

## ARBITRATION CASE

Before

Montgomery County Council of  
Supporting Services Employees

James M. Harkless  
Name of Arbitrator

v.

April 26, 1996  
Date of Decision

Board of Education of  
Montgomery County

**Issue: (Use exact issue as framed)**

Grievant not selected for vacant plumber II position at upcounty location. Grievant was not selected for plumber II vacancy in 1986 and filed grievance. Grievance was settled by placing grievant in the next available plumber II position. In 1995 a vacancy occurred, which was housed in an upcounty location. The system used long-term practice of allowing internal reassignments based on seniority and qualifications.

**CONTRACT PROVISION(S):**

Article 19, Filling of Vacancies - Section I

**DECISION: (Include brief synopsis of arbitrator's reasoning)**

Grievance denied. System has right to determine if vacancy exists.

**COMMENTS: (Local negotiator input on effects of decision on system)**

Positions are assigned to maintenance and may be housed at different county locations. Board has changed advertisements so as not to state a definite location.

## ARBITRATION CASE

Before

Teachers Association of Baltimore  
County

Malcolm L. Pritzker  
Name of Arbitrator

v.

March 25, 1996  
Date of Decision

Board of Education of  
Baltimore County

### Issue: (Use exact issue as framed)

Did the Board violate Article XII, Section 12.8, 12.8.2, 12.8.4 and 12.8.7 by denying the request of a male teacher for a six-week child rearing leave of absence with pay?

### CONTRACT PROVISION(S):

Article XII, Section 12.8 - If a teacher does not desire to return to her position as soon as she is physically able to do so, following the birth of a child or a father wishes to remain home to raise a newborn child, he/she may apply for a child rearing leave of absence under the following conditions: Section 12.8.4 a teacher on child rearing leave may use accumulated sick leave for up to six calendar weeks after giving birth to the child provided that the teacher has worked until it was medically necessary to stop.

### DECISION: (Include brief synopsis of arbitrator's reasoning)

In denying the grievance, the arbitrator states that in Section 12.8.4 "I can only read the reference to using accumulated sick leave as applying only to a female teacher ..."

He also noted that " the negotiators for both the Association and the Board testified without contradiction that the understanding of both parties at the bargaining table was that paid leaves are available only to female employees."

### COMMENTS: (Local negotiator input on effects of decision on system)

The grievant through the assistance of the American Civil Liberties Union Foundation of Maryland is now pursuing the case in the United States District Court.

**ARBITRATION CASE**

**Before**

Montgomery County Council of  
Supporting Services Employees

Louis Aronin  
Name of Arbitrator

v.

May 6, 1996  
Date of Decision

Board of Education of  
Montgomery County

**Issue: (Use exact issue as framed)**

Whether the termination of the grievant is arbitrable? Whether the grievant resigned from employment? Whether the grievant was probationary at time of termination?

**CONTRACT PROVISION(S):**

Article 17, Discipline and Discharge - Section A  
Article 3, Employee Bargaining Unit Defined - Section D

**DECISION: (Include brief synopsis of arbitrator's reasoning)**

Grievance denied. The grievant did resign. The grievant was a probationary employee and had no right to grieve.

**COMMENTS: (Local negotiator input on effects of decision on system)**

The grievant's probationary period was extended for two three-month periods due to poor evaluations. The Grievant wrote letter of resignation, which was left in work place, but not submitted to the Department of Personnel Services.

## ARBITRATION CASE

Before

Teachers Association of Baltimore  
County

M. David Vaughn  
Name of Arbitrator

v.

February 3, 1997  
Date of Decision

Board of Education of  
Baltimore County

### Issue: (Use exact issue as framed)

Did the Board violate the subcontracting provisions of the Master Agreement, Article II, Sections 2.3 and 2.3.1 when it exceeded six full-time teachers and their positions from the Home and Hospital Program, reallocated the positions and teachers to the Special Education Program and hired part-time teachers to perform part of the work which had been performed by the exceeded full-time teachers?

### CONTRACT PROVISION(S):

Article II, 2.3 - The Board shall have the right to subcontract work. However, work that is normally performed by members of the bargaining unit who are covered by this Agreement shall not be subcontracted to organizations and/or workers not covered by this Agreement unless there is a substantial business or professional reason for so doing.

2.3.1 - In addition, if the Board is contemplating subcontracting any bargaining unit work the Association shall be given sufficient advance notice of such plans so that they shall have ample opportunity to meet with the Board before such a decision is put into effect.

### DECISION: (Include brief synopsis of arbitrator's reasoning)

The arbitrator accepted the Association agreement that the placement of non-bargaining unit (part-time) teachers to perform work normally completed by full-time bargaining unit teachers constitutes subcontracting. However, he found that the Board has a legitimate "business or professional reason" in subcontracting out this work and therefore, did not violate Section 2.3 of the Master Agreement. Because this was subcontracting of work, the arbitrator concluded that the Board had an obligation, according to Section 2.3.1, to meet and confer with the Association prior to implementing the decision. The Arbitrator emphasized that this obligation did not mean that the Board had to negotiate this issue.

## ARBITRATION CASE

Before

Teachers Association of Baltimore  
County

E. William Hockenberry  
Name of Arbitrator

v.

April 21, 1995  
Date of Decision

Board of Education of  
Baltimore County

### Issue: (Use exact issue as framed)

Did the Board of Education violate Article XV of the Agreement by the involuntary transfer of the Grievant?

### CONTRACT PROVISION(S):

Article XV Section 15.7 - Involuntary transfers will be made only to prevent disruption of the instructional program, to maintain balance of staffing..... "Balanced Staffing" shall be defined as that which provides teachers who have the necessary qualifications to teach specified subject areas and grade levels and also vary in experience, race, and sex.

### DECISION: (Include brief synopsis of arbitrator's reasoning)

The arbitrator denied the grievance saying that the Board was justified in retaining the less senior teacher who had experience teaching higher level grade 11 and grade 12 English courses. Even though the grievant had experience teaching English classes, the Arbitrator agreed that he could not maintain the instructional program at the same level of quality.

### COMMENTS: (Local negotiator input on effects of decision on system)

The case has given us the confidence to make transfer decisions based on this balanced staffing clause instead of the section calling for involuntary transfers by the least senior teacher.

## ARBITRATION CASE

Before

Montgomery County Education  
Association

Robert J. Ables  
Name of Arbitrator

v.

September 7, 1996  
Date of Decision

Board of Education of  
Montgomery County

**Issue: (Use exact issue as framed)**

Union alleged grievant was transferred from Assessment Specialist position to itinerant teacher because she did not retire at end of 1994-95 school year, criticized supervision, and untimely notice of new assignment.

**CONTRACT PROVISION(S):**

Article 10, Unit Member Assignment  
Article 12, Involuntary Transfers

**DECISION: (Include brief synopsis of arbitrator's reasoning)**

Grievance denied on all counts. Positions in question were both teacher level positions and movement was deemed as reassignment rather than transfer

## ARBITRATION CASE

Before

Teachers Association of Anne  
Arundel County

Leon B. Applewhaite  
Name of Arbitrator

v.

May 4, 1996  
Date of Decision

Board of Education of  
Anne Arundel County

### Issue: (Use exact issue as framed)

Whether the Board of Education violated Art. 8 of the parties negotiated agreement by not reassigning Myra Cason (special education teacher) to the same position she held at the start of her FMLA leave, upon her return from FMLA leave and by not allowing her to work four days during the summer, as her position would normally permit.

### CONTRACT PROVISION(S):

Article L(8) (10): "Except in unusual circumstances upon return from FMLA leave, a Unite I member will return to his/her position.

### DECISION: (Include brief synopsis of arbitrator's reasoning)

Collective Bargaining agreement violated. Teachers ordered reinstated as Vocational Experience Program (VEP) coordinator and given four days for lost summer work. Arbitrator believed the VEP duties were unique enough to this special education teacher's position that FMLA entitled her to return to those specific duties. Board still believes that this is an overbroad interpretation of "position," as used both in the agreement and in FMLA.

## ARBITRATION CASE

Washington County Educational  
Classified Employees Association

v.

Board of Education of  
Washington County

**Issue: (Use exact issue as framed)**

"The stipulated issue in this proceeding is whether or not classified employees, including both 10-month and 12-month employees, are entitled to holiday pay pursuant to Article 3.7 of the Agreement for work performed on February 19, 1996."

### **CONTRACT PROVISION(S):**

3.7 Pay, Holidays - Employees who are required to work on a regular official holiday (see Article 4.2) receive an additional regular one and one half day's pay. Other non-work days are worked at straight time or for comp time.

4.21 Holidays - Holidays for 12-month employees are: Labor Day, Association Day, Thanksgiving +1, Christmas +1, New Year's Day, Martin Luther King Day, Good Friday, Easter Monday, Memorial Day, July 4, and five (5) other days as determined by the Board.

### **DECISION: (Include brief synopsis of arbitrator's reasoning)**

The grievance is denied. Contract language allows the Board to designate 5 days as holidays, and February 19, 1996 (President's Day) was one of the 5 designated. However, due to bad weather, it was necessary to hold school on that day. The Board "undesignated" February 19 as a contract holiday and in its place designated a day in June after school ended as the 5th day. Ultimately, 10-month employees worked on and were paid for the contracted amount of days. The contract guarantees them no holidays. Twelve-month employees worked the prerequisite amount of days, were paid for the prerequisite number of days and received 17 paid holidays as required in the contract.

### **COMMENTS: (Local negotiator input on effects of decision on system)**

The decision settles an ongoing controversy as to whether or not 10-month employees are promised "holidays". They are not. It also affirms the right of the Board to change the five holidays "as determined by the Board" mid-year as it deems necessary.

ARBITRATION CASE

Before

Montgomery County Council of  
Supporting Services Employees

William M. Edgett  
Name of Arbitrator

v.

April 10, 1996  
Date of Decision

Board of Education of  
Montgomery County

**Issue: (Use exact issue as framed)**

Grievability of disciplinary action based on evaluation. Board contends that action taken because of evaluation can be processed through administrative complaint procedure but not grieved.

Is employee who is promoted to higher level position permanent in position until they receive "permanent status" in position in evaluation process?

**CONTRACT PROVISION(S):**

Article 17, Discipline and Discharge - Section A

**DECISION: (Include brief synopsis of arbitrator's reasoning)**

Grievance denied. Arbitrator ruled that removal from position is not a demotion until permanent status is granted.

**COMMENTS: (Local negotiator input on effects of decision on system)**

This was a major decision for us regarding several pending cases.