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HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Strikes against Government are wholly unlawful. This bill places upon our statutes a clear statement of the principles involved and provides effective penalties in case of violation.

The bill declares that a public employee who strikes loses his Civil Service protection, and if re-employed does not regain it for five years. To remove any possibility of profit from his wrongful act, his compensation may not be increased for three years.

The bill carefully preserves every right enjoyed by public employees to express their views, complaints and grievances, privately or publicly.

The conditions of public and private employment are entirely different. The special characteristics of public employment are as follows:

1. Public service is a public trust not only for elected officials but for all employees. It is a trust in behalf of all the people. A trustee cannot strike or falter in the performance of his duties.
2. A public employee has as his employer all the people. The people cannot tolerate an attack upon themselves.
3. The public employee has no employer who may profit from depressed conditions of employment.
4. The conditions of public employment, the rules governing it, and the revenues available to pay for it are all matters of public record.
5. Public employees have the right to improve their conditions through arguments before all the people, before legislative bodies, to administrative officials and, of course, by their own ballots on election day. These rights are so effective that among all the types of employment over the years, public employment has been rated as having the best and most desirable conditions. Public employees by virtue of their rights or otherwise enjoy highly beneficial pension systems, supported in large part by Government, unprecedented security and stability of employment and compensation through bad times as well as good and machinery for correction of individual grievances before administrative officials, before Civil Service Commissions, and even in the courts.

The duty of public employees is to the whole of society. A strike of firemen could overnight permit the destruction of a whole city. A strike of police could endanger the safety of millions of people and of all their possessions. A strike of sanitation workers could almost overnight produce an epidemic threatening the lives of other millions of people. A strike in the mental hospitals of the State could cause the deaths of thousands of patients by starvation or by the violence of other disturbed patients.

Government is not an end in itself. It exists solely to serve the people. The very right of private employees to strikes depends on the protection of constitutional government under law. Every liberty enjoyed in this Nation exists because it is protected by government which functions uninterruptedly. The paralysis of any portion of Government could quickly lead to the paralysis of all society. Paralysis of government is anarchy and in anarchy liberties become useless. A strike against Government would be successful only if it could produce paralysis of Government. This no people can permit and survive.

The penalties in this bill are moderate but firm. By their clear terms they will protect loyal employees and what is more important will protect the interests of all the people."

Governor Thomas E. Dewey
1947 N.Y. Legislative Annual, p. 36

I have chosen to resurrect Governor Dewey's entire memorandum asking for the legislation which became the Condon-Wadlin Act because despite the passage of almost thirty years since these words were written, many could accept today, without change, the letter and the spirit of the late Governor's statement. Others would I grant, consider it to have as much relevance as an address by President William Howard Taft to a joint session of the Congress.

New York State has not moved in these thirty years to grant the right to strike to public employees. But quite unlike the Condon-Wadlin Act, the successor statute, the Taylor Law, requires public employers to bargain and to enter into written contracts with the unions representing the majority of their employees. We are frequently told by union partisans that there can be no "real collective bargaining" without the right to strike. We are frequently told by municipal officials and those who negotiate for them that they would prefer giving the right to strike to public employees rather than be forced to accept compulsory interest arbitration. The Scriptures remind us that the peacemakers are blessed. I suggest that they are rather lonely.

To my mind, strikes are an inappropriate means for solution of public sector impasses and are at best rather wasteful exercises. I do not agree with very much that Governor Dewey said in the quotation above and I think that the Condon-Wadlin Act was an abomination. But I believe that those who glibly talk of strikes as though they are no more traumatic than a taffypull, don't know what they are talking about.

Let us spare ourselves the question of whether we can meaningfully delineate those groups in the public sector that can strike without injuring public health, safety or welfare - and those that cannot. Certainly, strikes by probation officers

may not threaten public health, while those of sanitation employees may. A walkout by policemen or firefighters menaces public safety, while a strike by teachers may not. But all of the trials by combat are injurious. When I mediated a lengthy downstate school strike last year, I was told upon my arrival by a group of highly emotional parents at the scene that high school seniors were in serious trouble with regard to college boards and Regents examinations. After weeks of strike, the community was bitterly divided. So, indeed, were the teachers (those who struck and those who didn't), and the Board of Education was suffering a sharp schism in its ranks. I have never observed a strike that was totally peaceful. There are the delights of tacks on driveways, threatening midnight telephone calls, and sometimes actual physical assaults. We can frequently observe the whole syndrome of unappetizing human behavior under stress. I submit that if any group of public employees can strike for an indefinite period without affecting public health, safety or welfare, it may be a fair assumption that they have no meaningful job function.

What then can there be for the public sector union that operates under a statute that provides sanctions against the strike? Why, the same thing that holds when a strike is legal! I mean that quite seriously. Strikes are a cruel test of the parties. The ability of the union to make a credible strike threat - even if it is never uttered, is as weighty, and far safer than having to go out on the bricks. Many a gallant pursuing a maiden around a bedchamber has rued having caught her. His reputation was better untested.¹

Now with regard to the municipal managers who would rather "take a strike" than arbitrate, I would suggest that they laugh at "scars that never felt a wound".² In any event we have never pushed for binding arbitration as a substitute for negotiation, mediation or fact-finding. The statute addresses itself to binding arbitration only for police and firefighters precisely because sanctions or nay, a work stoppage by the uniformed forces is totally unacceptable.

More than a dozen states and some smaller political subdivisions such as cities and counties provide by statute for compulsory interest arbitration for uniformed personnel. None, to my knowledge, have repealed their arbitration laws. Some statutes provide for conventional arbitration by neutrals, some like the New York law, for tripartite arbitration, and some for "last best offer" either package or item by item. We think that this diversity of arbitration procedures is a good thing. Experimentation with various forms of interest arbitration may tell us much about the advantages and disadvantages of each. My young assistant, Ronald Kurach, whose stewardship of the interest and grievance arbitration procedures is always marked by a fine intelligence and conscientiousness informs me that about 25 percent of the universe in police and fire cases go to interest arbitration. That figure would not seem to indicate that the availability of interest arbitration has either a chilling or a narcotic effect on collective bargaining in police and fire cases. I am indebted to my distinguished colleague, Dr. Thomas Joyner, PERB's Director of Research, for figures that show that arbitrated settlements have been "cheaper" for the public employer than those obtained in negotiations. The figures from Ron and Tom are set forth below.

¹ cf. Sir Richard Burton, D. H. Lawrence, B. F. Westervelt and Havelock Ellis.

² Romeo and Juliet, II, ii, 1.

Tom: PATROLMAN SALARY INCREASES ON TOP STEP IN 1975^{/a} FOR
NEGOTIATED AND ARBITRATED CONTRACTS
NEW YORK STATE (Excludes New York City)

	No. of Agree- ments	No. in Depart- ment	Top Step ^{/b}	Weighted Average	
				Increase Over 1974 Amount	%
Total	109	8,300	\$13,994	\$1,270	9.7
Negotiated	91	6,000	14,112	1,349	10.3
Arbitrated	18	2,300	13,694	1,069	8.7

FIREFIGHTER SALARY INCREASES ON STOP STEP IN 1975^{/a} FOR
NEGOTIATED AND ARBITRATED CONTRACTS
NEW YORK STATE (Excluding New York City)

	No. of Agree- ments	No. in Depart- ment	Top Step ^{/b}	Weighted Average	
				Increase Over 1974 Amount	%
Total	40	3,500	\$12,222	\$848	7.4
Negotiated	30	1,900	11,585	871	8.1
Arbitrated	10	1,600	13,018	821	6.7

^{/a} Includes all increases in fiscal years starting in 1975.

^{/b} Salary after consecutive increments are received, generally 3-5 years.

Ron: Out of a universe of 335 police and fire units, of which 200 were up for negotiations in 1975, we received 50 petitions for arbitration, or 25 percent.

There is little possibility that these or any other statistics will convert the critics of interest arbitration in the public sector to the point of view that it is a good thing.

If the critics of our police-fire interest arbitration law find fault with its administration or with the way the panels have functioned, let them cite the failures and the faults. We must properly respond by making changes. But if, as I suspect is the case, their attacks on binding arbitration arise from the pain of being denied the right to unilaterally determine the terms and conditions of employment of policemen and firefighters, time has passed them by.

Perhaps it will be found with further experience in the police-fire arbitration cases that the legislation should not have been passed and the amendment should be allowed to die in July of '77. I see no such evidence now.

In any event, though management or union advocates speak easily of strikes, such tests of power are wasteful and pointless. We find no finality in strikes. When they occur, we have to mediate them. Robert Southey was a minor poet but

as he pointed out in the old German peasants' recollection of the battle of Blenheim:

'It was the English,' Kaspar cried,
'Who put the French to rout;
But what they fought each other for
I could not well make out.
But every body said,' quoth he,
'That 'twas a famous victory.

'And every body praised the Duke
Who this great fight did win.'
'But what good came of it at last?'
Quoth little Peterkin:—
'Why that I cannot tell,' said he,
'But 'twas a famous victory.'

"After Blenheim", 1815
Robert Southey

* * * * *

Erwin Kelly writes the following:

For quite some time now I have been attempting to say thank you to each of you individually by means of a letter whenever you did a case for us for "expenses only", but I thought at this time I would like to say thank you to you collectively.

When Dr. Helsby wrote to the panel on this subject, he sent his letter to 144 panel members who had fairly consistently been involved in helping us resolve impasses over the last several years. One hundred and forty-one panel members responded with a resounding "yes". There were only three who did not respond and one said "no" but later changed his mind. As of this date, 127 of the 141 have either completed a case or given us a commitment on a definite case for expenses only. Of the 14 remaining, I am confident that they too will respond in the same way as the other panel members when we call them. I believe that the response of the panel in the manner I have just described is an outstanding tribute to their commitment as professional neutrals to the process of public sector bargaining and demonstrates the fine personal and professional relationship of the panel and the PERB staff.

In the area of billing, I would like to ask if you could make a slight change in the manner of submitting your bills for the sake of consistency. Some members have been indicating the total time spent each day while others have reported elapsed time by means of showing when they started and when they finished. We have found the latter to be more suitable for auditing purposes and would ask you to use that style in submitting all future billing. The following would be an example:

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