

Dec.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. PD-07-02
)	
SIMON NICHOLSON,)	DECISION NO. 261
)	
Petitioner,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
and)	
)	
UNIVERSITY OF HAWAII)	
PROFESSIONAL ASSEMBLY,)	
)	
Exclusive)	
Representative.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On January 26, 1987, Petitioner SIMON NICHOLSON filed a Petition for Review of Refunds with the Hawaii Labor Relations Board [hereinafter referred to as Board]. Petitioner objects to the payment of \$135.26 in dues equivalents pursuant to Section 89-4, Hawaii Revised Statutes [hereinafter referred to as HRS].

FINDINGS OF FACT

Petitioner, a British citizen, was appointed a visiting professor of art for the period January 1, 1986 to June 30, 1986 at the University of Hawaii. As such, he was a member of bargaining unit 7 as defined in Subsection 89-6(a), HRS.

The UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY [hereinafter referred to as UHPA] is the exclusive representative of bargaining unit 7 as the term is defined in Section 89-2, HRS.

The UK/USA double tax treaty (Response of University of Hawaii Professional Assembly, Ex. B) exempts visiting professors from paying federal income taxes (Article 20); and apparently Petitioner was so exempted. UHPA Response, p. 3.

During the period January 1, 1986 to June 30, 1986, Petitioner paid \$135.26 in dues equivalents pursuant to Section 89-4, HRS, to the exclusive representative.

CONCLUSIONS OF LAW

Section 89-4, HRS, provides as follows:

Payroll deductions. (a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative. Additionally, the employer shall deduct an amount equivalent to the regular dues from the payroll of every nonmember employee in the appropriate bargaining unit, and shall remit the amount to the exclusive representative; provided that the deduction from the payroll of every nonmember employee shall be made only for an exclusive representative which provides for a procedure for determining the amount of a refund to any employee who demands the return of any part of the deduction which represents the employees' pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to terms and conditions of employment. If a nonmember employee objects to the amount to be refunded, the nonmember employee may petition the board for review thereof within fifteen days after notice of the refund has been received. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction from the payroll of members and nonmembers shall terminate.

(b) The employer shall, upon written authorization by an employee, executed at any time after the employee's joining an employee organization, deduct from the payroll of the employee the amount of membership dues, initiation fees, group insurance premiums, and other association benefits and shall remit the amount to the employee organization designated by the employee.

(c) The employer shall continue all payroll assignments authorized by an employee prior to the effective date of this chapter and all assignments authorized under subsection (b) until notification is submitted by an employee to discontinue the employee's assignments.

Section 89-3.5, HRS, provides:

Religious exemption from support of employee organization. Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support any employee organization as a condition of employment; except that an employee may be required in a contract between an employees' employer and employee organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee. If an employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance-arbitration procedure on the employees' behalf, the employee organization is authorized to charge the employee for the reasonable cost of using the procedure.

Petitioner objects to the payment of dues equivalents on two bases:

1. The UK/USA double tax treaty, under which he claims to be exempt from such dues; and

2. Conscientious objection. He objects to the "closed shop," under which he is "forced" to pay dues without being asked. While he approves of unions in principle, he objects to the erosion of freedom caused by the "closed shop." See Petitioner's letter, dated June 6, 1987.

The exclusive representative in response points out that the amount paid was pursuant to statute and not paid directly to the union, and thus Petitioner was not subjected to joining a "closed shop." The union further points out that Petitioner was employed as a regular faculty member, performing instructional services during his one semester of employment, and not just a "visiting artist."

The exclusive representative further disagrees with Petitioner's theory that the double tax treaty exempts him from payment of the dues equivalent. The treaty applies to taxes levied by a contracting state (either U. S. or U.K.) but does not apply to dues imposed pursuant to statute. The treaty exempts a visiting professor from federal income taxes, and Petitioner was so exempted. There is no mention of State income taxes, which he assumably paid. The exclusive representative further points out that the treaty provides that the income of visiting "artistes and athletes" may be taxed in the contracting state in which those activities are exercised. Article 17. The union further argues that Petitioner's other ground for exemption--conscientious objection--states no basis for his request to be

exempted from the dues equivalent, i.e., Section 89-4, HRS, provides for no such exemption.

It is not disputed that Petitioner was exempted from federal income taxes pursuant to the subject treaty. See Petitioner's letter, dated June 6, 1987, paragraph 5, and UHPA's supplemental response, paragraph 3. It is further clear from a reading of the treaty itself that it applies to exemption from federal taxes. Article 2, Exhibit B, attached to response by UHPA. The treaty does not apply to dues equivalents paid pursuant to Section 89-4, HRS, and thus Petitioner is not exempt from payment of the dues equivalent on that basis.

Neither does Section 89-4, HRS, provide for exemption from the dues equivalent payment on the basis of "conscientious objection" as that term is used in Petitioner's letter. Under Section 89-3.5, HRS, conscientious objection on religious grounds to dues payments is a basis for exemption from payment, but Petitioner does not make such a claim herein. As the exclusive representative observes, the payment was not made to the union as such but to the exclusive representative as provided for in Section 89-4, HRS. Conscientious objection thus also offers no basis for exemption from payment of the dues equivalent.

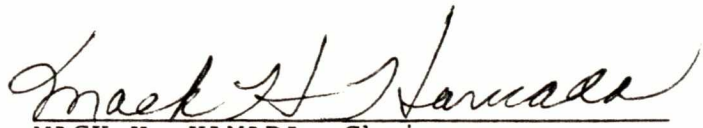
ORDER

The petition for review of refunds is denied.


SIMON NICHOLSON and UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY
CASE NO. PD-07-02
DECISION NO. 261
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, April 18, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

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