

1 HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
2 Minutes of the Board of Trustees
3 Thursday, January 31, 2002
4
5

6 TRUSTEES PRESENT: Ms. Audrey Hidano, Vice-Chairperson
7 Mr. Jim Williams, Secretary-Treasurer
8 Ms. Kathryn S. Matayoshi
9 Mr. Neal Miyahira
10 Mr. Will Miyake
11 Mr. Chip Uwaine
12 Mr. Davis Yogi
13 Ms. Joan Lewis (Arrived 9:30 a.m.)
14 Mr. Jimmy Yasuda (Arrived 9:25 a.m.)
15

16 TRUSTEES ABSENT: Mr. Sam Callejo, Chairperson
17

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

20 BUDGET & FINANCE Ms. Wanda Kimura
21 PROJECT TEAM Mr. Tracy Ban
22 Ms. Lynette Fukunaga
23 Ms. Karen Tom
24 Mr. Gary Sanehira
25 Ms. Shirley Kawamoto
26

27 OTHERS PRESENT: Mr. Rod Tam, HMSA
28 Mr. Norbert Mendes, HDS
29 Ms. Monica Engle, VSP
30 Ms. Karen Momono, Royal State
31 Mr. Melvin Higa, MBAH
32 Mr. Melvin Kutara, C&C of Honolulu, Dept. of Human Resources
33 Ms. Gertrude Nitta, HGEA-Retiree
34 Ms. Nani Crowell, HSTA
35 Mr. Maurice Morita, HSTA
36 Mr. George Butterfield, HSTA-Retiree
37 Ms. Jean Aoki, HSRTA
38 Ms. Sarah Moriyama, ORTA/HSTA-Retiree
39 Mr. Charles Khim
40

41 A. CALL TO ORDER

42 The regular meeting of the Board of Trustees was called to order at 9:15 a.m. by
43 Ms. Audrey Hidano, Vice-Chairperson, in Conference Room 303/304, No. 1 Capitol
44 District Building, 250 South Hotel Street, Honolulu, Hawaii, on Thursday, January 31,
45 2002.
46

1 Ms. Hidano thanked Mr. Miyake for the morning's refreshments and Mr. Higa (member of
2 the public) for being the courier of the refreshments.
3

4 B. APPROVAL OF MINUTES

5 Minutes of the January 24, 2002 meeting will be ready for approval at the February 5,
6 2002 meeting.
7

8 C. AGENDA ITEMS III. A. 1 - 2 and B. 1 - 2 were completed during the January 29, 2002
9 meeting.
10

11 D. FOLLOW-UP REPORT ON AGENDA ITEM III.C.1.

12 Mr. Tracy Ban, Budget and Finance Project Team, completed the applications for fiduciary
13 liability insurance, fidelity bond, and errors and omissions insurance provided by
14 Ms. Stephanie Tsubata, Marsh USA. Completion of the errors and omissions insurance
15 application is pending clarification of a few items with Marsh USA and information from
16 each trustee for item 12. The trustees were asked to provide the information for item 12
17 and return it to Mr. Ban by the end of the meeting.
18

19 Completed applications provide information needed by insurance brokers to determine
20 coverages and price quotations. At least two insurance brokers will be contacted to provide
21 presentations to the board on their recommended coverages and provide informal quotes.
22

23 Board members reviewed the applications and made various comments and suggestions
24 regarding the coverage requested and other and other aspects and implications of the
25 applications.
26

27 PUBLIC COMMENTS:

28 A member of the public commented that Mr. Ban is not qualified to answer questions about
29 the completion of the form. In response, Mr. Aburano commented that Mr. Ban was
30 merely providing a review of the questions covered in the applications.
31

32 C. Khim, member of the public and attorney, commented that it may be more efficient to
33 discuss the completion of applications directly with the insurance broker.
34

35 M. Higa, member of the public, commented that it is unclear if the board has the authority
36 to procure insurance independently of the State Risk Management Office. He further
37 commented that should the board purchase insurance independently the board should
38 ascertain if there would be any waiver of coverages provided by the State Risk
39 Management Office. In response, Mr. Aburano reported that his communications with the
40 State Risk Management Office indicated that the board could formally request authority to
41 directly purchase insurance and it is possible that the State Risk Management Office would
42 grant such authority.
43

1 C. Khim, member of the public and attorney, commented that the motion the board passed
2 was for the trust to proceed to purchase insurance independently and Act 88 provides the
3 board that authority. He also suggested that the board consider AON as an insurance
4 broker.

5
6 FURTHER DISCUSSION:

7 Ms. Hidano requested that the working copies of the insurance applications be marked as
8 DRAFT and dated.

9
10 Mr. Uwayne and Ms. Matayoshi were asked to also look at insurance coverages so that the
11 periods of coverage coincide with any changes in officers.

12
13 E. FOLLOW-UP REPORT ON AGENDA ITEM III. C.2.

14 Mr. Aburano is still waiting for a response on his questions concerning the State's crime
15 policy from Stephanie Tsubata who is contacting the insurance carrier for clarification.

16
17 F. RECESSED at 9:55 a.m.; reconvened at 10:05 a.m.

18
19 G. AGENDA ITEM III.C.3. was completed at the January 29, 2002 meeting.

20
21 H. RECRUITMENT AND APPOINTMENT OF ADMINISTRATOR AND OTHER FUND
22 STAFF (Agenda III.C.4)

23 This item is to be considered by the Administrative Committee for recommendation.

24
25 DISCUSSION: None.

26
27 PUBLIC COMMENTS:

28 C. Khim, member of the public and attorney, provided his interpretation of sections 20 and
29 24(4) in Act 88, SLH 2001, on staffing. The two sections read in combination appear to
30 envision hiring a third party administrator for benefit plans and an administrator and staff
31 for the administration of the trust.

32
33 M. Higa, Mutual Benefit Association of Hawaii, provided written comments for Agenda
34 items III.C.4, 5, 8, 10, and 11, which were distributed to the trustees.

35
36 FURTHER DISCUSSION:

37 Mr. Yasuda suggested having a discussion at the next meeting on the staffing the trust
38 requires which includes an administrator and consultants so that the board can consider the
39 budgetary impact.

40
41 Mr. Yogi offered to provide a presentation on how the State's Deferred Compensation
42 Board and third party administrator interact.

1 Mr. Aburano commented that the legislative history of Act 88 appears to provide the Board
2 a lot of discretion in the administration of the fund. The use of a third party administrator
3 for the administration of both the trust and benefit plans may meet the intent of the
4 legislature if that is a cost-effective method of proceeding.
5

6 PUBLIC COMMENTS:

7 M. Higa, Mutual Benefit Association of Hawaii, commented that the authority of hiring a
8 third party administrator may fall under the authority of the Chief Negotiator if it
9 constitutes privatization under Act 90. In response, Mr. Yogi commented that managed
10 competition is under the purview of the Chief Negotiator and privatization is limited to the
11 chief executive or individual authorized to make the procurement. Mr. Aburano will
12 review Act 90, SLH 2000, and report to the board.
13

14 I. RETENTION OF AUDITORS, ACTUARIES, INVESTMENT FIRMS AND
15 MANAGERS, BENEFIT PLAN CONSULTANTS, OR OTHER PROFESSIONAL
16 ADVISORS (Agenda Item III.C.5.)

17 Staff was asked to present available information on staffing to the board at the next
18 meeting. It was suggested that the board also discuss whether to obtain one or more
19 consultants at that time.
20

21 PUBLIC COMMENTS:

22 C. Khim, member of the public and attorney, commented that he is aware of the use of
23 dual consultants by several plans especially when there is concern by the employee trustees
24 that the consultant is allied with the employer trustees.
25

26 J. ADOPTION OF RULEMAKING PROCEDURES (Agenda Item III.C.6)

27 This item is to be reviewed by the Rules Committee for recommendation.
28

29 PUBLIC COMMENTS:

30 C. Khim, member of the public and attorney, commented that Section 26 of Act 88,
31 provides requirements which must be included in the procedures and must be done prior to
32 rulemaking.
33

34 K. LEGAL ADVISOR (Agenda Item III.C.7.)

35 The trustees discussed the possible use of private counsel in addition to the Attorney
36 General. The board wanted to have more information as to when and under what
37 circumstances would separate counsel be appropriate, the established process in obtaining
38 private counsel, and what happens when there is a conflict of interest for the attorney
39 general.
40

41 Mr. Aburano briefly reviewed the Hawaii Supreme Court decision of Chun vs. the
42 Employees' Retirement System. He said the decision stated that the attorney general acts
43 as the sole legal representative of state officers and instrumentalities. However, when a

1 conflict of interest develops between the attorney general and a state officer or agency, the
2 Chun decision indicates that the attorney general may have to cease representing the state
3 officer or agency, and the state officer or agency may have to obtain separate counsel. Mr.
4 Aburano noted that the Chun case involved a matter in litigation as opposed to a non-
5 litigation matter.
6

7 A question was raised as to whether the trustees could be held personally liable if they
8 relied on the advice of counsel. Mr. Aburano commented that under H.R.S. §26-35.5, the
9 trustees are immune from actions brought under state law unless they act with an improper
10 or malicious purpose. Similarly, under H.R.S. §26-35.5, trustees are indemnified against
11 federal lawsuits unless they act with an improper or malicious purpose. It would be
12 unlikely that the trustees would be found liable if they acted in accordance with the attorney
13 general's advice. As noted previously, one exception could be if the trustees do not
14 provide the attorney general with all the relevant facts. Then the attorney general's advice
15 may be flawed due to lack of knowledge of all the relevant facts. Mr. Aburano said he did
16 not know what would happen if the trustees failed to act in accordance with the attorney
17 general's advice but rather relied on the advice of private counsel. He said that if the
18 private counsel's advice was ultimately determined to be incorrect, the trustees may have to
19 explain to the court why they acted against the advice of the attorney general who is their
20 designated legal counsel.
21

22 Ms. Matayoshi indicated that when boards within DCCA are in conflict, the attorney
23 general separates all files, work, etc., and the deputies attorney general still continue to
24 represent each board; there has been no problems with that arrangement. She indicated
25 that the department of the attorney general is the chief procurement office for legal
26 services.
27

28 Mr. Aburano indicated that §28-8.3, HRS, lists those agencies that are permitted to have
29 counsel other than from the department of the attorney general. He noted that the trust is
30 not one of the agencies listed. He also indicated that when an issue of potential conflict of
31 interest arises in litigation, a committee at the attorney general's office determines if the
32 litigant (generally, a state employee) should have separate or private counsel. The attorney
33 general's office maintains a list of private attorneys that could be used in such cases.
34

35 Mr. Aburano also noted that the attorney general's office may obtain private counsel when
36 there is a matter that requires specialized expertise not available within the department of
37 the attorney general, e.g., issuing municipal bonds. This is on a case-by-case basis,
38 generally involves very complex matters, and the necessity for private counsel is
39 determined by the attorney general.
40

41 Mr. Aburano was asked to report on the process for acquiring independent counsel not only
42 in situations where there is an issue of the board's liability but also in situations where
43 separate legal advice is necessary, e.g., in a specialized area of law.

1
2 In response to a trustee's question on the extent to which a trustee can rely on the attorney
3 general's advice, Mr. Aburano commented that the attorney will provide advice to the
4 trustees on what is a reasonable and lawful decision. When the decision made by the board
5 follows such advice, the board would probably be protected under the State's indemnity
6 and immunity law.

7
8 Mr. Aburano will research and report to the board on the process to request specialized
9 private counsel and who pays for such counsel.

10
11 Board requested that Mr. Aburano provide information on his background, i.e., the other
12 boards that he may service, so that the board could determine if Mr. Aburano would have a
13 conflict in areas where he has knowledge of related actions of other boards that are his
14 clients. Mr. Aburano will check if that information can be provided, and he will follow-up
15 on the letter from the attorney general on his appointment.

16
17 There was also concern if there are conflicts of interests among the trustees where
18 Employer trustees may have a conflict because the trustees are cabinet members of the
19 current administration and similarly, Employee-beneficiary trustees may have a conflict of
20 interests that are unknown to other trustees.

21
22 PUBLIC COMMENTS:

23 M. Higa, Mutual Benefit Association of Hawaii, stated that Mr. Molloway, Ethics
24 Commission, indicated there are three areas of conflicts of interest that the attorney general
25 enforces. He also related his experience as a former trustee of a board attached to the
26 Department of Budget and Finance where the board met with the attorney general to
27 request a deputy attorney general who was not assigned to the Department of Budget and
28 Finance to minimize any conflict of interest.

29
30 C. Khim, member of the public and attorney, commented that each trustee is liable for his
31 or her actions and this is the reason for purchasing liability insurance. He recommended
32 that the board determine its standard of liability; the better standard would be the higher
33 liability standard. He commented that he believes that Act 88 permits the hiring of other
34 advisors which includes private counsel.

35
36 L. REIMBURSEMENT OF EUTF-RELATED EXPENDITURES TO THE DEPARTMENT
37 OF BUDGET AND FINANCE (Agenda Item III.C.9)

38 This item was discussed during the January 29, 2002 meeting.

39
40 M. AGENDA ITEMS III.C. 8, 10, 11, 12

41 MOTION made by Mr. Uwaine and seconded by Mr. Yogi to defer agenda items III.C.8,
42 10, 11, and 12 to the February 5, 2002 meeting.

43 The motion was passed without objection.

1
2 N. RECESSED at 11:25 a.m.; reconvened at 11:35 a.m.

3
4 O. ELECTION OF OFFICERS (Agenda Item IV.A.)

5 MOTION was made by Mr. Uwaine and seconded by Mr. Yogi to address Agenda
6 Item IV.A. out of order. The motion was passed without objection.

7
8 MOTION was made by Mr. Uwaine to nominate Mr. Sam Callejo for Chair, Ms. Audrey
9 Hidano for Vice-Chair, and Mr. James Williams for Secretary-Treasurer for the period of
10 March 1, 2002 through June 30, 2002.

11
12 PUBLIC COMMENTS:

13 C. Khim, member of the public and attorney, indicated that the proper procedure is to have
14 a motion to close nominations and if there are no other nominations, then the nominees are
15 elected by acclamation.

16
17 MOTION was made by Ms. Matayoshi and seconded by Mr. Miyake to close nominations
18 and elect the officers nominated by Mr. Uwaine. The motion was unanimously passed
19 (Employer trustees/3 YES; Employee-beneficiary trustees/5 YES)

20
21 P. COMMUNICATIONS FROM THE PUBLIC (Agenda Item V.)

22 M. Higa, Mutual Benefit Association of Hawaii, will be pleased to respond to any
23 questions or clarifications on his submitted written comments.

24
25 R. FUTURE AGENDA ITEMS AND NEXT MEETING DATE (Agenda Item VI)

26 Agenda items III.C.4, 5, 8, 10, 11, and 12 will be carried over to the February 5, 2002
27 meeting. Mr. Yogi wished to add a discussion on rules to the February 7, 2002 agenda
28 and administration issues on the February 12, 2002 agenda.

29
30 The next meeting is scheduled for February 5, 2002 from 9 a.m. – 12 Noon.

31
32 S. ADJOURNMENT

33 A motion to adjourn the meeting was made by Ms. Matayoshi and seconded by
34 Mr. Miyahira. The motion was unanimously passed. (Employer trustees/3 YES; Employee-
35 beneficiary trustees/5 YES).

36
37 The meeting was adjourned at 11:40 a.m.

38
39 Respectfully submitted,

40
41 /s/ James Williams

42 James Williams, Secretary-Treasurer

43 APPROVED ON February 12, 2002.

- 1
- 2 Documents distributed:
- 3 1. Committee Assignment Chart. (1 page)
- 4 2. February Calendar with excused absences. (1 page)
- 5 3. Written comments dated January 31, 2002 from Mr. Mel Higa, Mutual Benefit Association
- 6 of Hawaii. (2 pages)
- 7 4. Draft of Fidelity Bond Application. (6 pages)
- 8 5. Draft of Fiduciary Liability Insurance Application. (5 pages)
- 9 6. Draft of Errors and Omissions Insurance Application. (8 pages)