



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

Web: nyc.gov/html/law/home.html

For Immediate Release

**APPEALS DIVISION, FIRST DEPARTMENT VACATES ARBITRATION AWARD
AS IMPROPERLY INTERFERING WITH SCHOOL'S DUTY
TO MAINTAIN EDUCATIONAL STANDARDS**

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, July 19, 2002 -- Citing the public policy limitations on arbitral power, the Appellate Division, First Department vacated an arbitration award yesterday entered against the former New York City Board of Education, because the arbitrator had improperly substituted her judgment for the judgment of a public school principal as to which teacher was best qualified for a job.

Writing for a unanimous Court, Justice David Friedman held that the arbitrator had violated public policy by "impermissibly infringing on the non-delegable responsibility of the public school system to maintain educational standards."

In 1998, the United Federation of Teachers (UFT) filed a grievance on behalf of a third-grade teacher, alleging that the principal of P.S. 173 had violated the collective bargaining agreement between UFT and the former Board when he rejected the grievant's application for a per-session "Project Read" position. The arbitrator determined that the principal had breached the collective bargaining agreement by "arbitrarily" denying the grievant's Project Read application. Accordingly, the arbitrator directed the Board to place the grievant in a Project Read position with back pay. Rejecting the Board's efforts to vacate the arbitration award, the Supreme Court later entered an order confirming it.

The Appellate Division, First Department unanimously reversed the confirmation order and vacated the arbitration award. The Court held that as a matter of public policy, when the Board of Education has authorized a school principal to make discretionary teacher appointments, an arbitrator may not substitute her own judgment as to which teacher is best qualified for a position.

Furthermore, the Court held that the arbitrator had exceeded her power under the collective bargaining agreement, which authorized her to invalidate a school's discretionary decisions only if the school abused its discretion. Under those circumstances, the Court reasoned, the arbitrator lacked power to reject a principal's teacher selection decision as arbitrary, when nothing in the record supported that conclusion, simply because the arbitrator "found the principal's stated reasons unpersuasive to her."

Barry Schwartz, an Assistant Chief in the Law Department's Appeals Division, and Senior Counsel Scott Shorr handled this matter on behalf of the City. Shorr, who argued the case in the First Department, noted its legal significance. "Although arbitration is a very efficient way to resolve legal disputes, the First Department's decision is a useful reminder of the important public policy and contractual restraints on arbitral power."

Given how infrequently New York Appellate Courts vacate arbitration awards, Shorr added, "This decision shows great respect for the principle that schools, not arbitrators, are in the best position to decide which teachers are best qualified to educate our children."

On appeal, Lena Mukherjee represented the UFT.

In June 2002, the Board of Education underwent a school governance change. Control of the central school board was transferred to the Mayor of the City of New York.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

###