

STATE OF WEST VIRGINIA

SPECIAL REPORT

OF

CONSOLIDATED PUBLIC RETIREMENT BOARD WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR THE PERIOD

JULY 1, 1991 – DECEMBER 31, 1996



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

SPECIAL REPORT

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

JULY 1, 1991 - DECEMBER 31, 1996

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM
EXIT CONFERENCE

We held an exit conference on December 9, 1997 with the Executive Secretary of the Consolidated Public Retirement Board and all findings and recommendations contained within the Special Report on the Public Employees Retirement System were reviewed and discussed. The above official's responses are included in italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks sections of this report.

WEST VIRGINIA LEGISLATURE

Joint Committee on Government and Finance

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To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the accounts of the West Virginia Public Employees Retirement System as administered by the Consolidated Public Retirement Board.

Our examination covers the period July 1, 1991 through December 31, 1996. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Theford L. Shanklin".

Theford L. Shanklin, CPA, Director
Legislative Post Audit Division

September 15, 1997

Auditors: Neil McEachron, CPA, Auditor-in-charge
Peter Maruish, CPA
Jean Ann Waldron
Larry Bowman
Melanie Lester

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

INTRODUCTION

Consolidated Public Retirement Board

Effective July 1, 1991, Chapter 5, Article 10D of the West Virginia Code created the Consolidated Public Retirement Board (CPRB). The Board's duties are to administer and shall have all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System (PERS); the Teachers Retirement System; the Teachers' Defined Contribution Retirement System; the Death, Disability and Retirement Fund of the Department of Public Safety and the Judges' Retirement System.

The Board consists of 13 members as follows: the Governor; State Treasurer; State Auditor; Secretary of the Department of Administration; four residents of the State who are not members, retirants or beneficiaries of any of the retirement systems; a member, annuitant or retirant of the PERS who is or was a State employee; a member, annuitant or retirant of the PERS who is not or was not a State employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the Department of Public Safety Death, Disability and Retirement Fund; and, a member, annuitant or retirant of the Teachers' Defined Contribution Retirement System.

The Board shall elect from its own number a Chairman and Vice Chairman. The Board shall appoint an Executive Secretary who shall be the chief administrative officer of all the systems. The Executive Secretary shall, with Board approval, employ such employees as are

required for the proper operation of the systems. Also, the Board is empowered to employ a state retirement actuary or actuarial firm.

The Board shall meet at least once every three months and five voting trustees constitute a quorum. All Board meetings shall be public. Members shall serve without compensation for their services, provided that each member shall be reimbursed, upon Board approval, for any necessary expenses incurred by them in carrying out their duties. No public employee member may suffer any loss of salary or wages on account of their service as a trustee.

West Virginia Public Employees Retirement System

The West Virginia Public Employees Retirement System was created by an Act of the 1961 Legislature to provide a general retirement system for the employees of the State of West Virginia and employees of other political subdivisions of the State which elect to participate. The primary purpose of the Act was to provide a State pension plan which supplements the Federal Social Security System. In addition to retirement benefits, PERS makes provisions for total and permanent disability and provides certain survivor benefits. The members of PERS contribute 4.5% of their gross wages whereas the employer pays 9.5% of employees' gross salaries.

To qualify for full retirement benefits, a member must be 60 years old, currently employed by a participating employer, and have at least five years of contributing service. An individual with at least five years of service who terminates employment prior to retirement will be eligible for retirement benefits at age 62. Finally, a member may retire with full benefits if the member's age is 55 or older and when his years of contributory service combined with his age equals 80 or greater. PERS has three retirement options as follows:

Straight Life Annuity Option

The straight life annuity option is paid to the member until death. After the member's death, any contributions remaining in the member's account will be paid in a lump sum payment to the no cash beneficiary.

Option A - Joint and Survivor Annuity

Upon the death of a retirant, his or her annuity will be continued throughout the life of and paid to the retirant's beneficiary. The beneficiary must have an insurable interest in the life of the retirant to be eligible to receive the annuity. Because this option covers two lives, the annuity benefit will be less than the straight life annuity.

Option B - Modified Joint and Survivor Annuity

Upon the death of a retirant, 50% of his or her reduced annuity will be continued throughout the life of the beneficiary. The beneficiary must have an insurable interest in the life of the retirant to be eligible to receive the annuity. Because this option covers two lives, the annuity benefit will be less than the straight life annuity.

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CONSOLIDATED PUBLIC RETIREMENT BOARD MEMBERS AND STAFF
AS OF DECEMBER 31, 1996

Governor Gaston CapertonEx Officio

Chuck Polan, Secretary of Department
of Administration Chairman - Ex Officio

Glen B. Gainer, III, State Auditor..... Vice Chairman - Ex Officio

Larrie Bailey, TreasurerEx Officio

William McGinleyState Resident

Janet Wilson.....State Resident

David WyantState Resident

Roger RumbaughState Resident

James P. QuarlesState Employee Member
Public Employees Retirement System

Elizabeth Poundstone.....Non-State Employee Member
Public Employees Retirement System

Tony Lautar, Jr. Teachers Retirement System Member

Loretta Elder Teachers' Defined Contribution
Retirement System Member

S.S. Satterfield Department of Public Safety's Death,
Disability and Retirement Fund Member

STAFF

James L. Sims Executive Secretary
Paula VanHorn.....Administrative Assistant
Mary Jane Arvon, ManagerRetirement Section
Terasa Flading, Manager Contribution and Withdrawal Section
Robert Nichols, ManagerData Processing Section
Scott DennisonActuary
Lori Cottrill Accountant

CONSOLIDATED PUBLIC RETIREMENT BOARD

PUBLIC EMPLOYEES RETIREMENT SYSTEM

SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

Retirement Annuities Miscalculated

1. During the time period July 1, 1991 through September 30, 1996, there were 3,719 retirants and beneficiaries who started receiving a monthly pension benefit. We examined the retirement annuities of 113 of these retirants and beneficiaries. Our examination revealed 31% of the annuities tested were not prepared in accordance with the West Virginia Code, as amended, and applicable rules and regulations.

Of the 113 retirement annuities tested, 21 (19%) annuities were understated, 13 (11%) annuities were overstated and one (1%) annuity was paid in advance. For the period July 1991 through September 1996, the dollar impact of these errors on the 35 annuitants noted was as follows: 21 annuitants were underpaid total pension benefits amounting to \$2,950; 13 annuitants were overpaid total pension benefits amounting to \$7,250; and one annuitant was paid an annuity of \$1,560 one month before the annuity was due. Projecting these sample results over the population of 3,719 annuitants, we estimated the retirement annuities of 691 annuitants were understated, the retirement annuities of 428 annuitants were overstated and the retirement annuities of 33 annuitants were paid one month in advance. We further estimated the dollar impact on these annuitants over the aforementioned time period was as follows: 691 annuitants were underpaid pension benefits amounting to \$177,000; 428 annuitants were overpaid total pension benefits

amounting to \$435,000; and, 33 annuitants received pension benefits paid in advance amounting to \$46,500.

We recommend the Board strengthen internal controls in the area of preparation of retirement annuities. We also recommend the Board comply with the provisions of Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, when preparing a retirant's final annuity calculation. For those retirants contained within our sample who were underpaid, we recommend the Board pay these retirants the amount of any underpayments. For those retirants who were overpaid, we recommend the Board attempt to collect the amount of any overpayments from these retirants. Due to the frequency of errors noted during our examination, we further recommend that the Board review all retirement annuities processed during the period July 1991 through September 1996 to ensure each retirant's annuity was accurately prepared. Any retirants found to have been underpaid during this process should be promptly paid the amount of any underpayments, while the Board should attempt to collect any overpayments from those retirants found to have been overpaid.

Board's Response

We have taken the following steps to improve our service:

- a. Correct any retirement benefits that have been brought to our attention.*
- b. Reduced to writing understanding of the West Virginia Code and have also communicated decisions by the West Virginia Consolidated Public Retirement Board to the staff.*

- c. Had training session with the retirement advisors explaining the Code and Rules.*
- d. All retirement calculations are reviewed by another person within the department. (See pages 18 - 35.)*

Division of Rehabilitation Services Transfer

2. We noted in our review of Board minutes the Division of Rehabilitation Services and its employees were permitted to begin participation in the Public Employees Retirement System (PERS) effective July 1, 1995. The Division and its 725 employees had previously belonged to the State Teachers Retirement System and the Teachers' Defined Contribution System. This transfer added \$26,600,000 to the PERS unfunded liability according to the "West Virginia Public Employees' Retirement System Actuarial Valuation as of July 1, 1995". Conversely, the State Teachers Retirement System gained \$31,000,000 as noted in the "West Virginia Teachers' Retirement System Actuarial Valuation as of July 1, 1995". For 203 former members of the Teachers' Defined Contribution System, we noted approximately \$1,150,000 of contributions and earnings were transferred from this system into PERS.

We recommend the Board seek to provide for the transfer of employee and employer contributions and earnings from the Teachers' Defined Contribution System to PERS by requesting amendment to the West Virginia Code which would specifically allow such transfers or through the legislative rule-making process as outlined in Chapter 29A, Article 3 of the West Virginia Code. Also, we recommend the Board formally approve

such transfers between the retirement systems through majority vote of the Board to be reflected in the Board's official minutes.

Board's Response

The Consolidated Public Retirement Board has passed a motion saying that any future transfers between systems must be approved by the Board. (See pages 35 - 38.)

Payment of Legal Expenditures

3. Between January 1995 and March 1997, the Board paid \$250,023.67 to a private law firm. For the period January 1995 through March 1995, we noted the Board, without a written contract, paid \$20,698.35 of the \$250,023.67 to a private law firm for litigating a case before the West Virginia Supreme Court of Appeals. Without consulting with the Attorney General's Office, which still officially served as the Board's legal counsel at this time under authority of §5-3-2 of the West Virginia Code, this law firm was engaged by the Board in January 1995 to handle this case. However, we believe the Board was not in compliance with Chapter 5, Article 3, Section 2 of the West Virginia Code, as amended, at the time the Board engaged this law firm.

Subsequent to the hiring of this law firm, §5-10d-2(d) of the West Virginia Code was amended on February 22, 1995 to allow the Board to employ and be represented by legal counsel other than the Attorney General's Office. Upon resolution of the Supreme Court case, the Board contracted with this private law firm to provide legal services to the Board for the initial period of March 20, 1995 through December 31, 1995. The Board paid this law firm \$69,706.77 of the \$250,023.67 for legal services provided during the initial contract period. Under the terms of the contract, the contract could be extended for

additional periods beyond December 31, 1995, upon the mutual written agreement of both parties in accordance with State purchasing rules and regulations. Without a valid, written agreement extending the initial contract period, the Board paid the law firm \$159,618.55 of the \$250,023.67 for legal services provided during the period January 1996 through March 1997. We believe the Board was not in compliance with State purchasing rules and regulations because they did not seek to obtain a written agreement to extend the contract beyond the initial period.

Upon review of the Board minutes, we noted that at a regular meeting held on February 4, 1997, the Chairman of the Board appointed a committee of Board members to review the Board's current legal counsel. At the following Board meeting, a motion was passed unanimously authorizing the hiring of a permanent part- time lawyer following a review of the Board's legal expenses by the committee.

Board's Response

All current expenditures are in compliance with West Virginia Code and as of the third quarter of 1997 the West Virginia Consolidated Public Retirement Board has a contract with an individual lawyer for legal services for \$25,000 annually. (See pages 38 - 47.)

Late Deposits

4. We noted in our test of employee and employer contributions that the Board did not make timely deposits of contribution receipts which resulted in the loss of approximately \$1,500 in investment revenue for the State. Of the 370 deposits tested, we noted 68

(18%) deposits totaling \$1,132,366.89 were made four to 31 days after their receipt by the Board.

We recommend the Board comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Board's Response

Administratively it is much easier to hold a deposit that is not correct until we contact the agency, city, county, etc. to insure that the money we have received is correct. This saves more time and money if it is compared to \$1,500 in lost interest earnings. (See pages 47 and 48.)

Delinquent Monthly Contributions

5. During our test of employee and employer contributions, we noted two non-state agencies were delinquent in remitting contributions to the Board. These agencies constantly remitted late payments of contributions during fiscal year 1997 and were delinquent (over 60 days) on 15 occasions. Also, we noted that 28 state and non-state agencies remitted contributions to the Board after the due date and the State lost approximately \$1,100 in interest revenue on \$1,369,275.19 of late contributions from the 18 non-state agencies.

We recommend the Board comply with Chapter 5, Article 10, Section 33(b) of the West Virginia Code, as amended.

Board's Response

No one currently is over 60 days late. (See pages 48 - 50.)

Reinstatement of Withdrawn Service

6. Between July 1, 1991 and September 30, 1996, approximately 1,312 active members of PERS were making payments toward the reinstatement of previously forfeited service. During the course of our review of these reinstatement receipts, we noted the following: three (3) instances where members did not pay the correct amount due and 12 instances where payments to members' contribution reports were not properly posted.

We recommend the Board comply with Chapter 5, Article 10, Section 18 of the West Virginia Code, as amended. We further recommend the Board, for the three employees noted above, refund the \$109.14 in overpayments and collect the \$100.00 underpayment and adjust the members' "Contribution History Reports" for the posting errors.

Board's Response

We will comply with the audit recommendation. (See pages 50 - 52.)

Overpayment of Interest on Refunded Contributions

7. We noted in our test of refunded contributions to members who withdrew from PERS that 25 members selected for testing were overpaid \$1,750.75 in interest earnings in noncompliance with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended.

In accordance with §5-10-41 of the West Virginia Code, interest earnings should be credited to members' accounts on June 30 of each fiscal year based on the July 1 balance of such year. However, the Executive Secretary initiated a procedural change (which took effect in fiscal year 1996) to pay members who refunded during the period April through June the amount of interest earnings due as computed on a calendar year basis

rather than a fiscal year basis. This procedural change resulted in overpayments of interest earnings to refund applicants during the months of April, May and June for both fiscal years 1996 and 1997.

We recommend the Board comply with Chapter 5, Article 10, Sections 30(a) and 41 of the West Virginia Code, as amended, and revise members' annual statements to reflect the appropriate amount of interest earnings. We further recommend the Board review all refunds made during the months of April through June of fiscal years 1996 and 1997 and attempt to collect any interest overpayments.

Board's Response

In order to conform with the West Virginia and IRS Code, interest should be credited as of December 31 of each year and we have asked the West Virginia Legislature to change the interest date from June 30 to December 31. This will solve this issue. (See pages 52 - 55.)

Calculation Errors in Refunded Contribution Amounts

8. We noted in our test of refunded contributions the Board understated the amounts refunded to five members by a total amount of \$34.63 as a result of errors made by agency personnel in calculating each member's refund.

We recommend the Board comply with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended. We further recommend the Board compensate \$104.44 to the three members who were underpaid and attempt to collect \$69.81 from the two members who were overpaid.

Board's Response

No response by the Board. (See pages 55 - 57.)

Retirement Contributions Erroneously Deducted from Members' Lump Sum Payment for Unused Leave

9. In our test of retirement annuities, we noted six retirants and their former non-state employers appeared to have overpaid retirement contributions of \$827.44 and \$1,746.82, respectively. These retirants received lump sum payments for unused annual and sick leave in which retirement contributions and the corresponding employer contributions were withheld in conflict with Board policy.

We recommend the Board comply with their practice of consistently applying the provisions of Chapter 5, Article 5, Section 3 of the West Virginia Code, as amended, to State and non-state participating employers. We further recommend the Board review the preceding contributions and contact the employers to make any necessary adjustments.

Board's Response

We have made every effort to make sure that each payroll location knows what contributions they should forward to the Consolidated Public Retirement Board. But since PERS has about 800 payroll locations throughout the state it is difficult to monitor all of these locations. (See pages 57 - 59.)

Monthly Contribution Report Calculation Errors

10. We noted in our test of employer and employee contributions that three employers remitted incorrect "Monthly Contribution Reports" and corresponding receipts in which the errors were not detected by the Board's auditing function. Regarding these three

employers, employee contributions had been overstated by a net amount of \$25.90 while employer contributions had been overstated by \$90.27.

We recommend the Board comply with Title 162, Series 5, Sections 12 and 13 of the Legislative Rule for PERS. We further recommend the Board make the \$116.17 adjustments to the preceding participating employers' monthly reports.

Board's Response

As I stated before we deal with approximately 800 payroll locations and the staff of the Consolidated Public Retirement Board do a very good job in helping these people file accurate and timely reports. (See pages 59 - 60.)

Retention of Microfilm Records

11. We noted in our test of retirement annuities that, in some cases, the Board did not retain all microfilm records for active members and retirants. Our test revealed that of 113 retirants tested, 56 retirant microfilm files had one or more missing documents.

We recommend the Board comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code and strengthen internal controls over the area of retention of microfilm records.

Board's Response

Contributions, salary, and other information are kept on computer files so even if we have no records in our microfilm system, we can still process PERS retirement benefits correctly. We film all records and store one copy in our office and store a backup copy at another location. (See pages 60 and 61.)

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT SYSTEM
GENERAL REMARKS

INTRODUCTION

We have completed an examination of the West Virginia Public Employees Retirement System. The examination covered the period July 1, 1991 through December 31, 1996.

COMPLIANCE MATTERS

Chapter 5, Article 10 of the West Virginia Code, as amended, generally governs the West Virginia Public Employees Retirement System. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to the findings listed below.

Retirement Annuities Miscalculated

During the time period July 1, 1991 through September 30, 1996, there were 3,719 retirants and beneficiaries who started receiving a monthly pension benefit. We examined the retirement annuities of 113 of these retirants and beneficiaries. Our examination revealed 31% of the annuities tested were not prepared in accordance with the West Virginia Code, as amended, and applicable rules and regulations. The following table reflects the results of our sample as projected over the entire population:

<u>Remarks</u>	<u>Percent</u>	<u>Number of Annuitants Affected</u>	
		<u>Sample</u>	<u>Population</u>
In Compliance	69%	78	2,567
Annuities Understated	19%	21	691
Annuities Overstated	11%	13	428
Paid in Advance	<u>1%</u>	<u>1</u>	<u>33</u>
Total	<u>100%</u>	<u>113</u>	<u>3,719</u>

As the above table indicates, 30% of the retirement annuities paid to the population of 3,719 retirants and beneficiaries were either understated or overstated. Using the 19% error rate, we estimated the monthly annuities of 691 annuitants in the population were understated. For these 691 annuitants, we further determined their average monthly annuity of \$519 was understated by approximately \$10 per month. Using the 11% error rate, we estimated the annuities of 428 annuitants were overstated. For these 428 annuitants, we further determined their average monthly annuity of \$789 was overstated by approximately \$22 per month. Also, using the 1% error rate for the one retirant who received an annuity one month before the annuity was due, we estimated 33 annuitants received an annuity paid in advance. The following table depicts the dollar impact of these errors on both the sample and population:

<u>Remarks</u>	<u>Dollar Impact on Sample</u>		<u>Dollar impact on Population</u>	
	Total Pension Benefits Paid <u>During Period</u>	Actual Pension Benefits (Underpaid) /Overpaid	Total Pension Benefits Paid <u>During Period</u>	Projected Pension Benefits (Underpaid) /Overpaid
In Compliance	\$ 761,300	N/A	\$45,741,000	N/A
Understatements	152,500	(\$2,950)	9,163,000	(\$177,000)
Overstatements	258,600	\$7,250	15,539,000	\$ 435,000
Paid in Advance	<u>4,700</u>	\$1,560	<u>281,000</u>	\$ 46,500
Total	<u>\$1,177,100</u>		<u>\$70,724,000</u>	

The following sections provide detailed information on the 35 errors which were noted earlier. These errors included general clerical errors, errors resulting from changes in interpretation of the statutes regarding the determination of a member's final average salary and errors resulting from changes in the interpretation of the statutes affecting the crediting of prior service to retiring members.

A. General Clerical Errors

During our examination we noted 29 of these 35 errors were the result of mistakes made by the retirement advisor(s) during the process of preparing each annuitant's final annuity calculation. Of the 29 miscalculated annuities, 17 errors resulted in understated annuities, 11 errors resulted in overstated annuities, and one annuity was paid one month before the annuity was due. Generally, the types of errors noted included miscalculations of a member's final

average salary or years of credited service. These miscalculated annuities did not comply with Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, which states in part,

"...Provided, That after March one, one thousand nine hundred seventy, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. In either event upon his retirement he shall have the right to elect an option provided for in section twenty-four [§5-10-24] of this article. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies..."

We also noted the monthly annuities of some retirants were miscalculated because the wrong option factor amount was utilized in the determination of the retirant's Option A or B annuity. Chapter 5, Article 10, Section 24 of the West Virginia Code, as amended, states in part,

"Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:

Option A - Joint and survivor annuity.-Upon the death of a retirant, who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement; or

Option B - Modified joint and survivor annuity.-Upon the death of a retirant, who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and

filed with the board of trustees prior to the effective date of his or her retirement..."

This Code section governs the proper election of an Option A or B annuity by a PERS retiree. To determine the final annuity amount for a retiree who elected to receive an Option A or B annuity rather than a straight life annuity, option factor tables are utilized in the computation of the retiree's final annuity. These tables are based on the ages of both the retiree and beneficiary. Our examination indicated that in some cases the wrong age had been used for either the retiree or beneficiary which adversely affected the calculation of the retiree's monthly annuity.

Another error occurred when a retirement advisor mistakenly recorded the effective retirement date for a disability retiree a month earlier than the actual retirement date. As a result, the retiree received an annuity paid in advance. We also noted one retiree whose monthly annuity was overstated because the amount that he received upon termination of his employment, as a lump sum payment for annual leave, was erroneously included as part of his final average salary.

We noted several factors which contributed to the occurrence of these errors. Eleven of these 29 errors occurred during the period of July 1991 through December 1995, while the remaining 18 errors occurred during calendar year 1996.

Upon inquiry of the Manager of the Retirement Section about the large number of errors noted during 1996, she stated that since the consolidation of the retirement systems, her department has had to contend with an increased workload of plan participants applying for retirement benefits along with a downsizing of staff charged with handling this workload; particularly, during the first several months of 1996 when her department experienced several

changes in personnel. She stated her department was not staffed by a sufficient number of retirement advisors in early 1996 which accounted for the occurrence of many of the clerical errors during this period. She further stated that to fill these vacant retirement advisor positions, other employees within her department were transferred from other positions and reassigned as retirement advisors to help process the high volume of retirement applicants. Being new to these positions, these employees were processing retirement annuities before they were fully trained in their new job duties. The unfamiliarity of these employees with the applicable laws, rules and regulations necessary to prepare a retirant's final annuity calculation contributed to the occurrence of some of these clerical errors. We further learned the Board had implemented an internal control procedure to ensure final annuity calculations were accurately prepared. One retirement advisor would initaially prepare a retirant's final annuity calculation and then another retirement advisor would recheck the calculation for accuracy. However, due to the increased workload and the inexperience of the newly appointed retirement advisors, the Manager of the Retirement Section circumvented this internal control procedure by instructing the more experienced retirement advisors to recheck their own work in order to process the large volume of annuities in a timely manner. This breakdown of the Board's internal control structure contributed to the occurrence of several of these clerical errors.

As to the occurrence of the 11 errors which occurred during the period July 1991 through December 1995, the enormous workload combined with the Board's small staff of retirement advisors may have been the prevalent cause of these clerical errors.

To illustrate the full monetary impact of these clerical errors on individual retirants, we have prepared a table summarizing the total monthly dollar effect for the 29

annuitants whose retirement annuity was either understated, overstated, or paid in advance due to clerical error. The table also shows the total amount these retirants were underpaid or overpaid from their date of retirement through September 1996.

<u>Type of Error</u>	<u>Number of Annuitants</u>	<u>Amount Monthly Annuity (Understated)/ Overstated</u>	<u>Total Amount (Underpaid)/ Overpaid As of 9/96</u>
Understated	17	(\$277)	(\$2,780)
Overstated	11	\$208	\$4,080
Paid in Advance	1	N/A	\$1,560

Concerning the 17 annuitants whose retirement annuities were understated, we noted the amounts by which these monthly annuities were understated ranged from a low of \$1 to a high of \$177. We also noted one annuitant was underpaid a cumulative total of \$1,063 from their date of retirement through September 1996. For the 11 annuitants whose retirement annuities were overstated, the amounts by which these monthly annuities were overstated ranged from a low of \$2 to a high of \$70. One of these 11 annuitants was overpaid a cumulative total of \$1,891 from their date of retirement through September 1996.

B. Changes in Interpretation of Statutes Regarding Determination of Final Average Salary

While documenting the Board's procedures for preparing retirement annuities, we noted a change in procedure had been put into effect by the Executive Secretary concerning the effect of breaks in service on the calculation of a retirant's final average salary. The Board minutes do not indicate this procedural change had been approved by the Board. The implementation of this procedural change took effect around March 1996 and lasted until

September 1996. Our examination indicated four (4) of the 35 errors noted were due to this procedural change.

Chapter 5, Article 10, Section 2(15) of the West Virginia Code, as amended, defines final average salary as follows:

"(15) 'Final average salary' means either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service..."

Based on this Code section, the Board has promulgated rules and regulations governing the proper calculation of a retiring member's final average salary. Title 162, Series 5, Section 6 of the Legislative Rule promulgated by the Board for PERS provides the following procedure in computing a member's final average salary:

"6.1. No compensation shall be considered for any period for which service is not credited.

6.2. The ten (10) years of credited service immediately preceding the date of his or her employment with a participating public employer last terminated is the one hundred nineteen (119) months of service proceeding the last month before retirement.

6.3. The three (3) consecutive years of service for which his or her compensation was the highest is the highest aggregate of his or her compensation for the thirty-six (36) consecutive months of service contained within the one hundred nineteen (119) months of service, plus the last month of service determined in Subsection 6.2 of this Rule.

6.4. His or her final average salary shall be one-third (1/3) of the aggregate salary determined in Subsection 6.3 of this Rule."

These rules and regulations in conjunction with the Code section mentioned earlier established the proper determination of a member's final average salary as comprising his or her 36 consecutive months of highest aggregate salary (which must be credited service) contained within the last 120 months of credited service prior to the member's retirement.

The reasoning for this procedural change as explained to us by the Executive Secretary was to develop a procedure concerning breaks in service which could be consistently applied to each retiring member of PERS. To ensure the Board was following the law concerning the proper determination of a member's final average salary, the Executive Secretary sought the advice of legal counsel to ascertain the effect of breaks in service on the computation of a member's final average salary. The legal counsel's written response to the Executive Secretary's request stated in part,

"...months of no compensation which fall within the thirty-six (36) month unbroken chain cannot be omitted in favor of a month of normal, usually higher, compensation. From a "final average salary" calculation standpoint, if there is a month of a no compensation in the thirty-six (36) month unbroken chain, the month of no compensation must be averaged in as a zero...."

Based on this advice from legal counsel, the Executive Secretary put this procedural change into effect around March 1996. By having to calculate a member's final average salary over an unbroken chain of 36 consecutive months, the member's pension benefits may be less because his or her final average salary is being based on years of credited service when earnings were lower.

Previously, if a retirement advisor encountered breaks in service while calculating a member's final average salary these breaks in service were extracted (or skipped over) from the

computation. For one annuitant in our sample who was the beneficiary of a deceased retirant, we noted the deceased retirant's final average salary was calculated in just this manner. The deceased had qualified for deferred retirement and began receiving an annuity in December 1992. He subsequently died during January 1995 and his beneficiary began receiving the same monthly annuity in February 1995. The computation of the deceased's final average salary encompassed the period October 1966 through November 1969 (a period of 38 months). An examination of his contribution records indicated he did not receive any compensation while employed with a participating employer during the months of May and June 1968. Thus, these two (2) months were extracted (or skipped over) from the computation of his final average salary. This retirant's final average salary was not calculated in accordance with guidelines established by the West Virginia Code and the Legislative Rule for PERS.

During the course of our examination, we noted four (4) retirants whose retirement annuity was understated due to this procedural change. The monthly annuity of these retirants was calculated to be lower than what it should have been due to the effect of this procedural change on the determination of their final average salary. The following table illustrates the monetary impact of this procedural change on these four (4) retirants.

<u>Retirant</u>	<u>Amount Monthly Annuity Understated</u>	<u>Total Amount Underpaid As of 9/96</u>
1	\$ 2.38	\$21.42
2	\$12.79	\$51.16
3	\$15.15	\$45.45
4	\$26.61	\$53.22

According to the Executive Secretary, this procedural change was reevaluated several months after its implementation due to concerns voiced by members of the Board's staff over whether or not this procedural change was an appropriate interpretation of the final average salary statutes. Once again the advice of legal counsel was sought in this matter. In another letter drafted by legal counsel, earlier interpretations made regarding the effect of breaks in service on the computation of a member's final average salary were retracted. The letter states in part,

"...months of credited service are the criteria used in determining a PERS member's final average salary. From a definitional standpoint, months of no compensation or very low compensation -may not give rise to any credited service and, therefore, may not impact the final average salary calculation...."

Even though a member's final average salary encompasses his or her 36 consecutive months of highest aggregate salary, it is based on 36 consecutive months of credited service.

Chapter 5, Article 10, Section 2(13) of the West Virginia Code, as amended, defines credited service as follows:

"(13) 'Credited service' means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article."

As this Code section provides, credited service pertains to service rendered by a member with a participating public employer upon which retirement contributions were made as well as any service rendered by the member with a participating public employer prior to the establishment of PERS. The implementation of this procedural change had not taken into consideration that a retirant's final average salary must comprise 36 months of consecutive credited service. Since no contributions were made during a break in service, the month or months of no compensation

could not be used in the calculation of final average salary. This procedural change did not comply with §5-10-2(13) and (15) of the West Virginia Code, as amended.

The procedural change regarding the effect of breaks in service on final average salary was discontinued in September 1996. The Board returned to its previous practice regarding breaks in service on final average salary which involves extracting (or skipping over) breaks in service from the computation of final average salary. Subsequently, the retirement annuities of the four (4) retirants noted by us were adjusted accordingly when brought to the attention of the appropriate Board personnel. However, we noted the Board did not review their records to ascertain if any other retirants may have been adversely affected by this procedural change while in force in order to make any necessary adjustments to their retirement annuity.

C. Change in Interpretation of Statutes Regarding Crediting of Prior Service

Another procedural change implemented by the Board affected the determination of a member's prior service. Our examination indicated two (2) of the 35 errors noted were due to this procedural change.

Chapter 5, Article 10, Section 2(11) of the West Virginia Code, as amended, defines prior service as follows:

"(11) 'Prior service' means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article."

As this Code section indicates, prior service represents non-contributory service rendered by a member with a participating public employer before the establishment of the Public Employees Retirement System on July 1, 1961. Credited service is defined as follows by Chapter 5, Article 10, Section 2(13) of the West Virginia Code, as amended:

"(13)'Credited service' means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article."

The procedural change concerning the crediting of prior service focused on the interpretation of §5-10-18 of the West Virginia Code, as amended. This statute addresses a member's withdrawal from the system, forfeiture by the member of their credited service upon withdrawing their contributions from the system and the criteria the member must follow for reinstating his or her forfeited service upon reentering the system. Chapter 5, Article 10, Section 18 of the West Virginia Code, as amended, states,

"When a member of the retirement system retires or dies, he ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he ceases to be a member and **forfeits service credited** to him at that time. If he becomes reemployed by a participating public employer he shall be reinstated as a member of the retirement system and his **credited service last forfeited by him shall be restored to his credit**: Provided, That he must be reemployed for a period of one year or longer to have such service restored: Provided, however, That he returns to the members' deposit fund the amount, if any, he withdrew there from, together with regular interest thereon from the date of withdrawal to the date of repayment, and that such repayment begins within two years of the return to employment and that the full amount be repaid within five years of the return to employment." **[Emphasis added.]**

During our examination we became aware that the interpretation of this Code section by the Board as it relates to the forfeiture of a member's credited service upon withdrawal from the system changed during 1996. Prior to 1996, the Board permitted retiring members of PERS to include their prior service as part of their total credited service even though these members had not reinstated their withdrawn service upon reemployment. However, this practice was changed to comply with the aforementioned Code section.

According to the Executive Secretary, he wanted to ensure the Board was following the law in the crediting of prior service to members of PERS. Thus, starting in January 1996 the Board implemented a procedural change concerning the determination of a member's prior service. In accordance with this procedural change, a retiring member will forfeit all prior service credited to him or her if the member chooses not to repay any withdrawn contributions back to the system prior to retirement. A member's credited service is the sum of both the member's contributing service and prior service.

During our examination we noted two (2) retirants who were allowed to claim prior service as part of their total credited service even though they had not reinstated previously withdrawn service prior to retiring. Thus, their retirement annuities were overstated due to this procedural change. We also noted two (2) members who had retired under similar conditions after the implementation of this procedural change who were not allowed to utilize their prior service as part of their total years of credited service. Using these four (4) retirants, we have prepared the following table to better illustrate the manner in which prior service was treated before and after the implementation of this procedural change.

<u>Retirant</u>	<u>Date Retired</u>	<u>Amount of Prior Service (Years)</u>	<u>Amount of Prior Service Included As Part of Total Years of Credited Service (Years)</u>	<u>Retired Before/After Procedural Change</u>
1	4/01/94	0.67	0.67	Before
2	2/01/95	2.75	2.75	Before
3	1/01/96	6.50	-0-	After
4	3/01/96	0.33	-0-	After

The monetary impact on the retirement annuities of retirants #1 and #2 due to this procedural change is reflected in the following table:

<u>Retirant</u>	<u>Amount Monthly Annuity Overstated</u>	<u>Total Amount Overpaid As of 9/96</u>
1	\$ 31.67	\$ 950.10
2	\$110.94	\$2,218.80

Upon review of the Board minutes, we noted where an active member of PERS affected by this procedural change had challenged this procedure before the Board at a regular meeting held on April 23, 1996. Previously, this member had requested an estimate of their retirement annuity from the Board. During the process of getting an estimate the member learned her six (6) years and six (6) months of prior service credit with a State agency had been forfeited since the member had not sought repayment of her withdrawn contributions upon reemployment in accordance with §5-10-18 of the West Virginia Code, as amended. The member appealed this decision by the staff to the Board. Prior to 1996, this member's six (6) years and six (6) months of prior service had been included in the total amount of credited service reflected on the annual statements issued to the member even though the member had not reinstated her withdrawn service to the Board. The amount of prior service as reflected on the annual statements misled the member to believe she had that amount of prior service standing to her credit. At the regular meeting held on April 23, 1996, the Board voted unanimously to uphold the staff's decision concerning this member which also served to validate the procedural change. Currently, this procedural change regarding prior service is still in effect.

The change in procedure to not allow prior service credit to members who chose not to reinstate withdrawn service after 1995 complies with the law. Consequently, this change

results in annuity overpayments for retirants who retired prior to 1996 and were allowed to retain prior service credit in the same circumstances.

Recommendation

When the Board discovers an error has been made in the computation of a retirant's final annuity calculation, the Board is authorized by the West Virginia Code to adjust the monthly benefit of a retirant whose annuity has been miscalculated to reflect the retirant's true monthly benefit. Specifically, Chapter 5, Article 10, Section 44 of the West Virginia Code states,

"Should any change or error in the records of any participating public employer or the retirement system result in any person receiving from the system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as is practicable shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled shall be paid."

Based on the results of our examination, we conclude that the Board's internal control structure governing final annuity calculations was not functioning as described to us. Therefore, we recommend the Board strengthen internal controls in the area of preparation of retirement annuities. We also recommend the Board comply with the provisions of Chapter 5, Article 10, Section 22 of the West Virginia Code, as amended, when preparing a retirant's final annuity calculation. For those retirants contained within our sample who were underpaid, we recommend the Board pay these retirants the amount of any underpayments. For those retirants who were overpaid, we recommend the Board attempt to collect the amount of any overpayments from these retirants. Due to the frequency of errors noted during our examination, we further recommend that the Board review all retirement annuities processed during the period

July 1991 through September 1996 to ensure each retiree's annuity was accurately prepared. Any retirees found to have been underpaid during this process should be promptly paid the amount of any underpayments, while the Board should attempt to collect any overpayments from those retirees found to have been overpaid.

Board's Response

The manager of the PERS section has more than 15 years experience with the retirement system. Also of the two people who were retirement advisors for PERS, one had more than 20 years of experience with the retirement system, and the other one was a recent graduate of West Virginia University in accounting. The individual with more than 20 years of experience retired on the very day she learned that the auditors were reviewing retirement calculations and the other individual left state government for other employment. Of the five retirement advisors that we now have, the average experience as a retirement advisor is less than two years.

Your report recalculated 113 out of 3,719 total PERS annuities that were completed between July 1, 1991 and September 30, 1996. This is a sample of only 3%. The total benefits payable during this same period of time from the 113 retirements were \$1,177,100. You state that overpayments of \$7,250 were made on these 113 retirees who were to receive \$1,177,100 in benefits. This \$7,250 is less than 1% of the total reviewed benefits of \$1,177,000. In fact it is 6/10 of 1%.

We have taken the following steps to improve our service:

- a. Correct any retirement benefits that have been brought to our attention.*

- b. Reduced to writing understanding of the West Virginia Code and have also communicated decisions by the West Virginia Consolidated Public Retirement Board to the staff.*
- c. Had training session with the retirement advisors explaining the Code and Rules.*
- d. All retirement calculations are reviewed by another person within the department.*

The manager of the retirement section assures me that current employees understand the retirement system and the retirement benefits are being calculated properly.

Division of Rehabilitation Services Transfer

We noted in our review of Board minutes, the Division of Rehabilitation Services and its employees were permitted to begin participation in the Public Employees Retirement System (PERS) effective July 1, 1995. The Division and its 725 employees had previously belonged to the State Teachers Retirement System and the Teachers' Defined Contribution System. We were unable to locate in the Board minutes where the Board formally approved the Division of Rehabilitation Services to transfer participation from the aforementioned teachers systems to PERS. However, in discussions with the Executive Secretary he stated that he believed he had the legal authority to make the transfer. Also, the transfer added \$26,600,000 to the PERS unfunded liability according to the "West Virginia Public Employees' Retirement System Actuarial Valuation as of July 1, 1995" which states in part,

"Changes Since the Previous Valuation ... Because of reorganization of state government, employees of the Division of Rehabilitation Services, who were formerly members of the Teachers' Retirement System and the Teachers' Defined Contribution Plan, have now transferred their membership to PERS. This has added \$26.6 million to PERS' Unfunded Liability...."

Conversely, the State Teachers Retirement System gained \$31,000,000 as noted in the "West Virginia Teachers' Retirement System Actuarial Valuation as of July 1, 1995" which states in part,

"Rehabilitation Services": Employees in the Division of Rehabilitation Services were transferred from TRS into the Public Employees' Retirement System as of July 1, 1995. Following customary procedure for the State's retirement systems, it is expected that three years after this transfer these employees' accumulated contributions will be transferred from TRS to PERS. Since these assets are less than the Accrued Liability for their TRS benefits, TRS stands to gain a reduction in its Unfunded Accrued Liability from this event. The present value of this expected gain is about \$31 million"

Also, we could not locate any formal Board approval or statute which authorized the employees who had participated in the Teachers' Defined Contribution System the option to transfer employee and employer contributions from this system into PERS to receive a like amount of PERS service credit. For the 203 employees who took advantage of the option, approximately \$1,150,000 of contributions and earnings were transferred from the Teachers' Defined Contribution System into PERS.

We asked the Board's Executive Secretary if the Board had approved the participation of the Division of Rehabilitation Services in PERS and to cite the statute, rule or regulation which authorized the transfer of contributions and service credit from the Teachers' Defined Contribution System into PERS. We also asked if the transfer was approved by the Board. The Executive Secretary's response was as follows:

"... 1. The West Virginia Legislature transferred the Division of Rehabilitation Services to Education and the Arts. Because of this our attorney of Bowles, Rice, McDavid, Graff, & Love told us that employees of Rehabilitation Services should be members of the Public Employees Retirement System and not members of the teachers' retirement systems. This was also confirmed in writing by the West Virginia Attorney General's Office. I informed the Board of

this fact and no member had any objection to this transfer taking place. No formal vote of the Board was taken.

2. Since it was concluded that employees of Rehabilitation Services should be members of the Public Employees Retirement System we developed a plan that would be fair to the employees, the state, and the respective retirement plans. However any funds that were transferred could now be transferred back if that becomes necessary. There were two categories of workers at Rehabilitation Services; 1.) Past members of the West Virginia Teachers Defined Benefit Retirement Plan and; 2.) Past members of the West Virginia Teachers Defined Contribution Retirement Plan.

As of July 1, 1995 for employees transferring from the Teachers Defined Benefit Plan to the Public Employees Retirement System no employee or employer funds have been transferred. However at the end of three years in the PERS System, individual members may elect to transfer funds and past service into PERS according to Chapter 5, Article 10, Section 3(b) and Chapter 5, Article 10, Section 14(b) of the West Virginia Code.

As of July 1, 1995 there have been transfers of employee and employer funds from the Teachers Defined Contribution Plan to the Public Employees Retirement System. None of these employees had six or more years of service credit therefore no employee had any vested retirement benefit. I do not believe it would have been fair to the members to require these employees to become members of PERS without giving them credit for their prior years of service credit.

The West Virginia Legislature had looked at similar issues of transfers out of the Teachers Defined Contribution Retirement Plan in Chapter 18, Article 7B, Section 7 when it said,"shall transfer all member and employer contributions and investment earnings there from the teacher defined contribution system to the Teachers' defined benefit system and shall receive service credit for the time the member participated in the defined contribution system as if that participant had been in the teachers' defined benefit retirement system." This says that "all member and employer contributions" will be transferred. If we had not made these transfers none of these people would have received any service credit for the years they worked prior to July 1, 1995...."

We recommend the Board seek to provide for the transfer of employee and employer contributions and earnings from the Teachers' Defined Contribution System to PERS by requesting amendment to the West Virginia Code which would specifically allow such transfers or through the legislative rule-making process as outlined in Chapter 29A, Article 3 of the West Virginia Code.

Also, we recommend the Board formally approve such transfers between the retirement systems through majority vote of the Board to be reflected in the Board's official minutes.

Board's Response

The West Virginia Legislature transferred the Division of Rehabilitation Services to Education and the Arts. Because of this action, our attorney at the time, Ken Webb of Bowles, Rice, McDavid, Graff & Love confirmed to us in writing that employees of Rehabilitation Services should be members of the PERS. This was also confirmed to us in writing by the West Virginia Attorney General's Office. I informed the Consolidated Public Retirement Board of this fact and no member had any objection to the transfer taking place and no formal vote was taken by the Board. West Virginia Code §5-10D-2 says, "The executive secretary shall be the chief administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her." I believed that I had the legal authority at that time to make the transfer, however since then the Consolidated Public Retirement Board has passed a motion saying that any future transfers between systems must be approved by the Board. I will, of course, comply with the directions of the Board.

Payment of Legal Expenditures

Between January 1995 and March 1997 the Board paid \$250,023.67 to a private law firm. The following schedule depicts what these payments were for:

<u>Period Services Were Provided</u>	<u>Amount Paid</u>	<u>Presence of a Written Contract (Yes/No)</u>	<u>Type of Services Provided</u>
1/95 thru 3/95	\$ 20,698.35	No	Litigation of WV Supreme Court Case
3/95 thru 12/95	69,706.77	Yes	General Representation
1/96 thru 3/97	<u>159,618.55</u>	No	General Representation
Total	<u>\$250,023.67</u>		

The following sections provide detailed information on the relationship between the Board and this private law firm as shown in the above table.

A. \$20,698.35 Paid to Private Law Firm for Services Provided During the Period January 1995 thru March 1995

During our examination of the Board's legal expenditures, we noted that the Board was billed a total of \$20,698.35 by a private law firm for legal services rendered from January 1995 through March 1995. Without consulting with the Attorney General's Office, which was still officially serving as the Board's legal counsel, this law firm was engaged by the Board to handle the rehearing of a matter before the West Virginia Supreme Court of Appeals. The Board minutes do not indicate this action had been approved by the Board.

The hiring of the law firm by the Board conflicts with Chapter 5, Article 3, Section 2 of the West Virginia Code, as amended, which states in part,

"The attorney general shall appear as counsel for the state in all causes pending in the supreme court of appeals, or in any federal court, in which the state is interested; he shall appear in any cause in which the state is interested that is pending in any other court of the state on written request of the governor, and when such appearance is entered he shall take charge of and have control of such cause; he shall defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or any of the federal courts when the state is not interested in such

cause against such officer, but should the state be interested against such officer, he shall appear for the state; he shall institute and prosecute all civil actions and proceedings in favor of or for the use of the state which may be necessary in the execution of the official duties of any state officer, board or commission on the written request of such officer, board or commission..."

During January 1995, the Board sought the services of this firm to specifically handle the rehearing of one particular case. This case concerned an annual cost-of-living adjustment (COLA) granted by the Legislature to retiring members of the Department of Public Safety Death, Disability and Retirement System (Plan "A"). During the 1988 Legislative session, §15-2-27a was enacted by the Legislature granting a 3.75% COLA to each retired member of the Division of Public Safety at least 56 years of age or older. During the 1994 Legislative session the Legislature amended this section of Code. For those members retiring on or after September 15, 1994, the amendment reduced the annual cost-of-living adjustment to be paid to retirees, surviving spouses or other beneficiaries from 3.75% to 2.00%. The Board fully supported the amendment to this Code section. However, the constitutionality of this amendment was challenged before the West Virginia Supreme Court of Appeals which ruled the amendment to be unconstitutional. The Attorney General's Office represented the Board in defense of this amended legislation. The Court ruled that the Legislature could not take away a benefit once it has already been given. This decision was handed down by the Court in December 1994. The Board decided to appeal this decision.

At this time the Attorney General's Office officially served as the Board's legal counsel in all legal matters. However, the Board chose to utilize the services of a private law firm rather than the Attorney General's Office to handle the rehearing of this case. Upon review of the Board minutes, we were unable to locate any motion voted upon by the Board approving

the hiring of this firm. Since Board approval to hire this firm was not reflected in the minutes, we requested the Executive Secretary draft a letter explaining the circumstances surrounding the hiring of this firm. In this letter the Executive Secretary addressed the issue of why this firm was used in this matter rather than the Attorney General's Office. The Executive Secretary responded,

"The Board did not believe that they were being well represented in this matter by the attorney who was assigned to us by the Attorney General's Office. The Board in informal discussions decided to find a private attorney who could be of assistance to Robert Nunley. Mr. Nunley was the attorney working for the Attorney General and who was assigned to the Consolidated Public Retirement Board.

We asked Gary Markham to help Mr. Nunley with the proviso that we would try to pay him, but there was a possibility that he would not be paid for these services. All of Mr. Markham's work was then forwarded to Mr. Nunley and Mr. Nunley filed any necessary papers as though all of the work had been done by the Attorney General's Office.

Shortly thereafter the West Virginia Legislature changes the Code which allowed the Consolidated Public Retirement Board to hire our own counsel and Mr. Markham was hired by the Consolidated Public Retirement Board and then finished the work at the West Virginia Supreme Court on Booth v Sims and was paid for all of the work on this case."

Services rendered by the firm in this matter included drafting and filing the petition for rehearing as well as arguing the petition before the Court. The Court issued a modified opinion in this matter dated March 24, 1995 essentially upholding their initial decision. The decision by the Court found §15-2-27a of the West Virginia Code to be an unconstitutional impairment of the State's obligation of its contract but only to the extent that it reduces the petitioner's cost-of-living adjustment.

The Board's decision to utilize the services of a private law firm to handle the rehearing of this case rather than the Attorney General's Office cost the State of West Virginia \$20,698.35 in legal fees and expenses. We believe the Attorney General's Office, as the official representative for the Board at this time, should have been entrusted by the Board with the responsibility of handling the rehearing of the case. This would have resulted in a much less expense than hiring a private law firm. Upon review of the billings submitted by the Attorney General's Office for legal services rendered during fiscal year 1995, we noted that the highest hourly rate charged by an Assistant Attorney General for work done on behalf of the Board was \$65.00. Based on this \$65 hourly rate and the total number of hours billed (131.15) by the firm in this matter, we estimated that if the rehearing of this case had been handled by the Attorney General's Office then legal fees would have amounted to approximately \$8,524.75. Not taking reimbursement of itemized expenses into account, we believe based on our estimation of projected legal fees that the Board could have saved approximately \$11,610.50 in legal fees in this matter if the Board had followed the law and utilized the services of the Attorney General's Office.

Subsequent to the hiring of this law firm, §5-10D-2(d) of the West Virginia Code was amended on February 22, 1995 to allow the Board to employ and be represented by legal counsel other than the Attorney General's Office. However, we believe the Board was not in compliance with Chapter 5, Article 3, Section 2 of the West Virginia Code, as amended, at the time the Board engaged this law firm. Furthermore, State purchasing rules and regulations require that payment for legal services in excess of \$10,000 must be authorized by a written contract approved by the purchasing division. Therefore, we believe the expenditures totaling

\$20,698.35 by the Board for representation in this case without the benefit of a written, approved contract did not comply with State purchasing rules and regulations.

B. \$69,706.77 Paid to Private Law Firm for Services Provided During the Period March 1995 Through December 31, 1995

Subsequent to the passage of §5-10D-2(d) of the West Virginia Code, the Board contracted with this private law firm to provide legal services to the Board for the initial period of March 20, 1995 through December 31, 1995. The purchasing requisition which accompanied this contract authorized the Board to pay no more than \$80,000 for legal services provided during this period. Total expenditures paid by the Board to the firm for legal services rendered during the contract period amounted to \$69,706.77. Even though total expenditures paid did not exceed the contract amount, we noted that the charges for legal fees reflected on the monthly billings submitted by the firm during the contract period, in some instances, were not in accordance with the terms of the contract.

Provisions Six (6) and Seven (7) of the contract set forth the agreed upon fee structure as follows:

"Provision Six (6). The firm will assign Kenneth E. Webb, Jr., to represent the CPRB on routine matters. The charge for routine matters by Mr. Webb or other attorneys in the Firm will be at the rate of \$95.00 per hour. Mr. Webb may be replaced by the Firm only upon written consent of or at the request of the CPRB.

Provision Seven (7). Upon request of the CPRB for the services of a pension attorney, Gary G. Markham or another pension attorney acceptable to the CPRB will be assigned at the rate of \$150.00 per hour."

According to the terms of the contract, an hourly rate of \$95 would be charged for the handling of routine matters and an hourly rate of \$150 would be charged for the handling of specific pension matters.

However, we noted where the Board was billed a total of \$11,167.77 during the initial contract period in charges which did not conform to this fee structure. Of this amount, \$8,142.75 was billed for legal fees while the remaining \$3,025.02 was billed for itemized expenses. The legal fees pertained to charges for the handling of routine matters billed at hourly rates other than the \$95.00 hourly rate; charges for the handling of pension matters at hourly rates other than the \$150.00 hourly rate; and charges for clerical support (paralegals and summer clerks) billed at hourly rates not specified in the contract. Itemized expenses billed to the Board included legal computer research charges, photocopier charges, travel expenses, postal charges, county clerk fees and other miscellaneous expenses. The fee structure outlined in the contract did not provide any provision for the reimbursement of itemized expenses.

From conversations held with the Executive Secretary and other staff personnel, we learned that the monthly billings submitted by the firm were not routinely reviewed by the Board's staff against the terms of the contract to ensure that the Board was properly billed for services rendered.

C. \$159,618.55 Paid to Private Law Firm for Services Provided During the Period January 1996 Through March 1997

The Board initially contracted with this law firm to provide legal services to the Board for the period of March 20, 1995 through December 31, 1995. Under the terms of the contract, the contract could be extended for additional periods beyond December 31, 1995 upon the mutual written agreement of both parties in accordance with State purchasing rules and

regulations. Provision Two (2) of the contract addresses the possible extension of the original contract as follows:

"Provision Two (2). This agreement may be extended for additional periods of varying durations upon the mutual written agreement of the parties."

After the expiration of the initial contract, we noted that the Board was billed a total of \$159,618.55 in legal fees and expenses from January 1996 through March 1997. Through inquiry of the Executive Secretary, we learned that no written agreement had been drawn up between the parties extending the original contract. Therefore, the Board paid the firm \$159,618.55 in legal fees and expenses without a valid contract authorizing the Board to do so. According to the Executive Secretary, the Board was satisfied with the quality of legal services being provided by the firm and the parties had a verbal understanding that the current relationship would continue. Thus, a written agreement extending the contract was never prepared.

We believe the Board was not in compliance with State purchasing rules and regulations because they did not seek to obtain a written agreement to extend the contract beyond the initial period.

When processing payments for contractual services, it is the responsibility of the State Auditor's Office to audit all vendor invoices submitted by a State agency against an outstanding contract between the vendor and agency in accordance with State purchasing rules and regulations. This process is performed to ensure that all vendor invoices were prepared in accordance with the terms of the contract before the invoices are approved for payment.

Upon review of the State Auditor's Account Status Report, we noted that the payment requests submitted by the Board for legal services received from January 1995 through

March 1997 were approved and subsequently paid by the State Auditor's Office. We met with the Director of the Auditing Division of the State Auditor's Office to inquire about the payment of these expenditures. We learned from this official that the Board had coded their payment requests for legal services with a special authorization which allowed the invoices to be processed without being reviewed against an outstanding contract. Because the payment requests were coded with a special authorization, the official explained that her staff believed the payment requests were single purchases under \$10,000 and, thus, were processed immediately for payment. However, she admitted that her staff had neglected to audit those payment requests submitted by the Board which amounted to over \$10,000 against a written contract on file even though these payment requests were coded with the same special authorization. Upon review of her records, she stated that in fact there was no written contract on file with the State Auditor's Office approving such expenditures.

Upon review of the Board minutes, we noted that at a regular meeting held on February 4, 1997 the Chairman of the Board appointed a committee of Board members to review the Board's current legal counsel. At the following Board meeting, a motion was passed unanimously authorizing the hiring of a permanent part-time lawyer following a review of the Board's legal expenses by the committee.

Board's Response

The West Virginia Consolidated Public Retirement Board was aware of all payments made to our outside lawyers and these bills were not only reviewed by me but also were reviewed by some Board Members. I believe that all current expenditures are in compliance with West Virginia Code and as of the third quarter of 1997 the West Virginia

Consolidated Public Retirement Board has a contract with an individual lawyer for legal services for \$25,000 annually.

Late Deposits

We noted in our test of employee and employer contributions that the Board did not make timely deposits of contribution receipts which resulted in the loss of approximately \$1,500 in investment revenue for the State. Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended, states in part,

"All officials and employees of the state authorized by the statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such money so received for deposit within the state treasury and shall deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever...."

Of the 370 deposits tested, we noted 68 (18%) deposits totaling \$1,132,366.89 were made four to 31 days after their receipt by the Board. We also were unable to determine if an additional 148 deposits totaling \$1,815,711.22 were deposited timely because the Board did not maintain a record of the date these contributions were received.

Upon inquiry with Board personnel, we learned the Board does not deposit the contributions received from various non-state participating employers if discrepancies are noted on the accompanying monthly retirement reports. The Board's policy is to retain the receipts until the discrepancies are resolved. However, we believe this policy results in a loss of investment revenue to the State. Using a 4% interest rate, we determined the State lost approximately \$1,500 of interest revenue for late deposits totaling \$1,132,366.89.

We recommend the Board comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Board's Response

The employees of the Consolidated Public Retirement Board credit deposits in a timely manner. In fact I have asked our staff to make every effort to make deposits on the same day that they are received. We received deposits almost every day from outside our office and unfortunately through no fault of our staff sometimes they are incorrect. Administratively it is much easier to hold a deposit that is not correct until we contact the agency, city, county, etc. to insure that the money we have received is correct. This saves more time and money if it is compared to \$1,500 in lost interest earnings.

Delinquent Monthly Contributions

During our test of employee and employer contributions, we noted two non-state agencies were delinquent in remitting contributions to the Board. Also, we noted that 28 state and non-state agencies remitted contributions to the Board after the due date and the State lost approximately \$1,100 in interest revenue on \$1,369,275.19 of late contributions from the 18 non-state agencies. Title 162, Series 5, Sections 12 and 13 of the Legislative Rule promulgated by the Board for PERS state in part,

"§162-5-12. Employer Contributions...The sums are due the Public Employees Retirement System at the end of each calendar month in arrears and shall be paid not later than five (5) days following the end of the calendar month....

§162-5-13. Employee Contributions...The sums withheld each calendar month are due the Retirement System at the end of each calendar month and shall be paid not later than five (5) days following the end of each calendar month...."

As noted in the preceding rules, participating employers are to remit the employee and employer contributions to PERS no later than five days following the end of the calendar

month in which the contributions were received. If an employer fails to make payments to the Board 60 days after the due date, the employer shall become delinquent as noted in Chapter 5, Article 10, Section 33 of the West Virginia Code, as amended, which states in part,

"...(b) If any participating public employer, other than the state, fails to make any payment due the retirement system for a period of sixty days after the payment is due, the participating public employer shall become delinquent and such delinquency shall be certified to the state auditor by the board of trustees. If any participating public employer becomes delinquent, as provided herein, the state auditor is authorized and directed to withhold any money due such participating public employer by the state until such delinquency, together with regular interest thereon, from the date due, is satisfied. Such money so withheld by the state auditor shall be paid to the retirement system."

We noted two non-state employers did not comply with the aforementioned statute on 15 occasions by having remitted employee and employer monthly contributions after 60 days had elapsed. Delinquent monthly contributions during fiscal year 1997 for each non-state employer were as follows:

	<u>Contributions</u>		<u>Number</u>	<u>Average</u>
	<u>Employee</u>	<u>Employer</u>	<u>of Months</u>	<u>Days Late</u>
Non-State Employer #1	\$ 8,943.68	\$18,881.09	9	81
Non-State Employer #2	<u>2,753.36</u>	<u>5,812.70</u>	<u>6</u>	80
Total	<u>\$11,697.04</u>	<u>\$24,693.79</u>	<u>15</u>	

We could not ascertain the reason for the delinquent payments by the two preceding non-state agencies; however, we believe these employers should have remitted the employee contributions totaling \$11,697.04 to the Board on a timely basis since the employers are entrusted with the employee retirement contributions.

According to the Executive Secretary, these agencies were not certified to the State Auditor. He stated that very few agencies were ever delinquent and he knew of no agency which had not eventually paid the contributions due. However, we believe these agencies should have been certified to the State Auditor and interest imposed in accordance with Chapter 5, Article 10, Section 33(b) of the West Virginia Code, as amended.

We recommend the Board comply with Chapter 5, Article 10, Section 33(b) of the West Virginia Code, as amended.

Board's Response

There are some non-state entities that have great difficulty in coming up with the 9 1/2% contributions for their employer share of the PERS contributions. The staff tries hard to see that all contributions are made in a timely manner. The supervisor of the membership section is a relatively new staff member, but she has a business degree from West Virginia University and she is doing an excellent job. She reports to me in writing weekly the status on contributions for all members of PERS and no one currently is over 60 days late.

Reinstatement of Withdrawn Service

Between July 1, 1991 and September 30, 1996, approximately 1,312 active members of PERS were making payments toward the reinstatement of previously forfeited service. During the course of our review of these reinstatement receipts, we noted the following: three (3) instances where members did not pay the correct amount due and 12 instances where payments to members' contribution reports were not properly posted.

Chapter 5, Article 10, Section 18 of the West Virginia Code, as amended, states in part,

"...When a member leaves the employ of a participating public employer for any other reason, he ceases to be a member and forfeits service credited to him at that time. If he becomes reemployed by a participating public employer he shall be reinstated as a member of the retirement system and his credited service last forfeited by him shall be restored to his credit: Provided...he returns to the members' deposit fund the amount, if any, he withdrew there from, together with regular interest thereon from the date of withdrawal to the date of repayment...."

Title 162, Series 5, Section 32 of the Legislative Rule for PERS provides for payment of previously withdrawn contributions as follows:

"Any former member of the Retirement System who withdrew his or her contributions and who is reemployed by a participating employer may repay his or her withdrawals over a three (3) year period, together with four percent 4% interest, if repayment in a lump sum will work a hardship...."

Of the 50 members selected for testing, we noted the Board, through clerical error, miscalculated the amount due from two employees which resulted in an overpayment by these employees of \$35.09 and \$74.05, respectively. Conversely, the Board erroneously applied a \$100.00 payment to a member's accounts receivable ledger for which no deposit could be located. Further, we noted 11 payments totaling \$3,309.50 were not posted to members' "Contribution History Reports" and one instance where a member's "Contribution History Report" was posted for a \$147.68 payment that was not received. Because the "Contribution History Report" is the source document to determine refund amounts, these posting errors would result in understatements or overstatements of members' refunds and interest earnings.

We recommend the Board comply with Chapter 5, Article 10, Section 18 of the West Virginia Code, as amended. We further recommend the Board, for the three employees

noted above, refund the \$109.14 in overpayments and collect the \$100.00 underpayment and adjust the members' "Contribution History Reports" for the posting errors.

Board's Response

The supervisor of the membership section is also responsible for the reinstatements in PERS. If we have not already done so, we will make the payment of \$109.14 to three individuals and try to collect the \$100 for one other individual.

Overpayment of Interest on Refunded Contributions

We noted in our test of refunded contributions to members who withdrew from PERS that 25 members selected for testing were overpaid \$1,750.75 in interest earnings in noncompliance with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended.

Upon withdrawing from the retirement system, a member will be refunded their accumulated contributions in accordance with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended, which states,

"(a)In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid, upon his written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs subsequent to a period of two years from and after the date he last became a member of the system. If his said separation from the employ of a participating public employer occurs within a period of two years from and after the date he last became a member of the system, he shall be paid his accumulated contribution standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund."

Accumulated contributions are defined as follows by Chapter 5, Article 10, Section 2(16) of the West Virginia Code, as amended:

"(16) 'Accumulated Contributions' means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members' deposit fund, together with regular interest thereon..."

Chapter 5, Article 10, Section 41 of the West Virginia Code provides for the computation of interest earnings as follows:

"The board of trustees shall, at the end of each fiscal year, allow and credit regular interest on the balance at the beginning of the said fiscal year in each member's individual account in the members deposit fund...."

As noted in the preceding Code section, interest earnings should be credited to members' accounts on June 30 of each fiscal year based on the July 1 balance of such year. However, during fiscal year 1994 we noted the Board revised the annual statements sent to members by reflecting accumulated contributions on a calendar year basis instead of a fiscal year basis. In addition, interest earnings reflected on these statements are credited on December 31 of each calendar year based on the January 1 balance of such year. We believe the interest earnings reflected on the annual statements as computed on the calendar year basis instead of the fiscal year basis are not in compliance with Chapter 5, Article 10, Section 41 of the West Virginia Code.

The annual statements are received by members following the end of March of each year for the preceding calendar year. Furthermore, the Executive Secretary initiated a procedural change (which took effect in fiscal year 1996) to pay members who refunded during the period April 1996 through June 1996 the amount of any interest earnings due as computed

on a calendar year basis rather than a fiscal year basis. Consequently, this procedural change resulted in a total of \$1,342.14 in overpayments of interest for 20 members selected for testing during this period.

The Executive Secretary stated the annual statements were revised to simplify the information for members to show contributions and years of service on a calendar year basis which coincides with the tax year. He further stated the Board received inquiries from members concerning the differences between the reported interest earnings on the statements and the refund amounts paid. Therefore, the procedural change was implemented to use the interest amounts reported on the statements in the calculation of refunds issued during these three months because members expected to be refunded the amount of interest earnings shown on their annual statement. Also, the Executive Secretary believed the differences in the amount of interest earnings calculated on the calendar year basis as compared to the fiscal year basis were insignificant.

Subsequent to the end of our examination period, we sampled additional refund transactions which occurred during the first half of April 1997 to determine whether this procedural change was carried forward into fiscal year 1997. We noted five refund recipients received additional interest earnings calculated on the calendar year basis amounting to \$408.61.

We recommend the Board comply with Chapter 5, Article 10, Sections 30(a) and 41 of the West Virginia Code, as amended, and revise members' annual statements to reflect the appropriate amount of interest earnings. We further recommend the Board review all refunds made during the months of April through June of fiscal years 1996 and 1997 and seek to collect any interest overpayments.

Board's Response

We send more than 30,000 individual annual statements out each year. About five years ago we sent individual annual statements to PERS members of the system as of June 30 of each year which showed only their contributions along with their interest earnings. However this statement showed only individual contributions and nothing about service credit or anything else. Since individual members use the calendar year as their tax year and all contributions are tax deferred and because retirement benefits in PERS are also calculated on calendar years, we developed a statement to participants based on the calendar year. The first time we sent statements for the year ending December 31, the statements showed interest as of June 30 of the year. As you might imagine, we received hundreds of calls asking why the members did not receive interest for the entire year and not just for half of the year. After that we began showing interest for the full year, but in order to do so, we projected interest for the last six months of the year so that members would not be concerned with the last six months of interest. However that caused another problem. If a member withdrew in January, they thought they should receive exactly what was on their statement as of December 31 of the previous year. These amounts are all relatively small and if compared with the administrative problems for individual statements, they are insignificant. In order to conform with the West Virginia and IRS Code, interest should be credited as of December 31 of each year and we have asked the West Virginia Legislature to change the interest date from June 30 to December 31. This will solve this issue.

Calculation Errors in Refunded Contribution Amounts

We noted in our test of refunded contributions the Board understated the amounts refunded to five members by a total amount of \$34.63 as a result of errors made by agency

personnel in calculating each member's refund. These understated refund amounts were in noncompliance with Chapter 5, Article 10, Section 30(a) of the West Virginia Code, as amended, which states in part,

"(a)In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid...his accumulated contributions standing to his credit in the members deposit fund...If his said separation from the employ of a participating public employer occurs within a period of two years from and after the date he last became a member of the system, he shall be paid his accumulated contribution standing to his credit in the members deposit fund less the total interest credited to his individual account therein...."

The understated and overstated distribution amounts are as follows:

<u>Member</u>	<u>Amount Paid</u>	<u>Amount Due</u>	<u>Overpaid/ (Underpaid) Differences</u>
<u>1</u>	\$1,238.41	\$1,263.28	(\$24.87)
<u>2</u>	419.67	455.95	(36.28)
<u>3</u>	1,321.73	1,310.85	10.88
<u>4</u>	1,416.67	1,357.74	58.93
<u>5</u>	<u>2,353.16</u>	<u>2,396.45</u>	(<u>43.29</u>)
Total	<u>\$6,749.64</u>	<u>\$6,784.27</u>	<u>(\$34.63)</u>

The \$24.87 and \$36.28 underpayments were caused by the omission of the members' last contribution. The remaining differences were caused by interest errors in determining eligibility and calculating amounts due.

We recommend the Board comply with Chapter 5, Article 10, Section 30 (a) of the West Virginia Code, as amended. We further recommend the Board compensate \$104.44 to

the three members who were underpaid and seek to collect \$69.81 from the two members who were overpaid.

Board's Response

No response by the Board.

Retirement Contributions Erroneously Deducted from Members' Lump Sum Payment for Unused Leave

In our test of retirement annuities, we noted six retirants and their former non-state employers appeared to have overpaid retirement contributions of \$827.44 and \$1,746.82, respectively. These retirants received lump sum payments for unused annual and sick leave in which retirement contributions and the corresponding employer contributions were withheld in conflict with Board policy.

Chapter 5, Article 5, Section 3 of the West Virginia Code, as amended, states in part,

"Every eligible employee...at the time of his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at such time...In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time

shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto...."

The Board's practice is to apply the preceding statute to non-state participating employers concerning the lump sum payments for unused annual leave and sick leave. Also, the

"Verification of Last Two-Months Salary" (Form 17), which is used as a reporting form to determine retirement annuities, instructs the employer as follows:

"...Do not report or withhold retirement deduction on annual leave paid in lump sum..."

Although the participating employers are responsible for withholding the correct amount of employee and employer contributions, the Board reviews the amounts remitted for compliance with the law and informs employers of any necessary correcting adjustments to be made to the next month's contribution report. However, we noted the following retirement contributions were withheld from six retirants and their former employers on lump sum payments for unused annual and sick leave:

<u>Retirant</u>	<u>Lump Sum Payment</u>		<u>Employee Contribution Amount</u>	<u>Employer Contribution Amount</u>
	<u>Annual Leave</u>	<u>Sick Leave</u>		
<u>1</u>	\$2,741.85	\$ -0-	\$123.38	\$ 260.48
<u>2</u>	-0-	4,841.60	217.87	459.95
<u>3</u>	923.04	3,076.80	179.99	379.98
<u>4</u>	377.94	-0-	17.01	35.90
<u>5</u>	312.00	-0-	14.04	29.64
<u>6</u>	<u>1,254.24</u>	<u>4,860.18</u>	<u>275.15</u>	<u>580.87</u>
Total	<u>\$5,609.07</u>	<u>\$12,778.58</u>	<u>\$827.44</u>	<u>\$1,746.82</u>

We brought the withholding of the preceding contributions to the attention of the Manager of the Contributions and Withdrawal Section; she stated the errors had not been previously detected or corrected.

We recommend the Board comply with their practice of consistently applying the provisions of Chapter 5, Article 5, Section 3 of the West Virginia Code, as amended, to State and

non-state participating employers. We further recommend the Board review the preceding contributions and contact the employers to make any necessary adjustments.

Board's Response

We have made every effort to make sure that each payroll location knows what contributions they should forward to the Consolidated Public Retirement Board. But since PERS has about 800 payroll locations throughout the state it is difficult to monitor all of these locations.

Monthly Contribution Report Calculation Errors

We noted in our test of employer and employee contributions, that three employers remitted incorrect "Monthly Contribution Reports" and corresponding receipts in which the errors were not detected by the Board's auditing function.

Title 162, Series 5, Sections 12 and 13 of the Board's Legislative Rule state in part,

"§162-5-12. Employer Contributions.

Each participating public employer shall contribute nine and five-tenths percent (9.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System...

§162-5-13. Employee Contributions.

Each participating public employer shall withhold four and five-tenths percent (4.5%) of the gross compensation of each member...."

The Board audits each monthly contribution report remitted by participating employers for mathematical accuracy and determines whether the correct amount of

contributions were received in accordance with the preceding Legislative Rule. If a discrepancy is noted, Board personnel contact the employer and informs the employer of the discrepancy. The adjustments to resolve the discrepancy are made on the following month's contribution report. Of the monthly contribution reports selected for testing, we noted the following overstatements and understatement of contributions:

<u>Employer</u>	<u>Amount</u>	<u>Description</u>
1	\$ 52.50	Overstated Employee Contributions
2	(26.60)	Understated Employee Contributions
3	<u>90.27</u>	Overstated Employer Contributions
Total	<u>\$116.17</u>	

We recommend the Board comply with Title 162, Series 5, Sections 12 and 13 of the Legislative Rule. We further recommend the Board make the \$116.17 adjustments to the preceding participating employers' monthly reports.

Board's Response

As I stated before we deal with approximately 800 payroll locations and the staff of the Consolidated Public Retirement Board do a very good job in helping these people file accurate and timely reports.

Retention of Microfilm Records

Chapter 5A, Article 8, Section 9 of the West Virginia Code states in part,

"The head of each agency shall...Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities...."

We noted in our test of retirement annuities that, in some cases, the Board did not retain all microfilm records for active members and retirants. In 1991, the Board began microfilming documentation contained in active member and retirant files and the original documents were sent to a central storage facility for safekeeping. However, our test revealed that of 113 retirants tested, 56 retirant microfilm files had one or more missing documents. Since retirement annuities are calculated based on the microfilm files - and some of these files are missing documents such as birth certificates, verification of military service (DD-214) and verification of any prior service - the member's annuity calculation could be materially misstated.

We recommend the Board comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code and strengthen internal controls over the area of retention of microfilm records.

Board's Response

The Consolidated Public Retirement Board maintains more than 100,000 individual records for both active and retired members of the various retirement systems. It happens quite often that we will receive employee and employer contributions along with individual names and social security numbers with no membership forms, beneficiary forms or anything else. However we try to get the proper forms completed. Contributions, salary, and other information are kept on computer files so even if we have no records in our microfilm system, we can still process PERS retirement benefits correctly. We film all records and store one copy in our office and store a backup copy at another location.

STATE OF WEST VIRGINIA

OFFICE OF LEGISLATIVE AUDITOR, TO WIT:

I, Thedford I. Shanklin, CPA, Director of the legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 15th day of December 1997.



Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Consolidated Public Retirement Board; Governor; Attorney General; and, State Auditor.