WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 563

(By Mr. )

PASSED March 12, 1983
In Effect sixty days from Passage

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-83
AN ACT to repeal section thirty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; 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 the seniority rights for school personnel and substitute school service personnel; providing for how professional personnel seniority shall be determined; requiring the county board to give reasons in writing to the professional applicant with the most seniority who is not hired to a classroom teacher's position; providing for professional reduction in force and right to recall; providing for posting and filling of professional positions; defining qualifications of service personnel; allowing professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, to be considered for such jobs or positions after service personnel whose employment has been discontinued; requiring boards to substantiate reasons for failure to observe seniority in promotions or hiring, if the employee so requests; providing continuing
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protection for those employed at the time of original enactment of the provisions for seniority rights; providing for the acceptance of extra-duty assignments and allowing an alternate procedure if approved by two thirds of the employees; defining extra-duty assignments; requiring boards to post notices of job vacancies; providing that vacancies must be filled within twenty days; providing for reductions in force and preferred recall list; allowing mandamus to compel compliance; making boards liable for certain costs, reasonable attorney's fees; and retroactive wages and benefits from local funds when not prevailing in mandamus suit; requiring that substitute school service personnel be assigned on basis of seniority; allowing such substitutes to be assigned to temporarily fill vacancies created by transfers; requiring that substitutes working for service employee suspended for more than thirty days be accorded all rights, privileges and benefits of the position filled; allowing substitutes to be assigned temporarily to newly created positions; providing for assignment of substitutes on rotating basis in order of seniority; requiring that regular employee be given opportunity to temporarily fill position at his same work station or building during temporary absence of fellow employee; and granting certain substitute school service personnel the same rights pertaining to suspension, dismissal and contract renewal as afforded to regularly-employed service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

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

1 (a) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education. For purposes of establishing seniority as hereinafter provided, when an employee holds valid
certification or licensure in one or more areas, the seniority shall accrue in each area. Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority.

A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications.

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, That such employee shall be employed in any other professional position where he had previously been employed or to any lateral area 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 professional personnel 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. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position. Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list.
and give them an opportunity to apply, but failure to apply shall not cause such employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification and/or licensure. Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice of such position openings shall include the job description. No vacancy shall be filled until after the five-day minimum posting period.

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

(1) Regularly employed service personnel;
(2) Service personnel whose employment has been discontinued in accordance with this section;
(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
(4) Substitute service personnel; and
(5) 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 and thereafter.

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 two thirds of the employees within that classification category of employment. For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions
in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

All decisions by county boards of education concerning reduction in work force of service personnel shall be made on the basis of seniority, as hereinafter provided. 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.

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.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court. Further, employees 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 payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

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

The county board shall employ and the county superintendent, subject to the approval of the county board of education, shall assign substitute service personnel on the basis of seniority 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 twenty
working days from the commencement of the leave of
absence, shall give regular employee status to a person
hired to fill such 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 shall be returned to such position and the
substitute 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, transfer, retirement, permanent disability or
death of the regular service employee who had been
assigned to fill such position: Provided, That within twenty
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;
(5) To fill the vacancy created by a regular employee's
susension: Provided, That if the suspension is for more
than thirty working days the substitute service employee
shall be assigned to fill the vacancy on a regular basis and
shall have and be accorded all rights, privileges and
benefits pertaining to such position until such termination
by the county board of education becomes final. If the
susended employee is not returned to his job, the board
shall fill the vacancy under the procedures set out in section
eight-b of this article and section five, article two of this
chapter; and
(6) To temporarily fill a vacancy in a newly created
position prior to employment of a service personnel on a
regular basis under the procedure set forth in section eight-
b of this article.
Substitutes shall be assigned in the following manner: A
substitute with the greatest length of service time, that is,
from the date he began his assigned duties as a substitute in
that particular category of employment, shall be given
priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence.

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 substitute 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.

Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel in sections six, seven, eight and eight-a of article two of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Anello
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26th day of March, 1983.

Governor