



**REPLY TO:**  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

**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

**BARRY SMITH**

**v.**

**DOCKET NO. 55-87-209**

**WYOMING COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Barry Smith, has been employed by the Wyoming County Board of Education as a physical education teacher for six years. The grievant alleges that the position of business manager was awarded to another applicant with equal qualifications but lesser seniority than himself in violation of W.Va. Code, 18A-4-8b. A level four hearing was conducted on October 27 and proposed findings and conclusions were submitted by November 16.

In January 1987 the board posted a vacancy notice for the position of business manager. The minimum qualification listed was a bachelor's degree, with work experience and a business/accounting background preferred.

Following the posting period a candidate was recommended to the board but failed to gain its approval. The grievant was then recommended but also failed to be approved. At a meeting held on June 29, 1987 the board voted to consolidate the position of business manager with that of treasurer and to employ Ms. Kim Cook (then treasurer) in the combined position. Minutes of that meeting reflect that the action was the result of a reduction in force which was occurring in the county.

The grievant argues that business manager is a professional position and that he is at least equally qualified as Ms. Cook and as he has more seniority the position should have been awarded to him. He cites W.Va. Code, 18A-4-8b(a) and the holding in Dillon v. Wyoming County Board of Education, 351 S.E. 2d 58 (W.Va. 1986) in support of his position and requests that he be instated to the position of business manager at an annual salary of \$38,870.00 plus compensation for lost wages and benefits.

The board argues that business manager is a service personnel position and that it has the authority to reduce the number of personnel if necessary and did so by combining the positions of business manager and treasurer thereby eliminating one position. The board also asserts that it has the right to abolish a posted position before an individual is hired to fill the

vacancy and the submission of an application does not vest an individual in any contractual right to the position.

As this board has previously held that, based upon an opinion of the State Superintendent of Schools, a board may abolish a posted position which has not been filled it is unnecessary to address the issues of whether the position is classified as professional or service personnel and whether the grievant was the most qualified applicant.<sup>1</sup>

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. The grievant has been employed by the Wyoming County Board of Education as a teacher for six years.

---

<sup>1</sup>An opinion dated February 2, 1986 determined that a board is within its authority to cancel a posting and abolish a position if it has not yet been filled. A decision of the State Superintendent dated June 18, 1985 also noted that if a board determines that a posted position is not actually needed, the position may be abolished.

2. In January 1987 the board posted a position vacancy as business manager. The minimum qualification was a bachelor's degree with work experience and a business and/or accounting background preferred. The vacancy was announced as a professional position.

3. The grievant applied and was recommended for the position, however, he did not receive board approval.

4. The position of business manager was consolidated with that of treasurer and the position awarded to the individual who was employed as treasurer.

5. The purpose of the consolidation was to eliminate one position in the central office administration as part of a reduction in force.

6. The consolidation of the positions effectively eliminated the position of business manager and rescinded the posting for that position.

7. There is no evidence that the board of education acted in an arbitrary or capricious manner in abolishing the position in question.

### Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E. 2d 58 (W.Va. 1986); Neal v. Mason County Board of Education, Docket No. 26-86-329-3.

2. Interpretations of the State Superintendent of Schools are entitled to great weight unless clearly erroneous. Smith v. Board of Education of the County of Logan, 341, S.E. 2d 685 (W.Va. 1985); Thompson v. Kanawha, Docket No. 20-86-366-1.

3. In the absence of a showing of arbitrary conduct a school may abolish a position which has been posted but not yet filled. Nelson v. Lincoln County Board of Education, Docket No. 22-86-116.

Accordingly, the grievance is DENIED.

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

DATED

January 29, 1988

Sue Keller

SUE KELLER

Hearing Examiner