

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS ASSOCIATION
(HSTA),

Petitioner.

Case No. SF-05-1

Decision No. 5

DECISION AND ORDER

I. STATEMENT OF THE QUESTION.

By petition filed on June 29, 1971, the Hawaii State Teachers Association, (hereinafter referred to as the Petitioner), requested the Hawaii Public Employment Relations Board, (hereinafter referred to as the Board), to certify its proposed service fee of seventy-seven dollars (\$77.00) as reasonable pursuant to Section 89-4(a), Hawaii Revised Statutes.

Section 89-4(a) states:

"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 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."

II. CHAPTER 89 AS IT PERTAINS TO SERVICE FEES.

Other applicable sections of Chapter 89 are as follows:

Section 2(16). Defines "service fees" as a means of assessing "all employees in the appropriate bargaining unit to defray the cost of services rendered by the exclusive representative in negotiations and contract administration."

Section . Maintains the right of he employee to join and participate in activities of the bargaining representative, or to refrain from participating in such activities "except to the extent of making such payment of service fees to an exclusive representative as provided in section 89-4."

Section 8(a). Clarifies that the exclusive representative of the majority of employees in the bargaining unit "shall be the exclusive representative of all employees in the unit" and that the exclusive representative shall "be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership."

III. ARGUMENT.

In its petition to the Board, Petitioner argued that, under the language of the law, it would be reasonable to conclude the Legislature intended service fees to be equal to employee organization dues. In support of its position, Petitioner cites Section 89-13(a)(3) which states:

"Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

. . . .

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization."

* We are of the opinion that Petitioner's position that the Legislature intended service fees to be equal to union dues is without merit. The legislative history reveals that the bill enacted as Act 171, S.L.H. 1970 (Chapter 89, Hawaii Revised Statutes) was Senate Bill No. 1696-70, S.D. 1, H.D. 3, C.D. 1. In the original draft of the bill, there were no provisions relating to service fees. The Senate Committee on Public Employment

added the provis. as which are now Sections 89-2(16) and 89-4(a). The House Committee on Finance amended the definition of service fees as "an assessment of all employees in the appropriate bargaining unit who are not members of an employee organization." The conference committee re-drafted both provisions to read as they do in Sections 89-2(16) and 89-4(a), respectively.

The Hawaii Legislature knew the congressional history of the Wagner, Taft-Hartley and Landrum-Griffin Acts. It is clear that the federal laws were models from which the Hawaii Legislature drafted its Public Employment Relations Act, as the Hawaii statute follows the language of the federal laws in many areas. If our Legislature intended an agency shop type of union security, it could easily have adopted language of Section 8(a)(3) of the National Labor Relations Act. However, the Legislature adopted language which was unique throughout. The automatic check-off of service fees, the review by the Board and the limiting of such fees to a pro rata share of the cost of "negotiations and contract administration" were to be found in no other statute at the time Act 171 was drafted.

We conclude that if the Legislature had intended that service fees be equal to employee organization dues, there would be no useful purpose for the Board to review whether service fees were reasonable pursuant to Section 89-4(a).

Petitioner also argued that if the Board approved a service fee of a lesser amount than union dues, it would be discriminatory and cites Section 89-4(a). We reject Petitioner's contention on the following rationale:

"If the Board were to approve a service fee of a lesser amount than dues, such approval would be based on a conclusion by the Board that organization dues were, in part, being used to provide goods and services beyond negotiations and contract administration, and that as such goods and services must have been approved by the membership they must therefore be considered of value above and

beyond the value of negotiations and contract administration. The Board sees no discrimination nor does it see any tendency to encourage or discourage membership under such a situation. Each employee of the employer in the appropriate bargaining unit would receive equal service commensurate with the amount paid, whether in dues or service fees." See Smigel v. Southgate Community School District, Mich. Ct. Apps. Div. 1 (1970), 74 LRRM 3080.

We are of the opinion that the Board is required by Chapter 89 to examine the expenditures and/or proposed expenditures of the exclusive bargaining representative and ascertain which of its activities are concerned with "negotiations and contract administration" and which are not, and apportion the costs of such activities which are concerned with negotiations and contract administration on a pro rata basis among all members of the appropriate bargaining unit.

We are of the opinion that the Board is not expected to act in the capacity of a certified public accountant and attempt to account for every penny spent by the exclusive bargaining representative but rather that the Board should look at expenditure requirements by program and make its judgment on this basis. We conclude further that the Board is not expected to act as a management analyst and make judgments on the quality and price of materials, supplies, equipment and facilities used by the exclusive bargaining representative, but rather whether or not the use of such items contribute to negotiations and contract administration.

The language of Section 89-4(a) is unique. There is no judicial authority to support our conclusions. However, we are of the opinion that the Board should confine its judgment to matters involved in labor relations insofar as such matters can be separated from accounting and management analysis.

IV. EVALUATION OF PROGRAMS FOR NEGOTIATION AND CONTRACT ADMINISTRATION.

We are of the opinion that the costs of negotiations should not be limited to the face-to-face contact between the exclusive bargaining representative and the public employer at the bargaining table. The exclusive bargaining representative must first be and

remain organized. It must have trained personnel for negotiations and contract administration for it is a viable institution. It must have quarters, means of conducting research on wages, hours and other terms and conditions of employment and means of communicating with all members of the appropriate bargaining unit. Negotiation and contract administration is a dynamic day-to-day involvement in the employment relationship between management and labor. It is going on in one form or another constantly, whether or not management and labor negotiating teams are in session. Any disagreement between an employee and a management representative may lead to a grievance. Any disagreement between an employee organization official and a management official may lead to a contract demand. With this understanding of the collective bargaining relationship, the Board investigated the expenditures of Petitioner to date and its proposed expenditures for the year dating from certification of Petitioner as exclusive bargaining representative.

The Petitioner requested that its existing dues schedule for members be certified to be reasonable for all non-members of Unit 5. The Petitioner's dues schedule for members is as follows:

| | |
|---------------------------------------|------------------|
| Dues to local island units | \$ 2.00 per year |
| To Petitioner | 30.00 |
| To Hawaii Education Association (HEA) | 20.00 |
| To National Educ. Assn. (NEA) | <u>25.00</u> |
| Total | \$77.00 |

Petitioner's members are required as a condition of membership to belong to HEA and to NEA.

Both HEA and NEA have an interest in, and spend dues monies on, activities not related to negotiations and contract administration for employees in the appropriate bargaining unit. We therefore reject the proposition that HEA and NEA dues as such be used as a guide in arriving at a reasonable service fee for non-members of the appropriate bargaining unit.

It should be noted that both HEA and NEA generate significant amounts of income from sources other than dues. HEA administers an insurance program for its members and receives a fee from the insurance company for its services. HEA also owns real estate and receives income from tenants other than Petitioner. We are of the opinion that this "outside income" more than offsets the cost of activities engaged by HEA which are not in support of Petitioner's negotiation and contract administration activities. NEA also receives income from sources other than its dues.

In order to arrive at a decision and order as to the reasonableness of the proposed service fees of Petitioner, the Board held conferences over a four-month period and concluded its investigation with a stenographic record on September 16, 1971.

* We have considered all of the activities and services of the Petitioner and those activities and services provided by HEA and NEA which directly or indirectly support the Petitioner's negotiating and administering functions. These in our judgment are activities and services which, if not available from HEA and NEA would need to be provided by some other means as, for example, by adding personnel to the Petitioner's payroll and/or by contracting with commercial providers. Therefore, insofar as these services and activities constitute, or are in support of, negotiations and contract administration, they must be considered in arriving at a reasonable service fee.

Examples of these activities and services are:

HEA provides:

- (1) Housing and building maintenance for office space.
- (2) Furniture, equipment, and supplies.
- (3) Services, such as data processing, printing, accounting, record keeping, etc.

NEA provides:

- (1) Staffing on a local level to support negotiations and contract administration.
- (2) Training in organization and administration.
- (3) Research.
- (4) Legal counsel.
- (5) Other supportive activities, including cash grants.

V. CONCLUSION.

We find that the anticipated costs to Petitioner in providing negotiation and contract administration services, including a reasonable estimate of the cost of services contracted by Petitioner with HEA and NEA which also contribute to or support the negotiation and contract administration functions, substantiate the need for a service fee of seventy-seven dollars (\$77.00). It is to be noted that as the Petitioner is only recently certified as exclusive bargaining agent and is currently involved in negotiating an initial contract with the employer, the Board investigation has been made, for the most part, against anticipated expenses for a first year of operation. Our decision and order is, therefore, made for an interim period of one year, beginning from the effective date of certification of Petitioner as exclusive bargaining agent and ending on May 31, 1972.

We hereby certify that seventy-seven dollars (\$77.00) per year proposed by Petitioner as a service fee is reasonable. (See Exhibit A, attached.) Such amount paid by members of Petitioner as dues shall be considered their pro rata share. The employer is hereby authorized and ordered to deduct such amount from the pay of non-members in the appropriate bargaining unit and remit the amount to Petitioner.

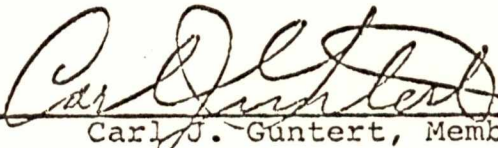
Such deduction shall be retroactive to the effective date of certification of Petitioner as exclusive bargaining agent,

*
May 27, 1971, or the date of employment, whichever is later.
See Swartz Creek Community Schools, MERC No. C69 G80, GERR,
August 16, 1971. Such deduction for service fee, certified
for the interim period ending on May 31, 1972, may continue or
be adjusted to an amount which the Board determines reasonable
upon further investigation and review of expenditures incurred
by Petitioner during the interim.

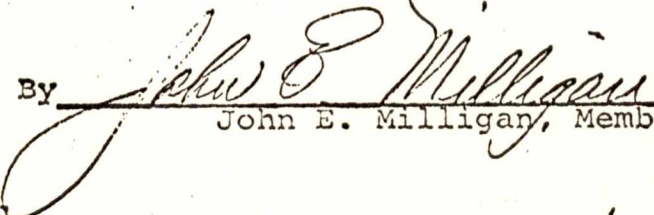
We further order the Petitioner to maintain suitable records
of its expenditures and services contracted with the Hawaii Educa-
tion Association and the National Education Association during
the ensuing year, so as to allow for an accurate review of the value
of such services to the extent they contribute to negotiations and
contract administration for employees in Unit 5, teachers and
other personnel of the Department of Education under the same
salary schedule.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By


Carl J. Guntert, Member

By


John E. Milligan, Member

Dated: October 27, 1971

Honolulu, Hawaii

CONCURRING AND DISSENTING OPINION

I concur with Board Members Guntert and Milligan that the Legislature did not intend service fees to be equal to union dues. I also concur with my colleagues that a service fee of a lesser amount than dues would not tend to encourage nor discourage membership in Petitioner's organization. I further agree that the certification of service fee should be for an interim period.

I dissent from my colleagues' conclusion that "the anticipated costs to Petitioner in providing negotiation and contract administration services...substantiate the need for a service fee of seventy-seven dollars (\$77.00)." I am not convinced that a full and complete record of the facts has been made available on which the Board may ascertain a reasonable service fee necessary to defray the cost for Petitioner's services to be rendered in negotiating and administering an agreement.

A number of NEA programs show little, if any, tangible relationship to the process of contract negotiations and administration for employees in the appropriate bargaining unit. They appear to be more directly related to organizing efforts to gain the support of unorganized groups, to rendering direct services to organization members, a majority of whom are outside of the appropriate bargaining unit, and to the support of partisan causes not related to the economic well-being and interests of persons not members of Petitioner's organization.

There is also some lack of clarity in the anticipated costs of HSTA, projected on a cash basis, which indicates faulty accounting or reporting procedures for the purpose of determining the reasonableness of service fees.

I find that Petitioner has failed to submit a complete and accurate presentation of the cost of its services to be

rendered in the process of collective bargaining. Therefore,
I cannot approve the service fee of seventy-seven dollars requested
by Petitioner.

Mack H. Hamada
Mack H. Hamada, Chairman

Dated: October 27, 1971

Honolulu, Hawaii

EXHIBIT A

Financial Rationale of Approval of Petitioner's Service Fee of \$77.00

SUMMARY: 1971-72

I. Potential Income:

| | |
|-------------------------------------|----------------|
| Teachers in Service | 9,010 |
| Teachers on Sabbatical Leave | 47 |
| Teachers on Leave Without Pay | 636 |
| Teachers on Exchange | <u>11</u> |
| Total: | 9,704 |
| Number of Teachers, Non-collectible | <u>477</u> |
| Balance: | 9,227 |
| Service Fee and Dues per Teacher | <u>x 77.00</u> |
| ANTICIPATED INCOME: | \$ 710,479.00 |

II. Cost of Negotiation and Contract Administration

| | |
|-----------------------------------------------------------------------------------------------------|------------------|
| Petitioner's projected expenditures | \$ 394,000.00 |
| Services contracted from HEA | 204,000.00 |
| Consultants from NEA | 70,000.00 |
| Local Chapter expenses, projected | <u>19,440.00</u> |
| Total | \$687,440.00 |
| Balance of income as estimated cost (value) of additional NEA service, and unanticipated cost | <u>23,039.00</u> |
| | \$710,479.00 |

Financial Rationale of Approval of Petitioner's Service Fee of \$77.00

DETAILS: 1971-72

I. Potential Income (See HSTA Exhibit B)

The Department of Education, during the course of investigation, provided the Board with the following count of teachers employed or on leave, at the beginning of the 1971-72 school year:

| | |
|----------------------------------------------------------------|-----------|
| Actively employed and teaching in Hawaii, number | 9,010 |
| Teachers on sabbatical leave who are receiving one-half pay | 47 |
| Teachers on leave receiving no pay | 636 |
| Teachers on exchange in some other area | <u>11</u> |
| Total number teachers | 9,704 |

It is assumed that Petitioner can receive service fees from all teachers receiving pay through payroll deduction as provided by Section 89-4(a). There is no way to assure payment of service fees or dues by teachers receiving no pay.

From experience, the Petitioner estimates that one-half of its members who are on leave without pay will voluntarily pay dues. It is estimated that none of the teachers who are not members and who are on leave without pay will pay service fees voluntarily.

Approximately one-half of the teachers are members of Petitioner's organization. It is assumed that one-half of those on leave, at any one time will be members. Thus, if the assumptions are correct, one quarter of those on leave will pay dues or fees and three quarters will not.

Three quarters of 636 on leave = 477

| | |
|----------------------------|------------|
| Total teachers | 9,704 |
| Less those non-collectible | <u>477</u> |
| | 9,227 |

| | |
|-------------------|-----------------|
| Times Service Fee | \$ <u>77.00</u> |
|-------------------|-----------------|

| | |
|--------------------|---------------|
| Anticipated income | \$ 710,479.00 |
|--------------------|---------------|

A. Petitioner's projected expenditures:

(See HSTA Exhibit #2 - page 10 through 11; Transcript pages 8 through 45)

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. Policy making and direction | \$ 25,300.00 |
| This item includes expenses incurred in conducting an annual convention, and monthly meetings of the State Board. | |
| 2. Leadership development | 16,000.00 |
| This item includes training of positions in leadership throughout the organization. | |
| 3. Public relations and internal communications | 8,000.00 |
| This includes the cost of printing the institutional newspaper, as well as other releases to the membership. | |
| 4. Legal assistance | 18,000.00 |
| This amount has been projected for use of legal counsel. | |
| 5. Bargaining Committee and legislative contact | 8,000.00 |
| This item includes transportation and living expenses for neighbor island members of the negotiating committee and liaison with the legislature concerning ratification of cost items negotiated. | |
| 6. Reserve | 2,500.00 |
| Reserve is set up for unforeseen expenses. | |
| 7. HSTA office budget | \$316,300.00 |
| This item is made up of the following: (See HSTA Exh. A) | |
| a. Salaries, professional staff (11) | \$158,000.00 |
| b. Salaries, clerical staff (6) | 37,400.00 |
| c. Part-time help and overtime | 9,900.00 |
| d. Telephone | 7,500.00 |
| e. Staff travel and auto | 20,600.00 |
| f. Contribution to retirement plan for employees | 38,100.00 |
| g. Taxes | 10,800.00 |
| h. Rental - satellite offices and equipment | 17,000.00 |
| i. Office supplies and research materials | <u>17,000.00</u> |
| | <u>\$316,300.00</u> |
| TOTAL: | \$394,100.00 |

B. Service contracted from HEA.

(See HSTA Exhibit #2, pages 8 through 9; Transcript pages 45 through 67)

1. Housing, furniture and equipment

| | |
|------------------------------------------------------|--------------|
| a. Building maintenance | \$ 29,000.00 |
| b. Furniture supplied to HSTA | 9,000.00 |
| c. HEA furniture and equipment used to support HSTA | 8,400.00 |
| d. Automatic data processing service to support HSTA | 9,000.00 |

2. Printing facility and service, office supplies, communication assistance to support HSTA 27,000.00

3. HEA staff salaries, less salaries for insurance servicing 81,000.00

4. HEA staff fringe benefits - Taxes and insurance applicable to HSTA service 34,000.00

5. Telephone and temporary employees to service HSTA 6,600.00

TOTAL

\$ 204,000.00

C. Services Provided by National Education

Association (See HSTA Exhibit #2, pages 3 through 4; Transcript pages 67 through 76)

1. Uniserve (Field) representatives salary contribution and training 7 positions @\$9,000.00. This item already accounted in HSTA anticipated expenses.

2. \$30,000 cash grant - already accounted for in HSTA anticipated expenses.

3. Two NEA consultants, travel, housing and expenses \$ 70,000.00

4. NEA services available and anticipated but not specifically accounted for. (See HSTA Exhibit #2, pages 4 through 6; Transcript pages 67 through 76)

a. Legal advice
This service has already been used a number of times.

b. Research.
All NEA research on a national basis is available to HSTA as needed.

c. Organizational and staff management services.

d. National lobby service for funds and activities which may support local demands.

e. Cash funds to pursue legal and constitutional rights of educators.

f. Training and emergency assistance.

- g. Other professional and self-improvement services that may contribute to negotiations and contract administration.

These items and other contingencies estimated at

23,039.00

93,039.00

- D. Local Chapter expenses (See Petitioner's Exhibit #2, page 2; Transcript pages 33 and 34)

Income from HSTA @\$2.00 per member of the bargaining unit to be used only on matters related to collective bargaining. Activities such as identifying matter for collective bargaining and grievance processing, and conducting communication between members and the parent organization, etc.)

Budgeted

\$ 19,440.00

GRAND TOTAL

\$710,479.00