

**FMCS**

**Federal Mediation & Conciliation Service**



# 2012 Annual Report



## **Report for Fiscal Year 2012**

### **Message from the Director**

In my tenure as Director, FY 2012 stands out not only for the major challenges it presented to the FMCS in helping to resolve a series of key labor disputes across America, but also for the opportunities it provided to the FMCS to advance the institution of collective bargaining.

Through much of FY 2012, despite gradually improving economic conditions, an atmosphere of uncertainty clouded collective bargaining negotiations nationwide. Unemployment hovered at relatively high levels, with many private employers delaying their hiring decisions while they waited for better signs of an upward trend. Many employers still cautiously clung to strategies of cost reduction that included shrinking workforces and benefits. For employees, job security, pensions and health care benefits remained key issues at bargaining tables. And, as the economic picture gradually brightened through the year, the need to regain wages for workers that had been lost in recent hard times became more urgent. Adding to this already complex picture, in bargaining over health care benefits, labor and management were confronted with the additional contractual and plan changes required by the Patient Protection and Affordable Care Act of 2010 (the “Affordable Care Act”) scheduled to go into effect in 2014.

In carrying out its core mission to assist the parties in resolving collective bargaining disputes, the FMCS continued to provide its skilled, experienced mediators on a pro-active, outreach basis. The work of the FMCS is as essential to the success of the U.S. economy as it has ever been. That reality was powerfully demonstrated throughout the fiscal year by a number of high profile disputes concerning which the Agency was jointly requested to provide mediation services and the mediation played a critical role in collective bargaining agreements ultimately being achieved. The list below illustrates this point:

- Verizon and CWA/IBEW – A marathon 60 day mediation resulted in agreements covering 45,000 employees.
- Kaiser Permanente and the Coalition of Kaiser Unions – A team of mediators contributed mightily to the successful resolution of collective bargaining agreements covering 100,000 employees, the single largest unit of healthcare workers in our country.
- International Longshoreman’s Association and the United States Maritime Alliance – Again, thanks to a team of mediators and weeks of intense negotiations, a threatened strike was averted that would have shut down all our Atlantic and Gulf ports and severely impacted the nation’s economy.
- Consolidated Edison Company of New York and the Utility Workers Union of America, Local 1-2 – What was reported at the time to be the largest lockout in recent U.S. labor-relations history, affecting some 8,000 electrical utility workers in metropolitan New York City, was ended after 26 days last summer with the assistance

- Lockheed Martin Corporation and the International Association of Machinists Aerospace Workers, District 776 – A nine week strike by 3,600 workers at three of the company’s facilities in Texas, California and Maryland affected production of F-16 fighter jets until FMCS mediators assisted the parties in reaching an agreement.

At bottom, mediation is an extension of the collective bargaining process and experience teaches that good faith collective bargaining unquestionably is the best mechanism for resolving labor-management disputes and for providing the framework for working together to achieve productivity, innovation and competitiveness – all of which are necessary for survival and success in our global economy. Therefore, we will continue to educate and inform labor and management representatives, our stakeholders and key audiences about the value of FMCS services in preventing or mitigating economically disruptive labor disputes and workplace conflicts. With more than six decades of experience, FMCS has unmatched expertise and an unequalled record in the field of labor dispute resolution. Looking ahead, we are ready for whatever challenges a new year may bring.

### **Other Initiatives**

FY 2012 was also notable for the successful continuation of a unique FMCS outreach to promote labor-management cooperation—this time in the public sector with the all-important goal of elevating student achievement in our nation’s public schools. In conjunction with the U.S. Department of Education, two major teachers’ unions—the American Federation of Teachers (AFT) and the National Education Association (NEA)—and the organizations representing school administrators, school boards, and major urban school systems (American Association of School Administrators, the National School Boards Association and the Council of the Great City Schools), the FMCS has worked to promote student achievement as a priority concern in collective bargaining in public education. With its expertise in developing cooperative labor-management relationships and training employers and employees in joint problem-solving techniques, the FMCS has played a key role in this major educational reform effort, launched by the partnering organizations and agencies at a conference in Denver in 2011 and reinvigorated with a similar conference of the participating organizations in Cincinnati in 2012.

Also in FY 2012, FMCS continued its work in support of the implementation of labor-management partnerships for federal government agencies across the country, as mandated by President Obama’s Executive Order 13522, issued in 2009, to “promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.” Federal agencies were required by the President’s order to establish “labor-management forums [that] allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people.” The purpose of the order was to establish a cooperative and productive form of labor-management relations throughout the executive branch which would inure to the benefit of the taxpayers.

Working with the Federal Labor Relations Authority (FLRA) Office of the General Counsel, the FMCS helped to craft an appropriate training program for federal agencies and employees’

unions that would enable them to create productive partnerships and labor-management forums in compliance with the President's order. Through FY 2011 and extending through FY 2012, the FMCS provided training to a wide range of federal departments and agencies, including the Departments of the Treasury, Defense, Homeland Security, Health and Human Services, Veterans Affairs, Labor, Agriculture, the Army and the Navy, the Office of Personnel Management, the Federal Aviation Administration, the National Labor Relations Board, the Peace Corps, and the Marine Corps. In a testament to the success of the FMCS training, the Agency was tasked by the National Council on Federal Labor-Management Relations, the entity created to oversee the implementation of Executive Order 13522, with developing an innovative "train-the-trainer" program, which multiplied the effect of the training within large agencies by increasing the number of available trainers with each training session. In FY 2012, the FMCS "train-the-trainer" initiative was developed and successfully launched through an innovative, Internet-based program, effectively offering this low-cost training government-wide.

Apart from those all important training programs the Agency also provided its traditional mediation services to assist a number of government agencies and their respective labor organizations in reaching collective bargaining agreements. Most notably an FMCS mediator, pursuant to the joint request of Transportation Security Administration and the American Federation of Government Employees, was present throughout their bargaining sessions and was credited by them as having played a major role in their ultimately achieving a landmark agreement covering 45,000 employees, the single largest bargaining unit throughout the federal government.

### **Alternative Dispute Resolution (ADR)**

FY 2012 also featured a re-vitalization of the FMCS's Alternative Dispute Resolution (ADR) programs, authorized by both the Administrative Dispute Resolution Act (ADRA) and the Negotiated Rulemaking Act. These statutes designate the FMCS as a key provider of ADR services and support for federal agencies seeking an alternative to costly litigation on a wide variety of issues, including mediation of discrimination and whistleblower claims, facilitation of negotiated rulemaking, and mediating complex, multi-party disputes arising under agency programs.

Through extensive outreach and collaboration with other executive branch agencies, FMCS has reacquainted key decision-makers with the potential cost-savings and value of FMCS training, systems design, mediation, and facilitation services. The early results of these outreach effort have been rewarding. In addition to delivering ADR services to the Veterans Administration, Centers for Medicare and Medicaid, the Departments of Labor, Education, Health and Human Services, Transportation and numerous others, the FMCS is now mediating whistleblower complaints for both the Office of Special Counsel (OSC) and the Occupational Safety and Health Administration (OSHA). FMCS mediators are also helping to resolve unfair labor practice disputes for the National Labor Relations Board (NLRB), specifically, cases that have already been heard and decided by Administrative Law Judges but are pending review by the Board, and

ultimately the federal appeals courts. Resolving such disputes will save the government and the parties the time and costs of further litigation.

## **International**

FY 2012 also saw growth in the delivery of FMCS assistance to the U.S. Departments of State and Labor to help developing market economies and current or prospective U.S. trading partners improve their labor relations and dispute resolution systems. During this past year, FMCS mediators provided much-needed mediation training and capacity building in many emerging democracies around the world.

## **Conclusion**

At the close of FY 2012, the FMCS was moving ahead with plans for a conference of labor relations practitioners to promote the value and benefits of labor-management collaboration in collective bargaining. In addition, plans were being finalized for an “ADR Open House” to showcase the value and cost-savings potential of FMCS ADR services. The work of the FMCS is as essential to the success of the U.S. economy as it has ever been. We will continue to educate and inform labor and management representatives, government agencies, our stakeholders and key audiences about the value of FMCS services in preventing or mitigating economically disruptive labor disputes, workplace conflicts, and our ability to reduce the costs of litigation relating to the delivery of government services and programs. With more than six decades of experience, FMCS has unmatched expertise and an unequalled record in the field of labor dispute resolution. Looking ahead, we are ready for whatever challenges a new year may bring.

Sincerely,

A handwritten signature in black ink that reads "George H. Cohen". The signature is written in a cursive, flowing style.

George H. Cohen  
Director

## **FY 2012 Agency Services**

### **Agency Mission**

For 65 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 FMCS 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 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 2012, FMCS mediators were actively involved in more than 4,500 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 2012, FMCS mediated nearly 1,800 grievance mediation cases and helped the parties reach agreement in 1,367 of these (77 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. 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 FMCS 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 2012, FMCS mediated more than 1,100 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 2012, the Office of Arbitration Services processed nearly 13,600 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided nearly 2,000 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

| <b>PROGRAM SERVICES</b>  | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> |
|--|----------------|----------------|----------------|----------------|
| <b>1. COLLECTIVE BARGAINING MEDIATION.....</b>                 |                |                |                |                |
| Assigned Cases <sup>1</sup>                                    | 13,887         | 14,127         | 13,712         | 13,114         |
| -Private Sector  | 12,425         | 12,888         | 12,460         | 11,814         |
| -Public Sector (state and municipal)                           | 1,138          | 906            | 943            | 943            |
| -Federal Sector  | 324            | 333            | 309            | 357            |
| Mediated Cases <sup>2</sup>                                    | 4,767          | 4,919          | 4,665          | 4,528          |
| -Private Sector  | 3,320          | 3,632          | 3,271          | 3,079          |
| -Public Sector (state and municipal)                           | 1,155          | 991            | 1,091          | 1,111          |
| -Federal Sector  | 292            | 296            | 303            | 338            |
| Closed Cases   | 13,308         | 12,992         | 13,776         | 13,652         |
| Closed Mediated Cases  | 3,958          | 4,005          | 3,815          | 3,764          |
| Activity Rate <sup>3</sup>                                     | 30%            | 31%            | 28%            | 28%            |
| Settled and Closed Mediated Cases                              | 3,395          | 3,428          | 3,234          | 3,159          |
| Percentage of mediated cases settled through FMCS <sup>4</sup> | 86%            | 86%            | 85%            | 84%            |
| Activity rate in significant cases <sup>5</sup>                | 37%            | 45%            | 33%            | 46%            |
| <b>2. GRIEVANCE MEDIATION.....</b>                             |                |                |                |                |
| Assigned Cases   | 2,027          | 2,124          | 1,968          | 1,837          |
| Mediated Cases   | 2,004          | 2,084          | 1,905          | 1,784          |
| -Private Sector  | 1,570          | 1,708          | 1,513          | 1,372          |
| -Public Sector (state and municipal)                           | 313            | 239            | 261            | 264            |
| -Federal Sector  | 121            | 137            | 131            | 148            |
| Settled GM Cases   | 1,479          | 1,532          | 1,428          | 1,367          |
| Percentage of cases settled through FMCS <sup>6</sup>          | 74%            | 74%            | 75%            | 77%            |
| <b>3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....</b>           |                |                |                |                |
| Number of training programs provided                           | 2,327          | 2,200          | 2,301          | 2,128          |
| -Private Sector  | 1,400          | 1,471          | 1,267          | 1,262          |
| -Public Sector (state and municipal)                           | 682            | 433            | 493            | 463            |
| -Federal Sector  | 245            | 296            | 541            | 403            |
| <b>4. EMPLOYMENT MEDIATION.....</b>                            |                |                |                |                |
| Mediated Cases   | 1,362          | 1,392          | 1,330          | 1,110          |
| -Federal Sector  | 1,336          | 1,387          | 1,297          | 1,090          |
| -Public Sector (state and municipal)                           | 9              | 2              | 5              | 5              |
| -Private   | 17             | 3              | 28             | 15             |
| Settled EM Cases   | 638            | 675            | 641            | 537            |
| Percent of EM cases settled through FMCS <sup>7</sup>          | 47%            | 48%            | 48%            | 48%            |
| <b>5. OUTREACH.....</b>  |                |                |                |                |
| Outreach cases <sup>8</sup>                                    | 3,622          | 3,240          | 3,190          | 3,019          |

<sup>1</sup> 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 2012 FMCS case intake exceeded 22,500.

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

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

<sup>4</sup> Defined as the number of active cases settled divided by the total number of active cases.

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

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

<sup>7</sup> Defined as the number of mediated employment cases settled divided by the number of mediated cases closed

<sup>8</sup> 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

|  | 2007   | 2008   | 2009   | 2010  | 2011   | 2012   |
|--|--------|--------|--------|-------|--------|--------|
| Work stoppages carried from preceding FY                             | 31     | 19     | 29     | 13    | 18     | 24     |
| Work stoppages beginning within FY                                   | 163    | 193    | 103    | 159   | 155    | 162    |
| Work stoppages closed within FY                                      | 175    | 183    | 119    | 154   | 149    | 164    |
| Work stoppages open at end of FY                                     | 19     | 29     | 13     | 18    | 24     | 22     |
| Average duration of work stoppages in closed cases (number of days)  | 63.1   | 51.8   | 104.2  | 44.9  | 45.3   | 49.0   |
| Estimated number of worker-hours lost due to work stoppages (1,000s) | 29,734 | 20,147 | 19,609 | 8,877 | 11,222 | 11,038 |

| <b>Work Stoppage Cost Information</b>               |                          |                         |                      |
|---|--------------------------|-------------------------|----------------------|
|   | <b>Direct Costs</b>      | <b>Indirect Costs</b>   | <b>Total Costs</b>   |
| <b>Year</b>   | <b>(\$1,000s)</b>        | <b>(\$1,000s)</b>       | <b>(\$1,000s)</b>    |
| 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            |
| 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              |
|   |                          |                         |                      |
| <b>Savings to Parties Attributable to Mediation</b> |                          |                         |                      |
|   | <b>Reduced Incidence</b> | <b>Reduced Duration</b> | <b>Total Savings</b> |
| <b>Year</b>   | <b>(\$1,000s)</b>        | <b>(\$1,000s)</b>       | <b>(\$1,000s)</b>    |
| 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            |
| 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              |

## Arbitration Services Program Data

| <b>Activity</b>             | <b>2007</b>    | <b>2008</b>    | <b>2009</b>    | <b>2010</b>    | <b>2011</b>    | <b>2012</b>    |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Panels Issued <sup>9</sup>  | 16,264         | 15,717         | 16,692         | 16,486         | 14,367         | 13,538         |
| Arbitrators Appointed       | 6,485          | 6,568          | 6,496          | 6,870          | 6,608          | 6,129          |
| <b>Activity Charged For</b> |                |                |                |                |                |                |
| Travel Days                 | .45            | .45            | .57            | .48            | .44            | .92            |
| Hearing Days                | 1.10           | 1.07           | 1.10           | 1.14           | 1.10           | 1.13           |
| Study Days                  | 2.34           | 2.43           | 2.40           | 2.37           | 2.37           | 2.37           |
| <b>Total</b>                | <b>3.89</b>    | <b>3.95</b>    | <b>4.07</b>    | <b>3.99</b>    | <b>3.91</b>    | <b>4.42</b>    |
| <b>Average Charges</b>      |                |                |                |                |                |                |
| Per Diem Rate               | \$883          | \$913          | \$962          | \$981          | \$984          | \$1,006        |
| Amount of Fee               | \$3,571        | \$3,780        | \$4,049        | \$4,039        | \$4,045        | \$4,576        |
| Amount of Expenses          | \$359          | \$391          | \$421          | \$380          | \$384          | \$389          |
| <b>Total Charged</b>        | <b>\$3,929</b> | <b>\$4,171</b> | <b>\$4,470</b> | <b>\$4,419</b> | <b>\$4,429</b> | <b>\$4,965</b> |

<sup>9</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.