


STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
UNIVERSITY OF HAWAII)	Case No. <u>SF-07-95</u>
PROFESSIONAL ASSEMBLY,)	
)	Decision No. <u>148</u>
Petitioner.)	
_____)	

ERRATA

On March 30, 1981, this Board certified in Decision 148 a new service fee for employees in Unit 7. In its findings of fact, the University of Hawaii Professional Assembly's operating expenses for the year July 1, 1979 to June 30, 1980 are stated as "\$490,97." This figure should read and is hereby corrected to "\$490,975."

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: April 1, 1981

Honolulu, Hawaii

ERRATA
148

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

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PROFESSIONAL ASSEMBLY,)	
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FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

Pursuant to §89-4, Hawaii Revised Statutes (HRS), the University of Hawaii Professional Assembly (UHPA), on January 14, 1981, petitioned this Board to certify as reasonable a service fee of \$125.00 plus .35 percent of annual salaries effective upon certification by the Board, for the period from certification to June 30, 1982.

A prehearing on the petition was held on January 14, 1981. Notice of these proceedings was published in both the Honolulu Advertiser and Honolulu Star-Bulletin on January 19 and 26, 1981.

The hearing was held on February 12, 1981 before the Board. Appearing for Petitioner were J. N. Musto, UHPA Executive Director, and Robert Fox, UHPA President. Richard Criley, a Unit 7 member, appeared in opposition to UHPA's petition.

Based on the record in this case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

UHPA is, and was at all times relevant, the certified exclusive representative as defined in §89-2(10), HRS, of all employees in bargaining unit 7 (Faculty of the University of Hawaii and the community college system).

The Board of Regents is the public employer of employees in Unit 7. §89-2(9), HRS.

There are approximately 2,636 members in Unit 7. UHPA does not service retirees or other persons not in Unit 7.

Unit 7 members presently pay an annual service fee of \$120 plus .2 percent of the amount the employee's straight time salary was on July 1, 1977, including an annual \$30 per employee per capita payment divided equally between UHPA's national affiliates, the National Education Association (NEA) and The American Association of University Professors (AAUP).

This service fee generated income of \$435,253 for UHPA in the year July 1, 1979 to June 30, 1980. During that same year, UHPA's operating expenses totaled \$490,97.

UHPA does not exact a membership fee over and above the service fee. Unit members wishing to become union members merely indicate so to the union.

UHPA's proposed budget for the year ending June 30, 1982 is \$567,750.

PROJECTED 1981-1982 BUDGET

A.	NEGOTIATIONS.	\$ 25,000
B.	RIGHTS MAINTENANCE.	\$ 51,200
C.	LEGISLATIVE	\$ 5,710
D.	COMMUNICATIONS.	\$ 11,400
E.	EFFECTIVE LEADERSHIP.	\$ 40,828
F.	LEADERSHIP/MEMBERSHIP DEVELOPMENT	\$ 3,000
G.	ADMINISTRATIVE EXPENSES	\$ 98,180
H.	NATIONAL AFFILIATIONS	\$ 78,420
I.	SALARIES AND COMPENSATION	\$254,012
	Total	\$567,750

Using the September 1980 unit membership count of 2,600 and an average unit salary of \$24,000, application of

the existing service fee formula produces an average monthly income of \$36,400 or \$436,800 annually. Application of the proposed service fee formula to the same variables produces a monthly income of \$45,283 or \$543,400 annually, for a difference of \$8,883 over present monthly income. Under the proposed monthly budget of \$47,312 ($\$567,750 \div 12$), a monthly deficit of \$2,029 will remain if the proposed service fee formula is approved. UHPA proposes to cover any shortfall in expenditures versus revenues through interest received on time certificates and the union checking account, and, in the Rights Maintenance area, through a reimbursement from the NEA Dushane Fund. See below.

The major increases in the proposed UHPA budget for fiscal 1981-82 are due primarily to the following:

- Under the "Administrative Expenses" account, UHPA anticipates an office relocation during the current fiscal year. UHPA currently pays low rent and office expenses to share one floor with the Hawaii Education Association (HEA), with the remainder of its offices spread out on the second floor. A relocation will be necessitated by the anticipated sale of the building and UHPA's desire to consolidate its offices for the sake of administrative efficiency. UHPA's rental agreement expires June 30, 1981. To rent new office space at the current market rate will necessitate, UHPA calculates, an increase in rental costs of about \$16,380. Upon relocation, UHPA will have to purchase new equipment since a major amount of its present office equipment is on loan from the HEA.

- Under the "Negotiations" account, expenses for training and preparation for next biennium negotiations, printing of new contracts and completion of 1980-81 contract negotiations.

- Under the "Rights Maintenance" account, expenses for litigation and legal retainers. UHPA currently has 12 cases pending before the Hawaii Supreme Court including efforts to enforce arbitration awards and numerous other cases before the Circuit Court, this Board, and in the process of arbitration. UHPA expects, however, to receive a 10% reimbursement for Rights Maintenance expenses through the NEA DuShane Legal Fund in the 1981-82 fiscal year. Also, expenses for training for staff in grievance processing and arbitration advocacy.

- Other increased administrative expenses, including the hiring of outside services for the institution of a new bank payroll and service fee processing system, and higher postal, insurance, and telephone rates.

- Under the "Salaries and Compensation" account, expenses for higher staff salaries including negotiated salary increases for staff union and excluded employees and negotiated fringe benefit increases. While these items show an absolute increase over the previous fiscal year, the relative proportion of the budget expended on salaries and compensation shows a decrease over 1980-81 in the proposed 1981-82 budget. Bd. Ex. 4, Ex. C, p. 5.

- Under the "Legislative," "Effective Leadership," and "Leadership/Membership Development" accounts, increased travel costs and other higher operating costs due to inflation. Neighbor island bargaining unit members will participate more actively in legislative committee activities and on the board of directors and executive committee, thus necessitating increased travel expenses. Faculty representatives are to be more actively involved in policy-making, unit member representation, and grievance processing. UHPA will also incur travel expenses in sending representatives to the National Collective Bargaining Conference of the NEA and AAUP.

UHPA also maintains a special services fund and a political action committee fund. The projected budgets for both these funds show substantially increased expenditures. These funds, however, are not supported by service fees.

Under the "Communications" account, UHPA projects an expenditure of \$3,000 on the union newspaper, Mana Leo Kahi, and \$1,000 on public relations. These expenses are proper as charged to service fees as no disallowable activities such as partisan political and other activities unrelated to the negotiation and administration of a collective bargaining agreement are supported under these budget items (Decision 92, 2 HPERB 48, Decision 94, 2 HPERB 83).*

Musto indicated that unit member input into the service fee approval process is afforded through a system of faculty representatives. Faculty representatives represent unit members on a basis of one to twenty-five (approximately 115 representatives). Unit member inquiries regarding the service fee increase are gathered by the representatives and reported to the 26 member Board of Directors, after a review by the Finance and Executive committees, where final approval is made.

UHPA's requested service fee includes a \$30 per capita payment to its two national parent organization, the NEA and AAUP. UHPA is not requesting that this per capita be altered in its instant request.

The \$30 is divided equally between the two national affiliates. Pursuant to Decision 87, 2 HPERB 6, UHPA reviews

*UHPA in 1980-81 allocated a small amount to finance a "membership drive," which is a disallowable charge to service fees (Decision 94, supra). However, at hearing, J. N. Musto indicated that this money was spent on literature to inform unit members of UHPA's newly instituted faculty representative program, which was then a new form of representation, and to encourage employee involvement in the program and in union governance.

this apportionment in light of services and benefits provided by each affiliate.

Regular NEA dues are .0028 x the national average annual salary of classroom teachers in the public elementary and secondary schools. AAUP dues are a flat dollar amount for all members which will rise to \$49 in 1981-82. However, by special arrangement Unit 7 members pay only \$15 to each affiliate.

While the NEA does engage in partisan political activities, the per capita paid by Unit 7 members does not go toward such activities, and thus the NEA rebate plan under which service fee payors are able to recover portions of their per capita expended on partisan political activities does not apply to Unit 7 members.

UHPA has recorded deficits, principally due to litigation expenses, in the previous two fiscal years. The deficit in 1979-80 was \$33,685.69 (Bd. Ex. 4, Ex. A, p. 3, Attach. II, p. 3) and a deficit of \$62,533 is anticipated for 1980-81. Bd. Ex. 4, Attach. I, p 2.

CONCLUSIONS OF LAW

Section 89-4(a), HRS, states:

Payroll deductions. (a) 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.

We have previously ruled that this statutory language requires this Board to make an initial determination of whether the requested fee is for "costs of negotiating and administering the collective bargaining agreement." HPERB Decision Nos. 7, 78.

In this respect, and in conformity with the determinations made in prior service fee decisions, this Board concludes that the expenditures in the proposed UHPA budget are for costs of its services in negotiating and administering a collective bargaining agreement.

The increases over the previous period have been satisfactorily justified. Increases have occurred because of the higher cost of maintaining present services, including legal costs, anticipated increases in rental expenses upon relocation, and increased travel costs, especially those incurred in drawing neighbor island unit members into UHPA activities.

This Board has previously certified as reasonable per capita payments to its national affiliates where UHPA showed that unnecessarily duplicative services from the NEA and the AAUP had been eliminated through coordination by a permanent, five member committee consisting of representatives from UHPA and each of the national affiliates, and where the cost of services provided or to be provided by these national affiliates equalled or exceeded the proposed payments to these organizations. HPERB Decision No. 64, 1 HPERB 581, Decision 87, *supra*.

Reasonable service fees which were calculated by dividing allowable budgeted costs by the number of bargaining unit members have been permitted under the provisions of Section 89-4, HRS. This Board has also interpreted the

term "pro rata" in this section to permit reasonable service fees which are a percentage of salary. HPERB Decision No. 87. UHPA's requested service fee is a combination of these two methods. UHPA has shown that the application of this formula to the salaries of the members of its bargaining unit is fair and will result in a sum closely approximating the amount it requires to defray its costs for negotiating and administering the contract for Unit 7. We therefore conclude that under the UHPA's formula applied to the facts presented in its case, the proposed service fee is reasonable under Section 89-4, HRS.

At hearing unit member Richard Criley, a professor at Manoa with 12 years of service, presented his objection to the size of increase of service fees, noting first that his service fee increased 16.9 percent from 1978 to 1979, with no increase from 1979 to 1980. He submitted that service fee increases should be tied to salary increases, the last of which negotiated by UHPA was eight percent.

In reply, Musto noted that the Board has rejected automatic increases tied to salary adjustments (see Decision 87, *supra*, at 15). He further noted that under UHPA's partial percentage formula, a graduated form of service fees is in effect in Unit 7, and that given the wide range of salaries in Unit 7, higher salaries pay a significantly higher service fee. This, Musto noted, was a deliberate policy choice on the part of UHPA. Musto noted that while Criley's service fee increased by 16.9 percent from 1978 to 1979, the average annual increase from the last service fee certification by the Board to the one under consideration is 5.75 percent. Tr. p. 6, 18-22.


ORDER

Based on the above findings of fact and conclusions of law, this Board orders:

1. An annual service fee of \$125 plus .35 percent of annual salaries effective upon certification by the Board, shall be deducted by the employer from the payroll of each employee in bargaining unit 7 and transmitted to UHPA. 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 the number of payroll periods during which the employee is employed as a member of bargaining unit 7.

2. The increased service fee shall be effective upon certification by the Board, for all employees on the payroll at that time and shall be effective until June 30, 1982. For all persons hired after such date of certification, 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.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: March 30, 1981

Honolulu, Hawaii