WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

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ENROLLED

HOUSE BILL No. 2460

(By Delegates, Puzio, Atkins, Chesington, Paxton, and Schoenover)

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Passed .................................. March 17, 1993

In Effect .................................. In effect from Passage
ENROLLED

H. B. 2460

(By Delegates Prezioso, Adkins, Overington, Paxton and Schoonover)

[Passed March 17, 1993; 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 reductions in force of professional educators; requiring that such reductions be based solely on seniority; and requiring local boards to adopt policy defining lateral positions.

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:

§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 instruc-
tional 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 profes-
sional 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 certifi-
Provided further, That, if an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification and/or licensure.

For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter, shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit same to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by such date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure, and days in the period of employment.

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 workforce 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 and/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 for transfer: Provided, That a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, however, That the employee is certified and/or licensed and agrees to the reassignment.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/25/93
Time 1:40 PM