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October 25, 2007

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Robert E. Anderson  
General Counsel

**SUBJECT:** Supplemental Report on Developments in the Counsel's Office Since September 27, 2007

In Veggian v. Camden Bd. of Ed. and Camden Ed. Ass'n et al., 2007 U.S. Dist. LEXIS 73449 (D. N.J. 2007), a teacher filed a civil action against a school board and its superintendent and other officials and her majority representative and its president. She alleged that the defendants conspired to remove the teacher from her school after she reported a grade-altering scheme to her supervisors. Judge Noel Hillman of the federal district court denied motions to dismiss the claims alleging that the Association and its president violated her constitutional rights and breached the duty of fair representation by filing a grievance contesting her earlier transfer to that school. While the Association is a private party generally and thus not subject to the constitutional standards applicable to governmental entities, the Court found sufficient evidence (if ultimately believed) to warrant a finding of a conspiracy between administrators and Association representatives so that all the defendants could be considered to have been acting under color of State law. The Court also found sufficient evidence (if ultimately believed) to warrant a finding that the Association had not acted in good faith, with honesty of purpose, and without unfair discrimination against the teacher. A footnote stated that the defendants had cited PERC cases for the proposition that the duty of fair representation did not extend beyond contract negotiation, administration, and enforcement, but the Court could not retrieve those cases. The Court then stated that PERC's views would not be binding and that absent any court cases on point, it would not consider the defendants' proposition of a limited duty of fair representation to override the "general" duty of fair representation.

