



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

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August 12, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since June 24, 2004

The Bound Brook Board of Education has filed a Complaint seeking to restrain the Bound Brook Education Association from arbitrating a grievance and the Commission from appointing an arbitrator from its panel to hear the grievance. That grievance contests the non-renewal of the employment contract of a non-tenured custodian. The Board asserts that the grievance is not contractually arbitrable.

In Carino v. Stefan, __ F.3d __, 2004 U.S. App. LEXIS 14844 (3d Cir. 2004), the Third Circuit Court of Appeals dismissed a private sector worker's malpractice suit against a lawyer hired to arbitrate a grievance on the worker's behalf. The Court held that federal labor law (the LMRA) immunizes attorneys hired by unions to perform services related to a collective bargaining agreement from malpractice suits and that the worker was limited to suing the union for breaching its duty of fair representation. The Court reasoned it would be anomalous to allow a malpractice suit against an attorney based on a negligence standard and subject to a prolonged statute of limitations period when a suit against a union would have to meet a higher standard of proof (that the misconduct was "arbitrary, discriminatory, or in bad faith") and be filed within a shorter period (six months).

REA:aat