

EX-101 (11-6-72)

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII STATE TEACHERS)	
ASSOCIATION,)	Case No. <u>SF-05-18</u>
)	
Petitioner,)	
)	Decision No. <u>36</u>
HAWAII FEDERATION OF)	
TEACHERS,)	
)	
Intervenor.)	
_____)	

DECISION AND ORDER

The Petitioner (also referred to hereafter as the HSTA) requested that the Hawaii Public Employment Relations Board (hereafter Board) increase the service fee presently assessed against the members of bargaining unit 5 from \$97 per annum to \$141 per annum. The petition was filed with the Board on June 29, 1973.

The HSTA's original service fee of \$77 was granted by this Board in Case No. SF-05-1a on January 24, 1972. The dues were increased to \$97 per annum effective November 10, 1972, in Case No. SF-05-6.

The Intervenor (hereafter also referred to as the HFT) moved on July 10, 1973, to intervene in this case. Said motion was granted.

The matter came on for hearing before this Board after due notice on July 24, 25, 26, 27, 30, and August 6, 1973.

The hearing was held on record with all testimony under oath and a transcript was made. Petitioner, Intervenor and individual members of Unit 5, acting in their

own behalf, were permitted to cross examine all witnesses. Individual unit members, under oath, were permitted to make statements and were subject to cross examination.

On the basis of the entire record herein, this Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The HSTA is the certified exclusive representative for personnel in bargaining unit 5 as defined in Section 89-6(a)(5), Hawaii Revised Statutes (hereafter HRS).

2. Under amended HSTA by-laws, the board of directors of the HSTA is authorized to establish dues for members of the HSTA as of July 1 of each year at a rate of no more than 1 per cent of the average annual teacher salary.

3. The average annual teacher salary has been computed to be \$10,800. Thus, the board of directors of the HSTA is authorized to raise the HSTA portion of its dues structure to \$108 per annum.

4. The annual dues of the HSTA including the \$108 sum and amounts for its affiliates totals \$141.00. The breakdown of the amount per unit member is as follows:

HSTA	\$108.00
HEA	6.00
NEA	25.00
Locals	<u>2.00</u>
Total.	\$141.00

5. The HSTA, following the guidance of the decision by the special hearings officer in Case No. SF-05-1a, has contracted for services with the Hawaii Education Association (hereafter HEA) and the National Education Association (hereafter NEA) rather than paying per capita dues to these organizations. The HSTA and the NEA have continued to contract since the decision in said case for services. The HSTA has similarly contracted with the HEA. In prior hearings, this Board found the contracted for amounts to be reasonable.

6. The current HSTA-NEA Memorandum of Agreement executed on July 23, 1973, calls for the HSTA to pay NEA \$216,250 during the fiscal year ending June 30, 1974. All services and grants to be provided by the NEA under the agreement are to be "for the benefit of members of the bargaining unit represented by HSTA."

7. The NEA-HSTA contract amount for the 1972-1973 fiscal year was \$220,000.

8. The HSTA-HEA Memorandum of Agreement for the fiscal year ending on June 30, 1974, provides that the HEA "will supply to HSTA, on behalf of members of the bargaining unit, services of a total value in excess of \$28,000.00 per annum."

9. Both the NEA and HEA have provided services to the HSTA in excess of the contract amounts for the previous contract periods.

10. The amount which will be allocated out of the service fees to local chapters is \$17,000.

11. The total thus going to the affiliates of the HSTA for the 1973-1974 fiscal year is the following:

HEA	\$ 28,000
NEA	216,250
Locals	<u>17,600</u>
Total.	\$261,850

12. The operating budget for the HSTA exclusive of the above affiliation costs for the fiscal year totals \$595,000.

13. The HSTA also has an operating deficit of \$388,745.

14. Additionally, the HSTA is currently liable for a fine for civil contempt of court in the amount of \$190,000. This fine was levied upon the HSTA for the strike it engaged in in April, 1973, in alleged violation of an injunction issued by the circuit court.

15. The sum of HSTA accrued obligations and current (1973-74) operating expenses is:

Payments to affiliates	\$261,850
Current operating expenses (1973-74)	595,000
Deficit	388,745
Fine	<u>190,000</u>
Total.	\$1,435,595

16. The estimated number of service fee paying members of Unit 5 ranges between 9,051 and 8,985. The Department of Education appears to be unable to give a firmer figure to the Board.

17. In Decision No. 29 in Case No. SF-05-6 this Board directed the HSTA that it should accompany its petitions for service fee alterations with cost accounting statements isolating amounts spent for HSTA members only

from those spent for all unit members. The Board further directed the HSTA to furnish the Board annually with six copies of the financial reports required to be submitted to its members pursuant to Section 89-15, HRS. The HSTA failed to comply with these orders.

18. The HFT endorsed the April strike and many of its members participated in the strike.

CONCLUSIONS OF LAW

1. Rule 6.04(b) of the Board's rules provides that the amount of service fees shall not exceed dues. Although the HSTA board of directors has not raised dues to \$141, it will do so when it receives this decision. We believe that the taking of this action will satisfy the provisions of the rule. For as soon as the new service fee is in effect there will be an accompanying raise in dues. Thus, at no time will the service fee, after this approval of the increase in service fees exceed the amount of dues. At the time of petition the \$141 exceeded the present dues of \$97. However, at the time of petition, the \$141 service fee was not approved, was not in effect, and was not being deducted.

2. Section 89-4(a) provides:

"The employer shall, upon receiving from an exclusive representative a written statement which specifies an amount of reasonable service fees necessary to defray the costs for its services rendered in negotiating and administering an agreement and computed on a pro rata basis among all employees within its appropriate bargaining unit, deduct from the payroll of every employee in the appropriate bargaining unit the amount of service and

remit the amount to the exclusive representative. A deduction permitted by this section, as determined by the board to be reasonable, shall extend to any employee organization chosen as the exclusive representative of an appropriate bargaining unit. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate."

The question facing this Board is whether the \$141 service fee requested by the HSTA is reasonable. In its first enunciation of what the term reasonable meant in Section 89-4 this Board adopted the statement of special hearings officer Ted Tsukiyama in Case No. SF-05-1a:

"[The test of reasonableness]...is a requirement that the employee's contribution...of the costs of collective bargaining...be fair and equitable. It means that the fee must be reasonably related to the costs of contract negotiation and administration, and thus requires that the activities and expenditures of the union which do not benefit the non-member must be excluded. It means that the overall fee must be reasonable in amount to assure that the union will not become improperly enriched or that the non-member pays more than his pro rata share of the union's representation services...On the other hand, the test of reasonableness is also designed to protect the Petitioner toward the final determination of a service that will not permit 'free rides' nor undermine the financial stability of the union to hinder its proper performance."

3. This Board is of the opinion that the April, 1973, strike was an integral part of the collective bargaining process and that expenses incurred in its furtherance, including the \$190,000 fine, are allowable charges against the service fee.

4. This Board will depart from that portion of the decision in Case No. SF-05-1a which declared that evidence of a union's dues structure is wholly irrelevant in determining service fees. The present law offers little

in the way of guidance as to what a reasonable service fee should be. Under Chapter 89, HRS, union membership is a wholly voluntary act and union members have a voice in setting dues either through direct vote or by elected representatives. This action, by members, gives some evidence of what employees consider to be reasonable. This is not to say that in every instance the service fee spoken of in Section 89-4(b), HRS, should or may equal dues. Dues may be spent for purposes other than the complex ongoing process of negotiating and maintaining a collective bargaining agreement; service fees may not be so spent.

5. This Board further modifies that portion of the decision in Case No. SF-05-1a which led the HSTA to conclude that it's only affiliation with the NEA and HEA for service fee purposes could be by contracts for services. The HSTA may utilize a unified dues structure. Respecting its service fee structure, it will still be incumbent upon the HSTA to show that affiliation fees going to its locals, the HEA, and NEA are for purposes allowed under Section 89-4(b), HRS. Per capita assessments out of service fees are allowable so long as the unit members receive in exchange for such fees services related to contract negotiation and administration.

6. While this Board deplores deficit spending and questions the wisdom of certain fiscal decisions made by the appointed and elected leaders of the HSTA, the Board finds nothing in Chapter 89, HRS, or the record of this case which would permit it to inject itself into direct management decisions of the HSTA. To totally disallow the HSTA request for an increase because this board may disagree with

the way the HSTA has spent its funds would, in the unfortunate circumstances of this case, cripple the HSTA in carrying out the mission the majority of Unit 5 members selected it to do for them. If corrections are to be made they must be made by the union leadership, and that failing, by the union membership.

7. The Board finds that the operating expense budget for the fiscal year 1973-1974, the payments to be made to the HEA and the NEA including necessary overhead costs included in the exhibits entered into evidence in this case, and to the local chapters and the deficit of the HSTA including the \$190,000 fine are all related to contract negotiation and administration and are reasonable under the circumstances of this case under the terms of Section 89-4, HRS, and Chapter 6 of the Board's rules.

8. The Board finds that \$141 per annum, under the circumstances of this case, is a reasonable service fee.

ORDER

1. An annual service fee of \$141 will be deducted by the employer from the payroll of all employees in bargaining unit 5 and paid to Petitioner herein; and such deductions shall be made each payroll period in an amount determined by the service fee divided by the number of payroll periods per year.

2. This new service fee amount shall be effective as of September 1, 1973, for all such employees on the payroll at that time and for all persons hired after such time,

as of the date of hire. The deductions shall commence at the earliest possible date.

3. In the future, when the HSTA or any other exclusive representative comes in for a service fee increase, this Board will require it to demonstrate in the record that the appropriate authorities in the union have already raised the dues. This Board will not be used as a mechanism for, in effect, raising union dues. That function lies properly with the union membership and serves as a guide to this Board as to what said members consider to be reasonable.

4. The HSTA shall comply in all future service fee cases initiated by it with the order contained in paragraph 6 of the Order in Case No. SF-05-6 concerning cost accounting and the supplying of annual financial reports. This paragraph declared:

"The Petitioner, HEA, the local units and, to the extent appropriate the NEA, shall maintain a cost accounting system which clearly distinguishes between services supplied to the bargaining unit and services supplied to members of HSTA-HEA-NEA only. For any cost category for benefits which are not specifically identifiable as being for Unit 5 personnel only or HSTA members only, the Petitioner, HEA, and local chapters, and to the extent applicable, the NEA, shall develop an appropriate and reasonable basis for allocating such costs between Unit 5 and HSTA members. Further, the Petitioner shall supply the Board annually with six copies of the financial reports required to be supplied to its members pursuant to Section 89-15, Hawaii Revised Statutes."

In the near future the Board will distribute to all exclusive representatives a detailed description of the cost accounting statement it desires to insure compliance with the cost accounting requirement. Such description will be

prepared by the Board. This description of the desired accounting measures will be distributed to all exclusive representatives and failure to comply with such requirement will result in summary dismissal of service fee petitions.

5. Both the NEA and the HEA shall comply with the above requirement of cost accounting. Failure to do so will mean that all testimony proffered by or on behalf of said entities as to services they have rendered to Unit 5 shall be stricken from the record.

6. The service fee certified as reasonable herein shall continue through June 30, 1974, only. The Board will review the financial situation of the HSTA at or about that time to see whether a continuation or alteration of the service fee is warranted. The Board relies on the HSTA to make a good effort to demonstrate fiscal responsibility during that period.

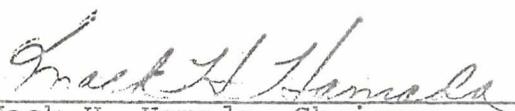
7. Prior to June 30, 1974, the Board may, on its own motion, the motion of any affected employee, or the motion of Petitioner, review the reasonableness of the service fee.

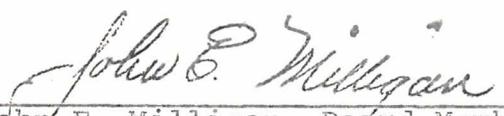
8. The orders contained in paragraph 5 of Decision No. 29 in Case No. SF-05-6 directed toward the employer apply with equal force in this case. Said paragraph stated:

"The employer for each pay day shall make available to Petitioner computer printouts already supplied by the Department of Accounting and General services showing the names of all persons in the bargaining unit on the payroll, as of the second payroll after the date of this Order. Further, the employing department shall make available to the Petitioner copies of SF-5 forms showing personnel actions involving any person in the bargaining unit, within two weeks

of such action. Any costs involved in providing SF-5 forms may be the subject of negotiation between the Public Employer and the Petitioner."

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member

Dated: September 13, 1973

Honolulu, Hawaii

CONCURRING OPINION

While I agree with the majority opinion herein as evidence by my signature thereon, I feel compelled to raise and discuss further issues which trouble me deeply.

In every service fee decision rendered by this Board the service fee certified to be reasonable has equalled membership dues. Records adduced have not been adequate to permit this Board to isolate tangible benefits enjoyed by union members which are not or cannot be enjoyed* by unit members who are not members of the exclusive representative except in Case No. SF-05-1. This is the primary reason this Board must have cost accounting presentations in service fee cases.

Further, union members have voting power which permits them some voice in policy determinations made by the union's leadership including those as to how their money is spent. Nonmembers have no voice in these matters. This is akin to taxation without representation. While the value of this participation in policy making has no tangible dollar value, I feel that it must be realized that it has some value, the recognition of which should result in dues being somewhat higher than service fees.

The primary reason for my concurrence with Member Milligan is that for me to go through all of the items in the proposed operating budget and the accrued deficit to

*For example, in the instant case non-HSTA members do not receive the NEA Journal. However, merely by giving their names and addresses to the HSTA they will receive the journal.

reduce or disallow those expenditures which appear to me to be excessive would end in only one result -- the HSTA would be destroyed. It could no longer represent, for the duration of its certification period, the people it is charged by law with the duty of representing for collective bargaining purposes. It dismays me that a unit with close to 9,000 members, seemingly well educated people, cannot select leadership with administrative ability and business acumen. Thus, reluctantly I join in the majority opinion, because I will not be a party to the self-destruction of the HSTA.



Mack H. Hamada, Chairman

dated: September 13, 1973

Honolulu, Hawaii

DISSENTING OPINION

I dissent from my fellow Board Members' majority opinion that an annual service fee of \$141, effective as of September 1, 1973, is timely and, therefore, should be deducted by the employer from the payroll of all employees in bargaining unit 5 and paid to Petitioner HSTA.

The reasons why I feel a service fee of \$141 for the teachers bargaining unit is not approvable at this time are set forth below:

1. HPERB Rule 6.04 (b). HPERB Rule 6.04 (b) provides that service fees shall not be more than membership dues. Said rule is rendered meaningless by my colleagues' approval of a service fee of \$141, which exceeds HSTA's membership dues of \$97. This Board approved on March 15, 1973, a service fee increase equal to membership dues. (Case No. SF-05-6, Decision No. 29) Since then, HSTA's dues have not been changed and remains at \$97.

I see no compelling reason why this Board should approve the amount of service requested before HSTA increased its membership dues to an amount equivalent to, or greater than, the amount of service fee requested. The Board majority excuse their action in this case by saying that HSTA Board of Directors will raise its dues when it receives this decision. They say that such action will satisfy the provisions of HPERB Rule 6.04 (b); this is plain "shibai."

The HSTA Board of Directors was authorized to raise its dues by its annual delegate convention in April, 1973. However, at its discretion, it has chosen to delay an increase in annual dues and relate, instead, the annual dues to the service fees found reasonable by this Board. It was admitted in the testimony that dues may be higher than service fees.

Our Rule 6.04 (b) was established so that the reasonableness of the amount of proposed service fees could be weighed, in part, against the amount of membership dues of the petitioning exclusive representative. It appears to me that it would have been more appropriate for the Board to first require Petitioner HSTA to increase its annual dues. Thereafter, we would determine what amount of service fees increase was reasonable within the limits of the then existing amount of membership dues.

However, in the instant case, the Board departed from its own rule and, unlike any prior service fee case, granted a service fee which is more than membership dues. The Board's approval of the service fee increase is based on HSTA's word that it will establish a comparable increase in membership dues. By such approval, the Board is setting the amount of membership dues for Petitioner HSTA and affording HSTA a convenient reason to justify to its membership why an increase in annual dues now becomes necessary to equal the amount of service fees already approved by HPERB. What HSTA is doing, in effect, is determining the reasonableness of the amount of membership dues it should set by the amount of service fees approved by this Board.

The Board does not have control over the amount of union membership dues. If HSTA does not increase its membership dues to an amount equal to or greater than \$141, or if the increase does not become effective at the same time or prior to the increase in service fees, the Board's only recourse would be to withdraw or modify its order approving the service fee increase, or threaten such action, to compel HSTA to increase its membership dues accordingly.

Whether such action would be necessary is a remote likelihood, however, the point I am raising is that this Board has control over the amount of service fees, not membership dues. Therefore, the Board should, in accordance with its own Rule 6.04 (b), so long as it remains in effect, approve a service fee which it finds reasonable that is no more than the membership dues of the petitioner.

2. Annual dues limited to 1% of the average annual teacher salary. According to HSTA's bylaw , Article XI, the Board of Directors of HSTA is authorized to set annual dues at the rate of no more than 1% of the average annual teacher salary. HSTA computed the average annual teacher salary at \$10,800. Thus, annual dues are presently limited to \$108.

While there was oral testimony that the above limitation applies to HSTA's portion of its dues structure, Article XI of the bylaws makes no specific reference indicating that the limitation applies to HSTA's portion only. On the contrary, in view of HSTA's unified dues structure which includes payments to its affiliates and locals and the testimony of the NEA representative, the limitation on "annual dues" can easily be construed as being applicable to the unified dues structure of HSTA (what a member pays for annual dues) and not HSTA's portion only.

NEA bylaws provides under Article IX, Section 3, that "annual dues of a state affiliate shall be \$25, except that the dues shall be waived in unified dues states." Similarly, Article IX, Section 4, provides a waiver of the \$5 annual dues of a local affiliate in unified dues states.

The NEA representative, Mr. Ferguson, in reply to my questioning, stated that Hawaii is a unified dues state. This means that a member in any one of the unified dues states is being assessed dues dollars to a local association, which includes dollars transmitted to the state association and the national association. A member, by paying his local dues, is also paying his dues to the affiliates of that particular local. It is the HSTA who is affiliated with the NEA and who has responsibility for the per capita tax or assessment, not the individual. The individual's only responsibility as far as dues is the payment of annual dues to Petitioner HSTA.

Throughout the hearing HSTA refers to their unified dues structure. Only in reference to the limitation of its bylaws on annual dues does HSTA make a distinction that annual dues means HSTA's dues or HSTA's portion, not dues of its affiliates and locals.

I am of the opinion that HSTA's dues or HSTA's portion are the same as annual dues and unified dues or whatever label HSTA may use in reference to the amount which must be paid to be a member of HSTA. Since Hawaii is a unified dues state, there are no state and national affiliate dues. HSTA has service contracts with the state and national association and pays for these contracts from annual dues and service fees. Thus, HSTA's portion, if they choose to call it that, is the same as annual dues.

In view of the above, I believe that it was not made clear to the membership that the amendment to Article XI in April, 1973, which increased the maximum limit on the amount of annual dues from .6% to 1% of the average

annual teacher salary, applies to HSTA's portion only and meant an increase of as much as 45% (\$44) in the amount of annual dues. "Annual dues" in unified dues states includes all payments to affiliates and locals. HSTA's reluctance to increase its membership dues to \$141 which it claims it is authorized to do makes me suspect and convinces me that HSTA should first be required to increase their membership dues before a service fee increase of \$141 can be found reasonable by this Board.

3. HSTA expenditures. It appears that HSTA has been and, is being misled to believe that it can spend money any way it pleases and HPERB will rubber stamp whatever it requests.

I, like my colleagues, believe it should normally not be HPERB's responsibility to become deeply involved in any union's administrative and fiscal affairs, but rather a responsibility of the union membership. However, there may be times when the leadership of a union is misleading or even exploiting the membership; then I believe HPERB would be expected to step in and bring such actions to a halt in order to protect the members and non-members from paying an unreasonable service fees or dues.

I call attention to Mrs. Lorna Kakesako's testimony (Tr. Vol. II, p. 70), upon questioning by Chairman Hamada:

"Q. If this Board is to determine whether or not a service fee is reasonable, do you think we ought to have a say on how you spend your money, rather than rubber stamp what you spend?

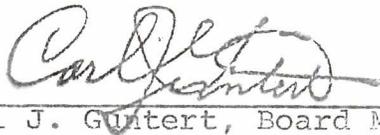
"A. I believe -- my opinion, sir?

"Q. Yes.

"A. I believe, the Board has an obligation to see that the money is wisely spent."

While no drastic action has yet been called for, there are indications that HSTA expenditures require closer scrutiny by this Board. HSTA has come to this Board with a proposed budget to justify its proposed service fee. Once the service fee was approved, however, HSTA did not adhere to the budget which it presented to the Board. While some variance spending was expected, HSTA has incurred a huge deficit and expects this Board to automatically approve a service fee increase to cover the deficit. Even if HSTA can claim its deficit spending as costs of negotiation and contract administration, if HSTA continues its exorbitant spending habits or spending on items of a non-compelling nature, despite its deficit, on items such as advertising, this Board would be obligated to act if service fees are to be of a reasonable amount related to necessary costs of negotiation and contract administration.

In view of the foregoing, I cannot concur with my colleagues approval of a service fee increase to \$141 for teachers in bargaining unit 5.



Carl J. Guitert, Board Member

Dated: September 13, 1973

Honolulu, Hawaii