

NO: 563

APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Committee Substitute for

SENATE BILL NO. 563

(By Mr. *Stuck, Jr. Hickey, et al*)



PASSED *March 12* 1983

In Effect *ninety days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 563

(BY MR. HECK, MR. HOLLIDAY AND MR. TUCKER)

[Passed March 12, 1983; in effect ninety days from passage.]

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

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
- 2 determined on the basis of the length of time the employee
- 3 has been professionally employed by the county board of
- 4 education. For purposes of establishing seniority as
- 5 hereinafter provided, when an employee holds valid

6 certification or licensure in one or more areas, the seniority
7 shall accrue in each area. Employment for a full
8 employment term shall equal one year of seniority, but no
9 employee may accrue more than one year of seniority
10 during any given fiscal year. Employment for less than the
11 full employment term shall be prorated. A random selection
12 system established by the employees and approved by the
13 board shall be used to determine the priority if two or more
14 employees accumulate identical seniority.

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

22 Whenever a county board is required to reduce the
23 number of professional personnel in its employment, the
24 employee with the least amount of seniority shall be
25 properly notified and released from employment pursuant
26 to the provisions of section two, article two of this chapter:
27 *Provided*, That such employee shall be employed in any
28 other professional position where he had previously been
29 employed or to any lateral area for which he is certified
30 and/or licensed if his seniority is greater than the seniority
31 of any other employee in that area of certification and/or
32 licensure.

33 All professional personnel whose seniority with the
34 county board is insufficient to allow their retention by the
35 county board during a reduction in work force shall be
36 placed upon a preferred recall list. As to any professional
37 position opening within the area where they had previously
38 been employed or to any lateral area for which they have
39 certification and/or licensure, such employee shall be
40 recalled on the basis of seniority if no regular full-time
41 professional personnel, or those returning from leaves of
42 absence with greater seniority, are qualified, apply for and
43 accept such position. Before position openings that are
44 known or expected to extend for twenty consecutive
45 employment days or longer for professional personnel may
46 be filled by the board, the board shall be required to notify
47 all qualified professional personnel on the preferred list

48 and give them an opportunity to apply, but failure to apply
49 shall not cause such employee to forfeit any right to recall.
50 The notice shall be sent by certified mail to the last known
51 address of the employee, and it shall be the duty of each
52 professional personnel to notify the board of continued
53 availability annually, of any change in address or of any
54 change in certification and/or licensure.

55 Boards shall be required to post and date notices of all
56 openings in established, existing or newly created positions
57 in conspicuous working places for all professional
58 personnel to observe for at least five working days. The
59 notice of such position openings shall include the job
60 description. No vacancy shall be filled until after the five-
61 day minimum posting period.

62 (b) A county board of education shall make decisions
63 affecting promotion and filling of any service personnel
64 positions of employment or jobs occurring throughout the
65 school year that are to be performed by service personnel as
66 provided in section eight, article four of this chapter, on the
67 basis of seniority, qualifications and evaluation of past
68 service.

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

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

89 The county board of education may not prohibit a service
90 employee from retaining or continuing his employment in

91 any positions or jobs held prior to the effective date of this
92 section and thereafter.

93 A promotion shall be defined as any change in his
94 employment that the employee deems to improve his
95 working circumstance within his classification category of
96 employment and shall include a transfer to another
97 classification category or place of employment if the
98 position is not filled by an employee who holds a title within
99 that classification category of employment. Each class title
100 listed in section eight, article four of this chapter shall be
101 considered a separate classification category of
102 employment for service personnel, except for those class
103 titles having Roman numeral designations, which shall be
104 considered a single classification of employment. The
105 cafeteria manager class title shall be included in the same
106 classification category as cooks. The executive secretary
107 class title shall be included in the same classification
108 category as secretaries.

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

112 Notwithstanding any other provisions of this chapter to
113 the contrary, decisions affecting such personnel with
114 respect to extra-duty assignments, shall be made in the
115 following manner: An employee with the greatest length of
116 service time in a particular category of employment shall be
117 given priority in accepting such assignments, followed by
118 other fellow employees on a rotating basis according to the
119 length of their service time until all such employees have
120 had an opportunity to perform similar assignments. The
121 cycle then shall be repeated: *Provided*, That an alternative
122 procedure for making extra-duty assignments within a
123 particular classification category of employment may be
124 utilized if the alternative procedure is approved both by the
125 county board of education and by an affirmative vote of two
126 thirds of the employees within that classification category
127 of employment. For the purpose of this section, extra-duty
128 assignments are defined as irregular jobs that occur
129 periodically or occasionally such as, but not limited to, field
130 trips, athletic events, proms, banquets and band festival
131 trips.

132 Boards shall be required to post and date notices of all job
133 vacancies of established existing or newly created positions

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

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

147 The seniority of any such service personnel shall be
148 determined on the basis of the length of time the employee
149 has been employed by the county board of education within
150 a particular job classification. For the purpose of
151 establishing seniority for a preferred recall list as
152 hereinafter provided, when an employee has been employed
153 in one or more classifications, the seniority accrued in each
154 previous classification shall be retained by the employee.

155 Should a county board of education be required to reduce
156 the number of employees within a particular job
157 classification, the employee with the least amount of
158 seniority within that classification or grades of
159 classification shall be properly released and employed in a
160 different grade of that classification if there is a job
161 vacancy: *Provided*, That if there is no job vacancy for
162 employment within such classification or grades of
163 classification, he shall be employed in any other job
164 classification which he previously held with the county
165 board if there is a vacancy and shall retain any seniority
166 accrued in such job classification or grade of classification.

167 If two or more employees accumulate identical seniority,
168 the priority shall be determined by a random selection
169 system established by the employees and approved by the
170 county board.

171 All employees whose seniority with the county board is
172 insufficient to allow their retention by the county board
173 during a reduction in work force shall be placed upon a
174 preferred recall list and shall be recalled to employment by
175 the county board on the basis of seniority.

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

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

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

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

198 Any board failing to comply with the provisions of this
199 article may be compelled to do so by mandamus and shall be
200 liable to any party prevailing against the board for court
201 costs and his reasonable attorney fee, as determined and
202 established by the court. Further, employees denied
203 promotion or employment in violation of this section shall
204 be awarded the job, pay and any applicable benefits
205 retroactively to the date of the violation and payable
206 entirely from local funds. Further, the board shall be liable
207 to any party prevailing against the board for any court
208 reporter costs including copies of transcripts.

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

1 The county board shall employ and the county
2 superintendent, subject to the approval of the county board
3 of education, shall assign substitute service personnel on
4 the basis of seniority to perform any of the following duties:

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

7 (2) To fill the position of a regular service employee on
8 leave of absence: *Provided*, That if such leave of absence is

9 to extend beyond thirty days, the board, within twenty
10 working days from the commencement of the leave of
11 absence, shall give regular employee status to a person
12 hired to fill such position. The person employed on a regular
13 basis shall be selected under the procedure set forth in
14 section eight-b of this article. The substitute shall hold such
15 position and regular employee status only until the regular
16 employee shall be returned to such position and the
17 substitute shall have and shall be accorded all rights,
18 privileges and benefits pertaining to such position;

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

21 (4) To temporarily fill a vacancy in a permanent
22 position caused by severance of employment by the
23 resignation, transfer, retirement, permanent disability or
24 death of the regular service employee who had been
25 assigned to fill such position: *Provided*, That within twenty
26 working days from the commencement of the vacancy, the
27 board shall fill such vacancy under the procedures set out in
28 section eight-b of this article and section five, article two of
29 this chapter and such person hired to fill the vacancy shall
30 have and shall be accorded all rights, privileges and
31 benefits pertaining to such position;

32 (5) To fill the vacancy created by a regular employee's
33 suspension: *Provided*, That if the suspension is for more
34 than thirty working days the substitute service employee
35 shall be assigned to fill the vacancy on a regular basis and
36 shall have and be accorded all rights, privileges and
37 benefits pertaining to such position until such termination
38 by the county board of education becomes final. If the
39 suspended employee is not returned to his job, the board
40 shall fill the vacancy under the procedures set out in section
41 eight-b of this article and section five, article two of this
42 chapter; and

43 (6) To temporarily fill a vacancy in a newly created
44 position prior to employment of a service personnel on a
45 regular basis under the procedure set forth in section eight-
46 b of this article.

47 Substitutes shall be assigned in the following manner: A
48 substitute with the greatest length of service time, that is,
49 from the date he began his assigned duties as a substitute in
50 that particular category of employment, shall be given

51 priority in accepting the assignment throughout the period
52 of the regular employee's absence or until the vacancy is
53 filled on a regular basis under the procedures set out in
54 section eight-b of this article. All substitutes shall be
55 employed on a rotating basis according to the length of their
56 service time until each substitute has had an opportunity to
57 perform similar assignments: *Provided*, That if there are
58 regular service employees employed in the same building or
59 working station as the absent employee and who are
60 employed in the same classification category of
61 employment, such regular employees shall be first offered
62 the opportunity to fill the position of the absent employee
63 on a rotating and seniority basis with the substitute then
64 filling the regular employee's position. A regular employee
65 assigned to fill the position of an absent employee shall be
66 given the opportunity to hold that position throughout such
67 absence.

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

75 Before any substitute service employee enters upon his
76 duties, he shall execute with the county board of education
77 a written contract as provided in section five, article two of
78 this chapter.

79 Substitute service employees who have worked thirty
80 days for a school system shall have all rights pertaining to
81 suspension, dismissal and contract renewal as is granted to
82 regular service personnel in sections six, seven, eight and
83 eight-a of article two of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

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

..... *[Handwritten Signature]*
Governor



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