

FMCS

Federal Mediation & Conciliation Service



2007 Annual Report



Report for Fiscal Year 2007



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Arthur F. Rosenfeld*

Message from the Director

Collective bargaining relationships in the U.S. have been evolving in response to a hyper-competitive and globalized economy. From one narrow perspective, relationships between labor and management appear to have entered a remarkably peaceful era. In 2007, our Agency recorded only 173 work stoppages ending in the fiscal year, the fewest ever in our history and a drop of nearly 95 percent from 1977. However, despite the statistical appearance of calm, labor relations and collective bargaining in general are rapidly evolving, which places extraordinary pressure on traditional collective bargaining relationships.

Today's tough business environment of rising raw materials prices, tightening credit markets, escalating benefit costs and fierce global competition is changing collective bargaining from a zero-sum game. Building a new labor-management model based on cooperation, trust and joint problem-solving requires a sustained level of effort. Changing long-held attitudes and behavior is always difficult, but I would argue that the complexity of the issues and the stakes that both sides face today demands a new way of thinking.

The increasing popularity of Voluntary Employee Benefit Associations (VEBAs) as a vehicle for funding retiree benefits underscores this point. While a number of extremely important negotiations this past year hinged upon the successful implementation of these complex financial arrangements, merely adopting a creative solution to a problem does not necessarily mean that labor and management have truly transformed their collective bargaining relationship. In fact, I would argue that introducing a new element, such as a VEBA, into an existing and complex collective bargaining relationship could be disastrous without careful preparation. Abandoning the zero-sum mentality not only requires a creative process, but a strong process, and this is where I believe that FMCS offers a valuable service to collective bargaining relationships.

Through its national organization of skilled mediators, FMCS offers a comprehensive package of services and programs designed to strengthen collective bargaining relationships and reduce conflict. These services include collective bargaining mediation, grievance mediation, programs for repairing broken bargaining relationships, and training in communication and dispute resolution. When conflict does occur, FMCS works aggressively to minimize resultant costs—which can be significant. Using a model developed for the Agency in 2005 by the Employment Policy Foundation, FMCS estimates that work stoppages over the past two years cost employees

and businesses an estimated \$1.5 billion in lost wages and employer profits. Disruption among ancillary businesses is estimated to have cost an additional \$1.6 billion during this period.

FMCS also offers services and programs designed to resolve contract-based disputes that may arise during the term of a collective bargaining agreement. In recent years, the Agency has seen both a rise in the number of individual claims and increased use of our mediators to help resolve this type of mid-term conflict. We undertake this work not only to avoid a potential burden to the nation's court system, but also as an opportunity to repair to the relationship between employers and employees and to prevent disputes from poisoning collective bargaining.

The FMCS is not a large agency. We take our mandate seriously, and strongly believe that, despite our size, we will continue to make a significant contribution to the nation's well being. Collective bargaining has been, and will continue to be, a critical component of this country's economic success, particularly as the process evolves into a joint exercise in creative and collaborative problem solving by labor and management.



Arthur F. Rosenfeld
Director

FY 2007 Agency Services

Agency Mission

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

A. Collective Bargaining Mediation

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

During mediation, the mediator's task is to identify alternative solutions and compromises, encourage settlement where appropriate, control the critical timing of offers, and persuade the parties to honestly discuss their differences. In FY 2007, FMCS mediators were actively involved in over 5,300 collective bargaining contract negotiations in every major industry throughout the United States.

B. Grievance Mediation

Grievance mediation involves the use of a neutral party to mediate disputes that may arise over the terms and conditions of a collective bargaining agreement. Agency mediators provide this service to the private and public sectors with the goal of preventing unresolved contract interpretation issues from spilling over into future contract negotiations. Lengthening contract terms increase the importance of resolving contentious issues arising during the term of a contract. In FY 2007, FMCS mediated 1,753 grievance mediation cases and helped the parties reach agreement in over 1,200 of these.

C. Relationship-Development and Training

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

D. Employment Mediation

Outside the collective bargaining arena, FMCS provides employment mediation services to the federal sector and to state and local governments on a cost-reimbursable basis. The Administrative Dispute Resolution Act of 1990, the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996 expanded FMCS' role as a provider of these services. The legislative intent behind these acts was to expand the use of alternative dispute resolution throughout the Federal government, reduce litigation costs, and promote better government decision-making. The Agency also provides employment mediation to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes. In FY 2007, FMCS mediated 1,060 employment cases.

E. International Training and Exchange

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

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

F. Arbitration Services

National labor policy favors arbitration for settling contractual disputes. FMCS' Office of Arbitration Services maintains a roster of approximately 1,400 independent arbitrators who are qualified to hear and decide disputes over the interpretation or application of collective bargaining agreements. Upon request from the parties, FMCS furnishes a list of names from which they may choose an arbitrator to hear their case and render a decision. During FY 2007, the Office of Arbitration Services processed over 16,200 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided nearly 2,200 labor arbitration cases.

G. FMCS Institute for Conflict Management

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

Mediation Services Program Data

PROGRAM SERVICES	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
1. COLLECTIVE BARGAINING MEDIATION.....				
Assigned Cases ¹	18,493	17,102	15,072	14,663
-Private Sector	16,738	15,596	13,539	13,245
-Public Sector (state and municipal)	1,295	1,160	1,219	1,107
-Federal Sector	460	346	314	311
Mediated Cases ²	4,748	5,215	5,484	5,329
-Private Sector	3,274	3,873	3,874	3,907
-Public Sector (state and municipal)	1,077	1,086	1,319	1,145
-Federal Sector	397	256	291	277
Closed Cases	16,215	13,928	15,664	14,478
Closed Mediated Cases	4,595	4,084	4,486	4,426
Activity Rate ³	28%	30%	29%	31%
Settled and Closed Mediated Cases	3,768	3,557	3,864	3,818
Percentage of mediated cases settled through FMCS ⁴	82%	87%	86%	86%
Activity rate in significant cases ⁵	51%	47%	45%	51%
2. GRIEVANCE MEDIATION				
Assigned Cases	1,639	1,705	1,632	1,768
Mediated Cases	1,544	1,621	1,625	1,753
-Private Sector	1,168	1,232	1,219	1,282
-Public Sector (state and municipal)	205	263	270	316
-Federal Sector	171	126	136	155
Settled GM Cases	1,264	1,212	1,219	1,254
Percentage of cases settled through FMCS ⁶	82%	72%	75%	74%
3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....				
Number of training programs provided	2,281	2,085	2,445	2,548
-Private Sector	1,565	1,273	1,552	1,591
-Public Sector (state and municipal)	599	708	730	730
-Federal Sector	117	104	163	227
4. EMPLOYMENT MEDIATION				
Mediated Cases	1,596	1,008	1,022	1,060
-Federal Sector	1,417	917	993	1,038
-Public Sector (state and municipal)	5	31	13	5
-Private	174	60	16	17
Settled EM Cases	718	484	523	532
Percent of EM cases settled through FMCS ⁷	45%	48%	51%	50%
5. OUTREACH				
Outreach cases ⁸	4,741	3,513	3,859	3,847

¹ Section 8(d) of the NLRA, as amended, 29 U.S.C. §158(d) requires that any employer or labor organization provide notice to FMCS 30 days prior to contract expiration. Not all cases providing notices are assigned. Actual FY 2007 FMCS case intake exceeded 22,000.

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

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

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

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

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

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

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

Work Stoppage Information					
	2003	2004	2005	2006	2007
Work stoppages carried from preceding FY	41	29	25	52	31
Work stoppages beginning within FY	277	269	289	247	162
Work stoppages closed within FY	289	273	262	268	173
Work stoppages open at end of FY	29	25	52	31	20
Average duration of work stoppages in closed cases (number of days)	60.5	76.7	41.1	70.9	63.1
Estimated number of worker-hours lost due to work stoppages (1,000s)	17,078	71,501	18,064	25,175	29,734

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

Arbitration Services Program Data

Activity	2003	2004	2005	2006	2007
Panel Requests	17,332	16,382	15,370	15,572	14,287
Panels Issued ⁹	19,023	18,033	16,787	16,854	16,264
Arbitrators Appointed	8,595	7,875	7,592	6,860	6,485
Activity Charged For					
Travel Days	.48	.45	.46	.46	.45
Hearing Days	1.15	1.09	1.15	1.11	1.10
Study Days	2.35	2.37	2.40	2.40	2.34
Total	3.98	3.91	4.01	3.97	3.89
Average Charges					
Per Diem Rate	\$764	\$802	\$836	\$860	\$883
Amount of Fee	\$3,048	\$3,197	\$3,396	\$3,605	\$3,571
Amount of Expenses	\$364	\$344	\$336	\$335	\$359
Total Charged	\$3,412	\$3,542	\$3,732	\$3,940	\$3,929

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

	2003	2004	2005	2006	2007
Total Number of Issues	2,314	2,581	2,629	2,473	2,172
General Issues	506	417	308	320	243
Overtime Other Than Pay ¹⁰					
Distribution of Overtime	35	41	2	6	1
Compulsory Overtime	9	3	2	1	1
Other Overtime	12	1	4	4	0
Seniority					
Promotion & Upgrading	63	42	26	40	20
Layoff Bumping & Recall	71	69	57	39	32
Transfer	14	9	0	0	2
Other Seniority	35	15	8	24	19
Union Officers ¹¹	13	21	0	1	0
Strike & Lockout	1	2	1	0	0
Working Conditions ¹²	19	20	12	23	16
Discrimination	17	18	18	18	13
Management Rights	71	61	72	85	82
Scheduling of Work	47	61	62	50	45
Work Assignments	99	54	44	29	12
Economic Wage Rates & Pay Issues	233	209	167	178	157
Wage Issues	42	95	134	156	154
Rate of Pay	60	33	7	1	1
Severance Pay	5	1	2	1	0
Reporting, Call- in & Call-back Pay	10	6	0	0	0
Holidays & Holiday Pay	21	14	8	7	0
Vacations & Vacation Pay	27	26	0	4	0
Incentive Rates & Standards	15	9	3	1	0
Overtime Pay	53	25	13	8	2
Fringe Benefits Issues	112	104	100	127	76
Health & Welfare	61	46	47	48	25
Pensions	11	8	7	19	11
Other Fringe Issues	40	50	46	60	40
Discharge & Disciplinary Issues	1,091	996	937	913	728
Technical Issues	97	69	47	59	54
Job Posting & Bidding	43	39	43	43	38
Job Evaluation	21	14	1	14	11
Job Classification	33	16	3	2	5

¹⁰ Overtime pay issues included under this category are economic, wage rates and pay issues

¹¹ Included in this classification are issues concerning super seniority and union business.

¹² This classification also includes issues concerning safety.

	2003	2004	2005	2006	2007
Scope of Agreement	53	58	50	28	31
Subcontracting	36	44	42	24	24
Jurisdictional Disputes	5	7	7	4	7
Foreman, Supervision, etc.	9	7	1	0	0
Mergers, Consolidations, Accretion, Other Plants	3	0	0	0	0

Arbitrability Issues	361	289	219	191	275
Arbitrability of Grievances	139	96	38	26	23
Procedural	102	62	68	96	123
Substantive	25	18	28	37	41
Procedural & Substantive	12	16	10	17	24
Other Arbitrability Questions	0	0	0	0	0
Not Elsewhere Classified	83	97	75	15	64