

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII FIRE FIGHTERS)	Case No. <u>SF-11-17</u>
ASSOCIATION, Local 1463,)	
IAFF,)	Decision No. <u>35</u>
)	
Petitioner.)	
_____)	

DECISION AND ORDER

I. STATEMENT OF THE QUESTION

The above-entitled matter came on for hearing before the Board on July 3, 1973. The HAWAII FIRE FIGHTERS ASSOCIATION, Local 1463, IAFF (hereinafter HFFA) filed a petition on June 15, 1973, requesting the Hawaii Public Employment Relations Board (hereinafter Board) to certify the reasonableness of its proposed service fees for firemen, Unit 11, as follows:

- | | | |
|-----|--|---------------------|
| (1) | for the period from the date of its certification to December 31, 1972 | \$6.50
per month |
| (2) | for the period from January 1, 1973, to June 30, 1973 | \$7.00
per month |
| (3) | for the period from July 1, 1973, to June 30, 1974 | \$7.50
per month |

The hearing was conducted by the Board, sitting en banc, at the Board's hearing room, 550 Halekauwila Street, Honolulu, Hawaii.

Notice of the hearing was mailed to the appropriate employers designated in Section 89-2(9), Hawaii Revised Statutes.

At the hearing before the Board, Francis Kennedy, Jr., Business Manager, appeared on behalf of HFFA and was represented by the attorney for HFFA, Rogers M. Ikenaga. Only the representatives of HFFA were present and no person in opposition to the HFFA petition appeared at the hearing.

Section 89-4, Hawaii Revised Statutes, requires the Board to determine the reasonableness of a service fee proposed by an exclusive representative. The question before the Board in the instant case is whether the amounts of service fees proposed by HFFA for employees in Unit 11 are reasonable.

II. FINDINGS OF FACT

1. Petitioner, HFFA, is an employee organization as defined in Chapter 89, Hawaii Revised Statutes.

2. HFFA was certified by the Board as the exclusive bargaining representative for firemen, Unit 11, on February 4, 1972.

3. HFFA Exhibit #1 shows that actual expenses for the year ending December 31, 1972, were \$85,578.06.

4. HFFA Exhibit #3 shows that anticipated expenditures for calendar year 1973 are estimated at \$100,850.00.

5. HFFA Exhibit #2 shows the value of services rendered and claimed by HFFA as costs related to contract negotiation and contract administration. The value of services rendered per employee during 1972 was \$9.36¹ per month.

¹The figure computed by HFFA is in error. Automobile allowances and expenses were inadvertently omitted and the amount for travel and per diem (convention) was miscalculated.

A written explanation was submitted by HFFA setting forth the method used in arriving at the value of services rendered.

a. costs not related to collective bargaining.

Expenditures during 1972 which were not claimed as costs for contract negotiation and contract administration include public relations, insurance, newsletter, contributions to private organizations and miscellaneous.

b. costs related to collective bargaining.

HFFA estimated that the following percentages per item are costs allocable to contract negotiation and contract administration; the remaining percentages per item, if any, are costs incurred to provide services and benefits to union members only.

automobile allowances and expenses	90%
meeting expenses	90%
rent	90%
office supplies and expenses	90%
utilities	90%
salaries	90%
travel and per diem (regular)	90%
service fees (legal, accounting and public relations)	90%
entertainment	50%
travel and per diem (convention)	50%
contributions and promotional (only political efforts to work toward collective bargaining agreement included Tr. page 61)	100%
employment expense (T.D.I., Workmen's Compensation, Social Security)	100%
IAFF services and facilities	100%

c. value of services. In its computation to justify its proposed service fees, HFFA used estimated value, rather than actual cost, of services rendered for the following items:

	<u>Actual cost</u>	<u>Estimated value</u>
IAFF services and facilities	\$19,117.99	\$50,000.00
Automobile allowances and expenses	\$ 3,587.59	\$ 3,787.83 = 90% of estimated value
Salaries	\$31,502.93	\$50,042.64 = 90% of estimated value
Service fees	\$ 1,443.25	\$10,082.87 = 90% of estimated value
Employment expense	\$ 2,796.99	\$ 4,453.79 = 8.9% of estimated value of salaries

6. HFFA is affiliated with the International Association of Fire Fighters, the Hawaii Federation of Labor, AFL-CIO, and the Honolulu Port Council, AFL-CIO. Union assessments during 1972 amounted to \$19,117.99; a sum of \$20,700.00 is earmarked for 1973.

HFFA has shown that services provided by the International to HFFA, to members and non-members of Unit 11, are valued at \$50,000.00 and exceed the amount of union assessments. Some services provided by the International during 1972 include: staff representatives during negotiation, fact-finding hearings, and the impasse and strike vote situation; studies and surveys used during negotiations and related to the fire fighting occupation; telephone consultation on problems relating to collective bargaining; a monthly international magazine mailed to members and made available to non-members at the various fire stations; and study groups, study sessions, seminars and symposiums related to collective bargaining.

7. HFFA estimates its total bargaining unit count at 1,150 employees; 40 employees are not members of HFFA.

8. HFFA estimates that 10% of its activities and personnel are directed toward providing benefits and services for members only. HFFA had income from sources other than membership dues amounting to \$2,207.49 and \$1,000.00 from its insurance retention agreement. The total amount received from sources other than membership dues in 1972 was not sufficient to support 10% of HFFA activities and personnel for the benefit of members only. Therefore, a portion of membership dues was used to pay for the cost of such benefits and services.

9. The amount of HFFA membership dues, adopted by the membership and contained in the HFFA by-laws, are set at the rate of one percent, rounded to the nearest half dollar of the second salary step for fire fighters, SR-16 C (since July 1, 1970 - \$675; effective January 1, 1973 - \$715; effective July 1, 1973 - \$751).²

10. The amount of service fees proposed by HFFA is equivalent to its membership dues (from the date of certification - \$6.50 per month; effective January 1, 1973 - \$7.00 per month; effective July 1, 1973 - \$7.50 per month).

III. CONCLUSIONS OF LAW

1. Actual expenses and value of services. The thrust of HFFA's position respecting its proposed service fees is that the value of services provided to all employees in the bargaining unit exceeds the amount of service fees

²The salary increases were negotiated in the firemen's contract (Section 27), executed on March 6, 1973.

requested; therefore, the amount of service fees requested is justified. HFFA contends that it would have cost an employee \$9.00 plus per month during 1972 to obtain the level of services that was provided; however, it is only requesting a lesser amount for service fees, an amount equal to membership dues.

Section 89-2(16), Hawaii Revised Statutes, defines "service fees" as:

" . . . 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." (Underscore added.)

The Random House Dictionary of the English Language (College) defines "cost" as:

" . . . the price paid to acquire, produce, accomplish or maintain anything; . . . outlay or expenditure of money, time, trouble, etc. . . ."

Value, on the other hand, implies "intrinsic excellence or desirability," according to the Random House Dictionary. Therein, "value" is defined as:

" . . . attributed or relative worth, merit, or usefulness. . . ."

It is clear what the Legislature intended with respect to service fees. Section 89-4(a), Hawaii Revised Statutes, specifies that service fees are to be of a reasonable amount "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." Thus, it is the cost or the amount of money actually expended by the exclusive representative in providing negotiation and contract administrative services to all employees in its appropriate bargaining unit that is to be shared equally among all unit employees.

In prior cases, the Board has considered the value of services provided to all bargaining unit employees in determining the reasonableness of proposed service fees. Value of services, however, was used to justify estimated costs to be expended or actual costs already expended by the exclusive representative.

The instant case is distinguishable. HFFA uses value of services to justify amounts greater than actual costs expended during 1972 and greater than estimated costs to be expended during 1973 for particular items. For example, in the case of union assessments, HFFA spent \$19,117.99 during 1972 and projects that it will spend \$20,700.00 in union assessments during 1973. HFFA estimates the value of services rendered by its affiliates at \$50,000.00. It contends that since the estimated value of services is \$50,000, each employee in the bargaining unit received \$3.62 worth of services per month. Therefore, \$3.62 per employee per month in union assessments is justified in arriving at the amount of service fees.³ The actual cost of union assessments per employee per month was \$1.50.

The Board is of the opinion that it cannot approve an amount greater than actual cost, or estimated cost, as in the case of union assessments, \$3.62 instead of \$1.50 per month per employee. Any amount greater than \$1.50 per

³HFFA is not, per se, requesting \$3.62 per month per employee for union assessments. It is requesting, however, an amount greater than actual cost (\$1.50) but considerably less than \$3.62. HFFA provides \$9.00 plus worth of services, it is requesting a lesser amount for service fees, the equivalent of union membership dues (\$6.50, \$7.00 and \$7.50 per month per employee).

month per employee would go toward benefits and services for members only or costs unrelated to collective bargaining. This would be contrary to legislative intent. Money which an exclusive representative needs to support activities and personnel for purposes other than negotiation and contract administration must come from its membership dues, or from sources of income other than service fees.

 HFFA does not have sufficient income from sources other than membership dues and service fees to support 10% of its activities and personnel to provide benefits and services to members only and other costs unrelated to collective bargaining. The amount of service fee requested by HFFA is equal to its membership dues. Thus, the Board cannot approve a service fee equal to membership dues since non-members would be paying for costs other than costs related to negotiation and contract administration. It can be argued that service fees would not be used at all to support benefits and services for members only or for non-collective bargaining costs. However, as long as service fees and membership dues are equal and there is insufficient income from other sources, non-members would be paying a greater proportionate share of the costs for negotiation and contract administration. The statute is clear that all employees in the bargaining unit, members and non-members alike, should share equally in the costs of negotiation and contract administration.

In view of the foregoing, the Board finds no merit in HFFA's justification of proposed service fees based solely on value of services and without consideration of the actual costs expended or estimated costs to be expended. Value of services can be used to the extent of justifying costs (money expended or to be expended) for collective bargaining purposes; not for justifying amounts greater than costs which would also be used for purposes other than collective bargaining.

2. Computation of service fee. The computation of the amount of service fee based on actual expenditures in 1972 and computation of the amount of service fee based on estimated expenditures in 1973 are in the Appendix.

On the basis of the record, the Board found that HFFA's 1972 expenditures allocable as costs of negotiation and contract administration amount to \$73,838.64. A pro rata share of \$64.20 per employee based on 1972 expenditures is proper and reasonable in accordance with Section 89-4, Hawaii Revised Statutes. In determining the amount of service fee, the Board included all items based on actual expenditures which were claimed by HFFA. On items claimed by HFFA which were based on value of services, the Board included only the actual amounts expended for each item as allocable costs; thus, deleting amounts in excess of actual amounts expended and claimed by HFFA.

Considering HFFA's estimated costs for 1973 and relying, where necessary, on its 1972 pattern of expenditures, the Board found that \$86,772.00 are costs attributable to negotiation and contract administration. An employee's pro rata share of \$74.45 is proper and reasonable in accordance with Section 89-4, Hawaii Revised Statutes.

HFFA did not provide justification for 1973 estimated costs based on the value of services as it did for 1972 expenses for the following: IAFF services and facilities, service fees, automobile allowances and expenses, employment expenses, and salaries. However, based on the value of services in 1972 (which exceeds actual costs for 1972 and which exceeds estimated costs for 1973), the Board finds that estimated costs for 1973 for these items appear reasonable and justified so long as 90% of the value of services in 1973 exceeds or at least equals actual costs that will be expended for these items, as in 1972.

Additionally, HFFA did not provide a breakdown of 1973 estimated costs for the following expense categories as it did for 1972 expenses: contributions and promotional (political efforts to work toward collective bargaining agreement), travel and per diem (convention and regular), salaries (business manager, office secretary, clerical help and all others), and automobile allowances and expenses (officers auto allowances, business manager auto allowance and miscellaneous auto expenses). Allocable costs for these categories, in the absence of more detailed data, were arrived at by computing a percentage for each category of allocable cost in 1972 divided by actual cost in 1972, and multiplying the resulting percentage by the respective estimated cost for 1973 for each category.

3. Effective dates. HFFA petitioned the Board to approve its proposed service fees as follows: effective from the date of certification, \$6.50 per month (\$78 yearly), effective January 1, 1973, \$7.00 per month (\$84 yearly) and effective July 1, 1973, \$7.50 per month (\$90 yearly).

The amount of service fee or the employee's pro rata share of the costs of negotiation and contract administration found reasonable by the Board in accordance with Section 89-4, Hawaii Revised Statutes, is \$64.20 based on 1972 expenditures and \$74.45 based on 1973 estimated expenditures.

In all prior cases involving initial certification of service fees, the Board has allowed service fees to be deducted retroactive to the date of certification of the exclusive representative. Thus, the initial service fee of \$64.20 per employee based on the costs incurred by HFFA in 1972 for negotiation and contract administration covers the period from February 4, 1972, to December 31, 1972.

The proposed increases requested by HFFA, effective January 1, 1973, and July 1, 1973, were included in the subject petition for certification of service fees filed July 15, 1973. The Board found that the increases proposed by HFFA could not be justified by the evidence presented and found that an increase in service fees to \$74.45 is reasonable based on HFFA's estimated expenditures for 1973. The remaining question is the effective date of said increase in service fees.

It is the policy of this Board to approve an increase in service fees, effective from the date of the petition for an increase or at a time thereafter as may be specified by the petitioner. In a prior service fee case concerning an increase in service fee for teachers, the Board disallowed a retroactive increase in service fees by setting the date of the petition as the effective date of the increase. (Case No. SF-05-6, Decision No. 29,

March 15, 1973) The Hawaii State Teachers Association modified their dues structure by action of its delegate convention meeting in March, 1972, and the Hawaii Education Association annual meeting in April, 1972. The Hawaii State Teachers Association did not file its petition for an increase in service fees until November 10, 1972.

The instant case is distinguishable from the prior case involving the teachers' increase in service fees, wherein the Board disallowed a retroactive increase. HFFA dues are set at the rate of 1%, rounded to the nearest half dollar of the second salary step for firefighters (SR-16 C). Said salary step restricts the amount of membership dues and, therefore, limits the amount of service fees which the Board will approve as reasonable pursuant to the Board's Rules of Practice and Procedure. Rule 6.04 specifies that service fees shall not be more than membership dues.

The increases in service fees requested by HFFA is based on salary increases, effective January 1, 1973, and July 1, 1973. The salary increases were negotiated under the collective bargaining for firemen (Section 27, Wages), signed March 6, 1973. These negotiated salary increases constituted cost items subject to ratification by the Legislature. The Legislature acted on salary increases for all bargaining unit employees on April 13, 1973, and the Governor signed the bill granting the salary increases on June 8, 1973.

In view of the above, HFFA's request for an increase in service fee effective January 1, 1973, is timely under the circumstances. Although the increase in service

fees found reasonable by the Board is somewhat less than the increase requested by HFFA and would not have exceeded membership dues, HFFA's request for an increase in service fees was based on \$7.00 per month effective January 1, 1973. A service fee of \$7.00 per month would not have been approved by the Board since membership dues were \$6.50 per month on January 1, 1973, and remained at that amount until salary increases were subsequently negotiated and approved, retroactively to January 1, 1973.

Therefore, the increase in service fee to \$74.45 per year for Unit 11 is effective retroactive to January 1, 1973.

IV. ORDER

The Petitioner HFFA, and, to the extent appropriate the IAFF, shall maintain a cost accounting system which clearly distinguishes between services supplied to all bargaining unit employees and services supplied to members of HFFA only. 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.


In accordance with the policy adopted by the Board, this certification of service fee for Unit 11 shall be \$64.20 for the period commencing from the date of certification of February 4, 1972, to December 31, 1972; thereafter, commencing January 1, 1973, the service fee shall be \$74.45 per year and shall continue until altered or terminated by the Board. Hereafter, the Board may, upon application of any

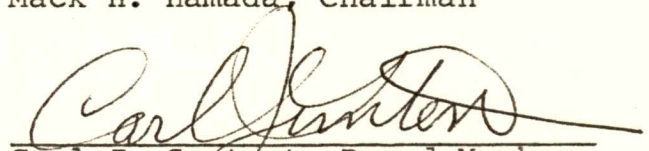
affected employee, or by the Petitioner, or in the Board's discretion, initiate a review of the service fees. Any such review will be based upon a history of actual costs and expenditures incurred by the Petitioner up to the date of such review.

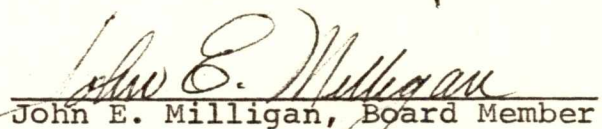
The Board suggests that the appropriate Public Employers and Petitioner negotiate a mutual agreement on methods and procedures which are to be followed in deducting said service fees. Failing such agreement, the parties may petition the Board concerning the mechanics of said service fee deductions.

The appropriate Public Employers are hereby directed to commence such deductions at the earliest possible date and to continue such deductions until such time as this Board orders otherwise.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


Carl J. Guntert, Board Member


John E. Milligan, Board Member

Date: September 11, 1973

Honolulu, Hawaii

APPENDIX

SERVICE FEE BASED ON 1972 EXPENDITURES

<u>A. Items not requiring adjustments</u>		<u>Allocable</u> <u>Costs</u>
HFFA figures computed on actual cost allocable to collective bargaining.		
meeting expense ($\$2,102.75 \times 90\% = \$1,892.47$)		\$ 1,892.47
rent ($\$1,500.00 \times 90\% = \$1,350.00$)		1,350.00
office supplies and expenses ($\$3,870.57 \times 90\% = \$3,483.51$)		3,483.51
utilities ($\$2,718.13 \times 90\% = \$2,446.32$)		2,446.32
contributions and promotional ($\$2,869.37$ of which $\$2,398.00$ were for political efforts to work toward collective bargaining agreement)		2,398.00
entertainment ($\$3,293.79 \times 50\% = \$1,646.89$)		1,646.89
travel and per diem (convention = $\$3,995.36 \times 50\% = \$1,997.68$; * regular = $\$2,746.75 \times 90\% = \$2,472.07$)		<u>4,469.75</u>
"A" Total		\$17,686.94
 <u>B. Items requiring adjustments</u>		
HFFA figures computed on value, rather than actual cost, allocable to collective bargaining		
IAFF services and facilities (value of IAFF services $\times 90\% = \$50,000.00$; actual cost = $\$19,117.99$)		\$19,117.99
service fees (value of services = $\$11,203.19 \times 90\% = \$10,082.87$; actual cost = $\$1,443.25$)		1,443.25
automobile allowances and expenses (value = $\$4,207.59 \times 90\% = \$3,786.83$; actual cost = $\$3,587.59$)		
officers auto allowances (value = $\$2,340.00 \times 90\% = \$2,106.00$; actual cost = $\$1,620.00$)	\$1,620.00	
business manager auto allowance (value based on actual cost; $\$1,560.00 \times 90\% = \$1,404.00$)	1,404.00	
misc. auto expenses (value based on actual cost; $\$407.59 \times 90\% = \366.83)	<u>366.83</u>	3,390.83

*HFFA computational error corrected.

Allocable
Costs

salaries

(value of services x 90% = \$50,042.64;
actual cost = \$31,502.93)

business manager

(value based on actual cost;
\$14,225.00 x 90% = \$12,802.50) \$12,802.50

office secretary

(value based on actual cost;
\$6,425.93 x 90% = \$5,783.34) 5,783.34

clerical help (temp.)

(value based on actual cost;
\$352.00 x 90% = \$316.80 316.80

all others

(value of services x 90% =
\$31,140.00; actual cost =
\$10,500.00) 10,500.00 \$29,402.64

employment expense

(value based on 8.9% of value of
salaries; \$50,042.64 x 8.9% =
\$4,453.79; actual cost = \$2,796.99) 2,796.99

"B" Total \$56,151.70

C. Amount of service fee per employee for 1972

Total amount of allocable costs:

"A" total + "B" total = \$17,686.94 + \$56,151.70 = \$73,838.64

Divide allocable costs by number of employees in Unit 11

\$73,838.64 divided by 1,150 = \$64.20 per employee for 1972

SERVICE FEE BASED ON 1973 ESTIMATED COSTS

A. Items based on estimated cost multiplied by allocable percentage

meeting expense ($\$4,000 \times 90\% = \$3,600$)	\$ 3,600
rent ($\$1,500 \times 90\% = \$1,350$)	1,350
office supplies and expenses ($\$3,600 \times 90\% = \$3,240$)	3,240
utilities ($\$3,500 \times 90\% = \$3,150$)	3,150
entertainment ($\$3,600 \times 50\% = \$1,800$)	<u>1,800</u>
"A" Total	\$13,140

B. Items based on estimated cost and generally supported by 1972 estimated value of services

IAFF services and facilities (\$20,700)	\$20,700
service fees (\$7,010)	7,010
employment expense (\$3,300)	<u>3,300</u>
"B" Total	\$31,010

C. Items based on estimated cost multiplied by allocable percentage; allocable percentage based on 1972 allocable costs divided by 1972 actual cost**

contributions and promotional ($\$2,200 \times 84\% = \$1,848$)	\$ 1,848
travel and per diem ($\$6,000 \times 64\% = \$3,840$)	3,840
automobile allowances and expenses ($\$3,440 \times 95\% = \$3,268$)	3,268
salaries ($\$36,200 \times 93\% = \$33,666$)	<u>33,666</u>
"C" Total	\$42,622

D. Amount of service fee per employee for 1973

Total amount of allocable costs:

$$\text{"A"} + \text{"B"} + \text{"C"} = \$13,140 + \$31,010 + \$42,622 = \underline{\$86,772}$$

Divide allocable costs by number of employees in Unit 11

$$\underline{\$86,772 \text{ divided by } 1,150 = \$74.45 \text{ per employee for 1973}}$$

**Each item is made up of sub-items with varying allocable percentages or sub-items justified by value of services. Estimated costs are by categories and estimated costs by sub-items were not presented as for 1972 expenditures. Therefore, as a "rough" measure we used in "C" above, an allocable percentage based on 1972 data.