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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"How long soever it hath continued, if it be against reason, it is of no force in law."

Sir Edward Coke (1552-1634)

"One of the most interesting and important decisions to be handed down by our Board in recent months was that in The Matter of BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK and PROFESSIONAL STAFF CONGRESS/CUNY.* In this case a Board majority (Chairman Helsing and Member Denson) held that negotiators may not insist that non-mandatory subjects of negotiations be considered by a fact finder who is attempting to resolve an impasse in negotiations, or from persisting in a demand for a non-mandatory subject after fact-finding. I would add that in his dissent, Board Member Crowley did not disagree with the majority that such action by negotiators would be an Improper Practice under Section 209-a of the statute but dissented on other grounds, viz., that the proposal made by the respondent organization was a mandatory subject of negotiations.

"I will quote from the discussion in the majority opinion. 'The U. S. Supreme Court in *NLRB v. Borg Warner Corp.*, 356 U.S. 342 (1958), has declared that under the National Labor Relations Act a party may propose for agreement matters that are not mandatory subjects for negotiations, but may not press such a proposal to the point of insistence. We determine that the test applied by the Supreme Court is an appropriate one to be applied to the duty to negotiate under the Taylor Law. It is, of course, difficult to draw a precise line between appropriate conduct in proposing non-mandatory contract terms and inappropriate insistence upon such a demand. We determine that the insistence on the demand in the instant case went too far when, over the objections of BHE, it was carried into factfinding and even beyond factfinding.'

"And so, beloved colleagues in our College of Fact Finders, please look upon the winged words quoted above under the sacred doctrine of 'stare decisis, et non quieta movere' and be so guided. I refer, of course, to the doctrine in law and not to the famed tenor aria from Verdi's *La Forza del Destino*.

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"Gerard de Marchi died at the age of 34 on April 23. I cannot write an adequate obituary for him. Let it only be said that he was warm and bright and witty, and that all his friends at Cornell and PERB and everywhere are glad that we knew him--even though it was for too brief a time."

* Case No. U-0904