

Oral History of George Cohen, Esq.

This interview is being conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit. The interviewer is Roger Pollak, and the interviewee is George Cohen. The interview took place at the home of George Cohen on Thursday, January 26, 2023. This is the seventh interview.

MR. POLLAK: We've been at this for about a year, I think.

MR. COHEN: I believe so, Roger.

MR. POLLAK: And your apartment is as congenial a surrounding as it has been throughout the process. It's a pleasure.

George, today you wanted to talk about your time becoming and then as director of the Federal Mediation and Conciliation Service (FMCS), and I guess where we're going to start is with how that came about after your kind of wrapping up your practice.

MR. COHEN: Yes. One of the great things about this particular interview is it forced me to go back and take a real hard look at a four-year career and what preceded that career, so I feel honored to be able to do that.

The words that I always end up using is coincidences, circumstances, and relationships, and that's exactly what I think happened here. I was part of a mandatory retirement program at Bredhoff and Kaiser, and that took place in 2005. I was then 72 years old, and the commonly held view about me by my wife and friends was I wasn't really ready to go out to pasture. I thought long and hard about what my interests had been, and lo and behold, I felt it easy to get focused on mediation.

As you know, as the chief negotiator in many rounds of bargaining, you end up mediating with your own team and mediating with the other side, so the word mediation sort of jumped out at me.

I was given, as a senior retiree, office space at Bredhoff and Kaiser. I was going to be on my own. I sent out a few letters saying I'm going to be a solo practitioner as a mediator. Soon thereafter, I had two distinct paths that arose that I couldn't have been more pleased with. The one and most interesting was that the U.S. Circuit Court for the D.C. Circuit has a very prestigious mediation panel, which is administered by the court. Two of the then-current judges were professional and social friends of mine, two ends of the spectrum, Harry Edwards to the left and Larry Silberman to the right. I believe they jointly called me somewhere around 2006 or 2007 and said we noticed you're now mediating. How about joining our team of about 20 or 25 pro bono mediators. Judges assign mediators to certain cases. I said that sounds delightful to me. What more public service could I do?

I was active in that world for about three years. Because of my NLRB background, I immediately was asked to do a few circuit court of appeals, D.C. Circuit labor cases, all of which were fascinating, complicated, and controversial.

At about the same time, I received a call to do something I had not done before in my life, which would be to serve as a joint mediator in a terrible dispute between ALPA (airline union) and the pilots of Mesaba

Airline that flew out of Minneapolis-St. Paul. I was asked to be the “union’s” mediator. Mesaba selected a “management” mediator who I didn’t know, but who was a very experienced person in the airline industry as well as being a respected arbitration lawyer from North Carolina. The two of us engaged in I would say about a six-month unbelievable episode sitting in a hotel in Minneapolis-St. Paul observing as some of the pilots and the airlines went at each other on every single article of their existing contract. They’re very contentious. The pilots are very knowledgeable about the airline operations. The airline thinks they’re more knowledgeable than the pilots! That’s a subject of great concern. Finally, after literally six months of arguing over maybe a hundred or more provisions in a 200-page agreement, the parties reached an agreement, which was then ratified.

That was a wonderful success story. And out of that, Roger, was my learning what I knew in advance that we Easterners are pretty boring people, whereas the people from the South have all these expressions and commentary of life that is way more pleasurable than anything I’ve ever uttered in my life. My colleague had one at the very end of bargaining, when things were still really tense. He walked into my apartment, we had rooms at the hotel, and said, “George, the time for pussyfooting is over.” I said, what did you say to me? He said, we’ve got to tell these two parties, you and me, that “the time for pussyfooting is over.” I said, well, you tell it to your folks, I’m going to tell it to my folks, and let’s see how the

music plays out. I don't know if that's what caused the resolution or not, but in my mind, for the rest of my career as a mediator, I regularly used that saying as the end of mediation approached, and I pass that on for posterity here.

That was number two. I had a number three quickly. At the Bush inaugural in 2006, there was a terrible incident in which the D.C. police rounded up about 200 people who they claimed were engaged in violence or causing physical threats – some of whom carried picket or just signs. They hauled them into various large police vans, almost willy-nilly. There was no room at the jail, so they brought them to some school building, if I remember, had them handcuffed, laid down on mattresses on their stomachs, and kept them there until the judicial system was able to process them between four or twenty hours from the time they were apprehended. No food, no water, no access to bathrooms, under conditions they claimed were inhumane.

The next thing I knew, there was a class action filed by a husband-and-wife plaintiffs team that specialized in representing protestors at major public events. Once it came to the attention of the U.S. District Court in D.C., they spoke to the Court of Appeals folks, and they said we have two labor lawyer-type guys who are perfect for this kind of a case, one of whom is Dick Hotvedt from Morgan, Lewis & Bockius, who was also on the panel at that time. Fast forward fifty years later, Dick lives one

flight above me here at Maplewood. So he and I have had a chance to have a drink and reflect about this experience.

Among the 200 or so arrested were nurses who were staying at a hotel on 15th Street and were out in the street just innocently observing the protest marchers, and somehow, they were swooped up by the police and also incarcerated. So we had a very difficult time given that breadth of individuals, all of whom in fact were collectively confronted with the same ultimate situation with the police.

In sum, class action plaintiffs, a federal district court case, and the two of us undertook co-mediation. Again, after many months facing the challenge of trying to distinguish between those who were seriously hurt and those who were not. At bottom, how do you have a monetary settlement that takes into consideration these unique circumstances? We were dealing with the Attorney General of the District for the defendants and the plaintiffs' husband and wife class action team.

Just when we were at the moment of truth with a comprehensive \$10 million or so settlement agreement ready to be finalized, a newly appointment Attorney General for the District of Columbia appeared at the meeting. He was a renowned, hard-nosed, tough litigator from Hogan & Hartson. He walked in, met with Dick and me, and he gave us a real scolding. He told us we were way out of line, we didn't know what we were doing, we didn't understand the most fundamental thing, which was astounding to us. He said a Black jury in the District of Columbia is not

going to give all these white kids anywhere near the kind of money that the District was about to agree to because of our efforts. He then declared, “As far as I’m concerned, this mediation is over.” Dick and I looked at him. I did not know the gentleman. I said I don’t really know who you are, but we’ve listened to your message, and we strongly believe you’re wrong. We think that before this litigation is over, you will realize you made a big mistake in not agreeing to our mediated settlement.

Of course, we were chagrined. We were teed off. We had put in an enormous amount of time and effort. Six or eight months later, the newspaper announced a negotiated settlement had been reached. The dollar amount was roughly the same as we had mediated, and it took six months of pain and suffering for the parties and the attorney general’s office. So that was what you would call an up and a down but an interesting experience.

Last but not least by any means, I actually just got off the phone with my very co-mediator in this matter, a very distinguished arbitrator named Richard Bloch. I said, Rich, it was about 2007 and 2008. How did we get involved as co-mediators, because I know what we did, but I can’t remember how it came about. He said, well, in 2006, during the Bush administration, a very hard-nosed gentleman became the chief spokesman for the Federal Aviation Authority. They were in detailed bargaining for a new agreement with the Air Traffic Controllers of America. They were unable to reach an agreement, and the FAA, under his leadership,

unilaterally implemented a document that they called a “Collective Bargaining Agreement,” albeit one-sided, not agreed to, not signed off on. A very interesting situation emerged. Somehow, a year and a half later, after 5,000 grievances were filed because every action that the FAA took, the union challenged on the grounds that it was not based on a provision of the collective bargaining agreement. As a result, all that happened were boxes of grievances were filed. Somehow the former administrator of the FAA was called in by a Congressional committee. I don’t know exactly, but another former head of the FAA, Jane Garvey, was asked to mediate the dispute. She apparently immediately said I know nothing about collective bargaining, I know a person named Rich Bloch. She called him. Rich Bloch apparently then said this is a case for me and George Cohen together. And George Cohen agreed to do it.

There was one threshold event that happened and is worthy of the attention of anybody who reads this. There had been a predecessor collective bargaining agreement negotiated by these two parties. Let’s call it the green book. The document that the FAA generated unilaterally was called the white book. So enter George Cohen and Rich Bloch, and here’s the first day. The parties are looking at us like why are you here, and we’re just saying we’ve been appointed to try to work with you. And the FAA’s lawyer, who was a very fine labor lawyer who I knew well named Harry Risetto, was there under a specific directive from his client – you tell the mediators we start with the white book. And the union, when they

heard those words, shouted and screamed that the white book was not a bona fide CBA and therefore start from the green book. Rich and I caucused and made what we would call in the trade a monumental threshold decision. We walked back into the room and said gentlemen, there is no white book. The green book has expired. There is no book. So you're starting from scratch with us if you want to come to a resolution! FAA, if you want to state your position on any provision from the language of the white book, fine. You guys from the union, air traffic controllers, if you want to argue any provision should be governed by the green book, that's fine also. We will begin our mediation with those two respective positions in place. This is a new ballgame. Neither party had won. So you could imagine. There was a lot of noise and a lot of consternation. The choice was, are they going to throw us out or keep us in? They chose to keep us in. I will say to end this all, approximately six months later, after five days and nights a week around the clock, we helped to produce a new collective bargaining – much to the appreciation of both parties!

Armed with all those experiences, I was, as you would expect, totally enamored with the process of mediation. I was prepared in 2009 to continue as a solo mediator doing that. It's a very unusual thing, as you'd expect, to have joint mediators. But I had them in all three of those particular situations.

MR. POLLAK: What happened next that led to your appointment as director of FMCS?

MR. COHEN: That was then in my mind a total unanticipated development. Barack Obama had been elected President of the United States and, as you'd expect, he had very strong trade union support. As a matter of fact, his number one labor man while he was at the Senate was the son of the president of a major UFCW local in Chicago named Henry Tamarin. His son, a young man named Nate Tamarin, inherited the position at least as an interim basis as Obama's key person dealing with labor issues. At that time, I think it's fair to say, the two most important lawyers in the trade union movement were Jon Hiatt, General Counsel of the AFL-CIO, and Judy Scott, General Counsel of the SEIU. The SEIU had played a very prominent role in Obama's campaign. Andy Stern, the president of the SEIU was known in the first year of Obama's ascendancy to the presidency as the person who had more visits to the White House than any other person during that year.

To make a long story long, it appears that Judy and Jon were friends. They were looking at prospective appointees to the NLRB, the Department of Labor, and the FMCS. I received a joint call from them one day saying George, we'd like to give your name to Nate Tamarin to be the nominee for Director of the FMCS. I said I think pretty much what you thought I would say, Roger. I said guys, I'm 75 years old. I'm working part time under my schedule, and I think this is a wonderful offer, but I don't think this is something that I ought to affirmatively respond to. They said well, we'll be back to mediate with you some more! I would estimate

that two or three days or weeks later, I then started receiving calls from very prominent management labor lawyers. Andy Kramer of Jones Day, Harry Risetto and Chuck O'Connor from Morgan Lewis – highly respected with numerous important corporate clients. There was a fear at that time that the Democratic administration was going to support a law which would provide that if in bargaining for an initial CBA you don't achieve a negotiated settlement, the parties would be subject to mandatory mediation, and if that doesn't produce agreement, they get mandatory arbitration of their first agreement. That literally sent chills to the Chamber of Commerce and the NAM. They communicated that to their high-level lawyers, and the question was, is President Obama going to now appoint some radical young person to show up as the FMCS director who might end up with authority to be either the key mediator or the decision maker. We can't live with that. We've got to find some rational human being. Who is a rational human being that they had dealt with? George Cohen.

After that happened, I said to myself, well what the heck. What have I got to lose? I've got both important interest groups saying I should do it, and I had a follow up conversation with Jon and Judy. I said okay, tell Nate I'd be willing to come in for an interview. I came in for an interview in the Executive Office building of the White House. My immediate reaction, Roger, was let's see. Nate's about 35, and the two people he had with him are between 25 and 30. I'm now 75 going on 76. I may be a little older than the three of them combined. Nate, who has

turned out to be to this day a wonderful friend of mine, a terrific guy doing that job, looked up and he asked the first critical question, why would you want this job? And that was okay because I had thought why don't they ask me that to begin with. I said I wouldn't be here if I'm not interested. He said that's all we wanted to hear. So tell us what you would do as a mediator. Thirty minutes later, they made up their minds that I was a kind of proactive, solution-oriented person also committed to outreach to the labor-management community.

I was thinking it was important to build up the morale of 175 career mediators. Interestingly, the FMCS, may be the only government agency with one presidential appointee. That's it. Everyone else at the FMCS is career, including the people who were then deputies. When I named Allison Beck as another deputy, it went through the normal civil service. So that was it.

I accepted. I said I'll be honored to be nominated. They said we'll assign someone to help you out. I said that's fine, but I don't know that I want to get into that. But they said you do because you're going to have to appear before the majority and minority staffs of the Labor Committee of the Senate for detailed interviews. And rest assured, the Republican staff is doing all it can to delay any of Obama's labor nominees. I said I appreciate that. I don't have a controversial position, do I? And they said no, but that may not matter.

In any event, you then fill out an unbelievably large number of “vetting” pages, and you wonder when you’re done how anybody who isn’t the most honest human being in the world could possibly make it through all the paperwork. From birth, no less. Every possible conflict, every dollar you might have received, every place you might have been, all has to be disclosed and then reviewed and sent back to you. I successfully went through all of that. Then I appeared before the Senate Republican staff first, and I had a ten-plus experience with them. Here’s why. I walked into the room and learned that the most senior staffer had graduated Georgetown Law School about three years before. The other twelve junior members were either college graduates or just had finished law school. Bottom line, they were understandably completely unknowledgeable about the FMCS. They had heard about the Labor Department and the NLRB, but not the FMCS. They knew I was a Democrat, and that’s all. So after about three minutes of some questioning, I decided to take charge. I asked how many of you have ever even mediated a case or know of or watched a mediation? And of course you know what the answer was. No hands went up. I said okay, I think this is what we should do. You four staffers, you’ll be union representatives. You four will be management, and the two remaining, including the senior man, you’ll be the mediators. I’ll give you each three typical issues to deal with in a collective bargaining negotiation. The Union wants wage increases and pension improvements. Management wants to take away

health care. Why don't you start, and I'll observe and tell you what I would be doing as a mediator.

Well, much to my delight, they completely got into this experience. For the next thirty minutes or so, they negotiated. I observed. When they were done, I gave them a little critique about how they performed as negotiators. And that was essentially the end of my interview. I said it's a pleasure being here. Do you have any more questions? I have a question, the most senior staffer replied. He then stood up at his end of the table, and he looked at me and declared, "Mr. Cohen, I want to tell you this has been the most interesting interview I have ever conducted in my life, but I'm a Republican. I couldn't be hired to work for the FMCS." I said, that's wrong. In fact, you look like you might be a good mediator from what I watched. If you applied to be a mediator for the FMCS, we don't ask you your political party affiliation. I'm a Republican, he repeated again and again. I said I'll see you outside after the interview. And I did. I tried yet another time to dispel his conclusion that a Republican could not get a job in a Democratic administration. It reflected on me how bad our system had become that he believed that. The result was their committee approved me, and I was never called to have a hearing before the Senate. Instead, a voice vote was taken, and in the middle of October, six months after I was nominated by the President. I was told that was amazingly short vis-à-vis what normally

goes on in that game. So by October 6, 2009, I'm now in my job as the Director of FMCS.

MR. POLLAK: How did you find things at the FMCS when you got there?

MR. COHEN: From the time I was nominated and word was out that I was likely to be confirmed, the FMCS assigned their PR man John Arnold and Scot Beckenbaugh, the gentleman who was then the number one career mediator at the FMCS, to meet with me and get me prepared in advance for what my job was going to entail. They understood that once I was confirmed, my responsibilities started immediately. Obviously there's a backlog of things to do. So I had probably three to five one- to two-hour sessions with each of them at Bredhoff and Kaiser, in our small conference room, in which I asked the basic questions, and they told me what they wanted to share with me that wasn't confidential information.

What I was advised was not something that I was at all happy about. Arthur Rosenfeld, the person I was succeeding, had never done anything in the real world of labor-management relations. His career was as a Senate staff person on Capitol Hill. I was told he had little interest in collective bargaining or mediation. He also had achieved his political ambition to be on the NLRB as a management representative. I had never met him. I had never even heard of him, which probably tells you something since I had been actively practicing labor law for the past forty years. He apparently didn't even pass muster with the Republicans on the NLRB. They got him "reassigned" to be the director of the FMCS. During

that tour, he sort of made it known things like the sports and entertainment industry and the public sector and certain other areas that they shouldn't be involved in mediation and therefore, I'm told, that FMCS had not been in the public limelight for the last four years. In addition to that, as a result, the morale of the 175 career mediators was at a very low ebb because he didn't give them much credit for the valuable contribution they made.

A very quick vignette about Arthur Rosenfeld is that my first day in the office, the IT people come in and said is everything okay, Director? That's how you're called. I said well I can't seem to turn on my computer. They said we understand. You look like you're an elderly gentleman. We'll help you out here. I said fine, that's what I'm looking for. Well, the first expert was there for about a half hour. He can't get it on. He calls the number two. He comes up. No solution. The third comes, this time with his supervisor, and they're all looking at me saying we have no explanation for this, but you are right. Your computer is not functional. We'll get you an alternative one, but we'll be back tomorrow, and don't worry about it. Everything will be taken care of. And lo' and behold, they did come back the next day. They went through the same exercise and still don't know what to do. One of them knelt on the floor where the wiring touches the plug. He noticed that the wiring had all been chewed up and cut through. They know how – it's by Mr. Rosenfeld's French poodle that

he brought to the office every day of his life to sit there with him while he conducted the job of director of the FMCS!

So I sat there on my second day on the job saying wow. Then when I went out into long, beautiful corridor, I noticed there were portraits of each of my sixteen predecessor directors, I'm only number seventeen because the FMCS was established as an independent agency by a 1947 Act of Congress. And much to my surprise and chagrin, there is the portrait of Mr. Rosenfeld with his French poodle in his arm! That told me a lot about who I was succeeding. By any standard, this was a bizarre experience.

In direct answer to your question, it didn't take a brain surgeon to figure out what to do. I had two distinct paths. First and foremost, the morale of the workforce, and I'll tell you what I set out to do. And second, the image that the public had about the FMCS, which was much more of a challenge because, as you know, it takes two parties to consent to the use of a mediator. The statute and the system are very clear. All I could do under the language of the statute is proffer my services at which case any one or both parties could say thank you, but no thank you. Indeed, if both said fine and you start, any party could walk out at any point. So you are there only by dint of your ability to help persuade the parties it's in their joint best interest to keep you around to help them collectively. And boy that is a piece of work to be confronted with.

So let's go through what I did. In terms of the image which I was most concerned about, I spoke to our PR gentleman, who was not a really proactive PR guy. He had sat there for four years with no job and a nice GS-16 job and nothing to do because there was no PR going on. You and I have talked "relationship." I immediately said to myself, give me a schedule of all the major rounds of bargaining coming up in the next year or eighteen months. The Agency had a lot of data. I carefully looked at that list and said well, I know the steel industry. I know the aluminum industry. I went through industry-by-industry, and I asked do I know anyone there? I'm going to start with the ones I did, and I had positive introductory calls – only by telephone, never e-mail. I either called the vice president of labor relations and/or the president of the union when I knew them. My conversations went something like this: I have not had the pleasure of ever speaking to you or meeting you. I'm the new FMCS Director. Do you know what we offer? Not necessarily, Mr. Cohen, a CEO would say. Let me just talk you through. I know your bargaining is coming up. I know you're not looking for immediate help, but please understand, if you're nearing an impasse or a problem, or even if you want help in training your staff, we're here to do it – free of charge. I'd be delighted if you make a follow up call to me at some time. Not shockingly, I got some favorable responses, certainly from IBEW, CWA, United Steelworkers. I made all of them know that I needed their help in getting their counterparts to feel the same about us and about me. So that was

phase one, and it was just fascinating for me to see the reactions I was getting and making sure you don't overplay your hand, but you're trying to get your foot in the door.

The other thing is, I did have the opportunity to speak at labor conferences all over the country because you're the "Honorable George H. Cohen," and the industry people were very interested in wanting to meet anybody who was an Obama appointee. So I had the opportunity to go and speak at least once or twice a month at large gatherings in the major cities to joint labor-management officials and government staffers. The FMCS personnel were there as well. I did just what you would expect. Here I am. Here's what we have to offer. Here's what we know we can do to help you. You tell us anything that you need that has anything to do with relationships. We'll be there with you. And by the way, I have been a chief negotiator for the last thirty or forty years of my life. I'm an "agreement" person, and you know that unless there is an agreement, you have uncertainty, you have chaos. You surely don't have stability. We're here to help you get stability. And then I use the line I used most successfully in four years that I'm convinced strikes a responsive chord almost every time. That's when I'd say mediation provides both parties the opportunity to "control their own destinies. You own your own agreement. Absent an agreement, nothing is certain. Each side thinks it has the leverage, unions by striking management by locking out. But in the final

analysis, no one knows how that's going to play out. So if you want to achieve stability, here I am!" That was my mantra.

Okay. One last thing on this. I developed a perfect introduction, and my introduction was, "my name is George Cohen. I have the best job in the federal government. Why is that, George? Well, I have no Board. I have no Commission. I report to no one. I can do anything that I decide I want to do, and no one knows what the hell I'm doing!" I would inevitably get very positive responses to that.

In my four years as director, I never had any interference from anybody in the Administration. I essentially shared regular updates with my White House liaison, Nate Tamarin – exchanges of information but no interference. I understand that Nate in turn kept the President and Vice President informed when high-profile disputes were involved. Other government agencies knew what I was doing, but most people don't realize the reason why we had the FMCS was Congress was concerned that keeping the FMCS as part of the Labor Department would inevitably create the appearance that "politics" were involved because if it's a Democratic administration, maybe the FMCS is going to be a little more friendly in that direction and vice versa. As noted, in 1947, Congress established the FMCS as an independent agency to avoid any concern that it was under the control of the Department of Labor.

So my initial conversation with each Secretary of Labor, I always emphasized that if any party seeks your assistance in a negotiation dispute,

I think it would be very helpful if you refer them to me. We ought to have periodic conversations, and if you are aware of any big trouble spots, I will put that on my agenda. I would appreciate it if you do not assert yourself and attempt to replace me as the mediator. And that worked extremely well. Seth Harris was my contact person at the Department of Labor. I had none of those issues. None.

MR. POLLAK: I know you wanted to talk about some of the high-profile disputes that you got involved with personally. Obviously there were dozens of mediators working on disputes large and small, but you rolled up your sleeves and got involved in them.

MR. COHEN: Yes. So for the readers, let's just quickly say as you'd expect, the FMCS, like all government agencies, had regional offices. We had about ten in major cities, New York, Philadelphia, Chicago, Los Angeles, Denver, San Francisco, Phoenix, Miami, et cetera, and each one was staffed by a person who was the number one person there, and usually between five or ten mediators. In its heyday, I understand, there were as many as 250 mediators at some point in time. With the Republican administration, the number was reduced. I think my total complement was about 175 mediators – all civil service employees GS11-14, all professionals, all experienced. Everyone either came out of state mediation service or after a certain number of years representing management or representing unions. So we had a great diversity of staff in that regard. We also had a number of women who had been hired in the five or ten years before I showed up.

I was immediately impressed that they were dedicated to their jobs and like the men working out of home a lot because if you're in Chicago but you're handling disputes in Indiana and other states adjacent to Illinois, you didn't have to be in the Chicago office. The office manager was in charge of that. What I tried to do, Roger, was the same thing as with respect to speeches. I tried to go in the first year in particular, to a variety of regional offices. I met with the staff and asked each mediator to tell me what dispute he/she was working on and what notable disputes they had worked on. Then I told them what was going on at headquarters. I wanted to get them to feel that I was one of them, which I was! They were all immediately delighted to know that a major part of my life was collective bargaining. I didn't have to talk about any other aspects of Bredhoff and Kaiser, just collective bargaining—public and private. That was my way of showing respect for their efforts and establishing we shared the same objective – assisting parties to achieve agreements.

I had the good fortune of personally assisting in the settlement of numerous high-profile disputes – to the mediators, it was a refreshing change from my predecessor's non-engagement in disputes. This translated into a big uptick in staff morale.

The first high-profile case I was asked to mediate was in March 2010. I was sworn in as the Director in October 2019. It involved professional soccer. I was called jointly by the two parties and was told that they were at an impasse in the bargaining and requested my

involvement. Unlike other collective bargaining disputes where you have the company and the union once you start talking about professional sports, a very fascinating third party – namely, the Commissioner – served as Chief Negotiator on behalf of thirty or so individual teams, and his staff. The Commissioner, Don Garber, was an experienced businessman, but I don't know how much in collective bargaining. He was accompanied by a team of the league's lawyers, economists, labor relations professionals, and several persons with operational responsibilities. The League's negotiating committee also included a number of the owners.

For its part, the Major League Soccer Players Association was represented by its Executive Director Bob Fosse, lawyers, and staff personnel and a player representative from each team. The parties occupied a conference room and several large caucus rooms.

The mediation consumed five long days and nights around the clock. There were two things that jumped out at me. The player representatives were neophytes in the world I was in. They were a diversified group of intelligent young men from all over the world, white, black, Latinos. They all drank bottled water incessantly. They all had backpacks. They all looked like they were in incredible physical condition, but they also looked quite confused about what was going to unfold in their presence over the course of that week.

Now for the dynamics as to what unfolded. Certainly the best respected or recognized superstar, Landon Donovan from the LA Galaxy,

showed up after two days. It was like another world opened up. Landon Donovan quickly became their spokesman, and of course, in the internal union discussions, I was well aware of that as I watched with interest. I established a meaningful rapport with him. My challenge was to emphasize that this was only their second round of negotiations, and common sense dictated that the League's financial situation was far removed from the other major professional sports. Free agency was not in the cards, but there was plenty of room for significant progress to better salaries and conditions of employment.

So over the course of five or six days with Landon Donovan's very exceptional assistance, we worked our way through, and the parties reached an overall satisfactory solution. We had plenty of press coverage. The FMCS, the players, and myself were all quoted. As to the players, they realized I had generated respect for them. They made inroads into benefits that they had never received before. They accepted my advice that collective bargaining was an ongoing process, and over time what they needed was increased leverage and a more favorable economic picture for the industry.

One further note. I had my right-hand man, Deputy Director Scot Beckenbaugh, with me. He assisted me in virtually all the major disputes I mediated. He was an Iowa man. He was a very experienced mediator, highly qualified to deal with both the nuances of strategy making and had special knowledge in two areas that at Bredhoff and Kaiser I relied on

other colleagues – healthcare and pensions. He also shared my proactive mediation style. So, naturally, we became a team. We talked over virtually everything I wanted to achieve, and I would say he played a very major role with me throughout my four-year FMCS career.

MR. POLLAK: Next, talk about the Bay Area Regional Transit (“BART”) mediation.

MR. COHEN: I arrived in Oakland, California, which is where the Transit Authority headquarters was located. On the management side, we were met with a serious concerned team of officials and their counsel. This is what we were told: The union was the Service Employees International Union, a union that our law firm had a relationship with. The SEIU also was accompanied by the Amalgamated Transit Workers Union, who represented maybe 20% of the total workforce. That always adds an extra challenge to achieving agreement because you’ve got two unions that have to consent to everything. Two unions with different agendas for reasons that are perfectly understandable. You have different contracts, different interests, and sometimes different even conflicting personalities. So add it all together, you have a “situation.” I walked in with Scot, and I brought my local negotiator from the regional office with me. I tried to do that in all mediations, even though I was the person ultimately in charge and responsible. I did this for a good reason. Some of the local mediators knew the parties personally. I also wanted them to go back and advise their fellow mediators that I wasn’t coming in like an autocrat and taking over. I was allowing them to share in the meetings and the judgments that were

being made. And they did, and they made contributions that impressed me at times for sure.

The union was threatening to go out on strike the day I got there. The stakes were very high in terms of possible adverse impact on a very large ridership. Five hundred thousand passengers a day were transported back and forth between Oakland and San Francisco. By my reckoning, this meant 500,000 people at 5:00 in the morning are going to get up and try to find out whether they can rely on their traditional means of going to work or were they having to face traffic jams of major proportion. I don't think I'm exaggerating the seriousness.

Now for the bizarre scene. In another room were sitting about 25 local political officials all armed with cell phones and computers. When I entered, I was told they were merely "interested" in what was going to happen, and they, of course, had their own relationships with both the union and management personnel. So right away, I said to myself well, if these people are going to be doing "sidebars" while I'm trying to mediate, I might as well forget trying. And then I'm told on top of that there's a really wonderful gentleman who's pretty tight with the union but also with management. He's the Lieutenant Governor of the State of California, Gavin Newsom, and he's a player in all this as well. Okay, I'm a total outsider, a stranger! No one knows George Cohen. No one knows Scot Beckenbaugh. Somebody knows the fellow who was with us from the regional office. So what do I have to do? Obviously, I have to first

establish some ground rules with the folks who were there, so I went in and at my best and most diplomatic way, I said ladies and gentlemen, you really have two choices here. Do it yourself, which I would support 100%, whatever your capacity is to bring these parties together, or sit in this room and understand I'm going to do this with my team by ourselves. Every day I'll come in once or twice and give you a generic update, which you are never to disclose to either party, knowing in advance I wasn't going to give them much information. I asked if anybody had any questions for me, and people did ask me questions. They seemed to be a bit taken aback. I was very assertive, but I explained to them what I had done in my life and why I was so confident that this is the right way to proceed. I left them. I said I'll come back in half an hour, and you tell me you want Option A, George or Option B, you, but you're not going to get both. I came back, and they said we'll take Option A, George. I think they did that for a very good reason as politicians. If this situation went "to hell in a handbasket," George was responsible. And if I succeeded, they would all be able to say they were supporting everything. I figured that out.

The Lieutenant Governor and I established an excellent relationship. He knew my son Bruce from making the movie, *Milk*. Bruce produced that motion picture. Gavin and his wife attended the premiere at the Castro in San Francisco, and I actually had met him that night, but I didn't realize exactly what that meant. So that gave me entree to him. He was wonderful. He knew a lot of important people, but he said here's my

cellphone number. All I ask you to do is call me every day and let me know what's happening. Let me know if I can do anything to help you, and I did. Now he's the Governor and maybe a Presidential candidate. I would give him an "A double plus" as a mediator thinking about a high-level politician, what he could have done, and more important, what he didn't do!

The Press was hanging on every word. I did develop, as you would imagine, a technique to deal with these tough negotiations. About 10:00 p.m. every night, I would go out onto the street, and there'd be between ten and thirty media people, television cameras, whatever, and I would say, "ladies and gentlemen, I am George Cohen, the Director of the Federal Mediation and Conciliation Service. I'm actively engaged in mediating this dispute. I want to thank you for your willingness to come out here at this late hour, and I want to give you one statement, and I then will not take any questions, and my statement is 'the trains will be running tomorrow.'" And I would turn around and walk out. This is what happened nightly. Five days into the mediation, the parties remained at odds over a few issues. Worse still, they were getting nastier with each other, and they were also getting very upset about the mediation and what we were doing to them because we were putting plenty of pressure on them as we didn't want a strike. We didn't see any breakthrough. Scot and I had a lengthy strategy meeting, and we said you know what, I think if we walk out on them, they're both going to panic. I don't think the union

really wants to strike, and I don't think the management really wants to force it. So at 8:00 the fifth night, I called both sides together, maybe fifty people in the room, and I said you know, we are people who are very experienced in our field, and you are all people who are experienced as well. We respect you. We hope you respect us. And we think at this point you might be better served trying to work out this problem yourselves. We've made that determination, but only if you feel that to get a solution you'd like us back, please let us know immediately and we will respond. And we left.

The two of us flew back to Washington, and the next morning our buddy, our co-mediator from the office, called me and said he just got a call. The parties want to have a settlement meeting that day, and they want him to be there. And I said perfect. And they had a meeting. He was there. The documents had already been in place with whatever minor modifications, and the matter was settled without either Scot or I actually being present, but it was settled. No strike. Perfect ending.

MR. POLLAK: The next one we have is the CWA and IBW dispute with Verizon. Those were always pretty intense negotiations.

MR. COHEN: A serious problem was dropped in our lap because before we were asked to mediate, we had two unions. The CWA represented the vast majority of the production and maintenance employees and the IBEW represented workers responsible for maintaining electrical wire lines. Forty-five thousand in the aggregate. Three-quarters represented by CWA, one

quarter by IBEW. Very difficult negotiations. Before we appeared on the scene, there was a terrible ten-day strike that should have never been called – all about legal issues over the obligation to bargain. And the relationship between the parties was in the “dumper.” What then unfolded was at least seven weeks of continuous “hands-on” intense, very detailed mediation. Scot and Pete Donatello, our local fellow from New York, were involved with me throughout this torturous experience.

The vast majority of time was on the comprehensive healthcare plan, individual item-by-item, fighting about everything because Verizon was committed to a company-wide policy. This was an unusual situation. Most of their employees were not represented by a union, and they were covered by a company-wide healthcare plan. At the same time, the unions were hell bent on protecting and improving their own negotiated plan. For myself and Scot, this was a very frustrating process. Every single item was being hard fought. For example, how many times will the use of a physical therapist be covered by the policy? Should there be an annual limit, and if so, how many visits? I mean this is literally what was going on, and nothing’s getting resolved quickly.

So the bottom line, I decided the time had come for me to talk directly with the three key players who were not at the bargaining table, Larry Cohen, the President of CWA, Ed Hill, the President of IBEW, and Lloyd McAdams, Chairman and CEO of Verizon. I already had

established a relationship with Larry and Ed but not with Mr. McAdams. I did know something about him.

The day I accepted the assignment, in *The Washington Post* Finance section, Lloyd McAdams's earnings for the prior year was listed as \$23.6 million. So I said to myself, this is a person who can wield a lot of power and influence. So I picked up the phone and I called him. I had done some research, and lo' and behold, he had graduated Cornell University fifteen years after I had graduated. He was an engineer, and my initial contact with him went something like this: "Mr. McAdams, I'm going to call you Lloyd because you're fifteen years younger than me. You went to Cornell University fifteen years after me, and you must therefore have a great amount of admiration and respect for who I am and what I do!" He said George, I've been waiting for you to call me. I want an agreement. I said that's all I want to hear because if you tell me you want an agreement, I'm going to be able to help you the best I know how to get an agreement. But I have to tell you, your vice president of labor management relations is not making it easy for me to help you get an agreement. Mr. McAdams in essence said when the time comes that you think you need something, I'd like to hear it. Sure enough, three weeks later, I called him. I said there are two critical items that your people are refusing to accept at the table, and it's my judgment if those would be offered to the union – and I could do it not on your behalf but indirectly – I think you'd have an agreement. He said let's review this again. He

wanted me to guarantee that result. Of course not, I replied. But I'll give you "cover." It will come from me as a proposed mediator solution. He said you got it. And in fact, I had a strong sense in advance that this would end the dispute in view of my earlier informal discussions caucusing with the unions. The result: an agreement.

MR. POLLAK: Let's move on to the United States Maritime Alliance mediation.

MR. COHEN: I told you already this was the single most important, the single most difficult, the single most potentially disastrous dispute because the ILA represented all the longshoreman from Maine to Charleston, South Carolina, on the East Coast and then in all the ports across the Gulf Coast, all the way to Mississippi, Alabama, Georgia. In other words, those 14,000 or so longshoremen could close down every one of the fourteen major ports in the United States of America. The estimates were at least a half a billion dollars impact weekly, either because of lost wages or economic downturn.

On the other side of the fence, the U.S. Maritime Alliance, affectionately known as USMX, consisted of about 25 of the most powerful shipowners from almost every country of the world, all pulled together against their wishes to have to deal with this powerful union, led by one of the most charismatic, incorrigible, impossible-to-understand-at-any-moment, human beings ever in this field, the president Harold Daggett.

Harold Daggett was a piece of work from the day we met him until the day we came to a resolution. His counterpart was the polar opposite, a quiet, soft-spoken gentleman named James Capo, whose career at USMX was about to end. He was to be replaced by Dave Adam. But the time Dave Adam replaced him, I think we had already achieved the first interim agreement.

It was September 2012, and the threat was that the ILA was going to shut this whole damn industry down. Every retailer in America was panicked. Christmas merchandise, Christmas shopping, Christmas money all at risk! We had the two parties, the Retail Federation officials were pleading with yours truly, the FMCS director, to get a solution, the Department of Transportation, and the Maritime Administration officials were on high alert and very concerned. The Justice Department lawyers told me there's a Taft-Hartley injunction possible here given the drastic impact a strike would have on the economy. However, I also knew the Obama administration likely would be loathe to seek an injunction against a major union at a time when the union would have some leverage. That was a political reality. Nate Tamarin, my terrific White House liaison, was on the phone with me regularly. Nate told me he was telling everyone this is my responsibility and none of the other agencies should interfere in my conducting the mediation.

Mediation continued from September until we achieved an interim no strike agreement before Christmas. Thereafter, three more months of

around the clock of bargaining took place. The ILA Negotiating Committee consisted of about fifty union representatives from its various locals and international staff. Interestingly, more black representatives than I've ever seen in my life in any one union, which is another really fascinating thing.

Harold Daggett's son, who was the heir-apparent then and is still the heir apparent, that was 2012, ran the New York Local and was sort of his father's "stability guy."

There we were, the night before the strike threat. Harold had threatened to strike if the Industry refused to agree to one additional sizeable economic demand. At the same time, he kept asking what am I going to do if I don't get this item? Scot Beckenbaugh and I were sitting across from Harold and Jim Capo, his counterpart. Jim Capo understood that strike was likely. He explained that he would arrange a conference call with his committee that night. I said Jim, you can do it. You have to do it for the good of the country and the world. And Jim Capo succeeded. He reported back that the one item had been agreed to, and that was the end of the dispute.

To me, this was a "no brainier." The entire shipping industry achieved years of stability on certain costs for a relatively small dollar price.

I have to tell you one vignette. The way Mr. Daggett conducted the local union representative meetings was he'd have a priest or a lay priest

in attendance to give classic Catholic prayers to his committee before he went out and met with management. And then of course when that joint meeting began, the first five words out of his mouth had the F word in it. Yes, prayer was a very big thing to Harold.

On one occasion, the union caucus was about to begin. Fifty union representatives were in the room plus Scot, me, and Pete Donatello. I'm at one end of a long table, and he was seated at the other end. Before the prayer, Harold saw me standing up shuffling my papers, and in a very loud voice, he announced, "Well George, apparently you're going to give the prayer today." This caught me by surprise. I had no notice that anything like this was ever going to happen in my life, right? Nevertheless, I replied, "So Harold, as a result of knowing you, every morning I get up and the first thing I do is pray!" Well, that was it. All fifty guys who had been having to listen to Harold do this to them all their lives stood up and applauded me.

MR. POLLAK: I understand you had another longshoreman experience in Long Beach, California?

MR. COHEN: Yes. I got a call in my office that the Long Beach port had a major strike threat. Mayor Villaraigosa himself had tried for two weeks to work it out. I knew nothing about any of this. My secretary came into the office at 10:00 in the morning and said the Mayor of Los Angeles was on the phone and wanted to talk to me. I said of course. But in the interim, the two lawyers representing the parties to the dispute called and also wanted to

talk to me. Of course, I talked to the Mayor first. He told me he'd been trying to help achieve an agreement. No luck. He's fit to be tied. He's frustrated. He can't deal with these son of a guns anymore, can I come out and help him? I said I can. You've said the Port of Long Beach is going to be shut down tomorrow or the next day. I said okay, I'll arrange to be there. I think there's a United flight tonight. I think I'll be there by 8:00 or 9:00 tonight your time. He said "What? You're telling me you're going to come tonight?" I said that's what I just said. Didn't you want me? Yes, I do. I'll have someone waiting for you. He hangs up. The lawyers also advised we want you. I said the Mayor wanted the same thing. That's fine. I said just give me an insight. How many issues? Well there's not many, but we're really fighting hard in about two or three issues. I said okay, I'll make the arrangements. You call me back and tell me the issues. They did.

I tell Scot pack your bags. Bonnie has made a reservation. We land at the airport, and three of the strongest looking gentlemen you've ever seen are holding up "George Cohen" and "Scot Beckenbaugh" signs. The gentleman who met me said, I've just checked your resume, and I know how old you are. Do you feel okay to walk a quarter of a mile to the sedan that we have for you? I said I played tennis yesterday. I'll be fine, but thank you for worrying about me. He had read my damn resume. Out we go. The next thing I know, the horn is honking and color lights atop our sedan are flashing on and off. We arrive at the Long Beach port and were escorted to a big warehouse. Offices in one area were occupied by

Industry representatives, and offices in another area were occupied by union representatives. The doors separating the offices were closed, but I heard a lot of shouting and screaming from the union office.

In the meantime, I'm introduced to the Mayor and his staff of about fifteen people. Then quite an amazing thing unfolded. He said to me, "Well, Mr. Cohen, a very interesting thing has happened. Since you told the parties you would come to help mediate, and since I told them you're on a plane coming here tonight, they've gotten a "little nervous" that maybe that's not what should happen here, maybe they should meet themselves and come to their own resolution. Next thing I know, a piece of pizza is given to me with a Coca-Cola or maybe a beer, and I hear a lot of applause from the union group. They've just ratified the deal. They all came to the room where I'm located and proudly announced "We've got a resolution, and there's going to be a press conference out on the dock now, and we'd like you to come out on behalf of the FMCS and thank us for having reached an agreement." All this is on the Bible!

Okay, I flew back to DC, and a few days later, I've convened and was addressing a labor management conference at Georgetown Law School, December 13, 2012. Of course my first order of business was to tell that story. I said some cynics said the parties didn't even need me so why should I get any credit for helping resolve the dispute? I said are you crazy? I have set a new standard. I don't even have to conduct a mediation

session. Once the word spreads that I am showing up, the parties reach their own agreement. That is the new standard for all federal mediation!!

MR. POLLAK: Congratulations. Incredible stories. What happened with the musicians.

MR. COHEN: I have two quick ones with the musicians. Both of them involve Local 802.

The one that was sort of the joke of them all, I want to quickly say I would never have mediated that dispute with the Metropolitan Opera in the normal course, but here it was New York City, the capital of the entertainment industry. Arthur Goldberg had once mediated a dispute involving the Metropolitan Opera. I was told that by a lot of people. I said okay, and on a Sunday afternoon, I took a train to New York City. I met the Maestro Peter Gelb, who was a very powerful man in the entertainment world. Simply put, he ran the Metropolitan, still does with an iron hand. His father was a very famous *New York Times* reporter, Arthur Gelb, and everybody knew him. The highly respected Local 802 represented the musicians. In a nutshell, after one hour, I asked Peter Gelb exactly what are you arguing about here? He said the union wants one more \$600 payment, and my lawyer advised that I “hold out.” I said how many people are in the unit? He said about 90. I said, I just multiplied 90 by \$600. Are you telling me you want to go to the mat over the “piddling” amount when a three-year agreement hangs in the balance? How do I know that’s all they want? Well I’ll find that out for you. So I walked into the other room and said exactly what you would expect. I’m delighted to

be here. I don't think I can get you this extra \$600, but if by some chance that could work out, is that all that you need in order to have a satisfactory conclusion to the negotiations? They said yes. I said well I'm going to give it a try. I returned to Peter's office, and I said you know what, I think you can get a deal if you give the \$600. I then convened a joint meeting, confirmed what occurred, and the parties shook hands and congratulated each other. I took the next train to DC!

Peter Gelb has now hired as his number two man a management lawyer, Bernie Plum, with whom I enjoyed a wonderful relationship during the time I represented musicians working in traveling Broadway musicals. Again, the critical role of relationships.

The New York Philharmonic dispute was much tougher. I was there one long week around the clock. Local 802 represented by Bruce Simon, a very experienced, talented lawyer. Management was represented by equally talented Willis Goldsmith, from a very prestigious firm with an office in New York City, Jones Day. Zarin Mehta, the brother of Zubin Mehta, the renowned conductor, was the head of the management team. He was the President of the New York Philharmonic and was assisted by Bill Thomas, his right-hand man, who I've gotten to know very well, a very knowledgeable economist and negotiator. For its part, Local 802 was represented by its President, Tino Gagliardi, and an extremely capable musician negotiating committee.

After a week, the parties were down to one critical issue, and management was holding firm. They wanted to revise the pension plan so that new hires would have a separate pension plan with benefits reduced from those being paid to the incumbent musicians. The union said “Go fly a kite.” We all play together, we rehearse together, we travel together, and we are supposed to be leaving for a three-week tour of Southeast Asia starting in Japan tomorrow night at 5:00, and we understand the instruments are starting to be packed at 3:00 in the afternoon tomorrow. So Mr. Mediator, help us to get a solution or no trip. That was the state of affairs.

I met informally with Mr. Mehta and Bill Thomas. They understood the situation but said, in essence, we do not have the authority to make this type of a retreat at this point in time. Who has the authority? The Chairman and CEO of the New York Philharmonic. Am I saying this right? I said who is this gentleman, and where is he? They gave me his name. They said but he’s in Davos, Switzerland. I said okay. He’s there at the world-famous economist meeting to discuss the future of the world. Somebody here in your office, you call him. You tell him we’re at the “moment of truth” with a mediated solution with a tour of Southeast Asia hanging in the balance, and the mediator needs to talk to him. They said sure, we’ll do that. They got him, and they put me into a separate room with a perfect telephonic connection. It was probably one of the most interesting eight minutes of my life. He’s busy in between speeches. I told

him who I was and why I'm calling him. I told him we are at a critical juncture in the negotiations and he alone has the authority to determine its fate. He replied in essence the same thing that every CEO seems to say when the moment of truth and they don't want a strike, nor do they want to give in to the union's demand. Are you telling me this would be the end of the dispute, and you're guaranteeing there will be an agreement? By then I had the union's commitment to end the dispute, so I was in a position to do that. He then said to me, you sound like a really interesting person. I'd really like to get to know you. I'll be in touch with you when I get back to the United States. I've never seen or heard from that gentleman since then. But again, the parties shook hands, and the tour took place.

MR. POLLAK: It's a nice thing to say.

MR. COHEN: Okay. Those are all success stories. I told you I had one really bad story with the National Football Players Association. I don't want to leave my successes without making the world understand that a mediator's job is damn hard, and there's no guarantee when you start any one that you're going to help get the parties together.

I had one monumental failure that, of course when you have it, it's very disheartening. It went something like this. Given my success with soccer and my relationship with Bob Batterman, the lawyer who had represented Major League Soccer in the mediation I described and was the outside counsel at that time to Roger Goodell, President of the National Football League, my services were ultimately requested. Bob Batterman

knew me very well. He called me one day and said we've been meeting for months with Dee Smith, executive director of the NFLPA and his team, and we're still nowhere. I spoke to each separately, but one common theme emerged. They both explained they began by talking about the big money items, disagreements quickly surfaced, and the negotiations sessions ended in an hour or so. Bob then suggested it would be a good idea for me to reach out even more affirmatively than I had to the two parties. I agreed and reached out to Dee, whose assessment was the NFL didn't want to bargain and didn't want to reach an agreement. So he concluded that I'm more than happy, if you want to give it a shot, if the other side is willing. I said I'm not sure that they are, but I'll find out.

The upshot was that Bob Batterman brought Roger Goodell and his right-hand man to a restaurant here in Washington to meet George Cohen. We met, and I told him what basically my techniques are. I told him if they're nowhere now, they didn't seem to me to have too much to lose. I assured him we were prepared to start mediation immediately and continue the process directed at reaching an agreement expeditiously. Goodell said, I'll get back to you.

The NFL called me back the next day, and they said yes, we'd like to mediate under your auspices. That happened. Here was the lineup: the NFL side was led by Roger Goodell, who clearly was not at that point in his life a collective bargaining negotiator. Bob Batterman was going to do most of the talking. They were joined by a team of lawyers and staff

operating personnel, three owners, and some business types. The Player's Association was represented by its key staff, including lawyers, economists, and operations personnel, plus thirty or so player representatives. So in total, we had a group of more than fifty people. We had caucus rooms, of course. The unions had the bigger one because they had a larger group. I started with the "low hanging fruit", as people like to call it, namely, the working conditions. I set up probably a half a dozen subcommittees on all interesting, important working conditions that had nothing to do with the biggies like the salary cap scheduling issues, for example, how many games you'll play in the season versus exhibition games. We made excellent progress, not a lot of final agreements, but getting close to them. Most important, broad-based participation combined with new mutual respect led to a restored state of optimism that mediation could succeed.

And then the unions brought in their top-flight antitrust lawyers, Jim Quinn and Jeff Kessler. They were urging the union to leave mediation and file suit under the antitrust laws, purportedly to enhance their bargaining leverage on the major economic items. The NFL played into their hands when I called a joint meeting where all the owners showed up, and they made the mistake of making a very clearly unacceptable package proposal. My view was it was okay as an "opening offer," and I let it be known to the union and the management as well that you know guys, this is not going to get management very far, but they've made an

offer, and the union should be now in a position to make a counter. I had reason to think there's plenty of room on both sides to try to reach a negotiated agreement. I left both sides with that message. However, by then Quinn and Kessler had captured the attention of the union committee. Drew Brees, the New Orleans Saints star quarterback, had recently showed up and begun to be prominently involved in the relationship between the antitrust law and labor law. That added up to the union's decision to leave mediation and proceed to take the dispute to court.

Another factor contributed to this result. In retrospect, of all the misjudgments I ever made, the major one was that. I had been led to believe that a separate private meeting between Dee and Roger, the parties were much closer together than they were in their formal positioning. I did not participate in the meeting between the two of them on my stated belief that the rest of their lives it was going to be the two of them together. And that was a mistake because I would have known what actually happened between the two of them. I didn't know, but what ultimately became clear was that Roger thought there was more of an agreement in principle than what Dee was willing to acknowledge. Once you have that, as you know, you have a total disconnect. And that proved to be a critical problem for me and my attempt to mediate.

So there was reason for Jim and Jeff Kessler to say to their folks mediation isn't getting you anywhere and we'll file a lawsuit in the Federal District Court for the District of Minnesota and get before Judge

Doty in Minneapolis, who's a great fan of Jeff Kessler, and Judge Doty will issue a decision that will give us the leverage that will put us in much better bargaining posture. This was said to Scot and me shortly after the NFL presented its proposal to the union. In retrospect, I would have been better served if I urged the union committee to reject their lawyer's advice. But I didn't do that. I accepted their decision to leave mediation. All I did was to advise the committee it was my judgment that even if they prevailed before Judge Doty, beware the Eighth Circuit Court of Appeals!

And that's exactly what happened. The players walked out. They won before Judge Doty. Then they lost quickly in the Eighth Circuit. They went back to Judge Doty on remand from the Eighth Circuit opinion, and Judge Doty said to himself I want no part of negotiating and mediating a dispute that could take up months of my time. I'll assign a Special Master to handle this dispute. He did the job of a mediator, and did it quite well I'm sure, and the parties ended up with a negotiated settlement, albeit four to six months after they walked out of my office. Equally important, there was reason to believe that same negotiated agreement could have been achieved in mediation.

MR. POLLAK: You win some, you lose some. That's the moral of that story. I know you wanted to talk a little bit about mediation and your techniques, philosophy, and approach.

MR. COHEN: The experiences you have build on one another, and after a while, when you see certain things seem to have universal appeal, it sticks in your

mind. The people who may read this are going to get the benefit of exactly what I never do or never did in public when I spoke because inevitably at any labor management conference, I would be asked the question, so Mr. Cohen, or Director Cohen, or Honorable Mr. Cohen, what is your technique that enables you to help the parties reach agreements? You seem to be reasonably successful in doing that. I would say, “Folks, if I disclose my techniques here in public, then everyone would know what I’m going to do when they get to meet with me, and then I might not have a technique anymore! So all I’m going to say to you is I will offer you is a few general principles I endorse: Relationships, relationships, relationships. Leadership, leadership, leadership. Respect, respect, respect. You better well come into mediation with a mindset that you want to solve problems, not create new ones. And with that, that’s all you’re going to hear from me. But isn’t that good? I’m sure you’re all doing that already.” And then laughter. “And if you’re not, I’m sure you know what to do now. Do you want me to repeat that?” They say no. Okay, so now we’re ready to proceed.

So the first order of business is to make sure the mediator is in control because you’re going to be meeting in high profile cases with chief negotiators who are important, who know they’re important, who think they’re more important, et cetera. And what do they want? They want to run the show. And what do they really want to do? They want to start by explaining why they’re right about everything and the other side is wrong.

The first meeting I conduct always is very important. It's always a joint meeting with both teams present, and it's always in my conference room. I didn't tell you this. My conference room is called the Cyrus Ching Conference Room. Cyrus Ching was the first director of the Federal Mediation Conciliation Service in 1947. I knew nothing about that, but when I walked into that room the first day I showed up on the job, I was both surprised and shocked to see his name and picture on the wall. I said wow, when I was in Georgetown Law School getting my LLM, I took a course called Mediation taught by Cyrus Ching, a towering 6 foot 5, pipe-smoking, charismatic, booming voice, storyteller par excellence. I'm just the seventeenth director to follow him. It was all true. So of course I loved the idea of saying you're in the Cyrus Ching room, and I loved to tell everyone in 1960, I was at graduate student at Georgetown Law School and he taught the course on Mediation. A real-life "ice breaker" to introduce what was about to take place.

Okay, so when I looked around, all of the management representatives typically wore three-piece suits. They've got their attaché cases. First thing I do is I say look, here I am. Please keep in mind all you're going to get guys is me and Scot. And all I'm going to get is all of you combined. So the first thing we have to do is establish an informal working environment. No more suits and ties. I just want sport clothes. I want everybody to come in here with the understanding that we're going to spend a lot of time together. Communicating is the key. You're going to

be having discussions. You're going to be having the opportunity to say what you want to say, but it's all going to be in the framework of either joint sessions together at this table or in subcommittees or separate caucuses. Ultimately, please understand you agreed to keep this process in my hands. I'm perfectly comfortable with that, and I'm going to do that, but I want to make sure it's not going to come as a shock to anybody. So if anybody has a concern about what I have in mind, let me know that. (Since all parties want to get on the mediator's "right side," there's rarely any concern raised.)

Then I say I don't want to be wasting anybody's time. Does anybody here not want to get an agreement? Because if you're not really interested in getting an agreement, there's no sense wasting anyone's time. So let me just go around and ask. Does everyone want to get an agreement here? Okay, we're all of the same mind. We want to get an agreement together. Let the game begin.

I have a few ground rules. Let's begin with the media. To protect this process, everything that takes place here is confidential and therefore not subject to any public disclosure. There will not be one word coming out of my mouth to the media unless and until you have jointly authorized me to do so. Likewise, I expect and must insist that no member of either negotiating committee makes any statement to the press. I know you have friends in the media. I know you're going to get calls. I know you all have relationships, but my experience has been this is the most

counterproductive thing in the world from the standpoint of conducting a successful mediation. Anything that both parties and I agree should go out into the public domain, we will have a written statement reflecting that. It will be coming from me. You will have reviewed and approved it. Then what will be distributed to the press by our PR staff is exactly that statement.

Then I focus on how I will conduct the negotiating process. The most important thing any mediator can do to satisfy the basic concern that whatever information or bargaining position either party shares with me will remain confidential unless and until the party authorizes me to disclose it to the other party.

So my goal is always the same, for both parties to leave the first session with a good feeling that participating in mediation was going to be the right decision and that the mediators involved in it look like they know what the hell they're doing.

The second meetings were going to be separate meetings. I knew and understood here's really the critical thing. No one came to the Director of the FMCS who hadn't been fighting with the other party for an extended period, three months, six months, or even nine months. Nobody called on the phone and said George, we haven't begun to meet yet. We think it'd be a great idea if you become our mediator. No. Here was the common denominator I confronted. On the substance, the parties typically were deadlocked over anything or everything, and even worse, the chief

negotiators had built up a pretty serious hostile relationship, distrustful of each other. So I say to myself I'm going to let each side have an opportunity to vent as much as they want, but I don't want them doing it across the table. That would not be conducive to starting a constructive mediation. I usually start with management because they're the ones I want to win over. They all know I've been a union lawyer. And here's what would unfold. They would usually want to tell me their positions on all the outstanding issues and then get to the nitty gritty, the union positions are outrageous, there's nothing we can do to reason with them, you can't trust them, you can't believe them, and they only respond to the pressure of the radical rank-and-filers. And all I would do is listen and take some notes and try maybe once in a while to try to gently get the chief negotiator to acknowledge anything positive about his counterpart.

MR. POLLAK: You're using football as an example, but these are really global techniques?

MR. COHEN: Exactly right. And the next day, same thing with the other side, the union committee. Then we're going to get both parties back together. Okay, when we do so, my basic premise now is what every mediator who I've been involved in knows. You don't start with the killers, the issues that you know have caused the deadlock. You have to start with the easy ones – usually working conditions – first, for two reasons. You've got a chance to start getting some settlements, some building blocks, and most importantly, get the parties comfortable with mediation and get them

comfortable with the mindset that they are generating some momentum on the road to reaching an overall agreement. I either start with that and ask each side what it thinks are the working conditions or other issues that they feel can be relatively easy for other side to agree to. Or over time, I've developed another approach. I say to each side, between now and tomorrow afternoon, review your respective positions on all your working conditions, and then, for my eyes only, give me a priority list in numerical order of one to ten of your priorities. I will not show it to the other side. And union, you do the same thing, and I will not show it to the other side. And my experience has been very informative. The first three or four are often a total match. Four through seven, different views. This greatly helps me formulate my own order of importance.

I also like to establish subcommittees. When I see thirty player reps or fifteen management people and I know, as you know, in the final analysis, negotiations will be limited to one-on-one or two-on-two and the mediators, what are these other people going to be doing every day they're sitting there. They're going to be building up frustration and maybe hostility. I've got to get them involved. I've got to get them participating on issues they will know are worthy of their attention. That model has met with a lot of success.

The press releases about me in every one of the disputes are really interesting. Most of the rank-and-file officers of the union have walked out and said we had a change in tone brought about by the mediator because

we were actively participating, and we felt the other side was listening and paying some attention to us. So the proof of the pudding was it clearly works.

The hard part is to keep the process going and actually produce results. And every time I could get the parties to initial off on one issue, I would explain to everyone until everything is agreed to, you have no agreement. But let's put each agreed on one in a pile in the middle of the table so as we keep signing off with initials on these ones, everyone's starting to build a little momentum here. We've got to get everyone to believe it's worth their time and effort and it's destined to succeed.

That was my never-ending goal. It's psychology. I'm not saying those words to them. I'm thinking those words, and Scot and I are talking about those words. Incidentally, I might be saying it to the chief negotiators when I see that each of them want an agreement.

The other amazing advantage which people don't realize is the "what ifs." I constantly use that. I would constantly go to one side and say I can't get you that, but I know how much you want that. For example, you want that change in the pension plan. What if by some act of God I can get you that. You've never told me what it's worth to you. So I'm going to leave your caucus now. I never wanted to see a dynamic of the members of either caucus arguing in my presence about what they should be doing. I like to leave the room and feel that they're more free to do that. And then I come back in the room and say so have you guys got a

consensus because again, I don't think I can get you that, but it really will help me to know what I'm shooting for here. And lo' and behold, they'd usually say something. Well, instead of 9% salary increase, we can live with 7.5%. Okay.

You keep playing that out. No one has actually had to confront the other side and "throw in the towel." Those are the words I use all the time. No such thing as "caving in." No such thing as "bargaining against myself." Every management lawyer I ever knew loved to announce "I'm not going to bargain against myself." Well of course you are because every time you change your bargaining position, you have bargained against your initial position. So instead my formulation was we are working to accommodate strongly-held conflicting views. There's no caving in. I repeat that because that's what the militants on both sides are fearful of being accused of. That was an amazing advantage of mediation. It can protect the interests of both parties by avoiding direct confrontation.

I already described the possible use of the package deal on the economics. That's a tried-and-true way of taking care of the last two or three toughest issues. And then I gave you the moment of truth strategic initiative.

MR. POLLAK: That was very effective.

MR. COHEN: Yes it was. And I believe in my heart of hearts because when I go into a room with three management guys saying I'm going to lock these guys out, they're not going to know what happened to them, I would give them

some scenarios that what my experience might be, and they didn't like to hear that. And likewise. The union proclaiming a strike will bring them to their knees. I've heard that before. Yeah, you know what. Management could hold out longer than you can. It's getting near Christmas. You've got wives, you've got families, you've got pressure on you. Don't tell me we're going to hold the line, 2,500 people. Bottom line, use of economic weapon by either side is always an "iffy proposition."

So my final message is to point out that by contrast, if instead of resorting to the use of economic weapons, and the risk of uncertain results, staying the course and negotiating can result in controlling your own destinies – reaching agreement and with it, stability and certainty in place of chaos and uncertainty.

I'm exhausted. I think I'll save the two things that I succeeded most in the public relations area of conveying the image of the FMCS encouraging parties to my two conferences held, once in Georgetown Law School, once at the White House, each of which in its own way was really a smashing success, and it's very sad that I can't see the consequences spreading around the country what we accomplished by who we brought in and what they said. I think it's worthy of twenty minutes, not three. And I haven't done *NTEU v. Nixon* or my last thing about my family and friends that supported my life on this.

MR. POLLAK: Alright. Let's end here.