

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

| | | | |
|------------------------------|---|--------------|----------|
| In the Matter of |) | Case Nos. | SF-02-72 |
| |) | | SF-03-73 |
| HAWAII GOVERNMENT EMPLOYEES' |) | | SF-04-74 |
| ASSOCIATION, LOCAL 152, |) | | SF-06-75 |
| AFSCME, AFL-CIO, |) | | SF-08-76 |
| |) | | SF-09-77 |
| Petitioner. |) | | SF-13-78 |
| <hr/> | | Decision No. | 116 |

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDERS

On July 9, 1979, the Hawaii Government Employees' Association (hereafter HGEA) filed with this Board a consolidated Petition for Reasonableness of Service Fee. The petition requested the Board's approval of the following service fee for all the seven bargaining units for which the HGEA is the exclusive bargaining representative:

HGEA proposes an annual service fee, effective on September 1, 1979, in the amount of .0075 times the straight time monthly salaries of employees projected for September 1, 1979 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. Board Exhibit 1.

After the publication of legal notices of the petition in newspapers of general circulation (Board Exhibit 4), a hearing was held on August 2, 1979. The HGEA's case was presented at the hearing by its counsel. No person in opposition to the petition appeared at the hearing.

At the hearing, the HGEA offered an amendment to its petition as follows:

An annual service fee, effective as of September 1, 1979, in the amount of .0075 times the straight time monthly salaries of employees agreed upon between public employers and HGEA as of July 1, 1979 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, and provided further that said service fee also be deducted from the back pay paid to employees in HGEA's bargaining units for the period from September 1, 1979 to June 30, 1980 inclusive. (Pet. Exhibit 1A; emphasis added)

After a complete review of the evidence submitted by the HGEA in support of its petition, the Board makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

The Petitioner HGEA is and was, at all times relevant, the certified exclusive representative of employees in bargaining units 2, 3, 4, 6, 8, 9 and 13.

The total number of employees in the respective bargaining units is 16,855, approximately 1,500 more employees than in the previous fiscal year. The increase is primarily attributable to the fact that HGEA became the exclusive bargaining representative of Unit 9 (Registered Professional Nurses).

The breakdown of unit members by bargaining units is as follows:

| <u>Unit</u> | <u>Union Members</u> | <u>Non-union Members</u> | <u>Bargaining Unit Totals</u> |
|-------------|--------------------------|------------------------------|-----------------------------------|
| 02 | 523 | 257 | 780 |
| 03 | 7,704 | 1,607 | 9,311 |
| 04 | 391 | 36 | 427 |
| 06 | 493 | 36 | 529 |
| 08 | 501 | 302 | 803 |
| 09 | 300 | 460 | 760 |
| 13 | <u>3,548</u> | <u>697</u> | <u>4,245</u> |
| | 13,460 | 3,395 | 16,855 |

In addition to the bargaining unit members, HGEA also has 5,762 associate members, 4,403 retiree members and 90 members who are employees of the East-West Center allied unit.

The HGEA has a centralized operation and provides the same services to all the seven bargaining units it represents. The budget is consolidated and all units pay service fees which are computed according to the same formula.

The current service fee for all HGEA unit members is computed according to the same formula proposed in the instant petition except that it is based on the salaries in effect on September 1, 1978. This service fee was approved by the Board in Decisions 101 and 115.

The HGEA is affiliated with the American Federation of State, County and Municipal Employees (hereafter AFSCME) and with the Hawaii State Federation of Labor (hereafter HSFL). These affiliates provide collective bargaining data and other research assistance to aid negotiating teams, conduct educational programs open to all unit members, and lobby for legislative approval of negotiated cost items in HGEA contracts. In return for these services, the HGEA pays monthly fees of \$2.90 to AFSCME and 30 cents to HSFL for each unit

member. Such per capita payments were permitted by the Board as charges against service fees in Case No. SF-02-62, et seq. (Decision 101).

At the hearing, the HGEA reported that the AFSCME per capita payment would be increased in January, 1980 according to the increases of salaries of public employees during the past calendar year. On September 21, 1979, the HGEA submitted a letter to the Board indicating that said increase will be 15 cents per month. Accordingly, the AFSCME per capita payments to be included in the proposed service fee will be \$2.90 for the months of September through December, 1979 and \$3.05 for the months of January through December, 1980.¹

The HGEA also noted that the affiliates would be providing the same level of services for fiscal year 1979-80 as was provided for fiscal year 1978-79. The Board has taken judicial notice of the record in Case No. SF-02-62, et seq., as it relates to the accounting of the services provided by these affiliates.

The instant petition, as amended, requests the use of the same formula but with the base salaries agreed upon by the HGEA and the public employers as of July 1, 1979. The petition further requests that said service fee be deducted when the employees receive their back pay. The reason for this proviso

¹ This per capita increase will create off-setting \$16,434 increases in HGEA's total income and expenditures as submitted to the Board at the hearing in Petitioner's Exhibit 1. While the figures used in this decision are from Petitioner's Exhibit 1, the Board notes that the net effect remains the same even with the per capita increase.

is because the agreed upon salary increases effective July 1, 1979 require Legislative approval which is not expected to occur until the 1980 legislative session.

It is anticipated that the employees will be paid their increases retroactively in July, 1980. The HGEA does not wish to deduct the increase in service fees until such time as the employees actually receive their salary increases.

If the proposed service fee is approved by the Board, the HGEA estimates a service fee income of \$2,426,748, for fiscal year 1979-80 as follows:

| <u>Unit</u> | <u>Totals</u> |
|-------------|----------------|
| 02 | 115,606 |
| 03 | 1,199,287 |
| 04 | 74,771 |
| 06 | 95,220 |
| 08 | 124,807 |
| 09 | 118,560 |
| 13 | <u>698,497</u> |
| | \$2,426,748 |

In addition to service fee revenues, the HGEA projects an income of \$759,895 from other sources as follows:

| | |
|-----------------------|------------------------|
| Associate Member Dues | \$536,303 ² |
| Administrative Fees | 198,592 |
| Interest Income | <u>25,000</u> |
| | \$759,895 |

The HGEA budget for the fiscal year beginning July 1, 1979 and ending on June 30, 1980, projects a total expenditure of \$3,308,243. A summary of this budget by program areas is

² Includes \$12,626 in dues for the 90 employees of the East-West Center.

provided below with comparative figures for the 1978-79 proposed budget and actual expenditures.

| | <u>Proposed Budget FY 78-79</u> | <u>Actual Expenditures FY 78-79</u> | <u>Proposed Budget FY 79-80</u> |
|---|-------------------------------------|---|-------------------------------------|
| I. Wages, Salaries, Fringes | \$1,266,781 | \$1,231,077 | \$1,375,367 |
| II. Payroll Taxes | 76,228 | 62,909 | 94,097 |
| III. Rent | 128,909 | 129,924 | 200,988 |
| IV. Administrative - Oahu and State | 842,740 | 852,775 | 898,173 |
| V. Office of the Director | 21,600 | 18,653 | 22,200 |
| VI. Fiscal Services | 3,198 | 3,104 | 996 |
| VII. Office Services | 34,470 | 27,393 | 34,470 |
| VIII. Education and Training | 15,721 | 4,127 | 15,721 |
| IX. "The Public Employee" | 62,500 | 56,125 | 65,000 |
| X. Program Development - Oahu and State | 297,738 | 271,623 | 380,738 |
| XI. Neighbor Island Services | 87,993 | 84,183 | 86,617 |
| XII. Board of Directors | 36,361 | 27,477 | 54,576 |
| XIII. Committees | 12,350 | 9,863 | 14,300 |
| XIV. Elections | 1,650 | 4,270 | 15,000 |
| XV. Legislative Services | <u>125,000</u> | <u>128,220</u> | <u>50,000</u> |
| Totals | \$3,013,239 | \$2,911,723 | \$3,308,243 |

The "Wages, Salaries and Fringes" account provides funds for the 57 employees of the HGEA who will all be receiving seven per cent salary increases. The fringe benefits included in this account are car allowances, medical and liability insurance, and retirement and vacation benefits.

The category "Payroll Taxes" includes payments for Social Security, Unemployment, and Workmen's Compensation and are computed according to formulas established by law.

The "Rent" account includes costs for mortgages or rental, as the case may be, of HGEA offices on the islands of Oahu, Hawaii, Maui and Kauai.

The "Administrative - Oahu and State" account includes expenses for per capita payments, a strike fund, janitorial services, equipment, data processing, library material, audit fees and the Ainoa pension.

"The Office of the Director" appropriation is for contingency expenses incurred by the program and division chiefs in grievance handling and contract administration.

The "Fiscal Services" account covers the travel and per diem expenses for the fiscal staff. An increase in this account is due to two additional internal audits required for neighbor island offices.

The "Office Services" account is used for the rental of a copying machine, supplies, printing of stationery and postage.

The "Education and Training" account covers the costs of travel and per diem, equipment and supplies, conferences, seminars, workshops, and classes for the education and training of stewards and field representatives for contract and grievance administration.

The "Public Employee" account includes the costs for the production of the union newspaper. Newspaper staff salaries are included in the "Wages, Salaries and Fringes" account.

"Program Development - Oahu and State" includes costs for sports, recreation, meetings, organizing, unit expenses and the biennial HGEA convention.

The "Neighbor Island Services" account is to be used for the general administrative and program development expenses of the neighbor island offices.

The "Board of Directors" account provides funds for meeting and contingency expenses, public relations and contributions. The contingency fund can only be used for expenses incurred in representing bargaining unit employees.

The "Committees" account covers meeting expenses for the Standing Committees mandated by the HGEA Constitution and Special Committees formed by the Board of Directors.

The "Elections" account is for the election of a representative from each of the seven bargaining units to the Board of Directors.

The "Legislative Services" account is used for expenses incurred in lobbying for the implementation of negotiated contract cost items and improved health and retirement benefits and working conditions. This account also includes political action funds which are used to insure the election of people sympathetic to public employees.

The projected expenditures for fiscal year 1979-80 total \$295,004 more than the budget for fiscal year 1978-79 and \$396,520 more than the actual expenditures for fiscal year 1978-79.

The increased budget requirement for fiscal year 1979-80 is primarily attributable to wage and salary increases with commensurate increases for fringe benefits and payroll taxes (Tr. pp. 8-11).

Another element in the increase is the addition of Unit 9 to the HGEA family of bargaining units which necessitated the hiring of a new union agent, election of a Unit 9 director

to serve on the HGEA Board of Directors and increases in the per capita payments to affiliates and the Strike Fund (Decision 115).

Other major increases are due to costs for the HGEA biennial convention to be held on Maui (Tr. p. 23), increased mortgage and rental payments for HGEA office buildings (Tr. pp. 11-12), and inflationary increases for general operational costs.

Major decreases in the projected budget from the previous year's budget are due to HGEA's conversion to more efficient technology and decrease in the Legislative Services account requirement (Tr. pp. 15-16, 18).

Adhering to the Board's rulings in previous service fee decisions, the HGEA stipulated to the following list of proposed expenditures which are disallowable charges against service fees:

| | |
|-----------|---|
| \$164,575 | Portions of staff salaries (\$126,286), ³ fringe benefits (\$27,894) and payroll taxes (\$10,395) for employees' work time spent on impermissible service fee activities such as recreation, membership insurance, associate members program and political action. (Tr. pp. 34-36) |
| 34,515 | Portions of expenses attributable to non-collective bargaining activities and associate member program for telephone (\$1,684), Service |

³ This amount includes \$10,606 of the public relations officer's salary and \$10,750 of the associate editor's salary for their work on non-service fee reporting in the union newspaper (Petitioner's Exhibit D-1; Tr. pp. 38-40).

| | |
|----------|--|
| | Bureau data processing (\$26,600), audit fees (\$4,526) and neighbor island administrative expenses (\$1,705). (Tr. pp. 36-37) |
| \$ 1,724 | Five per cent of "Office Services" expenses attributable to associate member program. (Tr. p. 38) |
| 54,925 | This amount includes 38% of the production cost for the union news- paper, "Public Employee," for asso- ciate members' copies. Of the remaining 62% of copies for bar- gaining unit members, 75% of the costs was also disallowed for the newspaper space devoted to non- service related activities. (Tr. p. 38) |
| 41,568 | "Program Development" expenses for the retirees unit (\$36,960) and the excluded unit (\$4,608). (Tr. p. 40) |
| 69,676 | Recreation and sports activity expenses for all islands. (Tr. p. 41) |
| 11,533 | Portion of "Board of Directors" account used for public relations (\$2,000), contributions (\$6,000) and for travel, per diem, confer- ences and meeting expenses (\$3,533). (Tr. p. 42) |

| | |
|----------|--|
| \$ 4,970 | Fifty per cent of the Standing Committee account (\$4,425) and 10% of the Special Committee account (\$545) for time spent on non-service fee related activities. (Tr. p. 42) |
| 40,000 | Eighty per cent of the Legislative Services account for time spent on political action. (Tr. pp. 42-43) |
| 64,273 | Remittance to the United Public Workers for employees in any of the seven HGEA units who elected to remain as members of UPW. This remittance is a result of the affiliation of both unions with AFSCME. (Tr. p. 43) |

The HGEA estimates that approximately 25% of the "Public Employee" is devoted to collective bargaining and contract administration functions (Petitioner's Exhibit 3A) and the cost for the remaining 75% is impermissible as service fee expenses. After a review of the ten issues of the "Public Employee" submitted into evidence by the HGEA, the Board concurs with the HGEA's estimate.

After reviewing the evidence presented by the HGEA, the Board has determined that additional items do not meet the test for permissible service fee expenses.

Under the "Administrative - Oahu and State" account is an appropriation of \$2,652 for the Ainoa Pension. The purpose of this appropriation is to cover the depleted trust fund for the beneficiary of the previous HGEA Executive Director, Daniel K. Ainoa. The entire amount is disallowed.

In the Program Development account, \$2,500 has been allocated to provide incentives to HGEA members to enlist new employees to become union members. This amount is not a permissible service fee expense.

The total amount of disallowable charges as stipulated by the HGEA (\$487,759) and augmented by the Board (\$5,152) is \$492,911; therefore, the allowable expenditures from service fees total \$2,815,332. If the proposed service fee is certified by the Board as reasonable, the projected service fee income of \$2,426,748 will still leave HGEA with a deficit of \$242,795. The deficit, however, will be covered by the non-service fee revenues HGEA receives.

CONCLUSIONS OF LAW

The Board finds that, with the exception of the two additional exclusions made by the Board, the amounts stipulated by the HGEA as impermissible charges against service fee are consistent with guidelines established in previous service fee decisions. The Board also finds that the HGEA has provided sufficient evidence to justify the remaining expenses for permissible collective bargaining related functions of the union and concludes that the instant service fee request is reasonable.

With respect to the two additional exclusions of the "Ainoa Pension" and "Organizing" budget items, the Board reiterates its earlier rulings that there is no reasonable relationship of said pension fund to the collective bargaining activities of the HGEA (Decision 101) and that membership recruitment is an impermissible charge against the service fee (Decisions 94 and 101).

ORDERS

The Board certifies as reasonable a monthly service fee of .0075 times the straight time monthly salaries of employees plus the per capita payments to AFSCME (\$2.90 per month for the months of September through December, 1979, and \$3.05 per month thereafter) and the HSFL (30 cents per month); provided, however, that when the salaries agreed upon by the public employers and HGEA effective July 1, 1979 become payable, the monthly service fee shall be .0075 times the increased salaries, effective September 1, 1979 plus the per capita payments. In no event shall the service fee be less than \$7 per month nor greater than \$15 per month for any employee.

The employer shall deduct from the payroll of each employee covered by this decision the amount certified to be reasonable. The deduction of the fifteen cent increase in the AFSCME per capita portion of the service fee shall commence for the pay period beginning on January 1, 1980. The deductions of the increased service fee resulting from the aforesaid negotiated increases shall be made when the increase becomes payable and shall be retroactive to September 1, 1979. An arrangement shall be made between the employer and the HGEA to deduct the retroactive portion of the service fee out of any back pay paid to the employees to cover the aforementioned increase in salary.

The service fee shall be retroactive to September 1, 1979, 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 salaries in effect on the date of

hire, subject to an adjustment to reflect the aforementioned negotiated increases, and shall be retroactive to the date of hire or effective as of the date of hire, as the case may be.

All deductions made pursuant to this order shall commence at the earliest possible date, and shall be transmitted to the HGEA. Said deductions shall continue until the service fee is changed by order of the Board in the next service fee review for the HGEA.

The HGEA is directed to petition this Board for a service fee review as soon as practicable after the close of the 1979-80 fiscal year.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: October 3, 1979

Honolulu, Hawaii