

MERIT SYSTEM PROTECTION BOARD 1981 ANNUAL REPORT

Montgomery County Government
Merit System Protection Board
Rockville, MD

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1981
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 1981 were:

Ernest L. Bailey, Jr., Chairman (re-appointed 1979)
Robert R. Fredlund, Vice Chairman (appointed 1980)
Harriet T. Bernstein, Associate Member (re-appointed 1981)

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 1.2, Audits, Investigations and Inquiries of the Personnel Regulations for Merit System employees.

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 opportunity to present

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 audit findings and recommendations to the County Executive and County Council."

"(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 1.2, Audits, Investigations and Inquiries of the Personnel Regulations for Merit System Employees, 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 and/or corrective action necessary."

ACTIVITIES OF THE BOARD

1981 proved to be a very busy year for the Merit System Protection Board. A summary of our activities follows:

1. The Board held 34 hearings for the purpose of taking testimony in relation to individual appeals.
2. The Board held 52 worksessions in the normal process of conducting business, reviewing written records on many appeals, discussing requests for interpretations, etc.
3. The Board continued the investigation into the hiring of a Deputy Director, Department of Liquor Control, which began in late 1980. Our activities this year consisted of 14 meetings with our Attorney and Investigator, a Public Deposition of one witness, a meeting with the County Council to discuss tentative findings and 2 Public Hearings to take testimony related to the tentative findings. The final report was being prepared at the close of 1981.
4. The Board met with the Chief Administrative Officer and other administration officials on 5 different occasions to discuss personnel management, and implementation of certain decisions.
5. The Board received 3 complaints of alleged harassment under Section 24, Disclosure of Illegal or Improper Acts of the Personnel Regulations. One of these cases was referred to administrative officials in accordance with established procedures and extensive investigations were conducted by the Board's staff on the other 2. Based on the finding of no probable cause, the complaints were dismissed. One individual requested reconsideration by the Board who ruled that the evidence did not support bringing charges against the other parties. Names and circumstances in cases of this nature are totally confidential unless formal charges are brought against specific individuals.

6. The Board also worked with the administration and the County Council on Bill 18-81, which amended various laws to clarify the responsibilities and duties in the personnel area in accordance with Charter changes that were approved in November 1980.

APPEALS AND DECISIONS

The Personnel Regulations provide an opportunity for employees to file appeals with the Merit System Protection Board. Once the notice of appeal has been filed, the employee has ten work days to submit additional information required by Section 23.4, Appeal Period, of the Regulations. After this information is received, the appeal is processed in one of two ways.

First, if the appeal involves a suspension, demotion or dismissal, a hearing is scheduled, as required by Section 404 of the County Charter. In cases involving suspension or dismissal, at least two weeks advance notice of the hearing is required. Upon completion of the hearing, the Board prepares and issues a written decision, usually within three weeks of the hearing.

The second method for processing appeals requires the development of a written record. Upon receipt of the notice of appeal and supplemental information, the County is notified and allowed ten days to respond, in accordance with Section 23.6, Notification and Submission of Record, of the Personnel Regulations. The Board then provides the employee an additional five work days to respond to or comment on the County's submission. The case is then placed on the Board's agenda, and copies of all documentation are provided to each Board member. The Board then discusses the case at the next worksession, and either renders a decision on the basis of the written record, or grants a hearing. If the decision is issued based on the written record, it is prepared, in writing, and usually released within three weeks of the worksession. If a hearing is granted, all parties are provided at least thirty days notice, and the written decision is released within approximately three weeks of the hearing.

Because of the time lapse between the time the notice of appeal is filed and the final decision is released by the Board, cases filed after mid-November were assigned 1982 case numbers since decisions could not realistically be issued prior to the end of the calendar year.

During 1981, the Board received eighty-one appeals. Summaries of decisions on those appeals follow. Only Case No. 81-75 is still outstanding, as appellant requested the appeal be held in abeyance pending resolution of other matters which may render the appeal before the Board moot.

CLASSIFICATION

Case No. 80-21 (decided June, 1981)

An administrative employee of a fire department appealed the classification of the position in which employed, with a subsequent appeal of the effective date of reclassification.

The case was referred to the Hearing Examiner by the Merit Board, but the classification issue was resolved prior to the Hearing Examiner's review and report to the Board. With respect to the effective date of reclassification, the employee requested retroactivity for approximately one year. The request for retroactivity was denied by the Fire Commission (which was the Chief Administrative Officer in this case).

The Personnel Regulations provide that the effective date of a reclassification shall be the first day of the pay period following approval of the reclassification unless otherwise approved by the Chief Administrative Officer. Since the appropriate authority in this case had denied retroactivity, the Merit Board also denied the request for retroactivity.

Case No. 81-37

A Police Officer appealed from the Chief Administrative Officer's denial of his request to be promoted to the position of Police Officer III. The individual went on sick leave in November, 1977, and then on leave without pay in February, 1978. At the time of his illness, he was a Private First Class. In July, 1979, the Department of Police implemented a new Career Development Plan, and appellant's position title was changed from Private First Class to Police Officer II. Promotion to Police Officer III was to be made on the basis of evaluation of an individual's work performance.

On June 2, 1980, appellant returned to active duty as a Police Officer II. In May, 1981, the individual received an outstanding performance rating, and was subsequently promoted to Police Officer III. He requested the promotion be retroactive to June 2, 1980, the date he returned to active duty.

The Board found that the normal rating period for promotional purposes was one year, and, since the individual had been on leave for approximately two years, the decision to delay the promotion pending completion of one year's satisfactory work performance was reasonable, appropriate, and in accordance with established procedure. Therefore, the decision of the Chief Administrative Officer was sustained.

Classification

Case No. 81-71

Therapeutic Counselors filed an appeal from the decision of the Chief Administrative Officer on their grievance concerning classification. After noting the appeal, the counselors were advised, in writing, of the requirements of Section 23.4, Appeal Period, of the Personnel Regulations. Upon review of the file, the Board ruled that the counselors had failed to meet the requirements of Section 23.4, and the appeal was dismissed for failure to file in accordance with the Personnel Regulations.

Case No. 81-72

A Transit Controller appealed from the decision of the Chief Administrative Officer on his grievance concerning classification of his position. The individual's appeal was based on disagreement with respect to substantive issues rather than procedures. Section 7.10 of the Personnel Regulations permits appeals of classification action only if there is a violation of established procedure or due process. Finding no evidence of such a violation, the appeal was dismissed.

COMPENSATION

Case No. 80-08 (decided January, 1981)

Nine Management Information Service employees appealed the decision of the Chief Administrative Officer on their grievance concerning salary adjustments because of what they believed to be inequities occurring as a result of within-grade hiring policies and practices.

At the request of appellants, the cases were separated into three appeals since two of the individuals felt their cases involved separate and distinct facts, unrelated to the other seven.

In reviewing the cases of the two, the Board found that neither had been given appropriate credit for their work experience, and, therefore, had not received proper placement on the pay scale based on the equivalency policy. Finding an inequity as a result of these actions, the Board directed that the individuals be given appropriate credit, and that their salaries be adjusted accordingly.

With respect to the other seven appellants, the Board found that during a twenty-two month period, the County hired fifteen new employees in the occupational series, with thirteen being appointed within-grade. The policy in effect provided for a 5% allowance for experience beyond the minimum requirement. Evidence showed that recruitment of individuals with the experience desired by the County was extremely difficult during the period in question. The Board also noted that all of the appellants were making in excess of any amount paid to new hires, and that six of the seven appellants had themselves been hired within-grade when appointed.

The Board ruled that the establishment of rates above the minimum for hiring new employees or the adjustment of rates within grade for other employees in a class is discretionary and the prerogative of the Chief Administrative Officer. Since all of the new hires were employed at salaries less than appellants', and finding that there was no requirement that a specific difference between certain employees be maintained solely on the basis of seniority or experience, the Board found no justification for the appeal, and it was denied.

NOTE: APPELLANTS APPEALED THIS DECISION TO THE
CIRCUIT COURT FOR MONTGOMERY COUNTY.

Compensation

Case No. 81-07

An Engineer III appealed from the decision of the Chief Administrative Officer on his grievance concerning additional compensation based on his experience and education because of what he believed to be inequities in the hiring of two other employees subsequent to his date of hire.

The record showed that the individual had been hired in 1977 at the beginning salary for an Engineer III. On June 1, 1979, the individual's position was up-graded one grade, and his salary increased 5% in accordance with established procedures. Appellant also received normal service increments from the date of hire through the date of appeal. In October, 1980, two other individuals were appointed to positions of Engineer III at the minimum salary for the grade. The appellant's salary was then approximately 10% higher than the new hires.

The Board found that the salaries were consistent with the County's pay plan, and found no evidence of inequity as alleged. Accordingly, the appeal was denied.

Case No. 81-08

A class grievance was filed appealing the decision of the Chief Administrative Officer which denied a request that a 5% shift pay differential be reinstated.

In 1973 through early 1976, employees hired in the occupational class in question were given a 5% within-grade advancement if assigned to work the 4:00 p.m. to 12:00 midnight shift or if on call from 12:00 midnight to 8:00 a.m., with such compensation being payable only as long as the employee was on the night shift. In March, 1976, the Personnel Office directed the 5% additional pay be changed to a pay differential rather than a within-grade advancement in order to be in compliance with the County's pay plan. On April 4, 1976, the records of all individuals who had been granted a within-grade advancement were changed to reflect a pay differential with no change in total salary. Subsequent to that date, all individuals appointed and assigned to the night shift were given a pay differential.

In 1978, it was discovered that the employees were no longer assigned to a permanent night shift, but were instead working a rotating shift which required night work only one week out of every twenty weeks. The Personnel Office directed the Department to discontinue the pay differential since it did not meet the

Compensation

Case No. 81-08 continued

County's requirements of permanent assignment to night work. The pay differential was discontinued on July 1, 1980.

Section 3, Employee Compensation and Awards of the Personnel Regulations in effect at the time of the grievance allowed the Chief Administrative Officer to establish shift pay differentials "for evening work for those occupational classes normally having a work day during daylight hours".

It was the opinion of the Board that salaries and salary schedules are subject to change, and, in this case, there was no guaranty or assurance that a pay differential would be maintained or achieved solely on the basis of seniority or a person's position. It clearly was the intent of the County to provide a pay differential for permanent night shift duty, not rotating shifts. Based on the Personnel Regulations in effect, and the responsibility of the Chief Administrative Officer thereunder, the Board found that the action of discontinuing the pay differential was proper, and the appeal was denied.

Case No. 81-14

An employee appealed from the decision of the Chief Administrative Officer which denied her request for a salary adjustment because of a pay inequity.

All parties agreed that a pay inequity did exist since implementation of the revised County pay plan on June 25, 1978, because of Appellant's being at the maximum of her pay grade at the time, and having passed her normal increment date several months before. This resulted in an individual hired after appellant being eligible for an increment nine months before appellant, even though the second individual had been on leave without pay for a period of one year.

It was the unanimous decision of the Board that under Section 33.8, Service Increment; Service Increment Dates, subsection (i), Reassignment of Increment Dates, the inequity could have been resolved with appropriate reassignment of appellant's increment date. Therefore, the Board directed the individual's personnel file be corrected to reflect eligibility for an increment on July 1, 1978, rather than February 1, 1979, and on July 1 of each year thereafter, with appropriate reimbursement of salary monies due as a result of the correction.

Compensation

Case No. 81-17

Thirteen Police Sergeants appealed to the Merit Board that they were eligible to receive a 5% detective pay differential which had been discontinued as a result of the Board's decision in another case.

Prior to September, 1971, Police Officers assigned to detective work received a 5% pay differential to compensate them for overtime work in lieu of overtime pay. In September, 1971, this policy was discontinued, and the individuals were allowed to earn overtime. Procedures were established to provide for continuance of the pay differential until such time as an individual was promoted or transferred out of detective work. Because of administrative confusion and a subsequent opinion of the County Attorney's Office, the Police Department allowed individuals who laterally transferred out of detective work to retain the pay differentials while discontinuing the differential for individuals who were promoted. After review of the personnel files of the thirteen individuals, the Board found that eleven were no longer entitled to the differential since they had either been promoted or transferred out of the detective work assignment.

With respect to the twelfth individual, the Board found that upon promotion and transfer, the differential had not been incorporated into the new salary as provided by the established policy, and directed that the adjustment be made and the employee reimbursed all money due as a result of the correction.

The thirteenth individual had not been promoted or transferred since the policy change in 1971, and, based on a 1972 decision of the former Personnel Board, he was found to be entitled to continue receiving the pay differential until such time as he is promoted or transferred. (APPELLANTS APPEALED THIS DECISION TO CIRCUIT COURT)

Case No. 81-18

A Bus Operator appealed from the decision of the Chief Administrative Officer on his grievance concerning extraordinary performance awards for part-time bus operators.

On October 1, 1980, the Department of Transportation implemented a policy which provided for awards for part-time employees if such individual worked at least 1,040 hours during a 12-month period. Since full-time employees receive 2% of their annual salaries, and part-time employees were to receive 2% of half that amount (1040 hours

Compensation

Case No. 81-18 continued

per year), appellant argued that the award should be based on the actual number of hours worked, irrespective of classification. The Chief Administrative Officer modified the policy to allow granting of an award as soon as an individual had worked 1,040 hours, but limited such awards to one each twelve months.

In reviewing the law, the Board found that Section 33-11 of the County's Merit System Law gave the Chief Administrative Officer sole responsibility for the establishment of extraordinary pay policies. After consideration of the facts, it was the unanimous decision of the Merit Board that the Chief Administrative Officer's decision to base an award on an individual's work status was a fair and equitable method for rewarding employees, particularly since using actual time worked would create serious inequities in job classifications. Finding no violation of established procedures, the decision of the Chief Administrative Officer was sustained.

Cases No. 81-29 and 81-29a

Two Police Technicians appealed from the decision of the Chief Administrative Officer on their grievances concerning duty assignment and compensation for duties performed outside their normal classification. Evidence showed that the individuals who were Police Technicians II had been periodically assigned to train lower level employees because the Police Technicians III did not have adequate time to conduct the training sessions.

In originally creating the different classes for Police Technicians, it was clear that the III-level assignment was determined partially on the basis of training responsibilities. Further, the II-level employees are not (under the class specifications) normally assigned training functions, and the County concurs that these individuals are not adequately prepared to fulfill the training role. However, because of turnover problems, the Chief Administrative Officer ruled that the individuals would be required to perform training duties, and would not be granted any additional compensation for such activities.

It was the ruling of the Merit Board that the assignment of training functions, without amending the class specification, was improper. Accordingly, the County was directed to discontinue the practice of assigning Police Technicians II training responsibilities. Further, it was the opinion of the Board that there was insufficient evidence to show that these additional duties were sufficient to justify additional compensation, and since it had been performed only periodically, rather than on a continuing basis, the request for compensation was denied.

Compensation

Case No. 81-32

A Police Sergeant appealed from the decision of the Personnel Director dismissing his grievance concerning dissatisfaction with the County's revised pay plan because it was not noted timely. The record showed that on May 9, 1978, the County Council revised the County's pay plan, which reduced annual increments and provided for certain other changes. The individual was promoted to Sergeant in 1980, received a 5% increase, and completed his probationary period in the position in February, 1981. The individual did not file his grievance until 23 days after being notified that he was not receiving an additional increase in salary upon completion of the probationary period as had been done prior to the changes in the pay plan in 1978.

The County's grievance procedures require that an individual file a complaint within ten days of date of notification of an action. The Board ruled that the Personnel Director was correct in denying the grievance for lack of timeliness, and the appeal was denied.

Case No. 81-36

Four Liquor Store Clerks appealed from the decision of the Chief Administrative Officer which denied their requests for pay differentials because they were assigned to Class A liquor stores.

The record showed that Managers and Assistant Managers of Class A liquor stores receive pay differentials because of the additional financial accountability required because of the high volume of Class A stores. While there may be a greater volume of work in Class A stores, there was no evidence to show that the level of duties and responsibilities of Clerks in Class A stores differs from those of Clerks in Class B stores. Therefore, since classification of positions is based on level of duties and responsibilities rather than volume, and since the granting of a pay differential is the sole responsibility and authority of the Chief Administrative Officer, who had denied the request, it was the unanimous decision of the Merit Board that the decision of the Chief Administrative Officer be sustained.

Case No. 81-39

A Bus Operator appealed from the decision of the Chief Administrative Officer which denied a request for pay differentials for certain job assignments.

The County raised the issue of timeliness in filing the appeal. A review of the record indicated that the letter of appeal from appellant was dated after expiration of the appeal period provided by the Personnel Regulations, and was not received until two days

Compensation

Case No. 81-39

after the date prepared. Therefore, since appellant had failed to meet the requirements of Section 23.4, Appeal Period, of the Personnel Regulations, the appeal was dismissed for lack of timeliness.

Case No. 81-45

A Police Officer appealed from the decision of the Chief Administrative Officer which denied his request for overtime pay for the twenty minute "roll call" period he was required to attend prior to the beginning of each shift. Appellant contended that since he was assigned to work an eight-hour shift in addition to being present for roll call twenty minutes prior to the shift, he was entitled to overtime pay for the twenty-minute period.

The record showed that each police officer is authorized a thirty minute meal period during each shift, and appellant did not allege that he missed any of these authorized meal periods during the period in question. Section A6.2 of the Personnel Regulations specifically states that ". . . meal periods shall not be included in any computations to determine the amount of compensation or compensatory leave due an employee for overtime work". Therefore, while appellant was at work for a period of eight hours and twenty minutes, including the roll call time, for payroll purposes, the thirty-minute meal period must be excluded, and his actual time worked is seven hours and fifty minutes. Since this is less than the normal eight hours per day, the Board ruled that appellant was not entitled to any overtime compensation.

Case No. 81-48

A Planner appealed from the decision of the Chief Administrative Officer which denied his request for a pay adjustment to correct an alleged inequity which occurred as a result of a voluntary transfer.

The record showed that the individual was asked to accept a voluntary, lateral transfer from one department to another since he had expertise required by the second department. He agreed to the transfer.

Two weeks after the actual transfer, his prior position was reclassified and up-graded, and all incumbents of the prior class were awarded 5% pay adjustments. Appellant had not been informed of the pending reclassification prior to his agreeing to the transfer,

Compensation

Case No. 81-48 continued

and contended that had he known of the possibility of upward reclassification, he may not have agreed to the transfer. Even though his request for a 5% pay adjustment was approved by the new department head, the Chief Administrative Officer denied the request.

It was the decision of the Board that the County had failed to provide appellant with proper information when discussing the transfer, and that had he known of the possibility of reclassification, he would not have agreed to the lateral transfer. Therefore, the Board ordered the County to adjust appellant's salary by 5%, retroactively to the date of reclassification of his former position.

Case No. 81-74

A Police Officer appealed from the decision of the Chief Administrative Officer which denied his request for overtime pay for hours worked in excess of the normal work week. Appellant contended that since he was required to attend roll call twenty minutes prior to the actual commencement of his shift, and since his shift on the week in question began at 11:00 p.m. Saturday, he was entitled to 1-1/3 hours overtime since the pay period ended at midnight on Saturday.

The Board had previously rendered an interpretation of Section A6.2 of the Personnel Regulations, which stated that ". . . on days in which a shift begins on one calendar day and ends on another calendar day, the work day shall be the day on which the majority of time is worked . . .". The Board ruled that the shift involved actually constituted work on Sunday, which was the beginning of a new pay period, and the individual was not entitled to overtime for the 1-1/3 hours as part of the previous week's work schedule.

Case No. 81-79

A Firefighter appealed from the decision of the Personnel Director (issued on behalf of the Fire and Rescue Commission) which denied his request for 16 hours of holiday pay for working a 24-hour work day on a holiday. Appellant was employed by a fire department which utilized a 24 hours on/48 hours off work schedule. Other fire departments utilize two shifts, one consisting of 10 hours and one consisting of 14 hours. Therefore, appellant believed he was entitled to receive two shifts of holiday pay since he was working 24 hours on the holiday.

Compensation

Case No. 81-79 continued

The approved Fire/Rescue Personnel Regulations give the individual fire departments authority for determining work schedules. Section 22 (A) (9) of those Regulations provides for holiday pay based on an eight-hour work day, while Section 22 (A) (6) provides for overtime pay up to a maximum of eight hours, or for hours worked in excess of the normal work day. Section 27 of the Regulations sets forth procedures for charging leave for time off, and indicates that eight hours of leave will be charged for individuals working a ten or 14-hour shift, while 16 hours of leave will be charged for individual working a 24-hour shift.

Appellant had received his normal wages for working the holiday, plus eight hours of overtime pay. The Board ruled that since this was a normal work day for appellant, he was entitled to his holiday pay at his regular rate, and overtime pay for a maximum of eight hours [Section 22 (A) (6)]. Since he normally worked a 24-hour shift, he was not eligible for any further overtime compensation, and because of the requirements of Section 22 (A) (9), he could not be granted more than one day of compensation for the holiday. Accordingly, his appeal was denied.

The Board suggested to the Fire and Rescue Commission that Sections 22, 23 and 27 of the Personnel Regulations be reviewed for consistency, taking into account the 24-hour shift that was evidently being utilized by several departments, but had not been considered (as it was not in use) at the time the Regulations were actually being developed.

DELAYS OF SERVICE INCREMENTS

Case No. 81-02

A Firefighter appealed his delay of service increment due November 1, 1976, based on his being 4-1/2 pounds overweight.

The record showed that the policy concerning delay of service increment for an employee's being overweight was discontinued for County employees on October 1, 1975, and for Firefighters on January 18, 1977. However, the Circuit Court for Montgomery County had awarded another Firefighter retroactivity to August 1, 1975, in a similar case. The individual did not appeal previously because he had been told by his superiors that the change in policy did not apply to him.

Even though the appeal had not been filed previously, the Board recognized the fact that employees are entitled to equity and fair treatment under the law. The Department discouraged the individual's pursuit of appeal, and did not properly inform him of his rights at the time of the action. Therefore, the Board directed that the increment be incorporated into the employee's annual salary effective with the first full pay period following October 20, 1980, and the employee was to be reimbursed the difference in money from that time forward.

(APPELLANT APPEALED THIS DECISION TO THE CIRCUIT COURT)

Case No. 81-51

An Investigator appealed the delay of his service increment for unsatisfactory performance. However, in a separate action, the Merit System Protection Board re-assigned appellant's increment date as part of a decision to a date beyond that set by the department head in the delay. Therefore, the Board ruled that the action was moot, and the appeal was dismissed.

DISABILITY RETIREMENT HEARING BOARD DECISIONS

Case No. 81-04

A Police Officer appealed from the decision of the Disability Retirement Hearing Board, and alleged failure of that Board to follow established procedures. After reviewing the documentation, the Merit Board found that the Disability Retirement Hearing Board had failed to designate a Medical Review Committee, as required by Section 33.49 of the Employees' Retirement System of Montgomery County. Therefore, the case was remanded to the Disability Retirement Hearing Board for compliance with the law and issuance of a proper decision based on the evidence of record after such compliance.

The Disability Retirement Hearing Board subsequently sustained its original decision based on its finding that no additional evidence had been placed in the record, and that none of the basic evidence had been modified or expanded. In reviewing the record, the Merit Board found that additional medical evidence had been received from one doctor; that the officer's physical condition had changed considerably; and that the Medical Review Committee unanimously agreed that the officer was totally and permanently disabled from County employment, and that the disability was service connected. In fact, the County's medical examiner's concurrence in this finding was a complete reversal of his prior position. The evidence of record showed that six doctors found the individual to be disabled from further employment, and five of them stated that the disability was service connected. The officer had sustained a myocardial infarction while on duty, and is presently suffering from coronary artery disease, which severely limits his capabilities.

It was the unanimous decision of the Merit System Protection Board that the decision of the Disability Retirement Hearing Board was inconsistent with the evidence of record, and the decision was, therefore, rescinded. The Merit Board found the officer to be totally disabled as a result of the service connected illness, and awarded him a total, service connected disability retirement.

Case No. 81-10

An employee appealed from the decision of the Disability Retirement Hearing Board which denied her application for a non-service connected disability retirement.

The individual was hired by the County in November, 1973, and medical evidence of record revealed that she suffered from chronic osteoarthritis prior to County employment. Subsequent to employment, the individual underwent several operations for the arthritic problem, and her condition became such that she was unable to continue County employment.

Disability Retirement Hearing Board Decisions

Case No. 81-10 continued

To be eligible for a non-service connected disability retirement, an individual must have at least ten years of credited service, and must be incapacitated from further performance of duties as a result of an illness or injury incurred after enrollment in the retirement system. Appellant had purchased retirement service credits and met the ten year requirement, but the record clearly indicated that the condition pre-existed County employment. Therefore, pursuant to Section 33-43, Disability Retirement, subsection (b), Non-Service Connected Disability Retirement, of the Employees' Retirement System of Montgomery County, the employee did not meet the eligibility requirements. Therefore, the decision of the Disability Retirement Hearing Board was sustained.

Case No. 81-21

A Police Officer appealed from the decision of the Disability Retirement Hearing Board which awarded him a partial service-connected disability retirement. In reviewing the evidence of record, the Merit Board noted that the individual was being retired from a position he had been working in at a satisfactory level for a period of almost ten years, and there was nothing in the record to show that he was unable to continue performing the assigned duties. There was also nothing in the record to indicate any effort to find alternative placement in keeping with the Department of Police policy on reasonable accommodation instituted in 1980. Further, the medical opinions and evaluations were prepared on an incorrect class specification.

Based on their findings, the Merit Board remanded the case to the Disability Retirement Hearing Board for proper documentation of the record prior to rendering a decision.

Case No. 81-24

A Police Officer appealed from the decision of the Disability Retirement Hearing Board on his application for service-connected disability retirement. A review of the record revealed that the Police Officer had been injured in 1977, but that there was no evidence of the nature or seriousness of the accident and injury, nor any information on the medical treatment rendered as a result of that injury. It was also revealed that the medical evaluations in the record were based on the wrong class specification, and that the Department of Police had not submitted documentation to show that there had been a reasonable effort to place the officer in another position of comparable status, pursuant to the 1980 policy for reasonable accommodation.

Disability Retirement Hearing Board

Case No. 81-24 continued

Because of the deficiencies of the record, the case was remanded to the Disability Retirement Hearing Board for further development of the record, and for re-evaluation of the individual's condition based on current and proper medical evidence.

Case No. 81-33

A Police Officer appealed from the decision of the Disability Retirement Hearing Board on his application for service-connected disability retirement. Evidence showed that the individual had sustained an injury while in the performance of his duties as a Police Officer, and had surgery as a result of the injury. The medical evidence showed that the individual was partially disabled but was capable of performing limited duties on a regular basis. The Department of Police assigned him to a position of comparable status, and made reasonable accommodation to allow him to continue employment.

Section 33-43 (c) (3) of the Employees' Retirement System of Montgomery County requires that an individual be "unable to perform the duties of the occupational classification to which assigned at the time disability occurred or a position of comparable status within the same department" in order to be eligible for disability retirement. Since the appellant was capable of performing limited duties, and since the Department of Police had a position of comparable status available, the Merit Board ruled that the individual was ineligible for a disability retirement at this time. The decision of the Disability Retirement Hearing Board was, therefore, sustained.

Case No. 81-35

A Police Officer appealed from the decision of the Disability Retirement Hearing Board which granted him a partial, service-connected disability retirement rather than total disability, as requested.

Evidence of record showed that appellant had sustained several injuries while on duty, but had also sustained serious injuries while off duty. The medical evidence, as well as the ruling of the State Workers' Compensation Commission showed that most of the individual's disability was not work-related. Therefore, since the medical evidence supported the partial disability rating assigned by the Disability Retirement Hearing Board, that

Disability Retirement Hearing Board

Case No. 81-35 continued

decision was sustained with a recommendation that the individual's condition be reviewed periodically in an effort to achieve satisfactory rehabilitation and re-employment in a position of comparable status.

Case No. 81-38

A Firefighter appealed from the decision of the Disability Retirement Hearing Board. At the request of appellant's counsel and the Personnel Office, the case was remanded to the Disability Retirement Hearing Board for further action because of that Board's failure to comply with the requirements of Section 33-49, Medical Review Committee, of the Employees' Retirement System of Montgomery County. Appellant was returned to his prior sick leave status pending a proper resolution of his application for disability retirement.

Subsequent to a new decision being issued by the Disability Retirement Hearing Board, appellant again appealed to the Merit System Protection Board, and, at the request of counsel, review of the case was held in abeyance pending a decision from the Court of Special Appeals in another case that could have an impact on the subject appeal.

Case No. 81-40

A Clerk Typist appealed from the decision of the Disability Retirement Hearing Board which denied her application for disability retirement by finding she was not disabled.

The record showed that the Disability Retirement Hearing Board had failed to meet the requirements of Section 33-49, Medical Review Committee, of the Employees' Retirement System. Therefore, the case was remanded for further action by that Board.

Subsequent to issuance of a new decision by the Disability Retirement Hearing Board, appellant again appealed to the Merit System Protection Board. The record showed that the individual had injured her back on the job while lifting a box of records in the County's Records Warehouse, and that such injury was ruled compensable under the State Workers' Compensation law. Review of the extensive medical documentation revealed that six different doctors were of the opinion that the individual had a serious back injury, and that she was disabled from performing her duties at the present time. Appellant

Disability Retirement Hearing Board

Case No. 81-40 continued

had also been approved for disability benefits from the Social Security Administration and Connecticut General, the County's long-term disability carrier.

Based on the record, the Merit System Protection Board found that appellant had been injured in the performance of her duties, and that she was unable to perform the duties of her position at the time. Accordingly, the Board ordered that the individual be retired on a temporary, service-connected disability pursuant to Section 33-43 (c) (1) of the Employees' Retirement System of Montgomery County, and be paid benefits in accordance with Section 33-43 (f) (1) of that law. It was further ordered that the individual be re-examined in February, 1983, and that the Disability Retirement Hearing Board render a decision with respect to continuance of retirement after consideration of the medical evidence available.

Case No. 81-54

An individual appealed the decision of the Disability Retirement Hearing Board, but withdrew the appeal prior to Board action.

Case No. 81-57

An individual appealed the decision of the Disability Retirement Hearing Board, but withdrew the appeal prior to Board action.

DISMISSALS

Case No. 81-19

An Investigator appealed five separate actions: two letters of reprimand, an Employee Planning and Performance Evaluation (EPPE), a five-day suspension, and finally a dismissal. All charges were cumulative and inter-related, and, for purposes of hearing and decision, were consolidated into the Dismissal case.

The County presented only one witness to support the extensive charges, but the testimony was inconclusive and not supported by other individuals allegedly involved in the various incidents. Further, there were no approved written guidelines for the employee to follow; most directions were given orally; and certain legal requirements were never clarified for appellant. The parties agreed that there was a serious communication problem, and a very unsatisfactory inter-personal relationship between appellant and management. Additionally, the individual had been assigned and expected to perform supervisory duties, even though he had been denied promotion to the supervisory position because of an unsatisfactory work performance at the full performance level.

The Board found that appellant had been improperly placed in a supervisory position for which he was not qualified; that the charges were very general in nature, and lacked specificity as well as sufficient documentation to verify the charges; and that the behavior of all parties was less than desirable. Because of the failure of the County to support the charges, the Board rescinded one reprimand; directed the EPPE material be removed from the personnel file; rescinded the suspension; rescinded the dismissal; and directed the employee be reinstated at the Investigator level and that he be reimbursed retroactively for monies lost.

NOTE: THE COUNTY APPEALED THIS DECISION TO THE
CIRCUIT COURT FOR MONTGOMERY COUNTY.

Dismissals

Case No. 81-22

A Tree Climber appealed his dismissal for violating established work procedures, and for receiving money from a County citizen under questionable circumstances.

Testimony revealed that the appellant and another employee delivered a load of wood chips to a County resident in violation of established procedures, and that \$25.00 was received for such delivery. Appellant gave \$10.00 of the money to his helper, \$5.00 to his supervisor, and kept \$10.00 for himself. Testimony of County employees indicated that the practice of delivering wood chips and receiving money had been going on for approximately ten years, and that supervisory employees were aware of the practice. Appellant had been with the County for approximately four years; had a satisfactory work performance record; had received two promotions and a meritorious annual leave award in 1978. There was no evidence of prior disciplinary action against him.

Appellant was never provided a copy of the charges prior to notification of his dismissal, and had not been afforded an opportunity to present his side of the story prior to dismissal since his supervisors never discussed the matter with him. He received notice of the dismissal three days prior to the effective date. The helper was still in probationary status at the time, and received a written reprimand for the incident. The supervisor involved was not disciplined.

Even though the practice had occurred for a period of approximately ten years, solicitation of funds in such a situation was a violation of established procedure, and is subject to disciplinary action. However, based on the individual's work record, the disciplinary action (or lack thereof) against the others involved, and the County's failure to provide the individual an opportunity to be heard prior to the action (as required by Section 21.5 (b) of the Personnel Regulations), and the failure to provide proper notification of disciplinary action as provided under Section 21.4 of the Personnel Regulations, the Merit System Protection Board found insufficient justification for the dismissal, particularly in view of the County's stated policy of progressive disciplinary action (Section 21.1 of the Personnel Regulations). Therefore, the Board ordered the dismissal be rescinded, but that the individual be suspended without pay for a period of ten days for solicitation of funds, and that he be reimbursed for salary monies lost over and above the ten day suspension.

Dismissals

Case No. 81-34

A Warehouse Worker/Truck Driver Helper appealed his dismissal for alleged involvement in a physical confrontation while on duty.

At the initial hearing, the Merit Board found that the Department Head did not have delegated authority to dismiss an employee, as required by Section 23.5 (b) of the Personnel Regulations, and had not provided the individual a copy of the charges nor given him an opportunity to respond, as required by that same section of the Personnel Regulations. Therefore, since the action had not been approved by the Chief Administrative Officer, and the employee had not been provided due process, the dismissal was rescinded by the Board, and the employee reinstated to his position with full back pay.

The Department subsequently dismissed the employee for the second time on the same charges. Again, the Department Head had failed to obtain approval of the Chief Administrative Officer for such action, as required by Section 21.5 of the Personnel Regulations. While it was indicated that it was the intent of the Chief Administrative Officer to delegate authority, there was no evidence to show that he had, in fact, done so. Therefore, finding the action was not in accordance with the Personnel Regulations, and established procedures, the dismissal was again rescinded, this time with prejudice, and the individual was reinstated to his prior position or one of comparable status, with full back pay.

NOTE: THIS CASE WAS APPEALED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY BY THE COUNTY.

Case No. 81-41

An individual appealed dismissal from her position with the Police Department, but withdrew the appeal prior to Board action.

Case No. 81-47

An Employment Specialist appealed her dismissal for alleged falsification of documentation.

The record showed that appellant had been employed for approximately fourteen years in the same area of responsibility, and was knowledgeable with respect to her duties and responsibilities. The individual failed to follow established procedures with respect to verification of data, and certified forms as being correct prior to

Dismissals

Case No. 81-47 continued

their being completed. The County documented such action in two specific cases. The individual had been warned previously for similar problems, and had been counselled with respect to her work performance. Three months prior to the dismissal, she had been suspended for falsifying signatures on County forms.

Based on the individual's extensive experience and knowledge with respect to her responsibilities, and the fact that she had been warned, counselled and suspended for similar violations only three months prior to the dismissal, the dismissal was sustained.

Case No. 81-73

A Bus Operator appealed his dismissal but withdrew the appeal prior to the hearing.

Case No. 81-78

A Forklift Operator appealed his dismissal for alleged destruction of County property; alleged failure to report an accident; and alleged conduct unbecoming a County employee.

The individual was assigned to drive a specific forklift on the day in question. It was alleged that sometime during appellant's work shift, a piece of County equipment was severely damaged by a forklift. Witnesses in the area of the damage testified that they did not see or hear anything, and that, based upon the amount of damage to the equipment, a collision would have made a loud noise. Additionally, other employees, including a supervisor, had driven vehicles under the damaged equipment, even though prohibited under departmental procedure, and none of these employees knew how the damage had been caused.

Testimony revealed that the area under the damaged equipment had been barricaded to prevent operation of vehicles under the equipment, but the barricade had been removed sometime prior to the accident, and management never made an effort to replace it or enforce the prohibition from driving in the area. There was also testimony that 12 to 13 other employees on duty on the morning in question could operate the forklift, and, for various reasons, appellant had left his forklift unattended on three different occasions that morning.

Determination of which forklift was involved in the collision was based on paint scrapings found on the forklift, however, testimony

Dismissals

Case No. 81-78

also indicated that management had used two forklifts to try to return the damaged equipment to its normal shape, but management could not verify which forklifts had been used for this purpose or that the paint scrapings could not have been transferred during the attempt to repair the damage.

Based on the lack of any conclusive evidence as to when the damage occurred, how it may have occurred, and who may have been involved, it was the opinion of the Board that the case was entirely too circumstantial to support or justify disciplinary action. Accordingly, the dismissal was rescinded, the employee was reinstated to his position and reimbursed for all salary monies lost and attorney's fees.

FIRE AND RESCUE COMMISSION DECISIONS

Case No. 81-05

A Fire Officer appealed from the decision of the Montgomery County Fire and Rescue Commission on his grievance concerning removal from a special duty assignment.

The record showed that the individual was injured on the job in August, 1980, and was placed on disability leave. In September, after evaluating the individual's work performance for the previous year, it was the decision of his superiors that he was below average, and was removed from the special duty assignment pursuant to Section 3 (c) of the Personnel Regulations in effect at that time.

Appellant appealed the action, alleging that it was the result of his injury, not his work performance. The Board found insufficient evidence to support appellant's allegation, and, based on the information provided by the Fire Department, found the action to be in accordance with the Fire Department's authority, and the action was sustained.

(APPELLANT APPEALED THIS DECISION TO THE CIRCUIT COURT)

Case No. 81-26

A Firefighter appealed from the decision of the Fire and Rescue Commission with respect to forfeiture of annual leave and written censure for his involvement in a confrontation with another employee.

Evidence of record showed that appellant was involved in an altercation with another employee, and that he was apparently the instigator. The Department had placed him on paid administrative leave pending investigation of the incident. After investigation, the individual was given a letter of censure and was required to forfeit six days, two hours of accumulated annual leave--three days for disciplinary purposes, and three days, two hours to reimburse the Department for the administrative leave. Further, while allowing the individual to appear at a regular meeting, the Department denied appellant's counsel to participate. The Board found that, although counsel had been denied the right to speak in behalf of his client, appellant had been afforded adequate opportunity at the various levels of appeal to present complete information.

The Board ruled that the Fire Department had authority to grant administrative leave pending investigation of an incident under Section 33.26 (d) (8) of the Personnel Regulations, but did not have the authority to subsequently rescind the leave under Section 33.22 (e), as claimed. Therefore, since appellant was the instigator of the altercation, the Merit System Protection Board sustained the letter of censure and three days disciplinary leave, but directed the Department to reimburse him for the three days, two hours administrative leave.

Fire and Rescue Commission Decisions

Case No. 81-30

A Firefighter appealed from the decision of the Fire and Rescue Commission with respect to forfeiture of annual leave and written censure for his involvement in a confrontation with another employee.

Evidence of record showed that the individual had been involved in a physical confrontation with another employee while on duty, but that the other individual was the instigator of the problem. The Department had placed appellant on paid administrative leave pending investigation of the incident. After investigation, the individual was given a letter of censure and required to forfeit six days, two hours of accumulated annual leave--three days for disciplinary purposes and three days, two hours to reimburse the Department for the administrative leave. Further, while allowing the individual to appear at a regular meeting, the Department denied appellant's counsel to participate. The Board found that, although counsel had been denied the right to speak in behalf of his client, appellant had been afforded adequate opportunity at the various levels of appeal to present complete information.

The Board ruled that the Fire Department had authority to grant administrative leave pending investigation of an incident under Section 33.26 (d) (8) of the Personnel Regulations, but did not have the authority to subsequently rescind the leave under Section 33.22 (e), as claimed. Therefore, since appellant had been provoked by the other individual, the written censure was sustained, but the forfeiture of annual leave for disciplinary purposes was reduced from three to two days, and the Department was directed to reimburse appellant four days, two hours of annual leave--one for the reduced penalty, and three days, two hours for the administrative leave.

Case No. 81-43

A Firefighter appealed from the decision of the Fire and Rescue Commission on his grievance which denied his request for awarding annual leave because of the implementation of a hold-back pay system. Appellant initially filed his grievance with his department, and the department agreed that he should be awarded forty hours of annual leave upon implementation of the hold-back system, in accordance with the plan used by the County in 1972. Subsequently, the Fire and Rescue Commission overruled the department, and denied the employee's request.

After review of the record, it was the decision of the Merit Board that since the issue had been filed as a grievance, and since

Fire and Rescue Commission Decisions

Case No. 81-43 continued

the purpose of the grievance procedure is to resolve issues at the lowest possible level, the decision of the fire department effectively closed the case, and the action of the Fire and Rescue Commission was improper since no appeal had been filed with them. The Board's decision was appealed to the Circuit Court by the Chief Administrative Officer, and the Court ruled that since the Fire and Rescue Commission had been given authority for consistency of payroll systems within the individual fire departments, it did, in fact, have authority to overturn the decision of the fire department on the grievance. Accordingly, the Court overturned the decision of the Merit Board, and reaffirmed the decision of the Fire and Rescue Commission.

Case No. 81-50

An applicant for the position of Firefighter appealed the Fire and Rescue Commission's decision to disqualify her from further consideration for failure to complete the physical agility test.

Appellant alleged that equipment used for the test may have been faulty, and that advance training classes were not made available to all applicants. Appellant was a trained volunteer firefighter, and had been notified in advance of the test of the requirements to be met, and encouraged to observe others taking the test, and to practice prior to actually taking the test. One person was allowed to re-take the test when faulty equipment was discovered, however that individual failed the test the second time as well.

Even though appellant was allowed ten minutes to complete the test, she quit after three minutes, fifty-one seconds. She was subsequently denied a request to re-take the test.

It was the unanimous decision of the Merit Board that the test was job-related, properly announced, and administered in a fair and equitable manner. Therefore, appellant's disqualification from further consideration was sustained.

MISCELLANEOUS

Case No. 80-29 (decided August, 1981)

An employee appealed from the decision to place him on leave without pay pending determination of his mental competence to continue performance of assigned duties.

Subsequent to medical and psychiatric examinations, physicians reported no problem, and the Board ordered the employee be reinstated to his position with full back pay. Appellant was also granted attorney's fees.

Case No. 81-09

A Bus Operator appealed the decision of the Chief Administrative Officer concerning retention of a written warning in her personnel file. During the investigation of damage to a County vehicle, appellant refused to provide the investigator with her drivers license. As a result of this refusal, appellant was given a written warning which specifically stated it was not a disciplinary action.

A Fact Finder found that the request of the supervisor was reasonable and appropriate, and recommended that the document be retained in the individual's personnel file until November 1, 1981. The Chief Administrative Officer directed the letter be retained in the departmental file only for a period of two years. The Board sustained the findings of the Fact Finder, and, based on the nature of the incident, concurred with his recommendation that the document be removed from the file on November 1, 1981. Further, during the Board's review of the case, two other documents found in the file were ruled inappropriate and the Board directed their immediate removal.

Case No. 81-12

An Administrative Aide appealed to the Board alleging that her resignation was involuntary, and requested that she be allowed to rescind it.

The individual had notified her supervisors in late 1980 that she was planning to return to school in January, 1981, and, if possible, wanted to transfer to a part-time position. She subsequently filed applications for part-time vacancies in the County, but was not successful in being selected. On January 5, 1981, she submitted her resignation effective January 16, and indicated that she realized she had five days from the date of resignation to rescind it. She did not rescind the resignation within the five days.

Section 17, Resignation, of the Personnel Regulations states that a resignation may be rescinded within five work days from the date submitted, or, if it was in fact the result of a coercive act or action. The Board found no evidence that the resignation was anything but voluntary, and noted that the individual could have elected to request professional improvement leave under Section 13.8, or leave without pay under Sec. 11 of the Personnel Regulations. Finding no evidence that the act was involuntary, the appeal was denied.

Miscellaneous

Case No. 81-13

An Inspector appealed from the decision of the Personnel Director denying his grievance concerning transfers which occurred in 1975, 1977 and 1980, on the basis that the grievance had not been filed timely.

The Board noted the grievance was not filed until one year after the most recent transfer, and concurred with the Personnel Director that the appeal had not been filed timely and further found that the individual had not been transferred to another County position, but had simply been given a duty reassignment. Accordingly, the appeal was denied.

Case No. 81-15

An employee appealed the decision of the Chief Administrative Officer on his grievance concerning forfeiture of annual leave for disciplinary purposes.

The evidence of record showed that the employee was involved in a physical confrontation with another employee, and struck the other employee with a broom handle. The Department Head determined that since there was no history of disciplinary problems with the employee, he would be required to forfeit forty hours of annual leave as provided in Section 22 (b) (24) of the Personnel Regulations in effect at the time. This punishment was consistent with the action taken against other employees in similar circumstances.

Based on the evidence of record, and the provisions of the Personnel Regulations of 1972, it was the unanimous decision of the Merit Board that the action was reasonable and appropriate, and the appeal was denied.

Case No. 81-20

A former employee appealed to the Merit Board from the decision of the Personnel Director to discontinue processing a grievance filed prior to her resignation.

Subsequent to submitting a resignation, but three days prior to the effective date of the resignation, the individual filed a grievance with the Personnel Director concerning protection from alleged coercion/harassment. Since the issues raised concerned conditions of her employment, the Personnel Director ruled that the issues were rendered moot by the termination of her employment, and she was so notified.

The Board agreed with the Personnel Director that the issues were moot, and his decision was sustained.

Miscellaneous

Case No. 81-23

Bus Operators filed a class action appeal from the decision of the Chief Administrative Officer concerning what they believed to be a redefinition of the utility work pick assignment.

The major issues involved a change from fixed reporting times to sliding reporting times, giving utility employees first option for overtime work, and utilizing vacation relief drivers to cover utility assignments.

The Bus Operators' Manual did not mandate fixed reporting times for utility drivers, and, in fact, required drivers to report as required by their daily run assignments. The Bus Operators' Manual also stated that a vacation relief driver would be utilized to cover an assignment of another driver who is "on leave or has been suspended or dismissed". The Manual also provided that overtime was to be made available to all employees on an equitable basis, and the Chief Administrative Officer overruled the priority given utility workers, which resolved that issue.

The Department of Transportation provided statistical data to show that the change in procedures had reduced the percentage of missed trips and had reduced the amount of overtime required. The Board found the changes to be in accordance with the Bus Operators' Manual, and the Personnel Regulations. Further, it was the Board's opinion that management has the responsibility for establishment of policies and procedures to achieve established goals, and the subsequent review and modification of such policies and procedures as needed. In the instant case, while the employees may have disagreed with or disliked some of the changes, the evidence showed that the changes did improve the effectiveness and efficiency of the operating unit, and was, therefore, in the best interest of the County. The action of management was sustained.

Case No. 81-25

A Bus Operator appealed from the decision of the Chief Administrative Officer on his grievance concerning employment practices, liability of bus operators, and allegedly inconsistent policies.

The record showed that in 1976, the Department of Transportation implemented a departmental procedure concerning disciplinary action for preventable accidents. In January, 1980, the Transit Operations Section of the Department of Transportation instituted a point-system

Miscellaneous

Case No. 81-25 continued

for disciplinary actions for preventable accidents, which was inconsistent with the policy promulgated by the Department in 1976. Additionally, in 1980, a review process was established which included two separate Boards--one with responsibility for initial review and decision as to preventability, and the second to function as an appeal body. Two of the three members of the initial review committee also served on the appeal body. Review of accident cases indicated that mandatory hearing requirements had not been adhered to; time limits for notification had not been adhered to; and the 1980 point-system was used as a basis for disciplinary actions, even though it was in conflict with the 1976 policy. It was further revealed that the 1976 policy included forfeiture of annual leave as a penalty, which was no longer permitted under the Personnel Regulations.

It was the opinion of the Board that, while the County had never instituted an accident review policy County-wide, it was not a discriminatory practice to utilize such a program in specific departments or units which involve a high-volume of driving County vehicles. Accordingly, the allegations of discriminatory employment practices by implementation of such a program were dismissed.

The issue involving driver liability, in the opinion of the Board, was properly addressed by the accident review procedure. With respect to the inconsistent policies, it was the unanimous decision that the 1980 policy was in violation of the Department's 1976 policy; that the 1976 policy was now in conflict with the Personnel Regulations; and that it was inappropriate for individuals to serve on both the review board and appeal body. The Department of Transportation was directed to modify its policy to bring it into compliance with the Personnel Regulations; to revise the accident review procedure to eliminate conflicts between the review committee and appeal body; and to take appropriate action to assure compliance with the procedures with respect to notification and referral for mandatory hearings.

Case No. 81-31

A member of the Employees' Retirement System of Montgomery County (ERSMC) appealed from the decision of the Chief Administrative Officer which denied his request to be allowed purchase of prior service credits as provided for in 1974, rather than under changes effected in 1978.

The record showed that the individual submitted an application to purchase prior service credits in April, 1974, when payment was based on the amount of money contributed to the other plan. On June 1, 1974, the purchase amount was based on an actuarial calculation. In 1975,

Miscellaneous

Case No. 81-31 continued

the individual was notified that he needed to provide written certification of employment with the prior agency. In 1977, without any further correspondence with the employee, the Personnel Office dismissed his request since they had not received certification of prior employment. On July 1, 1978, the ERSMC was again amended and allowed individuals to purchase prior service credits on an actuarial basis. Appellant submitted an application in August, 1978, and was not notified of the amount required until October, 1980. Upon finding that the cost was based on an actuarial calculation rather than actual contributions, appellant filed a grievance, but the Chief Administrative Officer sustained the actuarial cost basis.

It was the unanimous opinion of the Merit System Protection Board that the lengthy delays and apparent lack of concern for prompt action on the part of the County created an undue hardship on the appellant. Therefore, because of the County's lack of follow-up and timely action, the Board ruled that the individual should be allowed to purchase the prior service credits based on the law in effect at the time the initial application was made in 1974.

NOTE: THE BOARD'S DECISION IN THIS CASE WAS APPEALED BY THE COUNTY TO THE CIRCUIT COURT. THE CIRCUIT COURT REMANDED IT TO THE MERIT BOARD FOR HEARING AND DECISION BASED UPON THE FACTS PRESENTED. THE PARTIES REACHED A MUTUALLY SATISFACTORY RESOLUTION OF THE ISSUES PRIOR TO THE HEARING.

Case No. 81-42

Bus Operators submitted a petition to the Merit System Protection Board concerning alleged disclosure of illegal acts by their supervisors. After review of the documentation submitted, it was the unanimous decision of the Board that appellants failed to show that the circumstances were so unusual that they necessitated direct filing with the Board. Therefore, since Section 24 of the Personnel Regulations permits direct filing with the Board only in unusual circumstances, the individuals were notified to bring the allegations to the attention of the authorities responsible for corrective action.

Miscellaneous

Case No. 81-44

A Police Officer appealed from the decision of the Chief Administrative Officer which denied his grievance concerning two consecutive days off.

Section A6.2 of the Personnel Regulations requires that ". . . whenever practicable, the policy of two consecutive days off shall be followed . . .". The record showed that for a period of years, the Police Department had been deployed on a four-day work week, and the officers had been receiving at least two consecutive days off each week. Effective March 1, 1981, deployment of the department was revised, and the officers were returned to a five-day work week. Appellant alleged that he was not receiving two consecutive days off as other County employees receive, as required by the Personnel Regulations. The record also showed that appellant received more than forty-eight consecutive hours off fifty-two out of fifty-three shift changes during a one year period.

In the opinion of the Board, when positions involve shift work, forty-eight consecutive hours off constitutes two days off, and, since the individual received two consecutive days off fifty-two times during the year, the Board ruled that the schedule of appellant's assigned shift satisfactorily met the requirements of Section A6.2 of the Personnel Regulations. Accordingly, the decision of the Chief Administrative Officer was sustained.

Case No. 81-46

A Building Service Worker appealed his termination directly to the Merit System Protection Board. Since Section 18.3 of the Personnel Regulations mandates that appeals of termination be appealed pursuant to Section 22 of the Personnel Regulations, the grievance procedures, the appeal was referred to the appropriate administrative authorities.

Upon completion of the grievance procedure, appellant again appealed to the Board.

The record showed the appellant had been absent from work on numerous occasions because of illnesses, and had failed to call his supervisors prior to his reporting time, in accordance with established procedures. The individual had personally received copies of policies and procedures covering absences, and had received several written warnings concerning unauthorized absences, four in

Miscellaneous

Case No. 81-46 continued

the two months preceeding termination. Because of a back problem, appellant did not report to work for a period of one week, and failed to contact his supervisor at any time concerning his inability to report. Therefore, since the individual had been absent more than three consecutive days without reporting, his employment was terminated as provided for in Section 18 of the Personnel Regulations. The termination was sustained.

Case No. 81-53

An employee filed an appeal from the decision of the Chief Administrative Officer on a grievance, but withdrew the appeal prior to the Board's taking any action.

Case No. 81-55

A Police Sergeant appealed the implementation of a new policy concerning use of annual leave which he believed to be discriminatory against sergeants on shift work.

Because of manpower requirements, the Department of Police implemented a new policy which set forth certain restrictions on use of annual leave by shift sergeants, effective February 25, 1981. While certain requirements had to be met, there was no indication that any request for leave had been denied. The Board noted that the sergeants were only affected when they were scheduled for night work, which was once every five weeks.

Section 5.7 of the Personnel Regulations gives management the authority to approve use of annual leave, and the Chief Administrative Officer authority to establish procedures for use of annual leave. While earned leave is a benefit for use by an employee, the Board recognized management's responsibility to determine manpower needs and establishing reasonable guidelines and restrictions which may be necessary to assure adequate coverage. Based on the allowances provided by management, it was the opinion of the Board that the new policy was equitable and fair, and the decision of the Chief Administrative Officer was sustained.

Miscellaneous

Case No. 81-56

An Office Assistant appealed from the decision of the Chief Administrative Officer on her grievance concerning an involuntary transfer. The Fact Finder assigned the grievance recommended reversal of the transfer, and that future transfers be carried out in a fair and equitable manner. The Chief Administrative Officer approved the Fact Finder's recommendations, and appellant was returned to the prior position.

On appeal to the Merit Board, appellant requested reimbursement for job-related transportation expenses incurred during the period of the transfer, a copy of a special report, and disciplinary action against the parties responsible for the wrongful transfer.

The record showed that the County ultimately provided a copy of the report to appellant. On the remaining two issues, the Board ruled that responsibility for disciplinary action rested with the Department Head, and that disciplinary action against an individual employee was outside the Board's authority. With respect to the request for travel expenses, the Board noted that while her original duty assignment was convenient to her home, it was still her responsibility to get to and from work, and the time and distance involved in this case were not unreasonable. In the opinion of the Board, there was insufficient justification for granting reimbursement, and the request was denied.

In a request for reconsideration, appellant raised another issue involving discrimination, and was referred to the Human Relations Commission in accordance with Section 4 of the Personnel Regulations.

Case No's. 81-58 through 81-61

Four Inspectors appealed from the decision of the Personnel Director which denied their grievances on the basis that the issue was not grievable.

The individuals had filed grievances because their supervisor had filed a grievance, allegedly involving them, but, because the grievance process is confidential, and appellants had not been provided copies of the supervisor's grievance, there was no proof that the supervisor's grievance did, in fact, involve appellants.

Miscellaneous

Case No's. 81-58 through 81-61 continued

In reviewing the grievance process, the Board determined that an employee may file a grievance based on a misunderstanding or disagreement with a supervisor with respect to a term or condition of employment, or treatment by managers, supervisors or other employees. Therefore, the Board ruled that until a decision was rendered on the supervisor's grievance which resulted in adverse impact on a specific individual, appellants did not have a grievable issue. Accordingly, the decision of the Personnel Director was sustained.

Case No. 81-62

A Transit Operations Supervisor appealed from the decision of the Chief Administrative Officer on his request to revise work schedules. The supervisors had worked a four-day week for approximately two years, and in January, 1981, were notified of plans to return to a five-day work week. The supervisors were given an opportunity to submit written comments on the proposal.

After consideration of the comments, the new five-day plan was implemented in May, 1981. Subsequently, the Director of the Department of Transportation directed changes to the new plan based on problems identified by the supervisors.

The special investigator assigned the grievance found a lack of communication between the parties, and that there was insufficient supervisory interface with employees in the new schedule. The investigator also noted that many of the complaints were a result of "personal convenience". The investigator proposed a new plan which provided for one supervisor working four ten-hour days, one working five eight-hour days, and the third working two seven and one-half-hour days, two eight-hour days, and one nine-hour day. These shifts rotated on a regular basis. This plan was implemented by the Chief Administrative Officer.

The Board found that a change in work schedules was the responsibility and prerogative of management under Section A6.1 of the Personnel Regulations. However, Section A6.2 of those Regulations sets forth the normal work day as "not less than eight hours nor more than ten hours". Therefore, it was the ruling of the Board that since one of the work schedules provided for less than eight hours per day, it was improper and not in accordance with the Regulations. Further, since the normal work day for that shift had to be considered eight hours, the individual who worked nine hours on one day had to be paid at the overtime rate for the additional hour worked during each week assigned to that shift. The Department of Transportation was directed

Miscellaneous

Case No. 81-62 continued

to bring the schedule into compliance with the Regulations, and to reimburse employees affected for any time worked in excess of eight hours per day while assigned to the one shift.

Case No. 81-63

A Bus Operator appealed from the decision of the Chief Administrative Officer which denied his request for a change in the accounting period contained in the Accident Review Procedure.

Reviewing the case, the Merit Board determined that the issues were related to and part of Case No. 81-25 (previously summarized) in which the Board directed certain corrective action. Based on that, the Board ruled that the twelve-month reporting period was still in effect, rather than the twenty-four-month reporting period the Department of Transportation had been using, and the Board directed that the policies in this area be consolidated. The Board further directed the Department of Transportation to review all personnel actions taken as a result of the conflicting policies to assure that they were in compliance with the procedure established in 1976, and to take corrective action where necessary.

Case No. 81-64

A Police Officer appealed his performance evaluation rating. Section 8.5, Appeals from Performance Ratings, of the Personnel Regulations provides for appeal to the Board only in cases involving failure to follow established procedures. Therefore, since appellant failed to submit any evidence to show irregularity in procedure, the appeal was denied.

Case No. 81-65

A Police Officer appealed from the decision of the Chief Administrative Officer which denied his grievance requesting payment for damage to his personal vehicle caused by a County canine.

Appellant was assigned responsibility for a County police canine and placed the dog in his garage with his personal car. The dog allegedly scratched the car, damaging the paint.

It was the decision of the Board that the issue in the case was one of liability rather than a condition of employment or personnel action. Accordingly, the Board ruled the issue was not appealable and the request was denied.

Miscellaneous

Case No. 81-68

A member of the Employees' Retirement System of Montgomery County (ERSMC) appealed from the decision denying his application for an administrative retirement pursuant to Section 33-38 (j) of the 1972 Retirement Law because of his being RIF'd in October, 1981.

In reviewing the record, the Board noted that Section 33-38 was deleted from the Retirement Law in 1974, and that the law had undergone many revisions in the last ten years. Appellant alleged that because he was fully vested (more than five years of service) prior to deletion of that provision, he was entitled to receive a minimum of 50% of final earnings under an administrative retirement, rather than the 39% calculated under Section 33-45 (d) of the present law.

The Board ruled that based on case law (City of Frederick v. Harr L. uinn, et al [23 Md. App. 626 (1977)] and Saxton v. Board o Trustees 266 Md. 690, 694 (1972)), the County had a right to modify discontinued service benefits as was done in 1974 and again in 1978. Further, the Board ruled that an employee has a vested right to normal retirement benefits only, and does not have a right to an administrative retirement until such time as the eligibility requirements for such retirement have been met (service terminated or adversely affected). Additionally, the Board noted that election of an administrative retirement was voluntary, as the individual had the right to pursue other County employment, and had been offered another position at a slightly lower grade. Accordingly, the appeal was denied.

NOTE: THIS DECISION WAS APPEALED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY BY THE EMPLOYEE.

Case No's. 81-69, 81-76 and 81-80

Three Police Officers appealed from the decision of the Chief Administrative Officer which denied their grievances concerning use of semi-automatic and automatic weapons while off-duty. The record showed that from 1978 through 1981, off-duty officers and plainclothes officers on duty were allowed to carry automatic weapons or semi-automatic weapons if the weapons were approved by the Departmental Armorer. In August, 1981, the Director of the Department of Police issued a new directive concerning handguns, and rescinded approval of semi-automatic and automatic weapons whether on or off duty. The new policy also established a higher qualifying score

Miscellaneous

Case No's. 81-69, 81-76 and 81-80 continued

for use of a second weapon.

It was the ruling of the Board that, pursuant to Section 33-3 (c) of the Montgomery County Code, the Director of the Department of Police has the responsibility and authority for issuance of such a directive; that the directive was implemented in accordance with established procedure; and that, while the State of Maryland set a minimum qualifying standard for weapons, the County has the right to set higher requirements if desired. The Board suggested that the Department of Police review its policy for development of new procedures in an effort to improve communications between employees and management.

Appellants had also requested reimbursement for costs incurred in purchasing a second weapon since the second weapons were no longer allowed. However, it was the decision of the Board that since the officers were not required to carry weapons while off-duty, and since they are issued a weapon by the County which may be carried while off duty if they so choose, there was no justification for reimbursement of any costs incurred because of the individuals' desire for a particular weapon, and that request was also denied.

NOTE: THIS DECISION WAS APPEALED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY BY THE EMPLOYEES.

Case No. 81-77

A Correctional Officer appealed his demotion for alleged inappropriate activity on two occasions. The record showed and the appellant admitted that on one occasion, he engaged in an activity which mocked an inmate, and, in the opinion of his supervisors, created an adverse or possibly compromising affect on appellant as well as other officers.

Appellant was warned and counselled with respect to the first incident, and cautioned that further inappropriate behavior could result in dismissal. One week later, appellant was involved in an activity in which he could have been shot by two other officers with loaded shotguns. This action was considered irresponsible and inappropriate by management, but, based on appellant's general good attitude, the Department Head elected to demote appellant rather than dismiss him.

After review of the evidence and consideration of the types of action available, it was the decision of the Merit Board that the action taken was reasonable and appropriate, and the appeal was denied.

Case No. 81-81

An individual appealed a downgrade of his position, but withdrew the appeal prior to hearing by the Board.

RECRUITMENT AND PROMOTION

Case No. 80-93 (settled December, 1981)

An applicant for a Deputy Director position appealed the selection of an individual to fill the subject position, but the matter was settled by agreement prior to the Board's issuing a decision on the appeal.

Case No. 81-06

An employee appealed a "not qualified" rating received on his application for promotion to the position of Assistant Liquor Store Manager.

Appellant contended that his experience as an assistant store manager with a food chain for approximately five years, which was not considered relevant by the County, should have been allowed as equivalent experience. The class specification for the position required " . . . one year of experience as a Liquor Store Clerk II with the County or two years of equivalent experience acquired outside the County". Since the class specification and vacancy announcement did not specify a type of experience, it was the decision of the Board that the individual's experience as an assistant store manager outside the County must be considered comparable, and he should be given credit accordingly.

The County was directed to give the employee the opportunity to complete the testing procedure afforded all other qualified applicants.

Case No. 81-16

A former employee appealed the Personnel Director's decision not to accept her application for a vacancy which had been advertised "for employees only". The individual had resigned from the County government on January 16, and the position in question was advertised "for employees only" on January 19. Since the individual had resigned from County employment prior to submitting an application for the vacancy, which contained specific limitations, it was the unanimous decision of the Merit Board that the Personnel Director was correct in refusing to accept the application, and the appeal was denied.

Case No. 81-49

A Fire Lieutenant appealed a promotional action, but withdrew the appeal prior to a Board decision.

Recruitment and Promotion

Case No. 81-52

A Fire Lieutenant appealed the promotional examination for the position of Captain which was administered in June, 1980.

The record showed that appellant was aware of the appeal procedure prior to taking the examination, and that he had received a response to his complaint on July 15, 1980. He did not take any further formal action until noting the appeal with the Merit Board on May 20, 1981. Because of the nine-month interval between receiving response and the noting of the appeal with the Board, it was the unanimous decision of the Board that the appeal was not timely filed under Section 23.4, and it was dismissed.

Case No. 81-66

A Police Technician III appealed from the decision of the Chief Administrative Officer which denied his request for a non-competitive promotion to the position of Police Technician Supervisor. The record showed that appellant had been assigned supervisory duties in an "acting" capacity in August, 1977, without a salary adjustment for performing the higher-level duties. The individual was eligible for promotion to the position at the time of his acting assignment.

With implementation of the Career Development Plan, five supervisory positions were reclassified, and four incumbents were promoted to the new class. Since appellant was not officially filling the fifth position, he was not promoted to the supervisory level.

Appellant had successfully passed several supervisory training courses, and had received outstanding performance evaluations, which indicated that he was performing the supervisory duties in an exemplary manner. In 1980, he received a cash award for his outstanding performance as a supervisor.

The Special Investigator for the grievance found the complaint to be valid, and recommended non-competitive promotion and retro-active salary to November, 1977. The Chief Administrative Officer did not believe such a promotion would be consistent with the requirements of Section 13 of the Personnel Regulations, and denied the recommendation, but directed that the individual be promoted

Recruitment and Promotion

Case No. 81-66 continued

temporarily, and that the position be filled competitively.

It was the decision of the Merit Board that the Personnel Regulations in effect in 1977 should have been utilized rather than the 1980 Regulations since the action in question was the individual's assignment to supervisory duties in 1977. Therefore, the Board directed that the individual be promoted non-competitively, as permitted in Section 13 (d) of the 1972 Regulations, retroactively to November, 1977, with the normal 5% salary increase. Further, the individual's position was then to be reclassified to Police Technician Supervisor and he was to be promoted, effective the same date and with the same salary adjustment the other incumbents of the position had been promoted. The Board ordered all subsequent personnel actions to be modified accordingly, and the appellant was to be reimbursed all monies due as a result of these actions, as well as being reimbursed for reasonable attorney's fees.

Case No. 81-67

An applicant for the position of Firefighter appealed the "unacceptable" medical rating received, and requested reinstatement to the eligible list.

The record showed that appellant was disqualified for failure to meet NFPA 1001 Medical Standards, which provide that an individual be disqualified if the condition in question was ". . . symptomatic . . . likely to interfere with performance of duties or is likely to require assignment limitations . . .". The medical evidence submitted by both sides showed that the condition was asymptomatic, and that there was no indication that the condition would interfere with appellant's performance of duties or would require duty limitations. Based on the medical evidence of record, the Board directed the individual be reinstated to the eligible list, and the processing of her application continue in accordance with established procedure.

NOTE: THE COUNTY APPEALED THIS DECISION TO THE
CIRCUIT COURT FOR MONTGOMERY COUNTY.

Recruitment and Promotion

Case No. 81-70

A Police Officer appealed from the decision of the Personnel Director that his grievance was based on a non-grievable issue.

Appellant's grievance was based on the development and administration of a promotional examination. The County had set forth procedures which indicated that the Director of the Department of Police was the final authority on all questions regarding the examination, and that his decision was not appealable. The Board ruled that such practice was inconsistent with Section 5.6 (d), Examinations, of the Personnel Regulations, and found that the matter was, in fact, grievable. The case was referred to the Personnel Office for processing in accordance with established procedure.

SUSPENSIONS

Case No. 81-01

An Investigator appealed a suspension. The case was later consolidated with Case No. 81-19 for purposes of hearing and decision. See Case No. 81-19, Dismissals, for summary.

Case No. 81-03

A Liquor Store Manager appealed a suspension for alleged violation of policy on money security for the second time. Evidence of record showed that in May, 1980, the individual received a performance development plan on which money security was specified as an item for improvement. In October, 1980, the individual received a written warning for leaving the safe unlocked during working hours, and was told that if it happened again, he would be suspended for two days. In December, 1980, the safe was again found open, and, even though it was empty, the individual was suspended for two days. The individual testified that he was aware of the policy, but left the empty safe unlocked based on his concern for the safety of employees in the event of a robbery.

It was the unanimous decision of the Board that the policy of keeping safes locked at all times was reasonable and appropriate, and, since appellant was aware of the requirement, the suspension was sustained.

Case No. 81-11

An Equipment Operator appealed a suspension for alleged insubordination. There was no disagreement with the facts of the case, and the primary issue before the Board was the severity of penalty.

In determining severity, the Board noted that Section 21.1 of the Personnel Regulations requires that disciplinary actions be progressive in nature. Appellant had had a satisfactory work performance record, with no prior disciplinary actions; the incident occurred during a snow emergency, which created unusual pressures; and of the five supervisors involved, none was completely aware of the total facts of the situation, which tended to confuse matters. Based on these facts, plus the fact that appellant had no control over some of the circumstances, it was the unanimous decision of the Merit Board that the suspension be rescinded and the individual reimbursed all monies lost. However, since the employee was insubordinate, the Board directed that a letter of reprimand--the first

Suspensions

Case No. 81-11 continued

level of formal disciplinary action--be prepared and placed in appellant's personnel file in accordance with established procedures.

Case No. 81-27

An Assistant Warehouse Leader appealed his suspension for alleged involvement in a physical confrontation while on duty. The suspension was rescinded by the Department Head because of failure to obtain approval of the Chief Administrative Officer, as required by Section 21.5 (b) of the Personnel Regulations. Therefore, no action was required by the Merit Board.

Case No. 81-28

A Correctional Specialist appealed his suspension pursuant to Section 21.3 (e), pending a Court decision on criminal charges. The individual was subsequently exonerated of all charges. Therefore, pursuant to Section 21.3 (e) of the Personnel Regulations, the individual was returned to duty with full back pay, and no action was required by the Board.

INTERPRETATIONS OF THE PERSONNEL REGULATIONS

Pursuant to Section 1.4, Interpretation, of the Personnel Regulations, the Merit System Protection Board issued the following interpretations regarding

Use of Casual Labor by the Independent Fire and Rescue Corporations

Lateral Transfers Between the Independent Fire and Rescue Corporations and the County's Department of Fire and Rescue Services

Work Schedules for Employees Working Around-the-Clock Shifts

Pay Policies.

As mentioned in Section 1.4, Board interpretations are final, subject only to review by a court of competent jurisdiction. Two of the Board's interpretations were appealed to the Circuit Court for Montgomery County, however court decisions were not rendered in time for inclusion in this report.

USE OF CASUAL LABOR BY THE INDEPENDENT FIRE AND RESCUE CORPORATIONS

The Merit System Protection Board considered a request for interpretation of the Personnel Regulations with respect to the hiring of casual labor by independent fire and rescue corporations. It is our opinion that:

1. Career merit system employees may be hired as casual labor of an independent fire and rescue corporation, subject to the restrictions and/or limitations of the County's ethics laws. It is our understanding from the County Attorney's Office that a specific waiver may have to be requested from the Ethics Commission prior to hiring of a merit system employee as casual labor.
2. If the independent fire and rescue corporation uses its own employees, they must pay the employees at the normal rate of pay, which may include overtime or compensatory leave, depending upon the number of hours the employees work.

3. If the independent fire and rescue corporation uses employees from other independent fire and rescue corporations, reimbursement may be at the casual labor rate.

LATERAL TRANSFERS BETWEEN THE INDEPENDENT FIRE AND RESCUE CORPORATIONS AND THE COUNTY'S DEPARTMENT OF FIRE AND RESCUE SERVICES

The Merit System Protection Board reviewed Section 15.1 (a) of the Personnel Regulations for Montgomery County (approved December, 1980), and the same section number of the Personnel Regulations for Fire and Rescue Service Merit System Employees of the Independent Fire and Rescue Corporations of Montgomery County (approved April, 1981). The question concerning these provisions is whether or not an individual employee may be laterally transferred from an independent fire department to the Department of Fire and Rescue Services, which is under the County's Merit System.

In conducting the review, the Board noted that Section 21-4 (m) of the Montgomery County Code requires that:

"(2) The comprehensive county personnel regulations shall be adopted by the commission unless modified in accordance with subsection (b) (3) of this section, and will apply to all career personnel employed by the local corporations and paid with tax funds. The chief administrative officer shall have the responsibility to administer and apply these regulations uniformly in a manner consistent with the responsibilities assigned to the commission elsewhere under this chapter as a service to the local corporations. The administration and application of these regulations shall be consistent with the special characteristics of the fire, rescue and emergency medical services."

Further, in modifying the County's Personnel Regulations, the Fire and Rescue Commission specifically provided for transfer between corporations or between a corporation and the Department of Fire and Rescue Services [see Section 15.1 (a)]. The Board also noted that this lateral movement was included and considered in developing a Career Development Plan for Fire and Rescue Personnel, and that the same class specifications are used by the County and the Fire Departments for fire-related positions.

Based on the foregoing, it is the interpretation of the Merit System Protection Board that Section 15.1 (a), Transfer, of both the

County's Personnel Regulations and the Fire and Rescue Personnel Regulations should be interpreted as permitting lateral transfers between individual fire corporations and/or the County's Department of Fire and Rescue Services.

WORK SCHEDULES FOR EMPLOYEES WORKING AROUND-THE-CLOCK SHIFTS

Section A.6, Work Schedules: Attendance; Hours of Work, subsection 6.2, Work Day and Work Week, of the Personnel Regulations for Montgomery County (approved December, 1980), states:

"The normal work day for full-time County employees shall be not less than eight hours nor more than ten hours. The normal work week for full-time County employees shall be forty hours (excluding all meal periods), Sunday through Saturday. The foregoing provisions shall not apply to employees assigned to perform operational firefighting duties. The normal work day and normal work week for such employees shall be established by the Chief Administrative Officer. Whenever practicable, the policy of two consecutive days off shall be followed. The Chief Administrative Officer may authorize the inclusion of a meal period (not in excess of thirty minutes) for each employee filling a position in an occupational class assigned around-the-clock shift schedules. Meal periods shall not be included in any computations to determine the amount of compensation or compensatory leave due an employee for overtime work."

This section does not define precisely what constitutes two days off, nor does it clearly state what the parameters of a work day shall be. With respect to these issues, it is the unanimous decision of the Merit System Protection Board that Section A6.2, Work Day and Work Week, of the Personnel Regulations for Montgomery County shall be interpreted as follows:

1. Two consecutive days off shall normally be construed as two calendar days off, except in situations where around-the-clock shift work is involved. Where around-the-clock shift work is involved, two consecutive days off shall be defined as forty-eight consecutive hours.
2. The normal work day shall be considered to be from 12:01 a.m. to 12:00 midnight, except in situations involving shift work. With respect to shift work, on days in which a shift begins one calendar day and ends on another calendar day, the work day shall be

the day on which the majority of time is worked.
Example: Shift begins at 10:00 p.m. on Monday,
and ends at 6:00 a.m. on Tuesday. The work day
shall be considered Tuesday, not Monday. If the
amount of time worked is divided evenly between
two calendar days, the day on which the shift
started shall be considered the work day.

--THIS INTERPRETATION WAS APPEALED TO THE CIRCUIT COURT.

PAY POLICIES

The Merit System Protection Board was requested to interpret Section A1.7, Pay Policies, of the Personnel Regulations of Montgomery County, Maryland, as amended through December 2, 1980, particularly as it affects police patrol employees. The basic concern involved compensation for the mandatory roll call period of twenty minutes prior to the beginning of a shift, and resulting disciplinary action for failure to attend the roll call period.

Section A1.7, Pay Policies, states:

"Employees are to be paid on a bi-weekly pay period basis. Salaries under the general pay schedule shall be computed on the basis of fifty-two weeks for a work year of two thousand eighty hours and employees are to be paid accordingly. Except as specifically provided by Federal, State or County law and these Regulations, the Chief Administrative Officer shall have the responsibility for determining payroll deductions and charges for such deductions, if any. Upon termination, if an employee is indebted to the County, the amount due may be deducted from pay, accrued annual leave or compensatory leave or retirement contributions."

Prior to addressing the specific questions, the Board noted the following points:

1. Police patrol employees are assigned by eight hour shifts (4-12, 12-8, 8-4 or other variable) because of the need for 24 hour coverage. While they are required to report 20 minutes early for roll call, making their "day" 8 hours and 20 minutes long, including a meal break, other County employees have a work day of 8 hours and 30 minutes, including a meal break. Even though a police officer is considered "on call" during meal breaks, 30 minutes relief time is provided during normal shifts, leaving an actual "work day" of 7 hours, 50 minutes.
2. Section A6.2, Work Day and Work Week, of the Personnel Regulations, specifically excludes meal periods from being considered (or included) when computing compensation due for hours worked.

3. While a police officer is "on call" 24 hours a day, regular patrol duty is normally only 7 hours, 50 minutes, five days a week, excluding meal breaks.

With respect to the questions raised, the Merit System Protection Board ruled that, pursuant to Section A1.7 of the Personnel Regulations:

1. The work year for police patrol officers is properly compensated for in 2080 hours since meal periods may not be included when determining compensable time for overtime purposes.
2. Patrol officers are required to attend roll call since it is a requirement of their job, and does not result in overtime work.
3. The Department of Police does have authority to take disciplinary action for failure to comply with reporting and attendance requirements, as provided for in other sections of the Personnel Regulations.
4. Patrol officers are not being shown disparate treatment in relation to other Merit System employees when, in fact, police officers are in regular duty status for only 7 hours and 50 minutes a day, versus 8 hours for most County employees.

--THIS INTERPRETATION WAS APPEALED TO THE CIRCUIT COURT.

CLASSIFICATION REVIEW

The Merit System Protection Board reviewed many of the classification actions approved by the Chief Administrative Officer during the calendar year 1981, and provided him written comments and suggestions as deemed necessary and appropriate. This was the second year under the system where the Chief Administrative Officer has final approval authority and the activity remained fairly constant overall, as evidenced by the following comparison:

	1980	1981
Number of Positions Reclassified Upward	252	207
Number of Positions Reclassified Downward	11	20
Number of Classes Reallocated Upward	17	23
Number of Classes Reallocated Downward	1	1
Number of Classes Created	30	28
Number of Classes Abolished	69	54

The Board was pleased to see the continuing trend to decrease the number of different classes being used, and encourages the County to develop more generic type classes at all levels to simplify the plan and aid in assuring equity of grade assignments for all positions of similar level duties and responsibilities.

While the number of positions reclassified was down, we are concerned about the 110% increase in the average upgrade--from 1.24 grades in 1980, to 2.6 grades in 1981. In 1981, over half of the positions reclassified were increased two or more grades (125 positions). In fact, 30% (62 positions) were increased four or more grade levels. We plan to study more cases and review the County system more closely in 1982 to determine the cause for this increase and to ascertain the impact, both to management in flexibility of work assignments and mobility of employees, and financially to the County as a result of accompanying salary increases.

With respect to position downgrades, the average in 1980 was 4.55 and dropped to 2.1 in 1981.

SUMMARY OF CLASSIFICATION ACTIONS
 BY DEPARTMENT/OFFICE/AGENCY
 January 1, 1981 through December 31, 1981

DEPARTMENT/OFFICE/AGENCY	POSITIONS	
	UPGRADED	DOWNGRADED
Chief Administrative Officer	4	
Consumer Affairs	3	
County Attorney	1	
County Council	3	
Commission for Women	1	1
Community Use of Schools		1
Corrections and Rehabilitation		1
Environmental Protection	54	1
Facilities and Services	2	2
Family Resources	19	
Finance	3	1
Health	74	
Landlord/Tenant Affairs	2	
Libraries	5	9
Liquor	1	
Management and Budget	5	
Personnel	1	2
Police	1	1
Recreation	2	
<u>Transportation</u>	20	
TOTAL	201	20

GENERAL COMMENTS

In 1981, most of our time and energy had to be directed towards our appellate duties and responsibilities to assure prompt resolution of issues and to afford all parties appropriate due process. These requirements severely limited the Board's ability to conduct audits and reviews in various areas of personnel management to assure compliance with the intent of the County's Merit System Law and Personnel Regulations, which we believe must be given a high priority. We are pleased to report that steps have been taken to provide sufficient funding for the Board to retain private experts in specific areas to assist in and/or to conduct audits and reviews of the County's personnel practices. This change should enable us to carry out our oversight responsibilities in a more effective and efficient manner.

We recognize that there is no perfect system of personnel management and that Montgomery County, like any other jurisdiction, has problems and needs that must be addressed. Hopefully, better lines of communication can be developed at all levels of our government to facilitate a meaningful exchange of ideas and dialogue, resulting in cooperative changes and improvements to the system, as a means of meeting our needs and, thereby, improving service to the taxpayers to whom we are responsible.

We urge all employees (including managers and administrators) elected officials and citizens to be open to new ideas, considerate of opinions of others and to be cooperative, as success will only be achieved through a total team effort. We owe such an effort to our fellow employees and citizens.