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May 26, 2011

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Counsel's Office

**SUBJECT:** Supplemental Report on Developments in the Counsel's Office Since May 18, 2011

**Other Cases**

James Rinaldo v. Kenneth Burkert, et al., 2011 N.J. Super. Unpub. LEXIS 1278 (5/17/11) involves an intra-union dispute involving action taken against Rinaldo, the President of PBA Local 199A, representing Union County Correction Officers holding supervisory ranks. In the Spring of 2009, Executive Committee members of PBA Local 199, the union for non-supervisors, accused Rinaldo, then assigned as "Disciplinary Lieutenant" of disciplining two correctional officers in violation of PBA by-laws and rules and sought his expulsion from the union. In response, Rinaldo filed a lawsuit alleging several claims, primarily civil rights violations, against the four PBA executive committee members. Neither Local 199, or its parent organization, the State PBA, were listed as defendants. The charges against Rinaldo were amended to include his filing of the lawsuit which was also alleged to violate the PBA bylaws because Rinaldo had not first used PBA appeal procedures. The State PBA Judiciary Committee expelled Rinaldo from membership in both PBA Local 199A and PBA Local 199, and from his office as PBA Local 199A President. In upholding the trial judge's dismissal of the Rinaldo's suit, the opinion observes, *inter alia*, that a claim for a breach of the duty of fair representation could not be pursued unless the majority representative and/or the affiliated labor organizations were named as defendants.

Teamsters Local 331, v. Borough of West Wildwood, 2011 N.J. Super. Unpublished LEXIS (5/24/11) affirms a trial court confirmation of a grievance arbitration award holding that the suspension and termination of a Borough employee was not based on just cause. The employee had been accused of purchasing automobile parts for his personal vehicle using Borough vouchers. The court reviewed the evidence from the arbitration hearing and agreed that the arbitrator's conclusion that the employer had not sustained its burden of proving the charges should be upheld under the "reasonably debatable" standard.