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March 30, 2011

**MEMORANDUM**

**TO:** Commissioners  
**FROM:** Counsel's Office  
**SUBJECT:** Supplemental Report on Developments in the Counsel's Office Since March 24, 2011

**Other Cases**

In PBA, Local No. 11 v. City of Trenton \_\_\_ N.J. \_\_\_, 2011 N.J. LEXIS 349 (3/29/11), a divided Supreme Court affirms by a 4-3 vote a decision of an Appellate Division panel and holds that an arbitration award, regarding compensation for "muster time" was "reasonably debatable" and should not have been set aside by a trial court. The high court remands the case to the trial division to enter an order confirming the arbitration award. The grievance claimed that the City violated the parties' contract by requiring police officers and detectives to report ten minutes before their shifts for muster without additional compensation. The arbitrator awarded straight time as compensation. The trial court found that the arbitrator rewrote the contract and that the matter was not "debatable, at all." By a 2-1 vote, an Appellate Division panel reversed the trial court and upheld the award. 2010 N.J. Super. Unpub. LEXIS 352 (2/24/10). Justice Virginia Long's majority opinion cites Linden Board of Education v. Linden Education Association ex rel. Mizichko, 202 N.J. 268 (2010), for the proposition that "an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.'" 202 N.J. at 276. The majority opinion also holds that an arbitrator, to fill in apparent gaps in the contract "may weav[e] together" all those provisions that bear on the relevant question in coming to a final conclusion. When that occurs, even if the arbitrator's decision appears to conflict with the direct language of one clause of an agreement, so long as the contract, as a whole, supports the arbitrator's interpretation, the award will be upheld. The dissent, written by Chief Justice Rabner, asserts that the arbitrator wrote a new term into the agreement making his award inconsistent with the plain language of the two relevant provisions and not reasonably debatable.