

**MINUTES OF THE
WV CONSOLIDATED PUBLIC RETIREMENT BOARD
BOARD OF TRUSTEES MEETING
MEETING OF MARCH 14, 2018**

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
Jeff Waybright, *representing Auditor John B. McCuskey*
Diana Stout, Esquire, *representing Treasurer John Perdue*
Cabinet Secretary John A. Myers
Bill Barker
Andy Bird
Joseph Bunn, Esquire
Captain Michael Corsaro, *Vice Chairman*
Michael Haney
Mike McKown
D. Todd Murray
Jeffrey Vallet

Trustees absent were:

Ann Urling, *representing Governor James C. Justice, II*
Joe Lynch

A quorum was present.

Due notice had been posted.

Also in attendance were:

Jeffrey E. Fleck, CPRB Executive Director
Terasa Miller, CPRB Deputy Director
Jeaneen Legato, Esquire, CPRB General Counsel
Ronda Harvey, Esquire, Bowles Rice
Tim Abraham, CPRB Chief Compliance Officer
John Galloway, CPRB Chief Financial 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
Patricia Bowgren, CPRB I.T. Staff
Tina Baker, CPRB Internal Auditor
Lisa Trump, CPRB Retirement Manager

Gary Pullin, Hearing Officer
Craig Slaughter, Executive Director, WVIMB
Chris Meadows, Empower Retirement
Bill Thornton, Empower Retirement
Tom Zacharias, Deloitte
Troy Jaros, Conduent
Ken Woodson, Board Actuary Interviewee
Phil Kabler, Charleston Gazette Mail

Tab 1: Approval of the January 24, 2018 Meeting Minutes

Captain Corsaro made a motion to approve the minutes of the January 24, 2018 meeting of the CPRB. The motion was seconded by Mr. Murray. The motion carried unanimously.

The minutes are located behind Tab 1.

Tab 2: Reports of the Chairman and Executive Director

Chairman Wyant recognized and welcomed the new Board Member appointed to the CPRB by Governor Justice, William "Bill" Barker, non-member citizen.

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

1. Executive Director Fleck reported on the Metric Chart. He announced that staff has worked hard to get the retirements completed. He announced we were caught up with retirements and have already processed over 37 retirements for March 2018.
2. Executive Director Fleck reported on the Teachers' Defined Contribution (TDC) 2018 Educational Meetings. He announced as of February 28, 2018, Chris Meadows of Empower Retirement has held a total of 20 meetings so far, with 549 in attendance. Director Fleck announced as of February 28, 2018, there were a total of 4,307 participants and \$502,728,463 in total assets in the TDC Plan.
3. Executive Director Fleck reported on the Delinquent Employers. He announced that the City of Richwood was caught up to January 2018. Executive Director Fleck reported that he contacted the Taylor County PSD's Payroll Clerk and they will submit their payment this week. He announced that Green Acres is still making their payments on time. Executive Director Fleck announced since the last Board meeting we have received payment on the employee contributions from the Huntington Cabell Wayne Animal Shelter.
4. Executive Director Fleck reviewed the Comprehensive Annual Financial Report (CAFR) for FY 2016 & 2017. He thanked John Galloway, CFO, the Accounting Staff, Melody Bailey, Actuarial Analyst for all of their hard work on the CAFR.

5. Executive Director Fleck reviewed the December 31, 2017 financials with the Board. He announced we are currently at 42.43% of budget.
6. Executive Director Fleck reported on the Legislative Update. He reviewed all of the Legislation that was discussed during the Legislature in the 2018 Legislative Session that pertains to the CPRB. He announced the only bill that would pertain to CPRB that passed was Senate Bill 501, a DSRS Bill relating to accrued benefit of retirees in Deputy Sheriff Retirement System.
7. Executive Director Fleck updated the Board on the additional office space across the street. He announced we have some staff over there working; however electrical work is still being completed.
8. Executive Director Fleck updated the Board on the Alpha Technology Phone System. He announced the new system should be in place by the end of the month of March.
9. Executive Director announced the LRWL Contract is ending this month. He announced we will be \$150,000 under the not to exceed amount.

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

Tab 3: Plans Investment Data

Craig Slaughter, Executive Director of the West Virginia Investment Management Board (WVIMB), reviewed the Plan's Investment Returns for January 31, 2018.

Chris Meadows of Empower Retirement reviewed the TDC Educational Meetings for the prior year. He announced he held 93 meetings, met with 323 participants and conducted 787 phone counseling sessions with participants in the TDC Plan for a total of 1,110 participants served.

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

Tab 4: Reconsideration of TRS & State Police Plan B Contribution Rates – Troy Jaros of Conduent

Mr. Jaros of Conduent reviewed the Summary of Cost Analysis and the Impact of Pay Increases with the Board. He announced on July 1, 2018, all employees of the following systems will receive a pay increase:

- PERS – Only State employees
- TRS
- Plan A
- Plan B

Mr. Jaros announced the cost analysis looks at what the estimated impact of these pay increases will

have for the July 1, 2018 valuations, based on the July 1, 2017 valuations. He announced the impact of the pay increases has been approximated by looking at an additional 5% pay increase for each eligible employee. He reviewed the results of the UAAL impact as of July 1, 2017 and FY2019 contribution impact.

The Reconsideration of TRS & State Police Plan B Contribution Rates report is located behind Tab 4.

Tab 5: Consideration of Current Disability Retirement Applications

Chairman Todd Murray reported the Disability Committee met on March 13, 2018 and made the following recommendations for the Board’s approval.

Chairman Murray 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
DSRS	1 Partial Non-Duty & 1 Partial Duty	0	1 Partial Non-Duty & 1 Partial Duty
EMSRS	0	1	1
PERS	15	2	17
TDC	2	0	2
TRS/TDC	8	0	8
TOTAL	27	3	30

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. Haney. The motion carried unanimously.

The Disability list is located behind Tab 5.

Tab 6: Consideration of Appeal to Hearing Officer – Gary Pullin

Hearing Officer Pullin reviewed the appeal of David W. Caplinger, a member of PERS. The issue presented in this matter is whether the effective date of retirement for Mr. Caplinger is February 1, 2017 or April 1, 2017.

Hearing Officer Pullin recommended that the request of David W. Caplinger to have his retirement annuity benefits commence as of February 1, 2017, with appropriate back payments made to Applicant for the months of February and March of 2017, be granted for the reasons set forth in the January 5, 2018 Recommended

Decision of the Hearing Officer.

Mr. Bunn made a motion the Board adopt the recommendation of the Hearing Officer and grant the appeal of David W. Caplinger. Mr. Vallet seconded the motion. There was discussion on the motion. Mr. Bunn withdrew his motion. Mr. Vallet withdrew his second.

Mr. Bunn made a motion the Board deny the recommendation of the Hearing Officer and deny the appeal of David W. Caplinger. Captain Corsaro seconded the motion. There was discussion on the motion. The motion carried unanimously.

The appeal from Hearing Officer Pullin is located behind Tab 6.

Tab 7: 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 updated the Board on the case of *WV State Police v. CPRB*. She announced on January 25, 2018 the WV State Police filed an administrative appeal of the Board's Final Order which granted Timothy Bradley a duty related partial disability. On January 29, 2018, Judge Kaufman entered a Scheduling Order. On February 27, 2018, upon the request of opposing counsel, Judge Kaufman entered an Amended Scheduling Order. Petitioner's brief is due on or before April 13, 2018. Our brief is due on or before April 28, 2018.

Ms. Legato updated the Board on the LTHS case of Michael Thornsby. She announced on February 26, 2017, Judge Bailey entered a *Final Order Granting West Virginia Consolidated Public Retirement Board's Petition to Terminate Michael Thornsby's Retirement Benefits*. On March 20, 2017, Mr. Thornsby, pro se, filed a Notice of Appeal with the Supreme Court of Appeals of West Virginia. On April 4, 2017, the Court entered a Scheduling Order. Mr. Thornsby's brief was due on June 26, 2017. Our brief was due on August 10, 2017 or within forty-five days after the filing of his brief. She announced on February 9, 2018, the Supreme Court issued a *Memorandum Decision* affirming the Circuit Court' and Board's Final Order which terminated Mr. Thornsby's pension benefits for rendering *less than honorable service* and further denied Mrs. Thornsby's request to be paid his pension as an alternate payee.

The report of the In-House Legal Counsel is located behind Tab 7.

Report from Outside Legal Counsel – Ronda Harvey

Ronda Harvey, Outside Legal Counsel with Bowles Rice 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 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 fees award by September 1, 2017. We did not receive payment and are now beginning the formal collection proceeding. Ms. Harvey attempted to contact Mr. Feuchtenburger, Mr. Ward's attorney, by phone and 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.

She announced, we did not receive payment, and therefore she filed a *Motion for Contempt* asking the Court to force payment and further penalize Petitioner's counsel.

She announced, the hearing on CPRB's *Motion for Contempt* took place on December 11, 2017. At the hearing, Judge Burnside granted the motion and ordered petitioner's counsel to pay the additional attorney fees and expenses incurred in preparing for and appearing at the contempt hearing.

She informed the Board that she submitted an affidavit of fees in the amount of \$4,391.59, which brings the total fee award to \$7,623.89. Judge Burnside also ordered petitioner's counsel to pay the total within 30 days of the hearing or by January 11, 2018. Ms. Harvey announced Judge Burnside entered another order on February 20, 2018 that ordered Ward's counsel to pay fees in the amount of \$5,986.89 within 10 days of the

order. The 10-day time period has expired. She announced we had not yet received payment and are sending a letter to Ward's counsel. Ms. Harvey announced if he does not pay soon, we will notify the court and begin collection efforts.

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

Ms. Harvey updated the Board on the *Allen E. Tackett v. CPRB* case. On November 17, 2017, the Supreme Court finally entered a Memorandum Decision upholding the circuit court's September 16, 2016 ruling and remanding the case to the circuit court for resolution of Tackett's request for attorney's fees. Recently, General Tackett's lawyer raised the issue of pursuing the attorney's fees. We notified him that we do not believe CPRB is responsible for his attorney's fees and he responded that he will plan to file a motion before Judge Webster. To date, he has not done that, but we expect to receive his motion in the near future.

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 parties submitted their post-hearing briefs and on November 17, 2017, Hearing Officer, Gary Pullin issued his Recommended Decision. Counsel for Applicant, Lonnie Simmons, filed *Applicant's Motion to Amend the Recommended Order* objecting to that decision on December 6, 2017. On December 8, 2017, Hearing Officer Pullin issued his Response of Hearing Officer to Applicant's Motion to Amend Recommended Decision denying Applicant's motion to amend. The Board accepted the recommendation and Lonnie Simmons has advised that he plans to appeal the decision to circuit court.

The report of the Outside Legal Counsel is located behind Tab 7.

Tab 8: Committee Reports

Accounting and Investment Committee

Mr. Bunn, Chairman of the A&I Committee announced the Committee met this morning and had recommendations to make to the Board on behalf of the Committee.

Mr. Bunn announced the A&I Committee recommends the Board remove the American Century Heritage Fund and replace it with the T. Rowe Price Mid-Cap Fund.

Mr. Vallet made a motion the Board remove the American Century Heritage Fund and replace it with the T. Rowe Price Mid-Cap Fund. Cabinet Secretary Myers seconded the motion. The motion carried unanimously.

Mr. Bunn announced the A&I Committee recommends the Board remove the Fidelity New Millennium

Fund and replace it with the T. Rowe Price Blue-Chip Fund.

Mr. Vallet made a motion the Board remove the Fidelity New Millennium Fund and replace it with the T. Rowe Price Blue-Chip Fund. Mr. Bird seconded the motion. The motion carried unanimously. announced

Mr. Bunn announced the A&I Committee recommends the Board approve that \$385,725.27 be transferred to the CPRB Administrative General Fund from the TDC Revenue Sharing Account.

Captain Corsaro made a motion that the Board approve the transfer of \$385,725.27 to the CPRB Administrative General Fund from the TDC Revenue Sharing Account. The motion was seconded by Mr. Vallet. The motion carried unanimously.

The minutes of the A & I Committee are located behind Tab #8.

Executive Director & Actuary Review Committee

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

Mr. Vallet made a motion the Board go into Executive Session to discuss a personnel matter as allowed by West Virginia Code §6-9A-4. The motion was seconded by Mr. Haney. The motion carried unanimously. Executive Director Fleck requested that Melody Bailey, Actuarial Analyst stay during Executive Session.

The Board went into Executive Session at 11:20 a.m.

Chairman Wyant reconvened the Public Session of the March 14, 2018 meeting of the CPRB from Executive Session at 12:40 p.m.

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

Ms. Stout made a motion to authorize Executive Director to make and offer and to start negotiations for salary and moving expenses as discussed in Executive Session. The motion was seconded by Captain Corsaro. The motion carried unanimously.

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

Mr. Waybright made a motion the Board go into Executive Session to discuss a personnel matter as allowed by West Virginia Code §6-9A-4. The motion was seconded by Cabinet Secretary Myers. The motion carried unanimously.

The Board went into Executive Session at 12:43 p.m.

Chairman Wyant reconvened the Public Session of the March 14, 2018 meeting of the CPRB from Executive Session at 12:53 p.m.

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

Chairman Wyant announced the Executive Director & Actuary Review Committee were discussing the evaluation of the Executive Director and will report back at a later time.

The minutes of the Executive Director & Actuary Review Committee are 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. None was heard.

Chairman Wyant adjourned the March 14, 2018 meeting of the West Virginia Consolidated Public Retirement Board (CPRB) at 12:54 p.m.



David Wyant, Chairman
Consolidated Public Retirement Board



Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board