



**STATE OF NEW JERSEY
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December 7, 2000

M E M O R A N D U M

TO: Commissioners

FROM: Bob Anderson

RE: Developments in the Counsel's Office Since November 30, 2000

Attached is a United States Supreme Court opinion holding that public policy did not require vacating an arbitration award. Eastern Ass'n Coal Corp. v. United Mine Workers of America, Dist. 17, ___ U.S. ___ (2000). An arbitrator held that the employer did not have just cause to discharge a truck driver after that driver tested positive, for the second time, for using marijuana. The award reinstated the driver; but also directed that he be suspended for 90 days, reimburse the parties for arbitration costs, continue to participate in a substance abuse program and undergo random drug testing, and sign an undated letter of resignation to take effect if he tested positive within the next five years. The Court upheld this award, noting the "background labor law policy that favors determination of disciplinary questions through arbitration when chosen as a result of labor-management negotiation" and finding that the award did not violate any law, regulation, or explicit well-defined and dominant public policy. A concurring opinion by Justice Scalia, joined by Justice Thomas, would confine the public policy basis for vacating an award to a violation of "positive law" – that is, a statute or regulation.