

Federal Mediation and Conciliation Service

Five-Year Strategic Plan

2008-2013

**Federal Mediation and Conciliation Service
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Table of Contents

I	Introduction.....	2
II	Agency Evaluation.....	3
	A. Personnel.....	3
	B. Field Office Structure	4
III	External Evaluation.....	4
	A. Decline in Number of Work Stoppages	4
	B. Collective Bargaining Trends	5
	C. Decline in Union Membership.....	6
	D. Business Cycles	6
	E. Natural and Human-Caused Economic Disruptions	7
	F. Lower Profile of Labor Professionals	8
	G. Employment and Retirement Benefits	8
IV	Core Programs and Services	10
	A. Collective Bargaining Mediation: Initial and Successor Contract Negotiations ..	10
	B. Relationship Development and Training Programs	10
	C. Grievance Mediation.....	11
	D. Arbitration Services	11
	E. FMCS Institute.....	11
	F. Employment Mediation	11
	G. International Training and Exchange.....	12
V	Vision, Values, and Mission Statements.....	13
	A. Vision Statement.....	13
	B. Values Statement	13
	C. Mission Statement.....	13
	Strategic Goal #1: Mediation	14
	Strategic Goal #2: Building Problem-Solving Relationships	15
	Strategic Goal #3: Resolving Mid-Term Disputes.....	16
	Strategic Goal #4: Promoting ADR	17
	Appendix A: Current FMCS Field Offices and Subregion Structure	18

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I Introduction

Congress established the Federal Mediation and Conciliation Service (FMCS or Agency) in 1947 through the Labor Management Relations Act (Taft-Hartley) amendments to the National Labor Relations Act (NLRA) as an independent agency whose mission is “to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”¹ Subsequent acts of Congress and Presidential orders have expanded FMCS’s role to providing employment-based mediation services to the private sector and alternative dispute resolution (ADR) programs to government agencies, as well as promoting and establishing labor-management partnerships in the private sector.

Over the past 60 years, the FMCS has provided services that embrace this mission and demonstrate its commitment to preventing or minimizing interruptions of the free flow of commerce growing out of labor disputes. As labor-management relationships have evolved over time, so has the nature of the Agency’s work. The Agency today provides a range of services to labor and management, such as relationship development training and training in interest-based bargaining, to help the parties deal effectively with disputes that may arise between them without resorting to work stoppages.

This five-year strategic plan proposes the means by which the FMCS will fulfill its mission in the coming years.

¹ 29 USC § 173. By statute, FMCS’s jurisdiction excludes the rail and airline industries, which are covered by the National Mediation Board under the Railway Labor Act.

II Agency Evaluation

The FMCS has no enforcement power and, under most circumstances, parties engaged in collective bargaining must first consent to FMCS mediators' participation. Mediators can neither dictate the content of a contract nor enforce its terms. The following section highlights the internal factors that influence the Agency's ability to fulfill its mission.

A. Personnel

The voluntary nature of mediation in collective bargaining presents a formidable challenge: the Agency cannot force the parties to accept its assistance even if the relationship would undoubtedly benefit from mediation or some other intervention. Furthermore, even if it becomes involved in a collective bargaining negotiation, the Agency cannot require the parties to participate in other programs it may offer. For this reason, the Agency relies almost exclusively upon its reputation and that of its mediators in order to provide services and fulfill its statutory role.

Mediators promote and contribute to the Agency's mission by assisting parties to collective bargaining agreements in the successful negotiation of new agreements and the resolution of workplace disputes that arise during the life of the contract. FMCS mediators join the Agency in mid-career from professional backgrounds that include legal, health care, educational, and labor relations fields. Mediators bring many years of experience either negotiating labor contracts or settling workplace disputes. This experience is most commonly gained as a union or management representative, a labor lawyer, or a neutral arbitrator or mediator. In addition to their job experience, many of the Agency's mediators are highly educated, with approximately 15 percent of the Agency's 170 mediators holding a law degree, and another 25 percent holding some other type of advanced degree.

FMCS mediators undergo a year or more of intensive on-the-job training and job-shadowing before being given their own case load. Agency mediators maintain excellent relationships with business and labor leaders, communicating with them on a daily basis and monitoring the progress of upcoming and ongoing contract negotiations—even those in which they are not actually involved.

On average, mediators are actively involved in 30 collective bargaining negotiations each year and participate in another 50 individual mediation, educational, or outreach cases. In all, Agency mediators were assigned and monitored more than 15,000 cases, drove more than 2.1 million miles and conducted nearly 30,000 meetings with one or both parties in a collective bargaining relationship in FY 2007.

Currently, the average mediator tenure with the Agency is 12.7 years and nearly 18 percent of all mediators have been with the Agency 20 or more years. As these job tenure figures suggest, FMCS mediators not only have experience with hundreds of successful negotiations, but internal surveys suggest that they are truly committed to and deeply enjoy their work.

Recently released results from the Federal Human Capital Survey, conducted biennially by the Office of Personnel Management (OPM), provided strong indicators of the respect with which FMCS's employees regard their work and their high levels of job satisfaction. In 2007, the FMCS headed the list of small agencies as one of the "Best Places to Work in the Federal Government." This ranking is based on responses from more than 221,000 federal workers in 283 federal organizations. The Agency was also top-ranked among small agencies in 2005, based on the previous OPM survey.

B. Field Office Structure

The Agency periodically re-examines its field office structure to determine if its offices are located near existing and anticipated future work opportunities and to rebalance managerial work loads. The Agency currently maintains field offices throughout the United States in 10 subregions and two regions.

A thorough review of the FMCS's field structure during the summer of 2007 found that the current structure does not require significant reorganization. Among the many factors considered in this review were the Agency's ability to fill anticipated vacant positions, the workload balance among mediators and subregions, and bargaining activity patterns in various parts of the country.

III External Evaluation

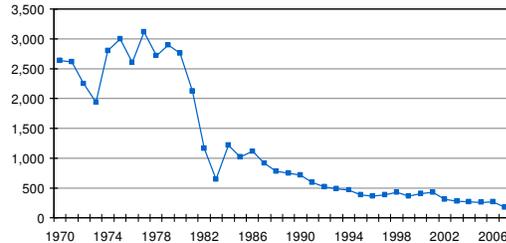
Many different external factors influence the ability of the Agency to perform its work as well as the type of work that it does. These may be long-standing trends or individual events. In either case, the Agency monitors these factors to understand how they affect its ability to fulfill its mission.

A. Decline in Number of Work Stoppages

Since the Agency's inception in 1947, no single statistic more clearly demonstrates the dramatic change in the Agency's work in collective bargaining than the decline in the number of work stoppages that occur each year. Work stoppages were relatively common throughout the Agency's first four decades, with 3,000 or more stoppages occurring each year. In the early 1980's, the number of stoppages began to rapidly fall, and now total fewer than 300 each year.

Work Stoppage Trends

Number of Work Stoppages Ended in Fiscal Year, 1970-2007



Sources: FMCS Case Data

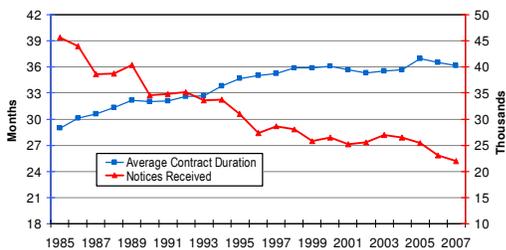
While the Agency can certainly take some credit for this decline, the reasons for it are myriad and the relative contribution of individual factors is still a matter of considerable debate among academic and labor relations researchers. As work stoppages have become a less favored strategy for parties involved in labor disputes over the past 30 years, the Agency has emphasized conflict resolution and relationship building as important elements in a healthy collective bargaining relationship.

B. Collective Bargaining Trends

One strategy adopted by labor and management to bring more stability to employer-union relationships has been to increase the duration of labor contracts. This shift to contracts of longer duration has had a major impact on the work of the FMCS. The Agency estimates that the average duration of contracts renegotiated in FY 2007 was slightly more than 36 months, an increase from 28 months in 1984. Longer contract periods mean fewer collective bargaining negotiations each year, even if the number of collective bargaining contracts stays the same.

Collective Bargaining Trends

Bargaining Notices Received and Contract Durations, 1985-2007



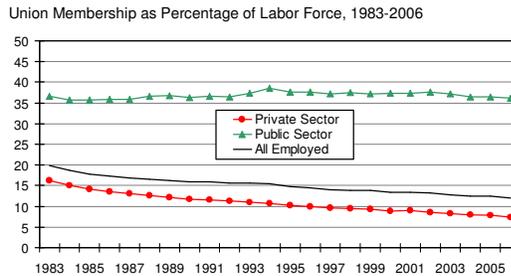
Sources: FMCS Case Data

While longer contracts may bring greater stability by allowing employers to better estimate their future payroll and benefit costs and employees to lock in their bargaining table gains, they also make management and labor less able to react to economic changes and may allow unresolved labor issues to accumulate until the next contract negotiation. The Agency has responded to this challenge by emphasizing early mediation in contract renewals, introducing interest-based bargaining and other collaborative approaches, and implementing relationship development programs that teach labor and management how to communicate with each other in ways that manage or avoid conflict.

C. Decline in Union Membership

Union membership, particularly in the private sector, has been in decline for nearly 30 years, leading unions to seek expansion in the service sector and other high-growth industries that have not traditionally been unionized. This activity presents both challenges and opportunities for the Agency.

Unionization Trends

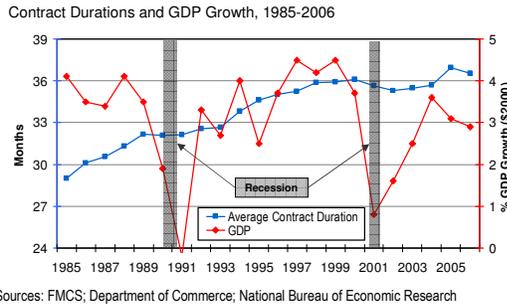


For instance, newly unionized parties may have little experience negotiating collective bargaining contracts and thus be susceptible to forming contentious rather than cooperative relationships. For this reason, the Agency prioritizes mediator activity in new (initial) contract negotiations to assist the two parties to build a strong and positive relationship. Early mediation also is an extremely effective way of reducing the incidence and duration of work stoppages. Research demonstrates that the duration of any work stoppage that does occur is nearly 50 percent shorter if a mediator has met with the parties prior to the contract expiration date.

D. Business Cycles

Expectations about the duration and timing of changes in economic activity complicate collective bargaining negotiations. In economic downturns, management may wish to contain its operating expenses by limiting resources devoted to wages and benefits, while labor may try, at worst, to maintain previous compensation gains and employment. During economic expansion, management may seek greater flexibility in setting working conditions and hiring, while labor seeks to capture a greater share of corporate earnings. Consequently, management and labor will generally desire longer duration contracts during economic expansion, and shorter duration contracts during economic contractions. Unexpectedly weak economic growth or the threat of bankruptcy may give parties to a longer contract an incentive to renegotiate some of its terms or seek changes in its interpretation.

Effect of Business Cycle



The FMCS monitors factors related to demographic changes and conditions within specific industries and occupations which may contribute to broader labor force trends during business cycles. The Bureau of Labor Statistics reports² the following trends for the period 2004-2014:

- Employment growth will continue to be concentrated in the service-providing sectors of the economy, with employment growth in educational services, health care and social assistance, and professional and business services expected to grow more than twice as fast as the overall economy.
- Employment in construction will grow more slowly than in the previous decade, while manufacturing employment is expected to slow its decline. Overall, employment in goods-producing industries is expected to decrease from 15 percent to 13 percent of total employment.
- Professional and related occupations and service occupations are projected to add the most jobs, accounting for 6 out of 10 new jobs created over the 2004-2014 period.
- Nine of the 10 fastest growing occupations are health or computer (information technology) occupations and 5 of the 10 occupations adding the most jobs are service occupations.
- The labor force will continue to age, with prime-age workers—those between the ages of 25 and 54—shrinking to 65 percent of the labor force by 2014, while the number of workers 55 and older will grow by 49 percent, to over 21 percent of the labor force.

E. Natural and Human-Caused Economic Disruptions

Major natural disasters such as fires, hurricanes, floods, and earthquakes and events such as terrorist attacks or large industrial accidents, can significantly disrupt local or national economic activity. At the onset, these events may disrupt or damage transportation networks and industrial infrastructure and physically displace the labor force. In the medium term, there may be other local effects such as labor or housing shortages or changes in local wages or living costs. If severe enough, the consequences of economic disruptions must invariably be handled at the bargaining table. The

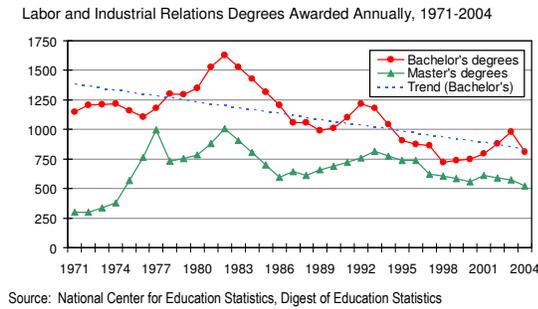
² Bureau of Labor Statistics, (December 7, 2005), *BLS Releases 2004-14 Employment Projections*, <http://www.bls.gov/news.release/ecopro.nr0.htm>

aftermath of hurricane Katrina and the September 11, 2001, terrorist attacks are two more recent and severe examples of this type of disruption.³

F. Lower Profile of Labor Professionals

As the proportion of the unionized workforce and the number of unions have declined over the past 30 years and labor contract periods have lengthened, companies have started eliminating labor relations professionals from their corporate work force. The lack of a dedicated liaison between management and labor and turnover among union representatives complicates the work of Agency mediators. This is because union and company representatives may have little experience overseeing collective bargaining negotiations and thus require that mediators spend more time educating the parties before the actual contract negotiations begin.

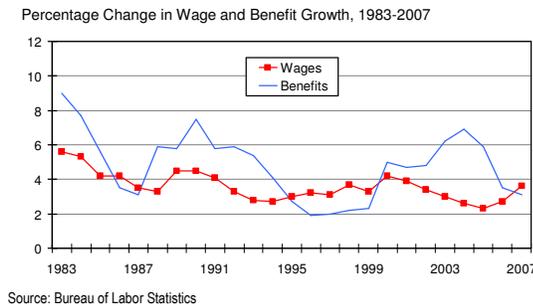
Profession Trends



G. Employment and Retirement Benefits

Employee benefits such as leave, paid holidays, health care and pension plans account for approximately 22 percent of total employment costs in the U.S. As health care and pension costs continue to rise, employers have sought to control their total employment expenses by limiting wage increases and/or asking employees to cover more of their health care and retirement costs.

Compensation Trends



³ Nossiter, Adam, “Strike at Big Shipyard Is Yet Another Effect of Katrina”, New York Times, March 13, 2007, A13

Asking for wage and benefit concessions during contract negotiations in companies with high legacy pension and retiree health can be complicated. Company pension plan conversions from defined benefit to defined contribution are often controversial and difficult to implement, as are the creation of union-managed voluntary employees' beneficiary associations (VEBAs). Legislative and regulatory changes, such as the Pension Protection Act of 2006 and implementation of Financial Accounting Standards No. 158 (FAS 158), have also complicated negotiations by changing longstanding "rules of the game." The FMCS continually updates the skills of its mediators to ensure that they are well prepared for issues they might face while performing their work.

IV Core Programs and Services

Building and maintaining constructive labor-management relationships requires much more than mediation during a contract negotiation. The Agency's mediators must be skilled facilitators, instructors, and labor-management relationship experts to the private and government sectors of the economy. The Agency also maintains and provides rosters of arbitrators and connects mediators to international and foreign labor and management organizations. The FMCS provides a broad scope of core programs and services to the private and government sectors of the economy.

A. Collective Bargaining Mediation: Initial and Successor Contract Negotiations

Through collective bargaining mediation, the 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. The FMCS provides mediation services to the private sector and also to the public sector, including federal agencies and state and local governments.

In FY 2007, FMCS mediators were actively involved in 5,329 collective bargaining contract negotiations in every major industry throughout the United States.

B. Relationship Development and Training Programs

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. These training programs not only improve the quality of the parties' relationships but also make future mediation efforts more effective.

In addition to providing training programs, FMCS mediators also participate in outreach activities designed to raise public awareness of collective bargaining issues and mediation techniques by lecturing at universities, seminars and conferences, and meeting with local leaders in the collective bargaining community.

C. 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, the FMCS mediated 1,753 grievance mediation cases and helped the parties reach agreement in over 1,250 of these.

D. Arbitration Services

National labor policy favors arbitration for settling contractual disputes. FMCS's 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, the 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 nearly 16,264 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided 2,127 labor arbitration cases.

E. FMCS Institute

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.

F. Employment Mediation

Outside the collective bargaining arena, the 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's 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.

G. International Training and Exchange

Beyond the nation's borders, the FMCS plays an important role in promoting collective bargaining and conflict resolution around the world. FMCS's international work is a small, but integral, part of its services. Emerging market economies 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 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 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's 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. The program helps create the stable and productive work forces that are needed to attract foreign investment and improve living conditions as well as supporting U.S. companies and workers in the global market by advocating core labor standards for all nations,. Equally important, the FMCS helps establish the labor relations institutions that are essential to the smooth functioning of free market economies. In addition to industrial relations, FMCS mediators assist with rule of law initiatives, thereby helping to foster 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's 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.

V Vision, Values, and Mission Statements

A. Vision Statement

The Agency commits to a strong and viable collective bargaining system as a foundation for society's well-being and economic growth, and believes in the benefit to the public of effective conflict resolution processes.

B. Values Statement

People—People are the key to FMCS's effectiveness and ability to excel. We strive for an atmosphere of mutual trust and inclusion with respect for the dignity and uniqueness of all individuals. We promote continuous growth and development and encourage individual responsibility and teamwork for excellence and leadership.

Service—We are dedicated to meeting the needs of labor and management through continuous improvement. We are committed to anticipating and responding to change. Commitment to quality education and training is vital to our mission. Leadership through initiative, creativity and innovation is essential. Neutrality, confidentiality, and acceptability are the foundations of our work.

Communication—Effective communication, in all forms, is a necessary quality of a dynamic, changing organization. We are dedicated to clear, complete, timely and honest communication. While we respect appropriate confidentiality, we value open communication that begins with listening and encourages participation by all.

C. Mission Statement

FMCS commits to:

- Promoting the development of sound and stable labor-management relationships;
- Preventing or minimizing work stoppages by assisting labor and management to settle their disputes through mediation;
- Advocating collective bargaining, mediation, and voluntary arbitration as the preferred process for settling disputes between employer and representatives of employees;
- Developing the art, science and practice of conflict resolution; and,
- Fostering the establishment and maintenance of constructive joint processes to improve labor-management relationships, employment security and organizational effectiveness.

Strategic Goal #1: Mediation

Minimize the number and duration of work stoppages that may occur during collective bargaining negotiations.

Objective:

- Use of FMCS collective bargaining mediation by labor and management leaders.

Action:

- Early intervention activities, particularly in initial contracts, the health care industry, and large and high-impact bargaining units.

Strategies:

- Encourage labor and management leaders to employ mediation in their contract negotiations.
- Assist parties with problem solving activities during the term of the agreement.

Expected Outputs:

- Increased mediator case activity rates.
 - Increased proportion of cases with meetings held prior to contract expiration date.
-

Discussion:

Collective bargaining mediation represents the core of the Agency's mission and its most publicly visible work. In 2005, an independent study conducted for the Agency found that mediation prior to a contract's expiration date significantly reduces the duration of any work stoppage that occurs. Previously, three separate studies of matched bargaining pairs found that FMCS mediation was also an important factor in preventing work stoppages from occurring in the first place.

As a result of these studies, the Agency believes that early and ongoing contact with the parties to a labor contract negotiation is imperative in reducing the number and duration of work stoppages. This is particularly true in collective bargaining cases that involve: an initial contract; national security; the health care industry; large bargaining units or in those cases that have the potential for permanent shutdowns or disruptions to the community, work force, or interstate commerce.

The Agency evaluates its success in these areas by looking at how many negotiations use mediation services, whether or not a work stoppage occurred, the duration of any stoppage, and the timing of mediators' involvement. On an aggregate basis the Agency also estimates the financial cost of work stoppages that actually occur and the value of work stoppages that its mediators are able to prevent or shorten.

Strategic Goal #2: Building Problem-Solving Relationships

Improve labor-management relationships.

Objective:

- Use collaborative dispute resolution processes to manage workplace conflict.

Actions:

- Provide techniques and information that help parties improve their collective bargaining relationship.
- Deliver internally sustainable dispute resolution systems.
- Educate labor and management leaders in the art of building and maintaining labor-management partnerships.

Strategy:

- Promote the use of FMCS programs and outreach to develop sound and stable labor-management relationships.

Expected Output:

- Increased customer satisfaction with FMCS educational products and services.
-

Discussion:

Relationship development and training and a number of related activities are designed to help the parties to a collective bargaining agreement better understand the issues and external forces affecting their collective bargaining relationship and to develop internal task forces or groups to help them improve their relationship. In an increasingly global economy, outreach to sister agencies in other countries is a small, but important aspect of the Agency's work in this area.

American employer and employee continued success in a globally competitive arena requires a degree of cooperation between labor and management that traditional confrontational bargaining relationships cannot easily accommodate. These competitive issues can be both complex and subtle and require creative solutions that address unique challenges. Mediators should play a major part in assisting employers and employee representatives to improve their organizational effectiveness and to add value to the organization through improved labor-management relationships.

The Agency is committed to delivering to its customers the best possible information, analysis, practices, and solutions. Through its program evaluations, the Agency is constantly seeking to improve its core curriculum.

Strategic Goal #3: Resolving Mid-Term Disputes

Resolve contract-based disputes (grievances) that arise during the term of collective bargaining agreements.

Objectives:

- Assist parties to voluntarily resolve contract-based disputes.
- Provide high-value arbitrator referral service for situations when parties cannot voluntarily resolve a contract-based dispute.

Actions:

- Increase penetration in groups that have not traditionally used FMCS mediation.
- Maintain roster of experienced arbitrators.
- Improve all aspects of the referral service.

Strategies:

- Advocate mediation and arbitration as the preferred methods for settling disputes between parties in a collective bargaining relationship.
- Facilitate joint, collaborative problem solving events on an ongoing basis.

Expected Outputs:

- Increase the proportion of settled grievance mediation cases.
 - Increase customer satisfaction with quality of arbitration service.
-

Discussion:

Grievance mediation, joint problem-solving facilitation, and arbitration are three approaches for resolving disputes that may arise from differing interpretations of a labor contract's terms and conditions. Grievance mediation and joint problem solving facilitation are voluntary processes that rely upon consensus building. Arbitration is a structured process that provides a final and binding determination. All three approaches are designed to reduce the need for expensive and time-consuming court litigation, and resolve disputes before they negatively affect the collective bargaining relationship.

Increasing the Agency's presence among groups that have not traditionally used its services is one way to build healthier collective bargaining relationships. FMCS's involvement in these interventions encourages the parties to engage in other collective bargaining activities with less disruption and animosity.

Improved settlement rates in contract-based disputes and joint problem-solving cases provide a good indication of how well Agency mediators are able to facilitate agreements. Likewise, favorable customer evaluations of the arbitrator referral service help the Agency improve the quality of the service.

Strategic Goal #4: Promoting ADR

Resolve statute- or regulation-based workplace disputes.

Objective:

- Use employment mediation as an alternative to litigation.

Action:

- Increase number of employment mediations conducted and reimbursable agreements signed.

Strategy:

- Advocate alternative dispute resolution (ADR) as the preferred method for settling non-collective bargaining disputes.

Expected Output:

- Increase the proportion of settled employment mediation cases.
-

Discussion:

The Agency's alternative dispute resolution (ADR) work is defined by the Administrative Dispute Resolution Act of 1996 and is designed to help resolve disputes that do not result from a collective bargaining relationship. Under the Act, the Agency is generally limited to work in the federal sector, but may include state or local entities if the dispute is related to a federal rule or regulation.

Using traditional dispute resolution vehicles, such as the courts, may take several years and cost hundreds of thousands of dollars in legal fees and court costs. While the Agency provides its ADR services as a reimbursable service, costs generally run less than \$1,000 per case and most can be resolved quite quickly. These modest costs are more than offset by reduced friction in the workplace and a more productive workforce.

By increasing the number of ADR cases that the Agency takes and improving the rate at which it helps settle cases, FMCS seeks to provide a cost-effective alternative to litigation and promote better government decision-making.

Appendix A: Current FMCS Field Offices and Subregion Structure

