

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	Case No. <u>SF-07-57</u>
UNIVERSITY OF HAWAII)	
PROFESSIONAL ASSEMBLY,)	Decision No. <u>87</u>
)	
Petitioner.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERS

The University of Hawaii Professional Assembly (hereafter UHPA), on October 20, 1977, petitioned the Hawaii Public Employment Relations Board (hereafter Board or HPERB) to certify as reasonable a service fee of "\$120 plus .2 percent of salary effective July 1, 1977," pursuant to Section 89-4, Hawaii Revised Statutes (hereafter HRS).

UHPA also asks for this Board's approval of an increase of \$5 per annum in the per capita payments it makes out of service fees to the National Education Association and American Association of University Professors (hereafter NEA and AAUP, respectively, or "national affiliates" collectively) and for removal of restrictions on the division and payment of said per capita assessments set forth in HPERB Decision 64.

The prehearing on the petition was held on November 21, 1977. The hearing was held on December 5, 1977. Notice of these proceedings was published twice in two newspapers of general circulation in Hawaii, the Honolulu Advertiser and the Honolulu Star-Bulletin, on November 1 and 8, 1977.

The hearing was held before the full Board in its hearing room. Appearing as witnesses for petitioner were Helen Kronlein, Executive Secretary of UHPA; John Thompson, past president of UHPA and member of the UHPA Board; Charles Bob Simpson of NEA, and William B. Woolf of AAUP. There were no appearances in opposition to UHPA's petition.

Based on the entire record in this case, this Board makes the following findings of fact, conclusions of law, and orders.

FINDINGS OF FACT

UHPA is, and was at all times relevant, the certified "exclusive representative," as that term is defined in Chapter 89-2(10), HRS, of all employees in bargaining unit 7 (faculty of the University of Hawaii and community college system).

The Board of Regents is the public employer of employees in unit 7. Chapter 89-2(9), HRS.

There are approximately 2,600 members of unit 7. UHPA does not service retirees or other persons not in unit 7.

Unit 7 members presently pay a total annual service fee of \$102 per employee, which includes a \$25.00 annual per capita payment to the national affiliates, shared equally between them. Except for an eight month period during which the fee was reduced to \$77 (HPERB Decision No. 59), unit 7 members have paid this service fee of \$102 since November 1, 1972.

This service fee generated income of \$268,102 for UHPA in the year November 1, 1975 through October 31, 1976. During that same year, UHPA's operating expenses totalled \$288,646.

Subsequent to October 31, 1976, UHPA changed its fiscal year to a July 1 - June 30 period to coincide with the fiscal year of the University.

UHPA's proposed budget for the coming year (July 1, 1977 to June 30, 1978) is \$400,400.

P R O P O S E D

UHPA BUDGET

<u>Administrative Services</u>	\$221,000
<u>Governance</u>	\$ 24,500
<u>Leadership Development</u>	\$ 4,000
<u>Negotiations</u>	\$ 11,100
<u>Contract Administration</u>	\$ 49,000
<u>Legislative</u>	\$ 5,000
<u>Communications & Public Relations</u>	\$ 7,800
<u>National Affiliation</u>	\$ 78,000
TOTAL	<u>\$400,400</u>

Ms. Kronlein testified that the projected budget does not include \$4,000 in unpaid litigation expenses, \$6,000 legally due the past Executive Secretary in retirement benefits, and unbilled litigation expenses for 12 grievances. UHPA's attorney estimates his billings to average from \$1,000 to \$2,000 per grievance.

Adding these costs to a budget of \$400,400 would result in a total projected expenditure of about \$428,400. UHPA will be able to meet its costs if income from service fees approximates its estimate of projected income, because of some reimbursement for legal expenses from an NEA grant.

Based on unit 7 salaries as of September, 1977, UHPA estimates that the service fee it requests will generate income of \$425,000. Ms. Kronlein testified that this figure is a high estimate, because the size of the bargaining unit is greatest at the beginning of the fall academic term.

The major increases in the UHPA budget are due to higher operating costs caused by inflation, the need to improve and expand the delivery of services to bargaining unit members on the neighbor islands, the rising number and cost of grievance cases, and the increased per capita payment to the national affiliates.

The major increase in Administrative Services is in staff salaries. The category of staff salaries includes allotments for one additional professional employee and one additional clerical employee. Ms. Kronlein testified that UHPA is presently understaffed. She explained that UHPA's three professional staff members coordinate all UHPA's activities, including organizing the activities of the various campuses, providing support to the committees developing negotiation proposals, providing legislative and lobbying support, conducting training workshops for UHPA contract representatives, and participating in informal and formal grievance resolution.

Ms. Kronlein also testified that the increase in the Fringe Benefits category is for the purpose of implementing personnel policies adopted by UHPA's board of directors

which state that staff members shall have salary increases and life insurance and retirement benefits comparable to those available to the University faculty.

The Governance category covers the costs of meetings and other expenses for UHPA's internal governing bodies. This category includes UHPA's costs in participating in the coordinating meetings with the national affiliates to identify and coordinate the services the nationals will render to UHPA. Increases in air fares account for some of the additional expenses in Governance.

The category of Leadership Development budgets a sum for training bargaining unit members involved in negotiations and contract administration. UHPA has presented workshops in areas such as basic bargaining law, proposal development and problems in the areas of tenure, and promotion and grievances. It intends to upgrade these programs.

Ms. Kronlein testified that there has been an increase in the amount budgeted for Negotiations, primarily in travel expenses, to enable representatives of the neighbor island campuses to participate on the bargaining team.

The major increase in the category of Contract Administration is for arbitration expenditures. Ms. Kronlein testified that the budgeted amount for arbitration was calculated by multiplying the estimated average total costs of an arbitration including attorneys' fees, costs of transcripts and other related costs (\$3,500) by ten, the number of cases UHPA anticipates for the coming year.

Ms. Kronlein testified that based on the past year's experience, this budgeted figure is probably low. UHPA processed 87 grievances in 1976-77, of which 45 were taken to arbitration.

The testimony of Helen Kronlein also shows that UHPA has found it needs to upgrade its efforts directed toward the legislature to better secure the ratification of collective bargaining agreements it negotiates, hence the increase in the Legislative category.

Although UHPA has made political contributions in the past, these have been paid from voluntary contributions kept in an account separate from the one maintained for service fees. It will make no political contributions out of service fees.

In order to stay within its budget in the past, UHPA could not finance the neighbor island participation necessary to provide full representation and communication to all unit 7 members. UHPA is now trying to develop a pyramid type structure, with the central leadership fanning out to contract representatives and people in each area, to improve lines of verbal communication.

UHPA has also begun a program of routine communications, which includes newsletters to the contract representatives and elected leadership, and a monthly newspaper for all unit 7 members.

It is these efforts to increase UHPA's ability to keep unit members aware of what is happening which accounts for the increase in the Communications category.

PER CAPITAS TO NATIONAL AFFILIATES

UHPA has requested an annual per capita to be paid out of the service fee in the amount of \$30 per employee. This sum would be divided, as indicated below, between the AAUP and the NEA.

Documents and testimony on the issue of the per capitas produced at the hearing show that for the 14 month period from September 1, 1977 through October 31, 1978, the nationals estimate they will incur expenses of approximately \$152,000 for services to UHPA.

Of the \$152,000, approximately \$130,000 will be expended in direct costs. These direct costs include:

I.	Developing and Coordinating National assistance; Assistance in formulating UHPA bargaining and organizational objectives.	\$ 27,504.14
II.	Training for UHPA leaders in bargaining strategies and assistance in negotiations . .	\$ 22,740.38
III.	Training for UHPA leaders in contract administration; on-site assistance in processing grievances	\$ 6,600.87
IV.	A. Legal Defense and subsistence grants in certain termination and disciplinary cases	\$ 19,296.67
	B. Liability insurance premium	\$ 5,276.70
V.	Publications of NEA and AAUP for all unit members; Assistance in organizing UHPA communications program.	\$ 31,743.00
		<u>\$113,161.76</u>

Added to the \$113,161.76 were other direct costs, such as administrative overhead for the travel account, additional publication expenses and \$12,062.53 for the Dushane Legal Defense Program. These additional costs raise the total for direct expenditures for the 14 month period to \$130,000, or a per person annual cost of \$42.85.

To direct costs, the NEA added an additional \$22,000 for indirect expenditures, bringing the total to \$152,000 for the projected budget. Indirect costs include most of NEA's research operations, legislative activities on the national level, and improvements made in the quality

of instruction, professional development and the human rights area, such as ethnic and minority programs. NEA estimated that the prorated cost of these indirect services is \$7.24 per unit member per year. AAUP's estimation of costs for indirect services is even higher than NEA's because of the smaller size of the AAUP. Based on its expenses, the AAUP's annual expense for indirect costs is \$11.74 per employee.

Based on the above figures, direct costs of \$42.85 annually per employee will be expended by the national affiliates for services to UHPA. This cost is higher than the increased per capita fee of \$30 requested. If indirect costs are added, the annual per capita expenditures is estimated at \$50.09 which, of course, is even higher than the requested \$30. The national affiliates have included only the NEA's figure for indirect costs, the lower of the two, in arriving at this total to eliminate any duplication of costs.

The national affiliates have not included certain indirect costs in calculating these figures. Some of these are the costs of telephone calls and follow up meetings which are held after the meetings of the coordinating council to assign duties to each organization.

The testimony showed that the largest per capita cost category, I, reflects expenditures for a coordinating council composed of officials of UHPA, AAUP, and NEA. The council determines the validity of UHPA's requests to the national affiliates, and arranges service to meet requested needs and to avoid unnecessary duplication of services. This coordinating council was established pursuant to an HPERB directive in Decision No. 64.

This council insures that there are no unnecessarily duplicative services rendered UHPA by the national affiliates. Each affiliate provides services consistent with its expertise. The AAUP's strength is in the area of academic concerns, tenure and university systems, while the NEA's expertise is in collective bargaining and community and state college problems.

An area of major increase is in the Legal Defense Program which, testimony showed, has been upgraded. In the past, the national affiliates allocated \$5,300 per year to UHPA for grievance processing. Under the new program, which commenced September 1, 1977, the national affiliates have allocated \$19,296.67 as being a reasonable amount to expend for legal expenditures for unit members in certain termination and disciplinary cases. This figure is based upon a formula applied to \$37,000, the amount which UHPA has budgeted for arbitration costs. Under the formula, the NEA will pay 10 percent of the first \$4 expended by UHPA per unit member, 50 percent of the additional \$4 to \$8 per unit member expended, and 75 percent of all expenses over \$8 per member. If the UHPA spends more than the \$37,000 allotted, NEA subsidies will increase according to the formula. Thus, under the new system of administering national assistance for legal fees, payments to UHPA will be automatic and nondiscretionary once UHPA decides to expend money in a grievance case.

The testimony on university bargaining units and the services provided by the nationals indicates that even if UHPA were affiliated with one national organization, the cost of servicing UHPA would not be less than \$30 per member annually.

Mr. Simpson of the NEA testified, for example, that even if there were only a single national affiliate, there would have to be some expenditures for coordination meetings between the local and its national. He further testified that UHPA's geographical distance from NEA headquarters in Washington, D.C. is another cost factor which would remain even with single affiliation.

CONCLUSIONS OF LAW

Section 89-4(a), HRS, states:

Payroll deductions. (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 employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate.

We have previously ruled that this statutory language requires this Board to make an initial determination of whether the requested fee is for "costs of negotiating and administering the collective bargaining agreement." HPERB Decisions No. 7, 78.

In this respect, and in conformity with the determinations made in prior service fee decisions, this Board concludes that the expenditures in the proposed UHPA

budget are for costs of its services in negotiating and administering a collective bargaining agreement.

The increases over the previous period have been satisfactorily justified. Increases have occurred because of the higher cost of maintaining present services and because UHPA is expanding its programs to better service all members of unit 7, especially those on the neighbor island campuses.

This determination of reasonableness extends to the increase of \$5 per year in the per capita amount UHPA pays to the national affiliates. This Board has previously certified as reasonable per capita payments where UHPA showed that unnecessarily duplicative services from the NEA and the AAUP had been eliminated through coordination by a permanent, five member committee consisting of representatives from UHPA and each of the national affiliates, and where the cost of services provided or to be provided by these national affiliates equalled or exceeded the proposed payments to these organizations. HPERB Decision No. 64.

This Board is satisfied that the joint committee has continued to be an effective means of coordinating the delivery of services from the NEA and AAUP to UHPA. We also find that the services rendered by the national affiliates to UHPA will and have exceeded the annual per capita amount requested.

In Decision 64, we restricted the distribution of payments to the national affiliates by requiring that this payment be divided equally between the two organizations.

Petitioner asks that the restriction be removed to allow proportionate allocation of the payments between the national affiliates using a formula based on their mutual agreement.

The formula would be based on the amount of services rendered by each to UHPA. UHPA states that proportionate allocation would prevent situations where the equal division of payments would result in one organization receiving a windfall at the expense of the other. For this reason, the proportionate allocation will be allowed.

This Board will also allow UHPA to transmit some funds to the national affiliates if, and when UHPA finds it must borrow from these affiliates to pay for litigation costs in excess of the budgeted amount.

Reasonable service fees which were calculated by dividing allowable budgeted costs by the number of bargaining unit members have been permitted under the provisions of Section 89-4, HRS. HPERB Decisions No. 31, 52, 59. This Board has also interpreted the term "pro rata" in this section to permit reasonable service fees which are a percentage of salary. HPERB Decisions No. 57, 68, 72, 78. UHPA's requested service fee is a combination of these two methods. UHPA has shown that the application of this formula to the salaries of the members of its bargaining unit is fair and will result in a sum closely approximating the amount it requires to defray its costs for negotiating and administering the contract for unit 7. This sum is proportionate according to an exactly calculable factor. We therefore conclude that under the UHPA's formula applied to the facts presented in its case, the proposed service fee is reasonable under Section 89-4, HRS.

Petitioner UHPA requests a service fee of "\$120 plus .2 percent of salary effective July 1, 1977." At the hearing, petitioner's representative was asked to clarify this request.

"[Mr. Milligan]" In your petition, item number five, second page, you are proposing \$120 plus two tenths of one percent of salary effective July 1, 1977, with no punctuation. Do you mean of the salaries as they are as of that date, or do you mean of the salaries whatever they are at any date starting on that date?

"[A]" Your second analysis.

"[Mr. Nassau]" It means your second. We are aware, however, of the recent opinion in the HGEA case which, I think, rejected that.

"[Mr. Milligan]" Yes, okay.

"[Mr. Nassau]" We are requesting the automatic increase. We do that with an awareness that this board has already spoken to that issue. I suppose we would accept the second as an alternative.

I do think if I interject that a reasonable factor that would allow a percentage increase each year might be very valuable in saving a great deal of the inconvenience and expense and time involving the organization and this board if there were some inflationary factor that could be plugged in. I think that might have some desirability.

If petitioner's primary request were granted, the amount of service fees to be paid by each member of this bargaining unit would increase automatically whenever salaries increased. In Decisions 78 and 68, this Board stated:

"... [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."

Accordingly, UHPA's method of calculation incorporating an automatic increase is rejected.

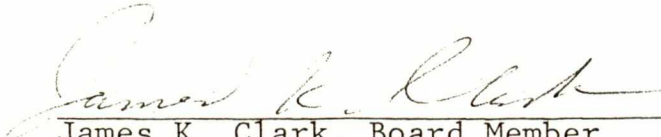
ORDERS

Based on the above findings of fact and conclusions of law, this Board orders:

1. An annual service fee of \$120 plus .2 percent of the amount the employee's straight time salary was on July 1, 1977, shall be deducted by the employer from the payroll of each employee 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 annual service fee divided by the number of payroll periods during which the employee is employed as a member of bargaining unit 7.

2. The increased service fee shall be retroactive to July 1, 1977, 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.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: March 13, 1978


Honolulu, Hawaii

CONCURRING OPINION

While I concur with the result reached by the majority, I feel that UHPA's national affiliates, the NEA and the AAUP, should be required to maintain a separate accounting system for UHPA funds. The income the national affiliates receive from UHPA as per capita payments should not be put into a nationwide fund or used to defray costs incurred for locals other than UHPA.

I also believe that the national affiliates can, and should, provide this Board with a more detailed accounting and description of the services they perform for UHPA in exchange for the per capita payment.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman

Dated: March 13, 1978

Honolulu, Hawaii