



# bulletin

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## HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"But arbitrators are inescapably *political* actors, in both the objective and to many persons pejorative meanings of the word. In the absence of empirical proof establishing that arbitrators somehow possess psychological and material value structures different from those of other persons, it is reasonable to assume that arbitrators are self-interested individuals who find in the arbitration process incentives sufficient to induce continued participation: pecuniary reward, advancement of career goals, a sense of participation, the opportunity to shape political outcomes, and ego gratification. In addition, arbitrators usually are not randomly selected for assignment; rather, a subjective evaluation process involving the negotiating parties, and quite often an administrative agency, usually precedes designation. Assuming that negotiating parties examine past decisions when selecting arbitrators, with an eye to protecting themselves in the future from 'unfriendly' decisions, and that subsequent appointments are desirable, arbitrators must consider the personal as well as labor relation consequences of their arbitration decisions."

Raymond D. Horton (Associate  
Professor at the Columbia  
University Graduate School  
of Business)

"Arbitration, Arbitrators and  
the Public Interest", Industrial  
& Labor Relations Review, Volume  
28, Number 4, July 1975

I would recommend that PERB panelists read the article by Professor Horton from which I have quoted. That is, not because I agree with very much in the article, but Ray Horton is a remarkably intelligent and thoughtful young man who has written and spoken cogently and sometimes brilliantly, on public sector bargaining. "Arbitration, Arbitrators, and the Public Interest" should at least set your adrenals flowing. I would, however, wish to address myself to the quoted passage.

This very day, I have had a lengthy telephone conversation with a panel member who is serving as a chairperson on an interest arbitration panel involving police. She is preparing a dissenting opinion in a case in which the two partisan arbitrators have agreed on a salary proposal for a two-year agreement. The neutral arbitrator had told her panel colleagues that what they have agreed to is unconscionable and



that the panel ought to be dissolved and the partisan arbitrators should make the agreement with their principals. Unfortunately, this cannot be done and the neutral must write a dissent. The integrity and the understanding of the statutory criteria which the neutral arbitrator has brought to this panel may bring her threats that her position may cost her a substantial number of appointments by advocate groups in the future, but she is firm. I would further argue that she is not, bless her, unique. When I was mediating the teachers' strike in New York City last September, my colleague, Lou Yagoda, had just received a letter critical of one of his arbitration awards. "I never look back," Lou said, "I make the award as intelligently and conscientiously as I can - and I never look back". Lou Yagoda never seems to lack arbitration work.

I grew up amid the fleshpots of Flatbush and there is little innocence in me. I do believe that when parties read an arbitration award written with the cogency and grace of an Abe Stockman or note the painstaking research that goes into one of Jim Hill's awards, they recognize the mark of the professional and will choose him thereafter regardless of who gained or lost in the award.

My problems are seldom with arbitration awards. Neither the grievance arbitration nor interest arbitration performed under our aegis has caused any embarrassment. My problems lie with some of the fact-finding reports. Why, in the names of all the gods at once, is it still necessary to remind fact finders as I did in the last issue of the Bulletin that a rationale belongs in a fact-finding report? If the fact finder does not pale at making a recommendation, why should he shrink from writing a line or two of rationale? The media do not always pay much attention to fact-finding reports but when there is a strike, everybody in the community wants to have it passed from hand to hand. In at least two teacher strikes this year, I thought the fact-finding reports almost more painful than the strikes. The prime defect in both cases was a total lack of rationale written for the recommendations made.

I would caution that I am not suggesting that we seek fact-finding reports the length of a doctoral thesis. The most substantial statements may still be brief. I recall that the best movie review I ever read consisted of a single sentence. It was, "George Arliss continues to shout, frown, cackle and annoy". The movie was called "The Last Gentleman" and Arliss for those among my readers who are youthful was an overrated stage and screen actor of the '20's and '30's. Oscar Wilde's brief fairy tale "The Happy Prince" tells us all we need to know about society. Everything we need to know about the world and our place in it, I think, is covered in Pearl S. Buck's short story "The Pleat" and George Orwell's essay "Shooting An Elephant". It should be possible in a fact-finding report to achieve weightiness without weight.

I did not believe either, that now in the autumn of my life and with the Taylor Law about to enter its ninth year, it would be necessary to remind some fact finders that the parties do not enjoy being attacked in print and the itch to be didactic must be curbed. Do, I beseech you, educate the parties while mediating and not fact-finding. Do not put into print the comment that you thought one party or another was devious or suffered from obvious genetic retardation. If they have the tiniest of egos, they will reject your report no matter how brilliantly researched and wittily written. Is it possible that some among us have forgotten that the fact-finding process is supposed to produce a document



which the parties will spray with attar of roses as they go hand in hand to settlement? If the fact finder reproves parties for some high crimes and misdemeanors, the document will be reviled and flung upon the ground.

"Patience Is The Best Remedy For Every Trouble"

Titus Maccius Plautus  
254-184 B.C.

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I have frequently congratulated myself on the excellence of the PERB staff as personalities and professionals. The turnover in PERB has been minimal and the family has pretty much been able to stay together. However, on October 1st Jim Sharp retired from State service. I suppose that to attempt to describe the joys of working with Jim and to point to this fine personality is like holding a candle to a giant searchlight. Nearly all the panel members know him and have shared his always stimulating and thoroughly delightful company. Jim will continue to toil in the PERB vineyards as a panel member while he and Betty enjoy the pleasures of being home again in Jamestown.

We are pleased to report that Eric Lawson, Jr. will succeed Jim Sharp as regional representative in the Buffalo office and will take over his new duties on the first of the year. Again, as with Jim, Eric is known to almost all of the members of the panel personally. Eric came to us as a young intern in 1969 and the energy, dynamism and intelligence that he has brought to his work ever since assures us that he will keep things humming in the west. In this connection, panel members in the Buffalo, Rochester and other western areas in the State are again urged to make full use of the Buffalo office for visits, consultations, follow-up on cases, etc.

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Once again, we implore the fact finders to remember that TWO copies of the report must be sent to PERB.

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#### RECENT AGREEMENTS:

##### Agreement Between

West Babylon U.F.S.D.  
(Suffolk County)  
and  
Non-teaching Unit, CSEA  
1975-1976 School Year  
(Covers about 200 employees  
in Cafeteria, Clerical,  
Custodial and Transportation  
Departments)

##### Summary of Changes

Salary: Increased about 14.3%.  
Retirement: Changed to 75-i "Improved Career"  
plan, was 75-g "25-Year Career" plan.