



# bulletin

FOR MEDIATORS / FACT FINDERS

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## HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Qui desiderat pacem, praeparet bellum"

Vegitius  
(4th Century A.D.)

"Vegitius's caution, 'Let him who desires peace, prepare for war' should be the motto of PERB this year. It appears that multi-year contracts are expiring in many districts of the State where there have been bitter confrontations over past years. This, combined with the sad state of the economy, should challenge our conciliation staff and panel as they have never been challenged before. And so, we have been meeting with our faithful legions. The last of the three PERB seminars for 1975 has just ended at Cornell and we would like to believe that our mediators, arbitrators, and factfinders are trained and ready to beat the advocates' swords into ploughshares and their spears into pruning hooks. (I don't know what our clients would do with agrarian implements, but that is no reason not to be Scriptural when the opportunity presents itself.)

"One of the lawyer-advocates who spoke at our last seminar contended quite seriously, that in interest arbitration, the panel was responsible for determining the source of revenue to be raised for any award to be made. Thus, if the Police in a municipality were to get an 8 percent raise or the Firefighters were to get an additional fringe benefit costing X dollars, the arbitration panel would be required to indicate the source. We most emphatically disagree.

"When an arbitration panel makes an award under our law, one of the statutory criteria is 'the interests and welfare of the public and the financial ability of the employer to pay.'<sup>1</sup> We would hope and expect that the advocates for the union and for the municipality present to the arbitrators the necessary data to permit a valid judgment with regard to this important criterion, and that if such evidence is not submitted to the panel's satisfaction--they demand it. Once the award has been made with the necessary attention paid to this and all the other criteria, it is quite beyond the scope of the panel's responsibility or, indeed, the panel's authority, to determine whether certain budget items should be reshuffled or reduced or whether a specific tax should be imposed or increased. This is a function not of an arbitration panel, but of government. If inquiry is made of arbitrators on which source the municipality should use to provide the funds necessary for the award, the panel reply should always be at that point that they are *functus officio*.

"The courts have made clear in this State that where the parties are compelled to go to arbitration of contract terms, judges will be much less loath to take hard looks at arbitrator awards than they are in cases where

<sup>1</sup> Taylor Law - Section 209.4(c)(v)b.

the parties contract to grievance arbitration. (See for example, 'Mount St. Mary's Hospital vs. Catherwood.'<sup>2</sup>) Our Board's belief is that the arbitration panel must utilize the criteria in making its award. The law is clear. Our Deputy Chairman, Jerry Lefkowitz, spelled this out in his article on compulsory arbitration in police-fire disputes.<sup>3</sup> I grant that it is probably true that even if statutory criteria do not exist, arbitrators will use those criteria anyway. (See the comparison of experience in Michigan and Pennsylvania by Mike Klapper.<sup>4</sup>) But no matter.

"In any event, I do not see the function of the arbitrators beyond the clear language of the statute. Our arbitrators are not mayors, council finance committee chairmen, or budget directors. They must not, and I am sure will not, seek to poach in the preserves of municipal officials on matters like tax determination or budget allocation. The increased cost of virtually every service and of items such as fuel, will during this difficult year make municipal management tasks very hard indeed, but decision-making in budget and taxes lies with them and will remain with them. If they ask the arbitrator for advice, he may reply with the wisdom of Horace, 'Tu ne quaesieris, scire nefas'.<sup>5</sup>"

PERB and ILR are sponsoring two one-day seminars on the public school strike. One will be on April 8 at the Tappan Zee Motor Inn, Nyack; the second May 8 at the Hotel Syracuse, Syracuse. The fee is \$35 per person.

The seminar will begin with a panel discussion of the recent Port Jefferson teacher strike. The chief spokesmen for the board and for the teachers association will take part, as well as other members of the teams who were present at the table.

In addition, participants will have an opportunity to discuss the school strike in small workshops with advocates from other districts and a number of PERB mediators who have been involved in strike situations. Throughout the day, the focus will be on practical experiences rather than on theory.

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Total compensation per man hour in 1974 in the United States was up 8.8% over 1973. However, the rapid increase in prices caused a 1.9% drop in real compensation per man hour. Similarly, production or nonsupervisory workers on private payrolls averaged \$4.40 an hour in January 1975, up 35¢ over the January 1973 level. However, real earnings after taxes were \$88.08 in 1967 dollars, down \$4.72 or 5.4% over the 12-month period.

<sup>2</sup> 305 N.Y.S. 2d 143.

<sup>3</sup> "Compulsory Arbitration in Police-Fire Disputes", PERB News, Vol. 7, No. 10, Nov. 1974.

<sup>4</sup> "Legislated Criteria in Arbitration of Public Safety Contract Disputes" Michael J. Klapper - The Arbitration Journal, Vol. 29, No. 2., June 1974.

<sup>5</sup> "Pray ask not, such knowledge is not for us.", Horace (65-8 BC) (Odes xi-1)