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Fifty-Fourth Annual Report of the Federal Mediation and Conciliation Service (Fiscal Year 2001)

Federal Mediation and Conciliation Service

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Fifty-Fourth Annual Report of the Federal Mediation and Conciliation Service (Fiscal Year 2001)

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Comments

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To the Congress:

It is my distinct privilege to submit to you the Fifty-Fourth Report of the Federal Mediation and Conciliation Service (FMCS) in accordance with the provisions of the Labor Management Relations Act of 1947. This report details the activities of this agency in fiscal year 2001.

Today, there is a new FMCS. The structure, the leadership, resources and an unprecedented emphasis on employee education and training are in place. Along with increased employee accountability for performance are rewards for outstanding work. Systems have been established to elicit and use customer feedback for evaluation and guidance in our services and operations. Our commitment to customer focus and responsiveness continues.

2001 was an important year for FMCS services to our customers. Among the more than 6424 collective bargaining negotiations in which our mediators were active was the one of the nation's most visible public sector strike by 12,000 public school teachers and 3,000 university professors in the State of Hawaii. The strike effectively shut down the public school system in that state, effecting some 185,000 public school students and 44,500 college students.

FMCS Preventive Mediation Services found fertile ground in 2001 as management and union leaders continued to seek new and better ways to work together using new technologies pioneered by FMCS. Our Alternative Dispute Resolution services to government continue in wide demand as more agencies have turned to FMCS for alternatives to courtroom litigation.

The American workplace is changing. The Federal Mediation and Conciliation Service will change with it so that we can continue to offer value-added assistance to employers and employees as they confront the challenges of modern labor-management relations.

Respectfully,

/s/ John J. Toner
Chief of Staff
On Behalf of the Director

I. INTRODUCTION

A. Agency Mission

For more than fifty years, the Federal Mediation and Conciliation Service (FMCS) has carried out its mission of preserving and promoting Labor-Management Peace in the Nation. The FMCS was created by Congress as an independent agency by the Labor-Management Relations Act of 1947. During this time a dedicated cadre of highly trained and skilled mediators who provide conflict resolution services to our nation's employers and their unionized employees has carried out the activities of the agency. The primary mission of these mediators is to prevent or minimize interruptions to the free flow of commerce growing out of labor disputes and to assist these parties in improving and maintaining their labor-management relationships. The core mission of the Service is Dispute Mediation, a voluntary process in which FMCS mediators serve as third-party neutrals to facilitate the settlement of issues and disagreements in the negotiation of collective bargaining agreements.

B. FMCS Services

In carrying out its mission, the Service always depended on the acceptability, experience, skills and credibility of its mediation workforce. The agency's mediators provide the following services to the public:

1. Dispute Mediation – Initial and Successor Contracts
2. Preventative Mediation
3. Arbitration Services
4. Grants Program
5. FMCS Institute
6. ADR/International
7. Youth Conflict Resolution and Peer Mediation

1. Dispute Mediation: Initial and Successor Contract Negotiations

Dispute Mediation is a voluntary process that occurs when a third-party neutral assists the two sides, or parties, in reaching agreement in contract negotiations. This includes initial contract negotiations, which take place between an employer and a newly certified or recognized union representing its employees, and negotiations for successor collective bargaining agreements. Mediators have no authority to impose settlements; their only tool is the power of persuasion. Through Dispute Mediation, FMCS helps avert or minimize the impact of work stoppages on the U.S. economy. In FY 2001, FMCS mediators were actively involved in 6424 collective bargaining contract negotiations in every major industry and service throughout the United States. This is an increase of approximately 100 cases over FY 2000 dispute activity. This represents an 18% increase in dispute activity since 1996. Dispute mediation services are provided not only to the private sector, but also to the public sector, including federal agencies, and state and local governments.

Initial contract negotiations are critical as they are the foundation for the parties' future labor-management relationship. Initial contract negotiations are often more

difficult than established contract re-negotiations since they frequently follow contentious representation election campaigns in which the parties adopt hardened positions toward each other. Current data indicates less likelihood of agreement on initial contracts than in contract re-negotiations, even with the assistance of FMCS mediators. There are higher incidences of strikes or lockouts, and threats or actual use of permanent replacement workers in initial contract negotiation settings. Additionally, unfair labor practice charges can hold up any possibility of agreement and are more common in this environment.

For the last several years, FMCS has placed special emphasis on the mediation of initial contract negotiations between employers and unions in newly represented bargaining units. Under an arrangement with the National Labor Relations Board, FMCS is immediately notified of all new union certifications. Our policy is to assign all initial contract cases to mediators as soon as we receive the certifications. Mediators are proactively involved in assisting the parties and the cases remain open for a two year period if the parties do not reach agreement. As a result of our efforts, the parties are more successful at reaching agreements on initial contracts.

With regard to successor contract negotiations, mediators are in touch with both parties prior to commencement of negotiations. The legally required notice of intent to commence successor contract negotiations triggers the contact. FY 2001 was a critical bargaining year, with major contracts expiring in the following industries: over-the-road trucking, motion picture and television production, telecommunications, retail food, food manufacturing and processing, construction, hotel service and maintenance, theme park entertainment, east and gulf coast shipping, shipbuilding, apparel, health care, as well as federal state and local public employees and educational institutions.

For FY 2001 data regarding dispute mediation in successor contracts and initial contract negotiations, and cases of significance in each category during this fiscal year, see Sections II and III.

2. Preventative Mediation

Preventative mediation services are collaborative union-management processes that concentrate on improving the parties' long-term relationships. In preventative mediation, FMCS mediators address the workplace relationship by providing education and skills training in effective bargaining, communications, joint problem solving and innovative conflict resolution. Preventative mediation services are increasingly important because labor and management have entered into contracts of longer duration than in previous years. In this regard, at the close of FY 1999, 22% of all contracts contained duration clauses that exceeded 3 years. Nine percent of all contracts settled in FY 1999 covered 5 year periods or longer. FY 2000 and FY 2001 data show a continuation of this trend. Because the parties maintain their contractual relationship for longer periods, our Preventative Mediation services are of particular significance to address the workplace relationship issues that arise during the life of the contract. As a result, there is an increase in demand for FMCS Preventative Mediation Services. Traditionally, preventative mediation comprises 10% of the total mediation caseload, but we expect it to grow in the coming years.

Preventative mediation services are broadly defined as collaborative union-management processes designed to improve the party's relationship on issues of mutual interest. When preventative mediation is required, the mediator assess the parties' needs and designs a program that is specifically tailored for those parties. FMCS offers a wide array of services to address workplace problems and they are:

- (a) Consultation with subcommittees to address contract administration issues;
- (b) Training, either in single sessions, or multiple sessions covering a broader spectrum of issues. We have a curriculum, posted on the Agency intranet, for mediators to use and to design customer-specific programs in the following areas:

- **Orientation to Joint Labor-Management Initiatives:** a one day workshop providing participants the opportunity to interact and share common experiences, discuss the nation's economic climate, the impact of international competition, and the foundation of labor-management cooperation.
- **Interest Based Bargaining Training:** teaches the benefits and techniques of a non-adversarial, joint problem solving approach to negotiation focusing on the interests that underlie the parties' positions.
- **Relationship by Objective:** aims to improve the parties relationship with one another, particularly where the relationship has worsened after a contentious representation election, initial contract negotiation, or strike. These training sessions are held off site and require a team of mediators.
- **Labor-Management Committee:** joint labor management committees designed to bring the parties into regular communication.
- **Partners in Change:** a two day workshop to explore the organization's current culture, identifying perceptions within the organization, creating a vision for the future, and designing a system that effectuates change.
- **Committee Effectiveness Training:** skills training on how to become effective contributors, and includes a guidebook covering effective planning, meetings, group problem solving, consensus decision making, and effective communication with constituents. Training modules include understanding yourself and others, interpersonal skills, group dynamics and shared leadership.
- **Labor Management Worksite Committee Training:** extends labor-management committees from the leadership level to the worksite level, including the formation of worksite committees, group interactions, techniques to manage change and skills to monitor the work of the committee.
- **Contract Administration/Steward-Supervisor Training:** provides front line supervisors and shop stewards with the basic information on their roles and responsibilities regarding contract administration, grievance processing, the arbitration procedure,

and interpersonal communications for building cooperative relationships.

- **Facilitation Training:** focuses on the skills needed to build a successful labor-management committee, including understanding adult learning and working styles, and planning and facilitating effective meetings.
- **Alternate Dispute Resolution:** designed for governmental agencies implementing ADR strategies and defines mediation and negotiation, the role of the mediator, and practice of ADR skills.
- **Cultural Awareness Skills for Labor and Management:** addresses cross cultural conflicts in a workplace setting and how to function in a multicultural work setting. This program works best when an issue arises that is racial or cultural in nature, such as a sudden change in the makeup of the workforce, negative cultural undertones during negotiations, a bargaining committee that is diverse, or a rise in grievances appear to be racially or culturally motivated.

In addition to these preventive mediation programs, field mediators continuously participate in education, advocacy and outreach activities (called EAOs). Mediators lecture at universities, seminars and conferences and they meet with local leaders in the collective bargaining community. Through this outreach activity, the labor-management community and the general public gain understanding of the uses of mediation, arbitration and collective bargaining and the agency's services.

For FY 2001 data regarding preventative mediation and cases of significance during this year, see Section IV.

3. Arbitration Services

National labor policy favors the settlement of contractual disputes by arbitration. When conflicts arise over the interpretation or implementation of a contract or contract provision, FMCS assists through the time-tested conflict resolution method of voluntary arbitration. A professional arbitrator, acting in a quasi-judicial capacity, hears arguments, weighs evidence and renders a decision to settle the dispute, usually binding on both parties. On request, FMCS Arbitration Services provides the disputing parties with a "panel" of qualified, private labor arbitrators from which they select the arbitrator to hear their case. The panels are drawn from an FMCS computerized nationwide roster of some 1350 labor arbitrators. To join the FMCS roster, arbitrators must be approved by an Arbitration Review Board, which meets quarterly to consider new applicants in order to be appointed to the roster by the FMCS Director. There is also an arbitration user focus group that reviews and makes recommendations to the FMCS Director on changes in arbitration service, policies and procedures.

As a result of customer feedback in late 1999 and 2000, and the Arbitration Customer Council, FMCS implemented many new policies and procedures. While the arbitration panel requests in FY2001 dropped slightly from FY 2000, we have seen a marked increase in the number of "special requirements" requested by the parties seeking

FMCS arbitrators' services. Parties are now more experienced in tailoring their requests to specific experience in specific industries. We also believe that imposing a fee structure in 1997 has steadily reduced the previous number of nuisance requests for panels that were without merit.

The FMCS also holds annual Arbitrator Symposia in Cleveland, Philadelphia, Chicago and Seattle. These functions provide FMCS arbitrators with an opportunity to discuss and share the latest information about their profession.

For FY 2001 data regarding arbitration services and program data, see Section V.

4. Grants Program

FMCS is authorized by the Labor-Management Cooperation Act of 1978 to award grants to support and encourage joint labor-management cooperative activities that "improve the labor-management relationship, job security and organizational effectiveness." Congress funds the FMCS Grants Program each year in the agency's appropriation.

The rules, regulations and instructions for preparing grant applications are published annually in the federal register and include the following information:

- Program description and scope
- Required program elements
- Grantee selection criteria
- Applicant submission deadline
- Applicant eligibility criteria
- Dollar range of awards
- Duration of grant period
- Cash Match requirement
- Application review process

Since 1981, FMCS has awarded \$18.9-million in grants to 303 applicants for the establishment or continuation of joint committees that propose innovative approaches to labor-management cooperation. These committees, established on a plant, area or industry-wide basis, unite representatives of management and labor organizations on a regular basis, and are effective vehicles for increasing productivity, improving product quality and resolving workplace issues. Committees have focused their efforts on improving labor-management relationships, job security, organizational effectiveness, economic development, health care cost containment solutions, competitiveness of a region's hotel industry, economic development, and public sector management. All committees must present measurable results of their efforts for grant funding.

In fiscal year 2001, 66 grant applications were filed and the FMCS awarded 13 new and 5 non-competitive (continuation of prior grants) at a cost of \$1.5 million. These grants supported labor-management committees representing approximately 1.6

million employees in both the private and public sector. An independent FMCS Grants Review Board, chaired by the Director of Labor-Management Grants, does preliminary scoring of each application. Final selection is made by the program director.

For FY 2001 data regarding the grants program and summary funding, see Section VI.

5. FMCS Institute

In FY 1999, the FMCS inaugurated the FMCS Institute, which delivers extended training and education to labor and management practitioners in a central classroom format. This training is more structured and more conducive to intensive focus than the Agency's traditional on-site preventative mediation programs. Our experience with Institute course work shows that the training is better handled in a classroom setting, away from shop or office floor, in order to maximize communication among all the participants.

The FMCS Institute offers training in practical conflict resolution skills, and provides participants the opportunity to interact with and learn from experienced practitioners who use these skills every day. Institute activities have included training in labor relations, collective bargaining, dispute resolution skills, arbitrator and arbitration skills building, facilitation process skills, group dynamics and multi-party facilitation, cultural diversity, negotiation contract skills, information technology and conflict resolution, advanced facilitation skills, and equal employment opportunity complaint mediation skills.

Fees received for delivery of training services fund the FMCS Institute. All fees collected are utilized to recover expenses and administrative costs of the Institute. Training fees charged to customers are set at a level that allows the Institute to provide a professionally delivered product from one year to the next.

For FY 2001 data regarding the FMCS Institute and course offerings, see Section VII.

6. ADR/International

FMCS is authorized under the Administrative Dispute Resolution Act of 1996 to provide mediation/problem-solving techniques in non-labor relations situations. The ADR/International department functions in three arenas: (a) domestic ADR; (b) International Labor-Management Education and Training; and (c) International ADR.

(a) Domestic ADR work provides conflict resolution services aimed at helping all sectors of government avoid costly and time-consuming litigation to settle disputes by assisting parties in creating ADR structures and processes within agencies. We also provide government with an open and inclusive alternative to traditional rule and policy making. Our services in the domestic ADR arena include:

- **Consultation:** Initial assessment of customer needs.

- **System Design:** Analysis of existing mechanisms and design of appropriate methods and strategies to establish or improve conflict resolution processes within the agency or customer.
- **Education/Training:** Programs aimed at educating ADR users and practitioners on mediation skills, training for potential customer or agency mediators, and mentoring mediator trainees through active ADR cases.
- **Mediation/Facilitation and Convening:** Mediation or facilitation of disputes, or performing fact finding or convening processes.
- **Regulatory Negotiations/Public Policy Dialogues:** Conducting consensus focused public policy discussions regarding proposed rules or regulations for government agencies. We guide regulatory negotiations aimed at unifying government regulators and those affected by the proposed regulation.
- **Private Sector ADR:** Applying ADR principles to conflicts away from the negotiation table not directly related to collective bargaining, including facilitation of disputes within a corporate or union board, patent or trademark disputes, or mediation of issues surrounding voluntary recognition of a bargaining unit.

(b) International Labor-Management Education and Training Program: The rapid globalization of marketplaces, proliferation of trade pacts and rapid technological advances, more countries recognize that industrial relations and conflict resolution systems are means of securing economic growth and competitiveness. Countries with developing economies, such as Eastern and Central Europe and South American countries exist without industrial relations or conflict resolution systems. Our mediators briefings, training and technical assistance in labor relations, mediation and collective bargaining to friendly foreign governments. Delegations from other countries are frequent visitors to FMCS National Headquarters in Washington D.C. for briefings and training. The International Labor and Training Services include:

- Consultation on dispute resolution systems.
- Negotiation skills training.
- The collective bargaining process.
- Dispute mediation skills, and training in labor dispute resolution.
- Creation of labor-management committees.
- Introduction to advanced labor management relations at specific company-union sites
- Administration of mediation services.
- Introduction and use of ADR systems

(c) International ADR: The conflict evolution needs of other nations continue to evolve and our expertise is sought to provide ADR training and processes to other nations. Application of FMCS conflict resolution skills through the International ADR department continues to develop in the following areas:

- Facilitation of consensus building dialogues related to economic growth and legal/institutional reform in developing countries;
- Mediation/negotiation skills building for employees of regional organizations;
- Negotiation/conflict resolution training for police forces in post-conflict societies;

- Sponsorship or co-sponsorship of best practices seminars in use of conflict resolution
- Consultation and assistance in establishing international centers of dispute resolution;
- Training of co-mediation teams to mediate NAFTA disputes

Appropriated funds are not used for either ADR or International Services. Mediator salaries and expenses are reimbursed through interagency agreements and contracts with international organizations.

For FY 2001 data regarding ADR and the international program, see Section VIII.

7. Youth Conflict Resolution and Peer Mediation:

In FY 2000 FMCS began delivering the completed curriculum on Youth Conflict Resolution and Peer Mediation. Experience teaches that those who learn conflict resolution skills early in life carry these skills with them throughout their life. American business and its employees benefit from learning cultural awareness skills, as America's workplaces become increasingly diverse giving meaning to our nation's motto of *E Pluribus Unum*. This program provides a means of nonviolent conflict resolution for students and staff and is designed to assist elementary and secondary school staff to implement a school wide peer mediation program. Students, staff and parents are trained in basic conflict resolution skills to prepare them to problem solve many of their disputes in a constructive manner. A smaller group of students and staff are then trained as mediators.

The curriculum is designed to teach new skills in managing anger and conflict and apply them by direct participation; improve the school environment by helping students and staff address underlying conflict that cause rule infractions; reduce the number of disputes that become violent or hurtful; and reduce the amount of staff time spent on discipline. The program uses TAGS to facilitate school surveys, classroom instruction on youth violence, conflict resolution sessions, problem solving meetings, and classroom discussions on the topics that effect students. In future annual reports, the Agency will provide data on the Youth Initiative and its impact on our society.

All FMCS services outlined above are aimed at carrying out the policy of the United States that the best interest of the nation is most satisfactorily secured through collective bargaining between employers and representatives of their employees. History has expanded the interests of these parties to include their relationships with agencies of government, the American public and foreign entities. FMCS has kept pace and faith with its mission of serving these increasingly varied interests.

C. Nature of Collective Bargaining in FY 2001

Fiscal year 2001 was a critical bargaining year, with major contracts expiring the following industries: over-the-road trucking, motion picture and television production , telecommunications, retail food, food manufacturing and processing, construction, hotel service and maintenance, them park entertainment, east and gulf coast shipping,

shipbuilding, apparel, health care, as well as federal state and local public employees and educational institutions

The consolidation of companies in response to increasing global competition continues to strain the American collective bargaining process as companies seek to retain competitive advantage in markets that are now worldwide. Continuing economic pressures in the delivery of health care put extraordinary pressure on that industry and its costs of service delivery. This continues to have a paradoxical roll-up effect on the costs of providing historically accustomed health care benefits to the nation's organized employees. Increasing penetration of competing imports brought critical political pressures on union leadership in an effort to stem the flow of jobs to non-union employers or the job flight overseas to newly developing nations. While wages remained relatively stable in recent years, costs of health benefits continue to outpace the cost-of-living. Cost containment and sharing proved to be flashpoint issues in negotiations as employer provided health-care benefits have been an expected and accepted part of the national employment matrix since the end of the Second World War. The continuing economic turmoil gave reason to believe that extreme wage bargaining positions would be tempered but the specter of consolidations and new methods of doing business thrust job security forward as a key item on unions' bargaining agendas.

FMCS mediators were actively involved in 6424 collective bargaining contract negotiations in every major industry and service throughout the United States in FY 2001. This represents a slight increase over FY 2000 dispute activity. In 76% of those cases, the agency's mediators secured contract settlements.

The FMCS played a role in resolving a number of strike situations where the bargaining unit size exceeded 500 employees and effected significant portions of the economy. We played an integral role in one of the nation's largest school teachers strike. In Hawaii, 12,000 public school teachers and 3000 university professors engaged in a strike, effecting close to 229,000 students in the state. Our defense related disputes involved mediation efforts with Lockheed Martin at Kirkland Air Force Base, where retired Special Forces officers and active National Guard helicopter pilots struck, directly impacting on the nation's defense readiness. The Director intervened in this dispute and the matter was settled soon thereafter. Our non-defense strike involvement resolved work stoppages among 3,500 employees of Olin Corporation, 1,200 employees of Peoples Gas Light and Coke Company, 1000 drivers employed by Chicagoland Dump Truck Haulers; and 860 employees of Rochelle Foods, Inc.

Although we assist the parties in resolving strike situations, our primary mission is to avoid work stoppages altogether by achieving negotiated settlements. We averted strikes by 14,000 employees of Kroger Company; 10,000 Boeing Military Aircraft and Missiles Systems employees who perform defense construction work; 9,000 nurses at Minneapolis-St. Paul Metropolitan Hospitals; 2,300 Maytag employees; 2,000 GES Exposition Service employees working in Las Vegas; 600 employees of Levi Strauss; and firefighters employed by the City of Cincinnati.

D. Technology Assisted Group Solutions (TAGS):

In FY 2000, the agency introduced Technology Assisted Group Solutions System (TAGS). The TAGS system uses a powerful network of mobile computers and customized software that skilled mediators use to solve problems more effectively, help groups brainstorm, gather and organize information, prioritize, evaluate and build consensus faster than traditional group meetings. By the skillful utilization of a network of computers and customized computer software, FMCS mediators became even more successful helping our customers develop meaningful solutions to workplace and organizational management problems and develop positive working relationships. FMCS customers report that TAGS helps them prepare for meetings or negotiations, saves time and money, maintains records in an organized fashion, and allows them to communicate better with their constituents. FY 2001 demonstrations of TAGS throughout the nation continues to meet with overwhelming enthusiasm. In the coming years, as TAGS usage grows and the technology improves, we will measure its impact on collective bargaining negotiations and mediation of disputes.

During this fiscal year, we have expanded TAGS and have seen a significant demand for the service. We also have conducted internal union elections with the technology. Use of TAGS is economically sound for two reasons: (1) the technology requires less face-to-face time and allows negotiations to take place between parties that are geographically separated, thereby saving travel costs and (2) it reduces the number of days required for meetings because it increases the efficiency of decision-making.

We have also incorporated TAGS technology into the Agency's culture. We use it to communicate with our field offices, conduct surveys, and focus groups, and we use it to share documents, presentations and other items that might be useful for field. When we want to seek input from the field, we use TAGS technology for polling purposes and have brainstormed within the organization using TAGS.

1. Electronic Conference Centers (ECCs):

In fiscal year 2001, the FMCS established seven electronic conference centers (ECCs) that incorporate TAGS technology. These ECCs are located in Newark, Minneapolis, Oakland, Cleveland, Atlanta and Washington D.C. While these centers are designed to be stationary, they have mobile capacity and can be shipped to customer locations when needed and can be combined with equipment from other ECCs to accommodate larger groups. Additionally, the ECCs can be linked electronically.

2. Academic Partnerships:

In FY 2001, the Agency began academic partnerships with universities, colleges and/or institutes that allow us to share research, curricula, internships, and mentoring opportunities. Researchers at academic institutions have developed theories of dispute resolution techniques and new approaches to collaborative systems. In order to benefit

from the ongoing knowledge that the academic world can provide, we developed relationships with the following institutions:

- The Usery Center at Georgia State University;
- The Kennedy School at Harvard;
- North Texas University;
- The School for Conflict Management at George Mason University
- The Strauss Institute at Pepperdine

E. New Initiatives:

1. Credentialing of Neutrals

In addition to our collaborative efforts with academic institutions, the FMCS embarked on a credentialing initiative in fiscal years 2000 and 2001 that will continue until fiscal years 2002 and 2003. We are examining whether to establish an internal roster, for agency use only, in areas of employment, commercial and multi-party disputes. The credentialing initiative is an attempt to raise the professional bar of the mediator by establishing standards for experience, education, training and other attributes. We have established focus groups for both the private sector and the federal government to discuss criterion for credentialing standard. As we finalize this initiative, the following are some of the criterion we have examined and will continue to examine:

- Number and type of case in each area (e.g., labor, employment, commercial, environmental, etc);
- Origination of training;
- Nature, duration and type of curriculum completed;
- Type of continuous education pursued;
- Nature, type and recent ethics training;
- Origination of ethics training;
- Establishment of a consumer complaint procedure and investigation for process violations; and
- Examination of validity of applicant biography

2. Resource Center:

The agency is currently working on The Resource Center, an on-line resource available to field mediators via the FMCS intranet. The Resource Center will provide electronic access to books, articles, preventive mediation training materials, and videos on labor relations and collective bargaining, labor-management partnerships, conflict resolution, negotiated rulemaking and, resolution of EEO and ADA disputes. The Resource Center will also have sample contract language used in different industries throughout the country. Our plan is to improve the quantity of tools available to assist mediators in their work by providing a mediator resource kit. This kit will include documentation on joint labor-management process mission statements, examples of labor-management education programs, exercises for facilitating meetings, a rich array of

case studies and case study summaries, an assortment of assessment and evaluation tools used in joint labor-management programs, joint process contract language, and materials on alternative bargaining processes and alternative dispute mechanisms.

F. Summary

All FMCS activity is aimed at promoting and improving the conflict resolution and collective bargaining processes in the United States. This helps American businesses become and remain more competitive in the international marketplace and increases the quality of working life of American workers.

Through Dispute Mediation, FMCS averts or minimizes the impact of work stoppages on the U.S. economy, either in initial bargaining relationships, or in mature bargaining relationships. FMCS Preventive Mediation Services offers labor and management the skills to improve long-term workplace relationships. Arbitration Services provides the internal jurisprudence that helps the parties administer their collective bargaining agreements. The grants program promotes innovative, joint approaches to building better relationships. Through Alternative Dispute Resolution Services, FMCS helps government agencies reduce the likelihood of litigation, speeds up federal processes, and improves the delivery of regulated government services. FMCS international services offers training to foreign governments in these same techniques, promoting the establishment of sound labor-management relations and conflict resolution systems in strategic areas of the world.

While there are fewer cases involving work stoppages in recent years, strikes and lockouts that do occur are often more protracted, difficult, and contentious. The complexity of issues in today's collective bargaining arena require FMCS mediators to play increasingly important roles in critical negotiations and in guiding the parties to constructive agreements rather than work stoppages. FMCS preventive mediation programs concentrate on improving the parties' long-term relationships through the addition of new skills and knowledge. America's corporations and their unions seek this training in order to achieve organizational effectiveness, preserve the competitive position of their enterprise, and to maintain a sound, secure employment base.

II. DISPUTE MEDIATION:

A. Dispute Mediation Process:

In collective bargaining, Dispute Mediation is a voluntary process which occurs when a third-party neutral assists the two sides, or parties, in reaching agreement in contract negotiations. This includes initial contract negotiations, which take place between an employer and a newly certified union representing its employees, and negotiations for successor collective bargaining agreements.

In Dispute Mediation, FMCS mediators are in touch with both parties even before negotiations actually begin. The legally required notice of intent to open a collective bargaining agreement triggers the contact. During negotiations, effective mediators use knowledge of the parties and issues "on the table" to guide negotiators through potential deadlocks to a settlement acceptable to both sides. Mediators may make suggestions, and offer procedural or substantive recommendations with the agreement of both parties. However, they have no authority to impose settlements. Their only tool is the power of persuasion. Their effectiveness derives from their status as respected neutrals, their acceptability to the parties, their broad knowledge and experience in the process of collective bargaining, and, especially, the quality of their ideas, suggestions and perspectives.

B. FY 2001 Cases of Significance:

1. Olin Corporation/International Association of Machinists:

The Olin Corporation produces copper and cooper alloys and brass for ammunition and coins. One division of the company has 3,500 employees represented by various unions. The IAM, one of the eight unions, rejected company's final offer and 2,700 struck on December 4, 2000. The issues involved pension, insurance and a two tier wage progression. When the strike was one month old, the FMCS secured the parties return to the table and on January 20, 2001, six weeks after the strike began, a new proposal was submitted to the membership. The FMCS mediator was present when the agreement was presented to the membership. We borrowed voting booths from the NLRB's local Regional Office to conduct the ratification vote. The contract was ratified 3 to 1, ending the seven week strike.

2. State of Hawaii Department of Education/Hawaii State Teachers Association and University of Hawaii/University of Hawaii Professional Association:

In April 2001, the State of Hawaii experienced one of the nations largest strikes by public school teachers and university professors. A total of 12,000 public school teachers and 3,000 university professors struck, effecting the education of 229,500 students state-wide. The issues in both negotiations included salary increases. The state offered 14% while the unions were seeking 22%.

For 13 days, we worked with the university bargaining unit and produced a settlement. The university professors received an immediate increase, and an additional

6% increase scheduled for August 2002. For the first time, the state agreed to fund 1% of the total salary base for merit awards. The strike in this unit ended after 13 days.

The public school unit strike ended after 20 days. FMCS mediators met with the parties twelve times, securing an agreement provided bonus payments, 2% pay raises in August and September 2002; 3% pay raise in September 002, and a 3% raise in February 2003. The parties also agreed to differential pay from 3% to 6% for advanced degrees. Agreement was also reached on a number of non-economic issues, including a mentoring program for new teachers, peer assistance, and an evaluation program linking student achievement to individual teacher performance

3. Peoples Gas Light and Coke Company/Service Employee International Union:

Approximately 1,200 employees of Peoples Gas Light and Coke Company are represented by the SEIU and perform installation, repair, maintenance, meter reading, and emergency response work for the utility. The most significant issue concerned the transfer of clerical work to unrepresented employees and a 10 hour shift requirement. The union did not recommend the final offer to its membership, and as a result, the proposal was defeated and a strike was authorized. A city-wide strike involving these employees would have serious consequences and FMCS mediators worked toward a new proposal, which was rejected by the membership. The union struck for 3 weeks, until FMCS mediators secured a settlement, ultimately ratified by the membership, providing for voluntary 10 hour work shifts and the guarantee of additional employment for employees that were displaced when their work was reassigned.

4. Minneapolis-St. Paul Metropolitan Hospitals/Minnesota Nurses Association:

The Minneapolis-St. Paul Metropolitan hospitals involve six different hospital systems and over 9,000 nurses. Five mediators were assigned to this dispute. Strike notice was given when the parties were far apart on critical issues of staffing and wages. Mediators worked with the parties to reach a tentative agreement, but those efforts were unsuccessful. A final offer was made, but was rejected. The mediators worked with each hospital, and one by one, agreements were reached, with the exception of one hospital that struck for a short period. The mediators worked with that one institution and reached agreement soon thereafter. A citywide strike involving 9,000 workers, and irreparable harm to patient care, was narrowly avoided with our efforts.

5. Lockheed Martin/International Association of Machinists:

A small bargaining consisting of 60 retired special forces officers/pilots and active National Guard helicopter pilots struck Lockheed Martin located at Kirkland Air Force base. Although the unit is relatively small, the impact of the strike was significant because the striking employees train active military pilots, which effects the nation's defense readiness. Due to the impact of this work stoppage, the Director intervened and mediated the dispute. After 3 days of talks held at the National office, an agreement was reached and the strike ended.

6. Boeing Military Aircraft and Missiles Systems/International Association of Machinists:

A 10,000 person bargaining unit at Boeing handles all of the company's defense related construction. Aerospace negotiations generally are complex because of the sophisticated nature of the work involved in construction of aircraft. The membership voted against an earlier offer and a strike vote was taken. The FMCS commenced mediation of the dispute when wages, job security and job classification issues continued to separate the parties. After a 12-hour negotiation session with the mediator, the contract terms were settled, ratified by the membership, and a work stoppage involving a large bargaining unit was averted.

7. GES Exposition Services, Freeman Companies/International Brotherhood of Teamsters:

GES and Freeman Companies are two of the largest exposition service companies with operations in Las Vegas, Chicago, San Francisco and New York. In Las Vegas, they employ 2000 employees who are members of the International Brotherhood of Teamsters, Local 631. This industry is marked by fast and furious hiring prior to a trade show or convention, and precipitous layoffs immediately thereafter. Most employees do not work more than 1200 hours a year, but require health insurance all year round. A strike in this industry would have widespread implications; businesses that would have spent countless months preparing for a trade show or convention, would have to cancel the event if a strike occurred. After 3 days of bargaining, the membership ratified the mediated agreement and a work stoppage was avoided.

8. Levi Strauss & Company/UNITE:

Mediators assisted these parties in reaching a national agreement covering 6000 employees, and continued to participate in local negotiations in Brownsville, Texas, a 600 person bargaining unit. The unit employees were predominantly Spanish-speaking which caused significant communication problems with English-speaking managers. The FMCS mediator involved in this dispute used bilingual skills to resolve the parties' dispute.

9. Kroger Company/United Food and Commercial Workers:

Kroger is one of the largest retail foot chains in the country. The company sought pension relief funding for a large unit encompassing approximately 14,000 union members. After three mediation sessions, and a final marathon bargaining session stretching past the contract expiration date and the strike deadline, the parties reached agreement and the contract was ratified.

10. Rochelle Foods Inc./United Food and Commercial Workers Union:

Rochelle Foods is a hog processing plant, employing approximately 860 members of the UFCW. Its parent company, Hormel, was involved in one of the most difficult labor disputes in the history of the industry. Despite the mediator's efforts, a strike occurred and the major issue concerned the company's recent change in its operation from hog killing to hog processing and pork fabrication. This change had a significant impact on the employees' pay rates. Complicating the issue further was the employer's health insurance proposal. The regional director scheduled negotiations with the parent company and the international union representatives, in Washington, D.C. A framework for a settlement was achieved, but the details of the agreement required additional work at the local level. A mediator skillfully guided the local leadership to an agreement within the framework designed miles away and the two week strike ended.

11. Chicagoland Dump Truck Haulers/International Brotherhood of Teamsters:

The Chicagoland Dump Truck Haulers Association is a multi-employer association consisting of 70 companies and 1,000 drivers represented by different locals. The parties commenced negotiations over the terms of a master agreement. The parties met 11 times with a mediator before a strike began. The strike threatened to disrupt all construction projects in the Chicago area, with a significant impact on not on the striking drivers, but construction workers and billions in construction contracts. The mediator engaged in lengthy two-day negotiations and ultimately reached a settlement avoiding a protracted strike and its effects on commerce.

12. United States Navy/American Federation of Government Employees:

American Federal of Federal Employees represents 2700 employees in several units at United States Navy locations, including naval hospitals, air stations, submarine bases, Trident training facilities, weapons stations, drug screening labs and Atlantic ordinance command. The parties agreed to use interest-based bargaining processes and the Agency's TAGS software to accomplish that goal. Two commissioners conducted 3-day training sessions on interest based bargaining and when the parties were ready to commence negotiations, we set up two LCD projectors, laptops for each principal spokespersons and the mediator. All were linked by wireless modems to laptop configured as a server. The parties were able to view color coded management and union contract language proposals projected on the screen. Agreement was reached in nine days.

13. City of Cincinnati/International Association of Firefighters:

The parties in this case determined to use the interest based bargaining process. The negotiations were difficult because they followed riots in the city, and, during the negotiations, the city public service director resigned, as did the city manager. Due to the politically sensitive nature of the case, an Ohio state mediator was present as well. After negotiating non-economic terms using interest based bargaining methods, but the method

was less successful during discussions involving economic issues. The parties agreed to use IBB fundamentals (such as trust, mutual respect for the institutions and each other) during traditional bargaining over economic terms. The mediators met with principal leaders in Cincinnati Convention Center and reached agreement, averting a strike.

C. Dispute Mediation Program Data

Intake

Fiscal Years 1997 Through 2001	1997	1998	1999	2000	2001
Union and Employer Notices ¹	54,660	50,170	36,854	34,038	33,344
NLRB and FLRA Certifications ²	1,530	1,750	1,631	1,492	1,446
Public Sector Board Requests ³	273	207	198	191	152
Union and Employer Requests ⁴	2,122	1,872	1,903	2,521	2,704
Total	58,585	53,978	40,586	38,242	37,646

Case Numbers Issued

Fiscal Years 1997 Through 2001⁵	1997	1998	1999	2000	2001
	28,330	27,802	25,676	26,323	25,071

Case Numbers Assigned

Fiscal Years 1997 Through 2001⁶	1997	1998	1999	2000	2001
	20,844	20,263	19,200	19,574	19,116

Cases Closed Fiscal Years 1997 Through 2001⁷

	1997	1998	1999	2000	2001
By consolidation after assignment ⁸	1,230	972	685	1,125	619
By Final Report with meetings ⁹	5,643	5,784	6,188	6,321	6,424
By Final Report with no meetings ¹⁰	13,383	13,011	12,422	13,291	12,107
Total	20,256	20,139	19,295	20,737	19,150

¹ Notifications to the Service by one or both parties desiring to modify a contract that is expiring, or for a specific reopening of an existing contract.

² Notifications from these two agencies regarding certification or recertification of bargaining units. Bargaining for an initial contract usually follows such certifications.

³ Requests for mediation assistance from public sector parties where a state has a Public Sector Board with jurisdiction over labor contracts, but no state mediation service is available.

⁴ Requests from the parties for mediation assistance where no notification to the Service has been filed.

⁵ Case numbers assigned to notifications, certifications, and requests received by the Service. Some notifications are subsequently consolidated into a single case with a specific case number; therefore, the lower total of case numbers issued when compared to the intake.

⁶ Cases assigned to a mediator. The decision to assign a case involves many factors and not all cases are assigned.

⁷ Closed by Final Report filed by the mediator assigned to the case or by consolidation of a case with other cases after assignment.

⁸ Some cases are subsequently consolidated after assignment where it is determined that multiple parties will be involved in the same negotiations.

⁹ Cases closed where the mediator met with both parties on one or more occasions.

¹⁰ Cases closed where mediation assistance did not require any meetings with the parties, but where the mediator was in contact with the parties during negotiations.

Dispute Meeting Conferences Fiscal Years 1997 Through 2001 ¹¹	1997	1998	1999	2000	2001
	18,300	17,923	19,329	17,837	17,933

¹¹ The number of meetings in closed dispute mediation cases where a mediator was present in a meeting between the parties.

Work Stoppage Information Fiscal Years 1997 Through 2001¹²	1997	1998	1999	2000	2001
Work stoppages beginning in the Fiscal year	378	421	362	400	432
Work stoppages in closed cases in the fiscal year	373	405	411	392	445
Average duration of work stoppages in closed cases (number of days)	54.0	43.7	50.5	390	40.7
 Contract Mediation Analysis By Sector Fiscal Years 1997 Through 2001					
	1997	1998	1999	2000	2001
INTAKE	58,585	53,978	40,586	38,242	37,646
CASE NUMBERS ISSUED					
Private Sector	26,626	26,006	23,856	24,386	23,135
Public Sector	1,118	1,145	1,141	1,216	1,185
Federal Sector	587	649	678	720	750
ASSIGNED					
Private Sector	26,626	18,487	17,444	17,681	17,241
Public Sector	1,055	1134	1,089	1,168	1,139
Federal Sector	593	641	666	725	739
CLOSED CASES¹³					
Private Sector	18,588	18,036	17,394	18,786	17,219
Public Sector	1,091	1,105	1,199	1,209	1,150
Federal Sector	577	626	701	742	781

¹² The Bureau of Labor Statistics reports work stoppages over 1,000 employees. FMCS reports all work stoppages.

¹³ Excludes cases closed by consolidation after assignment.

III. INITIAL CONTRACT NEGOTIATIONS:

A. Initial Contract Negotiations and Processes:

Initial contract negotiations are critical because they are the foundation for the parties' future labor-management relationship. A bad start in relations between the employer and the union may be felt for years afterward, and ultimately injure the economic health of the organization. Initial contract negotiations are often more difficult than established successor contract since they frequently follow contentious representation election campaigns.

Negotiations can be further complicated by one or both parties' inexperience in collective bargaining and labor-management relations. Current data indicates less likelihood of agreement on initial contracts than in successor contract negotiations, even with the assistance of FMCS mediators. There are higher incidences of strikes or lockouts, and permanent replacement workers are used with greater frequency during initial contract negotiations. Unfair labor practice charges are more common in this environment and can deter an agreement.

For the last several years, FMCS has placed special emphasis on mediation of initial contract negotiations between employers and newly certified or recognized bargaining units. Under an arrangement with the National Labor Relations Board, FMCS is immediately notified of all new union certifications. It is our policy that all initial contract cases are promptly assigned for mediation, and that mediators make every effort to become actively involved in assisting the parties in achieving agreements.

Since 1996, FMCS maintained a rule requiring all initial contract cases remain open for two years pending an agreement between the parties, or the closing of the case for other reasons. □

B. FY 2001 Initial Contract Cases of Significance:

1. Cambridge Industries/United Automobile Workers:

The United Automobile Workers won a representation rights at Cambridge and began negotiations in November 1999. However, in March 2000, Cambridge filed for Chapter 11 bankruptcy protection and another company bought the financial assets of Cambridge. Multiple unfair labor practice charges were filed, and 82 relatively unsuccessful negotiation sessions were held by the time the parties requested FMCS assistance. We held 15 joint negotiation sessions, in addition to separate meetings with the parties. Ultimately, the parties reached agreement, although members of the union's committee remained frustrated by the lengthy process and antagonisms generated during negotiations. The FMCS mediator has continued to play a role with these parties, teaching them how to improve their relationship and transform it into a productive and lasting one.

2. Bureau of Indian Affairs/American Federation of Teachers:

This case is of interest because the parties agreed, in an initial contract negotiation context, to utilize interest based bargaining processes, and also utilize our TAGS software to do so. We trained the parties on IBB techniques for 3 days prior to the negotiations and agreed to a six week negotiation schedule. All issues were on the table, since this was an initial contract negotiations, and the use of TAGS facilitated agreement and kept the diversity of locals issues at bay. During the six week negotiation, the parties remained in a problem-solving mode and reached agreement on 47 contract provisions. Only one issue proceeded to the Federal Services Impasse Panel. Nevertheless, the parties reached agreement within the six week time allotted, almost unheard of in the federal sector.

C. Initial Contract Bargaining Data

Initial Contract Bargaining	1997	1998	1999	2000	2001
Private Sector initial contract cases received:	1,606	1,800	1,715	1,715	1,745
Assigned to mediators:	1,555	1,730	1,657	1,677	1,702
Assigned from NLRB certifications:	1,306	1,503	1,397	1,296	1,282
Assigned from other sources: (e.g. voluntary recognition)	249	227	260	381	420
Cases closed by FMCS: (Mediated and non-mediated)	534	597	661	867	1,892
Mediated cases closed with agreement reached:	142	119	137	231	360
Percentage of mediated cases	82.1	68.4	47.9	52.9	55.1
Mediated cases closed without agreement reached:	31	55	149	206	293
Percentage of mediated cases ¹⁴	17.9	31.6	52.1	47.1	44.9
Non-mediated cases closed with agreement reached:	230	277	249	255	676
Percentage of non-mediated cases:	63.7	65.4	66.4	59.3	54.6
Non-mediated cases closed without agreement reached:	131	146	126	175	561
Percentage of non-mediated cases ¹⁵	36.3	34.5	33.6	40.7	45.3
Percentage of mediated and non-mediated cases	69.7	66.3	58.3	56.0	54.8
Closed with agreement reached:					
Closed cases involving ULP ¹⁶ filed by either party:	41	65	75	128	263
Closed cases involving work stoppages:	14	24	19	24	43
Closed cases involving work stoppages with	8	10	10	14	21
Agreement reached:					
Average number of days between statutory notice	122	175	166	176	85

¹⁴ Cases closed with agreement reached occur with final agreement on an initial contract

¹⁵ Cases closed without agreement occur after two years if agreement has not been reached on initial contract

¹⁶ Unfair Labor Practices

Receipt by FMCS and closure: ¹⁷					
Average number of days for cases carried over	359	337	351	363	432
And closed in next fiscal year:					
Assigned cases carried over to next year:	1,021	1,416	1,001	813	792

¹⁷ For cases closed in the same fiscal year they are received

IV. PREVENTIVE MEDIATION:

A. Preventive Mediation Process:

In today's changing workplace and economic environment, business organizations and unions recognize that the quality of the labor-management relationship is an important factor in an organization's ability to compete. As a result, the role of federal mediators has evolved beyond traditional crisis intervention during the last few days of collective bargaining negotiations. More frequently, mediators are involved during the life of a contract to address workplace issues between the parties, and train both sides in effective bargaining, communications, joint problem solving and innovative conflict resolution methods. Increasingly, FMCS offers a broader range of services to respond to changing customer requirements. These "preventive mediation" (PM) services are collaborative union-management processes and are as important as our dispute mediation services.

B. FY 2001 Preventative Mediation Cases of Significance:

1. Ohio Education Association:

The Ohio Education Association reorganized and created five regional coordinating councils throughout the state. The coordinating councils consisted of employees with varying job titles and duties. In conjunction with Ohio state mediators, 3 FMCS commissioners prepared a two day training program focused on team building, brainstorming, consensus and techniques for accelerating consensus in a large group. The training sessions provided the OEA with techniques to continue its planning, mission and goals.

2. Ameren-UE /Operating Engineers Local 148:

Ameren-UE is an electrical utility with 8,000 employees in five states. As a result of several safety surveys and relationship-by-objective programs we conducted, we detected a lack of trust between the parties that effected the collective bargaining relationship. We developed an intense two day leadership training program offered to all first line supervisors and union stewards. As a result of this effort, the parties settle their conflicts quickly and grievance filings are at their lowest level.

3. Westvaco Corp./Paper, Allied-Industrial, Chemical & Energy Workers (PACE)/International Brotherhood of Electrical Workers (IBEW):

We conducted 4 different training programs with the two unions representing employees at Westvaco. The first program was designed to assess the needs of the parties and what kind of intervention was appropriate. Thereafter we conducted a Committee Effectiveness Training, involving high level managers and local union officials. The third program was a series of steward-supervisor training including 3 local unions at two different plants. Finally, we conducted grievance mediation dispute resolution. As a result of these intensive training programs, the parties are now more productive.

4. Indiana Department of Corrections/United Automobile Workers:

The Indiana Department of Corrections had a hostile relationship with the union, marred by excessive grievances and arbitrations, low employee morale, stressful work environment, low wages, high turnover rates and mandatory overtime requirements. We met with the Indiana Deputy Director of State Personnel and the regional director of the union and suggested a specially designed program aimed at reducing the number of grievances. The training session targeted superintendents/wardens, full time union officials and representatives from the international. The training was so successful that we were asked to train all major correctional facilities throughout the State of Indiana. Ultimately, we ran 10 joint training programs and the parties have reported a significant improvement in their relationship.

5. Snyder of Berlin/Retail Wholesale Department and Store Union:

Snyder of Berlin manufactures snack foods. The parties' relationship soured in the spring of 1999, when the union struck for ten weeks over work rules. When the strike settled, we suggested that the parties participate in a "Putting it Back Together" program. The parties rejected that offer, but requested assistance in handling the backlog of their grievances, which totaled about 130. We continued to press the parties to participate in training aimed at improving their relationship. Eventually, the parties participated in a "Relationship by Objective" training program and, ever since, the parties have held regularly scheduled labor-management steering committees to identify conflicts and mutual concerns. The parties report that productivity has improved by 30%.

6. Workplace Violence Initiatives:

In response to client demands, and the rise of violence in the workplace, the FMCS looked for existing organizations to jointly devise programs and strategies for preventing workplace violence. We partnered with the Workplace Action Team for the Initiative for Violence-Free Families and Communities, and the Twin Cities Area Labor Management Committee, both located in Minneapolis, St. Paul. This tri-partite partnership resulted in a determination to co-sponsor a daylong conference entitled "Looking Below the Surface to Build Respectful, Productive Relationships." The program was highly interactive, allowing participants to identify workplace violence issues and devise their own steps for long and short term change. We used several mediators to conduct breakout sessions, showcases two clients that are currently working on workplace violence issues, and presented a theater-type show dramatizing the tendency to minimize the potential for violence.

The program was so successful that we conducted a second program, with a slightly different format. The afternoon session remained highly interactive, but the participants were grouped by industry and used TAGS technology to brainstorm conceptual methods of building healthy and respectful relationships. The program was extremely successful and help our customers develop their own plans to reduce violence and conflict in their organizations.

C. Preventive Mediation Program Data

Preventive Mediation Cases

Fiscal Years 1997 through 2001 ¹⁸	1997	1998	1999	2000	2001
Assigned ¹⁹	2,404	2,776	2,891	2,782	2,629
Closed by Final Report ²⁰	2,505	2,813	2,954	2,792	2,655

Education, Advocacy and Outreach Cases -

Fiscal Years 1997 Through 2001 ²¹	1997	1998	1999	2000	2001
Assigned	5,472	5,797	5,518	5,504	5,436
Closed by Final Report	5,619	5,932	5,626	5,621	5,645

¹⁸ Preventive mediation involves the assistance of a mediator where a party or parties desires such help in improving the relationship during the term of the contract. Such assistance may include training, arranging labor-management committees, and special programs.

¹⁹ Cases assigned to a mediator.

²⁰ Closed by a Final Report filed by the mediator.

²¹ Education, Advocacy and Outreach involves mediator meeting with various members of the public to discuss and/or explain the processes of mediation.

V. ARBITRATION SERVICES:

A. Arbitration Services:

In collective bargaining, voluntary arbitration is the preferred method of settling disputes over contract interpretation or application. Since its creation, FMCS provided access to voluntary arbitration services. Rather than using full-time government employees, the Service maintains a roster of the nation's most experienced private professional arbitrators who have met rigid FMCS qualifications. Upon request, FMCS furnishes a panel of qualified arbitrators from which the parties select a mutually satisfactory individual to hear and render a final and binding decision on the issue or issues in dispute.

The FMCS Office of Arbitration Services maintains a roster of over 1,300 private arbitrators, knowledgeable practitioners with backgrounds in collective bargaining and labor-management relations. FMCS charges a nominal fee for the provision of arbitrator lists and panels, or other major services.

The FMCS computerized retrieval system produces a panel of potential arbitrators from which the parties may select. Panels can be compiled on the basis of geographic location, professional affiliation, occupation, experience with particular industries or issues, or other criteria specified by the parties. FMCS also furnishes current biographical sketches of the arbitrator panels.

To join the FMCS Roster, arbitrators must be approved by an Arbitration Review Board, which meets quarterly to consider new applicants for appointment to the roster by the FMCS Director. There is also an arbitration user focus group, which reviews and makes recommendations to the FMCS Director on changes in Arbitration Service policies and procedures.

B. FY 2001 Accomplishments:

To comply with Government Paperwork Elimination Act, Arbitration Services instituted an electronic filing system where customers could request panels of arbitrators via e-mail, fax or mail. We also included the parties' e-mail addresses to the arbitrator appointment letter to facilitate communication between the arbitrator and the parties. Additionally, the R-43 form has been revised to enable customers to select a panel from a geographical area. Based on the geographical area requested, we provide the parties with the names of arbitrators whose principal business address is within 125 miles of the site of the dispute. This results in substantial savings on travel expenditures.

In FY 2001, we also convened an Arbitration Customer Focus Group to provide feedback to the agency regarding the manner in which arbitrators are selected and panels are produced, timeliness of awards, and the geographical makeup of the boundaries for selecting arbitrators. With respect to the timeliness of awards, during fiscal year 2001, we instituted new procedures regarding assignment of work to arbitrators: if an arbitrator has two or more overdue awards, that arbitrator's name is "unavailable" for selection by

the parties until awards have been rendered. This fosters timely awards. Finally, upon request of our customers, we also revised the arbitrator's personal data questionnaire to provide more information to customers about the arbitrator.

C. Arbitration Services Program Data

Number of Panel Requests, Panels Submitted and Arbitrator Appointments Fiscal Years 1997 Through 2001

Activity	1997	1998	1999	2000	2001
Panel Requests	27,385	17,357	17,514	16,976	16,594
Panels Issued ⁷	30,066	31,295	19,062	19,485	18,275
Arbitrators Appointed	10,102	10,391	8,984	9,561	8,706
Activity Charged For	1997	1998	1999	2000	2001
Travel Days	.40	.34	.41	.51	.43
Hearing Days	1.10	1.23	1.20	1.18	1.15
Study Days	2.33	2.30	2.38	2.58	2.40
Total	3.86	3.74	4.02	4.27	3.98
Charges	1997	1998	1999	2000	2001
Per Diem Rate	591.00	598.50	641.49	672.12	693.12
Amount of Fee	2,421.00	2,296.46	2,592.00	2863.49	2761.04
Amount of Expenses	253.00	252.00	248.92	321.67	341.92
Total Charged	2,674.00	2,548.46	2,840.92	3185.16	3102.96
Total Number of Issues And Specific Issues	1997	1998	1999	2000	2001
Total	2,034	2,132	2,132	2,723	1902
General Issues	779	409	391	585	434
Overtime Other Than Pay*					
Distribution of Overtime	63	36	30	48	34
Compulsory Overtime	12	4	8	12	8
Other Overtime	20	17	15	18	10
Seniority					
Promotion & Upgrading	108	49	42	86	54
Layoff Bumping & Recall	129	52	48	65	46
Transfer	45	22	13	16	17
Other Seniority	63	31	33	38	25
Union Officers**	16	6	4	12	9
Strike & Lockout	5	2	2	4	3
Working Conditions***	35	15	19	35	35
Discrimination	28	12	21	27	19
Management Rights	77	37	49	75	51
Scheduling of Work	40	49	45	50	43
Work Assignments	138	77	62	99	80

⁷ 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.

* Overtime pay issues included under this category Economic: Wage Rates and Pay Issues.

** Included in this classification are issues concerning super seniority and union business.

*** This classification also includes issues concerning safety.

Economic Wage Rates & Pay Issues	409	231	239	298	227
Wage Issues	69	39	46	32	29
Rate of Pay	91	48	65	75	53
Severance Pay	13	7	6	5	6
Reporting, Call- in & Call-back Pay	13	6	10	12	13
Holidays & Holiday Pay	40	34	15	33	31
Vacations & Vacation Pay	74	36	31	54	29
Incentive Rates & Standards	15	12	17	25	13
Overtime Pay	94	49	49	62	53
Fringe Benefits Issues	110	81	63	100	69
Health & Welfare	40	35	27	58	29
Pensions	18	15	6	14	11
Other Fringe Issues	52	31	30	28	29
Discharge & Disciplinary Issues	1,941	1,032	1004	1203	849
Technical Issues	163	79	102	139	81
Job Posting & Bidding	58	38	36	52	32
Job Evaluation	30	18	24	28	18
Job Classification	75	23	42	59	31
Scope of Agreement	120	78	61	74	45
Subcontracting	79	54	40	48	29
Jurisdictional Disputes	25	15	10	16	8
Foreman, Supervision, etc.	13	5	7	5	5
Mergers, Consolidations, Accretion, Other Plants	3	4	4	5	3
Arbitrability of Grievances	99	81	146	193	109
Procedural	29	43	98	120	76
Substantive	59	29	35	42	14
Procedural & Substantive	11	9	13	24	19
Other Arbitrability Questions	0	0	0	7	0
Not Elsewhere Classified	166	43	126	131	88
Total Number of Cases					
State & Region	1997	1998	1999	2000	2001
Mountain	174	97	142	85	123
Arizona	21	8	9	15	10
Colorado	66	30	47	28	40
Idaho	10	4	6	3	7
Montana	20	14	8	11	16
Nevada	11	13	30	12	13
New Mexico	34	18	35	11	26
Utah	11	7	5	4	5
Wyoming	1	3	2	1	6
Pacific	269	150	153	128	140
Alaska	13	6	8	6	13
California	138	56	86	59	66

Hawaii	4	0	2	2	0
Oregon	37	34	17	32	28
Washington	77	54	40	29	33
Miscellaneous	7	7	9	16	9
Philippines	0	0	0	0	0
Puerto Rico	3	2	2	4	1
Virgin Islands	3	1	4	4	4
Guam	0	0	0	0	0
Others	1	4	3	8	4
New England	54	34	20	29	45
Connecticut	10	4	5	10	13
Maine	6	10	2	2	2
Massachusetts	23	11	9	11	12
New Hampshire	3	3	2	0	2
Rhode Island	5	1	1	0	6
Vermont	7	5	1	6	10
Middle Atlantic	457	567	233	289	307
New Jersey	39	20	31	22	30
New York	178	81	95	111	121
Pennsylvania	240	233	107	156	156
South Atlantic	591	288	285	349	385
Delaware	3	5	4	6	12
District of Columbia	50	20	53	31	36
Florida	170	98	55	92	112
Georgia	102	35	25	51	58
Maryland	79	32	48	35	29
North Carolina	41	17	7	21	29
South Carolina	18	15	8	15	14
Virginia	55	32	47	56	30
West Virginia	73	34	38	42	65
East North Central	1,219	790	673	866	715
Illinois	318	127	207	191	145
Indiana	156	101	71	67	63
Michigan	250	159	187	190	194
Ohio	381	343	154	338	224
Wisconsin	114	60	54	80	89
West North Central	476	408	222	316	314
Iowa	99	88	49	61	68
Kansas	57	36	27	32	38
Minnesota	111	103	40	90	84
Missouri	170	148	85	101	94
Nebraska	22	19	16	17	19
North Dakota	5	10	1	5	8
South Dakota	12	4	4	10	3
East South Central	316	191	118	236	239
Alabama	111	57	23	53	57
Kentucky	69	49	35	70	81
Mississippi	38	16	9	17	32
Tennessee	98	69	51	96	69

West South Central	393	207	110	227	237
Arkansas	64	30	11	35	40
Louisiana	36	21	9	28	23
Oklahoma	77	69	26	68	70
Texas	216	87	64	96	104
Totals	3,956	2,506	1,965	2507	2514

VI. GRANTS PROGRAM:

A. Grants:

FMCS is authorized by the Labor-Management Cooperation Act of 1978 to award grants to support and encourage joint labor-management cooperative activities that “improve the labor-management relationship, job security and organizational effectiveness.” Congress funds FMCS Grants Program each year in the agency’s appropriation.

In fiscal year 2001, the FMCS awarded 13 new and 5 non-competitive (continuation of prior grants) at a cost of \$1.5 million. These grants supported labor-management committees representing approximately 1.6 million employees in both the private and public sector. In FY 2001, 66 grant applications were received. An independent FMCS Grants Review Board, chaired by the Director of Labor-Management Grants, does preliminary scoring of each application. Final selection is made by the program director.

B. Fiscal Year 2001 Grant Funding Summary

AREA

National Policy Association (Washington, DC) (NC)

\$125,000 to assist in upgrading the information technology skills of the American workforce and identify solutions to emerging economic and social challenges in the U.S. and internationally.

Fox Cities/Green Bay Area Labor-Management Council (Green Bay, WI)

\$25,000 to provide the necessary training and resources to interested businesses and employees to develop a highly trained and effective labor management committee.

Labor-Management Partnership of Mid-Michigan (Okemos, MI)

\$63,105 to provide a forum for labor and management to maintain open communication, sharing of ideas and to work together to foster labor-management cooperation.

Social Justice Labor-Management Cooperative Trust Fund (Oakland, CA) (NC)

\$49,250 to develop and increase the awareness of opportunities available by conducting outreach through various collaborations.

PLANT

Kraft Foods (Battle Creek, MI)

\$31,500 to develop a structural communication environment and implement an education and training plan for business goals.

Alliant Techsystems, Inc. (Rocket Center, WV)

\$64,297 to overcome barriers to quality and productivity by jointly addressing changes in job functions and enhancing employee job satisfaction and employment security.

PUBLIC SECTOR

ASEA/AFSCME Local 52-AFL-CIO (Anchorage, AK)

\$124,960 to create a more cooperative labor-management relationship to maintain training programs and train future stewards and supervisors.

Los Angeles County Metropolitan Transportation Authority (Los Angeles, CA)

\$125,000 to improve the safety environment of employees by reducing the cost of Workers-Compensation claims.

Cleveland State University (Cleveland, OH) (NC)

\$70,000 to provide training and facilitation to employers and utilize strategic union-management partnerships to increase productivity and effectiveness in the workplace.

PUBLIC SECTOR EDUCATION

Gold Trail Union School District (Placerville, CA)

\$17,820 to create a positive and productive labor-management relationship to provide quality education to the students in the community.

Tucson Unified School District #1 (Tucson, AZ)

\$122,729 to develop effective methods to handle school violence by providing anti-violence and peer intervention training programs.

Lakewood City Schools (Lakewood, OH)

\$49,253 to improve the relationship between labor and management within the school district by providing training to address important issues regarding problem solving and communication skills.

University of Montana (Missoula, MT)

\$125,000 to improve labor-management relationships and increase staff involvement in decision-making.

INDUSTRY

Plumbers and Pipe Fitters Local 421 (Winston-Salem, NC) (NC)

\$125,000 to develop a comprehensive public relations campaign to attract new members, provide quality training to members and develop certification programs.

Capital Area Labor Management Council, Inc. (Harrisburg, PA)

\$103,200 to develop strategies to improve the workforce by employing higher qualified candidates into the industry.

Laidlaw Transit (Dorchester, MA)

\$72,129 to develop a strong labor-management working relationship and create an impact on education and training.

Teamster Employer National Transport and Logistics Committee (Washington, DC)

\$125,000 to develop a strategic plan to recruit higher qualified employees and ensure that they acquire and meet the expected needs of the industry.

VII. FMCS INSTITUTE:

A. Purpose and Course Offering:

Education and training in labor relations and conflict resolution are an integral part of the Agency's mission for more than half a century. Fiscal Year 1999 was the inaugural year for the FMCS Institute, and its primary mission is to offering training and education to labor and management practitioners in a classroom format that is structured, accessible, and convenient to individuals and small groups than the Service's traditional, site-based Preventive Mediation programs. The institute was established to respond to the changing needs of modern collective bargaining, providing essential training in meeting the challenges of labor-management relations and organizational change.

In FY 2001, the Institute offered the following classes:

- Mediation Skills for Workplace Disputes – offered once in Washington, D.C. and once in San Diego, CA;
- Becoming a Labor Arbitrator – offered once in San Diego, CA, and once in Dallas, TX;
- Arbitration for Advocates – offered three times, in St. Pete Beach, FL, Phoenix, AZ, and Chicago, IL, and once in conjunction with Quirk Institute in Providence, Rhode Island; and
- Advanced Facilitation Skills – offered for the United States Navy in San Diego, CA.

We plan to offer additional courses next fiscal year in dispute resolution skills, basic and advanced skills in negotiations, mediation and facilitation, grievance prevention and handling, on-line dispute resolution, meeting technology, employment arbitration, communications during disputes, violence prevention, and arbitration for advocates in labor relations.



Fees received for delivery of training services fund the FMCS INSTITUTE. All fees collected will be utilized to recover expenses and administrative costs of the Institute. Training fees charged to customers are set at a level that allows the Institute to provide a professionally delivered product from one year to the next. □

VIII. ADR/INTERNATIONAL:

A. Services Provided:

Alternative Dispute Resolution (ADR) services are available to agencies of government. These range from mediation, conflict resolution systems design, education, training and mentoring, to the facilitation of multi-party regulatory, environmental and public policy negotiations. All these services are successful alternatives to costly and time-consuming litigation in the settlement of conflict.

FMCS mediates disputes both within agencies (e.g., age discrimination and other unfair employment complaints, whistleblower complaints) and between agencies and their regulated public (e.g., environmental disputes).

The longer-term objective is to assist agencies in institutionalizing these processes. FMCS “trains the trainers,” imparting these skills to agency personnel so they can construct their own dispute resolution system, and also train others within their organization.

1. Domestic Alternative Dispute Resolution (ADR)

FMCS concluded nearly 917 ADR cases for numerous governmental agencies in fiscal year 2001, providing consultation, systems design, training, mediation or facilitation, mentoring/co-mediation, as well as follow-up and program evaluation. In FY 2001 alone, we have reached over 7,000 participants through our domestic ADR program.

FMCS mediators continue to mediate work place and discrimination complaints for numerous federal agencies. Immigration and Naturalization Service received nationwide training on dispute resolution techniques. We also mediated EEO disputes within the INS and trained INS mediators to develop an internal cadre of capable facilitators to resolve EEO and other workplace disputes. Additionally, we continue to mediate age discrimination complaints at Health & Human Services (HHS), a program instituted in 1980. Some additional domestic ADR work includes:

(a) Iowa Department of Natural Resources/Grain Processing Industry:

This dispute arose when the Iowa Department of Natural Resources commenced development of regulations for issuance of permits for emission standards under the new Clean Air Act. The industry was concerned that its needs were ignored by the state’s new permit process. At the request of the state, we commenced a public policy dialogue and introduced interest based problem solving principles. Using IBB, the 13 industry representatives and the 5 state representatives negotiated ground rules, identified the issues in dispute and over the course of 3 months, the parties reach a consensus on applicable guidelines for the permitting process. In addition, five outstanding appeals related to the permit process were settled. Costly litigation surrounding the permitting process was substantially reduced.

(b) AGRI Processors/City of Postville:

The State of Iowa invited the FMCS to mediate another significant, and highly public dispute with AGRI, a kosher meat processing facility owned and operated by Hasidic Jews. There were cultural conflicts between the company, the residents of Postville, and the immigrant workforce employed by the company. The conflict described below received national press attention in the Wall Street Journal, the CBS Sunday Morning Show, and National Public Radio.

AGRI and Iowa Turkey, another meat processing plant adjacent to AGRI, share the use of a sewage lagoon system owned by the City of Postville. In the spring of 2000, there was a significant number of fish that suddenly died and the fish industry attributed the problem to sewage discharge from the lagoon shared by AGRI and Iowa Turkey. The city was liable for the discharge from the lagoon and each meat processing plant was placed under court order to limit the waste discharged into the lagoon. The city levied fines against both companies, believing that each exceeded the discharge limits required by the court order. Due to these problems, the city wanted to dissolve itself of the responsibility for operating the lagoon and informed both meat processing plants, and the public, that unless improvements were made to the lagoon system, and the processing plants reduced their discharge amounts, the city would not issue a new permit for use of the lagoon. Because the city no longer wanted operational responsibility for the lagoon, it sold the lagoon system to Iowa Turkey. AGRI sued to block the sale because the sale cost them their only water treatment option. The city countersued AGRI for user fees and fines associated with over-usage of the lagoon. The FMCS started mediation between the city and AGRI when there were 5 litigation cases pending.

The conflict was so intense that the mediators separated the parties for long periods of time and engaged in traditional “shuttling” techniques. A settlement framework was reached, and the parties insisted that the FMCS remain present at every subsequent meeting to iron out the details of the agreement. The substance of the agreement calls for construction of a separate, stand alone, state-of-the-art wastewater treatment facility, jointly funded by AGRI and the city. The city will own the facility until any bonds are retired, at which time AGRI will assume ownership.

2. Regulatory Negotiations:

Authorized by the Administrative Dispute Resolution Act of 1996, FMCS offers government regulatory and enforcement agencies a better way to formulate new rules and regulations. In the traditional rulemaking process, agency personnel draft new regulations with little or no outside input, publish the draft regulation in the Federal Register for the required public comment period, and then await criticism, or legal challenges, from those affected by the new regulation.

In contrast, FMCS convenes and facilitates Regulatory Negotiations, a process in which those affected by a regulation jointly draft a proposed rule or regulation by consensus. Early involvement by potential antagonists allows the agency to resolve its problems by working together with the agency’s stakeholders. The result is better regulation because those facing regulation took an active role in the process. In addition, subsequent court challenges are greatly reduced.

Under the authority of the 1996 Administrative Dispute Resolution Act, the FMCS assists federal and state agencies by convening and mediating regulatory negotiations as well as less formal, public policy dialogues. FMCS completed 3 major multi-party negotiations during FY 2001. For example, we were involved with the Department of Health and Human Services, Indian Health Services, to deal with titles added to the Indian Self-Determination and Education Assistance Act of 1975. New legislation required rulemaking to negotiate and promulgate regulations to carry out the provisions of the law. Our involvement in this case, and in other regulatory negotiations, is a constructive way to diminish litigation and enhance relationships with constituencies.

3. **International Dispute Resolution, Education and Training:**

FMCS is responding to increasing requests for conflict resolution services outside the traditional domestic labor-management. It is adapting the same skills and processes provided here to friendly foreign governments and organizations. Briefing sessions for foreign union and management officials familiarize them with U.S. labor-management history, laws, and practice enabling them to more fully understand how American industry and its workers function in today's economy.

The International ADR Team develops a program plan, outlining specific services, potential venues for those services and possible funding sources. Since FMCS receives no appropriated funds for its ADR or International programs, mediator salaries and expenses are reimbursed through such entities as the Department of State, The United States Agency for International Development (USAID) and the United States Institute of Peace.

FMCS continued to respond to requests for International Labor training and technical assistance from all parts of the world during FY 2001. Overall, we assisted 70 foreign government organizations. Here are some examples:

(a) **Asian-Pacific Economic Cooperation:**

We coordinated a second Labor-Management-Government Symposium sponsored by the Asian-Pacific Economic Cooperation Human Resource Development Working Group. The symposium was entitled "Responding to Change in the Workplace: Innovations in Labor-Management-Government Relations. The conference joined labor relations practitioners, government officials, and academicians from the Asia Pacific Region. We emphasized case studies, panel discussions, concrete processes for fostering labor-management cooperation, interactive simulation of techniques that promote cooperation, and the degree to which certain labor-management practices can be replicated across different cultural, economic and social strata. We also used TAGS was used to demonstrate how parties can improve workplace communication, encourage worker participation and creativity, and promote labor-management cooperation.

(b) **Involvement in Applied Conflict Resolution Organizations Network:**

The FMCS played a critical role in the establishment of the Applied Conflict Resolution Organizations Network (ACRON), which promotes and supports collaboration with the conflict resolution field and between organizations in the field and related fields. The organization builds awareness of and support for the field of conflict resolution and peace building among target audiences and strengthen theories and practice in the field. We serve on the coordinating committee and implement ACRON's vision and strategy.

IX. FMCS ORGANIZATION:

The functions and responsibilities of each office within FMCS are set forth below:

Office of the Director

The Director, appointed by the President with the advice and consent of the Senate, is responsible for establishment of policy and overall administration of the Service. The Director serves as agency liaison with the White House, members of the President's Cabinet, Congress, and major labor and management customers, while providing direction for, and participating in, the mediation of major disputes and preventive mediation cases.

The Executive Assistant to the Director assists the Director in the administration of his duties, has overall responsibility for the coordination of meetings and events involving the Director and represents the Director in many National Office activities, such as the National Office Partnership Council.

The National Representative functions as a representative of FMCS and the Director on assignments with national significance and as an agency spokesperson in various private and public sector, and international labor-management forums. This person also serves as an advisor on technical and administrative operations of the Service and assists in selected significant mediation activities and national disputes.

The Office of the General Counsel provides legal support and advice necessary for the Service to carry out its mission. Working with the Department of Justice, the office represents the agency in proceedings before the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and other administrative bodies. This office is also responsible for the agency's compliance with the Freedom of Information Act.

Office of the Deputy Director

The Deputy Director is responsible for assisting the Director in all aspects of management of the Service's five regions, 71 field offices and 195 mediators. The Deputy Director participates in the mediation of labor disputes of national scope and significance when necessary. The Deputy Director is responsible for the operation and implementation of FMCS policies and procedures for dispute mediation and preventive mediation activities and serves as the principal operations officer in the internal administration of the Service, responsible for managing the daily operations and implementing policies for the program and support functions of the National Office.

The Deputy Director serves as an advisor to the Director in the establishment of policy, and represents the Director in a variety of forums with the White House, the President's cabinet, the Congress, leaders of labor and management, and federal, state and local government officials.

The Designated Agency Ethics Officer is responsible for assuring high ethical standards by all FMCS employees, and for preventing any financial conflicts of interest, or the appearance of conflict by FMCS personnel. This office manages the agency's Ethics program, which includes annual ethics training for all employees, and oversight of all required financial reporting by certain FMCS personnel.

National Office Departments

The Office of Arbitration Services provides the labor-management community, upon request, with "panels" of highly qualified arbitrators to settle disputes arising during the life of labor contracts. This office maintains a computerized roster more than 1,350 qualified, private sector arbitrators.

The Office of Budget and Finance develops budget estimates and supporting material to cover the financial needs of the Service, coordinates and assists in the presentation of the budget to the Office of Management and Budget and to the Congress, and ensures that enacted appropriations are properly executed. The office also provides an integrated system of accounting controls, records, and reports to meet management's needs and ensure compliance with applicable laws.

The Office of Education and Training develops educational and training curricula for FMCS Preventive Mediation programs, and oversees all training and professional development functions for FMCS leadership, mediators and staff, including the assessment of staff training needs and the coordination of training programs.

The Office of Human Resources is responsible for providing human resource programs to meet management's needs and ensure compliance with applicable laws and regulations. Major programs include hiring of qualified employees, classification of all positions, implementation and monitoring of appraisal systems, and coordination of employee relations programs.

The Office of Information Systems and Administration provides a full range of administrative support functions to the National Office in Washington, D.C. and the seventy one field locations throughout the country. These services include procurement, contracting, supply, office space, mail services, records management, printing and distribution, desktop publishing, communications and transportation management, building security, and maintenance. This office is also responsible for the Service's automated data processing support with the major focus on systems that handle case processing and reporting.

The Office of International and Dispute Resolution Services is responsible for International Domestic Alternative Dispute Resolution, International Labor and International Dispute Resolution activities and projects, coordinating the provision of conflict resolution services with other government agencies, including joint problem-solving approaches used in lieu of agency adjudication, courtroom litigation and traditional government rulemaking. This office also coordinates programs with sponsoring

organizations that send FMCS mediators abroad and bring delegations from other countries to FMCS Headquarters.

The Office of Programs and Labor-Management Grants administers the FMCS program for labor-management grants, supporting the establishment and operation of plant, area, and industry wide joint labor-management committees, and coordinating the National Labor-Management Conference.

FMCS Field Organization

Leadership Teams in each of the Service's five geographic regions are comprised of a *Regional Director* and two *Directors of Mediation Services*, who report to the Regional Director and each work hands-on with approximately twenty mediators.

Mediators are the largest group of employees. They provide services to the agency's customers, mediating disputes in the negotiation of collective bargaining contracts, and training in cooperative skills and processes as part of Preventive Mediation services. To be selected as a mediator, they must have extensive experience and knowledge of collective bargaining and a strong commitment to become proficient in the delivery of all FMCS services. Their knowledge of labor-management relations and the collective bargaining process is key to their ability to assist and influence bargainers in settling their differences. □

X. LEGISLATIVE AUTHORITY:

The Federal Mediation and Conciliation Service was established by Title II of the Labor-Management Relations Act (Taft-Hartley) in 1947 as an independent agency whose mission is to prevent and minimize labor-management disputes affecting interstate commerce by providing mediation, conciliation, and voluntary arbitration. That primary duty remains unchanged. All mediation and conciliation functions of the Secretary of Labor and the United States Conciliation Service were transferred to FMCS at that time. Its independence and neutrality were highlighted by the Act's legislative command that "The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor." The FMCS mission includes both the private and public sectors, except for the railroad and airline industries, which are covered by the Railway Labor Act and the National Mediation Board.

In 1990, the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act authorized the agency to assist other Federal agencies in resolving disputes arising out of grants, contracts, licenses, or other agency rules, regulations or administrative actions, and to assist in the process of negotiated rulemaking. The Administrative Dispute Resolution Act of 1996 amended and permanently reenacted these 1990 Acts.

The National Performance Review recommended creation of the National Partnership Council to promote the formation of labor-management partnerships in the Federal government as a way of reforming government. On October 1, 1993, the President issued Executive Order 12871 directing the formation of the Council and naming the Director of Federal Mediation and Conciliation Service as one of its eleven principal members. The Executive Order directed Federal agencies to provide systematic training of federal employees in Alternate Dispute Resolution techniques and interest based bargaining approaches, and named FMCS a training source. FMCS has continued its mediation and other services available to federal sector parties in an effort to avoid costly litigation and adversarial disputes.

Over the years, Congress and the Executive Branch have authorized FMCS to perform a variety of dispute resolution functions as well as to assist in collective bargaining disputes and the improvement of labor-management relationships. Specific statutory and other authorizations of agency programs are described below. □

The Labor-Management Relations Act of 1947 (Public Law 80-101, 29 U.S.C. Sec. 173) directs the Service to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes by helping the parties settle such disputes through mediation. Parties are required to notify the Service 30 days prior to a contract termination or modification date so that mediation services may be proffered.

The Act establishes a special procedure for threatened or actual strikes which in the opinion of the President imperil the national health or safety. In such a situation, the President may appoint a board of inquiry to ascertain the facts with respect to the dispute. After receipt of the report, the President may seek to enjoin the strike for not more than 80 days, and a court may do so if it finds that the threatened or actual strike or lockout affects a substantial part or all of an industry and would imperil the national health or safety.

The Health Care Amendments of 1974 (Public Law 93-360, 29 U.S.C. Sec. 158(d)) (amending the National Labor Relations Act) include special responsibilities to prevent or minimize work stoppages in the health care industry. In the case of this industry, FMCS must be notified 60 days before the contract termination date. A 30 day notice is required in initial bargaining situations. If, in the opinion of the Director, a strike is threatened which would interrupt the delivery of health care in a locality, the Director may appoint a board of inquiry (29 U.S.C. section 183). The board has 15 days within which to operate and file its report and recommendations; parties must maintain the status quo for 15 days thereafter while further negotiations and mediation take place. The parties are required to cooperate in any mediation efforts by FMCS.

The Civil Service Reform Act of 1978 (Public Law 95-454, 5 U.S.C. Sec. 7119) directs the Service to provide mediation assistance and services in disputes arising from negotiations between Federal agencies and the exclusive representatives of their employees.

The Postal Reorganization Act of 1970 (Public Law 91-375, 39 U.S.C. Sec. 1207) requires the Service to establish fact-finding panels and arbitration boards if disputes between the Postal Service and the exclusive representatives of its employees are not resolved prior to certain statutory deadlines.

Presidential Statement, March 24, 1953. President Eisenhower established the Atomic Energy Labor-Management Relations Panel within the Service in March 1953, in order to ensure the uninterrupted functioning of the Atomic Energy Program without strikes or lockouts due to labor-management disputes. This Panel was moved to the Atomic Energy Commission in March 1956 but was returned to FMCS under President Carter in April 1980 and renamed the Energy Labor-Management Relations Panel (ELMRP).

Executive Order 11374, dated October 11, 1967, transferred the responsibilities of the Missile Sites Labor Commission (created by Executive Order 10946) to FMCS.

The Federal Insecticide, Fungicide and Rodenticide Act of 1978 (Public Law 95-396, 7 U.S.C. 136a(c)(f)(ii)) requires the Service to provide for the appointment of

arbitrators to decide disputes concerning compensation for the use or development of pesticide registration data.

The Labor-Management Cooperation Act of 1978 (Public Law 95-524, 29 U.S.C. 175a) amended sections 175 and 302 of the Labor-Management Relations Act and authorizes and directs the Service to encourage and support joint labor-management activities conducted by plant, area, and industry-wide committees designed to improve labor-management relationships, employment security, and organizational effectiveness. The Act authorizes the Service to provide grant funds to assist in the establishment and operation of these labor-management committees.

The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) 5 U.S.C., 571, et seq. authorizes and encourages agencies to use various alternative means of dispute resolution in the federal administrative process in order to avoid the time and expense of litigation. The 1996 Act amended and permanently reenacted the Administrative Dispute Resolution Act of 1990 as well as the Negotiated Rulemaking Act of 1990. The repeal of the sunset date (expiration dates) and the reporting requirements of the Acts suggest that the ADR and regulatory-negotiation "experiments" have become well accepted processes of Federal agencies.

A lead agency or interagency committee will be designated by the President to facilitate and encourage use of alternative dispute resolution. Federal agencies are now required to consult with that lead agency or committee and are now permitted to participate in binding arbitration in some situations. Under the 1996 Act, coverage has been expanded to include additional dispute resolution techniques, such as "ombudsmen," and the use of ADR in some workplace conflicts, including Hatch Act violations, retirement, insurance, certain suspensions, removals, examinations and appointments. The 1996 Act directs FMCS to develop guidelines to expedite the acquisition of neutrals and to encourage use of alternative dispute resolution in the Federal government. Lastly, this legislation amends the Labor-Management Relations Act of 1947 (Taft-Hartley) by permanently adding section 173(f) of Title 29 of the United States Code so that FMCS may provide all forms of ADR assistance to Federal agencies. Under this legislation, FMCS continues to assist agencies in negotiated rulemaking processes as well as other ADR procedures by providing training, facilitation, mediation, and other neutral skills.

The U.S. Code of Federal Regulations at 45 CFR 90.43, issued by the Department of Health and Human Services, implementing its authority under the **Age Discrimination Act of 1975, 42 U.S.C. 6 101 et seq.**, authorizes the Service to provide mediation assistance for the resolution of age discrimination charges.

The Air Traffic Management Performance Improvement Act of 1996 (Public Law 104-264, 49 U.S.C. Section 40122), directs the FMCS to mediate disputes between the Administrator of the Federal Aviation Administration and its employee representatives if these bargaining parties fail to reach a negotiated agreement. □

