WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4040
(By Delegate Mezzatesta)

Passed March 10, 2004
In Effect from Passage
AN ACT to amend and reenact §18A-4-7a of the code of West Virginia, 1931, as amended, relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position.

Be it enacted by the Legislature of West Virginia:

That §18A-4-7a of the code of West Virginia, 1931, 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) 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.
(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

(c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:

1. Appropriate certification, licensure or both;
2. 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;
3. The amount of course work, degree level or both in the relevant field and degree level generally;
4. Academic achievement;
5. Relevant specialized training;
6. Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and
7. Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) 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 a decision affecting the filling of the position on the basis of the following criteria:

1. Appropriate certification, licensure or both;
2. Total amount of teaching experience;
(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Seniority.

(e) In filling positions pursuant to subsection (d) of this section, 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.

(f) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter 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, licensed or both.

(g) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, 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.

(h) 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.

(i) 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.

(j) 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. The provisions of this subsection are subject to the following:
(1) 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;

(2) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee’s seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(3) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee’s seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, 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, licensure or both; and

(4) If, prior to the first day of August of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.
(k) 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 the 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 the report to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(l) After the fifth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional
term when it is determined to be in the best interest of the
students: Provided, That the county superintendent shall notify
the state board of each transfer of a person employed in a
professional position to another professional position after the
fifth day prior to the beginning of the instructional term. The
Legislature finds that it is not in the best interest of the students
particularly in the elementary grades to have multiple teachers
for any one grade level or course during the instructional term.
It is the intent of the Legislature that the filling of positions
through transfers of personnel from one professional position
to another after the fifth day prior to the beginning of the
instructional term should be kept to a minimum.

(m) 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 certifica-
tion, licensure or both, the 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 the position.

(n) 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 the 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 avail-
ability annually, of any change in address or of any change in
certification, licensure or both.
Openings in established, existing or newly created positions shall be processed as follows:

1. Boards shall be required to post and date notices which shall be subject to the following:
   
   A. The notices shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;
   
   B. The notice shall be posted within twenty working days of the position openings and shall include the job description;
   
   C. 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;
   
   D. Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and
   
   E. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

2. No vacancy shall be filled until after the five-day minimum posting period;

3. 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;

4. A position held by a teacher who is certified, licensed or both, 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; and

(5) Nothing provided herein shall prevent the county board
of education from eliminating a position due to lack of need.

(p) 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 reas-
signed 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.

(q) Reductions in classroom teaching positions in elemen-
tary schools shall be processed as follows:

(1) When the total number of classroom teaching positions
in an elementary school needs to be reduced, the reduction shall
be made on the basis of seniority with the least senior class-
room teacher being recommended for transfer; and

(2) When 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, That the em-
ployee is certified, licensed or both and agrees to the reassign-
ment.

(r) 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.

(s) The county board shall compile, update annually on the first day of July and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 ___ day of April, 2004.

Governor