

**MINUTES OF THE
WV CONSOLIDATED PUBLIC RETIREMENT BOARD
BOARD OF TRUSTEES MEETING
MEETING OF NOVEMBER 15, 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 10:07 a.m. by Chairman David Wyant.

Roll Call was taken.

Trustees present were:

David Wyant, Esquire, Chairman
Ann Urling, Esquire, *representing Governor James C. Justice, II*
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, *Vice Chairman*
Michael Haney
Mike McKown

Trustees absent were:

Joe Lynch
D. Todd Murray
Jeffrey Vallet

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
Gary Pullin, CPRB Hearing Officer
Tim Abraham, Chief Compliance Officer

Heather Drake, CPRB Administrative Assistant
Melody Bailey, CPRB Actuary Assistant
Alysia Miller, CPRB Paralegal
John Beane, CPRB I.T. Manager
Tammy Patton, CPRB I.T. Staff
Paul Hardy, CPRB Programmer
Tina Baker, CPRB Internal Auditor
Caroline Brady, CPRB Employer Reporting Manager
Lisa Trump, CPRB Retirement Manager
Rod Livingston, WVIMB
Denise Fortune, Empower Retirement
Chris Meadows, Empower Retirement
John Dunlap, Director, WV Office of Technology
Tom Zacharias, Deloitte
Emily Elassal, CPRB Receptionist
Rajahnea Patrick, CPRB Receptionist
Sharon Kraszyk, CPRB Call Center
Cassie Huffman, CPRB Call Center
Elizabeth Crowder, CPRB Call Center

Tab 1: Approval of the October 11, 2017 Meeting Minutes

Mr. Waybright made a motion to approve the minutes of the October 11, 2017 meeting of the CPRB. The motion was seconded by Cabinet Secretary Myers. The motion carried unanimously.

The minutes are located behind Tab 1.

Tab 2: Reports of the Chairman and Executive Director

Chairman Wyant announced that Board Member Angela Crank has resigned from the Board. She had to leave due to scheduling and availability, and we will miss her. Chairman Wyant thanked her publicly for her participation with the CPRB Board.

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

1. Executive Director Fleck reported on the PERS monthly retirements for FY 2017. He announced that as of June 30, 2017, there were a total of 1,526 retirements processed in PERS.
2. Executive Director Fleck reported on the TRS monthly retirements for FY 2017. He announced that as of June 30, 2017, there were a total of 1,775 retirements processed in TRS.

3. Executive Director Fleck reported on the Metric Chart. He announced we have now completed the July retirements. He announced there were 163 retirements in PERS and 820 in TRS. He announced we have received 128 August PERS retirements and 67 for TRS; 112 September PERS retirements and 76 for TRS; 97 October PERS retirements and 55 for TRS; and we have received 247 November retirements and 39 for TRS so far.
4. Executive Director Fleck announced John Dunlap is present to give an update on where we are with the phone system as requested from the last Board Meeting. Mr. Dunlap informed the Board that the CPRB is third on the list to receive a telephone upgrade, but in the meantime, he has assigned someone from the Office of Technology to work directly with the CPRB on the phone issues. Chairman Wyant and Ms. Stout asked Mr. Dunlap when will the CPRB receive the upgrade on the phone system and once we get it, when will it be completed. Mr. Dunlap informed them that once we receive the new system, it could take a matter of weeks to complete the upgrade. He announced the Office of Technology is waiting on someone from the CPRB to tell them to go ahead with the order for the new phone system upgrade.
5. Executive Director Fleck reported on the Teachers' Defined Contribution (TDC) 2017 Educational Meetings. He announced as of October 31, 2017, Chris Meadows of Empower Retirement has held a total of 85 meetings so far, with 996 in attendance. Director Fleck announced as of October 31, 2017, there were a total of 4,333 participants and \$486,349,435 in total assets in the TDC Plan.
6. Executive Director Fleck reviewed the Fall Edition of the TDC Financial Footnotes.
7. 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 the Mingo County PSD still has not paid, they are still waiting on an insurance settlement to pay their employer contributions. Captain Corsaro asked the Executive Director how the TRS employers know there are late fees. Executive Director Fleck informed Captain Corsaro that he could send out a letter to them. Captain Corsaro suggested the letter should go to the Director of the agencies and not to the payroll staff.
8. Executive Director Fleck reported on the CPRB new hires. He announced we have hired twelve new employees and have also created a call-center to answer the influx of calls so that staff can concentrate on their work and navigating the new COMPASS Computer System.
9. Executive Director Fleck informed the Board he had a proposal for additional space to

house the I.T. Department, the new hires and the call-center. He announced he has checked into leasing with the Colby Corporation, the office space across the street in the building that the old Pat Butner Interiors was in. He announced the cost would be \$10.95 a square foot and we would need cubicles installed by Capital Business Interiors for the new staff at an additional cost of \$59,146.27.

Chairman Wyant asked the Board if there was a motion to approve the additional space for the CPRB.

Ms. Stout made a motion the Board authorize the Executive Director to enter into a lease agreement for the property across the street with the Colby Corporation and to purchase the cubicles. Mr. Bunn seconded the motion. There was discussion on the motion. A vote was taken and the motion failed.

10. Executive Director Fleck introduced Tim Abraham, the CPRB's new Chief Compliance Officer. Chairman Wyant welcomed Mr. Abraham.
11. Executive Director Fleck announced we have hired a Chief Financial Officer, John Galloway. He used to work for Gibbons & Kawash and will start with the CPRB on Monday, November 27, 2017.
12. Executive Director Fleck reviewed the October 31, 2017 financials with the Board. He announced we are currently at 32.17% of budget.
13. Executive Director Fleck reported on the Legislative Interims. He announced there were no pension committee meetings held in November.
14. Executive Director Fleck reviewed the CPRB Mission Statement with the Board.
15. Executive Director Fleck announced that Mrs. Kinslow was updating the Board Member list, he asked the Members to look it over and give any changes to Candi so she can update it and pass it out at the December Board Meeting.
16. Executive Director Fleck announced he had contractual matters to discuss in Executive Session.

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

Tab 3: Plans Investment Data

Rob Livingston of the West Virginia Investment Management Board (WVIMB), reviewed the Plan's Investment Returns for August 31, 2017 and September 30, 2017. He announced that the market has been good all the way through October 2017.

Chris Meadows of Empower Retirement reviewed the TDC Educational Meetings through September 30, 2017. He announced he has traveled to 14 locations, held 85 meetings, met with 38 participants and held 73 sessions with participants in the TDC Plan. He announced Empower has mailed out the Financial Footnotes, TDC Highlights and the Quarterly Statements to all TDC Members.

Mr. Meadows reported on the Empower Statistics; he reported there are 4,333 participants in TDC, with \$486,349,435 in total assets in the Plan.

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

Tab 4: Consideration of Current Disability Retirement Applications

Captain Corsaro reported the Disability Committee met on November 14, 2017, and make the following recommendations for the Board’s approval.

Captain Corsaro announced the Disability Committee approved the staff’s recommendations of the disability retirement applications and made the following recommendations to the Board for their approval:

System	Approved	Denied	Total
PERS	10	0	10
TRS	1	0	1
TRS (TDC Transfers)	6	0	6
TOTAL	17	0	17

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

The Disability list is located behind Tab 4.

Tab 5: Consideration of Appeals to the Hearing Officer – Gary Pullin

Mr. Pullin reviewed the appeal of Linda Birchfield – Modad for the Board. He announced, the

issues presented in this matter are whether Ms. Birchfield – Modad was statutorily eligible to participate in the Teachers Retirement System during the years 1982-1993; whether she was a teacher or non-teaching employee during this period and whether the Board is now estopped from taking the action described in its February 22, 2017 correspondence to the Appellant.

Mr. Pullin announced his recommendation that the request of Linda Birchfield – Modad to correct her service credit for the fiscal years 1982-1993 from 0.636 years to 9.264, be denied for the reasons set forth in his October 12, 2017 Second Amended Recommended Decision.

Captain Corsaro made a motion to accept the recommendation from the Hearing Officer and deny the appeal of Linda Birchfield – Modad. The motion was seconded by Mr. Bunn. The motion carried unanimously.

Tab 6: Legal Counsel Reports

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

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

The Board went into Executive Session at 10:57 a.m.

Chairman Wyant reconvened the Public Session of the November 15, 2017 meeting of the CPRB from Executive Session at 11:25 a.m.

Chairman Wyant announced the Board was in Executive Session to discuss a legal matter and contractual 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, 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 Less than Honorable Service (LTHS) case of Jacques Vance, a PERS member who is a former Kanawha County home confinement officer. On September 11, 2017, he was convicted of the felony offense of *Bribery in Official and Political Matters*. On October 31, 2017, Judge King sentenced him to 1-10 years in prison.

Ms. Legato recommended the Board terminate the PERS membership of Jacques Vance for LTHS.

Captain Corsaro made a motion the Board accept the recommendation of Counsel and terminate the PERS membership of Jacques Vance and authorize counsel to proceed with LTHS against him. The motion was seconded by Mr. Bunn. The motion carried unanimously.

Ms. Legato updated the Board on the case of *CPRB v. Ollie Hunting*. 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 Supreme Court of Appeals scheduled this case for oral argument under Rule 19 for September 19, 2017. On September 19, 2017, the Court heard oral argument. On October 19, 2017, the Supreme Court issued a unanimous *Memorandum Decision* which reversed the circuit court's *Final Order* and reinstated the CPRB's *Final Order*. A copy of the decision is located behind Tab A of her report.

Ms. Legato updated the Board on the case of *Randall W. Myers v. CPRB*. She announced this is a TRS appeal regarding the inclusion of the value of a county vehicle as part of salary which resulted in excess contributions being submitted and refunded, and the reduction of the annuity to recoup the overpayment. An administrative hearing was held on November 22, 2016. On January 6, 2017, Hearing Officer Pullin issued a *Recommended Decision* which recommends that Mr. Myers's request to have the value of the county vehicle included as part of his salary should be denied. On January 25, 2017, the Board issued a *Final Order* which adopted the Hearing Officer's *Recommended Decision*. On March 2, 2017, Mr. Myers, by counsel, David Tyson, filed a *Petition for Appeal* in the Circuit Court of Lewis County. On March 14, 2017, we filed a motion to dismiss for lack of jurisdiction due to the petition being untimely filed. On March 31, 2017, we mailed the Court a proposed *Dismissal Order*. On April 4, 2017, opposing counsel filed a response to our *Motion to Dismiss*. On April 10, 2017, we filed a reply to their response. On June 8, 2017, (entered in clerk's office on June 12, 2017), Judge Reger entered an *Order Granting Respondent'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*. 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 25, 2017, the Court entered a Scheduling Order. Opposing counsel's brief is due on November 22, 2017. Our brief is due on January 8, 2018.

On September 22, 2017, an *Order Denying Second Motion to Set Aside Dismissal Order* was entered by Judge Reger in Lewis County. A copy of the Order is located behind Tab B of her report.

On October 17, 2017, counsel for Petitioner filed a *Petition for Appeal* with the West Virginia Supreme Court regarding the lower court's latest order denying his second motion to reconsider.

On October 24, 2017, we filed *Respondent's Motion to Dismiss Appeal* with the West Virginia Supreme Court of Appeals. On November 7, 2017, opposing counsel filed *Petitioner's Response to Motion to Dismiss* and *Petitioner's Motion to Consolidate Appeals*. We are waiting on the Supreme Court's decision.

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, updated the Board on the case of *IMB and CPRB v. VALIC*. She reported we are waiting on a decision from the WV Supreme Court of Appeals.

Ms. Harvey informed the Board we are still waiting for a decision from the WV 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 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.

Ms. Harvey 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. We did not receive payment, and are now beginning the formal collection proceeding. We have attempted to contact Mr. Feuchtenburger, Mr. Ward's attorney by phone and have left messages. On October 3, 2017, counsel wrote to him, enclosing a Motion for Contempt, advising that it has been filed, again requesting that he pay the award and agree to withdraw the Motion if he pays within the next week.

A hearing has been scheduled for December 11, 2017, at 1:30 p.m., on CPRB's Motion for Contempt.

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*. The Applicant then filed a reply brief on March 30, 2017. The briefing is now complete.

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 the Hearing Officer is recommending denying their appeals. No formal opinion has been received.

Ms. Harvey updated the Board on the Timothy Dale Bradley appeal. 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. A hearing was held before Hearing Officer, Anne Charnock on September 12, 2017. The State Police appeared by Counsel, Will Valentino and John Hoyer. Tim Bradley appeared by counsel, Brian Prim. Terasa Miller appeared for CPRB with counsel, Ronda Harvey. The Hearing Officer heard evidence and at the close of the hearing, she requested proposed orders by October 25, 2017.

On October 25, 2017, Brian Prim asked for an extension to submit the proposed order. Hearing Officer Charnock and the parties jointly agreed. The Recommended Decisions were submitted to Hearing Officer Charnock on November 1, 2017.

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

Tab 7: Committee Reports

Accounting & Investment Committee

Mr. Bunn announced the A&I Committee met this morning and has recommendations from the Committee for the Board’s approval.

Mr. Bunn recommended the Board approve the renewal of the Empower Retirement contract, with the same terms and conditions for one year so that staff can prepare a RFP for a new contract.

Cabinet Secretary Myers made a motion the Board approve the recommendation of the A&I Committee and give staff authority to renew the Empower Retirement contract with the same terms and conditions for one year. Mr. Waybright seconded the motion. The motion carried unanimously.

Mr. Bunn recommended that pursuant to the Error Correction Policy, the A&I Committee recommends the Board approve that staff be permitted to transfer \$13,000.00 from the Revenue Sharing Account to the Error Correction Account to pay amounts necessary to correct errors.

Mr. McKown made a motion the Board approve that staff be authorized to transfer \$13,000.00 from the Revenue Sharing Account to the Error Correction Account to pay the amounts necessary to correct errors. The motion was seconded by Mr. Bird. There was discussion on the motion. The motion carried unanimously.

The minutes of the A&I Committee are located behind Tab 7.

Cabinet Secretary Myers and Ann Urling left the meeting at 11:37 a.m.

Computer System Update Committee

Captain Corsaro announced the Computer System Update Committee met yesterday, November 14, 2015. He announced we are under budget with the money that we owe to Deloitte and LRWL.

Captain Corsaro informed the Board that staff spoke to the Purchasing Division and was informed that a new telephone system for the CPRB must be placed out to bid. He announced if we were to do an RFQ, it could take 30 to 60 days.

Ms. Stout informed the Board that we could place in the terms and conditions of the contract for the new telephone system, as many extensions as we wanted for renewal purposes.

Ms. Stout made a motion the Board authorize staff to draft specs for an RFQ and submit to the Purchasing Division. The motion was seconded by Mr. Bunn. The motion carried unanimously.

The minutes of the Computer System Update Committee are located behind Tab 7.

Executive Director & Actuary Review Committee

Chairman Wyant announced that the Executive Director & Actuary Review Committee met on October 11, 2017 and again on October 25, 2017, to look at ways to retain an actuary. He announced the Executive Director & Actuary Review Committee has a recommendation that the Board authorize the Committee to prepare an RFQ to hire a recruiting firm to help us to obtain a Board actuary.

Mr. Bunn made a motion the Board give the Executive Director & Actuary Review Committee authority to proceed with a RFQ to hire a recruiting firm to pursue a candidate for the actuary position. The motion was seconded by Captain Corsaro. The motion carried unanimously.

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

Tab 8: Employer Service Verification Reporting Policy

Executive Director Fleck announced that during the October 11, 2017 Board Meeting, the Board approved an Employer Service Verification Reporting Policy, staff has proposed revisions to that policy for the Board to review and approve.

Deputy Director Miller announced that staff recommends with the new amendments to the policy, the policy would read as follows:

“Effective December 1, 2017, or at which time process is automated through COMPASS, all participating public employers must submit to the Consolidated Public Retirement Board (CPRB) a service verification via electronic submission through the Employer Reporting Self Service module or by written form within 5 business days of the employee’s last day on the employer’s payroll, or CPRB’s receipt of the member’s retirement or refund application, whichever occurs last.

Any employer failing to do so will be assessed an administrative penalty of \$100.00 for each business day the employer is in default, which may be collected by the CPRB; in addition to the CPRB’s attorney fees if collection efforts are necessary. The penalty shall be deposited into the CPRB’s administrative fund.”

Mr. McKown made a motion the Board approve and modify the Employer Service Verification Reporting Policy as presented, effective December 1, 2017. The motion was seconded by Captain Corsaro. The motion carried unanimously.

The proposed amendment to the Employer Service Verification Reporting Policy is located behind Tab 8.

Tab 9: Other, Old Business

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


Tab 10: Other, New Business

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

Mr. Bunn announced he would volunteer to assist staff to create an additional policy for delinquent employers, if needed. Chairman Wyant and Captain Corsaro informed Mr. Bunn that there is already a policy in place.

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

Chairman Wyant adjourned the November 15, 2017 meeting of the West Virginia Consolidated Public Retirement Board (CPRB) at 11:53 a.m.



David Wyant, Chairman
Consolidated Public Retirement Board



Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board