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October 25, 2001

M E M O R A N D U M

TO: Commissioners and Professional Staff

FROM: Bob Anderson
General Counsel

RE: Supplemental Report on Developments in the Counsel's Office Since September 26, 2001

An Appellate Division panel rejected a claim that a grievance was not contractually arbitrable in City of Linden Bd. of Ed v. IBT, Local 478, App. Div. Dkt. No. A-3177-99T1 (6/7/01) (copy attached). The union sought to arbitrate a grievance asserting that bus drivers were deprived of extra driving assignments and extra pay when their supervisor assigned himself extra runs rather than follow a rotation list. The Board sought a restraint of arbitration from the Chancery Division because the parties' arbitration clause provided:

> Only matters relating to salary, insurance, employment procedures, sick leave, discipline and/or discharge may proceed to binding arbitration.

The trial court restrained arbitration, but the Appellate Division reversed. It reasoned that public policy favors liberal construction of arbitration clauses and that any issue of arbitrability must be conclusively determined by PERC. The Court may be confused on this latter point since the agency's jurisdiction over arbitrability questions is limited to scope-of-negotiations issues and courts are the usual forum for resolving substantive questions of contractual arbitrability.

In the decision, the Court also reversed a ruling permitting the union to file an unfair practice charge even though the dispute had arisen more than six months earlier. The union asserted that it had elected to arbitrate the grievance rather than file a charge because the superintendent had sent it a letter acknowledging that "both sides will take this issue to arbitration." The Appellate Division held that the six month statute of limitation in N.J.S.A. 34:13A-5.4(c) was not tolled because the superintendent's statement did not "prevent" the union from filing a charge.

REA:aat
Attachment