

Senate Bill No. 528

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

[Introduced February 16, 2011; referred to the Committee on
Education; and then to the Committee on Finance.]

10 A BILL to amend and reenact §18A-4-8b of the Code of West Virginia,
11 1931, as amended, relating to allowing classified workers who
12 are physically unable to perform their job duties on a
13 temporary or permanent basis to work in another classification
14 at the discretion of the county board of education and
15 continue to receive the compensation of the previous
16 employment position.

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

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

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

21 **§18A-4-8b. Seniority rights for school service personnel.**

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

1 service.

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

11 Qualified applicants shall be considered in the following order:

12 (1) Regularly employed service personnel who hold a
13 classification title within the classification category of the
14 vacancy;

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

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

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

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

25 (6) Substitute service personnel who do not hold a
26 classification title within the classification category of the

1 vacancy; and

2 (7) New service personnel.

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

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

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

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

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

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

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

26 (D) The mechanic assistant and chief mechanic class titles are

1 included in the same classification category as mechanics.

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

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

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

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

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

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

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

25 (B) An alternative procedure for making extra-duty assignments
26 within a particular classification category of employment may be

1 used if the alternative procedure is approved both by the county
2 board and by an affirmative vote of two-thirds of the employees
3 within that classification category of employment.

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

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

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

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

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

1 her application as soon as possible after the county board makes a
2 hiring decision regarding the posted position.

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

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

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

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

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

26 (k) After a reduction in force or transfer is approved, but

1 prior to August 1, a county board in its sole and exclusive
2 judgment may determine that the reason for any particular reduction
3 in force or transfer no longer exists.

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

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

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

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

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

26 (m) All service personnel whose seniority with the county

1 board is insufficient to allow their retention by the county board
2 during a reduction in work force are placed upon a preferred recall
3 list and shall be recalled to employment by the county board on the
4 basis of seniority.

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

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

15 (p) Notwithstanding any provision of this code to the
16 contrary, a service person who holds a continuing contract in a
17 specific job classification and who is physically unable to perform
18 the job's duties on a temporary or permanent basis as a result of
19 a work related injury or disease as confirmed by a physician chosen
20 by the employee, may be permitted to return to work and to perform
21 duties in another classification at the discretion of the county
22 board of education. Such an employee shall receive the same
23 compensation and benefits as he or she would receive pursuant to
24 his or her continuing contract of employment in the classification
25 of the employee's regular position. A temporary assignment as
26 described by this paragraph does not constitute the creation of a

1 vacancy requiring posting and filling pursuant to this section.
2 Further, nothing in this paragraph shall be construed to discourage
3 or prohibit permitting an employee to return to his or her regular
4 position on a light duty basis.

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

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

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

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

25 (1) A service person denied promotion or employment in
26 violation of this section shall be awarded the job, pay and any

1 applicable benefits retroactively to the date of the violation and
2 shall be paid entirely from local funds.

3 (2) The county board is liable to any party prevailing against
4 the board for any court reporter costs including copies of
5 transcripts.

NOTE: The purpose of this bill is to allow classified workers who are physically unable to perform their job duties on temporary or permanent basis, may work in another classification at the discretion of the county board of education and continue to receive the compensation of the previous employment position.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.