WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
SENATE BILL NO. 528

(By Mr. Ash & Mr. Galperin)

PASSED March 11, 1982
In Effect Ninety days from Passage
AN ACT to amend and reenact sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to seniority rights for service personnel; establishing an order of preference for filling positions to be used in conjunction with seniority; defining the word "promotion"; defining classification category of employment; providing an alternative procedure for making extra-duty assignments; relating to the employment of service personnel substitutes; defining the time period in which county boards must fill vacancies; and providing a method for filling the vacancies.

Be it enacted by the Legislature of West Virginia:

That sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

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

1 A county board of education shall make decisions affecting promotion and 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, article four of this chapter, on the basis of seniority, qualifications and evaluation of past service in the following order:

2 (1) Regularly employed service personnel.

3 (2) Service personnel whose employment has been discontinued in accordance with this section.
(3) Substitute service personnel.

(4) New service personnel.

The county board of education may not prohibit a service employee from retaining or continuing his employment in any positions or jobs held prior to the effective date of this section.

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include 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. Each class title listed in section eight, article four of this chapter shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries.

For purposes of determining seniority under this section, an employee's seniority begins on the date that he enters into his assigned duties.

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments, shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated. Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of four fifths of the employees within that classification category of employment.

All decisions by county boards of education concerning reduction in work force of all personnel shall be made on the basis of seniority, as hereinafter provided:
(1) The seniority of any such service personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education within a particular job classification. For the purpose of establishing seniority for a preferred recall list as hereinafter provided, when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee. Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, That if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(2) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education. For the purposes of establishing seniority for a preferred recall list as hereinafter provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area. Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter: Provided, however, that such employee shall be employed in any other position for which he is certified and/or licensed if his seniority is greater than the seniority of any other employee in that area of certification and/or licensure. All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a
preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any lateral position for which the employee is qualified or to a lateral area for which an employee has certification and/or licensure.

Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

The county board shall be required to notify all employees on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee; it shall be the duty of each such employee to notify the county board of any change in the address of such employee.

No position openings may be filled by the county board, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-15. Employment of service personnel substitutes.

The county board may employ and the county superintendent, subject to the approval of the county board of education, may employ and assign substitute service personnel to perform any of the following duties:

(1) To fill the temporary absence of another service employee;

(2) To fill the position of a regular service employee on leave of absence: Provided, That if such leave of absence is to extend beyond thirty days, the board, within ten working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill such position: Provided, however, That if a board has in effect an official, written policy of posting job vacancies, it shall be allowed twenty working days to fill this position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b of this article. The
substitute shall hold such position and regular employee status only until the regular employee returns to such position and shall have and shall be accorded all rights, privileges and benefits pertaining to such position;

(3) To perform the service of a service employee who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, retirement, permanent disability or death of the regular service employee who had been assigned to fill such position: Provided, That within ten working days from the commencement of the vacancy, the board shall fill such vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter and such person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to such position: Provided, however, That if a board has in effect an official, written policy of posting job vacancies, it shall be allowed twenty working days to fill the vacancy;

(5) To fill the vacancy created by a regular employee's suspension: Provided, That a substitute service employee shall not be assigned to fill the vacancy on a permanent basis until such termination by the county board of education becomes final.

The salary of a substitute service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.

Before any service employee enters upon his duties, he shall execute with the county board of education a written contract as provided in section five, article two of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

[Signatures]

Clerk of the Senate
Clerk of the House of Delegates

President of the Senate
Speaker House of Delegates

The within __________ this the ______

day of ______, 1982.

Governor