STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION, LOCAL 152, AFSCME, AFL-CIO,	)	Case Nos. SF-02-44 SF-03-45 SF-04-46 SF-06-47 SF-08-48 SF-13-49
Petitioner,	)	
and	)	
	)	Decision No. 78
THEODORE B. JORDAN,	)	
Intervenor.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On September 13, 1976, petitioner Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO (hereafter referred to as HGEA), filed with the Board a consolidated petition for a modification of the service fee assessment for all employees in the six bargaining units for which it is the certified exclusive representative.

In Decision 72 (December 10, 1976), this Board certified the following service fee for the six units as reasonable:

> "An annual service fee in the amount of .0075 X the straight time monthly salary of an employee in bargaining units 2, 3, 4, 6, 8 or 13, in effect on September 1, 1975 X 12 plus the per capita dues to AFSCME ($2.15 per month) and the Hawaii State Federation of Labor (20 cents per month)...In no event shall the service fee be less than $7 per month or more than $15 per month for any employee." (Pages 21-22, Decision No. 72).

The HGEA's petition requests that the following new service fee be certified as reasonable for the six units:

> "Effective on September 1, 1976, and September 1 of each year

> thereafter, HGEA proposes an annual service fee in the amount of .0075 times the straight time monthly salaries of employees in effect on September 1, 1976 times 12, plus per capita payments to the American Federation of State, County and Municipal Employees (AFSCME) and the Hawaii State Federation of Labor, AFL-CIO, provided that said service fee shall not be less than $7 per month nor greater than $15 per month..." (HGEA petition)

After legal notice of the service fee petition was published in newspapers of general circulation (Board Exs. 3, 4), the Board held hearings on February 1 and 8, 1977. At the February 1, 1977 hearing, Mr. Theodore B. Jordan submitted to the Board a petition for intervention in Case No. SF-08-48; said intervention was granted orally (Tr. 2/1/77, p. 7).

On February 18, 1977, intervenor Jordan filed a Motion to Reopen Hearing for Introduction of Evidence. The reason for reopening was to relitigate the issues previously litigated in HPERB Decision No. 72, because intervenor's appeal from that decision had been dismissed. A hearing on the motion was held on March 7, 1977, at which time the HGEA requested that the cases be reopened solely to permit the admission of evidence on the 10¢ per month increase of per capita payments to the Hawaii State Federation of Labor. This evidence had inadvertently been omitted during the February hearings (Tr. 3/7/77, pp. 12, 15). Thereafter, in Order No. 107 (March 8, 1977), the Board granted the HGEA's request; it also denied intervenor Jordan's motion, but stated that reopening would be considered if the intervenor submitted a written list of the specific evidence sought to be introduced, by March 18, 1977. On April 11, 1977, the Board heard arguments on the Motion for Reopening, as augmented by intervenor's March 18, 1977 list. By Order No. 119 (April 15, 1977), the Board

granted intervenor's motion for reopening, to permit introduction of additional testimonial evidence and the collective bargaining agreement for Unit 8. The hearing, upon reopening, was held on April 27, 1977; and each party submitted post-hearing briefs on June 6 and 21, 1977.

Upon a full review of the record herein, this Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

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

Theodore B. Jordan is a "public employee," as defined in Section 89-2(7), Hawaii Revised Statutes (hereafter HRS), and is included in Unit 8 (personnel of the University of Hawaii and the community college system other than faculty). Mr. Jordan's intervention in the subject cases is limited to Case No. SF-08-48.

The Board of Regents of the University of Hawaii constitutes a "public employer" within the meaning of Section 89-2(9), HRS. It is the employer of Unit 8.

All members of the six bargaining units covered by the HGEA's consolidated petition are required to pay service fees to the HGEA pursuant to Section 89-4(a), HRS. Decision No. 7, rendered January 17, 1972, by Special Hearings Officer; aff'd., by Board Order dated January 24, 1972; aff'd., in memorandum opinion form, Naud v. Amioka, Civil No. 35588 (1972).

The total number of employees in the respective units, listed in Exhibit B attached to the HGEA's petition, is 14,256. Based on the salary schedule for these employees in effect on September 1, 1976, the HGEA estimated that its requested service fee would produce revenues of $1,818,336 for fiscal year 1976-1977. The breakdown by units to reflect this anticipated service fee income is as follows:

Unit	No. of Employees	Service Fee Revenues
2	766	$ 96,339
3	8,089	902,359
4	409	58,968
6	588	104,868
8	782	110,051
13	3,622	545,751
Total:	14,256	$1,818,336

HGEA Exhibit 2a, as amended by testimony on current per capita increases, contains the following projected overall increases for fiscal year 1976-1977, over actual expenditures for fiscal year 1975-1976:

Budget Summary

		Actual Expenditures 1975-1976	Proposed Budget 1976-1977
I.	Wages, Salaries, Fringes	$1,004,398	$1,133,366
II.	Payroll Taxes	54,334	61,080
III.	Land (Mortgages and Rents)	84,912	89,150
IV.	Administrative Expenses	818,671	778,832
V.	Office of the Director	19,357	21,600

		Actual Expenditures 1975-1976	Proposed Budget 1976-1977
VI.	Education and Training	$ 8,096	$ 17,221
VII.	"The Public Employee"	49,172	66,500
VIII.	Fiscal Services	3,686	3,188
IX.	Office Services	21,313	25,452
X.	Program Development	57,336	196,024
XI.	Neighbor Island Services	67,474	73,527
XII.	Board of Directors	28,661	19,580
XIII.	Committees	5,368	14,450
XIV.	Elections	6,314	1,050
XV.	Legislative Services	17,674	50,000
	Totals:	$2,246,766	$2,551,020

The need for a service fee increase is due primarily to salary increases for HGEA employees, and increases in the per capita payments to the American Federation of State, County and Municipal Employees (hereafter AFSCME) and the Hawaii State Federation of Labor, AFL-CIO (hereafter HSFL).

Projected expenditures for HGEA staff salaries and payroll taxes are $135,714 higher than expenditures in those categories in 1975-1976 (HGEA Ex. 2a, Accounts I and II, and Ex. 3, pp. 1-2). The reason for this increase is that HGEA employees receive salary adjustments equal to the increases negotiated for public employees in comparable positions.

The HGEA's affiliation with AFSCME and HSFL requires it to pay $2.90 per month to AFSCME and 30 cents per month to

HSFL for each of the employees in its bargaining units. The budgeted per capita payments to the affiliates for 1976-1977, which are included in the administrative expenses account, reflect an increase of $91,134 over those expenditures for 1975-1976 (HGEA Ex. 3, p. 4, item A). Mr. Russell Okata, Deputy Executive Director of the HGEA, testified that the AFSCME per capita payments were increased from $2.15 to $2.40 per unit member per month, effective January 1, 1976, for an increase of $23,139 for fiscal year 1976-1977. Effective January 1, 1977, the AFSCME per capita payments were then raised from $2.40 to $2.90 per unit member per month, resulting in an additional increase of $45,000 for the last six months of fiscal year 1976-1977. Increases in HSFL per capita payments, from 20 cents to 25 cents, then to 30 cents per unit member per month, amounted to an overall increase of $14,000 for fiscal year 1976-1977. The per capita increases are due to increased costs for staff expenses, supplies, and other administrative expenses.

Among the direct services provided by AFSCME to the HGEA are the following: the services of a comprehensive research department staffed by professional economists and researchers, access to extensive contract information through AFSCME's data processing system, and the provision of AFSCME staff personnel to assist in education and training. The HGEA has, in the past, attempted to employ an economist as a staff member, but has found the cost prohibitive. AFSCME also lobbies for, and provides assistance and information on federal legislation affecting public sector employees in Hawaii and across the nation.

Through its collective membership of approximately 45,000 people, HSFL provides the HGEA with additional strength and support for legislative ratification of collectively-bargained cost items. HSFL further assists the HGEA in its collective bargaining efforts by facilitating the sharing of information between local AFL-CIO affiliates. The services which the HGEA receives from HSFL are different from those provided by AFSCME.

Affiliation with AFSCME and HSFL also gives the HGEA automatic membership in the AFL-CIO, and protects it from raids by other AFL-CIO affiliates.

Some of the other increases in the HGEA's projected expenditures for 1976-1977 are the result of higher costs for facilities, services or supplies. These include increases in such areas as land (HGEA Ex. 3, p. 3), Service Bureau (HGEA Ex. 3, p. 4) and office services (HGEA Ex. 3, p. 9). Much of the increase in the program development account is due to the transfer of travel, per diem, legal counsel, statewide sports and recreation sub-accounts from the administrative expenses account to this category (HGEA Ex. 3, pp. 4, 10).

Budgeted expenditures for the legislative services account represent an increase of $32,326 over expenditures for the previous fiscal year (HGEA Ex. 3, p. 20); this amount is attributable to the HGEA's political activities in the 1976 elections.

Mr. Okata testified that the following portions of the projected expenditures for 1976-1977 are excludable as expenses which, under prior Board decisions, are not chargeable against service fee income:

$39,438	42% of Service Bureau expenses attributable to computer services

	for associate members (HGEA Ex. 3, p. 4, item H).
$27,930	42% of the cost of "The Public Employee" attributable to associate members (HGEA Ex. 3, p. 7).
1,273	5% of Office Services expenses attributable to associate members (HGEA Ex. 3, p. 9).
738	5% of Neighbor Island Administrative Services attributable to copying machine, supplies, printing and postage expenses for associate members (HGEA Ex. 3, pp. 11, 12, 13).
29,610	Portion of Program Development budget attributable in full to Retirees Unit (HGEA Ex. 3, p. 10, item L).
4,114	Portion of Program Development budget attributable in full to Excluded Unit (HGEA Ex. 3, p. 10, item M).
2,500	Portion of Program Development budget for organizing non-union members in bargaining units represented by the HGEA (HGEA Ex. 3, p. 10, item G).
28,551	One-half of the Program Development and Neighbor Island Services budgets attributable to recreation

and statewide sports, for the portion of fiscal year 1976-1977 during which these programs were not available to non-union members (HGEA Ex. 3, p. 10, items D and E, p. 14, item D, p. 15, item D, p. 16, item C). Effective January, 1977, the programs were opened to all bargaining unit employees (HGEA Ex. 4).

$40,000 — 80% of Legislative Services budget used for political purposes not allowable under prior Board decisions; 20% of the $50,000 sum ($10,000) is for lobbying expenses related to contract negotiation and administration (HGEA Ex. 3, p. 20).

The total of the foregoing excludable amounts is $174,154.

Based on its prior decisions, testimony presented at the hearings, and information contained in petitioner's exhibits, the Board also disallows the following amounts from the 1976-1977 budget because they are costs unrelated to contract negotiation and administration:

$28,551 — The remaining one-half of the Program Development and Neighbor Island Services budgets attributable to recreation and statewide sports, for the reasons stated on page 18.

$77,289	Amount remitted to the United Public Workers (hereafter UPW) for their members in HGEA bargaining units (HGEA Ex. 1). There is no evidence which indicates how this expense is related to contract negotiation or administration.
3,600	Portion of Neighbor Island Services budget attributable to public relations expenses (HGEA Ex. 3, p. 14, item E, p. 15, item F, p. 16, item E).
2,000	Portion of Board of Directors budget attributable to public relations expenses (HGEA Ex. 3, p. 17, item F).

RECAPITULATION OF MODIFICATIONS MADE TO BUDGET SUMMARY BECAUSE OF EXCLUDED AND DISALLOWED AMOUNTS

Total budgeted expenses submitted for FY 1976-1977	$2,551,020
Total of excluded and disallowed items	285,594
Adjusted budgeted expenses for FY 1976-1977	$2,265,426

The adjusted expense figure of $2,265,426 for 1976-1977 still leaves the HGEA in a deficit situation because the requested service fee for fiscal year 1976-1977 would yield only $1,818,336.

The HGEA has three other sources of income apart from service fee revenues (HGEA Ex. 1). These include:

$508,643	Dues from associate members, who comprise approximately 42% of the HGEA's membership.
180,000	Administrative fees
5,000	Interest income

The total amount of estimated non-service fee income is $693,643.

As adjusted by HPERB, the HGEA's expenditure projections have increased over the period 1974-1977:

FY 1974-1975	$1,189,141	(See Decision 57, December 27, 1974)
FY 1975-1976	2,081,981	(See Decision 72, December 10, 1976)
FY 1976-1977	2,265,426	

The HGEA keeps the books for all of its activities on a consolidated basis. Since May, 1976, it has begun to investigate the feasibility of restructuring its organization to account for expenses on a unit by unit basis. It has also adopted new accounting procedures; however, the new system is still on a consolidated basis because of the high costs involved in segregating expenses for each of its six bargaining units.

In 1974, AFSCME established a rebate procedure for refunding that proportion of service fee money spent by AFSCME and its local affiliates for partisan political or ideological purposes to which an individual employee objected. The steps in the present procedure (amended in 1976) are outlined in Board Exhibit 6:

> "Each year, by Apr. 1, the international secretary-treasurer will calculate the portion of per capita

payment or its service fee equivalent that has been used for partisan political or ideological purposes during the preceding fiscal year.

The financial officers of councils and locals will make the same kind of calculation, also by Apr. 1, unless some different date is more appropriate for the local or council.

If the subordinate body chooses to use a different date, it must publish that date in its regular publication at least two months in advance.

Regardless of the date set by the subordinate body, individuals who want the calculated portion of their payment returned must request it, in writing, between Apr. 1 and Apr. 16.

The request must be sent to the international secretary-treasurer at AFSCME headquarters in Washington, D. C., by registered or certified mail. The request should include a list of those subordinate bodies to which the individual has made dues or service fee payments.

A written request applies only to one year and must be renewed in writing if the individual wishes to object to expenditures in any subsequent year.

AFSCME will notify the appropriate subordinate bodies of request for rebates filed within the designated time period. The international and those subordinate bodies will then send rebate checks to the individuals by registered or certified mail.

Should the subordinate body involved have a date other than Apr. 1 for calculating the correct portion, the mailing of the rebate from that body will correspond to that date.

Any individual who is dissatisfied with the amount of the rebate sent to him or her may object by filing a written appeal with the union's judicial panel. Any such appeal must be made in writing and must be filed within 15 days after the rebate check has been received.

Appeals should be sent to Judicial Panel Chairman Joseph L. Ames at international headquarters in Washington,

D. C. The panel will conduct a hearing and issue a written decision on each appeal.

There is an additional final appeal for individuals who are dissatisfied with the panel's ruling. A member can appeal to the next international convention.

A non-member can appeal to the Review Panel, which is a body provided for in Article XII of the international constitution. Appeals to this panel must be filed in writing within 15 days after receiving the judicial panel decision.

The Review Panel is composed of prominent persons who have no connection whatsoever with AFSCME or its subordinate bodies other than to serve on the panel."

Checks for the HGEA's portion of any rebate will be mailed to those requesting them in October, 1977.

As of April, 1977, no deadline for requesting a rebate from the HGEA had been determined. Mr. Okata also testified that there was a possibility that the AFSCME deadline could be waived for unions like the HGEA, which have a different fiscal year.

Notice of the rebate procedure was published in the AFSCME newsletter, The Public Employee, during the latter part of 1974 (HGEA Ex. 6), and in subsequent editions dated July/August 1975 (HGEA Ex. 5) and February 1977 (HGEA Ex. 7). Notice of the procedure was also published in the HGEA newsletter, The Public Employee, dated April 12, 1977 (Bd. Ex. 6). Copies of both newsletters are sent to those members of the HGEA's bargaining units who provide the union with their addresses.

Intervenor Jordan testified that he did not wish to have copies of the HGEA newspaper sent to him. However, he did receive copies of the April 12, 1977 edition of The Public Employee on April 20, 1977, four days after the deadline for requesting rebates from AFSCME had passed.

He did not make any further inquiries regarding the rebate procedure to the HGEA.

CONCLUSIONS OF LAW

Before turning to the specific issues presented in this service fee case, we find it appropriate to first discuss the Board's role in the area of service fees. Section 89-4, HRS, provides that:

> "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 employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate." (Emphasis added)

Under the foregoing section, this Board's overall responsibility is to determine the "reasonableness" of the service fee assessment requested by an exclusive representative. We view the statute as requiring the Board to determine whether, based on the evidence presented, the service fee expenses and computations are permitted by Section 89-4(a), HRS. Thus, absolute mathematical precision is not required, as we do not think that the statute intended the Board's function to be one of a detailed auditing or accounting nature.

The terms, "reasonable service fee necessary to defray the costs for its services rendered in negotiating

and administering an agreement" describe what is commonly known as a "fair share" payment. The Board's initial function is therefore to determine whether the requested fee is for reasonable costs of negotiating and administering the collective bargaining agreement. In order to determine what the costs of contract negotiation and administration are, the Board draws an allocative line between the union's costs that are related to collective bargaining and those which are not.

To the extent that the decisions in Abood v. Detroit Board of Education, _____U. S._____, 45 U.S.L.W. 4473 (May 23, 1977) and Int'l. Association of Machinists v. Street, 367 U. S. 740 (1961), have delineated certain expenses which cannot properly be attributed to the costs of collective bargaining, they are of some value to the Board. The Abood case is the first U. S. Supreme Court decision involving the agency shop fee in the public sector. Unfortunately, it provides only limited assistance in the overall task of determining proper charges against service fees because, due to the absence of a factual record in that case, the Court dealt only with the impermissibility of using service fee revenues to make political contributions and to express political views unrelated to the union's duties as exclusive representative:

> "We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or towards the advancement of other ideological causes not germane to its duties as collective bargaining representative [footnote omitted]. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." 45 U.S.L.W. at 4480.

In fact, the Court specifically pointed out that it had had no occasion to deal with the question of "what specific union activities in the present context properly fall under the definition of collective bargaining," 45 U.S.L.W. at 4480. See also Id.., note 33; Int'l. Association of Machinists v. Street, supra, at 769.

With respect to the terms of Section 89-4(a), HRS, "[reasonable service fee] computed on a pro rata basis among all employees within its appropriate bargaining unit," the Board's function is to determine whether the means of allocating and distributing the costs related to collective bargaining are reasonable. In making such a determination, the Board does not require the most precise method of computation; we appreciate that several methods of allocating costs may be devised. What the Board requires instead is an equitable computation that is neither excessive nor extreme.

Based on these considerations, we conclude that the proposed HGEA service fee, as adjusted, is reasonable under Section 89-4, HRS.

More specifically, the Board finds that the adjusted amounts proposed to be expended in servicing the units that the HGEA represents are for the purposes specified in Section 89-4(a), HRS. We do not find it unjustifiable for the HGEA to maintain a consolidated recordkeeping system for its six bargaining units. To the extent that such a practice promotes efficiency in the areas of costs and services, it falls within the meaning of "reasonableness" required by the statute.

Those amounts excluded by the HGEA, and those disallowed by the Board, reflect the Board's judgment as to where the allocative line between costs related to collective bargaining, and costs unrelated to collective bargaining, must

> "5. Political activities. Section 89-10 of the PERA requires that 'all cost items shall be subject to appropriations by the appropriate legislative bodies.' Thus, political activity directed toward such legislative bodies to secure ultimate realization of the fruits of its bargaining must definitely be considered part of the progress of contract negotiations under our law. Thus, the usual sanctions against inclusion of political activity costs in service fee negotiated in the private sector as enunciated by the Street and Allen cases (International Association of Machinists v. Street (1961) 367 U.S. 740; Brotherhood of Railway Clerks v. Allen (1963) 373 U.S. 113) should have no significant impact in the public sector (see Jay W. Waks--'Impact of the Agency Shop on Labor Relations in the Public Sector,' 55 Cornell Law Review 574 at 583). The public sector union is much more politically oriented in makeup and activity than the private sector union and our Legislature has so recognized. Thus, the problem again imposes the difficulty and burdens of proper allocation, and it will become incumbent upon the union to characterize and distinguish its legislative efforts toward securing contract gratification as against ordinary political expenditures of contributing to political parties, candidates or of general political activity."

Thus, the Board has disallowed from the HGEA's 1976-1977 legislative services account those amounts ($40,000) not used to secure legislative ratification of collectively negotiated benefits. The remaining amount ($10,000) is properly chargeable to service fees. It might also be noted that, although the question of legislative lobbying expenses was not decided in Abood, supra, the Supreme Court did recognize the likelihood of differences between private and public sector political expenditures:

> "There will, of course, be difficult problems in drawing lines between collective bargaining activities, for which contributions may be compelled, and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited [footnote omitted]. The Court held in Street, as a matter of statutory construction, that a similar line must be drawn under the Railway Labor Act, but in the public sector the line may be somewhat hazier. The process of establishing a written

> collective-bargaining agreement prescribing the terms and conditions of public employment may require not merely concord at the bargaining table, but subsequent approval by other public authorities; related budgetary and appropriations decisions might be seen as an integral part of the bargaining process. We have no occasion in this case, however, to try to define such a dividing line." 45 U. S. L. W. 4480. (Emphasis added)

Amounts expended by AFSCME for political activities, which may not be charged against service fee revenues (through the payment of per capitas by the HGEA to AFSCME), are refunded to bargaining unit employees who request the rebates. In light of the Supreme Court's approval of similar rebate procedures in Abood, supra, and Brotherhood of Railway & Steamship Clerks v. Allen, 373 U. S. 113 (1963), the Board has found that, as a minimum, use of the AFSCME rebate procedure and the means by which employees are informed of it, are reasonable under our statute. In the future, however, the Board will require additional evidence on AFSCME and HSFL expenditures before approving the HGEA's per capita payments to these affiliates.

After segregating the disallowable expenditures from those upon which the proposed service fee should be based, the Board has determined that the requested increase is justified by general increases in costs. The increases in per capita payments were, for example, deemed reasonable because of the expansion of services provided by the affiliates. The value of the services provided has also historically exceeded the cost of these services.

This Board also finds that the HGEA's existing method of calculating service fees, based on a percentage of the employee's salary, is reasonable under Section 89-4(a), HRS. Intervenor Jordan has urged that the term "pro rata"

be interpreted to mean an equal dollar amount per bargaining unit employee. However, we are of the opinion that our holding in HPERB Decision No. 57 (December 27, 1974) is controlling on this issue. In that decision, we stated:

> 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 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 substantial 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 89-4, 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.

Moreover, we observe that the HGEA's service fee computation will produce revenues on a proportionate basis similar to those resulting from a "classic" method of pro-rating costs among bargaining unit employees. This observation is demonstrated by the following hypothetical:

Example 1

	Income	Proportion of Total	Pro Rata Share of Costs
A	$200	25 %	$22.50
B	100	12.5%	11.25
C	500	62.5%	56.25
Totals	$800	100.0%	$90.00

If A, B, and C are 3 bargaining unit employees with different income levels, then each employee's pro rata share of a specific amount of costs, here $90.00, would be in the same ratio as that employee's income was to the total of all employees' incomes. Thus, since employee A's income ($200) is 25% of the total of A, B and C's incomes ($800), then employee A's share of the costs ($22.50) is 25% of the total costs ($90), as indicated in column three. In order to compute the above type of prorated share of the service fee, however, costs must be a specific figure. The HGEA's petition, on the other hand, is based on projected expenditures. Because the request is for a fiscal year which has not yet elapsed, there is no specific figure for actual costs at the time the petition

is filed. Under the HGEA's method of computation, employees A, B and C in the above hypothetical would be assessed the following amounts if each employee's share were 10% of his or her income:

Example 2

	Income	Proportion of Total	Percentage Share of Costs
A	$200	22.2%	$20.00
B	100	11.1%	10.00
C	500	55.6%	50.00
		88.9%	80.00
[Deficit]	____	[11.1%]	[10.00]
Totals	$800	100.0%	$90.00

Thus, although the employees' total payments, in the second example, will not cover all of the $90.00 costs (there is a $10 deficit), the individual employee's share of the total amount paid by all employees is in the same proportion as that in the first example; e.g., Employee A's proportion, under both computations, is twice that of employee B, while employee C's proportion is five times that of employee B. Accordingly, we believe that the HGEA's method of computation achieves the type of equitable apportionment required under "pro rata" distribution. As long as the percentage computation does not yield revenues which exceed actual costs of collective bargaining, we find it to be a reasonable means of apportioning the total service fee amount. The floor and the ceiling, which are part of the service fee formula, are, in our opinion, not unreasonable; they are the products of democratic internal union considerations directly pertinent to collective bargaining efficacy.

Finally, the HGEA has requested that, within the parameters of the $7 floor and $15 ceiling, its service fee

be increased automatically, without hearing, on September 1 of each year following September 1, 1976. This request is denied, for the reasons stated in HPERB Decision No. 68 (June 4, 1976):

> ". . .[W]e 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."

ORDER

An annual service fee in the amount of .0075 X the straight time monthly salary in effect on September 1, 1976 X 12, plus the per capita payments to AFSCME ($2.90 per month) and to HSFL (30 cents per month) shall be deducted by the employer from the payroll of each employee covered by this decision and the aggregate of such deductions shall be transmitted to the HGEA. Such deductions shall be made each payroll period in an amount, which, to the extent possible, is equal to the annual service fee divided by 24 payroll periods.

The increased service fee shall be retroactive to September 1, 1976, for all employees on the payroll at that time. For all persons hired after such date, the service fee

shall be computed on the basis of the salary in effect on the date of hire, and 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 possible date.

In no event shall the service fee be less than $7 per month or more than $15 per month for any employee.

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 HGEA or any affected employee, review the reasonableness of the subject service fee whenever it deems such a review would be appropriate.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

James K. Clark, Board Member

John E. Milligan, Board Member

Dated: July 28, 1977

Honolulu, Hawaii

DISSENTING OPINION

I dissent from the opinion of the majority for the same reasons I dissented in Decision 72.

Specifically, I am of the opinion the majority has misinterpreted the word pro rata in Section 89-4(a), HRS. I believe that the proration must be applied to the exclusive representative's costs incurred in collective bargaining activities. In this case the percentage formula is applied to the employees' salaries; it has no direct connection to union costs.

Additionally, even if the service fee certified to be reasonable herein were a percentage of costs, rather than a percentage of an individual employee's income, I would be of the opinion that there is insufficient evidence to justify as reasonable a percentage service fee.

Moreover, I find the floor and ceiling destructive of the concept of proration. They may be reasonable, but they are not justifiable under the applicable statutory language.

Again, as I was in Decision 72, I am convinced that service fees should not equal dues.

I repeat my concern about the HGEA's failure to submit data which separates its service fee expenditures from its non-allowable expenses and its service fee income from its "outside income."

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

Dated: July 28, 1977

Honolulu, Hawaii