

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
UNIVERSITY OF HAWAII)	Case No. <u>SF-07-29</u>
PROFESSIONAL ASSEMBLY,)	
(AAUP-NEA),)	Decision No. <u>59</u>
)	
Petitioner.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERS

On December 4, 1974, Petitioner UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (hereafter UHPA) requested the Hawaii Public Employment Relations Board (hereafter Board) to certify the reasonableness of its proposed service fee of \$102 per year retroactive to November 1, 1974, the date of its certification as the exclusive representative of unit 7, faculty of the University of Hawaii and the Community College System.

A formal hearing after due notice was held before the entire Board on December 19, 1974. Messrs. John Thompson, James Butler and Charles McClain, Jr., testified on behalf of UHPA. No person appeared at the hearing in opposition to UHPA's petition. However, a unit 7 faculty member who was present at the hearing did express from the floor his concern regarding the double per capita and his satisfaction with the Board's inquiry respecting the double per capita.

UHPA's attorney, Mr. Benjamin Sigal, submitted a brief in support of UHPA's petition on January 10, 1975.

The Board, having reviewed all exhibits, the official transcript and UHPA's brief, hereby makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

1. Petitioner UHPA is the exclusive representative for all employees in bargaining unit 7 as defined in Subsection 89-6(a)(7), Hawaii Revised Statutes (hereafter HRS), and was certified as such by this Board on November 1, 1974. Case R-07-14(b), Decision 53.

2. The service fee for unit 7 employees was \$102 per year (\$8.50 a month). Said service fee had been payable to the Hawaii Federation of College Teachers, Local 2003, AFT (AFL-CIO), the then exclusive representative, but was terminated on November 1, 1974, in accordance with Section 89-4, HRS, when UHPA was certified as the new exclusive representative of unit 7. Order 4, relating to Cases SF-07-9 and SF-07-19, Decisions 31 and 52.

3. At the present time there are approximately 2,515 employees in bargaining unit 7 (Tr. 5).

4. The UHPA membership is approaching half the number of employees in its bargaining unit (Tr. 17). Membership dues are \$8.50 per month or \$102 annually (Tr. 64).

5. UHPA is affiliated with two national organizations, the American Association of University Professors (hereafter AAUP) and the National Education Association (hereafter NEA). The dual national affiliation resulted when UHPA (a coalition between two local organizations -- the AAUP chapter and the NEA affiliate) was formed and its members decided that they could use the assistance of both organizations (Tr. 57), who agreed to furnish to UHPA all services that any of their affiliates had received (Tr. 11).

6. Along with its petition, UHPA submitted a budget adopted by its Board of Directors, which covers the

fiscal period commencing November 1, 1974, and ending October 31, 1975. UHPA's total budgeted expenditures for said fiscal period are estimated at \$317,500.

Since UHPA was only certified as the exclusive representative a month prior to filing the subject petition, it did not submit any data on actual costs incurred. The estimated expenditures in the budget are the only figures which UHPA submitted to support its proposed service fee.

7. Based on an annual service fee of \$102 per employee as proposed and a bargaining unit count of 2,500, UHPA anticipates a service fee income of \$255,000 during the aforesaid fiscal period.

8. The UHPA Board of Directors approved, in effect, an unbalanced budget, insofar as estimated expenditures exceed anticipated income. The budget as presented shows a substantial deficit of \$62,500 during UHPA's first operational year as exclusive representative of unit 7.

9. Mr. John Thompson, Vice President of UHPA, was involved in preparing the UHPA budget. He stated that UHPA expects to meet the \$62,500 deficit first by grants from its national organizations and if such grants prove insufficient, then UHPA would seek loans from either its nationals or perhaps other places (Tr. 12).

The topic of direct grants from the AAUP and the NEA to assist UHPA in starting up costs in the first year of bargaining was under discussion at the time the hearing was held (Tr. 18, 23, 60). There were still no commitments made by the NEA and the AAUP when UHPA submitted its brief, since the UHPA's attorney indicated therein that discussions respecting direct grants were still in progress.

10. For purposes of discussion and review of the record in the instant case, UHPA's budget is divided into two broad categories -- the UHPA's own operating expenses and per capita dues payments.

UHPA has allocated \$192,500 of its total budget for its own operating expenses. The remaining \$125,000 or 39% of its budget is earmarked for per capita dues payments, i.e., \$62,500 each to the NEA and the AAUP.

11. With respect to UHPA's own estimated operating expenses, the record shows that three staff positions had not yet been filled. The UHPA is in the process of recruiting for these positions with annual salaries budgeted as follows: \$17,000 for field representative, \$16,000 for another field representative and \$13,000 for office manager (Tr. 75, 76). These positions constitute the only items among the UHPA's operating expenses where it was apparent that variances would result between budgeted and actual costs, the amount of which would depend on the duration these positions remained vacant.

The evidence was uncontroverted with respect to UHPA's remaining operating expenses, inasmuch as UHPA has had only a month and a half of experience as the exclusive representative and the budget is for estimated costs to be incurred during the fiscal period ending October 31, 1975.

12. The bulk of the record dealt with the per capita portion of UHPA's budget. Under the budget as submitted, each national would receive \$25 per year from each unit 7 employee. In the case of the NEA, said amount is equal to the full fee which the NEA charges its affiliates (Tr. 24). In the case of the AAUP, said amount was derived from an estimate of the average dues paid to the AAUP. The AAUP national dues vary according to salary -- the highest being \$36 per year and

the lowest \$12 per year. The average is \$25 per year, which is, although it is averaged, a full fee (Tr. 39).

From the perspective of an individual unit 7 employee, this means that \$50 out of a proposed annual service fee of \$102 or 49% of said fee would be allocable to per capitas.

13. Mr. James Butler, West Coast Regional Director and Associate Director of Affiliate Relations for the NFA, and Mr. Charles McClain, Jr., Associate Secretary and Assistant Counsel for the AAUP, testified on the full range of services each respective organization had to offer to UHPA as an affiliate. Both organizations would make the following services available:

- (a) assistance in negotiations, e.g., analyzing and criticizing contract proposals and contract language, providing resource data and the use of its professional staff for consultation (Tr. 21, 27-29, 33, 34);
- (b) assistance in contract enforcement, e.g., processing grievances, screening grievances for arbitration and data on arbitration awards (Tr. 21, 22, 34, 56);
- (c) legal assistance, e.g., litigation on faculty rights and the protection of individual members (Tr. 22, 34, 37);
- (d) lobbying and legislative activities on behalf of higher education (Tr. 19, 20, 25, 56, 60);
- (e) publications (Tr. 23, 35),
- (f) training activities on negotiations, contract administration, academic governance, communications and public relations (Tr. 22, 35, 42, 49-51, 56); and
- (g) direct grants (Tr. 23, 60).

14. In view of the apparent overlap in the range of services each national organization had to offer, the Board was concerned about the possible duplication of services. Although there was testimony to the effect that the services which UHPA will receive from each national are not expected to be similar (Tr. 13), that each national has greater strength and

experience than the other in different specific areas (Tr. 40), and that the services of both organization will complement each other (Tr. 14, 65), the record discloses that the intent to coordinate the services of both nationals to avoid duplication of services has not materialized (Tr. 40, 56, 62). Some progress in trying to coordinate activities has been made, but the specific details on a plan of services has yet to be worked out at a meeting among the national representatives of the NEA and the AAUP and the representatives of UHPA some time in the near future (Tr. 62).

15. In answer to questioning concerning the value of services to be rendered by each national, Mr. Thompson replied that, in his opinion, each would provide an estimated value of services worth \$25 per person per year (Tr. 66). Mr. McClain also stated that the AAUP estimates that the value of its services will exceed \$62,500, the amount of money it would receive in per capita dues (Tr. 52).

The record, however, is devoid of any evidence which substantiates the above estimates, i.e., the value of services would equal or exceed per capita dues. The only service that was assigned an estimated dollar value was the availability of a professional university budget analyst. Mr. McClain's rough estimate was that professional fees and travel for a budget analyst might amount to two or three thousand dollars.

Despite further questioning regarding the estimated value of specific services, neither UHPA, the NEA or the AAUP attempted to assign estimated dollar values to any of the other services which the nationals would make available to UHPA or had already provided UHPA.

14. Thus far, the specific services rendered by each national organization are as follows:

- (a) NEA -- provided approximately a dozen system contracts and services regarding contract provisions, dealing particularly with community colleges (Tr. 70), sent a contract specialist consultant to Hawaii for four days (Tr. 75) and talked to UHPA about how to organize chapters (Tr. 75);
- (b) AAUP -- provided ten to fifteen contracts (Tr. 68) and resource data on faculty salaries (Tr. 48, 58), sent consultative staff to Hawaii to assist in negotiations, one was here three or four days and another was here two days (Tr. 68), and engaged in telephone consultation and correspondence with UHPA regarding contract proposals and contract language (Tr. 34).

Although the full range of services of each national organization (listed under Findings of Fact 13) are available to UHPA as an affiliate, the above were the only services which UHPA has utilized or received to date.

CONCLUSIONS OF LAW

1. UHPA's operating expenses. Based on the evidence presented during the hearing, the Board finds that the expenditures to be made out of service fees by UHPA for its own operating expenses are proper under the provisions of Subsection 89-4(a), HRS. UHPA estimates that approximately \$192,500 will be necessary for operating costs during its first fiscal year period ending October 31, 1975.

The Board is cognizant of the three vacant staff positions -- two field representatives and an office manager -- the estimated annual salaries for which were used to justify the proposed service fee. However, since the amount of the variances cannot be determined until the positions are filled and actual salaries are set, any necessary adjustments will be made at a subsequent service fee review based on actual expenses incurred.

2. Per capitas. The UHPA service fee request is a case of first impression for the Board to the extent that UHPA is asking this Board to approve as reasonable per capita to two national organizations -- the NEA and the AAUP. Each national intends to charge UHPA its full affiliation fee, \$25 per unit employee per year, without regard to UHPA's uncommon status of being affiliated with two national organizations. Thus, out of a proposed annual service fee of \$102, 49% of said amount or \$50 would be sent to the nationals.

This Board is particularly concerned about the per capita portion of the UHPA's budget. In its effort to determine whether double per capita should be allowable in the computation of a reasonable service fee, the Board raised the following issues:

- (a) whether there would be any unnecessary duplication of services and
- (b) whether the value of services to be rendered by each national equals or exceeds the amount of per capita payment (\$62,500) it would receive.

Duplication of services. The Board is of the opinion that it would be unreasonable to require employees to pay double per capita if both nationals will be providing the same services. It was, therefore, concerned about the obvious overlap in the range of services offered by each national and the possible duplication of services. UHPA, the NEA and the AAUP were similarly concerned and recognized the need to coordinate the services to be rendered by each national.

Although it is intended that the services of each national will be complementary and that UHPA would utilize the strengths of each organization, the Board is not convinced by the record that unnecessary duplication of services will, in fact, be eliminated. Some efforts have been initiated to coordinate the services of the nationals, but the specific

details on a plan of services has yet to be worked out among the representatives of UHPA, the NEA and the AAUP. Until such time as said plan of services is finalized and available to protect the employees in the unit and to provide the Board adequate assurance that there will not be unnecessary duplication of services, the Board will not consider the double per capita as reasonable nor allowable costs subject to a service fee deduction under Subsection 89-4(a), IRS.

Value of services. The Board is not persuaded by the evidence presented that the services to be rendered by each national would equal or exceed the amount of per capita costs.

Aside from opinions that each employee would receive \$25 worth of services per year from each national and estimates that the value of services to be rendered by the nationals would exceed \$125,000, neither UHPA, the NEA or the AAUP revealed the bases on which such opinions and estimates were formulated. The Board made several attempts during the course of the hearing to elicit from the witnesses estimated dollar values of specific services to be rendered or already rendered by each national. The witnesses were not responsive, except as to the availability of a professional university budget analyst whose professional fees and travel costs were roughly estimated at two or three thousand dollars.

The Board understands why it was difficult for UHPA to assign dollar values to specific services. It had no past cost experience on which to base its estimates. However, the nationals, in view of their vast experiences with other jurisdictions, could have easily estimated the value of their specific services already rendered to UHPA. With respect to the value of services to be rendered, it became evident as

the hearing proceeded that neither UHPA or the nationals could assign dollar values, as the Board requested, because agreement as to the specific services which each national would render was still under discussion.

The UHPA's attorney, being aware that the per capita costs had not been substantiated in the record, tried to convince this Board in his brief that the pertinent criterion is the cost, not the value, of services that is relevant. In order to support his argument, Mr. Sigal misrepresents the Board's findings in prior service fee cases, particularly the firemen's service fee decision.

Contrary to Mr. Sigal's contention, the Board has not "repeatedly indicated that it is the cost of service, not their value, that is relevant." For this reason, Mr. Sigal had no other choice but to rely on the firemen's service fee case, wherein cost was the relevant criterion. Case SF-11-17, Decision 35. The firemen's case, however, which Mr. Sigal failed to note, is distinguishable from all other service fee cases, including the instant case.

In said case, the petitioner used the value of services to justify an amount greater than actual per capita cost and requested the Board to include said amount in the service fee computation. The Board held that the value of services could be used to justify only the actual per capita cost, not an amount in excess thereof even if the value of services did exceed cost. It was in this context that cost, rather than value of services, was considered the relevant criterion.

In view of the above, the Board finds no merit in Mr. Sigal's contention that the only pertinent question, in this case, is what will be paid. Per capita cost out of service fees must be justified by a showing that the unit members will receive in exchange services related to contract negotia-

tion and administration which equal, at least, the amount of per capita cost paid. UHPA and the representatives of the NEA and the AAUP have failed to make such a showing. Until such a showing is made, the Board will not consider the per capita costs allowable expenses in the computation of a reasonable service fee.

3. Computation of service fee. On the basis of the record, the Board has found that the amount of \$192,500 for the UHPA's operating expenses is reasonable and proper under the provisions of Section 89-4, IRS. For the reasons set forth above, the Board will disallow the per capita costs of \$125,000 from the computation of a reasonable service fee.

Based on an approximate bargaining unit count of 2,500 employees and the amount of \$192,500 deemed reasonable by this Board, the Board finds that UHPA is entitled to an annual service fee of \$77 from all employees in bargaining unit 7.

4. Effective date. In all prior cases involving the initial certification of a service fee, the Board has allowed the service fee deduction to be retroactive to the date of certification of the exclusive representative. Similarly, the UHPA's annual service fee of \$77 per employee shall be retroactive to November 1, 1974, the date of its initial certification as the exclusive representative of unit 7.

ORDERS

1. An annual service fee of \$77 shall be deducted by the employer from the payroll of employees in bargaining unit 7 and transmitted to UHPA. 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 in a year.

2. The service fee shall be retroactive to November 1, 1974, for all said employees on the payroll at that time. For all persons hired after such time, it shall be retroactive to the date of hire or effective as of the date of hire, as the case may be. The deductions shall commence at the earliest date possible.

3. The service fee certified herein as reasonable shall continue to be deducted until such time as this Board directs otherwise.

4. The Board may, upon its own motion or the petition of UHPA or any affected employee, review the reasonableness of said service fee whenever it deems such a review would be appropriate. Any such review shall be based upon a history of actual costs incurred by UHPA up to the date of the review.

UHPA shall be required to supply records of such costs and distinguish between costs incurred for services which benefit all unit 7 employees and, if any, costs incurred for services which benefit the UHPA membership only. In the event that costs are incurred for services which are not clearly distinguishable as being for the benefit of all unit 7 employees or the UHPA membership only, UHPA shall develop an appropriate and reasonable basis for the allocation of such costs.

5. UHPA is prohibited from using any service fee monies approved herein to pay per capita dues to the NEA and the AAUP. To assure compliance with this order of the Board, UHPA is directed to maintain a separate fund for its own operating

expenses and a separate fund for per capita dues. No portion of an UHPA member's dues unless in excess of the service fee amount which constitutes his fair share of the UHPA's operating costs, shall be deposited into the fund maintained for per capitas.

If any per capita dues are transmitted to the NEA or the AAUP, UEPA shall keep a record of all such per capitas transmitted. The record shall contain the date of transmittal, to whom paid, the amount sent, and the fund from which per capitas were paid. In no event shall the amount of per capitas transmitted exceed the amount deposited into the fund maintained for per capitas.

UHPA shall not incur any loans for per capita dues payments on behalf of unit 7 employees who are not members of UHPA.

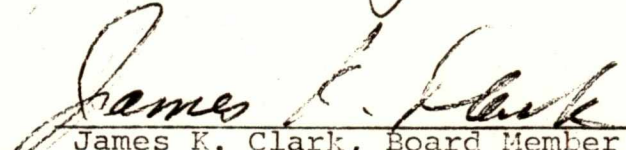
6. The above Order 5 shall be continued until such time that UHPA can justify that its per capitas are reasonable and allowable costs subject to a service fee deduction.

7. UHPA may, upon the filing of a subsequent petition, initiate a review of its per capita costs at any time. Said costs, however, must be substantiated by a showing that unnecessary duplication of efforts will be eliminated and that all bargaining unit employees will receive in exchange services which at least equal the amount of per capita costs. In the absence of such showing, the UHPA's petition for review of its per capita costs will be summarily dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member


James K. Clark, Board Member

DATED: February 11, 1975

Monolulu, Hawaii