

*How Can We Help You?*

**FMCS**

**Federal Mediation & Conciliation Service**



**2005 Annual Report**



**This report details the activities of this agency for Fiscal Year 2005.**

In this first decade of the 21<sup>st</sup> century, the Federal Mediation and Conciliation Service (FMCS) is positioned to play a key role in historic changes affecting our workplaces and our economy. With economic globalization has come the need for a flexible, mobile workforce. Free trade has engendered a new set of international competitors for U.S. companies. Health care and pension costs continue to rise, placing a significant economic burden on employers and employees. This year, the labor movement faced its own internal turmoil when the Service Employees International Union, the United Food and Commercial Workers, the International Brotherhood of Teamsters, and Laborers' International Union of North America disaffiliated from the AFL-CIO.

FMCS delivers conflict resolution assistance to the nation's unionized workplaces. Helping employers and unions avoid work stoppages and their potentially devastating effects on the local, regional or even national economy through mediation services constitutes the core work and focus of FMCS.

In FY 2005, the Employment Policy Foundation, a nonprofit, nonpartisan public policy research foundation, found that FMCS mediation has a significant impact on American companies and workers. According to the study, mediation saved U.S. businesses and workers approximately \$9 billion between 1999 and 2004.

EPF also estimated that, without FMCS intervention, the costs of work stoppages to the U.S. economy over a six year period would have been 71 percent greater--\$21.7 billion instead of \$12.7 billion--and would have impacted 76 percent more workers, 4 million instead of 1.85 million. Without FMCS mediation, the number of work stoppages in an average year would be 61 percent

FMCS prevented 1,265 work stoppages over the six-year period and saved employees, employers and others doing business with them approximately \$1.3 billion annually in wages and profits that otherwise would be lost.

The study also shows that timing of FMCS intervention has significance. If mediation starts before the contract expires, work stoppage duration can be reduced by 46 percent. EPF estimated that this reduction in work stoppages resulted in an average annual benefit of \$207 million.

FMCS recognizes that there has been a significant reduction in the number of work stoppages every year – a 90 percent reduction since 1970. However, work stoppages in FY 2004 alone had a significant impact on American companies and workers. Despite the lowest strike rate in decades, the 273 work stoppages in 2004 had a direct impact on wages and company profits, causing \$954,527,000 in lost wages and \$147,948,000 in lost company profits. The same work stoppages had an indirect impact - \$2 billion in lost wages, and caused 338,643 lost jobs in ancillary industries.

Nationwide in FY 2005, field mediators were involved in about 5000 collective bargaining disputes. In 87% of those cases, FMCS assisted the parties in achieving collective bargaining settlements. In addition, we continue to train the labor-management community on methods designed to improve labor-management relations through training programs. FMCS provided relationship development and training programs 2257 times during this fiscal year. Our employment mediation services to federal, state and local governments continue in wide demand as more agencies have turned to FMCS for alternatives to courtroom litigation. FMCS mediated 1446 employment-related disputes, and mediated 1675 grievance cases arising out of current collective bargaining agreements.

As technology, global competition and other economic forces continue to transform American workplaces, the Federal Mediation and Conciliation Service is keeping pace in this period of historic change so that we can continue to provide state-of-the-art assistance to employers and employees as they confront the challenges of modern labor-management relations.

Scot Beckenbaugh, Acting Director

## **A. Agency Mission**

For fifty-eight years, the Federal Mediation and Conciliation Service (FMCS) has carried out its mission of preserving and promoting labor-management peace. The FMCS was created by Congress as an independent agency by the Labor-Management Relations Act of 1947. Highly trained mediators provide conflict resolution services to our nation's employers and their unionized employees with the goal of preventing or minimizing interruptions to the free flow of commerce growing out of labor disputes and improving labor-management relations. The core activity of the Service is collective bargaining mediation. It is a voluntary process in which mediators serve as third-party neutrals to facilitate the settlement of issues in the negotiation of collective bargaining agreements.

### **1. Collective Bargaining Mediation: Initial and Successor Contract Negotiations**

The Agency provides collective bargaining mediation for initial contract negotiations, which take place between an employer and a newly certified or recognized union representing its employees, and for negotiations for successor collective bargaining agreements. Mediation services are provided not only to the private sector, but also to the public sector, including federal agencies, and state and local governments. Mediators have no authority to impose settlements; their goal is to assist the parties in working through the issues and to reach a mutually acceptable agreement. Through collective bargaining mediation, FMCS helps avert or minimize the impact of work stoppages on the U.S. economy.

In FY 2005, FMCS mediators were actively involved in about 5000<sup>1</sup> collective bargaining contract negotiations in every major industry and service throughout the United States.

### **2. Grievance Mediation**

Grievance mediation involves the use of a neutral party to mediate grievances arising during the life of a contract. This service is provided to the private and public sectors. Of all contracts reached in FY 2005, 19% were of more than 3 years duration. Longer contract terms raise the specter of increased grievances. Left unresolved, the grievances become sources of contention between the parties. In FY 2005, FMCS mediated 1675 grievance mediation cases.

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<sup>1</sup> FMCS mediators had at least one meeting with one of the parties in about 5000 cases in FY 2005. This includes cases that were closed in FY 2005 and cases that remained open and carried over to the next fiscal year.

### **3. Relationship Development and Training Programs**

Although our primary focus continues to be resolution of conflict as it arises, prevention of conflict at the outset is also an important goal. The agency's relationship-building training programs are designed to improve the labor-management relationship and to develop approaches toward collective bargaining that prevent friction or disputes from arising. These kinds of training programs improve the quality of the parties' relationship and make mediation more effective.

In addition to our training programs, field mediators continuously participate in outreach activities by lecturing at universities, seminars and conferences, and meet with local leaders in the collective bargaining community.

### **4. Arbitration Services**

National labor policy allows for the settlement of contractual disputes by arbitration. When conflicts arise over the interpretation or implementation of a contract provision, FMCS assists through voluntary arbitration.

### **5. FMCS Institute**

The FMCS Institute for Conflict Management provides training and education to labor and management practitioners in a classroom format. Institute classroom training, provided away from the workplace, maximizes communication among all the participants. The Institute offers training in practical conflict resolution skills, collective bargaining, arbitrator and arbitration skills-building, facilitation process skills, multi-party facilitation, cultural diversity, mediation skills for the workplace, and workplace violence prevention. The Institute runs as a reimbursable program and is funded by fees received for delivery of training.

## **6. Employment Mediation**

Outside the collective bargaining arena, FMCS provides employment mediation services to the federal sector and to state and local governments. These mediation services include resolution of employment-related disputes. The Administrative Dispute Resolution Act of 1990, the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996 expanded FMCS's role as a provider of these services. The legislative design was to expand the use of alternative dispute resolution throughout the federal government, reduce litigation costs, and promote better government decision-making. FMCS provides consultation, training, dispute resolution systems design and facilitation services to many federal, state and local agencies. Employment mediation is also provided to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes. In FY 2005, FMCS mediated 1446 employment cases.

## **7. International Training and Exchange**

Beyond the nation's borders, FMCS plays an important role in promoting collective bargaining and conflict resolution in other countries. Our international work is a small, but integral part of our services. Emerging democracies often struggle to compete effectively in a globally integrated marketplace. Part of their struggle includes the implementation of an effective labor relations system. Other nations and foreign organizations have sought our assistance in designing systems that resolve and prevent industrial conflict where a formal system has not been developed to manage it. International training programs are also a knowledge-sharing experience: FMCS mediators are "cross-trained" as they gain familiarity with complex issues affecting the global economy. As a result, the FMCS is more effective in assisting labor and management in resolving disputes with international implications.

<b>PROGRAM SERVICES</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>1. COLLECTIVE BARGAINING MEDIATION</b>				
Assigned Cases <sup>2</sup>	19,303	19,516	18,493 <sup>3</sup>	17,102
Private Sector	17,266	17,568	16,738	15,489
Public Sector (State and municipal)	NA	1,329	1,295	1,160
Federal Sector	NA	619	460	346
Mediated Cases <sup>4</sup>	6,757	6,640	4,748 <sup>5</sup>	5,215
Private Sector	NA	4,912	3,274	3,847
Public Sector (State and Municipal)	NA	1,218	1,077	1,086
Federal Sector	NA	510	397	256
Activity Rate <sup>6</sup>	35%	34%	26%	30%
Number of Mediated Cases Settled	5,128	4,988	3,768	3,557
Percentage of Mediated Cases Settled through FMCS <sup>7</sup>	75%	74%	79%	87%
Activity Rate in Significant Cases <sup>8</sup>	52%	50%	51%	47%
<b>2. GRIEVANCE MEDIATION</b>				
Assigned Cases	1,011	1,419	1,639	1,705
Mediated Cases	989	1,407	1,544	1,675
Private Sector	NA	NA	1,168	1,334
Public Sector	NA	NA	205	270
Federal Sector	NA	NA	171	141
Number of GM cases settled	NA	NA	1,264	1,212
Percentage of Cases Settled Through FMCS <sup>9</sup>	NA	NA	82%	72%
<b>3. RELATIONSHIP-DEVELOPMENT AND TRAINING</b>				
Number of Training Classes Provided	2,618	2,594	2,281	2,257
Private Sector	1,747	1,693	1,565	1,315
Public Sector (State and Municipal)	871	901	599	749
Federal Sector		213	117	117
Percent of Training Surveyed	NA	NA	NA	Seeking OMB approval under PRA
<b>4. EMPLOYMENT MEDIATION</b>				
Number of Employment Mediation Cases <sup>10</sup>	1,198	1,310	1,596	1,446
Federal Sector	539	525	1,417	1,202
Public Sector (State and Municipal)	31	8	5	47
Private	430	628	174	79
Percent of EM Cases Settled	NA	59%	45%	48%
<b>5. OUTREACH</b>				
Number of Outreach cases <sup>11</sup>	5,800	5,392	4,741	3,513

<sup>2</sup> Section 8(d) of the Act requires that any employer or labor organization provide notice to this Agency 60 days prior to contract expiration. This is known as an "F-7" notice. All F-7 notices where the bargaining unit is greater than 15 are assigned to a mediator. If the bargaining unit size is less than 15, the case is unassigned. However, all newly certified units (certified by the National Labor Relations Board or the Federal Labor Relations Authority) are assigned to a mediator regardless of the unit size.

<sup>3</sup> This number is less than it was in prior years because, in FY 2004, the Agency determined that it was no longer appropriate to group collective bargaining mediation cases with grievance mediation cases. In prior years, this number included assigned grievance mediation cases and assigned collective bargaining mediation cases. These cases are sufficiently different as to warrant separation.

<sup>4</sup> Mediated cases represent the number of cases in the FY where mediators have become active in the negotiations. In prior fiscal years, the Agency defined "active" as any case closed in the FY where the offer of mediation was accepted by the parties. The Agency "activity rate" has now been changed to reflect mediated cases as a percentage of closed cases rather than assigned cases.

<sup>5</sup> As with assigned cases, this number is less than it was in prior years because the Agency determined that it was no longer appropriate to group collective bargaining mediation cases with grievance mediation cases. In prior years, this number included assigned grievance mediation cases and assigned collective bargaining mediation cases.

<sup>6</sup> Defined as the number of closed cases where there was at least one meeting divided by the number of total closed assignments.

<sup>7</sup> Defined as the number of active cases settled divided by the total number of active cases.

<sup>8</sup> Significant cases are defined as situations where the bargaining unit exceeds 1,000 or where the case will have a significant impact on interstate commerce (i.e. utilities or defense contracting work).

<sup>9</sup> Defined as the number of GM cases settled and closed within the fiscal year divided by the number of closed GM assignments (1675).

<sup>10</sup> This number includes EM cases, plus dispute design cases (24), regulatory cases (8) and cases falling into the category of 'other' (70). These case types are included in the EM category because they were included in prior fiscal years.

<sup>11</sup> In order to increase their visibility in the labor-management community, FMCS requires all mediators to engage in outreach efforts, including meetings with labor and management representatives within their territory or jurisdiction. These kinds of activities include attendance at conferences, meeting with local and state officials to offer FMCS services, meeting union and company representatives at places of business, and lectures.

**Program Services**

<b>Work Stoppage Information</b>					
Fiscal Years 2001 Through 2005	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Number of Work Stoppages Ending in FY					273
Number of Work Stoppages Occurring Within FY					300
Closed cases with work stoppages in FY	445	327	289	273	226
Average duration of work stoppages in closed cases (number of days)	40.7	53.7	60.5	76.7	43



## Arbitration Services Program Data

Activity	2001	2002	2003	2004	2005
Panel Requests	16,594	17,282	17,332	16,382	15,370
Panels Issued <sup>20</sup>	18,275	18,885	19,023	18,033	16,787
Arbitrators Appointed	8,706	8,335	8,595	7,875	7,592

Activity Charged For	2001	2002	2003	2004	2005
Travel Days	.43	.45	.48	.45	.46
Hearing Days	1.15	1.09	1.15	1.09	1.15
Study Days	2.40	2.44	2.35	2.37	2.40
<b>Total</b>	<b>3.98</b>	<b>3.98</b>	<b>3.98</b>	<b>3.91</b>	<b>4.01</b>

Charges	2001	2002	2003	2004	2005
Per Diem Rate	693.12	720.75	763.87	801.59	835.62
Amount of Fee	2761.04	2884.46	3047.54	3197.37	3,396.29
Amount of Expenses	341.92	318.03	364.32	344.25	336.17
<b>Total Charged</b>	<b>3102.96</b>	<b>3202.49</b>	<b>3411.86</b>	<b>3541.62</b>	<b>3732.46</b>

<sup>20</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><u>Arbitration Services Program Data</u></b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b><i>Total Number of Issues</i></b>	<b>1,902</b>	<b>1,989</b>	<b>2,314</b>	<b>2,581</b>	<b>2,629</b>
<b><i>Specific Issues</i></b>					
<b>General Issues</b>	<b>434</b>	<b>463</b>	<b>506</b>	<b>417</b>	<b>308</b>
Overtime Other Than Pay*					
Distribution of Overtime	34	26	35	41	2
Compulsory Overtime	8	12	9	3	2
Other Overtime	10	10	12	1	4
<b>Seniority</b>					
Promotion & Upgrading	54	52	63	42	26
Layoff Bumping & Recall	46	48	71	69	57
Transfer	17	21	14	9	0
Other Seniority	25	25	35	15	8
Union Officers**	9	14	13	21	0
Strike & Lockout	3	2	1	2	1
Working Conditions***	35	29	19	20	12
Discrimination	19	24	17	18	18
Management Rights	51	63	71	61	72
Scheduling of Work	43	67	47	61	62
Work Assignments	80	70	99	54	44
<b>Economic Wage Rates &amp; Pay Issues</b>	<b>227</b>	<b>229</b>	<b>233</b>	<b>209</b>	<b>167</b>
Wage Issues	29	36	42	95	134
Rate of Pay	53	60	60	33	7
Severance Pay	6	8	5	1	2
Reporting, Call- in & Call-back Pay	13	7	10	6	0
Holidays & Holiday Pay	31	26	21	14	8
Vacations & Vacation Pay	29	39	27	26	0
Incentive Rates & Standards	13	7	15	9	3
Overtime Pay	53	46	53	25	13
<b>Fringe Benefits Issues</b>	<b>69</b>	<b>99</b>	<b>112</b>	<b>104</b>	<b>100</b>
Health & Welfare	29	58	61	46	47
Pensions	11	8	11	8	7
Other Fringe Issues	29	33	40	50	46
<b>Discharge &amp; Disciplinary Issues</b>	<b>849</b>	<b>947</b>	<b>1091</b>	<b>996</b>	<b>937</b>
<b>Technical Issues</b>	<b>81</b>	<b>86</b>	<b>97</b>	<b>69</b>	<b>47</b>
Job Posting & Bidding	32	38	43	39	43
Job Evaluation	18	11	21	14	1
Job Classification	31	37	33	16	3

\* Overtime pay issues included under this category are 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><u>Arbitration Services Program Data</u></b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>Scope of Agreement</b>	<b>45</b>	<b>65</b>	<b>53</b>	<b>58</b>	<b>50</b>
Subcontracting	29	41	36	44	42
Jurisdictional Disputes	8	14	5	7	7
Foreman, Supervision, etc.	5	8	9	7	1
Mergers, Consolidations, Accretion, Other Plants	3	2	3	0	0

<b>Arbitrability of Grievances</b>	<b>109</b>	<b>100</b>	<b>139</b>	<b>96</b>	<b>38</b>
Procedural	76	60	102	62	68
Substantive	14	23	25	18	28
Procedural & Substantive	19	17	12	16	10
Other Arbitrability Questions	0	0	0	0	0
<b>Not Elsewhere Classified</b>	<b>88</b>	<b>115</b>	<b>83</b>	<b>97</b>	<b>75</b>

<b>Arbitration Services Program Data</b>					
<b>Total Number of Cases State &amp; Region</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>Mountain</b>	<b>123</b>	<b>115</b>	<b>136</b>	<b>118</b>	<b>109</b>
Arizona	10	15	20	16	9
Colorado	40	30	47	30	39
Idaho	7	5	7	3	4
Montana	16	7	11	16	10
Nevada	13	31	23	31	16
New Mexico	26	19	20	19	25
Utah	5	5	6	2	5
Wyoming	6	3	2	1	1
<b>Pacific</b>	<b>140</b>	<b>151</b>	<b>129</b>	<b>132</b>	<b>142</b>
Alaska	13	7	2	7	9
California	66	73	67	58	65
Hawaii	0	1	3	0	0
Oregon	28	31	12	25	26
Washington	33	39	45	42	42
<b>Miscellaneous</b>	<b>9</b>	<b>13</b>	<b>15</b>	<b>14</b>	<b>11</b>
Philippines	0	0	0	0	0
Puerto Rico	1	2	7	0	3
Virgin Islands	4	10	6	14	7
Guam	0	0	0	0	0
Others	4	1	2	0	1
<b>New England</b>	<b>45</b>	<b>17</b>	<b>37</b>	<b>28</b>	<b>30</b>
Connecticut	13	0	4	6	10
Maine	2	2	4	1	1
Massachusetts	12	9	8	11	9
New Hampshire	2	1	0	1	1
Rhode Island	6	3	8	3	5
Vermont	10	2	13	6	4
<b>Middle Atlantic</b>	<b>307</b>	<b>246</b>	<b>284</b>	<b>252</b>	<b>265</b>
New Jersey	30	26	35	23	30
New York	121	71	97	80	74
Pennsylvania	156	149	152	149	161
<b>South Atlantic</b>	<b>385</b>	<b>375</b>	<b>457</b>	<b>449</b>	<b>447</b>
Delaware	12	3	2	7	4
District of Columbia	36	35	50	56	85
Florida	112	125	124	146	140
Georgia	58	41	77	55	42
Maryland	29	49	48	55	54
North Carolina	29	29	37	31	22
South Carolina	14	14	21	19	11
Virginia	30	43	53	42	43
West Virginia	65	36	45	38	46

<b>Arbitration Services Program Data</b>					
<b>Total Number of Cases State &amp; Region</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>East South Central</b>	<b>239</b>	<b>221</b>	<b>224</b>	<b>229</b>	<b>217</b>
Alabama	57	51	49	66	81
Kentucky	81	66	71	57	54
Mississippi	32	20	24	18	19
Tennessee	69	84	80	88	63
<b>West South Central</b>	<b>237</b>	<b>308</b>	<b>321</b>	<b>266</b>	<b>289</b>
Arkansas	40	53	53	44	52
Louisiana	23	43	40	38	39
Oklahoma	70	104	79	50	72
Texas	104	108	149	134	126
<b>Totals</b>	<b>2,514</b>	<b>2,669</b>	<b>2,746</b>	<b>2,581</b>	<b>2,629</b>

<b>East North Central</b>	<b>715</b>	<b>950</b>	<b>796</b>	<b>841</b>	<b>823</b>
Illinois	145	216	199	198	195
Indiana	63	84	55	83	82
Michigan	194	158	171	172	147
Ohio	224	413	274	330	315
Wisconsin	89	79	97	58	84
<b>West North Central</b>	<b>314</b>	<b>273</b>	<b>347</b>	<b>250</b>	<b>284</b>
Iowa	68	51	67	36	49
Kansas	38	28	39	23	27
Minnesota	84	82	71	70	66
Missouri	94	89	121	103	113
Nebraska	19	12	17	5	13
North Dakota	8	4	23	11	11
South Dakota	3	7	9	2	5

