

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
UNITED PUBLIC WORKERS,)	Case No. <u>SF-01-39</u>
Local 646, AFSCME, AFL-CIO,)	<u>SF-10-40</u>
)	
Petitioner.)	Decision No. <u>68</u>
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On November 13, 1975, the United Public Workers (hereafter UPW or Petitioner) requested the Hawaii Public Employment Relations Board (hereafter Board) to certify as reasonable its proposed service fee increase for employees in unit 1 (non-supervisory blue collar employees) and unit 10 (non-professional hospital and institutional workers).

The request is for an increase commencing January 1, 1976, which is 1.5% of an employee's monthly base salary, subject to a minimum of \$8.65 and a maximum of \$15.00 per month. The current service fee for employees in said units is \$7.65 per month. Petitioner's proposed increase does not apply to employees working twenty hours per week (also referred to herein as half-time employees). Half-time employees would continue to pay the \$7.65 monthly service fee if the Board determines that a service fee of \$7.65 per month is reasonable for such employees.

A prehearing conference was held on December 5, 1975. Hearings were held before the entire Board, after publication of legal notice, on December 18, 1975, and April 13, 1976. Henry B. Epstein, UPW State Director, presented the

UPW's case for the proposed increase. No person appeared at the hearings in opposition to the UPW petition.

Upon a full review of all exhibits and testimony presented at said hearings, this Board makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

Petitioner UPW is the exclusive representative of unit 1 (non-supervisory blue collar employees) and unit 10 (non-professional hospital and institutional workers) as defined under HRS §89-6(a) and was certified as such by this Board, respectively, on October 20, 1971 (HPERB Case R-01-4, Decision 3), and February 11, 1972 (Case R-10-6, Decision 9).

There are 7,229 employees in unit 1 and 1,369 employees in unit 10. (Petitioner's Exhibit #6) Of these, 818 employees in unit 1 and 5 employees in unit 10 work only twenty hours per week. (Petitioner's Exhibit #11)

The UPW has 5,178 members in unit 1 and 1,021 members in unit 10. A membership dues increase from \$7.65 to 1.5% of an employee's monthly base salary, subject to an \$8.65 minimum and a \$15.00 maximum per month, was adopted by the UPW convention in October, 1975. The convention intended that the dues be flexible, i.e., adjusted upwards automatically whenever an employee receives a pay increase. The dues increase does not apply to employees working twenty hours or less per week. A special rate, which is, in effect, no increase in membership dues, was approved for such employees working half time.

The current service fee for units 1 and 10 is \$7.65 per month. Said service fee was approved by this Board on March 31, 1975, to cover a thirty-five cents increase in the AFSCME per capita. (HPERB Cases SF-01-30 and SF-10-31, Decision 61) Similarly, a prior service fee increase for units 1 and 10 was approved by this Board on August 28, 1974, to cover a thirty cents increase in the AFSCME per capita. (HPERB Cases SF-01-20 and SF-10-21, Decision 51) This is the UPW's first request for a service fee increase to cover its increased operating costs, since July 28, 1973, when the Board approved a service fee of \$7.00 per month. (HPERB Cases SF-01-15 and SF-10-16, Decision 34)

The UPW submitted a monthly operating budget for 1976 and allocated costs chargeable to units 1 and 10 on the basis of its estimation of time and effort spent on these units or its prior experience of actual costs incurred for these units. (Petitioner's Exhibit #12) It applied its estimation of time and effort spent -- unit 1, 61.82% and unit 10, 11.86% -- to the following expenses: staff salaries, education and newspaper, office overhead, janitorial services, meetings, state officers, payroll taxes and expenses, bonding, subscriptions and research, donations, and lobbying. It used estimated amounts to be incurred for units 1 and 10 based on prior experience for the following expenses: organizing prizes, UPW-PAC, building program, division activities, emergency fund, auditing and legal, and arbitration. All public sector negotiations costs were charged to units 1 and 10. None of the costs for private sector negotiations, political contributions to candidates, sports, and group insurance were charged to units 1 and 10.

Based on the above allocations, \$73,653 or 71% of the UPW's total monthly budget of \$103,528 was used to justify a service fee increase for units 1 and 10.

A service fee increase as proposed by the UPW for all employees working more than twenty hours per week (1.5% of an employee's monthly base salary, subject to a minimum of \$8.65 and a maximum of \$15.00 per month) would provide the UPW with an estimated income of \$71,870 from employees in units 1 and 10, based on their current salaries.

The UPW's service fee increase as proposed is for a flexible amount consistent with the membership dues adopted by its convention, which would be adjusted upwards automatically whenever an employee receives a pay increase.

CONCLUSIONS OF LAW

Based on the evidence submitted during the hearing on this matter, we find that the expenditures being made or intended to be made by the UPW from service fees are proper under the provisions of HRS §89-4(a). The allocation of costs with respect to those expenses which benefit both UPW members and non-members in units 1 and 10 is reasonable. Service fee monies are not being used for expenses which do not benefit employees in units 1 and 10, i.e., private sector negotiations, expenses which benefit members only, i.e., sports and group insurance, and contributions to political candidates.

We find that the UPW's request for a lesser amount of service fee for employees working twenty hours per week is reasonable in view of their relatively limited ability

to pay and less than full utilization of union services in comparison to full-time employees. Additionally, there is a provision in the AFSCME Constitution which allows the UPW to pay fifty cents less in per capita for part-timers if the savings is passed on to part-timers.

The \$73,853 estimated monthly expenditures during 1976 for units 1 and 10 exceed the \$71,870 anticipated monthly income for 1976 that the UPW would receive from its proposed service fee increase. Thus, a service fee of 1.5% of an employee's monthly base salary, subject to a minimum of \$8.65 and a maximum of \$15.00 per month, for employees working more than twenty hours per week and a service fee of \$7.65 per month for employees working twenty hours per week in units 1 and 10 are justified.

We, however, are of the opinion that we cannot approve the UPW's request for flexibility in the service fee amount so that it is automatically adjusted upwards whenever an employee receives a pay increase. We recognize that such flexibility may be desirable for membership dues since approval from the UPW convention, which meets biennially only, is necessary before dues can be increased. However, with respect to a service fee increase, the UPW is free to submit a request for increase at any time and the Board will approve such an increase if it is properly substantiated.

Moreover, we would be failing our responsibility if we were to allow automatic increases in service fees. Under HRS §89-4(a), the Board is required to certify an amount of reasonable service fees necessary to defray the costs incurred by an exclusive representative for services rendered

in negotiating and administering an agreement. We cannot determine whether a service fee is reasonable in the absence of evidence with respect to costs incurred or demonstrably to be incurred by the exclusive representative. Although there is merit to the UPW's contention that a service fee increase would be justified since the salaries of its own employees are comparably increased whenever unit employees receive pay increases and other expenses also increase as a result of inflation, we cannot approve a service fee increase unless there is evidence that actual costs incurred or to be incurred for unit employees will exceed, or at least equal, the amount of income that would accrue to the exclusive representative if the increase in service fee for unit employees is granted.

For these reasons, our approval of the UPW's request for a service fee increase does not extend to granting its request for flexibility. The service fee approved by the majority is one that will provide the UPW with an amount of anticipated income from employees in units 1 and 10 which will not exceed the estimated amount of expenditures to be incurred for such employees. Inasmuch as the amount of anticipated income that was justified in this proceeding was based on current salaries during November or December, 1975, and the effective date of the requested increase is January 1, 1976, we shall use the monthly base salary of an employee on January 1, 1976, as the basis for computing the service fee.

We find and hereby certify that a service fee of 1.5% of an employee's monthly base salary on January 1, 1976, subject to a minimum of \$8.65 and a maximum of \$15.00

per month, for employees working more than twenty hours per week and a service fee of \$7.65 per month for employees working twenty hours per week are reasonable for employees in units 1 and 10.

ORDERS


A monthly service fee of 1.5% of an employee's monthly base salary on January 1, 1976, subject to a minimum of \$8.65 and a maximum of \$15.00 per month, for employees working more than twenty hours per week and a monthly service fee of \$7.65 for employees working twenty hours per week shall be deducted by the employer from the payroll of employees in bargaining units 1 and 10 and transmitted to the UPW. Such deductions shall be made each payroll period in an amount which, to the extent possible, is equal to the monthly service fee divided by two payroll periods.


The increased service fee shall be retroactive to January 1, 1976, for all of 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.

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

The Board may, upon its own motion or the petition of the UPW 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


John E. Milligan, Board Member


James K. Clark, Board Member

Dated: June 4, 1976

Honolulu, Hawaii

DISSENTING OPINION

The majority has approved as reasonable the UPW's request for a percentage service fee for employees working more than twenty hours per week and a flat service fee of a lesser amount for employees working twenty hours per week. I respectfully dissent from these opinions of my fellow Board Members.

I am of the opinion that the facts in this proceeding do not warrant or justify a percentage service fee for employees working more than half-time nor a flat service fee of a lesser amount for half-time employees.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman

Dated: June 4, 1976

Honolulu, Hawaii