

FEDERAL MEDIATION AND CONCILIATION SERVICE

WASHINGTON, D. C.

The FMCS:

Past, Present and Future

An Address

by

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Federal Mediation and Conciliation Service

Presented to the

XVI Annual Mediation Seminar

Washington, D. C.

November 5, 1973

IT IS WITH A DEEP SENSE OF PRIDE THAT I SHARE WITH YOU THIS MORNING MY THOUGHTS ABOUT OUR ORGANIZATION, ITS MISSION, AND THE DUTIES AND OBLIGATIONS OF THE CHOSEN FEW WHO HAVE BEEN SELECTED TO SERVE AMERICA THROUGH THE FEDERAL MEDIATION AND CONCILIATION SERVICE.

I SAID A "CHOSEN FEW"--AND YET, ASSEMBLED HERE THIS MORNING IS THE WORLD'S LARGEST SINGLE GROUP OF PEACEMAKERS IN THE FIELD OF LABOR-MANAGEMENT RELATIONS. . . . AND, LET ME SAY, NOT JUST THE LARGEST BUT THE MOST KNOWLEDGEABLE AND THE MOST TALENTED AS WELL.



I FIND IT A PRIVILEGE AND A PLEASURE TO SERVE AS THE COACH OF THIS UNIQUE TEAM OF PROFESSIONALS.

UPON ACCEPTING THE PRESIDENT'S APPOINTMENT AS DIRECTOR OF THE SERVICE, I DECIDED I WOULD DO ALL I COULD TO MEET WITH EACH AND EVERY ONE OF YOU. I WANTED TO KNOW YOUR THOUGHTS. . . I WANTED TO HEAR YOUR SUGGESTIONS. . . I WANTED TO SHARE IN YOUR SUCCESSES, AND TO WORK WITH YOU IN OVERCOMING ANY PROBLEMS.

AND SO SINCE TAKING OFFICE ON MARCH 29--220 DAYS AGO--I HAVE SPENT 103 DAYS IN THE FIELD.

I HAVE BEEN TREATED GRACIOUSLY AS YOUR GUEST AT EVERY REGIONAL CONFERENCE--MEETINGS THAT HAVE TAKEN ME FROM PORTSMOUTH,

NEW HAMPSHIRE, AND ATLANTIC CITY ON THE EAST COAST TO SAN FRANCISCO ON THE WEST COAST; FROM GALVESTON AND GULF BREEZE, FLORIDA, IN THE SOUTH TO CHICAGO AND TRAVERSE CITY, MICHIGAN, IN THE MIDWEST.

AS THE DIRECTOR OF YOUR AGENCY, I HAVE DELIVERED 33 SPEECHES AND, INCIDENTALLY, HAVE FOUR MORE SCHEDULED FOR NEXT WEEK.

ON EACH OF THESE OCCASIONS, MY GOAL HAS BEEN TO SPREAD THE GOSPEL OF MEDIATION AND TO EXPOUND UPON THE MERITS OF THE SPLENDID FEDERAL AGENCY THAT HAS BEEN DESIGNED TO MAKE MEDIATION WORK.

SOME OF YOU, I KNOW, BELIEVE THAT THE MEDIATION PROCESS IS WELL ENOUGH KNOWN.

I DISAGREE. AND LET ME TELL YOU WHY.



ONE PIECE OF CONVENTIONAL WISDOM THAT IS WIDELY ACCEPTED GOES LIKE THIS-- "THE PAST IS PROLOGUE." IN OTHER WORDS, WHERE WE GO FROM HERE IS CLOSELY RELATED TO WHERE WE HAVE JUST BEEN. FOR THE SAKE OF OUR OWN FUTURE--THE FUTURE OF MEDIATION ITSELF--I HOPE THIS DOESN'T APPLY TO US.

FOR OF ALL THE WORTHY PROGRAMS SPONSORED BY GOVERNMENT DURING THE LAST CENTURY, FEW, IF ANY, HAVE HAD SUCH AN UNSTABLE TIME OF IT AS THE MEDIATION OF LABOR-MANAGEMENT DISPUTES. I THINK IT IS WORTH SPENDING A FEW MINUTES TO REVIEW THE STORY--NOT BECAUSE "THE PAST IS PROLOGUE," BUT RATHER IN THE SPIRIT OF THE PHILOSOPHER GEORGE SANTAYANA, WHO WARNED US THAT THOSE WHO FAIL TO READ HISTORY ARE DOOMED TO REPEAT IT.

OUR HISTORY SHOWS US THAT MEDIATION HAS YET TO BE FULLY ACCEPTED IN OUR LABOR-MANAGEMENT RELATIONS. . . AND HAS BARELY BEEN TRIED IN THE VAST WORLD OF CONFLICT SURROUNDING SOCIAL CHANGE IN AMERICA.

EVEN THE INSTITUTIONS OF MEDIATION HAVE HAD A RELATIVELY SHORT LIFE EXPECTANCY FOR A VARIETY OF REASONS.

THIS IS THE 75TH ANNIVERSARY OF THE FIRST FEDERAL LAW PROVIDING FOR MEDIATION IN LABOR DISPUTES--THE ERDMAN ACT OF 1898. THE ACT WAS THE LAST OF SEVERAL 19TH CENTURY MEASURES DESIGNED TO BRING STABLE LABOR RELATIONS TO THE RAILROAD INDUSTRY.

LIKE ITS PREDECESSORS, THE ERDMAN ACT HAD LITTLE IMPACT.



FIFTEEN YEARS LATER, WITH THE ESTABLISHMENT OF THE DEPARTMENT OF LABOR, THE SECRETARY OF LABOR WAS GIVEN THE POWER TO MEDIATE INDUSTRIAL DISPUTES.

IN 1918 THE UNITED STATES CONCILIATION SERVICE WAS FORMED WITHIN THE DEPARTMENT OF LABOR.

THE U. S. CONCILIATION SERVICE-- THE GRANDDADDY OF OUR AGENCY, HAD TO CONDUCT A RUNNING FIGHT WITH COMPETITORS AND POTENTIAL COMPETITORS FROM ALL SIDES.

EVEN AS IT WAS FORMED, PRESIDENT WOODROW WILSON SET UP THE NATIONAL WAR LABOR BOARD TO SETTLE--THROUGH MEDIATION-- DISPUTES IN THE FIELD OF WAR PRODUCTION. THAT FIELD, OF COURSE, WAS ALL-INCLUSIVE.

THE CONCILIATION SERVICE SURVIVED THAT CHALLENGE ONLY TO HAVE CONGRESS ESTABLISH THE UNITED STATES MEDIATION BOARD--FORERUNNER OF THE NATIONAL MEDIATION BOARD --IN 1926.

THIS PULLED THE RAILROADS AWAY FROM THE JURISDICTION OF THE CONCILIATION SERVICE. AND IN 1934, DISPUTES INVOLVING AIRLINES WERE ALSO TURNED OVER TO THE NATIONAL MEDIATION BOARD.

THE THREAT OF AMERICAN INVOLVEMENT IN WORLD WAR II CAUSED PRESIDENT ROOSEVELT TO CREATE THE NATIONAL DEFENSE MEDIATION BOARD. AND THE WAR ITSELF BROUGHT ANOTHER AGENCY THAT DEPENDED HEAVILY ON MEDIATION AND ARBITRATION TECHNIQUES--THE NATIONAL WAR LABOR BOARD.



THE CONCILIATION SERVICE HANDLED 75,000 CASES BETWEEN THE ATTACK ON PEARL HARBOR AND V-J DAY. BUT A QUARTER OF THOSE CASES--INCLUDING MOST DISPUTES OF SUBSTANCE--WOUND UP BEFORE THE WAR LABOR BOARD.

THE WAR LABOR BOARD WAS THE PLACE WHERE THE SETTLEMENTS WERE REACHED. FOR IF THE PARTIES FAILED TO MELLOW UNDER THE MINISTRATIONS OF THE BOARD'S MEDIATORS, THE BOARD WROTE A CONTRACT ITSELF AND--BACKED BY THE WARTIME POWER OF SEIZURE--PUT IT INTO EFFECT.

NO ONE SERIOUSLY QUESTIONED THE NEED FOR SUCH ARBITRARY ACTION IN THE MIDST OF A DESPERATE WAR. BUT OBVIOUSLY THIS PROCEDURE DIDN'T REALLY SETTLE DIFFERENCES --IT JUST PUT THEM ON ICE.

IN THE SAME ICEBOX, OF COURSE, WERE THE CONCILIATION SERVICE AND, EVEN MORE UNFORTUNATELY, THE PRACTICE OF FREE COLLECTIVE BARGAINING.

THE SUBSEQUENT WAVE OF POST-WAR STRIKES WAS THEREFORE INEVITABLE, AND SO WAS THE INABILITY OF THE CONCILIATION SERVICE TO PLAY AN EFFECTIVE ROLE.

WITH PASSAGE OF THE TAFT-HARTLEY ACT IN 1947, THE FEDERAL MEDIATION AND CONCILIATION SERVICE WAS CREATED AS AN INDEPENDENT AGENCY, OUTSIDE THE DEPARTMENT OF LABOR.

SENATOR ROBERT TAFT GAVE HIS REASONING FOR ESTABLISHING THE AGENCY AND HIS HOPES FOR ITS FUTURE DURING THE HEARINGS ON HIS BILL.



"IT WAS FELT," HE SAID, "THAT THE LABOR DEPARTMENT WAS FORMED TO REPRESENT THE INTERESTS OF LABOR, AND THAT A CONCILIATION SERVICE SHOULD BE ABSOLUTELY IMPARTIAL BETWEEN LABOR AND EMPLOYER."

HIS HOPES WERE EXPRESSED IN THESE WORDS:

"I MIGHT SAY THAT IN THIS MEDIATION PROCEDURE WE HAVE PROVIDED GREATER POWER FOR THE MEDIATION SERVICE. WE HOPE THAT THE PRESTIGE WHICH IT ACQUIRES MAY LEAD TO MORE SUCCESSFUL MEDIATION THAN THERE HAS BEEN."

SOME OF THE OLDER HANDS IN THE AUDIENCE KNOW THAT OUR AGENCY DID NOT COME INTO EXISTENCE WITH UNIVERSAL ACCLAIM. THERE WAS SOME STRONG OPPOSITION.

PRESIDENT TRUMAN HAD VETOED AN EARLIER BILL CONTAINING A PROVISION FOR AN INDEPENDENT MEDIATION BODY. IN HIS TYPICAL BLUNT MANNER, HE SAID:

"I CONSIDER THE ESTABLISHMENT OF THIS NEW AGENCY TO BE INCONSISTENT WITH THE PRINCIPLES OF GOOD ADMINISTRATION."

SENATOR JOSEPH O'MAHONEY OF WYOMING OPPOSED THE NEW AGENCY CONCEPT IN FEAR OF ITS EXPENSE AND BECAUSE PERSONNEL WOULD BE CHOSEN OUTSIDE THE CIVIL SERVICE ROUTE.

UNENCUMBERED HIRING OF STAFF, HE SAID, WAS A PROVISION--AND I USE HIS WORDS--"AS WIDE OPEN AS A BARN DOOR TO POLITICAL PREFERMENT."



BUT THE WORDS THAT COME CLOSEST TO THE POINT I AM TRYING TO MAKE WERE SPOKEN BY SENATOR ALBEN W. BARKLEY OF KENTUCKY--SOON TO BE PRESIDENT TRUMAN'S VICE PRESIDENT.

SENATOR BARKLEY BOTH OPPOSED THE CREATION OF OUR AGENCY AND STOUTLY DEFENDED THE UNITED STATES CONCILIATION SERVICE, SAYING, AND I QUOTE:

"THE CONCILIATION SERVICE HAS NEVER BEEN; TO MY KNOWLEDGE, ACCUSED OF PARTISAN ACTION. IT HAS NEVER BEEN GIVEN PUBLIC CREDIT FOR THE MAGNIFICENT WORK IT HAS DONE IN SETTLING THOUSANDS UPON THOUSANDS OF LABOR CONTROVERSIES AND PREVENTING THOUSANDS UPON THOUSANDS OF STRIKES."

THOSE WORDS SHOULD CARRY A SIGNIFICANT WARNING TO EVERYONE IN THIS ROOM.

THAT WARNING IS SIMPLY THIS:  
UNLESS WE EFFECTIVELY TELL THE STORY OF THE FMCS AND THE GOOD WORKS OF THE MEDIATION PROCESS, WE, TOO, CAN SUFFER THE FATE OF BEING THE EXPENDABLE, UNKNOWN ORGANIZATION.

THEREFORE, I HAVE FELT IT TO BE MY DUTY TO PREACH THE GOSPEL OF MEDIATION ACROSS THIS LAND. . . TO URGE THE ROLE OF THE AGGRESSIVE PEACEMAKER UPON EACH OF YOU. . . TO SUGGEST THAT WE STEP INTO NEW AREAS OF CONFLICT WITH OUR UNIQUE SKILLS OF PERSUASION.



IT IS CLEAR TO ME THAT THE PAST CAN BE PROLOGUE--IF WE LET IT. IF WE FAIL TO DO THE JOB THAT NEEDS TO BE DONE, THERE ARE A DOZEN OTHERS WAITING IN THE WINGS TO PICK UP THE CHALLENGE.

WE ALL OWE A DEBT OF GRATITUDE TO THE LATE SENATOR IRVING IVES OF NEW YORK; THE MAN WHO DRAFTED TITLE II OF THE TAFT-HARTLEY ACT--THE SECTION THAT BROUGHT US INTO BEING.

HE GAVE THIS AS HIS REASON FOR THAT ACTION:

"THE GREAT LACK AT THE PRESENT MOMENT IN THE FIELD OF MEDIATION," HE SAID, "IS MEASURES BY WHICH WE MAY PREVENT INDUSTRIAL STRIFE, AS WELL AS CURE IT AFTER IT HAS BEGUN."

TO FILL THAT VOID, HE WROTE LEGISLATION THAT GIVES US VIRTUALLY A FREE HAND TO PURSUE THE MEDIATION PROCESS.

THE RECORD SHOWS THAT SENATOR TAFT AGREED THAT THE NEW AGENCY SHOULD HAVE GREAT LATITUDE:

WHEN ASKED "WHAT IS THE PURPOSE OF THE MEDIATION PROVISION?," TAFT REPLIED:

"IT IS TO HELP COLLECTIVE BARGAINING."

HE LATER EXPANDED ON THIS ANSWER BY SAYING:

"THE MEDIATION TITLE IS FOR THE PURPOSE OF SETTING UP MACHINERY TO ENCOURAGE AND BRING ABOUT COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE EMPLOYER AND THE EMPLOYEE."



THIS IS A SIGNIFICANT STATEMENT  
COMING FROM A MAN WHO WAS NOT NECESSARILY  
CONSIDERED A FRIEND OF LABOR.

AS I READ IT, THE SENATOR FROM  
OHIO WAS SAYING THAT OUR AGENCY WAS  
BEING CREATED TO ENCOURAGE COLLECTIVE  
BARGAINING--AND TO BRING ABOUT AGREE-  
MENTS THROUGH COLLECTIVE BARGAINING.

THE ACT PROVIDES US WITH A NUMBER  
OF THE TOOLS REQUIRED TO CARRY OUT ITS  
INTENT.

--IT MAKES THE FEDERAL MEDIATION  
AND CONCILIATION SERVICE A TOTALLY INDE-  
PENDENT AGENCY, ANSWERABLE TO THE PRESIDENT  
FOR ITS ACTIONS AND THE CONGRESS FOR ITS  
FUNDS.

--IT PROVIDES THE SERVICE WITH THE RIGHT TO RESPOND TO AN INVITATION BY EITHER PARTY--OR TO TAKE ITS OWN INITIATIVE--IN PROFFERING MEDIATION.

--IT MAKES AVAILABLE TO US A 30-DAY NOTICE OF EXPIRATION OF ALL LABOR-MANAGEMENT CONTRACTS.

--IT PROVIDES THAT PARTIES IN A DISPUTE SHALL PARTICIPATE FULLY AND PROMPTLY IN MEETINGS CALLED BY MEDIATORS FOR THE PURPOSE OF SETTLING DISPUTES.

--IT GIVES THE DIRECTOR THE AUTHORITY TO SET THE STANDARDS FOR HIRING, TRAINING AND ASSIGNING MEDIATORS; AS WELL AS TO ESTABLISH AND SUPPLY REGIONAL AND FIELD OFFICES.



--AND IT DOES ALL OF THESE BY MANDATING THAT, AND THESE ARE WORDS FROM THE ACT:

"IT IS THE POLICY OF THE UNITED STATES THAT SOUND AND STABLE INDUSTRIAL PEACE AND THE ADVANCEMENT OF THE GENERAL WELFARE, HEALTH, AND SAFETY OF THE NATION AND OF THE BEST INTEREST OF EMPLOYERS AND EMPLOYEES CAN MOST SATISFACTORILY BE SECURED BY THE SETTLEMENT OF ISSUES BETWEEN EMPLOYERS AND EMPLOYEES THROUGH THE PROCESSES OF CONFERENCE AND COLLECTIVE BARGAINING. . . ."

TO SUPPORT THIS STRONG PIECE OF LEGISLATION, PRESIDENT TRUMAN APPOINTED A STRONG AND WISE AND UNIVERSALLY ADMIRER MEDIATOR TO HEAD THE NEW AGENCY--CYRUS CHING.

THE NATION WAS WEARY OF LABOR-MANAGEMENT WARFARE--AND WAS EQUALLY WEARY OF A FRUSTRATED GOVERNMENT'S INEPT AND OFTEN HEAVY-HANDED METHODS OF DEALING WITH DISPUTES.

CY CHING BROUGHT THE NATION RELIEF BY APPLYING A STEADY, KNOWLEDGEABLE AND RESPONSIBLE HAND TO THE TILLER OF INDUSTRIAL RELATIONS.

BY THE TIME OF THE KOREAN WAR, THE FEDERAL MEDIATION AND CONCILIATION SERVICE HAD BECOME THE NATION'S DOMINANT TOOL FOR INDUSTRIAL PEACE--EVEN IN WARTIME.

CY CHING BROUGHT A NEW PHILOSOPHY TO THE WORLD OF LABOR-MANAGEMENT RELATIONS . . . A PHILOSOPHY THAT THE PARTIES AND THE PUBLIC COULD UNDERSTAND AND COPE WITH.



HIS TONE MIGHT HAVE BEST BEEN EXPRESSED IN THE WORDS THAT HE WROTE FOR THE SECOND ANNUAL REPORT OF THE FMCS:

"WE LIVE IN A DEMOCRACY," HE SAID.

"OUR DEMOCRATIC IDEALS AND PRACTICES APPLY TO OUR INDUSTRIAL AS WELL AS TO OUR POLITICAL INSTITUTIONS.

"UNDER A FREE DEMOCRATIC SYSTEM WE SHALL CONTINUE TO HAVE STRIKES, LOCKOUTS, AND LABOR-MANAGEMENT DISTURBANCES. THEY ARE THE PRICE WE PAY FOR OUR FREEDOMS.

"THOSE FREEDOMS," HE WENT ON, "CAN BE RETAINED AND THEIR PRICE LOWERED BY UNREMITTING EFFORTS BY ALL--PARTICULARLY MANAGEMENT AND UNION LEADERS AND GOVERNMENT REPRESENTATIVES--

TO IMPROVE HUMAN RELATIONS IN INDUSTRY  
AND TO PROMOTE THOSE PRACTICES WHICH  
RESULT IN THE MOST EFFECTIVE COLLECTIVE  
BARGAINING."

MUCH HAS CHANGED IN THE 24 YEARS  
SINCE C.Y CHING WROTE THOSE WORDS, BUT  
THEIR TRUTH REMAINS.

AND IT IS THE DUTY OF EVERY MEDIATOR  
IN THIS ROOM TO CARRY FORWARD THE SEARCH  
FOR METHODS TO IMPROVE HUMAN RELATIONS AND  
TO PROMOTE THOSE PRACTICES WHICH RESULT  
IN THE MOST EFFECTIVE COLLECTIVE BARGAINING.

IN THAT SEARCH, WE MUST IMPROVE ON  
THE TRIED AND TRUE POLICIES AND PRACTICES  
OF THE PAST.



AND EQUALLY IMPORTANT, WE MUST SEARCH FOR NEW FIELDS IN WHICH THE MEDIATION PROCESS CAN BE USED TO CULTIVATE A BETTER AND MORE RESPONSIBLE USE OF COLLECTIVE BARGAINING.

WE HAVE IN OUR SERVICE TODAY A CORPS OF NEARLY 280 PROFESSIONAL MEDIATORS. SOME OF YOU CAN TRACE YOUR CAREERS BACK TO THE CONCILIATION SERVICE AND THE WAR LABOR BOARD.

SOME OF YOU HAVE COME ABOARD DURING MY ADMINISTRATION.

ALL OF YOU SERVE BECAUSE YOU EITHER HAVE THE QUALIFICATIONS REQUIRED OF AN AGGRESSIVE PEACEMAKER, OR YOU HAVE THE POTENTIAL TO ACQUIRE THEM.

WHAT ARE THOSE QUALIFICATIONS?

WHAT MAKES A PERSON UNIQUELY QUALIFIED  
TO BE A FEDERAL MEDIATOR?

--FIRST AND FOREMOST, THE MEDIATOR  
MUST BE A PERSON OF UNQUESTIONED INTEGRITY  
AND IMPARTIALITY. THE TOTAL TRUST AND  
RESPECT THAT ARE A MEDIATOR'S PRIMARY  
STOCK IN TRADE CAN EXIST ONLY IN A CLIMATE  
OF INTEGRITY AND NEUTRALITY. THE MEDIATOR'S  
WORD MUST BE AN UNBREAKABLE BOND.

--THE MEDIATOR MUST HAVE AN INDE-  
PENDENCE--BUT AN INDEPENDENCE THAT IS  
FOUNDED ON AN UNDERSTANDING FOR THE PROBLEMS  
OF OTHERS.

--THE MEDIATOR MUST BE KNOWLEDGEABLE  
IN THE ART OF COLLECTIVE BARGAINING--AND  
MUST BE ABLE TO USE THAT KNOWLEDGE TO BUILD  
CONFIDENCE IN OTHERS.



--THE MEDIATOR MUST HAVE A SENSE OF COMPASSION, AS WELL AS A SENSE OF HUMOR. BOTH QUALITIES CAN CALM THE TROUBLED WATERS OF CONFLICT.

--THE MEDIATOR MUST ALSO HAVE AN UNUSUAL COMBINATION OF PATIENCE AND ENDURANCE THAT WILL ALLOW HIM TO GENTLY LEAD THE PARTIES AWAY FROM THE PERSUASION OF FORCE . . . AND TOWARD THE FORCE OF PERSUASION.

--A GOOD MEDIATOR WILL BE ABLE TO TELL A STORY AND GIVE A SPEECH IN A FASHION THAT WILL BRING HOME A MESSAGE.

--A GOOD MEDIATOR WILL CARE ABOUT HIS COMMUNITY. HE WILL BECOME INVOLVED WITH PEOPLE AND ORGANIZATIONS IN A CONSTANT DRIVE TO BUILD A CLIMATE OF LABOR-MANAGEMENT PEACE.