



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**PO Box 429  
TRENTON, NEW JERSEY 08625-0429**

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089

May 18, 2000

**M E M O**

To: Commissioners

From: Bob Anderson  
General Counsel

Re: Report on Developments in the Counsel's Office Since April 27, 2000

**Commission Cases**

I have filed an enforcement action in *City of East Orange and East Orange Engineering Supervisory Personnel Ass'n, H.E. No. 2000-5, 26 NJPER 87 (¶31034 2000)*, made final on January 11, 2000. The employer has not complied with an agency order requiring the payment of back wages to an employee whose weekly work hours were unilaterally cut from 35 to 12.

**Other Cases**

In *Golden v. Union Cty. And Union Cty. Prosecutor's Office, \_\_\_ N.J. \_\_\_ (2000)*, the Supreme Court reversed an Appellate Division decision, *317 N.J. Super. 64 (App. Div. 1998)*, and held that Prosecutors cannot bind themselves in an employment manual to give an assistant prosecutor a hearing before that employee is terminated. The Court holds that such a procedural right would contravene a statute stating that assistant prosecutors serve "at the pleasure of the prosecutors." *N.J.S.A. 2A:158-15*. The Court, however, distinguishes *OER v. CWA, 154 N.J. 98 (1998)*, permitting employees serving at their employer's pleasure to negotiate collectively over disciplinary review procedures.

In *Haddonfield Bd. Of Ed v. Haddonfield Ed. Ass'n*, App. Div. Dkt. No. A-2557-98T2 (4/25/00), an Appellate Division panel held that an arbitrator could determine whether the non-renewal of a custodian's contract was for disciplinary reasons. The contract expressly empowered the arbitrator to decide contractual arbitrability questions. The Court stated that "public employers have a right to exclude from arbitration the non-renewal of non-tenured employees" (slip. Opin. At 5), but held

that the dispute did not involve a simple non-renewal case since the Association had asserted that the non-renewal followed a suspension and should be considered disciplinary.

The United States Supreme Court has held that public employers may require employees to schedule compensatory time off to reduce the amount of accrued compensatory time under the Fair Labor Standards Act. *Christensen v. Harris Cty.*, \_\_\_ U.S. \_\_\_ (2000). The Court rejected the Department of Labor's interpretation of the FLSA that such use required an agreement with the employees.

According to the New Jersey Law Journal, the Third Circuit Court of Appeals recently upheld Newark's residency requirement and its stepped-up enforcement of that requirement. The workers who challenged the requirement were taxed with court costs and fees.