

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
JERELENE M. AIO,	)	Case Nos. CU-05-22
PAULA CHAMBERS,	)	CU-05-23
DEBORAH M. C. CHU,	)	CU-05-24
ANN K. CORUM,	)	CU-05-25
VAN E. CORUM, JR.,	)	CU-05-26
SHARON DUMAS,	)	CU-05-27
HARRY M. GREENWOOD, III,	)	CU-05-28
FLORENCE M. HAYSLIP,	)	CU-05-29
DONALD FREDERICK JENSEN,	)	CU-05-30
JOANNE C. KAPAHUA,	)	CU-05-31
HAROLD W. KUHA,	)	CU-05-32
LINDA M. McLEAN and	)	CU-05-33
E. PAUL VOSBURGH,	)	<u>CU-05-34</u>
Complainants,	)	
and	)	Order No. <u>190</u>
HAWAII STATE TEACHERS	)	
ASSOCIATION, NEA,	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS  
PROHIBITED PRACTICE CHARGES

The above Complainants, on January 13, 1978, filed prohibited practice charges against Respondent Hawaii State Teachers Association (hereafter referred to as HSTA).

Subsequently, on February 7, 1978, they filed a Particularization of their charge.

The charges allege that the HSTA is violating Section 89-13(b)(1) and (4) "by taking and continuing to take service fees from the Complainants which amount to more than Complainants' pro rata share of the cost to Respondent of the expenses of collective bargaining contract administration and grievance adjustment." (Quoting from Complaint)

The Particularization alleges, in part, that the HSTA is using service fees for political and lobbying expenses

"and other activities not related to the negotiation and administration of collective bargaining agreement" (quoting from Particularization) in a manner inconsistent with principles established in Abood v. Detroit Federation of Teachers, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977).

Complainants also allege that there have been both "changes in Respondent's expenditures and changes in applicable law [which] require a new determination of Respondent's compliance with H.R.S. §89-3 and 89-4." (Quoting from Particularization)

On February 14, 1978, the HSTA filed a document entitled, Affirmative Defenses and Answer. Simultaneously, it filed a Motion to Dismiss and Affidavit. The motion to dismiss was based on the assertion that the charges failed to state a claim upon which relief can be granted. The HSTA also states in said motion that Complainants have not alleged that the HSTA is failing to abide by or follow Decision 69, which established the current service fee for Unit 5 (teachers and other personnel of the department of education under the same salary schedule).

The Complainants countered in their Memorandum in Opposition to the Motion to Dismiss that they had made repeated allegations that the HSTA is violating the spirit of Decision 69.

Subsequently, the HSTA, at a hearing before this Board on April 17, 1978, put on testimony as to certain expenditures it makes out of service fees for lobbying expenses of various kinds:

While it may be (and this is a question of first impression under our law) that compliance with Decision 69 would in this case be a complete defense to a prohibited

practice charge, there now exists a controversy even as to whether the HSTA is expending its funds in accord with Decision 69.

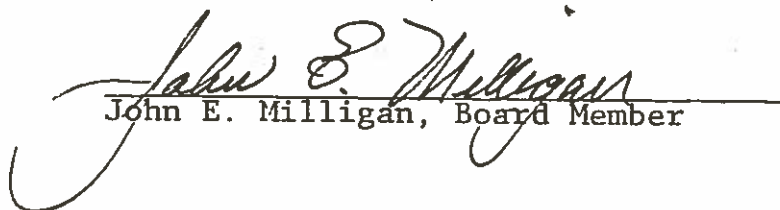
Based on the record as it presently stands in this case, this Board is unable to rule that the Complainants have failed to state a claim upon which relief can be granted.

In so ruling, the Board does not intend to open the door to a collateral attack on Decision 69. Complainants have the burden of proving that the HSTA wilfully violated Subsections 89-13(b)(1) and (4); meeting this burden should not entail an attempt to relitigate Decision 69.

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