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STRATEGIC PLAN

2014-2018

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Federal Mediation and Conciliation Service

Four-Year Strategic Plan

2014-2018

**Federal Mediation and Conciliation Service
2100 K St., NW
Washington, DC 20427**

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Federal Mediation and Conciliation Service

Four-Year Strategic Plan 2014-2018

1 Agency and Mission Information

Congress established the Federal Mediation and Conciliation Service (FMCS) in 1947 through the Labor Management Relations Act (Taft-Hartley) amendments to the National Labor Relations Act (NLRA) as an independent agency whose all-important 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 programs in the private sector.

The FMCS embraces the principle that constructive labor-management relationships and collective bargaining are the most effective tools for increasing productivity and generating innovation and competitiveness in the nation’s unionized workplaces. Over the past 66 years, the FMCS has produced a very impressive track record of success preventing or minimizing interruptions to the free flow of commerce and improving labor-management relationships and organizational effectiveness. As the collective bargaining environment has evolved over this time, so too has the approach of the FMCS’s work. Today, issues such as employee health care and pension benefits are very complex and may take several months of intensive negotiations to resolve. For this reason, the FMCS seeks to proactively engage the parties at the earliest possible moment and help them resolve their differences cooperatively and with a problem-solving mentality.

1.1 Introduction

Collective bargaining negotiations implicate economic issues, such as employee wages and benefits, with a wide spectrum of non-economic issues—those that relate to the terms and conditions of employment. With respect to these issues, the state of the

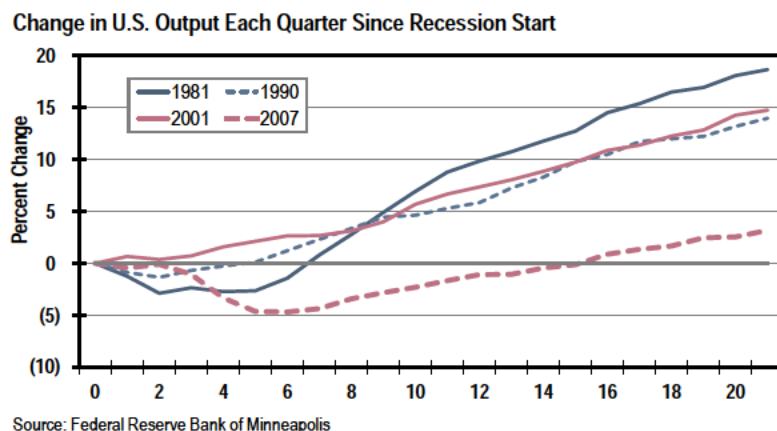
¹ 29 USC § 173. By statute, FMCS’s jurisdiction excludes the rail and airline industries, which are covered by the National Mediation Board under the Railway Labor Act.

national economy and the competitive and financial health of the unionized employer are critical in setting the overall environment for every negotiation. During periods of recession or slow growth, private sector employers historically argue that they have fewer financial resources available for employee benefits and wages. Negotiations may include proposed reductions in pay and benefits or changes to working conditions to provide greater flexibility in conducting their operations. For their part, state and local government employers may likewise have less tax revenue for benefits and wages or face shifts in the types of services demanded by the public.

In contrast, periods of economic growth historically provide employers with greater financial resources and opportunities. During those periods, tightening labor markets may provide the opportunity for employees to negotiate more favorable wages and benefit packages.

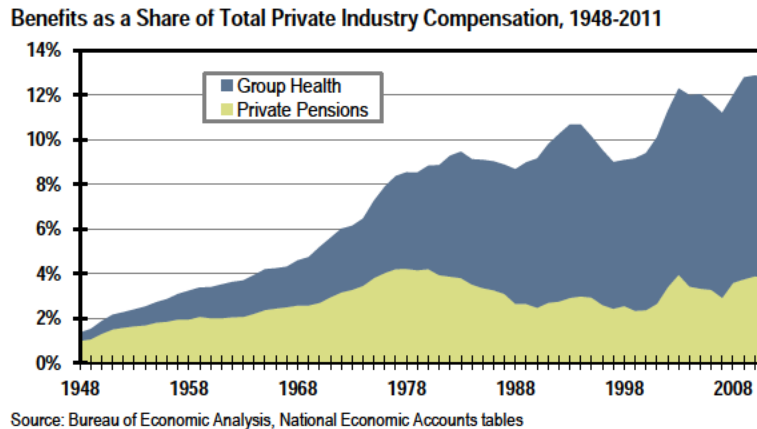
The FMCS anticipates that effects of the slow recovery from the so-called “Great Recession” of 2007-2009 will continue to dominate collective bargaining for the next few years. As shown in Figure 1, the recovery since the start of the 2007 recession has taken far longer and been quite weak in comparison to the recoveries from previous recessions.

Figure 1: Weak Economic Recovery



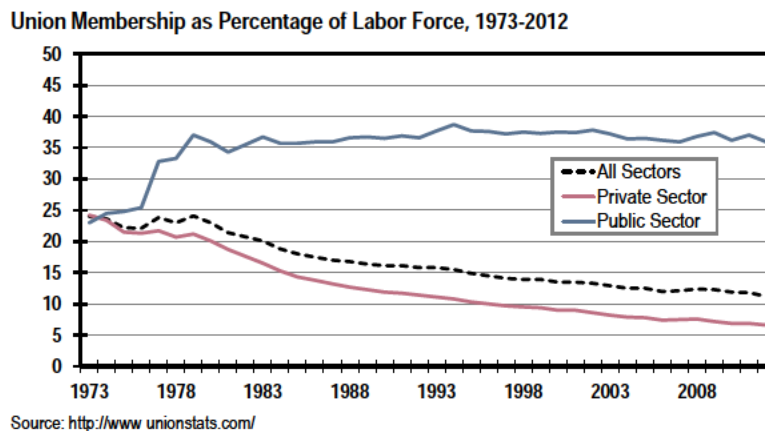
As the recovery becomes reality, employees who accepted reductions or status quo contracts with the expectation that these were temporary measures are likely to seek to “catch up” by significantly increasing their wage and benefit demands. Similarly, changes in health care costs and the contractual and plan changes necessitated by the implementation of the Patient Protection and Affordable Care Act of 2010 (ACA) will challenge collective bargaining negotiations through 2018. Specific provisions of the ACA may conflict with existing programs negotiated by collective bargaining parties. As shown in Figure 2, health care costs as a percentage of total compensation continue to rise for employers and employees, placing additional pressure on the bargaining parties to accommodate premium increases, reduced benefits, and higher service co-payments. Pension benefits and retirement security issues present challenges of a similar magnitude, particularly in a period of low interest rates and slow growth.

Figure 2: Increasing Health Care Costs



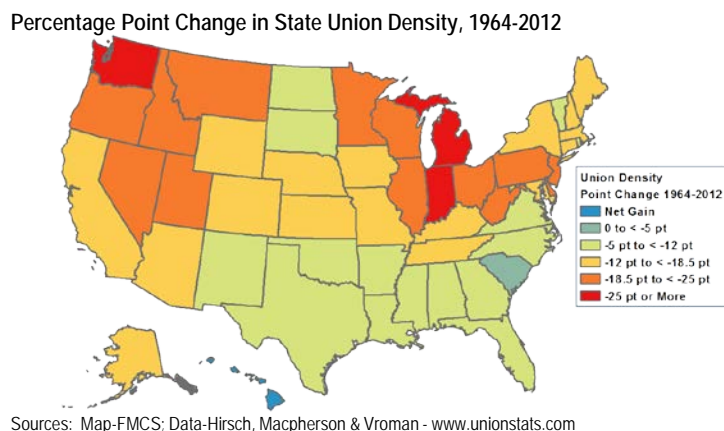
Economic issues aside, the FMCS continues to monitor a number of long-term national trends that impact its collective bargaining work. Most significant is the drop in the proportion of the U.S. private sector labor force that is represented by labor unions. As shown in Figure 3, private sector union membership has been steadily decreasing since the early 1970s and in 2012 only 6.6 percent of the U.S. private sector labor force belonged to a union. Despite this decline, union members still number more than 7 million and are employed in some of the nation's most critical industries, including manufacturing, health care, utilities, transportation, services, entertainment, and construction.

Figure 3: Decreasing Private Sector Unionization



This decline in the number of unionized workers has not been evenly distributed across the U.S. Significantly for the FMCS, the declines have been the largest in states with formerly high unionization rates and in which the FMCS has traditionally maintained a large presence. The FMCS has responded to this decline by consolidating its operations and reducing staff through attrition. As shown in Figure 4, decreases in union density have been greatest in the industrialized states of the northern U.S., most notably in Washington, Michigan, and Indiana. Southern states, which have traditionally not been heavily unionized, have seen relatively slight decreases since 1964.

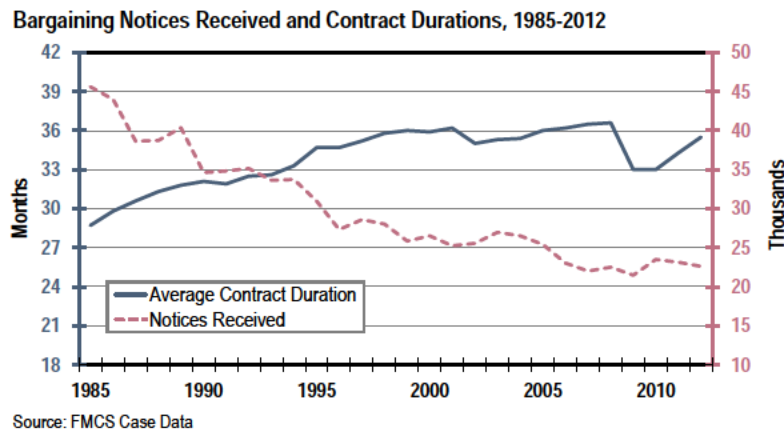
Figure 4: Decreasing Union Density



Related to the overall decline in the number of unionized workers, is a decrease in the number of collective bargaining agreements that are negotiated each year. This decrease is due in part to fewer employers having unionized employees and also to an increase in the duration of collective bargaining agreements. Increased contract durations necessarily create fewer opportunities for the FMCS to offer its collective bargaining mediation services, even if the number of collective bargaining contracts remains the same. Since 1985, the average duration of contracts known to the FMCS has increased from 28.7 months to 35.5 months in 2012 (Figure 5.) Correspondingly, the number of collective bargaining notices received by the FMCS levels off or increases slightly whenever the average contract duration drops. This drop in contract duration usually coincides with recessionary periods.

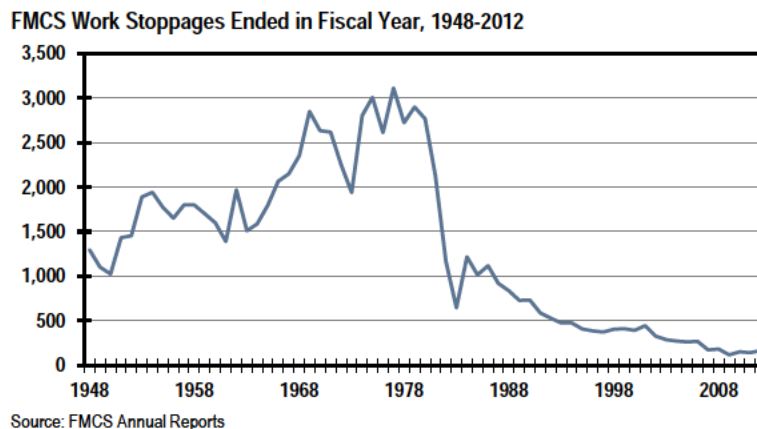
Nevertheless, in FY 2012, FMCS mediators actively monitored over 18,600 collective bargaining negotiations and were directly involved “at the table” in more than 4,500. The negotiations in which mediators were directly involved impacted every major industry throughout the United States. In one instance—the shipping industry covering the entire Atlantic Coast and Gulf Coast ports—the threatened work stoppage could have had a catastrophic effect on the nation’s economy. Further, the FMCS is planning to continue its pro-active outreach program in the future given its success obtaining joint requests from the parties to mediate complex, high-profile disputes with major economic implications.

Figure 5: Increasing Contract Durations



A second trend that the FMCS monitors closely is the decline in the number of work stoppages that occur each year. Work stoppages were relatively common throughout the FMCS's first four decades, with 3,000 or more stoppages occurring each year by the late 1970s. In the early 1980's, the number of stoppages began to decline, and now total a few hundred each year. Figure 6 shows the decrease in the number of work stoppages that occur each year. Even with this decline, the negative economic impact of a single work stoppage in a significant case would easily exceed FMCS's entire annual budget

Figure 6: Declining Work Stoppages



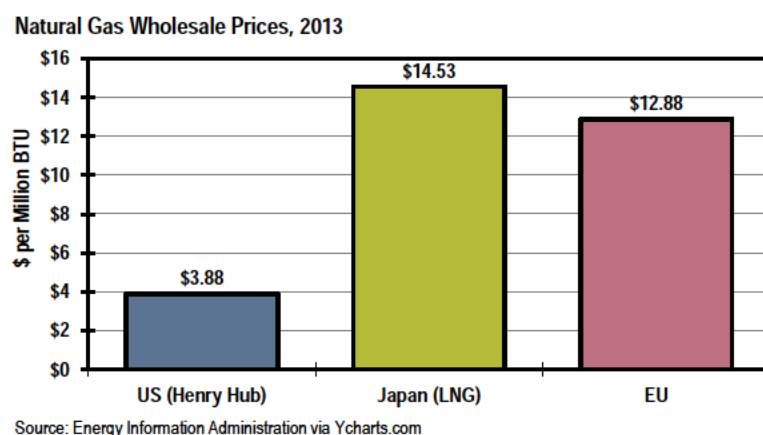
While the FMCS can certainly take some credit for this decline, the reasons for it are myriad, and the relative contribution of individual factors a matter of continuing debate among economists and labor relations scholars.

There are examples of significant recovery among unionized industries. One such example is the recent and widespread adoption of hydraulic fracturing “fracking” in the U.S. that is creating a surge in domestic oil and gas production. This boom in drilling and transporting activities not only provides direct employment for unionized workers, such as heavy equipment operators, engineers, truckers, welders, and other skilled trades,

but also for unionized workers in businesses that supply goods and services to these industries. Steel mills and heavy equipment manufacturers, to name a few, should all benefit from this economic opportunity.

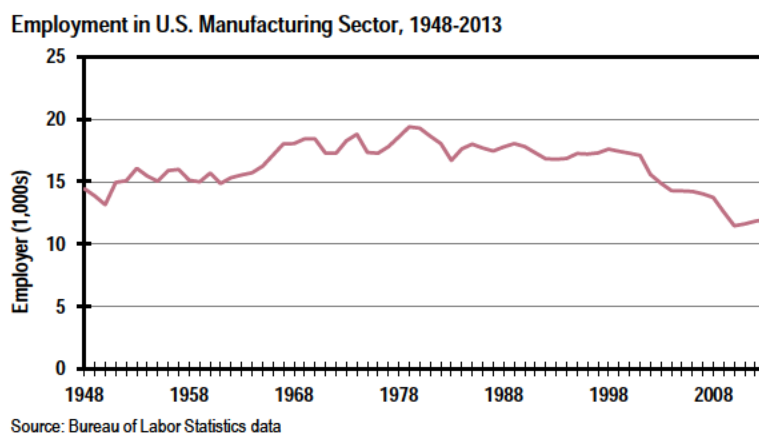
Increasing domestic energy supply has other positive economic effects due to the increased supply of domestic oil and gas. Natural gas wholesale prices in the U.S., for example, were between 30 and 25 percent of those in Europe and Japan throughout early 2013 (Figure 7). Lower energy costs help to offset higher labor costs in the U.S., particularly in energy intensive industries. In addition, strong economic growth in many developing countries has raised wages and benefit costs to the point that U.S.-based operations are again an attractive option for some companies.

Figure 7: Lower Energy Costs



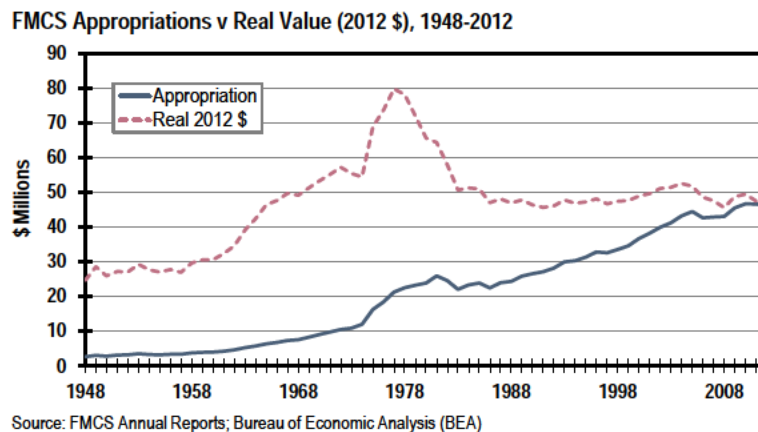
While it is too soon to predict the longer term impact of these changes, it is worth noting that employment in the manufacturing industry, decimated by two decades of job losses, has recovered approximately 500,000 jobs since 2010 (Figure 8.) The possibility of “onshoring”—or the return to the U.S. of jobs taken overseas—is a trend that the FMCS will continue to monitor for its potential positive impact on U.S. industry.

Figure 8: Improving Employment in Manufacturing



From an operational standpoint, the ongoing national fiscal policy debate is expected to dominate FMCS decision making for the next few years. To date, the FMCS has been able to avoid cutting public services due to appropriation cuts required by the Budget Control Act of 2011. However, the possible extension of these cuts into future years and the challenging federal budget environment will require the FMCS to consistently examine the level of services that it provides as well as its internal structure and operations. In real terms, the FMCS budget appropriation has held more or less steady since 1986, and in only three of these years has the appropriation been lower than the 2012 amount. In absolute terms, the FMCS 2012 appropriation is less than in the preceding two years (Figure 9).

Figure 9: Uncertain Appropriations



Despite budgetary challenges, the FMCS continues to strengthen its internal operations and improve the skills of its workforce. In 2012, employee survey responses resulted in the FMCS being ranked as one of the top small agencies in the federal government, a distinction it has received since the surveys were implemented. Employees ranked the agency particularly well in areas of job satisfaction and employee motivation.

1.2 Mission Statement

The sole mission of the FMCS is:

“To assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”

In support of this mission, the 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.

1.3 Vision and Values

Vision Statement

The FMCS 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.

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.

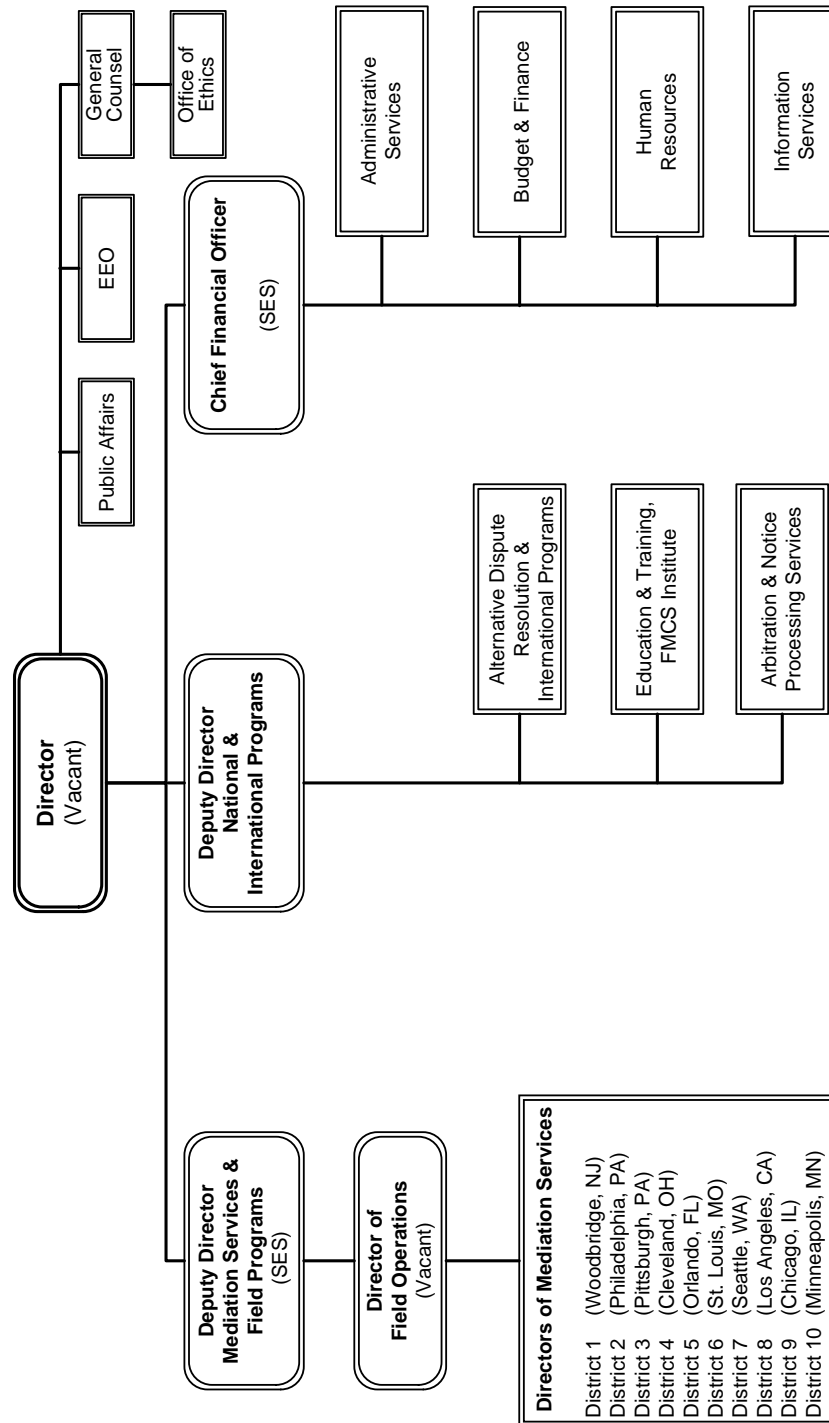
Service—We are dedicated to meeting the needs of labor and management through continuous improvement. We are committed to anticipating and responding to change. Commitment to quality education and training is vital to our mission. Leadership through initiative, creativity and innovation is essential.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

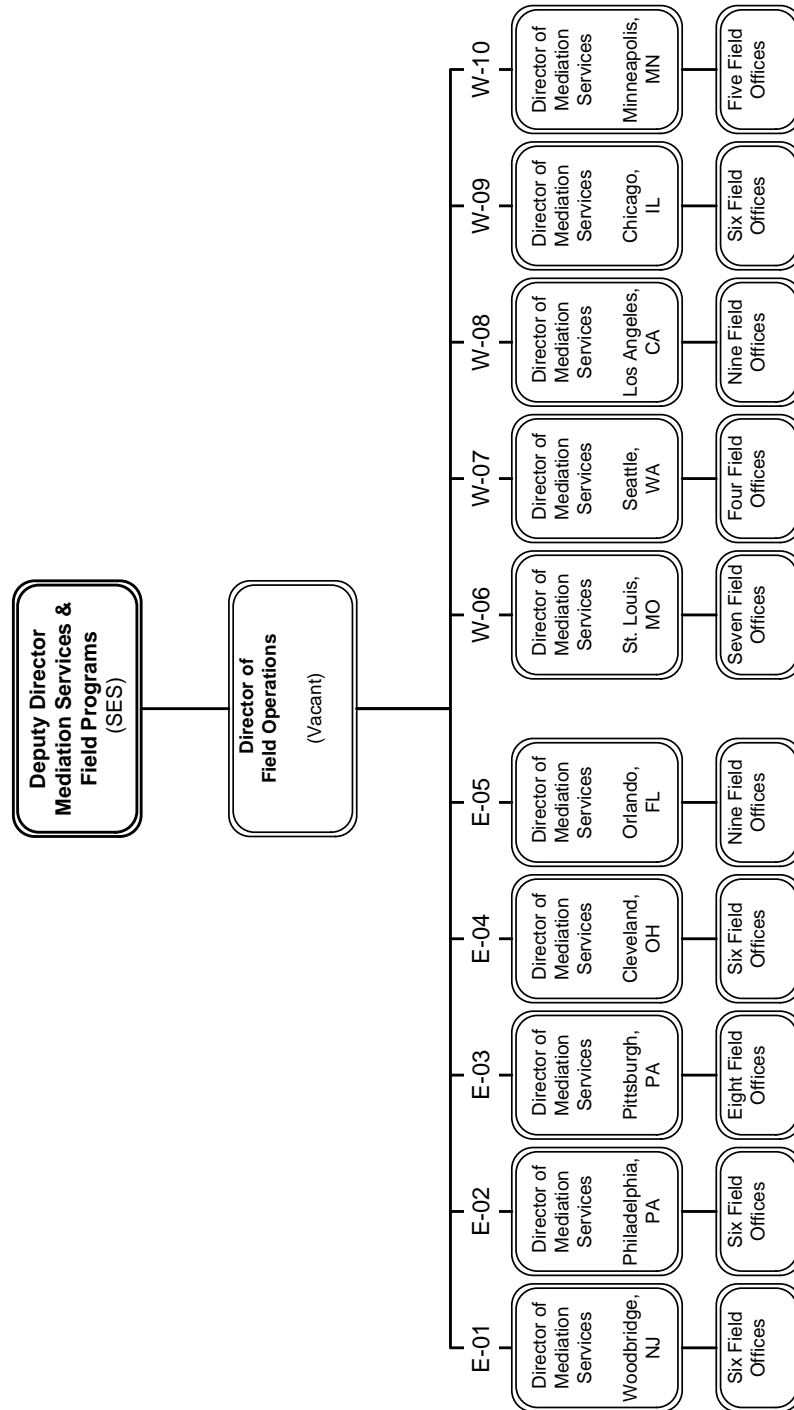
1.4 Organizational Structure

The FMCS maintains local offices in 66 different cities across the U.S. and a national headquarters in Washington D.C. The national office contains centralized procurement, budgeting, information technology, human resources, legal, equal employment opportunity, public affairs, and training functions. The FMCS maintains 10 district offices, each with a manager and an administrative assistant.

FMCS Organizational Chart



FMCS Field Management Structure



1.5 Scope of Responsibilities

Given the increased complexities of the issues, building and maintaining constructive labor-management relationships requires much more than mediation during contract negotiations. Limiting assistance to the time period when a contract is expiring can actually increase the likelihood of conflict and reduce the opportunities available to labor and management to meaningfully resolve issues. For this reason, FMCS mediators proactively offer training services to labor and management to help assure that when negotiations take place, they will be conducted in a constructive, problem-solving manner. On another front, the FMCS also maintains and provides rosters of arbitrators whose services the parties can utilize to resolve grievance disputes concerning the meaning, interpretation, and enforcement of provisions in existing collective bargaining agreements.

Collective Bargaining Mediation

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

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

Grievance Mediation

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

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.

In FY 2013, FMCS mediators conducted more than 2,000 training programs with the parties of collective bargaining.

FMCS relationship-development and training programs include:

- **Alternative Bargaining Training:** Teaches the benefits and techniques of a non-adversarial, joint problem-solving approach to negotiation.
- **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.

ADR Services

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

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. 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. The 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.

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

Arbitration Services

National labor policy favors arbitration 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, the FMCS furnishes a list of names from which they may choose an arbitrator to hear their case and render a decision.

During FY 2013, the Office of Arbitration Services processed almost 13,400 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided more than 2,100 labor arbitration cases.

FMCS Institute for Conflict Management

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

Arbitrator. The Institute runs as a reimbursable program and is funded by fees received from training participants.

Labor-Management Committee Grants

The 1978 Labor-Management Cooperation Act authorizes and directs the 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 the FMCS annual appropriations, and grants are distributed to encourage labor-management committees to develop innovative joint approaches to workplace problems. There were no funds appropriated for grants in FY 2013.

1.6 Statutory and Other Legal Authority

The Federal Mediation and Conciliation Service was established by Title II of the Labor-Management Relations Act (Taft-Hartley) in 1947 as an independent agency of the federal government whose primary mission is to prevent and minimize labor-management disputes affecting interstate commerce by providing mediation, conciliation, and voluntary arbitration services. All mediation and conciliation functions of the Secretary of Labor and the United States Conciliation Service were transferred to FMCS at that time. This mission includes both the private and public sectors, except for the railroad and airline industries, which are covered by the Railway Labor Act administered by the National Mediation Board.

The Civil Service Reform Act of 1978 authorized FMCS to assist with dispute resolution in federal sector labor disputes. The Labor-Management Cooperation Act amended the Taft-Hartley Act in 1978 and directed FMCS to encourage labor-management cooperative activities. It also authorized the issuance of grants to support joint labor-management activities conducted by plant, area, public sector, and industry-wide committees.

In 1990, the FMCS was authorized by the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act to assist other federal agencies in resolving disputes arising out of grants, contracts, licenses, or other agency administrative actions, and to assist in the process of negotiated rulemaking. The Administrative Dispute Resolution Act of 1996 amended and permanently reenacted these 1990 Acts.

Over the years, Congress and the Executive Branch have authorized FMCS to perform a variety of dispute resolution functions as well as to assist in the improvement of labor-management relationships. Specific statutory and other authorizations of FMCS programs are described below.

- I. The Labor-Management Relations Act of 1947 (Public Law 80-101, as amended, 29 U.S.C. 158(d), 173 *et. seq.*) directs the FMCS to prevent or

minimize interruptions to the free flow of commerce growing out of labor disputes by helping the parties settle such disputes through mediation. Parties are required to notify the FMCS 30 days prior to a contract termination or modification date so that mediation services may be proffered.

The Act establishes a special procedure for threatened or actual strikes which, in the opinion of the President, imperil the national health or safety. In such situations, the President may appoint a board of inquiry to ascertain the facts with respect to the dispute. After receipt of a report, the President may seek to enjoin the strike, and a court may do so if it finds that the threatened or actual strike or lockout affects a substantial part or all of an industry and would imperil the national health or safety. 29 U.S.C. 176-178.

- II. The Health Care Amendments of 1974 (Public Law 93-360, 29 U.S.C. 158(d) (4), (4)(A), (4)(B)) (amending the National Labor Relations Act) include special provisions intended to prevent or minimize work stoppages in the health care industry. In the case of this industry, FMCS must be notified 60 days before the contract termination date. A 30-day notice is required in initial bargaining situations. If, in the opinion of the Director, a strike is threatened which would interrupt the delivery of health care in a locality, the Director may appoint a board of inquiry. 29 U.S.C. 183. The board has 15 days within which to investigate and file its report and recommendations; parties must maintain the status quo for 15 days thereafter while further negotiations and mediation take place. The parties are required to cooperate in any mediation efforts by FMCS.
- III. The Civil Service Reform Act of 1978 (Public Law 95-454, 5 U.S.C. 7119(a)) directs the FMCS to provide mediation assistance in disputes arising from negotiations between federal agencies and the representatives of their employees.
- IV. The Postal Accountability and Enhancement Act of 2006 (Public Law 109-435, as amended, 39 U.S.C. 1207) requires the FMCS to provide mediation services and assist in establishing arbitration boards in collective bargaining disputes between the Postal Service and the exclusive representatives of its employees.
- V. An Act to Establish Dispute Resolution Procedures to Settle Disputes Between Supervisors and the United States Postal Service, 1980 (Public Law 96-326, as amended, 39 U.S.C. 1004) directs FMCS, upon the request of either the Postal Service or an organization representing its supervisors, to convene fact finding panels to recommend supervisory pay and fringe benefit policies and to create panels to review the effectiveness of these procedures and other employment policies.

- VI. Presidential Statement, March 24, 1953. The Atomic Energy Labor-Management Relations Panel was established within the FMCS in March 1953, by President Eisenhower, in order to ensure the uninterrupted functioning of the atomic energy program without strikes or lockouts due to labor-management disputes. This Panel was moved to the Atomic Energy Commission in March 1956 but was returned to the FMCS under an inter-agency agreement with the Department of Energy in April 1980 and renamed the Energy Labor Management Relations Panel (ELMRP).
- VII. Executive Order 11374, October 11, 1967, transferred the responsibilities of the Missile Sites Labor Commission (created by Executive Order 10946) to provide priority resolution of labor disputes at missile sites to the FMCS.
- VIII. The Federal Insecticide, Fungicide and Rodenticide Act of 1978, (Public Law 95-396, as amended, 7 U.S.C. 136a(c)(1)(F)(iii)) requires the FMCS to provide for the appointment of arbitrators to decide disputes concerning compensation for the use or development of pesticide registration data.
- IX. The Labor Management Cooperation Act of 1978 (Public Law 101-552, as amended by Public Law 95-524, 29 U.S.C. 175a, 186(c)(9)) added Sections 205A and 302(c)(9) to the Labor-Management Relations Act and authorizes and directs the FMCS to encourage and support joint labor-management activities conducted by plant, area, and industry-wide committees designed to improve labor-management relationships, employment security and organizational effectiveness. The Act authorizes the Service to provide grant funds to assist in the establishment and operation of these labor-management committees.
- X. The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) (ADRA) authorizes and encourages agencies to use various alternative means of dispute resolution in the federal administrative process in order to avoid the time and expense of litigation. The ADRA amended, permanently enacted, and incorporated into the Administrative Procedure Act, the Administrative Dispute Resolution Act provisions (5 U.S.C. 571 *et. seq.*) and the Negotiated Rulemaking Act provisions (5 U.S.C. 561, *et. seq.*) of 1990 legislation. These provisions and their predecessors suggest that the ADR and regulatory-negotiation “experiments” have become well-accepted processes of federal agencies.

Under the ADRA, coverage has been expanded to include additional dispute resolution techniques, such as “ombudsmen,” and the use of ADR in some workplace conflicts, including Hatch Act violations, retirement, insurance, certain suspensions, removals, examinations, and appointments. The ADRA encourages the development of guidelines to expedite the selection of neutrals and to facilitate the use of alternative dispute resolution in the federal government.

- This legislation also amends the Labor-Management Relations Act of 1947 (Taft-Hartley) by permanently adding Section 173(f) of Title 29 of the United States Code (29 U.S.C. 173(f)) so that the FMCS may provide all forms of ADR assistance to federal agencies. Under this legislation, the FMCS continues to assist agencies in negotiated rulemaking processes as well as other ADR procedures by providing training, facilitation, mediation, and other neutral skills.
- XI. The U.S. Code of Federal Regulations at 45 CFR 90.43(c)(3), issued by the Department of Health and Human Services, implementing its authority under the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., authorizes the FMCS to provide mediation assistance for the resolution of age-discrimination charges.
 - XII. The Federal Aviation Reauthorization Act of 1996 (Public Law 104-264, as amended, by Public Law 106-181, 49 U.S.C. 40122(a)) directs the FMCS to mediate disputes between the Administrator of the Federal Aviation Administration and its employee representatives concerning changes to the FAA's personnel management system.
 - XIII. The Veterans Health Care Capital Asset and Business Improvement Act of 2003 (Public Law 108-170, 38 U.S.C. 7403 (h)(4)(C)) gives the Secretary of Veterans Affairs or the exclusive representative of the affected employees the option of using the services of the Federal Mediation and Conciliation Service to assist the parties in reaching an agreement regarding disputes with respect to any system of promotion and advancement proposed by the Secretary.
 - XIV. Executive Order 13522 (Creating Labor-Management Forums To Improve Delivery of Government Services), December 9, 2009, continued by Executive Order 13591, November 23, 2011, permits the FMCS to furnish assistance to the National Council on Federal Labor-Management Relations, including training for executive departments and agencies in establishing labor-management forums and pilot projects to identify problems and negotiate solutions without regard to whether the matters are subject to bargaining (permissive subjects) under the Federal Service Labor-Relations Statute.
 - XV. The Transportation Security Administration Determination, "Transportation Security Officers and Collective Bargaining," February 4, 2011, requires the facilitation of collective bargaining negotiations by the Federal Mediation and Conciliation Service, or other agreed-upon entity, and requires TSA and the unions subject to bargaining to attend training in interest-based negotiations which will be conducted by the FMCS.

2 Cross-Agency Priority Goals

As a small independent and non-regulatory agency, the FMCS neither contributes to nor has responsibility for any currently established cross-agency priority goals.

3 Strategic Goals, Objectives, and Performance

Amidst the many factors previously described in Section 1.1, the FMCS remains dedicated to fulfilling its core mission. While the FMCS's top priority is providing high-quality mediation services, managerial and support staff must also function efficiently and effectively to properly support those directly fulfilling the agency's mission. For this reason, the FMCS conceptually organizes its mission around two broad themes: resolving workplace disputes and providing operational excellence. Within each theme lie sets of distinct work processes to which separate strategic goals may be applied.

In the agency work resolving workplace disputes, mediators are expected to provide services in every subject area except for arbitration, which operates as an autonomous referral service of the FMCS. Mediators' roles and functions are very well defined and the FMCS provides performance metrics and reviews for their work on a regular basis. Figure 10 provides a breakdown of the various activities performed by FMCS mediators.

Figure 10: Resolving Workplace Disputes Theme

1. Dispute Resolution
 - a. Collective Bargaining Mediation
 - b. Grievance Mediation
2. Preventative Mediation
 - a. Relationship Development Training
 - b. Labor-Management Grants
 - c. Education, Advocacy & Outreach
3. Alternative Dispute Resolution
 - a. Employment Mediation
 - b. Dispute Systems Design
 - c. Regulatory Negotiation
4. International Training and Exchange
5. Arbitration
 - a. Arbitrator Paneling Service

FMCS operational activities directly support its mediation efforts, provide information to other government agencies, and maintain activities mandated by Federal law. In the operational excellence sphere, responsibility for an activity may lie entirely within the function of a specific person or work unit or be spread across two or more departments (Figure 11.) The purpose of this conceptualization then is to identify where different work units contribute to the same activities or, alternatively, to pinpoint where one work unit may be duplicating the efforts of another. Since reporting requirements for many activities shift from year to year and potential data elements are limited to the successful submission of a report, the FMCS will provide evidence of its strategic planning and performance in these areas through narrative summaries.

Figure 11: Providing Operational Excellence Theme

1. Employee Engagement
 - a. Work-life
 - b. Talent Development
2. Culture of Compliance
 - a. Financial Systems
 - b. Corporate Responsibility
 - c. Acquisition Services
3. Executive Oversight
 - a. Policy Coordination
 - b. Continuity of Operations
4. Asset Management
 - a. Facility Management
 - b. Capital Assets

3.1 Resolving Workplace Disputes

Mediation is a voluntary, interactive and cooperative process that is well established in legal and business settings to reduce costs and improve the acceptability of the outcome to both parties. Labor relations related mediation can be an intensive process. On average, each FMCS mediator is actively involved in 30 collective bargaining negotiations each year and conducts an additional 50 individual mediation, training, educational, and outreach cases. As part of their job, mediators communicate with business and labor leaders on a daily basis and monitor the progress of upcoming and ongoing contract negotiations—even those in which they are not actually involved “at the table.” In all types of work, FMCS mediators were assigned more than 21,000 new cases, drove more than 2 million miles and conducted nearly 25,000 meetings with one or both parties to a collective bargaining relationship in FY 2012.

While measuring performance is challenging for an organization whose primary mission is to *prevent* an event from occurring, the FMCS uses an economic model to estimate the value of its mediation services to the U.S. economy. This model, developed

for the FMCS in 2005 by an independent economic research group, estimates that FMCS mediation provided an \$885 million benefit in FY 2012 to the national economy through prevented or shortened workplace disruptions.

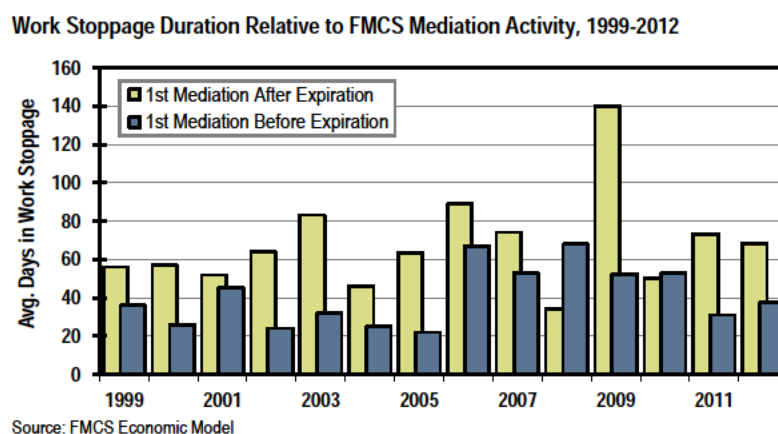
Dispute Resolution

The most important goal of the FMCS, and where it focuses most of its effort and financial resources, is to assist labor and management to voluntarily and cooperatively resolve their contract-based disputes. Labor unrest, whether manifested as an employee strike, management lockout, or a large number of unresolved grievances, carries a high cost to U.S. businesses, employees, taxpayers, and consumers alike. The FMCS estimates that, despite only 164 work stoppages ending in FY 2012, these stoppages came at the cost of \$723 million and negatively affected nearly 200,000 workers. Additional costs arise from unresolved employee or employer grievances. Whether manifested by excessive litigation, “work to rule” campaigns, or persistent protests over working conditions, unresolved grievances have an economic impact through reduced worker productivity and may also increase the possibility of future work stoppages.

The FMCS has two objectives to its dispute resolution activities. The first, and most important, is to minimize the number and duration of work stoppages that may occur during collective bargaining negotiations. The second is to resolve contract-based disputes, or grievances, that may arise during the term of a collective bargaining agreement.

A critical finding from the original 2005 economic model study was that when mediation occurs prior to a contract’s expiration date, work stoppages are not only less likely to occur, but the duration of any subsequent work stoppage is reduced by 40 percent (Figure 12). Prior to this, a study of matched bargaining pairs found that both parties identified FMCS mediation as the most important factor in preventing work stoppages from occurring in approximately 7 percent of all collective bargaining negotiations.

Figure 12: Effectiveness of Early Mediation



As a result of these two studies, the FMCS recognizes that early and ongoing contact with the parties to a labor contract negotiation is critical to reducing the number and duration of work stoppages. The FMCS's experiences have been that resolving grievances during the term of an agreement leads to stronger labor-management relationships and also reduces the likelihood of a work stoppage from occurring. 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, workforce, or interstate commerce.

The FMCS 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 FMCS 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.

FMCS historical records indicate that one-third to one-half of all collective bargaining cases mediated by the FMCS involved early mediation. In grievance mediation, historical records indicate that approximately 75 percent of all cases mediated by the FMCS result in an agreement. Given that mediation is a voluntary process, the FMCS has limited ability to dramatically increase either of these rates. However, these rates are valuable in that they indicate whether or not the FMCS is performing within its expected capacity.

Preventative Mediation

Preventative mediation activities are provided by the FMCS to collective bargaining parties and labor relations practitioners with the goal of improving the general climate of labor-management relations. Continued success of American businesses and American workers in a globally competitive arena requires a degree of cooperation between labor and management that traditional confrontational bargaining relationships cannot easily accommodate. This is particularly true with respect to new circumstances confronting both parties in the collective bargaining relationship, such as the challenges associated with the implementation of the Affordable Care Act of 2010. These competitive issues can be both complex and subtle and require creative solutions designed to address the unique challenges the parties confront.

As discussed in Section 1.1, lengthening contract durations and the drop in the number of work stoppages, along with corporate budget constraints, mean that many companies have eliminated their labor relations departments and rely instead on human resource departments to conduct their labor relations. These departments often lack sufficient collective bargaining experience and dedicated labor-management relations specialists. Similarly, many unions have fewer resources for training newly-elected representatives in the important problem solving skills needed for contract negotiations and administration.

FMCS preventative mediation activities address knowledge and skills gaps with the objective of educating labor and management leaders, both in the US and abroad, in the art of building and maintaining successful labor-management partnerships. As contemplated by the Labor Management Cooperation Act, successful partnerships improve productivity and enhance efficiency. FMCS mediators, for example, set up, train, and advise labor-management committees in both the private and federal sector. For its part, the FMCS Institute provides formal classroom-based and online training materials to labor practitioners on diverse topics to strengthen their mediation, arbitration, and problem-solving skill sets. Mediators also reach out routinely to new labor and management contacts to provide information about FMCS services. The FMCS constantly examines the performance of its services in this category based upon customer demand and individual program assessments.

Alternative Dispute Resolution

The goal of the FMCS's ADR program is to promote mediation as an alternative to litigation. This goal expands upon the principle that voluntary and cooperative conflict resolution is less expensive and provides the parties an important opportunity to control their own destinies and, as such, offers a better long term solution than comparable litigation models. The FMCS's ADR work is defined by the Administrative Dispute Resolution Act of 1996, the Negotiated Rulemaking Act of 1996, and §173 (f) of the Labor-Management Relations Act, and is designed to help resolve disputes that do not result from a collective bargaining relationship. Under these statutes, the FMCS 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.

ADR activities at the FMCS are diverse, but typically involve employment or administrative program dispute mediation, dispute system design, training persons in ADR skills and procedures or regulatory negotiations. All have the objective of resolving regulatory or enforcement policy disputes and statute-based workplace disputes. For example, 1) in the area of administrative program disputes, the FMCS mediates Age Discrimination Act complaints under a program administered by the Department of Health and Human Services; and 2) in the regulatory negotiations category, in 2011, FMCS mediators worked with the U.S. Department of Agriculture's Livestock and Seed Program to develop rules and methodologies for wholesale pork pricing.

Using traditional dispute resolution vehicles, such as the courts or other statutory processes, may take several years and cost hundreds of thousands of dollars in legal fees court costs, and require significant resource expenditures from the affected parties. In addition, imposed outcomes from utilization of these processes are unpredictable and the conditions present when the dispute arose may have changed dramatically.

By contrast, the FMCS is able to offer resolution in employment mediation cases for less than \$1,000 in most instances and provide an acceptable solution to both parties on the same day. Historically, the FMCS achieves an agreement in approximately 50 percent of these individual employment dispute mediation cases. In regulatory

matters, voluntary resolution of a single issue by multiple parties through a facilitated consensus-based process will normally offset any costs incurred.

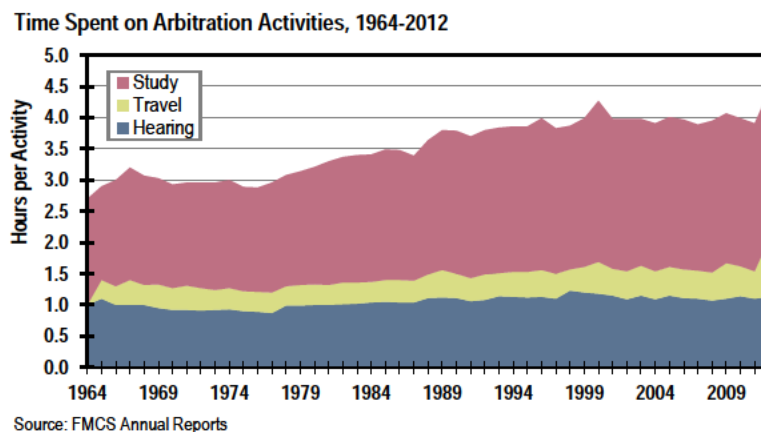
Employment mediation in particular is quite challenging for FMCS mediators. Most complainants are individuals who are not familiar with the concept of mediation and may be actively hostile to the unfamiliar concept and process. Also, FMCS mediation is often taken as a last resort after the parties have tried and failed to reach agreement numerous times. Despite these challenges, by increasing the number of employment/administrative program dispute cases and regulatory and enforcement cases that it takes in, the FMCS can provide a cost-effective alternative to litigation, increase government efficiency, and promote better government decision-making.

Arbitration

With the goal of providing arbitration panels service for situations when parties cannot voluntarily resolve a contract-based dispute, the FMCS arbitration service is an important tool for fulfilling the FMCS mission. Arbitration represents the last chance for labor and management to avoid direct litigation and all its associated costs. It is used in many different settings in the U.S. to reduce court costs and avoid court-imposed delays. Unlike litigation, arbitration is a private and often confidential process and an arbitrator who has expertise in the subject matter at hand can usually be selected.

Core to the concept of arbitration is the understanding that the arbitrator is neutral and well-versed in the issues of concern to the parties. The objective of the FMCS arbitration service is to provide a high-value arbitrator referral service. While the FMCS cannot control the amount of time an arbitrator spends on a case or the associated fees, it does track these costs. Figure 13 shows that the total average time spent by arbitrators has stayed fairly constant at approximately 4 hours since about 1995. Further, the total cost for the average arbitration, including hourly fees, expenses, and per diem has held relatively stable since 2003 at approximately \$4,500.

Figure 13: Time Spent on Arbitration



3.2 Providing Operational Excellence

Unlike agencies with enforcement or adjudicative powers, the FMCS has no enforcement authority and a very limited ability to require private parties to participate in mediation. Consequently, the FMCS relies upon its excellent reputation for delivering valuable services with a high level of professionalism and expertise and thus fulfill its statutory role and mission. The FMCS retains this reputation by recruiting highly qualified mediators and providing opportunities for skills development throughout their careers.

Many different internal activities must be effectively performed by FMCS staff to properly support its mediation activities. These include management, training, payroll, information technology, and acquisition functions. The overall quality of the services the FMCS provides is determined then, in part, by the efficiency of its internal functions, including management.

Due to the small staff size focusing on specific tasks, performance of these essential functions is readily apparent. Additionally, the FMCS relies upon a limited number of indicators that are representative of the overall health of that function or department and broader measures of success, such as the Federal Human Capital survey, to guide its decision-making.

Employee Engagement

Employee engagement is a management concept that centers on identifying key engagement factors and designing initiatives that motivate employee discretionary effort and improve employee retention. The FMCS's goal of supporting employees' emotional and physical well-being and creating a highly skilled, motivated, and empowered workforce was developed to address employee engagement. Innumerable studies have shown that engaged employees are more productive, perform their work more effectively, and are more willing to stay with their employer than those that are not engaged.

The FMCS has set objectives in two different areas relating to employee engagement. Employee programs such as telecommuting, alternate work schedules, and performance awards directly improve employee morale and maintain the objective of providing a workplace that helps employees balance work-life demands and supports their physical and emotional health. The FMCS also seeks to provide employees with opportunities for career advancement and enhancing their job skills. Activities such as skills development, leadership training, and high-quality personnel management all support creating and maintaining a talented workforce.

Using the annual Federal Employee Viewpoint Survey results to compare itself to similar agencies and also identify areas for improvement is a key strategy employed by the FMCS. Based on previous years' results, the FMCS will complete an assessment of all employees' training needs in 2013 and will focus on developing improved job skills for all employees. Similarly, the human resources department is working with managers to better document employee performance elements and standards and integrate identified skills gaps in individual development plans.

Culture of Compliance

Complying with internal controls, federal regulations and laws and industry best practices is an important goal of FMCS business processes and operations. For example, the Freedom of Information Act (FOIA) not only requires that the FMCS respond to public requests for information, but it must also have personnel and processes dedicated to the task and report regularly to other government agencies on its FOIA activities. Other important areas include ethics, finance, procurement, and records management.

With respect to financial and acquisition systems, the FMCS desires to be a good steward of the public trust through high-quality budgeting processes and financial and procurement controls. The objective in the area of corporate responsibility is to ensure that the FMCS conducts its operations ethically, transparently, and according to government and industry rules and standards. These objectives were set in recognition that good governance is a critical component of public confidence in government.

Key strategies used to meet FMCS compliance objectives include maintaining the high agency FOIA program ratings and reducing the number of records retained beyond the limits of the FMCS's retention policy.

Executive Oversight

Oversight of FMCS operations is an executive function with the goal of guiding current operations and providing a vision for the future. As illustrated in its organizational chart, the FMCS director is appointed by the President and supported by three executive positions, two deputy directors and the chief financial officer. Together, these individuals are responsible for overseeing day-to-day operations of the FMCS and also ensuring that the agency is well prepared to meet future challenges.

Policy coordination activities such as strategic planning, budgeting, and operational assessments are all performed with the objective of ensuring efficient operations, effective communications, and policy alignment. Similarly, continuity of operations activities such as succession planning, employee protection, and disaster recovery planning are essential for maintaining a safe workplace environment and providing for continuity of business operations in event of a natural disaster or national emergency.

The FMCS prepares for disasters by working with the Department of Homeland Security to strengthen its continuity of operations planning, preparing a facility capable of sustaining essential FMCS business operations for prolonged periods, and training key employees in reconstituting business operations from its secondary facility.

Asset Management

With 55 distinct office locations throughout the U.S. and a highly mobile workforce, the FMCS has many different physical assets to manage, as well as the electronic information systems that facilitate communications between these locations.

The goal of the FMCS's asset management activities is to manage and safeguard the physical and information assets of the FMCS.

The facility management function of the FMCS relates to locating, procuring and operating FMCS offices with the objective of providing neutral facilities in accordance with the express statutory language and that meet the needs of its customers located in that geographical area as well as the needs of its workforce. Since mediation may occur at any time of day or night, the FMCS cannot usually locate an office in a secure facility, such as a federal building. Communication system functions such as telecommunication and electronic information systems are provided by the FMCS with the objective of ensuring the availability of modern and effective information systems to its workforce and customers. Finally, the FMCS protects taxpayer interests in its capital assets by safeguarding agency physical assets from damage or loss.

A number of strategies are employed by the FMCS to manage its facilities. First, it monitors office and meeting space utilization rates. Offices that are not used by mediators at a rate that justifies their expense may be closed and the mediator switched to a home office. The FMCS currently has 11 home offices in use. The FMCS also considers relocating, consolidating, or adding offices, as appropriate. Among the many factors considered in these reviews are the FMCS's ability to fill anticipated vacancies, the workload balance among mediators and districts, and bargaining activity patterns. The strategy for managing electronic communications and capital assets is similar, relying upon anticipated life cycles to retire and replace obsolete assets and services.