

**MINUTES OF THE
WV CONSOLIDATED PUBLIC RETIREMENT BOARD
BOARD OF TRUSTEES MEETING
MEETING OF JULY 19, 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 10:04 a.m. by Chairman David Wyant.

Roll Call was taken.

Trustees present were:

David Wyant, Esquire, Chairman
Jason Pizatella, Esquire, *representing Governor James C. Justice, II*
Diana Stout, Esquire, *representing Treasurer John Perdue*
Mary Jane Pickens, Esquire, *representing Cabinet Secretary John A. Myers*
Joseph Bunn, Esquire
Captain Michael Corsaro
Michael Haney
Joe Lynch
Mike McKown
Jeffrey Vallet

Trustees absent were:

Jeff Waybright, *representing Auditor John B. McCuskey*
Andy Bird
Angela Crank
D. Todd Murray
David Stover

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
John Beane, CPRB IT Manager
Heather Drake, CPRB Administrative Assistant

Melody Bailey, CPRB Actuary Assistant
Alysia Miller, CPRB Paralegal
Eric Stringer, CPRB IT Staff
Caroline Brady, CPRB Assistant Manager
Tom Sauvageot, WVIMB Investment Officer
Eric Sanderson, Empower Retirement
Chris Meadows, Empower Retirement
Meir Schecter, LRWL
Tom Zacharias, Deloitte
Davin White, WVEA
Evan Shamblin, Suttle & Stalnaker
Ryan Mink, Suttle & Stalnaker
Chris Deweese, Suttle & Stalnaker

Tab 1: Approval of the June 7, 2017 Meeting Minutes

Mr. Bunn made a motion to approve the minutes of the June 7, 2017 meeting of the CPRB. The motion was seconded by Mr. Haney. The motion carried unanimously.

The minutes are located behind Tab #1.

Chairman Wyant announced he was moving the agenda to address Tab #4, the Audit Report of Suttle & Stalnaker.

Tab 4: Suttle & Stalnaker Audit Report – Chris Deweese

Chris Deweese of Suttle & Stalnaker presented a PowerPoint of the audit and reviewed it with the Board.

Mr. Vallet made a motion the Board accept the March 31, 2017 audit of Suttle & Stalnaker. The motion was seconded by Captain Corsaro. The motion carried unanimously.

Chairman Wyant moved the agenda back to address Tab #2, Reports of the Chairman and Executive Director.

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 Service Level Chart which will show how long it will take the CPRB staff to complete the refunds, estimates and retirements in the new COMPASS Computer System and the progression of the time that it took in the past,

before the COMPASS Computer System was implemented.

2. Executive Director Fleck announced we have created a new operational chart, we have named it the “Proposed Metric Chart.” He announced this chart will show the various areas and stages of completing estimates, retirements and refunds for PERS and TRS. He informed the Board that staff could make any other changes to the chart or to show other Plans if they would like. Chairman Wyant commented that we should start with this chart, which are our two biggest Plans, PERS and TRS, and go from there. Captain Corsaro announced he would like to see how long it takes to get the estimates, retirements and the retirement checks on that chart. Director Fleck announced that he will have that information updated to the chart and report it during the August Board Meeting. He announced that he will be bringing this chart to the Board at all future meetings.
3. Executive Director Fleck announced there was an article in the July addition of Quotes, Notes & Anecdotes of CPRB’s Melody Bailey who was named as the July 2017 Employee of the Month. He announced that Melody is very deserving of this award.
4. Executive Director Fleck reported on the Teachers’ Defined Contribution (TDC) 2017 Educational Meetings. He announced there have been a total of 55 meetings so far this year in TDC, with 676 in attendance. He announced as of June 30, 2017, there were a total of 4,363 participants and \$464,605,050 in total assets in the TDC Plan.
5. Executive Director Fleck reported on the Summer edition of the TDC Financial Footnotes that was sent to all TDC Plan Members.
6. Executive Director Fleck reported on the TDC Fund Change Update that was mailed to all TDC Retirement System Plan Members by Empower Retirement.
7. Executive Director Fleck reported on the Delinquent Employers. He announced that Mingo County PSD informed him that they are still waiting on a settlement to pay the delinquency. He announced that the Auditor’s Office has informed him that they will be withholding money from the Mingo County PSD to pay the CPRB for their delinquent contributions. Chairman Wyant directed Executive Director Fleck to send out a letter to all delinquent agencies informing them that we are waiving their delinquent fees for the months of May, June and July 2017, due to the implementation of the new COMPASS Computer System, but after that there will be penalties added to their delinquent amounts if not paid. Executive Director Fleck informed the Chairman that he will send a letter informing all of the delinquent agencies to comply.

8. Executive Director Fleck reviewed the June 2017 financials with the Board. He announced that as of June 30, 2017, we are at 78.38% of budget.

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

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

The Board went into Executive Session at 10:44 a.m.

Chairman Wyant reconvened the Public Session of the July 19, 2017 meeting of the CPRB from Executive Session at 11:57 a.m.

Chairman Wyant announced the Board was in Executive Session to discuss a personnel matter, 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# 2 on the Agenda, Reports of the Chairman and Executive Director.

9. Director Fleck reviewed the contract renewal for Bowles Rice, Outside Counsel and announced that their contract will expire on August 31, 2017.

Captain Corsaro made a motion the Board approve the renewal of the Bowles Rice contract for one year, from September 1, 2017 through August 31, 2018. The motion was seconded by Mr. Vallet. The motion carried unanimously.

10. Executive Director Fleck reviewed a proposal for a fee increase for the Defined Benefit Plans from sixty dollars per member annually, to eighty dollars per member. He announced it has been eleven years since we have increased the fees.

Mr. Vallet made a motion to increase the Defined Benefit Plan fees from sixty dollars per member to eighty dollars per member for twenty-four months, beginning on July 1, 2017 and ending on June 30, 2019. The motion was seconded by Mr. Bunn. There was discussion on the motion. The motion carried unanimously.

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 May 31, 2017. He announced that plan returns were up 14.6% to 14.7%.

Eric Sanderson of Empower Retirement reviewed the TDC Investment Data and Investment Performance with the Board for the period ending June 30, 2017. He informed the Board that a fund change letter has gone out to all TDC Members, informing them of the changes in the funds.

Mr. Sanderson announced that Empower sent out a TDC news letter to all of the Plan Members, but a letter about the 457 Plan that the State Treasurer's Office oversees was accidentally included in the mail-out. Chairman Wyant asked Mr. Sanderson what they were doing to fix it. Mr. Sanderson announced he wanted to bring it to the Board first. Chairman Wyant requested Mr. Sanderson to send out a letter to announce the mistake.

Captain Corsaro asked Mr. Sanderson what Empower is doing to implement the electronic interface to the CPRB that is to be provided by them and when the Board can expect this to be done. Mr. Sanderson informed Captain Corsaro and the Board that he needs to get approval and once he has approval, he would need a point-of-contact person for the CPRB and one for Deloitte; then Empower would need to gather all of the data from the CPRB and Deloitte for the interface. Executive Director Fleck announced that John Beane, CPRB's COMPASS Project Manager and IT Manager is the CPRB's point-of-contact person.

Captain Corsaro requested Mr. Sanderson to brief the Board on the electronic interface at the August Board Meeting. Chairman Wyant informed Mr. Sanderson the Board will expect an answer by the August Board Meeting on when the electronic interface will be implemented by Empower.

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

Tab 5: Consideration of Current Disability Retirement Applications

Captain Corsaro reported the Disability Committee met on July 18, 2017. The Committee

approved the staff's recommendations and made the following recommendations to the Board for their approval.

System	Approved	Denied	Total
EMSRS	1 Total Duty	0	1 Total Duty
PERS	12	3	15
TRS	2	0	2
TRS (TDC Transfers)	8	1	9
TOTAL	23	4	27

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

The Disability list is located behind Tab #5.

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 updated the Board on the case of *Randall W. Myers v. CPRB*. She announced that the Circuit Court of Lewis County entered an Order granting CPRB's Motion to Dismiss. 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 the Teachers Retirement System. She announced the Circuit Court Order is attached to her report.

Ms. Legato updated the Board on the Supreme Court case of *Rex Toney v. CPRB*. She announced this is a TRS appeal regarding Mr. Toney who was a school bus driver that pled guilty to the first-degree sexual abuse of a student in the Circuit Court of Lincoln County. The petitioner argued

that the Circuit Court abused its discretion by denying him his retirement benefits because they vested before his criminal conviction; West Virginia Code §5-10A-2 provides for disproportionate penalty and cruel and unusual punishment; West Virginia Code §5-10A-2 violates the equal protection clause; and principles of equity. She announced the Supreme Court entered a Memorandum Decision and found no error in the Circuit Court of Lincoln County's decision and affirmed the March 30, 2016 Order. She announced the Supreme Court decision is attached to her report.

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, there was nothing new to report regarding the case of *IMB and CPRB v. VALIC*.

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.

Ms. Harvey updated the Board on the case of *Gloria Haney-Nichols v. CPRB*. She announced that in March, Ms. Haney-Nichols appealed the decision of CPRB not to comply with her request to change the coding on her 1099-R, from a code 7 ("normal distribution") to a code 3 ("disability"). Ms. Haney-Nichols has been receiving disability retirement distributions from PERS for several years. CPRB sent her a letter dated March 13, 2017, explaining that CPRB cannot code her 1099-R as a code 3 because it cannot certify her disability. This is because disabilities that meet the requirements of a particular plan administered by CPRB may not meet the standard for a federal disability. A hearing was held before Hearing Officer Gary Pullin on May 23, 2017. At the hearing, it became clear that Ms. Haney-Nichols had previously received inconsistent tax advice and believed that the coding would make a difference on whether her disability retirement benefits were taxable. By the end of the hearing, Ms. Haney-Nichols seemed to have a better understanding regarding why CPRB had included code 7 on her 1099-R. We are awaiting a decision from the Hearing Officer. On July 12, 2017, the Hearing Officer submitted a decision in the CPRB's favor.

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*. The matter is pending before the Hearing Officer.

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

Tab 7: Committee Reports

Computer System Update Committee

Chairman Corsaro announced the Computer System Update Committee met yesterday, July 18, 2017 and has a recommendation for the Board's approval.

He announced the Computer System Update Committee recommends the Board authorize the Executive Director to finalize negotiations with Deloitte for Change Order Eight as it relates to resource rates and resource utilization for additional employee and employer support in an amount not to exceed one million dollars and to submit the Change Order to the Purchasing Division for approval and processing.

Mr. Bunn made a motion the board authorize the Executive Director to finalize negotiations with Deloitte for Change Order Eight as it relates to resource rates and resource utilization for additional employee and employer support in an amount not to exceed one million dollars and to submit the Change Order to the Purchasing Division for approval and processing. Mr. Vallet seconded the motion. 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 the Executive Director & Actuary Review Committee met on July 11, 2017, and interviewed applicants for the actuary position. The Executive Director & Actuary Review Committee recommends hiring Geoff Bridges as the CPRB Actuary.

Mr. Pizatella made a motion the Board authorize the Executive Director to enter into job offer negotiations with Mr. Bridges, contingent on a background and reference check on the applicant. The motion was seconded by Mr. Bunn. There was discussion on the motion. The motion carried unanimously.

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

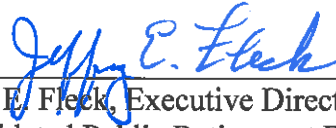
Tab 9: Other, New Business

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

Chairman Wyant adjourned the July 19, 2017 meeting of the West Virginia Consolidated Public Retirement Board (CPRB) at 12:24 p.m.



David Wyant, Chairman
Consolidated Public Retirement Board



Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board