

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )

HAWAII STATE TEACHERS )  
ASSOCIATION, NEA, )

Petitioner, )

and )

DONALD F. JENSEN, PAULA )  
CHAMBERS, SHARON DUMAS, )  
ANN KONDA CORUM, VAN E. )  
CORUM, JOANNE C. KAPAHUA, )  
HAROLD W. KUHA, LINDA M. )  
McLEAN, FLORENCE M. HAYSLIP, )  
HARRY MARSHALL GREENWOOD, )  
DEBORAH M. C. CHU, E. PAUL )  
VOSBURGH and JERELENE M. AIO, )

Petitioners for )  
Review, )

and )

HAWAII GOVERNMENT EMPLOYEES' )  
ASSOCIATION, LOCAL 152, )  
AFSCME, AFL-CIO, )

Intervenor on )  
Motion to Review. )

Case No. SF-05-42

Order No. 189

ORDER DENYING PETITION TO REVIEW  
REASONABLENESS OF SERVICE FEE

On January 13, 1978, thirteen employees (hereafter Petitioners) who are members of Unit 5 (teachers and other personnel of the department of education under the same salary schedule) filed with this Board a Petition to Review Reasonableness of Service Fee. The fee they wished to have reviewed was established by Board Decision 69 which was rendered in Case No. SF-05-42 on July 21, 1976.

On January 26, 1978, this Board issued, in this case, Order No. 167 which, in relevant part, stated:

"By said petition, they seek a review of Board Decision 69 . . . .

Said decision contains the following language:

'The Board may, upon its own motion or the petition of the HSTA or any affected employee, review the reasonableness of the subject service fee whenever it deems such a review would be appropriate.'

Language to similar effect has appeared in all of the Board's service fee decisions.

However, certain questions have arisen as to whether the Board may, in fact, on its own motion or the motion of anyone, legally review a final decision in a service fee case.

Accordingly, the Board directs the petitioning employees to submit a memorandum of law as to whether the Board, on their petition, has jurisdiction to review Decision 69 as this time.

The memorandum should demonstrate what statutory basis, if any, grants the Board jurisdiction and authority to entertain the petition for review.

Consideration should be given to the effect, if any, of the case of Yamada v. Natural Disaster Claims Commission, [54] Haw. 621, 516 P 2d 336 (1973), and the authorities relied upon therein.

Consideration also should be given to what legal effect, if any, results from the fact that none of the petitioning employees were parties to Case No. SF-05-42."

The Hawaii Government Employees' Association (hereafter HGEA) intervened solely on the questions raised by Order No. 167.

The Hawaii State Teachers Association, HGEA and the Petitioners submitted legal memoranda on these questions. Oral arguments were heard on April 17, 1978.

The Petitioners state that they "are not seeking review, rehearing or appeal of that Decision [69]. Instead Petitioners (as the Board correctly notes in the first paragraph of its January [26] Order) are merely asking for a review of the Unit 5 service fee paid to HSTA as of the current date, . . . ."

Petitioners' characterization of their request seems to amount to a distinction without a difference. Clearly, they wish the Board to take another look at the service fee approved of in Decision 69 and, if warranted, modify the decision.

The authorities relied upon by the Petitioners in support of their petition are Davis, Administrative Law, §1809 at 610 (1958), and Permian Basin Rate Cases, 390 U.S. 747 (1968); Tagg Bros. & Moorhead v. United States, 280 U.S. 420, 444-45 (1930); St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 64 (1936). All of these authorities might be persuasive but for the fact that they clearly involve the exercise by administrative agencies of their quasi-legislative functions.

As the HGEA correctly has pointed out, service fee hearings conducted under Section 89-4, Hawaii Revised Statutes (hereafter HRS), have been held to be contested cases under Hawaii's Administrative Procedure Act. Thus, when it renders a service fee decision this Board is acting in a quasi-judicial capacity, not a legislative capacity. Order Granting Plaintiffs' Request for a Preliminary Injunction and Remanding Case to HPERB for Further Proceedings, entered on December 16, 1971, in the case of Naud, et al. v. Amioka, et al. and HSTA, Civil No. 35588. The fact that the service fee payments ordered by a Board decision are payable over a period of time does not change the character of the Board's action from a judicial one to a legislative one.

The provisions of Chapter 91 (Hawaii's Administrative Procedure Act) defining the concepts of "contested case" and "agency hearing" obviously contemplate that decisions rendered in contested cases will become final and 30 days

later be reviewable by a Circuit Court. This fact itself would appear to preclude this Board from reviewing or re-considering a decision rendered nearly two years ago.

Because the decisions of the Board in service fee cases are quasi-judicial in nature, because of the finality afforded to decisions in contested cases by Chapter 91, HRS, and, most significantly, because the Petitioners have failed to show this Board any statutory authority which either explicitly or implicitly allows it to review Decision 69, the Board is of the opinion that the subject Petition for Review is governed by, and must be denied because of, the ruling in the case of Yamada v. Natural Disaster Claims Commission, 54 Haw. 621, 516 P 2d 336 (1973), rehearing denied, 55 Haw. 126 (1973):

The weight of authority requires that an administrative agency's power to reconsider final decisions be statutorily grounded, either stated expressly or inferred from a reading of the entire statute [citations omitted]. 56 Haw. 621, 626.

This ruling does not necessarily mean that a service fee decision once rendered may never be challenged by affected employees. In proper circumstances, a prohibited practice charge may possibly lie if the exclusive representative, for example, is violating the terms of a service fee decision.

Also, the Supreme Court of Hawaii has not indicated whether there are any exceptions to the rule stated in Yamada. Some courts in other jurisdictions have recognized exceptions to the rule under extraordinary circumstances, as where a substantial change in circumstances, or fraud, surprise, mistake, or inadvertence is shown. Anno. Administrative Decision - Reopening, 73 ALR 2d 939, 951-952. We do not need to attempt to fathom whether the Supreme Court of Hawaii would recognize any

of these exceptions because none of them has been alleged or shown to exist in this case.

In view of the fact that the Board lacks the power to reopen or reconsider service fee decisions, the language which the Board has heretofore inserted in its previous service fee decisions stating that the Board may, upon its own motion or the petition of the exclusive representative or any affected employee, review the reasonableness of the service fee whenever it deems such a review would be appropriate is of no legal significance:

The express reservation in an administrative determination of the agency's power to reopen the proceedings or modify its decision has been held not to confer such power upon the agency where it does not exist in the absence of the reservation. Anno. Administrative Decision - Reopening, 73 ALR 2d 939, 954.

This ruling of the Board does not compel the conclusion that a final decision in a service fee case may not be superseded by a subsequent service fee decision in a proper case brought by an exclusive representative on new notice and new facts in a subsequent contested case. Individual employees, however, do not have standing to petition for a determination of the reasonableness of a service fee. See Board Rule 6.02(a).

For all of the reasons aforesaid, the Petition to Review Reasonableness of Service Fee is denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: May 25, 1978

Honolulu, Hawaii