

FMCS

Federal Mediation & Conciliation Service



2013 Annual Report



Report for Fiscal Year 2013

Message from the Director

Despite the many challenges of the past year, and through individual leadership, vision and dedication among field mediators and support staff, the FMCS fulfilled its core mission to assist labor and management in collective bargaining disputes and distinguished itself as a high-performing federal agency in the delivery of training, relationship-building and alternative dispute resolution programs. Amid considerable budget uncertainty, the FMCS—through the effective management of its resources—conducted 2,027 relationship-development and training programs. Field mediators actively monitored nearly 13,000 cases and provided mediation services in more than 4,100 collective bargaining disputes. In total, the Agency provided an estimated \$1.5 billion in benefits to the U.S. economy through the mitigation and avoidance of disruptive work stoppages.

The FMCS maintained a high level of responsiveness to the needs of its customers, raised awareness about its services within the labor-management community, and provided an unprecedented number of practitioners with education and training resources and tools for success. In addition, the FMCS continued to answer the challenge presented by Executive Order 13522, vigorously reaching out to federal agencies and helping them to establish cooperative labor-management forums and increased collaboration. These outstanding mission outcomes were complemented by the Agency's success in engaging and empowering its employees, with the result that FMCS rated third among small agencies in the Best Places to Work in the Federal Government rankings for the third consecutive year. Significantly, the index scores for FMCS also placed the Agency third among all federal agencies, regardless of size, in 2013.

In FY 2013, at a time when the dynamic at the negotiating table remained extremely difficult, it was encouraging to note a developing trend in labor-management cooperation in collective bargaining relationships across the country. Once unthinkable, increasing numbers of labor unions and employers have begun working more cooperatively to reach agreements, reduce hostility and diminish the adversarial relations that often hinder successful bargaining. The FMCS played an integral role in the propagation of this trend, by offering ongoing assistance to management and unions in reaching labor agreements and expanding awareness of specialized facilitation and training opportunities that, when utilized, have helped to significantly transform inefficient labor relations models.

More than ever, the work of this agency was critically important in preventing or mitigating economically disruptive labor disputes and workplace conflicts. Collective bargaining in FY

2013 was plagued by a sluggish economy and rising health care costs as well as the aggressive demands of both unions and employers during bargaining as all parties sought to regain ground lost in the great recession. In many noteworthy cases, these pressures on the parties reinforced for them the value of building labor-management relationships as a foundation for success for both sides at the bargaining table. That fact was powerfully demonstrated throughout the fiscal year in a number of high-profile contract negotiations in which FMCS mediation services played a critical role in achieving collective bargaining agreements.

- **International Longshoremen’s Association (ILA) and the United States Maritime Alliance (USMX)** – In late August 2012, the ILA and USMX (a multi-employer organization representing numerous large shipping companies whose diverse ownership included corporations in the United States, Canada, Europe, and Asia) jointly requested FMCS assistance in their ongoing negotiation dispute. The dispute involved thousands of longshoremen throughout all the major Atlantic and Gulf Coast ports. A realistic strike threat existed with a September 30 deadline that would have inevitably crippled the nation’s economy at a critical point when it had just begun to show signs of recovery from the Great Recession. With the assistance of a top-level FMCS team, the parties initially agreed to extend the contract expiration date until 2013 to avoid serious damage to the entire retail industry’s holiday season along with its impact on the consumer public. Thereafter, the parties continued to negotiate—again with hands-on assistance from the FMCS—and succeeded in achieving a master agreement that provides for six years of stable labor-management relations. After rank-and-file workers and management ratified the master agreement, both parties praised the FMCS efforts, thus marking one of the FMCS’s most monumental accomplishments in many years.
- **Verizon and Communication Workers of America / International Brotherhood of Electrical Workers** – Verizon and its two unions, representing approximately 45,000 employees working in the mid-Atlantic and northeastern United States, had been engaged in direct negotiations for more than one year without any success. A two-week strike by the unions did not serve to bring the parties any closer together on a multitude of contentious economic (most especially those dealing with health care) and working conditions issues. At that juncture, the parties jointly requested assistance from the FMCS. What ensued was 60 days of marathon negotiations under the auspices of a top-level team of FMCS mediators, which ultimately produced tentative agreements covering the entire work force. Successful ratification of those agreements ended the threat of a further strike or lockout and, again, provided the basis for an extensive period of stable labor-management relations.
- **National Hockey League (NHL) and the National Hockey League Players Association (NHLPA)** – The National Hockey League and the National Hockey League Players Association became the third professional sports league in as many years to experience a major labor dispute. As the National Football League and the National

Football League Referees Association were resolving a much publicized two-and-a-half-month lockout with FMCS assistance in September, the NHL instituted a lockout of the players in mid-September when they were unable to reach agreement with the NHLPA on the terms of a new agreement. The parties met jointly with FMCS mediators in late November, but after two days of extensive discussions, the mediators ended the session, citing the extensive differences between the parties and the inability to find meaningful points of compromise between their well-established positions.

FMCS remained in contact with the principal spokespersons in the ensuing weeks, concerned about the aggregate economic impact on industries dependent upon NHL games in the 22 U.S. (New York City has two teams) and seven Canadian communities and the loss of their economic contributions to the impacted communities. As the lockout continued, restaurants, related entertainment businesses, hotels, and the arenas which hosted games continued to suffer the economic consequences. At the end of December, faced with the potential loss of the entire season and little progress meeting without FMCS assistance, the parties agreed to make a final attempt to negotiate a new agreement and salvage a partial season. In marathon mediation sessions, which began on New Year's Eve, the parties were able to bridge their significant differences. Announcing the framework of a new agreement at a joint press conference conducted at 6 a.m. Sunday, January 6th, following an 18-hour final session, both the NHL and the NHLPA cited the assistance of FMCS mediation as critical to their ability to reach agreement. By the end of January, arenas, restaurants, concessionaires, and hotels in the affected communities were once again at full employment. Overcoming fears of fan alienation and abandonment after the third lockout in league history, the shortened season was played before record crowds and heightened media ratings.

Based on FY 2013 data, the FMCS estimated that its involvement in a dispute reduced the duration of a work stoppage by an average of 33 percent. In 84 percent of cases involving FMCS mediators, labor and management were able to reach a collective bargaining agreement—a measure of the value of FMCS assistance.

With the end of the fiscal year, the FMCS planned to again sponsor a special labor-management summit conference, celebrating the successes of labor-management partnerships across the nation. For a second consecutive year, FMCS was to assemble a national audience of labor-relations practitioners and leaders to demonstrate the transformative effect of joint problem solving and cooperation in union-employer negotiations. The 2013 event was to take place at the White House and feature Secretary of Labor Thomas E. Perez and Secretary of Commerce Penny S. Pritzker in highlighting the importance of labor-management cooperation to the nation's workforce development and to the national economy.

In addition, the FMCS planned a first-of-its-kind training event for the Agency, titled "Conflict Resolution Week," to offer in-person and online training seminars, showcasing FMCS training programs and services. The series will provide more than 30 free, web-based, educational sessions including presentations by well-known experts in the field of conflict, covering topics

from the traditional basics to the cutting edge in conflict resolution. The event is expected to attract hundreds of attendees to the live sessions scheduled for FMCS headquarters in Washington, D.C., while thousands more are expected to participate in the training to be offered online. (At the time the data were compiled for this report, registrations for this event had reached capacity and had exceeded expectations after being re-scheduled to January, 2014 because of the federal government shutdown in October, 2013.)

The Conflict Resolution Week event was planned to follow up on the highly successful FMCS “Open House,” hosted by the Agency in November, 2013. The Open House was held to familiarize potential users of FMCS Alternative Dispute Resolution (ADR) programs with the value and benefits of services provided to federal government agencies. The Open House attracted scores of representatives from the federal sector to panel discussions and presentations describing available FMCS federal sector services, such as employment mediation, training, systems design, interagency cooperation, and facilitation of negotiated rulemaking and public policy dialogues.

Such documented results as those mentioned above underscore the vital work of the FMCS in providing the training and the inspiration that form the foundations of labor-management partnerships and effective conflict resolution. Our work shows the power of pro-active collaboration, and it is our hope that a new, more innovative era in labor-management relations may be emerging—one in which unions and employers together find ways to utilize new technologies, tools and processes to improve workforce training and productivity and to address quality issues.

Despite the challenges described above, FY 2013 was a year of proud accomplishments for the FMCS. Staying focused on our values and mission throughout the year, FMCS worked to advance labor-management collaboration, build significant partnerships in key industry sectors and enable government agencies and federally-funded programs to reduce or eliminate litigation costs through effective dispute resolution services. With the start of a new fiscal year, the FMCS is well prepared to undertake new challenges ahead.

Sincerely,



Scot L. Beckenbaugh
Acting Director



Allison Beck
Deputy Director

FY 2013 Agency Services

Agency Mission

The Federal Mediation and Conciliation Service (FMCS) is an independent agency of the federal government established by Congress in 1947 to help employers and unions avoid costly work stoppages and minimize their potentially devastating effects on regional or national commerce. The FMCS, headquartered in Washington, D.C., has mediators located in over 60 field offices and ten regional offices across the country and is best known for its history of successful and innovative advances in labor-management collaboration, joint problem-solving and the resolution of major collective bargaining disputes. In 1996, Congress recognized this record for pioneering dispute resolution techniques and highly skilled professional mediators and called upon the FMCS to help other federal, state and local agencies minimize costly litigation by resolving disputes arising under their jurisdictions. Thus, while our core activity remains the prevention or resolution of labor-management disputes, FMCS also provides sister agencies with a wide variety of alternative dispute resolution services.

A. Collective Bargaining Mediation

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

During mediation, the mediator's task is to identify alternative solutions and compromises, encourage settlement where appropriate, control the critical timing of offers, and persuade the parties to honestly discuss their differences. In FY 2013, FMCS mediators were actively involved in more than 4,100 collective bargaining contract negotiations in every major industry throughout the United States.

B. Grievance Mediation

Grievance mediation involves the use of a neutral party to mediate disputes that may arise over the terms and conditions of a collective bargaining agreement. FMCS mediators provide this service to the private and public sectors with the goal of preventing unresolved contract interpretation issues from spilling over into future contract negotiations. Lengthening contract terms increase the importance of resolving contentious issues arising during the term of a contract. In FY 2013, FMCS mediated more than 1,800 grievance mediation cases and helped the parties reach agreement in 1,383 of these (76 percent).

C. Relationship-Development and Training

Preventing conflict that may arise during the term of a collective bargaining agreement is another important goal of the FMCS. The FMCS's relationship-building training programs are designed to improve labor-management relationships by helping labor and management to develop collaborative problem-solving approaches. 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. ADR Services

Outside the collective bargaining arena, FMCS provides dispute resolution services to other federal, state, and local government agencies on a cost-reimbursable basis. The Administrative Dispute Resolution and Negotiated Rulemaking Acts recognized FMCS's conflict resolution expertise and called on FMCS to help expand the use of alternative dispute resolution throughout government to reduce litigation costs and to promote better government decision-making. To this end, FMCS provides sister agencies with a wide variety of professional services such as mediating employment disputes, designing and building capacity for effective conflict management systems, and developing tools for interagency and public-private cooperation and collaboration. In FY 2013, FMCS provided ADR services in more than 1,100 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 domestic labor-management disputes with international implications.

FMCS' international training programs are delivered largely on a cost-reimbursable basis through interagency acquisition agreements with other government agencies, such as the Departments of State and Labor and U.S. AID. In FY 2013, FMCS mediators designed and/or delivered mediation training programs in China, Vietnam and Burma. Better industrial relations practices were developed through joint labor-management training programs in transitioning democracies, such as Morocco, Bangladesh, and Lesotho. In addition to programs delivered abroad, every year, FMCS mediators host numerous foreign delegations visiting the U.S. and interested in U.S. labor-management relations and conflict resolution practices.

F. Arbitration Services

National labor policy favors arbitration for settling contractual disputes. FMCS's Office of Arbitration Services maintains a roster of approximately 1,200 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 2013, the Office of Arbitration Services processed nearly 13,400 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided more than 2,100 labor arbitration cases.

G. FMCS Institute for Conflict Management

The FMCS Institute for Conflict Management delivers accessible, practical, and experience-based conflict resolution training for individuals and small groups of employees and managers. The training is specifically designed to meet the challenges of labor-management relations and organizational change. The Institute's training programs provide participants the opportunity to interact with and learn from experienced practitioners who use these skills every day. Federal mediators and private-sector arbitrators comprise the Institute faculty. FY 2013 courses included Mediation Skills for the Workplace, Labor-Management Negotiation Skills, Evidence and Witness Examination in Arbitration, Arbitration for Federal Advocates, and The Art and Science of Inquiry (part of our Essential Neutral Skills Series) and Becoming a Labor Arbitrator. The Institute runs as a reimbursable program and is funded by fees received from training participants.

Mediation Services Program Data

PROGRAM SERVICES	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
1. COLLECTIVE BARGAINING MEDIATION.....				
Assigned Cases ¹	14,127	13,712	13,114	12,938
-Private Sector	12,888	12,460	11,814	11,802
-Public Sector (state and municipal)	906	943	943	843
-Federal Sector	333	309	357	293
Mediated Cases ²	4,919	4,665	4,528	4,122
-Private Sector	3,632	3,271	3,079	2,826
-Public Sector (state and municipal)	991	1,091	1,111	981
-Federal Sector	296	303	338	315
Closed Cases	12,992	13,776	13,652	12,651
Closed Mediated Cases	4,005	3,815	3,764	3,339
Activity Rate ³	31%	28%	28%	26%
Settled and Closed Mediated Cases	3,428	3,234	3,159	2,807
Percentage of mediated cases settled through FMCS ⁴	86%	85%	84%	84%
Activity rate in significant cases ⁵	45%	33%	46%	47%
2. GRIEVANCE MEDIATION.....				
Assigned Cases	2,124	1,968	1,837	1,872
Mediated Cases	2,084	1,905	1,784	1,809
-Private Sector	1,708	1,513	1,372	1,398
-Public Sector (state and municipal)	239	261	264	267
-Federal Sector	137	131	148	144
Settled GM Cases	1,532	1,428	1,367	1,383
Percentage of cases settled through FMCS ⁶	74%	75%	77%	76%
3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....				
Number of training programs provided	2,200	2,301	2,128	2,027
-Private Sector	1,471	1,267	1,262	1,174
-Public Sector (state and municipal)	433	493	463	533
-Federal Sector	296	541	403	320
4. EMPLOYMENT MEDIATION.....				
Mediated Cases	1,392	1,330	1,110	1,118
-Federal Sector	1,387	1,297	1,090	1,089
-Public Sector (state and municipal)	2	5	5	1
-Private	3	28	15	28
Settled EM Cases	675	641	537	488
Percent of EM cases settled through FMCS ⁷	48%	48%	48%	44%
5. OUTREACH.....				
Outreach cases ⁸	3,240	3,190	3,019	2,911

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 2013 FMCS case intake exceeded 22,700.

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

Work Stoppage Information

	2008	2009	2010	2011	2012	2013
Work stoppages carried from preceding FY	19	29	13	18	24	21
Work stoppages beginning within FY	193	103	159	155	161	154
Work stoppages closed within FY	183	119	154	149	164	159
Work stoppages open at end of FY	29	13	18	24	21	16
Average duration of work stoppages in closed cases (number of days)	51.8	104.2	44.9	45.3	49.0	44.3
Estimated number of worker-hours lost due to work stoppages (1,000s)	20,147	19,609	8,877	11,222	11,038	15,317

Work Stoppage Cost Information			
	Direct Costs	Indirect Costs	Total Costs
Year	(\$1,000s)	(\$1,000s)	(\$1,000s)
2001	495,484	476,000	971,484
2002	363,522	461,289	824,811
2003	372,678	329,595	702,273
2004	1,102,475	267,260	1,369,735
2005	488,075	450,737	938,812
2006	725,180	686,468	1,411,648
2007	801,314	931,108	1,732,422
2008	533,971	567,397	1,101,368
2009	623,264	736,032	1,359,296
2010	250,162	238,538	488,700
2011	389,041	314,144	703,185
2012	380,080	343,279	723,359
2013	564,716	391,938	956,654
Savings to Parties Attributable to Mediation			
	Reduced Incidence	Reduced Duration	Total Savings
Year	(\$1,000s)	(\$1,000s)	(\$1,000s)
2001	667,206	60,372	727,578
2002	840,936	272,595	1,113,531
2003	717,239	224,287	941,525
2004	2,259,575	173,177	2,432,752
2005	1,269,679	798,666	2,068,345
2006	1,320,946	374,872	1,695,818
2007	888,376	383,386	1,271,762
2008	1,155,903	(501,807)	654,096
2009	2,613,336	1,142,193	3,755,529
2010	1,389,809	(39,122)	1,350,687
2011	301,044	763,335	1,064,379
2012	283,421	601,157	884,578
2013	378,358	(298,717)	79,641

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.

Arbitration Services Program Data

Activity	2008	2009	2010	2011	2012	2013
Panels Issued ⁹	15,717	16,692	16,486	14,367	13,538	13,361
Arbitrators Appointed	6,568	6,496	6,870	6,608	6,129	6,020
Activity Charged For						
Travel Days	.45	.57	.48	.44	.92	.63
Hearing Days	1.07	1.10	1.14	1.10	1.13	1.05
Study Days	2.43	2.40	2.37	2.37	2.37	2.39
Total	3.95	4.07	3.99	3.91	4.42	4.07
Average Charges						
Per Diem Rate	\$913	\$962	\$981	\$984	\$1,006	\$1,024
Amount of Fee	\$3,780	\$4,049	\$4,039	\$4,045	\$4,576	\$4,517
Amount of Expenses	\$391	\$421	\$380	\$384	\$389	\$395
Total Charged	\$4,171	\$4,470	\$4,419	\$4,429	\$4,965	\$4,912

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.