

Federal Mediation and Conciliation Service

Five-Year Strategic Plan

2004-2009

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I. FMCS SERVICES:

The 1947 Taft-Hartley amendments to the National Labor Relations Act, (herein called the Labor Management Reporting Act, or the LMRA) established the FMCS as an independent agency charged with mediating all labor-management disputes substantially affecting interstate commerce.¹ Congressional intent is to advance and promote the best interests of employers and employees through the collective bargaining process, mediation of disputes and voluntary arbitration.²

For fifty-eight years, FMCS has embraced these principles. The Service's programs, developed and enhanced over the decades, demonstrates our commitment to the prevention or minimization of interruptions to the free flow of commerce growing out of labor disputes, and to improving the relationship between labor and management. Core services, described below, are designed to resolve conflict when it arises and prevent it before it begins.

A. Collective Bargaining and Grievance Mediation:

Mediation of collective bargaining contract negotiations has been the primary work of this Agency. This includes mediation for an initial contract and contract renegotiations. FMCS also handles grievance mediation, which is the mediation of grievances that arise during the life of a contract. Each case, whether it is grievance mediation or collective bargaining mediation, presents its own demands. The mediator's task is to develop alternative solutions and compromises, encourage settlement where appropriate, control the critical timing of offers, and persuade the parties to honestly identify their differences.

FMCS has jurisdiction over the private sector and the federal sector.³ FMCS gets involved in public sector cases where there is no viable state mediation service or when one exists, by the request of the state agency and the parties. Federal sector work includes mediation of mid-term contract disputes, mediation over terms and conditions of employment in successor contracts, and other alternative dispute resolution systems. In FY 2003, federal sector work represented 11% of our caseload. Health care institutions represented 9.2% of our workload.⁴

¹ FMCS jurisdiction under Taft-Hartley excludes the rail and airline industries, which are covered by the Railway Labor Act and the National Mediation Board.

² Section 201 of the LMRA.

³ In 1974, the Service's jurisdiction was expanded to include health care institutions, and in 1978, our jurisdiction was expanded further to include disputes arising in the federal sector. In 1979, Congress extended our jurisdiction to the U.S.P.S.

⁴ All statistics and percentages were generated from the Agency's case tracking system from fiscal year 2002 data.

B. Relationship Development and Training:

Although the Agency's primary focus continues to be resolution of conflict as it arises, prevention of conflict at the outset remains an equally important goal. Practically since its inception, FMCS has offered relationship-development and training programs (RDT) designed to improve the labor-management relationship and develop approaches toward collective bargaining that prevent friction or disputes from arising. The training improves the quality of the parties' relationship and makes contract negotiations more effective. In FY 2003, RDT work represented 16.2% of our workload, and in FY 2004, it represented 15.2% of our workload. The increase in average duration of contracts has created a demand for these training programs.

C. Employment Mediation:

Outside the collective bargaining arena, FMCS has been involved in other ADR programs in the public sector (state and local levels) and the federal sector. The Administrative Dispute Resolution Act of 1996 expanded FMCS's role as a provider of ADR services. The legislative design was to expand the use of alternative dispute resolution throughout the federal government, reduce litigation costs, and promote better government decision-making. FMCS mediates employment disputes, and provides consultation, training, dispute resolution systems design and facilitation services to many federal agencies, and to state and local agencies. These services are also offered to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes.

D. International Training and Exchange:

FMCS plays an important role in promoting collective bargaining and conflict resolution in other nations. FMCS international efforts are designed to level the economic playing field for American companies and workers by strengthening the rule of law and workers' rights in developing countries. The program advocates core labor standards through the creation of stable and productive work forces needed to attract foreign investment and to improve living conditions. Equally important, FMCS helps developing democracies establish labor relations institutions that are key to the smooth functioning of free market economies. Our international work is a small, but integral part of our services.

Promoting peaceful and constructive labor-management relationships has an effect on social dialogue and consensus decision-making beyond the industrial relations arena. These skills not only promote workplace democracy and solutions to human rights problems, but also promote sustainable economic development and the expansion of democratic institutions.

E. Arbitration Services:

Arbitration is favored by national labor policy and is used almost universally to resolve disputes arising over contractual terms. The statute, 29 U.S.C. Section 172 and 173, encourages the FMCS to provide arbitration services for resolution of labor disputes. FMCS maintains a roster of 1400 private arbitrators and, upon request from the parties, FMCS furnishes a list of names from which they can choose an arbitrator to hear their case and render a decision. Standards are maintained for credentialing arbitrators, and the Agency requires continuing education and ethics training. A customer complaint mechanism is used to address complaints by the parties.

F. Grants Program:

The 1978 Labor-Management Cooperation Act authorizes and directs the Service to encourage and support joint labor-management committees “established for the purpose of improving labor-management relationships, job security and organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.”⁵ Congress funds this initiative in the Agency’s annual appropriations, and grants are distributed to encourage labor-management committees to develop innovative, joint approaches to workplace problems.

G. FMCS Institute For Conflict Resolution:

The FMCS Institute provides training and education to labor and management practitioners in a centralized classroom format. Institute classroom training, provided away from the workplace, maximizes communication among all the participants. Institute courses are designed specifically for labor relations practitioners that want to build their skills in alternative dispute resolution. The Institute runs as a reimbursable program and is funded by fees received for delivery of training.

II. ASSESSMENT OF EXTERNAL FACTORS AFFECTING GOALS AND OBJECTIVES

A variety of forces impact the labor relations environment in which we work. Listed below are the significant trends impacting the Agency and its mission. We are mindful of them and continue to monitor developments in order to respond to evolving trends.

5 Section 205A(a)(1).

A. Globalization of Industry:

Globalization has been defined as "the increasing integration of the world's peoples and nations, brought about by expanded international flows of trade, investment, labor, capital, knowledge and information."⁶ Improvements in technology, e.g., satellite communications, fiber optics, and technologically superior equipment, has advanced globalization of industry and integration of markets. American businesses now compete in a global marketplace where goods cost less to produce in other parts of the world, significantly impacting the American workforce.

B. Impact of Technology:

Globalization has been accompanied by rapid improvements in technologies that offer businesses the opportunity to reduce production costs. Manufacturing jobs lost are not liable to return because of more efficient machines and processes. Production jobs have been transferred to lower cost areas, including abroad where labor is cheaper.⁷ This factor upsets traditional modes of business and impacts the workplace. To remain competitive in world markets, American businesses continue to develop innovative technological approaches to keep pace with the rapid changes in the global economy. The accelerated pace of change causes workplace uncertainties, and job loss, and has profound implications for contract negotiations and cooperative relationships.

C. Economic Forecasts:

1. Uncertainty of Business Cycles:

The National Bureau of Economic Research is the arbiter of business cycle dating information and declares when the economy is in recession and when the recovery begins. The recovery cycle begins with an increase in gross domestic product, and generally is followed by a decline in the unemployment rate. Uncertainty and ambiguity in economic forecasting makes it difficult for businesses to plan ahead, directly impacting the work force.

Increased pressure on productivity and the uncertainty in predicting the start and end of business cycles have a direct impact on collective bargaining. Management continues to seek cost-saving measures while using technology to increase productivity,⁸

6 Melloan, G. (2002, September 3). "Workers of the World Are Shedding Their Chains." *Wall Street Journal*, citing Linda Y.C. Lim of the University of Michigan Business School.

7 By some estimates, roughly 1.3 million manufacturing jobs have moved abroad since 1992, the bulk in the past three years to Mexico and East Asia. See Ansberry, C. (2003, July 21). "Laid-Off Factory Workers Find Jobs are Drying Up for Good." (*Wall Street Journal*).

8 Ibid.

while labor desires to maintain or increase wages, health benefits, and job security in the face of uncertain times. Economic uncertainty causes tension between the parties, complicates collective bargaining negotiations, and strains the labor-management relationship even after agreement has been reached. We continue to monitor these economic trends and work with the parties to improve their relationship as they navigate through difficult economic times.

2. Occupational and Industry Growth:

Related to economic forecasting are projections for occupational and industry growth. We monitor these trends in order to keep pace with the labor force, e.g., which sections of the economy anticipate growth, which expect a decline, and the overall occupational demographic of the work force. The Bureau of Labor Statistics reports the following significant trends:⁹

- The service-producing sector will continue to be the dominant employment generator in the economy, adding 20.5 million jobs by 2010. Within the goods-producing sector, construction and durable manufacturing will contribute relatively modest employment gains.
- As employment in the service-producing sector increases by 19 percent, manufacturing employment is expected to increase by only 3 percent over the 2000-2010 period. Manufacturing will return to its 1990 employment level of 19.1 million, but its share of total jobs is expected to decline from 13 percent in 2000 to 11 percent in 2010.
- Health services, business services, social services, engineering, management, and related services are expected to account for almost one half of non-farm wage and salary jobs added to the economy during the 2000-2010 period. These sectors account for a large share of the fastest-growing industries.
- Transportation and material moving occupations are projected to grow 15%, about the same as the average for all occupations.
- Office and administrative support occupations are projected slower than average, reflecting long-term trends in office automation.
- Production occupations should grow “much more slowly” than average because of advances in manufacturing technology.

⁹ Note that all of the information listed below was secured from the Department of Labor, Bureau of Labor Statistics from July 2003. See <http://www.bls.gov/news.release/ecopro.nr0.htm>.

D. Rising Health Care Costs:

Surging health care costs will undoubtedly pervade collective bargaining negotiations for years to come. Health care costs have increased significantly because of advances in medical technology, an aging population, increased use of hospitals and prescription drugs, and the increasing number of uninsured whose health care costs burdens other payers, including businesses and their employees. Additionally, the Bureau of Labor Statistics predicts that health services wage and salary growth will increase by 4.6%, also increasing the costs of health care. All of these cost factors are largely beyond the control of labor and management. However, health insurance costs, who will pay for it, and how the parties apportion the cost, has become the single most important issue during bargaining, overtaking wages and job security issues. Employers contend that soaring health care costs have hurt competitiveness, and if they cannot pass on some of the cost to employees, by raising employee contributions, co-payments, or deductibles, jobs will be eliminated. Even profitable employers are seeking pay apportionment changes.¹⁰ Employee-paid premiums and out-of-pocket costs rose 24% in 2003. Labor continues to fight increases in employee contributions. Labor relations academicians predict that this divide is likely to spawn an increase in strike rates nationwide.¹¹

E. Effect of September 11, 2001:

Since the attacks of September 11, 2001, the resultant security fears and the perceived need for increased vigilance in general, have affected FMCS's approach to labor-management conflict resolution. To some extent, the desire for additional security measures in certain workplaces has affected contract negotiations and other mid-term bargaining. An ancillary effect is the significant disruption in the airline, hotel and restaurant industries, where companies have reported a drop in earnings due to the decrease in travel. These economic pressures affect contract negotiations as well. Additionally, the parties are less willing to travel for bargaining, labor-management conferences, training programs, and certain labor-management cooperative partnership work. The Agency continues to work with the parties well in advance of contract expiration to reduce or manage disputes during renegotiation, while simultaneously reducing the need to travel for collective bargaining purposes.

10 See Greenhouse, S (2003, July 11). "Unions Finding That Employers Want More Concessions." (*The New York Times*). <http://www.nytimes.com/2003/07/11/national/11LABO.html>.

11 See generally Stires, D (2003, March 3). "The Breaking Point ; Worker health costs will rise a staggering 24% this year. Companies can no longer afford to pick up the bill. The battle is here." (*Fortune Magazine*)

The Homeland Security Act of 2002, a direct result of the September 11 attacks, has the potential for future impact on the Agency's work. The Act makes the services of the FMCS available to the parties to "facilitate the process of attempting to reach agreement" on proposed personnel changes. Mediation and facilitation services have been offered to the Department of Homeland Security for employment disputes.

F. Increase in Contract Duration

From fiscal years 2000 through 2003, 20% to 22% of collective bargaining agreements exceeded three years. This steady trend can improve the labor-management relationship: longer contract periods bring stability and consistency. Yet the same trend can pose inherent dangers: accumulation of unresolved issues during the life of a contract, increased grievances to challenge ambiguous contract language, and contentious bargaining over successor contracts. The parties' relationship during a lengthy contract period can be complex and may ebb and flow with periods of complacency followed by, or coupled with, tension during the renegotiation period. Rapid adjustments to market shifts and technological innovation heightens the need for positive relationships that are primed to respond with needed mid-contract adjustments. FMCS continues to train the labor-management community in cooperative problem solving techniques and to provide grievance mediation services to resolve conflicts arising between more distant renegotiations.

G. Changing Face of Labor and Corporate Consolidations:

In July 2005, Service Employees International Union, International Brotherhood of Teamsters and the United Food and Commercial Workers Union disaffiliated with the AFL-CIO. It is too early to tell the precise impact on collective bargaining, but it will have an impact on organizing efforts and will likely impact positions taken at the bargaining table.

Additionally, with the aggregate decline of union membership,¹² there has been a corresponding increase in union mergers at local and national levels.¹³ Mergers enhance bargaining and organizing power, eliminate duplication of effort, and increase financial and administrative resources. However, mergers also bring turnover in leadership within the organization and inexperienced labor leaders often do not have a grasp of relevant workplace issues, business concerns or the negotiation process. This can have an effect on the collective bargaining process, and makes it more difficult for *both* parties to reach a settlement.

12 In January 2005, the United States Department of Labor's Bureau of Labor Statistics reported that 12.5 percent of wage and salary workers were union members, down from 12.9 percent in 2003. The rate for private industry workers was 7.9 percent in 2004. See Bureau of Labor Statistics News Release, "Union Members 2004," January 27, 2005, at <http://www.bls.gov/news.release/union2.nr0.htm>.

13 See Williamson, L (1995) "Union Mergers, 1985-1994 Update," *Monthly Labor Review*. <http://www.bls.gov/opub/mlr/1995/02/art2full.pdf>.

On the management side, corporate downsizing through consolidation and layoffs can also have a significant impact on the workplace. Some economists assert that corporate downsizing neither restores the competitive edge, nor boosts productivity, as previously believed. Instead, downsizing can leave "surviving" employees overburdened and demoralized, hurting productivity and relationships between employees and management.¹⁴ Although the rate of corporate mergers and acquisitions fell in 2002¹⁵ when they do occur, they can lead to rapid turnover at the executive level, with an ancillary and taxing effect on the employees below.

H. Labor Force Demographics:

The demographic composition of the work force will undergo transformation due to changes in the composition of the population and rates of work force participation across demographic groups. Expansion of the immigrant work force population and generational changes due to retiring employees will impact the bargaining process. Changes in the "face" of the labor force impacts bargaining particularly where labor and management have difficulty adjusting to needs of the changing workplace. Bureau of Labor Statistics reports some significant trends:¹⁶

- In 2010, the baby-boomers will be ages 46 to 64, and this age group will account for a substantial share of the labor force. The median age of the labor force will continue to rise, even though the youth labor force (aged 16 to 24) is expected to grow more rapidly than the overall labor force for the first time in 25 years.
- The labor force participation rates of women in nearly all age groups are projected to increase. The women's labor force will grow more rapidly than the men's, and the women's share of the labor force will increase from 47 percent in 2000 to 48 percent in 2010.
- The Asian and the Hispanic labor forces are projected to increase faster than other groups, 44 percent and 36 percent, respectively, because of high net immigration and higher than average fertility. The African American labor force is expected to grow by 21 percent, more than twice as fast as the 9 percent growth rate for the white labor force.

14 See Hilsenrath, J (2001, February 21). "Many Say Layoffs Hurt Companies More Than They Help --- 'The Evidence Is Very Weak' That Downsizing Boosts Productivity." (*Wall Street Journal*). 2001 WL-WSJ 2854935

15 See Frank, R (2002, June 25). "Where Have the Masters of the Big Mergers Gone? --- As Corporate Acquisitions Cede To Divestitures and Spinoffs, Epoch of Big Deals May Be Over." (*Wall Street Journal*). 2002 WL-WSJ 3398864

16 Note that all of the information listed below was secured from the Department of Labor, Bureau of Labor Statistics, July 2003. <http://www.bls.gov/news.release/ecopro.nr0.htm>. In particular, see Table 5 at <http://www.bls.gov/news.release/ecopro.t05.htm>.

- White non-Hispanics accounted for 73 percent of the labor force in 2000 but their share of the labor force in 2010 will decrease to 69 percent.

Such a diverse work force has potential for strife, and if unmanaged, can develop into unresolved conflict.

I. Increased Acceptance of Alternative Dispute Resolution:

The use of alternative dispute resolution is not a new phenomenon. However, the breadth, volume, and systematic usage of ADR has grown. Throughout society, ADR has become the preferred choice in working toward settlement ranging from family disputes to neighborhood, environmental, intergovernmental, legal, and workplace disputes. FMCS has more collective experience in dispute resolution than any other agency of government and can offer its services within and beyond the workplace.

III. MISSION, VISION, AND VALUES STATEMENTS

A. Mission Statement:

FMCS's mission statement reflects the statutory intent of the Agency. Our mission is to:

- Promote the development of sound and stable labor management relationships;
- Prevent or minimize work stoppages by assisting labor and management to settle their disputes through mediation;
- Advocate collective bargaining, mediation and voluntary arbitration as the preferred processes for settling issues between employers and representatives of employees;
- Develop and advocate the art, science and practice of conflict resolution through the use of ADR;
- Assist parties in conflict through the provision of conflict resolution services; and
- Foster the establishment and maintenance of constructive joint processes to improve labor-management relationships, employment security and organizational effectiveness.

B. Vision Statement:

The Agency helps build better relationships through joint problem-solving and constructive responses to inevitable conflict. In turn, this improves the ability of organizations to create value for customers, shareholders and employees alike, and substantially benefits the national economy. The Agency concentrates its efforts on assisting employers and employees to cope with the demands of a rapidly changing workplace. Trends that the Agency views as particularly important include significant increases in: (1) the cost and complexity of health care; (2) the globalization effects on the workplace; (3) the application and importance of technology in the workplace; and (4) workplace litigation and conflict arising largely outside the scope of collective bargaining and focusing on individual employees. With nearly 60-years of providing mediation and facilitation services, FMCS has more collective experience in dispute resolution than any other agency of government.

C. Values Statement:

Reflecting the Agency's mission statement, our commitment to a viable collective bargaining system, and the benefit of effective conflict resolution processes as a foundation for society's well being and economic growth, this value statement embodies our core principles:

- Relationships are critical to the success of an organization: they affect creativity, productivity and adaptability, as well as the quality of workplace life.
- Poor relationships and communication represent a substantial barrier to achieving the kind of process innovation and high performance work organization demanded in the current business climate.
- The Agency's core mission of mediating and facilitating the resolution of workplace disputes and problems requires absolute neutrality, confidentiality, and acceptability to customers.
- In order to have maximum impact and to meet statutory obligations, the Agency must focus primarily on organizations and matters having the greatest effect on interstate commerce and/or public health and safety.
- Collaborative, problem-solving approaches to the resolution of conflict should be cultivated and encouraged whenever possible.

IV. GOALS

The Agency's goals, set forth below, are broad guidelines that shape our future and influence decision-making processes. These objectives, and the strategies used to achieve these goals, are wide-ranging in scope and will be reviewed and refined annually.

STRATEGIC GOAL 1:

TO MINIMIZE THE NUMBER AND SEVERITY OF WORK STOPPAGES SUBSTANTIALLY INFLUENCING INTERSTATE COMMERCE, NATIONAL SECURITY, AND/OR THE U.S. HEALTH CARE INDUSTRY, BY USE OF MEDIATION AND OTHER DISPUTE RESOLUTION PROCESSES.

STRATEGIC GOAL 2:

TO INCREASE THE NUMBER OF COLLECTIVE BARGAINING PARTNERS WITH A REAL, DETAILED, AND ONGOING COMMITMENT TO DEVELOPING IMPROVED LABOR-MANAGEMENT RELATIONSHIPS AND MORE EFFECTIVE PROBLEM-SOLVING TECHNIQUES.

STRATEGIC GOAL 3:

TO FACILITATE A COMMITMENT TO, AND DEVELOPMENT OF, SYSTEMS FOR HANDLING WORKPLACE DISPUTES ARISING OUTSIDE OF THE COLLECTIVE BARGAINING CONTEXT.

STRATEGIC GOAL 4:

TO ASSIST LABOR AND MANAGEMENT TO INCREASE THEIR UNDERSTANDING OF, AND EFFECTIVELY DEAL WITH, MAJOR ISSUES THAT DRIVE CONFLICT IN THE EVOLVING WORKPLACE, INCLUDING HEALTH CARE, TECHNOLOGY, EFFECTS OF GLOBALIZATION, AND DIVERSITY.

STRATEGIC GOAL 5:

EXPAND AGENCY PARTICIPATION IN EMPLOYMENT DISPUTE RESOLUTION

V. STRATEGIES:

STRATEGIC GOAL 1: MINIMIZING THE NUMBER AND SEVERITY OF WORK STOPPAGES INFLUENCING INTERSTATE COMMERCE, NATIONAL SECURITY, AND/OR THE U.S. HEALTH CARE INDUSTRY.

1. Definition of “Severe” Work Stoppages:

The Agency’s statutory mission is to prevent or minimize strikes that interrupt the free flow of commerce. Accordingly, our task is to reduce the number and severity of work stoppages in general. Achieving these goals requires defining a “severe” work stoppage. There cannot be, nor should there be, a bright line test that determines a work stoppage to be severe, for each work stoppage is unique to its geographical location, the industry involved, the community where it occurs, and the impact on related industries inside and outside the community. The following list of factors was developed to help determine the severity of a work stoppage:

- Economic impact, including a shutdown of a major industry or ancillary industry;
- Substantial job loss, although the precise number might vary depending on the circumstances;
- Impact of the work stoppage on the community and its residents;
- Workplace violence, such as picket line violence;
- National security issues, such as a work stoppage in an industry providing goods or services to the Department of Defense or the Department of Homeland Security;
- Health care, where a work stoppage risks the well-being of patients at acute care and other health care institutions;
- International impact, where our trading partners, relying on our goods and services, show concern about the work stoppage and its impact on their economies; and/or
- Unit size, although the size of the unit, on its own, may not be a factor, but it can have an overall economic impact.

These criteria can be evaluated either in the disjunctive or the conjunctive; any one of them individually or collectively might be sufficient to warrant a conclusion that a work stoppage is “severe,” although it is likely that more than one factor will be present when concluding that a work stoppage is severe. Each of the indicia listed above will become part of the Agency’s case tracking system so that data can be collected on severe work stoppages.

2. Strategies:

a. Estimate Economic Impact of Work Stoppages:

The economic impact of work stoppages is not easily ascertained. There are a number of factors to consider and the Agency will explore economic impact models

that can best estimate the impact of a work stoppage on the economy. Any matrix developed will include the following indicators:

- Wage impact – approximating the actual dollars lost due to a strike;
- Product/service impact – approximating the dollars lost in production and/or sales;
- Multiplier effect - the direct or indirect impact of the strike on other industries; and
- Effect of the strike on the community in which the strike occurred.

b. Estimate Economic Benefits of Preventing and/or Reducing Disputes:

Mediators use a significant number of techniques to resolve disputes, and it is extremely difficult to determine which techniques achieve greater success over any other. However, the benefits of mediation to the economy can be measured through the development of formulas and/or matrixes that estimate:

- the percentage of work stoppages averted because of mediator involvement;
- the number of strike duration days reduced because of mediator involvement; and
- the direct or indirect impact of the strike on other industries.

Cooperative relationships will be developed with labor economists to develop economic models that address these issues.

c. Active Involvement in Disputes with Significant Impact on Commerce:

Historically, there have been industries where either labor or management resisted mediation efforts to resolve their disputes. Some of those industries have a significant impact on commerce. Penetrating those industries to resolve disputes would benefit that industry as well as the economy as a whole. To assure the free flow of commerce in these industries, the Agency will:

- Determine the industries where the FMCS has not been actively involved in disputes;
- Create a working group to identify why we have not penetrated certain industries and how mediation services can be provided in industries that have a “significant impact” on interstate commerce/economy;
- Develop a detailed plan for penetrating industries that would include the following:
 - Relationship building: Developing relationships with the parties through high-level meetings with representatives of organized labor at the international level and management at the highest levels;

- Tripartite cooperation: Developing a tripartite panel to increase penetration in disputes in specific industries that have significant impact on interstate commerce. Cooperate with senior labor and management representatives in significant industries to minimize impacting work stoppages; and
- Assign a “coordinator” for significant industries: Once “significant industries” are identified, assign “coordinators” as the point of contact to handle specific industry disputes that impact on interstate commerce. Where a dispute is considered “significant,” the national office will be notified prior to assignment.

d. Special Focus on Industries Critical to the Economy:

There are some industries where the FMCS remains an active presence and is regularly involved in disputes. Currently, when a dispute arises in industries critical to the economy, resources are realigned to give that dispute priority. The case may be assigned based on expertise developed by a particular mediator, and the Office of the Director is advised of high-profile disputes. However, more can be done to enhance FMCS impact, including:

- In “significant case assignments,” consult with the local director of mediation services to discuss the issues and determine appropriate resource allocation;
- Pre-assign significant cases even prior to receipt of the statutory 8(d) notice of contract expiration;
- Develop industry-specific expertise across the organization;
- Use technology to information-share (within the Agency) common issues that develop nationwide;
- Succession-planning in situations where mediators have strong industry expertise; and
- Greater emphasis on teamwork cross-regionally and with the national office, with incentives for teamwork.

e. Health Care Industry:

As indicated in Section II, health care services are one of the fastest growing industries. The health care industry continues to expand and common issues continue to plague negotiations in which we are active. FMCS will continue to examine whether there are bargaining issues unique to certain sectors of the health care industry (acute care hospitals, other health care facilities, and home health care) and information will be gathered on industry trends from a variety of sources. To promote interagency information sharing, and to increase the knowledge of the field mediators in the health care industry and the issues facing it, the public affairs director will gather and circulate information regarding industry trends, along with a list of pending health care cases tracking specific information, including:

- issues involved, e.g., staffing or overtime;
- trends in specific units, e.g., licensed practical nurses, registered nurses, or nurses aides;
- cost pressures, e.g., costs of providing health care to patients versus cost of labor;
- consolidating/merger issues;
- community concerns, e.g., neighborhood concerns, sole health care institutions within a community, and access to health care; and
- effect on patient care.

STRATEGIC GOAL 2: INCREASE THE NUMBER OF COLLECTIVE BARGAINING PARTNERS WITH AN ONGOING COMMITMENT TO IMPROVING THEIR RELATIONSHIP.

1. Definition of “Improved Relationship”:

This goal specifically relates to the Agency’s training and facilitation programs (relationship development and training) designed to improve the labor-management relationship and develop approaches toward collective bargaining that prevent friction or disputes from arising. Evaluating whether these programs have “improved” the parties’ relationship involves subjective and objective measurements, and, at a minimum, a clear definition of an “improved relationship.” Our definition of an “improved” labor-management relationship includes these factors:

- Organizational self-definition of “improved relationship” from the parties’ perspective;
- Effective resolution of workplace disputes/grievances (quality of the resolution);
- Reduction in workplace disputes/grievances (quantity or number of grievances on file);
- Open communications;
- Increased productivity;
- Support for labor-management committees by high level labor-management representatives;
- Commitment, in writing, to an improved relationship;
- Proactive information-sharing prior to conflict arising; and
- Assessing the parties’ relationship on an ongoing basis.

2. Strategies:

a. Number of Collective Bargaining Partners Committed to Cooperation:

We will gather data, measure, and report the number of collective bargaining partners that have demonstrated an intent to collaboratively resolve workplace issues such as:

- Workplace violence
- Diversity
- Effects of globalization
- Health care issues
- Technology
- Job security
- Competitiveness
- Retirement benefits
- Legacy costs
- Cross training opportunities/succession issues
- Downsizing/Rightsizing
- Merger, consolidation and reorganization

b. Measuring Effectiveness of Programs to Improve Labor-Management Relationships:

To measure the effectiveness of our programs, we will conduct periodic customer surveys and the parties will be informed of our intent to assess the relationship in the future. A customer survey will be conducted immediately after the training or other program, six months later, and one year later, and there shall be periodic visits by the mediator. The survey instrument will focus on these core questions:¹⁷

- What prompted the program?
- Did it meet your expectations?
- Would you use it again?
- Did it have an impact on your relationship? Explain how.

c. Guidelines to Assess Relationship-Building Programs:

All of the Agency’s training and facilitation programs are designed to improve the labor-management relationship, but there are some relationship development and training programs that have a greater emphasis on relationship-building. The relationship-by-objective (RBO) program is designed to improve labor-management relationships that severely deteriorate after a strike, contentious election campaigns, or difficult negotiations. Committee effectiveness training (CET) is geared toward helping the parties work jointly and collaboratively in group settings. Labor-management committees (LMCs) are designed to continue without mediator assistance. These committees are fundamentally based on joint problem solving tools. These three programs emphasize relationship building and we will develop guidelines that regularly assess the parties’ relationship after these kinds of programs.

¹⁷ We will explore various methods for conducting the survey, including face-to-face surveys, telephonic surveys, use of technology for on-line surveys, or use of the “feedback” section of the website.

d. Periodic Reviews of Training and Facilitation Programs:

Based on the feedback received from customer surveys, there will be continuous evaluation of the training and facilitation programs, including efforts to improve them and adding new programs as necessary.

STRATEGIC GOAL 3:

TO FACILITATE A COMMITMENT TO, AND DEVELOPMENT OF, SYSTEMS FOR HANDLING WORKPLACE DISPUTES ARISING OUTSIDE OF THE COLLECTIVE BARGAINING CONTEXT.

1. Dispute Systems Design Generally

The Agency has partnered with the Straus Institute for Dispute Resolution at Pepperdine University to research and develop approaches to dispute resolution systems design in the workplace. The focus is on systems that address conflicts in the unionized workplace that are not ordinarily handled through an organization's collective bargaining agreement (e.g., statutory, rights-based disputes as well as underlying problems in relationships, morale, etc.).

2. FMCS Involvement in Dispute Systems Design

Rather than prescribing a particular design or product, FMCS expects to:

- Promote the use of helpful approaches to dispute systems design to the labor and management communities;
- Provide convening services to both labor and management regarding dispute systems: preliminary interest, structure for the negotiations, and facilitation of the decision to proceed;
- Facilitate the design negotiations for a given workplace;
- Support training for key personnel implementing a dispute systems project;
- Provide technical support for implementation of a dispute systems project; and
- Help evaluate the effectiveness of systems after implementation and develop metrics or appropriate benchmarks for success.

3. Strategies:

a. **Short term:** This project will be piloted on a small scale. During the pilot phase, the program will be rolled out in a select few industries (perhaps as few as two or three enterprises). The pilot programs will be carefully evaluated with recommendations for change as may be appropriate.

b. **Long term:** If the pilot programs show substantial promise, the effort will be expanded. All mediators will be offered initial training. Those who indicate an interest in comprehensive participation will receive more in-depth training in this area. Regional management will have the discretion to assign the work to those with requisite ability and desire.

STRATEGIC GOAL 4: ASSIST LABOR AND MANAGEMENT TO EFFECTIVELY DEAL WITH MAJOR ISSUES THAT DRIVE CONFLICT IN THE EVOLVING WORKPLACE, INCLUDING HEALTH CARE, TECHNOLOGY, EFFECTS OF GLOBALIZATION, AND DIVERSITY.

1. Strategies:

Section II identified many of the trends and factors that effect collective bargaining today. Bargaining takes place in an environment laden with rapid changes: technological advancements, rising health care costs, and a demographically changing work force which now includes a high percentage of immigrants, employees of different races and national origin, and generational divisions. Our task is to prepare ourselves and the parties to deal with these trends that drive conflict in the workplace. To meet these demands, we will:

- Develop internal seminars and training programs in critical industries, including telecommunications, health care, and aerospace, to educate field staff on specific critical labor issues arising in these industries and how to deal with them at the bargaining table.
- Develop best practices to address health care issues that arise at the bargaining table and devise successful solutions.
- Use field mediators to develop expertise in each of these areas and develop training programs for roll-out to the field (utilizing more than one mediator to develop the programs to encourage buy-in).
- Train all mediators so that they can effectively handle these difficult issues when they arise.
- Alter work stoppage reports and benchmark them with these specific issues (i.e., health care, technology, globalization and diversity) in order to measure the percentage of strike situations where these issues were factors.
- Train the labor-management community on how to effectively bargain over these complex issues and measure how many training sessions we conducted for the labor-management community.

STRATEGIC GOAL 5: EXPAND AGENCY PARTICIPATION IN EMPLOYMENT DISPUTE RESOLUTION

1. Prioritization of ADR Work:

Since the passage of the Administrative Dispute Resolution Act of 1996, the Agency has expanded its practice of alternative dispute resolution outside the workplace collective bargaining context. The scope and usage of ADR nationwide has grown to encompass environmental, intergovernmental, courtroom, and workplace disputes. ADR has become the preferred choice in working toward settlement. FMCS mediation skills and extensive experience places us in a unique position to offer cost-effective dispute resolution outside of the collective bargaining context.

2. Strategies:

a. Determine Criteria for Focusing on ADR Work:

Limited resources compel us to make choices in determining the kind of ADR work the Agency focuses on. Accordingly, we have developed critical factors to apply in determining whether particular work appropriately fits our statutory mission:

- **Workplace nexus:** is the dispute employment-related?
- **Impact on core mission work:** does the work have any positive or negative impact on traditional collective bargaining mediation?
- **Impact on interstate commerce, on the workplace, and on the community:** does it involve a dispute that impacts the free flow of commerce, the workplace as a whole, or the community in which it is centered?
- **Scope or nature of the conflict/project** (breadth and depth on both the domestic and international stage): does the work have national implications, or does it have significance in the international arena?
- **“Return” or benefits:** how does our involvement in that particular work benefit the Agency, the public and our mission? How does the benefit balance against the cost?
- **Financial and human capital resource allocation needs:** what are the resources required to accept the assignment?

b. Preliminary Determinations:

Looking forward, the Agency will continue to evaluate the ADR program and determine the appropriate focus for the future. In the meantime, we have applied the above criteria and, at a minimum, determined that the Agency should focus on:

- **Government and federal administrative agencies:** Generally, where there is a governmental interest, or where the work is inherently governmental, FMCS should have substantial involvement because of the statutory intent of the Administrative Resolution Act of 1996.
- **State and local agencies** (political and administrative divisions of the state): Coordinate, communicate, and cooperate with state and local agencies for efficient delivery of services.
- **International organizations and foreign governments:** Training for friendly foreign governments, ILO local officials, and NGOs, in conflict resolutions skills to resolve workplace disputes and in building mediation agencies.