



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Federal Publications

Key Workplace Documents

---

January 2001

## FY2000: Fifty-Third Annual Report

U.S. Federal Mediation and Conciliation Service

Follow this and additional works at: [https://digitalcommons.ilr.cornell.edu/key\\_workplace](https://digitalcommons.ilr.cornell.edu/key_workplace)

Thank you for downloading an article from DigitalCommons@ILR.

**Support this valuable resource today!**

---

This Article is brought to you for free and open access by the Key Workplace Documents at DigitalCommons@ILR. It has been accepted for inclusion in Federal Publications by an authorized administrator of DigitalCommons@ILR. For more information, please contact [catherwood-dig@cornell.edu](mailto:catherwood-dig@cornell.edu).

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact [web-accessibility@cornell.edu](mailto:web-accessibility@cornell.edu) for assistance.

---

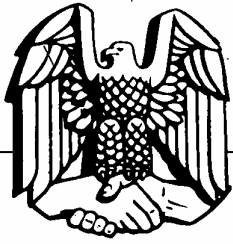
## FY2000: Fifty-Third Annual Report

### Keywords

Federal, key workplace documents, Catherwood, ILR, agency, mission, FMCS, services, collective bargaining, mediation, negotiations, program, employment, prevention, training, conflict, resolution, contract

### Comments

Federal Mediation and Conciliation Service



To the Congress:

It is my distinct privilege to submit to you the Fifty-Third 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 2000

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.

2000 was an important year for FMCS services to our customers. Among the more than 6,321 collective bargaining negotiations in which our mediators were active was the nation's largest white-collar strike by the 17,000 members of the Society of Professional Engineering Employees Association (SPEEA) against the Boeing Aircraft Company, America's largest aerospace manufacturer. We played a continuing important role in facilitating the first national contract between the partnership of Kaiser Foundation Hospitals and the consortium of unions representing the majority of Kaiser's employees.

FMCS Preventive Mediation Services found fertile ground in 2000 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,

C. Richard Barnes  
Director

# Introduction

## **A. Agency Mission**

**F**or 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 agencies 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. Through Dispute Mediation, FMCS helps avert or minimize the impact of work stoppages on the U.S. economy. In FY 2000, FMCS mediators were actively involved in 6321 collective bargaining contract negotiations in every major industry and service throughout the United States. This is a slight percentage increase over FY 1999 dispute activity.

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, FY 2000 was a critical bargaining year, with major contracts expiring in East and Gulf coast maritime, national master freight, telephone and telecommunications, tire and rubber manufacturing, aircraft and aerospace manufacturing, motion picture and television advertising production, clothing manufacturing, heavy truck and trailer manufacturing, heavy and highway construction, health care, retail food, food and grain processing and manufacturing as well as federal, state and local public employees and schools.

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. These were some of the complex issues facing FMCS mediators during FY 2000 bargaining.

**For FY 2000 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 today's changing workplace and economic environment, business organizations and their employee unions recognize that the quality of the labor-management relationship is an important factor in the organization's ability to compete in the marketplace. 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. As the United States assumes a leading role in the global economy there has been a corresponding need for growth and evolution of original collective bargaining models. This evolution has spawned an increase in the demand and importance of FMCS Preventive Mediation Services.

**For FY 2000 data regarding preventative mediation and cases of significance during this year, see Section IV.**

## 3. Arbitration Services

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 and the Arbitration Customer Council, FMCS implemented many new policies and procedures. While the arbitration panel requests in FY 2000 dropped slightly from FY 1999, 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 2000 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.

FMCS awards grants to establish or continue joint committees who propose innovative approaches to labor-management cooperation. These committees, established on a plant, area or industry-wide basis, bring representatives of management and employee unions together on a regular basis, and have proved to be effective vehicles for increasing productivity, improving product quality and resolving workplace issues. In recent years, they have addressed such issues as health care cost containment solutions, increasing the competitiveness of a region's hotel industry, economic development, and total quality management in the public sector and company/employee co-determination.

In fiscal year 2000, the 20 grants recipients (15 new and 5 continuation) were selected from 63 applicants requesting more than \$7 million in funding. An independent FMCS Grants Review Board,

chaired by the Director of Labor-Management Grants, does preliminary scoring of each application. The winners represented approximately 1.6 million employees in both the public and private sector. Final selection is made by the program director.

A 1998 study of the FMCS Labor-Management Cooperation Program, conducted by the Tennessee Center for Labor-Management Relations determined that 71.4% of the Labor-Management Committees established through the FMCS grants program continued to operate with independent funding after the grant period. Researchers analyzed data from over 200 case files of labor-management committees established through FMCS between 1981 and the start of fiscal year 1997. The research concluded that as many as 20 million workers were directly or indirectly affected by the achievements of the labor-management committees created with funding through the FMCS Labor-Management Cooperation Program.

For FY 2000 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 Service's traditional on-site preventative mediation programs.

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. In FY 2000, six courses were offered in eight sessions at centralized East, West and Central geographic locations. The sessions included: Labor Arbitrator Training; Cross-Cultural Competencies Course; Negotiations-A 21<sup>st</sup> Century Tool for Success; Mediation Skills for Workplace Disputes; Facilitation Skills and Training; and Facilitating Multi-Party Disputes.

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. Seven training courses are planned for FY 2001 in eleven geographic locations: Becoming an arbitrator; Negotiating Contracts; Mediation Skills; Multi-party Facilitation; and Facilitation using Electronic Technology.



For FY 2000 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 to agencies of national state and local governments as an alternative to costly and time-consuming courtroom litigation. Our work in this area includes the design of dispute resolution systems, education and training, mediation of employment complaints and the facilitation of regulatory negotiations and public policy dialogs. These ADR services have increasingly proved to be effective alternatives to costly and time-consuming litigation in settling administrative disputes and regulatory controversies.

Increased globalization of the world's economy demands export of FMCS' mediation processes, labor relations systems design and conflict resolution skills to developing nations throughout the world. Through FMCS International Labor Services, mediators have provided, both here and abroad, briefings, training and technical assistance in labor relations, mediation and collective bargaining to friendly foreign governments. Federal mediators have traveled to Central and South America, the Far East, Central and Eastern Europe, and Africa, where the Service provides training and technical assistance in creating labor-management systems, particularly in countries without pre-existing worker-to-employer labor-management systems. Delegations from other countries are frequent visitors to FMCS National Headquarters in Washington D.C. for briefings and training. FMCS' skills beyond labor relations have increased nationally and internationally. In this regard, the FMCS receives a growing number of requests for training in facilitation of national and international initiatives dealing with security and economic development initiatives within and among other nations.

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 2000 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*. 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. Government Performance and Results Act (GPRA): FY 2000 Survey Results**

FMCS conducted the first national survey of labor and management negotiators in 1996 as part of its response to the enactment of the Government Performance Results Act (GPRA) and the mandate of the National Performance Review that federal agencies seek input and feedback from their key customers. The Agency conducted a second survey early FY 2000, using the same methodology and survey techniques.

A total of 2,004 management and union negotiators that used FMCS services were surveyed telephonically by the Center for Survey Research at the University of Massachusetts, Boston. Approximately 400 responses were from management or union representatives in the public sector (i.e., state and local governments) and the remaining responses were from the private sector. The survey response rate was 74%, identical to the response rate achieved in 1996.

#### **1. GPRA Overall Performance Summary - Methodology of the FY 2000 Survey:**

The FY 2000 survey asked respondents a variety of questions regarding FMCS services. We asked about FMCS':

- (a) Performance in mediating contract disputes;
- (b) Impact on trends in the labor-management relationship (i.e., degree of cooperation between the parties and the assistance provided by the FMCS in improving the relationship);
- (c) Role in interest based bargaining; and
- (d) Public knowledge of other FMCS services, including its arbitration and grievance mediation services.

## Performance Summary

Overall, the results of the FY 2000 survey are similar to those obtained in 1996. This is not surprising given the short period between the two survey administrations and the continuity of the environmental contexts over this time period. The relative stability in most of the questions asked in the two surveys increases our confidence in the reliability of the estimates obtained. The data continue to provide a sound basis for assessing the views and preferences for services of FMCS customers and a valuable tool for assessing the quality of collective bargaining relationships in American society. These data will become more informative and valuable to the service and to the public if the survey is repeated on a consistent basis in the future years so that longer term trends can be observed, and where appropriate, addressed through adjustments in FMCS services.

Each area covered by the survey is discussed more fully below.

## 2. Mediation Services in Contract Negotiations

In the area of contract negotiations and FMCS' role in mediating these disputes, the survey asked respondents questions in the following areas:

- a. Overall awareness of the FMCS' mediation services in contract negotiations and assessment of those services;
- b. Mediator attributes;
- c. Effects of mediation on the parties' relationship;
- d. Number of issues open at the start of negotiations;
- e. Use of different mediator strategies;
- f. Preference for future involvement by FMCS.

*Awareness and Overall Assessments:* Virtually all labor and management negotiators are aware of FMCS and its contraction mediation services. Over two thirds have used FMCS services at some point in their careers. Ninety percent of union respondents and 81 percent of management respondents have a favorable (excellent or very good) view of the FMCS services they received in contract negotiations. Eighty nine percent of union representatives and 81 percent of management representatives indicate FMCS mediation services met or exceeded their expectations. Over 90 percent of union and management negotiators in both the private and public sectors would use FMCS services again in the future. While these and other responses indicate consistently positive assessments of these FMCS services, assessments of management respondents tend to be somewhat lower than union assessments. Management assessments

in FY 2000 were, however, considerably higher on a number of dimensions than in 1996 survey.

**Mediator Attributes:** Mediator knowledge, skills, neutrality, understanding of the issues, and trustworthiness were rated as excellent or very good by between 80 and 90 percent of labor and management negotiators. These ratings declined slightly from the 1996 survey, perhaps reflecting the retirement of a large number of highly experienced mediators. We are cautious, however, about interpreting this small decline. Future rounds of the survey will be needed to determine whether or not this changes again as the large number of new recruits gain experience.

In response to suggestions from customers, a new item was added to this list of mediator attributes in 1999—the mediator’s understanding of the industry in which the parties work. Seventy percent of management respondents and 85 percent of union respondents rated the mediator as being excellent or very good on this attribute, ratings somewhat below those obtained on the other attributes.

**Effects of Mediation:** Overall, approximately one third of the private sector respondents (46 percent of union and 26 percent of management respondents) indicated that, in the absence of FMCS assistance, a strike or lockout would have been likely or very likely. Forty-three percent of union respondents and 35 percent of their management counterparts credit FMCS mediation as leading to an agreement while another 42 and 43 percent respectively indicated mediation brought the parties closer together. The comparable numbers from public sector respondents are somewhat higher. Fifty four percent of public sector union respondents and 55 percent public sector management respondents credit FMCS mediation with leading them to an agreement and about 38 percent indicate arbitration or fact finding would have been likely or very likely without mediation.

**Number of Issues Open:** At commencement of mediation, public sector respondents report more issues left on the table when mediation began than do their private sector counterparts. About 85 percent of the public sector cases had more than four issues left open and nearly one third had more than ten open issues, compared to about 60 percent of private sector cases with more than four open issues and around twenty percent with more than ten.

**Use of Different Mediator Strategies:** Mediators use a variety of strategies or techniques to assist in reaching an agreement, depending on the issues encountered in a particular negotiation. A number of questions were asked of the negotiators in an effort to determine the relative emphasis given to different techniques. The parties were asked to report the amount of effort mediators gave to

certain techniques used during the mediation process. In general, mediators place the most emphasis on gaining trust of the parties and identifying the underlying obstacles to an agreement. Other strategies, such as dealing with constituents/superiors, controlling hostility, saving face, and educating the parties about the process are used in about half the negotiations.

There were interesting differences in mediation techniques when employed in the public sector. Public sector union respondents report slightly lower rates of use of certain strategies than do their private sector union counterparts. The data suggests that mediators concentrate more on changing the positions of public sector managers than on public sector union representatives. We caution that the use of different mediator techniques in the private and public sectors are rather small and require further analysis before reaching firm conclusions. However, the data suggests that the dynamics of negotiations and mediation are different in the two sectors.

***Preferences for Future Involvement:*** As was the case in 1996, a strong majority (72 percent) of union negotiators would like to see FMCS increase its involvement in contract negotiations while a majority of management negotiators (60 percent) would prefer FMCS activity to remain at the current level. This represents a substantial difference in the views of the two parties on this issue.

In 1996, a majority of both union and management negotiators reported FMCS public profile was too low. Since then, efforts were made to increase the agency's profile. An increased number of labor and management representatives now believe the Agency's profile is "about right." However, 60 percent of union and 40 percent of management negotiators would encourage FMCS to continue efforts to increase public awareness of its services.

### **3. Trends in Labor Management Relations**

The FY 2000 survey also asked questions that focused on the nature of the collective bargaining relationships today. Before turning to the specific questions, it is important to understand the broader contexts in which collective bargaining is situated.

Between 1996 and 1999, private sector union membership continued to decline, although the number of newly organized workers increased to over 200,000 in 1999. Fueled by the continued economic expansion of the American economy, unemployment rates declined over this time period thus producing extremely tight labor markets for many employers. Simultaneously, competitive pressures from global and domestic competition remained strong and average wage rates in union and non-union establishments increased a modest 3 percent per year. The combination of pressures to increase productivity and competitiveness, along with continued diffusion of new information technologies led an increasing number of

organizations to implement new forms of work organization aimed at utilizing the knowledge, skills, and motivation of the workforce. All these developments are taking place in a highly diverse economy and set of collective bargaining relationships that range from highly cooperative to highly adversarial. Finally, despite considerable dissatisfaction with the state of labor law by both unions and employers, the public policy gridlock in this area continues. Against this background, the FY 2000 survey measured the following trends in labor-management relations:

- (a). The nature of the relationship between the parties (i.e., cooperative versus adversarial);
- (b). Rates of change, (i.e., improvement in the relationship);
- (c). Factors influencing negotiations;
- (d). Rates of settlement of bargaining disputes;
- (e). Outcome of bargaining; and
- (f). Workplace innovations and strategic partnerships.

Each areas is discussed more fully below.

***Nature of the Relationships:*** The survey data reflect the diversity in the nature of collective bargaining relationships described above. Approximately 75 percent of union and management negotiators report their relationships to be very or somewhat cooperative. Managers report somewhat more cooperative relations in 1999 than in 1996. Union leaders report the opposite trend. While these differences are small and reflect only two data points, it will be important to track whether these perceptions continue to diverge or converge in future years. A gap in perceptions would suggest that the levels of cooperation being reported or perceived by the respondents might not be very deep. As in 1996, approximately 20 percent of the union respondents and 15 percent of the management respondents report their relationships to be somewhat or very adversarial.

***Rates of Change:*** About 60 percent of the respondents report that their relationship is neither improving nor worsening, i.e., it is staying about the same. One third indicate their relationship is improving and less than ten percent indicate it is worsening. . In those cases where the relationship is improving, about two-thirds report the pace of change is slow or very slow. Thus, in the overall sample, only approximately 10 percent are improving at what the parties judge to be a quick or very quick pace.

Data on the rate of change in the parties' relationship generated considerable discussion in the regional briefings and prompted further analysis of the data. The question of greatest interest was whether this is a sufficient rate and pace of improvement, given the pace of change in the overall economy and workforce and the pressures labor and management. For FMCS, a more specific

question is whether our services are helping the parties to adapt and improve their relationships. While more analyses of these data are planned, the preliminary cross tabs (presented in Tables 3-7 of the Regional Briefing Report) suggest that the direction and speed of change are related to the nature of the relationships. Cooperative relationships are more likely to continue improving and adversarial relationships are deteriorating further. Thus, if anything, the data suggests a nationwide trend toward more variation and perhaps even a bifurcation in the quality of labor management relations. With respect to the effects of FMCS services, data suggests a positive relationship between FMCS services and the maintenance of cooperative relations. We caution that all these results are preliminary and are in need of further tracking and analysis on a longer term basis before firm conclusions should be drawn from them.

**Factors Influencing Negotiations:** The range of factors that influence collective bargaining negotiations remain quite varied, but their rank order remains about the same. The five most influential factors continue to be:

- (a). Pressures on fringe benefits;
- (b). Falling real wages;
- (c). Need for work rule flexibility;
- (d). Low trust; and
- (e). Fear of job loss.

With the exception of work rule flexibility, union respondents continue to report stronger pressures coming from these factors than their management counterparts.

A new item, pressure from competitors' human resource practices, was introduced in the 1999 survey. Seventeen percent of union respondents and 11 percent of management respondents indicated this heavily influenced their collective bargaining negotiations. Domestic competition was perceived to be a more important factor than international competition. Strike threats were perceived to be important by 12 percent of union negotiators and only four percent of management negotiators.

A strike, lockout, or job action occurred in only five percent of the negotiations. The threat of using replacement workers was reported to be an issue by 11 percent of union negotiators and six percent of management negotiators, while replacement workers were actually used in one to two percent of the cases. While this number is small, it represents approximately twenty percent of the actual strikes or lockouts that occurred in these negotiations.

**Settlement Rates and Timing:** The rates of settlement reached in both renewal and first contract cases were higher in FY 2000 than in 1996 when the survey was first conducted. Ninety-seven percent of renewal contracts reached agreements, as did approximately 90 percent of first contracts. This latter number is considerably higher

than in 1996 when just fewer than 80 percent of the parties reported reaching agreements in first contract negotiations.

Approximately one in four successor contract negotiations do not reach an agreement until one month or more after the contract expiration date. This suggests that a considerable number of parties are not resorting to strikes or lockouts if agreement is not reached by the expiration date but instead continue to bargain well after the deadline until they reach agreement. About half of the public sector negotiations extend one month or more beyond the contract expiration date, a rate considerably higher than that of the private sector.

**Outcomes:** Data on bargaining outcomes suggest a decline in the number of wage concessions and benefit reductions and an increase in settlements containing more flexibility in work rules. Nearly all contracts resulted in some wage increases. Union negotiators reported benefit increases in approximately 70 percent of their contracts compared to 53 percent of management negotiators. Union negotiators also are more likely to report achieving improvements in job security and union security than do management negotiators.

**Workplace Innovations and Strategic Partnerships:** The FY 2000 survey asked a new series of questions about whether workplace innovations or strategic partnerships (consultation, information sharing, or joint decision-making between labor and management representatives) occurred during the term of the agreement following the most recent negotiations. Approximately one in four negotiations feature follow-up activity involving teams, employee involvement or quality improvements. Most of these were initiated either by management or through joint management and union efforts. A little over one-third of the parties report that some form of strategic partnership exists. The parties rate the majority of these partnerships as being moderately successful.

#### **4. The State of Interest Based Bargaining (IBB)**

The FY 2000 survey also asked a series of question about interest based bargaining (IBB). In particular, we asked about:

- (a). Parties' awareness and use of IBB;
- (b). Use of specific IBB practices; and
- (c). Future use of IBB.

**Awareness and Use:** The relatively high rate of awareness and use of interest based bargaining reported in the 1996 survey (60 percent and 40 percent respectively) prompted additional focus on these techniques in the FY 2000 survey. Overall, awareness and use of IBB increased somewhat between 1996 and 1999 among private



sector respondents. By 1999 over 80 percent of union negotiators and 67 percent of management negotiators were familiar with IBB and a majority of both sets of negotiators had used these techniques. While about half of the union negotiators and 70 percent of the management negotiators who used IBB prefer it to traditional negotiating procedures, these percentages are between five and ten percentage points lower than in 1996. Still, between 60 and 77 percent of labor and management negotiators who used it rate IBB as good, very good, or excellent.

There is very high, nearly universal awareness of IBB among public sector negotiators. Use and preferences for IBB are about the same among public sector negotiators as with their private sector counterparts.

**Use of Specific IBB Practices:** The questions probing the use of more specific IBB practices indicate that about one third to 40 percent engaged in pre-negotiations training in IBB. Around twenty percent used some type of joint task force prior to negotiations, about one-third agreed on ground rules prior to bargaining, and about twenty percent provided some prior notice to their constituents prior to using IBB. Data and information sharing, joint task forces, and consensus decision-making principles were used in the majority of IBB negotiations. Private caucuses were also used in about three-fourths of these cases and a majority shifted somewhat away from IBB when the contract deadline was reached, suggesting that the parties are fashioning a bargaining process that mixes features of IBB with more conventional processes.

**Backlash and Future Use:** About one in five parties indicated some form of backlash from constituents over use of IBB while roughly the same number indicated their intent to continue using IBB in the future.

## 5. Additional FMCS Services

The FY 2000 survey asked respondents about their awareness, use, and evaluation of other FMCS services.

**Arbitration:** There is broad awareness and use of the arbitration services provided by FMCS. Ninety percent of the parties are aware of the arbitration service and about two-thirds of those who know about it have used it. Eighty percent of union respondents and 70 percent of management respondents agree it is important for FMCS to continue to provide arbitration services. Slightly more than 80 percent of those who report using FMCS and other arbitration services rate FMCS services to be of the same or better quality than the other services they use.

**Grievance Mediation:** Approximately two-thirds of the parties report awareness of FMCS' grievance mediation services. However,

only about one-fifth report using it. Of those that have used, the vast majority rated it as excellent, very good, or good.

**Other Training:** About 22 percent of union respondents and 50 percent of management respondents report using some other FMCS training service. Over ninety percent of those who use these services rate them as excellent, very good or good. IBB training appears to be among the most frequently used service in recent years.

#### **D. Nature of Collective Bargaining in FY 2000:**

FY 2000 was a critical bargaining year, with major contracts expiring in East and Gulf coast maritime, national master freight, telephone and telecommunications, tire and rubber manufacturing, aircraft and aerospace manufacturing, motion picture and television advertising production, clothing manufacturing, heavy truck and trailer manufacturing, heavy and highway construction, health care, retail food, food and grain processing and manufacturing as well as federal, state and local public employees and schools.

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 6321 collective bargaining contract negotiations in every major industry and service throughout the United States in FY 2000. This represents a slight increase over FY 1999 dispute activity. Federal mediators and the Director played an integral part in the settlement of the largest white-collar strike by 17,000 members of the Society of Professional Engineering Employees of America (SPEEA) at the Boeing aircraft company. Some other significant defense related disputes involving

FMCS mediation efforts include Bath Iron Works Shipbuilding and the International Association of Machinists and the Raytheon Corporation and the International Brotherhood of Electrical Workers (IBEW). Non-defense strike involvement included the massive stoppage by Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists against the Association of National Advertisers and Advertising Agencies; Phoenix Transit Systems and the Amalgamated Transit Union; Washington DC's Washington Hospital Center and the DC Nurses Association; the 10,000 members of the Service Employees Union Local 1 of Chicago against the Building Owners and Management and Suburban Cleaning Contractors Associations.

FMCS was involved in disputes that resulted in settlements without work stoppages. The most important was the national agreement between Kaiser Permanente healthcare system and the eight unions who belong to its national labor-management partnership covering 60,000 employees of Kaiser nationwide. This was accomplished and was a logical follow-on to a massive Interest Based Bargaining training effort by a team of FMCS mediators in FY 1999. With FMCS mediator assistance, the Chicago Symphony reached a new five-year agreement with the Chicago Federation of Musicians minutes before the possible cancellation of a season opening concert featuring world famous cellist YoYo Ma.

## **E. Technology Assisted Group Solutions (TAGS):**

FY 2000 saw the introduction and development of Technology Assisted Group Solutions System (TAGS). The TAGS system uses computer technology to reach solutions to problems by helping 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 people develop meaningful solutions to workplace and organizational management problems and developing more positive working relationships. FMCS demonstrations of TAGS throughout the nation in FY 2000 met with overwhelming enthusiasm as well as developing many new ideas for its utility as a problem solving enabler. In the coming years, as TAGS usage grows and the technology improves, we will be measuring its impact on collective bargaining negotiations and mediation of disputes.

## **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.

# 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 2000 Cases of Significance:**

### **1. The Boeing Company/ Society of Professional Engineering Employees in Aerospace**

The nation's first great labor strike of the millennium ended after 40 days as the 17,000 white collar engineering and technical employees of the nation's largest aerospace employer ratified a new three year agreement.

The Society of Professional Engineering Employees in Aerospace (SPEEA) was founded as an independent union and represents 22,600 Boeing Company engineering and technical workers in Washington, California and Kansas. The union had recently affiliated with the International Federation of Professional and

Technical Engineers, an AFL-CIO union, and became Local 2001 of that organization.

The strike began after five months of frustrating bargaining with little progress. The Company's "last proposals" were rejected three times by the SPEEA members who saw their status as second class to employees represented by the International Association of Machinists (IAM) who successfully reached agreement with Boeing less than a year earlier. The term "respect" entered the collective bargaining lexicon and it proved to be a powerful weapon in uniting the SPEEA membership.

The FMCS Director requested postponement of the strike, called for the first week of February. The parties agreed, but after two days, there was little change in the positions of the parties and the union struck on February 9. The company maintained its firm positions on the issues and conducted a publicity campaign touting its positions. The union maintained a presence with the public and its membership through the Internet and several unofficial and SPEEA's official web page carrying their message.

FMCS continued to explore the situation with both sides and in late February called them back to the bargaining table. These meetings found some small areas of movement but nothing that would break new ground toward ultimate settlement. Management publicly declared its belief that the parties reached impasse and indicated its intent to implement its last offer. By this time, the strike by 17,000 white-collar workers attracted the attention and interest of other unions and support grew for the normally docile engineer and technical union.

The FMCS Director called the negotiators to Washington, and after an all night session, the parties reached an agreement that the union recommended to its membership for ratification. The membership ratified the contract.

This was a costly strike. Boeing lost about \$5.2 billion in market capitalization on a 15% decline in stock decline. Delivery was missed on at least 5 aircraft. Boeing's numerous requests for aircraft technical support went unanswered during the strike. The union slogan "No Brains No Planes" was prophetic.

Despite the costs of the strike, the parties, with FMCS assistance, pledged a renewed understanding of the collective bargaining process. Phil Condit, President and CEO of Boeing, endorsed the collective bargaining process in the following statement made at the conclusions of the all-night mediation session: *"Throughout the almost five months of negotiations with SPEEA and the 38 days of strike, many employees said we were seeking respect. I believe we now have a better understanding of what is meant by that term. One day I hope*

*we can look back on this time as a turning point—a time when we more clearly recognized the importance of listening and seeking to understand each other. So that we can't lose sight of what we've learned, I am pledging my time and energy to a new 'working together' joint-task force that will focus on the issues impacting the engineering and technical communities."*

## **2. Kaiser Permanente/Multi Unions:**

Kaiser Permanente healthcare system and a coalition of AFL-CIO unions representing more than 65,000 employees in California, Colorado, Oregon, Ohio, Missouri, Maryland and Washington, D.C., used labor-management partnership as the vehicle for its nationwide contract bargaining.

Eight unions constitute the partnership with management. These eight unions include: American Federation of Teachers; American Federation of State, County, and Municipal Employees; International Federation of Professional and Technical Engineers; Kaiser Permanente Nurse Anesthetists Association; Office and Professional Employees International Union; Service Employees International Union; United Food and Commercial Workers Union; and United Steelworkers Union.

The partnership committed itself to developing and refining an affordable and balanced national agreement based on recommendations from seven bargaining unit task groups. Each of the 7 task groups comprised of 30 union and management personnel who were responsible for developing bargaining proposals in the following areas: wages; benefits; health and safety; work/life balance; performance and workforce development; quality and service; and work-life innovation. Prior to beginning their task, each task group received lengthy training in Interest Based Bargaining (IBB).

Working with the assistance of FMCS mediators and some outside consultants as facilitators, the parties used the innovative Interest Based Bargaining (IBB) process to develop "common issues" which would apply to 33 contracts with 26 locals of eight international unions. The purpose was to merge common issues in one forum and deal with those issues during national bargaining, rather than local-level bargaining. The common issues committee developed and refined the national agreement including the principles behind its clauses, guidelines for implementation, and alternate options for the scattered diverse locals. Subsequently, the local agreements were customized to fit their needs using the national agreement as the framework for their negotiations.

Local negotiations were accomplished through Interest Based Bargaining (IBB). Although either party had the right to withdraw from IBB and revert to traditional adversarial bargaining, the majority of the

bargaining process was successfully completed through the interest-based bargaining.

The results included a five-year national agreement with local supplements tailored to the individual needs of the diverse segments of the Kaiser system. The first of its kind in the health care industry, it provides employment and income security for a majority of the 60,000 unionized Kaiser employees nationwide. AFL-CIO President John J. Sweeney supported the agreement and particularly the job security issues raised during bargaining. He expressed great satisfaction that workers would be "redeployed rather than laid off as a result of restructuring or other changes at Kaiser. Displaced employees will be placed in comparable jobs, within a reasonable geographic area, with comparable rates of pay, working hours, and shift assignments."

Management also expressed satisfaction with the job security provisions of the agreement. Kaiser's chairman and chief executive officer, David Lawrence, said that in making a long term commitment to employees, "We believe that attracting and retaining committed employees and making the best possible use of their knowledge is the key to meeting the challenges of the future in health care....we will do everything possible to retain these valuable workers. We're empowering employees to be leaders of change and eliminating any incentive to resist change."

### **3. Association of National Advertisers & American Association of Advertising Agencies / Screen Actors-American Federation of Television and Radio Artists**

The six month strike by the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA) against the advertising, was the most costly work stoppage, when measured in actual days lost to a strike. The 135,000 members of the combined organizations collectively suffered 17,280,000 days of idleness as a result of the dispute.

The key issue in the dispute was the industry proposal to eliminate the "pay for play" residual payments for commercials and replace it with a one time fee for both broadcast and cable use. The unions wanted to increase the amount of pay for residuals while adding new payments for cable and Internet transmission and an improved system for monitoring advertising usage.

The entertainment industry is one of the most heavily unionized segments of the American economy and there was no shortage of high profile support for the striking unions. The advertising industry used its skills and mounted advertising campaigns in general and trade print publications, and broadcast their version of the dispute in the media. The unions responded in traditional ways by picketing businesses that avoided the strike by using non-union performers. The unions also used



their high profile and popular entertainment icons to publicize their position to the American public. The union also signed interim agreements with smaller agencies that allowed them to continue to produce commercials as well as providing employment for union performers during the strike. The union even produced its own television commercials to answer those produced by the advertising industry.

FMCS regularly monitored the negotiations. The mediator had two meetings during the summer of 2000 to explore the parties' positions with little progress in either attitudes or positions of the parties. The mediator adjourned the meetings subject to his recall.

The strike continued through the summer and in late August, FMCS prevailed on the parties to return to the bargaining table. Mediation sessions were held under a news blackout, and after 3 days, a joint statement issued by the parties reflecting a change in attitude.

The parties met continuously through September but negotiations stalled over the jurisdiction of the union for Internet commercials and rates of payment for cable commercials. The parties remained far apart on compensation issues. The unions sought a 10.3% increase over 30 months while the advertising agencies offered 7% over a three-year period.

The mediator proposed that the parties return to work for a 90 day "cooling off" period. The mediator recommended that employees return to work under the terms of the expired agreement and any new terms would retroactively apply to the beginning of the cooling off period. The unions turned down the proposal because they believed the agencies would stockpile ads and prolong the dispute if and when the strike resumed.

FMCS called the parties back to the bargaining table and after four days of intensive bargaining, the parties reached tentative agreement on a new contract. Neither side achieved all of their goals, but both sides were satisfied that they had arrived at constructive solutions to their problems allowing them to return to work. The unions resumed work on October 30 and the longest strike in Hollywood history, eclipsing the 154-day Writers Guild strike in 1988.

#### **4. Building Owners Management & Suburban Cleaning Contractors Associations / Service Employees International Union Local 1**

For decades, members of General Service Employees International Union (SEIU) Local 25 cleaned Chicago's downtown loop office buildings. The Building Owners and Managers Association (BOMA-Chicago) managed the buildings including the negotiation of labor agreements. Local 25 also represented the building security officers and elevator operators. As suburban development grew, the Union, with increasing success, began to organize the suburban

cleaning companies. Though successful in organizing, SEIU had limited success at the bargaining table. Health insurance was non-existent, and wages were significantly lower than the downtown rates.

In the mid-1990s, the long-time leadership of Local 25 was removed, the local placed in trusteeship and the members were placed in Local 1. As part of the International Union's Justice for Janitors campaign, Local 1 made an increased effort at suburban organizing and successfully developed a stronger rank and file in both the downtown and suburban groups.

The contracts covering the union's 5500 downtown members and 4500 suburban members were set to expire April 9, 2000. Negotiations focused on union demands for increased wages, vacations, and pensions for the downtown contract, and family health insurance and wage parity for the suburban contract. Unable to reach agreement by contract expiration, the parties agreed to FMCS mediator assistance and extended the agreements until the mediation sessions could be held. Mediation sessions were scheduled for April 17 for the downtown contract, and April 18 for the suburban contract.

During ongoing mediated negotiations for the downtown contract, the union set a strike deadline of 4:45 p.m. As negotiations continued, the deadline passed, and strikers began demonstrating in the downtown streets below the 12th floor meeting rooms. As negotiations continued into the evening, the strikers continued to gather until the crowd reached an estimated 5000. Shortly before 10:00 p.m., an agreement was reached and announced to the membership on the streets below. The agreement reached was characterized by the union as "the best in a decade."

The next day, the FMCS mediator met with the Suburban Contractors Cleaning Association and the SEIU Local 1 Suburban bargaining team. Following the pattern established with the downtown contract, the union set a strike deadline if negotiations were not satisfactory. As the talks focused on the major suburban issues of family health insurance and wage parity, talks began to break down and ended in late afternoon. The union began to pull workers off the jobs in the suburban buildings and the strike grew to more than 4000 within a few days. While no additional mediation sessions were scheduled, FMCS remained in contact with the parties.

During the ten-day strike that followed, striking employees escalated their actions to blocking the streets at busy suburban intersections. After fifty-one demonstrators were arrested for blocking traffic, off-the-record talks culminated in a settlement that provided for a union-run family health plan in the third year of the agreement (at a reduced cost to the employer), and a wage increase of \$1.35.

The offer was quickly ratified by the membership and workers returned to their jobs.

## **5. Nyack Hospital/New York Nurses Association**

These lengthy negotiations began in December 1997 but FMCS was first involved in November 1999, when the New York Nurses Association (NYSNA), which represented all 435 registered nurses at the facility in Rockland County, threatened to strike. The mediator held several sessions but after proper notice<sup>1</sup> was served on the hospital, the nurses struck on December 21, 1999.

The issues impeding a full agreement were the hospital's insistence on a merit pay plan instead of contractual scales and their demand for a reduction in contractual paid time off. The nurses were desired three additional experience steps on the wage scales and inclusion of staffing language that relieved mandatory overtime. The hospital continued to operate during the strike, using temporary nurses.

In early April, hospital management advised the striking nurses that if they did not return to work by April 10, 2000, they would be permanently replaced. Only two reported back to work. Inside the hospital, significant events unfolded, including the election of a new Board of Trustees. The Board's newly elected chair asked for a meeting with the principals of the union. There were some breakthroughs at that meeting and the mediator reconvened full negotiations. After lengthy bargaining sessions with members of the new hospital board, a tentative agreement was reached. A full meeting of the nurses membership was called for the following Sunday but the membership rejected the tentative agreement despite the recommendation of the union's leadership.

The mediator immediately recalled the parties to the table. Using the contract rejection as the blueprint for possible settlement, the mediator facilitated a new agreement on the contentious issues of merit pay, paid time off and the staffing requirements that forced union members to work back-to-back 8-hour shifts. A new five-year agreement was reached and ratified by the nurses, ending the 151-day strike.

## **6. Raytheon/International Brotherhood of Electrical Workers local 1505**

Union workers at Raytheon Co. ratified a new four-year contract ending a five-week strike at the nation's third largest aerospace and defense company. The contract was ratified overwhelmingly by the membership of Local 1505, International Brotherhood of Electrical Workers (IBEW).

---

<sup>1</sup> Section 8(g) of the National Labor Relations Act requires that a labor organization provide 10-day notice to any health care institution when it intends to engage in picketing or a strike.

About 2,700 workers went on strike August 27, 2000, demanding greater job security and improved health and pension benefits. They represented 21 percent of Raytheon's employees located in 10 Massachusetts plants.

State and federal officials, including the Governor's office, Congressmen, Senators and the AFL-CIO, followed the strike closely. Weekly rallies, together with significant daily picketing, resulted in arrests, charges and counter charges.

Throughout these difficult and highly charged negotiations, the mediator worked to maintain open communication between the parties. The mediator continuously met privately and jointly with representatives of both sides and structured the negotiations to help the parties achieve a mutual settlement.

## **7. Phoenix Transit Systems / Amalgamated Transit Union Local 1433**

In late summer of 2000, the Operating Engineers Local 428, Teamsters Local 104 and Amalgamated Transit Union Local 1433 began contract negotiations with Phoenix Transit Systems (PTS) in Phoenix, Arizona. PTS operates and maintains the municipal bus system for the city of Phoenix and surrounding cities. Prior to these negotiations, the City of Phoenix led a successful campaign to raise taxes to fund an improved transit system, adding services, new buses and expanded routes. This initiative increased transit system employment opportunities.

The economy at the time raised the union's expectations. Additionally, there were other industries in the area that successfully negotiated unusually high wage increases and other economic increases. There was pressure on the negotiators from both labor and management to propose an improved contract. However, there existed a long history of conflict and mistrust between the parties.

FMCS mediators were employed from the commencement of negotiations. Two Arizona Commissioners dealt with these parties in the past and were aware of most, if not all, of the issues during negotiations, including unresolved issues from prior negotiations which remained sore points in these talks. In spite of efforts to arrive at a peaceful resolution, the union struck.

The bargaining was plagued by continuing conflict and mistrust between the parties. Personality conflicts erupted at the bargaining table, on the streets and in the media. At the same time, two other unions of the Phoenix Transit, the Operating Engineers and the Teamsters, reached tentative agreements. The mediators continued to press the parties, and seven days after the strike began, the parties reached tentative agreement that returned bus service to Phoenix.

The mediators continue to encourage these parties to participate in FMCS' Relations By Objective (RBO) program. The RBO program provides extensive training in building working relationships that aims to jointly resolve problems. RBO has been used successfully throughout the nation to improve some of the most contentious bargaining relationships, clearing the way for constructive and creative bargaining relationships.

## **8. Washington Hospital Center/DCNA Negotiations**

Negotiations between Washington Hospital Center and the District of Columbia Nurses Association (DCNA) were difficult for a variety of reasons. There was a history of resentment between management representatives and the union. Two FMCS mediators knew they this would be a long and contentious negotiations.

FMCS entered negotiations two weeks prior to the union's strike deadline. The mediators explored the interests of both parties in full session and private caucus. Although wages and mandatory overtime seemed, on the surface, to be the driving factors in the impending strike, lack of trust fueled the negotiations.

In the past, the parties never used full sessions for negotiations, and management did not want face-to-face meetings with the union. The mediator's strategy was to get the parties to meet and disclose the real issues and interests of their constituents.

Lengthy caucuses characterized the parties' sessions (some including the mediators, some by themselves). Often, these caucuses lasted well into the morning, yielding little substantive counter proposals. As the strike deadline drew near, settlement seemed unlikely.

Once the strike began, media coverage at the city's largest hospital was intense. Tempers flared on the picket line when management hired temporary replacement workers. The hospital reported that their replacement nurses were performing well but costly.

FMCS intensified its mediation efforts. As weeks trudged by, the number of picketers dwindled as striking union members accepted other employment. The media ceased reporting any news about the strike while other unions joined the picket line. Management reduced its wage proposals because it deducted the cost of hiring the replacements from the cost of their package to the nurses. FMCS top officials intervened in the negotiations to underline the commitment of the agency to reaching a settlement.

During the final week of the strike, the original mediators met with the parties around the clock. A breakthrough came with some agreement on mandatory overtime. With a final face-to-face

meeting, the parties reached a settlement. The membership ratified the contract.

## **9. Bath Iron Works (General Dynamics Corporation) / International Association of Machinists**

The world's shipbuilding industry has constantly completed to lower labor costs and to maximize their profit margins. As a result, U.S. shipbuilders must rein in labor costs in order to remain viable in this industry.

Some 4,800 production employees of Local 6, International Association of Machinists (IAM), struck Bath Iron Works after rejecting management's offer of an 11.5% wage increase over three-years. The walkout, lasting 8 weeks, shut one of two shipyards that produce *Ageis* destroyers for the U. S. Navy.

An FMCS mediator recalled the parties to the table and the parties reached a new agreement with no increase in the wage proposal, but providing for "cross-training," affording union members an element of job security. This second contract was again rejected by the membership.

Negotiations resumed in Washington D.C., where the FMCS mediator was joined by W.J. Usery, former Secretary of Labor and one time IAM official. Tentative agreement was reached, providing for increases in the wage package and a reduction in health insurance co-payments for union members. The contract duration was lengthened to 42 months and "cross training" proposals were eliminated. The membership ratified the new agreement and returned to work, ending the eight-week strike.

## **10. Pullman Industries / United Auto Workers**

Pullman Industries supplies automobile parts to Daimler-Chrysler. United Automobile Workers (UAW) represents the production and maintenance employees.

To assure a continuing supply of parts, Chrysler sought to have contract negotiations concluded at least thirty days before the expiration of the contract. The parties reached a tentative agreement without mediation, but the union membership rejected the agreement.

The parties returned to the bargaining table, revised the agreement, but that agreement was also rejected. Nearing the thirty-day threshold demanded by their major customer, the parties called in the federal mediator. The mediation process included traditional joint meetings with bargaining committees, as well as informational meetings with all employees.

Another tentative agreement was achieved with improved contract language. The economic provisions remained as previously negotiated. The revised offer was presented at a ratification meeting attended by the mediator. The membership was dissatisfied with the wage provision and the health insurance premiums and rejected the

agreement. In order to provide more information about the contract's benefits, union representatives and the mediator scheduled meetings with bargaining unit employees. The meetings were held at the plant to assure participation. The contract was soon ratified.

### **11. Chicago Symphony Orchestra / Chicago Federation of Musicians**

The Chicago Symphony Orchestra (CSO) commenced negotiations with its orchestra musicians, represented by the Chicago Federation of Musicians. All orchestra musicians yearn to be the highest paid US orchestra. The CSO musicians were determined to regain their stature as the highest paid American orchestra.

Although their contract expired on September 10, the orchestra musicians agreed to continue rehearsals until opening night, September 15. Internationally renowned cellist Yo-Yo Ma was scheduled to open the season along with Conductor Daniel Barenboim and the Orchestra. Complicating the timing was Ma's performance schedule, allowing for only one rehearsal, scheduled for the morning of Wednesday, September 13.

Despite frequent meetings held in the week prior to opening night, the parties remained divided on many important issues. Orchestra management concluded that if the rehearsal was not conducted on September 13, opening night and Ma's performance would be canceled. The CSO was unwilling to play an opening night performance without a ratified contract.

The parties agreed to a meeting under the auspices of the federal mediator on September 12, less than twenty-four hours prior to the last opportunity for Ma's rehearsal. The parties met all night and reached a full tentative agreement the following morning. The orchestra membership ratified the agreement just prior to the start of Ma's rehearsal. The four-year agreement preserved the CSO's status as the highest-paid Symphony Orchestra in the United States.

### **12. Levy Restaurants / Hotel Employees and Restaurant Employees (HERE)**

As indicated above, FY 2000 saw the introduction of TAGS technology to mediate disputes. In June 2000, a FMCS mediator was asked to provide professional and technological support to the ongoing negotiations between a nationwide catering firm, Levy, and the Chicago local of the Hotel Employees and Restaurant Employees Union (HERE). Several factors distinguished this round of talks from other negotiations.

First, one of HERE's most experienced negotiators was designated to lead the newly experienced bargaining team. Second, the



negotiations involved two separate bargaining units representing several hundred employees at the McCormick Place Chicago convention and banquet facilities and the Navy Pier. These two facilities host the largest convention halls in the world. Third, these two bargaining units functioned under contracts designed for the hotel industry and not the banquet and convention industry agreements; the industries operate differently. Fourth, the union's negotiators were based in New York City while management's negotiators were based in Los Angeles, making face-to-face meetings difficult to schedule on a frequent basis. Fifth, the previous contracts expired some time ago and a sense of urgency existed to completion negotiations. Despite these obstacles, a high level of mutual respect and trust existed between the parties and, because the parties had geographical limitations to meeting in person, FMCS assessed these talks as a good candidate for TAGS. The parties agreed to try this new tool and its applications to the collective bargaining process.

Two types of TAGS supported negotiations were used: face-to-face negotiations and remote meeting-conference calls.

For the face-to-face talks, FMCS set up two LCD projectors, each driven by a laptop computer. Laptops were provided for each of the principal spokesmen and for the mediator; all were linked by wireless modems to a laptop computer configured as a server. A printer was also set up. The two projectors displayed the document on the two screens; they were able to easily view the language under discussion. The language from the existing McCormick Place and Navy Pier contracts were displayed with color-coded union and management proposals. This document became known as the "Joint Master Proposal". In addition, language from three other HERE contracts in Chicago and New York were on disks and available to be displayed upon request, for comparison purposes.

In general, the negotiations were candid. There were very few separate caucuses until the last stages of the negotiations. Most notable was the attention focused on the language projected on the screens; most of the conversation dealt with rephrasing words and sentences. Sentences or entire paragraphs were transposed from other agreements, when the parties agreed that the language accurately expressed their agreement. In contrast with traditional bargaining, in which participants have paper proposals, the committee members on the union side were either reading the language on the screen or suggesting alternative phrasing. Noticeably absent were the recriminations and accusations that may accompany a discussion of difficult matters such as discipline or work rules. TAGS provided "instant gratification" that proposals were reduced to writing; agreed-upon provisions were, color coded, dated and noted by a "TA" (tentatively agreed).

When the parties reached final economic issues, the mediator reverted to traditional mediation techniques, engaging in shuttle

diplomacy. The transition in bargaining modes was smooth and natural.

At several points during the negotiations, the parties were unable to meet in person. As a result, the conference call-remote meeting capability of *TAGS* was employed. The physical arrangement included an LCD projector set up in a conference room at the Chicago-area FMCS office; it was driven by a laptop linked to the FMCS *TAGS* server and web site in Washington, D.C. A speakerphone was set up in the same conference room. In the conference room there were two other telephone lines in the conference room, one for the union to link its own laptop into the Internet site, and the second for private communication between mediators in Chicago and Los Angeles. The participants called into the conference telephone number at the designated time from several locations around the country. Each of the remote participants had a computer linked into the *TAGS* web site, and the union committee members in the Chicago office had the site displayed on the projection screen.

The benefit of *TAGS* technology is the savings in travel costs to the parties and in shipping costs for the entire suite of computer equipment. It also preserved the momentum of negotiations for those time intervals when the parties' schedules would not permit them to be in Chicago simultaneously.

Both the employer and the union have indicated their satisfaction with the process and the outcome of *TAGS*-supported negotiations. In future years, the FMCS will quantify the value added by *TAGS* technology to the collective bargaining process and the cost savings to the parties. Qualitative measures of these negotiations are much easier to identify. Accurate and timely record-keeping, the maintenance of focus during discussions on contract provisions, the ability to draft and revise contract language virtually instantly in everyone's view all made the face-to-face negotiations a substantive and satisfying experience for the participants on both sides. The remote meeting-conference call capability preserved momentum during periods when face-to-face meetings could not be scheduled, and proved to be a valuable adjunct to the regular bargaining.

□

### C. Dispute Mediation Program Data

<b>Intake</b>					
<b>Fiscal Years 1996 Through 2000</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Union and Employer Notices <sup>1</sup>	54,628	54,660	50,170	36,854	34,038
NLRB and FLRA Certifications <sup>2</sup>	1,402	1,530	1,750	1,631	1,492
Public Sector Board Requests <sup>3</sup>	257	273	207	198	191
Union and Employer Requests <sup>4</sup>	1,702	2,122	1,872	1,903	2,521
<b>Total</b>	<b>57,989</b>	<b>58,585</b>	<b>53,978</b>	<b>40,586</b>	<b>38,242</b>

<b>Case Numbers Issued</b>					
<b>Fiscal Years 1996 Through 2000<sup>5</sup></b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
	27,119	28,330	27,802	25,676	26,323

<b>Case Numbers Assigned</b>					
<b>Fiscal Years 1996 Through 2000<sup>6</sup></b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
	19,535	20,844	20,263	19,200	19,574

<b>Cases Closed Fiscal Years 1996 Through 2000<sup>7</sup></b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
By consolidation after assignment <sup>8</sup>	1,022	1,230	972	685	1,125
By Final Report with meetings <sup>9</sup>	5,285	5,643	5,784	6,188	6,321
By Final Report with no meetings <sup>10</sup>	13,117	13,383	13,011	12,422	13,291
<b>Total</b>	<b>19,627</b>	<b>20,256</b>	<b>20,139</b>	<b>19,295</b>	<b>20,737</b>

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 the negotiations.

---

<b>Dispute Meeting Conferences</b>					
<b>Fiscal Years 1996 Through 2000</b> <sup>11</sup>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
	17,353	18,300	17,923	19,329	17,837

---

---

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

<b>Work Stoppage Information</b>					
<b>Fiscal Years 1996 Through 2000<sup>1</sup></b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Work stoppages beginning in the fiscal year	372	378	421	362	400
Work stoppages in closed cases in the fiscal year	388	373	405	411	392
Average duration of work stoppages in closed cases (number of days)	55.8	54.0	43.7	50.5	390

<b>Contract Mediation Analysis By Sector</b>					
<b>Fiscal Years 1995 Through 1999</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
INTAKE	57,989	58,585	53,978	40,586	38,242
CASE NUMBERS ISSUED					
Private Sector	25,496	26,626	26,006	23,856	24,386
Public Sector	1,007	1,118	1,145	1,141	1,216
Federal Sector	616	587	649	678	720
ASSIGNED					
Private Sector	25,496	26,626	18,487	17,444	17,681
Public Sector	985	1,055	1,134	1,089	1,168
Federal Sector	623	593	641	666	725
CLOSED CASES <sup>2</sup>					
Private Sector	18,063	18,588	18,036	17,394	18,786
Public Sector	971	1,091	1,105	1,199	1,209
Federal Sector	593	577	626	701	742

<sup>1</sup> The Bureau of Labor Statistics reports work stoppages over 1,000 employees. FMCS reports all work stoppages.

<sup>2</sup> Excludes cases closed by consolidation after assignment.



# Initial Initial Contracts Contracts

## 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 2000 Initial Contract Cases of Significance:**

### **1. St. Johns Regional Medical Center / Service Employees International Union (SEIU)**

The State of California has one of the three most highly organized health care sectors in America. Health care unions have placed particular emphasis on organizing in this state. St. Johns Regional Medical Center is a part of the Catholic Hospital Group (20 hospitals in California). Elections were held at 18 of the 20 the facilities.

Local 399 of the Service Employees International Union (SEIU) was certified as the representative of St. John's registered nurses. Although negotiations began with the assistance of a federal mediator, they faltered, and a strike commenced partially because of the membership's unrealistic expectations of success.

After a two-week strike, the union returned to work and to the bargaining table at the insistence of the FMCS mediator. The union felt it could not reach agreement without pressuring the hospital with another strike. After two more days of strike, an initial agreement was reached at the FMCS headquarters in Los Angeles.

The mediator provided the parties with additional training in contract administration, which will assist them in achieving a successful working relationship.

### **2. St. Mary's/Duluth Clinics / United Steelworkers of America**

St Mary's/Duluth Health Clinics employ 1100 employees represented by United Steel Workers of America (USA). Initial contract negotiations lasted nearly a year. Among the most difficult issues included one hundred different job classifications, multiple pay scales at 6 different facilities, different job classifications performing similar work, and similar job classifications performing entirely different work.

Extensive media coverage of the dispute created additional tension. Frustration with the length of the bargaining process caused the parties to request FMCS assistance. After ten mediation sessions conducted by two FMCS commissioners, the parties reached tentative agreement.

At the conclusion of these negotiations both parties were so pleased with FMCS assistance that the two chief spokespersons issued a joint press release commending FMCS for its work. Subsequent to the ratification of this first contract, FMCS has been asked to provide additional relationship assistance.



### C. Initial Contract Bargaining Data

Initial Contract Bargaining	FY 96	FY 97	FY 98	FY 99	FY2000
Private Sector initial contract cases received:	1,333	1,606	1,800	1,715	1715
Assigned to mediators:	1,279	1,555	1,730	1,657	1,677
Assigned from NLRB certifications:	1,106	1,306	1,503	1,397	1,296
Assigned from other sources: (e.g. voluntary recognition)	173	249	227	260	381
Cases closed by FMCS: (Mediated and non-mediated)	515	534	597	661	867
Mediated cases closed with agreement reached:	112	142	119	137	231
Percentage of mediated cases	72.3	82.1	68.4	47.9	52.9
Mediated cases closed without agreement reached:	43	31	55	149	206
Percentage of mediated cases <sup>1</sup>	27.7	17.9	31.6	52.1	47.1
Non-mediated cases closed with agreement reached:	198	230	277	249	255
Percentage of non-mediated cases:	55.0	63.7	65.4	66.4	59.3
Non-mediated cases closed without agreement reached:	162	131	146	126	175
Percentage of non-mediated cases <sup>2</sup>	45.0	36.3	34.5	33.6	40.7
Percentage of mediated and non-mediated cases	60.2	69.7	66.3	58.3	56.0
Closed with agreement reached:					
Closed cases involving ULP <sup>3</sup> filed by either party:	32	41	65	75	128
Closed cases involving work stoppages:	8	14	24	19	24
Closed cases involving work stoppages with Agreement reached:	5	8	10	10	14
Average number of days between statutory notice Receipt by FMCS and closure: <sup>4</sup>	238	122	175	166	176

<sup>1</sup> Cases closed with agreement reached occur with final agreement on an initial contract

<sup>2</sup> Cases closed without agreement occur after two years if agreement has not been reached on initial contract

<sup>3</sup> Unfair Labor Practices

<sup>4</sup> For cases closed in the same fiscal year they are received

---

Average number of days for cases carried over And closed in next fiscal year:	NA	359	337	351	363
Assigned cases carried over to next year:	764	1,021	1,416	1,001	813

---

# Preventive 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 2000 Preventative Mediation Cases of Significance:

### **1. Atlantic Baking Group / Baking Confectionary Tobacco Grain Millers / International Union of Operating Engineers**

The announced closing of a long established bakery in Pittsburgh, Pennsylvania rendered another devastating blow to a community, and local economy, still reeling from the fall of the once powerful steel industry in Western Pennsylvania. This one-time "icon" in the city provided employment for generations of workers who prided themselves in being able to produce quality food products for the marketplace.

Rather than accept defeat, however, leaders within business, labor, local civic organizations and government chose to channel their common vision and synergy in a positive way. After much hard work and cooperation, they have successfully reopened the idled 450,000 square foot manufacturing facility and the community has realized the restoration of several hundred family-sustaining jobs.

The collective efforts of the newly formed Atlantic Baking Group (ABG), the Bakery, Confectionary, Tobacco and Grain Millers (BCTGM) Local 12 and the International Union of Operating Engineers (IUOE) Local 95 represent the epitome of what a true labor-management partnership can accomplish, even in the face of daunting circumstances.

The ABG Labor-Management Committee (ABGLMC) is in the process of transforming a manufacturing facility, borne from a traditional management hierarchal structure, into a high performance, worker empowered production system. While both management and labor may have been initially uncomfortable with functioning together in such an unfamiliar workplace model, the outside pressures of competition demanded they change.

The ABG LMC was successful in obtaining an FMCS LMC Grant in FY 2000, and will be utilizing that funding to bolster their worker re-training programs. Our agency will assist with their training requirements and began by administering a needs assessment questionnaire to their LMC. The assessment identifies critical skill areas necessary for the committee to gain or improve their functional efficiency in areas such as effective communications, planning, problem solving and group dynamics.

Using the assessment results, FMCS builds a Committee Effectiveness Training (C.E.T.) program agenda in module form that will be delivered to the ABGLMC and workforce by our Pittsburgh based field mediators.

As the economies of the world grow ever more interdependent, businesses and labor organizations must meet the demanding challenges of the workplace to achieve production efficiencies in order to remain competitive. The ABGLMC has built a model partnership between Labor, Management, the Community and Government in an effort to meet these challenges.

## **2. An Ohio School District – Ohio Education Association**

The Ohio school district endured five strikes in the past twenty years. The last negotiation resulted in a six-week strike. Prior to contract negotiations, the superintendent called FMCS requesting training in interest based (IBB) problem solving. The purpose of the training was to begin mediation of disputes prior to the contract's expiration. Because interest based bargaining is a highly collaborative style of negotiations, the mediator was skeptical that the process would succeed with these contentious parties. FMCS agreed to meet with the union, the members of the Board of Education (BOE), and school administrators.

In meeting with each group separately, the mediator learned that the parties struggled to reverse many issues already covered by the current contract and dealt with in prior negotiations. Additionally, there were significant issues that remained unresolved and would remain issues in successor contract negotiations. These issues included restructure of the health plan and employee contributions, class-size, and inclusion of the classified group in the contract.

FMCS agreed to provide interest based bargaining training, provided that the Board of Education participate in the training, and that FMCS would retain the right to re-evaluate the appropriateness of IBB for this group at the conclusion of the training.

The training went well. FMCS facilitated open, honest and focused conversation. To ensure the future success of IBB, the FMCS required that 1. all Board of Education members participate in all negotiation meetings: 2. FMCS

would aggressively police any one person or group dominating the process, and 3. parties limit the number of issues brought to the IBB bargaining table only to those significant ones that required resolution at that time.

The parties agreed. At each meeting they progressively improved their interaction with each other and engaged in problem-solving techniques. As a result of this event, FMCS received calls from other school districts and labor-management organizations in the area seeking these services.

### **3. State of Iowa / American Federation of State County and Municipal Workers**

The nation's public employers are no longer insulated from the world's economy. The public sector, including federal, state and municipal government, face productivity problems that directly effect their responsiveness and efficiency in the delivery of their services.

In one of the largest training programs ever conducted in the Midwest, FMCS custom designed a labor-management cooperative training program to improve the working relationship between the union-represented employees and their supervisors/managers. The 20,000 State employees are represented by American Federation of State County and Municipal Workers (AFSCME) Council 61, in five separate bargaining units. The parties believed that improving their day-to-day working relationships would increase productivity and service delivery

This joint labor-management cooperative training program involved training sessions for thirty separate Labor-Management Committees. At the request of the parties and following the conclusion of the training, six mediators continue to serve as facilitators during regular labor-management sessions between the parties at several locations.

### **4. An Avenue to Promote Labor-Management Cooperation**

For the past 19 years, FMCS and Northern Kentucky University have joined forces to promote labor-management cooperation in the Greater Cincinnati area through an annual daylong conference in May of each year. In FY 2000, the conference hosted over 300 participants.

The conference highlights labor-management groups that have found ways to develop sound working relationships. On-going discussions between the audience and union-management officials provides an open forum to discuss success and failures experienced by the presenters. The theme is to encourage management and union officials in the Greater Cincinnati area to explore ways to improve their working relationships and enhance their competitive edge in the modern global economy.

### **5. Kentucky Electric Steel / United Steelworkers of America (USA) /FMCS and Grievance Mediation**

Kentucky Electric Steel Inc. (KESI) is a steel mill that produces steel bar flats. The flats are used to make springs and trailer parts for the truck industry and other

miscellaneous markets. Approximately 350 employees are represented by the United Steelworkers of America Local 7054.

KESI and the union have a 30year checkered labor-management history. There were several strikes, one that closed the plant operations down for 18 months in 1985.

FMCS has been very active with their contract negotiations. We mediated several collective bargaining agreements, but the parties wanted more help with their everyday problem solving and grievance handling. The company and the union reached out to FMCS for assistance in improving their overall labor-management relationship. During their 1998 negotiations, the parties agreed to start a labor-management committee (LMC) to solve ongoing problems utilizing modern dispute resolution techniques. FMCS and the Kentucky Labor Cabinet worked together on this project. The Kentucky Labor Cabinet provided grant money to assist with the training. FMCS also gave the parties a grant for a continuous improvement program. According to company officials, the project has the potential of saving the company upwards of \$500,000.

The LMC struggled since its inception partially due to a backlog of 100 grievances. Some of the grievances were 3-4 years old. The company argued that many grievances were untimely, while the union insisted that they be resolved. FMCS was asked to mediate all 100 grievances. The Kentucky Labor Cabinet joined in this effort.

The session started 8:00 a.m. on January 11, 2001. Each grievance was reviewed and discussed. Every grievance was mediated with the overall understanding that there was no agreement until all the 100 grievances had been mediated. Once the parties had a verbal commitment on all 100 grievances, all were reduced to writing. The parties signed the handwritten document sometime that evening. Management was pleased with the settlement and the union membership supported it as well.

The FMCS' grievance mediation process will provide the foundation for a productive and effective labor-management relationship in future. □

## C. Preventive Mediation Program Data

<b>Preventive Mediation Cases</b>					
<b>Fiscal Years 1996 through 2000</b> <sup>1</sup>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Assigned <sup>2</sup>	2,605	2,404	2,776	2,891	2,782
Closed by Final Report <sup>3</sup>	2,537	2,505	2,813	2,954	2,792

<b>Education, Advocacy and Outreach Cases</b>					
<b>Fiscal Years 1996 Through 2000</b> <sup>4</sup>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Assigned <sup>2</sup>	3,580	5,472	5,797	5,518	5,504
Closed by Final Report <sup>3</sup>	3,373	5,619	5,932	5,626	5,621

<sup>1</sup> 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.

<sup>2</sup> Cases assigned to a mediator.

<sup>3</sup> Closed by a Final Report filed by the mediator.

<sup>4</sup> Education, Advocacy and Outreach involves mediator meeting with various members of the public to discuss and/or explain the processes of mediation.

# Arbitration Arbitration

## **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 users focus group, which reviews and makes recommendations to the FMCS Director on changes in Arbitration Service policies and procedures.

## **B. FMCS' Arbitrators' Symposia:**

One of the lesser-known FMCS activities is the Arbitrator Symposium. It has been held annually since the 1970's in Cleveland, Philadelphia, Chicago, and Seattle.

The Symposium gives the 1,300 FMCS Roster Arbitrators the opportunity to meet once a year to discuss and share the latest information about their profession. Sixty to eighty arbitrators, drawn from Ohio, Michigan, Indiana, Kentucky and Pennsylvania, usually attend the Ohio Symposium. The presenters are usually arbitrators themselves as well as the Director of FMCS' Arbitration



Services. Planning and moderating the event rests with the senior commissioner of the FMCS Cleveland Field Office.

The Symposium has received consistently high marks for all aspects of its activities. Those attending look forward to it because it is one of the few opportunities for them to share ideas and information.

A modest registration fee, to date under \$100.00, covers the expenses. Attendees' pay for their rooms and speakers only receive a free registration to the Symposium.

□

### C. Arbitration Services Program Data

Number of Panel Requests, Panels Submitted and Arbitrator Appointments Fiscal Years 1996 Through 2000

<b>Activity</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Panel Requests	25,827	27,385	17,357	17,514	16,976
Panels Issued <sup>1</sup>	30,697	30,066	31,295	19,062	19,485
Arbitrators Appointed	11,593	10,102	10,391	8,984	9,561

<b>Activity Charged For</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Travel Days	.43	.40	.34	.41	.51
Hearing Days	1.13	1.10	1.23	1.20	1.18
Study Days	2.43	2.33	2.30	2.38	2.58
<b>Total</b>	<b>3.98</b>	<b>3.86</b>	<b>3.74</b>	<b>4.02</b>	<b>4.27</b>

<b>Charges</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Per Diem Rate	570.67	591.00	598.50	641.49	672.12
Amount of Fee	2,327.94	2,421.00	2,296.46	2,592.00	2863.49
Amount of Expenses	245.80	253.00	252.00	248.92	321.67
<b>Total Charged</b>	<b>2,537.73</b>	<b>2,674.00</b>	<b>2,548.46</b>	<b>2,840.92</b>	<b>3185.16</b>

<sup>1</sup> 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.

<b>Total Number of Issues And Specific Issues</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Total</b>	<b>3,961</b>	<b>2,034</b>	<b>2,132</b>	<b>2,132</b>	<b>2,723</b>
<b>General Issues</b>	<b>846</b>	<b>779</b>	<b>409</b>	<b>391</b>	<b>585</b>
Overtime Other Than Pay*					
Distribution of Overtime	73	63	36	30	48
Compulsory Overtime	12	12	4	8	12
Other Overtime	14	20	17	15	18
<b>Seniority</b>					
Promotion & Upgrading	143	108	49	42	86
Layoff Bumping & Recall	130	129	52	48	65
Transfer	44	45	22	13	16
Other Seniority	65	63	31	33	38
Union Officers**	15	16	6	4	12
Strike & Lockout	4	5	2	2	4
Working Conditions ***	21	35	15	19	35
Discrimination	22	28	12	21	27
Management Rights	81	77	37	49	75
Scheduling of Work	82	40	49	45	50
Work Assignments	140	138	77	62	99
<b>Economic Wage Rates &amp; Pay Issues</b>	<b>391</b>	<b>409</b>	<b>231</b>	<b>239</b>	<b>298</b>
Wage Issues	53	69	39	46	32
Rate of Pay	99	91	48	65	75
Severance Pay	3	13	7	6	5
Reporting, Call- in & Call-back Pay	12	13	6	10	12
Holidays & Holiday Pay	42	40	34	15	33
Vacations & Vacation Pay	70	74	36	31	54
Incentive Rates & Standards	18	15	12	17	25
Overtime Pay	94	94	49	49	62
<b>Fringe Benefits Issues</b>	<b>131</b>	<b>110</b>	<b>81</b>	<b>63</b>	<b>100</b>
Health & Welfare	63	40	35	27	58
Pensions	14	18	15	6	14
Other Fringe Issues	54	52	31	30	28
<b>Discharge &amp; Disciplinary Issues</b>	<b>1,916</b>	<b>1,941</b>	<b>1,032</b>	<b>1004</b>	<b>1203</b>
<b>Technical Issues</b>	<b>189</b>	<b>163</b>	<b>79</b>	<b>102</b>	<b>139</b>
Job Posting & Bidding	64	58	38	36	52
Job Evaluation	38	30	18	24	28
Job Classification	87	75	23	42	59
<b>Scope of Agreement</b>	<b>122</b>	<b>120</b>	<b>78</b>	<b>61</b>	<b>74</b>
Subcontracting	87	79	54	40	48
Jurisdictional Disputes	14	25	15	10	16
Foreman, Supervision, etc.	17	13	5	7	5
Mergers, Consolidations, Accretion, Other Plants	4	3	4	4	5

\* 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.

<b>Arbitrability of Grievances</b>	<b>178</b>	<b>99</b>	<b>81</b>	<b>146</b>	<b>193</b>
Procedural	46	29	43	98	120
Substantive	108	59	29	35	42
Procedural & Substantive	24	11	9	13	24
Other Arbitrability Questions	0	0	0	0	7
<b>Not Elsewhere Classified</b>	<b>188</b>	<b>166</b>	<b>43</b>	<b>126</b>	<b>131</b>

---

<b>Total Number of Cases</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>State &amp; Region</b>					

---

<b>Mountain</b>	<b>175</b>	<b>174</b>	<b>97</b>	<b>142</b>	<b>85</b>
Arizona	25	21	8	9	15
Colorado	61	66	30	47	28
Idaho	11	10	4	6	3
Montana	14	20	14	8	11
Nevada	16	11	13	30	12
New Mexico	30	34	18	35	11
Utah	9	11	7	5	4
Wyoming	9	1	3	2	1

<b>Pacific</b>	<b>290</b>	<b>269</b>	<b>150</b>	<b>153</b>	<b>128</b>
Alaska	9	13	6	8	6
California	174	138	56	86	59
Hawaii	5	4	0	2	2
Oregon	22	37	34	17	32
Washington	80	77	54	40	29

<b>Miscellaneous</b>	<b>34</b>	<b>7</b>	<b>7</b>	<b>9</b>	<b>16</b>
Philippines	0	0	0	0	0
Puerto Rico	6	3	2	2	4
Virgin Islands	14	3	1	4	4
Guam	2	0	0	0	0
Others	12	1	4	3	8

<b>New England</b>	<b>82</b>	<b>54</b>	<b>34</b>	<b>20</b>	<b>29</b>
Connecticut	9	10	4	5	10
Maine	13	6	10	2	2
Massachusetts	35	23	11	9	11
New Hampshire	6	3	3	2	0
Rhode Island	2	5	1	1	0
Vermont	17	7	5	1	6

<b>Middle Atlantic</b>	<b>475</b>	<b>457</b>	<b>567</b>	<b>233</b>	<b>289</b>
New Jersey	51	39	20	31	22
New York	148	178	81	95	111
Pennsylvania	276	240	233	107	156

<b>South Atlantic</b>	<b>597</b>	<b>591</b>	<b>288</b>	<b>285</b>	<b>349</b>
Delaware	3	3	5	4	6
District of Columbia	65	50	20	53	31
Florida	169	170	98	55	92
Georgia	110	102	35	25	51
Maryland	80	79	32	48	35
North Carolina	44	41	17	7	21
South Carolina	11	18	15	8	15

---

<b>Total Number of Cases</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>State &amp; Region</b>					
Virginia	61	55	32	47	56
West Virginia	54	73	34	38	42
<b>East North Central</b>	<b>1,474</b>	<b>1,219</b>	<b>790</b>	<b>673</b>	<b>866</b>
Illinois	358	318	127	207	191
Indiana	200	156	101	71	67
Michigan	303	250	159	187	190
Ohio	512	381	343	154	338
Wisconsin	101	114	60	54	80
<b>West North Central</b>	<b>498</b>	<b>476</b>	<b>408</b>	<b>222</b>	<b>316</b>
Iowa	99	99	88	49	61
Kansas	59	57	36	27	32
Minnesota	126	111	103	40	90
Missouri	180	170	148	85	101
Nebraska	16	22	19	16	17
North Dakota	13	5	10	1	5
South Dakota	5	12	4	4	10
<b>East South Central</b>	<b>370</b>	<b>316</b>	<b>191</b>	<b>118</b>	<b>236</b>
Alabama	98	111	57	23	53
Kentucky	108	69	49	35	70
Mississippi	29	38	16	9	17
Tennessee	135	98	69	51	96
<b>West South Central</b>	<b>420</b>	<b>393</b>	<b>207</b>	<b>110</b>	<b>227</b>
Arkansas	48	64	30	11	35
Louisiana	61	36	21	9	28
Oklahoma	88	77	69	26	68
Texas	223	216	87	64	96
<b>Totals</b>	<b>4,515</b>	<b>3,956</b>	<b>2,506</b>	<b>1,965</b>	<b>2507</b>

---

# Grants Grants

## A. Grants Program:

**F**MCS 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.

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 employee unions on a regular basis, and are effective vehicles for increasing productivity, improving product quality and resolving workplace issues. In recent years, they have addressed issues such as health care cost containment solutions, competitiveness of a region’s hotel industry, economic development, and public sector quality management.

In Fiscal Year 2000, the 20 grants recipients (15 new and 5 continuation) were selected from 63 applicants requesting more than \$7 million in funding. An independent FMCS Grants Review Board, chaired by the Director of Labor-Management Grants, does preliminary scoring of each application. The winners represented approximately 1.6 million employees in both the public and private sector. Final selection is made by the program director.

FMCS conducted the tenth biennial National Labor-Management Conference in Chicago in April 2000. It attracted 2,400 individuals seeking information on successful labor-management cooperation and advice on barriers to overcome in achieving success.

A 1998 the study of the FMCS Labor-Management Cooperation Program, conducted by the Tennessee Center for Labor-Management Relations determined that 71.4% of the Labor-Management Committees established through the FMCS grants program continued to operate with independent funding after the grant period. Researchers analyzed data from the case files of 200 labor-management committees established through FMCS grants and concluded that as many as 20-million workers were directly or indirectly affected by the achievements of the 200 Labor-Management Committees created with FMCS grants. □

## **B. Fiscal Year 2000 Grant Funding Summary**

### **Industry Committees**

National Interfaith Committee for Worker Justice/UFCW/AFSCME/SEIU (Chicago, IL)

\$125,000 to establish a national committee dealing with labor-management relations in religious health care settings.

Sheet Metal Industry Advancement Committee/Sheet Metal Workers (Philadelphia, PA)

\$75,000 to expand cooperative efforts to increase productivity and reduce costs.

COUNT Program (Towson, MD)

\$100,000 to promote Best Value Contracting (BVC) in the construction industry.

IBEW Local 99/ Various Electrical Contractors (Cranston, RI)

\$98,000 to promote interest in electrical construction careers among young persons and minorities to deal with skilled worker shortages.

Centralized Safety Training Data Base, Inc. (Concord, CA)

\$100,000 to expand the concept of a unified and centralized safety training database for construction workers throughout the State of California.

Laborers-AGC Education and Training Fund (Pomfret Center, CT)

\$125,000 to employ the Technology Assisted Group Solutions system in joint development of a strategic plan.

National Alliance for Fair Contracting

\$75,000 to expand, on nationwide basis, the efforts to promote fair contracting practices in public construction projects.

### **Plant Committees**

Atlantic Baking Group/BCTWU/IUOE (Pittsburgh, PA)

\$65,000 to improve plant competitiveness by enhancing the involvement of workers in making decisions that affect their working lives.

Kentucky Electric Steel/USWA Local 7054 (Ashland, KY)

\$43,450 to expand a continuous improvement system to lower costs and increase productivity.

Columbia Gas of PA and MD/UWUA/USWA (Pittsburgh, PA)

\$64,350 to jointly implement qualification standards for individuals performing covered tasks on pipeline facilities.

### **Area Committees**

The Area Labor-Management Cooperative Council of East Central Ohio (Zanesville, OH)

\$100,000 to create an Appalachian Center for Collaborative and Engaged Learning to help reduce the area's skilled worker shortage.



## **Public Sector Committees**

Riverside County/LIUNA/SEIU (Riverside, CA)

\$125,000 to develop methods to attract and retain staff to service information technology needs.

University of Michigan/Michigan State/AFSCME (Ann Arbor, MI)

\$44,181 to decrease conflict inherent in the grievance process by improving problem solving skills and the grievance process itself.

CSEA/County Nursing Facilities of New York (Albany, NY)

\$73,027 to explore innovative approaches to the recruitment, retention and staffing problems faced by public nursing homes in New York State.

Public Employment Relations Board/IA State Education Assn./IA Assn. Of School Boards (Des Moines, IA)

\$108,381 to form statewide public education committee to coordinate interest-based problem solving and negotiation skills training in at least ten school districts.

South Colonie School District/CSEA-NEA (Albany, NY)

\$20,176 to develop a grievance mediation process involving internal mediators.

Detroit Public Schools/AFT and other unions (Detroit, MI)

\$111,987 to establish a district-wide committee that will support department and school based problem-solving teams and committees.



#### A. Purpose and Course Offering:

**E**ducation 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, 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 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. Federal mediators are the largest, most experienced cadre of professional conflict resolution managers.

The FMCS Institute offers a variety of skills training and education in conflict management and resolution, aimed at improving relationships between labor and management. 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. The following course offerings were held in East, West and Central locations in FY 2000.

- **Labor Arbitrator Training**-comprehensive skills training and education for experienced labor-management practitioners desiring to become labor arbitrators. A team of FMCS mediators taught the course with members of the National Academy of Arbitrators. This training provides FMCS a continued cadre of trained, experience dispute resolution professionals prepared to provide arbitration services to the nation's collective bargaining community
- **Cross Cultural Competencies**-The global marketplace, technological innovations and changing values have made the workplace increasingly more competitive, demanding, stressful and complex. Add to this the rapidly changing demographics reflecting more women and immigrant workers, and conflict in the workplace becomes inevitable. With the right

approach, diversity can be harnessed to enhance innovation, productivity and employee morale.

- **Negotiations...A 21<sup>st</sup> Century Tool for Success**-A dynamic and interactive negotiation workshop focused on best practices and techniques needed for the 21<sup>st</sup> century contract negotiations, problem solving, grievance handling, EEO matters and labor-management disputes.
- **Facilitation Skills Training**-Provides participants the tools and techniques to conduct successful meetings and guide creative problem solving, conflict management and negotiations.
- **Mediation Skills for Workplace Disputes**-Dealing effectively with conflict in the workplace has become a critical function in public and private organizations. Employers and employees are increasingly turning toward mediation as a way of resolving workplace related conflict to avoid costly and time-consuming litigation.
- **Facilitating Multi-Party Disputes**-The use of third parties in mediating and facilitating multi-party disputes such as public policy, regulatory and environmental issues is becoming increasingly common. Since the early 1980s, FMCS has facilitated dozens of negotiated rulemakings, environmental and other multi-party issues, and has become the leader in the field of mediating /facilitating multi-party disputes and negotiated rulemaking. Extending this knowledge to others fulfills an agency mission to develop the art, science and practice of conflict resolution.



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. Eleven training courses are planned for FY 2001. □

# ADR\*/ International

\* Alternative Dispute Resolution

## A. Services Provided:

Authorized by the Administrative Dispute Resolution and Negotiated Rulemaking Acts of 1990, both permanently reauthorized in 1996, FMCS offers a range of Alternative Dispute Resolution (ADR) 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 provide 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.

## ADR SERVICES TO CLIENTS

**Consultation:** Initial assessment of a client agency's needs.

**System Design:** Analysis of existing mechanisms and design of appropriate methods and strategies for implementing ADR.

**Education, Training, Mentoring:** Programs for educating the general user of ADR Services, training in mediation skills for potential mediators, and actual mentoring of mediator trainees through active cases.

**Mediation/Facilitation and Convening Services:** Available on contract to agencies to provide mediation, facilitation and convening services for all types of disputes, depending on FMCS resource availability.

**Evaluation and Follow-up:** Assessment of ADR programs and continuing involvement to improve ADR initiatives.

## **1. Domestic Alternative Dispute Resolution (ADR)**

FMCS concluded nearly 800 ADR cases for numerous governmental agencies in fiscal year 2000, providing consultation, systems design, training, mediation or facilitation, mentoring/co-mediation, as well as follow-up and program evaluation. FMCS continued its delivery of mediation services under two interagency agreements with the Equal Employment Opportunity Commission (EEOC), one agreement for "external" complaints from citizens filing discrimination charges against their employer or an organization, the other agreement was for "internal" complaints filed by EEOC employees against the Commission itself. Due to EEOC budgetary constraints, FMCS handled a limited number of these cases in FY 2000, in contrast to the 160 cases mediated in FY 1999. For Fiscal Year 2001, another national agreement was signed. The United States Postal Service "Redress Program" had FMCS mediate 300 cases in FY 2000.

FMCS mediators continue to mediate work place and discrimination complaints for numerous federal agencies including: Departments of Interior, Agriculture, Navy Immigration & Naturalization Service, Equal Employment Opportunity Commission, Office of Personnel Management, and the Peace Corps. We have had an exclusive agreement with Health & Human Services (HHS) since 1980 to mediate age discrimination complaints under the Age Discrimination Act of 1975, for federally funded institutions. Over 125 cases, coordinated through Departments of Labor, Agriculture, Education, Housing of Urban Development (HUD), HHS and Veterans Affairs were mediated during FY 2000.

## **2. U.S. Department of Labor-Solicitor's Office Project**

Early in fiscal year 2000, the Department of Labor (DOL) contacted the FMCS National Office requesting ADR Training for the DOL'S 400 plus Solicitors. Solicitors are the Department's attorneys responsible for the Agency's enforcement litigation pertaining to approximately 130 employment law statutes. The program design was referred to the DOL's Chicago Regional Solicitor's Office.

The goals for the program, as defined by the DOL, were: (1) to provide an overview of ADR legislative history, (2) to define various ADR techniques with a focus on mediation, including distinguishing mediation from early neutral evaluation and, (3) to offer Solicitor's Office Attorneys a practical experience as litigation advocates in the mediation process. Following several planning sessions, a prototype was developed to meet these goals. An additional mediation and advocacy ethics component was added later. An initial full day pilot in Lake Geneva, Wisconsin led to an expansion of the program to four additional regional conferences requiring the assistance of additional FMCS mediators.

The conference was devoted to realistic mediation simulations involving employment law enforced by the Department of Labor including OSHA, FLSA, ERISA, OFCCP, and MSHA. Following each session, participating solicitors

reported that the time spent in mediation was proved to be a valuable learning experience as DOL Solicitors prepare for judicial requirements to use alternative dispute resolution. The opportunity also proved to be a valuable learning experience for FMCS commissioners highlighting the complex and important enforcement responsibilities of the Department of Labor as well as the diverse and expanding roles of FMCS mediators.

### **3. Bureau of Public Debt-U.S. Treasury / National Treasury Employees Union**

The FMCS Parkersburg, West Virginia, field office had a long and successful association with the U.S. Treasury's Bureau of Public Debt (BPD) and the NTEU. The relationship began decades ago when Congress allowed Federal employees to organize and join unions.

The relationship had not expanded into the Equal Employment Opportunity arena until FMCS West Virginia commissioner contacted BPD two years ago, and explained FMCS ability to conduct EEO/ADR mediation sessions. So far in FY 2001, FMCS has completed four (4) EEO/ADR cases and FMCS has earned the reputation as the sole provider for this service at BPD. The mediation of EEO disputes saves the Treasury Bureau time and money, as well as serving management, labor and employees by properly handling an EEO complaint in an efficient and timely manner

### **4. 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 five major multi-party negotiations during FY 2000 and is currently engaged in three new multi-party negotiations thus far in FY 2001. It is certain that the use of negotiated rulemaking and other highly interactive negotiating models will be a constructive way to diminish litigation and enhance relationships with constituencies. A program of note, designed under HUD's Hope VI project, involves a community revitalization effort, consulting with residents on issues of design, safety, qualifications of returning residents, job training and education.

FMCS provided training in the areas of communication, mediation, problem solving and meeting planning. The Service also provided extensive problem solving workshops at three sites under this program.

#### **5. U. S. Government Regulatory Negotiations:**

FMCS was engaged in regulatory negotiations for the following agencies in FY 2000:

U. S. Department of Labor, to deal with pension fund issues;

Bureau of Indian Affairs and the Department of Transportation, to deal with highway right-of-way and construction on Native American reservation lands;

Department of Health and Human Services' Health Care Financing Administration, to establish a structure for ambulance fees; and

Department of Housing and Urban Development, to create a Housing Operating Fund.

#### **6. Non-federal ADR:**

FMCS also provides assistance to state and local governments and their agencies, as part of its reimbursable ADR services. Frequently, when FMCS develops a relationship with local governments in one area of service, it leads to a proliferation of activities within that level of government, with other nearby local governments, and with non-governmental organizations in the area who become aware of FMCS.

#### **7. International Dispute Resolution, Education and Training:**

In Fiscal Year 1998, FMCS consolidated the offices of ADR Services and International Affairs into ADR/International Services, combining limited resources to allow greater focus on each area, and to establish a third area of service: International ADR.

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 developed 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 2000 including Indonesia, South American countries, and Panama. We also continue to provide labor attaché training for Foreign Service officers working for U.S. Department of State overseas.

**(a). Indonesia**

An FMCS mediator worked on an extensive project in partnership with a non-governmental agency to strengthen Indonesia's capacity to manage inter-group conflicts by: (1) addressing underlying causes of conflict; and (2) reflecting the needs, values and interests of the conflicting parties.

**(b). South American Countries:**

The Organization of American States (OAS) has provided South American countries with a grant to train mediators in the MERCOSUR (Southern Cone Common Market- Argentina, Brazil, Chile, Uruguay, and Paraguay) nations. In FY 2000, FMCS has conducted training programs in both Argentina and Brazil. Plans for the continuation of this training for the other nations in the region are under way.

The International Labor Organization (ILO) funded a one-week mediation-training program for Brazilian Ministry prosecutors in employment cases. The program offered an overview of dispute resolution techniques and practical exercises to resolve employment law disputes.

**(c). Panama**

An ongoing relationship with the Republic of Panama was continued in FY 2000. FMCS furnished a variety of services to the United States Panama Canal Commission, the Panama Canal Authority (ACP) and the Republic of Panama in preparation for the December 1999 transfer of the Canal and post-transition issues. Federal mediators conducted extensive labor-management and collective bargaining training in preparation for the hand over.

The Agency completed an extensive system design project for the Republic of Panama funded by the Agency for International Development. This project provided for the establishment of a sustainable and independent mediation system for the Panama Canal as well as other labor-management disputes in Panama.

**(d). Labor Attaché Training:**

FMCS continues its long-standing service for the U. S. Department of State, providing briefings and training for Foreign Service officers assigned overseas to serve as United States labor attachés, and for government, business and labor leaders from other countries who visit the United States.



# FMCS 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. □

# Legislative Legislative Authority

**T**he 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.

**Executive Order 12871, dated October 1, 1993**, established the National Partnership Council in the federal sector to foster a new form of labor-management relations throughout the executive branch and promote the principles and recommendations of the National Performance Review. The

Director of FMCS serves as a member of this Council. The goal is to foster good government through the formation of labor-management partnerships.

**Executive Order 13062, dated September 29, 1997**, extends the National Partnership Council in the federal sector for two more years and continues the FMCS role.

**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. □

2000finaldraft 4-13-01