

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
Minutes of the Board of Trustees  
Tuesday, April 16, 2002

TRUSTEES PRESENT: Mr. Sam Callejo, Chairperson  
Ms. Audrey Hidano, Vice-Chairperson  
Mr. James Williams, Secretary-Treasurer  
Ms. Joan Lewis  
Ms. Kathryn Matayoshi  
Mr. Neal Miyahira (Arrived 9:55 a.m.)  
Mr. Clifford T. Uwaine

TRUSTEES ABSENT: Mr. Willard Miyake  
Mr. James Yasuda  
Mr. Davis Yogi

ATTORNEY: Mr. Brian Aburano, Deputy Attorney General

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

OTHERS PRESENT: Ms. Jean Aoki, HSRTA  
Mr. George Butterfield, HSTA-Retired  
Ms. Nani Crowell, HSTA  
Mr. Melvin Higa, MBAH  
Mr. Charles Khim  
Ms. Ruth P. Kim, HSTA-Retired  
Mr. Miles Kubo, HDS  
Mr. Melvin Kutara, C&C, Dept. of Human Resources  
Ms. Sarah Moriyama, ORTA  
Mr. Michael Moss, HMSA  
Mr. Gordon Murakami, Royal State  
Mr. Rod Tam, HMSA  
Mr. George Yamamoto, HGEA-Retirees

A. CALL TO ORDER

The regular meeting of the Board of Trustees was called to order at 9:10 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, April 16, 2002.

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The Chair stated that Messrs. Yasuda and Yogi notified staff that they would be unable to attend the meeting and Mr. Miyahira was on a conference call and would join the meeting later.

B. ANNOUNCEMENTS

The Chair announced that he and Mr. Williams have met with the Senate President and Senate Committee on Ways and Means Chair to discuss the Trust Fund's budget impact. They will meet with House Committee on Finance Chair on April 17, 2002. They have not been able to schedule a meeting with the House Speaker.

C. APPROVAL OF MINUTES

MOTION to approve the March 19, 2002 minutes as submitted was made by Ms. Matayoshi and seconded by Ms. Hidano. The motion was passed unanimously (Employer trustees 3/ Employee-Beneficiary trustees 3).

D. INSURANCE BROKER RETENTION AGREEMENT (Agenda Item VI.A.)

Being no objections, Agenda Item VI.A. was taken out order for action.

Mr. Aburano reviewed Marsh's client engagement letter dated April 15, 2002 to Chairperson Callejo. The letter sets forth the services Marsh will provide to the Trust Fund. They are generally the types of services that most insurance brokers provide to their clients. The letter indicates that: Marsh's annual compensation will be the commissions it receives from the insurance carriers; the term of the agreement shall be continuous until terminated and shall run concurrently with the State of Hawaii's insurance program; and that either party has the right to terminate the engagement with 90 days prior notice. Staff confirmed with the State Risk Office that the 90-day notification provision is included in the State's agreement with Marsh. The engagement letter also indicates that if the Board terminates Marsh as its broker during the term of the agreement, there would be no funds reimbursed to the Board because Marsh's compensation is earned at the beginning of the insurance term. However, if Marsh terminates the engagement, compensation is pro-rata. Mr. Aburano felt that the terms of the client engagement letter were generally satisfactory and were apparently used nationally by Marsh.

PUBLIC COMMENT

C. Khim commented that the terms of the engagement agreement could and should be modified. It was suggested that there should be a modification that gives only the Trust Fund the right to terminate the engagement with 90 days notice, and that Marsh's compensation would be reduced pro-rata upon any such termination.

The Trustees discussed whether Marsh's engagement letter could be amended so that the pro-rata compensation is mutual and how would Marsh feel about the unilateral termination. Ms. Tsubata from Marsh commented that it is common standard industry practice that a broker's compensation is earned at the beginning of the insurance term and any broker

assuming service mid-term will service the account without compensation. Upon renewal of insurance, the new broker would obtain commissions. If the Board wishes to amend Marsh's letter, it would have to submit the proposed revisions to Marsh for review by Marsh's corporate attorneys. Ms. Tsubata commented that the engagement letter is not a contract and Marsh is not requiring the Board to agree with it. The letter is an informational letter; the execution of the contract indicates that the Board accepts these terms. The Trustees discussed other possible amendments such as deleting sections that are not applicable to the Trust Fund.

#### PUBLIC COMMENTS

C. Khim commented that the Trust Fund would be deficient in discharging its fiduciary duties by following the State's agreement and that the Trust Fund should address any concerns about the letter of engagement before signing a contract.

Chair recommended that the Insurance Investigative Committee and Mr. Aburano follow-up on the Board's discussion of the engagement letter and report to the Board at the its next meeting.

#### E. ADMINISTRATIVE COMMITTEE REPORT (Agenda Item III.A.)

##### 1. Request for Proposal (RFP) for the Benefit Consultant

Ms. Matayoshi reviewed the Committee's recommended RFP. She reported that there is an aggressive schedule for the procurement of the consultant with the end of June 2002 as the target for an executed contract. The recommended RFP process includes solicitation letters sent to a list of consultants, letters of interest returned from interested proposers, Committee responses to written questions by the proposers, a recommendation from a subcommittee composed of members from the Benefits and Administrative Committees and a meeting of the highest rank proposers with the Board. The contract that would be used is attached to the RFP so that any questions or concerns could be dealt with immediately so as not to delay the process. Ms. Matayoshi briefly reviewed the complete RFP packet. She mentioned that there is a list of potential consultants, local and Mainland, that would be contacted and that there will be no advertising of the RFP.

MOTION to approve the RFP for Benefit Consultant was made by Ms. Matayoshi on behalf of the Administrative Committee.

Mr. Williams commented that one change that had been discussed, combining modifications of the General Conditions into the General Conditions, had not been included in this final packet. Mr. Aburano indicated that it is his intent to integrate the modifications into the General Conditions so there is only one document but he was unable to do that for this meeting. Mr. Aburano also reviewed a document he prepared, Special Conditions, which would be attached to the contract. A Special Conditions listing is normally attached to a contract to point out those conditions that are not included in the General Conditions. Due to the expedited RFP process, Mr. Aburano thought that providing the Special Conditions with the RFP would eliminate negotiations on the Special Conditions so that the execution of a contract would not be delayed. The Trustees

discussed that the Special Conditions could be sent to interested proposers at the time additional information is sent to them so that the issuance of the RFP would not be delayed and the Administrative Committee could consider the Special Conditions during its next meeting.

#### PUBLIC COMMENTS

C. Khim commented that Ms. Matayoshi's suggestion in handling the special conditions was an excellent solution and that the Administrative Committee did a stellar job in preparing the RFP in a collaborative manner. He stated that the reference on page 30 to "collectively bargained defined contribution trust fund" is not a correct description of the Trust Fund because the Trust Fund is a hybrid that has defined contributions from the employer and also a defined benefits plan. He suggested that the RFP should be modified.

Mr. Aburano suggested that if the Special Conditions document is not sent with the RFP, then the Board should consider adding a statement to the RFP covering the specific amount of liquidated damages for delay, i.e., \$1,000 per day. He felt that this was an important condition of which the proposers should be aware.

#### PUBLIC COMMENTS

C. Khim commented that Mr. Aburano's suggestion should be considered and the condition could be added as an item in the General Conditions.

The Trustees discussed different ways to include the specified amount of the liquidated damages in the General Conditions.

MOTION to amend the RFP to include a paragraph S between pages 18 and 19 that would specify liquidated damages as \$1,000 per day was made by Ms. Matayoshi and seconded by Mr. Yasuda. (Employer trustees 4/Employee-Beneficiary trustees 3).

Main motion made by Administrative Committee to approve the RFP was unanimously passed. (Employer trustees 4/Employee-Beneficiary trustees 3).

2. Hiring of an Administrator/Executive Director  
Ms. Matayoshi reported that the recruitment is still in progress and the Committee is now working on interview questions. Mr. Williams commented that the Board's review of evaluation criteria and interview questions should be done in an executive session.
3. Decision on Third Party Administrator vs. Hiring of Administrator.  
This agenda item will be discussed at the next Administrative Committee meeting on Thursday, April 18, 2002.

4. Referred Inquiry from Mr. Higa Regarding Role of ICSD

Ms. Matayoshi reviewed the informational matrix of the various internal administrative memoranda concerning the State's acquisition requirements for information systems.

PUBLIC COMMENTS

C. Khim commented that a motion should be made to refer the RFP's special conditions to the Administrative Committee.

Ms. Matayoshi responded that the special conditions document is part of developing the RFP and would be placed on the Committee's next agenda.

F. RULES COMMITTEE REPORT (Agenda Item III.B.)

There was no status update. The next meeting is scheduled for Tuesday, April 23, 2002, 9 a.m. to 4 p.m. Mr. Miyahira commented that there was an issue as to whether the meeting would be held because one trustee would not meet if another trustee was not present. The Chair commented that he would follow-up on that issue since it could not be discussed at the meeting since that Trustee was absent.

G. BENEFITS COMMITTEE REPORT (Agenda Item III.C.)

Ms. Lewis reported that the first item on the Committee's agenda is a presentation on the HFIMS and the Trustees are invited to attend the meeting scheduled at 1:30 p.m. It was estimated that the presentation would last about 30 minutes depending upon the number of questions asked during the presentation. The Committee will begin to discuss its plans in proceeding with its assignment.

Mr. Williams expressed his concerns about the Trust Fund being ready for business on July 1, 2003. His major concern is that the collective bargaining process will affect the Trust Fund. The Trust Fund plans to have information to the bargaining parties by January 2003. The Unions and Employers anticipated completion of bargaining by April 2003. However, April will be too late for the Trust Fund's open enrollment period. The dynamics of the negotiations affects the Trust Fund's ability to offer its plans with the possibility that one or more bargaining units do not complete negotiations in time. Mr. Miyahira agreed the negotiations could be a complication; however, the Trust Fund should have its plans ready irrespective of the negotiations process. The Trustees discussed how far the Benefits Committee should go without its consultant. It was suggested that as a backup plan the Committee could ask the insurance carriers to provide a cost to extend the plans for another year. The Trustees discussed that completing negotiations on the employer/employee contributions is outside of the Trust Fund's control and that the Trust Fund would need to have the plans to be offered and costs ready so that when collective bargaining negotiations are completed, the Trust Fund can move forward. There was discussion about possible alternate plans should collective bargaining settlements be delayed such as the possibility of the current Public Employees Health Fund being extended. The Trustees indicated that this issue could be discussed with the Health Fund's transition subcommittee.

#### PUBLIC COMMENT

C. Khim commented that there should be discussion about alternate plans of action should collective bargaining negotiations fail to be completed in time.

G. Butterfield commented that part of the fiduciary responsibility of the Board is to be aware of the reality of the issues and the Board needs to consider alternate plans of action.

#### H. OTHER REPORTS

##### 1. Deputy Attorney General (Agenda Item IV.A.)

Mr. Aburano reported on items previously raised at other meetings.

##### a. Charges for Audio Tape Copies of Board Meetings

Mr. Aburano reported that he reviewed the SHOPO case that was referred to by Mr. Khim. The case did not involve how much could be charged to persons requesting agency records, but that an agency must gather and produce requested documents no matter how difficult it was to do so. The Office of Information Practices, however, does have rules on how much can be charged for copying documents but not audiotapes: 5 cents per page for a public document and 10 cents a page for administrative rules. Mr. Aburano noted that the staff has found a private vendor that would reproduce audio tapes at \$6.00 per tape, and that would appear to be a reasonable charge.

##### b. Case Law On The Right To Travel As It Restricts The Board's Ability To Recruit An Administrator (Resident Vs. Non-Resident)

Mr. Aburano reported that there are U.S. Supreme Court cases that have found that the right-to-travel and right to equal protection of the laws are violated when a state sets up barriers to new arrivals, i.e., requiring a certain residency period in the state prior to obtaining welfare benefits or being allowed to register to vote. However, he noted that as yet there were no U.S. Supreme Court cases that deal with the issue of whether and to what extent a state or local government can treat potential job applicants differently. However, Mr. Aburano noted that there have been cases in which Hawaii courts have struck down Hawaii statutes that required a certain number of years of residency before the individual could be a public employee. These court decisions struck down the statutes on the basis that there was no rational reason for the residence requirement to be a public employee. In the hiring of the Fund's Administrator, if the Board is to treat candidates differently based upon residence, then there must be a rational reason to do so, otherwise applicants should be treated similarly.

##### c. Section 89, IRC.

Section 89, IRC, dealt with situations where different levels of benefits were provided by an employer to highly compensated employees versus non-highly compensated employees. The statute was repealed retroactively as if it had never

taken effect because: (a) it proved to be too hard to administer; and (b) it was feared that the statute might have an adverse rather than positive effect on the provision of benefits to employees. Mr. Aburano reported that there are other IRS laws that deal with different levels of benefits being provided to highly compensated employees in self-insured medical reimbursement plans. Essentially, the effect of these laws is that the excess benefits offered to the highly compensated employees are taxed. Mr. Aburano felt that these laws were not applicable to the Trust Fund since the Trust Fund was probably going to provide health benefits through insurance rather than a self-insured medical reimbursement plan. If the Trust Fund decided to offer a self-insured medical reimbursement plan and wanted to offer health benefits to highly compensated employees on a basis that was different than for non-highly compensated employees, Mr. Aburano said the Board could revisit this issue.

Ms. Lewis asked for clarification as to how the contributions for exempt and excluded employees are determined. There was discussion that contributions are covered under Chapter 89A, HRS. Staff will research and report on this issue.

#### PUBLIC COMMENT

C. Khim commented that Section 32 of Act 88 provided that contributions for excluded employees are provided by Chapter 89C, HRS. Mr. Khim also commented that there may be revenue rules on benefits that prohibits disproportionate compensation between highly compensated employees and non-highly compensated.

Mr. Aburano commented that it has been his impression that the Board plans to offer the same level of benefits to all employees. It would be appropriate to review this issue further should the Board decide to design and offer different level of benefits to highly compensated versus non-highly compensated employees.

#### 2. Staff

##### a. Expenditure Report (Agenda Item IV.B.1.)

Staff reported that a total of \$62,838 had been expended from the Board's general fund appropriation as of March 31, 2002. The staff will provide monthly reports to the Board.

##### b. Trust Fund Program Structure and Performance Measures (Agenda Item IV.B.2)

B&F has requested that all programs update their program structure. Staff reported that the Budget Division will allow a three-month extension for the Trust Fund because the agency is new. The Trustees discussed that this would be an appropriate assignment for the Administrator and asked staff to request the extension from B&F.

I. COMMUNICATIONS FROM THE PUBLIC AND INPUT FROM ATTENDEES

The Chair reported that the Board received correspondence from Kaiser Permanente and HMSA regarding participation in Trust Fund meetings only to the extent they will still be permitted to bid on benefit plans. Chair will meet with Mr. Aburano and State Procurement Office on Thursday, April 18, 2002, 2 p.m., to discuss this issue.

G. Butterfield asked if the Chair's discussion would be expanded to all carriers. Mr. Williams commented that he hopes that carriers would be able to continue participation in meetings except for those meetings that specifically dealt with RFP and proposals.

The Chair announced that Mr. Yasuda had submitted his resignation effective May 3, 2003 because of personal reasons.

PUBLIC COMMENTS

C. Khim praised Mr. Yasuda's governmental service and service as a Trustee. He expressed his regrets that Mr. Yasuda would no longer be serving on the Board.

G. Yamamoto thanked Mr. Yasuda for his service. He also expressed the concern of retiree groups about how administrative costs will affect the retiree's benefit levels.

J. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

There is a Benefits Committee meeting at 1:30 p.m. following the Board meeting. There is no Board meeting on April 23, 2002. The Rules Committee meeting is scheduled for Tuesday, April 23, 2002. The next Board meeting is scheduled for Tuesday, April 30, 2002.

K. ADJOURNMENT

MOTION to adjourn the meeting was made by Ms. Matayoshi and seconded by Mr. Williams. There were no objections; the motion was unanimously passed (Employer trustees 4/Employee-Beneficiary trustees 3).

The meeting was adjourned at 10:50 a.m.

Respectfully submitted,

/s/

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James Williams, Secretary-Treasurer

APPROVED on May 14, 2002.

Documents Distributed:

1. Minutes of March 19, 2002. (10 pages)
2. Benefits Consultant Request for Proposals Issuance Schedule. (1 page)



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3. Request for Proposals, Informational Document for Proposals to Furnish Benefit Plan Consulting Services (Draft April 12, 2002). (47 pages)
4. Special Conditions. (6 pages)
5. Modifications to General Conditions. (6 pages)
6. General Conditions. (19 pages)
7. List of Benefits Consultants. (1 page)
8. Draft letter to list of benefits consultants. (1 page)
9. Expenditure Information. (2 pages)
10. IT and TC Services, Facilities and Resources and the Trust Fund (04/10/02). (2 pages)
11. Insurance Broker Retention Agreement. (5 pages)
12. Request of the Program Structure and Performance Measures. (11 pages)
13. Letter from Kaiser Permanente (fax dated April 12, 2002) regarding participation in Trust Fund meetings only to the extent they will still be permitted to bid on benefit plans. (1 page)
14. Letter from HMSA (dated April 11, 2002) regarding participation in Trust Fund meetings will not preclude them from bidding on benefit plans. (1 page)
15. Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plans 2001. (8 pages)
16. Approved minutes of March 12, 2002. (19 pages)