

FMCS

Federal Mediation & Conciliation Service



2009 Annual Report



Report for Fiscal Year 2009

Message from the Director

Last year, the worst economic downturn in recent memory severely tested our nation's labor relations and, indeed, the institution of collective bargaining itself. The recession took an unprecedented toll in human terms—lost jobs, demoralized and distressed workers and their families—as employers felt constrained to cut back their work forces or close their doors. Whole communities suffered. As we look ahead hopefully for signs of recovery from the deepest recession this country has experienced in many decades, labor and management are assessing their past performances and their future prospects, in trying to ascertain where the tides of the economy in 2010 and beyond may carry them.

Unfortunately, speculation is a big part of the process whenever we try to foretell the future. There is little about what lies in store in the coming year that can be said for certain. But this much is clear: the FMCS is committed to helping labor and management work their way jointly through these difficult times by any and all means of cooperation, innovation and negotiation. I am cautiously optimistic knowing that collective bargaining has a proven track record as an effective tool not only for achieving enlightened worker protections but also for enhancing productivity, innovation and competitiveness—central ingredients for an economic recovery.

As Director, I have been impressed by the talent, ingenuity and energy that our dedicated FMCS mediators can bring to the table as the parties try to work their way jointly through their problems. Among our training activities are specific conflict prevention programs that FMCS mediators deliver to improve a labor-management relationship. Even before negotiations begin, we can help the parties understand how better to communicate, to manage conflict, and to avoid a damaging or disruptive dispute. It may not be possible to avoid all labor-management conflict, but certainly it is possible and desirable to help the parties manage conflict better.

I want our customers to know that whenever they jointly request assistance to help improve their relationship, the FMCS in general and the Director in particular will do everything we can. Whether it is a grievance backlog, a discrete safety and health issue, or a relationship that they think needs to be improved, we are ready, willing and able to assist. If there is a need to establish a joint labor-management committee, we have people with experience and talent in how to train and how to most effectively use a labor-management committee.

For the coming year, the FMCS has one overriding objective: namely, to pro-actively offer our services at the earliest date possible to help improve labor-management relationships. This has been my abiding goal, long before accepting this position. As Director of the FMCS, I am glad to say that is what this Agency is all about. And in these difficult economic times, I believe our customers need us now more than ever. Needless to say, our collective ability to succeed depends upon cooperative joint efforts.

Sincerely,

A handwritten signature in black ink that reads "George H. Cohen". The signature is written in a cursive, slightly slanted style.

George H. Cohen
Director

FY 2009 Agency Services

Agency Mission

For more than 60 years, the Federal Mediation and Conciliation Service (FMCS) has delivered neutral and confidential conflict resolution assistance to the nation's unionized workplaces. The core mission of FMCS is to help employers and unions avoid costly work stoppages and minimize their potentially devastating effects on regional or national commerce. The FMCS was created by Congress as an independent agency in the Labor-Management Relations Act of 1947. Our highly trained mediators provide conflict resolution services to the nation's employers and their unionized employees. Our goal is to prevent or minimize interruptions to the free flow of commerce that grow out of labor disputes and to improve labor-management relations. The core activity of the Agency is collective bargaining mediation; a voluntary process in which mediators serve as third-party neutrals to facilitate the settlement of issues in the negotiation of collective bargaining agreements.

A. Collective Bargaining Mediation

Through collective bargaining mediation, FMCS helps avert or minimize the cost of work stoppages to the U.S. economy. The Agency's core work is to mediate collective bargaining negotiations for initial contract negotiations—which take place between an employer and a newly certified or recognized union representing its employees—and for negotiations for successor collective bargaining agreements. FMCS provides mediation services to the private sector, and also to the public sector, including federal agencies, and state and local governments.

During mediation, the mediator's task is to identify alternative solutions and compromises, encourage settlement where appropriate, control the critical timing of offers, and persuade the parties to honestly discuss their differences. In FY 2009, FMCS mediators were actively involved in nearly 4,800 collective bargaining contract negotiations in every major industry throughout the United States.

B. Grievance Mediation

Grievance mediation involves the use of a neutral party to mediate disputes that may arise over the terms and conditions of a collective bargaining agreement. Agency mediators provide this service to the private and public sectors with the goal of preventing unresolved contract interpretation issues from spilling over into future contract negotiations. Lengthening contract terms increase the importance of resolving contentious issues arising during the term of a contract. In FY 2009, FMCS mediated 1,669 grievance mediation cases and helped the parties reach agreement in 1,260 of these.

C. Relationship-Development and Training

Preventing conflict that may arise during the term of a collective bargaining agreement is another important goal of the FMCS. The FMCS's relationship-building training programs are designed to improve labor-management relationships by helping labor and management to develop collaborative problem-solving approaches. Effective use of these programs better enables the parties to jointly respond to rapidly changing business and economic conditions during the term of the contract and also make future mediation efforts more effective.

D. Employment Mediation

Outside the collective bargaining arena, FMCS provides employment mediation services to the federal sector and to state and local governments on a cost-reimbursable basis. The Administrative Dispute Resolution Act of 1990, the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996 expanded FMCS' role as a provider of these services. The legislative intent behind these acts was to expand the use of alternative dispute resolution throughout the Federal government, reduce litigation costs, and promote better government decision-making. The Agency also provides employment mediation to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes. In FY 2009, FMCS mediated 1,362 employment cases.

E. International Training and Exchange

Beyond the nation's borders, FMCS plays an important role in promoting collective bargaining and conflict resolution around the world. FMCS' international work is a small, but integral, part of its services. Emerging market economies often struggle to compete effectively in a globally integrated marketplace. FMCS helps establish the labor relations institutions that are essential to the smooth functioning of free market economies. These programs are also a knowledge-sharing experience: FMCS mediators gain familiarity with complex issues affecting the global economy and, as a result, are more effective in resolving labor-management disputes with international implications.

FMCS' international efforts help to level the economic playing field for U.S. companies and workers by strengthening the rule of law and workers' rights in developing countries. In addition to supporting U.S. companies and workers in the global market by advocating core labor standards for all nations, the program helps create the stable and productive work forces that are needed to attract foreign investment and improve living conditions. In addition to industrial relations, FMCS mediators assist with rule of law initiatives, thereby helping to support economic growth and investment. These initiatives include mediation training and working with NGOs and other civil society organizations to develop mediation and other FMCS ADR programs. FMCS' international program operations are reimbursed and are funded in part by a number of foreign and U.S. agencies, including the U.S. Department of Labor, the U.S. Department of State, the U.S. Agency for International Development, and the International Labor Organization.

F. Arbitration Services

National labor policy favors arbitration for settling contractual disputes. FMCS' Office of Arbitration Services maintains a roster of approximately 1,400 independent arbitrators who are qualified to hear and decide disputes over the interpretation or application of collective bargaining agreements. Upon request from the parties, FMCS furnishes a list of names from which they may choose an arbitrator to hear their case and render a decision. During FY 2009, the Office of Arbitration Services processed nearly 15,900 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided more than 2,100 labor arbitration cases.

G. FMCS Institute for Conflict Management

The FMCS Institute for Conflict Management provides training and education to labor and management practitioners from multiple organizations in an off-site classroom format. The Institute offers training in practical conflict resolution skills, collective bargaining, arbitrator and arbitration skills-building, facilitation process skills, multi-party facilitation, cultural diversity, equal employment opportunity mediation skills, and workplace violence prevention. The Institute runs as a reimbursable program and is funded by fees received from training participants.

Mediation Services Program Data

PROGRAM SERVICES	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
1. COLLECTIVE BARGAINING MEDIATION.....				
Assigned Cases ¹	15,072	14,663	14,308	13,887
- Private Sector	13,539	13,245	12,914	12,425
- Public Sector (state and municipal)	1,219	1,107	1,083	1,138
- Federal Sector	314	311	311	324
Mediated Cases ²	5,484	5,329	4,836	4,767
- Private Sector	3,874	3,907	3,437	3,320
- Public Sector (state and municipal)	1,319	1,145	1,145	1,155
- Federal Sector	291	277	254	292
Closed Cases	15,664	14,478	13,480	13,308
Closed Mediated Cases	4,486	4,426	3,914	3,958
Activity Rate ³	29%	31%	29%	29.7%
Settled and Closed Mediated Cases	3,864	3,818	3,396	3,395
Percentage of mediated cases settled through FMCS ⁴	86%	86%	87%	86%
Activity rate in significant cases ⁵	45%	51%	38%	37%
2. GRIEVANCE MEDIATION				
Assigned Cases	1,632	1,768	1,749	2,027
Mediated Cases	1,625	1,753	1,728	2,004
- Private Sector	1,219	1,282	1,296	1,570
- Public Sector (state and municipal)	270	316	314	313
- Federal Sector	136	155	118	121
Settled GM Cases	1,219	1,254	1,299	1,479
Percentage of cases settled through FMCS ⁶	75%	74%	75%	74%
3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....				
Number of training programs provided	2,445	2,548	2,356	2,327
- Private Sector	1,552	1,591	1,390	1,400
- Public Sector (state and municipal)	730	730	712	682
- Federal Sector	163	227	254	245
4. EMPLOYMENT MEDIATION				
Mediated Cases	1,022	1,060	1,220	1,362
- Federal Sector	993	1,038	1,205	1,336
- Public Sector (state and municipal)	13	5	11	9
- Private	16	17	4	17
Settled EM Cases	523	532	576	638
Percent of EM cases settled through FMCS ⁷	51%	50%	47%	47%
5. OUTREACH				
Outreach cases ⁸	3,859	3,847	3,347	3,622

¹ Section 8(d) of the NLRA, as amended, 29 U.S.C. §158(d) requires that any employer or labor organization provide notice to FMCS 30 days prior to contract expiration. Not all cases providing notices are assigned. Actual FY 2009 FMCS case intake exceeded 21,400.

² Mediated cases (formerly called "active" cases) represent the number of cases in the FY where mediators have become active in the negotiations.

³ Defined as the number of closed cases where there was at least one meeting divided by the number of total closed assignments.

⁴ Defined as the number of active cases settled divided by the total number of active cases.

⁵ Significant cases are generally defined as situations where the bargaining unit exceeds 1,000.

⁶ Defined as the number of grievance mediation cases settled and closed within the fiscal year divided by the number of closed GM assignments.

⁷ Defined as the number of mediated employment cases settled divided by the number of mediated cases closed

⁸ FMCS requires all mediators to engage in outreach efforts. These kinds of activities include non-bargaining meetings with labor and management representatives, attendance at conferences, meetings with local and state officials to offer FMCS services, and presentations designed to increase public knowledge.

Work Stoppage Information					
	2005	2006	2007	2008	2009
Work stoppages carried from preceding FY	25	52	31	19	29
Work stoppages beginning within FY	289	247	164	193	103
Work stoppages closed within FY	262	268	176	183	118
Work stoppages open at end of FY	52	31	19	29	14
Average duration of work stoppages in closed cases (number of days)	41.1	70.9	63.1	51.8	104.2
Estimated number of worker-hours lost due to work stoppages (1,000s)	18,064	25,175	29,734	20,147	19,609

Work Stoppage Cost Information			
	Direct Costs	Indirect Costs	Total Costs
Year	(\$1,000s)	(\$1,000s)	(\$1,000s)
1999	883,010	896,481	1,779,490
2000	3,350,203	3,672,152	7,022,355
2001	495,484	476,000	971,484
2002	363,522	461,289	824,811
2003	372,678	329,595	702,273
2004	1,102,475	267,260	1,369,735
2005	488,075	450,737	938,812
2006	725,180	686,468	1,411,648
2007	801,314	931,108	1,732,422
2008	533,971	567,397	1,101,368
2009	623,264	736,032	1,359,296
Savings to Parties Attributable to Mediation			
	Reduced Incidence	Reduced Duration	Total Savings
Year	(\$1,000s)	(\$1,000s)	(\$1,000s)
1999	756,974	211,149	968,122
2000	1,992,529	303,092	2,295,621
2001	667,206	60,372	727,578
2002	840,936	272,595	1,113,531
2003	717,239	224,287	941,525
2004	2,259,575	173,177	2,432,752
2005	1,269,679	798,666	2,068,345
2006	1,320,946	374,872	1,695,818
2007	888,376	383,386	1,271,762
2008	1,155,903	(501,807)	654,096
2009	2,613,336	1,142,193	3,755,529

Arbitration Services Program Data

Activity	2005	2006	2007	2008	2009
Panel Requests	15,370	15,572	14,287	14,444	14,072
Panels Issued ⁹	16,787	16,854	16,264	15,717	16,692
Arbitrators Appointed	7,592	6,860	6,485	6,568	6,496
Activity Charged For					
Travel Days	.46	.46	.45	.45	.57
Hearing Days	1.15	1.11	1.10	1.07	1.10
Study Days	2.40	2.40	2.34	2.43	2.40
Total	4.01	3.97	3.89	3.95	4.07
Average Charges					
Per Diem Rate	\$836	\$860	\$883	\$913	\$962
Amount of Fee	\$3,396	\$3,605	\$3,571	\$3,780	\$4,049
Amount of Expenses	\$336	\$335	\$359	\$391	\$421
Total Charged	\$3,732	\$3,940	\$3,929	\$4,171	\$4,470

⁹ Frequently, the labor-management parties request more than one panel for arbitration cases, resulting in an increase in the number of panels issued over the number of requests received.