

**MINUTES OF THE
WV CONSOLIDATED PUBLIC RETIREMENT BOARD
BOARD OF TRUSTEES MEETING
MEETING OF AUGUST 30, 2017**

A meeting of the West Virginia Consolidated Public Retirement Board (CPRB) Board of Trustees was held in the CPRB Conference Room at 4101 MacCorkle Avenue, SE, Charleston, West Virginia 25304, and was called to order at 10:00 a.m. by Chairman David Wyant.

Roll Call was taken.

Trustees present were:

David Wyant, Esquire, Chairman
Jeff Waybright, *representing Auditor John B. McCuskey*
Diana Stout, Esquire, *representing Treasurer John Perdue*
Cabinet Secretary John A. Myers
Andy Bird
Joseph Bunn, Esquire
Captain Michael Corsaro
Angela Crank
Joe Lynch
D. Todd Murray
Jeffrey Vallet

Trustees absent were:

Jason Pizatella, Esquire, *representing Governor James C. Justice, II*
Michael Haney
Mike McKown

A quorum was present.

Due notice had been posted.

Also in attendance were:

Jeffrey E. Fleck, CPRB Executive Director
Terasa Miller, CPRB Deputy Director
Candi Kinslow, CPRB Executive Assistant
Jeaneen Legato, Esquire, CPRB General Counsel
Ronda Harvey, Esquire, Bowles Rice
Darden Greene, CPRB Chief Financial Officer
Heather Drake, CPRB Administrative Assistant
Melody Bailey, CPRB Actuary Assistant
Alysia Miller, CPRB Paralegal

Eric Stringer, CPRB IT Staff
Tina Baker, CPRB Internal Auditor
Gary Pullin, CPRB Hearing Officer
Tom Sauvageot, WVIMB Investment Officer
Eric Sanderson, Empower Retirement
Chris Meadows, Empower Retirement
Tom Zacharias, Deloitte

Tab 1: Approval of the July 19, 2017 Meeting Minutes

Mr. Vallet made a motion to approve the minutes of the July 19, 2017 meeting of the CPRB. The motion was seconded by Ms. Stout. The motion carried unanimously.

The minutes are located behind Tab 1.

Tab 2: Reports of the Chairman and Executive Director

The Board heard the report from Jeffrey Fleck, Executive Director, which included the following information:

1. Executive Director Fleck reported on the Metric Chart. He announced we now have more information that we can present to the Board because of the new COMPASS Computer System and even though it is still a work in progress, the new chart will show the various areas and stages of completing estimates, retirements and refunds for the Public Employees Retirement System (PERS) and Teachers' Retirement System (TRS). He informed the Board that as of July 1, 2017, staff has completed 356 retirements in TRS and 11 in PERS.
2. Executive Director Fleck reported on the Teachers' Defined Contribution (TDC) 2017 Educational Meetings. He announced as of July 31, 2017, there were a total of 4,348 participants and \$471,830,878 in total assets in the TDC Plan. He announced that Chris Meadows is here today and will report the TDC Educational Meetings for the Board.
3. Executive Director Fleck reported on the Delinquent Employers. He announced that Green Acres is still making their payments on time. He informed the Board that he sent an email and called JB Heflin of the Mingo County PSD, but has not heard back from him. Mr. Heflin informed him last time they spoke that they are still waiting on an insurance settlement to pay their employer contributions.
4. Executive Director Fleck reported on the Projected Fund Ratio's. He reported that he has received a letter from Conduent stating the projected funding percentages are going up on all of the plans, and has projected that PERS will be over 90% funded. He

- announced that TRS would have gone up as well, if the smoothing had not been implemented on that plan.
5. Executive Director Fleck reported on the Contribution Projections. He announced that Conduent has projected the PERS employer contribution rate will go down from 11% to 10%, effective July 1, 2018.
 6. Executive Director Fleck reported on the Employer Contribution Estimate Letters. He announced this letter will go out to all participating employers in the Public Employees Retirement System (PERS), informing them of the projected 10% employer contribution rate for July 1, 2018 for their budget purposes.
 7. Executive Director Fleck reported on the TDC Fund Change letter that was mailed to all TDC Retirement System Plan Members by Empower Retirement.
 8. Executive Director Fleck informed the Board that the CPRB has been awarded the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting (CAFR) again for 2016. CPRB has won this award for the past five years in a row. Director Fleck thanked Darden Greene, CPRB's CFO and his staff; and Melody Bailey, Actuarial Analyst, for all of the hard work they put into our CAFR every year. Chairman Wyant thanked the staff for their outstanding work on the CPRB CAFR.
 9. Executive Director Fleck reviewed the July 2017 financials with the Board. He announced that as of July 31, 2017, we are at 22.69% of budget.
 10. Executive Director Fleck informed the Board that due to mandatory deadlines for our annual financial audit, we are going to have an extra Board Meeting on Wednesday, October 4, 2017, for the sole purpose to approve the actuarial assumptions that need to be reported for budget purposes. He announced we will still have our regular Board Meeting on Wednesday, October 11, 2017, as well. He informed the Board that Chairman Wyant has other obligations on that day, so Vice Chairman Corsaro will Chair the October 4th Board Meeting.
 11. Executive Director Fleck announced that there will be an Actuarial Assumptions Review Committee Meeting on Tuesday, October 3, 2017. The Committee will review the actuarial assumptions, approve them and report them to the Board during the October 4th Board Meeting.
 12. Executive Director Fleck announced we will have our annual mandatory fiduciary training prior to the October 11, 2017 Board Meeting. Fiduciary training will begin at

10:00 a.m., and the Board Meeting will follow at approximately 11:00 a.m.

13. Executive Director Fleck gave a Legislative update. On August 21, 2017, he attended a Pension Committee Meeting. The Legislature will be conducting a study on refinancing the unfunded liability in TRS and also a study on what the impact of smoothing has been in TRS.

Chairman Wyant announced that Board Member David Stover has resigned. He announced that Mr. Stover will be missed and thanked him publicly for all of his assistance on the Board.

The Reports of the Chairman and Executive Director are located behind Tab 2.

Tab 3: Plans Investment Data

Tom Sauvageot, Investment Officer of the West Virginia Investment Management Board (WVIMB), reviewed the Plan's Investment Returns for June 30, 2017. He announced that plan returns were up to 15.4%.

Eric Sanderson of Empower Retirement reviewed the TDC Investment Data and Investment Performance with the Board. He informed the Board that a fund change letter went out to TDC Members informing them of the change in the fund. He announced that on August 15, 2017, Empower Retirement moved approximately \$61 million to the new investments directed by the Board during the June Board Meeting. Mr. Sanderson reported on the TDC Educational Meetings. He reported there have been a total of 60 meetings so far this year in TDC, with 775 in attendance. He reported that several meetings regarding the requested file interface have occurred, and progress is being made.

Chairman Wyant asked Mr. Sanderson when the Board can expect the electronic interface to be done, and Mr. Sanderson replied that they were working on it, but still needed more information. Chairman Wyant asked if he would have a date the interface would occur at the next Board Meeting in October, and Mr. Sanderson replied that Empower will do their best as they are still gathering information.

The Plan's Investment Data report is located behind Tab 3.

Tab 4: Consideration of Current Disability Retirement Applications

Mr. Murray reported the Disability Committee met on August 29, 2017. The Committee approved the staff's recommendations and made the following recommendations to the Board for their approval.

System	Approved	Denied	Total
DSRS	1 Partial Duty	0	1 Partial Duty
PERS	11	0	11
TRS	2	0	2
TRS (TDC Transfers)	2	0	2
TOTAL	16	0	16

Captain Corsaro made a motion the Board accept and approve the Disability Committee's recommendations concerning the disability retirement applications. The motion was seconded by Mr. Bird. The motion carried unanimously.

The Disability list is located behind Tab 4.

Tab 5: Consideration of Appeal to Hearing Officer – Gary Pullin

Hearing Officer Pullin reviewed the appeal of Gloria J. Haney-Nichols, a member of PERS. The issue presented in this matter is whether the Distribution Code in Box 7 of the Form 1099-R for a disability retiree under PERS should be a 7 (normal distribution) or a 3 (disability).

Hearing Officer Pullin recommended that the request of Gloria J. Haney-Nichols to have the Distribution Code in Box 7 of her 2016 Form 1099-R changed from Distribution Code 7 to Distribution Code 3, be denied for the reasons set forth in the July 12, 2017 Recommended Decision of the Hearing Officer.

Captain Corsaro made a motion the Board adopt the recommendation of the Hearing Officer and deny the appeal of Gloria J. Haney-Nichols. Mr. Vallet seconded the motion. There was discussion on the motion. The motion carried unanimously.

The appeal from Hearing Officer Pullin is located behind Tab 5.

Tab 6: Legal Counsel Reports

Chairman Wyant announced he would entertain a motion to go into Executive Session to discuss a personnel matter and legal matters.

Mr. Bunn made a motion the Board go into Executive Session to discuss a personnel matter and legal matters as allowed by West Virginia Code §6-9A-4. The motion was seconded by Mr. Lynch. The motion carried unanimously.

The Board went into Executive Session at 10:36 a.m.

Chairman Wyant reconvened the Public Session of the August 30, 2017 meeting of the CPRB from Executive Session at 11:23 a.m.

Chairman Wyant announced the Board was in Executive Session to discuss a personnel matter and legal matters as allowed by West Virginia Code §6-9A-4. He announced there were no decisions made during Executive Session.

Chairman Wyant announced we will now return to Tab 6 on the Agenda, Legal Counsel Reports.

Report of In-House Legal Counsel – Jeaneen Legato

Jeaneen Legato, In-House Legal Counsel, presented her report to the Board on all pending legal matters. She reported on all current Administrative, Circuit Court, Supreme Court and Less than Honorable Service (LTHS) cases.

Ms. Legato reviewed the LTHS case of Jerry E. Berry, a former PERS member who was an elected Summers County Commissioner from 2000-2012, and by virtue of that position, he was also president of Three Rivers Travel Council (Summers County's Visitors Bureau). In January 2016, a jury found him guilty of feloniously embezzling \$41,699.05 that belonged to the County Commission which he had access to by virtue of his position on the Three Rivers Travel Council. On April 22, 2016, Judge Irons adjudged him guilty of the felony offense of embezzlement, sentenced him to 1-10 years in prison and ordered him to pay restitution.

Ms. Legato recommended the Board terminate the PERS membership of Jerry E. Berry for LTHS.

Captain Corsaro made a motion the Board accept the recommendation of Counsel and terminate the PERS membership of Jerry E. Berry for LTHS. The motion was seconded by Mr. Murray. The motion carried unanimously.

Ms. Legato updated the Board on the LTHS case of Bruce E. Kenney, III, a PERS retiree with 22 years and 2 months service credit. He used his position with the Department of Highways to bypass state procedures and funnel inspection work to the Dennis Corporation in exchange for payments totaling approximately \$200,000.00. On December 12, 2016, he pled guilty in the U.S. Northern District Court of W.V., to two felony counts – *Honest Services Wire Fraud Conspiracy and Conspiracy to Impede the Internal Revenue Service*. On August 9, 2017, he was adjudged guilty by Judge Stamp and sentenced to 21 months in prison.

Ms. Legato recommended the Board terminate the membership in PERS of Bruce E. Kenney, III, for LTHS.

Mr. Vallet made a motion the Board accept the recommendation of Counsel to terminate the PERS pension of Bruce E. Kenney, III, for LTHS. The motion was seconded by Mr. Lynch. The motion carried unanimously.

Ms. Legato updated the Board on the case of *Randall W. Myers v. CPRB*. She announced this was the case where Mr. Myers wanted to have the monetary value attributable to the use of an employer owned vehicle be considered as part of his gross salary for purposes of calculating his retirement annuity in TRS. She announced that on June 8, 2017, the Circuit Court of Lewis County entered an Order granting CPRB's *Motion to Dismiss*. On June 15, 2017, opposing counsel filed *Petitioner's Motion to Set Aside Dismissal Order*. On June 25, 2017, we filed CPRB's *Response to Petitioner's Motion to Set Aside Dismissal Order*. On July 18, 2017, Judge Reger issued an *Order Denying Request for Oral Argument and Order Denying Motion to Set Aside Dismissal Order*. A copy of the Order is located behind Tab A of this report.

On August 14, 2017, counsel for Petitioner, filed *Petitioner's Second Motion to Set Aside*

Dismissal Order with the Circuit Court of Lewis County and a *Petition for Appeal* with the West Virginia Supreme Court. On August 24, 2017, we filed a response to *Petitioner's Second Motion to Set Aside Dismissal Order*. We are awaiting to hear from the West Virginia Supreme Court.

Ms. Legato updated the Board on the case of *Ollie Hunting v. CPRB*. She announced this is a TRS appeal regarding the inclusion of a lump sum settlement as part of the final average salary. By Order entered on May 16, 2017, the Court scheduled this case for oral argument under Rule 19 for September 19, 2017.

The report of the In-House Legal Counsel is located behind Tab 6.

Report from Outside Legal Counsel – Ronda Harvey

Ronda Harvey, Outside Legal Counsel with Bowles Rice, informed the Board that as of today, the case of *IMB and CPRB v. VALIC* is on appeal before the WV Supreme Court of Appeals.

Ms. Harvey informed the Board we are still waiting for a decision from the Supreme Court on the *Allen E. Tackett v. CPRB* case.

Ms. Harvey updated the Board on the case of *Thomas Ward v. CPRB*. She announced it appears that the Petitioner actually withdrew his PERS accumulated contributions. Thus, he has no further issue. Attempts have been made to reach Petitioner's counsel to request that he voluntarily dismiss the matter, but were unsuccessful as he failed to return messages. On March 8, 2017, CPRB filed a Motion to Dismiss. Judge Burnside has entered an Order requiring Petitioner to respond to the Motion by April 17, 2017. The Court also set a hearing for May 31, 2017.

The Petitioner also failed to appear at the May 31, 2017 hearing on the motion to dismiss. Judge Burnside agreed that dismissal was appropriate. He requested that we submit an order including support for the proposition that Petitioner's withdrawal of his PERS contributions was essentially an abandonment of this claim. Also, at the hearing, CPRB orally amended its motion to request attorney fees and expenses associated with the motion. CPRB's counsel pointed out that CPRB is a fiduciary of the funds and should not have had to expend attorney fees to obtain dismissal. Also, petitioner's counsel had an obligation to respond and appear, but failed to do so; if petitioner was dropping his claim, petitioner's counsel should have advised the Court. It was CPRB's preference to provide the

Court with an agreed dismissal order rather than file a motion and appear at a hearing. Judge Burnside also granted this relief and directed CPRB's counsel to file an affidavit of fees associated with the preparation of the motion, appearing at the hearing and the expenses related to those activities.

The affidavit of fees was submitted on June 14, 2017. On June 21, 2017, Judge Burnside entered an *Order Granting Motion to Dismiss* of the West Virginia Consolidated Public Retirement Board, which also grants the attorney's fee award.

She informed the Board that she sent a letter by certified mail to Petitioner's counsel asking for payment of the attorney's fee award by September 1, 2017. If we do not receive payment, we will consider formal collection proceedings.

Ms. Harvey updated the Board on the CPRB's administrative appeal of the Department of Natural Resources (DNR) Law Enforcement Officers, regarding whether subsistence pay was properly included as part of the individuals' pensionable compensation in PERS. The Applicants are seeking a declaratory judgment. The parties jointly submitted stipulations to the Hearing Officer and agreed that no witness testimony was necessary. The parties also agreed to waive a hearing. The Applicants filed an Initial Brief; CPRB filed a Response and on January 27, 2017, Counsel for petitioners filed the Applicants' Reply Brief. On March 21, 2017, CPRB submitted a Supplemental Filing providing a copy of the hearing examiner's decision in another related administrative matter, *In Re: Randall W. Myers*. Lonnie Simmons then filed a reply brief on March 30, 2017. The briefing is now complete and we are awaiting a decision from the Hearing Officer.

The parties had previously agreed that no hearing was necessary because the issue raised a legal question and not a factual question. Nevertheless, the Hearing Officer, Gary Pullin, requested a hearing and a hearing was held on May 25, 2017. At the hearing, the Hearing Officer raised several questions and concluded with a request that the parties provide further briefing on the issue of which version of the statute on "correction of errors" (W.Va. Code 5-10-44) applied to the DNR's appeal. Petitioner's brief is due on June 8, 2017. Mr. Simmons agreed that based on his vacation schedule, CPRB could file its response on or about July 10th. Then, Mr. Simmons would have 10 days to file a reply, if he so chooses. On June 12, 2017, Mr. Simmons filed *Applicants' Brief Filed After Hearing*. On June 30, 2017, we filed a *Response of CPRB to Applicant's Post-Hearing Brief*. She announced this matter is still pending before the Hearing Officer.

Ms. Harvey informed the Board on a new case, Timothy Dale Bradley. She announced that Mr. Bradley has appealed the CPRB's denial of his partial duty disability retirement. She announced that this Administrative Appeal is in its infancy. Hearing Officer Anne Charnock has scheduled a hearing to take place on September 12, 2017.

The report of the Outside Legal Counsel is located behind Tab 6.

Tab 7: Committee Reports

Executive Director & Actuary Review Committee

Chairman Wyant announced the Executive Director & Actuary Review Committee met on July 11, 2017, and attempted to retain an actuary, Jeff Bridges. Mr. Bridges informed us that he took another position, so we must start over in our interview process. Chairman Wyant announced that the Executive Director & Actuary Review Committee will hold a meeting after this Board Meeting today regarding the open actuary position.

The minutes of the Executive Director & Actuary Review Committee are located behind Tab 7.

Accounting & Investment Committee

Mr. Vallet reported on the A&I Committee met this morning. He announced that the Fidelity New Millennium Large Cap Growth Fund is still on the watch list, but no action was taken today by the Committee.

The minutes of the Accounting & Investment Committee are located behind Tab 7.

Tab 8: Other, Old Business

Chairman Wyant asked if there was any old business to bring before the Board.

Executive Director Fleck announced the CPRB is still having issues with the CPRB phone system. He is working with the Office of Technology to try to resolve the issues.

Chairman Wyant asked Executive Director Fleck to report back to the Board when he has

progress with the phone system.

Chairman Wyant asked if there was any other old business to bring before the Board. None was heard.

Tab 9: Other, New Business

Chairman Wyant asked if there was any new business to bring before the Board.

Chairman Wyant announced there will be an Executive Director & Actuary Review Committee Meeting following this Board Meeting. Members of the Committee are:

Jason Pizatella

Cabinet Secretary John Myers

Diana Stout

Joe Bunn

David Wyant

Chairman Wyant announced there will be a short Board Meeting on Wednesday, October 4, 2017 to approve the actuarial assumptions.

Chairman Wyant asked if there was any other new business to bring before the Board. None was heard.

Chairman Wyant adjourned the August 30, 2017 meeting of the West Virginia Consolidated Public Retirement Board (CPRB) at 11:39 a.m.



David Wyant, Chairman
Consolidated Public Retirement Board



Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board