



# bulletin

FOR MEDIATORS / FACT FINDERS

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## 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 Chatterly 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.



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.<sup>4</sup> "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

<sup>4</sup>Crowley, J. R., "The Public Interest and the Role of Labor Management Relations Agencies in Dispute Settlement," The Public Interest and the Role of the Neutral in Dispute Settlement-Proceedings of the Inaugural Convention of the Society of Professionals in Dispute Resolution, October 1973. SPIDR c/o American Arbitration Association; 1730 Rhode Island Avenue, N.W., Washington, D. C. 20036.

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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.