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MEMORANDUM

TO: Governor Jim Florio
Joseph C. Salema

FROM: David B. Applebaum *DBA*

DATE: September 3, 1991

RE: Teacher Job Actions

Per your request, I spoke this morning with both Attorney General Robert Del Tufo and Deputy Attorney General Bob Stoloff regarding the involvement of the State, and more specifically the Governor, in job actions by teachers. Additionally, we discussed the availability of sanctions against schoolteachers and their bargaining organizations by the courts.

The Governor's involvement in resolving teacher job actions, based on precedent, is minimal. Governors have traditionally avoided any contact with such matters, bothering only to make a comment or two about "the students being the ultimate losers in a battle between teachers and school districts," or "I urge everyone to come to a swift resolution and get on with the business of teaching our children." The only involvement in a teacher job action in recent memory was during the Byrne years, and that was to help mediate the end of a strike which had jeopardized the ability of graduating seniors to meet the required 180 days of classtime. In general, the potential failure to meet this requirement would be the most common reason for gubernatorial involvement, if any, given the responsibility of the State as *parens patriae*. Aside from making public statements, the Governor should defer any involvement in union/district disputes to the Commissioner of Education and, perhaps, the Commissioner of Labor.

More commonly, a judge would order picketing teachers back to work, given the widely held position that teacher strikes are illegal. In this case, the applicability of sanctions is very similar to situations involving public employee union members who might choose to call for a job action. A typical "back to work" order involves more than just ordering teachers back to their posts; it also calls for some affirmative action on the part of the local teachers' organization to prevent the job action. As with public employee strikes, the triggering event for court sanctioning is typically the violation of the "back to work" order, as is now the case in both Cinnaminson and Willingboro. In this case, the judge has the ability to call for the following sanctions (in order of likelihood):

- (a) A fine against the local teacher organization (leadership);
- (b) A fine against the individual teachers;
- (c) A jail sentence for the local leadership;
- (d) A jail sentence for the individual teachers;

Fines are normally levied based on the ability of the organization or the individual to pay, and are increased as the district demonstrates a willingness to defy the order. Jail sentences are rarely used, and are considered extraordinary measures. The court typically finds that the jailing of teachers is "not an appropriate sentence for those entrusted with the education of children." Finally, levying a fine against the NJEA would be nearly impossible, unless it could be proven that the state union was actively involved in promoting a job action(s).

Clearly the sanctions levied will depend on the local circumstances, as well as the individual judge.

At the time of this writing, only two local districts, Willingboro and Cinnaminson, have teacher strikes. As stated earlier, both district unions are now acting in defiance of a judge's back to work order. In the case of Willingboro, as you noted, substitute teachers are being hired at the rate of \$200 per day. Nearly 100 districts are either working without contracts or are currently negotiating new deals. Given the current climate, more job actions can be expected, and some of them are likely to be protracted -- particularly in those districts where teachers have been working for a period of time without a new contract.

Please advise should you need more information on this issue.