



**STATE OF NEW JERSEY
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September 26, 2001

M E M O R A N D U M

TO: Commissioners and Professional Staff

FROM: Bob Anderson
General Counsel

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

Attached is an Appellate Division affirmance of City of Union and Union City Employees Ass'n, P.E.R.C. No. 2000-89, 26 NJPER 271 (¶31105 2000). The Commission restrained binding arbitration of a grievance in which a Civil Service employee claimed she had been constructively discharged. Civil Service employees must appeal discharges and other major disciplinary determinations to the Merit System Board. The Court also affirmed a Merit System Board decision holding that the employee's appeal to the Board was untimely.

In City of Orange v. East Orange Superior Officers' Ass'n, PBA Local 16, App. Div. Dkt. No. A-4977-99T1 (8/28/01), the Appellate Division affirmed a lower court decision vacating an arbitration award. The arbitrator concluded that the employer violated the parties' contract when it did not pay a sergeant at a lieutenant's pay rate for the period when he was the ranking officer in a bureau previously supervised by a lieutenant. The award was vacated based on a mistake of fact apparent on the face of the award itself - - the arbitrator's inconsistent declarations that: (1) there was a practice of paying out-of-title compensation to sergeants temporarily replacing lieutenants, and (2) there were several instances in which sergeants had been substituted for lieutenants without an increase in compensation.

REA:aat
Attachment