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# A Wartime History of Government Conciliation Service

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# A WARTIME HISTORY OF GOVERNMENT CONCILIATION SERVICE

BY

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# INTRODUCTION

This work is intended to be a history of the government's efforts to settle labor disputes by mediation and conciliation. The period covered by the work is from June of 1942 until September, 1948. Effort has been made to keep the work as objective as possible since the writer has been employed as a Commissioner of Conciliation since June, 1942, and all conciliators are alike guilty of possessing ideas of how the function should be administered and directed. No criticism is essayed of any person who may have directed the government's mediation efforts at any time.

In performing conciliation and mediation work, the government seeks to educate labor and management alike in the philosophy underlying collective bargaining, and at the same time assist in the settlement of labor disputes. How well the job is performed means a more rapid realization of the benefits that inhere in a free democratic economy operating under a free and democratic political structure.

# CHAPTER I

## WHAT IS CONCILIATION?

The word conciliate is defined by Webster as a transitive verb, derived from the Latin, conciliare, to draw together, unite and further defines it to mean, "to gain good will by pleasing acts. To render accordant or compatible. To win over; to gain the good will of; to make friendly."

Synonyms offered in the Thesaurus include reconcile, disarm, satisfy, placate, propitiate, mollify, appease.

There exists today some confusion as to how this term is used to describe a particular function of a third party who seeks to intervene in disputes involving a labor union and an employer. This confusion can be traced to the common acceptance of authority that is usually present in governmental functions. There is also confusion between the term arbitration and conciliation. The word arbitrary should furnish the clue to the difference between the two words. Arbitrary means despotic, absolute, and arbitration means the hearing and determining of a cause in controversy by a person chosen to hear and decide such cause. Conciliation means none of these things. Yet the fact that most conciliation of labor disputes is performed by agents of the government, either Federal or State, the respect for authority leads to the idea that a conciliator may be an arbitrator or an arbitrator a conciliator. Many times arbitrators have acted in the role of conciliator but never have conciliators acted as arbitrators.

The word mediation means intervention according to Webster. In Eng-

lish Law, quoting Sir James McIntosh: "A mediator is a common friend who counsels both parties with a weight proportionate to their belief in his integrity and their respect for his power, but he is not an arbitrator, to whose decisions they submit their differences and whose award is binding upon them."[1] In the reign of Edward the Third in England there was established a "Mediator of Questions"[2] commission of six men who settled questions among the merchants concerned with the wool trade.

For purposes of this work the words conciliation and mediation will be considered synonymous. The Eightieth Congress in establishing a conciliation service outside the Department of Labor called the new service the Federal Mediation and Conciliation Service. Mediation implies a more active participation in labor disputes, including the making of positive suggestions for resolving the dispute; conciliation suggests a smoothing of the troubled waters, without making recommendations for settlement. Perhaps the shade of difference between the two functions lies in getting the parties to bargain, which would be called conciliation, and assisting them to reach agreement which could be called mediation.

The Labor Management Relations Act[3] makes bargaining mandatory for both management and union, so there is slight call for conciliators to effect this process between disputants. However, when the bargaining breaks down, and the parties decide, one or the other, or both, that further bargaining

1 Bouvier's Law Dictionary. -- Baldwin Century Edition.

2 Ibid.

3 Act of June 23, 1947. Eightieth Congress, First Session. Title 1, Section 101.

is of no value, then conciliators can be said to be first conciliators and then mediators, as they work at restoring the presence of the parties around the bargaining table and then labor to the end of agreement.

It has been said that industrial peace will come to the American Industrial scene when collective bargaining is sincerely employed by unions and employers having contractual relations. If the bargaining process fails entirely and employers and unions revert to the jungle law of might, the government will be forced to take steps to control the situation. The form of such control would be shaped by the circumstance. Such circumstance might include government decrees setting prices and wages. The government has been loath to employ the force mentioned. On the contrary, the government by passing the National Labor Relations Act has sought to make the process of collective bargaining work. Making it work is of great and fundamental importance. For free collective bargaining is an essential part of a free economy. This free economy is adjudged the greatest producer in history, giving the people who live in this country the highest standard of living in the world. To make the system of bargaining work the government depends first upon the efforts of the parties themselves, and then upon efforts (always voluntary) of the government conciliators or mediators. It is the efforts of the conciliators and mediators that aim at securing the end for which collective bargaining was instituted and that is, industrial peace.

When the bargaining process breaks down, or is thought to have broken down, the conciliator enters the situation. Hearing a recital of the issues, meeting the principals involved, getting the background of their own attempts to solve the isses between them, developing the history of the dispute, the

history of their contractual relations gives him the information that he wants. His first duty is to discover if they have bargained honestly with each other and made real attempts to settle. Have all the advantages and disadvantages of economic action been fully weighed? How far along the road to settlement have the parties travelled, and how much farther can they go unaided by third party intervention?

Many factors enter into the initial approach of a conciliator in a labor dispute. There is a two fold responsibility. First, he must make bargaining work, and second, he must settle a labor dispute. He has no desire to make conciliation a substitute for bargaining. He hopes to make conciliation an extension of bargaining. He wants the parties to settle unassisted. And he wants to settle the labor dispute once it has been ascertained that such dispute actually exists.

The initial approach for him is investigatory. A "feeling out" process. How much trust do the parties have in each other? What is the major difficulty between them? Is it technical or one of personalities? What criteria exist for a measure to aid them? Is it possible that a little advice about the major difficulty may aid the parties to settle all the remaining issues?

The second responsibility of the conciliator is to settle the dispute when the parties have exhausted the bargaining process and the remaining alternative is economic force. The union has decided to strike, or the employer to close his doors. Inherent in the role of conciliator is his responsibility to the public interest. He is aware of the secondary effect of the strike on those not immediately involved, the loss in money to a community, the loss in profits to stockholders, and the grievous loss of understanding

between the parties which could easily lead to years of strife in the future. These are the things in which the public is interested, and it is the duty of the conciliator to exert his finest efforts in attempting to avoid these disturbances, and yet maintain, in its finest essence, free collective bargaining.

Any Conciliation Service, federal government, state or private agency will be successful up to the abilities of the men who do the work. Just as a hospital may have the finest of equipment, the most beautiful buildings, go to the greatest extremes in care and research, if the surgeons and physicians who do the actual operating and diagnosing are incompetent the reputation of the hospital will be anything but attractive to potential patients. A conciliation service might have the finest collection of labor contracts, the best source of statistics, the finest reporting system and yet if the conciliators are incompetents, it will fail miserably and rapidly.

An important part of any conciliator's knowledge is an awareness of his limited authority. Voluntary action on the part of the disputants will settle the labor dispute. If the conciliator could hear the case, write out the answers, and the parties sign the contract, there would be no strikes.

Growing out of this knowledge of the voluntary aspect of labor dispute settlements is something called impartiality. Webster defines this word to mean " ... freedom from favoritism or bias; fairness; disinterestedness." An insistence that a conciliator remain at all times strictly impartial does not mean that he is without opinions. He is impartial but not neutral. It does not impose on him the duty of remaining at all times in an attitude of cold neutrality. He is not to be completely and unapproachably objective. Such a restriction would find conciliators sitting at the head of bargaining tables throughout the country, looking out the window, smiling encouragement

at the parties from time to time, much like a mother watching her children play a game of jacks.

Such a requirement would imply that a conciliator leave his own feelings out of the argument. His economic theories, his personal predilections for certain conditions have no place in the arguments of others. The answer as to what he can do brings us back to the original statement as to the basis for success for any conciliation agency. The conciliator must have clear opinions on any and all of the many questions that come up to the bargaining tables. He must have clear knowledge of the procedures and approaches employed in reaching settlements.

It is not too rare an occasion in the history of the United States Conciliation Service where the parties have asked the conciliator to act as a kind of arbitrator. In some regions, a certain conciliator may be so well known and completely trusted that parties will allow him in effect to tell them what to do. But the peculiar thing about labor relations is this same man might not be given even common courtesy in another plant in the same region. This anomaly makes a knowledge of the conditions, the history, the backgrounds, and the goals of the parties vital to the contribution a conciliator may make to the settlement of a labor dispute.

The requirements for an expert conciliator are fulfilled when we have a man who knows the procedures of collective bargaining, who has clear and wise opinions on the contract clauses and economic questions facing the disputants, who is intimately acquainted with the histories of the parties, and the history of their relationship.

In some regions the conciliator can suggest a solution to a dispute between the parties and have it accepted. That is an ideal situation. But

consider what elements must exist in such a situation. The conciliator must have at one time achieved the complete confidence of the parties and have done nothing in the years of acquaintanceship to alienate that regard. Gaining the confidence of the parties is the first task of the conciliator. From this confidence will come the knowledge of the situation that he needs before he can presume to advise either side to a course of action. A union leader would not tell of a large disaffection in the union membership requiring a course of action aimed at curing such disaffection although such action might include a strike. The leader must know his confidence will be respected and the conciliator to be a man of complete honor and integrity. Similarly, a company official would not divulge certain things concerning the status of his firm's finances or policies unless he had firm reliance on the discretion and honesty of the conciliator.

The true knowledge of the issues before the parties is essential. On the table before the world may be an issue of wages. But hidden in the events leading to the impasse may be many things. A change in management with the newcomers seeking to "show" the union. A change in the local union leadership with the new leaders striving for a record. The personal feeling between the union leader and the plant management. The antipathy of the management for the particular union leader and vice versa, the feeling for the committee held by the union leader and vice versa. These are a few of the things that may be learned by a conciliator rapidly if he has the confidence of the parties, since each side is willing and anxious to tell what they think is the reason for the impending difficulty. Getting the picture of the situation is very important because in many cases the conciliator does not have much time due to other

cases demanding attention and he should be aware of the places to strike toward a settlement of the dispute.

Entrance of a conciliator into a labor dispute is now effected by the provisions of the Labor Management Relations Act requiring that the union or management serve written notice 60 days prior to the termination date of the contract of a desire to change or modify the agreement or 60 days prior to the effective date of the change if there is no termination date. The Act further requires that if the dispute is not settled within 30 days, the parties inform the Federal Mediation and Conciliation Service or State agency of the existence of a dispute.[4] Other methods of entrance were in effect before the passage of the act, but these will be discussed in later chapters. For the purposes of this discussion on the elements of conciliation is the method now used, mentioned.

Unions normally are the moving forces for changes in existing labor agreements. In the first year of the Labor Management Relations Act, however, many companies filed notices, seeking to change contracts which contained union shop clauses, and which, if left unchanged would have led to charges of unfair labor practises.[5] But for the most part, unions have remained the party seeking to change the existing agreement. As a result of this the conciliator may meet with the union first, or with both parties, in an attempt to get at the issues between the parties. Once the issues have been ascertained, he separates the parties. In these initial separate conferences he attempts to get at the real picture of the dispute, build the confidence in the parties

4 Ibid., Sec., 8, Para. D, Sub-Para. 3.

5 Ibid., Sec., 8, Para., a-3-.

that he needs to continue to a successful conclusion, and find out where the "give" exists, if any, which might get the issues off dead center and on the avenue of agreement.

Once the conciliator has satisfied himself that he has all of the available information he can suggest procedures to the parties which suggestions lead to more exhaustive discussions of the issues between them. In the joint conference the conciliator can observe the workings of the opposing personalities, learn more concerning the validity of the opposing positions, and equip himself for the selling job he may have to do.

If the situation is immediately threatening, a deadline for strike action existing, a request will be made for a postponement in the name of the government and in the public interest. But since unions are sometimes faced with difficulty in building a strike psychology in their membership the union leaders may not receive this suggestion happily. The situation will command the amount of persuasive pressure to be used by the conciliator. Postponements usually conclude in settlements. The heat in the situation having been dispelled, the conciliator is in a better position to persuade the company and the union into agreement.

If postponement is not possible the conciliator offers voluntary arbitration to the parties. The arbitration suggestion is usually acceptable to unions, but companies, as a general rule, refuse to arbitrate issues which are to appear in a labor contract as clauses. Unions will usually accept arbitration on issues that will appear in the written agreement. They are making demands and regrettably enough, arbitration has come under a cloud of "split the difference" philosophy, and unions generally are great believers in the half a loaf theory.

The Labor Management Relations Act points out the duties of the conciliator when a deadlock is reached in negotiations. The paragraph states:

> If the Director is not able to bring the parties to agreement within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including the submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this act.[6]

Other procedures employed in rare instances include the addition of one or more conciliators, a specialist, a tri-partite mediation panel, or a fact-finding board.

The above procedures will come in for more extensive treatment later and are referred to above as only suggestive procedures employed in the conciliator's daily tasks. In summary, it is the largest task of the conciliator to make bargaining work between the parties, and when this fails, to exert every pressure and effort within his power to settle the labor dispute without a strike. It is important to remember that the only force the conciliator has is his own experience, knowledge and capacity. And his weapons are as potent as is the confidence of the parties in him.

## BRIEF HISTORY OF THE UNITED STATES CONCILIATION SERVICE

On the morning of March 4, 1913, many prominent labor leaders of the day gathered at the White House to witness the presidential signing of a bill

6 Ibid., Sec., 203, Para., c.

establishing the United States Department of Labor.[7] The gathering was symbolic of the success that had finally greeted the efforts of the leaders of organized labor in their urgings for the Congress to set up in the executive branch of the government a department giving the voice of labor a place at the cabinet councils.

The purpose of the act establishing the Department of Labor was declared " ... to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions and to advance their opportunities for profitable employment." [8] The act was signed by President William H. Taft.

It was natural that a labor leader be appointed the first Secretary of Labor. Woodrow Wilson, in one of his first official acts appointed William B. Wilson. Mr. Wilson had been the International Secretary of the United Mine Workers, and a Congressman from Pennsylvania.

In the organic act setting up the Department of Labor is found the authority for the existence of the Conciliation Service. " ... that the Secretary of Labor shall have power to act as Mediator and to appoint Commissioners of Conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done." [9]

7 Personal interview with Comm. B. Marshman. The source of Comm. Marshman's information was Comm. Oscar Nelson. At the time Comm. Nelson was the head of the Postal Clerks's Union and was present at the White House the morning Pres. Taft signed the bill.

8 Act of March 4, 1913, ( 37 Statute L. 736-738). An act to create a Dept. of Labor, Sec., 8.

9 Act of March 4, 1913, op. cit., Sec., 8.

There was no specific provision made in the act for the establishment of a division of conciliation within the Department of Labor. The Secretary of Labor himself handled the industrial disputes, or he would appoint someone, usually an employee of the department, to act for him in a dispute. In 1917, when the industrial scene of the country was charged with the tremendous war program in this country the labor disputes grew in number, and a department of conciliation was established with its own director.[10] The Service was a branch of the Labor Department and was not established by legislative action.

The first director of the United States Conciliation Service was Mr. Hugh Kerwin who had been secretary to William B. Wilson when Mr. Wilson was serving in Congress and later as Secretary of Labor. Mr. Kerwin served as director until 1937 when his death brought his many years of faithful and energetic service to a close. Madame Perkins, then Secretary of Labor, appointed Dr. John R. Steelman in his place. Dr. Steelman had been persuaded by Madame Perkins to leave the University of Alabama in 1934. He worked as a Commissioner of Conciliation until 1935 and was then appointed Special Assistant to the Secretary, in which capacity he served until his appointment as Director of the Service.

Steelman entered office as Director when the labor history of the country was undergoing a revolutionary change. The social legislation of the New Deal was starting to be felt in the everyday lives of the people who make up the industrial scene. Collective bargaining, which heretofore had been something referred to and recommended in government reports as being

10 Personal interview with Associate Director of the Federal Mediation and Conciliation Service, Howard Colvin.

desirable, had come alive and was being practised by millions of people who had known little of it in previous years. It was natural that the process would be strange. Deep roots were being reached and disturbed. And the elements that accompany such uprootings were present at the initial bargaining sessions between unions and managements from coast to coast.

The conciliation process was also very unfamiliar to employers and unions. The history of the Service had been one of seeing few conciliators employed and usually working in complete anonymity.[11] As a result, the work was relatively unknown. With the growth of the bargaining process and the accompanying search for a way out of the many deadlocks which emanated from misunderstanding and unfamiliarity with collective bargaining, the third party method of assisting labor disputants to settlements came into a new and significant importance.

The dynamic leadership of John R. Steelman played no little role in the enlargement of the conciliation process. Soon after taking office he divided the country into five regions, appointing a director for each region, and making the director responsible for knowing the status of the industrial disputes in that region. These directors headquartered in Washington and were in constant contact with the conciliators in the field. The men in the field received their assignments from Washington. The records were also keptthere. Each director knew the whereabouts of each conciliator every day and the size of his case load. Regional offices were established in the industrial centers throughout the nation.

11 Personal interview with Comm. B. Marshman who has been with the Service since it was established.

Steelman also undertook a program of public relations that informed the country to a wider extent as to the government's policy in labor disputes. He appeared at labor and management meetings throughout the country preaching the message of voluntary methods of dispute settlement when bargaining broke down between the parties. Many national magazines carried articles on the nature of the service rendered by the Conciliation Division of the Labor Department which aided in getting the message over to the public and workers and management.

The activities enlarging the Service, making it better known, and rendering it more efficient were made necessary by the growth of the bargaining process which was a direct result of the passage of the National Labor Relations Act. A brief glance at the table will demonstrate this.

| YEAR | No. of CASES |
|---|---|
| 1929 | 522 |
| 1930 | 557 |
| 1931 | 582 |
| 1932 | 752 |
| 1933 | 833 |
| 1934 | 1,140 |
| 1935 | 1,007 |
| 1936 | 1,012 |
| 1937 | 1,267 |
| 1938 | 4.231 |
| 1939 | 3,541 |
| 1940 | 3,751 |
| 1941 | 5,599 |

In 1942, the beginning year of this history, the Conciliation Service was employing about 122 men as Commissioners. The roll of men performing conciliation was never crowded. The Service, like all government agencies, was faced each year with budget requirements, and the amount of men was measured by what Congress allowed rather than the needs. The roster of Con-

ciliators had grown steadily, never by any noticeable leap in number, but through the years following the passage of the National Labor Relations Act, and into the years of the war, the number of conciliators increased to approximately 300 in 1946.[12]

Congress, by limiting the appropriation, controlled the amount of men employed as commissioners. The type of men attracted to the work was to some extent influenced by the salaries offered. Salaries ranged from $2,000.00 per year to $4600.00 per year in the years between 1913 - 1946. The work was of a special nature requiring specialized experience and was not subject to a Civil Service Examination. Experienced labor negotiators were worth more money than was being offered to Conciliators and the Director was hard put to fill the needs with men who could do the work and would remain satisfied with the small reward.

The nature of conciliation work lent itself in many ways toward making the work attractive to men who could have found greater financial reward in other work. There is a satisfaction in mediating labor disputes that few endeavors can duplicate. Money cannot buy the feeling that wells up when the two sides to a labor dispute grasp the hand of a conciliator and give him thanks for his assistance in averting a strike. And it is difficult to find work that is as interesting and challenging. It was these features of the work, rather than the salary offered that attracted enough men of outstanding qualifications to carry the load through the difficult years of the war.

12 Personal interview with James Dinneny, the Administrative Assistant to the Director of the U.S. Conciliation Service.

# CHAPTER II

## THE ESTABLISHMENT OF THE WAR LABOR BOARD

In the final six months of 1940 and throughout 1941, the call of the Defense Program had increased industrial production in this country to a tremendous degree. Accompanying the growth in production was a great increase in strikes.[1] Many of these were long lasting and fraught with bitterness, and the production lost to the Defense Program assumed vital proportions.

In March, 1941, President Roosevelt established the National Defense Mediation Board.[2] The Board was to supplement the work of the United States Conciliation Service and the labor dispute adjustment section of the Office of Production Management.[3]

The National Defense Mediation Board was successful to some extent in stemming the tidal wave of strikes but in November of 1941, it disintegrated under the pressure of the union shop issue in the case of the "captive" coal mines.[4]

Immediately after Pearl Harbor, the President convened a Joint Labor Management Conference and called for an agreement between labor and industrial leaders spelling out: "That there would be established a War Labor Board with

1 Monthly Labor Review, January, 1941, and January, 1942.

2 Monthly Labor Review, May, 1941.

3 Aims and Policies of the National War Labor Board by Wm. H. Davis. Annals of American Academy of Political and Social Science. Nov., 1942.

4 This will be amplified in later chapters.

power to finally determine all labor disputes that might affect war production."[5]

The National War Labor Board took its form from the National Defense Mediation Board and the War Labor Board of World War I.[6] Its authority was based on public opinion and the wartime emergency placed in a sharper light the activities of labor and management making the two forces more keenly aware of their obligation to the public. In deciding 17,566 cases certified to the Board, the government seized property in only 43 cases.

The National War Labor Board was tri-partite in form. There were four members each from Management, Labor and the Public.[7] It is interesting to note that about half of the personnel of the old National Defense Mediation Board were appointed to the National War Labor Board. The Chairman of the War Labor Board had been on the record for persuasion as the method for settling labor disputes for many years. The grave danger inherent in any form of compulsory arbitration was thought to be in some degree lessened by the type of man appointed to act for the public.[8]

The Executive Order setting up the Board established a procedure for

5 Aims and Policies of War Labor Board by Wm. H. Davis. Annals of American Academy of Political and Social Science. Vol., 224, Page 141. See also Para., 3 of Executive Order N. 9017. Sub-section C of the paragraph reads: "... after it takes jurisdiction the Board shall finally determine the disputes, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

6 Strikes in Wartime: Experience with Controls by Edwin E. Witte. Annals of American Academy of Political and Social Science.

7 Executive Order No. 9017, Para., 3, sub-section C.

8 Labor Relations in the Crisis by Wm. H. Davis. Survey Graphic. Nov., 1941.

settling labor disputes that began with direct negotiations between the parties, then travelled to the Conciliation Service and then to the final determination of the Board[9] after all the bargaining processes failed.

The Secretary of Labor certified labor disputes to the Board when the Conciliation Service reported the dispute insoluble. This process of certification was also employed in the days of the National Defense Mediation Board.[10] This procedure in the Executive Order setting up the National War Labor Board was directed to the end that the voluntary method of settling labor disputes would have every chance of operating successfully.[11]

The order establishing the National War Labor Board was issued on January 12, 1942. Other Executive Orders which were concerned with additional duties received by the Board, and addition of alternate members serving for the public will be discussed in some following chapters of this work.

## DECENTRALIZATION OF THE BOARD

On December 24, 1942, the National War Labor Board announced plans had been formulated for a decentralization program. In a single year of operation the back log of unheard cases was almost 6,000.[12] The program was two fold. On October 3, 1942, the Board had been given responsibility for the

9 Executive Order No. 9017, Para., 3, sub-section B.

10 Monthly Labor Review, May, 1941, pp. 1137-38.

11 Aims and Policies of War Labor Board by Wm. H. Davis. Annals of American Academy of Political and Social Science. Nov., 1942.

12 Business Week, January 23, 1943, p.70.

Wage and Salary Stabilization Program[13] and the added duties of administrating this program made it nearly impossible to give rapid service in the final adjudication of labor disputes. The program of decentralization was aimed at speeding up the handling of the dispute cases, and to make of the twelve men Board in Washington a Supreme Court which would hear only appeals from the regions. The National War Labor Board retained the right to review any decision on its own motion.

George W. Taylor, at that time Acting Chairman of the National War Labor Board said:

> Plans for decentralization of dispute cases have been considered by the Board for some time. They were temporarily shouldered out of the way by the wage and salary stabilization plan, the responsibility for which was given to the Board on October 3, 1942. Now that the Board's field organization has been set up and is able to take on this new duty, the Board is in position to put these plans regarding dispute cases into operation."[14]

The regional offices of the Board were established in the industrial centers of the United States. The list of the cities was as follows: Boston, New York, Philadelphia, Atlanta, Cleveland, Chicago, Kansas City, Dallas, Denver, San Francisco, Detroit, Seattle. Each regional board was composed of twelve members. Four representing the public, one of whom was the regional director and who also acted as chairman of the regional board, and four

13 Executive Order No. 9250, Paragraph 1 and 2, Title 2. Stabilizing Wages and Salaries. This Executive Order will be discussed at greater length in Chapter Three of this work, when will be considered the impact of the order on Wartime Conciliation.

14 Press Release No. B-357. Issued Dec., 24, 1942. 5 War Labor Reports.

representing labor and four representing management. The regional boards exercised all powers vested in the Board in Washington, subject to the National Board's right to review a case and assume original jurisdiction if it so desire.[15]

The National Board had on November 6, 1942, established regional offices for the handling of the requests of employers and unions for wage or salary adjustments.[16]

The plans for the handling of labor disputes on a decentralized basis were aimed at establishing panels composed of labor, management and public members in each region. To these panels would be referred all the labor disputes the United States Conciliation Service was unable to settle. Cases involving major policy of the National War Labor Board, and cases of national significance were retained by the National War Labor Board. These panels were to make their recommendations to the Regional Advisory Board and the Regional Advisory Board's decision would then be final subject to certain rights of review and petition. Advisory Boards were appointed in each region by the National War Labor Board. These Boards were composed of men selected from labor, industry and the public.[17]

In an announcement of its policy the National Board sought to restrict its activities to the following areas:

1. to exercise ultimate reviewing authority and a general superintendance over the regional machinery.

15

16 5 War Labor Reports. Page 13

17 4 War Labor Reports. Page XXXI

Ibid. Page XXXL

2. to hear appeals from regional orders in cases where petitions for review are granted.
3. to issue general policy directives.
4. to take jurisdiction of cases of general importance whenever it may seem in the public interest to do so.
5. to support the regional boards in maintaining the national no-strike agreement and in attaining compliance with their directive orders.[18]

In cases where the parties to a decision of a regional board appealed, the decision of the regional board did not become final until the board had acted upon the appeal, deciding to review it or uphold the regional board.[19]

DECENTRALIZATION OF U.S. CONCILIATION SERVICE

Dr. John R. Steelman had effected a sort of decentralization of the U.S. Conciliation Service late in 1937, when he had divided the country into five regions, appointing a regional director for each, such director headquartering in Washington.[20] These directors were responsible for keeping the director of the Service informed of the major and significant labor disputes in the particular area assigned.

Commissioners were assigned cases from Washington, usually by wire. The case assignments would read as follows:

COMMISSIONER DOE WILL CONTACT RICHARD
ROE INTERNATIONAL REPRESENTATIVE IAM
RE DISPUTE WITH JOHN JONES COMPANY.
S/ John R. Steelman,
Director.

18 Business Week, January 23, 1943, p.70.

19 5 War Labor Reports, p. 12.

20 See supra, p. 13.

The commissioner assigned the dispute would contact the party requesting the assigning of a conciliator and upon receiving the facts of the case, would contact the other party to the dispute for the purpose of receiving further information and making a date for a conference.

The reports used by the Service were simple and few in number. The first report was called the Preliminary Report and was used to get all the pertinent information on the case. The name of the company, the name of the union and the officials of each. The number of people involved directly and indirectly in the dispute. Nature of products mamufactured or services rendered and what percentage of work was directly involved in the war effort. The second report was called the Progress Report and was a simple sheet of paper used to keep the Washington office informed of the progress of the dispute and the efforts being made to settle it. The third report form was called the Final Report and was used to inform the Washington office of the final disposition of the case. There was another form called the Special Report used for situations calling for investigations and other activities not related to actual conciliation. The commissioner made out his reports in duplicate, sending one to Washington and retaining one for his files.

If the conciliator worked in one of the regional offices of the Service, he was under the guidance and leadership of the older conciliators, one of whom usually occupied the senior position, and was in charge of the office for administrative purposes. The conciliators were responsible only to the Director and to the Secretary of Labor.

In addition to several conciliators working out of their homes throughout the country the Service had regional offices in the following cities: San Francisco, Los Angeles, Atlanta, Chicaog, Indianapolis, Des

Moines, Minneapolis, Detroit, St. Louis, New York City, Cincinnati, Cleveland, Portland, Chattanooga, Seattle, Milwaukee.

The Conciliation Service began its decentralization in the spring of 1943 and accomplished the job one region at a time. The early summer of 1943 saw the Service operating smoothly for administrative purposes under the new form.

The decentralization of the U.S. Conciliation Service was accomplished with little difficulty. The regional directors merely moved to the cities established as headquarters for the region, the files followed and the doors were open for business almost as soon as arrival was made. Of course, there was delay due to office space available, telephone service, and other facilities, but there were no policy changes.

Commissioners were now assigned cases from their own regional offices. Parties seeking the offices of a conciliator were instructed to contact the regional director instead of the Director of the Service as before. The assignments were now signed by the regional directors. There was no change in reporting, except that another copy was added to be sent to the files of the regional offices.

Decentralization was to a greater or lesser extent already in existence for the purposes of the actual work when the War Labor Board made it necessary for the Conciliation Service to decentralize.in fact. In each regional office of the Conciliation Service there was appointed a liason man who worked with the War Labor Board on cases that the Conciliation Service had been unable to settle and for which the Service was requesting certification.

# CHAPTER III

## WARTIME DIFFICULTIES OF CONCILIATION

The actual work of conciliation did not change because of the war. Conciliators continued to work with labor and management groups, urging agreement and preaching the voluntary method of settling labor disputes. The emergency did bring into existence, however, new problems and forces which made the work of conciliation more difficult. The unexpected entry of the United States into the war could not have come at a more unpropitious moment in the history of labor-management relationships. The Conciliation Service was the major government agency devoted to the settlement of labor disputes at the time of Pearl Harbor. The National Defense Mediation Board had been greatly undermined by the defiance of John L. Lewis. The Railway Mediation Board continued to handle disputes in the Railroad Industry which had behind it many years of stable relationships and an acceptance of the process of collective bargaining. Examining the record of 1940 and 1941 in labor management disputes would not give any mediation service optimism. 1941 had been a near record year for long and bitter strikes despite the urgency of the defense program. There had occurred 4,288 strikes and a total of 28,424,857 lost man days of production.[1]

The entrance of the United States in war brought an urgency the defense program never possessed. The demand for labor had been great before but now it was a distress call. In short, management began bidding for workers

[1] Monthly Labor Review. BLS Report, May 1942.

which upset existing wage patterns, and caused confusion and disputes throughout the country. There came an increase in living costs. Workers were threatened with a cut in their real wages and reacted against this threat by demanding more in their money wages. Management resisted these wage demands on the grounds that money increases in wages were inflationary and that to raise wages was sure to bring on the spiral of rising prices. The all out industrial effort for war brought job changes to all industry. Where before a factory had manufactured farm implements, they now went into accelerated production on tanks, guns and the material for war. This shift in production caused job changes. It disturbed existing seniority patterns. It meant new job rates and time studies. It gave great impetus to grievances and discontent.

Most disturbing of all the threats to full production was the woeful lack of understanding achieved by labor and management in the mass production industries. Wm. H. Davis, first chairman of the National War Labor Board wrote:

> The sudden call of the defense program for a tremendous increase in production found collective bargaining between workers and management in our principle defense industries at various stages of immaturity, ranging from early infancy to the confusions of adolescence. In no important industry have they passed the problem age of adolescence, although in many industries they have grown out of it.[2]

In 1941, unions had added about two million members to their rolls. This number of workers, new to the idea of unionism, indicated that a large segment of the union membership in the industrial scene were not yet accustomed to power. Local union memberships, newly organized, usually with a

[2] Labor Relations in the Crisis by Wm. H. Davis. Survey Graphic, Nov., 1941.

recognition strike behind them, are very militant and feel that somebody must be shown how well knit their organization is. The years immediately preceding the war had been years of great industrial union organization. There had not been enough time to allow labor and mangement to rid themselves of the growing pains.

Management throughout the mass production industries had held out no flags of welcome to the labor movement. The constitutionality of the National Labor Relations Act was upheld by the Supreme Court in 1937. The act was passed in 1935 and industry awaited the result of the cases that were being decided by the Supreme Court before accepting collective bargaining, at least in the true sense of the term. It was natural that the labor unions when they finally reached the bargaining table after many months of waiting would be a little hard to please.

In addition to the forces of labor and management pulling against each other there existed in the labor movement, especially in the mass production industries, a disagreement more hopeless of settlement than the war between labor and management. This was dual-unionism. The CIO and the AFL were not friendly to each other on the local levels no matter what the peace committees might have reported to the parent bodies. The rivalry between the two groups was excessive and a constant pressure was exerted on union leaders to gain the best possible contracts because if the rival organization was doing better, the local might become restive and seek another bargaining agent.

The mature building trade unions were too mature. The old dog would learn no new tricks. Jurisdictional strikes would go on and on. If the car-

penters thought their job security was threatened because the iron workers were setting window frames in construction of a factory, the carpenters would set down their tools and demand to know the meaning of this outrage. Jurisdictional strikes increased commensurately with the increase in building production. The war did not change any union ideas on jurisdiction in spite of announcements from headquarters that all would be well.

These conditions composed a discordant symphony. They had increased in severity under the urgings of the defense program. They had proven too much for the National Defense Mediation Board. The U. S. Conciliation Service was performing at the top of its potential but the situation was out of control. It was a time of crisis in the country even if there had been no threat of war. And before anything could be drafted, even in the preliminary stages, there was Pearl Harbor.

One of the difficult things about any form of labor legislation is that so much time and study is required to produce a workable formula. And the war found the labor relations of this country in a woeful state and there wasn't any time. The result was a piecemeal, badly confused, and sometimes inconsistent program put together by force of expediency with a weather eye on the political winds. This paper is not aimed at being a critique of what was done but these points are mentioned to demonstrate the background against which the Conciliation Service sought to make collective bargaining work.

In 1942, the process of collective bargaining began a slow but steady march in the direction of complete government control. In the first months of that year the War Labor Board acted on many cases, establishing policies

to be used in future labor disputes. But in the country, far removed from the War Labor Board, conciliators worked on cases as they had in years past. Yet the parties bargained with an eye on the Board. Management sat behind the "no-strike" pledge of labor. Concessions were wrung out of either side of a dispute with great difficulty. The Board had made no policy on what cases they would accept. The union leader with four or five hundred workers in a foundry had as much right to bring his case before the Board as did the coal or steel industry.

The early months of 1942 indicated that the Board would soon pile up a back log of cases. Unions and companies displayed a surprising willingness to let the government settle their disputes. The Conciliation Service was charged in a more or less unofficial way with relieving the Board of the case load that was building up from day to day. Disputants had to have been subjected to the conciliation process before the Board would hear the case. To the Secretary of Labor had been given the responsibility of certifying the cases the Conciliation Service couldn't settle.

It is difficult to be sure of the existence of good faith bargaining. A conciliator in the early days of 1942, carried a tremendous case load. This meant that he had to give attention to many cases at the same time. His initial contacts with the parties, usually by telephone or letter, would not give him the whole picture of the situation. He could not know from what was said, or a report on the number of meetings, the amount of bargaining that had taken place. And the limits of time would not allow him to spend too much on any one case, when his briefcase carried thirty or forty others. Labor disputes between parties that are bargaining on their early contracts are replete with issues. Almost every possible clause in a labor contract

is up for revision. The union seeking constantly to improve the contract. Conditions being normal, the union can set a strike date, and the bargaining can proceed to that date, with the parties moving in their positions as pressure builds. Without a threat of strike, unions dealing with companies who have not accepted bargaining might as well not have bothered in the first place.

Conciliators were able in the first months of 1942, and almost until the time of the decentralization of the War Labor Board to persuade the parties of labor disputes to settle. This was especially possible in cases wherein the union had had some history of bargaining relationship and the question of union security was not present, and the company had made some offer to the union's demands. It was possible by pointing out to the union the tremendous delay attendant upon receiving a decision from the National War Labor Board, and dwelling on the benefits already received through bargaining. It was also a valuable talking point to demonstrate how close the parties were to agreement and how much more important it was to settle their own difficulties rather than have the government tell them what to do.

In the cases which normally, with out the "no-strike" pledge, would have concluded in strikes, the picture was different. Here the conciliator had to urge bargaining. Managements which had resisted organization until forced by the National Labor Relations Board could sit at a bargaining table for days on end and not bargain in any seriousness. These were the cases that proved most trying. Faced with a final adamant position from the management, the conciliator had no choice but to recommend certification of the case to the War Labor Board.

The challenge offered by the task of keeping as many cases away from

the War Labor Board as possible led the Conciliation Service to establish panels of conciliators. This was an intensified conciliation that for nerve wracking and enervating work was second to none. Panels were composed of three conciliators. A chairman, and two assistants. The panels worked with the disputants until it was absolutely positive that bargaining had taken place. It was voluntary, just as conciliation, but after a single commissioner had failed to settle a situation he would recommend the use of a panel, explaining to the parties that much had been achieved by this phase of conciliation. Panels usually convened in large cities and the parties to the dispute came to the conference room. Here the urgency of the situation was explained to the disputants and the three man panel of commissioners worked steadily at the issues before them, far into the night, meeting again the next morning, constantly pounding away at the issues, without rest or leisure, and giving the parties none until the dispute was settled or had to be certified to the Board. Panel conciliators were constantly at the bargaining table, day and night for months on end. The establishment of panels was the only departure from the normal work of conciliators, and panel work was actually conciliation but with an urgency and intensity that communicated itself to the parties and many times brought the necessary feeling and atmosphere for a settlement.

In 1942, the Service increased its staff of conciliators from 120 to about 200 men. Not nearly enough men for the job that was to be done. Labor disputes take time for analysis and discussion. The process of conciliation was not given this time. There was too much to be done. And as time went on, there were added to the normal issues for labor disputes several new forces that were not the result of any particular labor or management dispute but

rather government proclamations which were aimed at controlling the threat of inflation that was increasing daily. There were new policies which sought to control the amounts of wage increases. There were new orders from the War Manpower Commission which sought to control the flow of labor. And the cost of living continued to climb, despite the control program.

In 1942, the record shows 2,968 strikes. The significant thing about the figure is that the amount of man days lost for that number of strikes was 4, 182, 557. In 1941, when had occurred 4,288 strikes the man days lost had been 28,424,857. How many times conciliators had been called to strikes and persuaded the strikers to return, using the patriotic arguments to their best advantage. How many times had conciliators stood in front of angry union memberships and talked words of duty and persuaded people to pick up their tools. Persuading people to return to work pending settlement of a dispute by bargaining or War Labor Board action was a duty conciliators took on during the war. It was delicate work and a new policy made necessary by the urgency of the war. The year 1942 showed a decline of 82 percent in man days lost due to strikes, as compared to strikes in the ten years prior to the war. The U.S. Conciliation Service had performed some of the work necessary to bring down the average.

The problem of need for wage controls was not immediate at the time the President called the Labor Management Conference in December, 1941. Payrolls had grown in size and wage rates had increased but there had been maintained a steady flow of consumer's goods. There was small doubt, however, that the amount of money available would soon lead to competition for scarce consumer goods leading ultimately to inflation.

In April, 1942, the President called for a seven point indivisible anti-inflation program. The War Labor Board was already in difficulties as its back log of cases grew steadily. In July, 1942, the Board handed down a decision in a case involving the so-called "little steel" companies.[3] In this decision was contained a formula that would be discussed at bargaining tables from then to the end of the war. It was called the "little steel" formula. According to the Bureau of Labor Statistics living costs had increased fifteen percent between January 1, 1941, and May, 1942. The Board's formula set out that all those workers who had not received an increase of at least fifteen percent in that period were entitled to that amount. The formula was based on straight time hourly rates and did not take into consideration overtime premiums, and other additional payments. In addition the Board did not rule out increases above the "little steel" formula madé on the basis of "gross inequities", "inequalities", or for the effective prosecution of the war.

On October 2, 1942, the Economic Stabilization Act was passed placing a ceiling on wages and farm prices. To the National War Labor Board was given the job of carrying out the wage provisions of the act. The director of Economic Stabilization handed out directives which called for a strict interpretation of the "little steel" formula and wage increases above that formula seemed to be on the way out. Labor might have held still for the wage freeze, but living costs continued to climb. Food prices especially started to increase. The War Manpower Commission issued some stringent regulations aimed at halting the migration between jobs. Labor unrest was directly

[3] 1 War Labor Reports. Page 325.

attributable to the many regulations and the delay in gaining hearings. Unions could see that collective bargaining was becoming more and more a wartime casualty and developed an attitude of militancy which led to an increase in strikes.

In April, 1943, came the "hold the line" order which made the wage freeze tighter than ever.[4] Unions could only hope for wage increases if they had not reached the increase allowable under the "little steel" formula or if the wages sought to be increased were sub-standard.[5] This policy was declared to be unfair by the leaders of organized labor. It was claimed that the War Labor Board was established to give each case consideration on its own merits and this latest development of economic policy wiped about 20,000 cases from the Board's calendar. Most of these were wage increases agreed to by the parties which were waiting Board approval. Labor leaders threatened to resign from the Board and it appeared that the War Labor Board would receive the same fate that brought an end to the National Defense Mediation Board. But the order was modified. On May 12, 1943, the Director of Economic Stabilization issued a policy directive granting the War Labor Board wider wage adjustment powers. Using this policy the War Labor Board worked out the "wage brackets" formula which was to substitutefor the Board's previous power to correct wage inequalities. The wage inequalities had hitherto been interpreted without the existence of objective standards. Sound and tested going wage rates for jobs of particular types in particular areas were to be

4 Executive Order No. 9328. Para., 2. Stabilization of wages, prices, salaries.

5 7 War Labor Reports. Page VII.

the measure of wage requests coming before the Board.[6]

The penalties for unapproved increases made by employers were severe. An employer might not be allowed to deduct his total labor cost as a necessary item in estimating his income tax if he granted wage increases without Board approval. Employers did not make large wage concessions to unions, trusting that the Board would turn down such increases. Such increases as they did make were almost always used as a basis for price relief. Employers left it to the union to get the increase "by the Board", and the pressure on the Board, the red tape of filling out forms, the long wait for approval of agreed increases added to the general picture of confusion and dissatisfaction.

Conciliators who had worked many years in a locality and had built up confidence in the labor and management groups were not able to advise on Board policies. These changed rapidly and since cost items were involved and knowledge had to be sure, conciliators were loath to recommend any course of action that might conflict with Board policy. More trying than Board policy to conciliators was the attitude that grew during the days of wage stabilization. Parties to disputes began to feel that as long as the Board had to look at the wage increase anyway, it might as well look at the entire list of issues and speak on each one. Conciliators argued and persuaded, cutting the list of issues to the minimum so as to keep the labor dispute machinery of the Board operating with some degree of promptness.

## FRINGE ITEMS

The strict policies of the War Labor Board intended to be a bulwark against the ever rising tide of inflation were beset by unions seeking to

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8 War Labor Reports. Page VIII.

gain something for the local memberships. The constant pounding of the labor groups resulted in the Board granting so-called "fringe items". These were not gains in the wage rates as such but in the conditions of work which led to a gain in money wages. The Board adopted a policy of paid vacations, granting one week vacation after one year of service, and two weeks vacation after five years of service. Pay for holidays not worked became a method of giving unions a wage increase without disturbing the wage freeze. An added premium for night work, paid lunch periods, travel time, time for dressing tools, time for cleaning up at lunch time and after work, and many other "times" were paid for by companies, all of which were gains for the union, if not in the straight time rates, in the take home pay.

In such issues conciliators were confronted with Board policy. Companies in many cases were violently opposed to any idea of pay for no work and demanded that it be made clear that any vacation or paid holidays granted would be done so by government directive and not over the bargaining table in a voluntary manner. As a result of this company attitude many cases were certified to the Board, the companies insisting that the record clearly show that such conditions were never conceded but ordered. The Board's policies on these matters was such as to be an invitation to local unions to have a dispute certified and collect the paid holidays or vacation privileges that would have taken years of bargaining to achieve.

Parties to a dispute, in order to get their case before the War Labor Board had to go through conciliation, and conciliation became something that had to be undergone as an avenue of approach to the Board. The Board became the place from which came all good things. Conciliation was not made

more difficult by these policies but the danger of voluntary settlements of labor disputes ending completely was greatly increased as there now existed a government agency which could hand out conditions of work that unions would be many years securing by bargaining.

MAINTENANCE OF MEMBERSHIP

The National Defense Mediation Board had gone aground on the issue of union security. The United Mine Workers had pressed for the union shop in the case of the "captive" coal mines. These were the mines owned outright by the large steel companies and while the Mine Workers had enjoyed the union shop in most of the mines in the country the "captive" mines had never conceded the point to John L. Lewis. Some opinions for their refusal have it that the concession would have implications in the steel companies industrial unions relationships. In any event the National Defense Mediation Board did not recommend the union shop be granted in the case and the union refused to accept the award, the CIO members of the Board resigning, and the parent body boycotting the Board.

When the President called the meeting of Labor and Management representatives in December, 1941, there was an agreement reached between the parties providing that during the period of the war no resort would be made to strikes or lock-outs and that all disputes should be settled peacefully and a government agency set up to effect settlements should the parties fail to reach agreement. Both the employer and labor members of the Committee issued statements accepting the President's directive for the settling of labor disputes but the employer members added a proviso stating that the question of union security or union shop should not be handled by the new

agency. Quoting from the employer members proviso:

> We believe that, in determining the procedure of the Board, consideration should be given to the principle we have consistently maintained -- namely, that the Board should not accept for arbitration or consideration the issue of the closed shop, requiring a person to become or remain a member of a labor organization if he is to get or hold a job.
>
> We recommend that, for the duration of the war, employers shall not attempt to change the terms, in present contracts, which provide for the closed shop. Where a closed shop contract does not now exist, it may under the law be arrived at by voluntary negotiation. We endorse without reservation the right of labor to organize and bargain collectively.
>
> But it would be a serious mistake to abandon the principle that the right to work should not be infringed by government through requirement of membership in any organization, whether union or otherwise.
>
> The closed shop is the most highly controversial and emotional question in industrial relations today. To accept it as an issue for government arbitration would intensify agitation, increase labor disputes and divert the energy of both labor and management from the vital job of war production. Unless this issue is resolved in advance, it will impair the effectiveness of the War Labor Board itself. From our experience we are convinced that the continual presentation of this issue before government agencies would seriously impair the nation's productive activities.[7]

The employers also urged that a statement be made by both labor and management that neither side to a dispute use coercive measures in an exercise of their rights, and as a final suggestion stated that the policies of the Board be laid down by Executive Order or by Congress. The President

7 1 War Labor Reports. Page XV.

ignored all of the suggestions made by the employer members of the conference and established the National War Labor Board leaving it free to make and effect its own policy as it went along. There have been many reasons advanced as to why the President issued an order as far reaching in its effects on the wartime economy of the nation in such a great hurry. The Labor Management Conference took three days. Certainly not enough time to allow the kind of discussion and negotiation necessary for the agreement needed. But whatever his reasons, they are not important for the purposes of this paper and the point is mentioned to indicate the type of background against which labor management relations were conducted.

The issue of union security was the major item separating the members of the Labor Management Committee, and was also the major issue between labor unions and employers in the mass production industries. Unions in these industries improve the conditions of all the workers in the bargaining unit whether these workers are members of the union or not. Traditionally, unions in mass production industries are in greater need of union security than are the more completely "trade" unions. This is because the normal semi-skilled worker in the factory is ready to accept the benefits of collective bargaining but does not display the same readiness to become an active member or to tender the dues which are the life blood of any labor organization. This was especially the case in the years immediately prior to the war, as the typical industrial worker was new to the idea of unions and, of course, in the war expanded industries were many thousands of workers who have never belonged to unions, knew little of them, and didn't like what little they knew.

The Board did not institute a policy of forcing workers into unions.

Where such a condition was already in existence it would be the policy of wisdom to let it alone. But it was necessary to devise a policy to meet the demand that would be made for some kind of union security where such had not existed before and where it had always been an issue in labor disputes. True, such an issue had not always led to strikes, but it had been second only to wages in its importance and in many cases had exceeded wages as a condition leading to strikes. Industrial workers, knowing that wages were bound to rise during the war would be difficult to keep organized, and of course a possible wage freeze would lead the workers to question the wisdom of paying dues when no immediate benefits were in prospect.

The Board's answer to the problem was a security clause aimed at allowing all workers free choice to join a union or not as they saw fit, but making it a condition of employment that they maintain their membership in the union if they did join, for the term of the contract. This answered to a degree of satisfaction the charge that the government was forcing the union shop on employers and workers. A maintenance of membership was not a union or a closed shop. A worker had to stay in the union if he joined, for the term of the contract. If you were a member when the Board's directive was given, a fifteen day escape period was allowed during which you could signify your wish to discontinue your membership. It was a democratic as it could be and still gave unions some protection. The Board also directed that employers should refrain from attempting to influence employees to resign from the union.[8]

The maintenance clause was awarded to unions for stability during

[8] 4 War Labor Reports. LIV.

the war and the Board denied only a very few unions the protection of the clause. The clauses were handed out automatically for the most part provided the union was democratic and responsible. Local unions throughout the country which would have had to wait for many years before their company would grant union security, visited the Board and received their ration of protection.[9]

This policy of the Board was the greatest single bar to the voluntary settlement of labor disputes. Management representative might know that the Board would grant the clause if their case was certified, but such knowledge would seldom lead them to grant it voluntarily. Again, the companies chose an attitude of resignation to government directive but insisted that the record show that no shadow of agreement had ever rested on such a contract clause between the union and themselves.

Unions need the protection of the maintenance clause. The lack of any security was asking for a quick end to gains already made since bargaining had become the law of the land. The arguments for and against union security clauses could fill many books and conciliators did their best with the parties and reluctantly certified case after case to the Board. Where the conciliators were able to do some good was in the field of the other issues which usually accompany security and wage demands. Reducing these issues conciliators coaxed, urged, prodded and pleaded. Parties knowing the case was going to the Board on the security issue rarely did any real bargaining on the other issues. In many cases the mediators were able to get the issues reduced to a minimum, thus relieving the Board of the burden of hearing and deciding numerous issues which the parties should have been able to settle

[9] 15 War Labor Reports. Humble Oil and Refining Co. Page 380.

without directive. More important was the good effect of persuading parties to settle their own issues without government interference. And many times, if it was possible to secure agreement on some of the minor issues, the parties took another long look at the major issues and discovered that agreement wasn't so difficult after all.

## WAR LABOR DISPUTES ACT

The record of strikes in 1942 showed a great improvement over any preceding year. This was especially true in the amount of time lost due to strikes. But encouraging as it was, the critics of labor unions had not ceased their efforts to achieve some sort of control over the regulation of labor disputes. The powers given to the War Labor Board were resented by anti-New Deal Congressmen and Senators. Before the Board had been established and immediately before Pearl Harbor, Howard Smith, a Democratic Congressman from Virginia, had introduced a bill controlling labor disputes that had passed the House. Pearl Harbor had intervened before the Senate could act on the bill and the President had called the Labor Management Conference and established the War Labor Board.

Early in 1943, Representative Smith re-introduced the bill and in the Senate, Senator Tom Connally of Texas, had introduced a bill. After the various committees had worked on the bill it was passed on June 25, 1943, over the veto of the President. The bill was operating as a law only a short time when it was common knowledge that it was badly conceived and hastily constructed piece of legislation.

The Act provided the War Labor Board with statutory authority, the power to issue subpoenas for attendance of witnesses and presenting records.

It imposed one year imprisonment and a $5,000 fine for any person who instigated, co-erced, encourage a strike in a government controlled plant and it fortified the President's right to seize war facilities. Labor unions had to file a thirty day notice of a labor dispute and hold a secret ballot vote to strike such vote to be conducted by the National Labor Relations Board. The notices of the dispute were to be filed with the War Labor Board, the National Labor Relations Board, and the Secretary of Labor.

The notices filed with the Secretary of Labor came to the Conciliation Service and served as an assignment to a labor dispute. The rush of notices swamped the National Labor Relations Board and that agency soon gave up trying to hold elections on strike action. Unions filed notices, held their own strike votes and invariably voted to strike. They did not go on strike, but the vote gave them the weapon of pressure and it was used to its fullest extent.

Conciliators now entered disputes on the filing of a notice and the direct requests for a conciliator dropped in number. Approximately 75% of the case load handled now emanated from the dispute notices. Request for conciliators were made only when grievances arose or at time of negotiating initial contracts. Many unions favored this new method of securing the service of a conciliator. Requesting a conciliator in some circumstances is regarded as a sign of weakness and this official entry of the government made necessary by law, the passing of which had been favored by anti-labor managements, played into the hands of many unions.

The War Labor Disputes Act did not lessen strikes or make it less difficult to settle them. Labor unions were free to strike after filing the

notice and if they struck without filing the notice, they were subject to damage suits.[10] The act only added a great deal more to the confusion and red tape that existed in large quantities before it was passed. The difference it made to the Conciliation Service was that the method of assignment which had been historically by request of one of the disputing parties or some interested third person, now became a matter of entry because the union filed a notice of dispute and the government agency charged with assistance of settlement of the dispute was interested in performing the job set out for it to do. This method was a departure from the old voluntary request and made conciliation a little more bureaucratic in concept than formerly. As time went on such a method of entry became the accepted thing and no great difference resulted from the act.

## SUMMARY

Only the major phases of the wartime government program of conciliation have been mentioned. A more complete treatment cannot be demonstrated within the confines of this paper. Government conciliators worked under an avalanche of governmental policies and regulations that were pouring out of the wartime agencies which were charged with carrying out the many Executive Orders aimed at securing industrial mobilization. As the war program expanded there were many different boards under the War Labor Board that handled labor disputes in different industries such as the Trucking Commission and the Maritime Commission. There were Executive Orders which had to do with overtime payments, wage adjustments in the construction industry, and there was a constant stream of War Labor Board policies and decisions with which the conciliator had to be familiar. The War Manpower Commission issued

[10] See War Labor Disputes Act, Section 8 (c).

directives controlling the flow of man power which caused many labor disputes. Companies hoarded man power, pirated workers by illegal wage offers, battled to keep their skilled workers on the skilled jobs while loosely set piece work rates soared and gave unskilled workers unheard of earnings. Mediation activities were duplicated by many other agencies. The Army, the Navy, the Air Corps, maintained labor relations officers many of whom were lacking in the necessary experience. The War Production Board had labor and management representatives who acted as mediators, most of whom were present to see that their side was not left in the lurch. There existed no set policy and if confusion can be planned, this was the prime example.

An examination of the table will indicate the record of strikes and amount of lost time through the years of the war.

| YEAR | STRIKES | MAN DAYS LOST |
|---|---|---|
| 1942 | 2,968 | 4,182,557 |
| 1943 | 3,752 | 13,500,529 |
| 1944 | 4,956 | 8,721,079 |
| 1945 to VJ Day | 2,971 | 9,593,000 |
| 1945 after VJ Day | 1,779 | 28,432,000 |

Total strikes during the war, from December 8,1941, to August 14, 1945, were 14,731, involving 6,744,000 workers and cost about thirty million man days of idleness.[11]

The record of the Conciliation Service showed that it handled 75,653 labor disputes between Pearl Harbor and VJ Day. Of these 17,566 were certified to the War Labor Board, or 23.2 %. Conciliators settled 57,537 disputes by voluntary methods. Included in the settlements credited to Conciliators were those disputes which were heard by a hearing officer appointed by the War Labor Board, who made final and binding decisions consistent with Board

[11] Monthly Labor Review, May, 1946.

policy and whose decision was subject to review by the Board. This was a form of voluntary arbitration with the Board appointing the arbiter, and making the award subject to Board review. Conciliators had always received credit for a settlement when they persuaded parties to a dispute to accept voluntary arbitration and persuading parties to accept this type of War Labor Board action relieved the case load of the Board to a great degree.

Conciliators settled 76.1% of the labor disputes that arose during the war. When the many handicaps that existed to the voluntary method of settling labor disputes are considered this is no mean record. Wartime conciliation was carried on under more than usual pressure. There was a tremendous need for full production, and a tremendous burden on the Board, and the other agencies charged with the stabilizing of the economy, which had to be relieved if such agencies were to continue in existence. Conciliation is not a simple task in normal times when there is no wartime confusion as to government policy. A steady month of labor negotiations is a trial to anyone no matter what his experience. Conciliators worked seven days a week all through the war, without vacations and without once cleaning up their case load. The record of their devotion to this constructive work is as worthy of praise and appreciation as is the record of any other government agency that performed a task up to the abilities of its men and within the sphere of its authority. There is nothing too difficult to writing out a decision in a labor dispute when you know the decision will be made stick, but attempting to settle labor disputes with only powers of persuasion is a challenge second to none. Settling three out of four labor disputes is proof enough of how well the conciliators accepted that challenge.

# CHAPTER IV

## CONCILIATION FROM VJ DAY TO THE TAFT - HARTLEY LAW

The months immediately following VJ Day and well into 1946 were the worst in the history of union management relationships. From VJ Day to the end of the year there were 1,779 strikes and a staggering 28,432,000 man days of production lost.[1] This was only eight million less than had been lost in the entire forty two months of the war. The War Labor Board had hewed to the line, insisting on the application of the "little steel" formula, and had ignored the pleas of labor leaders who pointed out the ever widening gap in the relation between hourly rates of pay and the climbing cost of living. The Board used "take home" pay as a criterion and labor accepted the fringe items, which were gains of a kind and both watched the hourly rates of pay fall behind living costs. Then the war ended suddenly. The overtime hours that had acted as a cushion for the workers in meeting living costs were ended. Labor, faced with a cut in their earnings and with no relief forthcoming in price of necessaries, used its economic force. While wages were the paramount issues in most of the large and bitter strikes, the natural aftermath of the war, the adjustments that had to be made, the let down from the urgency all combined to add to the reasons for the many strikes. There was a natural blossoming in the feelings of many parties of "now, we can show them."

There were other events that contributed to the overall confusion of the labor management picture immediately following the war. In April, 1945,

[1] See supra, p.44.

President Roosevelt had died and the reins of government had passed to Harry Truman. There were, of course, some cabinet resignations. Among them, Madame Perkins, the head of the Department of Labor. The new President appointed Lewis B. Schwellenbach in her place. Mr. Schwellenbach had been a Federal Judge in the state of Washington, and a former U.S. Senator from that state. He had spent enough time in Washington to be aware of what was expected of a cabinet officer. His department had not fared well through the war and an examination of the labor relations activities of the government found the War Labor Board and the War Manpower Commission doing most of the work. The Conciliation Service was the important activity of the Labor Department and the war appeared to have made that agency a certification avenue to the Board. Mr. Schwellenbach had a desire to head a department that had a little more responsibility.

In the last months of the war, the members of the War Labor Board were aware of the pressures that were building in the labor management relationships throughout the country. As soon as the war ended the public members of the Board urged the President to call another Labor Management Conference and seek to have the "no-strike, no lock-out pledge," renewed for the duration of the reconversion. The idea was to have the Board continue in operation at least through the difficult days of reconversion and adjustment. The new Secretary of Labor did not favor this idea. At a meeting with Mr. Truman held early in September, 1945, he insisted to the President that "to continue the policy of withholding from the Department of Labor the essential function of labor relations would leave the Department sterile."[2]

2 Was the Labor Crisis Necessary? H.A. Alexander. Sat. Evening Post, Jan., 26, 1946.

It became evident to the members of the War Labor Board that the President was listening to the new Secretary of Labor for in a speech on October 30, he said: "I am convinced that we must get away as quickly as possible from government controls and that we must get back to the free operation of our competitive system. When wages are concerned, this means that we must get back to free and fair collective bargaining." [3] In this same speech the President mentioned that a Labor Management Conference had been called and pointed out that one of the principle questions for the conference was to recommend machinery for the mediation and arbitration of disputes when collective bargaining had broken down.

The government had taken a position of urging employers to give wage increases and yet insisted on retaining price controls. Consumer goods had not yet started to flow and the reconversion program was not yet under way and the leaders of government felt that the very favorable profit position of business would enable it to make substantial wage increases without disturbing the price picture. The manufacturers in the mass production industries did not agree that wage increases could be granted and the prices maintained. If wages went up prices were bound to go up in proportion seemed to be simple economics as far as the industrial leaders were concerned. The demands made by the unions for a wage increase sizable enough to make up the loss in wages suffered due to the reduction in hours were rejected by industries.

The Labor Management Conference was called on November 5, 1945. It was not a success. Agreement was reached on only a few points. The atmosphere

3 Vital Speeches. Vol., 12, pp. 79-82, Nov., 5, 1945.

was not one of harmony nor even of seeking agreement. Strikes were increasing and the government's adherence to a plan of wage increases with price control to be enforced made the employers reluctant to agree to anything. The conference had been called too late. AFL-CIO rivalry which had been lessened by the war flared again. No responsible or important government official gave the Conference the time and attention it should have had. The Secretary of Labor appeared to be winning the fight to combine the wartime labor relations activities into the Department of Labor. The employer members of the Board were reluctant to serve under a Department that had the promotion of the welfare of the worker as its basic policy. The War Labor Board was transferred to the Department of Labor for "housekeeping" purposes by Executive Order 9612 on September 19,1945. On December 31, 1945, the Board's activities were terminated and the National Wage Stabilization Board was established by Executive Order 9621.[4] In such an atmosphere of doubt and confusion agreement between labor and management was almost impossible.

Settlement of the many strikes that occurred after VJ Day and continued for some months was affected by a bulge in the price control list. The President also settled some of the strikes by seizure. Strikes were in existence in the automotive and steel industries, non-ferrous metal, electrical manufacturing, bus lines in Central Western States, meat packing, communications, farm equipment, bituminous coal and even the railroads had a strike which ended in two days when the government took over the lines. Throughout this period of the greatest industrial unrest the country had ever experienced the Secretary of Labor continued his efforts to enlarge the

4 28 War Labor Reports. Pages VI and VII.

Conciliation Service in scope and in function. The Labor Management Conference had reached agreement on few points and one of these was that the Conciliation Service should be re-organized "to the end that it will be established as an effective and completely impartial agency within the Department."[5] And an accompanying recommendation was that an advisory committee be established to "make recommendations to the Secretary of Labor or to the Director of the Conciliation Service with respect to the policy, procedures, organization, and development of adequate standards and qualifications for the personnel of this service."[6]

In the last week of September, 1945, Secretary Schwellenbach had appointed Edgar L. Warren as Director of the Conciliation Service. Warren had served as regional chairman of the War Labor Board's sixth and seventh regions. Prior to his service with the War Labor Board he had been an economist with the Wage Hour Division of the Department of Labor. John R. Steelman had resigned from the directorship of the Service in November, 1944, and the Secretary of Labor Perkins had appointed no one in his place. The Service had been in charge of Howard T. Colvin who served as acting director in the period between Steelman and Warren.

The war brought the Conciliation Service into a prominence which had never before existed. The necessity for the Service to certify the labor disputes to the War Labor Board and the record of settlements achieved made the mediation process of government an important one. It also placed a rather delicate question in the light of open discussion. How could conciliators

5 The Conciliation Service by Edgar L. Warren. Industrial and Labor Relations Review, Cornell University, Vol., 1, No. 3, p. 356, Apr., 1948.

6 Ibid.

employed by a department which had for its purpose the promotion of the welfare of the worker remain completely impartial as they went about their daily tasks. The War Labor Board had been tri-partite in representation but the Labor Department had no such philosophy. To avoid the critisicm and make for a more effective service acceptable to both labor and management, there was appointed on October 18, 1945, a committee to serve in an advisory capacity to the Director of the Service. This committee was tri-partite in nature and marked the first time in the history of the labor department that industry and labor had a joint voice in any department policy. Following the President's Labor Management Conference the committee was enlarged to eight members chosen from the AFL, CIO, and the Chamber of Commerce and the National Association of Manufacturers.

The appointment of this committee was one of the steps taken by the new leaders of the Conciliation Service to strengthen the Conciliation Service. The committee met with the director once a month and was consulted on every major policy move. This idea of strengthening the Service into a more active and especially more successful dispute settling agency took many forms and into the Conciliation Service came a great many changes and additions.

Acting on a recommendation of the Advisory Committee the Service set up a Training and Program Division. The director and other leaders of the Service set about to make the conciliators the best informed men on industrial relations in the country. It was felt that conciliators who had been able to get by on power of persuasion alone in the early pre-Wagner days now had to be experts on all phases of industrial relations. It was only fair to labor and management that the government furnish conciliators who were highly qualified by education and experience. To this end a training program was

set up which held seminars every six weeks, Lasting a week, the conciliators were brought to Washington, went through an intensive study of the existing labor laws, met with leaders of industry and labor, heard lectures from the heads of the different government agencies dealing with labor problems. The Program Division also compilied and sent out to each commissioner every week the latest developments in the labor management front, the latest wage and contract development and much other valuable and usable information.

In keeping with making the commissioners labor relations experts in fact as well as reputation the Labor Management Committee recommended that the salaries of commissioners and officers of the Service should be sufficient to attract persons possessing the necessary qualifications. The table will show how salaries of conciliators were raised.

| | | Number of employees | | |
|---|---|---|---|---|
| Grade | Salary Renge | Nov. 1945 | Jan. 1947 | Aug. 1947 |
| 15 | $9975.00 - 10000.00 | 3 | 13 | 12 |
| 14 | 8179.50 - 9376.50 | 4 | 19 | 19 |
| 13 | 7102.20 - 8059.80 | 19 | 87 | 82 |
| 12 | 5905.20 - 6862.80 | 165 | 126 | 118 |
| 11 | 4902.00 - 5905.20 | 76 | 34 | 31 |
| 10 | 4525.80 - 5278.20 | 26 | 2 | 2 |
| 9 | 4149.60 - 4902.00 | 3 | 3 | 2 |

In the field of arbitration the Service had been in the practise of appointing arbitrators in grievance cases when the parties to a dispute requested arbitration. Many labor contracts contained provisions for arbitration as the terminal point of the grievance procedure. The Service had been furnishing such service free of charge when the parties requested that there be no charge. Under the new regime this policy was ended. Free arbitration would be supplied but only on a special request coupled with an investigation. The Service had carried a staff of full time arbitrators but

but now substituted panels of arbitrators who had been approved by the Advisory Committee and furnished to the parties seeking arbitration a list of approved names from which the parties might choose their arbitrator. The cost of arbitration would have to be borne by the parties. This was a major departure from the old policy. Labor unions had come to use arbitration to a large extent because it cost nothing and had the good use to them of informing the membership that everything had been done to win a favorable award on the grievance. But this policy of free arbitration led to many plants and unions being arbitrated to death. No grievance would be settled by the parties unless there was arbitration. Such a policy does not contribute to labor peace. Arbitration should be a last resort and making it costly lends to that end being gained.

Acting on a recommendation of the Advisory Committee the Director of the Service established a panel of twenty-six conciliators. These were not men from the ranks of the Service but rather outstanding labor relations experts who were to serve on a part time basis and work on disputes in industries with which they had a special familiarity. They were to be used to supplement the work of the regular field staff of conciliators.

The Service had long employed technical commissioners who had worked under a director of the Technical Division. These men were used to make time and motion studies, work load studies, and other matters having to do job evaluation, merit rating system and wage payment methods. These men were furnished to parties in dispute on such matters and also were used to supplement the work of a conciliator by assisting him in cases where such matters were in dispute. The new director, who was acting on the guidance of the

Advisory Committee, sent a technical man to each of the regions so that such services and advice would be immediately available to the men in the field. The technical men also assisted arbitrators who were to make decisions in matters related to the abilities of the technical men.

The changes and additions made under the direction of the Secretary of Labor and the Director of the Conciliation Service were constructive for the most part. They were aimed in the direction of improving the voluntary method of dispute settlement in that they sought to improve the type of conciliation available.

There was a popular notion in existence that the Conciliation Service was a repository for discarded labor leaders who acted as observers and reporters of labor disputes and refrained from taking an active part in the conferences because of timidity or stupidity. But the strike situation which grew out of the confusion of the war offered ample opportunity for both the leaders of the about-to-be re-vitalized Conciliation Service to get into the act. Settlements in most of the major labor disputes were effected only after revision of prices, or presidential seizure which resulted finally in price relief. It appeared there was a great difference between a directive order and a request for patience.

Warren's plan to employ special commissioners on important cases in industries with which such specialists were to be familiar met with much hostility on the part of old line field conciliators. The plan was made especially unattractive when some of the special conciliators were not nationally known experts in the field of Industrial Relations but rather ex-War Labor Board employees whose experience in the field dated from the

time of the establishment of the Board. When the natural resentment of conciliators being shunted aside in favor of one of these specialists was expressed to Mr. Warren, he explained that the Advisory Committee had recommended the action. The specialists settled no dispute that couldn't have been settled by a good conciliator already in the field.

In November of 1946, it became necessary for a reduction in the force of conciliators. Fifty men were laid off. The Regional Directors, none of whom had been changed by the new regime, handed in the names of the men slated to leave. In some regions the lists were drawn by seniority, and in others at the discretion of the director. The lay-off occasioned much resentment inasmuch as the Program and Training Division was still conducting its seminars and employing a large staff of employees who were getting the information to the commissioners the Advisory Committee thought was needed to make experts of the conciliators. But the case load had fallen off by nearly 5,000 cases[7] and the reduction in force did not impair the efficiency of the Service although it made some enemies for Warren and the Service. It left approximately 250 men available for the work which amount was ample.

The Labor Department throughout the spring and summer of 1946 was putting up a stiff fight to hold on to the Conciliation Service. Congress was out to pass some legislation aimed at restoring some thought to be needed balance to labor management relations and had passed the Case Bill which contained a provision for removing the Service from the Department and establishing it as a separate agency. The bill was vetoed by President Truman and Congress upheld the veto. It appeared the Service would stay where it was for

7 Monthly Labor Review. May, 1947, p. 1134.

the time being. But the pressure for some sort of a labor bill was ever growing and each bill proposed contained the idea of removing the Service from the Labor Department.

On January 28, 1947, Secretary Schwellenbach gave the following testimony to the Senate Committee on Labor and Public Welfare:

> It is my honest conviction that the work of conciliation and mediation can be done fairly and impartially within the Department of Labor. Certainly, I have made every effort to bring about that fairness and that impartiality since becoming Secretary. Great care has been exercised by myself and by the Conciliation Service to avoid even a show of partiality. Upon receiving a complaint that a conciliator is being partial such conciliator is immediately removed from the case upon which he is working. This has only happened in a few instances -- but it mattered not whether the complaint came from labor or management -- the action was taken.[8]

Schwellenbach argued with a peculiar desperation. He could have been understood as pleading that there may have been partiality before he entered office. Those who favored taking the Service out of the Department made better argument.

Harold Metz and Meyer Jacobstein, professional research men for the Brookings Institution wrote:

> Despite its record of expanding activities, the operation of the Conciliation Service appears to be seriously defective. Its location in the Department of Labor is a major source of difficulty. By law the Department is charged

8 Congressional Digest. Vol., 26, pp.94-95. March, 1947.

with the task of actively promoting the interests of workers. Secretaries of Labor have on occasion said that in conciliating disputes it is the task of the Department to represent the interest of labor. An agency attempting to conciliate disputes obviously has its efficiency reduced if it is obligated by law to promote the interest of one of the parties as against the other.

The second defect in its operation is its policy of pursuing peace at any price. Since the function of the Conciliation Service is to facilitate the peaceful settlement of disputes, it places primary emphasis upon the avoidance of, or the rapid termination of, a work stoppage irrespective of the merits of the case. The attitude seems to be that any solution not illegal is desirable. This policy gives a great advantage to the party which makes the threat of breaking the industrial peace because that is the party which must be appeased.

... since lockouts by employees were made illegal by the National Labor Relations Board, ... in practise, the threat of a work stoppage always comes from labor. Under these circumstances when the government attempts to facilitate a peaceful settlement by conciliation, it is in effect saying to the workers, 'Yes, of course, you have the right to strike, but what does the employer have to give you, to get you to refrain from exercising that right?'

The existence of these shortcomings in the Conciliation Service as it is now functioning does not indicate that attempts to conciliate labor disputes by the government have no place in the Industrial Relations program. Under certain conditions it is obviously to the advantage of the public to bring the parties to a dispute together so that they can at least negotiate and strive to arrive at a settlement.

As a part of a program for settling disputes by collective bargaining, it would be desirable to create improved governmental machinery to assist in the voluntary adjustment of disputes. It would be advantageous to ensure that the parties involved in a controversy were actually attempting to solve it. Although the existing Conciliation Service has performed useful func-

> tions, it needs re-organization. Its operation has suffered from two primary defects. First, it is a part of the Department of Labor which is expressly charged with the primary task of promoting the interest of the worker. Second, is its underlying philosophy of peace at any price.[9]

Ludwig Teller wrote in November, 1946:

> The government, to accomplish the objective of a regime of voluntary collective bargaining, should recast its adjustment features and create a national mediation agency, independent of the Department of Labor, to take the place of the existing Conciliation Service.
>
> ... it is plainly improper for the government to intervene in controversies under a statute which makes its agents partisans of one side to such controversies. The resulting suspicion prevalent in many circles in regard to the intervention of the Conciliation Service is harmful to the very purpose sought to be accomplished by it.[10]

The handwriting was on the wall. If the separate committees in Congress could devise a bill, it appeared that some provision would be made taking the Conciliation Service out of the Labor Department. If prominent labor leaders fought the idea it would be admitting what the critics were saying as truth. If mediators are to act as the common friend of both parties to a dispute, and the Secretary of Labor said they were, what better place for such an agency than outside the Labor Department where its unbiased policy would never suffer the slightest stigma of partiality.

9 Ibid.

10 Requirements of a National Labor Policy by Ludwig Teller. Annals of American Academy of Political and Social Science. pp. 173-184. Nov., 1946.

Coupled with the criticism of keeping the Service in the Labor Department, there came attacks on Warren's administration of the Service. Anonymous letters attacking his leadership were sent to each conciliator and were published in the daily newspapers. Warren was accused of making the Service a haven for discarded War Labor Board employees and appointing his friends to act as arbitrators in grievance cases. There was a hullabaloo raised when it was discovered that he had once been a member of an organization that was supposedly communistic. It was rumored that unless he resigned there would be no appropriation for the Service. It was made clear that if the Service was removed from the Labor Department he would not receive approval as the director of any such new Service.

The passage of the Taft-Hartley Act in June, 1947, ended all the arguments. Title Two of the act took the Service out of the Labor Department and established the Federal Mediation and Conciliation Service. Warren resigned, his resignation to be effective in August when the new Service would become operative.

There was too much emphasis on conciliation under the Schwellenbach-Warren regime. Publicity was sought and the Service which had preferred to work anonymously found itself in the public eye. Publicity is fine when the cases are settled but not so pleasant when a case appears impossible of solution. Conciliators for years had preached the wisdom of labor disputes being settled by the parties without government assistance. But the new regime was partial to too much conciliation and moved too far under pressure from labor groups. Government conciliation should not be made a club with which to force any side of a labor dispute into any action.

The ending of free arbitration and the raising of commissioners' salaries were the two major improvements that Warren effected. The Industrial Relations departments of many large industries today are headed by ex-conciliators who left the Service because of the inadequate salaries. The new wage structure served to attract better qualified men and to give the men already employed financial justification for remaining.

Many of the improvements were hurried measures having their basis in the new Secretary of Labor's desire to satisfy the Advisory Committee of the complete impartiality of the Service and the effectiveness of it under the Department of Labor. Labor Relations in this country are too delicately balanced to have the major dispute settling agency of the government become a springboard for ambitious men who wish to vault to fame and glory from the springboard of having been the nation's major peacemaker in industrial disputes.

The leader of the government's Mediation Service should epitomize the philosophy the agency has to preach. A man who is content to work in anonymity and who seeks only to contribute to the industrial peace of the country and not to the furtherance of his own career.

A glance at the following table will show the record of the Service from 1942 to 1947. It will be seen that the major proportion of labor disputes under Warren's leadership were settled without strikes, just as they had been in the years prior to his regime, and as they will be under leaders in the future. Conciliation, acting as an extension of collective bargaining will continue to be a dynamic force in preserving industrial peace for as long as this country remains truly democratic.

Record of Settlements[11]

| | 1942 | 1943 | 1944 | 1945 | 1946 | 1947 |
|---|---|---|---|---|---|---|
| Total dispute cases | 6,467 | 14,344 | 21,698 | 23,121 | 16,434 | 14,422 |
| Work Stoppages | 1,781 | 2,086 | 2,843 | 3,207 | 3,206 | 3,047 |
| All Other Disputes | 4,686 | 12,258 | 18,855 | 19,914 | 13,228 | 11,375 |
| Referred to NWLB and other government agencies | 659 | 3,186 | 5,153 | 7,630 | 1,280 | 687 |
| Settled by agreement | 5,683 | 10,923 | 16,295 | 15,426 | 15,061 | 13,023 |

11 Industrial Labor Relations Review. Vol., 1, No. 3, p.357.

# C H A P T E R V

## FEDERAL MEDIATION AND CONCILIATION SERVICE — THE FIRST YEAR

The Labor Management Relations Act was passed on June 23, 1947, over the veto of President Truman who had read his veto message to the Congress on June 20. The new act amended the National Labor Relations Act and introduced many new provisions. Important to this paper is Title Two of the act which established an independent Federal Mediation and Conciliation Service to take the function of the old United States Conciliation Service. In his veto message the President mentioned that the bill was ignoring a unanimous conviction of the Labor Management Conference held in November, 1945. In part the President said:

> A unanimous recommendation of the Conference was that the Conciliation Service should be strengthened within the Department of Labor. This new name for the Service would carry with it no new dignity or new functions. The evidence does not support the theory that the conciliation function would be better exercised and protected by an agency outside the Department of Labor. Indeed, the Service would lose the important day-to-day support of factual research in industrial relations available from other units of the Department. Furthermore, the removal of the Conciliation Service from the Department of Labor would be contrary to the praiseworthy policy of Congress to centralize related governmental units within the major government departments.[1]

1 Veto Message of President Truman to 80th Congress.

Title Two of the Labor Management Relations Act begins:

> There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service. The Service shall be under the direction of a Federal Mediation and Conciliation Director who shall be appointed by the President by and with the consent of the Senate. The Director shall receive compensation at the rate of $12,000 per annum. The Director shall not engage in any other business, vocation or employment.[2]

The act transferred to the newly established Federal Mediation and Conciliation Service all the mediation and conciliation functions of the Department of Labor together with the personnel, records and unobligated balances of appropriations, allocations and other funds of the United States Conciliation Service. This section of the act was to take effect on the 60th day after the passage date.[3]

On August 22, 1947, the Federal Mediation and Conciliation Service came into existence. President Truman appointed Howard T. Colvin, Associate Director of the U.S. Conciliation Service as acting director of the new Service until the new Director, Cyrus S. Ching, would take over early in September.

On September 5, 1947, the new director took the oath of office. Cyrus S. Ching had been vice-president of the U.S. Rubber Co. in charge of Industrial Relations. He had served on the National Defense Mediation Board and on the National War Labor Board. As a member and later as President of the American Management Association he had urged employers to accept collect-

2 Labor Management Relations Act, Sec., 202 (a).

3 Ibid. Sec., 202 (d).

ive bargaining as part of their American scene at a time when such urgings were not typical of management leaders. At the time of his appointment he was 70 years of age and had retired from the U.S. Rubber Co. There is no doubt that the new Director of the Service accepted the job to make a contribution. He had the confidence of management and labor gave him an ungrudging respect despite his management background.

Section 8 (d) of the Labor Management Relations Act enlarged the duty of collective bargaining to include the serving of a written notice by one party to the contract to the other notifying of a desire to terminate or modify such contract. The duty was spelled out in the Act that such notifications must be made 60 days prior to the termination date of the agreement or 60 days prior to the desired date of the change if there was no termination date. If no settlement of the issues growing out of the desired change or termination of agreement was reached within 30 days the parties were then under the obligation of notifying the Federal Mediation and Conciliation Service of the existence of a dispute and simultaneously with such notification the parties must file the same notice with any State or Territorial Agency established to mediate and conciliate disputes within the State of Territory. The penalty on any employee for striking before the end of the 60 day period was loss of status as an employee of the employer and he could not vote in a representation election or claim unfair labor practises under the Act.[4]

These notices, filed by unions and companies, served as assignments to the new Service. The notices were sent to Washington and from that office

[4] Ibid. Sec., 8 (d) — (1) (2) (3) (4).

were forwarded to the regional offices where they were used as assignments. A commissioner receiving such notice contacted the parties, in person or by telephone, and made himself familiar with the situation. In the largest number of cases the parties reported that while the dispute had not yet been settled, negotiations were proceeding and no difficulty in reaching an agreement was to be anticipated. These cases were labeled "stand-by" and the commissioner contacted the parties at intervals to ascertain the status of the negotiations. If negotiations had broken down and the parties were at an impasse, the commissioner entered the case and sought to assist the parties to settlement. The actual work remained unchanged but the method of entrance into the dispute was now a statuatory requirement. Once the commissioner was informed that the parties had settled a "stand-by" situation the case was closed and was not considered a dispute for record-keeping purposes. Cases which required the assistance of a commissioner were called "active" and when these cases were closed were considered as settlements.

The filing of these notices increased the work of the Service to almost triple what it had been under the War Labor Disputes Act. There was no method available whereby the cases could be screened before they were given to a commissioner. It is impossible to tell from a mere notice whether the dispute will settle unaided or not. Contact must be established with the parties to ascertain chances of settlement without assistance. To have anyone but a commissioner contact the parties would be impracticable. Who would do the contacting and in what capacity if not the commissioner? He had to familiarize himself with the case and establish the important first contact with the parties, encouraging them to settle the matter if possible

without government assistance, but requesting that the Service be informed if the parties reached an impasse.

## JURISDICTION OF THE SERVICE

The U.S. Conciliation Service had made its services available in almost all types of labor disputes. The Labor Management Relations Act of 1947, however, put some limitations on the new Mediation Service. Section 203 of the Act stated that the Service could proffer its services whenever a dispute threatened to cause a substantital interruption of commerce. The Service was directed to avoid attempting to settle a dispute if the impact on commerce would be slight and the parties had available to them a State or other conciliation service.[5] This section also directed the Service to make itself available to parties in dispute over a grievance arising out of an existing contract only as a last resort and in exceptional cases.[6]

These new requirements added to the administrative burdens of the new Service. Screening of all cases was required so that the impact of a potential strike on commerce might be considered. New forms were devised and the commissioners instructed to secure information that would enable the directors to assume jurisdiction of the dispute or turn it over to a State agency. This question of "substantial interruption of commerce" was difficult to answer. The phrase did not make clear how far from trivial a "substantial interruption" was to be considered. For example, if 2000 furniture workers struck a plant in an industry that was as large as the furniture industry, would the loss of the production be considered substantial?

5 Ibid. Sec., 203 (a).

6 Ibid (d).

If 40 men making a tightly patented article used in the production lines of the automotive industry were to strike, would that be trivial because only 40 men were involved? The administrative policy of the Service was to accept for jurisdiction those cases having a more than trivial effect on commerce and turning over to the State agencies, wherever available, those cases purely intrastate or having a trivial or minor effect on commerce.

Section 203 directs the Service to make its conciliation and mediation functions available to parties in grievance disputes only as a last resort and in exceptional cases.[7] Arbitration as the terminal point in grievance procedures in labor contracts has been constantly increasing. While no accurate available data exist as to the number of arbitrations held each year on grievances which arise during the life of a labor agreement, the U.S. Conciliation Service appointed 1,008 arbitrators in the fiscal year ending June 1, 1947. Harold Davey of New York University said:

> One of the most heartwarming developments in labor relations during World War Two was the increased use of arbitration as the terminal point in the grievance procedure for the final settlement of disputes arising out of the interpretation or application of existing contracts.[8]

Conciliators under the U.S. Conciliation Service had urged the inclusion of arbitration in contracts between labor and management. But during the war the Conciliation Service could not furnish arbitrators soon enough and under the pressure of threatened strikes, conciliators had urged a settlement on

7 Ibid.

8 Hazards in Labor Arbitration by Harold Davey. Industrial and Labor Relations Review, Cornell University, April, 1948.

parties in the interest of war production which more often than not left the situation in worse condition than before. There were also many times that conciliators had urged settlements on parties when to have gone to arbitration would have seen their position vindicated. This is again a question of the labor leader's prestige and his desire to show the membership that he is doing everything possible for them. Since he is intelligent enough to know that he would receive an adversedecision in an arbitration proceeding, he will try mediation as another effort to achieve something. Another thought on this matter is that arbitration is expensive and since the government ended its free facilities in September, 1945, many labor leaders, trying to get their story in front of someone, would call on conciliation. Conciliators in situations of this kind made their own policy depending on the circumstances. Such situations were delicate ground for a government representative supposedly impartial and whose policy was to preach the sanctity of contracts and the inclusion of arbitration clauses. The removing of this type of situation from the realm of conciliation was at least consistent with the idea of keeping the agency strictly impartial. The Federal Mediation and Conciliation Service policy on arbitration remained identical to that of the U.S. Conciliation Service.[9]

## STATE AGENCIES

The new law added also to the burden of the State agencies concerned with conciliation and mediation. Few states have effective mediation services and it is to be hoped that the new act will serve as an impelling factor on

9 See supra, p. 52.

states to equip themselves with such functions. Those agencies that were active were guaranteed the cooperation of the new Federal Mediation and Conciliation Service. Director Ching, at a meeting with the representatives of sixteen state mediation boards, expressed the thought that " ... if top-side mediation people cannot decide among themselves who is to handle a certain case, how can they be expected to settle the basic dispute themselves and set the necessary patterns for national unity?"[10] It was impossible to draw up any set plan as the labor management relations policies of the different states vary so widely on the question. Regional Directors, operating under broad general policies, draw up workable arrangements with state officials located in particular regions. The program is working and in each state where such an agency exists the cooperation between the agencies has been exceptional. The state officials usually handle all the minor disputes, but in many cases State conciliators and Federal men will work together to the end of a peaceful settlement. The nature of the work to be done and the satisfaction to be derived from assisting parties to avert stoppage of work seem to obviate any pettiness or envy between the agencies.

LABOR MANAGEMENT ADVISORY PANEL FOR THE SERVICE

On December 13, 1947, President Truman appointed a twelve man labor-management panel. This panel was provided for in Section 205 (a) and (b) of the Labor Management Relations Act of 1947. The committee was divided equally in representation between labor and management, the men appointed being outstanding in their field. They were paid on a per diem basis, and consulted

10 Weekly Newsletter. Federal Mediation and Conciliation Service. December 8, 1947.

with the Director, at his request, on how to avoid industrial controversy and how voluntary adjustment of labor disputes might be best administered.[11] There was, however, no need for the committee to recommend certain policies or techniques, since the law covered nearly completely the duties of the new Service.

## NATIONAL EMERGENCIES

Section 206 of the Labor Management Relations Act gives the President the power to appoint a Board of Inquiry in labor disputes, which if allowed to conclude in strike would imperil the national safety or health. The Board of Inquiry once appointed by the President, inquires into the issues causing the dispute and makes a written report to the President. Copies of this report are made available to the public and the President files a copy of such report with the Service. The President can secure an injunction against the strike or the continuance of the strike. For a period of 60 days the parties are under a duty to make every effort to settle the dispute with the assistance of the Service. Neither party is under any duty to accept in whole or in part any proposal of settlement made by the Service, but the assistance of the Service is included in the duties of the parties to make every effort to adjust and settle their differences.

## NEW POLICIES

The new Director of the Service chose his assistants from among the field commissioners and brought no one with him. He abolished the Program and Training Division and brought an end to the weekly seminars which were

[11] Labor Management Relations Act of 1947. Sec., 205, (a) and (b).

supposed to make experts of the conciliators. Also abolished was the Technical Division of the Conciliation Service. Most of the technical commissioners were absorbed into the organization and were assigned cases that would see their technical abilities best utilized. The Program Division was liquidated almost immediately and the Technical Division in January, 1948.[12]

Cyrus Ching moved slowly but surely in the direction of building new concepts of mediation. His plans were founded on sureness of knowledge of the field. When he entered upon his new position he said: "There will be no miracles. Labor Relations are human relations and building them is a long slow process. My main idea is to encourage people to settle their own affairs."[13] The best expression of his plan for a mediation service was his statement that appeared in a national magazine.

> I want the organization to be not so much a fire department as an organization of fire prevention engineers. Since our personnel is limited this means we can't keep running around trying to stamp out brush fires. The small strike situations should be settled by the parties themselves or by a local or State mediation agency. Federal Mediators should watch the danger points where big strikes may develop. I want the regional directors to know their regions and the commissioners to know their areas -- establish friendly relations with the leaders of labor and management in those places when things are calm. When they see trouble building

12 Weekly Newsletter. Federal Mediation and Conciliation Service. Jan.,9,1948.

13 Two-Fisted Wisdom of Ching by Beverly Smith, Saturday Evening Post, Jan., 26, 1948, p.17.

> up they should go in there like a fire inspector and say 'remove that oily waste here -- put a sprinkler system in over there.' [14]

To the end that the men of the Service, both the regional directors and the field commissioners would receive the opportunity to better acquaint themselves with their regions a plan of further decentralization was devised which when accomplished would see the regions doubled in number. Smaller regions make more practicable and simpler the every day contacts between the men of the Service and the representatives of labor and management. This plan of decentralization went even further. Where before every report, memorandum, bulletin or letter was made in triplicate with a copy sent to Washington, now the region was in complete charge of such reports. Washington, as headquarters, might require some date on significant cases or strikes, but it was no longer necessary to send Washington a copy of every report on every case.

Through the year of 1947, these new policies were effected. Ching had won the confidence of the commissioners through a series of regional conferences at which he was in constant attendance. He constantly praised their work in addresses which he made all over the country, and at the same time explained his preventive concept of conciliation.

## PREVENTIVE CONCILIATION

The emphasis on preventive activities of the Service was the only innovation introduced by Ching. All of the conciliators felt, once the term as he used it was made clear, that what he was preaching to be done, had been done by the field conciliators for years. This activity meant to Ching: "...

[14] Ibid.

all those things which a Commissioner can and does do to develop in representatives of labor and management in his area, attitudes which will enable them to live and work together without allowing differences of opinion to develop into issues in dispute."[15]

Preventive conciliation is and should not be confused with conciliation of labor disputes that have already arisen and out of which might occur a stoppage of work. The real meaning of the term is that activity which builds between labor and management such confidence and regard that there is no dispute and, therefore, no need for government assistance. This activity might include commissioners calling on labor and management leaders in his area, acquainting himself with facts regarding the status of their contracts and what prospects of difficulty there might exist. It was said by some conciliators that the new program was seeking to prevent conciliation rather than labor disputes and there was, of course, the natural reluctance to accept such a program wholeheartedly inasmuch as the complete success of such a program meant the end of a job as a conciliator. Aware of this feeling Ching let it be known how he felt on the subject: "Preventive activity is not a panacea. It is not a cure all. It is not going to result in establishing perfect labor management relations in this country over night, or in the next ten years, or ever. It is not the key to Utopia."[16]

15 Field Memorandum, No. 31, Federal Mediation and Conciliation Service. March 24, 1948.

16 Ibid.

In appearing before the Congressional Appropriations Committee Ching said that he wished the Service to be judged: "Not on the amount of fires that were put out, but rather by the infrequency of fires which occurred."[17]

Ching in a speech before the Steel Warehouse Association said:

> The day when we reach the place in American Industry where I can say 'we don't have one dispute case all year' is the day that I am going to ask Congress to double the appropriation because we will have made a big contribution. We don't earn any money for the industry or the taxpayer or the American people by settling labor disputes. What we want to do is avoid them.[18]

The message Ching desired to get across to the conciliators was that he was aware of the factors inherent in good conciliation. First, that the success of the agency, to a much greater degree than any other function of the government, depended on the every day accomplishment of the men who worked in the field. Second, that the phase of the work which had been performed in the past that had been considered "preventive" and had been performed at the same time as was the work directly connected with the settling of a labor dispute was understood by him, and important to him. But he wanted more emphasis placed on this phase of the work, and wanted commissioners to employ more of their time and ingenuity in lending their efforts to the end that labor disputes would diminish in number and severity. Third, that he had no specific ideas as to how this aim should be accomplished but that he

17 Weekly NewsLetter. Federal Mediation and Conciliation Service. Mar., 12, 1948.

18 A speech made by Mr. Ching at the Thirty-Ninth annual meeting of the American Steel Warehouse Association, Inc., May 11, 1948.

would rather let the flow of ideas emanating from the conciliators gradually work into a philosophy of preventive conciliation and the activity spelled out on the basis of this philosophy.

The new Director agreed with the old regime in one respect. That was that the salaries paid conciliators should be ample enough to attract men to the Service who would contribute to it. At the present time new conciliators are given Grade CAF 11, and after a six months probationary period are advanced to Grade CAF 12. The following table will show the salary structure that exists in the Federal Mediation and Conciliation Service.

| Grade | Salary Range |
|---|---|
| 15 | $9975.00 - 10000.00 |
| 14 | 8179.50 - 9376.50 |
| 13 | 7102.20 - 8059.80 |
| 12 | 5905.20 - 6862.80 |
| 11 | 4902.00 - 5905.20 |

Regional directors receive Grade CAF 15. Assistant regional directors and a few commissioners receive Grade CAF 14. Most commissioners after two years of service receive Grade CAF 13.

There were few new men hired in the first year of Ching's adminstration. Men who retired or changed jobs were not replaced. Nor was there any top heavy administrative staff established. The importance of the actual work received the attention of the regional directors to a greater degree than ever before, with less time spent on the administrative duties. In September, 1948, there were approximately 230 men engaged in the work.

## SUMMARY

Conciliation as a process must be considered not apart of collective

bargaining but rather an extension of it. Such extension should be attached only when there is danger of a dispute concluding in a stoppage of work or a misunderstanding between the parties that will endanger their relationships in the years to come. Trying to make clear what a conciliator does in a specific case is almost impossible. Conciliators should understand that conflict between humans at the bargaining table must be kept at the levels of competition between ideas and persuasive abilities rather than the competition of economic strength. Conciliators are persuaders. They are men who urge parties to disputes to accept this or that position and have reasons for such acceptance. In their work they are able to gain more experience than any other person at the table.

In conclusion it must be repeated that the success of the government's mediation efforts will always depend on the abilities of the men who do it. If, as time passes a set of tried and true criteria or standards are evolved and can be used with validity to measure what special abilities and knowledge a conciliator must have to do the work satisfactorily, it will be found that no single one of these criteria or a combination of them all will compare with the true desire to perform a service to the country and to humanity. For, with such a desire, any man will be moved to equip himself so that he can perform his task to greater efficacy. Any conciliation agency, government or state, needs men who <u>want</u> to be true conciliators, and are not merely seeking a job. This type of man is immediately cognizant of the cause that is served by bringing into closer understanding the two great forces of labor and management. With eyes of the world upon America, looking to her for leadership, the acceptance of the most democratic of the country's democratic

processes, collective bargaining, will be evidence that this form of government comes closes to giving to man his true dignity and will also serve as warning that this country has a weapon as atomic in quality as in any atom bomb, and that is free labor and management sitting down solving their mutual problems, assisted by the government and not ordered by the government.

## CONCLUSIONS

The establishing of the conciliation function of the government as an independent agency was a part of the Labor Management Relations Act that did not receive too much attention in the whirlwind of debate aroused by the Act.

Whether the new agency has been more effective operating independently is difficult to answer. Not enough time has elapsed since its origin. It is true that it has been no worse.

In considering the value of retaining an independent mediation agency four things must be considered. First, old U.S. Conciliation Service was never made the object of severe criticism for being partial to labor. There were isolated cases which were corrected. The new agency will make no better record if conciliators are to take an active part in labor negotiations. It, too, will receive criticism in isolated instances. Second, the criticism of an agency established within a Department that has for its purpose the fostering of the welfare of the ware earners possesses a validity that is difficult to overcome with any protestation of impartiality. Third, mediation is an important function of the government and the agency should be headed by an outstanding man in the field. If the agency is returned to the Labor Department, the Director of the Mediation Service would be secondary to the Secretary of Labor. Would such a position be attractive to the type of man who could do an outstanding job of directing the Service? Fourth, the function has been separated from the Labor Department for almost eighteen months and to have it returned would lead to assuring the belief held by many people

that the functions are indeed partial to labor and such assurance would not make the Service more effective.

The daily tasks of a conciliator are difficult enough. Anything that can be done to assist in the more effective operation of this government service should be done without regard to political expediencies, personal ambitions or vanities, or pressures from any group. The public interest in labor disputes is as great as any other and serving that interest best should be the only task facing the men who have the future of the government in their hands.

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