



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

JANET JAMES

v.

DOCKET NO. 11-87-181-3

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

The grievant, Janet James, was employed as a teacher by the Gilmer County Board of Education in 1980 and assigned to the position of Librarian at Gilmer County High School in which she served through the 1986-87 school term. She has certification in the areas of Library Science, Physical Education 1 - 12, Health 1 - 12 and Safety Education 1 - 12.

Because of declining student enrollment and an anticipated shortage of state funds, the Board decided in the Spring of 1987 to cut back on the number of professional staff in the Gilmer County School system for the 1987-88 school year. The Board implemented a process by which the grievant was removed from her position as Librarian at Gilmer County High and placed in the position of Physical Education Instructor at Troy Elementary School. Grievant protested

the Board's actions and was granted a transfer hearing on April 21, 1987 and the Board voted to keep grievant on the transfer list for placement at Troy Elementary. She then filed a grievance which was waived at Levels I, II and III and the parties submitted the case for decision at Level IV on briefs and the record.

When the Board decided to make cuts in professional staff, the position of Assistant Principal at Gilmer County High School was to be eliminated. Mrs. Judy Smith held that position at the time and by the Board's action, she was placed on a transfer list. Mrs. Smith is certified in the areas of Secondary Principal, Library Science and English. The Board referred to W.Va. Code, 18A-4-8b(a) and interpreted that statute to mean Mrs. Smith should be allowed to replace or "bump" professional personnel within her several areas of certification who had less seniority in the Gilmer County School system. It also understood W.Va. Code, 18A-4-8b(a) as granting Mrs. Smith a preference as to who she could replace as long as that person was holding a position in one of her areas of certifications and had less seniority. Since there was no assistant principal in the county with less seniority, she looked to teaching positions and elected to replace the grievant as Librarian at Gilmer County High.

According to the Board, the displaced grievant then had to go through the same process and replace someone less senior

within her areas of certification. In her case, however, she was not allowed to choose among less senior teachers in these areas and was merely told she would be transferred to the Physical Education position at Troy Elementary School.

The grievant takes issue with the Board's action and essentially argues:

1. W.Va. Code, 18A-4-8b(a) should be interpreted as allowing the "employee" terminated in a reduction of force case the right to replace a professional person in their areas of certification but only that person in those areas who has the least seniority.
2. In this case, Mrs. Smith should not have been given a chance but should have replaced the English teacher at Gilmer County High School who had less seniority than the grievant since Mrs. Smith also had certification in English.
3. The action of granting Mrs. Smith her choice in the procedure while denying the grievant the same choice amounted to favoritism on the Board's part.

The Board responds and argues as follows:

1. The protections of W.Va. Code, 18A-4-8b(a) are to be afforded the "employee" who is to be terminated when reductions in force become necessary and that person has the option to replace "any" person within his or her areas of certification as long as that person has less seniority.
2. Since Mrs. Smith was the "employee" contemplated by W.Va. Code, 18A-4-8b(a), she was entitled to elect the area of certification in which she would replace a teacher with less seniority.

3. The grievant, Janet James, was not allowed the same option since she was not the "employee" to be terminated under this section of the W.Va. Code.

4. The Board engaged in no favoritism since it followed the clear and unambiguous language of W.Va. Code, 18A-4-8b(a).¹

The pertinent part of W.Va. Code, 18A-4-8b(a) reads as follows:

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§18A-2-2], article two of this chapter: Provided, that such employee shall be employed in any other professional position where he had previously been employed or to any lateral area for which he is certified and/or licensed if his seniority is greater than the seniority of any other employee in that area of certification or licensure.

It is true as the Board contends that when a statute is clear and unambiguous it should not be interpreted but be given full force and effect, Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984). But in the present case, W.Va. Code, 18A-4-8b(a) is simply silent on the question of whether an "employee" under this section should be granted a preference and when a statute is doubtful in meaning, the construction placed thereon by those charged with its execution is entitled to great weight. Evans v. Hutchinson, 214 S.E.2d 453 (W.Va. 1975).

¹The West Virginia Supreme Court of Appeals has
(footnote cont.)

According to the State Superintendent of Schools, an employee with several areas of certification must replace the teacher within those areas with the least seniority. State Superintendent's Interpretation, February 25, 1985. It is in keeping with W.Va. Code, 18A-4-8b(a)'s emphasis on seniority and the State Superintendent's interpretation of the pertinent part of that section of the W.Va. Code to hold that when an employee is to replace another employee in a reduction in force case, that employee must replace the least senior employee within his or her areas of certification. Mrs. Judy Smith should not have been given a preference and should have replaced the least senior teacher in her areas of certification.

In addition to the foregoing, the following findings of fact are made.

(footnote cont.)

ruled in State ex rel. the Board of Education of Kanawha v. Casey, 349 S.E.2d 435 (W.Va. 1986), that this section of the W.Va. Code imposes a clear limitation on the discretion of the county superintendents and boards of education with respect to transfer of professional educational personnel. While the Court's reasoning in that case is difficult to reconcile with the language of W.Va. Code, 18A-4-8b(a), which appears to deal exclusively with the termination and not transfer of the least senior employee in a reduction in force action, the Board nevertheless proceeded under this section of the W.Va. Code in the present case.

FINDINGS OF FACT

1. The grievant, Janet James, was employed by the Gilmer County Board of Education in 1980 and was assigned to the position of Librarian at Gilmer County High School in which she served through the 1986-87 school year. She holds certification in the areas of Library Science, Physical Education 1 - 12, Health 1 - 12 and Safety Education 1 - 12.

2. In the spring of 1987, the Gilmer County Board of Education, because of declining enrollment and loss of state funds, decided to eliminate the position of Assistant Principal at Gilmer County High School and subsequently, allowed Mrs. Judy Smith, the employee holding that position, to replace the grievant as Librarian at Gilmer County High School.

3. Mrs. Smith holds certification in the areas of Secondary Principal, Library Science and English.

4. When the Gilmer County Board of Education allowed Mrs. Smith to replace grievant, there was at least one teacher in Mrs. Smith's areas of certification with less seniority than the grievant.

5. The grievant was not given a choice in which of her areas of certification she would replace a less senior employee

but was forced to take the Physical Education Instructor position at Troy Elementary.

CONCLUSIONS OF LAW

1. Where a statute is of doubtful meaning, the construction placed thereon by those charged with its execution is entitled to great weight. Evans v. Hutchinson, supra.

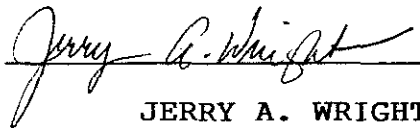
2. Interpretations of the State Superintendent of Schools are considered persuasive authority unless clearly erroneous. Smith v. Logan County Board of Education, 342 S.E.2d 685 (W.Va. 1985); Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-240-1; Lawrence Martin v. Mason County Board of Education, Docket No. 26-87-156-3.

3. State Superintendent's Interpretation, February 25, 1985 in regard to W.Va. Code, 18A-4-8b(a) is not clearly erroneous and must be considered persuasive authority in the present case.

4. When a school board elects to identify a professional position it wishes to cut in a reduction in force situation and proceeds to make such a reduction under W.Va. Code, 18A-4-8b(a), the employee whose position has been cut is not entitled to choose a position but must be transferred into the position of the least senior employee in their respective area(s) of certification(s).

Accordingly, the grievance is **GRANTED** and the Gilmer County Board of Education is **ORDERED** to reinstate the grievant in her position as Librarian of Gilmer County High School.

Either party may appeal this decision to the Circuit Court of Gilmer County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JERRY A. WRIGHT
Hearing Examiner

Dated: December 22, 1987