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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"There is no law governing all things."

Giordano Bruno
1548-1600

Never, in these columns, have I sought to treat the question of the role of the neutral in the resolution of impasses involving supervisory personnel. Yet, and particularly with regard to school district administrators, it continues to be a problem that vexes and irritates. I have not discussed the subject because as Oliver Cromwell told some friends in conversation in 1641, "I can tell you Sirs, what I would not have; though I cannot tell you what I would." Seven years later what Cromwell would have was law for everybody. I cannot look forward to that.

Intrinsic to the problem is, of course, our statutory language. Section 201, subdivision 7(a) of the Taylor Law provides in part "...(E)mployees may be designated as managerial only if they are persons (1) who formulate policy or (2) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgement."[1] Further, there is the language of the legislative intent. "It is the intention of the Legislature that designations of employees as management or confidential pursuant to subdivision seven of section two hundred one of the civil service law as amended by this act reflect the extent to which a public employer has from time to time organized itself for collective negotiations. It is not the intention of the Legislature to destroy existing employer-employee negotiating units such as principals or other school administrators who do not formulate policy or who do not have a significant role in employee relations as described in subdivision seven of section two hundred one of such law as amended by this act."[2] Compare this rather complex almost Janus-like language, with the simple Taft-Hartley exclusion in the definition of employee, "or any individual employed as a supervisor".[3]

The PERB Board which, of course, never flinches at any challenge, has through our Representation section responded to the statutory definition of managerial by drawing distinction between those who might be thought to be management merely

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1 CSL, Art. 14, Sec. 201.7(a).

2 CSL, Art. 14, Sec. 201.12.

3 LMRA, Sec. 3, ¶2.

"Billy, in one of his nice new sashes,
Fell in the fire and was burnt to ashes;
Now, although the room grows chilly,
I haven't the heart to poke poor Billy."

What am I poking around for? Perhaps to seek answers from panel?

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Your attention is invited to some major decisions of the Court of Appeals which impact on the Taylor Law. Our Counsel, Martin Barr, offers the following precis:

RE: Court of Appeals decisions - Board of Education, Yonkers City School District v. Yonkers Federation of Teachers; Burke v. Bowen; Yonkers School Crossing Guard Union v. City of Yonkers.

In the Yonkers Federation of Teachers the Court of Appeals holds that a job security clause is a valid and enforceable contractual obligation notwithstanding that the subject matter does not involve a mandatory subject of bargaining. Such a job security clause, which is explicit, comprehensive, extends for a reasonable period of time and was not negotiated in a period of legislatively declared financial emergency, between parties of unequal bargaining power, violates no public policy, statute or controlling decisional law and is therefore valid and enforceable. Such provision may properly be submitted to arbitration. If the arbitrator determines that the agreement has been breached, the arbitrator may fashion a remedy appropriate to the circumstances considering, among other things, the financial condition of the employer and its ability to fund the positions abolished.

In Burke v. Bowen, the Court reiterates that the job security clause involving the firefighters of Long Beach was valid and enforceable. However, in the absence of an arbitration provision in the contract, the Court will not grant the equitable remedy of specific performance in the light of the grave financial crises facing the City. The Court recognizes, however, the right of the dismissed firefighters to bring their own action for breach of the collective agreement and to recover damages for such breach.

In the School Crossing Guard case, the Court concluded that the clause in dispute was not a job security clause. It therefore affirmed the Appellate Division's dismissal of an action to enjoin the firings.

These decisions are of great significance to the continued well-being of the Taylor Law. The Appellate Division, Second Department, in each of these cases had previously held that even if job security clauses are valid, they are not binding on a public employer who must in its judgment abolish positions because of economic necessity. The lower court concluded that public policy demands that the employer's job abolition power remain unfettered. The Court of Appeals on the contrary holds that the circumstances revealed by these cases do not relieve a public employer of a lawful contractual obligation. The opinion of the Court of Appeals reaffirms that a collective bargaining contract stands in the same legal posture as any other contract. Economic necessity cannot justify unilateral recission of lawful contractual obligations set forth in a collective bargaining contract any more than it justifies unilateral recission of a lawful contractual obligation in any other type of contract.