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December 20, 2007

**MEMORANDUM**

**TO:** Commissioners

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

**SUBJECT:** Supplemental Report on Developments in the Counsel's Office Since November 20, 2007

In Local 54 PBA v. Fontoura, 2007 U.S. Dist. LEXIS 85717 (D. N.J. 2007), federal district court judge Susan D. Wigenton dismissed a case contesting the merger of the Essex County Police Department and the Essex County Sheriff's Department and related personnel actions. The plaintiff majority representative claimed in particular that the Sheriff and the County had retaliated against the employees for filing grievances. The Court abstained in favor of proceedings before the Merit System Board and the Public Employment Relations Commission in which the plaintiff could raise all its claims, constitutional and otherwise. The Court stated that the Legislature had "established a comprehensive statutory and regulatory scheme to govern labor and personnel matters for public employees" and had "created PERC and DOP to enforce and carry out the legislative mandate of these statutes." Thus, "New Jersey unequivocally has the most substantial interest in the operation and management of its labor and personnel force for public employees" and the federal courts had to defer to state agencies and courts for resolution of the issues presented.

In Hoag v. Brown, 2007 N.J. Super. LEXIS 348 (App. Div. 2007), the Court found sufficient evidence that a social worker employed by Correctional Medical Services Inc. and assigned to work at a correctional facility could be considered a State employee rather than an independent contractor employee for purposes of bringing a hostile work environment claim against the State under the Law Against Discrimination. The Court stressed that the Department

of Corrections exercised control over her work and that her work was integrated into DOC's business and was part of the State's constitutionally-mandated health-care system for prisoners.

In Witkowski v. New Jersey Employees Labor Union Local #1, App. Div. Dkt. No. A-4015-06T3 (12/14/07), an Appellate Division panel dismissed plaintiff's claim that Local 32 of the Office of Professional Employees Labor Union had assumed his employment contract as business manager of Local 1 of the New Jersey Employees Labor Union. The plaintiff alleged that Stephen Tully, Local 32's manager and secretary, had assured him that Local 32 would assume all of Local 1's obligations, including his employment contract, but the Court found that Tully had neither actual nor apparent authority to bind Local 32. The Court also rejected plaintiff's claim that Local 32 was a successor entity to Local 1; while Local 1 and Local 32 had entered an affiliation agreement, Local 1's parent organization objected to the affiliation and an arbitration award then voided that agreement.

REA:aat