

# **Merit System Protection Board Annual Report FY 1991**

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Robin Gerber, Vice Chairperson  
Angelo M. Caputo, Associate Member**

**Executive Secretary:**

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**June 30, 1991**

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1991  
ANNUAL REPORT OF THE  
MONTGOMERY COUNTY  
MERIT SYSTEM PROTECTION BOARD

COMPOSITION OF THE MERIT SYSTEM PROTECTION BOARD

The Merit System Protection Board is composed of three members who are appointed by the County Council, pursuant to Article 4, Section 403 of the Charter of Montgomery County, Maryland. Board members must be County residents, and may not be employed by the County in any other capacity. One member is appointed each year to serve a term of three years.

The Board members in 1991 were:

Anthony W. Hudson - Chairman (Appointed 1/89)  
Robin Gerber - Vice Chairperson (Appointed 1/90)  
Angelo M. Caputo - Associate Member (Appointed 1/91)

DUTIES AND RESPONSIBILITIES OF THE MERIT SYSTEM PROTECTION BOARD

The duties of the Merit System Protection Board are contained in Article 4, Merit System and Conflicts of Interest, Section 404, Duties of the Merit System Protection Board, of the Charter of Montgomery County, Maryland; Article II Merit System, Chapter 33, of the Montgomery County Code; and Section 1-12, Merit System Protection Board of the Montgomery County Personnel Regulations, 1986.

Section 404, Duties of the Merit System Protection Board, states as follows:

"Any employee under the merit system who is removed, demoted or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require.

If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law."

Section 33-7. County Executive and Merit System Protection Board Responsibilities, Article II, Merit System of the Montgomery County Code, defines the Merit System Protection Board responsibilities as follows:

"(a) Generally. In performing its functions, the Board is expected to protect the merit system and to protect employee and applicant rights guaranteed under the merit system, including protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions demonstrated by the facts to be proper, and to approach these matters without any bias or predilection to either supervisors or subordinates. The remedial and enforcement powers of the Board granted herein shall be fully exercised by the Board as needed to rectify personnel actions found to be improper. The Board shall comment on any proposed changes in the merit system law or regulations, at or before public hearing thereon. The Board, subject to the appropriation process, shall be responsible for establishing its staffing requirements necessary to properly implement its duties and to define the duties of such staff."

". . .(c) Classification Standards . . . The Board shall conduct or authorize periodic audits of classification assignments made by the Chief Administrative Officer and of the general structure and internal consistency of the classification plan, and submit findings and recommendations to the County Executive and County Council."

"(d) Personnel Regulations Review. The Merit System Protection Board shall meet and confer with the Chief Administrative Officer and employees and their organizations from time to time to review the need to amend these Regulations."

"(e) Adjudication. The Board shall hear and decide disciplinary appeals or grievances upon the request of a Merit System employee who has been removed, demoted or suspended and in such other cases as required herein."

"(f) Retirement. The Board may from time to time prepare and recommend to the Council modifications to the County's system of retirement pay."

"(g) Personnel Management Oversight. The Board shall review and study the administration of the County classification and retirement plans and other aspects of the Merit System and transmit to the Chief Administrative Officer, County Executive and the County Council its findings and recommendations. The Board shall conduct such special studies and audits on any matter relating to personnel as may be periodically requested by the County Council. All County agencies, departments and offices and County employees and organizations thereof shall cooperate with the Board and have adequate notice and an opportunity to participate in any such review initiated under this Section."

"(h) Publication. Consistent with the requirements of the Freedom of Information Act, confidentiality, and other provisions of law, the Board shall publish, at least annually, abstracts of its decisions, rulings, opinions and interpretations, and maintain a permanent record of its decisions."

"(i) Public Forum. The Board shall convene at least annually a public forum on personnel management in the County Government to examine the implementation of Charter requirements and the Merit System Law."

Section 1-12, (b) Audits, Investigations and Inquiries, of the Montgomery County Personnel Regulations, 1986 states:

"The Merit Board shall have the responsibility and authority to conduct audits, investigations or inquiries to assure that administration of the merit system is in compliance with the Merit System Law and these regulations. The results of each audit, investigation or inquiry shall be transmitted to the County Council, County Executive, and Chief Administrative Officer with appropriate recommendations for corrective action necessary."

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DEMOTION

Case No. 90-29

An employee appealed the decision of the Transportation Department demoting him from Workforce Leader III to Workforce Leader II.

The case was settled prior to the scheduled hearing and the Board closed the case.

DEMOTION

Case No. 90-36

An employee appealed a decision of the Department of Fire/Rescue Services demoting him from the rank of Lieutenant to Sergeant.

The record revealed that the appellant was temporarily promoted effective April 10, 1988 to the rank of Lieutenant with no vested rights to the permanent promotion. Absent another personnel action making the promotion permanent, the appellant would be returned to the position previously occupied. The return occurred on May 6, 1990.

The Board decided that termination of a temporary promotion is not a demotion and cannot be directly appealed. The appellant could file a grievance pursuant to Section 28 of the Montgomery County Personnel Rule. Therefore, the appeal was denied.

APPEALED TO THE CIRCUIT COURT BY APPELLANT

DEMOTION

Case No. 91-12

A Transportation Department employee appealed from the decision of the Chief Administrative Officer demoting him from Equipment Operator III, Grade 15 to Public Service Worker II, Grade 8. The County and the appellant settled the matter and the Board closed the case.

## DISMISSAL/TIMELINESS

### Case No. 91-14

A Department of Liquor Control employee appealed from the decision of the Department's Director dismissing him from employment.

The appellant asked the Board to resolve the question of the validity of a Settlement Agreement dated September 29, 1989 in which appellant waived his right to file suit or appeal "in any way or in any forum if the County dismissed (appellant) for failure to comply with or pass the testing as provided in paragraph #3 of this agreement."

The County asked the Board to decide the threshold question of whether appellant's appeal was timely filed.

The Board decided that the appellant's appeal was untimely, agreeing with the County that appellant had sufficient notice of his appeal rights. The Board also found that the waiver contained in the Settlement Agreement could not be used as an excuse for failure to file a timely appeal, and that appellant's doubts as to the authority of the Board to decide the validity of the Settlement Agreement are not sufficient justification for failure to file a timely appeal.

Therefore, the County's motion to dismiss appellant's appeal to the Board was approved.

## DISMISSAL

### Case No. 91-17

A Liquor Control Department employee appealed his dismissal for violating Departmental Procedures, Personnel Regulations and his Job Re-Entry Agreement. The County and the appellant settled and the Board closed the case.

**DISMISSAL**

**Case No. 91-40**

A Transportation Department employee appealed the decision of the Department's Director, dismissing him from County employment for violating the terms and conditions of a settlement agreement executed between the appellant and officials of Montgomery County dated November 28, 1990. The appellant failed to provide the Board with the specific information required by Section IV, Pre-Hearing Requirements of the Hearing Procedure. The case was closed.

**CLASSIFICATION/GRIEVABILITY**

**Case 90-31**

A Fire Department employee appealed the decision of the Personnel Office denying the processing of her grievance.

The appellant filed a grievance on February 9, 1990 and attached a statement which referred to the decision of the Chief Administrative Officer concerning Administrative Review No. 193 which retained the grade and title of her present position. This matter is now before the Circuit Court of Maryland.

The County subsequently on March 14, 1990 concluded that "... the issue is a classification issue. The allegations of unequal treatment in the appeal spring from, and are inseparable from the appellant's claim that her position is not properly classified..". Indeed, the relief sought by the appellant includes reclassification of her position, consistency in application of classification principles among similar positions, retroactive compensation, hearing and legal fees. The appeal was received by the Board on April 3, 1990.

The Board decided that the principal issue before it concerned classification of the appellant's position. Thus the matter is not grievable under present rules and regulations as the County had indicated to the appellant.

The decision of the Personnel Office was sustained.

**APPEALED TO THE CIRCUIT COURT BY APPELLANT**



## COMPENSATION/GRIEVABILITY

### Case No. 91-03

A Fire/Rescue Services employee filed an appeal from the decision of the Chief Administrative Officer not to accept his grievance and provide him the relief he requested.

The appellant was seeking compensation for time spent in certain training classes on personal time. A hearing on the grievance was conducted before a fact-finder on June 1, 1990. The basic facts in his grievance were not materially disputed.

In consideration of the appellant's appeal, the Board on October 4, 1990 asked the Personnel Director to document the correction of attendance records of three other employees to show that they attended training courses required for promotion on their own time and were not compensated for their attendance.

On November 8, 1990 the Personnel Officer informed the Board that other employees attending the training class in question did so on their own time.

The Board determined that the appellant was not entitled to be compensated for time spent in taking the courses in question. The hearing examiner's conclusion and recommendation were sustained by the Board and the appeal was denied.

GRIEVANCE/GRIEVABILITY/HANDICAPPING CONDITION

Case No. 90-25

An Information and Telecommunications Department employee appealed the decision of the Personnel Office denying the processing of his grievance.

The record was clear and the appellant noted on January 12, 1990 that the reason he was given an official reprimand was because of his handicapping condition. Section 4.6(a) of Administrative Procedure 4-4, Grievance Procedure, as amended September 15, 1989.

Section 4-2 of the Personnel Regulations allows such complaints to be filed directly with the HRC, and they are not considered grievable under the County Grievance Procedure.

It was the decision of the Board that the Human Relations Commission was the appropriate administrative review in the matter which the appellant raised. Accordingly, the decision of the County was sustained.

APPEALED TO THE CIRCUIT COURT BY APPELLANT

GRIEVANCE/GRIEVABILITY/POSITION CLASSIFICATION

Case No. 90-34

An Equipment Manager filed an appeal challenging the County's failure and refusal to remedy an alleged pay inequity between his position and the same position and grade elsewhere within the same Department.

Differences in pay at a grade are functions of original salary negotiations and subsequent pay adjustments allowed under County rules and regulations.

The Board found no misapplication of rules and regulations which would require a correction of equivalent pay within the same grade. Therefore, the decision of the Chief Administrative Officer was sustained, and the appeal denied.

## GRIEVANCE/GRIEVABILITY

### Case No. 90-39

Ten Police Department employees appealed the decision of the Labor/Employee Relations Manager, rejecting their formal written complaints as not constituting a grievance. The appeal was subsequently withdrawn by the appellants.

## GRIEVANCE/INVOLUNTARY TRANSFER

### Case No. 90-40

The Merit System Protection Board reviewed the written record on the appeal filed on behalf of a Transportation Department employee from the decision of the Chief Administrative Officer (CAO) denying the appellant's grievance concerning an involuntary transfer on May 5, 1989. The CAO's decision was based on three days of hearings before a fact finder. The transfer in this appeal was from one shop supervisory job to another in the Department of Transportation.

The appellant had asked for a hearing because of a subsequent transfer in July, 1990 which had characteristics raising questions about the underlying reasons for the May, 1989 transfer which was considered in this appeal. The only matter before the Board was the transfer for which an administrative hearing was held. The decision of the Board was based on the record.

The Board found the examiner's report to be thorough and issues had been clearly presented; six witnesses appeared for each side as well as the grievant. The examiner concluded that the appellant had not "...established that his transfer was either arbitrary and capricious, based on retaliation or discrimination, or was otherwise improper."

It was the opinion of the Board that management had reasonably and believably responded to the appellant's allegations. The appellant asserted that he was being "set up" for an ultimate firing. The Board could not look that far down the road. The Board did not find for the appellant in this transfer.

**GRIEVANCE/OPEN DOOR REVIEW PROCEDURE**

**CASE No. 90-42**

A Transportation Department employee appealed the decisions of the Personnel Office and the Chief Administrative Officer denying his grievance which concerned violations of Administrative Procedure 4-4, Grievance/Open Door Review Procedure.

After a review of the record it was the decision of the Board that the County complied with Administrative Procedure 4-4, and granted the appellant the relief allowable by removing questioned performance appraisal forms and related documents from all records and files. Accordingly, the Board sustained the decision of the County and the appeal was denied.

**GRIEVANCE/LEOBR**

**CASE NO. 90-43**

Several Police Department employees appealed the decision of the Personnel Office denying the processing of their grievances.

The appellant argued that his complaints concerning the denial of a promotion by the Chief of Police should be processed under the County's Administrative Procedure 4-4, Grievance Procedure, and the County argued that the appropriate forum for the appellants' complaints were the Law Enforcement Officers' Bill of Rights (LEOBR) proceedings.

The Board found that the decision of the Personnel Director referred this matter to the LEOBR was not within the spirit and intent of the Policy Administrative Procedure 4-4, Grievance Procedure, Sections 3.0, 3.1 and 3.2.

The Board remanded the grievance back to the Personnel Office for processing in accordance with established grievance procedures.

**GRIEVANCE/GRIEVABILITY/DISABLING CONDITION**

**Case 91-02**

A Police Department employee appealed the decision of the Personnel Office denying the processing of his grievance.

The record was clear and the appellant noted on May 4, 1990 that the reason for his grievance was because he was not promoted to the rank of Police Lieutenant due to his eye disability. Section 4-2 Appeals of the Personnel Regulations states:

If an individual believes the County has violated the policy with respect to race, color, religion, national origin, sex, marital status, age or handicapping condition, an appeal may be filed with the County's Human Relations Commission in accordance with the procedures established in Chapter 27, "Human Relations and Civil Liberties," of Montgomery County Code 1984, as amended. Alleged violations involving political affiliation and other non-merit factors, must be filed with the Merit System Protection Board in accordance with Section 29 of these regulations.

It was the decision of the Board that the Human Relations Commission was the appropriate administrative forum for the matter which he raised. Accordingly, the decision of the County was sustained.

**APPEALED TO THE CIRCUIT COURT BY APPELLANT**

## GRIEVANCE /SELECTION PROCESS

### Case 91-05

A Police Sergeant appealed from the decision of the Chief Administrative Officer denying his grievance and the relief requested.

The appellant alleged that Police Department Position Vacancy Announcement (89-03), dated January 24, 1989, failed to sufficiently inform applicants that the selection panel was considering the applicants' investigative skills in its decision.

Based on the appellant's tenure with the Police Department, the Board believes that the appellant knew or should have known that experience in the investigative area was a critical element for the position of Narcotics Tactical Squad Supervisor in the Special Investigations Division.

The Board found that the use of two supervisory/management level employees for a selection panel was not a violation of policy. The Board accepted the decision of the fact finder, and the appellant's appeal was denied.

## GRIEVANCE

### Case No. 91-06

An Information Systems and Telecommunications Department employee filed several appeals from the decisions of the Personnel Director and the Labor/Employee Relations Manager denying her grievances and the relief requested.

The appeals were consolidated and the Board addressed the following issues: (Alleged Harassment), (Conduct of Performance Evaluations), (Performance Evaluation not signed) and (Delay of Service Increment).

Despite the numerous allegations raised by the appellant, the Board found the consolidated appeals to be devoid of merit. The Board did not believe it was appropriate to use this forum for complaints which were non-meritorious and which could have been more satisfactorily resolved within the appellant's department.

The decision of the Personnel Director and the Labor/Employee Relations Manager was sustained and the appellant's appeal was denied.

**GRIEVANCE/GRIEVABILITY/TIMELINESS**

**Case No. 91-07**

Three Environmental Protection Department employees appealed from the decision of the Labor/Employee Relations Manager concerning the filing of their grievances. The record showed that:

1. All of the appellants were members of the Office, Professional and Technical (OPT) Bargaining Unit.

2. The County Government has a collective bargaining agreement with Montgomery County Government Employees Organization/Local 400 covering all positions in the (OPT) bargaining unit. This agreement gives exclusive representation rights for employees in the unit on all matters covered by the contract.

3. Promotional rights are covered by this contract.

After review of applicable law, it was the judgment of the Board that the issue was covered by the Collective Bargaining Agreement. Since all of the appellants were members of the (OPT) unit, they were required to use the negotiated grievance process contained in Section 10.3 of the agreement, and could not file a grievance under the Merit System. The Board additionally noted that their complaint was not timely filed. Their appeal to the Board would, therefore, have been denied on that basis.

**GRIEVANCE**

**Case No. 91-08**

A Fire/Rescue Services employee filed an appeal from the decision of the Labor/Employee Relations Manager, not to accept his grievance for processing under Administrative Procedure 4-4, Grievance/Open Door Review Procedure. The appeal was subsequently withdrawn by the appellant.

## GRIEVANCE/PROMOTION PROCESS

### Case No. 91-09

Six (6) Police Department employees filed an appeal from the decision of the Chief Administrative Officer denying their grievances and the relief requested.

The Appellants are three Sergeants and three Lieutenants in the Montgomery County Police Department who grieved the process of promotion as implemented by the Department and upheld by the Chief Administrative Officer based on a fact finding hearing held on May 1 and 2, 1990.

The grievants contended that the selection process used by the Police Chief for promoting candidates from the eligible lists was "not based on merit" as required by the Montgomery County Charter and Code.

The fact finder found that:

(a) All of the candidates for promotion to the rank of Lieutenant and Captain were known personally by the Police Chief and all the members of his ranking staff;

(b) There were extensive discussions at the meetings of the ranking staff which were presided over by the Chief and which preceded each of the promotions made from the eligible lists regarding the merits of all of the candidates, their length of service, time in rank, performance evaluations, disciplinary actions, if any, prior work experience, and "how they could fit into the positions that were vacant";

(c) Although the controlling basis for selection was to promote the candidates best qualified to fill the vacant positions, in fact the candidates who were promoted, with but a few exceptions, had higher examination scores and totals than the grievants; and

(d) no evidence was adduced that the grievants were more qualified or had better abilities, knowledge and skills than the candidates who were promoted.

The fact finder concluded that the selection process utilized by the Police Chief to promote the candidates from the eligible lists who were best qualified to fill the particular positions that were vacant and available clearly complied with the provision of Section 401 of the Montgomery County Charter.



The appellants took issue with the fact finder's report. Their argument was not that appellants were more qualified, but that the process used was undisclosed and imprecise. The appellants argue that they are unable to fully articulate or understand the exact reason for their non-selection. Interestingly, the appellants did not seek corrections of any improprieties or rescissions of promotions made. They simply sought the promotions which the process did not grant to them and questioned why the examiner did not find sufficient cause to reach conclusions in their favor.

The Board was not persuaded. A review of the record did not reveal that the selections of candidates were so flawed that law and principles were violated. Nor did the Board find that the non-selections of the appellants were arbitrary or capricious actions with sufficient cause to render governing law, rules, and principles meaningless. The appeal was denied.

#### GRIEVANCE/HARASSMENT/RETALIATION

##### Case No. 91-10

A Transportation Department employee filed a grievance from the decision of the Personnel Director concerning the processing of his grievance.

After a review of the record and pertinent regulations, the Board found that an employee is protected when exercising his/her rights under Administrative Procedure 4-4, Section 4-8, Freedom from Harassment and Retaliation.

This section is not limited to filing a grievance, as stated by the Personnel Director. The appellant's reference to Administrative Procedure 4-4, Section 4-8 was adequate to state a claim under the provision of that section.

Since the Personnel Director stated his case in the alternative, and by virtue of the investigation conducted by Personnel, the Board accepts the complaint as having been processed and denied. The Personnel Director was directed to send the grievance to the next step.

## GRIEVANCE/CHOICE OF REPRESENTATIVE

### Case No. 91-13

Six supervisory Police Department employees appealed the decision of the Chief Administrative Officer refusing to allow the Chairman, Grievance Committee, Montgomery County Police Association (MCPA) and President of the Fraternal Order of Police, Lodge 35 (FOP) to represent them in a grievance matter. The County relied on Section 28-1 Grievances of the Personnel Regulations, as amended August 25, 1988.

The County did not dispute the fact that the Chairman of the Grievance Committee MCPA was the chosen representative of the appellants, that he held the position as Chairman of the Grievance Committee MCPA, nor that the MCPA is not a labor organization certified under County collective bargaining laws.

The Board believed that the right of appellants to freely choose their representative was of the highest order of importance. This right was both the primary focus of Section 28-1 and a basic right of citizenship. The limitation of this right is meant to be narrowly construed, as demonstrated by the legislative history. The mere fact that the Chairman served in an official capacity in a labor organization which represented employees under the supervision of appellants could not itself serve to abrogate the fundamental right to representation of their choice guaranteed to appellants.

The Board's opinion that the County's fear of a failure by appellants to appropriately discharge their disciplinary duties due to a conflict of interest arising from the Chairman's representation is theoretical and had no basis in the material before the Board. Unless the County could demonstrate otherwise, the Board assumed that appellants will execute their professional responsibilities as professionals. If they did not, the County has disciplinary options available other than peremptorily denying appellants their right to free choice of representation.

The Board found that appellants' choice of the Chairman, Grievance Committee, MCPA, as their representative is protected by Section 28-1, and does not constitute representation by a labor organization as described in that section.

### APPEALED TO THE CIRCUIT COURT BY COUNTY

GRIEVANCE/RETALIATION/HARASSMENT

Case No. 91-16

A Fire Department employee appealed the decision of the Personnel Director concerning a complaint he filed under Section 4.8 of Administrative Procedure 4-4, Grievance Procedure, with regard to retaliation/harassment.

The matter before the Board concerned allegations of retaliation/harassment which were reviewed by the Personnel Director.

In the appellant's appeal, he raised issues regarding the promotion process. A retaliation claim under Section 4.8 was not appropriate to bring up procedural issues. The grievance procedure was appropriate.

When the appellant provided specifics concerning retaliation/harassment, these charges were discussed individually by the Personnel Director. Yet, in the appellant's January 5, 1991 letter to the Board, he stated that he was seeking relief on two issues: "...1. Vacant position not advertised. 2. Selection and assignment of candidates."

The appellant stated he would "...clear up some issues reiterated by the Personnel Director in his letter concerning his union activities and other factors." What followed in his letter did not dispute the finding that retaliation or harassment had not been substantiated. The Board did not find evidence of retaliation/harassment beyond his assertions.

The appeal was denied and the appellant was informed that procedural differences should be raised in the appropriate forum as presented to him earlier.

## GRIEVANCE/PERFORMANCE RATING

### Case No. 91-19

An Information Systems and Telecommunications Department employee appealed the decision of the Chief Administrative Officer on March, 1991, based on his concurrence with the recommendation of a fact finder, on a grievance concerning performance rating and the subsequent five month delay of service increment to May, 1990. The decision was based on a review of the record.

The appellant raised questions concerning work assignments and how they were made and that she was not directly responsible for them. The Board found that the supervisor expected her to deal with higher grade analysts to whom he had given more direct responsibility and accountability. Also, the Personnel Officer in his review earlier, gave her an opportunity to present evidence of specific assignments and no response on this issue was forthcoming.

The Board agreed with the Personnel Officer that her supervisor should have been more forthcoming with the written expectations concerning her work performance prior to October, 1989. The Personnel Officer took this into account in ameliorating the length of the extended waiting period January, 1990 to May 20, 1990. We are not moved to take any further mitigating action. The Board found the fact finder's reaction reasonable under the circumstances and no other procedural inadequacy which would call for corrective action. The appeal was denied.

## GRIEVANCE/GRIEVABILITY/TIMELINESS

### Case No. 91-20

Eight (8) Sheriff Department employees filed an appeal from the decision of the Labor/Employee Relations Manager concerning the grievability and timeliness of their complaint.

The case was settled prior to final Board action and the appeal was withdrawn.

## GRIEVANCE/REPRIMAND

### Case No. 91-22

An Information Systems and Telecommunications Department employee appealed the decision of the Chief Administrative Officer denying her grievance concerning disciplinary action based on excessive use of a County telephone(s) and facsimile equipment.

The CAO adopted the findings and recommendations of the fact finder which reduced the disciplinary action to a written reprimand.

The CAO decided that a written reprimand was more appropriate for the charges of unauthorized use of a FAX machine and excessive use of the County telephone which were proved as described in the fact finder's report. These constitute violations of Section 1-9 General Provisions, Work During Official Hours of the Personnel Regulation covering use of work time and Section 27-2, Disciplinary Actions, Causes for Disciplinary Actions of the Personnel Regulations covering misappropriation (misuse) of County property.

As evidenced in the appeal, the appellant brought up again matters already disposed of by the fact finder in recommending that the original penalty be mitigated. The rule was clear. The purpose of the disciplinary action was clear. Management's actions were carefully reviewed by the fact finder and sufficient undisputed evidence remained as the basis for the reprimand.

The Board understood that any employee who is punished is "singled out" for punishment. However, any punishment meted out must be for causes identified in rule or regulation, made known to employees, and specified in writing.

The Board found that the CAO's decision was based on a carefully documented report from the fact finder which weighed all the evidence presented. The appellant presented little, if any, new factual evidence or information which would cause the Board to doubt the original evidence presented in this case. The appellant did not dispute the facts surrounding the charges against her. Therefore, the Board found the CAO's decision reasonable and appropriate in light of the facts leading to the disciplinary action. The Board did not find a basis to further mitigate or eliminate the penalty. The appeal was denied.

### APPEALED TO CIRCUIT COURT BY APPELLANT

GRIEVANCE/TERMINATION/AFTER LWOP

Case No. 91-23

A former Facilities and Services Department employee appealed the decision of the Personnel Director terminating her employment based on the completion of a period of leave without pay (LWOP) extending beyond one year. Also of concern to the appellant was the discontinuance of her insurance coverage.

The appellant applied for a Service-Connected Disability Retirement which was denied by the County and sustained by the Board. Section 15-4 (a) of the Personnel Regulations provides for a maximum of one year LWOP for an employee.

The record showed that the appellant agreed in 1986 to a grant of LWOP for a period of twelve months. When the Personnel Office later notified the appellant of her termination in 1990, Section 15-4 (a) of the Personnel Regulations were cited as governing. The appellant was also told the conditions under which her health insurance could continue. The Board found no evidence of record, aside from appellant's assertion, that during the pendency of her appeal, she would be maintained as a County employee by extending plan coverage.

The appellant stated in response to the County representations in this appeal that the County did not comply with Section 24, Termination, of the Personnel Regulations. Section 24-2 applies in that management must inform in writing, counsel an employee, and provide adequate time for amelioration of problems prior to termination. The Board concluded that she was informed in writing; she was given an opportunity to call the Personnel Office representatives for assistance in 1986 and 1990; she signed the original grant of one year LWOP indicating agreement in 1986; she seemed to be aware of what the County had been doing and committed itself to do until the end of 1990 concerning her health insurance. The Board did not find non-compliance with Section 24.

In reality, the termination came three years late, although retroactive to 1987 with administrative excusal of the costs due the County for its share of health benefits costs.

The Board found the County's response prudent and reasonable under the circumstance the Board had before it. The appeal was denied.

GRIEVANCE/TRANSFER

Case No. 91-28

A Police Department employee appealed the decision of the Chief Administrative Officer denying the appellant's grievance in which he alleged that he was improperly transferred. In the appeal petition, the appellant argued that the absence of the tape recordings made by the fact finder left him unable to adequately mount an appeal from the fact finder's decision.

The Board agreed that the appellant's ability to present his appeal was adversely affected by the absence of a complete record from the fact finder. The absence of the actual recording of the hearing, from which a transcript could be made, also seriously hampered the Board's decision-making.

The Board did not agree with County's contention that MCPR 29-6 included "relevant reports, papers and documents" but not tape recordings. Transcripts are an ordinary part of a hearing record, and the written word is a transcription of a recording. The Board did not believe that a paper transcript would fall outside the parameters of MCPR 29-6.

The Board ordered that the County select another fact finder and conduct a new hearing.

## GRIEVANCE/RESIGNATION

### Case No. 91-37

A former Police Department employee appealed the decision of the Labor/Employee Relations Manager, refusing to accept a grievance from the appellant.

The record before the Board showed a 1991 memorandum denying a grievance filed on March 5, 1991, concerning the failure of the Director of the Police Department to accept the appellant's resignation. The grievance was filed after the appellant was dismissed on March 1, 1991. The appeal filed on April 1, 1991, dealt only with rescission of the resignation and indicated that the denial on the grievance would be separately appealed to the Board because the appellant was no longer an employee. On April 24, 1991, the Board received the aforementioned appeal with a request for consolidation of the appeals.

In its representations, the County pointed out that the dismissal of the appellant had been appealed to the Circuit Court of Montgomery County bringing together matters concerning the effect of the requested resignation and failure of the Police Director to act on the requested resignation.

The two appeals were consolidated by the Board. A hearing was requested on this matter; however, the Board decided on the record before it.

The consolidated appeal raises the matter of the failure of the Police Director to accept the appellant's resignation. The only way this matter could be raised under the circumstances was via a grievance. The grievance was made after his employment was terminated. The Board agreed with the County that the appellant had no standing to so grieve. The appellant had been dismissed and it was too late to file.

The Board noted that the appeal to the Circuit Court dealt with the dismissal and could reach issues concerning the resignation. The Board did not and would not address these matters in this appeal.

## GRIEVANCE/TIMELINESS

### Case No. 91-38

A Fire Department employee filed an appeal from the decision of the Labor/Employee Relations Manager concerning a grievance that was not timely filed.

The County decided to accept the appellant's grievance for processing and the appellant requested that the Board dismiss the appeal without prejudice. The Board closed the case.



GRIEVANCE/PERFORMANCE RATING

Case No. 91-39

An Information Systems and Telecommunications Department employee appealed her grievance decision concerning alleged violations in her performance evaluation for the period February, 1990 to January, 1991 involving the alleged failure of the Department to provide a timely performance evaluation. The decision is based on the record.

The last formal evaluation was made in May, 1990 in connection with her increment date which is May 20, 1990. The next appraisal would be due in 12 months or May, 1991. The County stated that the January, 1991 appraisal resulted solely from her request.

The appellant charged that she had no interim review; the evaluation was late; she was not counseled; she did not receive written notification of inadequate performance; and that the Chief Administrative Officer did not personally sign the Personnel Action Form changing the increment date.

The Board did not agree with her that there were irregularities in the record. The performance year began in May, 1990, not January, 1990. The evaluation received in Jan/Feb as a draft and then in final form can be considered an interim review since its results, if inadequate, can lead to an adverse personnel action after May, 1991. In the performance appraisal, the Board noted a hand written note from the supervisor who asked for a discussion with the appellant. The form had a note on the final page that a performance meeting was held in February, 1991, and that the appellant added no written comments to the form and refused to sign the appraisal form. The supervisor also explained on that appraisal what his expectations were, what deficiencies existed, and how he expected her to deal with those issues and with him during the period until the increment date in May, 1991. Concerning the signature of the Chief Administrative Officer, the Board referenced Sections 10-7, 10-9 and 10-10 of the Personnel Regulations. The Department Head apparently had authority to delay increment dates and the Personnel Officer acted for the Chief Administrative Officer for reassignment of increment dates (see Section 1-4b of the Personnel Regulations; Delegation of Authority is July, 1989.) The Personnel Officer's signature was sufficient to the Board. The appeal was denied.

GRIEVANCE (S) / CONSOLIDATED

CASE NO. 91-42

An Information Systems and Telecommunications Department employee appealed from the decisions of the Personnel Officer and the Labor/Employee Relations Manager denying her grievances concerning the issues listed below:

- A. Harassment and retaliation for the use of copy machine;
- B. Alleged retaliation, harassment and discrimination concerning an occupational class maintenance review;
- C. Acts of harassment/retaliation and violation of County Regulations 8-2, 8-3, 8-4 and the Grievance Procedure;
- D. Written reprimand; and
- E. Acts of harassment/retaliation and violation of County Regulations 8-2, 8-3, 8-4 and the Grievance Procedure.

The Board's decision was based on a review of the record.

Issue A filed November 30, 1990 concerned appellant's supervisor's efforts to control use of County office equipment for legitimate purposes. The Board did not view those efforts as harassment and retaliation. The Board addressed those matters in a previous appeal (Case #91-22) and the appellant received the Board's decision (February 26, 1991) which sustained the County's action.

Issue B concerned allegations that appellant's supervisor's failure to do certain things which would assist her in presenting information in a classification maintenance review constituted retaliation/harassment and discrimination. The Board agreed with the explanation provided by the County on this issue.

Issue C concerned allegations that appellant's supervisor did not directly supervise her, did not counsel her nor encourage her, did not adhere to time limits in carrying out personnel procedures, and the County did not adhere to time limits in processing her grievances. No new information was provided by the appellant which would cause the Board to overturn any actions taken by the County on this issue.

Issue D concerned the appellant's desire to have the Board stay an official reprimand. The Board reviewed the merits of the matter leading to the reprimand. This matter had been appealed by the appellant to the Circuit Court. There was no basis under Section 29-7 to stay the action based on the file before the Board.

Issue E concerned a proposed demotion action based on performance deficiencies. The appellant discounted the documentary evidence submitted by the County and indicated that many memos were evidence of harassment. The Board did not grant relief on the basis of the record before them.

The appeal of these matters were denied.

#### GRIEVANCE/PROMOTION

##### Case No. 91-43

A Fire/Rescue Services Department employee appealed from the decision of the Chief Administrative Officer, denying the relief he requested in his grievance.

The Board concurred with the fact finder's determination that there was no basis for making appellant's promotion retroactive. The Board noted that the settlement reached in another grievance case was not relied upon to reach this determination.

The decision of the Chief Administrative Officer was sustained and the appeal was denied.

**MEDICAL RATING**

**Case No. 91-25**

An applicant appealed the "not acceptable" medical rating received for the position of Police Officer Candidate.

The appellant was given a pre-employment medical examination in October, 1990 and was asked to submit a report from her medical doctor regarding use of a medication including diagnostic treatment and prognosis for fitness for duty as a Police Officer.

The appellant's doctors indicated that fitness as a Police Officer was dependent upon the appellant's continuing to take medication.

As a result, the County Medical Examiner rated appellant "Not Acceptable" because of a chronic psychological condition controlled by medications.

An individual's ability to perform satisfactorily is a professional judgment call, and based on his direct knowledge and experience with the County, the Board believes the Employee Medical Examiner's ruling was reasonable. Therefore, it was the decision of the Board that the "Not Acceptable" medical rating be, sustained because of the ongoing treatment and medication. The appeal was denied.

**MEDICAL RATING**

**Case No. 91-30**

An applicant appealed the "Not Acceptable" medical rating received for the position of Fire Fighter. The applicant decided not to pursue the appeal and the case was closed and the appellant was notified.

## PROMOTION

### Case No. 89-23

The Circuit Court for Montgomery County, Maryland ordered the Board to hold a hearing to determine whether the participation of an employee (other than the appellants) in the 1988 Promotional Examinations for the rank of Master Firefighter/Rescuer and Sergeant was proper.

The original grievances were filed by four appellants concerning eligibility to be considered for promotions from an eligibility list which was based upon the scores achieved by another employee who had the highest overall score on the examination. His high score was used in determining the "curve" which was applied to other candidates, including the appellants. If this employee had not been entitled to take the examination, all four scores of the appellants would have qualified them to be eligible for placement. Additionally, the employee was allowed to apply after the closing date for applications in resolution of a grievance he submitted. This employee was made a party upon motion of the appellants.

The hearing was held in July, 1990 and after the County had put its case on the record and the employee was given an opportunity to provide testimony, the parties attempted a settlement of the matter. This was not possible and the Board made a decision.

Two issues were raised by the appellants concerning Section 5.3 of the Personnel Regulations and Merit System Protection Board, (MSPB) decision number 85-435. It was the Board's opinion that the County apparently did not follow the procedure in Section 5.3, however, this did not vitiate the principal of promoting the best qualified candidates. It was also the opinion of the Board that the language relied upon by appellants in MSPB Case Number 85-435 was dicta.

It was the decision of the Board that the employee who had been allowed to compete and participate should not be harmed as a result. Equity demands that the score of the employee, the most qualified candidate, be retained and that the other scores be re-graded excluding the employee's score. The County was directed to use the next highest score and be guided by the Grievance Examiner's report to determine what the grievants' score would be. After the scores had been recomputed, the Board's stay on promotion actions was lifted.

PROMOTION

Case No. 91-01

Seven Police Department employees appealed from the decision of the Chief Administrative Officer, concerning the disposition of their grievances.

The appellants alleged that the 1989 Lieutenant's Promotion Examination was not constructed and administered in a fair and equitable manner and that information regarding scoring of the examination was withheld from some of the appellants.

After a review and discussion of all of the information submitted concerning this appeal, the Board did not find support for the argument that the 1989 Lieutenant's Promotion Examination process was flawed or that the appellants were denied an equal opportunity to compete. The fact finder's recommendation was accepted. The Chief Administrative Officer's disposition was sustained, and the appeal was denied.

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RETIREMENT CREDITS

Case No. 90-33

A Liquor Department employee appealed the decision of the Labor/Employee Relations Manager concerning the purchase of retirement credits.

The Board conducted a hearing and the threshold issue was whether this appeal was filed on a timely basis.

Based upon both the written documentation provided as part of the appellant's hearing submission, as well as the direct testimony, it was determined that the appellant knew or should have known to file an appeal far in advance of when the appeal was actually filed. The 20 day time period began to toll as early as October, 1989. Allowing for the sake of argument that it only began to toll on February, 1990, under either scenario, the filing on March 3, 1990 was untimely. Accordingly, the decision of the Personnel Office that the appellant's initial grievance was not timely filed was upheld. The appeal was denied.

**RETIREMENT/DISABILITY**

**Case No. 90-30**

The County Attorney's Office filed an appeal from the decision of the Prudential Insurance Company of America ruling that a Department of Liquor Control employee was permanently disabled, and his permanent disability qualified as a Service Connected Disability.

The employee was found by the hearing examiner to have a permanent total disability which was service connected. This decision became effective February 1, 1989.

Upon initial review, the Merit System Protection Board requested the parties to provide additional information related to the disability issue. The Board determined that a hearing would be necessary to establish all facts upon which to base their decision.

A Pre-Hearing Conference was held on August 20, 1991. The parties reviewed the issues which the Board had raised with regard to resolving this matter. A hearing was subsequently scheduled.

At its work session on September 10, 1991, the Board determined that further hearing in this case would not be necessary. The preponderance of evidence of the record fully supported a finding in favor of the employee. The Board affirmed the decision of the hearing examiner that the employee was entitled to a Permanent Service Connected Disability Retirement Benefit. The County's appeal was denied.

**APPEALED TO THE CIRCUIT COURT BY COUNTY**

**RETIREMENT/DISABILITY**

**Case No. 90-35**

A Police Department employee appealed the decision of the Administrator denying his application for Service Connected Disability Benefits.

Under Section 33-43 (e) Disability Retirement, Montgomery County Code, in order to be eligible for a Service Connected Disability Retirement, an individual must be "incapacitated for duty as the natural and proximate result of... condition aggravated while in the actual performance of duty..." and "unable to perform the duties of the occupational classification to which assigned at the time disability occurred or a position of comparable status..."

The Board was of the opinion that the appellant's depression and gastrointestinal problems were not service-connected. It was the judgment of the Board that the hearing examiner's decision was supported by substantial evidence in the record. The decision of the Administrator was sustained.

**APPEALED TO THE CIRCUIT COURT BY APPELLANT**



RETIREMENT/DISABILITY

Case No. 90-37

A Firefighter appealed the decision of the Administrator denying his application for Service Connected Disability Benefits.

The issue before the Board was whether to sustain the hearing examiner's decision that the appellant was not totally incapacitated for duty or partially and permanently incapacitated for duty as the natural and proximate result of a condition caused while in the actual performance of his duties.

The appellant began employment with Montgomery County Government as a firefighter in 1973. In 1985, the appellant had a heart attack and after completing an exercise program in December, 1985, his doctors permitted his return to duty.

He returned to work in 1986 and remained employed and fully active as a firefighter until May, 1988. During these two years, the appellant had neither chest pains nor chest tightness and functioned normally as a full-time firefighter.

In May, 1988 the appellant had an episode of chest pains, however, examination revealed that his heart condition was unchanged. He returned to work in a light duty status.

The appellant testified that he was very frightened of having another heart attack and was unable to perform the duties of a firefighter as a result of fear of a potential hazard if he should return to work.

The Board found the record clear that the appellant was physically able to perform as a firefighter. He demonstrated his ability to perform the task of firefighter for approximately two years between the dates of April, 1986 and May, 1988. The appellant believed that fear and anxiety would cause further heart problems if he performed as a firefighter. The appellant's subjective belief, however, does not suffice to qualify him for a Service Connected Disability.

It was the decision of the Board that the appellant did not meet the criteria for a Service Connected Disability Benefit. The Administrator's decision as to the Service Connected Disability Benefit was supported by substantial evidence in the record. Accordingly, the decision of the Administrator was affirmed.

RETIREMENT/DISABILITY

Case No. 90-38

An employee filed an appeal from the decision of the Administrator that he was not entitled to a Service Connected Disability Benefit.

After a review of the record, the Board was concerned about issues raised by the hearing examiner's comments concerning the lack of evidence in this case. In a number of instances, the examiner pointed to missing and potentially useful information. The Board decided in September, 1990, to conduct a hearing in this case to insure that a complete record existed upon which to base its decision.

Upon consideration of the motions filed by the County, the Board reconsidered its decision to conduct a hearing in this case. The Board, instead, remanded this case to the hearing examiner to conduct another hearing to fully develop the record in certain specified areas.

The Board ordered that the rehearing and opinion by the hearing examiner be completed no later than February, 1991.

APPEALED TO THE CIRCUIT COURT BY COUNTY AND APPELLANT

Case No. 90-38 (Continued)

Upon consideration of a joint motion for remand filed by the parties, the Circuit Court ordered that this matter be remanded to the Board for its consideration of the appellant's motion for reconsideration.

The issue before the Board was whether the appellant should receive a Disability Retirement Benefit. After a review of the record, the Board was of the opinion that the preponderance of the evidence of record, including the medical evidence and documented facts, indicated that the appellant was not disabled from his employment. Section 33-43 (e) of the Montgomery County Code, governed. Accordingly, the decision of the hearing examiner was sustained. The appeal was denied.

APPEALED TO THE CIRCUIT COURT BY APPELLANT

RETIREMENT/DISABILITY/REMAND

Case No. 90-41

The Board reviewed the written record on the appeal of a former County employee concerning the failure of the Chief Administrative Officer to respond to her request for interpretation of the County's Retirement Law.

The Board decided to remand this case to the Chief Administrative Officer to provide the appellant with a written response to her request within 30 days.

RETIREMENT/DISABILITY/NO RESPONSE

Case No. 91-15

An employee filed an appeal from the decision of the Administrator denying her application for a Service Connected and a Non-Service Connected Disability Retirement Benefit.

After several notifications, the appellant did not submit the required information necessary to process her appeal, and the case was closed.

RETIREMENT/DISABILITY

Case No. 91-24

An employee in the Human Relations Commission appealed the decision of the hearing examiner denying her application for a Service Connected Permanent Disability Retirement Benefit and granting her a Non-Service Connected Temporary Disability Retirement Benefit.

The issues before the Board were whether the appellant, should receive a Service Connected Disability Retirement Benefit and whether the appellant should receive a permanent Disability Retirement Benefit. Section 33-43 (e) of the Montgomery County Code governs.

The Board was of the opinion that the preponderance of the evidence of record indicated that the appellant's disablement was neither service related, aggravated by her job, nor did it totally or permanently incapacitate her for duty. The decision of the Prudential hearing examiner, was sustained and the appeal was denied.

APPEALED TO THE CIRCUIT COURT BY APPELLANT

**RETIREMENT/DISABILITY/REMAND**

**Case No. 91-26**

A Police Department employee appealed the decision of the Administrator denying his application for a Service Connected Disability Retirement Benefit. The Board's review of the record revealed factual inconsistencies between the record and the hearing examiner's opinion which were material to the central issue of eligibility for disability retirement.

This case was remanded to the Disability Retirement Hearing Examiner for clarification of the matters indicated and reconsideration of the initial decision.

**RETIREMENT/DISABILITY**

**Case No. 91-27**

A Fire/Rescue Services Department employee appealed from the decision of the hearing examiner, denying her application for a Permanent Total Service Connected Disability Retirement Benefit and awarding a Non-Service Connected Disability Retirement Benefit.

The issue before the Board was whether the appellant should receive a Service Connected Disability Retirement Benefit. Section 33-43 (d) & (e) of the Montgomery County Code governed.

The Board was of the opinion that the preponderance of the evidence of record indicated that the appellant did not have a Service Connected Disability. Accordingly, the decision of the hearing examiner was sustained and the appeal was denied.

## RETIREMENT

### Case No. 91-29

A Fire/Rescue Services Department employee appealed the decision of the hearing examiner denying his application for a Permanent Total Service Connected Disability Retirement Benefit and granting him a Service Connected Temporary Partial Disability Benefit.

The issue before the Board was whether the appellant should receive a Permanent Total Service Connected Disability Retirement Benefit. Section 33-43 (e) of the Montgomery County Code governed.

The Board found that the preponderance of the evidence of record indicated that the appellant's disability was work related and the disability was partial (may be subject to improvement and, therefore, is temporary partial).

The decision of the hearing examiner was sustained.

## RETIREMENT/DISABILITY

### Case No. 91-31

A Fire Sergeant appealed the decision of the hearing examiner denying his application for a Full Service Connected Disability Retirement Benefit and granting him a Service Connected Temporary Partial Disability Retirement Benefit.

The issue before the Board was whether the appellant should receive a Full Service Connected Disability Retirement Benefit. Section 33-43 (e) of the Montgomery County Code governs.

The Board found that the preponderance of the evidence of record indicated that the appellant's disability was work related and the disability was partial (may be subject to improvement and therefore, was temporary partial); and that the partial disability prevented him from performing all of the duties of a Fire Sergeant. The decision of the hearing examiner was sustained.

**RETIREMENT/DISABILITY/NO RESPONSE**

**Case No. 91-32**

A Police Department employee appealed from the decision of the hearing examiner denying her a Disability Retirement Benefit. The appellant failed to provide the Board with the specific information required by Section 29.4 Appeal Period of the Personnel Regulations for Montgomery County, 1986. The case was closed and the appellant was notified.

**RETIREMENT/DISABILITY**

**Case No. 91-33**

A Transportation Department employee appealed the decision of the hearing examiner, denying his application for a Service Connected Permanent Disability Retirement Benefit. The Board was of the opinion that the preponderance of the evidence of record indicates that the appellant was not disabled from his employment and that Section 33-43 (e) of the Montgomery County Code governed. The decision of the hearing examiner was sustained.

**RETIREMENT/DISABILITY**

**Case No. 91-34**

A Liquor Control Department employee appealed the decision of the hearing examiner, denying his application for a Retirement Benefit.

The issue before the Board was whether the appellant should receive a Total Service Connected Disability Retirement Benefit.

The Board was of the opinion that the preponderance of the evidence of record indicated that the disability was work related and that the disability was partial; and that the partial disability prevented him from performing all of the duties of a Liquor Store Clerk II and that Section 33-43 (e) of the Montgomery County Code governs. The decision of the hearing examiner was sustained.

RETIREMENT/DISABILITY/NO RESPONSE

Case No. 91-36

A Transportation Department employee appealed from the decision of the hearing examiner denying her application for a Service Connected and Non-Service Connected Disability Retirement Benefit. The appellant failed to provide the Board with the specific information required by Section 29.4 Appeal Period of the Personnel Regulations for Montgomery County, 1986. The case was closed and the appellant was notified.

RETIREMENT/DISABILITY

Case No. 91-45

A Department of Transportation employee appealed from the decision of the hearing examiner, denying his application for a Permanent Total Service Connected Disability Retirement and a Non-Service Connected Disability Retirement Benefit.

The issue before the Board is whether the appellant should receive Disability Retirement Benefits. Section 33-43 (d) & (e) of the Montgomery County Code governed.

The Board was of the opinion that the preponderance of the evidence of record indicated that the appellant did not have a Service Connected Disability nor did he meet the applicable statutory tests for a Non-Service Connected Disability Retirement Benefit. Accordingly, the decision of the hearing examiner was sustained and the appeal was denied.

## SUSPENSION

### CASE NO. 91-44

A Police Department employee filed an appeal from the decision of the Chief of Police suspending him from duty without pay for one day.

A Pre-Hearing Conference was held on June 27, 1991, and the Counsels were asked to file briefs on the threshold procedural issue of whether the County's action as invalid due to (1) the action having been filed with and dismissed under the Law Enforcement Officers' Bill of Rights (LEOBR), and (2) laches.

The Merit System Protection Board reviewed the briefs of the parties.

The Board rejected the argument of the appellant that the County was estopped from proceeding under the Merit System after losing on its appeal for jurisdiction to be found under the Law Enforcement Officers' Bill of Rights (LEOBR). The County acted reasonably in seeking jurisdiction under the LEOBR. When that jurisdiction was denied, the County was left with no forum to proceed under other than the Merit System. The County presented persuasive authority in its argument that, where jurisdiction is denied, it is appropriate to proceed in another forum where jurisdiction may be found.

The County, however, was not persuasive in its argument as to the timeliness of its actions with respect to bringing disciplinary action under the Merit System, after failing under the LEOBR. Section 27-1, Disciplinary Actions, of the Personnel Regulations commands the County to proceed "promptly" with disciplinary actions. The delay in excess of three months between the finding of lack of jurisdiction under the LEOBR and the commencement of disciplinary action under the County Administrative Procedures was not prompt by any reasonable interpretation of that word.

The County failed to account for its delay in continuing appellant's disciplinary processing. The reduction of appellant's discipline from three days to one day of suspension did not negate the possibility of a prejudicial effect from such delay.

It was the decision of the Board that the appellant be granted relief to include rescission of his suspension, back pay and benefits with interest and expungement of his records.



SUSPENSION

Case No. 91-49

An employee filed an appeal from the decision of the Acting Director, Department of Transportation, concerning a three (3) day suspension.

The employee withdrew the appeal and the Board closed the case.

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TERMINATION/ALCOHOLIC BEVERAGE

Case No. 91-04

An employee filed an appeal from the decision of the Transportation Department terminating him from employment with the Montgomery County Government in July, 1990.

The case was settled prior to final Board action and the appeal was withdrawn.

TERMINATION/DISABLING CONDITION

Case No. 91-11

A Transportation Department employee appealed the decision of the Director, Department of Transportation, terminating him from County Employment. The reason for the termination was based on Personnel Regulations, Section 24, Inability to Perform duties required of the position due to medical condition under Section 5.12 of the Medical Requirement for Employees/Applicants. In the meantime, the appellant was granted a Service Connected Disability Benefit rendering the case moot. The Board closed the case and the appellant was notified.

**TERMINATION/PROBATION**

**Case No. 91-14**

An employee filed an appeal from the decision of the Sheriff's Department, terminating him from employment with the Montgomery County Government, in September, 1990.

The appellant was a Deputy Sheriff who was hired in 1989 and his probationary period had been extended for six months in April, 1990.

The extension of probation complied with Section 6-4 (b) and (c) of the Personnel Regulations. Appellant was notified of termination and terminated in September, 1990 because of non-conformance to law, abuse of authority, conduct unbecoming of a Deputy Sheriff and discourtesy. At a pre-hearing conference both representatives asked for opportunity to present oral argument on a motion submitted by the County to dismiss the appeal.

The Board found the written record adequate to make a decision in this matter. The appellant's probationary period would not have been completed until after November, 1990. Therefore, he was a probationary employee when he was dismissed. As such he had no right to appeal to the Board.

**TERMINATION/REDUCTION-IN-FORCE**

**Case No. 91-21**

An employee appealed from the decision of the Personnel Director to terminate her employment with the County Government in late December, 1990 due to a Reduction-In-Force.

Earlier in the month, the employee was placed in a job with another Department at two grades lower than her previous position, and with saved pay for two years. The employee withdrew her appeal and the case was closed.

TERMINATION/REDUCTION-IN-FORCE

Case No. 91-47

A Department of Housing and Development employee filed an appeal from the decision of the Personnel Director, concerning a notice of termination effective June 30, 1991 due to a Reduction-In-Force.

The employee withdrew the appeal because the Reduction-In-Force notice was rescinded, rendering the appeal moot.

TERMINATION/REDUCTION-IN-FORCE

Case No. 91-48

A Personnel Department employee appealed from the decision of the Personnel Director, concerning a notice of termination effective June 30, 1991 due to a Reduction-In-Force.

The employee did not pursue the appeal because the Reduction-In-Force notice was rescinded. The Board closed the case.