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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4035

(By Delegates Browning + Compton)

— ● —

Passed March 3, 1992

In Effect From Passage

ENROLLED
H. B. 4035

(By DELEGATES BROWNING AND COMPTON)

[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
2 affecting the hiring of professional personnel other than
3 classroom teachers on the basis of the applicant with the
4 highest qualifications. Further, the county board shall
5 make decisions affecting the hiring of new classroom

6 teachers on the basis of the applicant with the highest
7 qualifications. In judging qualifications, consideration
8 shall be given to each of the following: Appropriate
9 certification and/or licensure; amount of experience
10 relevant to the position or, in the case of a classroom
11 teaching position, the amount of teaching experience in
12 the subject area; the amount of course work and/or
13 degree level in the relevant field and degree level
14 generally; academic achievement; relevant specialized
15 training; past performance evaluations conducted
16 pursuant to section twelve, article two of this chapter;
17 and other measures or indicators upon which the
18 relative qualifications of the applicant may fairly be
19 judged. If one or more permanently employed instruc-
20 tional personnel apply for a classroom teaching position
21 and meet the standards set forth in the job posting, the
22 county board of education shall make decisions affecting
23 the filling of such positions on the basis of the following
24 criteria: Appropriate certification and/or licensure; total
25 amount of teaching experience; the existence of teaching
26 experience in the required certification area; degree
27 level in the required certification area; specialized
28 training directly related to the performance of the job
29 as stated in the job description; receiving an overall
30 rating of satisfactory in evaluations over the previous
31 two years; and seniority. Consideration shall be given to
32 each criterion with each criterion being given equal
33 weight. If the applicant with the most seniority is not
34 selected for the position, upon the request of the
35 applicant a written statement of reasons shall be given
36 to the applicant with suggestions for improving the
37 applicant's qualifications.

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

46 Upon completion of one hundred thirty-three days of

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

54 Guidance counselors and all other professional em-
55 ployees, as defined in section one, article one of this
56 chapter, except classroom teachers, shall gain seniority
57 in their nonteaching area of professional employment on
58 the basis of the length of time the employee has been
59 employed by the county board of education in that area:
60 *Provided*, That if an employee is certified as a classroom
61 teacher, the employee accrues classroom teaching
62 seniority for the time that that employee is employed in
63 another professional area. For the purposes of accruing
64 seniority under this paragraph, employment as princi-
65 pal, supervisor or central office administrator, as
66 defined in section one, article one of this chapter, shall
67 be considered one area of employment.

68 Employment for a full employment term shall equal
69 one year of seniority, but no employee may accrue more
70 than one year of seniority during any given fiscal year.
71 Employment for less than the full employment term
72 shall be prorated. A random selection system estab-
73 lished by the employees and approved by the board shall
74 be used to determine the priority if two or more
75 employees accumulate identical seniority: *Provided*,
76 That when two or more principals have accumulated
77 identical seniority, decisions on reductions in force shall
78 be based on qualifications.

79 Whenever a county board is required to reduce the
80 number of professional personnel in its employment, the
81 employee with the least amount of seniority shall be
82 properly notified and released from employment pursu-
83 ant to the provisions of section two, article two of this
84 chapter: *Provided*, That all persons employed in a
85 certification area to be reduced who are employed under
86 a temporary permit shall be properly notified and
87 released before a fully certified employee in such a

88 position is subject to release: *Provided, however,* That an
89 employee subject to release shall be employed in any
90 other professional position where such employee is
91 certified and was previously employed or to any lateral
92 area for which such employee is certified and/or
93 licensed, if such employee's seniority is greater than the
94 seniority of any other employee in that area of certifi-
95 cation and/or licensure.

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

111 All professional personnel whose seniority with the
112 county board is insufficient to allow their retention by
113 the county board during a reduction in work force shall
114 be placed upon a preferred recall list. As to any
115 professional position opening within the area where they
116 had previously been employed or to any lateral area for
117 which they have certification and/or licensure, such
118 employee shall be recalled on the basis of seniority if no
119 regular, full-time professional personnel, or those
120 returning from leaves of absence with greater seniority,
121 are qualified, apply for and accept such position. Before
122 position openings that are known or expected to extend
123 for twenty consecutive employment days or longer for
124 professional personnel may be filled by the board, the
125 board shall be required to notify all qualified profes-
126 sional personnel on the preferred list and give them an
127 opportunity to apply, but failure to apply shall not cause
128 such employee to forfeit any right to recall. The notice

129 shall be sent by certified mail to the last known address
130 of the employee, and it shall be the duty of each
131 professional personnel to notify the board of continued
132 availability annually of any change in address or of any
133 change in certification and/or licensure.

134 Boards shall be required to post and date notices of
135 all openings in established, existing or newly created
136 positions in conspicuous working places for all profes-
137 sional personnel to observe for at least five working
138 days. The notice shall be posted within twenty working
139 days of such position openings and shall include the job
140 description. Any special criteria or skills that are
141 required by the position shall be specifically stated in
142 the job description and directly related to the perfor-
143 mance of the job. No vacancy shall be filled until after
144 the five-day minimum posting period. If one or more
145 applicants meets the qualifications listed in the job
146 posting, the successful applicant to fill the vacancy shall
147 be selected by the board within thirty working days of
148 the end of the posting period: *Provided*, That a position
149 held by a certified/or licensed teacher who has been
150 issued a permit for full-time employment and is working
151 toward certification in the permit area shall not be
152 subject to posting if the certificate is awarded within
153 five years. Nothing provided herein shall prevent the
154 county board of education from eliminating a position
155 due to lack of need.

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

166 When the total number of classroom teaching posi-
167 tions in an elementary school needs to be reduced, such
168 reduction shall be made on the basis of seniority with
169 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 Heck

Chairman Senate Committee

Ernest Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Narrell Holmes

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Keith Pindette

President of the Senate

B. J. C. C. C.

Speaker of the House of Delegates

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

Yastin Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/92

Time 3:40 pm