

FMCS

Federal Mediation & Conciliation Service



2010 Annual Report



Report for Fiscal Year 2010

Message from the Director

Labor and management continued to face many difficult issues this past year, presenting FMCS with a host of challenges and opportunities. Among the factors that have had a substantial, continuing impact on U.S. labor relations are the lingering effects of what has been called the Great Recession. With the nation's unemployment rate hovering in the vicinity of nine percent in general and even higher in the manufacturing and construction sectors, the after effects of the most severe economic downturn since the Depression of the 1930s will continue to dominate collective bargaining in FY 2011 and perhaps for years to come. In many industries, the recession and its consequences brought powerful employer demands for concessions and equally powerful union demands for job security.

In addition to the instability associated with the recession, the next single biggest contributor to labor relations conflicts and work stoppages in the past decade has been health care. No issue stands to engender bargaining conflicts more than health care benefits, their distribution and their associated increased costs. Contractual and plan changes also will be required of the parties as a direct result of the Patient Protection and Affordable Care Act of 2010 also known as the Affordable Care Act. During FY 2010, FMCS briefed field mediators on the provisions of the new law and began planning a series of labor-management seminars designed to highlight constructive joint solutions. While there is no doubt that labor and management will continue to have competing views about cost sharing and cost savings, the FMCS is cautiously optimistic that it can help the parties find acceptable compromises that will benefit both sides.

The subjects of pension benefits and retirement security add yet another dimension to the spectrum of contentious fringe benefit issues likely to be highly visible in the next several rounds of bargaining. FMCS anticipates that during FY 2011 and into the foreseeable future, management and labor will continue to battle over the merits and wisdom of defined benefit versus defined contribution pension plans.

The FMCS also recognizes that the need for job creation and sustainable energy initiatives will generate an increased emphasis and, indeed, urgency to the creation of "green jobs." This will add yet another potential source of tension to many collective bargaining relationships as employers seek to terminate old product lines, introduce new technology, and demand different skill sets of workers.

When taken together, these and other factors influencing labor-management relations have created a tense and volatile atmosphere at the nation's bargaining tables unlike anything experienced by the FMCS in recent years. Just one example in FY 2010 involved a potential open-ended walk-out by more than 12,000 nurses from 14 hospitals in the Minneapolis/St. Paul metropolitan area. The dispute was highly contentious and the issues complex and technical. After a one-day strike, the parties became even more deeply entrenched. A settlement ultimately was reached with round-the-clock assistance by several FMCS mediators. Perhaps more importantly, after working with our skilled professionals, the parties committed publicly to reinstate and reenergize collaborative committees to address the key issue of nurse-to-patient staffing ratios.

In the face of such challenges, the FMCS constantly strives to deliver services that best meet the interests of the parties and the public. First and foremost, and consistent with its core mission, the FMCS continues to place its major emphasis on assisting the parties in the bargaining process itself. In addition, FMCS underscores the need for labor-management relationship building and cooperation. Experience has shown that what labor and management need in difficult times is a strong relationship, built on mutual respect and trust, in which issues can be discussed and joint solutions reached. With outreach and training programs, the FMCS helps parties achieve stronger relationships. Every day, FMCS mediators, in a variety of ways, offer parties broad-based assistance, with a view toward encouraging relationship improvement far in advance of the trauma of contract expiration and deadlines for negotiations.

Congress recognized this precise point years ago when it passed the Labor Management Cooperation Act of 1978. The Act authorizes and directs the FMCS 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." Congress funds this initiative through its annual appropriation to the FMCS. The grants funded by the program are distributed to encourage labor-management committees to develop innovative, joint approaches to workplace problems.

In FY 2010, the FMCS awarded 10 new competitive grants totaling \$750,000. These grants are supporting labor-management committees tackling a wide variety of important issues related to health care, job safety, work-life balance, and the flexibility needed to pursue new business opportunities, such as green jobs.

In addition to training programs and grants for labor and management, FMCS mediators and managers participated in many joint labor-management conferences and seminars sponsored by

universities, bar associations, and professional groups—all with the goal of advising the labor relations community of the wide variety of constructive services the FMCS can provide to improve relationships between employers and unions to help them resolve disputes.

The FMCS is also responsible for helping to ensure stable labor-management relations in the federal government. In December 2009, the President issued Executive Order 13522. The stated purpose of this Executive Order is to “promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.” To that end, all federal agencies are required to establish and to implement “labor-management forums [that] allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people.”

FMCS mediators have been deeply involved in the important task of training federal union and management representatives in how to establish and implement these joint forums and to use them as tools to advance cooperation and collaboration within their respective federal agencies. In FY 2010, and within months of the issuance of the Executive Order, the FMCS, together with its sister agency, the Federal Labor Relations Authority (FLRA), responded to more than 100 requests for assistance. Together, the FMCS and FLRA created and delivered two days of intensive training to federal agency labor-managements pairs at locations throughout the country. These training sessions covered both statutory rights and responsibilities and described the best tools and cooperative techniques for creating and implementing productive labor-management forums.

In sum, the FMCS recognizes, as did Congress more than 60 years ago, that constructive labor-management relationships and collective bargaining provide the parties with the most effective tools for achieving productivity, innovation and competitiveness—the central ingredients for a growing economy.

As Director, I believe that the best approach to achieve these goals is a pro-active one. This past year, in speeches by our senior management at conferences and seminars and through group and individual outreach efforts by our mediators, we have worked to convey a simple truth to labor and management representatives, that in today’s competitive economy, they are partners not adversaries. Working together, they have the greatest chance for economic survival and success.

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 2010 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 FMCS 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 FMCS'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 2010, FMCS mediators were actively involved in more than 4,900 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. FMCS 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 2010, FMCS mediated 2,084 grievance mediation cases and helped the parties reach agreement in 1,532 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 FMCS 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 2010, FMCS mediated 1,392 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 2010, the Office of Arbitration Services processed nearly 16,500 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 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
1. COLLECTIVE BARGAINING MEDIATION.....				
Assigned Cases ¹	14,663	14,308	13,887	14,127
-Private Sector	13,245	12,914	12,425	12,888
-Public Sector (state and municipal)	1,107	1,083	1,138	906
-Federal Sector	311	311	324	333
Mediated Cases ²	5,329	4,836	4,767	4,919
-Private Sector	3,907	3,437	3,320	3,632
-Public Sector (state and municipal)	1,145	1,145	1,155	991
-Federal Sector	277	254	292	296
Closed Cases	14,478	13,480	13,308	12,992
Closed Mediated Cases	4,426	3,914	3,958	4,005
Activity Rate ³	31%	29%	30%	31%
Settled and Closed Mediated Cases	3,818	3,396	3,395	3,428
Percentage of mediated cases settled through FMCS ⁴	86%	87%	86%	86%
Activity rate in significant cases ⁵	51%	38%	37%	45%
2. GRIEVANCE MEDIATION.....				
Assigned Cases	1,768	1,749	2,027	2,124
Mediated Cases	1,753	1,728	2,004	2,084
-Private Sector	1,282	1,296	1,570	1,708
-Public Sector (state and municipal)	316	314	313	239
-Federal Sector	155	118	121	137
Settled GM Cases	1,254	1,299	1,479	1,532
Percentage of cases settled through FMCS ⁶	74%	75%	74%	74%
3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....				
Number of training programs provided	2,548	2,356	2,327	2,200
-Private Sector	1,591	1,390	1,400	1,471
-Public Sector (state and municipal)	730	712	682	433
-Federal Sector	227	254	245	296
4. EMPLOYMENT MEDIATION.....				
Mediated Cases	1,060	1,220	1,362	1,392
-Federal Sector	1,038	1,205	1,336	1,387
-Public Sector (state and municipal)	5	11	9	2
-Private	17	4	17	3
Settled EM Cases	532	576	638	675
Percent of EM cases settled through FMCS ⁷	50%	47%	47%	48%
5. OUTREACH.....				
Outreach cases ⁸	3,847	3,347	3,622	3,240

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 2010 FMCS case intake exceeded 23,400.

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	2010
Work stoppages carried from preceding FY	25	52	31	19	29	13
Work stoppages beginning within FY	290	247	163	193	103	159
Work stoppages closed within FY	263	268	175	183	119	153
Work stoppages open at end of FY	52	31	19	29	13	19
Average duration of work stoppages in closed cases (number of days)	41.1	70.9	63.1	51.8	104.2	47.3
Estimated number of worker-hours lost due to work stoppages (1,000s)	18,064	25,175	29,734	20,147	19,609	8,877

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
2010	250,162	238,538	488,700
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
2010	1,389,809	(39,122)	1,350,687

Arbitration Services Program Data

Activity	2006	2007	2008	2009	2010
Panels Issued ⁹	16,854	16,264	15,717	16,692	16,486
Arbitrators Appointed	6,860	6,485	6,568	6,496	6,870
Activity Charged For					
Travel Days	.46	.45	.45	.57	.48
Hearing Days	1.11	1.10	1.07	1.10	1.14
Study Days	2.40	2.34	2.43	2.40	2.37
Total	3.97	3.89	3.95	4.07	3.99
Average Charges					
Per Diem Rate	\$860	\$883	\$913	\$962	\$981
Amount of Fee	\$3,605	\$3,571	\$3,780	\$4,049	\$4,039
Amount of Expenses	\$335	\$359	\$391	\$421	\$380
Total Charged	\$3,940	\$3,929	\$4,171	\$4,470	\$4,419

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.