



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

February 28, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson  
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since January 31, 2002

Other Cases

Last year the Appellate Division decided two cases on the same day with opposite holdings. One was Roe v. Borough of Upper Saddle River, 336 N.J. Super. 566 (App. Div. 2001), holding that the Exempt Firemen's Tenure Act, N.J.S.A. 40A:14-65, did not protect subcode officials against having their position abolished if the employer acted in good faith in entering an Interlocal Services Agreement. The other was Viviani v. Borough of Bogota, 336 N.J. Super. 578 (App. Div. 2001), certif. granted 167 N.J. 572 (2001), holding that N.J.S.A. 40A:14-65 blocked an employer from abolishing positions held by exempt firemen because it was not a "time of widespread economic depression or mandatory retrenchment," and finding irrelevant the employer's good faith and cost reduction reasons.

The New Jersey Supreme Court has approved the analysis in Roe and reversed Viviani. Justices Verniero and Zazzali wrote dissenting opinions, joined by Justice Long. The majority's opinion permits an employer to abolish positions for reasons of economy so long as its declared objective is not a pretext for terminating or demoting a particular firefighter.

REA:aat