WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. 4035

(By Delegates Browning & Compton)

Passed March 3, 1992

In Effect from Passage
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H. B. 4035
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[Passed March 3, 1992; in effect from passage.]

AN ACT to amend and reenact section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring county boards of education to fill vacant positions in certain instances within thirty working days of the end of the posting period; dispensing with posting positions held by persons with permits working toward certification; providing that when principals acquire identical seniority reductions in force will be made on the basis of qualifications; granting retroactive relief and providing that court costs and attorneys fees be paid from county funds to prevailing parties when the county school board violates this section.

Be it enacted by the Legislature of West Virginia:

That section seven-a, 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-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1 A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. Further, the county board shall make decisions affecting the hiring of new classroom
teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

The seniority of classroom teachers as defined in section one, article one of this chapter with the exception of guidance counselors shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed.

Upon completion of one hundred thirty-three days of
employment in any one school year, substitute teachers shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

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: Provided, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on 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 all persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a
position is subject to release: Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

After the fifth day prior to the beginning of the instructional term, or after the first day of the second half of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that half of the instructional term: Provided, That such person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next half of the instructional term: Provided, however, That professional personnel who have been on an approved leave of absence may fill these vacancies prior to the next semester. The superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students.

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 shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job. No vacancy shall be filled until after the five-day minimum posting period. If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period: Provided, That a position held by a certified/or licensed teacher who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years. Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

When the total number of classroom teaching positions in an elementary school needs to be reduced, such reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended
170 for transfer: Provided, That a specified grade level
171 needs to be reduced and the least senior employee in the
172 school is not in that grade level, the least senior
173 classroom teacher in the grade level that needs to be
174 reduced shall be reassigned to the position made vacant
175 by the transfer of the least senior classroom teacher in
176 the school without that position being posted: Provided,
177 however, That the employee is certified and/or licensed
178 and agrees to the reassignment.

179 Any board failing to comply with the provisions of this
180 article may be compelled to do so by mandamus and
181 shall be liable to any party prevailing against the board
182 for court costs and reasonable attorney fees as deter-
183 mined and established by the court. Further, employees
184 denied promotion or employment in violation of this
185 section shall be awarded the job, pay and any applicable
186 benefits retroactive to the date of the violation and
187 payable entirely from local funds. Further, the board
188 shall be liable to any party prevailing against the board
189 for any court reporter costs including copies of trans-
190 cripts.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Neck
Chairman Senate Committee

Ernest Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell Bush
Clerk of the Senate

Donald S. Kopp
Clerk of the House of Delegates

Steve Sundt
President of the Senate

Bob Cade
Speaker of the House of Delegates

The within is approved this the 17th day of March 1992.

Lawton C. C 441
Governor
PRESENTED TO THE
GOVERNOR
Date 3/11/92
Time 3:40 pm