

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
THE HAWAII STATE TEACHERS ASSOCIATION )  
and )  
THE DEPARTMENT OF EDUCATION, )  
STATE OF HAWAII )  
\_\_\_\_\_ )

Case No. DR-05-2  
Decision No. 15

DECLARATORY RULING AND ORDER

The Hawaii State Teachers Association, having filed a petition with the Hawaii Public Employment Relations Board on May 9, 1972, wherein it requested the Board to clarify its decision, Case No. SF-05-1a issued on January 24, 1972, relating to service fees for teachers and other personnel of the Department of Education under the same salary schedule, Unit 5, specifically as to whether or not the interim service fees will automatically terminate on May 31, 1972, and the Board, having been informed that the Public Employer intends to automatically terminate such service fee deduction, hereby makes the following Declaratory Ruling and Order.

In establishing an interim service fee certification of one-year, the Board's intent is clearly reflected in its Special Hearings Officer's report, which states therein:

"With no actual or historical costs of bargaining available for proof, this law [Chapter 89, Hawaii Revised Statutes] must be interpreted and applied by this Board in the case of all first time applicants to necessarily mean consideration of estimated costs as a basis of determining the reasonable service fee. Actual costs will not be available until each representative has acquired a history and experience of actual collective bargaining. In reviewing all first time petitions under Section 89-4, this Board's review therefore must be confined to determining whether estimated costs of the service are reasonable or not, and permitting proof of all expenditures subsequent to certification as a basis of testing the reasonableness of those projected or estimated costs.

"To effectuate the statutory purpose of this law, this Board will certify all first time petitions filed under Section 89-4

for an interim period of one year commencing from the effective date of such service. Thereafter, the service fee may be reviewed by the Board upon application of any affected employee or of the exclusive representative, or upon such other terms as the Board shall prescribe."

It is evident from the above that the Board did not intend that the service fee would automatically terminate at the end of the interim certification period of May 31, 1972. The end of the interim certification period is only a point in time after which the Board may, upon application of an affected employee, or of the exclusive representative or in the Board's discretion, initiate a review of the service fee.

It is apparent that if the interim service fee were automatically terminated, it would cause irreparable injury to the exclusive representative and would be contrary to the purpose of the Act to promote stability in employer-employee relations. The Board did not intend the service fee to terminate automatically, but intended that the amount of service fee certified for the interim could be adjusted at any time after the end of the interim period, based on a review of actual cost experience of the exclusive representative. Upon completion of such review and if an adjustment in service fee results therefrom, the Board would transmit to the Public Employer an order reflecting such adjustment, effective as of such date as the Board specifies. The service fee does not terminate, but will be increased or decreased, as the case may be, at the next earliest succeeding payroll period possible.

As this Board is of the opinion that there is insufficient data to accomplish the purpose of a review, i.e., to adjust the service fee based on actual cost experience in negotiation and contract administration, and no petition has been filed requesting such review, the Board has not initiated such review of the amount of service fee for the interim. The Board affirmed its Special Hearings Officer's findings with respect to "negotiating and administering an agreement" as follows:

"We view the works 'negotiating and administering an agreement' as a term of art which generally encompasses the entire collective bargaining and representation activities of the representative with the employer, including all preliminary planning,




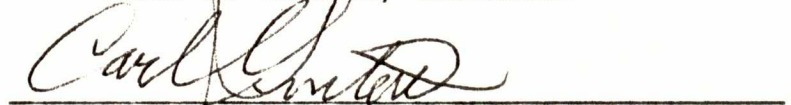
preparation, training, budgeting and organizational efforts and 'tooling up' process related to a negotiating contract and administering the same after its consummation. It virtually amounts to a residuum of the union's total activities after the 'union membership benefits' have been isolated and removed. This is the 'fair share' of the collective bargaining costs to be reflected in the service fee."

While the Hawaii State Teachers Association has had some experience with actual costs in negotiating a contract, it is evident that the exclusive representative will not have sufficient data with respect to actual costs in administering the contract. At this point in time, approximately two and a half months since the effective date of the teachers' contract (February 29, 1972), it is the Board's opinion that it would be unjust, as well as fruitless, to undertake a review based on actual costs expended in negotiating and administering the contract. We would necessarily have to rely again on estimated costs to be incurred in administering the agreement, which would not accomplish the purpose of a prudent review nor effectuate the policy of the Act.

THEREFORE, IT IS HEREBY ORDERED that the Public Employer shall comply with the Board's intent and continue to deduct service fees in accordance with the interim certification of service fee for Unit 5, until such time as this Board directs otherwise.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
Carl J. Guntert, Board Member

  
John E. Milligan, Board Member

Dated: May 16, 1972

Honolulu, Hawaii