PERB bulletin FOR MEDIATORS / FACT FINDERS

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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"And, behold, I come quickly; and my reward is with me, to give every man according as his work shall be."

Revelation 22:12

Despite certain administrative responsibilities with regard to both grievance and interest arbitration, our milieu is really mediation. The State of New York does not permit PERB conciliators to arbitrate in either the public or private sectors. We pray, however, never to be parochial. As the defendant urges in Gilbert and Sullivan's "Trial by Jury":

"You cannot eat breakfast all day,
Nor is it the act of a sinner,
When breakfast is taken away,
To turn your attention to dinner.
And it's not in the range of belief,
That you could hold him as a glutton,
Who, when he is tired of beef,
Determines to tackle the mutton."

A friend of mine once suggested while we enjoyed a pleasant sojourn in Boston, that the last word of the Massachusetts memorial to Wendell Phillips which reads, "When the Muse of time shall be asked to name the greatest of them all, she shall dip her pen into the sunlight and write across the clear blue sky-Agitator", should be changed to-Arbitrator. With his membership in that hallowed profession, we suspect he was sincere.

We are not prepared to go that far in extravagant admiration of the profession and its practitioners. Nevertheless, most of the arbitrators we know - and we know many - are a highly civilized group. We certainly believe in the arbitration process, rights and interest. Alas, arbitrators and arbitration are currently being rather cruelly knocked about.

When the United States Supreme Court in the famed *Steelworkers Trilogy* decisions[1] established a presumption of the arbitrability of labor disputes, arbitration had seemed to come upon its Golden Age. The process had been blessed by the highest court in the land and the arbitrators were anointed. The decisions of the NLRB and the courts which followed over the years vastly expanded the importance of arbitration. We took note of the decisions such as *Boys Markets*,[2] the landmark case in which the Supreme Court held that the courts might not bar injunctive relief against the strike where the grievance leading to the work stoppage was subject to arbitration under the contract and the employer was willing to proceed to arbitration. Again, we noted a number of cases insuring survival of arbitration rights after company mergers or even after the liquidation of businesses.[3] Expanding the NLRB's splendid bow to arbitration in the *Spielberg* case in 1955,[4] we had *Collyer* in 1971,[5] and former NLRB Chairman Miller came to Albany and spoke at length to the PERB staff about the Board decision in *Collyer* to defer to the contractual procedure

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1 *Steelworkers* v. *American Manufacturing Co.*, US SupCt-1960, 46 LRRM 2414; *Steelworkers* v. *Warrior and Gulf Navigation Co.*, US SupCt-1960, 46 LRRM 2416; *Steelworkers* v. *Enterprise Wheel & Car Corp.*, US SupCt-1960, 46 LRRM 2423.

2 *Boys Markets, Inc.* v. *Retail Clerks Union*, Local 770, US SupCt-1970, 74 LRRM 2257.

3 *John Wiley & Sons* v. *Livingston*, US SupCt-1964, 55 LRRM 2769.

4 *Spielberg Mfg. Co.*, NLRB-1955, 36 LRRM 1152.

5 *Collyer Insulated Wire*, NLRB-1971, 77 LRRM 1931; *Piano Workers* v. *Kimball Co.*, CA7-1964, 56 LRRM 2644.

Some observers of the work of our agency have suggested yet different ways of handling interest arbitration. Some have suggested a separate panel of arbitrators who would do nothing else but interest arbitration and would be given special training in such esoteric subjects as municipal finance. Apart from the fact that the setting up of such a panel with no other function for its members is virtually impossible, there is simply no need. We doubt if there is anyone on our interest arbitration panels who has not, as a fact finder, had substantial exposure to municipal budgets, tax rates, revenue sources, etc. Another proposal would avoid interest arbitrators altogether and rely on a kind of Administrative Law Judge in a labor court setting. We fail to grasp the advantage of such a scheme. We presume that what is being sought is shelter from political storm. If we believe in interest arbitration as a device to be utilized when all other efforts of conciliation fail (and we do so believe), then we must also argue that the State, the parties and the administrating agency must take criticism for unpopular awards. Further, we have no evidence that interest arbitrators are more likely to be intimidated by union or employer than are rights arbitrators.

We would suggest to arbitrator friends disturbed by frequent criticism and by what may appear as a diminution by the courts of the acceptability of arbitration in some cases, that they keep in mind the words of the late Supreme Court Justice Robert H. Jackson. "There is no reason to doubt that this Court may fall into error as may other branches of the Government.... The Court differs however, from other branches of the Government in its ability to extricate itself from error. It can reconsider." (Mr. Justice Jackson then went on to cite the long list of cases in which the Supreme Court has reversed itself.[11])

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PLEASE NOTE. On January 6, 1977, the Board at the request of the Director of Conciliation agreed to close the mediation, arbitration and fact-finding panels and no further applicants will be accepted. Please do not invite anyone of your acquaintance, no matter how well-qualified, to make application.

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FOR YOUR INFORMATION. A question often arises as to the relationship between the total Consumer Price Index and the medical costs part of the Index. The Bureau of Labor Statistics publishes the relative importance of the index components. The latest data are that medical care is 6.413% of the total. Thus, although the medical care component was at 191.3 (1967=100) in November as compared to the all items index at 173.8, the index for "all items less medical care" was at 172.7.

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RECENT SETTLEMENTS

Agreement Between	Summary of Provisions
Village of Scarsdale (Westchester County) and Scarsdale PBA (Covers 42 Police) December 6, 1976 Evelyn S. Brand Public Member & Chairman Murray Steyer Employer Member John R. Harold Employee Member Also awarded that a contract be written. Last one written in 1971.	Salaries: 6/1/75 - up $1,050; 6/1/76 - up $1,200. First Grade Patrolman goes to $15,450 on 6/1/75 and $16,650 on 6/1/76. Proportionate increases to others. Longevity: (New) $150 at end of 10 years & $200 at end of 15 years. Overtime: Pay time and one-half - may accumulate up to 80 hrs. comp. time. Personal Leave: 4 days. Death Leave: Codified. Sick Leave: Maximum accumulation limited to 180 days. Was unlimited. (Also codified) Safety Screening: Awarded. Clothing Allowance: Detectives raised to $225. Grievance: Binding arbitration and 10 days to file grievances. Denied: Shorter work schedule, air-conditioned cars (have but not contractual), a no repair work clause, past practice clause, a stronger out-of-title clause, and welfare fund. Also denied or did not rule on other items.

[11] *Helvering* v. *Griffiths*, 318 U.S. 400.