

No. 32508 – *George B. Summers and Ronald Fertile v. The West Virginia Consolidated Public Retirement Board*

FILED

July 12, 2005

released at 3:00 p.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

I concur with the majority’s holding that the legislative rule properly forbids the inclusion of lump-sum benefits in a “last year’s salary,” and that this rule is not constitutionally offensive.

But I have questions about allowing one small group of employees to enjoy a “windfall” – while others, who retired at the same time, may have missed out on the same benefits.

If the new regulation really “changed the law,” then perhaps *all* employees who retired prior to the new regulation are entitled to a recalculation.

Accordingly, I hesitantly concur.