

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
UNITED PUBLIC WORKERS,	)	Case Nos. <u>SF-01-81</u>
LOCAL 646, AFSCME, AFL-CIO,	)	<u>SF-10-82</u>
	)	
Petitioner.	)	
_____	)	Decision No. <u>133</u>

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDERS

On May 8, 1980, the United Public Workers, AFSCME, Local 646 (hereafter UPW) filed a Petition for Reasonableness of Service Fees. Said petition requested the Board to continue to certify as reasonable, through the 1979-80 fiscal year, the present service fee for employees in bargaining units 1 (non-supervisory employees in blue collar positions) and 10 (non-professional hospital and institutional workers).

After publication of legal notices in newspapers of general circulation, the Board held a prehearing conference on May 29, 1980 and a hearing on June 19, 1980. Mr. Henry B. Epstein, State Director of the UPW, presented the UPW budget and other evidence in support of the UPW's petition. No one appeared at the hearing to oppose said petition.

Upon a complete review of the record herein, the Board makes the following findings of fact, conclusions of law, and orders.

FINDINGS OF FACT

Petitioner UPW is and was at all times relevant, the certified exclusive representative of Units 1 and 10.

There are approximately 7,609 employees in Unit 1 and 1,570 employees in Unit 10. Of these totals 6,361 in Unit 1 and 1,221 in Unit 10 are union members. In addition, the UPW also has union members who are associate or retiree members or who are employed in the private sector.

The present service fee for Units 1 and 10 is 1.5 percent of the employee's monthly base pay in effect on July 1, 1978 with an \$8.65 minimum and a \$15.00 maximum for full-time employees. For part-time employees working 20 hours per week, the service fee is \$7.65 per month. This service fee was approved as reasonable through June 30, 1979, by the Board in Decision 96 on November 27, 1978. In said decision the UPW was directed to petition the Board for another service fee review no later than June 30, 1979.

The instant petition was filed belatedly in response to the Board's order in Decision 96 because the UPW was pre-occupied with prolonged contract negotiations and a Unit 1 strike in 1979.

In support of its petition, the UPW submitted the estimated income and expenditures for the period from July 1, 1979 through June 30, 1980. While the UPW consolidates its bookkeeping records for both the public and private sector, it has provided the Board with estimated Units 1 and 10 allocations for its average monthly income and expenditure projections for its 1979-80 fiscal year as follows:

INCOME (Units 1 and 10)

Membership dues	\$ 83,697.00
Part-timers	5,117.85
Non-member service fees	<u>16,727.04</u>
	\$105,541.89

## EXPENDITURES

### I. Operational

a.	Field staff	\$ 36,524.69
b.	Education and newspaper	3,547.75
c.	State Director	5,230.56
d.	Office Overhead	8,916.24
e.	Office and Janitorial	18,612.29
f.	Auditing and Legal	<u>2,520.00</u>
		\$ 75,351.53

### II. Organizational

a.	Meetings	\$ 3,780.00
b.	State Officers	<u>294.00</u>
		\$ 4,074.00

### III. Non-Full Time Programs and Activities

a.	Group Insurance	\$ 8.00
b.	Bonding	63.00
c.	Arbitrations	3,000.00
d.	Subscriptions & Research	238.00
e.	Donations	63.00
f.	Sports	100.00
g.	Lobbying	336.00
h.	Per Capita - State Fed.	2,940.00
i.	Coll. Barg. Units 1 & 10	4,000.00
j.	Per Capita - AFSCME	<u>27,279.95</u>
		\$ 38,027.95

### IV. Payroll Taxes & Expenses

\$ 6,228.78

### V. Others

a.	UPW-Political Action Comm.	\$ 1,428.00
b.	Building Program	2,766.12
c.	Division Allocation	2,509.08
d.	Emergency Fund	<u>1,984.08</u>
		\$ 8,687.28

TOTAL: \$132,369.54

In submitting its budget to the Board, the UPW allocated its total income and expenditures between bargaining unit and non-bargaining unit members on the basis of membership distribution. Thus, in most instances, the above allocations to Units 1 and 10 represent roughly 84 percent of the total UPW income and expenditures.



The UPW expenditures for fiscal year 1979-80 are substantially the same type of expenditures as reported in the last service fee review for fiscal year 1978-79. Major increases from the 1978-79 fiscal year to the 1979-80 fiscal year are due to negotiated pay raises for UPW staff, increased arbitration activity and general inflationary increases.

Under the "Operational" division of the budget, the "Field Staff" category includes payroll, health fund, expense allowance, pension and other expenses for the business agents and division directors in all four UPW offices throughout the State.

The "Education and Newspaper" category includes the salary and fringe benefits and allowances of the Editorial Assistant as well as newspaper production costs. The newspaper format has not changed since the last service fee review. Hence, the Board will apply the same formula used in Decision 96 and disallow 31 percent or \$977.67 of the production and salary cost attributable to time and space devoted to political endorsements, recreational and social events and ideological issues unrelated to wages, hours and working conditions.

The "State Director" category includes the salaries, fringe benefits and expenses of the State Director and the Legislative Aide. The Legislative Aide is responsible for lobbying at the legislature, coordinating political activities and researching cost-of-living changes and trends for negotiation purposes. The Legislative Aide's salary is \$1,752.96 per month and his fringe benefits and expense allowance total approximately \$806.36 per month.<sup>1</sup> As in Decision 96, the Board

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<sup>1</sup>Since the UPW did not provide a separate accounting of the fringe benefits and expense allowance for the Legislative Aide the Board calculated this amount based on the amount reported in Decision 96 which was approximately 46 percent of the Legislative Aide's salary.

will disallow six percent (\$153.56) of the Legislative Aide's salary and benefits for time spent lobbying on social issues and 20 percent (\$511.86) for time spent on political activities.

"Office Overhead" includes such expenses as mailing, supplies, equipment and office rentals and repairs, and utilities.

"Office and Janitorial" includes salaries and fringe benefits of the UPW office and janitorial staffs, janitorial supplies and data processing service. The UPW administers a Mutual Aid Fund which is a voluntary hospitalization plan available for union members only. The Mutual Aid Insurance Clerk spends about 50 percent of her time on this plan and the Board will disallow a proportionate amount of her monthly salary (\$1,038.45) and fringe benefits (\$218.07)<sup>2</sup> for a total disallowance of \$628.26.

The "Auditing and Legal" category provides for attorney retainer fee, unanticipated legal expenses and bookkeeping and auditing fees.

The "Organizational" division of the budget includes the expenses incurred for UPW Executive Board meetings, AFSCME convention, State Federation convention and travel allowances for state officers.

Under the division of "Non-Full Time Programs and Activities," the "Group Insurance" category is to cover occasional shortfalls during premium adjustment periods. The group insurance plan is for members only and is self-sufficient.

"Bonding" is an expense required by law since the UPW handles money.

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<sup>2</sup>Since the UPW did not provide a separate accounting of the fringe benefits and expense allowance for the Mutual Aid Insurance Clerk, the Board calculated this amount based on the amount reported in Decision 96 which was approximately 21 percent of the Clerk's salary.



The "Subscription and Research" category includes expenses for material on collective bargaining such as the BNA services and other Department of Labor magazines and research material.

"Donations" expenses include contributions to other unions on strike or community groups.

The "Sports" category is for a sports program for non-members as well as union members.

Appropriations for the lobbying efforts of the UPW include \$336 in the "Lobbying" category and \$1,428 in the "UPW-Political Action Comm." ("UPW-PAC") category.

The lobbying efforts of the UPW for the 1979-80 fiscal year focused on the ratification of agreements and collective bargaining legislation, i.e., the right to strike. Of the \$1,428 in the "UPW-PAC" category, the UPW allocated \$265.95 for political contributions. That amount is not an allowable charge against service fees.

The "Collective Bargaining" appropriation of \$4,000 is for negotiation expenses incurred for Units 1 and 10.

The UPW's local affiliate, Hawaii State Federation of Labor, and its national affiliate, American Federation of State, County and Municipal Employees, both provide the UPW with assistance for training, negotiations, strike activities and ratification of agreements in exchange for the per capita payments made by the UPW as part of the service fee. During fiscal year 1979-80, these services were heavily relied upon because of difficult contract negotiations and the strike by blue collar workers. The Board will not disallow any portion of the per capita payments.

The "Building Program" category includes the use of the UPW building for negotiations and other collective bargaining activities.

The "Division Allocation" is used to cover expenses of various UPW division offices and the "Emergency Fund" is the fund used in case of a strike.

Of the expenditures listed above, the categories of "Group Insurance," "Donations," and "Sports" do not reflect a reasonable relationship to collective bargaining and are disallowable charges against service fees. In addition, the UPW estimates that from the budget categories \$166 will be expended for social activities, \$400 for services to non-bargaining unit members and \$250.20 for expense accounts for public relations purposes. Such expenditures bear no reasonable relationship to contract negotiations and administration and are also disallowable.

The total amount of disallowable charges are as follows:

Group Insurance	\$ 8.00
Donations	63.00
Sports	100.00
Social Activities	166.00
Services for non-bargaining unit members	400.00
Public Relations expense account	250.00
Newspaper	977.67
Legislative Aide/Researcher	665.42
Mutual Aid Insurance Clerk	628.26
Political Contributions	<u>265.95</u>
	\$3,524.30

With a total monthly income of \$105,541.89 and allowable service fee expenditures of \$128,845.24 (\$132,369.54 minus \$3,524.30), the UPW service fee revenues are insufficient to cover the collective bargaining expenses of Units 1 and 10. However, the UPW has additional income from other sources such as interest income, service fee for group insurance and hospital benefits plans, union hall rental and initiation fees which it can use to supplement its service fee revenues.



## CONCLUSIONS OF LAW

Subsection 89-4(a), HRS, provides that:

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 fees 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. (Emphasis added)

Decision 7 of this Board established the following criteria for determining "reasonableness":

6. "Reasonableness". The test of "reasonableness" imposed by the Legislature upon the determinations of this Board in reviewing a proposed service fee has broad meaning and application. Primarily, it is a requirement that the employee's contribution or share of the costs of collective bargaining services 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.

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On the other hand, the test of reasonableness is also designed to protect the Petitioner toward the final determination of a service fee that will not permit "free rides" nor undermine the financial stability of the union to hinder its proper performance.  
1 HPERB No. 7 at 36-37.



In accordance with the above provisions, the Board disallowed certain expenditures in the findings of fact above which were not reasonably related to contract negotiation and administration. Except for those amounts disallowed, the Board finds that the UPW's planned expenditures from service fees for fiscal year 1979-80 are proper and that the proposed service fee is reasonable. Accordingly, the Board approves the monthly service fee requested of 1.5 percent of the wages or salaries in effect on July 1, 1978 for the 1979-80 fiscal year.

The Board does not like to approve service fee requests retroactively but an exception was made in this case since the prolonged contract negotiations and Unit 1 strike in 1979 precluded the UPW from preparing its case on a timely basis. Since it is a well-established Board policy to only approve service fees for the period for which a budget has been submitted, the Board expects the UPW to plan for more timely filing of its future service fee review petitions.

#### ORDERS

A monthly service fee of 1.5 percent of an employee's monthly base pay in effect on July 1, 1978 with an \$8.65 minimum and a \$15 maximum for full time employees and a monthly service fee of \$7.65 for part-time employees working twenty hours per week shall continue to be deducted by the appropriate employers from the payroll of employees in bargaining units 1 and 10 and transmitted to the UPW. Such deductions shall be made each payroll period in an amount which, to the extent possible, is equal to the monthly service fee divided by two payroll periods.

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

The UPW is directed to petition this Board for a service fee review as soon as practicable after the close of 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: July 24, 1980

Honolulu, Hawaii