

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII GOVERNMENT EMPLOYEES')	Case Nos. SF-02-44
ASSOCIATION, LOCAL 152,)	SF-03-45
AFSCME, AFL-CIO,)	SF-04-46
)	SF-06-47
Petitioner,)	SF-08-48
)	SF-13-49
and)	
)	
THEODORE B. JORDAN,)	Decision No. 92
)	
Intervenor.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERS

This decision arises from an appeal taken by Intervenor Theodore B. Jordan to the First Circuit Court from Decision 78 of this Board, which certified as reasonable a service fee of .0075 times the straight time monthly salary in effect on September 1, 1976 X 12, plus per capita payments of \$2.90 per month to the American Federation of State, County and Municipal Employees (hereafter AFSCME) and \$.30 per month to the Hawaii State Federation of Labor (hereafter HSFL) for all employees in the six bargaining units for which the Hawaii Government Employees' Association (hereafter HGEA) is the certified exclusive representative.¹

On March 30, 1978, the Circuit Court issued its Decision and Order. The court ordered that the case be remanded to HPERB for hearing and determination of the following matters in accordance with this decision:

¹The certification of reasonableness also provided that said service fee shall not be less than \$7 per month nor greater than \$15 per month.

1. Allowability of any of the cost of "The Public Employee" as a service fee activity;

2. Allocation of staff salaries and other similar expenditures which are supportive of the totality of HGEA activities, so that an equitable portion of such expenditures is apportioned to "union membership benefit" functions;

3. Any HSFL political activity costs (except those related to efforts to obtain ratification of the benefits of collective bargaining agreements) which are paid out of the per capita payments. Any such impermissible assessments must be appropriately prevented, either by refund procedures, deduction from the per capita, deletion of the per capita from the service fee formula, or other reasonable means.

Subject to and taking into account its determinations on the foregoing, HPERB shall certify a reasonable service fee deduction. On remand, HPERB shall be required to consider the foregoing matters in making its certification, but this remand shall not be construed as necessarily requiring a change in the service fee formula approved in Decision No. 78.

After notice to the parties, a prehearing was held on April 26, 1978. The hearing on remand was held on May 2, 1978 before the full Board.

Closing briefs were submitted by both parties on June 7, 1978, and the Intervenor filed a reply brief on June 19, 1978.

Based on the record herein and, in accordance with the order of the court, this Board makes the following additional findings of fact, conclusions of law, and orders in the instant case.

FINDINGS OF FACT

1. "The Public Employee"

"The Public Employee" is the house organ of the HGEA. The newspaper is usually distributed monthly, and approximately 22,000 copies are printed for each issue.

(Tr. 11)

The budgeted cost, exclusive of staff salaries, for the production of "The Public Employee" for the fiscal year 1976-77 was \$66,500. This budgeted cost covers printing, postage, and photography processing. This Board allowed only 58%, or \$38,570, as a charge against service fee revenue because the remaining 42% of the cost was deemed attributable to non-bargaining unit associate members.

"The Public Employee" typically contains information concerning organizational, collective bargaining, political action, recreational, and social activities of the HGEA.

Based on an issue-by-issue survey, the HGEA estimates that for the fiscal year 1976-77, 18% of the total space of the newspaper was comprised of material relevant to the negotiation and administration of the contracts for the units it represents.²

The HGEA proposes that 18% of the remaining cost of the newspaper allowed in Decision 83 be permitted as a charge against service fees. Thus, further excluded would be 82%, or \$31,627.

2. Staff salaries and other expenditures

Staff salaries - "The Public Employee"

Two HGEA staff members have primary responsibility for production of "The Public Employee." They are the Public Relations Officer, who is also the editor of the newspaper, and his assistant, the assistant editor.

In addition to their duties as editor and assistant editor, the Public Relations Officer and his assistant prepare

²At the hearing on remand, the HGEA provided an estimate of 25%. However, this figure was later revised to 18%. (Brief for HGEA on Remand at 15)

collective bargaining agreements, provide negotiation assistance during negotiating sessions, conduct meetings of the membership pertaining to collective bargaining, and prepare the public releases of the union. The annual salary of the Public Relations Officer is \$24,864, and his assistant, \$21,564. (Tr. 10)

Additional support for the newspaper is provided by HGEA stewards, neighbor island representatives, and recreational group leaders, who gather information and write articles on different activities in their jurisdictions. These persons are union members, not HGEA staff. (Tr. 14)

The HGEA estimates that approximately 60% of the Public Relations Officer's time is spent on "The Public Employee." His assistant spends 70% of her time on said newspaper. (Tr. 7) Of this time spent on the newspaper, an estimated 60% of the Public Relations Officer's time and 70% of his assistant's time is spent on those articles related to the negotiation and administration of collective bargaining agreements. (Tr. 8)

Based on the foregoing, approximately 76% of the Public Relations Officer's salary and 79% of his assistant's salary should be included in service fees, resulting in exclusions of \$5,967 and \$4,528, respectively. These exclusions comprise 23% of the amount paid for salaries attributable to "The Public Employee." The HGEA has offered exclusions of \$11,188 and \$11,320, which are not substantially contested by Intervenor. These figures appear to be the result of an error in calculation, and have no support in the facts.

A mailing list is used to produce the labels used in distributing copies of the newspaper. One HGEA employee from the steno pool is responsible for keeping the mailing

list up-to-date. She spends about 10% of her time in this activity. No exclusion has been made for her salary, since the primary purpose of the mailing list is to enable the HGEA to distribute collective bargaining matter, and her work for the newspaper is incidental.

A Special Assistant to the Director is in charge of mailing and addressing the newspapers. He is generally assisted by two other HGEA employees from the steno pool, who spend approximately one day per month on this task.

The portion of this mailing time attributable to associate member subscriptions is 42%. Since there were 261 working days in the fiscal year 1976-77, approximately 1.9% of these three employees' yearly time was spent on mailing "The Public Employee" to non-bargaining unit members.

The exclusions for the clerical staff are incorporated in the general staff salary exclusions, below. No exclusion, however, has been made from the Special Assistant's salary.

Since the record shows that one of the two Special Assistants to the Director spends 1.9% of his time mailing copies of "The Public Employee" to non-bargaining unit members, an allocation is clearly required. Taking the figures most favorable to the Intervenor, 1.9% of the salary of the higher paid of the two Special Assistants will be excluded. This results in an additional \$308, or .25% exclusion from the salary expenses of the Office of the Director.

Other staff salaries

Based on an assessment of staff duties, the HGEA has made the following allocation of staff time to union membership benefit functions. The percentage figure represents the total portion of staff time in each HGEA department spent on the

activity, and was obtained by adding the individual staff time exclusions presented by the HGEA. The dollar figure in the last column is the amount requested by staff salaries, by division, for fiscal 1976-77.

	<u>Recreation</u>	<u>Insurance</u>	<u>Associate Members</u>	<u>Political Action</u>	<u>Total Requested</u>
Office of the Director	.2%	.2%	1%	3%	\$122,160
Staff Services	2%	1%	1%	3%	279,312
Fiscal Services	--	25%	25%	--	104,352
Field Services	1%	1%	1%	1%	409,419

The record contains the following facts which support the HGEA's percentage exclusions.

Office of the Director:

Five percent of the Director's time was spent on political action and was excluded.

The Deputy Director similarly spends 5% of his time on political action. In addition, 1% of his time is spent on associate member activities.

There are two secretaries in the Office of the Director. One spends 1% of her time in each of the following types of activities: recreation, insurance, associate member, and political action. The other secretary spends 1% of her time on recreation, insurance, and political action each, and 5% on associate members.

Staff Services:

Major exclusions in this category are 25% of the Education and Recreation Specialist's salary for time spent on recreation, and 25% of the Legislative Officer's salary for political action.

Exclusions have been made from the salaries of the Office Services Supervisor and the stenographic staff. Ten

percent of their total time is spent on insurance and associate member activities; recreation and political action programs take up 1% each. This time is generally spent answering associate member's questions on the recreation, insurance, discount and social programs, and referring the inquiries to the appropriate HGEA division or to the insurance carrier.

Fiscal Services:

The total fiscal services payroll has been reduced by 50%, since 25% of that division's total staff time is spent on the insurance program, and another 25% on processing associate members. (Tr. 45-46)

Field Services:

The HGEA's Oahu Division staff employs one Union Agent, who spends 10% of his time on Associate member activities.

The Hawaii Division Chief spends 2% of his time servicing associate members and 5% of his time on political action. His secretary spends 1% of her time on political action activities and 15% of her time divided evenly among recreation, insurance, and associate member programs. This division also employs two Union Agents, who each spend 1% of their time on political action. In addition, one of these agents spends 12% of his time on recreation.

The Maui Division Chief spends 5% of his time on HGEA-related political actions. His secretary spends 1% of her time on political action activities, and 5% each on the recreation, insurance, and associate member programs. The Maui Union Agent spends 5% of his time on the recreation program and 5% on the insurance program.

Like the other division chiefs, the Kauai Division Chief spends 5% of his time on political action. He does not spend any time on the insurance program because the insurance carrier has a direct representative on the island. The Kauai Division stenographer spends 5% each on the recreation, insurance and associate member programs, and 1% doing political action work. The Kauai Union Agent spends 5% of his time on the recreation program and 5% on insurance.

Based on the facts in the record, this Board finds that 11% of \$961,671, the total amount paid for staff salaries, should be excluded as a charge against service fees.³

Fringe benefits and payroll taxes

In the HGEA's projected budget (Pet. Ex. 3), \$218,123 has been designated for employees' fringe benefits and \$61,080 for payroll taxes. Of this sum, the HGEA has stated that \$4,000 in workers' compensation insurance payments and the payroll taxes can be allocated on the same basis as staff salaries, since these payments are based on the exact dollar amounts paid as salaries. Applying the 11% figure for salary exclusions results in an exclusion of \$440 for workers' compensation insurance payments and \$6,719 for payroll taxes. No allocations have been proposed for the remainder of the fringe benefits, totaling \$214,123. The reason for the failure to provide a basis for allocation of other fringe benefits, according to the HGEA, was that allocation cannot readily be made on the same basis as salary exclusions.

³ The HGEA has provided its own estimate of 10%. The exhibits do not show that the salaries of the Public Relations Officer and his Assistant are included in the amount requested for salaries. Taking the view most favorable to Intervenor, these salary amounts have been added on. The 11% figure reflects these additions and the additional exclusion for the Special Assistant.

However, the HGEA witness testified that such fringe benefits are influenced by fluctuations in salary amounts:

Q Mr. Okata, there is no point in reading them. What I would like to have is an explanation for the reasons of the increases.

A The additional amount is requested as a result of the salary adjustment for the staff of HGEA.

Q Is that what the justification is, then, for all of these increases in each one of these items in that account?

A Items A, B, C, and D, yes. The other items are an effect of the salary increase.

Q All result from the salary increase?

A Yes.

(Emphasis added.)

Jordan v. Hamada. Transcript of Hearing of January 31, 1977 at 18-19.

It appears, then, as to items E-F, overtime, reclassification, car allowance, insurance, staff retirement, and vacation fund, some allocation is possible. Lacking sufficient justification for the non-allocation of the remainder of the expenditures in this category, the entire amount, less the already allocated amount for workers' compensation, will be excluded.

Other expenditures

The HGEA has determined that 30% of its long distance, toll, and inter-island wide area telephone service (WATS) charges, \$2,381, is directly attributable to the recreation, insurance, associate member, and political action programs.

Upon review of the agenda of the eleven meetings of its Board of Directors held during the fiscal year 1976-77, the HGEA estimates that 12% of total expense of \$10,080 for

this body, or \$1,210, should be excluded because that time was spent on programs pertaining to associate members, political action, insurance, and recreation. (Tr. 37-38)

Exclusions totaling \$4,745 are proposed for the budget item entitled Committees. The HGEA states that these exclusions are based on the statement of this Board regarding HGEA committees in HPERB Decision 78. Proposed is a 50% exclusion of the Legislative and Public Relations Committee's budget, and 10% of the funds designated for Special Committees, which went to the Special Committee on Travel. (Tr. 38)

The HGEA has made no allocations for items such as land, mortgage, space and equipment rental, or supplies.

The audit fee the HGEA pays is based on the total dollar amount of the budget. The total audit fee charged for the fiscal year 1976-77 was \$17,160. Since the exclusions from Decision 78 and this decision total 26% of the entire budget, that percentage of the audit fee should be excluded. This results in an audit fee exclusion of \$4,379.

SUMMARY OF ADDITIONAL EXCLUSIONS ON REMAND

"The Public Employee" - Production & Mailing		\$ 31,627
Staff Salaries - "Public Employee"	\$ 10,495	
Other Staff Salaries	93,785	
Total		104,280
Fringe Benefits - Workers' Comp.	400	
Other Fringes (Unallocated)	214,123	
Total		214,563
Payroll Taxes		6,719
Telephone Charges		2,381
Board of Directors		1,210
Committees		4,745
Audit Fee		<u>4,379</u>
Total		<u>\$369,904</u>

3. Hawaii State Federation of Labor

One of the functions of the HSFL is to provide its affiliates with support for receiving legislative approval of negotiated contracts that have been ratified. (Tr. 86) The HGEA is such an affiliate.

The HSFL has a Committee on Political Education (hereafter COPE), which deputizes people to register voters, provides information on relevant issues, and provides assistance to voters on Election Day so they get to the polls to vote. (Tr. 88)

COPE also has an in-house communication which informs their affiliates and their memberships which candidates COPE has endorsed.

COPE funds are acquired entirely from volunteer contributions. These come from member organizations, their membership, or from the parent body (National COPE). (Tr. 88)

HSFL's political contributions come from voluntary payments from members of the affiliates. The National COPE also makes some payments directly to candidates. These are volunteer funds also. (Tr. 97)

The HSFL has a voter education program which includes providing information to affiliates of fund raisers for local candidates. The funds for this program also come from COPE.

No HSFL staff member spends time raising funds for political contributions. (Tr. 99)

The HSFL has a newspaper, approximately 1/8 of which specifically deals with collective bargaining matters like negotiation and administration of agreements. (Tr. 93) Costs of this house organ total \$11,469. (Tr. 94)

The newspaper was financed through COPE monies, savings, and per capita payments. (Tr. 96) About 1/8 of the newspaper's cost came from per capita payments. (Tr. 94)

The HSFL estimates that its Executive Secretary, Van Horn Diamond, spends 5% of his time annually on lobbying work connected with obtaining legislative approval of collective bargaining agreements in the public sector. (Tr. 92)

He also spends 5% of his time annually in lobbying for specific legislation for the benefit of employees, such as Workers' Compensation. (Tr. 91)

Another 5% of his time annually is spent in lobbying activities of a general nature, such as supporting the operating budget of the State and/or the CIP. (Tr. 92)

The Executive Secretary's annual salary for fiscal 1976-77 was \$38,400.

CONCLUSIONS OF LAW

1. "The Public Employee"

The decision of the court in Jordan v. Hamada, supra, which remanded the instant case to this Board, stated that:

[i]n this regard, an additional exclusion which should be and appears not to have been considered is the total cost of "The Public Employee". Only 42% of the total cost was subtracted as being attributable to "associate members". The underlying assumption is that publication of "The Public Employee" is a service fee activity (i.e., reasonably related to negotiating and administering an agreement), as distinguished from a "union membership benefit", but that 42% of its cost is unrelated to bargaining unit employees. If "The Public Employee" is a publication "in which substantial coverage is devoted to general news, recreational and social activities, political and legislative matters, and cartoons", it is a "union membership benefit" and its cost should be subtracted in its entirety. (Ellis case)

Jordan v. Hamada at 4-5.

The court's orders, on the other hand, stated that:

[t]his cause is remanded to HPERB for hearing and determination of the following matters in accordance with this decision:

1. Allowability of any of the cost of "The Public Employee" as a service fee activity . . .

Supra, at 11.

Intervenor Jordan states that under the court's language, none of the cost of "The Public Employee" can be charged to service fees.

Intervenor emphasizes that since the HGEA claims that only 18% of its newspaper for the fiscal year 1976-77 was devoted to service fee activities, it is clear that "The Public Employee" is "a publication in which substantial coverage is devoted to general news, recreational and social activities, political and legislative matters, and cartoons," and "these costs should be subtracted in its entirety."

The HGEA argues that

"[a] careful examination of all the issues of that paper published in fiscal year 1976-77 (Pet. Ex. 1A) shows that no coverage is devoted to general news, no coverage is devoted to social activities, and no coverage is devoted to cartoons. There is coverage of legislative matters, but that coverage is a very small part of the total news coverage for the year. In short, the criterion quoted in the court's decision is not applicable to the present case . . ."

Brief for HGEA at 11.

The HGEA also argues, in the alternative, that the court's order implies that there can properly be an allocation of costs.

In order to determine which of these conflicting readings should prevail in the instant case, this Board must first review precedent cited by the court, including the case

of Ellis v. Railway Clerks, 91 LRRM 2339 (S.D. Ca. 1976), and the applicable provisions of Chapter 89.

In Ellis, plaintiffs, non-union members, protested the payment of an agency shop fee, a fee which was equal to the initiation fee and monthly dues uniformly imposed on union members. Plaintiffs also protested

. . . the use of these fees for any purpose other than the cost of collective bargaining and specifically protest the support of Legislative goals, candidates for political office, political efforts of any kind or nature, ideological causes, and any other activity which is not a direct cost of collective bargaining

91 LRRM 2341.

The Ellis court found, inter alia, that

22. BRAC⁴ has engaged in the following activities since June 30, 1972:

* * *

(5) Publications in which substantial coverage is devoted to general news, recreational and social activities, political and legislative matters, and cartoons.

91 LRRM 2342.

It then concluded, as a matter of law:

6. Those activities listed in Paragraph 22 of the Findings of Fact are non-collective bargaining activities as that term is defined in Street, supra.

7. BRAC's use of dues and fees of protesting employees for non-collective bargaining activities and purposes constitutes a breach of the fiduciary duty of fair representation BRAC owes to each plaintiff.

91 LRRM 2343.

The court then granted plaintiffs an interlocutory summary judgment as to the issue of liability alone, having

⁴ BRAC, the Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees, was the exclusive bargaining representative for the plaintiffs.

found that the defendants breached their duty of fair representation to plaintiffs.

The Ellis decision contains no factual description of the BRAC publications with which "The Public Employee" can be compared in order to determine whether it constitutes a "non-collective bargaining" activity as defined by that court.

The court in Jordan v. Hamada, supra, defined the basis by which service fee costs can be segregated from other union expenses.

. . . . These "union membership benefits" are excludable . . . because service fee costs are statutorily restricted to costs reasonably related to negotiation and administration of collective bargaining agreements. (Emphasis added)

Jordan v. Hamada at 4.

Employee organizations have traditionally utilized house organs to provide contemporaneous reports on their activities to those they represent. Effective representation anticipates communication of this kind. The importance of a communication link during negotiations was noted by one commentator:

. . . . Union members regularly recommend demands to be made in negotiations and normally vote on the union's proposals. During bargaining the union committee commonly reports to the members of the course of negotiation and often obtains further guidance, either formally or informally, as to which demands should have priority and which should be compromised. When a tentative agreement is reached, it is reported back to the members for vote. The outcome of that vote depends greatly on the effectiveness of communication between the union members and the negotiating committee during the course of negotiations.

Summers, "Public Employee Bargaining: A Political Perspective," 83 Yale L.J. 1156, 1198 (1974).

This communication link is no less important during the administration of the contract. The HGEA should report grievance handling, steward elections, committee appointments, service fee payments, and positions of the union relevant to different employer proposals to the members of the bargaining units it represents, so they may be fully informed.

Based on the record, it is this Board's opinion that 18% of the content of "The Public Employee" for the fiscal year 1976-77 has been sufficiently justified as a cost reasonably related to the negotiation and administering of collective bargaining agreements, and that therefore 18% of the cost of production and related staff salaries attributable to bargaining unit members' copies can properly be paid from service fees. The remainder of the cost of producing the newspaper will be disallowed for lack of justification.

We do note that although we have disallowed costs attributable to recreational and social activities, in some instances, reporting of such activities makes house organs attractive and thus better conveyors of the not-so-interesting or readable messages concerning negotiation and contract administration. In this respect, this Board will continue to eliminate from the service fee computation the costs attributable to non-bargaining unit member copies, and would also eliminate the cost of space devoted to partisan political and ideological issues unrelated to wages, hours, and working conditions. We would, however, encourage complete reporting on other activities and allow the cost of such reporting in the service fee computation if appropriately justified.

2. Staff salaries and similar expenditures

This Board next must apportion "an equitable portion" of staff salaries and other similar expenditures which

are supportive of the totality of HGEA activities to "union membership benefit functions."

In making this apportionment, the approach in Decision 78 will again be utilized. This method of segregation received the court's approval in Jordan v. Hamada:

HGEA's presentation in arriving at service fee costs was by submission of its total budgeted expenditures with subtractions therefrom of certain amounts which the union conceded as not being related to service fee activity. HPERB took a similar approach in deciding what was a reasonable service fee deduction, making subtractions additional to those made by HGEA. This approach is similar to that taken in Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, Civ. No. 73-113-N (S.D. Cal., Jan. 20, 1976), and is a permissible and reasonable approach.

Jordan v. Hamada, supra at 3-4.

Based on the record, the HGEA's allocation of staff salaries and other expenses is reasonable, except for the additional or corrected allocations made by this Board in the Findings of Fact for the salary of the Special Assistant to the Director, salaries of the Public Relations Officer and his assistant, fringe benefits, payroll taxes, and audit fees.

SUMMARY

Total projected budget, 1976-77	\$2,551,020
Exclusions: Decision 78	\$285,594
On remand	369,904
	<u>655,498</u>
Adjusted total budget	1,895,522
Service fee income	<u>1,818,336</u>
Deficit	77,186

These calculations show that notwithstanding the additional exclusion made by this Board, HGEA will have a deficit of service fee expenses over service fee income. Therefore, the previously approved service fee remains reasonable.

This Board was also required to examine the possibility of allocating telephone, land and equipment rental, and other administrative expenses of the HGEA. The record shows that where these charges can be directly and discretely attributable to "union membership benefits," they have been allocated. This was the case with long distance and WATS charges, and committee expenditures. In other instances, such as land and building rental, the expenditures are not readily susceptible to allocation. With the costs of maintaining the mailing list, the purpose of some expenses are essentially attributable to service fee activities, even though there may be some incidental benefit to "union member" programs. All these non-allocated costs are necessary to running the administrative structure of the exclusive bargaining representative; they very likely would have to be incurred even if the union engaged in no "union member" programs, and will be allowed as proper service fee costs in their entirety.

In allowing these costs, we refer to the principle that all who benefit must pay a fair share of the expense of collective bargaining benefits incurred by the exclusive representative. As the U. S. Supreme Court stated in Abood v. Detroit Board of Education, 431 U.S. 209, 95 LRRM 2411 (1977):

[T]he designation of a union as exclusive representative carries with it great responsibilities. The tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. See Street, 367 U.S., at 760. The services of lawyers, expert negotiators, economists, and research staff, as well as general administrative personnel, may be required. . . .

431 U.S. at 221, 95 LRRM at 2415.

See also, Jensen v. Yonamine, 437 F. Supp. 368, 374, 96 LRRM 2284, 2288 (1977); Association of Capitol Powerhouse Engineers v. Division of Building and Grounds, 89 Wash. 2d 177, 570 P. 2d 1042 (1977); K. Hanslowe, D. Dunn, and J. Erstling, Union Security in Public Employment, 13, 31 (1978).

3. Per capita payments to the HSFL

The record shows that all political expenditures are paid from voluntary funds from HSFL affiliates' members, collected in the COPE fund.

The record also shows that per capita payments are used to pay for that portion of the HSFL's house organ which specifically deals with negotiating and administering an agreement. Other revenue sources, such as COPE funds, pay for the remainder of the newspaper.

The HSFL, however, does use per capita payments to pay its Executive Secretary, who participates in political activity in the form of lobbying. The Board does not question the estimated 5% of his time spent helping the public sector affiliate obtain legislative approval for its contract as a charge against service fees. The Executive Secretary, however, spends time lobbying for other labor-related legislation, such as Workers' Compensation. He also does some general lobbying.

Permissible lobbying need not be confined to obtaining legislative approval for negotiated contracts. The terms and conditions of employment, as well as non-negotiable subjects in the public sector, are governmental decisions made through the political process. Summers, "Public Employee Bargaining: A Political Perspective," 83 Yale L.J. 1156, 1159.

The political nature of public employees' collective bargaining has been recognized by this Board in Decision No. 7:

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 ratification as against ordinary political expenditures of contributing to political parties, candidates or of general political activity.

HPERB Dec. No. 7 at 22.

and in a model agency shop statute:

Section 2. Provisions and Conditions of an Agency Shop Agreement.

* * *

(1) Amount of Payment.--The agency service fee shall be a sum proportionately commensurate with the costs of collective bargaining and contract administration; provided however,

first, such sum representing an agency service fee shall not reflect the additional costs of other expenses or activities that have no relation to the collective bargaining and contract administering services rendered by the union to the public employees;

second, such sum representing an agency service fee shall not reflect the costs of financial support of political causes, except to the extent that it is necessary for the union to engage in political activity in order to foster the goals of the union in collective bargaining and contract administration or to secure for the employees it represents advances in wages, hours, and other conditions of employment which ordinarily cannot be secured through bargaining collectively with the public employer. Nothing in this section shall authorize inclusion in the agency service fee of any sum representing expenditures or contributions to a political party, to a candidate for a political or elected office, or to a current officeholder. (Emphasis added)

Comment, "Impact of the Agency Shop on Labor Relations in the Public Sector," 55 Cornell L. Rev. at 578.

The record before us, however, contains little justification for or description of the 10% of the HSFL Executive Director's time spent in non-contract related lobbying. This Board is, therefore, compelled to disallow this portion of the Executive Secretary's salary as a charge against per capita payments because of the absence of any facts in the instant record demonstrating a reasonable relationship between such lobbying and "negotiating and administering an agreement."

The excluded portion of the Executive Secretary's salary is \$3,840. Since there are 14,256 employees, each is entitled to a rebate of approximately 27¢ annually.

Intervenor argues that this rebate must be made to each person in the HGEA-represented units, without the requirement that he or she step forward and request such rebate.

As the U. S. District Court for the District of Columbia stated, in Federal Election Commission v. NEA, et al., 771 GERR 46 (8/7/78):

[c]ertainly many NEA members who used reverse check-off knew that the dollar political contribution was being deducted and wanted to make that contribution. Requiring the NEA to return all money collected would thus infringe unnecessarily on the rights of those members.

771 GERR at 51.

In deference to these rights of HGEA members, and in recognition of the unique nature of the per capita payments as a tax set by the affiliate, this Board will instead order the HGEA and the HSFL to create a plan under which those service fee payers who request the rebate may receive it.

ORDERS

Upon consideration of the remand order by the court, the arguments of the parties, the record, and for the reasons set forth in the above decision, this Board orders that

The annual service fee certified in Decision No. 78 of this Board be re-certified reasonable, except for the per capita payments made to the HSFL. It is further

ORDERED that Petitioner HGEA and the Hawaii State Federation of Labor, in consultation with Intervenor, prepare a plan by which bargaining unit members represented by the HGEA will be informed of the decision of this Board, and be refunded, at their request, the 27¢ per annum that has been deducted from their paychecks in the form of per capita payments to the HSFL, and it is further

ORDERED that this plan be submitted to this Board for approval no later than 60 days after the date of this decision.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: October 18, 1978

Honolulu, Hawaii