

April 2, 2003

Senator John A. Hart, Jr.
Joint Committee on Commerce and Labor
State House, Room 520
Boston, MA 02133

Representative Michael J. Rodrigues
Joint Committee on Commerce and Labor
State House, Room 43
Boston, MA 02133

Senator David P. Magnani, Chairman
Joint Committee on Public Service
State House, Room 323
Boston, MA 02133

Representative Robert M. Koczera
Joint Committee on Public Service
State House, Room 156
Boston, MA 02133

Dear Senators Hart and Magnani, and Representatives Rodrigues and Koczera,

Public Employees for Environmental Responsibility (PEER) is a national service organization working on behalf of employees administering anti-pollution, land management and wildlife protection laws. PEER has received recent reports that Governor Romney's Administration has been engaging in unfair labor practices against Massachusetts Department of Environmental Protection (MADEP) attorneys. Specifically, PEER believes that the some of the actions taken by the Administration during the statewide reorganization process constitutes illegal union busting. Moreover, we would like to inform you that the reorganization will be configured so as to strip the remaining lawyers of civil service status and seniority rights.

PEER respectfully requests that the Joint Committee on Public Service and the Joint Committee on Commerce and Labor investigate the matters outlined below.

As you are aware, Governor Romney plans to create a new separate legal department within a proposed Office of Solicitor General (OSG). The Governor has publicly stated that, in creating this new department, he would lay off as many as half of the state's 800 attorneys. Those attorneys who are not laid off would be pulled out of their individual agencies and placed in to the new OSG unit.

According to information provided to PEER, lawyers at MADEP are being subjected to the following anti-union tactics:

- Contrary to transfer policies that allow government employees to maintain their seniority rights under the merit system when they move into new positions within their agency, Governor Romney's reorganization negates these legal protections as hundreds of attorneys will be forced to leave their agencies and form a new department. Attorneys have been informed that since their seniority rights will not transfer with them, the Romney Administration will pick and choose among the attorneys without any regard for seniority. In other words, this will allow the Administration to "discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage

membership in any employee organization,” a prohibited practice under Massachusetts law (See M.G.L. Ch. 10, § 10(a)(3)).

- To carry out this plan, Governor Romney hired Ruth Bramson as the Commonwealth's Director of Human Resources, best known for her efforts to break up the Shaw's supermarket union. According to sources who attended a meeting on Tuesday, March 25, 2003 with Bramson and John Jesensky, the Commonwealth's Director of Employee Relations, Jesensky was asked whether the Governor's plan, if approved, would give the Governor the authority to fire any state employee without giving a reason or proving any cause for the firing. Jesensky answered in the affirmative. Massachusetts law specifically affords public employees the right to join and participate in unions, and it is a prohibited practice for employers to “[i]nterfere, restrain, or coerce any employee” in the exercise of these rights. (See M.G.L. Ch. 10, § 10(a)(1)).

There are also several negative consequences of the proposed reorganization that would ultimately affect the citizens of the Commonwealth. We do not believe that these consequences have been publicly examined. For example, the proposed plan would:

- **Politicize the Administration of Law.** Under the proposed plan, Commonwealth attorneys would become political appointees as opposed to civil servants. Currently, state agencies have no incentive to hire more lawyers than they need, and they are bound by the strict hiring rules for civil servants. This plan would eliminate union protection for state lawyers, so that the Administration can strengthen political control over the remainder. Agency attorneys can presently give honest advice to their agency heads, knowing that they cannot be dismissed if they give the politically “wrong” but legally correct answer. Attorneys under the new OSG would be reclassified as “at will” employees, so that they may be hired and fired without cause and without appeal rights. Under this scenario, legal advice and opinions would be inconsistent, and there would be a large turnover of attorneys (and therefore loss of expertise) with each new administration.
- **Decrease Efficiency.** The cuts made to the corps of MADEP lawyers would inevitably result in longer decision-making times on both permits and enforcement actions. These permit and enforcement decisions are critical to ensuring that citizens of the Commonwealth have clean air and water. Moreover, the Governor's plan to make all lawyers generalists would result in a decrease of knowledge and efficiency. Efficiency is increased when lawyers are allowed to specialize, and to work closely with their non-lawyer counterparts.
- **Diminish Legal Output.** In many of the agencies, the legal departments are already chronically understaffed (see, e.g., DEP's FY02 Bureau of Waste Prevention C&E Report (Draft – December 18, 2002) which states, “Due to the large number of [enforcement] cases, Regions need additional [Office of General Counsel] support to develop cases, issue [enforcement] actions or litigate appeals for penalties and orders. Some enforcement actions do not proceed due to the lack of adequate attorney support at some regions.”) The layoff of half of this workforce will inevitably mean that important cases will have to be dropped and that complex cases will be much harder to bring in the future. For example, the reduction and transfer of DEP attorneys to the Office of Solicitor General will jeopardize the Attorney General's Environmental Protection Division's ability to bring quality civil environmental cases. MADEP attorneys refer these environmental cases to the AG, play a critical role in the development of the cases, and provide the necessary expertise to try the cases.

Governor Romney's reorganization is moving ahead without any analysis of how many attorneys the agency needs. One consequence may be the loss of substantial revenue collected by state attorneys in fines and penalties. For example, environmental fine revenue from DEP totaled more than \$2.6 million in 2001 and \$3.4 million in 2002.

In addition, PEER has learned that the Romney Administration is preparing to seek a Supreme Judicial Court advisory opinion on whether the Governor has the power to bar state lawyers from membership in government employee unions. As you know, such SJC opinions are allowed only in cases of "solemn occasion." (See Part II, c. 3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Amendments.) In this instance, the Romney administration is arguing that budgetary shortfalls constitute such an occasion. At issue is whether the state attorneys occupy a position of such sensitivity that membership in a union would be incompatible with their positions. The collective bargaining rights of state attorneys are a policy question from which the Legislature should not be excluded.

PEER believes that the Governor's plan, which has the consequence of removing key legal protections from the state's attorney workforce, deserves your Committee's attention. Further, PEER believes that attempts to remove collective bargaining rights from these employees by the Governor's staff are an unfair labor practice.

PEER has heard from a number of agency employees who corroborate the allegations above and whose testimony would aid any inquiry by your Committees. We urge you to investigate this matter in an expeditious fashion.

Please feel free to contact me if I can be of any assistance in this matter.

Sincerely,

Kyla Bennett

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cc by e-mail: Members of the Joint Committee on Commerce and Labor, and Members of the Joint Committee on Public Service