

FILED

2009 MAY 13 PM 4: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

HB 3146

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H. B. 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.

1 (a) A county board shall make decisions affecting
2 promotions and the filling of any service personnel positions
3 of employment or jobs occurring throughout the school year
4 that are to be performed by service personnel as provided in
5 section eight of this article, on the basis of seniority,
6 qualifications and evaluation of past service.

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

19 (1) Regularly employed service personnel who hold a
20 classification title within the classification category of the
21 vacancy;

22 (2) Service personnel who have held a classification title
23 within the classification category of the vacancy whose
24 employment has been discontinued in accordance with this
25 section;

26 (3) Regularly employed service personnel who do not
27 hold a classification title within the classification category of
28 vacancy;

29 (4) Service personnel who have not held a classification
30 title within the classification category of the vacancy and
31 whose employment has been discontinued in accordance with
32 this section;

33 (5) Substitute service personnel who hold a classification
34 title within the classification category of the vacancy;

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

38 (7) New service personnel.

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

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

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

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

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

58 (B) The executive secretary class title is included in the
59 same classification category as secretaries;

60 (C) Paraprofessional, autism mentor and braille or sign
61 language specialist class titles are included in the same
62 classification category as aides; and

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

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

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

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

75 (f) *Extra-duty assignments.* --

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

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

84 (A) A service person with the greatest length of service
85 time in a particular category of employment is given priority
86 in accepting extra duty assignments, followed by other fellow
87 employees on a rotating basis according to the length of their

88 service time until all employees have had an opportunity to
89 perform similar assignments. The cycle then is repeated.

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

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

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

102 (2) Notice of a job vacancy shall include the job
103 description, the period of employment, the amount of pay and
104 any benefits and other information that is helpful to
105 prospective applicants to understand the particulars of the
106 job. Job postings for vacancies made pursuant to this section
107 shall be written to ensure that the largest possible pool of
108 qualified applicants may apply. Job postings may not require
109 criteria which are not necessary for the successful
110 performance of the job and may not be written with the intent
111 to favor a specific applicant.

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

116 (4) The county board shall notify any person who has
117 applied for a job posted pursuant to this section of the status

118 of his or her application as soon as possible after the county
119 board makes a hiring decision regarding the posted position.

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

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

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

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

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

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

147 (l) If the board makes this determination, it shall rescind
148 the reduction in force or transfer and notify the affected

149 employee in writing of the right to be restored to his or her
150 former position of employment.

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

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

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

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

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

175 (n) A service person placed upon the preferred recall list
176 shall be recalled to any position openings by the county board
177 within the classification(s) where he or she had previously
178 been employed, to any lateral position for which the service

179 person is qualified or to a lateral area for which a service
180 person has certification and/or licensure.

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

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

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

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

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

206 (l) A service person denied promotion or employment in
207 violation of this section shall be awarded the job, pay and any
208 applicable benefits retroactively to the date of the violation
209 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 of 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

31 of Health and Human Resources facilities, corrections
32 facilities providing services to juvenile and youthful
33 offenders, in the West Virginia schools for the deaf and the
34 blind or in public community and technical colleges
35 providing middle college services are afforded all the rights,
36 privileges and benefits established for the professional
37 personnel under this article, subject to the following:

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

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

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

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

54 (d) *Additional seniority provisions.*

55 (1) Notwithstanding any other provision of this section to
56 the contrary, professional and service personnel employed in
57 an educational facility operated by the West Virginia
58 Department of Education accrue seniority at that facility on
59 the basis of the length of time the employee has been
60 employed at the facility. Professional and service personnel
61 whose employment at the facility was preceded immediately

62 by employment with the county board previously providing
63 education services at the facility or whose employment
64 contract was with the county board previously providing
65 education services at the facility:

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

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

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

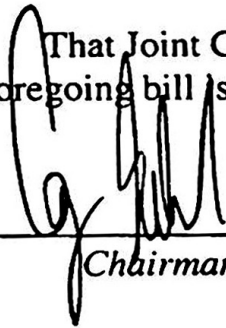
75 (D) Retains and continues to accrue county and facility
76 seniority in the event of reemployment by the county as a
77 result of direct transfer from the facility or recall from the
78 preferred list.

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

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

89 (4) Amendments made to this section during the 2009
90 regular session of the Legislature do not abrogate any rights,
91 privileges or benefits bestowed under previous enactments of
92 this section.

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.

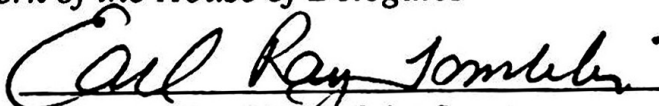
In effect ninety days from passage.



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 13th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY 8 2009

Time 2:25pm