

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
Minutes of the Board of Trustees
Tuesday, February 19, 2002

TRUSTEES PRESENT: Mr. Sam Callejo, Chairperson
Ms. Audrey Hidano, Vice-Chairperson
Mr. Jim Williams, Secretary-Treasurer
Ms. Joan Lewis
Ms. Kathryn Matayoshi
Mr. Neal Miyahira
Mr. Will Miyake
Mr. Chip Uwaine
Mr. Davis Yogi
Mr. Jimmy Yasuda

ATTORNEY: Mr. Brian Aburano, Deputy Attorney General

STAFF: Mr. Tracy Ban
Ms. Lynette Fukunaga
Ms. Shirley Kawamoto
Ms. Wanda Kimura
Mr. Gary Sanehira
Ms. Karen Tom

OTHERS PRESENT: Ms. Jan Yagi Buen, Senator
Mr. George Butterfield, HSTA-Retiree
Mr. Jonathan Chun, Senator
Ms. Nani Crowell, HSTA
Ms. Alana Deppe-Mariota, Kaiser Permanente
Ms. Monica Engle, VSP
Ms. Colleen Hanabusa, Senator
Mr. Melvin Higa, MBAH
Ms. Grace Ing, HSTA-Retiree
Mr. Charles Khim
Mr. Russell Kokubun, Senator
Mr. Melvin Kutara, C&C of Honolulu, Human Resources
Mr. Chris Lewis
Mr. Norbert Mendes, HDS
Mr. Maurice Morita, HSTA
Mr. Thomas Morrison, The Segal Company
Mr. Gordon Murakami, Royal State
Mr. Bob Nakata, Senator
Mr. Scott Saiki, Representative
Mr. Rod Tam, HMSA

A. CALL TO ORDER

The regular meeting of the Board of Trustees was called to order at 9:05 a.m. by Mr. Sam Callejo, Chairperson, in Conference Room 303/304, No. 1 Capitol District Building, 250 South Hotel Street, Honolulu, Hawaii, on Tuesday, February 19, 2002. All trustees were in attendance.

The scheduled meeting for February 21, 2002 was cancelled due to a lack of quorum. The meeting scheduled for February 14, 2002 was cancelled due to a lack of quorum when Mr. Uwaine advised on February 13, 2002 that he would be unable to attend the scheduled meeting.

B. APPROVAL OF MINUTES

Trustee Uwaine apologized to the Board and Mr. Miyahira for an inappropriate electronic comment imbedded in the January 29, 2002 minutes that had been submitted for review by the trustees. Chair Callejo commented that there has been a request for an Executive Session of the Board to address this matter. Trustee Uwaine indicated he would not have a problem if the discussion of this matter occurred during an open meeting.

Minutes for Thursday, January 24, 2002 were reviewed. Trustee Matayoshi noted for the record that the Employer trustees did not caucus during the recess (page 6, line 35) but no correction to the minutes was required. The minutes were approved unanimously as submitted.

Minutes for Tuesday, January 29, 2002 were reviewed. The requested corrections were:

- Page 3, lines 20-21, Ms. Matayoshi commented that the phrase, “where Ms. Ugalde was evasive and failed to answer a simple, straight forward question from him” is an editorial comment, that the comment was not an accurate reflection of her impression of Ms. Ugalde’s responses, and that the comment should be eliminated from the minutes. The Board agreed to removal of the comment.
- Page 7, lines 27-29, Mr. Aburano stated that he did not recall reporting to the Board that the OIP staff attorney had stated that a group of trustees meeting with their attorney “may not” be a violation of the Sunshine Law or that there was no provision in the Sunshine Law covering such a consultation. If he did say that, Mr. Aburano wanted to notify the Board that this was not an accurate reflection of what the OIP staff attorney had said to him. Rather, she had said that it may be a violation of the Sunshine Law and that there was no exemption from the Sunshine Law for such a consultation. He requested that the phrases, “or may not” and “as there is not provision in the Sunshine Law concerning group consultations of trustees with private counsel.”, be deleted on lines 27-29 to accurately reflect his comments relating to his discussion with the Office of Information Practices staff attorney.

After discussion by the trustees, the approval of the January 29, 2002 minutes was deferred to the next meeting so that Trustee Williams, Secretary-Treasurer, could review the draft and the tape recording of the meeting to determine what would be an accurate reflection of Mr. Aburano’s comments in the minutes.

There was discussion about maintaining the recordings of the Board’s meetings. Mr. Aburano commented that the tape recordings of the Board’s meetings are government records which are subject to public information act requests. Many boards keep tapes of a meeting until the

minutes for that meeting are approved. After the minutes are approved, the tapes are recycled. The Board had further discussion on the pros and cons of maintaining tape recordings of the Board's meetings and the purpose of the minutes.

MOTION that the Board's minutes will be a summary of the Board's official actions and the tape recordings of each meeting will be re-used or erased after the minutes for that meeting have been approved was made by Mr. Yogi and seconded by Mr. Uwaine.

VOTE: The motion was passed without objection.

- C. REVIEW OF AN EXAMPLE OF DRAFT ADMINISTRATIVE RULES (Agenda Item III.A.11.) The example of draft administrative rules was distributed at the February 12, 2002 meeting. The Rules Committee will address the draft.

In response, Chair Callejo addressed Agenda Item IV.C., Adoption of the Board's Operating Procedures.

- D. REVIEW OF OPERATING PROCEDURES CONSULTATION COMMENTS AND ADOPTION OF THE OPERATING PROCEDURES (Agenda Item IV.C.)
Six agencies responded with comments.

RECESS at 9:50 a.m.; reconvened at 10 a.m.

Mr. Yogi reviewed the submitted comments and the following action was taken:

1. The HGEA comment on Operating Procedures item 5 was incorporated as subsection (b) in item 5 of the Procedures.
2. The HGEA comment on item 9 had been discussed by the Board previously. The Operating Procedures item 9, bullet 5, was amended to provide that time limitations for comment by a public member may be adjusted at the discretion of the chair or at the request of any three trustees.
3. The City and County of Honolulu comments had already been considered and discussed during the drafting of the Operating Procedures; no changes to the procedures were necessary.
4. The County of Kauai comment relating to committees larger than four members was included in item 7, bullet 2, as a parenthetical notation, "an equal number from each trustee group."
5. The response from the Office of Hawaiian Affairs supported the Operating Procedures as written. No substantive comments were submitted.
6. The United Public Workers' comments concerned administrative cost accounting was referred to the Administrative Committee for consideration.
7. The Retirement Committee, HSTA, comment related to the ability of trustee groups to caucus prior to voting. It was determined that this issue must be addressed as an amendment to Chapter 87A, HRS.

MOTION to adopt the Operating Procedures as amended was made by Mr. Yogi and seconded by Mr. Miyake.

DISCUSSION:

There was clarification that the Operating Procedures would have amendments to parts 5, 7, and 9 as discussed.

A recommendation on the use of microphones from the C&C of Honolulu was referred to staff for follow-up as to the logistics and the cost of using a sound system with a microphone for each trustee during a board meetings.

A suggestion by Trustee Uwaine that the location of meetings be rotated among the different trustee organizations can be considered at the time each meeting is scheduled.

PUBLIC COMMENTS:

M. Higa provided numerous comments on the Operating Procedures. Chair Callejo requested that Mr. Higa submit his comments in writing.

N. Crowell, HSTA Member Benefits, suggested the word, "selected" be changed to "elected" in item 4, bullet 2.

MOTION on the floor was amended by Mr. Yogi to include an amendment to item 4, bullet 2, by correcting "selected" to "elected" and seconded by Ms. Matayoshi.

C. Khim commented that the Board is exempt from Chapter 91, HRS, rulemaking procedures but must comply with the rulemaking requirements under Chapter 87A, HRS. He stated that the Operating Procedures should be treated as rules since Chapter 87A, HRS, indicates that rules must be adopted before procedures, i.e., Section 87A-26(b) provides that the Board may issue procedures consistent with its rules.

DISCUSSION:

In response to public comments, Mr. Aburano stated that he had previously advised the Board that he thought the proposed operating procedures were internal operating procedures rather than rules and that they, therefore, were not covered by any rulemaking process. He was uncertain if the Board had considered these procedures as rules because the Board has been following the HRS 87A rulemaking process as if the procedures were rules. If the Board considers these procedures to be rules, then continuation of the rulemaking process, i.e., approval by the Governor and filing with the Office of the Lieutenant Governor completes the process. He commented that an agency's policies and procedures must be consistent with any rules the agency has adopted, but that this did not necessarily mean that rules must be adopted before there will be procedures.

The trustees discussed whether the procedures should be considered rules. For clarity, it may be better to change the title from Operating Procedures to Operating Rules as eventually these operating rules will become incorporated in the Board's administrative rules.

MOTION to amend the title of the Operating Procedures to Operating Rules was made by Mr. Miyake and seconded by Mr. Yogi.

DISCUSSION: None.

PUBLIC COMMENT:

Senator J. Chun asked if the impact of the motion would formally require the rules to follow Chapter 91, HRS, as opposed to procedures and was the intent for a change in the title only and not in substance.

Mr. Aburano responded that whether or not the operating procedures were rules, the Board is exempt from following the Chapter 91, HRS, rulemaking process. He also said that his review of the proposed operating procedures indicated that they were already required by existing law or were internal operating procedures. The one possible exception was item 9 which affected the public by limiting the time the public could comment on agenda items discussed by the Board.

VOTE: Motion passed unanimously. (Employer Trustees 5/Employee-Beneficiary Trustees 5)

The question was called on the motion to adopt the Operating Rules with amendments to items 4, 5, 7, and 9.

VOTE: Motion passed unanimously. (Employer Trustees 5/Employee-Beneficiary Trustees 5)

Mr. Yogi will collaborate with Mr. Miyake and prepare responses to the organizations that responded with comments by the next meeting.

E. REVIEW OF AN EXAMPLE OF DRAFT ADMINISTRATIVE RULES (Agenda Item III.A.11.)

With the adoption of Operating Rules, the subject of administrative rules was referred to the Rules Committee for consideration and for a report to the Board at the next meeting.

MOTION to appoint Trustees Hidano, Matayoshi, Williams, and Yasuda to the Administrative Committee; Trustees Hidano, Miyahira, Lewis, and Miyake to the Benefits Committee, and Trustees Miyahira, Yogi, Miyake, and Uwaine to the Rules Committee was made by Ms. Matayoshi and seconded by Mr. Miyake.

DISCUSSION: None.

VOTE: The motion was unanimously passed. (Employer Trustees 5/Employee-Beneficiary Trustees 5)

Committee meetings must follow the Sunshine Law and the filing of an agenda must be made six calendar days prior to the scheduled meeting. Committees should timely notify the staff of meeting dates and agenda so that staff is able to properly file the meeting notice and agenda.

RECESS at 10:55 a.m.; reconvened at 11:05 a.m.

F. DRAFT PROCUREMENT PROCESS (Agenda Item III.A.12.)

MOTION to adopt the EUTF Procurement Process was made by Mr. Miyahira and seconded by Ms. Matayoshi.

DISCUSSION:

The proposed procurement process was developed by staff at the request of the Board. Staff indicated that there was consultation with the Procurement Office, Department of Accounting and General Services (DAGS), in the development of the proposed process. The proposed procedure is a simplified procedure based upon existing DAGS procedures. There was comment that a deadline for response should be included in item 3.

MOTION to refer the proposed procurement process to the Administrative Committee for review and recommendation to the Board was made by Mr. Williams and seconded by Mr. Miyake.

DISCUSSION: None.

VOTE: The motion was unanimously passed. (Employer Trustees 5/Employee-Beneficiary Trustees 5)

G. DISCUSSION OF LEGISLATIVE BRIEFING MATERIALS (Agenda Item IV.A.)
Agenda Item III.A.13. was skipped.

Trustee Miyahira stated that he wears two hats, those being Director of Budget and Finance and Trustee of the Hawaii Employer-Union Health Benefits Trust Fund. Trustee Miyahira reported that he made a presentation as the Director of Finance to the Legislature in response to legislative concerns and at the request of the legislative leadership. The presentation included information that had been previously presented to the Board, e.g., possible benefit plans, timetable, and the decisions that must be made. The presentation was given to the House and Senate leadership and the House and Senate caucuses at the request of the respective leadership. Mr. Miyahira stated that he advised those attending the presentation that the information provided was not a product of the Board.

Mr. Uwaine said he had no problem with Mr. Miyahira making a presentation to the Legislature as the Director of Budget and Finance. However, he requested that the same presentation be given to the Board as it seems there is new information in the handouts that the Board has not seen before. In this respect, he noted that one of the handouts indicated that the trustees had been briefed on the same matters as were in the handout. After further discussion, Mr. Miyahira agreed to make the presentation to the board.

Mr. Yasuda stated his concern that the benefit plans to be offered by the Trust be fully reviewed, so that employee-beneficiaries would be alerted to any possible changes from the status quo.

Ms. Lewis asked the Chair if he had been aware of the presentations, and the Chair answered in the negative.

Mr. Miyahira stated that the benefit plans were presented as options. He further stated that in his role as Director he was trying to offset the viewpoints presented to the legislature by the public employee unions.

There was discussion about possible conflicts that may occur when a trustee, in his employment capacity, makes a presentation or provides information about the Trust Fund. Mr. Aburano commented that the Board could decide on a policy with respect to formal presentations by trustees. In this respect, he understood that some boards do not allow trustees to speak individually to the Legislature or other third parties without prior notification to the board as the board's policy is to provide information as a single entity. On the other hand, the Board could decide that any trustee could make presentations to the Legislature or other third parties provided the trustee made it clear that he or she was speaking only as an individual and was not speaking for the Board. Mr. Aburano noted that the Board currently does not have any rules or policies concerning individual trustees making presentations to the Legislature or other third parties. He further observed that, if the board adopts a policy restricting presentations, then Mr. Miyahira would need to delegate any B&F presentation duties related to the Trust to other B&F staff.

There was discussion that the Legislature may have an incorrect impression as the result of Mr. Miyahira's briefing because the information provided may appear to be products of the Trust Fund. The chair reiterated that a trustee who has been asked to make a formal presentation should inform the Board chair of the request and provide the other trustees an opportunity to attend the presentation. A comment was made that a trustee may not be able to invite other trustees to a presentation such as in situations when a legislator or legislative body requests a meeting with an individual trustee.

Ms. Lewis stated that, because of her position as a Trustee, she had not lobbied on behalf of her union's proposed legislation relating to a VEBAH Trust. Mr. Williams expressed his concern that, as Director of Budget and Finance, Mr. Miyahira faced a constant overlap of roles, resulting in a continuing series of conflicts. He stated his view that cost containment (for the employer) resulting from Act 88 would be due to caps on the retirees contributions and to the results of negotiations for the active employees, rather than from benefit design.

There was further discussion that the information distributed at the legislative briefing provides a basis to re-open the debate between employers and employee organizations on certain issues about Chapter 87A, HRS, that the trustees had agreed to leave outside of board meetings. There was discussion that any comment about the Employee-Beneficiary trustees obstructing the Board's progress made at the legislative briefing was inappropriate and inaccurate.

Mr. Miyahira apologized for anything he may have said to that effect. There was discussion that the information distributed at the legislative briefing was misleading since the multiple types of health plans Mr. Miyahira said would be offered were only ideas suggested by the carriers to the project team and that the board was previously advised that the HFIMS system may not be able to re-enroll all 90,000 participants, nor handle more than the existing Health Fund plans. There was discussion that it is necessary for the trustees to build a relationship of trust with each other in order to successfully implement Chapter 87A, HRS, and incidents such as this one hamper the development of that trust.

Mr. Miyake stated that neither he nor other trustees were trying to stifle nor obstruct the progress of the Trust. He referenced the intense meeting schedule of twice per week as evidence of the efforts being made by the trustees. Mr. Miyake reiterated his belief that it is the duty of the trustees to implement the law in the best interests of the employee-beneficiaries.

Discussion on any necessary follow-up with the legislative leadership will be discussed after Mr. Miyahira's briefing at the next Board meeting. The legislative presentation by Mr. Miyahira was added to the agenda for the February 26th meeting. Mr. Uwaine requested that the subject of the role of the staff be added to the agenda for further discussion on the management of the staff. Mr. Miyahira requested that an Executive Session be added to the next meeting's agenda.

Mr. Miyake advised the Board that while he was not making a legislative presentation, he wanted to give the Board notice that he would be attending an HGEA retirees meeting in Hilo on February 21, 2002 to explain the features of Act 88, SLH 2001, and Act 89, SLH 2001.

There was further discussion that a clear expectation be identified as to how formal presentations would be handled. Staff was asked to find the section of the minutes for the meeting that covered the Board's discussion on that subject and circulate that portion of the minutes to the trustees.

Mr. Aburano was asked to comment on the process for an Executive Session. He stated that an Executive Session may be held only for specified purposes. When the Executive Session item is reached, the trustees must vote to go into an Executive Session (2/3 vote in favor). For this Board, at minimum, two votes must be cast in favor of going into an Executive Session. The applicable purposes for the requested session appear to be: (1) to consider the hire, evaluation, dismissal, or discipline of an officer or employee or charges brought against the officer or employee where consideration of matters affecting privacy are involved; provided if the individual concerned requests an open meeting then an open meeting shall be held, and (2) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

It was noted that it may be prudent to satisfy both Chapters 92 and 87A, HRS, for the vote to go into Executive Session should all ten trustees be present at the meeting, i.e., three favorable votes from each trustee group and one additional vote of any trustee for a 2/3 vote of seven.

H. FUTURE MEETING SCHEDULE (Agenda Item III.A.13.)

There was discussion regarding an alternate schedule of meetings so that Trustee Lewis would not be required to miss two teaching days each week. It was decided that for the month of March 2002, the regular meeting of the Board will be held on Tuesday from 9 a.m. to 4 p.m. Future meeting dates for the month of April will be decided later during March.

I. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

Next meeting is scheduled for Tuesday, February 26, 2002.

The Administrative Committee plans to meet on February 27, 2002, Wednesday, at 9 a.m. The Rules Committee plans to meet on February 28, 2002, Thursday, from 9 a.m. to 12 noon. A

regular Board meeting is scheduled for February 28th, however, agendas for both meetings will be filed and one meeting will be cancelled as appropriate.

J. COMMUNICATIONS FROM THE PUBLIC AND INPUT FROM ATTENDEES

C. Khim commented that the understanding from the Board's discussion on formal presentations by trustees should be placed in the form of a motion.

Senator C. Hanabusa commented that the legislative leadership requested that Mr. Miyahira make a presentation as the Director of Finance and not in his capacity as a member of the board. She stated that she understood that Mr. Miyahira was speaking as the Director of Finance and not as a member or representative of the board. As a separate branch of government, the Legislature expects any member, especially a cabinet member, to appear when requested. She commented that the Board may not infringe upon the legislative right to call any member. The Board may wish to govern itself with an internal policy; however, the Legislature has a right to communicate with any member it wishes and to ask for his/her personal opinion. She noted that the presentation by Mr. Miyahira did not last long and he did not go through all of the presentation slides; he did not discuss the other three documents and she was unsure if the briefing participants even took any of the three additional documents. Senator Hanabusa said that the Legislature is concerned as to how the Board is operating, if it is moving along, and whether employee-beneficiaries will have a health plan in year 2003. She commented that the Legislature will arrive at its own decision as to how the Board is functioning. She further commented that if any trustee has a problem with fulfilling his/her fiduciary obligation as a trustee then that person should reconsider serving as a trustee.

Trustee Lewis responded that it is the duty of all trustees to ask questions about the interpretation and intent of the law and, if necessary, return to the Legislature with appropriate amendments to clarify the law. It is also the responsibility of the trustees to ensure that a product is ready to be delivered properly and benefits the employee-beneficiaries and the employers. This may or not occur by July 1, 2003 but that is not because the Employee-Beneficiary trustees are stonewalling any progress. There are problems in the implementation of the law. She further commented that it is the responsibility of the trustees to keep the Legislature informed as to the implementation of the law and that it is done as carefully and cautiously as possible. It is untrue that the Employee-Beneficiary trustees are stalemating so there is no deliverable product on July 1, 2003; rather, the trustees want the best product available at the appropriate time and at the best cost.

Senator Hanabusa further commented that if there are major problems with the law then the Board must let the Legislature know now so that the Legislature can help implementation move along. It is important to advise the Legislature about problems because the Legislature realizes that the law may need some fine tuning, such as having sufficient funds for implementation.

K. ADJOURNMENT

A motion to adjourn the meeting was made by Ms. Lewis and seconded by Ms. Matayoshi. There were no objections; the motion as unanimously passed.

The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

James Williams, Secretary-Treasurer

APPROVED on March 19, 2002.

Documents Distributed:

1. January 24, 2002 minutes. (7 pages)
2. January 29, 2002 minutes. (9 pages)
3. January 9, 2002 minutes - approved. (5 pages)
4. January 10, 2002 minutes - approved. (6 pages)
5. Operating Procedure Consultation (six letters received). (7 pages)
6. Letter from Mr. Melvin Higa, Mutual Benefit Association of Hawaii, regarding Health Fund System Deliverables as defined in RFP (June 1998). (2 pages)
7. EUTF Proposed Additional Position Salaries. (1 page)
8. Letter to the Board from Deputy Attorney General, Brian Aburano, regarding Section 41D-2(3), HRS (distributed to the Board of Trustees). (3 pages)
9. Copy of e-mail from Stephanie Tsubata, Marsh, to Brian Aburano, Deputy Attorney General, regarding State of Hawaii's crime policy (distributed to the Board of Trustees). (1 page)