

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUN 21 3 23 PM '95

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State College System Board of Directors TITLE NUMBER: 131

RULE TYPE: Legislative ; CITE AUTHORITY WV Code 18B-7-1, 18B-1-6

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 37

TITLE OF RULE BEING PROPOSED: Classified Employee Layoffs and Reassignments

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 21, 1995 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Office of the Chancellor
State College System of WV
1018 Kanawha Blvd., East
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

[Handwritten signature]

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

4.20

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

State Capitol Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
Fax No.: (304) 558-1311

Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

16 June 1996

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler,

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the promulgation of the following legislative rule of the State College System Board of Directors:

Title 131, Series 37: Classified Employee Layoffs and Reassignments

A copy of the rule is attached.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:mc

Attachment

cc: Dr. Clifford Trump
Dr. John Thralls

TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 37

TITLE: CLASSIFIED EMPLOYEE LAYOFFS AND REASSIGNMENTS

SUMMARY: West Virginia Code § 18B-7-1 details certain rights and responsibilities of classified employees. Series 62 of the State College System Rules, *Personnel Administration*, addresses some of the issues in this section of the Code. During the development of Series 62, the Classification Project Oversight Committee decided to omit the issue of layoffs from Series 62. Therefore, Series 37, *Classified Employee Layoffs and Reassignments*, has been developed. Series 37 includes procedures for implementing layoffs and reassignments of full-time classified employees.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 131:37 Classified Employee Layoffs and Reassignments

Type of Rule x Legislative Interpretive Procedural

Agency State College System of West Virginia Board of Directors

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|----------|----------|-------------|------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | \$ | \$ | \$ | \$ |
| Personal Services | | | | | |
| Current Expense | N/A | N/A | N/A | N/A | N/A |
| Repairs and Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of above estimates

N/A

3. Objectives of these rules

To define the procedures attendant with WV Code §18B-7-1.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large

N/A

Date: 6/21/95

Marie Carter
Signature of Agency Head or Authorized Representative

TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 37

FILED

JUN 21 3 23 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: CLASSIFIED EMPLOYEE LAYOFFS AND REASSIGNMENTS

SECTION 1. GENERAL

- 1.1 Scope - Procedures for implementing layoffs and reassignments of full-time classified employees.
- 1.2 Authority - W.Va. Code §§ 18B-7-1, 18B-1-2, 18B-1-6
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. DEFINITIONS

- 2.1 Equivalent Job Title A job title in the same paygrade and which requires substantially the same level and type of duties, skills, and responsibilities.
- 2.2 Full-Time Classified Employee Any employee in a classified position created to last a minimum of nine months of a twelve month period and in which such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. The FTE of a full-time classified employee shall not be relevant for any purposes of this rule except the calculation of seniority. Any employee whose position is funded by an external source, such as external grant or contract funds, to the extent of at least 50% of annual salary, shall not be deemed a full-time classified employee for the purposes of this rule if such was explained at the time the employee accepted the position and documented.

- 2.3 FTE Full time equivalency is the percentage of time for which a position is established, with a full-time position working 1,950 hours per year being 1.00 FTE.
- 2.4 Furlough A temporary, non-disciplinary, removal from the payroll for a predetermined period of time, as approved by the governing board. A furlough is to be distinguished from a layoff, which is a permanent, non-disciplinary removal from the payroll as determined by an institution.
- 2.5 Human Resources Office That office, division, or department designated by the president of an institution to administer the provisions of this rule and other personnel policies.
- 2.6 Institution The following are each considered separate institutions for the purpose of this rule only - Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, West Virginia State College, Southern West Virginia Community College, West Virginia Northern Community College, West Virginia University, Potomac State College of West Virginia University, West Virginia University at Parkersburg, Marshall University, West Virginia Graduate College, West Virginia School of Osteopathic Medicine, the offices of each of the chancellors, the central office of the governing boards, the West Virginia Network for Educational Telecomputing, and the Robert C. Byrd Health Sciences Center - Charleston Division.
- 2.7 Paygrade The number assigned by the governing boards to a particular job title and referring to the salary schedule set out in W.Va. Code § 18B-9-3.
- 2.8 President The administrative head of each institution set out in Sect. 2.6 of this rule.

- 2.9 Probationary Period That period of employment set out in W.Va. Code § 18B-9-12.
- 2.10 Qualified Meets the required minimum qualifications of a job title and has demonstrated the ability to perform the duties and responsibilities of such job title, as determined by the institutional human resources office.
- 2.11 Random Selection Method Any method of determining by chance how employees of equal seniority should be ranked for displacement or recall purposes. This would include such methods as, but not limited to, computer generation of random numbers, drawing of lots, rolling dice, or selection from a deck of playing cards.
- 2.12 Seniority The total number of years of continuous, uninterrupted service as a full-time classified employee in the state institutions of higher education, pro-rated by FTE.
- 2.13 Vacancy A full-time regular classified position, as delineated on an existing properly approved expenditure schedule and/or a position with a funded assignment, approved for recruitment, which is not presently filled by an employee.

SECTION 3. REASSIGNMENT

- 3.1 A full-time classified employee facing layoff for reason of lack of funds or work, or abolition of position, or material changes in duties or organization, will first be considered for reassignment to vacant positions within the institution as set out in Section 4 of this rule, and such reassignment may be made at the institution's discretion and upon the authority of the president or president's designee. If the employee refuses such reassignment, he/she relinquishes rights outlined in Sect. 18B-7-1 and will be terminated.

If reassignment attempts are unsuccessful, and layoff is imminent, the employee will be given the opportunity, pursuant to the procedures set out in this rule, to displace a less senior employee in the same job title or any

other equivalent or lower job title within the institution for which the senior employee is qualified, if such position exists.

If displacement is not possible, or if the employee refuses displacement rights offered by the institution to a lower job title, the employee will be laid off with rights of recall set out in this rule.

Employees displaced by other employees under this rule will be provided the same rights under this rule. Those unable to exercise displacement rights will be provided additional rights outlined in this rule. This rule shall apply only to full-time classified employees.

SECTION 4. LAYOFFS

- 4.1 Impending layoffs are to be authorized through the president or president's designee regardless of the level or type of position.
- 4.2 The chief institutional human resources officer and the chief institutional affirmative action officer are to be informed of the layoff circumstances and affected employees prior to release of the notifications.
- 4.3 An employee will be given at least two weeks written notice prior to effective date of layoff. Such written notice shall be hand-delivered to the employee at work or mailed by certified mail to the employee's last known address on file with the institution. Each notice of layoff shall contain the following information:
 - 4.3.1 The reason for layoff.
 - 4.3.2 The effective date of layoff.
 - 4.3.3 The employee's seniority for purposes of this rule.
 - 4.3.4 A copy of this rule.
 - 4.3.5 A statement that the employee is responsible for maintaining a current address with the institution.
 - 4.3.6 Effort will be made to reassign affected employee(s) prior to the target date of layoff.
- 4.4 The president or president's designee is charged with the responsibility and authority to reassign the employee(s) affected by impending layoff into

vacant positions of the same or equivalent job title within the institution for which their qualifications meet position requirements.

If reassignment to a vacant position in the same or equivalent job title is not possible, an employee may desire and be allowed to be voluntarily assigned to a vacancy in a lower job title for which he/she is qualified in order to avoid layoff, but must have been advised of her/his displacement rights upon layoff.

- 4.5 The institutional office of human resources will evaluate the qualifications of the affected employee(s) against the requirements of vacant position(s) and determine which vacant position(s) within the institution the employee(s) are qualified to perform.
- 4.6 The vacant position(s) within the institution into which the employee(s) affected by layoff shall be placed may be exempted from posting requirements and exempted from provisions of W.Va. Code § 18B-7-1 (d).
- 4.7 The president or president's designee will contact the hiring authority responsible for the vacant position(s) targeted for the reassignment of the employee(s) affected by layoff. If reassignment is unacceptable for job-related purposes, as determined by the president or president's designee, the vacant position may be posted for competitive selection.
- 4.8 The affected employee(s) will be notified of the reassignment by the chief human resources officer.

SECTION 5. DISPLACEMENT

- 5.1 In the event layoffs have been determined to be operationally necessary, and attempts at reassignment have been unsuccessful, the incumbent(s) of the affected position(s) will be evaluated by the chief institutional human resources officer or president's designee based upon qualifications in comparison to position requirements for jobs held by less senior employees in the same or equivalent job title, and for jobs held by less senior employees in lower job titles within the institution. The rights herein are intended for the purpose of maintaining employment and not for the purpose of actual job assignment. The institution may assign the employee in accordance with needs of the institution and institutional policy. As each job title is reviewed, displacement consideration must be by seniority, beginning with the least senior employee in that classification, as follows:

- 5.2 If the affected incumbent is qualified to perform the position duties of a job held by less senior employees within the same job title, the affected employee will be placed in the position held by the least senior employee in that job title, the less senior employee will be displaced and, in turn, provided displacement rights under this rule.
- 5.3 If there is no less senior employee in the same job title which the affected incumbent is qualified to displace, comparison to equivalent job titles within the institution will occur. If the affected incumbent is qualified to perform the duties of a job held by less senior employees within the equivalent job title, the affected employees will be offered the position held by the least senior employee in that job title. If the employee accepts, the least senior employee will be displaced and, in turn, provided displacement rights under this rule. If the employee refuses to displace the least senior employee, he/she is subject to layoff with all rights of recall set out in this rule.
- 5.4 If the affected incumbent is unqualified to displace a less senior employee in an equivalent job title, comparison to lower job titles within the institution will occur. If the affected incumbent is qualified to perform the position duties of job titles in the next lowest paygrade within the institution held by less senior employees, the affected incumbent will be offered the position held by the least senior employee in that paygrade. If the employee accepts the position, the least senior employee will be displaced and, in turn, provided displacement rights under this rule. If the employee refuses to displace the least senior employee, he/she is subject to layoff with all rights of recall set out in this rule. If the affected incumbent is not qualified for a position in the next lowest paygrade, or the employees in the next lowest paygrade are not less senior to the affected incumbent, then job titles in the next lowest paygrade will be examined in the same way. This will continue until the affected incumbent displaces an employee pursuant to this rule, refuses to displace another employee, or is to be found to not qualify for displacement rights in a job title in any lower paygrade.
- 5.5 In the event of simultaneous multiple position eliminations resulting in several employees having displacement rights over the same position, those rights must be exercised in order of seniority, with the most senior affected employee having first priority to displace.

SECTION 6. INSTITUTIONAL ASSISTANCE

- 6.1 If attempts at reassignment have been unsuccessful, and there are no circumstances under which the affected employee can exercise displacement rights, and the employee desires, the institution will request consideration

by other West Virginia institutions of higher education. This cannot delay the layoff procedures provided or required by W.Va. Code § 18B-7-1 and this rule.

- 6.2 If suitable employment cannot be found for the affected employee, the employee shall be offered retraining opportunities during the remainder of the existing appointment, to the extent possible and reasonable, as determined by the institution.
- 6.3 When layoff becomes effective, a letter from appropriate administrative levels will be written that expressly states that separation from employment is not the result of the individual's performance. A copy of the letter must be kept on file.
- 6.4 Employees who have been given notice of layoff will be granted, upon request, early release from employment.
- 6.5 The institution will provide access or referral to career counseling information about employment opportunities, maintenance of letters of reference, and help in preparing a resume, to the extent possible and reasonable, as determined by the institution.

SECTION 7. BENEFITS FOR LAID OFF EMPLOYEES

- 7.1 Employees laid off under this rule, for the purposes of benefits, shall be deemed as terminated for purposes not involving misconduct on the part of the employee and shall be treated as such under all applicable state and federal laws, rules and regulations.
- 7.2 An individual may ordinarily choose to take accumulated annual leave during a layoff or furlough period rather than retain it until the layoffs or furlough is over. If financial exigency is declared by the governing board, annual leave must be held until after the person returns to work, and may not be used during a furlough period; however, it may be used during a layoff for financial exigency purposes.

SECTION 8. RECALL

- 8.1 At any time that a layoff is necessary, the chief human resource officer of the institution will prepare a list for each job title from which employees are laid off. The names of all laid off employees will appear on a second list in descending order of seniority. In cases of identical seniority ratings, the

priority shall be determined by a random selection system established by the staff council and approved by the institution.

- 8.2 An employee's name shall remain on the appropriate lists beginning from the date he/she was first laid off or displaced from her/his original job title. It is the responsibility of the employee to renew the listing with the institution's human resources office yearly. During this period, the institution may not hire, transfer, or promote into any affected job title until all qualified persons on the layoff lists are reinstated or have declined the position when it is offered. Failure of an employee to annually renew her/his listing shall cause her/him to be stricken from the recall list and terminate her/his rights under this rule.
- 8.3 Employees who are not serving original probationary periods required by W.Va. Code § 18B-9-12 at the time of layoff are not required to serve such probationary periods upon reinstatement. Employees who are serving one of the above original probationary periods at the time of layoff must serve a new such probationary period upon reinstatement.
- 8.4 Each employee recalled from layoff shall be notified of the offer of reinstatement or reemployment by certified letter. The notice of reinstatement shall contain a statement that a refusal of reinstatement, except for compelling reasons, shall result in removal of such employee's name from the recall list.
- 8.5 Each recalled employee shall be allowed five calendar days from the date of receipt of the letter to accept the offer of employment, or explain compelling reasons why they cannot, and such time limit shall be explained to the employee in the notification of recall letter.
- 8.6 In the event of extenuating circumstances (e.g., illness, injury, absence from city or state, or other good cause, as determined by the president or president's designee) preventing the employee from returning within the above time limit, the employer shall grant a reasonable extension, not to exceed sixty days. In the absence of extenuating circumstances, an employee not accepting or declining reinstatement or reemployment within five calendar days shall be deemed to have declined reinstatement or reemployment and shall be removed from the recall list.
- 8.7 For purposes of recall, the employee shall be responsible for keeping a current address and telephone number on file with the institutional office of human resources and with her/his department, and maintain an up-to-date application and/or resume on a yearly basis.

SECTION 9. SALARY

- 9.1 Those employees reassigned to a vacancy, or displacing another employee, pursuant to the provisions of this rule, shall have their salary in the new position determined pursuant to the provisions of Series 62 of the State College System Rules.
- 9.2 Persons recalled for employment pursuant to this rule within 12 months of their date of layoff shall have their salary determined as follows: If the new position would have been considered a transfer from the employee's previous position, the base salary shall be the same as at the time of layoff. If the new position would have been considered demotion from the employee's previous position, a five percent reduction per paygrade, pursuant to Series 62, shall be applied to that base salary. Persons recalled after 12 months will have their salary determined as if a new employee.

SECTION 10. EFFECT

- 10.1 The provisions of this rule supersede all institutional rules, policies, practices, or procedures relating to layoffs, displacements, recalls, and other matters that are the subject of this rule. Each institution shall adopt, and file with the chancellor, within 60 days of the effective date of this rule, new institutional rules intended to effectuate the provisions of this rule.