PERB bulletin FOR MEDIATORS / FACT FINDERS

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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Do not do unto others as you would they should do unto you. Their tastes may not be the same...the golden rule is that there are no golden rules."

George Bernard Shaw (1856-1950)
"Maxims for Revolutionists"

I suspect that over the last eight years and more, Chairman Bob Helsby and I, have between us done about 80 percent of the public speaking before groups to which PERB has been invited. There is a substantial difference between a Helsby talk and a Newman talk. The Chairman prepares carefully and conscientiously. I have few notes and tend to extemporize a great deal. But if the topic has to do with impasse resolution, we both always emphasize the importance of flexibility in procedures. Nothing else is of greater concern, Dr. Helsby and I believe, than the need to leave the neutral agency unfettered to do what the situation seems to require without mechanistic application of statutory impasse procedures. (I must confess that I have thought about the flexibility doctrine so much that whereas I had considered at one time the old inscription for my gravestone, "NEVER MIND THE RESURRECTION, LORD, I NEED THE REST", I have now thought of having the single word - FLEXIBLE. But this is not the place for serious discussion of anything but temporal things.)

In connection with interest arbitration in police-fire disputes, I wish I had some flexible procedures to keep the parties from going to the final step, except in the barest minimum of cases. There are at least two advocates in the downstate area who seem determined to have all of the negotiations in which they are involved go to arbitration. Short of a few of their clients being badly burned by arbitrators' awards, I don't know how they can be stopped from continuing their rather irresponsible behavior. Input in arbitrators' awards is *ultra vires* for me anyway.

We have given serious thought, my staff and I, to the questions raised by panel members at last year's seminars as to the utility of fact finding where binding interest arbitration is the last step. Right now, that is an academic question. The statute would have to be amended to excise fact finding, and we are not yet at the point where our Board and the Legislature will be discussing the police-fire amendment. More on that later. We have, however, compressed the procedures in another way. We have been sending police-firefighter cases directly to a mediator/fact finder instead of appointing a mediator first. This much resembles our practice in school district disputes.

Why, one may inquire, if we are concerned about too many cases going to arbitration, would we compress the conciliation steps before it? Simply, because police and firefighter unions and their employers are often quite similar to

I disagree with my good friend Eve Robins and Tia Danenberg suggestion of giving the parties instructions on how a mediator works.

It is suggested that the parties be told that the medator may want to meet with the negotiator alone without his committee. This can be disastrous because often there are intra-union and intra-company politics involved. They may have sold their committees on the slogan of "open covenants openly arrived at". Unless one is sure of his ground, he may unwittingly destroy the negotiator in the presence of his committee. Assume that the negotiator will not meet without his committee - then what. The better approach is for the mediator to sound out the negotiator at a recess or rest period without his committee to ascertain if he can meet alone. If he cannot, there are always opportunities to meet with him alone after the meeting.

If a mediator is in control of a meeting, he need not explain or account for the time he spends in separate meetings. He simply announces at the joint meeting of his intention to meet separately and makes sure to report back to the standing by committee the result of his efforts before reconvening a joint meeting.

A mediator establishes his control as he enters a case. He can do this by his physical position at the table, his initiating the talks by requesting a recitation of the open issues, and by moving the talks from one topic to another.

Each of the suggested guidelines appeals to the parties to put their faith and confidence in the mediator and his neutrality. This is wishful thinking. It is only by his actions and not by his oral exhortations that a mediator establishes the degree of confidence in his ability and neutrality necessary for a successful mediation effort.

Further, I shudder at the apologetic tone of the guidelines as they relate to "pressure". Pressure denotes compulsion. The mediator's tool is persuasion and taking advantage of timing to evolve a consent to lose. If I were a negotiator or committeeman, I would resent being told that I am going to be pressured to do this or that. All it can accomplish is to raise another mental block to the eventual settlement.

Lastly, I like your thoughts on the mediator not being the "slave" nor messenger boy for the parties, especially when requested to transmit a patently unacceptable offer

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Erwin Kelly reports that the cooperation of the panel members in indicating elapsed time by means of showing stopping and starting times has been excellent. You may recall he wrote about this in the March issue of the Redhead. However, there is still some billing coming in without it. He would appreciate your understanding in this matter.

Once again, the following would be an example:

Date	Time Spent - Hour/Day	Nature of Work
April 16	7:00 P.M.-12:00 P.M. 5 Hrs. - 3/4 of a Day	Mediation, Fact-finding with parties
April 18	7:00 P.M.-2:00 A.M. 7 Hrs. - 1 Day	Fact-finding Hearing
April 21	9:00 A.M.-4:00 P.M. 7 Hrs. - 1 Day	Study and Preparation of Report
April 24	9:00 A.M.-12:00 A.M. 3 Hrs. - 1/2 Day	Preparation and Completion of Report

TOTAL HOURS/DAYS: 22 Hrs. -3½ Days at $125.00 Per Diem = $437.50