

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	Case Nos.	SF-02-62
)		SF-03-63
HAWAII GOVERNMENT EMPLOYEES')		SF-04-64
ASSOCIATION, LOCAL 152,)		SF-06-65
AFSCME, AFL-CIO,)		SF-08-66
)		SF-13-67
Petitioner.)	Decision No.	101

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERS

On October 19, 1978, the Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO (hereafter HGEA), filed a Petition for Certification of Reasonableness of Service Fees. The petition was a consolidated request for a service fee assessment of all employees in the six bargaining units for which the HGEA is the certified exclusive bargaining representative.

The petition requested the Board to certify as reasonable, the following service fee:

HGEA proposes an annual service fee, effective on September 1, 1978, in the amount of .0075 times the straight time monthly salaries of employees in effect on September 1, 1978 times 12, plus per capita payments to the American Federation of State, County and Municipal Employees (AFSCME) and the Hawaii State Federation of Labor, AFL-CIO, provided that said service fee shall not be less than \$7 per month nor greater than \$15 per month and that this service fee shall continue to be deducted until the service fee is changed by order of the Board.

After legal notice of the petition was published in newspapers of general circulation (Board Exhibit No. 3), the Board held hearings on November 27, 1978 and November 30, 1978. Transcripts of the hearings were received by the Board on November 30, 1978 and December 8, 1978. HGEA submitted its post hearing brief on January 4, 1979.

On November 20, 1978, a petition for intervention in Case No. SF-08-66, dated October 27, 1978, was filed with this Board by Valerie M. Godley and Theodore B. Jordan. The petition for intervention was denied by Board Order No. 222.

Based on the entire record herein, the Board makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

Petitioner HGEA is and was, at all times relevant, the certified exclusive representative of employees in bargaining units 2, 3, 4, 6, 8 and 13.

The total number of employees in the respective bargaining units is 15,328. Of this total 12,795 are union members and 2,533 are non-union members. In addition, HGEA has a total of 10,344 associate and retiree members who are not part of the bargaining units.

The current annual service fee for all employees in the six bargaining units is .0075 times the straight time monthly salaries in effect on September 1, 1977 times 12, plus per capita payments to AFSCME and the Hawaii State Federation of Labor, AFL-CIO, with a minimum of \$7 per month and a maximum of \$15 per month. This service fee was approved by this Board on October 20, 1978 (Decision 93) for the period from September 1, 1977 until modified by the Board.

The service fee petition presently before this Board requests that the same service fee rate be continued but that the base be changed to the salaries in effect on September 1, 1978 rather than September 1, 1977. The petition further requests that the proposed service fee formula be effective

retroactively to September 1, 1978 until it is changed by order of this Board.

If the proposed service fee request is approved, HGEA estimates a service fee income of \$2,213,142, for the fiscal year beginning July 1, 1978 and ending June 30, 1979, from the six bargaining units as follows:

<u>Unit</u>	<u>No. of Employees</u>	<u>Service Fee Income</u>
2	764	\$ 110,784
3	8,694	1,106,019
4	434	70,233
6	590	120,984
8	755	118,342
13	<u>4,091</u>	<u>686,780</u>
	15,328	\$2,213,142

In addition to service fee revenues, HGEA projects an income of \$742,661 from other sources as follows:

Associate member dues	\$531,161
Administration fees (insurance program)	186,500
Interest income	<u>25,000</u>
	\$742,661

The HGEA budget for the fiscal year beginning July 1, 1978 and ending June 30, 1979 projects a total expenditure of \$2,988,239. A summary of this budget by program areas is provided below with comparative figures for the 1977-78 proposed budget and actual expenditures.

	<u>Actual Expenditures 7/1/77-6/30/78</u>	<u>Proposed Budget 1977-1978</u>	<u>Proposed Budget 1978-1979</u>
I. Wages, Salaries, Fringes	\$1,162,253	\$1,212,805	\$1,266,781
II. Payroll Taxes	68,733	71,122	76,228
III. Rent	90,519	90,149	128,909

IV. Administrative	\$ 840,779	\$ 837,508	\$ 842,740
V. Office of the Director	20,251	21,600	21,600
VI. Fiscal Services	2,965	3,152	3,198
VII. Office Services	25,583	31,970	34,470
VIII. Education and Training	8,903	15,721	15,721
IX. "The Public Employee"	60,361	57,500	62,500
X. Program Development	260,924	282,738	297,738
XI. Neighbor Island Services	69,833	80,266	87,993
XII. Board of Directors	45,072	49,259	36,361
XIII. Committees	7,035	12,350	12,350
XIV. Elections	8,567	6,400	1,650
XV. Legislative Services	<u>109,519</u>	<u>100,000</u>	<u>100,000</u>
	<u>\$2,781,297</u>	<u>\$2,872,540</u>	<u>\$2,988,239</u>

The proposed budget for fiscal year 1978-79 is approximately four per cent higher than the proposed budget for fiscal year 1977-78 and seven per cent higher than the actual expenditures.

The bulk of the increased expenditures is to provide for staff salary and fringe benefit increases comparable to the increases HGEA negotiates for the six bargaining units it represents. Other increases are necessary to meet higher costs for office facilities on Kauai and Oahu (Tr. I, p. 13), supplies (Tr. I, pp. 21-22, 29-31), services (Tr. I, pp. 16-18, 28-31), and travel (Tr. I, pp. 20, 24).

The HGEA's national affiliate is the American Federation of State, County and Municipal Employees (hereafter AFSCME) and its State affiliate is the Hawaii State Federation of Labor (hereafter HSFL). Affiliation with AFSCME and HSFL

requires the HGEA to contribute \$2.90 per month to AFSCME and \$.30 per month to HSFL for each employee in its bargaining units. The budgeted amount in the Administration category for these per capita payments reflect an increase of \$9,540 over those expenditures for 1977-78 (Petitioner's Ex. 1, p. 4, item A). The increase is due to an increase in bargaining unit members during the budget year rather than an increase in the per capita payments.

AFSCME is an international organization dedicated to developing effective collective bargaining for state and local employees. In furtherance of this purpose, the organization provides varied types of services including research, training, lobbying, and legal counsel to assist government employees throughout the collective bargaining process.

Portions of the AFSCME per capita payments used for partisan political or ideological purposes are rebatable to unit members who object to such expenditures. The rebate and appeal procedure established by AFSCME in Article IX, Section 9 of its Constitution (Petitioner's Ex. 1) has been approved by the Board in Decisions 78, 92 and 93 and is also approved here.

HSFL coordinates information sharing among the local AFL-CIO affiliates. The Federation also provides support to local AFL-CIO unions in their lobbying for legislative approval of negotiated collective bargaining agreements and measures to improve employee working conditions.

The HSFL has a Committee on Political Education (hereafter COPE) funded entirely by volunteer contributions. These contributions come from both local and national COPE operations. All of HSFL's expenditures for endorsement and election of state public officials came strictly out of COPE

funds. No money received as per capita payments from affiliates goes to these contributions (Tr. II, p. 7).

Mr. Van Horn Diamond, Executive Secretary-Treasurer of HSFL, spends five per cent of his time annually on lobbying for legislative support of collective bargaining agreements of public sector affiliates (Tr. II, pp. 7-8).

An additional five per cent of his time yearly is spent lobbying for legislation related to public employee working conditions such as the Occupational Safety Health Act (hereafter OSHA), the Comprehensive Employment and Training Act (hereafter CETA), and the Economic Development Act (hereafter EDA) (Tr. II, p. 8).

He also spends another five per cent of his time annually in lobbying activities of a broader nature such as for prepaid health law, pension reform, the University of Hawaii Center for Labor Education, and the "Rice and Roses" program (Tr. II, pp. 8-14).

The HGEA stipulated that the following list of expenditures totaling \$525,483 are disallowable charges against service fee income:

\$167,105	Portion of staff salaries (\$129,244), fringe benefits (28,409) and payroll taxes (9,452) for work time spent on activities not related to contract negotiation and administration. This amount includes the salaries of the Public Relations Officer and the Associate Editor allocable to their time spent on non-collective bargaining activities while working on the newspaper (Petitioner's Exhibit 1).
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\$36,590	Portion of expenses attributable to associate members and non-collective bargaining activities for telephone (\$2,398), Service Bureau computer expenses (\$28,000), audit fees (\$4,418) and neighbor island administrative expenses (\$1,774).
1,724	Five per cent of Office Services expenses attributable to associate members.
39,468	Portion of expenses attributable to the retirees unit (\$34,860) and the excluded unit (\$4,608).
61,902	Full amounts allocated for recreation and sports.
9,761	Portion of expenses in the Board of Directors budget for public relations, contributions for community relations and meeting expenses.
3,995	Portion of Standing and Special Committee expenses.
90,000	Portion of the Legislative Services account used for political action.
53,125	Forty per cent of the newspaper expenses attributable to associate member copies and 75 per cent of

the newspaper space used for activities unrelated to contract negotiations and administration.

\$61,813

Remittance to the United Public Workers.

After full review of the transcripts and exhibits, the Board disallows additional amounts totaling \$6,819 which, in accordance with guidelines established in previous decisions, do not reasonably relate to contract negotiation and administration.

A new account under the Administrative category, the Ainoa Pension (\$944), was established in the 1978-79 proposed budget to provide sufficient funds for retirement benefits for the widow of a former HGEA Executive Director. The trust fund for this purpose established in 1968 was inadequate and the HGEA anticipates an increased allocation for this account of \$2,400 per year in subsequent years. The entire \$944 budgeted for this account is not allowed as a charge against service fee income.

In the program development account, the HGEA has allocated \$2,500 for organizing and encouraging bargaining unit members to become union members. The HGEA believes that this expenditure will provide better servicing of the total employees in the bargaining unit since service fee members appear hesitant to take advantage of the services it provides. Absent sufficient details in the record, it appears that this account will be used for membership recruitment which is not a permissible service fee expenditure, hence the entire \$2,500 in this account is disallowed.

The HGEA stipulated that \$53,125 of the \$62,500 budgeted for its newspaper, the "Public Employee," should be excluded from service fee expenses. This excluded amount is attributable to 40 per cent of the copies going to associate members and 75 per cent of the newspaper space used for impermissible service fee activities. In support of its position on the newspaper space, the HGEA submitted as evidence eighteen issues of the "Public Employee," from July 1977 to August 1979, and a summary sheet listing the amounts of newspaper space used for permissible union business.

After reviewing the eighteen issues, the Board finds that the HGEA estimate of 1,699 1/4 inches as space used for union business related to contract negotiation and administration is accurate and reasonable; however, HGEA erred in calculating the allowable percentage as 25 per cent. Based on 7,000 total inches of newspaper space, the Board calculates that the 1,699 1/4 represents only 24 per cent of allowable space and 76 per cent of disallowable space. We therefore must disallow an additional \$3,375.

The total amount of exclusions by the HGEA (\$525,483) and the Board (\$6,819) is \$532,302; therefore, the allowable expenditures from service fees total \$2,455,937. If the proposed service fee is approved by this Board, the projected income generated of \$2,213,142 will still leave HGEA with a deficit of \$242,795.

CONCLUSIONS OF LAW

Based upon a full review of the record herein, the Board finds that, with the exception of excluded items discussed below and in the Findings of Fact above, the amounts stipulated by HGEA as disallowable and allowable expenditures

from service fee revenue are consistent with guidelines established in previous decisions.

In Decisions 92 and 93, the Board disallowed 10 per cent of the salary of the HSFL Executive Secretary-Treasurer from per capita payments because of a lack of justification of the time spent in permissible non-contract related lobbying. Decision 92, p. 21. Decision 93, p. 22. In the instant case, however, the entire cost of the 15 per cent of the Executive Secretary-Treasurer's time spent on lobbying will be allowed as a charge against per capita payments.

According to the record, five per cent of the Executive Secretary's time is devoted to helping public sector affiliates obtain legislative approval for their contracts which is clearly allowable as an expense for "negotiating and administering an agreement."

The Board also does not question the annual cost of the five per cent of his time spent lobbying for working condition-related legislation. OSHA, CETA and EDA are all legislation which can directly affect the working conditions of public sector bargaining unit members. The Board has recognized the propriety of expending service fee funds for lobbying on working condition-related issues:

Permissive lobbying need not be confined to obtaining legislative approval for negotiated contracts. The terms and conditions of employment. . .are government decisions made through the political process. (Decision 92 at 19)

Implicit in Decision 92 was a holding that. . .lobbying on matters directly related to working conditions of the employees represented by the union might properly be charged against service fees. (Decision 94 at 16-17)

The remaining five per cent of the time which the Executive Secretary-Treasurer spends lobbying for broad

labor-related issues, such as the prepaid health plan, pension reform, the University of Hawaii Center for Labor Education and the "Rice and Roses" program also is allowable. The HSFL explained that while prepaid health plan and pension reform are nonnegotiable subjects, legislation relating to these issues is of concern to HSFL because it sets standards for present and future public sector health and pension plans.

The Board in allowing this charge against service fees is adhering to its prior ruling in Decision 94:

To view the process described in Subsection 89-4(a) as restricted to across the table negotiating with the executive branch is an unrealistic, fragmented view of public sector bargaining. In public sector bargaining, the Legislature provides the wherewithal to fund all agreements and retains control over working conditions of public employees. It merely has delegated to the executive branch certain bargaining authority. It is the Legislature who determines whether the fruits of negotiation will ripen.

In the course of the negotiation-ratification process, tradeoffs take place which show a direct link between union bargaining with the executive branch and lobbying in the Legislature. Items given up at the negotiating table may be regained at the Legislature. A case in point is the amendment of Subsection 89-9(d), HRS, which restored certain increments given up in bargaining.

In bargaining with the executive branch, a public sector union may forego a negotiable cost item in exchange for a grant by the Legislature of greater benefits in such nonnegotiable areas as the health fund or the retirement system. (Decision 94 at 18)

The "Rice and Roses" program and support of the University of Hawaii Center for Labor Education are also activities which are reasonably related to the collective bargaining process. The purpose of HSFL's involvement in

such activities is similar to that of HSTA's Teacher Talk articles which the Board determined as an allowable expenditure against service fees in Decision 94:

The HSTA's Teacher Talk articles which appear in the general newspapers are, except for those which endorse candidates, permissible charges against service fees. They are targeted at the public and teachers and one of their purposes is to create a favorable public attitude toward the bargaining efforts of the HSTA by portraying the union as a responsible representative of public school teachers with a wide range of concerns toward improving the quality of public education. Such image building is directly calculated to create a favorable bargaining climate for the HSTA--to get the public on its side in negotiations and impasses. These articles directly relate to the contract negotiation and administration efforts of the HSTA. (Decision 94 at 18)

HSFL has sufficiently accounted for all of the lobbying of its Executive Secretary-Treasurer and clearly, his activities are reasonably related to the negotiation and administration of collective bargaining agreements.

With respect to the Ainoa Pension Fund, the Board determines that this is a disallowable expenditure from service fee funds. HGEA explained that this trust fund was established to provide retirement benefits to the surviving spouse of a former Executive Director of HGEA. There is no reasonable relationship between this particular fund and the current collective bargaining activities of the HGEA. Hence, the amount for the fund is disallowed.

In Decision 94, the Board drew a distinction between costs for membership recruitment which are not proper charges against service fees and costs to make available information about union membership which are permissible charges. We reaffirm that distinction but must disallow the organizing funds in this case because it was impossible to determine

whether the account was used for the permissible purpose of making membership information available. HGEA stated that the organizing funds are used to encourage employees to become members of the union, but failed to provide sufficient details to justify the organizing account as a charge to service fees. See Decisions 58, 78 and 94.

In Decision 88 of this Board, the following order was made:

SHOPO is directed to petition for a service fee review no later than September 30, 1978, the ending date of its projected budget. In establishing this precedent, the Board is cognizant that SHOPO's service fee will be reviewed by the Board only five months from now. The Board, however, upon deeper consideration of its duty to certify the reasonableness of service fees, believes that it cannot approve a service fee for periods for which there is no accounting or showing as to how the service fee monies will be spent. Accordingly, henceforth, the Board will certify service fee amounts only for periods for which a projected budget has been provided.

Since the HGEA submitted a budget covering the period from July 1, 1978 through June 30, 1979, the Board will approve the subject service fee only through June 30, 1979.

ORDERS

An annual service of .0075 times the straight time monthly salary of employees in effect on September 1, 1978 times 12, plus the per capita payments to AFSCME (\$2.90 per month) and to HSFL (30 cents per month) is certified as reasonable by this Board.

The increased service fee shall be retroactive to September 1, 1978, for all employees on the payroll at that time. For all persons hired after such date, the service fee shall be computed on the basis of the salary in effect

on the date of hire, and shall be retroactive to the date of hire or effective as of the date of hire, as the case may be.

The employer shall deduct from the payroll of each employee covered by this decision the additional amounts required by the service fee formula certified in this decision from September 1, 1978 to the date of this decision. The employer and the HGEA shall devise the method of deducting this retroactive sum.

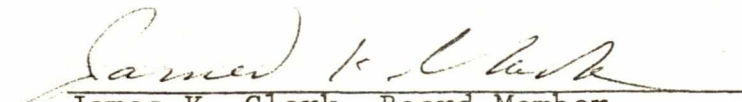
From the date of this decision, the full amount of the above-certified service fee shall be deducted by the employer from the payroll of each employee covered by this decision. Such deductions shall be made each payroll period in an amount which, to the extent possible, is equal to the annual service fee divided by 24 payroll periods. In no event shall the service fee be less than \$7 per month nor greater than \$15 per month for any employee.

All deductions made pursuant to this order shall commence at the earliest possible date, and shall be transmitted to the HGEA.

HGEA is directed to petition this Board for a service fee review no later than June 30, 1979.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: February 21, 1979

Honolulu, Hawaii