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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Law, says the judge as he looks down his nose.
Speaking clearly and most severely,
Law is as I've told you before,
Law is as you know I suppose,
Law is but let me explain it once more,
Law is the Law."

"Law, Say the Gardeners, Is the Sun"
W. H. Auden, 1907-1975

This week has been somewhat pressured. A teachers' strike in Long Island was settled by Ted Lang, but two others are looming Monday unless weekend conciliation is successful. A group of city bus drivers struck after one of their number was suspended for refusing to take a run that includes a high school whose students' behavior on the buses had led to unpleasant incidents. (The drivers have a grievance procedure in their contract that provides for binding arbitration but the poisonous relationship between the Authority and the union made a strike inevitable if only for the catharsis.) Paul Curry did settle the walkout after a two-day stoppage. In the Rochester area, a school district made an agreement with its teachers including raises and informed the non-professional employees that they would receive no increases. The non-professionals struck and Eric Lawson was able to get a settlement in the early hours of the next day.

Each of these skirmishes was totally unnecessary. Some minimal intelligence in contract administration and at the bargaining table would have avoided each of the brouhahas I have cited. I do not subscribe to the mediator's prayer recited at ALMA, "Let there be strife amongst thy people, Lord, lest thy servants perish".

But it is not of strikes or threats of strikes that is my text for this month. I wish to call attention to two decisions of my Board which historians may cite with the edicts of the Council of Trent.

When, after the passage of the interest arbitration amendment for police and firefighter impasses, the PERB conducted a series of meetings throughout the State on how we expected to administer the arbitration procedures, we cautioned the union and management advocates again and again that arbitration was not to be utilized except as a procedure of last resort. The PERB Board in two recent decisions has made it as TIME used to say, "pikestaff plain" that that is, indeed, their position.

demand may elicit concessions of the other on different demands. This process of compromise may lead to agreement. By withholding from the City a concession that it was prepared to incorporate in a public position, Local 729 frustrated the possibility of agreement prior to arbitration. In the Matter of Town of Haverstraw, 9 PERB 3063, we said:

> "Interest arbitration is not, and was not, intended as an alternative to, or substitute for, good faith negotiations. Rather, it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted."

So long as there is "give" in the position of a party, it is obliged to continue to seek an agreement through negotiations and to refrain from seeking an imposed settlement through interest arbitration...."

I have referred on more than one occasion during the past six months to the study conducted by Professor Thomas Kochan of our panel and a group of associates, of the impasse procedures for firefighters and police in New York State. Together with the other members of Tom Kochan's advisory group, I had the opportunity to see the final draft of his report. I shall not now attempt to delineate or discuss even a small part of the Kochan report. I would, however, point out that in their report, Tom Kochan and his associates found that those disputes most likely to pass on to the "terminal step(!)" of the impasse procedure were those:

1. Involving employer inability to pay.

2. Where the parties had a history of going to impasse and going to the terminal step of the procedure in earlier rounds of negotiations.

3. Where one or both of the parties felt it was "rational" to go to arbitration in order to maximize their ability to achieve a favorable settlement.

4. Where one or both of the parties had no commitment (for either idealogical or political reasons) to making the bargaining process work.

Perhaps the PERB Board's decisions in the Haverstraw and Binghamton cases will reduce the addiction among those in the last three categories at least.

Some months ago, I quoted Count Giancarlo Pellegrino Suriano-Siboletti. Peter Seitz wrote to me suggesting that either the Count is a fictional person or that he is, perhaps, a purveyor of pizza in the streets of Naples. Peter Seitz is one of the *eminence grises* of the National Academy of Arbitrators and a grandfather. That he should be cynical about one of the great noblemen of the Abruzzi is unfortunate but I have decided to quote the Count again because he has recently made an observation which is very apropos of our ceaseless effort to administer interest arbitration most effectively for the parties and the public interest. The Count in a typically original remark stated, "Esperienza e il nome che tutti danno ai loro errori".[6] Amen to that.

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6 Experience is the Name we give to our Mistakes.