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September 7, 1995

Mr. William Middleton
Superintendent
Wicomico County Board of Education
Post Office Box 1538
Salisbury, Maryland 21801

RE: St. Mary's County Board of Education
Coaching Grievance Decision by the Circuit Court

Dear Bill:

Recently, members of this law firm successfully argued to a Circuit Court Judge to enjoin an arbitration proceeding sought by the M.S.T.A. in a coaching case. I am most pleased to enclose a copy of a recently-issued Decision and Order by Judge Briscoe of the Circuit Court for St. Mary's County, in which he has enjoined the arbitration of a grievance filed by the St. Mary's County Education Association over the failure by the Superintendent to agree to the automatic renewal of a long-time coach at one of the County high schools.

Distinguishing the State Board's previous decision in Regala, Judge Briscoe concluded, in no uncertain terms, that coaching assignments are in no way entitled to the trappings of "tenure," and that they cannot, therefore, be guaranteed subject to some form of "just cause" burden whenever a one-year coaching position is discontinued for the following school year. The Court then directed the entire issue of the arbitrability of such a grievance to be decided by the State Board of Education using the traditional balancing test described in the Hubbard scope-of-bargaining decision by the Maryland Court of Appeals.

What made this case a good one on its facts is the unequivocal language contained in each St. Mary's County coach's extra-duty contract, to the effect that such contract is only good for the one school year, and that after its expiration "neither party had any obligation to the other for any subsequent school year."

It will be interesting to see how this case proceeds before the State Board of Education, and whether the State Board

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will have the courage to utilize this case as an appropriate opportunity to reaffirm Judge Briscoe's assessment of coaching positions in the same way, i.e., as not entitled to tenure on a year-to-year basis.

We will be happy to keep you posted as to the future development of this case.

Sincerely yours,



Leslie Robert Stellman

LRS:mee
Enclosure
485.ltr

BOARD OF EDUCATION OF
ST. MARY'S COUNTY
P.O. Box 343
Leonardtown, Maryland 20650

Plaintiff

v.

EDUCATION ASSOCIATION OF
ST. MARY'S COUNTY, INC.
P.O. Box 640
Lexington Park, Maryland 20653

Serve on:
Walter S. Levin, Esquire
Resident Agent
344 North Charles Street
Baltimore, Maryland 21201

Defendant

* * * * *

IN THE CIRCUIT COURT

FOR

ST. MARY'S COUNTY

Case No. CA 95-563

FILED
SEP - 1 1995
CIRCUIT COURT
FOR
ST. MARY'S CO., MD.

OPINION AND ORDER

This case comes before the Court on the Board of Education of St. Mary's County's application for an injunction to stay arbitration proceedings concerning a contract dispute between a teacher and the St. Mary's County Board of Education. Thomas Murray, an English teacher at Leonardtown High School, entered into a one-year agreement (the "Coaching Agreement") with the Board of Education of St. Mary's County (the "Board") to serve as an assistant football coach for the 1994-1995 school year only. There was no Coaching Agreement for the 1995-1996 school year.

In February of 1995, the Board posted a notice inviting interested employees to apply for certain coaching positions at Leonardtown High School, including an assistant football coach position. Although Murray was free to apply, he declined to do so. Murray instead filed a grievance under the negotiated collective

bargaining agreement between the Board and the Education Association of St. Mary's County, Inc. ("EASMC"). Murray alleged that by advertising for the assistant football coach position for the 1995-1996 school year, the Board had "violated the intent and meaning of the Negotiated Agreement by reducing me in compensation without just cause."

Edward Weiland, the principal of Leonardtown High School, responded to the grievance by determining that the issue was non-grievable, that Murray had not been reduced in compensation and that there was no violation of the negotiated agreement. The EASMC pursued the grievance to the next administrative level where Dr. Joan D. Kozlovsky, Superintendent of St. Mary's County Public Schools, denied the grievance and further indicated that the matter was not subject to arbitration. Dr. Kozlovsky did inform Mr. Murray that he had the right to appeal Mr. Weiland's decision administratively in accordance with Md. Code Ann., Educ. 4-205(c).

However, rather than pursuing the appellate process prescribed in Md. Code Ann., Educ. 4-205(c), the EASMC filed a Demand for Arbitration with the American Arbitration Association. The EASMC asserts that the underlying dispute in this case is arbitrable. The American Arbitration Association noted that an issue of arbitrability exists, but concluded that this issue can be determined by the arbitrator. The Board's position is that, as a matter of law, questions of arbitrability may only be decided by the Maryland State Board of Education (the "State Board") and may not be decided by an arbitrator. Although Dr. Kozlovsky notified the American Arbitration Association that the Board could not

matters of educational policy may be made the subject of collective bargaining and arbitration. In Dorchester County, the county board appealed from a circuit court order denying a stay of arbitration in a dispute concerning teachers' certificates. Consolidated with that case was an appeal by the Board of Education of Garrett County from a circuit court decision refusing to vacate an arbitrator's decision on a class size issue. The Court of Appeals remanded both cases holding that "the Circuit Court for Dorchester County should order a stay of arbitration , and ... the Circuit Court for Garrett County should grant the Petition to Vacate the Arbitration Award." Id. at 792. Concluding that the State Board of Education has "jurisdiction to determine whether particular issues fall within the statutory authorization for collective bargaining", Id., the Court held that the teachers must first exhaust their administrative remedies before the State Board before going to arbitration.

The Court recognizes that the State Board has previously held that a decision not to reappoint a coach may be subject to arbitration. Regala v. Charles County Board of Education, 5 Op. MSBE 319 (1989). However, this case is clearly distinguishable from Regala because the issue in this case is whether a teacher who enters into a one-year coaching agreement has tenure in his coaching assignment despite contractual language limiting the term of his assignment to a single school year. Murray's Coaching Agreement clearly provides that its duration is for one year only and that after the expiration of the term, neither party had any obligation to the other for any subsequent school year. There is

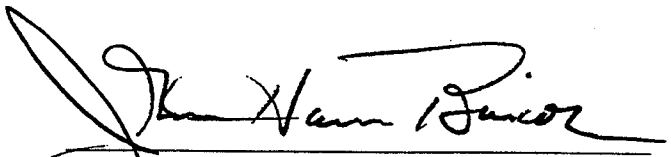
legally participate in the arbitration proceedings because the underlying dispute is inarbitrable, the American Arbitration Association declined to halt the proceedings. Therefore, the Board filed a Petition to Stay or Enjoin Arbitration in this Court until such time as Mr. Murray exhausts his remedies before the State Board and the State Board renders a decision as to whether Murray's dispute is arbitrable.

This Court finds that the arbitration proceedings should be stayed until such time as Murray exhausts his available administrative remedies before the State Board and the State Board determines whether the dispute is arbitrable. In Board of Education of Carroll County v. Carroll County Education Association, 53 Md. App.355 (1982), the Court of Special Appeals held that the responsibility to determine tenure was delegated exclusively to the local boards of education and that the local boards could not legally negotiate or delegate that authority through the collective bargaining process to an arbitrator. In this case Murray seeks to have an arbitrator decide that a coaching assignment for one school year effectively creates a "tenure" right in the coaching position for the remainder of Murray's teaching career. This Court finds that the Carroll County case as well as Md. Code Ann. 6-201 vests the Board with exclusive authority over teacher assignments and tenure determinations which authority may not be negotiated away or delegated to an arbitrator.

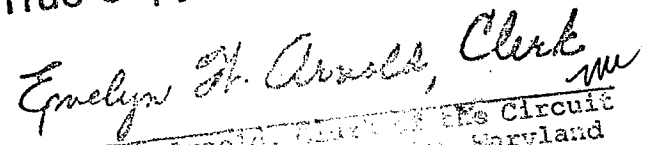
Similarly, in Board of Education for Dorchester County v. Hubbard, 305 Md. 774 (1986), the Court of Appeals held that the State Board has primary jurisdiction over the question of whether

nothing in the Regala decision indicating that similar contract language existed. The issue in Regala was whether a coach can be relieved of his duties without just cause.

The Court finds that an issue of arbitrability does exist in this case. However, the American Arbitration Association does not have the authority to decide the issue of arbitrability. The State Board has primary jurisdiction to determine questions of arbitrability in the sector of public education and therefore it is the State Board who should decide whether the dispute presented herein may be submitted to arbitration or must be handled through the administrative appeal process set forth in Md. Code Ann., Educ. 4-205(c). It is therefore ORDERED, this 1st day of September 1995 that the EASMC shall stay the arbitration proceedings initiated on Murray's behalf until such time as Murray exhausts his available administrative remedies before the State Board and the State Board determines that Murray's dispute is arbitrable.


Judge John Hanson Briscoe

True Copy Test


Evelyn W. Arnold, Clerk of the Circuit
Court for St. Mary's County, Maryland