



# bulletin

FOR MEDIATORS / FACT FINDERS

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## HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"There is such a thing as legitimate warfare: war has its laws; there are things which fairly may be done, and things which may not be done...."

John Henry, Cardinal Newman (1801-1890)  
(Apologia pro Vita Sua 1864)

Cardinal Newman wrote the lines quoted above in responding to the attacks of Charles Kingsley and was not referring to an actual military conflict. A latter-day Cardinal Newman might make the same observation with regard to labor-management negotiations.

One evening last week, I accepted an invitation from Paul Brian Curry of our staff to join him at a mediation session in what has been a long and seemingly intractable dispute between a board of education and a local teachers association. The board is represented by a highly skilled professional negotiator whom I have encountered elsewhere. I was shocked and angry when I found that each time the board of education wished to caucus, they sent their negotiator out of the room. During a brief encounter in the men's room in the early hours of the morning, I asked the board president why this was done. "What are you trying to do, destroy the guy?", I asked. "If he doesn't really know your true position on each issue, the teachers will find that out and he can have no credibility with either party." "Gosh, Harold," the board president replied, "I'm not trying to hurt \_\_\_\_\_ or the teachers for that matter." "I'm a Christian," he added. I considered the latter remark a non sequitur but refrained from saying so. Instead, when we rejoined the full board, I berated them loudly and with some bitterness for emasculating their negotiator and damaging the bargaining process.

On that same evening, some 200 miles to the southeast, Larry Hammer of our panel was meeting with the parties for the first time in yet another school dispute. Here, the teachers threw some 200 "demands" upon the table. Among them was an objection to a meeting room that the board of education had offered on a regular basis to the teachers association. (The teachers organization had found the room's facilities inadequate.) Another "demand" was for the substitution of a paper towel dispenser for a hot air hand dryer in the male faculty lounge. I was not with Larry but despite his kindly temperament, He did I am sure, give in words of flame his disapproval of such nonsense.

Now this errant behavior by advocates is not occurring because of the position of the stars in the firmament of heaven. Neither is it because we are between Whitsuntide and Michaelmas. Even after eight years of bargaining, there are



sometimes actions taken by the parties without relation to their real needs and concerns which can and do generate more problems than the genuine issues between them. Sometimes, as in the two cases described above, this may be traced to mere lack of experience or sophistication in negotiations. Sometimes, it is a deliberate ploy to use the process and the procedures to gain some ephemeral advantage.

Most of the procedural ploys to which I have made reference occur before a mediator/fact finder is assigned to the case. An improper practice charge is filed which is so devoid of substance that lacking any *prima facie*, it is not even docketed for the informal conference. But it infuriates the other party. In other instances, a barrage of press releases to the media cautions the public that the intransigence of the board of education will inevitably cause a strike, or if the source is the board, that the insatiable demands of the teachers will lead to an astronomic property tax increase. Another characteristic of these immature stratagems is that of the unavailable negotiator. Meetings cannot be held because the chief negotiator for one or the other side is too "busy" to attend negotiation sessions already scheduled and the postponements enrage the other party.

If we had the resources to engage in preventive mediation with its attendant opportunities to educate the parties, these injurious tactics could be kept to a minimum. We have not those resources and so when the mediator/fact finder arrives on the scene, there may be an unnecessarily tense atmosphere quite unrelated to the substantive issues on the table. We appeal to our neutrals - TAKE CHARGE!

In their excellent pamphlet, *A GUIDE FOR LABOR MEDIATORS*,<sup>1</sup> Eve Robins and Tia Denenberg suggest giving both parties at an initial joint session a few guidelines on how the mediator works. Here are a few of the suggested guidelines:

1. That during the course of the negotiations the mediator may want to meet with the negotiator for the union without the bargaining committee present, or with the employer's negotiator without the other members of his bargaining team.
2. That disparate amounts of time will be spent in separate sessions with the employer or union, and the mediator does not expect that anyone will run a "stop-watch" on her. That the amount of time is not significant; what is meaningful is the progress made in the talks and the parties trust in the judgement of the mediator to go where the talks may be most profitable.
3. That the bargaining committees in both rooms will at times be upset with the pressures applied by the mediator and there will be put to the test their faith in the mediator's neutrality as she seeks to modify positions. But that she must try to bring them to agreement and this is the way it is done.
4. That employer and union committees may find themselves spending hours alone, while the mediator meets with the principal negotiators. While this is admittedly a bore, their acceptance of it will contribute to the settlement of the issues in dispute.

Eve and Tia's list is considerably longer but I have reprinted those guidelines which I think apply to virtually all disputes.

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<sup>1</sup> Eva Robins with Tia Schneider Denenberg, *A Guide for Labor Mediators*, Industrial Relations Center, College of Business Administration, University of Hawaii, 2404 Maile Way, Honolulu, Hawaii 96822. January 1976, \$3.00.



There are a few mediators who are diffident and unaggressive, and they trouble us sorely. After all, the parties in only a small percentage of the impasses make a request for a specific person and sometimes the less aggressive mediator feels that he is an intruder. A pox on such thought! If the mediator were not needed, there would be no impasse. It is important to keep in mind that although PERB has a statutory right to intervene in a dispute on its own motion, we have very rarely done so. That means that when a mediator has been appointed, assistance has been requested by at least one and frequently by both parties. The test of the acceptability of the mediator does not really take place until he is on the scene and the parties have been exposed to his knowledge, strength and skills.

The mediator is the servant of the parties in the effort to find a settlement. He is not, however, their slave. Neither should he be manipulated into becoming only a witless messenger boy. Breathes there yet the mediator who believes he must take every proposal given by one side to the other - even if he believes that the proposal is so outrageous that it will impede progress if it is transmitted. What is wrong with stating that the proposal is to your mind counterproductive and advising that you will not transmit it? If the side making the proposal wish to do so, they can transmit it themselves. The mediator's credibility with both sides will probably be the better for taking such a position. Again, the mediator should be tolerant of the need for advocates to have the catharsis of denouncing the high crimes and misdemeanors of the other party. But there comes a point when the mediator must cry - "Hold, enough!"

The mediator is chairman of the proceedings and he is responsible for the decisions regarding what issues are to be taken up in what order. The mediator paces the process and pushes along at an accelerated pace when he feels that is needed or slows deliberately when he decides that is required. The mediator never should show lack of sympathy for the parties' concerns on the various issues. Indeed, he should genuinely be able to empathize with them. But the mediator is also required to deflate positions held dear. If he cannot do that with strength and grace, he cannot mediate.

I recognize that much that has herein been said is a redundancy for our old mediation hands and much of it belongs in a primer for tyro mediators, but we do well to remind ourselves. We began with a quote from John Henry, Cardinal Newman. Let us conclude with his motto "Ex umbris et imaginibus in veritatem."<sup>2</sup>

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#### RECENT SETTLEMENTS

##### Agreement Between

Town of Dickinson  
(Franklin County)  
and  
Truck Drivers and Helpers  
Local Union No. 687, IBT  
1976  
(Covers 3 Highway Department  
employees)

##### Summary of Provisions

Salary: Equipment Operator and Mechanic raised  
50¢ to \$4.00 per hour for 1976. Truck Driver  
and Mechanic remained at \$2.85 with Laborer  
also unchanged @ \$2.50.

<sup>2</sup> "From shadows and symbols into the truth".