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Grassroot Institute of Hawaii Discusses Local and National Policy

policybrief

Hawaii State Teachers' Union Clamps Down Hard on Teacher Dissent



By Laura Brown

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“In order to maintain pride and dignity in our profession,

we teachers must continually strive to uphold our responsibilities to enhance and protect our rights in the classroom, in the educational system, and in the community at large.”

— Forward, Hawaii State Teachers' Association, Bylaws 2009

Though an admirable goal, Hawaii public school teachers say this lofty statement does not include a provision to protect teachers from their own union. Concerned teachers believe they now need protection, because delegates to the April 2009 HSTA Convention approved bylaw amendments that:

- take away members' right to counsel during the grievance process;
- force non-members and part-time members to pay the same dues as regular members;

- strip away any pretense that the HSTA is a professional association by clarifying that it is a labor union under the National Education Association (NEA) umbrella;
- establish an internal board likely to thwart teachers from filing grievances;
- threaten teachers with fines and legal fees if they do not “exhaust internal remedies;” and
- allow members to be fined or expelled for breach of confidentiality, unauthorized disclosure of privileged information or refusal to respect a picket line.

All but 14 of more than 350 teacher delegates concurred with these punitive changes with only 7 nays and 7 abstentions. A majority of members have now ratified the bylaws.

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Professional Teachers are Now Considered Blue Collar Laborers

HSTA bylaws now clarify that their union is a “labor organization” whose purpose is “to promote and fulfill the specific objectives and goals of an affiliate association of the National Education Association of the United States (NEA).”

The NEA targeted Hawaii last year when it used more than \$300,000 in teachers’

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dues to run a media blitz against a public vote on a Constitutional Convention. A “Con Con” might have opened the door to breaking up the State-run education system.

And it might have led to the formation of schools or districts as Local Education Agencies (LEAs) eligible to receive federal funding and grants directly without giving a 20 percent “cut” to the Hawaii Department of Education (DOE) .

Other notable goals and objectives of the NEA include: Using teacher dues to lobby for government education from birth (0-5); pushing for the right of government schools to teach sexuality and sex education with emphasis on gay rights, even without consent of the parents; and putting state authority over parental rights.

Simultaneous with the HSTA’s commitment of Hawaii teachers’ dues to forward the NEA’s social agenda, the former purposes of the organization were removed from the bylaws. Those were:

- Maintain and advance the best American ideals and standards of education;
- Foster professional zeal and growth;
- Cultivate helpful, friendly relations among the members and in the community;
- Promote both personal and general welfare of the members for the best interests of education;
- Encourage members in the discharge of their professional, community and civic responsibilities;
- Promote the general welfare of the children of the State of Hawaii.

The new purpose of the HSTA is “to promote and protect the constitutional rights of public and private employees in Hawaii.” In other words, the teachers’ union is now primarily about unionizing.



Exhausting Remedies in a No-Win Situation

HSTA amendments clamp down on their members' right to file grievances. In a Catch-22 scenario, some members believe that HSTA bylaw procedures ensure that teachers may never be able to "exhaust their remedies" when filing a prohibited practice complaint. In other words, they say the process is now rigged so that the union will not have to provide fair representation to teachers when terms of their contract have been violated.

Specifically:

- Article XV, Section 4 requires "exhaustion of internal procedures and remedies for members," despite a flawed grievance procedure that allows an internal judicial panel to decide unilaterally whether a grievance may go to arbitration.
- Article XV, Section 5: Any teacher who "does not exhaust" his or her remedies "may be subject to disciplinary actions leading to suspensions, fines, expulsions or terminations, or other adverse actions."
- Article XV, Section 6 establishes an HSTA judicial panel to hear all grievances, complaints, legal matters and more. The panel will be entitled to its own lawyers and use of HSTA staff, but teachers will not be allowed representation or even to bring a friend for emotional support.

The HSTA bylaws now limit teachers' rights even further:

- The bylaws stipulate a one-year statute of limitations for any action challenging a teacher's suspension or termination of membership. This section also strips the member's right to have the presence of council during any disciplinary proceeding.
- Article X states that members do not always have the right to "one member, one vote" and that the "corporation" may limit members' rights. Article X also allows the corporation to sell all of the corporation's assets.

Mandatory Dues without Fair Representation

Federal labor laws allow unions and employers to include a union

security clause in their contract that all new employees must join the union or pay an equal amount in union dues as a service fee to the union. Hawaii's teachers come under this agency shop agreement and so Hawaii is not a Right-to-Work state.

Under this current arrangement, the union may spend money collected from non-members on 1) its international convention 2) social activities formally open to nonmembers 3) the union's regular publication in so far as it informs nonmembers about activities for which they may be charged. The HSTA may not spend objecting non-member fees on activities unrelated to collective bargaining or for political action committee (PAC) funds. Public sector unions are prohibited from spending

objecting nonmember fees on lobbying or political activities not related to contract negotiation or implementation.

According to one HSTA representative, the amount of PAC funds collected from teachers is minimal. However, in 2007, 12,798 members paid \$368,941 in political action dues of which \$328,278 was spent for lobbying purposes.

In *Swanson v. UHPA*, a class action civil rights complaint brought by the National Right to Work Foundation in U.S. District Court, the University of Hawaii Professional Association was ordered to stop collecting agency fees from non-union members until the union could prove non-expenditures on activities not related to collective bargaining. The court ruled that the union failed to observe employees' due process rights and failed to provide an independent audit of the union's books and records.



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- HSTA bylaws now inform members that there is a refund procedure for teachers who opt out of the union.
- Teachers must file a “timely” written objection to expenditures made by NEA and HSTA for political activities or ideological causes.
- Non-members, i.e. those who opt out of union membership, will pay the same regular dues as members, but will not be entitled to the same rights and benefits as members. Those rights include voting on their own contract and participating in collective bargaining.
- Dues deducted from teachers’ pay include both HSTA and NEA dues. Now, the NEA portion will be determined by the NEA and those amounts will be submitted to the employer and clearly specified in the authorization form.
- The amount of dues to be automatically deducted from teachers’ pay has changed from “1 percent of average statewide salary” to “one percent of highest teacher annual rate” plus any legal fees, fines or penalties for any breach of HSTA rules or failed complaint or charge against the union.



Teachers are Cash Cows for the Union

In 2007, the HSTA received over \$6.4 million in membership dues. Each teacher will soon pay out nearly \$1,000 per year to belong to the HSTA/NEA, and receive, in return, the threat of fines and legal fees from their own labor union when they file a grievance regarding collective bargaining contract abuses. Entry-level teachers making only \$36,000 per year will soon pay the same dues as those making \$78,000 per year, despite the fact that first and second year non-tenured teachers have no right to file grievances. The union is raising dues despite current revenues exceeding expenditures by nearly \$1 million per year.

If teachers object to forced political dues, they may follow National Right to Work procedures to resign from their union and request a refund of any dues used for political purposes. Then, they may join a professional teachers association, such as the Association of American Educators. That way, they may receive individual legal representation, liability insurance and assurance that their salary is not being used for a social or political agenda with which they disagree.

Teachers may also decertify the HSTA as their exclusive representative. (Visit <http://www.unionfacts.com/articles/memberDecertification.cfm> for further information.)

Teachers who wish to opt out of the union or seek a partial refund of dues should contact the National Right to Work Foundation at <http://www.nrtw.org>.

Please contact the Grassroot Institute of Hawaii at (808) 591-9393 for further information.



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