528, 40 P.2d 930 (2002); Hokama v. University of Hawai'i, 92 Hawai'i 268, 990 P.2d 1150 (1999); Santos v. State, 64 Haw. 648, 646 P.2d 962 (1982); (2) HLRB did not alter the express terms of the grievance procedure by requiring Poe to attempt to exhaust all contractual remedies, including step four; (3) Hawai'i courts may use parallel federal case law as guidance, see Hokama, 92 Hawai'i at 272 n.5, 990 P.2d at 1154 n.5; see generally Doe v. Parents No. 1 v. State, Dept. of Educ., 100 Hawai'i 34, 58 P.3d 545 (2002); Schefke v. Reliable Collection Agency, 96 Hawai'i 408, 32 P.3d 52 (2001); and (4) HLRB's conclusion that Employer's untimely response was de minimus was not clearly erroneous, inasmuch as Poe failed to show that he was

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prejudiced or suffered any damages by Employer's breach.

Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, February 26, 2004.

On the briefs:

Lewis W. Poe,  
appellant-appellant  
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Hawaii Labor Relations  
Board, joining in appellee-  
appellee State of Hawai'i's  
answering brief