CHAPTER VII

FEDERAL MEDIATION AND CONCILIATION SERVICE

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The Federal Mediation and Conciliation Service's arbitration function is far different from the days when we maintained a staff of permanent arbitrators. The Labor-Management Relations Act of 1947 made it our function to provide "full and adequate governmental facilities for conciliation, mediation and voluntary arbitration." In effect, this language left it open to the Service to determine how best to fulfill this last duty. We therefore decided that our proper arbitration function should be solely that of helping labor and management to find qualified and acceptable arbitrators, rather than giving them arbitration service directly. Thus, our basic arbitration function has come to be the maintenance of a roster from which we can nominate arbitrators to the parties and the suggesting of certain procedures and guides that we believe will enhance the acceptability of arbitration as an alternative to the use of economic force in the industrial arena.

Our arbitration job is akin to that of a broker since we do not participate or concern ourselves with the final relationship of the parties, but only with the means by which they reach their hoped-for mutually agreeable settlement. In its delicacy, our role might be even more immediately analogized to that of the marriage broker who hopes to aid in the creation of a happy and indissoluble relationship—one that threatens neither long-run friction nor immediate separation. Then, too, the marriage

broker, like ourselves, is committed to the general proposition that we need not wait for heaven to build a happy marriage.

More seriously, however, I believe that the arbitration role we have undertaken is in fundamental conformity with the present Administration's views as to the proper role of government vis-a-vis the economy. President Eisenhower has said that he subscribes to the Lincolnian statement that the correct role of government is to do for the people only what they cannot do themselves, or do so well alone. Labor and Management are certainly capable of writing their own contracts and enforcing them with arbitrators of their own selection and fundamentally should do just this. However, just as is the case with our more basic mediation function, when the parties find difficulty in writing or enforcing their contracts, government can and should undertake non-coercive efforts to aid them, always realizing that it is best to leave to them all that they can do for themselves. In so doing the best interests of all concerned are properly served.

The acceptance by labor and management of this Service role, as well as the acceptability of arbitration itself, is reflected in the steady increase in our load of requests for the nomination of panels. For example, there has been a more-than-17-percent increase in requests during the last six months of 1955 as against a like period a year ago, and our total load is more than double what it was only three years ago.

The role of the Federal Mediation and Conciliation Service in the arbitration field, as I have pointed out, is that of an intermediary between disputing labor and management. The role raises certain fundamental issues. Since we are in fact in the position of a government agency able to give business and consequent financial rewards to private citizens, we must be very careful that, in the selection of people for our roster and the nomination of these people to the parties, we in no way discriminate among them or incur the charge that we have selected certain arbitrators for a favored role in the field.

Our roster at present contains about 400 names and we presently add people to it as soon as they are brought to our attention and their qualifications and acceptability are demonstrated. We have added nearly 60 new people during the past year. However, there has been an almost equal number who have become inactive, through death, change of occupation or locality, unacceptability, or at their own request. Of these approximately 60 whose names have been added, about half have been chosen by the parties in their first few months on the roster.

In order to give the parties a wider range of choice and to increase the opportunities for experience among arbitrators, we have changed the policy of the Service which had existed since 1945 by now submitting panels of seven rather than five, unless a number other than seven is specified in the contract or requested by the parties. This suggestion came from one of our most experienced and acceptable arbitrators and has been well received.

During the course of a year, an arbitrator on our roster will receive an average of 15 nominations on panels. This average is, of course, subject to considerable variation, almost solely because of geographical location. In some areas of the country we receive relatively few requests; either because these areas are not highly industrialized, because arbitration is not well accepted in the area, or possibly because the parties in that vicinity select their own favored arbitrator directly, without recourse to the American Arbitration Association or ourselves. For example, over the last two and one-half years, each arbitrator in the Southeastern United States has averaged 20 nominations, whereas in the Northwest the average is but seven. In the Ohio-Michigan area the average is 21. The average for each arbitrator in New York City is 13; for Texas it is above 40. However, where these regional variations are not a factor, it is our constant and, I think, successful attempt to make an equitable distribution of the available case load.

The problem of the Service's necessary impartiality in the naming of arbitrators is even more fundamental when we are requested to name an arbitrator directly. Consequently, we avoid it whenever possible, both to avoid the charge of partiality and because we believe that a decision is more likely to be acceptable if the arbitrator is selected by the parties. We submit panels even when a direct appointment is initially requested, making a direct appointment only if the parties cannot agree on a selection and then insist that we appoint. Despite this, the number of necessary direct appointments remains steady at approximately three percent of the year's total designations. In selecting these people we cannot do otherwise than to attempt to apportion the appointments equally among the arbitrators in the given geographical area.

As I noted earlier, we feel that it is proper for us to make certain suggestions and guiding statements as to the conduct of arbitrations and the fees charged for this work. We do this only with a view toward increasing the acceptability of arbitration in general and, in a few cases, to systemize our own administrative procedures. In this connection, we have recently revised our arbitration policies and procedures. Copies of this revision are available.

In regard to fees, we now permit a maximum charge of $150 per day for grievance cases but, despite this change, we find that the average charge remains approximately $100 per day. In 1949 the average charge was $75 per day. There is, of course, considerable disparity in fees charged in different parts of the country, variations in some cases that seem difficult to explain. We also note minor variations among the fees charged for the different types of activities in an arbitration case—travel, hearings, study, and writing. A substantial number of arbitrators charge more to hear a case than for travel or study of cases. We also note differences in fees depending upon the type of grievance. One curious anomaly is that some arbitrators charge more than their usual fee for discharge cases, others less!

These general remarks on fees, of course, relate only to grievance arbitration, as opposed to contractual arbitration.

Our new policies and procedures have expedited the appointment of arbitrators and the awarding of decisions. We now request that decisions be made within 30 days of the end of the hearing or submission of briefs unless the parties agree otherwise. We did this because we all know that one of the valuable features of private voluntary arbitration is that it provides an immediate forum for grievance resolution. This virtue is lost if awards are unreasonably delayed. Then, too, you can readily understand that, in a small agency such as ours, relief from the burden of repeated follow-up letters is necessary.

From these remarks you may see that we do not minimize our obligation to do all within our power to provide "full and adequate facilities for * * * voluntary arbitration." At the same time we do not feel that we should assume any fundamental responsibility that is properly that of the parties or of the private arbitrators. We believe that when the parties fail to settle their dispute through their grievance machinery or by negotiation, voluntary arbitration has demonstrated its effectiveness as a means of resolving disputes over contract interpretation. While under most circumstances I do not believe that arbitration is desirable as an extension of the collective bargaining process, it must be conceded that at times it is a reasonable alternative to resort to economic force in the settlement of contract negotiations or reopenings.

In significant part, the effectiveness of arbitration is due to the high standards of wisdom and impartiality shown by the men and women of varying backgrounds from all parts of this Nation who devote their time to this type of work. For this you are to be congratulated.

I mentioned earlier in this talk that our arbitration function is that of an intermediary and stressed the importance of that function being so performed as to be of optimum service to both labor and management. During the year in which I have

served as Director of the Federal Mediation and Conciliation Service, I have devoted every effort to seeing that our arbitration division is administered efficiently, impartially, and with complete honesty. You have my assurance that while I remain as Director my efforts to that end will not be relaxed.