



# FMCS

FEDERAL MEDIATION &  
CONCILIATION SERVICE



## Annual Report



## A Message from FMCS Director Allison Beck

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Annual Report FY 2015



**Summarizing the achievements** of FMCS in Fiscal Year 2015 requires only three words: “Securing the Future.” Early in 2015, FMCS began the serious work of ensuring that the Agency is a model of government efficiency, integrity, employee engagement, and customer service. With the last in-depth examination of Agency structure, management, and services occurring nearly 20 years ago, FMCS started the year by announcing a new initiative called “Securing the Future of FMCS Together” to engage all employees in mapping a path forward. The overarching goal of the initiative is to ensure that FMCS meets the highest standards of integrity and operational excellence and that it embraces a culture of innovation to fulfill the evolving needs of its customers. In collaboration with Agency mediators, managers, and support staff, FMCS identified and announced the following overarching priorities:

- Ensure the continuing value and relevance of Agency services;
- Position the Agency for the future, both internally and externally;
- Reinforce a culture of integrity and compliance; and
- Foster an atmosphere of respect, engagement, inclusion, and innovation.

These became its organizational guideposts as FMCS faced key challenges arising from new technologies, evolving workplace issues, and contentious labor-management relations. To “Secure the Future” of FMCS—in other words, to prepare the Agency to address the workplace conflicts and collective bargaining disputes of the Internet-enabled 21st century—its agenda for FY 2015 was to upgrade and modernize

outdated or obsolete FMCS technology, prepare its mediators to better address the disputes of today’s on-demand, “Twitterized” workplaces, and better utilize the latest knowledge and most informed dispute resolution training and techniques to assist labor-management customers in conflict and crisis.

**At the nation’s bargaining tables** this past fiscal year, employers looked to technology for cost-savings, and unions made workforce job security a priority issue. The complex issue of health care and the cost of benefits remained a major concern for labor and management. In addition, unions sought to gain a share of the prosperity reaped by many employers who survived and then succeeded, in part thanks to contract concessions granted by unions in 2008 to 2009, during the depths of the Great Recession. Fiscal year 2015 for FMCS was marked by major negotiations in transportation, notably U.S. west coast ports and trucking; in energy, specifically petroleum refineries and oil facilities; in the health care industry, specifically Kaiser Permanente and a coalition of unions representing 100,000 health care workers; in telecommunications, specifically key negotiations affecting the Northeast and Southern United States; and in the auto industry, specifically the Detroit big-three auto manufacturers.

If FY 2015 was a year of challenges for FMCS in improving internal operations and in achieving settlements at the nation’s bargaining tables, it was also a year of many accomplishments in meeting these challenges. During the year, FMCS confronted technological challenges by embracing and implementing new technologies to better train and communicate with customers and Agency stakeholders as well as other key audiences. By leveraging new technologies in program training, FMCS was able to develop and implement what the Agency calls its “Virtual Academy,” which uses on-demand webinars to allow FMCS mediators to sharpen their skills, develop expertise in complex bargaining areas, and share success stories and experience with colleagues.



Again leveraging new training and communications technology, FMCS has made available new training for external audiences of labor and management that address new workplace issues and complex bargaining topics, emphasizing joint problem solving and best practices for working together for mutual benefit. In addition, **technology has expanded the reach of FMCS** in better informing and educating the national labor and management community about the benefits of FMCS mediation services and alternative dispute resolution in avoiding or mitigating the costly consequences of economically disruptive workplace conflicts.

While listing the many FMCS accomplishments of FY 2015, it must be said that none could have been achieved without a committed, highly professional and dedicated work force. **Although FMCS is a small agency, its record of achievement belies its size.** Perhaps the proudest moment of recognition for the year came when FMCS was ranked again (for the third time in a decade) as a best place to work in the Federal government by the Partnership for Public Service, and rated number one among Federal small agencies.

Analyzing results of the employee survey, **the Partnership also designated FMCS as one of the “most innovative” Federal agencies**, rating us among the government’s top performers for fostering innovation and motivating employees to develop new ideas on the job. Although the Agency is gratified by the recognition, FMCS continues to mine the results of employee surveys to identify areas for improvement. Analysis of previous years’ survey results has prompted ongoing initiatives related to improving employee performance evaluation systems and encouraging appropriate utilization of telework.

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Also in FY 2015, FMCS working groups looked at negotiated rulemaking processes and at generational differences in the workplace. Their work produced valuable materials for use by FMCS mediators. Other working groups reviewed labor dispute resolution practices for symphony orchestras and opera companies and looked at collective bargaining in the health care industry. **FMCS also has a group studying collective bargaining issues arising from health care benefits.** Meanwhile, other working groups have been assigned to recommend FMCS responses on subjects such as Federal sector bargaining, costing collective bargaining contracts, and facilitating multi-party public policy disputes.

Concerted efforts during the year produced numerous opportunities for FMCS mediators to share “best practices” among their colleagues. Headquarters and field staff provided maximum support to field mediators with resources, specialized training and technological tools—all with the goal of enabling FMCS to deliver high quality, state-of-the art, professional programs and services to current and future customers. The emphasis was on information and knowledge sharing due to the large number of FMCS mediator retirements for a third straight year. To mitigate or avert any loss of institutional know-how that would come with a wave of retirements, **FMCS implemented an innovative “flash mentoring” program** that was used successfully at several regional staff meetings. Defined as a one-time meeting or discussion that enables an individual to learn and seek guidance from a more experienced person who can pass on relevant knowledge and experience, flash mentoring provides a valuable learning opportunity while requiring a limited commitment of time and resources from the mentors. As implemented by FMCS at regional meetings, newly hired mediators during round-table conversations quizzed senior mediators about best practices in different service delivery areas. These quizzes and follow-up discussions provided the “mentors”—FMCS senior mediators—with new ideas as well.



## Employee Engagement

Sharing ideas, information and knowledge was the foundation for FMCS's "employee engagement" initiative throughout FY 2015. Employee engagement is another element of FMCS strategy to improve retention and performance and to create an enhanced organizational culture. When employees are engaged, they are committed to their organization's goals and values, motivated to contribute to organizational success, and are simultaneously able to enhance their own sense of well-being. To maintain its comparatively high level of engagement, as compared with other similarly sized agencies, **FMCS encouraged diverse viewpoints, feedback and innovation and practiced open communications and transparency.** Implementation of these organizational values was accomplished by, among other things: regular communications from the Director; daily internal and external news roundups; regular newsletters featuring up-to-date information about significant cases and training programs; regular meetings between the Agency Director, managers, and staff, instituting monthly meetings with national office managers to discuss upcoming needs, goals, action plans and deliverables; providing field directors with opportunities for regular information exchange and collaboration; and reinvigorating the FMCS labor-management forum to constructively engage the Agency's unionized workforce on a regular basis.

The Agency's re-energized headquarters labor-management forum was fully involved in pre-decisional involvement discussions throughout 2015. These discussions were particularly important due to the mandatory relocation of the FMCS national office scheduled November 2016. **As a result of a positive relationship with its bargaining unit, upon completion of the Agency's relocation, FMCS will have reduced its Agency footprint, improved its work flow and processes, and adopted new and more efficient space design and service delivery.**

**In FY 2015, FMCS mediators were actively involved in more than 3,700 collective bargaining contract negotiations in every major industry throughout the United States.**

## Effectively Managing Negotiating Challenges

erfully demonstrated throughout FY 2015 by a number of high profile negotiations and disputes for which the parties jointly requested FMCS mediation services. During a challenging year marked by national labor-management disputes of significant scope and economic impact, FMCS mediators stepped into key roles as peacemakers and as sources of expert knowledge for labor and management.

In 2015, FMCS saw that even the best labor-management relationship can be challenged when negotiation involves the kinds of multiple and complex issues currently facing most bargaining partners. Thus, the work of FMCS is as essential to the success of the U.S. economy as it has ever been. This reality was pow-





The following are brief summaries of FMCS work in major cases and activities during fiscal 2015:

**Atlanta Symphony Orchestra Players' Association (ASOPA), the Atlanta Symphony management and the Woodruff Arts Center.** Following the second lockout of musicians in two years, the agreement reached by the parties helped ensure the continuing viability of one of South's premier cultural institutions.

**International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA).** Following nearly six weeks of intensive negotiations with the FMCS top dispute mediator, and the 11th hour assistance of Secretary of Labor Thomas Perez, Secretary of Commerce Penny Pritzker, and Los Angeles Mayor Eric Garcetti, a complete shutdown of West Coast shipping operations was avoided. Analysts had predicted that a 10-day shutdown of the West Coast ports would have cost the U.S. economy \$2.1 billion a day.

**Major League Soccer (MLS) and the Major League Soccer Players Union.** With assistance from FMCS, a new 5-season collective bargaining agreement "will provide a platform for our players, ownership and management to work together to help build Major League Soccer into one of the great soccer leagues in the world," stated MLS Commissioner Don Garber.

**FairPoint Communications, Inc., the International Brotherhood of Electrical Workers (IBEW) and the Communications Workers of America (CWA).** An 18-week work stoppage impacting telecommunications services and delivery in the northeastern United States was successfully concluded when the parties resumed bargaining at FMCS Headquarters in Washington, DC with FMCS leadership.



**National Nurses United (NNU) and the University of Chicago Medical Center (UCMC).** With FMCS assistance, issues surrounding the use of ratios for staffing, team leads, charge nurses, elimination of rotation positions and other staffing concerns, along with Ebola treatment, union access, and many economic issues were ultimately resolved in a final, full day of bargaining that lasted until early the next morning.

**Kaiser Permanente and the Coalition of Kaiser Permanent Unions.** A team of FMCS mediators helped the parties reach agreement in the largest private-sector contract talks in the United States in 2015. The three-year, national contract covering 105,000 Kaiser Permanente health care workers used an interest based bargaining model to develop new quality, safety and affordability standards.

**United Steelworkers (USW) and U.S. Oil Facilities.** For the first time in 35 years, negotiations broke down between these parties and oil workers from coast to coast went on strike in February 2015. After agreement on national issues was reached, local negotiations faltered and work stoppages continued at a number of locations. FMCS mediators assisted in the settlement of all these disputes over several months.

**NY State Nurses Association (NYSNA) and NYC Hospital Alliance.** A team of senior FMCS mediators helped the parties avoid what would have been the largest nurses' strike in New York City history.

**Consolidated Nuclear Security (CNS) / Pantex and the Amarillo Metal Trades Council.** Pantex is the nation's primary facility responsible for production and maintenance of the U.S. nuclear warhead arsenal. Senior FMCS mediators helped the parties through lengthy and difficult talks until they reached agreement.



## Promoting Collaborative Solutions: Labor-Management Training

While the Agency's first priority must always be to prevent or promptly resolve labor disputes that could have an immediate, adverse impact on the U.S. economy, FMCS experience demonstrates the enormous value of training

parties in the tools and techniques of collaboration and joint problem-solving well in advance of any contract dispute. In the private, public, and Federal sectors, FMCS offers a wide range of programs designed to prevent workplace disputes and improve labor-management relationships by helping the parties develop collaborative problem-solving approaches for managing conflict. **Refined over decades of hands-on dispute resolution experience, the FMCS labor relations model encourages an ongoing, joint problem-solving approach** characterized by open communications, respect, trust, and transparency.

In the private sector, **this approach was best demonstrated in FY 2015 by a specialized program FMCS delivered for the United Auto Workers (UAW) and the Ford Motor Company (Ford) national negotiating committee.** The UAW and Ford had previously changed their approach to labor relations and bargaining partly because of the devastating impact of foreign competition on Ford products in the early part of this century. As a result, the company not only survived but even prospered following the Great Recession in large part because of the problem-solving, collaborative relationship the parties had spent years cultivating.

In anticipation of major contract negotiations in the summer of 2015 and high internal expectations resulting from the Company's recovery, the UAW and Ford jointly approached FMCS to train their combined company-wide negotiations committee at a pre-bargaining conference, nine months before contract expiration. Both sides recognized that the 2015 round of bargaining could be especially contentious if their leadership throughout the country—not just at the national/corporate level—did not have additional training conducted by well-respected neutral experts in the collective bargaining process.

**A team of FMCS mediators worked closely with the UAW and Ford to design a full day training program for 150 negotiation committee members.** Twelve FMCS mediators, divided into two-person teams, delivered five modules. For each of these modules, the following concepts were presented and followed by interactive exercises: (1) building trust and respect; (2) collaborative behavior and basic problem-solving approaches; (3) listening skills; (4) how to jointly collect facts and data; and (5) managing stakeholder expectations and social media.

The program was so well-received that FMCS now offers a training program for bargaining committees modeled on the UAW-Ford training.

**In FY 2015, FMCS mediators conducted more than 1,900 training programs with collective bargaining partners.**

## Improving Public and Federal Sector Bargaining Relationships

FMCS also plays a role in helping to achieve constructive labor-management relations throughout the public sector and in Federal government. While many public and all Federal unionized workers cannot be locked out or go on strike, the damage

from unresolved labor disputes can still be substantial. For example, updating job descriptions, work rules, and work processes can increase organizational effectiveness and allow more cost efficient delivery of services to the public.



In its work to improve labor-management relations in the public and Federal sectors, FMCS has designed relationship-building programs that help unions and employers develop collaborative, problem-solving approaches and manage their inherent conflicts. Effective use of these programs better enables the parties to respond jointly to changing business and economic conditions. Similarly, FMCS continues its important work in support of effective labor-management forums for Federal government agencies across the country, as mandated by Executive Order 13522, issued in 2009, to “promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.”



The President’s order required Federal agencies to establish “[l]abor-management forums [that] allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people.” FMCS mediators have had a central role in training and facilitating forums throughout the country. In addition, the National Council on Federal Labor-Management Relations has frequently called upon FMCS instructional design experts to develop and deliver interactive web-based training tools to improve forum performance.

For Federal agencies involved in collective bargaining with employee unions, FMCS provides training in professional development with the Federal Service Impasses Panel (FSIP). FMCS, in fact, has had a working team specializing in Federal sector bargaining so that in requesting its mediation services, Federal managers and employees can be assured that an FMCS mediator is experienced and knowledgeable and will be helpful to them in bridging their differences. Ideally, however, FMCS recommends to Federal managers and unions that they begin working with us before they reach a bargaining table. For several years, **FMCS has worked nationally in conjunction with the Federal Labor Relations Authority (FLRA) in training labor and management representatives in how to organize successful labor-management forums.** FMCS’s goal under the President’s Executive Order 13522 has been to improve relationships, cooperation and collaboration and to help both sides understand the benefits that result. Since the President issued EO 13522 in late 2009, FMCS has provided more than 270 Relationship Development and Training programs in support of labor-management cooperative efforts.

## Conflict Management Services for Government

The Administrative Dispute Resolution (ADR) Act of 1996 calls upon FMCS to assist Federal, state, and local agencies in resolving disputes arising under their jurisdictions. On a cost reimbursable

basis, FMCS provides Federal agencies, state and local governments with a wide variety of professional services, such as mediating workplace and employment disputes, mediating disputes involving administrative programs, consultation and evaluation in the designing and building of capacity for effective conflict management systems, convening and facilitation services associated with Negotiated Rulemaking, facilitation services for public policy discussions occurring under the Federal Advisory Committee Act, and developing tools for interagency and public-private cooperation and collaboration.

To better inform prospective users of FMCS collective bargaining services and conflict management services to government, Alternative Dispute Resolution (ADR) services and training, FMCS in early 2014 successfully launched a new and innovative “Conflict Resolution Week” program. Partnering with conflict resolution experts from the FLRA, the National Council on Labor Management Relations, the U.S. Office of Personnel Management (OPM), the Udall Foundation, and experts from the University of Illinois at Champaign-Urbana, this series of in-person and web-based training was able to reach thousands of participants at no cost to them and with minimal cost to FMCS and the providers. The first event of its kind for FMCS, this showcase event highlighted its ability to provide effective outreach and training with cost-saving, innovative technology.



The program's success led in 2015 to numerous requests for live and web-based training, including programs in early dispute resolution and other skills for the FLRA, OSHA, and the U.S. Park Service. Similar programs also were provided to the U.S. Environmental Protection Agency (EPA) and the Social Security Administration (SSA).

In addition to providing labor-management dispute resolution services, the Administrative Dispute Resolution (ADR) and Negotiated Rulemakings Acts of 1996 call upon FMCS to assist Federal, state, and government entities in resolving disputes arising under their jurisdictions. **On a cost-reimbursable basis, FMCS provides a wide variety of professional services to more than 130 Federal agencies and bureaus.**

These services include: mediating employment disputes and disputes involving administrative programs; training in the skills and procedures of alternative dispute resolution; consulting, evaluating, designing, and building capacity in conflict management systems; facilitating public policy and intra/inter-agency discussions; and developing tools for interagency and public-private cooperation and collaboration.

During 2015, FMCS provided negotiated rulemaking services to the U.S. Department of Energy (DOE), which had a goal of defining energy efficiency standards for manufactured housing. In what has been hailed as the biggest energy-saving standards rulemaking in DOE history, FMCS assisted industry, government and advocacy groups in achieving new consensus energy standards for commercial heating and air conditioning equipment. The new standards have the potential to save nearly 15 quadrillion BTUs (quads) of energy over 30 years and reduce energy consumption and costs by billions of dollars over the lifespan of the equipment. **DOE has asked FMCS to facilitate three additional rulemakings in 2016.**

In 2015, FMCS also provided training to more than 20 agencies in the skills and procedures of alternative dispute resolution. These trainings included an Agency-wide effort to assist the Social Security Administration's ADR program by training 6,000 supervisors and managers in the effective utilization of ADR. Additionally, in conjunction with the Office of Personnel Management (OPM), the Federal Executive Boards in Philadelphia, Detroit, Atlanta, Dallas, Washington, and Baltimore, and other Federal agencies, FMCS provided Basic, Advanced, and Refresher Mediation Skills training to more than 320 neutrals for the Federal Shared Neutral Services and other Federal agency ADR programs. The training included more than 120 IRS agents from the IRS Office of Appeals.

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## Innovative Education and Outreach to Agency Customers

For example, FMCS is utilizing and incorporating research on the neuroscience of conflict, specifically, what happens in the brain in a dispute, and applying this knowledge to the Agency's work in conflict resolution. In another relevant area, FMCS is looking at research on generational differences in the workplace, and how these differences can contribute to workplace conflict.

In FY 2015, FMCS began improving and expanding services, developing and delivering new training programs beyond what has been described here, and incorporating the newest approaches to conflict res-





The FMCS toolkit for troubled labor-management relationships now includes a number of specific programs tailored to match special needs and circumstances. To cite a few examples, FMCS provides grievance mediation that can help head off workplace problems before they escalate into headaches at the bargaining table later. With FMCS Relationship by Objectives (RBO) training, labor and management representatives can learn how to repair and rebuild a broken relationship. FMCS also provides Relationship Development Training (RDT), aimed at building better and stronger labor-management ties.

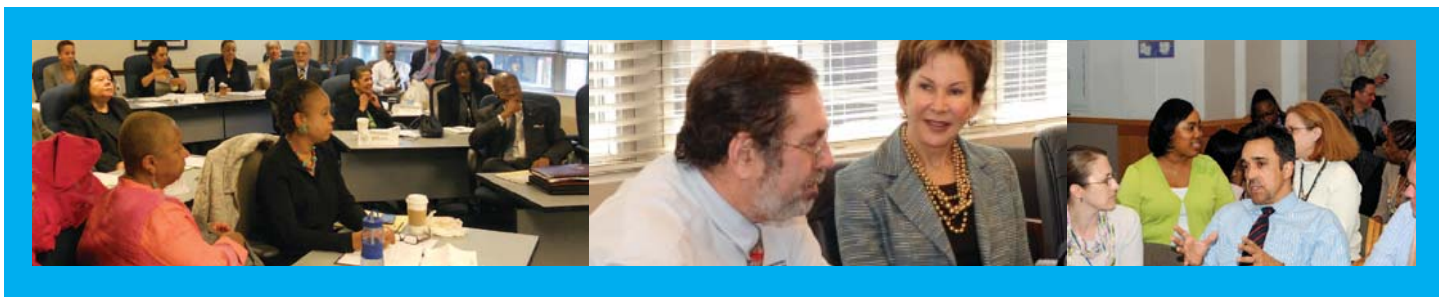
FMCS mediators work closely with labor and management in each case to develop the most effective types of relationship training, based on their needs. Under the agency's RDT program, for example, unions and employers learn from FMCS how to:

- Administer their collective bargaining agreement effectively;
- Communicate with understanding;
- Establish a labor-management committee to address issues of mutual concern;
- Train effective labor-management committee members;
- Develop organizational strength, productivity and efficiency.

In addition to customizing its training as needed, FMCS also offers choices for alternative bargaining processes to augment traditional mediation for parties engaged in the traditional brand of collective bargaining. These alternative mediation techniques for bargaining include:

- Modified traditional bargaining;
- Critical issues bargaining;
- Expedited bargaining;
- Interest-based bargaining;
- Affinity approach to economic bargaining.

FMCS is particularly proud of several new training programs and “success story” webinars, which were so well received among Agency customers that they were filled to capacity soon after FMCS announced they were being offered. The trainings and programs are examples of the 21st century technologies and innovations that are used at FMCS to help labor-management and ADR customers meet 21st century workplace challenges.



These initiatives included:

- **“From Adversaries to Allies: An Interest-Based Bargaining Success Story”** described the journey of the Nevada Health District on the management side and SEIU Local 1107 from committed opponents at the bargaining table to a relationship of mutual understanding and trust with the assistance of FMCS.
- **“Clearing the Deck: A Grievance Mediation Success Story”** described how NHS Human Services and AFSCME DC 88 improved their labor-management relationship and learned quickly to resolve workplace conflict and potential collective bargaining disputes by utilizing grievance mediation as a tool for achieving voluntary settlement.
- **“FMCS GM: Solving Disputes and Improving Relations Together”** was filled to capacity within 20 minutes after FMCS announced the program. Because it was so popular, FMCS also offered an audio-only version, which also has sold out.



- **“Leadership Conflict Resolution Skills: The Six Competencies of Outcome-Based Communications”** was designed specifically for leaders who are tasked with crucial mission and organizational goals. It provided participants with advanced soft-skill conflict resolution training in effective communication and interpersonal dynamics.
- **“The Art and Science of Inquiry”** focused on enhancing the oft-ignored but crucial conflict resolution skill of asking questions. It explored how to best use questions to bring parties in conflict together and facilitate their problem-solving.

Finally, FMCS continues to innovate with the production of interactive instructional tools designed to help FMCS customers more effectively utilize its services. Recent topics covered the on-line filing of statutorily required §8(d) notices of contract expiration and effectively using FMCS negotiated rulemaking support services.

## Operational Excellence

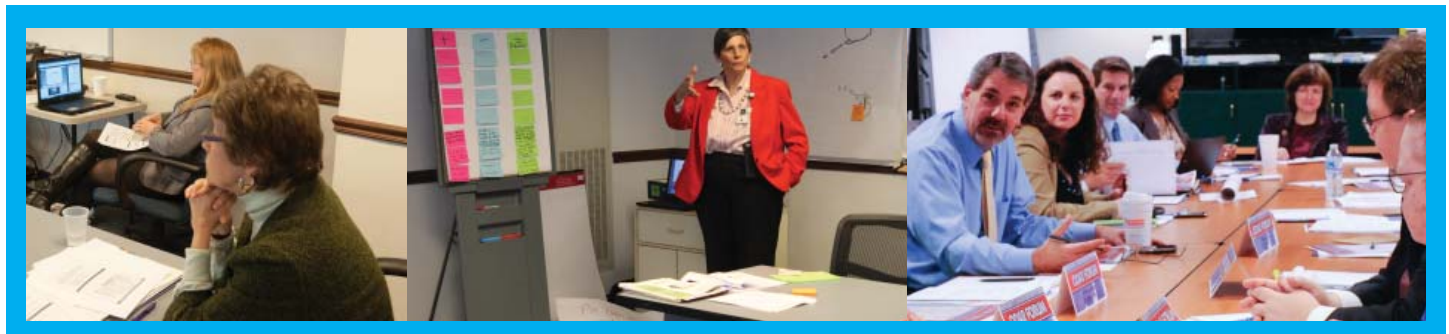
Like many Federal agencies, FMCS has experienced many challenges related to employee recruitment, training, and retention. As mentioned previously, FMCS has experienced three consecutive years of significant mediator retirements. In 2015 alone FMCS lost 18 mediators to retirement with more than 379 years of combined mediation experience. In response, FMCS recruited, on-boarded and began training 18 new mediators, or slightly more than 10 percent of its mediator workforce. Training new mediators is a labor-intensive process, involving five

weeks of formal classroom training and between six and 24 months of on-the-job training and job shadowing. Bringing a large number of new employees without previous Federal experience into an organization presents challenges, but it also provides an opportunity to create a dynamic yet consistent operating culture.

## Reforming Hiring Practices and Managing Performance

In meeting this challenge, FMCS has sought to position itself as one of the most desirable places to work in government. FMCS strives to attract the widest, most diverse, and best qualified applicants and to retain the best and most effective workforce. To this end, in 2015, FMCS hired a new

human resources director with years of high-level experience at the Department of the Navy and possessing specialized OPM staffing experience. The new director immediately began revamping and modernizing the FMCS HR office. Improvements to date include: OPM granted FMCS delegated hiring authority; FMCS became the first agency to beta test and use the new USA Staffing system; FMCS developed and implemented consistent on-boarding and mentoring practices across its operations; and FMCS reviewed and revised employee position descriptions and performance standards.





## Increasing Compliance and Strengthening Internal Controls

support to insure that FMCS employees are continuing the culture of innovation and creativity necessary for the success of the FMCS mission.

For its financial operations, FMCS hired a new finance director to update FMCS policies, strengthen and document its internal controls, and update staff skills. Strengthened financial policies and procedures, uniformly applied, will improve FMCS' ability to demonstrate effective, efficient, and transparent use of public resources. Also in 2015, FMCS contracted with the National Archives and Records Administration (NARA) to review its records keeping policies and systems, and by the end of 2016, FMCS will complete staff training on the new policies and procedures recommended by NARA. In FY 2015, FMCS began a review and update, as necessary, of all internal policy statements (FMCS Directives).

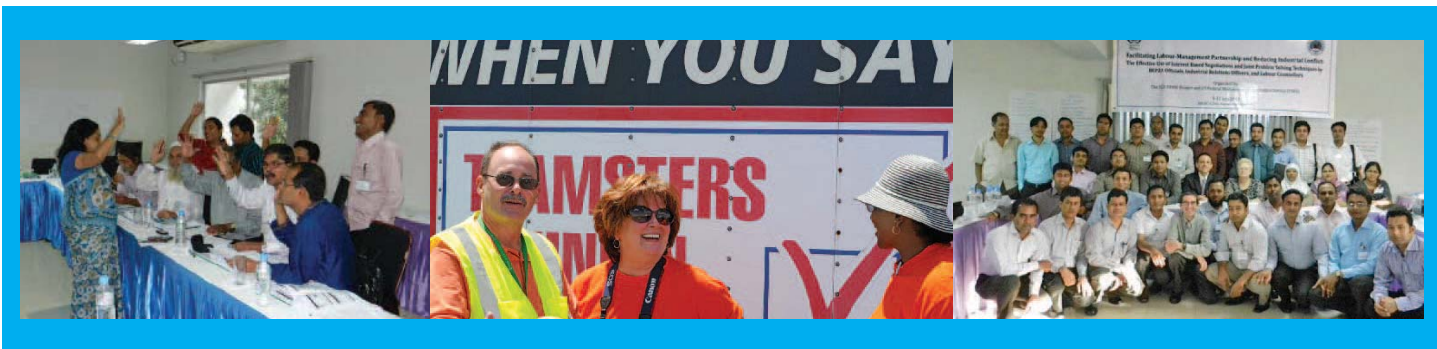
A critical part of the effort to improve compliance is the learning management system (LMS) that FMCS procured in 2015. The LMS will track and record each employee's completion of mandatory training, receipt of internal memos, and other professional development activities. This system will provide critical

## Creating Structural Integrity and Operational Consistency

working group has been tasked with developing succession planning guidelines, and another is reviewing field office utilization for efficiency and cost-effectiveness.

FMCS utilizes a well-developed system for evaluating the distribution and effectiveness of its field office staff and offices. This evaluation occurs on an annual basis and as retirements and attrition present opportunities for non-disruptive realignment of its personnel. With the majority of its employees involved in direct program delivery—175 employees (75 percent of its workforce in 2015 totaling 245 FTEs) distributed across 67 field stations—FMCS makes certain to place employees in areas where they can provide the greatest benefit at the least cost. FMCS will continue to use a workload evaluation model to determine trends in specific field stations. The results help ensure that decisions to fill vacant mediator positions reflect the current and potential demand for FMCS services.

With such urgent challenges to be confronted in FY 2015, FMCS reorganized the Agency management structure to ensure better integration between field and national office operations. It is currently reviewing and revising standard operating procedures across the Agency. In addition, a







## Modernizing Communications with Customers

FMCS strives to provide high-quality, high-value services to its customers in order to meet and fulfill its statutory mission. Equally important is FMCS's commitment to using allocated resources

as efficiently as possible in order to ensure that customers and taxpayers receive the most value for the services it provides.

In 2015, FMCS revamped and updated Agency technology to better serve current and future customers, including: launching a new public website; using social media (Facebook, Twitter and YouTube) to communicate with customers and employees; and using a new email service delivery system designed to reach larger audiences with information about upcoming live and web-based conflict resolution presentations and training events. In the near-term, FMCS expects to have an effective and modern communications strategy in place that clearly communicates the positive benefits of FMCS services.

## Conclusion

The FMCS mission statement reflects the Agency's statutory foundation: "to promote the development of sound and stable labor-management relationships and to prevent or minimize work stoppages by assisting labor and management in settling their disputes through mediation."

As the scope and complexity of workplace issues facing labor and management grow, FMCS will continue to play a critical role in helping labor and management create the kind of good labor-management relationships we know to be essential to averting labor strife that can damage the competitiveness and productivity of U.S. companies, the welfare of their employees, and the nation's economic well-being.

Based on its experience, FMCS believes that collective bargaining, collaboration, and joint problem-solving continue to be the best solutions to the workplace challenges of the 21st century. With an economy in transition, however, FMCS also recognizes the need for new approaches to managing workplace conflict. We are working hard to develop innovative conflict resolution techniques and tools, and using the latest technologies to help a new generation of workers and employers find solutions and success.

At the same time, FMCS continues to refine and expand our menu of training and dispute resolution programs for our sister Federal agencies and government at all levels to improve the delivery of services through enhanced labor-management collaboration, joint problem-solving, effective communication, increased employee engagement, diversity, mutual respect, and trust. FMCS also works to improve the efficiency and cost effectiveness of government at the Federal, state, and local levels with customized dispute resolution solutions for government agencies in the context of their administrative, regulatory, or enforcement activities.

To ensure that the Agency functions effectively in an environment greatly changed from its beginning nearly seven decades ago, FMCS is transforming at every level as a small, but critical independent agency of the U.S. government: it is structuring internal operations to meet the highest ethical and compliance standards; it is creating a positive sense of enthusiasm and urgency within its workforce to take services to the next level; and it is reaching new customers by leveraging the talent and creativity of its workforce with the newest technologies. Agency employees are working harder and innovating more than ever with extraordinary results. These are challenging times for employers, workers, and the organizations served by FMCS. Agency employees feel privileged and proud to help companies and their workers create more collaborative, competitive and productive workplaces and to contribute to our country's overall economic well-being.

Director, FMCS





# FY 2015 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. 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 FMCS to help other Federal, state and local agencies minimize costly litigation by resolving disputes arising under their jurisdictions. Thus, while its core activity remains the prevention or resolution of labor-management disputes, FMCS also provides its sister agencies with a wide variety of alternative dispute resolution services.

## Collective Bargaining Mediation

Through collective bargaining mediation, FMCS helps avert or minimize the cost of work stoppages to the U.S. economy. 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 2015, FMCS mediators were actively involved in more than 3,700 collective bargaining contract negotiations in every major industry throughout the United States.

## 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 2015, FMCS mediated more than 1,600 grievance mediation cases and helped the parties reach agreement in 1,200 of these (73 percent).

# Relationship Development and Training

Preventing conflict that may arise during the term of a collective bargaining agreement is another important goal of FMCS. 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. 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.



## FMCS Relationship Development and Training Programs

- **Alternative Bargaining Training.** Teaches the benefits and techniques of a non-adversarial, joint problem-solving approach to negotiation. In addition to the Interest-Based Bargaining process, various models include:
  - **The Affinity Model of Collaborative Economic Bargaining.** The Affinity Model is a facilitation tool that can be applied immediately to deal with distributive economic issues in an integrative and collaborative setting. The Affinity Model of bargaining has been used with a great success in a variety of industries and sectors such as K-12 Education and the Performing Arts.
  - **Critical Issues Bargaining (CIB).** CIB is a hybrid collaborative bargaining model which encourages information-sharing and interest-based problem-solving to resolve issues, and which then provides a built-in transition to traditional bargaining for unresolved and other critical issues. Prior to bargaining, parties present their economic forecast/projections/parameters.

FMCS has developed other alternative bargaining models for training parties to enhance problem-solving and mitigate adversarial relationships. These include: Enhanced Conventional Negotiations (ECN); Compressed Bargaining (CB); and Modified Traditional Bargaining (MTB).


# More FMCS Relationship Development and Training Programs



## FMCS Relationship Development and Training Programs

- **Relationship by Objective.** Improves the parties' relationship with one another, particularly where the relationship has worsened after a contentious representation election, initial contract negotiation, or strike.
- **Committee Effectiveness Training.** Assists the parties in developing joint labor-management committees designed to bring the parties into regular communication.
- **Partners in Change.** Explores the organization's current culture, identifies perceptions within the organization, creates a vision for the future, and designs systems that effectuate change.
- **Labor-Management Work-Site Committee Training.** Helps labor-management committees extend to the work-site level, forming work-site committees, group interactions, and learning techniques to manage change.
- **Contract Administration/Steward-Supervisor Training.** Trains front-line supervisors and shop stewards on their roles and responsibilities in contract administration, grievance processing, the arbitration procedure, and interpersonal communications for building cooperative relationships.
- **Cultural Awareness Skills for Labor and Management.** Trains the parties to function in a multicultural work setting including the resolution of cross-cultural conflicts in a workplace.
- **Collective Bargaining and Mediation Training.** Trains the parties on effective negotiation and communication skills.





# Conflict Resolution and ADR Services for Government

Outside the collective bargaining arena, FMCS provides professional services to a wide range of Federal, state, and government agencies. With a mandate to resolve disputes, train persons in skills and procedures employed in alternative means of dispute resolution design conflict management systems, build capacity for constructive conflict management, and strengthen inter-agency and public-private cooperation, FMCS seeks to reduce litigation costs and to promote better government decision-making

FMCS provided conflict management and ADR services more than 1,100 times in FY 2015. These services included negotiation, mediation, convening, facilitation, training, and systems design. FMCS provides these ADR services to Federal agencies and to state and local governments on a cost-reimbursable basis:

- **Workplace and Employment Disputes.** FMCS mediates workplace and employment disputes for Federal and state agencies. The majority of these disputes concern claims of employment discrimination (EEO), other types of personnel issues and workplace conflicts. FMCS accepts individual and multi-party conflicts for mediation.
- **Disputes Involving Administrative Programs.** FMCS also mediates disputes between agencies and their “regulated public,” such as whistleblower complaints or disputes involving contracts, grants, licenses, enforcement, and administrative programs.
- **Training Persons in the Skills and Procedures Employed in Alternative Means of Dispute Resolution.** FMCS also provides training in conflict resolution to aid in the effective use of alternative dispute resolution throughout the Federal government. To that end, FMCS offers both live and web-based training on a variety of topics.
- **Consultation, Evaluation, and Systems Design.** FMCS provides professional conflict resolution specialists to help agencies design conflict prevention and resolution systems to build capacity for constructive conflict management systems. Systems design may include an initial consultation, an assessment, program design and development, training delivery, and program management follow-up.
- **Facilitation during Decision-Making.** Particularly in times of limited budgets, FMCS facilitation services can help agencies achieve cost-savings when decision-making is delegated to a committee, task force, or other type of group. FMCS facilitation services, including consultation, convening, training, and the actual facilitation, help groups accomplish their tasks within specified time frames. Notably, these services can be provided both onsite and virtually, another valuable time and cost saving feature of FMCS facilitation services.
- **Negotiated Rulemaking.** Negotiated rulemaking is a process in which a government agency invites persons and groups potentially impacted by a proposed rule to participate in its drafting. Interested parties who might otherwise oppose or challenge the rule are given the chance to participate in its formulation, thus reducing post-issuance challenges. The Negotiated Rulemaking Act of 1996 authorizes FMCS to convene and facilitate this process. Since the 1980s, FMCS has convened and facilitated dozens of negotiated rulemakings for numerous agencies.
- **Agency Cooperation & Collaboration.** FMCS can facilitate intra-agency or multiple agency groups tasked with developing a strategic plan or identified objective involving complex matters. Interest-based problem-solving and collaboration skills are essential to achieving successful outcomes.
- **Public Policy Dialogues.** Similarly, FMCS is often called upon to facilitate public policy discussions involving Federal agencies and public-private stakeholders such as those conducted under the Federal Advisory Committee Act (FACA). These multi-party stakeholder discussions can benefit from the assistance of a skilled and neutral facilitator experienced in synthesizing discussion points and interests, as well as establishing and overseeing meeting structures and processes. Training and coaching are also available for participants.



# International Training and Exchange

Beyond the nation's borders, FMCS plays an important role in promoting collective bargaining and conflict resolution around the world. The 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.



In addition to programs delivered abroad, every year FMCS mediators host numerous foreign delegations visiting the United States and educate them in U.S. labor-management relations and conflict resolution practices.

FMCS international training programs are delivered using cost-reimbursable funds, largely through interagency acquisition agreements with other government agencies, such as the Departments of State, Labor, and USAID. In FY 2015, FMCS mediators delivered more than 330 hours of mediation and industrial relations training programs and consultation for delegations visiting the United States from Swaziland, Korea, Taiwan and Nigeria and in-country for participants in Burma, Morocco, Swaziland, Haiti, Bangladesh, Honduras, and Thailand.

## Arbitration Services

National labor policy favors arbitration over litigation for settling contractual disputes. The FMCS Office of Arbitration Services maintains a roster of approximately 1,100 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. FMCS administers its established policies and procedures on arbitration, which also incorporate the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, to which FMCS is a signatory.

During FY 2015, the Office of Arbitration Services processed more than 16,600 requests for panels and oversaw the appointment of more than 5,400 arbitrators nationwide.

## FMCS Institute for Conflict Management

The FMCS Institute for Conflict Management (Institute) delivers accessible, innovative, 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.

The Institute offered eight courses on five subjects in 2015: Mediation Skills for the Workplace, Labor-Management Negotiation Skills, Arbitration for Advocates, Six Competencies of Outcome-Based Communications, and Becoming a Labor Arbitrator. The Institute runs as a reimbursable program and is funded by fees received from training participants.

# Labor-Management Committee Grants

The 1978 Labor-Management Cooperation Act authorizes and directs FMCS to encourage and support joint labor-management committees “established for the purpose of improving labor-management relationships, job security, and organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.” Congress funds this initiative in annual appropriations to FMCS, and grants are competed and awarded to encourage labor-management committees to develop innovative joint approaches to workplace problems.

In FY 2015, FMCS awarded almost \$800,000 in grants from funds appropriated in 2014 and 2015.

Awarded funds included:

- **Helen Miller Member Education and Training Center & SEIU HCII.** Funds addressed a need to engage front-line hospital employees and hospital management to jointly identify areas for improvement in order to successfully transition health care delivery into the new performance-based systems that reward patient satisfaction, successful health care outcomes, and efficient service delivery. The grantees expect that the partnership projects will lead to stronger performance on value-based purchasing and other frontline worker performance metrics. This will in turn lead to reduced payment reimbursement penalties by Medicare and Medicaid.
- **Manufacturing Renaissance & Chicago Federation of Labor.** Between 1979 and 2009, manufacturing employment fell by 41 percent and wages have remained historically stagnant due to global competition, the infusion of new technologies, and cost-cutting processes. This, in turn, has negatively impacted communities, schools, local services, and the ability of workers to provide for their families. Grant funds will be used to build strategic public-private partnerships focused on creating a vision for advances in manufacturing in the 21st century. The project expects to foster healthy communities by developing collaborative, locally tailored programs that will fuel manufacturing innovation and competitiveness.
- **Golden Living Nursing Home Centers & SEIU Healthcare PA Training and Education Fund.** Nursing homes are being inundated with standards, regulations, best practice guidelines for efficient processes, and many other obligations or recommendations set forth by the Centers for Medicare and Medicaid Services (CMS) and the Affordable Care Act (ACA). While these are intended to improve patient safety, they can also have a negative impact on the flow of work if labor and management are not communicating well. By creating a Quality Assurance and Performance Improvement (QAPI) committee at each participating facility, one which includes management and frontline staff, the three facilities will improve employee satisfaction, work flow, and patient outcomes.

# Mediation Services Program Data



	2011	2012	2013	2014	2015
<b>PROGRAM SERVICES</b>					
<b>1. COLLECTIVE BARGAINING MEDIATION .....</b>					
Assigned Cases <sup>1</sup>	13,712	13,114	12,938	12,054	11,636
- Private Sector	12,460	11,814	11,802	10,856	10,620
- Public Sector (state and municipal)	943	943	843	905	749
- Federal Sector	309	357	293	293	267
Mediated Cases <sup>2</sup>	4,665	4,528	4,122	4,009	3,719
- Private Sector	3,271	3,079	2,826	2,697	2,600
- Public Sector (state and municipal)	1,091	1,111	981	1,020	842
- Federal Sector	303	338	315	292	277
Closed Cases	13,776	13,652	12,651	12,032	11,644
Closed Mediated Cases	3,815	3,764	3,339	3,299	3,081
Activity Rate <sup>3</sup>	28%	28%	26%	27.4%	28.8%
Settled and Closed Mediated Cases	3,234	3,159	2,807	2,852	2,605
Percentage of mediated cases settled w/FMCS <sup>4</sup>	85%	84%	84%	86.5%	84.6%
Activity rate in significant cases <sup>5</sup>	33%	46%	47%	40.6%	42.6%
<b>2. GRIEVANCE MEDIATION .....</b>					
Assigned Cases	1,968	1,837	1,872	1,762	1,729
Mediated Cases	1,905	1,784	1,809	1,704	1,676
- Private Sector	1,513	1,372	1,398	1,330	1,319
- Public Sector (state and municipal)	261	264	267	256	240
- Federal Sector	131	148	144	118	117
Settled GM Cases	1,428	1,367	1,383	1,308	1,221
Percentage of cases settled w/ FMCS <sup>6</sup>	75%	77%	76%	76.8%	72.9%
<b>3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....</b>					
Number of training programs provided	2,301	2,128	2,027	1,884	1,923
- Private Sector	1,267	1,262	1,174	1,111	1,090

# Mediation Services Program Data



	2011	2012	2013	2014	2015
<b>PROGRAM SERVICES</b>					
-Public Sector (state and municipal)	493	463	533	436	472
-Federal Sector	541	403	320	337	361
<b>4. ADR Services.....</b>					
Mediated Cases	1,330	1,110	1,118	910	1,193
-Federal Sector	1,323	1,090	1,089	884	1,152
-Public Sector (state and municipal)	3	5	1	6	3
-Private	4	15	28	20	38
Settled ADR Cases	641	537	488	410	536
Percent of ADR cases settled w/ FMCS <sup>7</sup>	48%	48%	44%	45.1%	44.9%
<b>5. OUTREACH.....</b>					
Outreach cases <sup>8</sup>	3,190	3,019	2,911	2,710	2,722
<b>6. ARBITRATION SERVICES.....</b>					
Number of panels issued	13,500	13,538	13,361	13,179	12,744
Number of arbitrators appointed	5,575	6,129	6,020	5,836	5,415
<b>7. INSTITUTE.....</b>					
Number of courses provided	5	8	10	8	8
Number of participants	93	179	188	114	151

<b>Work Stoppage Information</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Work stoppages carried from preceding FY	13	18	24	21	16	14
Work stoppages beginning within FY	159	155	161	154	106	110
Work stoppages closed within FY	154	149	164	159	108	111
Work stoppages open at end of FY	18	24	21	16	14	13
Average duration of work stoppages in closed cases (number of days)	44.9	45.3	49.0	44.3	75.7	63.8
Estimated number of work-er-hours lost due to work stoppages (1,000s)	8,877	11,222	11,038	15,317	6,823	39,280



# Arbitration Services Program Data



Activity	2010	2011	2012	2013	2014	2015
Panels Issued <sup>9</sup>	16,486	14,367	13,538	13,361	13,179	16,689
Arbitrators Appointed	6,870	6,608	6,129	6,020	5,836	5,415
<b>Activity Charged For</b>						
Travel Days	.48	.44	.92	.63	.59	.76
Hearing Days	1.14	1.10	1.13	1.05	1.17	1.39
Study Days	2.37	2.37	2.37	2.39	2.21	3.11
<b>Total</b>	<b>3.99</b>	<b>3.91</b>	<b>4.42</b>	<b>4.07</b>	<b>3.97</b>	<b>5.26</b>
<b>Average Charges</b>						
Per Diem Rate	\$981	\$984	\$1,006	\$1,024	\$1,045	\$1,212
Amount of Fee	\$4,039	\$4,045	\$4,576	\$4,517	\$4,488	\$6,290
Amount of Expenses	\$380	\$384	\$389	\$395	\$405	\$456
<b>Total Charged</b>	<b>\$4,419</b>	<b>\$4,429</b>	<b>\$4,965</b>	<b>\$4,912</b>	<b>\$4,893</b>	<b>\$6,746</b>

1. Section 8(d) of the National Labor Relations Act, 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 2015 FMCS case intake was nearly 20,000.
2. Mediated 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 mediated cases settled divided by the total number of mediated 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 ADR 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.
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.

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