1st Annual Report

Federal Mediation and Conciliation Service

Fiscal Year Ended June 30

1948

1st Annual Report
of the
Director
of the
Federal
Mediation and Conciliation
Service
for
Fiscal Year Ended June 30
1948

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Letter of Transmittal

Federal Mediation and Conciliation Service,
Office of the Director,

Washington, D.C., December 10, 1948

To the Congress of the United States:

In accordance with section 202 (c) of the Labor Management Relations Act, 1947, I have the honor to submit the first annual report of Federal Mediation and Conciliation Service for the fiscal year ended June 30, 1948.

Respectfully submitted.

Cyrus S. Ching,
Director.

Officials of the Federal Mediation and Conciliation Service on June 30, 1948

Cyrus S. Ching, *Director*.
Howard T. Colvin, *Associate Director*.
Peter Seitz, *General Counsel*.
James W. Greenwood, Jr., *Director, Administrative Management Division*.
Martin J. O'Connell, *Director, Field Operations Division*.

Introduction

This is the first annual report of the Federal Mediation and Conciliation Service, which was established as an independent agency of the Federal Government by the Labor Management Relations Act, 1947. The transfer of the personnel, records, and functions from the United States Conciliation Service in the Department of Labor to the new agency took place, in accordance with provisions of that act, on August 22, 1947, and I took office as Director shortly thereafter.

The establishment of the Federal Mediation and Conciliation Service as an independent agency required that new policies and new procedures with regard to certain new duties and functions be evolved and that certain organizational changes in the national office of the Service be made. This first annual report, therefore, deals with the way the Federal Mediation and Conciliation Service established its program and policies, how it reorganized itself to carry out this program more effectively, and tells of the progress made during its brief existence. In general, this report covers the period August 22, 1947, to June 30, 1948, in compliance with the statutory directions to the Director to make an annual report at the end of the fiscal year. Many of the programs initiated during this period and events occurring within it, however, were not carried to a conclusion until a later date. Accordingly, whenever the occasion appears to warrant it, this report recounts events and experiences in a period following the end of the fiscal year.

The major accomplishments and activities of the Federal Mediation and Conciliation Service may be summarized as follows:

(1) The new agency firmly established as its policy that the prime responsibility for industrial peace rests upon unions and management ; that the responsibility for offering mediation services in disputes having mainly local or intrastate consequences rests on local or State mediation agencies, where available; and that the Federal Service bears the responsibility of conciliation and mediation of labor disputes the economic consequences of which are substantially interstate in character. In other words, the energies of the Service are to be expended and its facilities made available in those situations which are properly of concern to and within the area of interest of the Federal Government.

(2) The organization of the Federal Mediation and Conciliation Service was revised to eliminate from the national office all personnel and functions except those essential for the purpose of formulating basic policy and coordinating operations in the field. New positions for three district representatives were created in order to improve liaison between the field staff and the national office staff in Washington, D. C.

(3) A number of new regions was created to improve the quality of supervision in the field and to enable the Service more effectively to handle its mediation responsibilities. This resulted in a reduction of travel and communication expense and other economies.

(4) A preventive mediation program was established and developed as a part of the regular duty of the Service. This program is an extension and intensification of activities which some commissioners of the Service carried out in the past with gratifying success. It serves two major purposes: (a) It seeks to improve human relations in industrial life in order that collective bargaining might be practiced in an atmosphere most favorable to peaceful settlement of disputes; and (b) it endeavors to enlarge the usefulness of the commissioners of the Service by bringing them in closer contact with key labor and management officials so that knowledge and information are exchanged and greater confidence is built up between commissioners and the people they must deal with in their dispute case mediation activities.

(5) The Service has instituted a new position classification and salary improvement program for its conciliators and mediators despite lower budget appropriations, by effecting savings through more economical administration, particularly in the; Washington office of the Service. We have succeeded in creating a salary and classification structure designed to permit the, recruiting and retaining of individuals of high caliber who are so sorely needed in Government service, and especially in the field of labor relations.

The first year of our existence has been one primarily of planning, and program and policy development. We enter the second year of our operations with the feeling that we have created the organization which will render effective mediation arid conciliation services in labor disputes.

The Federal Mediation and Conciliation Service has a unique and grave responsibility: To assist employers and unions in their dealings with each other in order that the national labor policy of collective bargaining may be realized.[1] There is a need for a better understanding of this policy and the part that a mediation agency should play in carrying it out.

What is collective bargaining? To us in the Service it is more than a set of rules, violation of which exposes an

[1] The only other agency of the Federal Government engaged in like activities is the National Mediation Board, which concerns itself exclusively with the rail and air transportation industries.

employer or union to legal sanctions.[2] It is a way of industrial life. In true collective bargaining, the parties will seek to strike their bargain, after exploring all alternatives, at that point between demand and offer where advantage to each bargainer is greatest, and disadvantage to each is at a minimum. It means, of course, that the negotiators on each side of the table will try to understand the special problems and limitations of the negotiators on the other side. In collective bargaining negotiations, the parties seek to enlarge the area of mutual understanding and agreement rather than the battlefield of potential conflict.

Collective bargaining also contemplates more than mere settlement by employers and unions of labor disputes without stoppages. Attention should be paid to the manner in which the settlement is reached. Some settlements are achieved by the application of crude economic force by either employers or unions where the bargaining power of one of the parties is disproportionate to that of the other. Although this is collective bargaining of a sort, it is not that ideal kind for which we should strive. Such settlements may be no more than armed truces, which may break out into warfare during the term of the contract or when it terminates at the end of the year.

The responsibility for effective collective bargaining rests on the •parties. The responsibility of a mediation agency is to promote collective bargaining and to assist the parties in their negotiations. Effective mediation depends entirely upon the degree of confidence and trust which unions and employers repose in mediators. The mediator is a bridge between the parties. His strict impartiality and his freedom from coercion, intimidation, or influence from any source, together with his wide experience in industrial relations situations, earn him confidences, and a position as an advisor which makes him of great value to the disputants. He has no ax to grind; he is answerable to no superior who has more than a disinterested public concern in the outcome of the dispute. He is not necessarily wiser or more able than the representatives of the parties—but his middle position gives him the advantage of objectivity which they frequently do not possess. This advantage enables him to prevent each party from underestimating the strength and determination of the other. Possessing confidential information of what the parties may give and take, he can be of assistance in narrowing the issues and bringing about an agreement which might otherwise be withheld until there is an actual trial of economic strength. Further, he does not confine his activities to dispute settlement. Under the preventive program of the Service, it is a part of his regular duties to seek out and enlist the confidence and support of key representatives of management and labor in the industries in his areas. He makes suggestions for the improvement of human relations and contract administration during periods of relative peace when tempers are cool and thereby anticipates and forestalls future difficulties.

In short, it is essential to the effective performance of the mediator's duty, that his institutional and personal relationships be such that neither side will have its suspicions aroused, however unjustly, that he is answerable to another with a suspected partisan stake in the dispute. There must be no thought that he is performing anything other than a disinterested public duty.

I wish to make one other brief observation concerning the role of the Government in collective bargaining. Although it has not been spelled out in the legislation, it is the firm policy of the Service today, and always should be, that too easy resort to mediators is unwise. Those settlements which are negotiated by the parties themselves without the aid of third persons are the best and lead to the most stable relations. The responsibility for industrial peace should be placed directly on the parties, not upon Government officials. People who always use water wings never learn how to swim by themselves. Mediation should be available, not as a substitute for bargaining by the parties, but as a supplement thereto when such bargaining reaches an impasse.

[2] The National Labor Relations Board, unlike the Service, is a law-enforcing agency. It determines proper units and representatives for collective bargaining; it issues orders when parties have committed unfair labor practices; it applies to courts for injunctions. The Service performs what its name implies, and nothing else; a "service" with respect to collective bargaining.

Chapter 1

A Brief History of Federal Mediation

The Federal Mediation and Conciliation Service came into existence on August 22, 1947, pursuant to section 202 (a) of title II of the Labor Management Relations Act, 1947. For the first time an inde-pendent agency was created by Congress to mediate and conciliate labor disputes other than those occurring in the railroad and air trans-portation industry. Previous to this legislative enactment, the United States Conciliation Service and similar predecessor organizations oper-ated as a function of the office of the Secretary of Labor. The United States Conciliation Service organization had no status in law as a separate agency of the Government. The performance of mediation and conciliation activities in the Department of Labor was authorized by section 8 of the act of March 4, 1913, creating the Department of Labor which provided 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. * * *"

In the quoted provision, Congress gave an indication of the direc-tion of its evolving policy in relation to industrial disputes. That policy, which found its latest expression in the provisions of title II of the act, dealing with the duties and functions of the Federal Mediation and Conciliation Service, is to promote the practices and usages of collective bargaining by employers and the representatives of workers by making available to them the facilities and services of Federal mediators and conciliators.

Acting under the authority of the Organic Act, the Secretary of Labor, during World War I, established in the Department of Labor the Division of Conciliation and Labor Adjustment Service which later came to be known as the United States Conciliation Service. The organization of that Service changed, its staff grew in size and its functions developed as the problems of industrial peace and stability of industrial relations multiplied in the period starting with World War I. Only 75 disputes were handled by the Department in its first 2 years. In 1919 the Service was called into 1,789 cases involving 4,160,348 workers. In the late twenties and during the depression, the decline in business activity as well as in union membership and strength, was reflected in the diminished number of labor disputes which the Service was called upon to mediate. Starting with 1933 as union organization increased under the stimulus of section 7 (a) of the National Industrial Recovery Act and the National Labor Relations Act, the Service was required to participate in a greatly in-creased number of cases, and, in consequence, its staff was augmented considerably. In this period, as a supplement and necessary adjunct to its mediation duties and activities, the Service did much to promote acceptance of the institution of voluntary arbitration and had staff members, who assisted the disputing parties in selecting an arbitrator and who arbitrated labor disputes when the need arose.

The advent of World War II enormously increased the tasks of the Service inasmuch as the National War Labor Board ordinarily would not take jurisdiction of a dispute until the Secretary of Labor had certified that the resources of the United States Conciliation Service had been unable to bring the parties to agreement. About one-fourth of the 75,000 cases handled by the Service between Pearl Harbor and VJ-day were referred to the Board[1]. With the end of the war, the number of cases handled by the Service declined from the wartime peak of about 23,000 cases per year to about 18,800 cases during the fiscal year 1946. This was a period of tumultuous labor relations, however, and the strikes called were of relatively long duration. For this reason, despite the falling off in case load since the war period, the demands made upon the Service did not materially decrease.

The changes in the size of the staff of the United States Conciliation Service, during this period of rapid development of its organization and functions, were as follows by fiscal years:[2]

1943	343	1946	488
1944	421	1947	49
1945	416	1948	442

The budget estimates projected for the years 1949 and 1950 are for a staff of 388. The budget approved by Congress for the 10 months of the fiscal year 1948, during which the Service was in existence, was $2,170,000. The budget approved by Congress for the Federal Media-tion and Conciliation Service for the full fiscal year 1949, was $2,940,000.

The United States Conciliation Service was operated in the Depart-ment of Labor under the immediate supervision of a Director. The first Director, Hugh L. Kerwin, served from the time the Service was established until his death in 1937. Dr. John K. Steelman served from 1937 until November 25, 1944; Howard T. Colvin served

[1] Case statistics for the U. S. Conciliation Service taken from the 34th Annual Re-port of the Secretary of Labor and from the Monthly Labor Review, August 1947 (p. 172)

[2] These figures reflect total staff.

as Acting Director from November 25, 1944, to September 23, 1945; Edgar L. Warren, the last Director, served from September 23, 1945, until August 21,1947.

When the Federal Mediation and Conciliation Service was created as an independent agency by title II of the Labor Management Kela-tions Act, 1947, the Congress made five significant changes in its status, functions, and activities:

(1) It separated the mediation functions from the Labor Depart-ment and vested them for the first time in an independent agency. To insure its complete independence, the act states that the Director of the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

(2) Previously, the United States Conciliation Service had no jurisdiction limitations on its activities. In consequence, no dispute was outside its province. The act creating the present Service established definite interstate commerce limitations on the extent to which the Federal Government could assert juris-diction in the mediation and conciliation of labor disputes. The act, for the first time in Federal legislation also recognized the role of State and other agencies in the mediation of labor disputes.

(3) It established limitations on the extent to which the Service could intercede in grievance disputes.

(4) It established for the first time the authority of the Federal Government in the mediation and conciliation of labor disputes by providing that the parties shall participate fully and promptly in meetings called by the Service to aid in the settle-ment of such disputes.

(5) The act created a National Labor-Management Panel consisting of 12 members appointed by the President, 6 of whom are selected from management and 6 of whom are selected from labor. The duty of the panel is to advise in the avoidance of industrial controversies, and the manner in which mediation shall be administered.

In pursuance of the legislative intention evidenced by the provisions of law removing the function of labor dispute mediation and concilia-tion from the Department of Labor, the Service has earnestly endeavored to earn a reputation for scrupulous and unquestioned im-partiality and devotion to the public interest, exclusively. It is believed that gratifying progress has been made in this direction.

Chapter 2

Organization of the Service

The establishment of the Service as an independent agency made necessary certain organization changes including provision of admin-istrative management and legal facilities. Prior to August 22, 1947, the former United States Conciliation Service as a part of the Depart-ment of Labor had available to it the administrative management and legal facilities of that department. Under the terms of the act that arrangement was no longer feasible and it became necessary for the new Service to establish, in the national office, small units to administer these functions. Accordingly, there was set up in the national office an Administrative Management Division and the position of General Counsel with appropriate responsibilities.

Decrease in National Office Staff

In spite of these necessary additions to the staff, the Director effected an over-all decrease in the number of positions assigned to the national office. This net decrease was made possible in several ways. In the first place, the Director increased the authority of the regional direc-tors and delegated to them full responsibility for the activities of the Service in the field. Moreover, in the national office, the former Pro-gram Division was abolished and later in the year the Technical Divi-sion was abolished and its functions transferred to the field. The Arbitration Division was also abolished and its function was absorbed by the office of the General Counsel. In addition, and as a result of the organization survey described below, the Field Operations Divi-sion was abolished and its functions were either transferred to the field or assumed by the Associate Director.

The aim of the Director has been to restrict the national office staff to minimum size in order to make available to the field where the bulk of the work of the Service is performed, the maximum amount of staff and funds. The national office staff has been limited to the func-tions of establishing basic policies and coordinating the activities of the field staff. The only direct operations handled in the national office are those pertaining to disputes of outstanding national signifi-cance.

Organization and Management Survey

Very early in the life of the new agency it became evident that a need existed for conducting an over-all survey of the organization and management of the Service. This survey was started in April 1948 and was completed by the middle of June. The major reasons for the survey were:

(1) The Director desired to bring to the Service the most efficient and economical administration it was possible to attain. This called for decentralizing the operations of the Service as com-pletely as possible without losing the necessary uniformity in administration in its regional units. If complete decentraliza-tion of authority was to be effective, it was believed to be de-sirable to organize the personnel, records and procedures of the regional offices in such a way as to allow for a maximum degree of discretion and judgment to be exercised within a uniform pattern of administrative procedures. It was also deemed to be necessary to provide for a system of reports and personal liaison which would keep the national office currently and ade-quately advised of the operations of the field service.

(2) The establishment of the Federal Mediation and Conciliation Service as an independent agency and the newly enacted pro-visions of law requiring that dispute notices be filed with the Service both necessitated the introduction of records and con-trols which either were not previously required or, if they existed, were not adequate for the new needs of the Service.

(3) Many office procedures in use when the Service became an inde-pendent agency had been devised during the war years to meet the then special needs of the Service. Since for a period of years no new office procedures had been generally placed into effect in the United States Conciliation Service, diverse office forms and practices had developed.

The reorganization proposals resulting from this survey were placed in effect over a period of several months beginning in June 1948. By the time this report was written in December 1948, the changes had been practically completed. The proposals provided for a further decentralization of the operations of the Service, and for the intro-duction of a more simplified organization structure throughout the Service.

The decentralization of the work of the Service was accomplished in several ways. First, the number of regions was increased from 8 to 12, thus making the facilities of the Service more readily available to the parties. This move resulted in regional directors of the Serv-ice having fewer men to direct, and permitted more intimate and better supervision. Secondly, provision was made for having all requests for the assignment of commissioners and

all dispute notices[1] filed directly with the regional offices of the Service. Finally, the concilia-tion report files in the national office were discontinued and all con-ciliation reports by commissioners are now being filed with the re-gional offices only. This procedure has eliminated the duplication of files and has also eliminated the necessity for sending large quantities of paper to Washington for examination and filing.

There were five principal organization changes made in the field. First, there were established standard position descriptions for all field positions—clerical, conciliator, and supervisory. Secondly, for each grade level of the conciliator positions, specific qualification standards were established. Third, a new and more equitable salary plan for conciliators was placed in effect. Under the new salary plan an entrance grade of CAF-11 with a salary of $5,232 per annum was established; in addition, provision was made for regular advancement at intervals of about 1 year to two higher grades (CAF-12, $6,235 per annum; and CAF-13, $7,432 per annum) for all employees who demonstrated the ability to perform satisfactorily the duties of the position. A special new grade of commissioner was also created at grade CAF-14, $8,510 per annum, to be given to only a selected group of outstanding conciliators who are possessed of more than usual ability and qualifications. In addition, a committee was established to study the bases for determining the appropriate number and dis-tribution of conciliators and to establish criteria for determining the proper location of each conciliator.

The reorganization of the national office provided for a further simplification of organization structure and a reduction in the num-ber of positions in that office. There are maintained in the national office only the minimum number of positions required to provide for policy formulation and over-all direction and coordination of the activities in the field. Specifically, the national office is limited to the functions and organization units indicated in the accompanying chart.

One further change provided for the establishment of the positions of district representatives. These officials serve in a dual capacity: First, as representatives of the field in the national office; second, as representatives of the Director in the field. Their principal function is to provide a closer liaison between the field and the Director and to serve as a two-way channel of communication, bringing the prob-lems of the field to the attention of the Director more rapidly and more effectively through oral communication and by carrying the thinking and policies of the Director to the field in the same manner.

As indicated above, the greater part of the proposed reorganization has now been placed in effect. The new uniform grades and qualifi-cation standards have been introduced throughout the Service and all commissioners are now properly classified and have had their grades adjusted to conform to the new standards. Four new regional direc-tors have been appointed and their new offices have been staffed, or-ganized, and placed on a routine operating basis. Three district representatives have been appointed and their functions discussed with the regional directors to insure that the new method of securing satisfactory liaison between the national office and the field will be properly carried on. All the offices of the Service are operating under * the new uniform office procedures. Commissioners are preparing their reports on the newly devised report forms and the new reporting requirements are being observed.

The new organization of the Service is reflected in the accompanying organization chart. In the process of arriving at this new simplified organization, it has been necessary to eliminate a number of positions in the national office and to establish some new positions in the field service. These changes have been accomplished without the loss of any of the trained personnel in the Service. Although experience with the new organization of the Service has been extremely limited, the results so far have indicated that the plans of the Service are properly directed and that a greater degree of efficiency of operations than previously existed has already been achieved. Every individual and every organization is by nature resistant to change and this Service has been no exception. However, once the value of the changes which were made had been recognized by the personnel of the Service there was complete acceptance and whole-hearted cooperation in carrying on the work of the Service under the new organization plan. The changes made have been primarily ad-ministrative in their nature and have involved the organization and management of the Service rather than techniques of mediation and conciliation.

In summary, the results of the organization and management survey indicated the need for a more simplified organization with a greater concentration of staff and resources in the field where the bulk of the work of the Service is performed. There was also indicated a need for a closer relationship between the Director and the field staff with an increase in the volume and frequency of communication between the two. Finally, there was indicated a need for a reduction in the volume of paper work and a greater degree of concentration of effort on operations rather than records. The changes made were directed at satisfying these indicated needs.

National Labor Management Panel

Section 205 (a) of the act provides that there shall be a National .Labor-Management Panel composed of 12 members appointed by the President, 6 of whom shall be selected from persons outstanding in the field of management and 6 of whom shall be selected from persons outstanding in the field of labor. It is the duty of the

[1] See p. 18 for description and purpose of dispute notices.

panel at the request of the Director of the Service "to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with refer-ence to controversies affecting the general welfare of the country."

On December 18,1947, President Truman appointed the panel. The names, business associations, and terms of office of the members are as follows:

Management

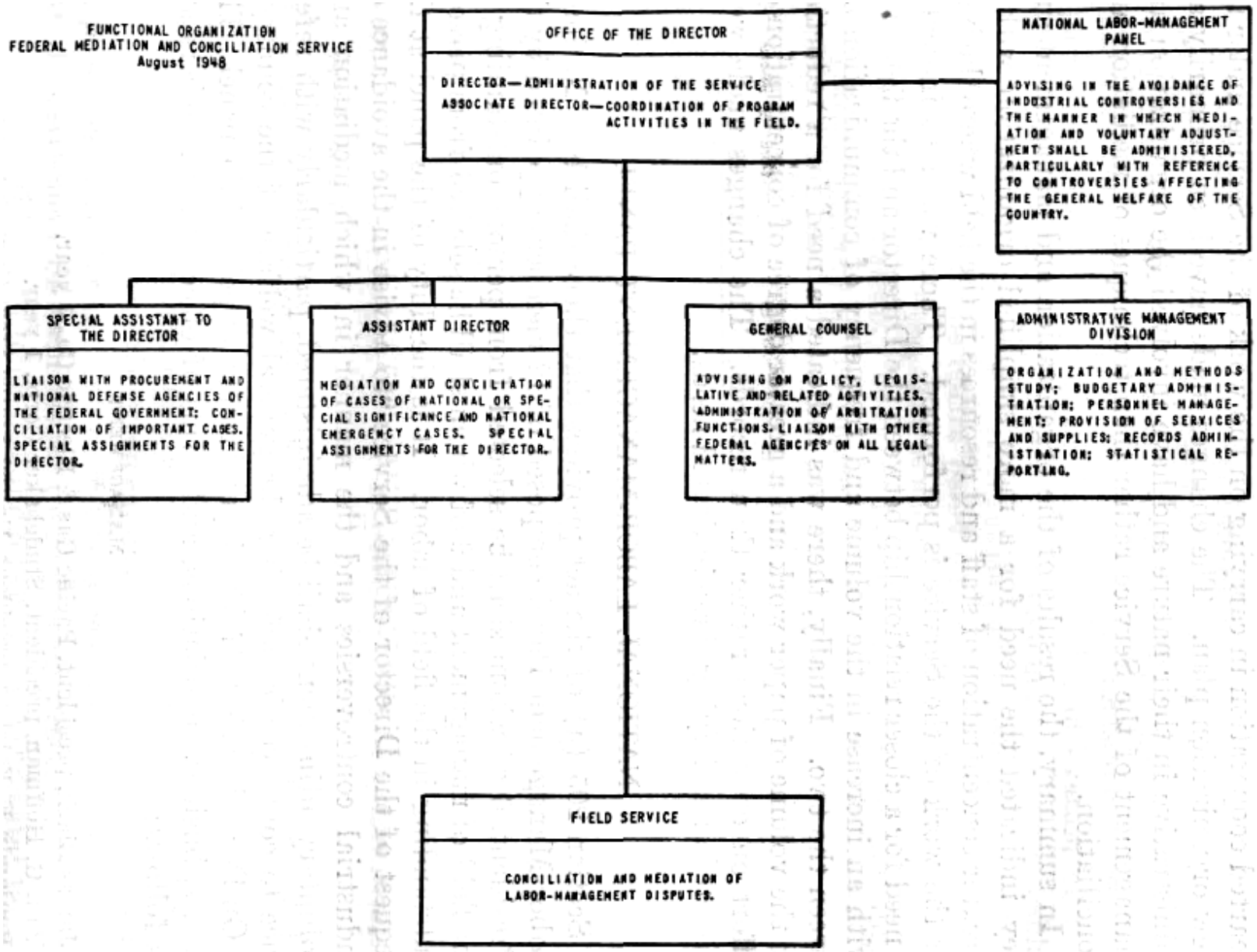
James Black, president, Pacific Gas & Electric Co., 1 year.
Paul G. Hoffman, president, Studebaker Corp., 1 year.
Benjamin F. Fairless, president, United States Steel Corp., 3 years.
George M. Humphrey, president, M. A. Hanna Co., 2 years.
Lewis Lapham, president, American-Hawaiian Steamship Co., 2 years.
Charles E. Wilson, president, General Electric Co., 3 years.

Labor

Harvey W. Brown, president, International Association of Machinists, 1 year.
Clinton S. Golden, 2 years.
William Green, president, American Federation of Labor, 3 years.
Allan S. Haywood, vice president, Congress of Industrial Organizations, 1 year.
William L. Hutcheson, president, United Brotherhood of Carpenters and Joiners of America, 2 years. Philip Murray, president, Congress of Industrial Organizations, 3 years.

The panel has held one formal meeting during the course of the year at which there was extensive and helpful discussion of the basic problems of policy faced by the Service. The Director has been afforded an opportunity to consult with individual members of the panel, on frequent occasions, for valued advice and assistance in respect of particular problems and labor disputes. This utilization of the^ membership of the panel has been found to be much more practicable in dealing with problems of the Service as they arise than the convening of formal meetings of the entire panel on predetermined occasions. The Service feels, however, that it should avail itself of greater use of the panel, as a statutory body, and expects to call panel meetings with greater frequency in the future.

FUNCTIONAL ORGANIZATION
FEDERAL MEDIATION AND CONCILIATION SERVICE
August 1948



Chapter 3

Functions and Policies of the Service

Conciliation and Mediation

Provisions of the act

It is the basic function of the Service to promote the policy of the United States with regard to industrial relations, as set forth in section 201 of the act. Those provisions declare that sound and stable indus-trial peace and the national welfare can most satisfactorily be secured "by the settlement of issues between employers and. employees through the processes of conference and collective bargaining" (subsec. (a)); that the settlement of such issues through such processes "may be advanced by making available full and adequate governmental facili-ties for conciliation, mediation and voluntary arbitration" (subsec. (b)); and that certain controversies arising between parties to collec-tive bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and unions "in formulating for inclusion within such agreements provision for adequate notice of any pro-posed changes in the terms of such agreements, for the final adjust-ment of grievances or questions regarding the application or inter-pretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies" (subsec. (c)).

These "policy" provisions introduce title II of the act, in the body of which are contained all of the substantive provisions dealing with the organization, duties and procedures of the Service.[1] The duty of the Service is expressed in section 203 (a) as being "to assist parties to labor disputes in industries affecting commerce[2] to settle such disputes through conciliation and mediation." This "duty" provision is implemented by section 203 (b) which sets forth the standards for its performance and the circumstances under which the duty devolves on the Service. These provisions will be discussed in connection with the "jurisdiction" of the Service.

Jurisdictional limitations and problems

Interstate commerce.—Section 203 (b) contains a general statement of the jurisdiction of the Service. This section also directs the Serv-ice to avoid attempting to exercise its jurisdiction in certain cases deemed by Congress to be matters primarily of State or local concern.

In the first sentence of section 203 (b) Congress, for the first time in the history of Federal conciliation, defines the authority of the Federal Mediation and Conciliation Service in terms of the effect of a labor dispute on interstate commerce. The Organic Act, under which the United States Conciliation Service in the Department of Labor operated, contained no such limitation. Section 203 (b) states that "the Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of any one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interrup-tion of commerce."[3]

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[1] Sec. 8 (d) (3), in title I, imposes a duty on parties desiring to modify the terms of, or to terminate, existing collective bargaining contracts to file notices thereof with the Service.

[2] 'Defined in sec. 501 (1).

[3] The legal limits of the jurisdiction of the Service, as expressed in sec. 203 (a), and the first sentence in sec. 203 (b), appears not to be materially different from that conferred on the National Labor Relations Board in respect of unfair labor practices by sec. 10 (a) of the act. The judicial decisions interpreting the phrase "affecting commerce" (see sec. 203 (a) of the act), as it appeared in the National Labor Relations Act, declared that the Board's jurisdiction began where threatened industrial strife would result in a "sub-stantial" interruption to or interference with commerce (N. L. R. B. v. Baltimore Transit Co., CCA-4: 1944, 140 Fed. (2d) 51) ; further, that jurisdiction would not be determined by mathematical formulae of the extent of interference but by determining whether a labor dispute would affect interstate commerce to a "substantial" extent; i.e., more than would be covered by the *maxim de minimus non curat lex*. (*Santa Cruz Fruit Packing Co. v. N. L. R. B.* (1938), 303 U. S. 453 ; *N. L. R. B. v. Fainblatt* (1939), 306 U. S. 601).

The Service must necessarily give weight to the judicial gloss on the legislative language determinative of the jurisdiction of the National Labor Relations Board in seeking to understand its own. If "substantial" is a word which necessarily limits the "affecting commerce" jurisdiction of the Board, and, by court interpretation, the jurisdiction of the Board encompasses all disputes which threaten more than a trivial interruption of com-merce, the legislative jurisdiction of the Service, by a parity of reasoning would be, indeed, very broad.

Although this interpretation of the first sentence of sec. 203 (b) appears to flow from the words employed and is fortified by the unconditional language of sec. 203 (a) which places a duty on the Service to act in situations "affecting commerce", the Service, for several reasons, has not undertaken to extend Its jurisdiction to the boundaries suggested. There are cogent reasons for believing that, notwithstanding the terms employed by Con-gress, it had a basic desire and intention to circumscribe the area of action of Federal mediation activities. This intention is derived from the provisions in the act

In compliance with this provision, the Service has issued instructions to its staff to follow the practice of entering only those cases in which a significant or considerable interruption of commerce is threatened and in which the interest of the Federal Government to provide mediation services is clear.

Before proceeding to the second sentence of section 203 (b) it seems appropriate to observe that the first sentence provides that the Service may act in a labor dispute, either upon its own motion, or upon the request of one or more of the parties to the dispute. Knowledge of the existence of a labor dispute is communicated to the Service by the parties, either by written or oral request or by notice filed in com-pliance with section 8 (d) (3) of the act. That section prescribes certain procedures and constitutes a partial definition of collective bargaining. By filing a notice, employers and unions desiring to modify or terminate existing collective bargaining contracts place the Service in a state of awareness and readiness to offer its mediation facilities if the situation demands them.

The second sentence in section 203 (b) ties in with the requirement that State mediation services be notified of unresolved disputes and sets forth the legislative formula for marking out the respective roles of the Federal and State services. Congress, in this formula, has not undertaken to cede outright to the States any portion of the area of its jurisdiction in the field of disputes affecting commerce. Instead, it has merely instructed ("directed") the Service "to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties."

A direction to avoid a course of action is less than a flat prohibition and interdiction. It would appear that by employing the rather unusual quoted language in preference to the more conventional language of flat prohibition, Congress recognized that there might be exceptional cases within the area ordinarily withdrawn from the jurisdiction of the Service in which the offering of its facilities might be desirable and justifiable.

As in the instance presented by the first sentence of section 203 (b), however, the policy of the Service in relation to the second sentence has been much more restrictive than what seems to it to be a permissible interpretation of the language. The policy of the Service, basically, is that the primary responsibility for industrial peace is on the parties; then on the community or State, and lastly on the Federal Government. Labor disputes, the impact of which will not materially interfere with the free flow of commerce and therefore are not pri-marily matters of Federal concern should be mediated, if need be, by State or city agencies, when they are available to act. What disputes would have a minor effect and what would have a more than minor effect upon interstate commerce is extremely difficult to determine— especially in a field in which rapid decisions must be made, without an opportunity, such as is afforded to the National Labor Relations Board and other administrative agencies, to gather evidence, sift it, and to come to an informed conclusion. Accordingly, the determina-tion of responsibility for mediating disputes in the shaded area of jurisdiction has been left to the agreements, accommodations, coopera-tion, and mutual agreement of the regional directors of the Service and the officers of State and other mediation agencies.

In an effort to execute the intention of Congress, the Service has entered or sought to enter into arrangements with State and other mediation agencies. The degree of success achieved and the problems encountered will be discussed in a subsequent portion of this report.

Grievance cases.—The Congress had declared in section 203 (d) that the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargain-ing contract is "final adjustment by a method agreed upon by the par-ties." This is in line with the general policy contained in section 201 (c), in which it is stated, "full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees" should be made available in formulating for inclusion in collective bargaining agreements provisions "for the final adjustment of grievances or questions regarding the application or interpretation of such agreements and other provisions designed to prevent subse-quent arising of such controversies." These facilities are made avail-able by the Service, whose mediators, when appropriate, suggest griev-ance machinery and procedure to the parties, and the voluntary arbi-tration of grievance disputes which cannot be settled by negotiation. The supplementary role played by the Service in the arbitration process is discussed under "Arbitration."

Section 203 (d) then proceeds to direct the Service to make its con-ciliation facilities available in the settlement of grievance disputes "only as a last resort and in exceptional cases." The Service has en-deavored to comply with that direction. It does not read the legis-lative direction, however, as requiring it to refuse its mediation fa-cilities entirely when requested to concern itself with a grievance dispute. When such a request is received with respect to a case which does not come within the stated exceptions in section 203 (d), and the dispute would-otherwise be within its jurisdiction under the pro-vision of section 203 (b); it is the policy of the Service to assign a mediator to the case for certain limited purposes. The mediator will usually urge the parties to utilize the grievance or

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recognizing the place and function of State and local agencies. Further, several weeks after the Eightieth Congress passed the act it granted appropriations to the Service which, in amount, did not warrant the assumption that a vast increase in the area of responsibility of the Service was contemplated. Accordingly, the Service has proceeded on the assumption that it was not the legislative intention that it might intercede in any labor dispute which simply threatens more than a *de minimus* interruption of commerce.

arbitration procedures in their collective bargaining contract, if the contract contains such provisions; if the contract does not provide adequate procedures, he will attempt to persuade the parties to agree upon such procedures for the purpose of settling the immediate issue in dispute. This activity is not regarded as the "settlement of such grievance disputes" by an officer of the Service, but rather, as as-sistance to the parties in agreeing upon a method of adjustment by themselves (or by an arbitrator to whom they delegate their responsi-bility).

The determination of which grievance cases fall within the stated exception categories of "last resort" and "exceptional" depends upon the special facts and circumstances of each case. Before undertaking to participate in the "settlement of such grievance disputes" mediators are required to present a factual justification of such action to super-visory officers in the Service.

Representation cases.—The United States Conciliation Service pol-icy, generally, was to avoid undertaking to participate in the determi-nation of the authorized representative of employees for bargaining purposes. That agency, however, occasionally conducted a card check of union membership on the joint request of employers and unions.

The present Service generally adheres to the policy of abstaining from any activity in the resolution of representation and like issues. This policy is based upon the fact that the Labor Management Rela-tions Act, 1947 contains a code of procedures to be administered by the National Labor Relations Board and its General Counsel for the de-termination of bargaining units, the conduct of elections, and the certification of authorized bargaining agencies. No functions or duties are allocated to the Service by title I of the act. All requests to the Service to assist in determining the appropriate representatives for bargaining, therefore, are referred by the Service to the National Labor Relations Board.

As a corollary to this policy the Service refrains from attempting to persuade an employer, in the course of mediation, to deal with a union when the employer declares that title I imposes no duty upon him to bargain with that union. A refusal of an employer to bargain collectively is made an unfair labor practice by section 8 (a) (5) of the act which is administered by the National Labor Relations Board. No authority is conferred upon the Service to assist in the resolution of such issues, and any efforts it might make to mediate them, if success-ful, might well be at variance with the policies and ultimate decisions of the Board and might result in the parties committing unfair labor practices at the instigation of the Service.

The duty of the National Labor Relations Board is to determine the correct bargaining unit, to hold elections, to certify the authorized agency of the employees, and to remove obstacles to collective bargain-ing. The duty of the Federal Mediation and Conciliation Service normally begins when the negotiators recognize the authority of each other to represent their principals, and are disposed to bargain, but experience difficulty in reaching an agreement.

Preventive activities

The basic industrial relations policy of the United States as ex-pressed by section 201 of the act, cannot be effectuated by mediation efforts exerted only when employers and unions are at an impasse in the course of a labor dispute. In such a situation it is not reasonable to expect mediators to do much more than to avert resort to strikes or lock-outs, and to persuade the parties to arrive at a bargained settle-ment of their dispute with due regard to the balance of the respective economic strengths and the public interest. Such settlements, how-ever, may sometimes mean no more than a temporary armistice and furnish no guarantee that difficulties will not be experienced anew on the termination of the contract. Effective promotion of industrial peace requires that efforts be put forth when the situation is not at crisis stage, when tempers are cool, and the mutual advantage of both parties may the more readily be recognized.

Many mediators previously on the staff of the United States Con-ciliation Service and now on the staff of the present Service, with a recognition of these facts, have for years engaged successfully in mediation activities when the parties were not in dispute. These ac-tivities have consisted mainly in searching out and analyzing situations which threaten peaceful industrial relations in their communities or areas and devising procedures and plans or formu-lating suggestions which have tended to remove impediments to good labor relations and promote the possibility of the parties reaching agreement on the occasion of the next contract reopening. It is the policy of the Service to stress the importance of this activity and to program it as part of the regular functions of the Service. This policy and program has been discussed with members of the executive and legislative branch, with the National Labor-Management Panel, and with groups of employer and union representatives in many parts of the country. It has received enthusiastic endorsement as a most important supplement to the regular mediation activities of the Serv-ice in active dispute cases.

Last offer ballots

Section 203 (c) provides that the Director, if unable to bring the parties to agreement within a reasonable time, shall seek to induce them voluntarily to seek other means of settling the dispute without resort to strike, lock-out,

or other coercion, "including submission to the employees in the bargaining unit of the employer's last offer of Settlement for approval or rejection in a secret ballot." Failure or refusal to agree to any suggestion made by the Director is not to be deemed a violation of any duty or obligation imposed by the act.

It is the policy of the Service to fulfill this direction. Its mediators have sought to induce the parties to employ the last-offer ballot pro-cedure whenever, in the exercise of their best judgment, the circum-stances have been appropriate. This situation will usually prevail when all other efforts to avert a strike or lock-out have proved un-availing and the mediator finds that there is, in fact, a last offer which the employer has made or is willing to make.

It is the policy of the Service not to conduct such secret ballots. This position was dictated by several considerations. First, sec-tion 203 (c) does not grant authority to the Federal Mediation and Conciliation Service to conduct such ballots. Second, the admin-istration of such elections requires skilled personnel experienced in the technique of conducting ballots of employees. The person-nel of the Service has no such skills or experience. Third, the nec-essity of ruling on challenges to votes would place the Service in a position which might interfere with the future usefulness of its staff as mediators. Fourth, funds have not been appropriated to the Serv-ice for conducting such ballots.

Dispute notices

Except for a period during World War II,[4] there was, prior to the enactment of the Labor Management Relations Act, 1947, no regular channel of information to the United States Conciliation Service with respect to the existence of disputes, the identity of disputants, the issues involved, etc. The Service was obliged to rely upon specific requests of the parties to a dispute that the Service intercede and upon indirect Sources of information, such as newspaper accounts. The unsatisfactory character of these channels of communication resulted in the Service, on many occasions, entering disputes tardily. Some-times, the parties had become adamant in their view before the Service was afforded an opportunity to intercede. In section 8 (d) Congress has taken steps to remedy this situation and has provided a formal method for advance notification of the Service of impending disputes. Section 8 (d) of the Labor Management Relations Act, 1947, is, in form, a partial definition of collective bargaining. The failure to engage in such bargaining subjects a party to a charge that it is guilty of an unfair labor practice and to specific sanctions. The definition concerns itself primarily with procedures. A party to an existing collective bargaining contract desiring to modify or termi-nate that contract is required to notify the other party of its desire 60 days prior to the effective date of such termination or modification and to offer to meet with and confer with the other party. Subsection (3) requires the parties to notify the Service if, within 30 days after having served the first notice, no agreement has been reached. A similar notice is required to be given simultaneously to any State or Territorial agency established to mediate disputes within the State or Territory where the dispute exists.

The statute does not prescribe the contents of the notice nor require that it be in any form approved by the Service; consequently, notices are sometimes received by the Service with inadequate information. In an effort to overcome this difficulty the Service has given wide distribution to a form which calls for a minimum amount of informa-tion. The parties have welcomed the availability of such a form and have been most cooperative in utilizing it in complying with section 8 (d) (3) of the act.

National emergency disputes

For the first time, in respect to disputes in industry, generally, Congress has enacted a detailed code of procedures for peacetime handling of labor disputes constituting national emergencies. The only other previous effort of Congress in this direction has been in respect of railroad and airline transportation.

Briefly stated, the act (sec. 206 et seq.) provides that whenever in the opinion of the President a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce will, if permitted to occur or to continue, imperil the national safety or health, he may appoint a board of inquiry. The board is required to report to him, within such time as he may require, the facts with respect to the dispute and the positions of the parties on the issues. The board may not make recom-mendations but its report is made public. After receiving the report the President may direct the Attorney General to petition the United States district courts for an injunction which may be issued if the court finds the stated jurisdictional facts (commerce and imperilment of national health or safety) to exist. The parties are under a duty, during the life of the injunction, to continue bargaining with the assistance of the Federal Mediation and Conciliation Service. At the end of a 60-day period the board is required to report the current positions of the parties, the efforts made to settle the dispute and a statement of the employer's last offer of settlement, which is to be made public by the President. The National Labor Relations Board, within 15 days, is required to take a secret ballot of the employees as to whether they desire to accept the employer's last offer of

[4] The War Labor Disputes Act required the filing of strike notices.

settlement and to certify the results to the Attorney General within 5 days there-after. The Attorney General then moves the court to discharge the injunction. When the motion is granted, the President is to submit to the Congress a full and comprehensive report of the proceedings, together with such recommendations as he may see fit to make.

Arbitration

The public interest, as well as the interest of the parties themselves, requires that all methods for the peaceful solution of labor difficul-ties be exhausted before the parties resort to a test of economic strength. If all efforts to mediate the issues or conciliate the parties have proved unsuccessful in resolving outstanding differences espe-cially those involving grievances and those affecting the continued operation of public utilities, the commissioners of the Service, where appropriate, endeavor to persuade the parties to arbitrate such dif-ferences. In so employing the arbitration process, the Service regards it as an extension of or a supplement to its mediation and conciliation functions.[5]

After arbitration has been voluntarily agreed to by the parties, the primary function of the Service is to furnish impartial assistance to them in their selection of the arbitrator. The Service believes that the parties who have delegated their authority to third persons to make decisions binding upon them, should agree upon and assume respon-sibility for the selection of arbitrators. Parties requesting the appointment of an arbitrator are informed that the Service prefers to submit the names of five qualified arbitrators in the area and are urged, in accordance with any procedure which is mutually agree-able, to select one as the arbitrator. If the parties cannot agree upon a selection from the list submitted by the Service, the Service will designate an arbitrator not on the list if the parties agree to this procedure. An arbitrator so designated is none the less considered to be the arbitrator of the parties. He has no responsibility to the Service, other than to act in accordance with certain maximum fee and other basic administrative rules prescribed for arbitrators whom the Service nominates.

The United States Conciliation Service at one time maintained a staff of arbitrators whose compensation and fees were paid by the Federal Government. These arbitrators were available at no charge to the parties to arbitrate labor disputes, on the request of the parties. The Federal Mediation and Conciliation Service no longer makes available paid arbitration, except in most unusual situations. This policy was dictated by several considerations, not the least of which was the conviction that a mediation service prejudices its usefulness to the parties when it takes responsibility for arbitration awards in labor disputes. The mediator is the confidential advisor and coun-selor of the disputants; the arbitrator hands down a quasi-judicial award which decides a dispute in favor of one party or the other. When an arbitrator bearing an official relation to a mediation agency issues an award not to the liking of one party, whether or not justified, a danger exists that that party may no longer repose confidence in the mediators of the agency. Moreover, in the absence of an appro-priation for Government-paid arbitration sufficient to supply arbitra-tors to all who request such services, it becomes necessary to determine which companies and unions should have access to these free facilities. The Government may not withhold such services except on reasonable grounds. Manifestly, the Service should not have the right or duty to inquire into the financial capacities of unions and employers to determine whether arbitration should be free in particular instances. In the absence of such standards, however, reasonable and proper decisions cannot be made.

The Service does not employ any "approved" or "blue ribbon" list as the exclusive source of its arbitrator nominees and appointees. Rather, it maintains an extensive file of the names of qualified arbitra-tors throughout the country and seeks to inform itself as thoroughly as possible of their acceptability to management and unions. The names submitted to the parties are selected with reference to such acceptability and to the experience of the proposed arbitrators with the type of dispute in issue. Fees of from $50 tip to, but not exceed-ing, $100 per day, may be charged by its nominees or appointees de-pending on the size and difficulty of the case. In addition, actual expenses may also be charged. Arbitration awards are not released for publication by the Service, or by the arbitrators it nominates or appoints, if either party affected by the award objects to such publication.

During the fiscal year, the Service designated 646 individuals as arbitrators of industrial disputes. Of this number, 307 designations were made under the policies described above, which were initiated by the Service in January of 1948; the remainder of the designations, which numbered 337, were made under policies of the United States

Conciliation Service, which were continued By the Federal Mediation and Conciliation Service until the new policies and procedures were formulated and put into effect.

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[5] The authority of the Service to offer and make available facilities to assist the parties In arbitration stems from sec. 201 (b) and (c), 202 (d) and 203 (c) of the act.

The statistics of arbitrators assigned by the United States Concilia-tion Service in previous fiscal years,[6] are not entirely comparable with the number of designations stated above for the fiscal year 1948. They should not be regarded as of significance in determin-ing whether arbitration is resorted to less frequently to resolve labor disputes or whether there is a tendency to utilize appointing or nomin-ating authorities other than the present Service, The Service has endeavored to minimize the costs of arbitration which the parties must bear by suggesting and encouraging them to proceed with one arbitrator of as many current issues or grievances as he might handle with expedition.[7] As a result of the success of this policy of minimizing costs, it is patent that the number of arbitration proceedings handled during the fiscal year 1948 does not reflect the number of issues involved in such proceedings. Furthermore, the number does not reflect cases in which the Service or its predecessor agency had nom-inated or appointed an arbitrator who had performed to the satis-faction of the parties and who was requested directly by them to act as arbitrator in respect of grievances or contract disputes arising at a later date, without applying to the Service to assist in the selection of an arbitrator.

[6] See the following tabulation :

Fiscal year	Number of arbitrators appointed
1943	1,009
1944	1,185
1945	1,151
1946	959
1947	1,008

[7] In one instance the parties had 214 issues outstanding. The Service was requested to assign one arbitrator for every three issues. After much consultation, seven arbitrators were assigned by the Service and arbitration decisions were rendered in a sufficient number of different types of issues to enable the parties themselves to resolve the remaining issues—at a substantial savings of both time and money.

Chapter 4

Operations of the Federal Mediation and Conciliation Service

Although the last few decades have witnessed a considerable de-velopment of statutory regulation of labor relations by the Federal Government, the basic techniques for the mediation and conciliation of labor disputes remain unchanged. The Labor Management Relations Act, 1947, however, has made for several marked differences between the operations of the Federal Mediation and Conciliation Service and those of the former United States Conciliation Service. From the point of view of the day to day operations of the present Service the following subjects stand out in greatest contrast when comparison is made between the two agencies.

(1) Dispute notices.—While the former United States Conciliation Service assigned most commissioners to disputes as the result of specific requests for the mediation facilities of the Federal Government, the present Federal Mediation and Conciliation Service makes most of its assignments as the result of the receipt of dispute notices filed pursuant to section 8 (d) (3) of the Labor Management Relations Act, 1947.

(2) Jurisdiction.—The United States Conciliation Service rarely refused to participate in negotiations if either side to a dispute requested the assignment of a commissioner. In contrast, the Labor Management Relations Act, 1947, defines the area of responsibility of the present Service in terms of disputes threat-ening a "substantial interruption of commerce" or more than a "minor effect on interstate commerce," depending upon the availability to the parties of a State or other mediation service. Thus the Federal Mediation and Conciliation Service has been required to decline to extend its mediation facilities in many disputes in which the former United States Conciliation Service had interceded at the request of the parties.

(3) Degree of participation.—The United States Conciliation Service made no effort to measure the degree to which com-missioners actually participated in disputes to which they were assigned. To render its reporting system more effective, both for purposes of public information and internal control, the present Service has classified its cases into three categories ac-cording to degree of participation.

Each of these three aspects of the work of the Service is treated in the following sections in which there is also presented a factual, sta-tistical report of the results of the operations of the Service during the first year of its operation. Whenever possible, comparisons for the previous year are also supplied. Unfortunately, the data for previous years and for part of the fiscal year 1948 are not complete. This is due to the fact that the reporting procedure formerly in effect did not provide for accumulation of some of the information now being made available as a result of the changes and improvements in the reporting system initiated during the fiscal year 1948.

Experience with Dispute Notices

In the fiscal year ended June 30,1948,17,401 notices involving 53,385 establishments were received by the Service. The receipt of dispute notices has materially changed the basis upon which assignments to mediate disputes are made. Table 1 shows the difference between the operations of the former United States Conciliation Service and the Federal Mediation and Conciliation Service for two recent periods. These periods were used because, even though data are available for the entire fiscal year 1948, the same type of information is available for only the period from December 1946 through June 1947 for the former United States Conciliation Service.

TABLE 1.—*A comparison of the bases on which commissioners were assigned to disputes by the U. S. Conciliation Service, and the Federal Mediation and Conciliation Service, cases closed December 1946 through June 1947 and December 1947 through June 1948*

Basis of assignment	Percent of total cases closed December 1946 through June 1947 (U. S. Conciliation Service)	Percent of active cases closed December 1947 through June 1948 (Federal Mediation and Conciliation Service)
Total	100.0	100.0
Notice filed under—		
War Labor Disputes Act	48.3	
Labor Management Relations Act		71.2
Request made by—		
Union	37.3	20.9
Employer	4.8	4.1
Both union and employer	6.8	3.1
All other bases of assignment	2.8	.7

While fewer than half (48 percent) of all assignments made by the former United States Conciliation Service in the fiscal year 1947 were made as a result of notices, the present Service made 71 percent of its' assignments on the basis of dispute notices. Under the present pro-visions of the law the parties are required to inform the Service, not less than 30 days before the expiration of the contract between the parties, of the existence of a dispute. This procedure provides a method, without the Service having to rely upon an invitation of one or both parties to the dispute or casual newspaper accounts, for bringing to the attention of the Service labor disputes which it might bear a responsibility to mediate. This procedure also has the virtue of providing the Service with knowledge of a disagreement sufficiently in advance of the expiration of the contract to permit the Service to carry on its' mediation and conciliation functions most effectively.

The notice provisions have proved to be an insurance that the moving party in a contract renegotiation will give sufficient advance notice of changes to permit the other side to give careful and due considera-tion to proposed modifications of existing agreements. Previous to the notice provisions having been enacted into law the tendency of the parties was to delay notifying mediation agencies until the last pos-sible moment before a work stoppage impended. In many situations, by the time the commissioner entered the dispute, a deadlock had already been reached, rendering the efforts of the commissioner far less effective and making his job more difficult to perform.

However, advance notice does not mean that the Service needlessly enters a situation of which it has been informed. On the contrary, the notice provisions have permitted the Service to assume its proper obligations in an orderly fashion. Despite the receipt of dispute notices the Service has declined to assume jurisdiction in a significant number of cases. (See table 2.)

The tendency to prefer the use of formal notices to the Government rather than informal invitations to participate became evident even during the last several years of the existence of the War Labor Dis-putes Act. Many, if not most, 30-day strike notices were filed because it was well known that the receipt of such a notice by the Department of Labor meant the immediate assignment of a United States commis-sioner of conciliation to the dispute. The experience of the former Conciliation Service was that upwards of 90 percent of these so-called strike notices never materialized into a stoppage. Where no other formal notice was required by law the strike notice was preferred to the informal invitation even though it meant using a procedure de-signed for entirely different purposes.

The dispute-notice method of informing the Federal Government of the existence of a dispute has proven its value not only to the Gov-ernment but to the parties themselves. The alternative to filing a dispute notice is, of course, for one or both the parties to the dispute voluntarily to invite the Government to participate in the negotia-tions. The need to extend an invitation to the Government to enter a deadlocked situation has occasionally given rise to misgivings as to the impartiality of the Federal mediation services, if the invitation is extended by only one of the parties. Moreover, the act of invitation is sometimes withheld by the parties because neither side wishes to give the other party the opportunity to interpret the invitation as a sign of weakness. In addition, there is the unfortunate tendency pre-viously pointed out, to delay until almost immediately before the deadline even in those situations where both sides are agreed that a mediator is necessary to help resolve a deadlocked dispute.

Experience with Jurisdiction Problems

In approximately 11 percent of the instances in which notices were received by the Service, jurisdiction was declined on the basis of an initial inspection of the notice in the regional office. While the re-maining 89 percent of the notices were assigned to commissioners, a considerable portion of these notices as well as a considerable portion of direct invitations to participate in negotiations, were subsequently declined by the Service on jurisdictional grounds upon receipt of an investigation report from the commissioner. The procedures of the Service require that a commissioner may intercede in a dispute only after his regional director has made an affirmative decision, on the basis of certain data regarding the establishment involved, that the Service has legal jurisdiction over the dispute and may therefore proceed with mediation and conciliation efforts.

The procedure of the Service in making jurisdiction determinations involves three steps.

(1) When a notice of dispute filed pursuant to section 8 (d) (3) of the act is received, a preliminary determination of jurisdic-tion is made. The regional director decides, on the basis of the information submitted, whether the establishment involved is one which might be within the jurisdiction of the Service. If, on its face, a notice appears to refer to a dispute not within the jurisdiction of the Service, it is filed away without any further action. Notices referring to disputes which appear to be not clearly outside the jurisdiction of the Service are assigned for investigation.

(2) A commissioner who receives an investigation assignment se-cures from both parties information necessary to make a final decision on jurisdiction. He makes it clear to the parties that his investigation does not commit the Service to offering its mediation facilities.

(3) On the basis of the information supplied by the commissioners, the jurisdiction policy of the Service is applied by the regional director who decides whether to authorize the commissioner to intercede in the dispute.

On rare occasions when the dispute is such as to require immediate action, or where the facts of jurisdiction are well known, the investi-gation step may be dispensed with and the commissioner authorized to intercede directly in the dispute.

Table 2 shows that the Service declined jurisdiction in 24 percent of all cases it investigated. The reasons the Service declined to accept jurisdiction in 2,904 disputes even though dispute notices were received or invitations to participate were extended, are also shown in table 2.

TABLE 2.—*Cases closed by the Federal Mediation and Conciliation Service classified according to whether or not the Service accepted jurisdiction, September 1947 through June 1948*

	Number	Percent	Percent
Total cases closed	12,208	100.0	
Cases in which the Service assumed jurisdiction	8,173	66.9	
Cases settled by parties prior to determination of jurisdiction	1,131	9.3	
Cases terminated because the Service lacked jurisdiction	2,904	23.8	100.0
Establishment engaged either in intrastate commerce or no substantial effect on interstate commerce	1,831		63.1
Minor effect on commerce and State or other mediation agency available to parties	596		20.5
Grievances involved and other means of settlement available	131		4.5
Union not recognized by employer as bargaining agent	188		6.5
All other reasons	158		5.4

While it has been possible, in some types of jurisdictional questions, to fix a policy course and adhere to it strictly, most jurisdictional problems have been handled on a case by case basis. The former practice is illustrated by the policy of the Service with regard to situations where the employer refuses to recognize the union as bar-gaining agent and is not required by law to do so. In such situations the Service will normally not intercede. As shown in table 2, however, few cases involve such clear-cut issues. Most of the problems of the Service have involved questions of the degree of effect on commerce and similar questions requiring subjective judgments where no hard and fast rules have been, or are capable of being, promulgated.

The necessity for determining jurisdiction has placed upon the Service and upon the commissioners additional burdens not previ-ously carried by the former United States Conciliation Service. To determine jurisdiction it is necessary to develop policy guides and procedures. It is also necessary to train national office and field per-sonnel to perform a function which, because of the absence of stand-ards capable of easy application, requires constant attention to new developments. More important than any of these problems is that the procedure for determining jurisdiction necessarily results in a delay between the time of receipt of a request for the services of a commissioner or a notice of dispute and the making of a decision as to whether, under the law, a commissioner may be authorized to intercede.

There are other advantages to the dispute notice and investigation procedure which tend to offset the new administrative burdens they place on the Service. These procedures afford the Service an oppor-tunity for a selection of the disputes in which it may intercede. The investigation of the case may clearly indicate that the dispute is one which should be referred to a State or local mediation service, or it may indicate that it is not the type of situation in which media-tion will be effective or in the best interests of the parties or the Nation. In any event the investigation process provides for a period of time during which the Service may determine the legality, propriety, and utility of its intercession in the dispute. Previous to the present requirements of law, when all requests for the intercession of a commissioner were honored immediately, the Federal Government found itself participating in situations in which the propriety of its participation was open to question. Withdrawing from such situa-tions was often extremely difficult in view of the embarrassment such action might cause one or both parties.

Degree of Participation in Dispute Cases

One of the marked changes in the internal reporting practices of the Federal Mediation and Conciliation Service was the classification of all closed cases into the three categories of active, consultation and stand-by. For reporting purposes these terms have been assigned the following definitions:

(1) ***Active case***.—An active case is a dispute assignment in which the commissioner has been authorized to proceed and in which the commissioner is actually participating in the negotiations between the parties by calling separate or joint meetings to be conducted under his sponsorship.

(2) ***Consultation case***.—A consultation case is one in which the commissioner is authorized to proceed but in which the com-missioner does not call meetings of the parties. He does, how-ever, give advice or assistance, either in person, in writing, or by telephone to either or both parties.

(3) ***Stand-by case***.—A stand-by case is one in which the commis-sioner is authorized to proceed but in which the services of the commissioner are not required at the time and he merely stands ready to intercede if and when his services become necessary.

The Service has assumed a responsibility for each case over which it has taken jurisdiction. It is the policy of the Service, however, not to participate in disputes in which its services are not necessary or desired to bring about a settlement of a dispute. For these reasons: the Service has two standards of reporting. When the Service as-sumes jurisdiction over a dispute and the case is active, reports are required with relative frequency from the commissioner as to the progress of negotiations. If, however, the case is in a stand-by or consultation status, less frequent reporting of the status of the negotia-tions is required, except that a report must be filed within ten days before the expiration of the contract in such inactive cases to insure that an inquiry is made sufficiently in advance of the expiration to allow for effective mediation, if necessary.

As a result of changes made in the reporting procedure during the fiscal year 1948, the Service is now able for the first time to indicate the varying degrees in which it was found necessary to participate in those disputes over which it assumed jurisdiction. Table 3 shows for the period from September 1, 1947, approximately when the new Service began its operations, through June 30, 1948, the end of the fiscal year, the distribution of closed cases by the degree of participa-tion by the Service.

TABLE 3.—*Cases closed by the Federal Mediation and Conciliation Service, September 1947 through June 1948, classified by degree of participation by Commissioner in dispute*

Degree of participation	Cases closed	
	Number	Percent
Total	8,173	100.0
Active	4,879	59.7
Consultation	673	8.2
Stand-by	2,621	32.1

The distinction between active, consultation, and stand-by cases is an extremely important factor in the practical operations of the Service. The knowledge that many cases over which it takes juris-diction will remain on a consultation or stand-by basis permits the Service to accept jurisdiction even though the load of dispute notices received at any particular moment is beyond the physical capacities of the Service to handle in active mediation. In the day to day making of assignments a regional director is now in a far better position to determine the availability of particular commissioners than he was previously when every assignment a commissioner had on the books was referred to as a case.

Monthly Variations in Dispute Cases

Table 4 shows the pattern of new case assignments by months for the past 3 years. The table shows for the past three fiscal years a defi-nite seasonal peak in the operations of the Service during the months of March, April, and May. This year the seasonal peak was extended into the month of June. The fiscal years 1946 and 1947 also showed a secondary peak during the month of October which did not appear in the year 1948. This secondary peak was a carry-over from the end of the war when a large number of contracts automatically reopened on the basis of a clause which read to the effect that when the wage stabilization regulations were revised the contract was open for re-negotiation. This secondary peak seems to have run its course, how-ever, by October 1947. The one peak during the spring months has become the outstanding factor of seasonality in the activities of the Service.

TABLE 4.—*Monthly index of new cases assigned by the U. S. Conciliation Service and the Federal Mediation and Conciliation Service, July 1945 through June 1948*

Month	Index (average for year=100)		
	1945-46	1946-47	1947-48
July	136.9	92.9	48.2
August	103.0	100.0	56.0
September	103.3	86.6	66.5
October	115.7	102.3	82.3
November	88.4	89.2	51.4
December	72.4	88.0	64.6
January	73.8	95.7	71.2
February	83.8	90.8	85.0
March	112.8	110.8	142.4
April	115.9	114.8	221.4
May	106.8	123.8	159.5
June	87.2	105.2	151.2

This seasonality of the operations of the Service has become so pro-nounced that the other activities of the Service tend to become regulated by it. Most important is the dovetailing of the preventive activities program with the lightened load of the Service during those periods when the dispute case workload is lightest. In effect, the Service has the opportunity, during part of the year, to carry on preventive activities which will render it more possible to bring about peaceful settlements during that part of the year when contracts, in the main, traditionally expire.

Parenthetically, it may be observed that the extremely precipitous decline during the months of July, August, and September of 1947 was due almost exclusively to the fact that during these months between the expiration of the War Labor Disputes Act and the effective date of the Labor Management Relations Act, 1947, no provision of law existed which required the filing of notices of dispute in any form with the ' Government. During this period it is obvious that the Federal Govern-ment had but scant sources of information concerning the existence of disputes.

Number of Employees Involved in Dispute Cases

Cases involving 1,000 or more employees accounted for 68 percent of all employees involved in active dispute cases. Such cases were only 9.0 percent of the total number of cases handled by the Service during the last 4 months of the fiscal year (the only period during the year for which such figures are available). On the other hand most active cases handled by the Service (71.0 percent) involved fewer than 300 employees; 42.7 percent of all active cases involved fewer than 100 employees. Table 5 shows the distribution of employees and cases according to the number of employees involved in the dispute.

TABLE 5.—*Number of employees involved in active dispute cases closed by the Federal Mediation and Conciliation Service, April through June 1948*

Number of employees involved	Number		Percent	
	Cases	Employees	Cases	Employees
Total	2,379	1,261,970	100.0	100.0
1 to 99	1,018	42,145	42.7	3.3
100 to 299	674	116,741	28.3	9.3
300 to 999	470	244,371	19.8	19.4
1,000 or more	213	858,713	9.0	68.0
Number not reported	4	----------	.2	----------

Issues Involved in Dispute Cases

Table 6 shows that almost 85 percent of all disputes handled by the Service in the fiscal year ended June 30,

1948, involved wage issues, either alone or together with other issues. These wage cases involved 87 percent of all workers involved in disputes handled by the Service. Despite the fact that the Labor Management Relations Act, 1947, resulted in profound changes in many existing contract provisions regarding union security, this issue appeared in only 19 percent of all cases handled by the Service. The preeminence of the wage issue in so many disputes is, of course, probably due to the continued advance of the price level during the year.

TABLE 6.—*Issues involved in active dispute cases closed by the Federal Mediation and Conciliation Service, July 1947 through June 1948*

Issues	Cases	Employees
Grand total [a]	7,198	3,129,705
NONCONTRACT ISSUES		
Recognition	300	62,250
Grievances	401	94,166
Jurisdictional dispute	21	15,640
Sympathy strike	3	303
CONTRACT PROVISIONS		
Wage issues—total	6,100	2,722,736
First contract	229	28,520
Wages only	1,961	845,663
Wages, union security and any other	1,284	611,678
Wages and vacations and/or paid holidays	614	159,996
Wages and hours (includes retroactivity)	103	23,277
Wages and any other (except union security)	1,909	1,053,602
Nonwage provisions—total	373	234,610
Union security	43	26,521
Union security and any other issues (except wages)	61	51,079
All other contract provisions	269	157,010

[a] Does not include "cases affecting 689 workers closed prior to October 1947, in which consent elections were involved.

Although the Service has established rigorous standards regarding its entrance into recognition, grievance, and jurisdictional disputes, the Service did handle 722 such cases during the year. These cases represent only 10 percent of all cases handled but it is anticipated that far fewer will be handled next year. The decline in such cases handled can be seen from a distribution of these types of cases during the first G months and the last 6 months of the year. From July through De-cember 1947, 529 cases were handled in these three categories. From January through June 1948 only 193 such cases were handled. Thus, almost three-fourths of all such cases handled during the year were handled during the first part of the year before policy on these matters was crystallized. After the policy of the Service was announced there was a decline in the latter half of the year of 64 percent in the number of such cases mediated by the Service.

Types of Active Cases Mediated by the Service

In the fiscal year 1948, a total of 15,273 cases, over which the Service asserted jurisdiction, were closed. Of these 15,273 cases, 7,209 or 47.2 percent were active cases. Of these 7,209 active cases only the rela-tively small number of 1,296 involved actual work stoppages. While only 18 percent of all active cases closed by the Service involved work stoppages, this same group of cases involved 26.7 percent of all workers involved in closed cases. The different types of situations involved in active mediation cases closed is shown below in table 8.

TABLE 7.—*Type of situation involved in active cases closed by the Federal Mediation and Conciliation Service, fiscal year 1948*

Type of situation	Cases		Workers involved	
	Number	Percent	Number	Percent
Total	7,209	100.0	3,130,394	100.0
Work stoppages	1,296	18.0	836,865	26.7
Threatened work stoppages	1,845	25.6	831,594	26.6
Controversies	4,068	56.4	1,461,935	46.7

The number of work stoppages handled by the Service should not be confused with the total number of work stoppages which occurred in the entire country during the fiscal year. The latter data are compiled by the Bureau of Labor Statistics and not by the Service. The Service maintains records of only its own activities and has no budgeted facilities for reporting national statistics of work stoppages. Nor may comparison be made between these figures and statistics issued previously by the United States Conciliation Service. The statistics of the United States Conciliation Service included inactive cases (consultation and stand-by cases) on which the Federal Mediation and Conciliation Service did not maintain any detailed records during the fiscal year 1948.

Only a part of the 1,296 work stoppages actively mediated by the Service in the fiscal year 1948 became work stoppages during the course of the mediation efforts of a commissioner of the Service. In 785 or 60.6 percent of all actively mediated work stoppages, the stoppage developed after a commissioner had interceded in the dispute. In the remaining 511, or 39.4 percent, the work stoppage had already developed before the commissioner had entered the dispute. It is noteworthy that of all the threatened work stoppage situations in which the Service interceded (2,630), only 29.8 percent (785) de-veloped into actual work stoppages.

Last Offer Ballots

Section 203 (c) of the Labor Management Relations Act, 1947, re-quires that the Service shall "seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including 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 act does not make it mandatory for either side to agree to any procedures suggested by the Service or to the taking of a secret ballot.

Perhaps no provision of the law has been more misunderstood by both unions and employers and, in the early days of administration of the act, even by commissioners of the Service. The reason for this is that many, if not most, union constitutions and bylaws provide that no agreement may be binding upon the union unless and until its membership, by secret ballot, has ratified the agreement entered into by the officials of the union. Many have considered such a ratification of an agreement reached through bargaining as a "last offer ballot" within the meaning of section 203 (c) of the act. For that reason many ratifications of agreements have been reported to the Federal Mediation and Conciliation Service as bona fide secret ballots on the employer's last offer even though the plain meaning of the act was contrary to such interpretation. For that reason, too, there has been a misunderstanding in the public's mind as to the extensiveness of the actual use of the provisions of the law and as to its effectiveness. The Service has now issued regulations and procedures which it hopes will provide accurate statistics as to the actual operations of this section of the law.

The figures shown in table 7 must be examined with these limita-tions in mind. On the basis of information currently available it is impossible to state how many of the secret ballots reported to the Serv-ice have in fact been bona fide "last offer ballots" as contemplated by section 203 (c). The commissioners of the Service are not present, usually, when such ballots are conducted and must report facts at sec-ond hand. It is our opinion that most of the so-called secret ballots which appear in table 7 are not "last offer ballots" at all but, in fact, are only ratifications of agreements reached by unions and employers.

TABLE 8.—*Number of secret ballots on the employer's last offer proposed by commissioner and results of secret ballots taken, January 1948 through June 1948*

	Number	Percent	Percent
Ballots proposed	734	100.0	-----
Total rejected	327	44.6	100.0
Rejected by union	259	-----	79.2
Rejected by employer	18	-----	5.5
Rejected by both	50	-----	15.3
No information	45	6.1	-----
RESULTS OF BALLOTS TAKEN			
Ballots accepted by both parties	362	49.3	-----
Total votes recorded	251	100.0	-----
Employer's last offer accepted	139	55.4	-----
Employer's last offer rejected	112	44.6	-----
No information	111	-----	-----

Between August 1947 and June 1948 commissioners have reported that they have suggested the last-offer ballot 734 times. Information is available on 689 of these suggestions. In 327 cases, 47.5 percent of the total, the suggestion to poll the employees was turned down. In the 362 times in which the poll was agreed to, information as to the results is available in 251 situations. In 139 last-offer ballots, which was 55.4 percent of the total, the employer's last offer was accepted, in the remaining 112 cases (44.6 percent) the employer's last offer was rejected.

The technique of suggesting that secret ballots be conducted on the acceptability of the employer's last offer has been utilized by Federal mediators for many years. It is a technique, however, which is rarely employed by the parties. The reason for this is that a secret ballot may, under some circumstances, appear to be a means for repudiating the elected leadership of the union. If the circumstances are not propitious, the proposal to have a secret ballot may do more harm than good. It is the attitude of the Federal Mediation and Concilia-tion Service that a secret ballot on the employer's last offer may be useful under certain circumstances. The Service feels, however, that indiscriminately proposing a secret ballot in every dispute situation serves no useful purpose but may on the contrary destroy the useful-ness of the secret ballot in those few situations in which it may be successfully utilized to avert a work stoppage.

Chapter 5

Experience in Federal-State Relations

The Labor Management Relations Act, 1947 (sec. 8 (d) (3)) re-quires that notices of dispute shall be filed with State and territorial mediation agencies as well as with the Federal Mediation and Concilia-tion Service. It also directs the Federal Service to avoid mediating disputes having only a minor effect on commerce where State or other mediation services are available (sec. 203 (b)). These provisions have encouraged some States and municipalities to develop their mediation facilities and to augment their staffs of mediators.

For decades most States have authorized State officials to undertake the mediation, conciliation, or arbitration of industrial disputes. This authority, however, has not been exercised to any considerable extent in the majority of such States. Prior to, and increasingly since the enactment of the Labor Management Relations Act, however, a num-ber of the more highly industrialized States have been developing mediation agencies with full-time staffs. Among the most active State mediation agencies are those found in New York, Massachusetts, Con-necticut, New Jersey, Pennsylvania, Michigan, Wisconsin, Minnesota, and California, in addition, New York City, Toledo, Ohio, and Louis-ville, Ky., maintain full-time staffs of mediators.

It is the policy of the Service to cooperate to the greatest degree with such agencies. The regional directors of the Service have been requested to lend every effort to arrive at effective working under-standings with the executive heads of State and other mediation agen-cies to the end that the common objectives of Federal and State legis-lation dealing with the mediation of labor disputes may be achieved.

The need for these efforts to succeed is emphasized by the fact that the duties imposed on the Federal Service and State agencies are over-lapping. Federal legislation directs the Federal Service to avoid the mediation of disputes when State or other agencies are available to offer their facilities, if the dispute threatens to have a minor effect on commerce. Although the determination of what constitutes only a minor effect is frequently difficult, Congress has clearly restricted the activities of the Federal Service where the effect of a particular dispute may not be significant. State legislation, however, usually contains no restriction or limitation on the activities of State agencies other than geographical. Consequently, there is always a possibility of jurisdictional conflict, particularly in the area in which Congress has imposed a duty upon the Service to act.

In going forward with its policy of encouraging and improving Federal-State relations in the field of labor-dispute mediation, the Service has not been unmindful of the problems and obstacles to com-plete cooperation that have existed and continue to exist. It must be kept in mind that it is the policy of the Service not to encourage the needless use of governmental mediation. It is believed that settlements arrived at without the help of third parties contribute more to future good relations than do settlements negotiated under the auspices of a mediator. Mediation, in the view of the Service, should be reserved for only those situations in which collective bargaining between the parties has failed and a deadlock exists.

This policy of the Service is jeopardized when Federal and State agencies enter into competition for the largest share of the available disputes. Neither State nor Federal agencies have been blameless in this situation. Both Federal and States agencies have at one time or another been guilty of unnecessarily interceding in labor disputes. Moreover, the parties themselves have encouraged the unnecessary intercession of Federal and State mediation agencies in their disputes. Not infrequently one side will attempt to bring in a Federal concilia-tor while the other party will insist on a State conciliator being present. It is generally agreed that "shopping around" for a mediator or play-ing one mediation agency against another, practices occasionally em-ployed where there is a lack of cooperation among Federal and State agencies, are prejudicial to the peaceful settlement of labor disputes. These are continuing problems and require the constant vigilance of the Service to insure that superficial conflicts do not adversely affect the basic policy of the Service which is to secure an ever increasing measure of Federal-State cooperation. It is, however, possible to report that despite many problems during the first year of the exist-ence of the Service there has been great progress in bringing about better and in some cases excellent relations between Federal and State agencies.

To achieve its goal of better Federal-State relations the efforts of the Service have been in two directions. First, the Service has pro-gressively, throughout the year, entered into both formal and informal agreements with almost all existing State agencies. The aim of these agreements is to outline the policy of cooperation to be followed by both agencies, to define the areas of jurisdiction to be allotted to each agency, and to establish the procedures to be used in bringing to the attention of each agency what the other agency is doing. Second, the Service has used all its efforts to bring about new attitudes, where necessary, in all staff personnel toward the desirability of good rela-tionships with other mediation agencies. Both the Washington and regional staffs of the Service are devoting themselves wholeheartedly to the problem of effecting a larger degree of Federal-State coopera-tion even where previously, in some measure, a feeling of Federal-State competition existed. Other efforts to cooperate with State agencies have included the scheduling of regular meetings between Federal and State

conciliators to discuss mutual problems and devel-opments in labor relations. When the Federal Service undertook to print forms to be used in connection with the filing of dispute notices as required by section 8 (d) (3) of the Labor Management Relations Act, the comments of all 48 State labor departments or mediation services were solicited. The form finally issued by the Federal Government contains special instructions and provides an extra copy for transmittal to the appropriate State mediation agency.

The efforts of the Service to work out arrangements with most of the active State agencies have led to some gratifying results. The agreement and understanding with the New York State Board of Mediation is an outstanding case in point. A copy of that agreement is included in this report as appendix C.

Examination of the agreement will disclose that, in general, it reserves to the State board the exclusive right to intercede in dis-putes threatening a minor effect on interstate commerce and recognizes the statutory role of the Federal Service in possible national emergency disputes and multistate disputes threatening a grave and serious interruption of commerce. It is realistically recognized, how-ever, that most disputes do not fall within either of these categories and are, therefore, within the statutory jurisdiction of both agencies to mediate. The agreement provides in such cases that neither agency will attempt to intercede so long as direct negotiations are proceeding in a manner satisfactory to both parties and that when the services of a mediator are required the preferences of the parties will be given the greatest weight in determining which agency shall mediate. The agreement sets forth principles and procedures governing the several types of situations which may be expected to arise and provides for the resolution of difficult questions by means of frequent consultation between the executive secretary of the State board and the regional director of the Federal Service.

It is obvious that this agreement is only as good as the heads of the respective agencies make it. The success of this agreement to coop-erate, like any agreement to cooperate, depends largely on mutual confidence and the real desire of both parties to make it work. As this report is written both agencies are well pleased with its operations. The New York agreement represents a great stride forward in State-Federal relations, and the Service will earnestly strive to achieve, in those few States where equally satisfactory cooperative agreements have not yet been worked out, the same relations of mutual confidence, respect and cooperation which exist in New York.

Written or oral agreements have also been consummated between the Federal Service and State agencies in California, Connecticut, Michigan, North Carolina Pennsylvania, Washington, and other States. Most of these agreements do not contain procedures and understandings as detailed as those in the New York agreement. The Service is presently engaged in reviewing its experience under exist-ing agreements with responsible State officials and where the circum-stances warrant, will ask State officials to enter into discussions lead-ing to modifications and amendments of current understandings.

It may also be noted that State legislation providing for special mediation, arbitration, or fact-finding machinery places a practical limitation and restriction on any action by the Federal Service. Sev-eral States provide for fact-finding boards which are authorized to make recommendations; some States also provide for mediation by the Governor, for injunctions, or for compulsory arbitration of labor disputes in public utilities. When the statutory machinery of a State law is placed into motion, it is the policy of the Federal Service to have its mediators stand by and to give such assistance to the State mediators as they may request. The Service does not believe it to be in the public interest to enter into a jurisdictional controversy as to settlement techniques with State officials who are fulfilling the requirements of State legislation.

The congressional mandate to the Service to make its facilities available in disputes threatening a substantial interruption of inter-state commerce is in terms so broad as clearly to include many dis-putes which come within the procedures laid down in State public utility statutes. Giving the language of Congress its broadest appli-cation, the Service would undoubtedly be justified in regarding it as its duty to mediate in many cases in which such State utility statutes have prescribed a procedure for the settlement of disputes not consist-ent with that prescribed by Congress. For practical reasons and be-cause the Congress seems not to have addressed itself specifically to the role of the Service where such a State public utility statute exists, the Service has refrained from taking the leading role in the media-tion of such disputes. This policy of the Service in respect of such situations is reported without recommendations as to legislation.

Chapter 6

Emergency Cases

The Congress imposed no special statutory duties upon the Service in the national emergency provisions of the act (sees. 206-210) other than to assist the parties in reaching a settlement in national emergency disputes (sec. 209 (a)). However, the experience of the Service with the background of such disputes, the issues involved and the posi-tions of the parties thereon, and its knowledge of facts required by other agencies of Government called upon to perform functions pre-scribed by the national emergency provisions, have made it necessary for the Service to play a more active role in the administration of those provisions than appears to be required by the language of the act. The Service plays this role reluctantly, because it is fully aware of the fact that its value to the public as a mediation agency should not be jeopardized by any activity associating it with law-enforcement provisions. On the other hand, it was clear that if the national emer-gency provisions of the act were to be given practical, realistic and efficient administration, in order that the national safety and health might be protected, it could not withhold from other agencies of Gov-ernment that administrative and informational assistance which they requested.

Thus, the Service is called upon, with respect to labor disputes it is engaged in mediating to furnish information to the President, boards of inquiry, and the Attorney General, all of whom have duties to per-form under the national emergency provisions of the act. It should be emphasized that the Service scrupulously refrains from partici-pating in the decision or policy making of such other agencies of Government and restricts its assistance to them to the furnishing of information.

It is evident that the central position occupied by the Service in national emergency labor disputes, before and during the injunction period and even after the discharge of the injunction, qualify it per-haps better than any other agency of Government excepting the Chief Executive, to report on the disputes which occurred during the past year. In view of the fact that no other agency of Government has the responsibility of making an over-all report of this character, the Service will undertake to do so as briefly as possible.

In recounting events which occurred in the national emergency disputes discussed in this report, the Service should not be understood to be assessing blame or responsibility on either unions or employers or their representatives, for acts committed, damage done, or failure to take any particular course of action. It is no part of the duty or authority of the Service to do so. In this account the Service has endeavored to restrict itself to facts which were given publication in Government documents, to private publications of news and to other sources which were, more or less, matters of public knowledge.

Atomic Energy Dispute

This dispute involved the Oak Ridge National Laboratory at Oak Ridge, Tenn. The plant is Government owned and is operated under contract with the Atomic Energy Commission by the Carbide & Car-bon Chemicals Corp. The dispute between this corporation and the Atomic Trades and Labor Council, which represented 18 American Federation of Labor craft unions related to the terms and provisions of a first contract between them to substitute for a collective-bargain-ing agreement between the Council and Monsanto Chemical Corp., which previously had operated the laboratory.

The history of this dispute and all of the relevant facts concerning the issues, the positions of the parties, the issuance and discharge of the injunction, the balloting of the employees on the employer's final offer and the ultimate settlements are set forth in House Document No. 726, Eightieth Congress, second session, which includes the mes-sage of the President to the Congress, dated June 18, 1948, concerning this dispute, the two reports of the board of inquiry appointed in refer-ence to that labor dispute and other relevant documents. It is there-fore unnecessary to burden this report with a recital of the details of the dispute, and we shall confine ourselves to reference to a few significant facts.

First, it is important to observe that in this dispute the procedures of the act relating to national emergencies were exhausted. A ballot of employees on the employer's final offer, conducted by the National Labor Relations Board, resulted in a vote of 771 to 26 against its acceptance. The injunction was discharged on June 11,1948. During the period of the injunction order, the Service brought the parties to-gether on numerous occasions in an effort to induce them to reach a settlement. These efforts were intensified during the last days of the injunction period when numerous meetings were held. Apparently the imminence of the discharge of the injunction did not have the effect of producing a settlement. Immediately after the discharge of the injunction the parties were again convened in joint session by the Service, and remained in continuous negotiations for over 50 hours.

These negotiations finally produced an agreement which was ratified by the union membership on June 15, 1948. Thus, although the uti-lization of the national emergency provisions of the act, in the opinion of the Service, appear to have averted a stoppage early in March 1948, in a facility whose continued operation was undoubtedly essential to the nation's welfare, it cannot be said that the period of the injunction contributed materially to the

final settlement, if at all. That settlement was "bargained out," with the aid of the Service, and without utilization of extraordinary statutory procedures.

Second, it became clear to the Service that there are special prob-lems in industrial relations in the atomic energy plants and facilities of the United States which require special treatment. Those problems are well posed in the President's message to Congress reference to which is made above. The President has appointed a Commission to study and report on these problems and to make recommendations for their solution. The Service is greatly impressed with the need for differential handling of labor relations problems in the atomic energy field, and hopes that the Congress will give its most earnest consider-ation to their solution.

Meat-Packing Dispute

This dispute, between the United Packinghouse Workers of America (C. I. O.) and the principal meat packing employers in the industry, involved a wage-reopening demand. The union demanded 29 cents per hour increase; the employers offered 9 cents—an amount that had previously been accepted by the Amalgamated Meat Cutters and Butchers Workmen of North America (A. F. of L.) and the National Brotherhood of Packinghouse Workers (Independent). The C. I. O. union claimed to represent about 81,000 wage earners in the 5 largest companies involved, out of a total of 182,000 wage earners in manu-facturing operations in the meat packing industry as of September 1947.[1]

Extended negotiations conducted under the auspices of the Service failed to produce a settlement prior to March 16,1948, the date set for a Nation-wide strike. On the day before the deadline date the President requested a continuance of work and arbitration of the wage issue; the union responded, however, that it would arbitrate only the question whether the final settlement should be made at 9 cents, 29-cents, or some figure in between. On March 15, 1948, the day before the strike, the President appointed a board of inquiry.[2] The board convened in Chicago on Wednesday, March 17, 1948, and conducted open hearings on 7 days thereafter. Although the Executive- order of appointment required its report on April 1, 1948, it requested and received from the President an extension of time for such filing. Its report was finally filed on April 8,1948.

The Service brought the parties into renewed negotiations immedi-ately after the filing of the report but the strike continued in some plants until the end of May and in others until the beginning of June notwithstanding unrelenting and determined mediation efforts. The stoppage of work finally came to an end, but not before violence had occurred at some plants. The employees returned to the plant under conditions dictated by the employers with the wage increase offered by them at the time the strike commenced.

In this case, the President, after having created the board of in-quiry, did not undertake to invoke the injunction procedures of the act. This Service, of course, is not in a position to discuss the con-siderations which moved the President to refrain from asking for an injunction order after having appointed a board of inquiry. It may be pertinent to observe, however, that the scarcity of meat products generally anticipated when the strike was first called, did not materi-alize. Indeed, during the course of the strike some pork products declined in price. Apparently the productive capacity of meat-pack-ing plants not on strike was increased to the point where further resort to the machinery of the act might have been unjustified.

First Bituminous Coal Dispute

This dispute over the activation of a welfare and retirement fund was between the United Mine Workers of America and coal operators and associations signatory to the national bituminous coal wage agree-ment of 1947. The welfare fund created by that agreement which contained accumulations totaling approximately $30,000,000, in March 1947, was to be disbursed in accordance with a program of administra-tion approved by a board of trustees. On that board, Mr. Ezra Van Horn was the designee of the mine operators and employers and Mr. John L. Lewis the designee of the union; these two trustees selected the third member, Mr. Thomas E. Murray. The trustees were unable to agree upon a plan of distribution and administration and Mr. Murray resigned as trustee on January 15, 1948. Mr. Van Horn suggested to Mr. Lewis that the vacancy be filled and submitted to him the names of certain individuals but Mr. Lewis did not respond to the suggestion.[3] The inability of the remaining trustees to agree upon a plan of distribution and the continued failure to make pay-ments from the fund resulted in a work stoppage. Shortly after the commencement of the stoppage the Service called the representatives into joint meetings and submitted a plan for resolution of the issue. This suggestion was not accepted by the Union.

The President appointed a board of inquiry on March 23, 1948, requesting that it report to him on or before April 5,1948.[4] Hearings were held on March 26,29, and 30, and the report was filed on March 31, 1948. That

[1] Report of Board of Inquiry (Meat Packing Industry) dated April 8, 1948, p. 8.

[2] It was estimated that the strike in the four largest companies in the industry above affected 25 percent of the total meat production in the United States and 30 percent of the total federally inspected meat production, ibid., pp. 8 and 9.

[3] Report of board of inquiry (bituminous coal industry) dated March 31, 1048, p. 2.

[4] See message from the President of the United States, Document 738 of the House of Representatives, 80th Cong., 2d sess.,

report stated that a stoppage in the mining of coal has "precipitated a crisis in the industry and in the Nation as a whole." The President requested the Attorney General to apply for an injunc-tion and an injunction order was issued on April 3, 1948, by Judge T. Alan Goldsborough of the United States District Court for the District of Columbia, It restrained the union from continuing with the strike, which the court found to be in existence, ordered the union to instruct its members to return to their employment, and further ordered the union and the operators to bargain collectively. Subse-quently, the court found, on motion and complaint of the Attorney General, that the union and its president had committed contempt of the injunction order and fined the former $1,400,000 and the latter $20,000. The miners ultimately returned to work and substantially normal production in the mines was attained on or about April 26, 1948.

Shortly after the injunction order was issued, Mr. Van Horn and Mr. Lewis agreed upon Hon. Styles Bridges as the third trustee of the fund. A majority of the trustees, Mr. Van Horn dissenting, then approved a plan of distribution. The legality of their action was challenged by Mr. Van Horn in the United States District Court for the District of Columbia. Summary judgment dismissing the suit was entered in favor of trustees Bridges and Lewis on June 22, 1948, and on June 23, 1948, on request of the Attorney General, the injunc-tion order was discharged, the dispute over the distribution of the fund being at an end.

It should be observed that although the Service held several meet-lings with the parties and numerous conferences with individual representatives of the parties, the subject matter of the dispute was not such as to lend itself to the mediation process. This dispute, although undoubtedly a labor dispute, posed legal and other issues more sus-ceptible to resolution by judicial process than by mediation. When that judicial opinion was issued, validating the distribution plan proposed by the majority of the trustees and resolving the legal doubts of the third trustee, settlement was achieved in a matter of hours. It is of interest to note that the employer representatives maintained the position that the dispute was not between the union and the em ployers but between members of a board of trustees whose decisions were not subject to their dictation.

The Telephone Dispute (Long Lines)

This dispute arose over the negotiation of a new contract by the American Union of Telephone Workers (C. I. O.) and the American Telephone & Telegraph Co. (Long Lines Division). Negotiations in which representatives of the Service participated as mediators were conducted up to and after the termination of the previous contract at midnight, May 8, 1948. In order to insure uninterrupted service of the important Nation-wide facility of long-distance telephone com-munication by the company and the union, the Service requested them, prior to the deadline date, to maintain their relationship in status quo during continued negotiations for a settlement of the dispute. The union agreed to honor this request and the company responded that it "has no thought at this time of making any changes in wages and working conditions." This reply was regarded by the union as not furnishing a sufficient guarantee to it that wages and working con-ditions would remain unchanged until a new contract could be nego-tiated. In view of the fact that a strike vote had already been taken the Service then called a meeting of the representatives of the parties to be held in Washington, D. C., on Monday, May 10,1948. The union representatives appeared on May 10. The company representatives appeared in Washington on May 12 and conferred with representa-tives of the Service. At that time the Director publicly proposed to the parties that they agree, for a reasonable period of time, to continue to observe all the terms and conditions of the expired contract ex-cepting those which might require legal implementation. The pro-posal also provided that if accepted, further negotiations would pro-ceed in New York City.

The union accepted and the company rejected the public proposal of the Service. The terms of the proposal and the positions of the parties were made known to the press. The union stated that the company's position gave it no alternative but to strike. It also stated publicly that it was willing to submit the issues to arbitration.

These facts were reported to the President on May 14, 1948. The President issued his Executive order invoking the national emergency provisions of the act and creating a board of inquiry on May 18,1948.

The Service continued its efforts to bring the parties into confer-ence, and as a result of separate discussions with the parties it appeared that further mediation efforts would be advisable and might lead to a settlement of the issues. The board of inquiry had scheduled its first hearing to be held in New York City on May 25, 1948. At that meeting and at the suggestion of the Service the board adjourned its hearing in order to afford the parties a further opportunity to bargain with the assistance of the Service.

The Service advised the board that the parties were willing to enter into a stipulation to maintain the status quo excepting as to "maintenance of dues" up to and including June 7, 1948, and if no agreement was reached by June 7, 1948, that the parties were to con-tinue to operate under the terms of the old contract until June 14. The board of inquiry, in view of the stipulation entered into by the parties, adjourned until June 8, 1948. The Service then called the parties into joint session and a settlement of the labor dispute was reached on June 14, 1948. This settlement made it unnecessary for the board of inquiry to take any further action other than to report to the

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for a full statement of the facts and developments in this dispute.

President as required in the Executive order creating it.

It is worthy of note that in this case, the mere appointment of the Board of Inquiry had the effect of reestablishing the bargaining relationship that had been ended by the failure of one party to give unqualified assurances that during a period of continued negotiations and until a new contract could be agreed upon, the status quo of wages, and terms and conditions of employment would be maintained.

Maritime Labor Dispute

This case involved substantially all shipping operations on the Atlantic, Gulf, and Pacific coasts and a considerable portion of the shipping on the Great Lakes. The disputes concerned the terms of new contracts to substitute for collective bargaining agreements ex-piring on June 15, 1948. On the Atlantic and Gulf coasts the dis-putes were between the National Maritime Union (C. I. O.), the National Marine Engineers Beneficial Association (Independent); and the American Radio Association (C. I. O.), representing em-ployees on American-flag oceangoing dry cargo or passenger ships. Most of the operators were represented in labor negotiations by the committee for companies and agents, Atlantic and Gulf coasts.

On the Great Lakes and Atlantic and Gulf coasts, the disputes also affected tanker operations. The National Maritime Union represented the unlicensed personnel on tankers on these coasts.

On the Pacific coast the disputes not only involved seagoing per-sonnel, but also longshoremen, deck-checkers, clerks, and other workers who serve both domestic and foreign vessels and work for stevedoring and terminal operators. Negotiations were conducted on behalf of employers by the Waterfront Employers' Association of the Pacific Coast, the Pacific American Shipowners Association and the Shipowner's Association of the Pacific Coast.

Negotiations were conducted on all coasts, with the aid of the Service, commencing a considerable period of time in advance of the June 15, 1948, deadlines. At an early stage in these negotiations it became evident that until a disposition could be made of the hiring-hall issue—the then principal item in dispute—little progress could be made toward a general settlement. Basing their position on the provisions of the Labor Management Relations Act, 1947, making it an unfair labor practice "by discrimination in regard to hire * * * to encourage or discourage membership in any labor organization" (sec. 8 (a) (3)), the employer representatives stated that the hiring practices provided for in the collective bargaining agreements must be altered to conform with the act. Although the contract provisions and practices there under differed in some degree, hiring on all coasts was done through hiring halls with union dispatchers. Some of the contracts provided for preferential treatment of union members; the employer representatives claimed that the hiring halls were actually administered to accord such preference. The position of the unions with respect to the employers' demand was that the hiring practices were not in violation of the act, and, in any event, should not be changed until it had been judicially determined that they were in violation of the act. The unions appeared to regard the hiring-hall institution and its continued administration in accordance with existing pro-cedures as essential to their security.

The 'issues and the positions of the respective parties were reported to the President early in June. On June 3, 1948, the President issued an Executive order establishing a board of inquiry consisting of five members. The board convened on June 4, 1948, in two panels—one in New York to deal with the disputes on the Atlantic, Gulf, and Great Lakes coast disputes and one in San Francisco to deal with the Pacific coast disputes. Telegrams summoning the parties for a hear-ing on Monday and Tuesday, June 7 and 8, were dispatched on Friday, June 4, 1948. The representatives of the parties attended and were permitted to make their presentation without time allotment. Some of the unions "complained that they had little opportunity to prepare and, in view of the early date set by the Executive order for the filing of the board's report on or before June 11, 1948, insufficient time to enlighten the board fully about the history, the basic problems and unique complications of labor relations in this industry."[5] The board presented its consolidated report on the disputes on all coasts to the President as required, and he thereupon requested the Attorney Gen-eral to apply for national emergency injunction orders in accordance with section 208 of the act. Orders were issued by judges of the district courts of the United States sitting in San Francisco, Cleve-land, and New York City on June 14. These orders enjoined both the employers and the unions and all persons in active participation with them, from encouraging and engaging in any strike or lock-out in the maritime industry or from making any changes in terms or con-ditions of employment other than by mutual agreement. The issuance of these injunctions averted for the statutory period the work stop-pages which, in the judgment of the Service, would have occurred on all coasts on June 15,1948.

After the issuance of the injunctions the Service continued its mediation efforts. On the Atlantic and Gulf coasts the bargaining efforts of the parties were profitably exerted and general settlements were achieved before September 1, 1948, the date of expiration of the injunction order. These settlements provided for the continuance of existing hiring practices pending judicial determination of their legality, and for wage increases and changes in certain working con-ditions. Settlements were also worked out with respect to the disputes on the Great Lakes.

Bargaining negotiations on the Pacific coast were not profitably conducted for the reasons set forth by the board

[5] Report to the President on Labor Disputes in the Maritime Industry by the board of inquiry (June 11, 1948), p. 1.

of inquiry in its final report.[6] A ballot of the employees in the several bargaining units on the last offers of the employers was conducted by the National Labor Relations Board in accordance with the procedures prescribed by the act. The certification filed by that board indicates that, of 26,965 longshoremen eligible to vote, none cast ballots. The National Labor Relations Board was not able to conduct its ballot of off-shore per-sonnel during the period prescribed by statute. Negotiations held immediately prior to the discharge of the applicable injunction order on September 2, 1948, gave considerable promise of success until they were broken off late at night on September 1,1948. All of the unions struck on September 2, 1948. The employer representatives immedi-ately revoked all offers previously made and announced that they would not negotiate or enter into any agreement with a union the officers of which had not signed the non-Communist affidavits in ac-cordance with section 9 (h) of the Labor Management Relations Act, 1947.

The longshore union then polled its employees on (1) whether it desired to require its officers to file non-Communist affidavits and (2) whether it desired to accept final offers of the employers. The results of this privately conducted ballot was reported to be as follows: For requiring the officers of the union to file affidavits, 694 "yes," 11,669 "no"; for accepting the last offers of employers, 391 "yes," 11,821 "no."

The stated position of the employer representatives not to meet with the union representatives placed serious obstacles in the path of effective mediation efforts. The representatives of the Service re-mained in close contact with the representatives of both parties and, in addition to exploring the situation with them, informed them of its availability to be of assistance in the settlement of disputes. It was manifest that the calling of meetings at which both parties would be invited to attend would not only be unprofitable, but might actually jeopardize the usefulness of the Service in facilitating a settlement of the dispute when the occasion offered promise of such a settlement. Obviously, where one party refuses to bargain, basing its decision on its interpretation of the legislative policy, this Service does not and should not have any means of compulsion to break the deadlock. Mediation is a procedure in the settlement of labor disputes which functions properly and successfully only when the parties voluntarily agree or, alternatively, recognize their obligation to bargain with each other, but find difficulty in arriving at a settlement. It is the experience of our times that identification of those authorized to bar-gain collectively and of those who are under a duty to do so should be the subject matter of legislation and the function of a law-enforcing agency. Any attempt by a mediation agency to undertake such activities would be prejudicial to its future effectiveness.

At the present writing, December 9, the Pacific coast stoppage is terminated. Negotiations between the International Longshoremen's and Warehousemen's Union and the Waterfront Employers' Associa-tion were reopened in the middle of November, and an agreement was reached on November 25 with final ratification by the union on Novem-ber 28. Negotiations between the Pacific American Shipowners' Association and the Marine Cooks and Stewards resulted in a settlement on December 2. An agreement between the Pacific American Ship-owners' Association and the Marine Firemen, Oilers, Water-tenders and Wipers Association was effected on December 2 with the assistance of the Service. An agreement in the dispute between the Pacific Amer-ican Shipowners' Association and the American Radio Association in which a question of recognition was involved was concluded on De-cember 3. Port and shipping operations were resumed during the week commencing December 5, 1948.

Second Bituminous Coal Dispute

This dispute was over the negotiation of a collective bargaining agreement to take the place of the National Bituminous Coal Wage Agreement of 1947 which was to terminate on June 30, 1948. The issues in dispute were wages and other terms and conditions of work. The union, however, insisted that before negotiating on these issues there must be a prior settlement of the differences over the activation of the retirement fund set up in the 1947 agreement. The approval of a plan for distribution of the monies in this fund was the subject of the first bituminous coal dispute discussed on pp. 43-45 above.

The dispute was initiated on April 30,1948, when the union notified all signatories to the 1947 agreement that it would expire on June 30, 1948, and that a conference would be held in Washington, D. C., on May 18, 1948, "for the purpose of negotiating a successor contract." On that date the union refused to recognize the Southern Coal Pro-ducers Association as a proper party to the conference. On June 4, on motion of the National Labor Relations Board, the United States District Court for the District of Columbia, issued an injunction requiring the union to bargain collectively with that association. The conference was resumed with the association as a party thereto on June 7. Inasmuch as the conference was a formal bargaining institu-tion set-up in the 1947 contract, the Service did not intervene nor call a joint meeting. However, it was in close touch at all times with the representatives participating therein.

Between May 18 and June 15 the parties met on 9 days but there was relatively little discussion of the wage issues or other terms and conditions of the contract other than the activation of the welfare fund. All proposals

[6] Report to the President on Labor Disputes in the Maritime Industry by the board of inquiry, August 13, 1948 (pp. 25-29).

and counterproposals were turned down. On June 14 the operators decided that further discussions would be fruitless and withdrew from the conference.

On June 17 the Director of the Service called the parties into con-ference. Joint and separate sessions were held with the parties for 2 days. It became apparent that the parties would not recede from their positions announced in May and the Director, accordingly, informed the President that an impasse had been reached.

On June 19,1948, the President declared that a national emergency existed within the meaning of section 206 of the act and appointed a board of inquiry, which convened on June 20. Public hearings were held on June 21 and 22. On the last mentioned date while the board was still in session, Judge Goldsborough on the United States District Court for the District of Columbia handed down his decision in one of the two suits instituted by Mr. Van Horn, trustee of the welfare fund against the other two trustees, Mr. Lewis and Mr. Bridges. The action of Messrs. Bridges and Lewis in resolving to make pension payments on the basis set forth in their resolution of April 1948 was approved and Mr. Van Horn's complaint was dismissed. This decision, accepted by Mr. Van Horn, cleared the way for bargaining on the other issues in dispute, on which no progress had been made until that time.

In view of these circumstances, the board, which had not yet com-pleted its inquiry into the facts as a basis for its report, postponed addi-tional hearings before it and encouraged the parties to resume negotiations. The board also requested and obtained from the President a short postponement of the date on which it was required to submit its report to the President under the act and the Executive order creating it. Negotiations were resumed, and on June 25 the board was informed by the union and all of the operators signatory to the 1947 agreement, except the operators of captive mines, producing ap-proximately 60,000,000 tons, that a final agreement had been reached with respect to the 1948 contract.

The differences between the union and the operators of the captive mines related primarily to the demand of the union that its union-shop relationship with the operators as set forth in the 1947 agreement be not disturbed. The captive-mine operators took the position that the Labor Management Relations Act, 1947, required that a union-shop ballot of employees be conducted by the National Labor Relations Board before the union might negotiate for a union shop. After is-suing a complaint the General Counsel of the National Labor Relations Board applied to the District Court of the United States for issuance of an injunction. This aspect of the dispute was settled when the parties entered into an agreement recognizing the union shop subject to the processing of charges lodged with the National Labor Relations Board by the employers and their final disposition by the courts.

Longshore Dispute on the Atlantic Coast

Although this dispute and employment of the statutory procedures of the act with respect thereto did not occur until after June 30, 1948, it is believed desirable to make a report thereon in order that the Eighty-first Congress might have before it, in one document, the his-tory of all national emergency cases which arose prior to 1949.

On August 17, 1948, the President appointed a board of inquiry to report on the labor dispute between steamship companies or asso-ciations of employers who were (1) engaged as operators or agents for ships engaged in service from or to North Atlantic ports from Hamp-ton Roads, Va., to Portland, Maine, or from or to other ports of the United States, or its Territories and possessions; (2) contracting stevedores; (3) contracting marine carpenters; or (4) other employers engaged in related or associated pier activities, and certain of their employees represented by the International Longshoremen's Associa-tion (A. F. of L.).

This dispute concerned the terms of a new contract. The wage issue was an especially difficult one to resolve because of the effects on the traditional working shifts in the industry of the decision of the Supreme Court of the United States *in Bay Ridge Operating Co. v. Aaron,* 334 U. S. 446 (1948).[7] Commissioners on the staff of the Service met with the parties before and during the injunction period of 80 days, and after the discharge of the injunction. The events following the discharge of the injunction on November 9, 1948, gave confirmation to the judgment of the President that the dispute threat-ened to imperil the national safety or health, and that an injunction was called for, under the provisions of the act if a stoppage, scheduled for midnight, August 21, 1948, were to be forestalled. The order issued by a judge of the District Court of the United States for the Southern District of New York restrained the parties from engaging in strikes or lock-outs or in any manner interfering with or affecting the orderly continuance of work in the industry, enjoined the parties from making any changes in wages, hours, or the terms or conditions of employment, and directed them to continue to bargain in good faith.

The parties met on numerous occasions with officials of the Service during the injunction period. The board of inquiry's report to the President dated October 21, 1948, which was released to the public, contained last offers of the employers with respect to several categories of workers in the industry. The overtime issue in these offers was sought to be resolved under section 7 (b) (1) of the Fair Labor Stand-ards Act which partially exempts from the overtime provisions of that act employers employing individuals for workweeks in excess of that specified in the act, without paying the overtime required, if such individuals were employed in pursuance of a collective bargaining agreement entered into by a union certified by the National Labor Relations Board which provides that

[7] The overtime-on-overtime case, so-called.

"no employee shall be employed more than 1,000 hours during any period of 26 consecutive weeks." Other issues in the case were the amount of a wage increase, retroactivity) vacations, call-in pay, a welfare fund and the term of the next contract. On November 8,1948, the National Labor Relations Board certified the following results of its ballot of longshoremen in the ports of Portland. Maine, Boston, Mass., New York City, N. Y., Philadelphia, Pa., Baltimore, Md., and Hampton Roads, Va., on the last offers made by the employers: Eligible to vote, 24,972; ballots marked "yes," 1,083; ballots marked "no," 26,646.

The ballots conducted by the National Labor Relations Board of clerks, checkers, cargo repairmen, and maintenance workers, where these occupational categories were found in these ports were to similar effect.

Immediately after the ballot was conducted, the parties were again called into session by the Service and more liberal offers were made on behalf of the employers. These offers were accepted, subject to approval by the rank and file of the union membership, by the nego-tiating committee of the union. As the polling of union membership began on November 10,1948, stoppages occurred on and about docks in New York City manned by local units said to be antagonistic to the officials who head up the international union. These stoppages, originally denominated "wildcat strikes," spread rapidly to other ports, including Halifax, Canada, to which some ships repaired when it became evident they could not unload in New York City or Boston. By November 12, 1948, the spokesmen for the negotiating committee of the union which had approved the offers about to be submitted to union vote, declared that those offers were inacceptable to the member ship and that further negotiations would be required. The wildcat stoppages became an official strike as of midnight, November 12, 1948.[8]

Newspaper accounts reported that transit of vast amounts of goods and materials destined for shipping to domestic centers and abroad under the Marshall plan, were piling up in the seaports affected and in other places. The Administrator of the Economic Cooperation. Administration made a public request for immediate resumption of operations which he considered indispensable for the success of the Marshall plan, but his wishes went unfulfilled. Although there were no reports of serious inconvenience occasioned to the public in New York City or other ports, it is clear that the strike resulted in a great deal of spoilage to perishable foodstuffs, great monetary loss to mer-chants engaged in the import and export trade, considerable delay in the delivery of thousands of sacks of mail destined for foreign ports, grave disruption of foreign and interstate traffic, and serious em-barrassment to the effectuation of one of the most important parts of the foreign policy of the United States.

The Service, at an early stage in the dispute assigned three of its most able commissioners to the case, one of whom was its Assistant Director. Many meetings were held with the parties, but little progress was made in settlement of the dispute, despite the most energetic efforts of the Service between November 10 and November 24. On that day the Director of the Service, in person, interceded to supplement the mediation activities of his staff members at the negotiations conducted in New York and a settlement was finally announced on Thanksgiving morning, November 25, 1948. That settlement has since been ap-proved by the union membership.

This case furnishes another instance of a national emergency dispute in which (1) a strike was, in fact, forestalled by the injunction; (2) there was no substantial progress made toward a settlement during the injunction period; (3) all of the procedures of the act (including the ballot on the last offer of the employers) were resorted to without success; (4) a strike occurred after the discharge of the injunction; and (5) the dispute was settled at long last after many meetings between the parties, aided by mediators, but not before great injury was caused to the public and the nation. In most respects (but not all) the pattern of development in this dispute parallels that involving the longshore and maritime dispute on the Pacific coast.

[8] The injunction order had been discharged on November 9, 1948, when its statutory period for existence had expired.

Chapter 7

Summary of Experience

For the first time in Federal legislation, Congress, in the Labor Management Relations Act, attempted a rather detailed exposition of the duties and activities of a conciliation and mediation service relating to industrial disputes, generally. This agency has had little more than a year's experience with those provisions. That experience is not sufficiently comprehensive to warrant making legislative proposals with respect to many of those provisions at the time of the writing of this report. At such time as he may be called upon to do so, however, the Director will be prepared to make legislative recommendations.

It is the function of an annual report to bring to the attention of the Congress such of the experience of the Service as may warrant consideration and study by Congress in connection with further legislation in the area of the responsibilities of the Service. For this limited purpose, there are set forth below, observations which, we trust, will be of assistance to the Congress in its review of the present act.

Jurisdiction (Interstate Commerce)

Sections 203 (a) and (b) of the act define the area of responsibility of the Service in terms of the effect of a dispute on interstate commerce. Ordinarily the Service may act in a labor dispute which threatens a substantial interruption of such commerce. If a State or other mediation service is available to offer mediation facilities, the Federal Service is directed to avoid mediating when the dispute threatens a minor effect upon commerce. In the body of this report we have already demonstrated the difficulties created by an interstate commerce definition of the jurisdiction of the Service. These difficulties arise not only internally, when the agency must determine whether or not it would be appropriate to offer its facilities but, more particularly, when a State or other agency, acting under another statute considers itself as having concurrent jurisdiction in relation to a dispute.

The administrative difficulties encountered by the Service might be minimized by a clarification of current limitations upon its re-sponsibility. It must be recognized, however, that State and other mediation agencies have a role to be played in settling labor disputes. Any distribution of duties and responsibilities should seek to avoid future jurisdictional conflicts-between Federal and State agencies.

National Emergency Duties[1]

Boards of inquiry.—The current provisions of the act (sec. 208 (a)) make the submission of a report by a statutory board of inquiry a condition precedent to the President requesting the At-torney General to apply for an injunction. If the dispute threatens a national stoppage of critical proportions, it becomes necessary for the President to appoint the board a sufficient period of time in ad-vance of the deadline date in order to afford it an opportunity to convene, to investigate, to hold hearings, to prepare and submit its report, and to give the Attorney General a reasonable opportunity to apply to the courts for an injunction in anticipation of a stoppage. Experience under the current provisions demonstrates that approxi-mately 10 days to 2 weeks is required, as a minimum, to enable boards of inquiry satisfactorily to perform their statutory duties in most national emergency situations.

The Service has found that appointment of a board of inquiry in advance of a stoppage deadline and the scheduling of hearings before such a board, has the effect of interfering with the collective bargaining of the parties, particularly in relationships in which it is traditional not to reach a settlement until the eleventh hour. Media-tion cannot be performed effectively when either the representatives of the Service or of the parties are before a board of inquiry, or when the parties await the report of the investigations of such a board. Further, the record will disclose that the relatively short period of time afforded to such boards to investigate the facts rele-vant to a dispute has exposed them to criticism and has afforded them insufficient time to operate at maximum efficiency and effective-ness.

Experience has also demonstrated that despite the great national importance of several disputes, relatively little publicity was given to, or public notice taken of, the reports of boards of inquiry. This may have been due to the fact that these boards were forbidden to make recommendations which might reasonably be expected to be given wide publicity, and restricted themselves to an exposition of the issues in controversy and the positions of the parties thereon. Although the facts relevant to a dispute may not have been known in the detail in which they were set forth in the reports of the boards of inquiry, it is believed that they were generally matters of public knowledge. Apparently the Congress required board of inquiry re-ports to be submitted and made public because of the desirability of mobilizing public opinion behind a settlement of the controversy. This desire has not been fulfilled

[1] This account does not undertake a critical evaluation of the basic structure and merits of the national emergency dispute provisions in the act. It does attempt to set forth the special experience of the Service with particular provisions thereof.

to a satisfactory degree.

It should also be observed that under current provisions of law, if the Federal Mediation and Conciliation Service does not make a public recommendation of settlement (a procedure it will normally refrain from adopting because nonacceptance of its recommendation might destroy its future usefulness to the parties) a dispute might well run the 60-day period prior to the deadline date and the 80-day period of the injunction—a period of 20 weeks—without any public recom-mendation of settlement calculated to bring public opinion to bear on the parties.

Use of the injunction.—It is the experience of the Service that in some of the national emergency disputes occurring in the last year the issuance of an injunctive order did much to forestall a national crisis and to assist in achieving a peaceful settlement. Similar claims for the utility of injunctions, such as are provided in current law, as a means of protecting the national welfare, cannot be made in respect of other national emergency disputes. Indeed, the final report of the board of inquiry in the maritime dispute involving the Pacific coast longshoremen's union observed that the employers and unions in that dispute regarded the injunction period as a "warming up" rather than a "cooling off" period (p. 27). National emergency disputes vary widely in their facts and circumstances, and it is unlikely that any ma-chinery can be devised that will guarantee satisfactory handling in all situations.

One of the conclusions which the Service is undoubtedly justified in drawing from its experience of the last year is that provision for an 80-day period of continued operations, under injunctive order of a court, tends to delay rather than facilitate settlement of a dispute. Parties unable to resolve the issues facing them before a deadline date, when subject to an injunction order, tend to lose a sense of urgency and to relax their efforts to reach a settlement. They wait for the next deadline date (the date of discharge of the injunction) to spur them to renewed efforts. In most instances efforts of the Service to encourage the parties to bargain during the injunction period, with a view to early settlement, falls on deaf ears. Further, the public appears to be lulled into a sense of false security by a relatively long period of industrial peace by injunction and does not give evidence of being aware of a threat to the common welfare which would produce a climate of public opinion favorable to settlement. Whether this experience dictates the desirability of a shorter injunction period or an injunction period of indefinite duration the Service expresses no opinion at this time.

Last offer 'ballots (sec. W9 (b)).—In every national emergency dispute to date the results of a ballot conducted by the National Labor Relations Board pursuant to section 209 (b) of the act have been overwhelmingly for rejection of the employer's last offer. For reasons which need not be elaborated here it is fair to assume that the likeli-hood of any ballot in the future having a contrary result, is small and remote. These ballots are expensive to conduct, and the experience of a year demonstrates that they do nothing to promote settlement of a dispute. To the contrary, they are a disrupting influence in collective bargaining and mediation. The last or final offer of an employer which the National Labor Relations Board is under an obligation to submit to ballot, is not likely to be the ultimate offer in fact, on the basis of which a settlement will be reached. Most decidedly this was the case in the disputes involving the Oak Ridge National Laboratories, the West coast maritime and longshoremen's unions and the Atlantic coast longshoremen's union. Unions and their membership appear to regard such last offers as counteroffers in bargaining which, if accepted, mean a repudiation of union leadership. Experience with the strike ballots required by the War Labor Disputes Act as well as the Labor Management Relations Act, 1947, discloses that workers are not likely to repudiate their representatives in the course of contract nego-tiations.

A vote turning down an employer's last offer places additional ob-stacles and difficulties in the way of a settlement. Union representa-tives must necessarily accept the vote as a mandate from the rank and file of workers that they may regard as practicable and possible bases of settlement only those offers of employers substantially more favor-able than the one rejected. With foreknowledge of this consequence, employers tend to keep in reserve, and not to represent as a last offer which may be submitted to ballot, concessions which might result in a settlement. Union leadership and employees, aware that employers assess the situation in this manner, act accordingly. Thus, the man-datory last offer ballot sets into action a cycle of tactical operations by both parties which cancel each other out and delay serious efforts to arrive at a prompt resolution of their differences.

Last Offer Ballots (Sec. 203 (b))

The national emergency dispute provisions discussed above (sec. 209 (b)) require the National Labor ^Relations Board to conduct a ballot of employees on the last offer of their employers. Section 203 (b) directs the Service in the generality of cases within its jurisdiction to suggest to the parties that they agree to submit the last offer of the employer to a secret ballot of the employees. The experience of the Service with this provision has not been such as to justify the conclu-sion that it has contributed materially to the settlement of disputes.

Cooperation of Parties with Service

Section 204 (a) (3) places a duty upon the parties to "participate fully and promptly" in such meetings as may be called by the Service. No sanction is specifically imposed for failure to fulfill that duty.

There have been instances during the past year, however, when some few employers or unions have refused to cooperate with the Service in carrying out the duties imposed upon them by section 204 (a) (3). It has been suggested that a refusal to attend negotiation meetings called by the Service may constitute an unfair labor practice under sections 8 (a) (5) and 8 (b) (3) of the act, or, at the least, be evidence thereof. In the absence of decisions by the National Labor Relations Board on the question, however, it is not known whether a refusal to cooperate with the Service by participating in conferences it calls is subject to sanctions at the behest of the other party to the dispute.

Conclusion

This report concerns itself primarily with the organization of the Service and the administrative procedures it utilizes in discharging its responsibilities. There is little discussion of the techniques of con-ciliation and mediation. Those techniques are not susceptible of simple description, are varied, and must be shaped to the differences in the industries, personalities of the negotiators, and other facts pre-sented in each case. Commissioners of conciliation and mediation who employ those techniques must be flexible, resourceful, and capable of adapting themselves to a multitude of conditions. The public good they can do is great; the responsibilities they bear to promote sound industrial relations is grave. The Service is an important factor in the national quest for industrial peace. The public interest requires that those responsible for the performance of the Service be ever vigilant to assure that it executes its functions with maximum efficiency.

It is important to observe that the daily business of the Service is not restricted to disputes with dramatic implications which make the headlines. Every day, all over the country, disputes are settled with the assistance of the Service and the cooperation of management and labor representatives. The duty and activity of the Service is not restricted to strikes and lock-outs; indeed the greatest part of its effort is expended in day-by-day mediation of disputes which do not develop into strikes or lock-outs, and in improving the relationships of the people who represent management and labor in their dealings with each other.

As stated in the Introduction, however, mediation is not a substitute for collective bargaining by the parties who must themselves bear the primary responsibility for their good relations. Under our free insti-tutions, this responsibility should not be assumed by Government, nor should the parties attempt to delegate it. Government clears the way for collective bargaining by designating bargaining representatives, laying down some minimum ground rules, and then, through the Serv-ice, giving assistance to the parties when there are obstacles to settle-ment. Under our system, Government does not write the ticket.

The progress that has been made in collective bargaining in the United States in the last 10 years is most gratifying. Far-seeing and imaginative representatives of organized labor and management are to be congratulated for the public contributions they make, every day, to the development and spread of this basically democratic process. The progress that has been made gives bright promise of even greater strides in the future.

To the extent that management and labor conscientiously apply themselves to making collective bargaining work, to that extent can we achieve high levels of production and industrial peace without sacrifice to our precious freedoms and liberties. And it is the high mission of the Federal Mediation and Conciliation Service to assist employers and unions in this great undertaking.

Appendix A

Labor Management Relations Act, 1947

Title I – Amendment of National Labor Reflections Act

Sec. 8. "(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifi-cations ;

"(3) "notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later :

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Appendix B

Labor Management Relations Act, 1947

Title II—Conciliation of Labor Disputes in Industries Affecting Commerce, National Emergencies

Sec. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of em-ployers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of con-ference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitra-tion to aid and encourage employers and the representatives of their em-ployees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes ; and

(c) certain controversies which arise between parties to collective-bar-gaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

Sec. 202.

(a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and 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.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provi-sions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee desig-nated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor," approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the

Department of Labor.

Functions of the Service

Sec. 203.

(a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor disputes in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communica-tion with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including 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.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agree-ment. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Sec. 204.

(a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or pros-pective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

sec. 205.

(a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of manage-ment and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

National Emergencies

Sec. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a sub-stantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a state-ment of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

sec. 207.

(a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board ap-pointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, sees. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

sec. 208.

(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i). affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii). if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appro-priate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, sees. 346 and 347).

sec. 209.

(a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and

shall certify the results thereof to the Attorney General within five days thereafter.

sec. 210. Upon the certification of the results of such ballot or upon a settle-ment being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, in-cluding the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

Compilation of Collective Bargaining Agreements, etc.

sec. 211.

(a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available col-lective-bargaining agreements and other available agreements and actions there-under settling or adjusting labor disputes. Such file shall be open to inspection tinder appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their repre-sentatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

Exemption or Railway Labor Act

sec. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

Appendix C

Memorandum of Understanding Between the Federal Mediation and Conciliation Service and the New York State Board of Mediation

Because the Federal Service—under the Labor Management Relations Act, 1947—offers its services in disputes threatening to cause a substantial inter-ruption of interstate commerce and the State board—under article 21 of the New York State labor law—offers its services in all existing, imminent or threatened labor disputes within the State of New York, and because there is no ready formula for the identification of disputes falling within the responsibility of one agency or the other, it is desirable that guides be established to clarify the relationship between the two agencies. For the purpose of coordinating their activities in a manner consonant with the common objectives of the Federal and State legislation the following understanding has been reached :

Procedures Employed by the Two Agencies

(1) Federal Mediation and Conciliation Service—handling of notices filed pursuant to the Labor Management Relations Act, 1047:

(a) *Preliminary screening*.—Upon receipt, notices of disputes within New York State are analyzed in the regional office. Those involving disputes which appear prima facie to threaten only a minor effect on interstate commerce are referred by letter to the State Board for handling by that agency.

(b) *Exploratory investigations*.—Disputes concerning which notice is given Which do not appear prima facie to threaten only a minor effect on interstate commerce are assigned to a commissioner for an exploratory investigation of their threatened effect upon interstate commerce. The exploratory investigation is conducted in such a way as to allow no inference by the parties that the Federal Service has intervened for purposes of mediation.

(c) *Final screening and disposition*.—Commissioners' reports, based upon the exploratory investigation, are then analyzed in the regional office. A determi-nation is made in each case as to whether the dispute is one in which the Federal Service should act. Those disputes found to have a greater than minor effect on interstate commerce are assigned to a conciliator for mediation if appropriate and the State Board is notified of such assignments. Those disputes threatening an effect on interstate commerce which is found to be minor are referred by letter to the State board for handling by that agency.

(2) New York State Board of Mediation—handling of notices filed pursuant to the Labor Management Relations Act, 1947:

(a) *Receipt of notice and notification to parties*.—Notices involving disputes in New York State are filed by the parties directly with the nearest office of the State board either in New York City, Albany, Buffalo, or Syracuse. Upon receipt of the notice a letter is directed to the parties involved acknowledging receipt of the notice and offering assistance if and when needed. Such a letter of acknowledgment allows no inference by the parties that the State board has intervened for purposes of mediation.

(b) *Assignment to mediator*.—Before the expiration date of the contract, the notice is given to a mediator for personal handling. This involves merely an inquiry to one or both of the parties to determine the status of the negotiations and to ascertain whether the services of the State board will be required.

This procedure varies in minor detail from office to office but is essentially the same for the four offices of the board.

(3) Federal and State Services—handling of direct requests for intervention:

Where either agency is requested by one or both of the parties to intervene in a dispute, that agency normally invites the parties to participate in a media-tion conference except that:

(a) Where the request is made of the Federal Service the dispute is first investigated to determine its effect upon interstate commerce. If its effect upon interstate commerce appears to be minor the parties are referred to the State board; if its effect upon interstate commerce is greater than minor the Federal

Service proceeds to handle the matter.

(b) If it is found by either agency, after the request for intervention has been made, that the other agency has already been active in mediating the matter no conferences are arranged until clearance is made with the other agency.

Agreement

A. The Federal Service is directed by law to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce. While it is recognized that the decision as to whether a dispute has a minor or greater than minor effect upon interstate commerce is within the province of the Federal Service, it is also recognized that the State agency has an interest in such de-cisions and that the standards used in making these decisions can most satis-factorily be applied through mutual understanding and consultation between the agencies.

B. Disputes the effect of which on interstate commerce is minor will normally be handled exclusively by the State board. Where an exception is made it will be accomplished through prior clearance between the agencies.

C. The State board in turn recognizes that it is normally preferable for the Federal Service to handle certain types of disputes of a national or multistate character which threaten a grave and serious effect upon interstate commerce.

D. It is recognized that it is the duty and responsibility of the Federal Service to mediate in disputes where consideration may be given to the utilization of the national emergency provisions of the Labor Management Relations Act, 1947.

E. A large proportion of the disputes concerning which notice is given do not fall within the classifications B, C, and D described above. In such cases both agencies may feel required to offer their services. In determining which agency will handle any given dispute of this nature it is agreed:

1. The primary responsibility for the settlement of labor disputes is upon the parties themselves through utilization of the procedures of collective bar-gaining.
2. Neither agency will attempt to intervene in such disputes so long as direct negotiations are proceeding in a manner satisfactory to both parties.
3. Normally, the most effective mediation is accomplished by the mediators and the agency in whom the parties repose the greatest degree of confidence. Therefore, where both parties make known a preference for one agency and the dispute is within its responsibility, this fact will be given great weight in the judgment of both agencies as to which one should mediate.
4. When either agency has completed arrangements with the parties for a joint conference or has actually held such conferences, the other agency will not attempt to intervene in the dispute.
5. In certain disputes one or both of the parties may invite the second agency to mediate after conferences have been held with the first agency. In that event the second agency will inform the party or parties that a cooperative agreement exists between the two Services which normally precludes such intervention after the dispute has been handled by the agency first intervening. The representatives of both agencies will endeavor to persuade the parties to continue to utilize the mediation services of the agency which has already conducted conferences in the matter.

   When conferences have not yet been scheduled or held by either agency and the preferences of the parties differ as to which agency should mediate, an endeavor will be made to arrange for one of the agencies to take sole respon-sibility for the dispute. If the suggested arrangement is not to the satisfaction of both of the parties, the representatives of both agencies may act jointly as mediators.

   Any difficulties which arise in the field concerning the above arrangements shall be referred to the executive secretary of the State board and to the regional director of the Federal Service for resolution by conferences and discussion.
6. Where one agency has handled a dispute for some time and a deadlock has continued without foreseeable prospects for settlement and where one or both parties ask for the intervention of the other agency, or where the other agency has reason to believe that it could be of help in resolving the deadlock, a determination will be made by the executive secretary of the State board and by the regional director of the Federal Service as to whether the dispute will be handled jointly or by one of the agencies alone.

F. It is understood that the executive secretary of the State board and the regional director of the Federal Service will confer from time to time on the practices of the agencies and their relationship under this

agreement. Where experience demonstrates that modifications in the agreement are desirable such modifications will be worked out promptly.

G. In general, the representatives of each agency shall so conduct themselves that labor, management, and the public will regard the two Services as organi-zations cooperating with each other to the end that industrial strife may be effectively minimized.

For the purpose of promoting the policies and procedures set forth in this agreement, joint conferences between the mediation staffs of both agencies will be held periodically.

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