



**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 31, 2001

**M E M O R A N D U M**

TO: Commissioners

FROM: Bob Anderson

RE: Supplemental Report on Developments in the Counsel's Office Since April 26, 2001

In its May 28, 2001 edition, the New Jersey Law Journal reports that a Superior Court judge has ruled that teachers and support staff do not have to pay fines for violating a back-to-work order issued during a three-day strike. However, the judge ordered the education association to pay attorneys' fees. I have not yet seen a copy of the order or any opinion.

The New Jersey Supreme Court has granted certification in Viviani v. Borough of Bogota. The issue is whether the Exempt Firemen's Tenure Act precludes the Borough from eliminating a tenured employee's position to save money when there is no widespread depression or mandatory retrenchment.

In Burris v. West Orange Tp. Police Dept., 338 N.J. Super. 493 (App. Div. 2001), the Court held that the Merit System Board has statutory authority to award attorneys' fees to employees establishing Civil Service violations and that this authority encompasses fees incurred in departmental disciplinary hearings before Merit System Board appeals are initiated. By contrast, the Commission has no statutory authority to award attorneys' fees.

The Appellate Division has vacated an arbitration award entitling a former Port Authority police sergeant to back pay during a suspension. Port Authority Police Sergeants Benevolent Ass'n, Inc. v. The Port Authority, \_\_\_ N.J. Super. \_\_\_ (2001). The sergeant was suspended without pay after a warrant was issued for his arrest based on an incident in which he allegedly brandished his weapon at a person who hit his car. The sergeant retired before the criminal charges were resolved and before departmental disciplinary charges were instituted, thus mooting any disciplinary charges. He then sought back pay from the date his suspension started until the date he retired. An arbitrator upheld the grievance and the trial court found the arbitrator's contractual interpretation was reasonably debatable. The Appellate Division panel reversed, holding that the contract did not entitle a suspended employee to back pay solely because the employee had been acquitted of criminal charges and reasoning that upholding such an award would subvert the public interest. The court worried that suspended officers would stay on suspension while disciplinary charges were pursued and then retire just before they were resolved, in the hope of a financial windfall if criminal charges were later dropped.