WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3146

(By Delegates Moye, Perry, Shaver, Caputo, Fragale and Rodighiero)

Passed April 11, 2009
In Effect Ninety Days from Passage
AN ACT to amend and reenact §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, all relating to seniority rights for school service personnel; revising criteria for consideration of applicants; providing for assignment based on seniority in certain circumstances in certain classifications; specifying certain rights, privileges and benefits of certain professional and service personnel providing middle college services in public community and technical colleges; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for school service personnel.
(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

1. Regularly employed service personnel who hold a classification title within the classification category of the vacancy;
2. Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;
3. Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;
4. Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;
(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;
(C) Paraprofessional, autism mentor and braille or sign language specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service person’s seniority begins on the date that he or she enters into the assigned duties.

(f) Extra-duty assignments.

(1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their
service time until all employees have had an opportunity to perform similar assignments. The cycle then is repeated.

(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. 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.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of existing or newly created positions.

(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status
of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of a service person is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, a service person who has been employed in one or more classifications retains the seniority accrued in each previous classification.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected
employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

(3) The county board may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

(I) If two or more service persons accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, to any lateral position for which the service
person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list does not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the service person. Each service person shall notify the county board of any change of address.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(t) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.
210 (2) The county board is liable to any party prevailing
211 against the board for any court reporter costs including copies
212 of transcripts.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional personnel
2 and service personnel employed by the State Department of
3 Education to provide education and support services to
4 residents of State Department of Health and Human
5 Resources facilities, corrections facilities providing services
6 to juvenile and youthful offenders, in the West Virginia
7 schools for the deaf and the blind and in public community
8 and technical colleges providing middle college services is
9 the same as set forth in sections two, three and eight-a of this
10 article. Additionally, those personnel shall receive the
11 equivalent of salary supplements paid to professional and
12 service personnel employed by the county board in the
13 county wherein each facility is located, as set forth in
14 sections five-a and five-b of this article. Professional
15 personnel and service personnel in these facilities who earn
16 advanced classification of training after the effective date of
17 this section shall be paid the advanced salary from the date
18 the classification of training is earned. The professional
19 personnel shall be certified, licensed or trained, and shall
20 meet other eligibility classifications as may be required by
21 the provisions of this chapter and by state board regulations
22 for comparable instructional personnel who are employed by
23 county boards. The professional personnel shall be paid at
24 the equivalent rate of pay for teachers as set forth in section
25 two of this article, but outside the public support plan, plus
26 the equivalent of the salary supplement paid to teachers
27 employed by the county board in the county in which each
28 facility is located, as set forth in section five-a of this article.

29 (b) Professional personnel employed by the department
30 to provide education services to residents in State Department
of Health and Human Resources facilities, corrections facilities providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind or in public community and technical colleges providing middle college services are afforded all the rights, privileges and benefits established for the professional personnel under this article, subject to the following:

(1) The benefits apply only within the facility at which the professional personnel are employed;

(2) The benefits exclude salaries unless explicitly provided for under this or other sections of this article; and

(3) Seniority for the professional personnel is determined on the basis of the length of time the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) Professional personnel and service personnel employed by the department of education to provide education and support services to residents in State Department of Health and Human Resources facilities, corrections facilities providing services to juvenile and youthful offenders, the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services are state employees.

(d) Additional seniority provisions.

(1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia Department of Education accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. Professional and service personnel whose employment at the facility was preceded immediately
by employment with the county board previously providing
education services at the facility or whose employment
contract was with the county board previously providing
education services at the facility:

(A) Retains any seniority accrued during employment by
the county board;

(B) Accrues seniority as a regular employee with the
county board during employment at the facility;

(C) Attains continuing contract status in accordance with
section two, article two, chapter eighteen-a of this code with
both the county and the facility if the sum of the years
employed by the county and the facility equals the statutory
number required for continuing contract status; and

(D) Retains and continues to accrue county and facility
seniority in the event of reemployment by the county as a
result of direct transfer from the facility or recall from the
preferred list.

(2) Reductions in work force in the facility or
employment by the facility or county board are made in
accordance with the provisions of sections seven-a and eight-
b of this chapter. Only years of employment within the
facility are considered for purposes of reduction in force
within the facility.

(3) The seniority conferred in this section applies
retroactively to all affected professional and service
personnel, but the rights incidental to the seniority commence
on the effective date of this section.

(4) Amendments made to this section during the 2009
regular session of the Legislature do not abrogate any rights,
privileges or benefits bestowed under previous enactments of
this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 18th day of May, 2009.

Governor

[Signature]
PRESENTED TO THE GOVERNOR

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