

1 HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
2 Minutes of the Board of Trustees
3 Tuesday, January 29, 2002
4
5

6 TRUSTEES PRESENT: Mr. Sam A. Callejo
7 Ms. Audrey Hidano
8 Ms. Joan Lewis
9 Ms. Kathryn S. Matayoshi
10 Mr. Neal Miyahira
11 Mr. Will Miyake
12 Mr. Chip Uwaine
13 Mr. Jimmy Yasuda (Arrived 10:15 a.m.)
14 Mr. Davis Yogi
15

16 TRUSTEE ABSENT: Mr. Jim Williams (Out-of-State)
17

18 ATTORNEY: Mr. Brian Aburano, Deputy Attorney General
19

20 BUDGET AND FINANCE Ms. Wanda Kimura
21 PROJECT TEAM STAFF Mr. Tracy Ban
22 Ms. Lynette Fukunaga
23 Ms. Karen Tom
24 Mr. Tom Morrison, The Segal Company
25 Ms. Shirley Kawamoto
26

27 OTHERS PRESENT: Mr. Rod Tam, HMSA
28 Ms. Alana Deppe-Mariota, Kaiser Permanente
29 Mr. Norbert Mendes, HDS
30 Ms. Monica Engle, VSP
31 Mr. Gordon Murakami, Royal State
32 Mr. Melvin Higa, MBAH
33 Mr. Melvin Kutara, C&C of Honolulu, Dept. of Human Resources
34 Ms. Gertrude Nitta, HGEA-Retiree
35 Ms. Nani Crowell, HSTA
36 Mr. Maurice Morita, HSTA
37 Mr. Leroy Simms, HSTA
38 Mr. George Butterfield, HSTA-Retiree
39 Ms. Ruth Kim, HSTA-Retiree
40 Ms. Karen Muronaka, HSTA-Retiree
41 Ms. Jean Aoki, HSRTA
42 Ms. Julie Ugalde, DAGS/Risk Management
43 Mr. Charles Khim
44

45 A. CALL TO ORDER

1 The regular meeting of the Board of Trustees was called to order at 9:20 a.m. by Mr. Sam
2 Callejo, Chairperson, in Conference Room 303/304, No. 1 Capitol District Building,
3 250 South Hotel Street, Honolulu, Hawaii, on Tuesday, January 29, 2002.
4

5
6 B. APPROVAL OF MINUTES

7 This matter was deferred because the minutes were not yet prepared. Minutes of the
8 January 24, 2002 meeting will be ready for review at the February 5, 2002 meeting.
9 During the period that the board meets twice a week, a meeting's minutes will be ready for
10 approval at the following third meeting, e.g., January 29, 2002 minutes will be on the
11 February 7, 2002 agenda.
12

13 C. RECESS at 9:30 a.m. by request for Mr. Uwaine so that he could review a section of the
14 recording of the January 24, 2002 meeting concerning the trustees' potential personal
15 liability that was relevant to today's meeting, due to the fact that the staff had incorrectly
16 fulfilled Mr. Uwaine's request made the day before to prepare an excerpt of the January
17 24, 2002 meeting. The meeting reconvened at 10:15 a.m.
18 Mr. Yasuda joined the meeting at 10:15 a.m.
19

20 D. FOLLOW-UP REPORT ON AGENDA ITEMS V. A - B

21 Mr. Aburano, Deputy Attorney General, reported on follow-up items from the January 24,
22 2002 meeting. With respect to Item V.A., the Attorney General's letter, dated January 6,
23 2000, to Gregory M. Sato, Esq., Hawaii Public Employees Health Fund, was distributed to
24 the trustees.
25

26 On Item V.B., Mr. Aburano reported that he had reviewed the State's crime policy and a
27 sample fidelity bond policy provided by Marsh, Inc. Mr. Aburano found that the terms of
28 the policies are very similar except for a couple of differences for which he is waiting for
29 clarification from the broker/insurer. Mr. Aburano briefed the trustees on the material
30 terms of the crime policy and sample fidelity bond. Mr. Aburano also reported that while
31 the State's crime policy had a \$250,000 deductible, he had been informed by the State's
32 risk management office that the State pays for losses under the \$250,000 and pursues the
33 dishonest employee who caused the loss. If the broker/insurer responds that the couple of
34 differences between the crime policy and fidelity bond do not adversely affect the fidelity
35 coverage provided to the trustees under the crime policy, Mr. Aburano stated that he felt
36 that the coverage provided by the State's crime policy and the State's risk management
37 office could be used to satisfy the requirements of HRS §87A-25(5).
38

39 Mr. Aburano distributed to the board a copy of the Attorney General letter dated January
40 29, 2002, which responds to the board's question as to whether the board's sovereign
41 immunity is waived by procuring primary fiduciary liability insurance.
42

43 E. PROCUREMENT OF FIDUCIARY LIABILITY INSURANCE (Agenda V. C.)

1 Without any objections, Agenda Item V. C. was moved to the beginning of the agenda.
2 The board discussed the feasibility of utilizing the State's existing insurance policy (\$2
3 million deductible) or the procurement of private insurance through a private broker.
4 Certain trustees voiced a concern as to the trustees' individual liability, the State's being
5 willing to defend and indemnify the trustees, the desirability of obtaining defense through a
6 private insurer, and the prudence of proceeding with any further board actions without
7 insurance.

8
9 MOTION was made by Mr. Uwaine and seconded by Mr. Miyake that the board take
10 action to procure private insurance coverage for the board.

11
12 DISCUSSION: The board discussed the amount of insurance to be procured and the type
13 of insurance to obtain, e.g., a gap policy that covers the difference between the State's \$2
14 million self-insurance amount, coverage when the legislature does not fund a claim in the
15 gap between the total cost of the liability and the State's excess liability insurance, etc.

16
17 Mr. Uwaine stated that Ms. Ugalde and her State Risk Management office lacked
18 credibility, because Ms. Ugalde had been evasive in her answers to his questions at the
19 January 24, 2002 meeting. Mr. Uwaine then read a verbatim question/answer colloquy
20 which occurred at the January 24, 2002 meeting[~~where Ms. Ugalde was evasive and~~
21 ~~failed to answer a simple, straight forward question from him~~]. Specifically, Mr. Uwaine
22 asked Ms. Ugalde if there is no action by the legislature or the AG to initiate legislative
23 action for the \$2 million deductible, would he be liable for the \$2 million. Ms. Ugalde
24 stated that she have not seen that occur.

25
26 PUBLIC COMMENTS:

27 T. Morrison, Segal, Inc., commented that for fiduciary liability insurance, the board pays a
28 premium and the individual trustees pay a premium which is a reimbursable expense. The
29 insurance coverage is usually on a "claims made" basis and the insurance is only required
30 to be in force at the time the claim is made, not when the action was taken that resulted in
31 the claim. It is also possible for the trust to pay claims from its trust funds, i.e., the
32 insurance deductible amount. Generally, a board's fiduciary duties are indicated by the
33 board's rules or trust documents.

34
35 C. Khim, a member of the public, commented on the fiduciary duties under the
36 Employees Retirement Income Security Act of 1974, as amended (ERISA), trustees'
37 fiduciary duties under Act 88 which mandates the purchase of insurance, and recommended
38 that the trustees purchase insurance. Mr. Khim provided his interpretation of §41D-2.(a),
39 HRS, that providing insurance for the board is outside of the statutory scope of the State's
40 risk management office.

41
42 M. Higa, member of the public, commented the board should purchase insurance to protect
43 the trust's assets.

1 FURTHER DISCUSSION:

2 The Board asked if Mr. Higa could provide information about the type of insurance and
3 amounts of insurance purchased for the employee organization trusts with which he works.
4 Ms. N. Crowell, HSTA/Member Benefits Corp., offered to supply HSTA's benefit trust
5 insurance information also.

6
7 PUBLIC COMMENTS:

8 G. Butterfield, a member of the public, commented that the current Public Employees
9 Health Fund has no plans to continue beyond 2003.

10
11 FURTHER DISCUSSION: Mr. Aburano commented that §41D-2.(a)(3), HRS, provides
12 the scope of the comptroller's risk management and insurance program responsibilities,
13 e.g., means that the comptroller does not have to do the job of the Public Employees
14 Health Fund in procuring health insurance coverage for public employees. He felt that
15 §41D-2.(a)(3) does not limit the trustees' immunity or indemnity under §26-35.5, HRS, or
16 the coverage of the State's insurance with respect to the trustees. Mr. Aburano was
17 requested to provide his comments in writing.

18
19 Mr. Uwaine clarified his motion that the board purchase private industry insurance to cover
20 fiduciary liability insurance and errors and omissions insurance of all trustees as provided
21 in Act 88 ,SLH 2001, section 25.

22
23 Discussion clarified that a private insurance broker quotations and recommendations are not
24 binding on the board, the board would work directly with the private broker, and multiple
25 brokers should be contacted.

26
27 RECESS at 11:50 a.m. Meeting reconvened at 12:00 p.m.

28
29 VOTE on the motion was passed unanimously.

30 (Public employer trustees/ 5 YES; Employee-Beneficiary trustees/4 YES)

31
32 Chairperson recommended that Mr. Uwaine and Ms. Matayoshi work together to come up
33 with a committee to work out details and timing to obtain the insurance information.

34
35 F. PRESENTATION BY THE SEGAL, CO. COVERING TRUSTEE DUTIES AND
36 RULES OF CONDUCT, ROTATION OF BOARD LEADERSHIP, ADVISORS, AND
37 THIRD PARTY ADMINISTRATOR (TPA)

38 Without objection, agenda item IV.B.2.c-f was moved to accommodate Mr. Morrison's
39 presentation because he is unable to attend the next meeting. The handout of
40 Mr. Morrison's PowerPoint presentation was provided at the meeting of January 24, 2002.

41
42 G. ADOPTION OF OPERATING PROCEDURES (Agenda Item IV.A.1.)

43 Mr. Miyake reviewed the revised language as proposed during the January 24, 2002
44 meeting. Additional changes were made:

- 1 • Item 3, changed by deleting “.the most current version of” and adding “10th
- 2 Edition,” to “Robert’s Rules of Order, Newly Revised”.
- 3 • Item 7, line 1, has a typographical error
- 4 • Item 7, last bullet, replace “their findings to the full board” with “a summary of
- 5 their disagreement(s) to the full board.”
- 6 • Item 8, clarify the employee organization with which the board will consult with a
- 7 listing of: “exclusive employee organizations, exclusive employee representatives,
- 8 retiree organizations, and all other employee organizations registered with the
- 9 board”.

10
11 MOTION was made by Ms. Matayoshi and seconded by Mr. Yogi to adopt the proposed
12 operating procedures with corrections as discussed, in principle, subject to consultation
13 with the employee and retiree groups concerning the proposed operating procedures, and
14 subject to changes to the proposed operating procedures which may occur as a result of
15 these consultations.

16
17 PUBLIC COMMENT

18 C. Khim, member of the public and attorney, recommended the use of “representative”
19 instead of “organization”.

20
21 M. Higa, member of the public, commented that he provided a letter from Mutual Benefit
22 Association of Hawaii to the board dated January 28, 2002, listing the employee
23 organizations with which the Public Employees Health Trust Fund currently deals.

24
25 G. Butterfield commented that information on the website will assist in access to
26 information and his concern that retiree groups could not register as retirees are not
27 considered employees.

28
29 R. Kim, HGEA, commented that she regularly receives written notices by calling the
30 number indicated.

31
32 FURTHER DISCUSSION: Board discussed registration procedure and that only an
33 organization may register and there should be one official contact for the organization.

34
35 VOTE on the motion was passed unanimously.

36 (Public employer trustees/ 5 YES; Employee-beneficiary trustees/4 YES)

37 The proposed procedures will be sent for consultation by the end of this week and
38 organizations will be provided two weeks for comment.

39
40 PUBLIC COMMENT

41 M. Higa, member of the public, commented that they would be providing written
42 comments on all agenda items as they arise.

43
44 H. ASSIGNMENT OF COMMITTEES (Agenda item IV.A.2.)

1
2 RECESSED AT 1:05 p.m.; reconvened at 1:15 p.m.
3 Trustees were assigned to committees as follows:

4
5 ADMINISTRATIVE COMMITTEE

- 6 • Audrey Hidano
- 7 • Kathy Matayoshi
- 8 • Jim Williams
- 9 • Jimmy Yasuda

10
11 BENEFITS COMMITTEE

- 12 • Audrey Hidano
- 13 • Neal Miyahira
- 14 • Joan Lewis
- 15 • Will Miyake

16
17 RULES COMMITTEE

- 18 • Neal Miyahira
- 19 • Davis Yogi
- 20 • Will Miyake
- 21 • Chip Uwaine

- 22
23 I. VOTING AND DISPUTE RESOLUTION (Agenda item IV.2.a – b)
24 Voting of the board has been covered in the Operating Procedures. Mr. Aburano reviewed
25 a suggested dispute resolution process that will be considered by the Rules Committee.

26
27 Mr. Morrison was asked to provide information on other processes with which he may
28 experience. Processes are similar with a difference in Taft-Hartley plans that there may be
29 mandatory resolution of a deadlock and there is a breathing space between meetings with
30 two successive deadlocks before a petition to the court by either side to move to dispute
31 resolution.

32
33 This subject was assigned to the Rules Committee for review and recommendation.

34
35 PUBLIC COMMENT

36 C. Khim, member of the public and attorney, commented that the dispute resolution is not
37 mandatory but permissive for this board.

- 38
39 J. PROCUREMENT OF FIDELITY BOND (Agenda Item V. D.)

40 Ms. Matayoshi suggested that insurance applications provided by the State's risk
41 management office be completed by staff except that the trustees must complete items 12
42 and 15 on the CHUBB application which requires personal information. Submit the
43 applications for review and signature at the January 31, 2002 meeting.
44

1 Ms. Matayoshi and Mr. Uwayne were asked by Chairperson Callejo to coordinate the
2 submission of applications to brokers for recommendations and information quotations with
3 the staff.
4

5 K. PRESENTATION OF THE RIGHTS OF TRUSTEES REPRESENTING EMPLOYEE-
6 BENEFICIARIES (Agenda V. E.)

7 Mr. Khim, personal attorney for employee-beneficiary trustees, stated that trustees are free
8 at any time to consult with any individual attorneys they have retained; to consult
9 individually or collectively with their attorney regarding their rights, duties obligations, and
10 liabilities or questions they may have regarding legal issues as they relate to board
11 proceedings. Group consultation with their attorney is permitted when each trustee does not
12 have conflicting interests with each other. Trustees as a group may consult with their
13 private attorney for a second opinion on the aforesaid legal issues and items in order to
14 make a decision on what actions should or should not be taken.. An individual trustee may
15 waive attorney-client confidentiality for advice provided by his or her private attorney as
16 well as the advice of the attorney general and share that information with others. Mr. Khim
17 commented that there is no duty for a trustee to share legal advice received from a private
18 attorney with the other trustees.
19

20 Mr. Aburano commented that he is aware that some trust treatises have suggested that there
21 is a duty for a trustee to prevent a co-trustee of breaching the co-trustee's fiduciary duty.
22 Thus, if a trustee has received information or advice that a co-trustee may be breaching a
23 fiduciary duty, that trustee may have a duty to inform the co-trustee of the information or
24 advice regarding that trustee's prospective action which constitutes a breach of fiduciary
25 duty. Mr. Aburano said that when he consulted with an attorney from OIP about a group
26 of more than two trustees at a time meeting privately with their attorney during a public
27 meeting, he was informally advised that this may ~~for may not~~ be a violation of the
28 Sunshine Law, as there is no ~~provision~~ exception in the Sunshine Law concerning group
29 consultations of trustees with private counsel. Mr. Aburano suggested that the board or
30 trustees seek an opinion from OIP on this issue. In addition, if private consultation
31 between trustees and their private attorney occurs during a public meeting and that
32 consultation extends to discussions on board policy, Mr. Aburano said the question arises
33 as to whether such discussions should occur as public comment. Mr. Aburano is not aware
34 of limited individual waivers of the attorney-client client-privilege; in his experience, once
35 a waiver is given, then the information is available to anyone. Finally, Mr. Aburano noted
36 that the attorney general is counsel to the board and that it is his opinion that waiver of
37 confidentiality where it concerns the attorney general's advice is a decision of the board
38 and it is his opinion that an individual trustee may not individually waive the board's
39 attorney-client confidentiality in so far as it concerns the attorney general.
40

41 L. RECRUITMENT AND APPOINTMENT OF THE ADMINISTRATOR AND OTHER
42 FUND STAFF (Agenda Item V.F.)

43 Mr. Uwayne addressed the issue of proper staffing of the EUTF Board. While praising the
44 competency of the project team staff, he questioned the appropriateness of the EUTF staff

1 being paid by the Departments of Budget and Finance (B&F) and Human Resources
2 Development (DHRD), which Directors serve as Trustees on the EUTF. He further
3 explained that staffing of EUTF should be employees of the Board without mixed loyalties
4 to the EUTF and Directors/Trustees Yogi and Miyahara.
5

6 Board discussed the use and compensation of the project team staff as interim trust staff
7 until decisions on permanent staff or a third party administrator are made. To avoid the
8 staff having to decide who's direction to follow, EUTF Board or Departmental, Mr.
9 Uwaine proposed that the trust should reimburse the B&F and DHRD for the project team
10 staff's wages and cost of benefits until June 30, 2002.
11

12 RECESS at 2:30 p.m.; reconvened at 2:45 p.m.
13

14 B&F Director/Trustee Miyahira stated that B&F will attempt to work with the Legislature
15 to include a proviso in pending legislation that will have the effect of shifting current B&F
16 and DHRD resources to the trust so that additional funding is available to the trust for staff
17 salaries. The staff will be assigned to the trust as employees, effective immediately.
18 Individual salary information for staff must be treated as confidential.
19

20 It was agreed that should the legislative attempt to shift B&F staff funding to EUTF fail,
21 the staffing cost would be reimbursed to B&F and DHRD from the \$300,000 funding of
22 Act 88.
23

24 The Administrative Committee is assigned to research third party administrators and the
25 details of the assignment and compensation of project team staff to the trust. Additional
26 items, e.g., cost of consultant, insurance, etc., must also be added to the trust budget for
27 review.
28

29 PUBLIC COMMENTS:

30 C. Khim, member of the public and attorney, commented that the Trust has not consulted
31 on its Operating Procedures with the employee organizations or public employers and it is,
32 therefore, premature to staff and begin work at the committee level.
33

34 FURTHER DISCUSSION:

35 Mr. Aburano commented that the Operating Procedures are internal procedures and are not
36 considered as rules. Thus, he felt that the committees could begin to meet. Any comments
37 from consultation with the employee-organizations and public employers may still be
38 incorporated in the Operating Procedures.
39

40 Board concluded that the committees would not meet until after consultation on the
41 Operating Procedures had been completed. The board will continue to meet and begin to
42 review items as a committee of the whole until the Operating Procedures are adopted.
43

44 M. STAFF ADMINISTRATIVE COMMENTS

1 MOTION was made by Mr. Miyake and seconded by J. Lewis that Mr. Uwaine be
2 delegated Secretary-Treasurer for the January 24, 2002, and January 29, 2002 meetings to
3 review the minutes in the absence of Mr. Williams. The motion was unanimously passed.
4 (Public employer trustees/ 5 YES; Employee-beneficiary trustees/4 YES)
5

6 N. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

7 Next meeting is Thursday, January 31, 2002, 9:00 a.m. – 12 Noon.
8

9 O. ADJOURNMENT

10 Motion to adjourn was made by Ms. Lewis and seconded by Ms. Matayoshi. The motion
11 was unanimously passed. (Public employer trustees/ 5 YES; Employee-beneficiary
12 trustees/4 YES)
13

14 The meeting was adjourned at 3:12 p.m.
15
16

17 Respectfully submitted,
18
19
20

21 _____
22 Clifford T. Uwaine, Secretary-Treasurer
23

24 APPROVED AS CORRECTED

25 on February 26, 2002.
26

27 Documents distributed:

- 28 1. Board of Trustees Operating Procedures (Ramseyer and Clean). (7 pages)
29 2. Responsibilities of Board Officers. (3 pages)
30 3. Letter dated January 6, 2002, to Gregory Sato, Chair, Board of Trustees, Hawaii Public
31 Employees Health Fund, from the Department of the Attorney General. (11 pages)
32 4. Letter dated January 29, 2002, to the Hawaii Employer-Union Health Benefits Trust Fund
33 from the Department of the Attorney General. (2 pages)
34 5. Letter dated January 28, 2002, to Mr. Sam Callejo, Chair, Trustees of the Hawaii
35 Employer-Union Health Benefits Trust Fund from Mr. Melvin Higa, Mutual Benefit
36 Association of Hawaii. (1 page)