



bulletin

FOR MEDIATORS / FACT FINDERS

PUBLISHED BY THE NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

OCTOBER 1974
(Vol. 5, No. 10)

HAROLD NEWMAN'S CLOUDY CRYSTAL BALL

"Solitudinem faciunt, Pacem Appellant"

Tacitus

"Those of you who failed to study your Latin in Brother Justin's classes may not be able to translate the above. It means 'they created a wilderness and called it peace.' It is the subject of this month's homily.

"As rosy-fingered dawn lights the eastern skies and red-eyed negotiators blink wearily at the exhausted mediator, he mutters that 'we had better write the memorandum of agreement before we break up.' Summoning the very last reserves of energy they have, advocates and neutral begin to get down on paper what brutal hours of hard bargaining and skilled mediation have produced. The weary group agree to put down, for example, that a '10 percent increase including increment' has been agreed to. And so on down the list they go on each item. With one final effort the numbed negotiators sign the memorandum, shake hands and smile at each other, and stumble to their cars. If they have the grace and the energy left, the parties thank the mediator before they go. The mediator grins triumphantly as he heads for home. He has once again brought peace where there might have been war. Alas! He has not brought peace. He has created a wilderness.

"What does '10 percent increase including increment' mean? Is it 10 percent at each step of the schedule? Is it 10 percent of the total budget amount for salaries? Is it one of some other possibilities? We may be sure that the parties know what they agreed to. The management people are convinced they signed for the least expensive 10 percent and the union for the most generous. Let us now look at the same group of negotiators several weeks after the night the 'settlement' was achieved. They are no longer smiling. They are glaring more fiercely at each other than they did in the most heated of the negotiation sessions. There are furious charges of 'bad faith' and 'reneging.' Improper practice charges are being filed. There are dark hints of a work stoppage. The peacemaker who had smiled a smile of triumph when the agreement was signed is shocked to learn that the agreement 'fell apart.' The mediator does not dream that he is at fault. In truth, what he did was in Clemenceau's words, 'worse than a crime. It was a mistake'!!

"I have too much delicacy of feeling to directly point to specific instances in the past few months where mediators have committed this atrocious error. Erwin Kelly has advised me of five cases in which we currently have problems resulting from ambiguously written memoranda of agreement. They involve cases in the Counties of Cayuga, Westchester, Delaware, Allegany, Nassau, and Seneca. (The geographic spread demonstrates that mediators are susceptible to the virus of carelessness all over the state.) Hear now our entreaty....

"Please make absolutely certain that the language in the memorandum of agreement contains no ambiguities. Read the language back to the parties so that if they have any question as to wording or interpretation, changes can be made. Tell them what it means to you. Only then may you depart secure and light of heart. Failure to do the above should merit punishment like the rack, the bastinado, or worst of all, the requirement to be the Hearing Officer on any improper practice charge that results.

* * * * *

"There is much in the literature of labor relations about the importance of proper timing for mediation intervention. William M. Leiserson,¹ Allan Weisenfeld,² and others have dealt with the subject. This is a matter that deserves much attention together with the subject of 'preventive mediation.' But that must wait for a future issue of this journal. I would, however, caution that both mediators and fact finders should not allow themselves to be lulled by the parties into believing that they can safely wait until they are called by the negotiators to appear. We have had some recent problems involving neutrals who were told 'we're making headway' or 'we want to try it on our own.' The fact finder or mediator sits back pleased that the parties might make their settlement without outside intervention when suddenly after the passage of some weeks a strike deadline has been set for the next day! It is well to take the parties' temperature frequently. Better still, advise Supreme Headquarters in Albany and inquiries can be made from there to parent organizations that probably can give accurate readings. A philosophic belief that the best agreement is one worked out by the parties themselves should not lead us into playing a kind of Russian roulette."

¹Leiserson, W. M., Proceedings of Industrial Relations Research Association, 1951, "The Function of Mediation in Labor Relations".

²Weisenfeld, A., "Mediation or Meddling?", ILR Review, January 1954.

* * * * *

The dates for the PERB panel seminars at Cornell have been changed. The originally announced dates conflicted with Thanksgiving and Hanukkah. The new dates are February 2, March 2 and March 9, 1975.

* * * * *

If you have changed your professional or business affiliations within the last few years, will you please send an updated biography to Muriel Gibbons.

* * * * *

Arbitration for policemen and firemen is getting under way. We have received eight requests, all from employees. The parties have selected and we have appointed the public members in two of these cases. There are two cases in litigation (including one of the cases in which an arbitrator is selected) and one other court challenge is expected soon.