HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Don't go into the front room, Dad,
Nancy is there with her caller,
Daddy dear, won't you stay out here?
Rose has a friend in the parlour.

Don't go into the kitchen, Dad;
I'll be there with my beau.
Since all of his girls have steady young men,
O'Brien has no place to go!"

From: "O'Brien Has No Place To Go"
Irish Song

These past weeks we have been as beleaguered as O'Brien. But our problem is the opposite of his. We have been beset with everything from blue flu to parapsychotic bargaining in some school districts. As a result we have been invited to go everywhere—including unpleasantly hot climes and we are in waspish temper. There is not even escape during the few quiet hours at home because some of the literature we have read has increased our irritation.

Two books have come to our attention whose theses we find both startling and absurd. One was written by two historians who claim to be well trained in econometrics. Taking advantage of this training, they fed data to a computer re the value of black slaves in the ante-bellum south as what indeed they were—property. From this, appeared a heavy volume in 1976 which argued that because slaves were property of great value and the linchpin of the pre-Civil War economy in the southern states, the slaves were almost always happy and well treated. We hardly needed two professors and a computer to teach us that the invention of the cotton gin fastened slavery on the south. As for the happiness and good treatment of the slaves—we were already convinced by "Gone With the Wind" and a hundred other books and films of the genre. The theme of the second book to which we make reference is that the virtual liquidation of the European Jewish population by the Nazis did not occur because of German Fascist policy, but was really "accidental." These are meant to be serious books, to be taken seriously. They were written by social scientists at distinguished universities. Perhaps then, to separate social sciences from the natural sciences we should refer to the former as "unnatural science?"

We are reminded that during the debate in the House of Lords on the prosecution of booksellers for offering the sexually explicit "Lady Chatterly's Lover" to their customers, Lord Teviot complained of the book and its author that, "The story he tells is pure invention; it never actually happened." This led Lord Boothby to say, "That is the thing about fiction; it doesn't happen." We would submit that the D. H. Lawrence novel about Lady Chatterley is far less fiction than much of what is written under the guise of history, political science, or discussion of public policy. If we are upset it is because our own main area of professional concern continues to be plagued with platform addresses, articles and "submitted papers" than cannot, we believe, be taken seriously in the light of public sector bargaining experience anywhere in the United States.
For example, we have read with astonishment a serious proposal that municipal bargaining be determined by referendum. We have read much else that does not seem to us to have any relation to reality. Indeed, Professor Thomas Kochan of the School of Industrial and Labor Relations at Cornell University, in a paper submitted to the 20th Winter Meeting of I.R.R.A. on "Theory, Policy Evaluation and Methodology in Collective Bargaining Research," cautioned that, "There are several important pitfalls that need to be avoided in the process of moving in this direction. First, the healthy dialogue between collective bargaining researchers and practitioners that now exists must be maintained. We specifically need to avoid the trap of reporting the results of our work in a way that speaks to only a handful of academic researchers and bypasses the ultimate audience that we wish to affect; namely, policy-makers and practitioners. Second, and perhaps most importantly, we must avoid at all costs designing graduate programs that merely produce competent technicians who are well founded in research design and data analysis but are not well founded in the historical/institutional base of the field. Institutional research provides a rich storehouse of raw materials that can be utilized to build better theories of collective bargaining phenomena. Thus, we must be careful to not ignore that body of work in our rush to advance the field. Finally, we must avoid the temptation to reduce everything to quantifiable terms, lest we be accused of acting like the little boy with a new toy hammer who decided everything in his world needed pounding."

We are, for example, plagued frequently by the true believers in the conventional wisdom that a single agency cannot and should not be responsible for the administration of a quasi-judicial representation and unfair labor adjudication function together with conciliation services. Have they researched that question at all? After almost 10 years of New York State PERB, we state that there is no basis for the "conventional wisdom." PERB's adjudication functions complement its dispute resolution responsi-
bilities. We should note that the 1969 amendments to the Taylor Law instructed that the PERB consider whether there are proceedings unique to public employment which might require different interpretation or application of unfair labor practices from those applied in the private sector. Let us examine the most common improper practice charge—that of refusal to bargain in good faith. If the PERB believes that the charge may simply be a bargaining tactic, the individual responsible for resolving the impasse and the one responsible for adjudication of the charge may coordinate their activities. The negotiation process is kept going. In any event, the pre-hearing conference which is routine in appropriate cases, really is a mediation effort. Where a question concerning a mandatory subject of bargaining arises, it may be legitimate or it may be simply a delaying tactic by one of the parties. The conciliator can pressure the parties to continue negotiations and if a real problem results on a scope of bargaining issue, adjudication may be expedited through the Board rule concerning these matters.

In addition, the ability of those responsible for the resolution of impasses to rely on the professional services of research and legal staffs of the agency whenever needed have been invaluable. If we were to follow the private sector model and research were assigned to another State department and the representation and unfair labor practice function to yet another, the parties would be disadvantaged. We would add that in New York State PERB's history, we cannot recall a single incident of a strike which occurred over a representation issue, nor a single refusal to accept the services of a mediator or factfinder because the agency had sustained an unfair labor practice charge against one of the parties.


3C SL, 209-a(1d), (2b)
From the first day of New York State PERB's existence we have had the good fortune to have Professor Joseph R. Crowley of Fordham Law School as a member of our Board. The combination of the breadth of his knowledge of every facet of labor relations and labor law, his integrity and conscientiousness have made a contribution to our work which cannot be overestimated. Joe Crowley spoke to the question of the single agency in 1973. "Questions have been raised as to whether it is in the Public Interest to give a regulatory agency both the responsibility for the prevention of unfair labor practices, and for conciliation and mediation. The argument usually advanced against such a combination of responsibility is that the agency's role in mediation is inhibited by its regulatory functions. Specifically, it has been contended that the parties will not really accept a mediator, and place confidence and trust in him, if the benign visage of the mediator is but a mask concealing his alter ego, the adjudicator in unfair labor practice proceedings. Neither the separation of these two functions within the agency, or the utilization of different staff members for each function provides a remedy, because it is still one agency. This contention so stated, admittedly has an appeal to one's sense of logic. Almost everyone in this assembly would agree, I trust, that the field of labor relations is not one, principles of which can be defined solely by a resort to theoretical logic. Rather, there must be the input of empirical evidence. I would submit that the experience of those public sector labor relations agencies, such as Wisconsin and New York, which administer both the regulatory and conciliatory functions, is that mediatory responsibility has not been so inhibited. This is not a subjective judgment, but one based on the record of success in conciliatory efforts by such agencies. Further, I would suggest that the same agency monitoring both the regulatory and mediatory functions, that each dispute can be handled in a more cohesive manner than with separate agencies and separate responsibilities."

We do not argue that every State should take the Taylor Law as its model. Indeed, some States have statutes very much like our own. But we do state emphatically that there is no basis for holding that the combination of functions in a single agency does not work and work well.

Our ill temper shall pass and we shall regain serenity. We recall Dorothy Parker...

"In May my heart was breaking—
Oh, wide the wound, and deep;
And bitter it beat at waking,
And sore it split in sleep.

And when it came November
I sought my heart, and sighed,
'Poor thing, do you remember?'
'What heart was that?' it cried."

Dorothy Parker (1893-1967)
"Autumn Valentine"
From: Not so Deep as a Well-Viking Press-1936


Ronald Kurach who performed yeoman services as the individual responsible for the interest and grievance arbitration functions in the Conciliation Section has transferred, at least temporarily, to PERB Research. Ron has been succeeded by Vera Scadura on a straight player deal with Research Director, Tom Joyner. All arbitration questions having to do with either rights or interest arbitration should be referred to Vera whose telephone number is (518) 457-6015.