



# bulletin

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## HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"O'er the rugged mountain's brow  
Clara threw the twins she nursed,  
And remarked, 'I wonder now  
Which will reach the bottom first?'"

"Ruthless Rhymes for Heartless Homes"  
Harry Graham (1874-1936)

How joyous we would be if fact finders and arbitrators were as curious about the impact of their recommendations and awards on the laws of government as was dear Clara with regard to the law of gravity! We are safely past the time, we think, when arbitrators thought that despite Tenure Law, they could grant tenure to teachers. But we continue to be astonished and dismayed that some rather distinguished impartialists do not yet grasp that the Taylor Law repealed only the Condon-Wadlin Act and that the other state statutes such as the Civil Service Law, the Education Law, the General Municipal Law, etc., are not to be disregarded.

The question of the impact of external law upon labor arbitration was the subject of a most impressive paper given by University of California Law Professor, David E. Feller, at the AAA sponsored Wingspread Conference in 1975.<sup>1</sup> In his paper, Professor Feller points to the ongoing debate among arbitrators on the question which he frames as follows: "The question to which they addressed themselves was the extent to which arbitrators, in resolving grievances, should implement or follow the rules governing the employment relationship imposed by external law rather than the contract, where the two conflict." Professor Feller states further that the answers range from never<sup>2</sup> to always.<sup>3</sup> For ourselves, perhaps to some degree because we are totally involved in the public sector, the answer lies with those who say always.

At the Arbitration Day Seminar sponsored by the American Arbitration Association in New York City on April 19th of this year, we spoke to this question as part of an address on "The Role of the Neutral." Since we are always in complete agreement with Harold Newman, who lives like a Franciscan but thinks like a Jesuit, we will quote him.<sup>4</sup>

"...I submit that we live at a time when the neutral, even though he wishes to function as a generalist, simply must be willing to train himself or be trained in a whole variety of areas outside the old concerns of the four corners of the contract or the common law of the shop. The expansion of social and labor legislation at Federal and State levels involving such programs as OSHA or ORISA and EOCC, the tremendous growth of public sector bargaining and the impact of a troubled economy provide more challenge to

<sup>1</sup> Feller, David E., "The Impact of External Law Upon Labor Arbitration," The Future of Labor Arbitration in America. American Arbitration Association: New York, N. Y., p. 83 ff.

<sup>2</sup> Meltzer, Bernard, "Ruminations about Ideology, Law and Labor Arbitration," in The Arbitrator, the NLRB and the Courts, Proceedings of the Twentieth Annual Meeting, National Academy of Arbitrators, (Washington: BNA Inc., 1967), p. 1.

<sup>3</sup> Howlett, Robert G., "The Arbitrator, the NLRB and the Courts," in The Arbitrator, the NLRB and the Courts, supra note 6, at 67.

<sup>4</sup> Newman, Harold R., "The Role of the Neutral," Address at Arbitration Day Labor Management Dispute Settlement Seminar sponsored by American Arbitration Association, April 19, 1977.



the labor neutral than he can face with equanimity. It is not just the fact that the courts have begun to move away from the sanctification of the arbitrator that dates from the Steel Worker's Trilogy. This has been pointed out over and over again in scores of meetings throughout the country. There is no need to plow the furrows of Gardner Denver, Holodnak, Vaca vs. Sipes, etc., over again. We have to recognize that we live in a time in which priests talk back to bishops, enlisted men in the military file grievances against their officers, and, indeed, the inmates of penal institutions seek and in a few cases have obtained, grievance procedures that end in arbitration. The arbitrator who considers himself a labor arbitrator and nothing else may decline to involve himself in the resolution of disputes other than those which arise between labor union and management. He may, for example, avoid community disputes like the plague. But even in "pure" labor arbitration, the realities of the outside world will penetrate the cloister in which in the happy past he could confine himself to analysis and interpretation of contract language. External law inevitably impacts on contractual agreements between private sector employees and unions and to an even greater extent upon public sector employers and unions. And the neutral who fails to seek to expand his knowledge of external law risks becoming functus officio as a labor relations professional while still in his prime.

Most of my own responsibility for the past ten years has been in the area of public sector bargaining. Here, as I have indicated, the impact of external law looms very large. The courts have intervened repeatedly in questions involving due process or fair representation after the arbitrator has laid down his pen. Furthermore, the majority of states have some kind of public sector bargaining statute. These laws inevitably impact on other statutes, such as civil service law, education law, municipal law, etc. The arbitrator, mediator and fact finder who functions in the public sector cannot close his eyes to this fact. My own agency conducts each year at the School of Labor and Industrial Relations at Cornell University training workshops for the arbitrators, mediators and fact finders who serve us on a per diem basis. It is not by chance that we chose this year to concentrate on the question of municipal budgeting and finance and to try to improve our understanding of such exotica as debt service, franchises, true property value, etc. We wished to be able to examine intelligently the evidentiary material on "ability to pay". Admittedly, such matters are of far greater concern to the interest arbitrator, the mediator and the fact finder than to the rights arbitrator. But we were gratified by the outpouring of attendance by the latter group. Doctors and lawyers have always emphasized their professional concerns in keeping abreast of the latest developments that impact upon their work. Labor neutrals can do no less. The opportunities offered to the labor neutral in training and upgrading of skills must, it seems to me, be thoroughly exploited."

We cannot expect that the most talented neutral among us, be he lawyer or not, can or should attempt to immerse himself in every statute that may impact on his work but once made aware, by one or both of the parties of possible impact, we would expect him to be concerned.

In the year of grace 1516, Sir Thomas More wrote,<sup>5</sup> "They have no lawyers among them for they consider them as a sort of people whose profession it is to disguise matters." Nineteen years later Sir Thomas was beheaded. It is said that King Henry VIII remarked to his courtiers after the execution, "Do you know Sir Thomas More? Well, he isn't any more." We can agree that if the witticism was uttered, the King displayed very bad taste. We expect, however, that many of our panel would feel after what we have quoted from Sir Thomas that he deserved his fate.

\* \* \* \* \*

ABRAM STOCKMAN - 1911-1977

We have heard much in the past decade about the quality of life. Certainly, the quality of life has much to do with an income that provides at least adequate food, clothing and housing. It has to do as well with environmental concerns and an unpolluted environment. But one seldom hears anyone speak of the quality of life in terms of the kind of people with whom one works and comes into contact socially. There are individuals who enrich our lives because of the attractiveness of their own characters or personalities.

Abram Stockman was such an individual. Abe was *elegant*. We do not use that word in any sense that implies snobbery. There was nothing of the snob in him. He was elegant in the dictionary definition of "gracefully refined and dignified, as in tastes, habits, literary style, etc." Beyond his grace and intelligence, we remember that he was always concerned with moral principles. (The Code of Ethics of the National Academy of Arbitrators came about largely through his efforts.)

<sup>5</sup> More, Sir Thomas, "Of Law and Magistrates," Utopia.