STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION, LOCAL 152, HGEA/AFSCME, AFL-CIO, Petitioner,	)	Case Nos. SF-02-23 SF-03-24 SF-04-25 SF-06-26 SF-08-27 SF-13-28 Decision No. 57

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERS

On October 25, 1974, the petitioner (also referred to herein as the HGEA) filed a consolidated petition for a modification of service fees for the six collective bargaining units for which it is the certified exclusive representative.

In its petition, subsequently modified, the HGEA asked this Board to certify as reasonable a service fee for all six units as follows:

> "The annual service fee proposed is .0075 times the straight time monthly salary of an employee times 12, effective from September 1, 1974, through August 31, 1975."

As modified the request was that the service fee in no case be less than $7 but not more than $15 per month. A further modification was that in addition to the above amount, employees would pay a per capita to AFSCME and the Hawaii State Federation of Labor ($1.70 per month). Even with this latter modification, the $7 floor and $15 ceiling figures would apply. That is, no employee would pay a total service fee, including the per capita, of less than $7 or more than $15 a month.

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A formal hearing after due notice was held before the entire Board on November 21, 1974. In addition to representatives of the petitioner who testified, employees in the affected units were permitted to file written testimony and argument and to testify orally at the hearing. The HGEA submitted a brief on November 27, 1974, and opponents to the requested service fee modification were afforded an opportunity to respond to this brief.

Upon a full review of all exhibits and the testimony presented at said hearing and the arguments made orally and in writing, the Board makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

1. The HGEA was and is at all times relevant the certified exclusive representative of employees in bargaining units 2, 3, 4, 6, 8, and 13.

2. Since February 1, 1973, employees in all of the subject units have paid an annual service fee of $84 to the HGEA. Decision No. 32, March 20, 1973.

3. The HGEA keeps its books for all of its activities on a consolidated basis. In the two previous HGEA service fee hearings, the petitions for all six units were consolidated and the Board worked from consolidated budgets for all units in arriving at the figures necessary to determine the reasonableness of the service fee in said hearings. The only other exclusive representative to represent more than one of the 13 bargaining units established by law is the United Public Workers. It too presents its evidence as to reasonableness of service fees for units 1 and 10 in a

consolidated form. The Board finds that, as a matter of fact, to require an exclusive representative to keep separate books for each unit it represents would generate more work, perhaps require additional employees on the union staff and very likely would drive the service fees for such units up to bear the cost of this additional bookkeeping. This is not to say that consolidated budgets for unions representing more than one unit cannot be further refined.

4. Based on the total budget figures supplied by the HGEA and admitted into evidence, the Board makes the following findings of facts:

a. There are 11,881 persons in the six units represented by the HGEA. This number includes HGEA members and non-members. That is, while all are unit members, not all are HGEA members.

b. Based on the salary schedules in effect for said members as of September 1, 1974, and using its proposed graduated scale as a basis of calculating service fees, the HGEA projects that it will receive a total of $1,278,683 in service fee income for the fiscal year 1974-75. Because the HGEA petitioned only for a service fee for the period ending August 31, 1975, based only on the salaries in effect on September 1, 1974, and submitted a budget only for the 1974-75 fiscal year, no other future proposed service fee will be considered herein and the service fee under contemplation herein will run only through August 31, 1975.

c. The HGEA will receive additional non-service fee revenues in the amount of $490,577 from associate member dues and $150,000 from the category "administrative fee." The latter account relates to the insurance

programs of the HGEA which are open to HGEA members only and are not supported out of service fee monies. The total of said non-service fee revenues is $640,577.

d. The HGEA is affiliated with AFSCME and the State Federation of Labor, AFL-CIO, and pays a per capita to these organizations which comes to a total of $1.70 per month per unit member. These organizations provide assistance of the following nature: collective bargaining data gathered nationally for use by the negotiating teams, educational programs, including community college courses open to all unit members for which AFSCME pays the tuition, lobbying for cost items and other research assistance.

e. The HGEA discount store and insurance programs are open only to HGEA members. No service fee money is used in the operation of these programs.

f. The HGEA projects that during the 1974-75 fiscal year, it will incur operating expenses of $1,918,374. From this amount, the Board disallows the following items included in the budget which it regards as not properly chargeable to service fee monies:

Item	Amount
Pension fund - Kendall	$ 6,633
Statewide recreation for members	15,000
Recreation - Hawaii County	6,000
Recreation - Maui	5,000
Recreation - Oahu	12,000
Recreation - Kauai	5,000
Organizing - Oahu	7,500
Organizing - private industry	7,500
Public Relations - Board of Directors	1,000
Public Relations - Hawaii	1,200
Public Relations - Maui	1,200
Public Relations - Kauai	1,200
TOTAL	$69,233

This disallowance of $69,233 from the aforesaid $1,918,374 results in an adjusted expenditure projections for 1974-75 as follows:

$1,918,374
- 69,233
$1,849,141

g. Thus, the HGEA projects total allowable service fee expenses for the 1974-75 fiscal year of $1,849,141 and projected service fee income of $1,278,683. The excess of costs over revenues is the following:

$1,849,141	expenses
- 1,278,683	service fee revenues
$ 570,458	excess of expenses over revenues (deficit)

h. As in the past, it is anticipated that this deficit will be covered by nonservice fee revenues.

i. The major portion of the increase in costs anticipated by the HGEA is attributable to salary increases for HGEA personnel.

j. The salary ranges, without fringe benefits, for employees in the bargaining units represented by the HGEA are from $5,172 to $33,658 per year, or $431 to $2,805 per month. Since 1970, the HGEA has negotiated percentage salary increases. Fringe benefits such as vacations, holidays, sick leave, and retirement are related to an employee's salary. Both in the areas of contract negotiations and administration (especially related to preserving an employee's paid status in the handling of grievances over suspensions or dismissals) the higher paid employee receives from a union's services a greater dollar gain.

CONCLUSIONS OF LAW

1. The amount proposed to be expended by the HGEA for services to the units it represents ($1,849,141) is for proper purposes under Subsection 89-4(a), Hawaii Revised Statutes (hereafter HRS). Said subsection provides:

> "(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 empolyee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate."

2. It is clear under said subsection that it is this Board's task to certify the reasonableness of the service fee deduction. Because of the records in the two prior hearings of this Board for HGEA service fees and the record in the instant case, which does not depart significantly therefrom as to the items allowed as costs, the Board does not find it difficult to certify as reasonable the total service fee requested to pay for the total service fee related costs to be incurred.

3. It is obvious to all who have participated in this case that the difficult issue to be dealt with is whether all members of a unit must pay an equal dollar amount of the service fee or whether a computation, based on a percentage of

one's salary, is permissible. This is a question of first impression for this Board because in all prior service fee cases, petitioners have asked for equal dollar amount payments from each unit member regardless of salary and the Board has approved the deduction as asked for. The Board has reviewed the briefs submitted by the HGEA, the oral and written testimony of opponents to the percentage method of computation, the legislative history of Section 89-4, HRS, and the language of the relevant statutory provision. Additionally, the Board has reviewed cases in which the term pro rata has been defined. From this review it is clear that pro rata frequently means not equal. In Chaplin v. Griffith, 97 A.409 (pa. 1916), it was held that the term pro rata never means equality or equal division. There also is a general rule that the term has no meaning unless it is referrable to some rule or standard. To adopt this rule as a sole means of interpreting the term in our statute would cast a cloud of doubt upon all earlier decisions of the Board wherein the division was an equal dollar amount. However, to totally deny the interpretation advanced by the HGEA would be to read the term pro rata in a twisted way. It becomes rather clear from a reading of the legislative history of the subject section that the Legislature used the term without precision. For example, in an earlier draft, the Legislature had before it language which was self contradictory by its own terms. S.B. No. 1696-70, S.D. 1, H.D. 2, H.D. 3 provided:

> "service fees . . . be computed on a pro rata basis by dividing total costs by the total number of employees within the appropriate bargaining units . . ."

However, in Conference Draft of said bill, the draft which became law, the words "by dividing total costs by the total number of employees in the bargaining units. . ." were left out after the words "computed on a pro rata basis." Not without reason, the HGEA has cited this modification as demonstrating a legislative intent that the notion of equality be rejected. The argument would be fully persuasive if H.D. 3 did not use the words pro rata side by side with the language denoting equality of dollar amount as though they meant the same thing.

Based on the review of the above authorities and guides such as they are, this Board believes the term pro rata as used in the law is ambiguous and provides little guidance as to what is intended. The Board thus finds it appropriate to read the statute as requiring that the service fee deduction and computation be reasonable and equitable as applied to all unit members.

The Board finds nothing in the law which precludes it, once it has determined that the cost figures presented to it in service fee hearings are reasonable, from determining that a computation based on an equal percentage of salary is also reasonable.

The Board is of the opinion that if this interpretation of the statute is incorrect, it would be in order for the Legislature to review the section under consideration and clarify its intent as to the manner of computation.

Opponents to the percentage scale have asked that it be demonstrated that the cost of serving them as individuals at their salary ranges is greater than servicing a lower paid person subject to the same scale. Obviously, this cannot be done. Rather the HGEA has rested its case on

a benefit theory. The Board does not find this to be an unreasonable method of computing the service fee. Under computation systems using either the costs or the benefits theory, there are bound to be inequalities. Conceivably the lowest paid member of a unit represented by the HGEA could find himself involved in a grievance that consumed hundreds of hours of HGEA staff time. Yet he would pay no more for this service under the opponents' theory than any other unit member. Servicing unit members involves costs which cannot be precisely allocated to each individual member. Such services do provide benefits, and the record demonstrates that the higher paid members derive greater benefits, especially when percentage salary increases are negotiated, Moreover, it must be borne in mind that this Board has found that the total service fee is based on the cost theory. It is only the computation of what each person pays as his fair share of these costs that is based on a benefits theory.

This has not been an easy case, but there is substatial weight in favor of the HGEA's position that pro rata does not mean an equal dollar amount. However, for the reasons stated above, especially the ambiguous way in which the Legislature used the term, this Board will not adopt so rigid a reading of Section 894, HRS. It will, however, adopt the position that the term pro rata does not always mean an equal dollar amount and some other reasonable method of computing the service fee is permissible under the language of Subsection 89-4, HRS, as presently written.

4. The Board hereby finds and so certifies that for the period from September 1, 1974, through August 31, 1975, an annual service fee in the amount of .0075 times the

straight time monthly salary of an employee times 12 plus the per capitas due to AFSCME and the State Federation of Labor is reasonable. In no event, however, shall said service fee be less than $7 per month or greater than $15 per month.

ORDERS

1. The annual service fee described under Conclusion of Law 4, immediately above, shall be deducted from the payroll of employees in bargaining units 2, 3, 4, 6, 8, and 13 and transmitted to the HGEA. Such deductions shall be made each payroll period in an amount which, to the extent possible, is equal to the service fee divided by the number of payroll periods per year.

2. The modified service fee shall be retroactive to September 1, 1974, for all employees on the payroll at that time. For employees hired after such date but before the date of this decision, it shall be retroactive to the date of hire. For employees hired on or after the date of this decision, the service fee shall be effective as of the date of hire. The deductions shall commence at the earliest possible date.

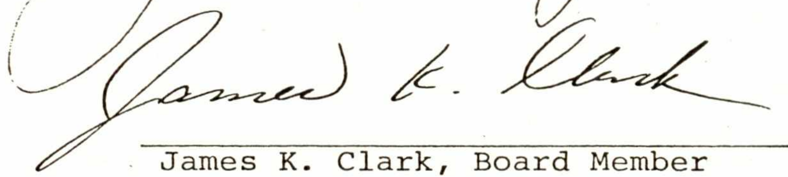
3. The service fee certified herein as reasonable shall continue to be deducted until August 31, 1975.

4. The Board may, upon its own motion or the petition of the HGEA or any affected employee, review the reasonableness of said service fee whenever it deems such a review would be appropriate.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

John E. Milligan, Board Member



James K. Clark, Board Member

Dated: December 27, 1974

Honolulu, Hawaii