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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL.

Othello: "Is he not honest?"
Iago: "Honest, my lord!"
Othello: "Honest! 'ay, honest"
Iago: "My lord, for aught I know?"
Othello: "What dost thou think?"
Iago: "Think, my lord!"
Othello: "Think my lord! By heaven he echoes me,
As if there were some monster in his
thought too hideous to be shown."

William Shakespeare
"Othello", Act III - Scene 3

Iago was, of course, deliberately not clear in his responses, but normally, people ought to say clearly what they mean. The function of human speech is, of course, to communicate. Much of our adult population including nearly all of those under thirty, have not mastered the English language at all. I fear that within a decade, both "Pygmalion" and "My Fair Lady" will be revived as tragic dramas rather than comedies.

We must also deplore the American habit of adopting slogans solely to avoid the painful effort of thinking - and then communication of reasoned thought. Responding by slogan hardly requires thinking at all. Thus, "I am against coddling criminals"; "I never trust politicians"; "I am 100% American". (On this last, Mr. George Bernard Shaw once observed that people who say they are 100% anything are usually 100% ass, but I shall not dwell on this observation because Mr. Shaw was Anglo-Irish). We also have, "I believe in free enterprise". The last time that we had anything approaching free enterprise was in the administration of William McKinley. The Nobel Laureate, Milton Friedman, stands vigil at its grave and waits its resurrection. Currently, we are rather distressed by a slogan which is being, we think, misused by some in the labor relations field. I refer to, "I believe in free collective bargaining".

Now, let me hasten to state that those who wrap themselves in the banner of free collective bargaining are almost always totally sincere. We would submit, however, that collective bargaining has never really been "free". There are costs to both parties in the sense that between aspiration and reality, the representatives of union and management cannot achieve all or nearly all of their objectives in the final settlement of contract terms. (This may not be true, of course, where the power relationship is totally tilted to one side but such situations are a rarity nowadays and by nobody's definition would this be free collective bargaining.) Those who praise free collective bargaining mean an agreement achieved through voluntary negotiations without an imposed settlement through, for example, the interest arbitration route. One of the facts that must be faced is that voluntary agreements cannot always be achieved, and sometimes the costs imposed on public health, safety and welfare if the parties are unable to make such an agreement by themselves, may be very dear. We refer, for example, to negotiations involving utilities, milk deliverers, policemen, firemen, sanitationmen, etc. These involve, of course, both the private and public sectors. The question of whether people involved in the delivery of these services should have collective bargaining without statutory conciliation procedures should voluntary agreement fail to be achieved, is a public policy question. It is also a question of law. Professor Harold Lasswell of the Harvard Law School used to tell his classes that, "Law is Policy, not all Policy gets to be Law".¹

Robert Doherty, Associate Dean of the School of Industrial and Labor Relations at Cornell, always speaks and writes clearly and never leaves any doubt on where he stands on questions of labor relations, labor law and public policy. He was, a few years ago, described in these columns as a "curmudgeon". He is one indeed. He is also brilliant without being stuffy. His wit and wisdom delight always. If there were more academics like him, I would regret my lack of formal education. Professor Doherty recently delivered a paper to a training session for fact finders sponsored by the Ontario Education Relations

¹ Quoted by Lasswell pupil and PERB panelist, Professor John Sands of the Albany Law School.

Commission. It has recently been published² and I would urge my readers to peruse the lecture and savor it. Your souls will be refreshed and your minds stimulated - or vice versa. Permit me to quote one paragraph.

"Because it is so difficult to determine the relative weight of these criteria (comparability, the market, ability to pay, the public interest, etc.), the factfinder will frequently use the parties' arguments only to justify what he has wanted to achieve all along--acceptability. Certainly this will be the case if the factfinder sees himself as part of the conciliatory process, rather than performing a quasi-judicial role. The only question the factfinder asks himself under these circumstances is: what will the parties accept with the least amount of bad humor? This means an acceptance based not so much on the grounds that the factfinder's recommendations were models in logical persuasion, but because he or she was smart enough to give the lion the lion's share and give to the mouse what mice deserve."

Max Doner, the Great Neck Maimonides, has put it a bit more delicately. In an arbitration award³ which Max wrote recently, he stated, "The Arbitrator is the creature of the Agreement and his movements are confined to the course chartered for him by the language of the Agreement, drafted by the parties in free collective bargaining. It is recognized, however, that of the two parties involved one may be freer than the other, all based on the balance of power. The resulting inequities or disadvantages, if any, accruing to one side or the other are not within the realm of the Arbitrator to correct, adjust or ameliorate. The Arbitrator is called upon to interpret the Agreement and is barred from rewriting or rephrasing same." (Emphasis added)

We don't doubt after almost ten years of involvement with fact finders and fact-finding that the report and recommendations should be written for acceptability rather than with the rights arbitrator's privilege of seeking equity. Indeed, we have always encouraged fact finders to write for acceptability. What equity can be determined under the familiar criteria that Professor Doherty cites? If, indeed, this means that the power relationship between the parties has a great deal to do with the fact finder's recommendations, so be it. Collective bargaining, however, is not really in either the public or private sectors, a wrestling match between two contenders with the more powerful eventually triumphant. There are all kinds of restraints upon the parties quite beyond the "power positions" we have come to accept. In fact, in the same paper to which I have made reference Professor Doherty says with regard to teacher bargaining:⁴

"Most public employee collective bargaining statutes provide for comparisons between similarly situated employees, public and private. This is done, I believe, for at least two reasons. First, employees whose jobs require similar skills, training, and other personal attributes are, within certain geographical limitations, drawn from the same labor pool or market. Boards of education do not ordinarily recruit teachers in the coal mines, nor do coal mine operators tend to recruit in the university. Each occupation has its "going wage" and this is for the most part a reflection of the requirements of both the product and labor markets. Thus, we tend to make comparisons of teachers' salaries between districts in a somewhat loosely defined labor market. This provides some instruction as to what salary level is required to enable a school board to recruit teachers of a given quality, to keep the best teachers from being wooed away, and to promote harmony and good feeling within the ranks. Factfinders thus give heavy weight to the so-called comparability argument--to the degree apples are being compared with apples and they all come from the same part of the orchard. I will deal with some problems posed by this standard later on.

"The second reason why factfinders tend to pay considerable attention to comparability arguments has little to do with market forces. Indeed, with respect to public education, marked as it now is with a burgeoning surplus of teachers and declining public school enrollments, markets are no longer of paramount importance. Rather, it is the mystique of egalitarianism that now occupies our attention. It isn't fair, so the union argument goes, that teachers in a neighboring school district should have higher salaries or receive greater increases than the teachers who are at the moment seeking salary improvements. We should all be treated alike (unless, of course, everywhere we look our counterparts are treated worse), irrespective of the neighboring district's greater ability to pay the higher salaries, and regardless of differences that may exist in other conditions of employment. Reverse this plea and you will have a school board's argument. In disputes over salaries, and usually in respect to other issues as well, the 'facts' presented to the neutral by both parties will be designed to demonstrate that teachers in any given district are either well situated or poorly situated, depending upon which side is trying to make a case. And it is easy to demonstrate both. All one needs to do is look for comparative data in a slightly different region. The region, the 'ambience of coercive comparison,' to use a fancy expression sometimes invoked by labor relations specialists, shifts as it suits one or the other party's purpose to do so. All to the great consternation of the factfinder who always strives to be fair and wise about such things."

² Doherty, Robert E., "On Factfinding: A One-eyed Man Lost Among The Eagles", Public Personnel Management, Vol. 5, No. 5, pp. 363-367 (September-October 1976).

³ Arbitrator Doner, Methodist Hospital of Brooklyn v. New York State Nurses Association, AAA, Case No. 13 30 1517 76.

⁴ Doherty, op. cit., pp. 3-4.

We think all "fair and wise" fact finders will agree that Bob Doherty has delineated comparability problems with refreshing clarity and candor. No lingo, he. Whether most impartialists will agree with him is another matter.

We suspect that regardless of whether one does or does not look at comparability as one of the major restraints on the parties in negotiation, everyone will agree that restraints there are. We do not seek to silence or even muffle those who trumpet "free collective bargaining". "But, if it existed" we say to them, "Could the country afford it?" "Indeed, could the parties afford it?"

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PLEASE NOTE. Erwin Kelly calls to our attention that it has been quite some time since many of you have gained admittance to our panel and the resumes which you submitted at that time have now become somewhat dated. We would appreciate your submitting updated resumes reflecting your increased experience so that we may place them in our personnel folders. Please address them to Harold Newman c/o of PERB.

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IRVING SHAPIRO

Irv Shapiro, our friend and Albany neighbor, a member of the National Academy of Arbitrators and one of the most gifted labor neutrals in the State, died last month.

There is no need to make reference to Irv's contributions as a labor impartial. That would be a redundancy for nearly everybody who reads this publication. We ought to perhaps, though, remember him too for the hundreds of hours he devoted as a volunteer to organizations that needed help to carry on their good works. There are many, especially here in Albany, who will always remember him for that.

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RECENT SETTLEMENTS

Village of Kings Point
(Nassau County)
and
PBA
6/1/75-5/31/77
(Covers about 20 Police)

Summary of Provisions

Salaries: Increased 9.5% and 8.0% in 1st & 2nd years of agreement signed in July 1976.

<u>Rank & Grade</u>	<u>6/1/74- 5/31/75</u>	<u>6/1/75- 5/31/76</u>	<u>6/1/76- 5/31/77</u>
Patrolman			
Start(1st Yr.)	\$11,447	\$12,534	\$13,537
Top(5th Yr.)	15,410	16,874	18,224
Sergeant	18,349	20,092	21,699

Longevity: Pay for 6 yrs.' service increased from \$300 to \$450. Newly added is \$50 per year of service for 16 through 35 yrs. \$350 @ 10 & 15 yrs. remains unchanged. Maximum for 15 yrs.' service now \$1,150 instead of \$1,000.

Night Differential: For hours between 3:30 P.M. and 7:30 A.M. to \$1,000/yr. for patrolman, sergeant \$1,200/yr. Was 45¢/hr. for basic salary of \$13,400 or less and 55¢ for over \$13,400.

Mileage Allowance: Raised 3¢ to 15¢ during second year.

Travel Time: Two hours if recalled to duty. New.

Clothing Allowance: Increased from \$175 to \$300 for 2nd year of contract. Cleaning & maintenance goes to \$300 in 1st year and \$350 in 2nd year. Was \$250.

Sick Leave: 18 days raised to 26 days per year effective 6/1/76. No limit on accumulation. Was 365 days.

Health Insurance: Coverage extended to widow and children of employee who dies while on active service - children until 18 as if employee were alive and widow till dead officer's 65th birthday or till widow remarries.

Dental Plan: Contribution by Village raised from \$150 to \$158 per year.

Termination Pay: Eligibility service time dropped from 20 to 10 years. Years of service times 5 days for time after 6/1/76. Four days did, and will, apply to service before 6/1/76. Sick leave up to 200 days times 50% paid on termination, effective 6/1/76. Was up to 130 days.