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## In Defense of Academic Judgment: A Reply

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## COMMENTARY

### IN DEFENSE OF ACADEMIC JUDGMENT: A REPLY

BERNARD MINTZ\*

Dr. Benewitz's self-serving defense of the arbitral process and procedure in relation to faculty collective bargaining<sup>1</sup> constitutes further evidence in support of the thesis developed in the authors' previously published article.<sup>2</sup> Let us examine at least one segment of the Benewitz position.

Stipulating acceptance of the fact "that either side may misconstrue language when application becomes disadvantageous to them and that the arbitrator dealing with such interpretations will seem to take away something a party thought it had won,"<sup>3</sup> one must raise the question of what God-given talent is possessed by the arbitrator, who has had no experience in the world of academe, to act as a referee in an arena in which the game being played is foreign to him.

With no desire to enter into a point-by-point rebuttal of the arguments in defense of arbitration offered by my-esteemed colleague, Dr. Benewitz, the concluding paragraph of his Commentary cries out for refutation.

Contracts extending over the 20 constituent colleges within CUNY, contracts which constituted a first major university faculty unionization, informational notices concerning the contract with the Legislative Conference and informational notices concerning the contract with the UFCT were issued by the Chancellor's Designee, in the course of two years of administration of contracts with two rival faculty unions (each of whom had a piece of the action). These informational notices constituted the backbone of a management communications network between the Vice-Chancellor for Staff Relations (Bernard Mintz) and a presidential designee for faculty union rela-

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1. Benewitz, *Commentary, In Defense of Academic Judgment: A Comment*, 23 BUFFALO L. REV. 201 (1973).

2. Mintz & Golden, *In Defense of Academic Judgment: Settling Faculty Collective Bargaining Agreement Grievances Through Arbitration*, 22 BUFFALO L. REV. 523 (1973).

3. Benewitz, *supra* note 1, 23 BUFFALO L. REV. at 201.

tions on each of the 20 campuses. They were a device which made it possible to share the responses to written questions concerning the contracts raised by campus designees to the Chancellor's Designee. Informational notices made for campus uniformity in contract administration and, in the main, constituted re-application of long-standing practices and policies in university faculty personnel administration in the light of the new contractual union relationship, rather than "administration interpretations and applications"<sup>4</sup> of the contract. One must keep in mind that until third-party (union) overview came into the picture, each constituent college in the system, while following personnel policy guidelines, generally applied its own variations.

Thus, the authors reaffirm their original contention that the language of the "Nota Bene," that section of the contract's grievance procedure which precedes the provision providing for arbitration and sets restrictions on the powers of the arbitrator, is "crystal clear."<sup>5</sup> That every section of every contractual provision was crystal clear was never the authors' contention. Which labor contract extant could make that claim? No, Mr. Arbitrator, you have once again missed the point.

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4. *Id.* at 207.

5. Mintz & Golden, *supra* note 2, 22 BUFFALO L. REV. at 543.