



# bulletin

FOR MEDIATORS / FACT FINDERS

PUBLISHED BY THE NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

October 1973  
(Vol. 4, No. 10)

## HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

" 'Seven hours to law, to soothing slumber seven;  
Ten to the world allot, and all to heaven.'

Sir William Jones (1746-1794)

"I am afraid that Sir William could not have foreseen the life of the mediator. His prescription for the good life is denied to the conciliator of labor disputes. Seven hours of soothing slumber is three hours more than I enjoyed in a total of three nights whilst I entertained the parties at Newburgh and made mad forays to the strike at Yorktown. And many colleagues from staff and panel had as little sleep as I as teachers and boards broke staves across each other's pates last month. But when the smoke of battle had cleared, we had had but five strikes and each of these is now settled. I shall forbear from praising the skill and superb devotion of those mediators who were involved in the strikes and the near strikes. There is a danger that I may overlook someone and in any event, the Chairman elsewhere on these pages wants to express his own thanks.

\*

\*

\*

\*

"Last December in this publication, I called attention to the varied tools available for conciliation ranging from fact-finding to mediation, to arbitration, to med-arb, to last best offer and with variations on the themes. Lamentably, a fact-finder no longer active on our panels decided to try yet another device. He met with only one party on this fact-finding report (after delivery to both). He then ascertained what items still troubled those with whom he was meeting and engaged in telephone conversation about these items with the absent adversary. He kept assuring those with whom he was meeting that 'this will be OK,' 'they'll go along on that,' etc., etc. When he departed for home that night, there was satisfaction among the negotiators with whom he had met that they had an agreement. But lo, when they met with the other side later, they were promptly disenchanted. Time passed. The party who thought they had had an agreement filed an Improper Practice charge on the failure of the other side to agree to contract it. Then, on the refusal of our Board to require the respondent in the IP charge to execute a contract absent an agreement on all issues in dispute, the charging party filed an Article 78 proceeding to compel PERB to do so. By the time the court action had commenced, the fact-finder had moved out of state and in any event could not have testified because he is barred by statute under Section 205.4(b) of the Taylor Law. Expensive and time-consuming litigation could have been avoided had the fact-finder not been so bloody innovative. Meetings conducted by a mediator or fact-finder between one party and a telephone are not part of the neutral's arsenal of weapons and, indeed, if this were not a family publication, I would characterize such a proceeding in most unPresbyterian language. I do not mean, of course, that all of us have not found it convenient from time to time to communicate by telephone with one side while meeting with the other.