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M E M O R A N D U M

TO: Commissioners

FROM: Bob Anderson

RE: Supplemental Report on Developments in the Counsel's Office
Since February 22, 2001

In East Brunswick Tp. Bd. of Ed. v. East Brunswick Ed. Ass'n, App. Div. Dkt. No. A-2627-99T2 (2/23/01), an Appellate Division panel upheld a grievance arbitration award mandating that the Board pay newly-hired teachers for attending summer workshops and seminars held after they signed their employment contracts but before they began teaching. The Court held that the arbitrator's award was a reasonably debatable interpretation of the contract and did not violate public policy. It rejected the Board's argument that the newly hired teachers cannot be considered "employees" under the parties' contract because they would not be considered "employees" under the Employer-Employee Relations Act, the education laws, the workers' compensation law, or the common law.

In Circuit City Stores, Inc. v. Saint Clair Adams, ___ U.S. ___ (2001), the United States Supreme Court held that the Federal Arbitration Act permits federal court actions to compel arbitration (and enjoin state court actions) of employment discrimination disputes if an employer and the individual employee have agreed to

arbitration. The Court rejected an argument that the FAA does not apply to employment contracts.

In my monthly report, I discussed Roe v. Borough of Upper Saddle River, 336 N.J. Super. 566 (App. Div. 2001), holding that the Exempt Firemen's Tenure Act did not block an employer from abolishing positions held by exempt firemen even if it was not a "time of widespread economic depression or mandatory retrenchment" under N.J.S.A. 40A:14-65. The opposite result was reached by another Appellate Division panel in Viviani v. Borough of Bogota, 336 N.J. Super. 578 (App. Div. 2001), holding that N.J.S.A. 40A:14-65 was controlling and constitutional. The New Jersey Supreme Court will ultimately have to decide which panel's interpretation is correct.

In Murphy v. Mayor Gerald Luongo and Washington Tp., ____ N.J. Super. ____ (App. Div. 2001), the Appellate Division held that a mayor could appoint an interim police chief without the Township Council's approval. A permanent appointment, however, would have to be approved by the Council.