

**BOARD OF TRUSTEES**  
**Regular Meeting**  
Thursday, February 26, 2009, 12:00 p.m.  
Retirement Fund Conference Room

**MINUTES**

<b>DEFINED BENEFITS</b>
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**I. ATTENDANCE, QUORUM, AND CALL TO ORDER**

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:09 p.m. Thursday, February 26, 2009, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

**Board of Trustees Present:**

Joe T. San Agustin, Chairman  
Wilfred P. Leon Guerrero, Vice-Chairman  
Gerard A. Cruz, Treasurer  
George A. Santos, Trustee  
Katherine T.E. Taitano, Trustee  
Antolina S. Leon Guerrero, Trustee *(12:24 p.m.)*

**Board of Trustees Absent:**

James J. Taylor, Secretary

**Staff Present:**

Paula Blas, Director  
Diana Bernardo, Controller  
Rosalia Bordallo, General Accounting Supervisor  
Jackie Blas, Recording Secretary  
Dr. John C. Steele, Retirement Fund Medical Consultant *(1:12 p.m.)*  
Kenneth Dunstan, Benefit Program Administrator  
Jackie Sablan, Benefit Specialist II  
Lena Sanchez, Benefit Specialist II

**Public Present:**

Dave Burger, Burger & Comer  
Rodalyn Marquez, Office of the Public Auditor  
Teresita S. Perez

Chairman San Agustin called for the suspension of Agenda Items II through VII until the February 27, 2009 reconvened meeting. Chairman San Agustin stated that the Board will entertain the following Agenda Items:

## **II. Retiree Advocate – Appointment for Fiscal Year 2010 GovGuam Health Insurance Negotiations**

Chairman San Agustin stated that there will be a replacement for Mrs. Ana San Nicolas as a member of the GovGuam Health Insurance Negotiations Team. Chairman San Agustin stated that a letter has been sent to Mrs. San Nicolas thanking her for her services. Chairman San Agustin stated that there is a recommendation to nominate Mr. Frank G. Blaz, former Director of the Department of Administration, to replace Mrs. San Nicolas on the Negotiations Team.

**Vice-Chairman Wilfred Leon Guerrero seconded by Trustee Katherine Taitano, moved to appoint Mr. Frank G. Blaz as the retirees' representative for the Fiscal Year 2010 GovGuam Health Insurance Negotiations. Without objection, the motion passed.**

## **III. Fiscal Year 2008 Audit Report**

Dave Burger of Burger & Comer reported on the Retirement Fund's Statement of Plan Net Assets as of September 30, 2008. Mr. Burger stated that there is a drop in assets from \$1,694,523,579 in 2007 to \$1,413,613,675 in 2008. The Net Investment Income for 2008 is (216,814,967). Mr. Burger reported on the subsequent events up to January 31, 2009. "The United States economy was determined to be in a recession as of December 2007, and has weakened considerably since September 2008. Some effects of the weakening economy were as follows: (a) more than 1 million jobs were lost in the fourth quarter of 2008, (b) home foreclosures have increased significantly, (c) the Federal government has had to inject or loan money to prevent several large businesses from failing, (d) the major U.S. automakers are faced with ballooning inventories and low demand, and (e) the Dow Jones Industrial Average (DJIA) has dropped from a high above 14,000 in October 2007 to about 8,000 in January 2009, a decline of more than 40%. The market value of the Retirement Fund's invested assets in the Defined Benefit Plan has dropped from \$1.127 Billion at September 30, 2008 to approximately \$932 Million at January 31, 2009. This is a decrease of \$195 Million or about 17%. The Defined Contribution Plan assets dropped from \$161.8 Million at September 30, 2008 to \$140.5 Million at January 31, 2009. This is a decrease of \$21.3 Million or about 10.4%."

Chairman San Agustin asked whether the dividend income dropped. Treasurer Gerard Cruz stated that the dividend payments are from equity managers. The impact has been on the market value.

Mr. Burger reported that their report on compliance and internal control did not identify any current year findings. Mr. Burger also reported on their current year Management Letter comments: Preparation of Financial Statements – Mr. Burger stated that for the first time that they can recall, the Retirement Fund actually drafted the Management's Discussion and Analysis (MD&A), the financial statements, the notes to the financial statements, and the supporting schedules. Mr. Burger commended the staff and management at the Retirement Fund that assisted in this process.

Mr. Burger reported that there are two prior year comments being repeated. The first comment is on the Defined Contribution Plan Third Party Administrator (TPA) Expenses. Mr. Burger stated that their recommendation is that the Retirement Fund management investigate this issue further. Director Paula Blas stated that this is actually being investigated. Chairman San Agustin suggested giving the TPA a timeline to respond. Mr. Burger stated that the second comment is on the Funding Status. Mr. Burger stated that the fact that the annuity payments exceed contributions results in liquidations of plan assets. In Fiscal Year 2008, annuity payments exceeded the total of interest, dividends, and contribution income by about \$17 Million. Mr. Burger stated that the Retirement Fund does not remit all contributions to the investment managers due to the cash flow situation. This can compound the problem in a growth environment because those contributions were never invested to provide a return for the plan. Chairman San Agustin suggested adding the following statement: "In Fiscal Year 2008, annuity payments exceeded the total of interest, dividends, and other contribution income by about \$17 Million in comparison to the "X" amount of dollars in 2007." Mr. Burger stated that he could include the 2007 figure. Mr. Burger stated that there are two recommendations. The first recommendation is to ask the Legislature to require the autonomous agencies to pay the actuarial rate. Rosalia Bordallo, General Accounting Supervisor, stated that the budget bill is showing two separate rates in 2002. Mrs. Bordallo stated that in 2003, the rate was changed because it could not be afforded. Mr. Burger stated to go to the core of the enabling law. Treasurer Cruz suggested to start billing at the actuarial rate. Chairman San Agustin stated that the statute states to pay at the actuarial rate. Mr. Burger stated that it will reflect the General Fund liability. Chairman San Agustin stated to charge the agencies the actuarial rate.

Vice-Chairman Wilfred Leon Guerrero stated that he would like to follow up on Recommendation No. 1: "The Board should consider modifying the benefits offered under the Defined Benefit Plan. There are certain elements of the calculations that could be changed on a prospective basis, such as excluding non-base pay in the calculation of the average salary. It might even be feasible to set a maximum dollar amount for an annuity. Finally, the Board should give thought to raising the minimum age at which a person can retire." Chairman San Agustin asked if many employees are involved in the non-base pay inclusion. Director Blas stated that it is the uniform employees (Guam Police Department, Guam Fire Department, Department of Corrections, Customs and Quarantine, Guam Power Authority and Department of Public Works). Director Blas stated that the cut-off of the non-base pay was in 1989. Director Blas stated that she would check on the numbers, by department, of employees on non-base pay inclusion.

Chairman San Agustin and Treasurer Cruz recommended removing Recommendation No. 2: "The Board should consider consulting with the Guam Legislature to see if the Government of Guam would be agreeable to providing some sort of incentive to induce participants to transfer from the Defined Benefit Plan to the Defined Contribution Plan." The Board of Trustees were agreeable on removing Recommendation No. 2.

Chairman San Agustin congratulated the Audit Committee and staff on the audit process.

**Treasurer Gerard Cruz, seconded by Trustee Antolina Leon Guerrero, moved to accept the Fiscal Year 2008 Audit Report as presented, with corrections. Without objection, the motion passed.**

#### **IV. STANDING COMMITTEE REPORTS**

##### **A. Members and Benefits Committee**

Trustee George Santos presented his Committee's February 2009 report to the Board of Trustees.

**Trustee George Santos, seconded by Treasurer Gerard Cruz, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 11, including the attached Annuity Worksheets, based on the Committee's review and findings during their meeting of February 11, 2009 and subsequent meetings thereafter. Without objection, the motion passed.**

Trustee Santos stated that the following applications are recommended to be forwarded to the Board of Trustees for their review, discussion and disposition.

*Chairman San Agustin stepped out of the meeting at this time.*

#### **MEMBERS AND BENEFITS DISABILITY APPLICANTS**

Vice-Chairman Leon Guerrero stated that the Board of Trustees will hear the disability cases currently before the Board.

##### **CASE NO. 09-9079**

Trustee Santos stated that the Retirement Fund's Medical Consultant is recommending a full disability retirement for Case No. 09-9079. Trustee Santos stated that the Members and Benefits Committee recommends accepting the Retirement Fund's Medical Consultant's recommendation.

**Trustee George Santos, seconded by Trustee Antolina Leon Guerrero, moved to accept the Retirement Fund's Medical Consultant's recommendation to grant a full disability retirement for Case No. 09-9079. With a unanimous vote of yes, the motion passed. Secretary James Taylor was absent. Chairman Joe T. San Agustin was away from the meeting at this time.**

##### **CASE NO. 09-3393**

Trustee Santos stated that the Retirement Fund's Medical Consultant is recommending a full medical disability for Case No. 09-3393. Trustee Santos stated that the Members and Benefits Committee recommends accepting the Retirement Fund's Medical Consultant's recommendation. Treasurer Cruz asked whether this is the first attempt for disability. Director Blas replied, "Yes." Treasurer Cruz stated that the applicant's disability came from multiple myeloma, neuropathy, anemia, diabetes, and hyper lipidimia. Chairman San Agustin asked whether the applicant was notified of the hearing. Director Blas replied, "Yes." Trustee Santos stated for the record that the applicant passed away early this morning.

**Trustee George Santos, seconded by Trustee Antolina Leon Guerrero, moved to accept the Retirement Fund's Medical Consultant's recommendation to grant a full medical disability retirement for Case No. 09-3393. With a unanimous vote of yes, the motion passed. Secretary James Taylor was absent. Chairman Joe T. San Agustin was away from the meeting at this time.**

**CASE NO. 09-5783**

Trustee Antolina Leon Guerrero read out loud the Retirement Fund's Medical Consultant's comment dated December 24, 2008 on Case No. 09-5783: "This unfortunate Public Works employee suffers an invasive and metastatic cancer of the penis and despite surgery and chemotherapy, his symptoms have rapidly advanced and have led to significant disability at this time. I agree with the other examiners that he suffers terminal metastatic penile cancer which is likely to be fatal within the next twelve months. I recommend full medical disability."

**Trustee Antolina Leon Guerrero, seconded by Trustee George Santos, moved to accept the Retirement Fund's Medical Consultant's recommendation to grant a full medical disability retirement for Case No. 09-5783. With a unanimous vote of yes, the motion passed. Secretary James Taylor was absent. Chairman Joe T. San Agustin was away from the meeting at this time.**

*Dr. John Steele, Retirement Fund's Medical Consultant, joins the meeting at this time (1:12 p.m.).*

**CASE NO. 09-2972**

Trustee Santos stated that the Retirement Fund's Medical Consultant had recommended that the Retirement Fund contact the applicant or the applicant's family or the applicant's physicians on the mainland to provide the Retirement Fund with an updated report of the applicant's current medical status, whether the applicant has received a bone marrow transplant and the applicant's prognosis by the attending oncologists. Trustee Santos stated that the Retirement Fund's Medical Consultant will delay his recommendation until such time that an updated report is received.

*Chairman San Agustin returns back to the meeting at this time.*

Dr. John Steele, Retirement Fund's Medical Consultant, read out loud his summary and conclusion report dated January 20, 2009. "This 53 year old Building Inspector with the Department of Administration, developed symptoms of lymphosarcomous leukemia in 2005. The applicant initially had marked enlargement of the spleen. With chemotherapy, the applicant's hematological abnormalities reversed and the applicant's splenic enlargement resolved. The applicant remained in remission until September 2007, the cancer recurred and marrow infiltration was identified. Chemotherapy was restarted and, after a long negotiation, the applicant's insurance company agreed to the applicant's referral for bone marrow transplantation in the summer of 2008. Reports by two oncologists from Los Angeles in the fall of 2008 indicated debility, profound weakness, pain, and recurrent enlargement of the spleen. They both indicate the applicant is depressed. Both assessed the applicant's degree of whole body impairment as 90%, though without reference to AMA guidelines. Neither makes reference to the bone marrow transplantation and whether this has occurred, and the outcome of it."

Dr. Steele's comment was that the applicant who has suffered a lymphoma/leukemia with symptoms for three and a half years went into a remission promptly with chemotherapy soon after diagnosis. However, the leukemia recurred in September 2007 and a year later the applicant was referred to the United States for a bone marrow transplant. The applicant's most current medical records are by two oncologists who cared for the applicant in Los Angeles. Neither indicated whether the bone marrow transplantation was performed. They both indicated that the applicant is

debilitated and weak and is suffering considerable pain. They both note the applicant's prognosis is poor. Dr. Steele stated that he did not know the applicant's status at the time he prepared this report in January of 2009. The applicant is known to have an aggressive hematological neoplasm which might be cured by successful bone marrow transplant and that is the reason for the applicant's referral to the City of Hope in the summer of 2008. Dr. Steele stated that he does not know whether the bone marrow transplant has been accomplished, or is intended. Though the applicant is clearly debilitated by reports from August and October 2008, there is no current update of the applicant's medical condition.

Dr. Steele stated that Director Blas had contacted Dr. Samuel Friedman. Dr. Steele read out loud Dr. Friedman's response dated February 25, 2009. "The applicant has a lymphoma with a leukemic phase which is controllable for some time (with chemotherapy) but not curable without an allogenic stem cell transplant for which the patient is being followed up at City of Hope in Los Angeles. The applicant also is known to have Hepatitis C which is not apparently active at this time, but can be reactivated by the chemotherapy which the applicant is receiving currently every three months. This may certainly present a problem for transplant and is one of the reasons for the reluctance of City of Hope to undertake this procedure currently. At this time the applicant can probably do light work, but this ability will probably degrade in the future. If the applicant does undergo transplantation, the applicant will be disabled for some time."

Chairman San Agustin asked whether there is any record of the transplant. Dr. Steele stated that the applicant returned to Guam without a transplant. Dr. Steele stated that this may be because the applicant has Hepatitis C. Dr. Steele stated that the applicant is undergoing chemotherapy. Chairman San Agustin stated that the chemotherapy may not work. Dr. Steele stated that it could work. Chairman San Agustin stated that according to Dr. Friedman, the applicant can not get a transplant because of the applicant having Hepatitis C. Chairman San Agustin stated that Dr. Friedman recommended that the applicant try to obtain medical disability. Dr. Steele stated that what Dr. Friedman is saying is that the applicant is a candidate for bone marrow transplant which will put the applicant in remission. Dr. Steele stated that it would be helpful to have the applicant's spouse speak about the applicant's condition.

At this time Chairman San Agustin asked whether the applicant's spouse would like to address the Board of Trustees and if so, the applicant's spouse was advised that he/she would then waive his/her rights to privacy of his/her medical records.

Mrs. Teresita S. Perez identified herself as the wife of David Taitano Perez, Jr. Mrs. Perez addresses that Board at this time and acknowledges waiving their right of privacy. Chairman San Agustin asked Mrs. Perez what has transpired. Mrs. Perez stated that her husband was consulted by Dr. Friedman for a bone marrow transplant. The bone marrow transplant did not happen because of some issues with the insurance company. Mrs. Perez stated that her husband was referred to the City of Hope for the transplant. Mrs. Perez stated that Dr. Lasika Seneviratne consulted with her husband to check on his sibling for a match. Mrs. Perez stated that her husband only has one sibling and the kit came back that she was not a match. Mrs. Perez stated that they were off-island for three months. Mrs. Perez stated that several tests were conducted on her husband and he tested positive for Hepatitis C. Mrs. Perez stated that her husband was going through intense treatments for four days. Mrs. Perez stated that Dr. Friedman had suggested for them to relocate off-island. Mrs. Perez stated that Dr. Palarkat advised her husband not to go through with the transplant. Mrs. Perez stated

that Dr. Palarkat asked Dr. Friedman whether medication is available on island and Dr. Friedman told Dr. Palarkat that it is available on island. Mrs. Perez stated that Dr. Palarkat told them that they needed to take care of the Hepatitis C first and for them to return to Guam and for her husband to continue with chemotherapy treatment. Mrs. Perez stated that Dr. Palarkat had stated that her husband could return for a stem transplant. Mrs. Perez stated that Dr. Friedman then tells her husband something different when they returned to Guam.

Treasurer Cruz asked whether Mr. Perez is undergoing chemotherapy. Mrs. Perez replied, "Yes." Chairman San Agustin asked whether Mr. Perez has returned to work. Mrs. Perez stated that her husband has developed a lump and does not want to return to work anymore. Chairman San Agustin asked how long has Mr. Perez been employed with the Government of Guam. Mrs. Perez replied, "Sixteen years of service." Mrs. Perez stated that her husband exhausted all of his leave. Mrs. Perez stated that her husband's employer is inquiring of his status. Chairman San Agustin asked what Mr. Perez does before his treatment. Mrs. Perez stated that he takes his medications. Vice-Chairman Leon Guerrero asked how often Mr. Perez undergoes chemotherapy. Mrs. Perez stated that chemotherapy is every three months. Dr. Steele stated that this is a complex situation – it is not a clear picture. Dr. Steele stated that in 2006, with treatment and medication, Mr. Perez was in remission. In 2007, Mr. Perez's cancer recurred.

Dr. Steele stated that it is a dreadful situation. Mr. and Mrs. Perez were misadvised. Dr. Steele stated that there was no opinion from City of Hope and Good Samaritan. Mr. Perez spent three months in California and at the end was told that he was not eligible for a bone marrow transplant due to Hepatitis C. Dr. Steele stated that Mr. Perez was told to return to Guam to take care of the Hepatitis C. Dr. Steele stated that he was told that Hepatitis C could be cured with medication in Guam. "We now know that Hepatitis C can not be cured, it could only be treated." Dr. Steele stated that there is not a good communication with the Los Angeles physician and Dr. Friedman. Dr. Steele stated that the present situation has decided against stem transplant after the Hepatitis C is treated. Vice-Chairman Leon Guerrero stated that it has been established that it is a conflicting situation. Vice-Chairman Leon Guerrero stated that Mr. Perez is undergoing chemotherapy every three months and is experiencing side effects. Trustee Leon Guerrero asked what happens to Mr. Perez after chemotherapy. Mrs. Perez stated that her husband takes his medication and then goes to sleep.

Dr. Steele asked Mrs. Perez whether Mr. Perez would be able to appear before the Board. Mrs. Perez stated that her husband does not want to appear anymore after two attempts. Chairman San Agustin asked how long ago Mr. Perez applied for disability. Director Blas stated that Mr. Perez applied in 2006 and was disapproved on April 13, 2007.

Dr. Steele read out loud his report dated February 24, 2007. "On September 17, 2006, I prepared a summary evaluation for the Retirement Fund about this 51 year old Building Inspector with the Department of Administration who had made application for Medical Retirement because of leukemia/lymphoma. His symptoms were of weakness and dizziness. He was also suffering polyarthralgia and numbness. The Director of the Department of Administration noted he had been absent from work during the preceding 89 days. He had been evaluated by Doctors Olivia Cruz, Fred Schroeder and Vincent Duenas. His principle symptoms were of fatigue and weakness and this they felt was in consequence of his chemotherapy. They felt those symptoms would improve. When examined, he showed no evidence of recurrence of malignancy. They agreed it was not

possible to know if or when his malignancy would recur. They assessed very different degrees of disability and by example, Dr. Cruz assessed 90%, Dr. Schroeder 58% and Dr. Duenas 15%. I felt his disability rating by AMA guidelines was between 31% and 51%, because he required continuing treatment for malignancy and had symptoms that interfered with his performance of daily activities. I recommended a review by Retirement Fund Board members. Though I was not present, I assumed the Retirement Fund members declined his application, and he therefore appealed their decision.

On January 25, 2007, he was evaluated for the Retirement Fund by Dr. Doris Lim. She agreed that diagnosis was leukemia/lymphoma. She felt he probably also suffered reactive depression. His symptoms continued to be joint pain and weakness, and she also felt he was depressed. Dr. Lim found his examination to be normal and he appeared quite well and healthy. He showed no evidence of recurrent malignancy. She assessed his disability as 15% by AMA guidelines. A recent review of his history and examination by Dr. Lim as the third examiner for the Retirement Fund shows no evidence of recurrent malignancy of physical abnormality. His symptoms continue to be those of weakness and joint pain. He is now depressed. I recommend that the Retirement Fund continue to deny medical disability. Although he does suffer a malignancy which may recur he is currently in remission and his symptoms are not felt to be disabling.”

Dr. Steele stated that the reason Mr. Perez was not eligible in 2007 was because he was in remission. Vice-Chairman Leon Guerrero stated that with what Dr. Steele had reported as of February 24, 2007, Mr. Perez was denied disability because he was in remission. Vice-Chairman Leon Guerrero stated that Mr. Perez’s ailment recurred. Treasurer Cruz stated that Mr. Perez has a lump which is painful. Treasurer Cruz asked whether Mr. Perez’s physician knows that he had a relapse. Mrs. Perez replied, “Yes.” Treasurer Cruz asked whether Mr. Perez’s chemotherapy is indefinite. Mrs. Perez replied, “Yes.” Trustee Katherine Taitano asked whether chemotherapy is conducted quarterly. Mrs. Perez replied, “Yes.” Dr. Steele asked whether Mr. Perez has seen Dr. Cruz. Mrs. Perez stated that her husband has not gone back to see Dr. Cruz. Trustee Leon Guerrero asked what type of work Mr. Perez is currently doing at his place of employment. Mrs. Perez stated that her husband is on light duty – administrative work. Mrs. Perez stated that her husband often feels tired at work and wants to go home.

Chairman San Agustin stated that, having heard both sides, the Board will now entertain a motion.

**Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Antolina Leon Guerrero, moved to approve a full medical disability retirement for Case No. 09-2972. With a unanimous vote of yes, the motion passed. Secretary James Taylor was absent.**



**V. RECESS**

**Treasurer Gerard Cruz, seconded by Trustee Antolina Leon Guerrero, moved to recess, and without objection, the Board of Trustees meeting for the Defined Benefits Plan recessed at 2:10 p.m. on Thursday, February 26, 2009 and will reconvene on Friday, February 27, 2009, at 12:00 Noon in the Retirement Fund Conference Room. Motion passed.**

**I hereby certify that the foregoing is a full, true and correct copy of the Minutes of February 26, 2009 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 27, 2009.**

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**James J. Taylor, Board Secretary**

**RECORDING SECRETARY:**

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**Jackie Blas**