

FEDERAL MEDIATION AND CONCILIATION SERVICE

FISCAL YEAR 2012

Congressional Budget Submission

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Fiscal Year 2012 Budget Estimates

I. Executive Summary

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 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 the FMCS’s role to include promoting labor-management relationships in the private and public sectors as well as providing employment-based mediation services to the private sector and alternative dispute resolution (ADR) programs to government agencies.

Over the past 60 years, the FMCS has produced a record of success preventing or minimizing interruptions to the free flow of commerce through mediation and a variety of programs and services designed to improve labor-management relationships and organizational effectiveness. While the parties’ use of mediation continues, the additional services they require from the FMCS have evolved over time as their needs and the challenges confronting workplace relationships have changed. The issues and relationship challenges the parties confront today and tomorrow will, inevitably, have a direct impact on the FMCS.

FMCS begins, as it must, by noting the continued presence of multiple factors associated with what has been described as the “Great Recession.” Among other factors likely to impact bargaining is that the unemployment rate remains about nine percent in general and is even higher in manufacturing and construction. The impact of this severe economic downturn will continue to dominate collective bargaining in FY 2011 and likely for years beyond. In many industries, the recession and its consequences have brought powerful employer demands for concessions and equally powerful union demands to resist them. If granted, there can be little doubt that employees will demand restoration of losses and an increasing share of the growing economy when stability and growth return. One manifestation of the uncertain economic climate is that many

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.

employers feel constrained to insist upon achieving flexibility in the size of its work force thereby triggering a major confrontation in negotiations as unions stress the need for job security through protection against layoffs.

In addition to the instability associated with the recession, the next single biggest contributor to labor relations conflicts and work stoppages in the past decade has been health care. No issue stands to engender future bargaining conflicts more than health care benefits, their distribution and their associated increased costs. Contractual and plan changes will be required of the parties as a direct result of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act). While the FMCS can help the parties manage the conflict inherent with competing views, there can be no doubt that labor and management will continue to have strongly held competing views with regard to the appropriate distribution of the cost burden.

The subject of pension benefits and retirement security adds yet another dimension to the spectrum of contentious fringe benefit issues likely to be highly visible in the next several rounds of bargaining. FMCS anticipates that during FY 2011 and into the foreseeable future, management and labor will continue to battle over the merits and wisdom of defined benefit versus defined contribution pension plans.

The FMCS also recognizes that the need for job creation and sustainable energy initiatives will generate an increased emphasis and, indeed, urgency to the creation of “green jobs.” This will add yet another potential source of tension to many collective bargaining relationships as employers seek to terminate old product lines, introduce new technology, and demand different skill sets of workers.

Finally, factors beyond the control of the parties, such as natural disasters (Hurricane Katrina), terrorist attacks (9/11) and other catastrophic events (the British Petroleum Gulf oil disaster), have a devastating impact, not only on human lives and community well-being, but their economic consequences can have significant regional and national impact on collective bargaining.

Any one of these potential sources of conflict can pose a serious threat to the stability of the collective bargaining process. When taken together, they present monumental challenges as extreme and complex as anything experienced by the FMCS in recent years. In the face of such challenges, the question for the FMCS is how to best serve the interests of the parties and the public.

First and foremost, consistent with its core mission, the FMCS will continue to place its major emphasis on assisting the parties in the bargaining process itself. The foregoing description of the array of potential sources of conflict awaiting the parties highlights the importance of the FMCS’s role in providing guidance to the parties in addressing economic and workplace issues—some generic and others industry or workplace specific.

Furthermore, the lesson FMCS has learned from extensive “hands-on” experience is that what the parties need most during difficult times is a strong labor-management relationship in which issues can be discussed and joint solutions reached. In addition to mediation, the FMCS helps parties achieve this essential relationship through carefully honed outreach and relationship development programs. Every day, FMCS mediators, in

a variety of ways, offer parties broad-based assistance, with a view toward encouraging relationship improvement far in advance of the trauma of contract expiration.

To illustrate, the FMCS's experience has shown that negotiations over health care related issues generate not only volatile economic disputes but also a host of highly technical and nuanced issues surrounding health care plan design and utilization. Increasingly, parties are attempting to achieve cost containment through wellness, targeted preventative care, and strict quality targets.

What this necessarily means is that waiting until 30-60 days before contract expiration to attempt to address these multi-faceted subjects is a recipe for disruptive economic conflict. Instead, as a number of parties have already recognized, there is a more constructive model—a model whereby the parties create joint labor-management health care cooperative committees far in advance of contract expiration. This joint problem-solving approach is modeled after longstanding FMCS joint programs designed to encourage cooperation on issues of mutual interest.

In support of this joint approach, the FMCS sponsored a series of three one-day seminars in Chicago, San Francisco and New York City. The seminars were designed to spread the word throughout the labor-management communities that a number of their counterparts already had engaged in these “best practices” with noteworthy success and that FMCS stood ready to assist them in their efforts.

The FMCS provides this same early stage assistance model to the parties to improve their labor-management relationships generally. To the extent FMCS can help them substitute cooperation for confrontation; the likelihood of costly strikes or lockouts is reduced. Congress recognized this precise point years ago when it passed the Labor Management Cooperation Act of 1978. It 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's annual appropriations, and grants are distributed to encourage labor-management committees to develop innovative joint approaches to workplace problems.

In FY 2010, the FMCS awarded 10 new competitive grants at a cost of \$750,000. These grants are supporting labor-management committees tackling a wide variety of important issues related to health care, job safety, work-life balance, and the flexibility needed to pursue new business opportunities, such as green jobs.

In addition to providing training programs and grants for the parties, FMCS mediators and managers regularly participate in many joint labor-management conferences and seminars sponsored by universities, bar associations, and professional groups—all with the goal of advising the parties of the wide variety of constructive services the FMCS can provide in advance of the commencement of formal negotiations.

The statutory focus to this point has been on the private sector. However, the FMCS's energy can also impact labor-management relations in the public sector. The states and their public sector unions often request FMCS assistance in their collective

bargaining relationships. During this time of severe state budget deficits, bargaining between states and their teachers, police, and firefighters, just to name a few, can be expected to be especially difficult.

The need for a highly-skilled, well-educated, globally competitive workforce has been a consistent theme from both unions and employers. Our K-12 education system has been struggling to meet this national need. Recently, a number of school districts, together with the labor organizations who represent their teachers and organizations representing school administrators and school boards, have volunteered to participate in an innovative program launched by the Secretary of Education. The stated goal of the program is to advance student achievement through labor-management collaboration. The FMCS at the request of the parties has agreed to partner with the Department of Education along with the American Federation of Teachers, the National Education Association, the Council of the Great City Schools, the National School Boards Association and the American Association of School Administrators. In states where FMCS has traditionally provided mediation services in the public sector, FMCS facilitation services will be offered for parties seeking to engage in reform oriented discussions.

The FMCS is also responsible for helping to ensure stable labor-management relations in the Federal government. In December 2009, the President issued Executive Order 13522. The stated purpose of this Executive Order is to “promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.” To that end, all federal agencies are required to establish and to implement “labor-management forums [that] allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people.”

FMCS mediators are deeply involved in the all-important task of training the parties to federal agency forums on how to establish and implement them. In FY 2010, and within months of the issuance of the Executive Order, the FMCS, together with its sister agency, the Federal Labor Relations Authority (FLRA), responded to more than 100 requests for assistance. Together, the FMCS and FLRA created and delivered a two-day intensive course to federal agency labor-managements pairs throughout the country. These courses covered both statutory rights and responsibilities and the best tools and cooperative techniques for creating and implementing productive labor-management forums.

In sum, the FMCS recognizes, as did Congress more than 60 years ago, that constructive labor-management relationships and collective bargaining provide the parties with the most effective tools for achieving productivity, innovation and competitiveness—the central ingredients for a growing economy.

A. Impacts, Achievements, and Challenges

With its history of more than 60 years of providing mediation, training, and facilitation services, the FMCS has more aggregate experience in alternative dispute resolution than any other government agency. The FMCS is successful, as is the U.S. economy and taxpayer, when work stoppages are minimized in duration or do not occur

and when collective bargaining relationships do not lead to unmanaged conflict in the workplace.

Many different external factors influence the magnitude of FMCS's workload, the types of dispute resolution services that are required, and the FMCS's ability to perform its work successfully. For the upcoming year and beyond, the FMCS will monitor emerging trends in mission-critical areas and will continue to routinely upgrade mediator skills with the most up-to-date information and training techniques.

The Demonstrated Positive Economic Impact of FMCS Services

The FMCS recognizes that the positive impact of work stoppages that do not occur is difficult to quantify. For this reason, the FMCS measures its positive impact through a specially created economic model and evaluates its organizational effectiveness using a number of other tools.

The FMCS uses an independently developed modeling system for estimating the impact of its services on the U.S. economy.² Using conservative modeling techniques, the FMCS estimates that its work in FY 2009 and FY 2010 saved the economy \$5.1 billion in wages and profits that otherwise would have been lost to work stoppages. By contrast, but in support of the contention that work stoppages can still have a significant damaging impact upon the U.S. economy, work stoppages that did occur during this period resulted in the loss of an estimated \$873 million in wages and profits to employees and businesses. Disruption to ancillary businesses is estimated to have cost an additional \$975 million during this period.

Research also has shown that early FMCS involvement is critical when considering the duration of work stoppages. Over the past 12 years, FMCS direct involvement in the bargaining process at any time prior to contract expiration is associated with a 48 percent reduction in the duration of any subsequent work stoppage. Since 1999, early intervention has reduced the duration of work stoppages that do occur by an average of 26 days.

While work stoppage data help demonstrate the direct economic benefits of mediation, such data dramatically understate the real value of FMCS services to the U.S. economy. This is because the aggregate value of these services is hard to measure in precise economic terms due to the difficulty in modeling the negative effects of the work stoppages that did *not* occur because of FMCS mediation services.

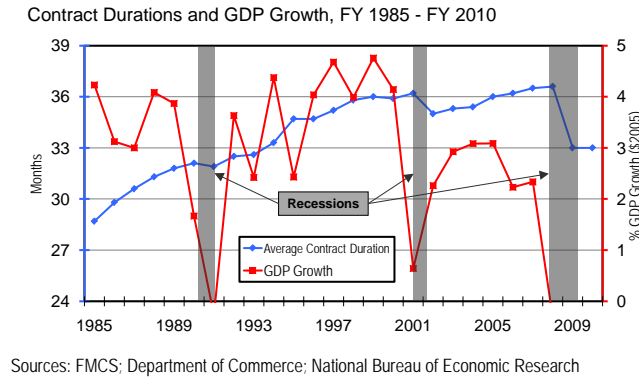
The Challenges of Economic Recession and Recovery

Just as the "Great Recession" impacted collective bargaining in FY 2009 and 2010, it is anticipated that labor strife will continue once the economy starts to improve. In the 1990 and 2001 recessions, for example, the FMCS observed a reduction in the

² In FY 2005, the FMCS entered into an agreement with the Employment Policy Foundation (EPF), a nonprofit, nonpartisan public policy research foundation with expertise on workplace trends, to develop a model that was capable of estimating the impact of the FMCS's services.

duration of labor contracts negotiated during those periods. Evidence of an even more dramatic drop is emerging in the current recession—from an average contract duration of 36.6 months in 2008 to 33 months in 2009 and 2010.

Effect of Business Cycle



This sharp decline in contract durations has two implications for labor-management relations that concern the FMCS. The first is that shorter duration contracts mean negotiations will occur with greater frequency, increasing the number of notices that the FMCS must process each year, as well as mediator workloads. The second is that the FMCS anticipates that workers may seek to recoup the wage and benefit concessions many of them made during the recession. This may well lead to more contentious labor-management negotiations and thus increase the likelihood of work stoppages and FMCS workload in FY 2011 and beyond.

The Benefits of Building Positive Relationships

FMCS experience has shown that perhaps the best means for avoiding disruptions to commerce is preventive mediation, also referred to as relationship development. The FMCS’s relationship building programs are designed to improve labor-management relationships by helping labor and management develop collaborative, problem-solving approaches and, thus, manage their inherent conflict. Effective use of these programs better enables the parties to respond rapidly and jointly to changing business and economic conditions. Adoption of these processes helps ensure successful and highly productive workplaces and, therefore, the FMCS will continue this important work in FY 2011 and FY 2012.

For example, and in order to help parties address the challenges of health care costs and delivery, the FMCS offers parties a full range of relationship development and training (RDT) services. In the first quarter of FY 2011, the FMCS organized three regional health care bargaining “best practices” seminars titled “Working Together: Labor-Management Solutions to the Health Care Challenge.” A total of 540 attendees heard from preeminent speakers from labor, management, and the health care industry.

Through these seminars and other anticipated services in both FY 2011 and FY 2012, FMCS will demonstrate the value of structured, joint problem solving approaches to manage and frame solutions to highly complex health care issues well in

advance of contract expiration. These joint training programs will provide a foundation for the parties to jointly developed solutions, to implement the changes necessary, and to minimize the potential for conflict and work stoppages the FMCS has experienced all too often over the last decade.

Another ongoing area of FMCS involvement in FY 2011, and beyond, is FMCS support of efforts to “improve the productivity and effectiveness of the federal government” through the implementation of Executive Order 13522. FMCS mediators are deeply involved, in many cases together with the FLRA, in the all-important task of training the parties to federal agency forums on how to establish and implement them. Joint requests for FMCS services are already on the increase at the time of this submission. The FMCS anticipates a continuation of this trend in FY 2012 as the initial stages of forum establishment are completed and the parties seek facilitation of issues identified for forum resolution.

The FMCS also helps build positive relationships through its labor-management grants program authorized in the Labor-Management Cooperation Act of 1978. The broad objectives of these grants are to: 1) improve communications and working relationships between labor and management; 2) provide employers and employees with training to achieve organizational effectiveness through innovative joint approaches; 3) assist employees and employers in solving problems of mutual concern; 4) explore ways to eliminate potential problems affecting economic development in the area; and 5) enhance employees’ involvement in the decision-making process.

In FY 2009, the Congress provided the FMCS with the resources to fund this program and, despite a shortened time period for completion of submissions, the FMCS received a near-record 51 grant proposals and was able to disburse \$650,000 in awards. In FY 2010, the FMCS awarded 10 new competitive grants at a cost of \$750,000. These grants are supporting labor-management committees tackling a wide variety of important issues related to health care, job safety, work-life balance, and the flexibility needed to pursue new business opportunities, such as green jobs.

For FY 2012 the FMCS is requesting the same funding commitment for grants as FY 2011, since multiple factors associated with the recession will require increased emphasis in this and other relationship development program areas. Funding joint initiatives to help manage these elements will continue to be important to labor-management relations in FY 2012 as the economy recovers.

Another strategy for preventing workplace conflict is FMCS outreach. On a regular basis, but especially during difficult economic periods, FMCS mediators and managers participate in outreach activities designed to improve relationships and raise awareness of collective bargaining issues and mediation techniques by lecturing at universities, seminars and conferences, and meeting with local leaders in the collective bargaining community. Outreach activities will provide an additional valuable service to the collective bargaining community as all parties begin to address the changes required by the passage of the Affordable Care Act, “green jobs” initiatives, and the complex challenges of retirement security. The FMCS anticipates a heightened level of outreach will continue through FY 2012.

Finally, domestically and internationally, FMCS builds positive relationships through a number of reimbursable funded programs. For example, FMCS provides employment dispute resolution services to a significant number of federal government agencies. FMCS also promotes collective bargaining and conflict resolution in developing countries, emerging free market economies, and to free trade agreement partners. By strengthening rule of law initiatives and helping to create and implement effective labor relations systems, FMCS international efforts also help to level the economic playing field for U.S. companies and workers.

Monitoring Expiring Contracts

The importance of the FMCS's relationship development work is perhaps best illustrated by the sheer numbers of expiring collective bargaining agreements that the FMCS tracks each year. For FY 2011, for example, the FMCS will monitor more than 21,000 collective bargaining agreements, many of which are in key private sector industries, particularly the telecommunications, entertainment, aerospace, and construction industries. These and other expiring contracts account for at least 28 percent of the private sector unionized workforce, or 2.3 million workers. Looking ahead to FY 2012, based upon internal data, the FMCS is aware of over 10,000 expiring contracts that cover another 28 percent of the private sector unionized workforce, or 2.3 million workers. Historically, the number of actual notices received in a fiscal year exceeds the known number of expiring contracts by 50 percent. In each of these fiscal years, FMCS can anticipate receiving approximately 20,000 required notices of contract expiration. The FMCS estimates that direct wage losses alone from a single day of work stoppage in any one of the largest of these expiring contracts would easily exceed FMCS's entire annual budget and cause avoidable disruptions to the national economy.

Pursuing Organizational Efficiency

The FMCS is committed to using allocated resources efficiently. In FY 2010, for the sixth consecutive year, the FMCS used a performance matrix to measure the caseload performance of its field offices. This performance matrix compares each of its field stations against the FMCS's national caseload averages. Performance is evaluated over a rolling period of four fiscal years to determine collective bargaining trends in specific field stations. The results help ensure that decisions to fill vacant mediator and support staff positions reflect the current and potential demand for the FMCS's services. In fact, the majority of the FMCS's employees are involved in direct program delivery, with 181 employees (77 percent of its workforce) distributed across 68 field stations.

In 2010 the FMCS implemented a number of initiatives to improve both its internal efficiency and increase public access to and use of electronic documents. Internally, the 2010 launch of an internal report and report scheduling system has saved more than 25 hours of staff time each month in preparing reports and has also allowed reports to be delivered within hours of the end of each reporting period.

In 2011, the FMCS will continue to expand upon the capabilities of its internal reporting system by making most reports available online and on an ad-hoc basis. This will further reduce staff workloads by allowing immediate access to reports and will also eliminate delays in receiving time-sensitive reports.

Also in 2010, the human resources department completed a project to convert its records to electronic format. Even though it does not operate a data center, the FMCS reviewed its computer operations in accordance with the Federal Data Center Consolidation Initiative and determined that it can reduce energy consumption and hardware purchases by increasing its use of virtual server technology for development, testing, and disaster recovery operations.

On the public side of its operations, the FMCS continued its efforts to increase use of its online bargaining notice (F-7 notice) system. In 2010, approximately 30 percent of F-7 notices were given electronically to the FMCS. This system was expanded during 2010 to allow for electronic referrals for mediation by federal agencies.

The FMCS will implement a program for validating postal addresses and removing duplicate address records from its databases in 2011. This effort is expected to reduce mailing costs and improve the accuracy of mailings and will position the FMCS to use geographic information systems (GIS) for budgeting and analysis purposes in future years.

Increasing Employee Satisfaction and Wellness

In 2010, the FMCS was again rated as one of the top places to work in the U.S. government, ranking 4th among small agencies. While this excellent result builds upon prior years' rankings, there are areas in which improvement is needed to maintain the FMCS's high employee satisfaction scores. For 2011, these areas are in employee recruitment, communications, and executive leadership.

One way in which FMCS will continue to address employee satisfaction and performance is through an employee wellness program. It must be noted, however, that over 77 percent of the FMCS's workforce is dispersed among 68 field stations across the United States, with the majority of these field offices staffed by one to three people. This structure challenges the ability of the FMCS to develop and implement a single program that will accommodate the interests of centralized office staff and small field stations. In order to implement a program that is practical, cost-effective, and most likely to be successful, the FMCS will survey the interests of its workforce in FY 2011 and look to best practices in designing a wellness program for the whole agency. The FMCS will track and report its activities and progress in this initiative using OPM's online WellCheck program.

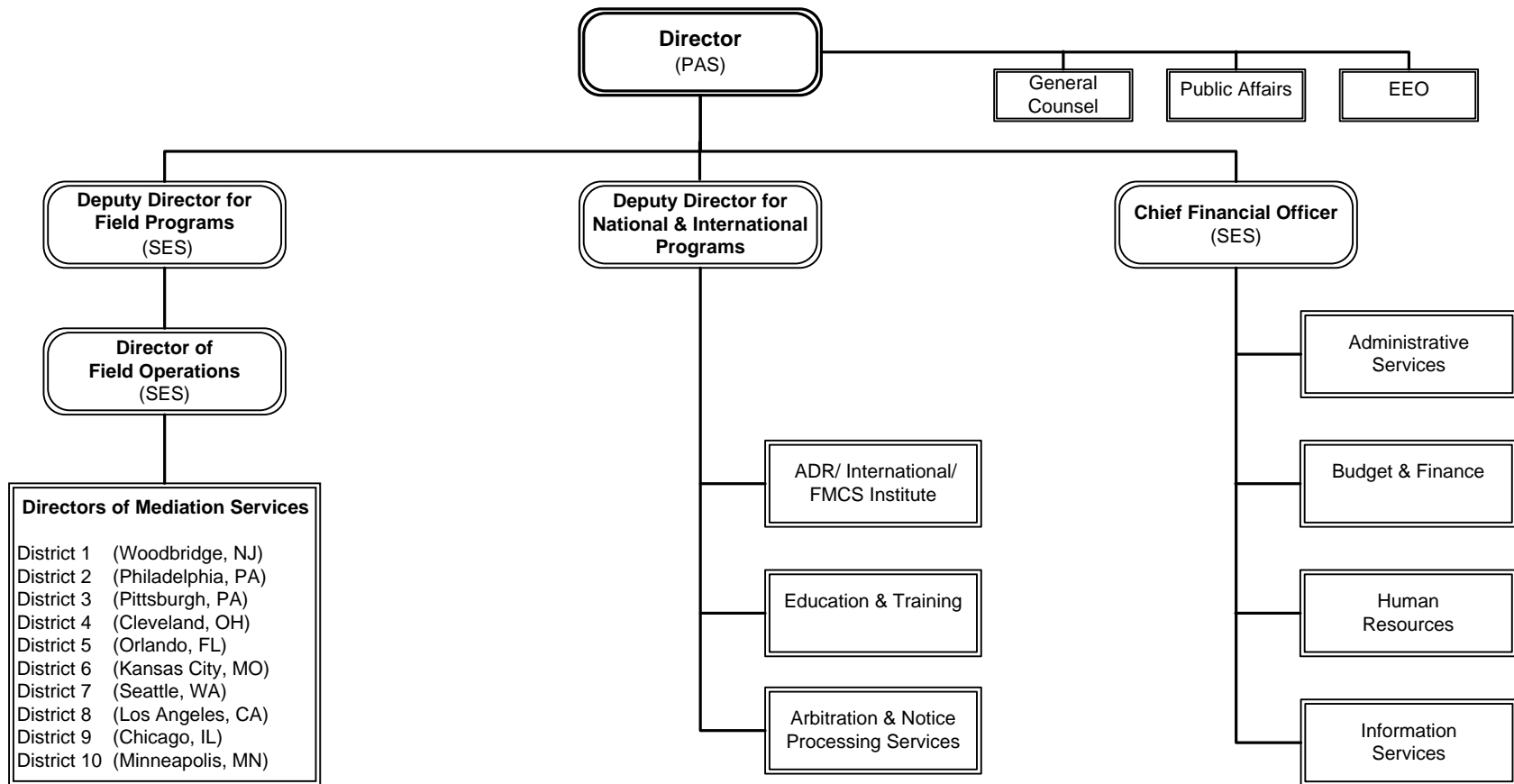
B. Conclusion

The FMCS mission statement reflects the statutory foundation of the agency: "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 collective bargaining issues facing labor and management grow, the FMCS will continue to play a critical role in averting labor strife that can damage the competitiveness and productivity of U.S. companies, the welfare of their employees, and our nation's economic well being. Given the anticipated size and

number of collective bargaining mediations in FY 2012, the complexity of the issues the parties face, and the increased demand and expectations of the labor-management community for FMCS services that make collective bargaining more effective, we urge you to favorably consider this respectful request for \$48,025,000.

II. FMCS Organizational Chart



As of Feb. 14, 2011

III. Appropriation Language

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service ("Service") to carry out the functions vested in it by the Labor Management Relations Act, 1947, including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978; and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, \$48,025,000, including \$750,000 to remain available through September 30, 2013, for activities authorized by the Labor-Management Cooperation Act of 1978: *Provided*, That notwithstanding 31 U.S.C. 3302, fees charged, up to full cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration services shall be credited to and merged with this account, and shall remain available until expended: *Provided further*, That fees for arbitration services shall be available only for education, training, and professional development of the agency workforce: *Provided further*, That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction. Note: A full-year 2011 appropriation for this account was not enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 111-242, as amended). The amounts included for 2011 reflect the annualized level provided by the continuing resolution.

IV. Statutory and Other Legal Authority

FEDERAL MEDIATION AND CONCILIATION SERVICE

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.

In addition to specifically mandated services, FMCS has offered traditional mediation services (applied to both collective bargaining and employment disputes), facilitation and training functions (applied particularly to the merging of different agency cultures), convening of disparate agency and private groups, and conflict systems design assistance and training for organizational/workplace disputes as well as for handling external complaints.

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. 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).

- VI. 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.
- VII. 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.
- VIII. 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.
- IX. The Administrative Dispute Resolution Act of 1996 (Public Law 104-320, 5 U.S.C., 571, et seq., 29 U.S.C.173(f)) 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 1996 Act amended and permanently reenacted the Administrative Dispute Resolution Act of 1990 as well as the Negotiated Rulemaking Act of 1990. The repeal of the sunset dates and the reporting requirements of the Acts suggest that the ADR and regulatory-negotiation “experiments” have become well-accepted processes of federal agencies.

Under the 1996 Act, 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 1996 Act encourages the development of guidelines to expedite the selection of neutrals and to facilitate the use of alternative dispute resolution in the Federal Government.

Lastly, this legislation amends the Labor-Management Relations Act of 1947 (Taft-Hartley) by permanently adding Section 173(f) of Title 29 of the United States Code 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.

- X. 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.
- XI. 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.
- XII. 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.
- XIII. Executive Order 13522 (Creating Labor-Management Forums To Improve Delivery of Government Services), December 9, 2009, provides for 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.

V. Budget Tables and Detailed Financial Requirements

FEDERAL MEDIATION AND CONCILIATION SERVICE
BUDGET AND STAFFING BY ACTIVITY
(in thousands of dollars)

	FY 2010 Actual		FY 2011* Estimated		FY 2012 Request		Total Program Increase or (Decrease) 2011 to 2012	
	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority
1. Collective Bargaining and Grievance Mediations (Dispute), Relationship Development Training (Preventive), and Outreach (Public Information) Workloads	181	\$36,164	195	\$36,327	195	\$37,560	0	\$1,233
2. Arbitration Services	8	696	8	700	8	720	0	20
3. National Office Support and Administrative Services.....	47	9,042	49	8,875	49	8,995	0	120
4. Labor-Management Grants	0	750	0	750	0	750	0	0
Sub-Total Appropriated	236	\$46,652	252	\$46,652	252	\$48,025	0	\$1,373

BUDGET AND STAFFING BY ACTIVITY
(in thousands of dollars)

	FY 2010 Actual		FY 2011* Estimated		FY 2012 Request		Total Program Increase or (Decrease) 2011 to 2012	
	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority	Full-Time Equivalent Employment	Budget Authority
5. Reimbursable programs: Employment Mediation, International Training and Institute Courses	8	\$1,464	8	\$1,678	8	\$1,715	0	\$37
6. FMCS Internal Training and Education.....	0	497	0	750	0	750	0	0
Sub-Total Reimbursable	8	\$1,961	8	\$2,428	8	\$2,465	0	\$37
TOTAL RESOURCES	244	\$48,613	260	\$49,080	260	\$50,490	0	\$1,410

* N.B. The FY 2011 estimate is the annualized continuing resolution level.

FEDERAL MEDIATION AND CONCILIATION SERVICE

**BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS**

(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Personnel Compensation</u>	<u>\$25,935</u>	<u>\$27,396</u>	<u>\$27,528</u>	<u>\$28,297</u>
Full-time permanent	25,537	26,910	27,101	27,868
- Full-time permanent positions	25,537	26,910	27,101	27,868
Other than full-time permanent	70	71	101	101
- Other than full-time permanent positions	70	71	101	101
Other Personnel Compensation	328	415	326	328
- Overtime & holiday pay	28	16	26	28
- Cash incentive awards	300	399	300	300
<u>Personnel Benefits</u>	<u>\$7,287</u>	<u>\$7,548</u>	<u>\$7,876</u>	<u>\$8,018</u>
Civilian Personnel Benefits	7,287	7,548	7,876	8,018
- CSRS Retirement Contribution	326	281	281	275
- FERS Retirement Contribution	2,337	2,372	2,400	2,476
- Federal Retirement Thrift Savings Plan Contribution	1,000	1,043	1,143	1,183
- Group life insurance	48	48	48	48
- Health Insurance Contribution	1,490	1,524	1,600	1,712
- OASDI – FERS	1,181	1,351	1,400	1,419
- Employee compensation	449	424	399	401
- Relocation expenses (PCS)	0	34	134	0

BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS
(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Personnel Benefits (continued)</u>				
Civilian Personnel Benefits (continued)				
- Cost-of-living allowance	48	46	46	50
- Subsidy for commuting costs	40	52	52	52
- Medicare contribution	368	373	373	402
<u>Benefits of Former Personnel</u>				
- Unemployment compensation	2	0	3	0
- Voluntary separation incentive	0	0	0	0
<u>Travel and Transportation of Persons</u>				
- National office travel	130	99	120	130
- Official car	15	9	9	15
- Field office travel	1,595	1,598	1,650	1,700
<u>Transportation of Things</u>				
- Transportation of household goods (PCS)	0	4	4	0
<u>Rents, Communications, and Utilities</u>				
Rental Payments to GSA	5,641	5,182	5,482	5,900
- Rental payments to GSA	5,641	5,182	5,482	5,900

BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS
(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Rents, Communications, and Utilities (continued)</u>				
Rental Payments to Others	5	4	4	7
- Conference room rental	5	4	4	7
Communications, Utilities and Miscellaneous Charges	946	917	917	917
- Reproduction equipment rental	25	0	0	0
- Miscellaneous charges	10	5	5	5
- Audio-visual equipment rental	2	3	3	3
- GSA Phones	250	216	216	216
- FTS Phones	20	16	16	16
- Commercial Phones	280	280	280	280
- Data communication services	220	285	285	285
- Postal services and rentals	139	112	112	112
<u>Printing and Reproduction</u>	<u>\$60</u>	<u>\$20</u>	<u>\$20</u>	<u>\$20</u>
- FMCS forms and other printing	60	20	20	20
<u>Other Contractual Services</u>	<u>\$1,838</u>	<u>\$1,895</u>	<u>\$1,334</u>	<u>\$1,384</u>
Advisory and Assistance Service	21	16	16	21
- Computer assisted legal research	5	0	0	5
- OPM background investigations	6	6	6	6
- Office equipment and machinery relocation	10	10	10	10

BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS
(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Other Contractual Services (continued)</u>				
Other Services	245	232	245	245
- Management and professional services	240	227	240	240
- Official representation fund	5	5	5	5
Other purchases of goods and services from Government Accounts	161	159	185	185
- Guard security services	161	159	185	185
Operation and Maintenance of Facilities	50	26	26	50
- Office repairs and alterations	50	26	26	50
Medical Care	33	21	21	21
- Medical care	33	21	21	21
Operation and Maintenance of Equipment	1,328	1,441	841	862
- Maintenance of office equipment	128	111	111	128
- Maintenance of information technology equipment	300	157	257	260
- Information Technology Support Services	865	1,139	439	439
- Support of payroll/personnel operations	35	34	34	35
- Household goods storage (PCS)	0	0	0	0

BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS
(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Supplies and Materials</u>	<u>\$460</u>	<u>\$312</u>	<u>\$342</u>	<u>\$340</u>
- Office supplies and materials	200	193	203	200
- Information technology supplies and materials	260	119	139	140
<u>Equipment</u>	<u>\$912</u>	<u>\$918</u>	<u>\$613</u>	<u>\$547</u>
- Furniture and fixtures	100	75	150	82
- Information technology Hardware/Software	680	825	425	425
- Audio-visual equipment	132	18	38	40
<u>Grants, Subsidies and Contributions</u>	<u>\$650</u>	<u>\$750</u>	<u>\$750</u>	<u>\$750</u>
Sub-total appropriated	\$45,476	\$46,652	\$46,652	\$48,025

BUDGET ESTIMATES FISCAL YEAR 2012
FINANCIAL REQUIREMENTS
(in thousands of dollars)

	FY 2009 Actual	FY 2010 Actual	FY 2011 Estimated	FY 2012 Request
<u>Reimbursable Programs (non-appropriated)</u>	<u>\$1,240</u>	<u>\$1,464</u>	<u>\$1,678</u>	<u>\$1,715</u>
- Compensation	765	834	886	910
- Benefits	200	223	229	242
- Travel	212	225	200	200
- Communications	3	4	3	3
- Other contractual services	50	156	350	350
- Supplies and materials	10	22	10	10
Sub-total of Reimbursable Programs	\$1,240	\$1,464	\$1,678	\$1,715
<u>FMCS Internal Training and Education (non-appropriated)</u>	<u>\$562</u>	<u>\$497</u>	<u>\$750</u>	<u>\$750</u>
- Seminars, Workshops, Conferences and Training	250	214	325	325
- New mediator costs	60	88	80	80
- Tuition	92	77	92	92
- Other contractual services	80	22	173	173
- Supplies & materials	20	15	20	20
- Subscriptions & training materials	60	81	60	60
Sub-total of FMCS Training and Education	\$562	\$497	\$750	\$750
Sub-total of non-appropriated (reimbursable obligations)	\$1,802	\$1,961	\$2,428	\$2,465
TOTAL RESOURCES	\$47,278	\$48,613	\$49,080	\$50,490

FEDERAL MEDIATION AND CONCILIATION SERVICE

Detail of Total Employment – End of Year

	2010 Actual	2011 Estimated	2012 Requested
Executive Level III.....	1	1	1
ES.....	3	4	4
Subtotal.....	4	5	5
GS-15.....	22	22	22
GS-14.....	153	156	159
GS-13.....	23	27	24
GS-12.....	5	9	9
GS-11.....	1	4	4
GS-10.....	2	2	2
GS-9.....	4	4	4
GS-8.....	16	17	17
GS-7.....	7	8	8
GS-6.....	7	7	7
GS-5.....	0	0	0
GS-4.....	0	0	0
GS-3.....	0	0	0
GS-2.....	0	0	0
Subtotal.....	240	256	256
Total employment, end of year.....	244 *	261 *	261 *
Full-time equivalent (FTE) usage.....	244 *	260 *	260 *
Average ES Salary.....	\$160,600	\$163,000	\$163,000
Average GS Level.....	12.99	12.96	12.97
Average GS Salary.....	\$110,614	\$108,960	\$109,140

* 8 FTE funded by reimbursable revenue.

VI. Mission and Program Structure

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 mission is “to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”ⁱ Subsequent acts of Congress and presidential orders have expanded the FMCS role to provide mediation services to the federal sector and alternative dispute resolution (ADR) programs to Federal Government agencies, as well as promote and establish labor-management partnerships.

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.

For more than 60 years, the FMCS has provided services that embrace this mission and demonstrate its commitment to preventing or minimizing interruptions of the free flow of commerce growing out of labor disputes. As labor-management relationships have evolved over time, so, too, has the nature of the FMCS work within collective bargaining relationships. The FMCS today provides a range of services to labor and management, such as relationship-development training and training in interest-based bargaining, to help the parties deal effectively with disputes that may arise between them without resorting to work stoppages. The following section describes the FMCS comprehensive package of core programs and services.

A. Collective Bargaining Mediation

Through collective bargaining mediation, the 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 contracts—which take place between an employer and a newly certified or recognized union representing its employees—and for negotiations for successor collective bargaining agreements. The FMCS provides mediation services to the private sector and also to the public sector, including federal agencies and state and local governments.

In FY 2010, FMCS mediators actively monitored over 14,000 collective bargaining negotiations and were directly involved “at the table” in more than 4,900. The negotiations in which FMCS mediators were directly involved impacted every major industry throughout the United States.

B. Grievance Mediation

Grievance mediation involves the use of a neutral party to mediate disputes that may arise over the terms and conditions of a collective bargaining agreement. FMCS mediators provide this service to the private and public sectors with the salutary goal of preventing unresolved contract interpretation issues from spilling over and bogging down future contract negotiations. The volatile economic climate, highly competitive business environment, and the rapidity with which employers and unions must respond to changing conditions all increase the importance of resolving contentious issues arising mid-contract. Additionally these unresolved matters, if left to fester, invariably create a climate of conflict in the collective bargaining relationship and increase the potential for work stoppages during bargaining over contract renewal.

In FY 2010, the FMCS mediated 2,084 grievance mediation cases and helped the parties reach agreement in more than 1,500 of these (74 percent). Apart from that direct benefit to the parties, experience has shown that once parties utilize this type of mediation assistance, they are more likely to call upon FMCS mediation services during their negotiations at contract renewal time.

C. Relationship-Development and Training

Preventing conflict that may arise during the term of a collective bargaining agreement is another important goal of the FMCS. The FMCS's relationship-building training programs are designed to serve a preventive purpose and to improve labor-management relationships by helping labor and management develop collaborative, problem-solving approaches. Effective use of these programs better enables the parties to jointly respond to rapidly changing business and economic conditions. These training programs not only improve the quality of the parties' relationships, but are designed to provide processes and structures conducive to joint discussion and resolution of issues. Adoption of these processes helps ensure successful and highly productive workplaces. In FY 2010, FMCS mediators conducted 2,200 training programs to the parties of collective bargaining.

FMCS relationship-development and training programs include:

- **Alternative Bargaining Training:** Teaches the benefits and techniques of a non-adversary, 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.

D. Arbitration Services

National labor policy favors arbitration for settling contractual disputes. FMCS's Office of Arbitration Services maintains a roster of approximately 1,400 independent arbitrators who are qualified to hear and decide disputes over the interpretation or application of collective bargaining agreements. Upon request from the parties, the FMCS furnishes a list of names from which they may choose an arbitrator to hear their case and render a decision.

During FY 2010, the Office of Arbitration Services processed nearly 16,500 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided more than 2,100 labor arbitration cases.

E. Employment and Regulatory Mediation

Outside the collective bargaining arena, the FMCS provides employment mediation services to the federal sector and to state and local governments on a cost-reimbursable basis. The Administrative Dispute Resolution Act of 1990, the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996 expanded FMCS's role as a provider of these services. The legislative intent behind

these acts was to expand the use of alternative dispute resolution throughout the Federal Government, reduce litigation costs, and promote better government decision-making. A recent development has been the increased emphasis on the utilization of regulatory negotiations to enhance the effectiveness and efficiency of promulgating new agency rules. This requires experienced mediators and facilitators, who are specially trained and skilled at managing complex multi-party negotiations involving multiple stakeholders. The FMCS's workforce is uniquely positioned to meet the specific demands of the regulatory negotiations environment, and indeed, requests for such services have increased.

The FMCS also provides employment mediation to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes. In FY 2010, FMCS mediated 1,392 employment cases.

F. FMCS Institute

The FMCS Institute for Conflict Management provides training and education to labor and management practitioners from multiple organizations in an off-site classroom format. The Institute offers training in practical conflict resolution skills, collective bargaining, arbitrator and arbitration skills-building, facilitation process skills, multi-party facilitation, cultural diversity, and equal employment opportunity mediation skills. The Institute runs as a reimbursable program and is funded by fees received from training participants.

G. 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's annual appropriations, and grants are distributed to encourage labor-management committees to develop innovative joint approaches to workplace problems.

In FY 2010, the FMCS awarded 10 new competitive grants at a cost of \$750,000. These grants supported labor-management committees tackling a wide variety of important issues related to health care, job safety, work-life balance, and the flexibility needed to pursue new business opportunities, such as green jobs.

H. International Training and Exchange

Beyond the nation's borders, the FMCS plays an important role in promoting collective bargaining and conflict resolution around the world. FMCS's international work is a small, but integral, part of its services. Emerging market economies often struggle to compete effectively in a globally integrated marketplace. Part of their struggle includes the implementation of effective labor relations systems. Other nations

and foreign organizations have sought assistance in designing systems that resolve and prevent industrial conflict where a formal system has not been developed to manage it. International training programs are also a knowledge-sharing experience; FMCS mediators gain familiarity with complex issues affecting the global economy and, as a result, are more effective in resolving labor-management disputes with international implications.

FMCS's international efforts also help to level the economic playing field for U.S. companies and workers by strengthening the rule of law and workers' rights in developing countries. The program helps create the stable and productive work forces that are needed to attract foreign investment and improve living conditions as well as supporting U.S. companies and workers in the global market by advocating core labor standards for all nations. Equally important, the FMCS helps establish the labor relations institutions that are essential to the smooth functioning of free market economies. In addition to industrial relations, FMCS mediators assist with rule of law initiatives, thereby helping to foster economic growth and investment. These initiatives include mediation training and working with NGOs and other civil society organizations to develop mediation and other FMCS ADR programs. FMCS's International Program operations are reimbursed and are funded in part by a number of foreign and U.S. agencies, including the U.S. Department of Labor, the U.S. Department of State, the U.S. Agency for International Development, and the International Labor Organization.

VII. Workload Projections – FY 2011 and FY 2012

The FMCS's workload over prior fiscal years, caseload estimates, accomplishments for FY 2010, and estimated workload in FY 2011 and 2012 are included in the following pages. These estimates should be read in conjunction with the FMCS's strategic program objectives detailed in Section VIII.

WORKLOAD OUTPUTS AND PROJECTIONS

FISCAL YEARS 2007 - 2012

PROGRAM SERVICES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2010	FY 2011	FY 2012
	Actual	Actual	Actual	Estimated	Actual	Estimated	Estimated
1. COLLECTIVE BARGAINING							
MEDIATION							
Assigned Cases ⁱⁱ	14,663	14,308	13,887	14,000	14,127	14,000	14,000
-Private Sector	13,245	12,914	12,425	12,656	12,888	12,630	12,630
-Public Sector (state and municipal)	1,107	1,083	1,138	1,050	906	1,041	1,041
-Federal Sector	311	311	324	294	333	329	329
Mediated Cases ⁱⁱⁱ	5,329	4,836	4,767	4,971	4,919	4,798	4,798
-Private Sector	3,907	3,437	3,320	3,595	3,632	3,444	3,444
-Public Sector (state and municipal)	1,145	1,145	1,155	1,119	991	1,096	1,096
-Federal Sector	277	254	292	257	296	257	257
Closed Cases	14,478	13,480	13,308	13,241	12,992	13,276	13,276
Closed Mediated Cases	4,426	3,914	3,958	4,028	4,005	3,982	3,982
Activity Rate ^{iv}	31%	29%	30%	30%	31%	30%	30%
Settled and Closed Mediated Cases	3,818	3,396	3,395	3,487	3,428	3,375	3,375
Percentage of mediated cases settled w/FMCS ^v	86%	87%	86%	87%	86%	85%	85%
Activity rate in significant cases ^{vi}	51%	38%	37%	43%	46%	43%	43%
2. GRIEVANCE MEDIATION.....							
Assigned Cases	1,768	1,749	2,027	1,980	2,124	2,300	2,300
Mediated Cases	1,753	1,728	2,004	1,943	2,084	2,261	2,261
-Private Sector	1,282	1,296	1,570	1,481	1,708	1,736	1,736
-Public Sector (state and municipal)	316	314	313	342	239	389	389
-Federal Sector	155	118	121	157	137	174	174
Settled GM Cases	1,254	1,299	1,479	1,468	1,532	1,703	1,703
Percentage of cases settled through FMCS ^{vii}	74%	75%	74%	76%	74%	75%	75%

PROGRAM SERVICES	FY 2007 Actual	FY 2008 Actual	FY 2009 Actual	FY 2010 Estimated	FY 2010 Actual	FY 2011 Estimated	FY 2012 Estimated
3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....							
Number of training programs provided	2,548	2,356	2,327	2,400	2,200	2,300	2,300
-Private Sector	1,591	1,390	1,400	1,406	1,471	1,377	1,377
-Public Sector (state and municipal)	730	712	682	706	433	654	654
-Federal Sector	227	254	245	288	296	269	269
4. EMPLOYMENT MEDIATION.....							
Mediated Cases	1,060	1,220	1,362	1,350	1,392	1,350	1,350
-Federal Sector	1,038	1,205	1,336	1,322	1,387	1,304	1,304
-Public Sector (state and municipal)	5	11	9	12	2	17	17
-Private	17	4	17	16	3	29	29
Settled EM Cases	532	576	638	663	675	657	657
Percent of EM cases settled through FMCS ^{viii}	50%	47%	47%	49%	48%	49%	49%
5. OUTREACH.....							
Outreach cases ^{ix}	3,847	3,347	3,622	3,550	3,240	3,400	3,400
6. ARBITRATION SERVICES							
Number of panels issued	16,264	15,717	16,692	16,000	16,486	16,000	16,000
Number of arbitrators appointed	6,485	6,568	6,496	6,500	6,870	6,505	6,505
Average number of days for arbitrator appointment	3.2	3.24	2.72	2	2	2	2
7. INSTITUTE.....							
Number of courses provided	9	5	7	11	12	11	11
Number of participants	219	150	187	240	207	290	290

VIII. Program Objectives – FY 2011 and FY 2012

Program objectives for each service area are guided by the FMCS's five-year strategic plan. This plan was updated for this budget submission. For each strategic goal, the FMCS has identified a number of objectives, key implementation strategies and actions, and measures for tracking its performance toward achieving each goal. The following section details each goal and presents a matrix identifying the programs impacted by them, performance objectives and accomplishments for FY 2010, and performance goals for FY 2011 and FY 2012.

In FY 2009, the FMCS initiated a new project to measure its impact in building problem-solving relationships. Data for this project are currently being collected and prepared for analysis, with initial results anticipated in the FY 2013 budget request.

Strategic Goal #1: Mediation

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

Objective:

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

Action:

- Early intervention activities, particularly in initial contracts, in negotiations where health care is identified as a significant issue, the health care industry, and large and high-impact bargaining units.

Strategies:

- Encourage labor and management leaders to employ mediation in their contract negotiations.
- Pursue FMCS joint problem solving initiatives during the term of the agreement.

Expected Outputs:

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

Discussion:

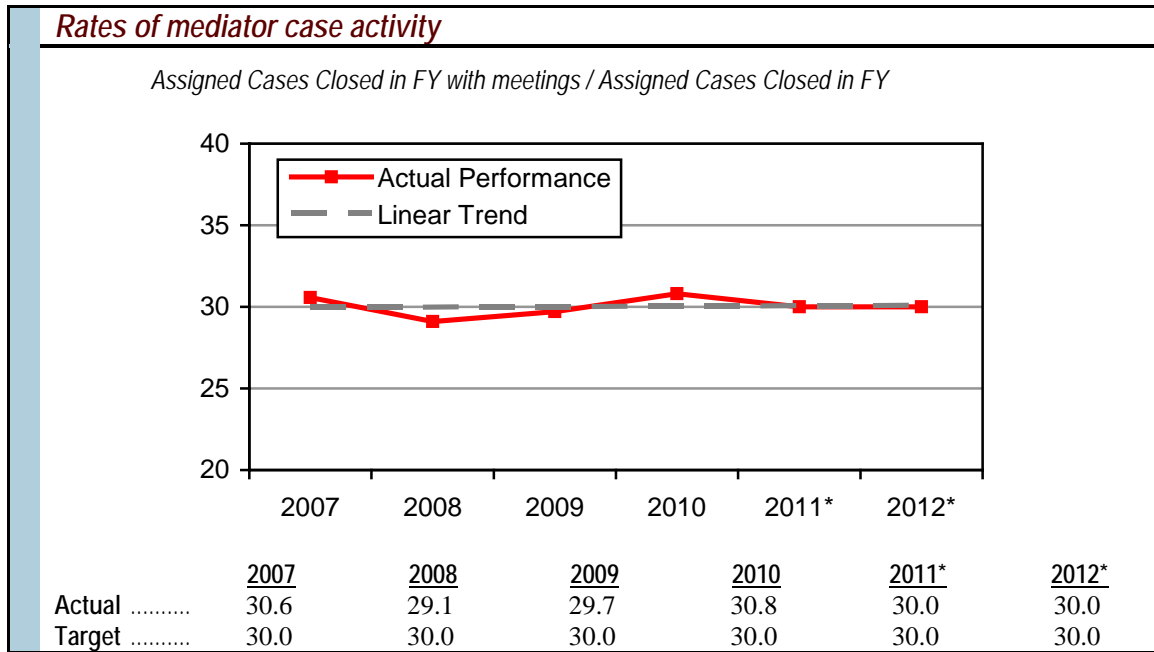
Collective bargaining mediation represents the core of the FMCS's mission and its most publicly visible work. In 2005, an independent study conducted for the FMCS found that mediation prior to a contract's expiration date significantly reduces the duration of any work stoppage that occurs. Previously,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

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

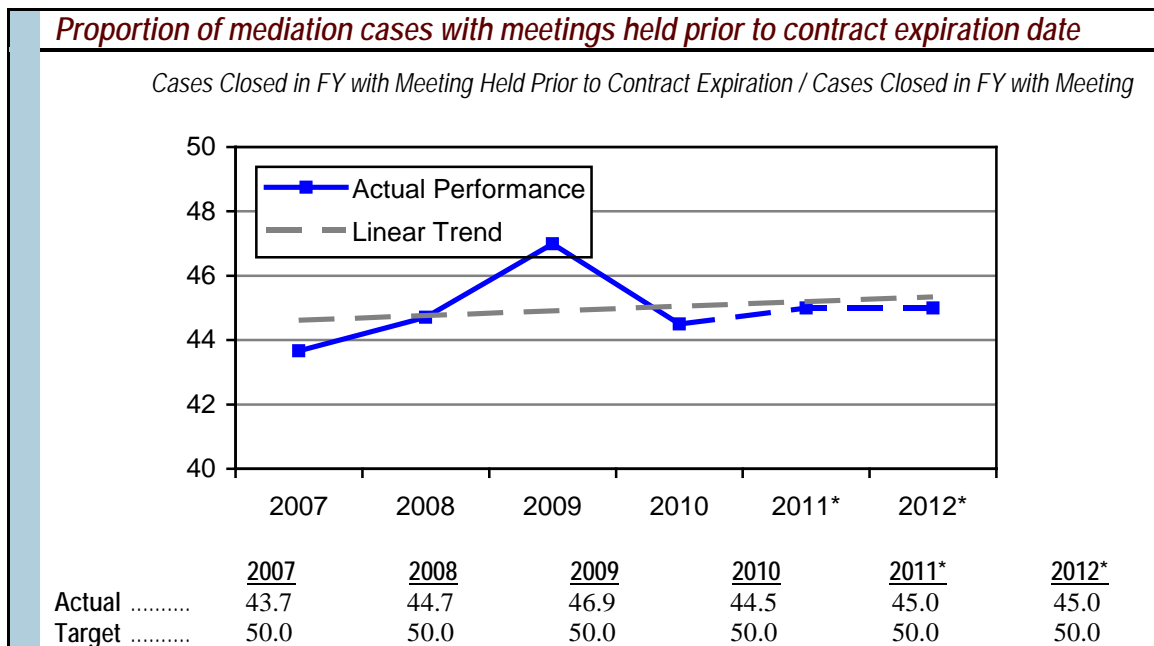
The FMCS evaluates its success in these areas by looking at how many negotiations use mediation services, whether or not a work stoppage occurred, the duration of any stoppage, and the timing of mediators' involvement. On an aggregate basis the FMCS also estimates the financial cost of work stoppages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

Mediation Outputs and Performance Measures

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



* Estimated



* Estimated

Strategic Goal #2: Building Problem-Solving Relationships

Improve labor-management relationships.

Objective:

- Use collaborative dispute resolution processes to manage workplace conflict.

Actions:

- Provide techniques and information that help parties improve their collective bargaining relationship with particular emphasis on implementation of the Affordable Care Act.
- Deliver internally sustainable dispute resolution systems.
- Educate labor and management leaders in the art of building and maintaining labor-management partnerships.

Strategy:

- Promote the use of FMCS programs and outreach emphasizing joint initiatives on significant issues likely to impact collective bargaining.

Expected Output:

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

Discussion:

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

American employer and employee continued success in a globally competitive arena requires a degree of cooperation between labor and management that traditional confrontational bargaining relationships cannot easily accommodate. 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. These competitive issues can be both complex and subtle and require creative solutions that address unique challenges.

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

Strategic Goal #3: Resolving Mid-Term Disputes

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

Objectives:

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

Actions:

- Increased utilization of FMCS services to resolve contract-based disputes.
- Maintain roster of experienced arbitrators.
- Improve all aspects of the arbitration referral service.

Strategies:

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

Expected Outputs:

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

Discussion:

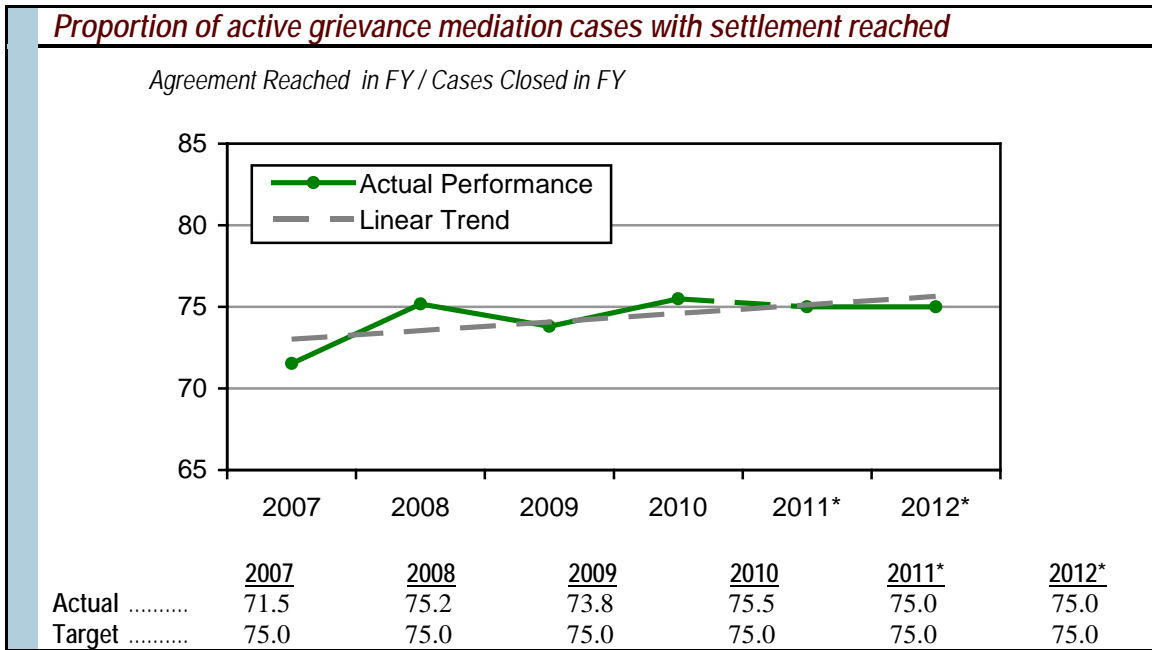
Grievance mediation, joint problem-solving facilitation, and arbitration are three approaches for resolving disputes that may arise from differing interpretations of a labor contract's terms and conditions. Grievance mediation and joint problem solving facilitation are voluntary processes that rely upon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

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

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

Resolving Mid-Term Disputes Outputs and Performance Measures

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



* Estimated

Strategic Goal #4: Promoting ADR

Resolve regulatory / enforcement policy disputes and statute- based workplace disputes.

Objectives:

- Use employment mediation as an alternative to litigation.
- Use problem-solving processes to resolve regulatory/ policy based disputes.

Action:

- Increase number of employment mediations conducted and reimbursable agreements signed.
- Increase the number of facilitated Regulatory Negotiations and Public Policy disputes conducted

Strategy:

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

Expected Output:

- Increase the number of mediated settlements in employment mediation cases.
 - Increase the number of Regulatory/Policy disputes resolved through facilitated processes.
-

Discussion:

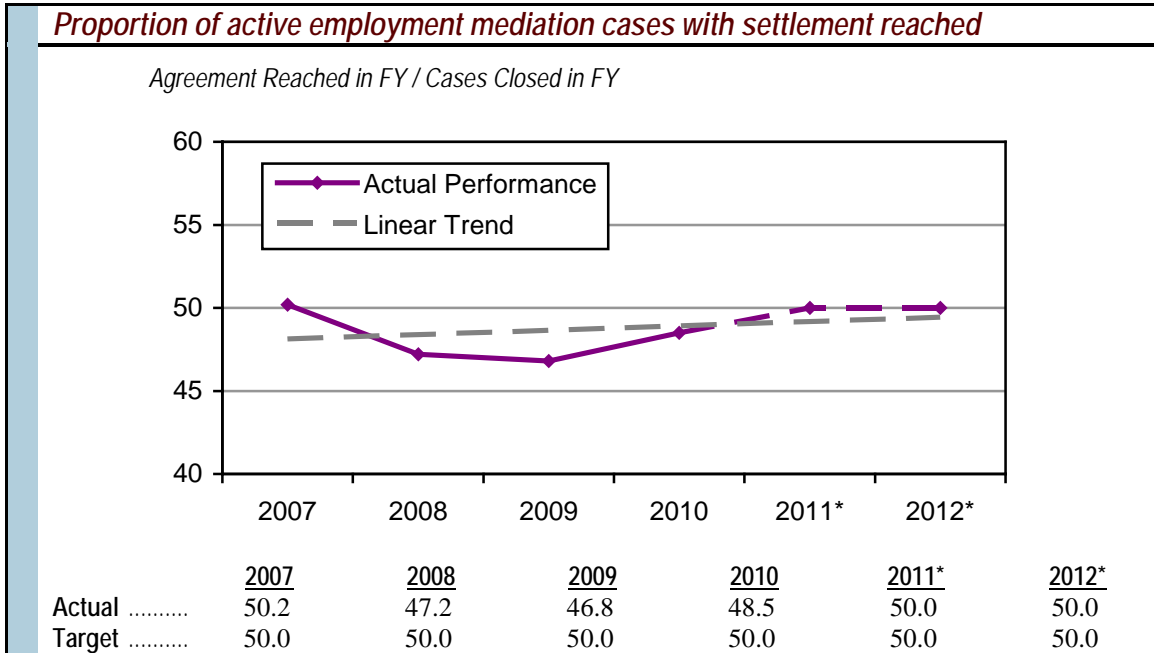
The FMCS's alternative dispute resolution (ADR) work is defined by the Administrative Dispute Resolution Act of 1996 and is designed to help resolve disputes that do not result from a collective bargaining relationship. Under the Act, the FMCS is generally limited to work in the federal sector, but may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

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. In regulatory matters, voluntary resolution of a single issue by multiple parties through a facilitated consensus based process will normally offset any costs incurred. Broader resolution of more issues increases the benefits on an exponential basis.

By increasing the number of individual employment cases and regulatory/enforcement case that the FMCS takes and achieving an increased number of resolved cases, FMCS seeks to provide a cost-effective alternative to litigation and promote better government decision-making.

Promoting ADR Outputs and Performance Measures

Resolve statute- or regulation-based workplace disputes.



* Estimated

Endnotes

- ⁱ 29 USC § 173. By statute, FMCS’s jurisdiction excludes the rail and airline industries, which are covered by the National Mediation Board under the Railway Labor Act.
- ⁱⁱ 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 the FMCS 30 days prior to contract expiration. Not all cases providing notices are assigned. Actual FY 2010 FMCS case intake exceeded 22,000.
- ⁱⁱⁱ Mediated cases (formerly called “active” cases) represent the number of cases in the FY where mediators have become active in the negotiations.
- ^{iv} Defined as the number of closed cases where there was at least one meeting divided by the number of total closed assignments.
- ^v Defined as the number of mediated cases settled divided by the total number of active cases.
- ^{vi} Significant cases are generally defined as situations where the bargaining unit exceeds 1,000.
- ^{vii} Defined as the number of grievance mediation cases settled and closed within the fiscal year divided by the number of closed GM assignments.
- ^{viii} Defined as the number of mediated employment cases settled divided by the number of mediated cases closed
- ^{ix} 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.