

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	Case No. <u>SF-05-71</u>
)	
HAWAII STATE TEACHERS)	
ASSOCIATION, NEA,)	Decision No. <u>123</u>
)	
Petitioner,)	
)	
and)	
)	
DONALD FREDERICK JENSEN,)	
)	
Intervenor.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDERS

On May 14, 1979, the Hawaii State Teachers Association (hereafter HSTA) petitioned this Board for Certification of Reasonableness of Service Fees. In its petition, the HSTA asked the Board to certify a service fee of \$155.28 for the fiscal year September 1, 1979 to August 31, 1980 for the employees of Unit 5 (teachers and other personnel of the department of education under the same salary schedule).

The present HSTA service fee of \$148.19 per annum was approved by the Board in Decision 94 (rendered on November 8, 1978).

Donald Frederick Jensen, an employee in Unit 5, petitioned for and was granted intervenor status in this case. Order No. 285 (September 6, 1979).

After publication of legal notice in newspapers of general circulation, a hearing was held on September 10, 1979. Closing briefs were submitted by both the HSTA and the Intervenor on October 1, 1979.

Based upon the entire record herein, this Board makes the following findings of fact, conclusions of law and orders in the instant case.

FINDINGS OF FACT

Petitioner HSTA is and was, at all times relevant, the certified exclusive representative of the employees in Unit 5.

Intervenor Donald Frederick Jensen is a "public employee" as that term is defined by Subsection 89-2(7), Hawaii Revised Statutes (hereafter HRS), and is currently an included employee of Unit 5. As a Unit 5 employee, his bargaining representative is the HSTA. Though represented by the HSTA, Intervenor Jensen is not a dues-paying member of the HSTA.

The employers of Unit 5 are the Board of Education and the Governor. Subsection 89-2(9), HRS.

The total number of employees in Unit 5 is estimated, for service fee computation purposes, to be 8,750, approximately 50 more than in the previous fiscal year. This estimated total used for service fee computations differs from the actual 1978-1979 membership figures presented to the Board in Petitioner's Exhibit "A". In Exhibit "A", the Petitioner obtained an average of the fluctuating membership count for the 1978-1979 fiscal year. The average membership count obtained was 8,810. If this average count was used for service fee computations instead of the figure used by the HSTA, an additional \$9,316.80 in service fee revenues would be generated. The director of Financial Services for the HSTA explained that this discrepancy in the total membership figures is justifiable, because the membership count fluctuates constantly and the figures used are merely a projected estimate for the following fiscal year, not a concrete number. As in the preceding HSTA

service fee presentation, the lower figure will be used by the Board.

The current service fee for Unit 5 employees is \$148.19, an amount uniformly assessed against all unit members for the fiscal year July 1, 1978 to June 30, 1979. Decision No. 94. The current service fee was extended at the level established by Decision No. 94 for the months of July and August, 1979 because the HSTA shifted its fiscal year to coincide with the school year, September 1, 1979 to August 31, 1980.

Of this \$148.19, an amount of \$35 per individual per year was passed along to the national affiliate of the HSTA, the National Education Association (hereafter NEA), as a per capita charge.

The proposed service fee charge for the new fiscal year September 1, 1979 to August 31, 1980 is \$155.28, an increase of \$7.09 per person. The stated intent of the HSTA concerning the increase is to retain \$.09 for the local service fee budget and remit an additional \$7 to its national affiliate NEA.

Service fee revenues are placed in the General Fund account.

For the fiscal year 1979-1980, the general HSTA Fund Account is comprised of the following sources of revenues:

Service Fee (8,750 x \$155.28)	\$1,358,700.00
Uniserve Grant	79,800.00
Records Grant	3,110.00
DuShane Fund	2,500.00
Advertising/Other Income	4,000.00
Balance Carried Forward	<u>57,572.00</u>
	\$1,505,682.00

Based upon its proposed expenditures and estimated revenues, the HSTA has a balanced General Fund Account budget.¹

The HSTA collects from each of its dues paying members and from persons not currently included in Unit 5 due to leave, retirement, etc., an additional \$13.44 over the service fee deduction.² The additional \$13.44 charge is placed in an account, labeled the membership or M Account. The total amount of income budgeted for the M Account for 1979-1980 is \$141,654, an increase of \$21,962 over the previous fiscal year. The M Account funds are derived primarily from membership dues, NEA grants for special services, member's insurance programs and interest for funds currently held. TR 9/10/79 at p. 44. The M Account budget is similar to the HSTA General Fund Account budget in that both budgets use the same format. Though the two budgets parallel one another in form, they differ in the intended use of the revenues. The General Fund Account funds (service fees) are statutorily restricted to negotiating and administering a collective bargaining agreement. In contrast, the use of the M Account funds is not restricted. Accordingly, the HSTA allocates expenses to the M Account which it believes are not proper charges against the General Fund Account. Currently, these apportionments need not be mere estimates as in previous service fee petitions, but can be based upon the preceding year's experience.

¹The estimated expenditures for Goal I on Petitioner's Exhibits "I" and "I-1" are not in accordance. However, the Board believes that the discrepancy of 3¢ is negligible.

²The \$13.44 dues differential was established in July of 1976. The differential has not increased since that time, though the HSTA anticipates that an increase will be proposed in the 1980-1981 budget.

Items paid for out of the M Account include the costs of the members-only group insurance program, purely social activities, recruitment and organization of new members, supplies, office equipment, rent of premises, telephone, union governance expenses and other operating expenses.

The HSTA also has three other funds paid for out of the M Account: The Crisis Fund, the Board Fund and the Political Action Committee Fund. The Crisis Fund is to provide a reserve to be used in the event a rival union challenges the HSTA's exclusive representative status. The Board Fund or Reserve is primarily used for projects in the HSTA governance area. The Political Action Fund is used to make political contributions and endorse candidates.

The following tabulation includes both the General Fund Account and the M Account line budgets for the fiscal year 1979-1980 and shows the allocations made by the HSTA between the two budgets:

<u>Account</u>	<u>General Fund</u>	<u>Membership Funds</u>
Salaries	\$ 528,224	\$ 56,623
Employee Welfare	88,548	10,499
Employee Payroll Taxes	45,621	4,692
Accounting & Data Processing	44,540	15,750
Advertising - Public Media	500	-
Automobile	17,817	383
Board of Directors Fund	3,176	1,542
Committees	30,475	4,310
Conventions - HSTA	38,500	-
Conventions - NEA	6,700	-
Conventions - Locals	6,500	-
Communications - Internal	33,899	2,410
Expense Allowance	10,862	690
Interest - Dues	5,460	35
Insurance	6,300	472
Legal	48,500	-
Legislative	2,000	1,000
Leadership Activities & Training	17,306	3,600
Maintenance	7,360	614

<u>Account</u>	<u>General Fund</u>	<u>Membership Funds</u>
Office Supplies	\$ 18,891	\$ 1,760
Outside Services	9,235	1,820
Postage	12,075	1,050
Publications & Research		
Materials	3,185	-
Rental Premises	49,900	4,000
Rental Equipment	5,550	640
Room & Board	17,185	725
Service Fees, NEA	367,500	1,838
Service Fees, Local	17,500	204
Telephone	28,398	2,562
Travel	23,114	850
Accrued Leave	10,000	1,200
Equipment Fund	861	-
Excise Tax	-	250
Reserve	-	22,135
Total	\$1,505,682	\$141,654

Figures for the Crisis Fund and Political Action Fund for fiscal year 1979-1980 were not provided. The Board does not consider their omission significant because these Funds are financed through the M Account and not through service fee revenues.

The projected General Fund Expenses of \$1,505,682 for the fiscal years 1979-1980 are up \$114,934 over the actual General Fund Expenses of \$1,390,748 for fiscal year 1978-1979. Petitioner's Exhibit "C-2" and "G".

The increase is attributable to salary increases for the HSTA employees (\$51,107), related fringe benefits and employee welfare payments (\$28,550), an increase in the per capita payments to the NEA (\$66,008), increases in the total convention budget (\$3,500), and increases in communication, insurance, legal and other inflationary increases.

The Teacher Advocate is the union newspaper, copies of which all Unit 5 members are entitled to receive. The newspaper is paid for out of General Account Funds.

Ten issues of the Teacher Advocate were published during the period September, 1978 through June, 1979 and were submitted into evidence as Petitioner's Exhibit O.

Each issue is eight pages long with the exception of a twelve-page issue in October, 1978. Some of the issues carry a full or half-page paid "special services" advertisement. The term "special services" is used to describe programs and benefits which are available only to HSTA members such as group insurance and discount purchasing programs. The General Fund is reimbursed for the costs of the special services advertising.

Most of the issues deal heavily with NEA and HSTA governance (articles about NEA and HSTA officers, structures and policies), Unit 5 negotiations and contract benefits and rights, accomplishments of individual teachers, legislation affecting working conditions of teachers and problems facing teachers and school.

Several of the issues contained articles and pictures which were more pertinent to the political process than to the collective bargaining process. The articles and pictures not only informed the teachers of the political process but also urged the teachers to become active in a political party and work for those candidates endorsed by the HSTA.

The picture and article on three-fourths of page 1 and one-fourth of page 3 of the October, 1978 issue concerns a "grass roots" endorsement of certain candidates through a preference survey. The entire article concerns the survey activities of the Political Action Committee of the HSTA. The Political Action Committee is entirely funded from M Account revenues because the activities of the Committee

have as their goal a political objective. The article and pictures likewise have a political objective which cannot pass muster. Therefore, the coverage of the Committee's activities in the October, 1978 issue is a disallowed use of service fee funds.

The November, 1978 issue contains pictures and articles on one-half of page 4 and on all of page 5 which illustrate members of the HSTA campaigning for candidates. One article asks the Unit 5 employee to "learn through involvement" in the political process. Similarly to the disallowed portion of the October issue, this page and a half of the November issue have a political objective.

The December, 1978 issue includes an article discussing the success of the HSTA endorsement of certain candidates. The pictures reflect the HSTA endorsement efforts and show members of the HSTA campaigning for candidates. These pictures are similarly tainted with a political objective and serve no direct collective bargaining purpose. The pictures and article on three-fourths of page 3 and three-fourths of page 1 are disallowed.

The total disallowed pages are as follows:

1 page	October, 1978 issue
1-1/2 pages	November, 1978 issue
<u>1-1/2 pages</u>	December, 1978 issue

4.0 pages

The Teacher Advocate had a total of 84 pages for the fiscal year 1978-79. The disallowed portion constitutes 4.8% of the total. This means that the funds spent for the Teacher Advocate must be reduced by 4.8%.

The only evidence presented by the HSTA to the Board on the costs of producing the Advocate was an

estimated budget for the fiscal year 1979-1980. Petitioner's Exhibit L.

Estimated Cost of Advocate
FY 1979-80

8 Pages x 10 Issues	\$22,550
4 Pages x 4 Issues	4,080
2nd Class Permit	1,500
Handling (by mailing serv.)	1,674
Graphic Materials	125
Film Processing	1,200
Miscellaneous Materials	100
Labels	900
TOTAL	\$32,129

4.8% of this estimated total budget is \$1,542.19.

Thus, the allowable HSTA Advocate budget is \$30,586.81.

The Advocate is also sent to retired teacher members and associate members. These mailing and production costs are reimbursed to the General Account from the M Account.

Also charged to the Service Fee Account is the cost of publishing a weekly article in the Honolulu Star-Bulletin and The Advertiser called "Teacher Talk."

The HSTA devotes some of its resources, particularly staff time charged to service fees, to communications (often in the form of advocacy) with persons in the Department of Education, or the Board of Education, and in the Legislature related to the following subjects or objectives:

1. Direct across the table negotiation of collective bargaining agreements for Unit 5;
2. The processing of grievances arising under said agreements;
3. The anticipated or actual impact of State legislative action on working conditions of teachers;
4. Health problems in the schools, including venereal disease and drinking, among students;

5. Discipline problems in the schools, student vandalism and violence;

6. Efforts to bring about or resist, as the case may be, amendments of Chapter 89, HRS, the statute which provides for collective bargaining for public employees in Hawaii, including teachers;

7. Changes in employment related matters such as retirement and health fund benefits which are made non-negotiable by Subsection 89-9(d), HRS.

The HSTA also expends service fee resources to obtain federal funding for public education.

The HSTA is affiliated with the NEA and currently remits a per capita charge of \$35 per individual per year. For the fiscal year 1979-1980, the new per capita uniformly established across the nation by the NEA amounts to \$42 per person per annum. The NEA revenues generated by this per capita charge amount to \$367,500 for the fiscal year 1979-1980.

In return for this money, the HSTA will receive the following support and services from the NEA:

1. Direct NEA Financial Payments to the HSTA

Uniserv Program	81,600 ³
Data Gathering	3,110
Training	- ⁴

The purpose of the Uniserv program is to assist the HSTA in collective bargaining and grievance administration.

³ Figure accords to testimony at hearing transcript, p. 66, and not Petitioner's Exhibit B.

⁴ Figure not provided.

The data gathering grant constitutes a reimbursement to the HSTA for the costs of providing the NEA with demographic and other information on Unit 5 employees. This information assists the NEA in communicating with the Unit 5 members.

The training programs administered by the NEA staff are used in four specific areas: leadership developments as it relates to governance and union efficiency, workshops for Uniserv people, programs in the legislative area, and workshops designed for those individuals who are in public relations positions within the Union.

2. NEA Insurance Programs Provided to the HSTA

The NEA also makes available to the HSTA the following services covering all persons in Unit 5:

a. Maintains an assistance fund to provide interest-free loans to teachers who are involved in strikes.

The HSTA would be allowed to draw up to \$150,000 from this fund. This kind of insurance program is not available on the open market;

b. Maintains the DeShane Fund (Unified Legal Services Program) to provide a portion of the costs of litigation arising out of the terms and conditions of employment of the Unit 5 members. Under the guidelines for this program, the NEA reimburses the HSTA at the following rate:

\$4.00 below	10%
\$8.00 below	50%
\$8.01 up	70%

TR. at p. 67.

c. Maintains the Educators' Employment Liability Program of insurance to protect teachers from liability for acts arising out of their employment;

d. The NEA is negotiating malpractice insurance for its staff and the staffs of its local affiliates such as the HSTA who are involved in bargaining and grievance resolution.

3. NEA Services to the HSTA

a. Maintains a telex system which permits the HSTA to communicate rapidly with the NEA and other affiliates of the NEA;

b. Maintains a nationwide bargaining support system network which consists presently of three computerized programs: salary schedules, state budget analyses, and contract clauses. Soon to be added is an arbitrator file. The HSTA would have to buy into this network at a cost of \$10,000. It cost the NEA between \$300,000 to \$375,000 to develop this system;

c. Does research for affiliates on evaluation of arbitrators, contract analysis, salary schedules, employer budgets, school finance, retirement systems, economic trends, in-service education, curriculum, and class size;

d. Provides, on request, contract language to be used in negotiations;

e. Conducts polls for the HSTA. So far, it has conducted a poll on teacher satisfaction with the Unit 5 contract and community attitudes toward education. In the Spring of 1979, it polled all Unit 5 members to determine what they hope can be achieved through collective bargaining;

f. Makes available a number of NEA publications dealing with collective bargaining, legislation which affects

education, and statistics pertaining to the field of education;

- g. Provides direct staff assistance in negotiations;
- h. Provides the assistance of the NEA's legal staff;
- i. Provides training programs for the HSTA staff.

4. NEA Lobbying

The NEA carries on a lobbying effort within both the executive and legislative branches of the federal and state governments. A primary focus of this lobbying is to get funds for education appropriated and allocated to the states. Other areas of concern have been and are legislation on social security, medical and retirement benefits for teachers, and coverage of teachers by unemployment insurance.

The NEA has a rebate program to refund to dissenters money it expends on political activities.

Notice of the rebate procedure is contained in the NEA Recorder, which is sent to all persons in the unit and is posted on bulletin boards in the schools.

For fiscal year 1976-1977, approximately 215 persons in Unit 5 requested and received rebates from the NEA.

Under the NEA procedure, only persons who are not members of the HSTA and who object to the expenditure of any portion of their service fee for political activity may request a political activity rebate by sending the NEA a timely written request for the rebate. The rebate is determined by multiplying the per capita amount by the percentage of the total NEA budget which is allocated to political activity. Provision is made for year end adjustments of the rebate calculation to refund a proportion of actual expenditures for political activity if they differ from budgeted ones.

One may take a challenge of the amount of the rebate to the executive committee and beyond that body to arbitration.

For purposes of the rebate plan, the term "political activity" means:

- (1) the administration of an independent political action committee;
- (2) the determination and/or publicizing of an organizational preference for a candidate for political office;
- (3) efforts to enact, defeat, repeal, or amend legislation which is not related to the working conditions (legislation establishing collective bargaining, professional negotiation, or some other system of employer-employee relations shall be deemed related to working conditions), welfare, or working environment of employees represented by the NEA and/or its affiliates;
or
- (4) contributions to charitable, religious or ideological causes.

In addition to its line item budget, the HSTA submitted into evidence an HSTA Program Budget. This document sets forth the five goals that HSTA seeks to accomplish in the fiscal year 1979-1980. Most of the goals are subdivided into objectives and sub-objectives. Dollar amounts were provided for all the goals, the objectives and sub-objectives.

The Program Budget goals are as follows:

GOAL I	:	ECONOMIC & PROFESSIONAL SECURITY FOR THE MEMBERS OF THE BARGAINING UNIT	1979-80
		1.0 Negotiations	\$ 30,074.00
		2.0 Problem Solving	319,068.00
		3.0 Collective Bargaining Data	<u>15,195.00</u>
			<u>\$ 364,332.00</u>
GOAL II	:	SIGNIFICANT LEGISLATIVE SUPPORT FOR PUBLIC EDUCATION	
		1.0 Increase Funding	\$ 32,140.00
		2.0 Legislative Support	<u>21,144.00</u>
			<u>\$ 53,284.00</u>
GOAL III	:	AN INDEPENDENT UNITED TEACHING ORGANIZATION	
		1.0 Maintain Governance Structure	\$ 217,002.00
		2.0 Training	46,531.00
		3.0 Community Relations	<u>2,071.00</u>
			<u>\$ 265,604.00</u>
GOAL IV	:	PROFESSIONAL EXCELLENCE	
		1.0 In-Service Education	\$ 5,270.00
		2.0 Relations with University	<u>701.00</u>
			<u>\$ 5,971.00</u>
GOAL V	:	HUMAN AND CIVIL RIGHTS	
		1.0 Teacher Rights	<u>\$ ---</u>
SUPPORT AREAS			
		Communications	\$ 60,890.00
		Administration	370,631.00
		Service Fees	<u>385,000.00</u>
			<u>\$1,505,682.00</u>

A review of the Program Budget may raise questions as to the intended use of Goal II, Objective 2. In particular, questions may arise as to how the HSTA Legislative Programs keys into Goal II, Objective 2. This is because the HSTA

Legislative Program is juxtaposed next to Objective 2 in Petitioner's Exhibit "J-4". The HSTA director of financial services, Lorna Kakesako, explained that the Legislative Program presented in the Exhibit is merely an example of the priorities of the HSTA and that the two portions in the Exhibit are not fatally tied together. TR. at pp. 47-8.

The funds contained in the HSTA Board Reserve for the fiscal year 1978-1979 were transferred to the Leadership Conference in May of 1979. Ms. Kakesako explained that the amount was needed for the contract ratification project planned under the Leadership Conference program. Therefore, since the Board Reserve funds were transferred and depleted by the ratification project, they were not included in the 1979-1980 proposed budget. TR. 18-19, 30, 41-42.

During the interim period (July and August, 1979) between the previous fiscal year 1978-1979 and the proposed new fiscal year 1979-1980, the service fee remained at the level established by Board Decision 94.

The July-August, 1979 supplementary budget is as follows:

JULY-AUGUST, 1979 SUPPLEMENT
BUDGET SUMMARY ANTICIPATED INCOME

General Account

Service Fee 8,750 x \$24.70	\$216,125
UniServ Program	13,300
Records Grant	<u>518</u>
	\$229,943

PROGRAM BUDGET

Goal I

Economic and Professional Security for the Members of the Bargaining Unit	\$ 46,880
---	-----------

Goal II

Significant Legislative Support for Public Education	5,044
---	-------

Goal III

An Independent United Teaching Organization	49,600
--	--------

Support

Communications	8,758
Administrative	65,719
Service Fees	<u>53,942</u>
	\$229,943

ACCRUED LEAVE FUND

Anticipated 1978-79 (6/30/79) Balance	\$ 58,601
July - August, 1979	<u>2,500</u>
	\$ 61,101

NOTE: This fund is the estimated liability of HSTA for accrued leave for all employees; the amount due each employee varies during the year depending on the amount of leave taken.

CONCLUSIONS OF LAW

The Board finds that with the exception of the 5.5 pages in the Teacher Advocate, the HSTA proposed service fee expenditures are consistent with guidelines established in previous service fee decisions. The Board finds that the HSTA has provided sufficient evidence to justify the expenses as permissible activities reasonably related to contract negotiations and administration.

With respect to the disallowed pages in the Advocate, the Board reiterates its earlier rulings. In Decision No. 94, the Board disallowed certain charges against service fee funds which did not have a reasonable nexus to the collective bargaining process for service fee purposes. The Board also separated out and disallowed expenditures which had a political objective, such as funds used to elect to public office those who will or have supported the goals and objectives of the HSTA. The articles and pictures are similarly disallowable. Therefore, the Teacher Advocate budget should be reduced by \$1,542.19, and the service fee accordingly reduced for each employee in Unit 5 by \$.18 to \$155.10 per employee per annum.

ORDERS

An annual service fee of \$155.10 shall be deducted by the employer of employees in Unit 5 from their payroll and transmitted to the HSTA. 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.

The increased service fee shall be retroactive to September 1, 1979, for all employees on the payroll at that time. For all persons hired on or after that date, the service fee shall be effective as of the date of hire.

The service fee shall continue to be deducted until otherwise ordered by this Board.

The HSTA is directed to petition this Board for a service fee review as soon as practicable after the close of the 1979-1980 fiscal year.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: February 6, 1980

Honolulu, Hawaii

CONCURRING OPINION OF CHAIRMAN HAMADA

I concur with the Findings of Fact in this case; however, I would like to state my concern regarding the per capita payments to the NEA.

For the fiscal year 1979-80, the HSTA will be paying a per capita fee of approximately \$367,500 to the NEA for its 8,750 bargaining unit members (\$42 per person per year). In return for this fee, the HSTA receives various grant funds and support services from the NEA.

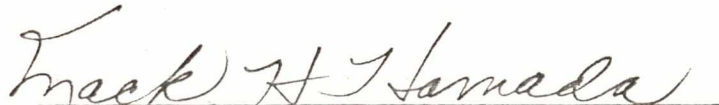
The largest grant fund received by the HSTA is the Uniserv Grant. This grant was established by the NEA about ten years ago for the purpose of affording the state locals an opportunity to have people out in the field working on a daily basis with teachers on contract negotiation and administration matters.

The Uniserv representatives, who are the HSTA business agents, are hired locally and are paid partly from direct service fee funds and partly from this Uniserv Grant fund. Each state local receives a flat amount of \$10,200 per Uniserv representative. The amount has increased over the past few years from \$8,500 to \$10,200 per Uniserv representative. The HSTA will be receiving \$81,600 for fiscal year 1979-80 since it has eight Uniserv representatives. According to Ms. Kakesako, as long as the per capita payments are made, the HSTA expects the same Uniserv Grant annually.

I am cognizant of the fact that this has been a standard procedure between the HSTA and the NEA for many years; however, I am now of the opinion that this is really

an unnecessary recycling of service fee money. I, therefore, believe that the HSTA should withhold the amount of per capita payment equivalent to the amount the NEA would have returned in the form of the Uniserv Grant. Since the money will be used for the salaries of the HSTA Uniserv staff, the money should stay local ab initio.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman

Dated: February 6, 1980

Honolulu, Hawaii