



**STATE OF NEW JERSEY  
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October 20, 2005

**MEMORANDUM**

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since September 29, 2005

**Other Cases**

In New Jersey Transit Bus Operations, Inc. v. ATU, App. Div. Dkt. No. A-0086-04T2 (9/30/05) (copy attached), an Appellate Division panel vacated two grievance arbitration awards concerning compensation due part-time bus operators. In one grievance, ATU successfully argued that a bus operator could not be disciplined for failing to report five minutes before his scheduled pull-out time because NJT did not pay for that five minute period. In the other grievance, ATU successfully argued that part-time bus operators should be compensated for the time they spend filling out accident reports. The Appellate Division vacated the awards because the contractual provisions concerning payment for reporting to work and filling out reports applied only to full-time employees and a provision covering part-time employees stated that they would only receive the pay and benefits specified by that provision and that provision did not specify the disputed payments. The Court held that the contract was clear so the awards did not draw their essence from the contracts. It rejected the arbitrator's reliance on a clause stating that "Part-time operators shall receive the same hourly rate as full-time operators." It reasoned that parity in hourly rates does not equate to parity in pay.

In Wilkins v. ABF Freight System, 178 LRRM 2016 (E.D. Pa 2005), Chief Judge Giles of the federal district court for Eastern Pennsylvania held that a union is not required to give an employee a formal notice that it will not pursue his or her grievance. The six-month statute of limitations for bringing a duty-of-fair representation claim against a union begins when an employee should know the union will not pursue the grievance.

REA:aat  
Attachment