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Perry A. Zirkel

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# Counterpoint: Introduction

PERRY A. ZIRKEL\*

In the Fall 1989 issue, Caraway posed the question of whether grievance mediation was worth using, and he answered the question, based on his experience for the California State Mediation and Conciliation Service, "yes" for the great number of grievances that have individual rather than unit-wide impact.<sup>1</sup>

In this issue, union attorneys Gregory and Heinen re-examine the issue from the viewpoint of the individual grievant. In contrast to Caraway's reliance on anecdotal experience, they cite Brett & Goldberg's empirical study, which found that the majority of individual grievants were not satisfied with the compromise results that often flow from this flexible process. They also point to recent conflicting developments in the NLRB's deferral doctrine with regard to mediated prearbitration settlements, characterizing a nondeferral approach as unsettling to both employers and union representatives and regarding a deferral approach as another source of potential dissatisfaction for the individual grievant.

Perhaps senior author Gregory has undergone another stage in his self-described evolution from "dilettante" to "believer" to "convert" to "disciple" with regard to grievance mediation.<sup>2</sup> In any event, readers who seek to make an informed choice about this grievance resolution technique should carefully and critically evaluate the relevant literature that is based on practical experience,<sup>3</sup> legal analysis,<sup>4</sup> and empirical research.<sup>5</sup> Despite

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\* Ph.D. (U. Conn.), LL.M. (Yale), University Professor of Education and Law, Lehigh University.

1. Caraway, *Grievance Mediation: Worth Using?* 18 J. LAW & EDUC. 495, 497 (1989).
2. Gregory, *Grievance Mediation: A Union Advocate's View*, in PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 143, 146 (J. Stern & B. Dennis eds. 1984).
3. See, e.g., Sarno, *Grievance Mediation: A Management Approach*, in PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 136 (J. Stein & B. Dennis eds. 1984); Zack, *Suggested New Approaches to Grievance Arbitration*, in PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 105, 112-13 (B. Dennis & G. Sommers eds. 1978).
4. See, e.g., Schmedemann, *Reconciling Differences: The Theory and Law of Mediating Labor Grievances*, 9 INDUS. REL. L.J. 523, 535-31 and 594 (1987); cf. Valtin, "Preventive Mediation": *Grievance Disputes Under the Taft Hartley Act*, 7 LAB. L.J. 768, 775 (1950).
5. See, e.g., Bowers, Steeber & Stallworth, *Grievance Mediation: A Route to Resolution for the Cost Conscious 1980's*, 33 LAB. L.J. 459, 461-63 (1982); Gregory & Rooney, *Grievance Mediation: A Trend in the Cost Conscious Eighties*, 31 LAB. L.J. 502 (1980); McPherson, *Grievance Mediation Under Collective Bargaining*, 9 INDUS. & LAB. REL. REV. 205 (1955); O'Grady, *Grievance Mediation*

Goldberg's intense promotion of this approach,<sup>6</sup> cautionary concerns include the broad variety of practices under this flexible rubric, the generally limited nature of the research, and the largely partisan viewpoints of most authors who have written about this issue.

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*Activities By State Agencies*, 31 Arb. J. 125 (1976); Skratek, *Grievance Mediation: Does It Really Work?* CONFERENCE PROCEEDINGS, IRRA SPRING MEETING 157 (1986).

6. See, e.g., Brett & Goldberg, *Mediator-Advisers: A New Third Party Role*, in NEGOTIATING IN ORGANIZATIONS 165 (M. Bazerman & R. Lewicki eds. 1983); Goldberg, *The Coal Industry Development*, in PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 128 (J. Stein & B. Dennis eds. 1984); Goldberg, *Grievance Mediation: A Step Towards Peace in the Bituminous Coal Industry*, 85 W. Va. L. Rev. 777 (1983); see also sources cited in notes 4, 7, and 8 of Gregory & Heinen's accompanying Counterpoint commentary.