

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 528**

4 (By Senators Yost, Klempa and Kessler (Acting President))

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6 [Originating in the Committee on Education;
7 reported February 23, 2011.]
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11 A BILL to amend and reenact §18A-4-8b of the Code of West Virginia,
12 1931, as amended, relating to county boards of education;
13 temporary reassignment of injured or ill service personnel
14 under specified conditions; compensation and benefits;
15 vacancies and job postings; and expiration of reassignments.

16 *Be it enacted by the Legislature of West Virginia:*

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

19 **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

20 **§18A-4-8b. Seniority rights for school service personnel.**

21 (a) A county board shall make decisions affecting promotions
22 and the filling of any service personnel positions of employment or
23 jobs occurring throughout the school year that are to be performed
24 by service personnel as provided in section eight of this article,
25 on the basis of seniority, qualifications and evaluation of past
26 service.

27 (b) Qualifications means the applicant holds a classification
28 title in his or her category of employment as provided in this

1 section and is given first opportunity for promotion and filling
2 vacancies. Other employees then shall be considered and shall
3 qualify by meeting the definition of the job title that relates to
4 the promotion or vacancy, as defined in section eight of this
5 article. If requested by the employee, the county board shall show
6 valid cause why a service person with the most seniority is not
7 promoted or employed in the position for which he or she applies.

8 Qualified applicants shall be considered in the following order:

9 (1) Regularly employed service personnel who hold a
10 classification title within the classification category of the
11 vacancy;

12 (2) Service personnel who have held a classification title
13 within the classification category of the vacancy whose employment
14 has been discontinued in accordance with this section;

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

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

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

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

25 (7) New service personnel.

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

1 thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) Notice of a job vacancy shall include the job description,
2 the period of employment, the work site, the starting and ending
3 time of the daily shift, the amount of pay and any benefits and
4 other information that is helpful to prospective applicants to
5 understand the particulars of the job. The notice of a job vacancy
6 in the aide classification categories shall include the program or
7 primary assignment of the position. Job postings for vacancies
8 made pursuant to this section shall be written to ensure that the
9 largest possible pool of qualified applicants may apply. Job
10 postings may not require criteria which are not necessary for the
11 successful performance of the job and may not be written with the
12 intent to favor a specific applicant.

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

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

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

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

1 previous classification.

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

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

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

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

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

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

27 (3) The county board may not rescind the reduction in force of
28 an employee until all service personnel with more seniority in the

1 classification category on the preferred recall list have been
2 offered the opportunity for recall to regular employment as
3 provided in this section.

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

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

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

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

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

28 (p) Temporary reassignment due to injury or illness --

1 Notwithstanding any provision of this code to the contrary, a
2 county board may permit a service person who holds a continuing
3 contract in a specific job classification and who is physically
4 unable to perform the job's duties to return to work and to perform
5 duties in another classification under the following conditions:

6 (1) The temporary reassignment is the result of a work related
7 injury or illness confirmed by the employee's physician of choice;

8 (2) The service person receives the same compensation and
9 benefits as he or she would have received pursuant to his or her
10 continuing contract of employment in the classification of the
11 employee's regular position;

12 (3) The service person may not be discouraged nor prohibited
13 from returning to his or her regular position on a light duty
14 basis;

15 (4) A temporary reassignment as described by this subsection
16 does not create a vacancy requiring posting and filling pursuant to
17 this section; and

18 (5) A temporary reassignment is limited to one calendar year.

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

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

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

6 ~~(s)~~ (t) A county board failing to comply with the provisions
7 of this article may be compelled to do so by mandamus and is liable
8 to any party prevailing against the board for court costs and the
9 prevailing party's reasonable attorney fee, as determined and
10 established by the court.

11 (1) A service person denied promotion or employment in
12 violation of this section shall be awarded the job, pay and any
13 applicable benefits retroactively to the date of the violation and
14 shall be paid entirely from local funds.

15 (2) The county board is liable to any party prevailing against
16 the board for any court reporter costs including copies of
17 transcripts.