

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII STATE TEACHERS)	Case No. <u>SF-05-6</u>
ASSOCIATION,)	
)	Decision No. <u>29</u>
Petitioner,)	
)	
HAWAII FEDERATION OF)	
TEACHERS,)	
Intervenor.)	
)	

DECISION AND ORDER

This matter came on for hearing before the Board on December 27, 1972, on the basis of a petition filed by the Hawaii State Teachers Association (hereinafter HSTA) on November 10, 1972. The petition requested that a service fee of \$97.00 per year be found reasonable. The hearing continued from time to time thereafter until February 1, 1973. The Hawaii Federation of Teachers (hereinafter HFT) intervened and participated in the hearing including the cross-examination of witnesses called by the HSTA, but produced no witnesses or evidence of its own. The employer, Department of Education, though notified did not participate in the hearing. The hearing was held on the record with all testimony under oath, and a transcript was made.

On the basis of the record of the hearing, and the official records of the Board, the Hawaii Public Employment Relations Board (hereinafter Board) makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. By Order of the Board dated January 24, 1972, in Case No. SF-05-1, and affirmed by the Circuit Court in Civil No. 35588 on January 25, 1972, the service fee for Unit 5 was set at \$77 per person on the payroll per annum, which amount was equal to the consolidated HSTA-HEA-NEA and Local dues. This Order was for the service fee year June 1, 1971, to May 30, 1972, and was continued after said end date by Order of the Board issued May 16, 1972, in DR-05-2.

2. The Hearings Officer in Case No. SF-05-1, whose findings were adopted by the Board, found that expenditure by HSTA in the total amount of \$757,542 would be justified, which amount represents a pro-rata amount of \$82.54 per person per annum based on a potential service fee head count of 9,177, but that such amounts in excess of \$77 per person could not be collected because of the requirements of Board Rule 6.04.

3. HSTA, by action of its delegate convention meeting on March 28th and 29th, 1972, and HEA, at its annual meeting held on April 28th and 29th, 1972, modified their dues structure so that the total integrated dues of all affiliated organizations totaled \$97 per annum for the present service fee year. Both HSTA and HEA adopted a common fiscal year from July 1 to June 30.

4. The total amount of service fees collected by HSTA for the period June 1, 1971, to May 30, 1972, which was \$673,058, would indicate, after adjustment for retro-active payments received, payment of service fees by an

average of 9,002 persons per pay period, rather than the 9,177 which was assumed in the original service fee decision, SF-05-1. Service fee collections for the pay periods from June 15, 1972, to October 15, 1972, indicate an average of 8,955 persons contributing service fees.

5. The HSTA does not have an adequate way of monitoring service fee payments by persons in the unit, or of checking on changes of status of such persons, and the computer printout information available to HSTA from the Department of Accounting and General Services is incomplete in this regard.

6. The value of services supplied to the bargaining unit by the HSTA and affiliated organizations during the post service fee year totaled \$874,507, and the amount of service fees actually received totaled \$673,058, leaving a deficit of \$201,449. This deficit is represented by cash, \$85,000 of outstanding loans, and the difference between the value of services or equipment and facilities supplied by affiliates HEA and NEA and the amount paid to such affiliates.

7. The proposed budgets for the present fiscal year for the HSTA and locals is \$602,860 and \$18,400 respectively, and such amounts are related to the negotiation and administration of the collective bargaining agreement and, therefore, can and are to be charged against a reasonable service fee.

8. The proposed payments to HEA for services rendered during the service fee year is \$29,270.72 and this amount is related to the negotiation and administration of the collective bargaining agreement and represents

the value of services supplied to all the persons in the unit and not merely to members of HSTA-HEA-NEA. The HEA has other sources of income, including rentals, insurance rebates and dues from persons in other units which support purely membership activities and benefits. The HEA rents office, conference and parking space to HSTA for an annual rental of \$33,579.60, which amount is included in the HSTA budget mentioned above. Said space rental is based on \$.50 a square foot per month, including all utilities and janitorial service; the parking charge is based on \$20 per stall; both of which rates are within the price range of comparable commercial space and facilities. The building and real property being used has been largely paid for in past years by members of HEA, including many present members of HSTA, and, therefore, to some extent represents a benefit being supplied by members of HSTA to non-members in the bargaining unit.

9. The proposed service contract with NEA for the present service fee year is \$220,000, which amount includes 10% for overhead or "indirect" costs. As of January, 1973, NEA had already advanced, committed, or actually spent some \$274,567 in "direct" costs on behalf of Unit No. 5. The 10% requested for overhead or "indirect" costs is reasonable. The \$220,000 is reasonable and represents the value of services supplied and to be supplied to the entire unit and not just to members. Membership services such as the NEA journal can be supplied to non-members in the unit, if they so indicate and provide the HSTA with their correct home mailing address.

10. The NEA accounting system is on a PPBES (program budgeting) system, but the amounts spent in behalf of the bargaining unit can be specifically segregated and tabulated.

11. Several hundred members of the bargaining unit are on various types of leave, both with and without pay, at any given time. Such persons, when they return to their jobs, receive the benefits of any increase in pay and other improvements in wages, hours and working conditions achieved through collective bargaining during their absence. Petitioner states that such employees are also entitled to the services of the bargaining agent while on leave in the same manner as any other person in said unit, but such services are less likely to be needed or used when on leave without pay.

12. No witnesses were called by Intervenors. No substantial evidence was submitted by Intervenors or others which would support a finding that the amount of service fee requested by Petitioner HSTA was not reasonable.

CONCLUSIONS OF LAW

1. HSTA, Petitioner herein, is the duly certified exclusive bargaining representative in Unit 5 under the title of "Hawaii State Teachers Association (HSTA-HEA-NEA)" and entitled to service fees found by this Board to be reasonable.

2. A service fee in the amount of the consolidated dues of all affiliates of HSTA-HEA-NEA--to wit: \$97 per person per annum--is reasonable under the terms of HRS 89-4(a) and the terms of Chapter 6 of the Board's Rules.

3. Petitioner has requested that bargaining unit members on leave of absence without pay be required to pay service fees for the period they are not on the payroll. Petitioner proposes that said fees be deducted on a lump sum from such employees when they return to the payroll. Section 89-4(a), Hawaii Revised Statutes, sets forth the requirement for the collection of service fees from bargaining unit members. Said section provides:

"Sec. 89-4. 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."

While the section does not deal with the question of employees on leave without pay (some such leaves may extend for as long as two years for some units, and perhaps longer) Chairman Hamada and member Guntert are of the opinion that in tying the assessment of service fees to payroll deductions, the Legislature did not intend persons not on the payroll to be assessed service fees for such periods. The majority does not regard the subject section as creating a contractual obligation between the exclusive representative and the employees in the unit it represents; it regards the section as imposing a payroll deduction, which

ceases, when no pay is coming to the employee. That an employee on leave may receive benefits that are negotiated during his absence places him in no more advantageous a position than a new employee who becomes an employee after such benefits have been established. The new employee, not having been on the payroll, is not required to pay retroactively for the services resulting from exclusive representation actions occurring prior to his employment. He is not a free rider. Neither, in the opinion of the majority, is the employee, who receives no pay while he is on leave, a free rider. That this ruling may result in certain inequities is appreciated by the majority. Perhaps the subject section requires legislative reconsideration. But, as it stands, it requires, in the opinion of the majority, deductions to be made only for payroll periods when the employee is on the payroll, "on the payroll" meaning when he is receiving a pay check.

4. Petitioner, as the exclusive bargaining representative, is entitled to such information from the employer and the other departments involved as is necessary to determine that deductions of service fees are being properly made from all persons obligated to pay such fees. Any costs involved in providing such data may be the subject of negotiation between the Public Employer and the Petitioner, consistent with the Order set forth hereinafter.

5. Affiliated organizations, providing monetary support and services to the exclusive bargaining representative, which services are directly related to, or are a part of the services rendered by said agent in negotiating and administering the agreement, are entitled to be reimbursed for the actual cost of such support and services.

Further, such actual cost should include the reasonable and necessary overhead expenses involved in providing such support and services.

ORDER

1. An annual service fee of \$97 will be deducted by the employer from the payroll of all employees in Bargaining Unit 5 and paid to Petitioner herein; and such deductions shall be made each payroll period in an amount determined by the service fee divided by the number of payroll periods per year.

2. This new service fee amount shall be effective as of the date of the petition herein, November 10, 1972, for all such employees on the payroll at that time, and for persons hired after such time, as of the date of hire, and shall commence at the earliest possible date.

3. All service fee deductions made under the prior Order in SF-05-1 after November 10, 1972, shall be credited against the amount due from any individual, and the balance shall be deducted in a manner agreed to by the Petitioner and the Public Employer.

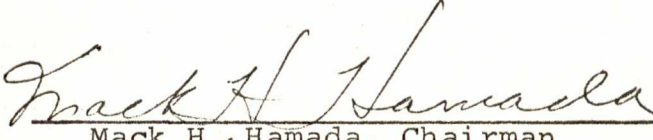
4. Petitioner shall be responsible for any rebates necessary to members who have paid membership dues to HSTA-HEA-NEA during a period for which a retroactive collection of service fees is made; however, no rebate shall be made which would reduce the net amount paid by any such member below the service fee amount due for such period.

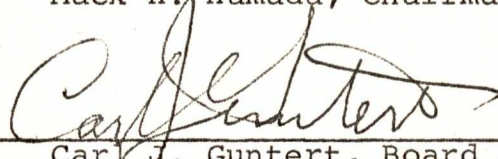
5. The employer for each pay day shall make available to Petitioner computer printouts already supplied by the Department of Accounting and General services showing the names of all persons in the bargaining unit on the payroll, as of the second payroll after the date of this Order. Further, the employing department shall make available to the Petitioner copies of SF-5 forms showing personnel actions involving any person in the bargaining unit, within two weeks of such action. Any costs involved in providing SF-5 forms may be the subject of negotiation between the Public Employer and the Petitioner.

6. The Petitioner, HEA, the local units and, to the extent appropriate the NEA, shall maintain a cost accounting system which clearly distinguishes between services supplied to the bargaining unit and services supplied to members of HSTA-HEA-NEA only. For any cost category for benefits which are not specifically identifiable as being for Unit 5 personnel only or HSTA members only, the Petitioner, HEA, and local chapters, and to the extent applicable, the NEA, shall develop an appropriate and reasonable basis for allocating such costs between Unit 5 and HSTA members. Further, the Petitioner shall supply the Board annually with six copies of the financial reports required to be supplied to its members pursuant to Section 89-15, Hawaii Revised Statutes.

7. Hereafter, the Board may, on its own motion, the motion of any affected employee, or the motion of Petitioner, review the reasonableness of the service fee. Pending such review this Order shall continue until such time as the Board orders otherwise.

HAWAII PUBLIC EMPLOYMENT RELATIONS
BOARD


Mack H. Hamada, Chairman


Carl J. Guntert, Board Member

Dated: March 15, 1973

Honolulu, Hawaii

CONCURRING AND DISSENTING OPINION

I concur with my colleagues in their findings, with the exception of their finding that the service fee is not applicable to employees who are on leave of absence without pay. On this point, I believe they clearly erred in their interpretation of the law.

I base my conclusion on the following:

I. Findings of Fact

1. An employee on leave of absence from a position in this bargaining unit, or any other bargaining unit, maintains his employee status with the employer throughout the period of the leave. The sole purpose of a leave of absence is to protect employee status; therefore, employees on leave of absence are still employees of the State.

2. The terms and conditions of leave of absence benefits in unit 5, as well as in other units, are benefits arrived at through collective bargaining and are thus a negotiated benefit, the cost of which, under the law, is to be shared on a pro-rata basis among all employees in the bargaining unit.

3. Except as a result of illness or accident, a leave of absence is a benefit taken at the option of the employee.

4. The only benefits given up by the employee on leave are those given up at the employee's choice.

5. If an employee on leave of absence is not assessed service fees, working employees will have to pay his share of collective bargaining and contract administration costs.

II. Conclusions of Law

Section 89-2, Definitions, reads as follows in pertinent part:

"(7) 'Employee' or 'Public employee' means any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c).

"(16) 'Service fee' means an assessment of all employees in an appropriate bargaining unit to defray the cost for services rendered by the exclusive representative in negotiations and contract administration." (Emphasis added.)

Section 89-4(a), in pertinent part, reads as follows:

"(a) The employer shall, upon receiving from an exclusive representative a written statement which specified 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 . . ." (Emphasis added.)

The language in these sections is clear and specific. In Section 89-2(7), "Employee" has been clearly defined as "any employee employed by the public employer . . ."

In Section 89-2(16), the service fee is clearly an "assessment of all employees . . ."

Section 89-4(a) clearly states that service fees are to be computed on a pro-rata basis among all employees.

III. Minority Conclusion

My colleagues' conclusion that service fees need not be deducted from some employees, namely those who are on leave of absence without pay, is clearly not supported by Chapter 89. To interpret the law as they have will create wide inequities in the treatment of employees in the bargaining unit. For example, most employee organizations offer benefits such as

insurance, which are not supported by service fees, to members of the union. Employee members of the organization can, and are required by the organization to keep up their service fee payments during a leave of absence without pay, as a condition of maintaining their insurance in force. This will place an extra financial burden on the member.

My colleagues state that no fee is required to be deducted when the employee receive no pay. I agree. The pro rata share can be deducted, however, when the employee returns from leave of absence and is again on the payroll. In my judgment the Legislature has left no lee-way. Section 89-4(a) requires the employer to deduct the service fee in its entirety.

I find no conflict, confusion, or ambiguity in the language of Chapter 89; I can, therefore, reach no other conclusion than that all persons who maintain an employee status within the appropriate bargaining unit are required to pay their full pro rata assessment of the service fee through the mechanics of payroll deduction, and that the employer is required to make such deduction when an employee on leave without pay again returns to work.

HAWAII PUBLIC EMPLOYMENT RELATIONS
BOARD


John E. Milligan, Board Member

Dated: March 15, 1973

Honolulu, Hawaii