WEST VIRGINIA CODE: §18A-4-8B

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

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(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign support specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service persons seniority begins on the date that he or she enters into the assigned duties.

(f) Extra-duty assignments. --

(1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all employees have had an opportunity to perform similar assignments. The cycle then is repeated.

(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two-thirds of the employees within

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that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) All vacancies in existing or newly created positions shall be filled within twenty working days from the closing date of the job posting for the position.

(4) The county board shall notify the successful applicant as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of a service person is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, a service person who has been employed in one or more classifications retains the seniority accrued in each previous classification.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in

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its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

(3) The county board may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

(l) If two or more service persons accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list does not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notification shall be sent annually, with written receipt notification documented by the superintendent, and shall list instructions to access job postings on any website maintained by or available for the use of the county board.

(q) A position opening may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

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(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

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