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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4040

(By Delegate Mezzatesta)



Passed March 10, 2004

In Effect from Passage

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E N R O L L E D

H. B. 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
- 2 affecting the hiring of professional personnel other than
- 3 classroom teachers on the basis of the applicant with the highest
- 4 qualifications.

5 (b) The county board shall make decisions affecting the
6 hiring of new classroom teachers on the basis of the applicant
7 with the highest qualifications.

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

11 (1) Appropriate certification, licensure or both;

12 (2) Amount of experience relevant to the position; or, in the
13 case of a classroom teaching position, the amount of teaching
14 experience in the subject area;

15 (3) The amount of course work, degree level or both in the
16 relevant field and degree level generally;

17 (4) Academic achievement;

18 (5) Relevant specialized training;

19 (6) Past performance evaluations conducted pursuant to
20 section twelve, article two of this chapter; and

21 (7) Other measures or indicators upon which the relative
22 qualifications of the applicant may fairly be judged.

23 (d) If one or more permanently employed instructional
24 personnel apply for a classroom teaching position and meet the
25 standards set forth in the job posting, the county board of
26 education shall make a decision affecting the filling of the
27 position on the basis of the following criteria:

28 (1) Appropriate certification, licensure or both;

29 (2) Total amount of teaching experience;

30 (3) The existence of teaching experience in the required
31 certification area;

32 (4) Degree level in the required certification area;

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

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

38 (7) Seniority.

39 (e) In filling positions pursuant to subsection (d) of this
40 section, consideration shall be given to each criterion with each
41 criterion being given equal weight. If the applicant with the
42 most seniority is not selected for the position, upon the request
43 of the applicant a written statement of reasons shall be given to
44 the applicant with suggestions for improving the applicant's
45 qualifications.

46 (f) With the exception of guidance counselors, the seniority
47 of classroom teachers, as defined in section one, article one of
48 this chapter shall be determined on the basis of the length of
49 time the employee has been employed as a regular full-time
50 certified and/or licensed professional educator by the county
51 board of education and shall be granted in all areas that the
52 employee is certified, licensed or both.

53 (g) Upon completion of one hundred thirty-three days of
54 employment in any one school year, substitute teachers, except
55 retired teachers and other retired professional educators
56 employed as substitutes, shall accrue seniority exclusively for
57 the purpose of applying for employment as a permanent, full-
58 time professional employee. One hundred thirty-three days or
59 more of said employment shall be prorated and shall vest as a

60 fraction of the school year worked by the permanent, full-time
61 teacher.

62 (h) Guidance counselors and all other professional employ-
63 ees, as defined in section one, article one of this chapter, except
64 classroom teachers, shall gain seniority in their nonteaching
65 area of professional employment on the basis of the length of
66 time the employee has been employed by the county board of
67 education in that area: *Provided*, That if an employee is
68 certified as a classroom teacher, the employee accrues class-
69 room teaching seniority for the time that that employee is
70 employed in another professional area. For the purposes of
71 accruing seniority under this paragraph, employment as
72 principal, supervisor or central office administrator, as defined
73 in section one, article one of this chapter, shall be considered
74 one area of employment.

75 (i) Employment for a full employment term shall equal one
76 year of seniority, but no employee may accrue more than one
77 year of seniority during any given fiscal year. Employment for
78 less than the full employment term shall be prorated. A random
79 selection system established by the employees and approved by
80 the board shall be used to determine the priority if two or more
81 employees accumulate identical seniority: *Provided*, That when
82 two or more principals have accumulated identical seniority,
83 decisions on reductions in force shall be based on qualifica-
84 tions.

85 (j) Whenever a county board is required to reduce the
86 number of professional personnel in its employment, the
87 employee with the least amount of seniority shall be properly
88 notified and released from employment pursuant to the provi-
89 sions of section two, article two of this chapter. The provisions
90 of this subsection are subject to the following:

91 (1) All persons employed in a certification area to be
92 reduced who are employed under a temporary permit shall be
93 properly notified and released before a fully certified employee
94 in such a position is subject to release;

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

101 (3) If an employee subject to release holds certification,
102 licensure or both in more than one lateral area and if the
103 employee's seniority is greater than the seniority of any other
104 employee in one or more of those areas of certification,
105 licensure or both, the employee subject to release shall be
106 employed in the professional position held by the employee
107 with the least seniority in any of those areas of certification,
108 licensure or both; and

109 (4) If, prior to the first day of August of the year a reduction
110 in force is approved, the reason for any particular reduction in
111 force no longer exists as determined by the county board in its
112 sole and exclusive judgment, the board shall rescind the
113 reduction in force or transfer and shall notify the released
114 employee in writing of his or her right to be restored to his or
115 her position of employment. Within five days of being so
116 notified, the released employee shall notify the board, in
117 writing, of his or her intent to resume his or her position of
118 employment or the right to be restored shall terminate. Notwith-
119 standing any other provision of this subdivision, if there is
120 another employee on the preferred recall list with proper
121 certification and higher seniority, that person shall be placed in
122 the position restored as a result of the reduction in force being
123 rescinded.

124 (k) For the purpose of this article, all positions which meet
125 the definition of classroom teacher as defined in section one,
126 article one of this chapter shall be lateral positions. For all other
127 professional positions, the county board of education shall
128 adopt a policy by the thirty-first day of October, one thousand
129 nine hundred ninety-three, and may modify the policy thereafter
130 as necessary, which defines which positions shall be lateral
131 positions. The board shall submit a copy of its policy to the
132 state board within thirty days of adoption or any modification,
133 and the state board shall compile a report and submit the report
134 to the legislative oversight commission on education account-
135 ability by the thirty-first day of December, one thousand nine
136 hundred ninety-three, and by that date in any succeeding year
137 in which any county board submits a modification of its policy
138 relating to lateral positions. In adopting the policy, the board
139 shall give consideration to the rank of each position in terms of
140 title; nature of responsibilities; salary level; certification,
141 licensure or both; and days in the period of employment.

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

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

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

154 (3) The county board, upon recommendation of the
155 superintendent may fill a position before the next instructional

156 term when it is determined to be in the best interest of the
157 students: *Provided*, That the county superintendent shall notify
158 the state board of each transfer of a person employed in a
159 professional position to another professional position after the
160 fifth day prior to the beginning of the instructional term. The
161 Legislature finds that it is not in the best interest of the students
162 particularly in the elementary grades to have multiple teachers
163 for any one grade level or course during the instructional term.
164 It is the intent of the Legislature that the filling of positions
165 through transfers of personnel from one professional position
166 to another after the fifth day prior to the beginning of the
167 instructional term should be kept to a minimum.

168 (m) All professional personnel whose seniority with the
169 county board is insufficient to allow their retention by the
170 county board during a reduction in work force shall be placed
171 upon a preferred recall list. As to any professional position
172 opening within the area where they had previously been
173 employed or to any lateral area for which they have certifica-
174 tion, licensure or both, the employee shall be recalled on the
175 basis of seniority if no regular, full-time professional personnel,
176 or those returning from leaves of absence with greater seniority,
177 are qualified, apply for and accept the position.

178 (n) Before position openings that are known or expected to
179 extend for twenty consecutive employment days or longer for
180 professional personnel may be filled by the board, the board
181 shall be required to notify all qualified professional personnel
182 on the preferred list and give them an opportunity to apply, but
183 failure to apply shall not cause the employee to forfeit any right
184 to recall. The notice shall be sent by certified mail to the last
185 known address of the employee, and it shall be the duty of each
186 professional personnel to notify the board of continued avail-
187 ability annually, of any change in address or of any change in
188 certification, licensure or both.

189 (o) Openings in established, existing or newly created
190 positions shall be processed as follows:

191 (1) Boards shall be required to post and date notices which
192 shall be subject to the following:

193 (A) The notices shall be posted in conspicuous working
194 places for all professional personnel to observe for at least five
195 working days;

196 (B) The notice shall be posted within twenty working days
197 of the position openings and shall include the job description;

198 (C) Any special criteria or skills that are required by the
199 position shall be specifically stated in the job description and
200 directly related to the performance of the job;

201 (D) Postings for vacancies made pursuant to this section
202 shall be written so as to ensure that the largest possible pool of
203 qualified applicants may apply; and

204 (E) Job postings may not require criteria which are not
205 necessary for the successful performance of the job and may not
206 be written with the intent to favor a specific applicant;

207 (2) No vacancy shall be filled until after the five-day
208 minimum posting period;

209 (3) If one or more applicants meets the qualifications listed
210 in the job posting, the successful applicant to fill the vacancy
211 shall be selected by the board within thirty working days of the
212 end of the posting period;

213 (4) A position held by a teacher who is certified, licensed
214 or both, who has been issued a permit for full-time employment
215 and is working toward certification in the permit area shall not

216 be subject to posting if the certificate is awarded within five
217 years; and

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

220 (p) Notwithstanding any other provision of the code to the
221 contrary, where the total number of classroom teaching
222 positions in an elementary school does not increase from one
223 school year to the next, but there exists in that school a need to
224 realign the number of teachers in one or more grade levels,
225 kindergarten through six, teachers at the school may be reas-
226 signed to grade levels for which they are certified without that
227 position being posted: *Provided*, That the employee and the
228 county board of education mutually agree to the reassignment.

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

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

235 (2) When a specified grade level needs to be reduced and
236 the least senior employee in the school is not in that grade level,
237 the least senior classroom teacher in the grade level that needs
238 to be reduced shall be reassigned to the position made vacant by
239 the transfer of the least senior classroom teacher in the school
240 without that position being posted: *Provided*, That the em-
241 ployee is certified, licensed or both and agrees to the reassign-
242 ment.

243 (r) Any board failing to comply with the provisions of this
244 article may be compelled to do so by mandamus and shall be
245 liable to any party prevailing against the board for court costs
246 and reasonable attorney fees as determined and established by

247 the court. Further, employees denied promotion or employment
248 in violation of this section shall be awarded the job, pay and
249 any applicable benefits retroactive to the date of the violation
250 and payable entirely from local funds. Further, the board shall
251 be liable to any party prevailing against the board for any court
252 reporter costs including copies of transcripts.

253 (s) The county board shall compile, update annually on the
254 first day of July and make available by electronic or other
255 means to all employees a list of all professional personnel
256 employed by the county, their areas of certification and their
257 seniority.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lucy M...
Chairman Senate Committee

Sharon Spencer
Chairman House Committee

Originating in the House.

In effect from passage.

Barrett Gibbs
Clerk of the Senate

Gregory D. Gray
Clerk of the House of Delegates

Carl Bay Tommbini
President of the Senate

Robert Skis
Speaker of the House of Delegates

The within is approved this the 5th
day of April, 2004.

Bob Wise
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/22/04

TIME 10:00 am