

**TABLE OF CONTENTS**

	<b>PAGE NO.</b>
<b>I. INTRODUCTION</b>	
A. Agency Mission.....	6
B. FMCS Services.....	6
1. Dispute Mediation – Initial and Successor Contract Negotiations.....	6
2. Preventative Mediation.....	7
3. Arbitration Services.....	9
4. Grants Program.....	9
5. FMCS Institute.....	10
6. ADR/International.....	11
7. Youth Conflict Resolution and Peer Mediation.....	12
C. Nature of Collective Bargaining in FY 2002.....	13
D. GPRA Goals Achieved in FY 2002.....	14
E. Technology.....	16
F. New Initiatives.....	17
1. Credentialing of Neutrals.....	17
2. Resource Center.....	17
G. Summary.....	18
<b>II. DISPUTE MEDIATION.....</b>	<b>20</b>
A. Dispute Mediation Process.....	20
B. FY 2002 Cases of Significance.....	20
1. First Energy/International Brotherhood of Electrical Workers	
2. Hershey Foods/Bakery, Confectionary, Tobacco Workers and Grain Millers Union	
3. Eaton Aerospace (Vickers Fluid Power)/Communication Workers of America	
4. University Hospitals Incorporated/Ohio Nurses Association	
5. Tyson Foods (Iowa Beef Processors) United Food and Commercial Workers	
6. Cook County (Chicago, Illinois)/Service Employees International Union/American Federation of State and County Municipal Employees	

C. Dispute Mediation Program Data.....	23
III. INITIAL CONTRACT NEGOTIATIONS.....	25
A. Initial Contract Negotiations and Processes.....	25
B. Initial Contract Bargaining Data.....	25
IV. PREVENTATIVE MEDIATION.....	27
A. Preventive Mediation Process.....	27
B. FY 2002 Cases of Significance.....	27
1. Kaiser Permanente/United Association of California/Service Employees International Union/American Federation of Nurses	
2. Frederick County Maryland/Emergency Services Division/Career Fire Fighters Association of Frederick/International Association of Fire Fighters/Frederick County Volunteer Fire and Rescue Association	
3. United States Air Force Material Command/American Federation of Government Employees	
4. Iowa Association of School Boards (IASB)/Iowa State Education Association/Iowa Public Employment Relations Board	
5. Levi Strauss/UNITE	
6. City of Los Angeles/Various Unions	
C. Preventative Mediation Program Data.....	29
V. ARBITRATION SERVICES.....	30
A. Arbitration Services.....	30
B. FY 2002 Accomplishments.....	30
C. Arbitration Program Data.....	31
VI. GRANTS.....	36
A. Grants Program.....	36
B. FY 2002 Grant Funding Summary.....	36
VII. FMCS INSTITUTE.....	39
A. Purpose and Course Offering.....	39
VIII. ADR/INTERNATIONAL.....	40
A. Services Provided.....	40

1. Domestic Alternate Dispute Resolution.....	40
2. Regulatory Negotiations.....	41
3. International ADR.....	41
IX. FMCS ORGANIZATION.....	43
Office of the Director	
National Office Department	
FMCS Field Organization	
X. LEGISLATIVE AUTHORITY.....	46



To the Congress:

It is my distinct privilege to submit to you the Fifty-Fifth Annual Report of the Federal Mediation and Conciliation Service (FMCS) in accordance with the provisions of the Labor-Management Relations Act of 1947. This report details the activities of this agency in fiscal year 2002.

Fiscal year 2002 commenced immediately after the terrorist attacks of September 11, 2001. The aftermath of 9-11, the difficulties faced by the markets, corporate scandals, the globalization of the economy, rapid technological changes, and pressures in the health care industry continue to burden the collective bargaining process. Despite these factors, we continue to assist in the free flow of commerce through mediation. We remain committed to our goals, and to the needs of our customers, for mediation and alternate dispute resolution services aimed at resolving our nation's conflicts which can adversely affect commerce.

I was confirmed as the Service's 15<sup>th</sup> Director in August 2002, and was immediately faced with the West Coast ports' dispute. This dispute best exemplifies the issues that continue to plague the labor-management community: the desire of employers to implement cost-saving technological advancements that affect employees. The ports' dispute began in FY 2002, and stalled the shipment of nearly half the cargo entering and exiting the United States by sea.

Although the ports' dispute was the most publicly known dispute during fiscal year 2002, our field mediators were involved in 6757 disputes. In 75% of those cases, we assisted the parties in achieving collective bargaining settlements. In addition, our mediators continue to train the labor-management community on methods designed to improve their relationship. These training sessions, known as preventative mediation, were provided 2618 times during this fiscal year. Our alternative dispute resolution services to federal, state and local governments continue to be in wide demand as more agencies have turned to FMCS for alternatives to courtroom litigation.

The American workplace is changing and the Federal Mediation and Conciliation Service will change with it so that we can continue to offer assistance to employers and employees as they confront the challenges of modern labor-management relations.

Respectfully,  
Peter Hurtgen, Director

## I. INTRODUCTION

### A. Agency Mission

For fifty-five years, the Federal Mediation and Conciliation Service (FMCS) has carried out its mission of preserving and promoting labor-management peace. The FMCS was created by Congress as an independent agency by the Labor-Management Relations Act of 1947. A dedicated cadre of highly trained mediators provide conflict resolution services to our nation's employers and their unionized employees and carry out the agency's mission. Their primary mission is to prevent or minimize interruptions to the free flow of commerce growing out of labor disputes and to assist these parties in improving and maintaining their labor-management relationships. The core mission of the Service is dispute mediation, a voluntary process in which mediators serve as third-party neutrals to facilitate the settlement of issues in the negotiation of collective bargaining agreements.

### B. FMCS Services

In carrying out its mission, the FMCS provides the following services to the public:

1. Dispute Mediation – Initial and Successor Contracts
2. Preventative Mediation
3. Arbitration Services
4. Grants Program
5. FMCS Institute
6. ADR/International
7. Youth Conflict Resolution and Peer Mediation

#### **1. Dispute Mediation: Initial and Successor Contract Negotiations**

Dispute mediation is a voluntary process that occurs when a third-party neutral assists the parties in reaching agreement in contract negotiations. This includes initial contract negotiations, which take place between an employer and a newly certified or recognized union representing its employees, and negotiations for successor collective bargaining agreements. Mediators have no authority to impose settlements; their only tool is the power of persuasion. Through dispute mediation, FMCS helps avert or minimize the impact of work stoppages on the U.S. economy.

In FY 2002, FMCS mediators were actively involved in 6757 collective bargaining contract negotiations in every major industry and service throughout the United States. This is an increase of approximately 300 cases over FY 2001 dispute activity. Dispute mediation services are provided not only to the private sector, but also to the public sector, including federal agencies, and state and local governments.

Initial contract negotiations are critical as they are the foundation for the parties' future labor-management relationship. Initial contract negotiations are often more difficult than established contract re-negotiations since they frequently follow contentious representation election campaigns in which the parties adopt hardened

positions toward each other. Current data indicates less likelihood of agreement on initial contracts than in contract re-negotiations, even with the assistance of FMCS mediators. There are higher incidences of strikes or lockouts, and threats or actual use of permanent replacement workers in initial contract negotiation settings. Additionally, unfair labor practice charges can hold up any possibility of agreement and are more common in this environment.

For the last several years, FMCS has placed special emphasis on the mediation of initial contract negotiations between employers and unions in newly represented bargaining units. Under an arrangement with the National Labor Relations Board, FMCS is immediately notified of all new union certifications. Our policy is to assign all initial contract cases to mediators as soon as we receive the certifications. Mediators are proactively involved in assisting the parties and the cases remain open for a two year period if the parties do not reach agreement.

With regard to successor contract negotiations, mediators are in touch with both parties prior to commencement of negotiations. The legally required notice of intent to commence successor contract negotiations triggers the contact. FY 2002 was a critical bargaining year, with major contracts expiring in the following industries: aerospace, defense, food manufacturing, construction, hotel service and maintenance, theme park entertainment, west coast shipping, apparel, health care as well as federal, state and local public employees and educational institutions.

For FY 2002 data regarding dispute mediation in successor contracts and initial contract negotiations, and cases of significance in each category during this fiscal year, see Sections II and III.

## **2. Preventative Mediation**

Preventative mediation services are collaborative union-management processes that concentrate on improving the parties' long-term relationships. In preventative mediation, FMCS mediators address the workplace relationship by providing education and skills training in effective bargaining, communications, joint problem solving and innovative conflict resolution. Preventative mediation services are increasingly important because labor and management have entered into contracts of longer duration than in previous years. Because the parties maintain their contractual relationship for longer periods, our preventative mediation services are of particular significance to address the workplace relationship issues that arise during the life of the contract. FY 2002 data shows a slight decrease in the number of preventative mediation services over fiscal year 2001, but we anticipate an increase in demand for these services in the future.

Preventative mediation services are broadly defined as collaborative union-management processes designed to improve the party's relationship on issues of mutual interest. When preventative mediation is requested, the mediator determines the parties' needs and designs a program that is specifically tailored for those parties. FMCS offers a wide array of services to address workplace problems and they include:

- **Orientation to Joint Labor-Management Initiatives:** a one day workshop providing participants the opportunity to interact and share common experiences, discuss the nation's economic climate, the impact of international competition, and the foundation of labor-management cooperation.
- **Interest Based Bargaining Training:** teaches the benefits and techniques of a non-adversarial, joint problem solving approach to negotiation focusing on the interests that underlie the parties' positions.
- **Relationship by Objective:** aims to improve the parties relationship with one another, particularly where the relationship has worsened after a contentious representation election, initial contract negotiation, or strike. These training sessions are held off site and require a team of mediators.
- **Labor-Management Committee:** joint labor-management committees designed to bring the parties into regular communication.
- **Partners in Change:** a two day workshop to explore the organization's current culture, identifying perceptions within the organization, creating a vision for the future, and designing a system that effectuates change.
- **Committee Effectiveness Training:** skills training on how to become effective contributors, and includes a guidebook covering effective planning, meetings, group problem solving, consensus decision making, and effective communication with constituents. Training modules include understanding yourself and others, interpersonal skills, group dynamics and shared leadership.
- **Labor-Management Worksite Committee Training:** extends labor-management committees from the leadership level to the worksite level, including the formation of worksite committees, group interactions, techniques to manage change and skills to monitor the work of the committee.
- **Contract Administration/Steward-Supervisor Training:** provides front line supervisors and shop stewards with the basic information on their roles and responsibilities regarding contract administration, grievance processing, the arbitration procedure, and interpersonal communications for building cooperative relationships.
- **Facilitation Training:** focuses on the skills needed to build a successful labor-management committee, including understanding adult learning and working styles, and planning and facilitating effective meetings.
- **Alternate Dispute Resolution:** designed for governmental agencies implementing ADR strategies and defines mediation and negotiation, the role of the mediator, and practice of ADR skills.
- **Cultural Awareness Skills for Labor and Management:** addresses cross cultural conflicts in a workplace setting and how to function in a multicultural work setting. This program works best when an issue arises that is racial or cultural in nature, such as a sudden change in the makeup of the workforce, negative cultural undertones during negotiations, a bargaining committee that is diverse, or a rise in grievances that are racially or culturally motivated.



In addition to these preventive mediation programs, field mediators continuously participate in education, advocacy and outreach activities (EAOs). Mediators lecture at universities, seminars and conferences and they meet with local leaders in the collective bargaining community. Through this outreach activity, the labor-management community and the general public gain understanding of the uses of mediation, arbitration and collective bargaining and the agency's services.

For FY 2002 data regarding preventative mediation and cases of significance during this year, see Section IV.

### **3. Arbitration Services**

National labor policy favors the settlement of contractual disputes by arbitration, if the parties cannot otherwise settle the matter. When conflicts arise over the interpretation or implementation of a contract or contract provision, FMCS assists through voluntary arbitration. A professional arbitrator, acting in a quasi-judicial capacity, hears arguments, weighs evidence and renders a decision to settle the dispute, usually binding on both parties. On request, FMCS Arbitration Services provides the disputing parties with a "panel" of qualified, private labor arbitrators from which they select the arbitrator to hear their case. The panels are drawn from an FMCS computerized nationwide roster of some 1400 labor arbitrators. To join the FMCS roster, arbitrators must be approved by an Arbitration Review Board, which meets quarterly to consider new applicants, in order to be appointed to the roster by the FMCS Director. There is also an arbitration user focus group that reviews and makes recommendations to the FMCS Director on changes in arbitration service, policies and procedures.

In recent years, we implemented new policies and procedures in our arbitration services department. The parties now have the ability to request arbitration panels on-line and receive them via e-mail, fax, or regular mail. We have revised Form R-43 (Request for Arbitration Panel) to expand the list of acceptable methods of payment and clarified special requirements for panels. Customers are now able to select from geographical areas closer to the site of the dispute, thereby reducing the travel costs incurred by arbitrators.

The FMCS also holds annual Arbitrator Symposia in Cleveland, Philadelphia, Chicago and Seattle. These functions provide FMCS arbitrators with an opportunity to discuss and share the latest information about their profession.

For FY 2002 data regarding arbitration services and program data, see Section V.

### **4. Grants Program**

FMCS is authorized by the Labor-Management Cooperation Act of 1978 to award grants to support and encourage joint labor-management cooperative activities that "improve the labor-management relationship, job security and organizational effectiveness." Congress funds the FMCS Grants Program each year in the agency's appropriation.

The rules, regulations and instructions for preparing grant applications are published annually in the Federal Register and include the following information:

- Program description and scope
- Required program elements
- Grantee selection criteria
- Applicant submission deadline
- Applicant eligibility criteria
- Dollar range of awards
- Duration of grant period
- Cash Match requirement
- Application review process

Financial assistance is appropriate where it can be demonstrated that the creation of the labor-management committee has the potential to:

- Improve communication between management and labor;
- Train employees and employers on organizational effectiveness and innovative joint approaches;
- Assist management and labor in solving issues that may not be resolved in the traditional collective bargaining process;
- Eliminate potential problems effecting the economic development of the area;
- Enhance employee involvement in the decision-making process; or
- Encourage and improve communication skills

The establishment or continuation of joint committees unite representatives of management and labor organizations on a regular basis, and are effective vehicles for increasing productivity, improving product quality and resolving workplace issues. In the past, committees have focused their efforts on improving labor-management relationships, job security, organizational effectiveness, economic development, health care cost containment solutions, competitiveness of a region's hotel industry, economic development, and public sector management. All committees must present measurable results of their efforts for grant funding.

An independent FMCS Grants Review Board, chaired by the Director of Labor-Management Grants, preliminarily scores each application. Final selection is made by the program director.

For FY 2002 data regarding the grants program and summary funding, see Section VI.

## **5. FMCS Institute**

The FMCS Institute commenced operation in 1999. The Institute delivers extended training and education to labor and management practitioners in a central classroom format. This training is more structured and more conducive to intensive focus

than the Agency's traditional on-site preventative mediation programs. Our experience with Institute course work shows that the training is better handled in a classroom setting, away from shop or office floor, in order to maximize communication among all the participants.

The FMCS Institute offers training in practical conflict resolution skills, and provides participants the opportunity to interact with and learn from experienced practitioners who use these skills every day. Institute activities have included training in labor relations, collective bargaining, dispute resolution skills, arbitrator and arbitration skills building, facilitation process skills, group dynamics and multi-party facilitation, cultural diversity, negotiation contract skills, information technology and conflict resolution, advanced facilitation skills, equal employment opportunity complaint mediation skills, and workplace violence prevention.

Fees received for delivery of training services fund the FMCS Institute. All fees collected are utilized to recover expenses and administrative costs of the Institute. Training fees charged to customers are set at a level that allows the Institute to provide a professionally delivered product from one year to the next.

For FY 2002 data regarding the FMCS Institute and course offerings, see Section VII.

## **6. ADR/International**

FMCS is authorized under the Administrative Dispute Resolution Act of 1996 to provide mediation/problem-solving techniques in non-labor relations situations. The ADR/International department functions in three arenas: (a) domestic ADR; (b) International Labor Education and Training; and (c) International ADR.

(a) Domestic ADR work provides conflict resolution services aimed at helping all sectors of government avoid costly and time-consuming litigation to settle disputes by assisting parties in creating ADR structures and processes within agencies. We provide government with an open and inclusive alternative to traditional rule and policy making. Our services in the domestic ADR arena include:

- **Consultation:** Initial assessment of customer needs.
- **System Design:** Analysis of existing mechanisms and design of appropriate methods and strategies to establish or improve conflict resolution processes within the agency or customer.
- **Education/Training:** Programs aimed at educating ADR users and practitioners on mediation skills, training for potential customer or agency mediators, and mentoring mediator trainees through active ADR cases.
- **Mediation/Facilitation and Convening:** Mediation or facilitation of disputes, or performing fact finding or convening processes.
- **Regulatory Negotiations/Public Policy Dialogues:** Conducting consensus focused public policy discussions regarding proposed rules or regulations for government agencies. We guide regulatory negotiations aimed at unifying government regulators and those affected by the proposed regulation.

- **Private Sector ADR:** Applying ADR principles to conflicts away from the negotiation table not directly related to collective bargaining, including facilitation of disputes within a corporate or union board, patent or trademark disputes, or mediation of issues surrounding voluntary recognition of a bargaining unit.

(b) International Labor Education and Training program: Due to the rapid globalization of marketplaces, proliferation of trade pacts and rapid technological advances, more countries recognize that industrial relations and conflict resolution systems are means of securing economic growth and competitiveness. Countries with developing economies may not have developed industrial relations or conflict resolution systems. Our mediators provide briefings, training and technical assistance in labor relations, mediation and collective bargaining to friendly foreign governments. Delegations from other countries are frequent visitors to FMCS National Headquarters in Washington D.C. for briefings and training. The International Labor and Training Services include:

- Consultation on dispute resolution systems.
- Negotiation skills training.
- The collective bargaining process.
- Dispute mediation skills, and training in labor dispute resolution.
- Creation of labor-management committees.
- Introduction to advanced labor-management relations at specific company-union sites
- Administration of mediation services.
- Introduction and use of ADR systems.

(c) International ADR: The conflict resolution needs of other nations continue to evolve and our expertise is sought to provide ADR training and processes to other nations. Application of FMCS conflict resolution skills through the International ADR department continues to develop in the following areas:

- Facilitation of consensus building dialogues related to economic growth and legal/institutional reform in developing countries;
- Mediation/negotiation skills building for employees of regional organizations;
- Negotiation/conflict resolution training for police forces in post-conflict societies;
- Sponsorship or co-sponsorship of best practices seminars in use of conflict resolution;
- Consultation and assistance in establishing international centers of dispute resolution;
- Training of co-mediation teams to mediate NAFTA disputes.

For FY 2002 data regarding ADR and the international program, see Section VIII.

## **7. Youth Conflict Resolution and Peer Mediation:**

In FY 2000, FMCS began delivering the completed curriculum on Youth Conflict Resolution and Peer Mediation. Experience teaches that those who learn conflict

resolution skills early in life carry these skills with them throughout their life. This program provides a means of nonviolent conflict resolution for students and staff and is designed to assist elementary and secondary school staff to implement a school wide peer mediation program. Students, staff and parents are trained in basic conflict resolution skills to prepare them to problem solve many of their disputes in a constructive manner. A smaller group of students and staff are then trained as mediators.

The curriculum is designed to teach new skills in managing anger and conflict and apply them by direct participation; improve the school environment by helping students and staff address underlying conflict that cause rule infractions; reduce the number of disputes that become violent or hurtful; and reduce the amount of staff time spent on discipline.

In fiscal year 2002, we partnered with six communities across the nation to implement a technology-driven, internet-based program. Using the agency's TAGS technology (see description below), we conducted surveys to identify the factors contributing to youth conflict and violence within communities. Using TAGS, communities, schools, parents, teachers and students conduct on-line problem-solving meetings and surveys in an effort to prevent or eliminate youth violence in their communities. While TAGS technology is extremely useful for higher level elementary and middle school age children, the technology is too advanced for younger children. As a result, we are currently developing a child-friendly CD-ROM, aimed at teaching conflict resolution skills to pre-school and elementary school age children.

A team of academic partners and mediators continue to evaluate this program and monitor its successes to ensure its continued assistance to our nation's communities.

### **C. Nature of Collective Bargaining in FY 2002**

Fiscal year 2002 was a critical bargaining year, with major contracts expiring the following industries: aerospace, defense, food manufacturing, construction, hotel service and maintenance, theme park entertainment, west coast shipping, apparel, health care as well as federal, state and local public employees and educational institutions. While the west coast ports dispute remained in the public eye, mediators were actively involved in 6757 collective bargaining contract negotiations in every major industry and service throughout the United States in FY 2002. This represents an increase of 300 cases over FY 2001 dispute activity.<sup>1</sup> With our assistance, 5128 contracts were reached. As a result, 75.8% of our dispute cases resulted in negotiated settlements.

In the aftermath of September 11, a spirit of cooperation existed in the labor-management community and, as a result, there were fewer work stoppages during this fiscal year. There were 445 work stoppages during fiscal year 2001, but that number substantially decreased during fiscal year 2002 to 327. Nevertheless, contracts continued

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<sup>1</sup> It is interesting to note that FY 2002 saw an increase in dispute work over the prior year, despite the terrorists acts of September 11. To further analyze this issue, we compared the number of contracts that expired in FY 2001 with those that expired in FY 2002. The numbers show that there were 37,646 contracts that expired in FY 2001, compared to 45,339 that expired on FY 2002. This could explain the increase in the number of dispute cases we had in FY 2002. A greater number of expiring contracts is directly proportional to an increase in dispute assignments.

to expire and the Agency played a role in resolving significant disputes. We resolved a defense-related dispute involving Lockheed Martin’s employees and also resolved a work stoppage among thousands of employees employed at two Disney premier hotels serving VIP visitors and guests. We settled strikes involving 6,000 court–system employees of Cook County, Illinois, and 3,000 employees of Hershey Foods.

Although we assist the parties in resolving strike situations, our primary mission is to avoid work stoppages altogether by achieving negotiated settlements. We averted strikes by 185,000 employees of United Parcel Service; 55,000 health care workers employed by the League of Voluntary Hospitals in New York City; 40,000 employees in the Las Vegas casino industry; 2,000 employees of Tyson Foods; 887 nurses employed by University Hospitals in Cincinnati; and 385 employees of Eaton Aerospace.

**D. GPRA Achievements:**

Government Performance and Results Act requires all federal agencies to identify performance goals. For every service provided, we identified specific goals for fiscal year 2002. Although our 2002 GPRA performance was previously submitted to Congress in our FY 2004 budget submission, our achievements are reported here as well. To the extent that the Agency fell short of its GPRA goals in any of the below-noted areas, the Agency’s GPRA 2002 report explained the factors impacting our ability to achieve certain goals. Those factors are reiterated here in footnotes.

<b>Service</b>	<b>Goals/Objectives</b>	<b>Actual Performance</b>
<b>Dispute Mediation</b>	1. Close 14,740 cases	2. Closed 15,256 cases
	2. Assign 32.9% of active cases <sup>2</sup>	2. Assigned 35% of active cases
<b>Arbitration Services</b>	1. Provide 19,021 panels	1. Provided 18,885 panels.
	2. Average number of days between receipt of request and panel provided should not exceed 5 workdays	2. Average workdays 6.85 from receipt of panel request to panel provided <sup>3</sup>
	3. 6 National or Regional training conferences for arbitrators and users	3. 5 training conferences provided
<b>Domestic ADR</b>	1. Close 793 ADR cases	1. Closed 1,114 cases
	2. Monitor number of participants exposed to ADR	2. 6,289 participants exposed to ADR

<sup>2</sup> An active case is defined as one where an F-7 has been filed. However, not every case is assigned to a mediator. We assign cases where the bargaining unit is in excess of 15 or the case involves an initial contract.

<sup>3</sup> Arbitration Services was severely impacted by the anthrax incidents in Washington, D.C. Mail was delayed for months so that it could be irradiated by the Postal Service which resulted in the delay in furnishing panels.

<b>Service</b>	<b>Goals/Objectives</b>	<b>Actual Performance</b>
	3. Settle 60% of non-EEO ADR	3. 60% of non-EEO settled
	4. Settle 52% of EEO cases	4. Settled 57.1% of EEO cases
<b>Regulatory Negotiations</b>	1. Close 7 regulatory negotiations	1. Closed 4 <sup>4</sup>
	2. Assist 120 organizations	2. Assisted 40 organizations
<b>International ADR</b>	1. Assist 70 foreign governments	1. Assisted 73 foreign governments
<b>FMCS Institute</b>	1. Provide 10 courses	1. Provided 12 courses
<b>Grants Program</b>	1. Provide 20 grants to labor-management committees	1. Provided 18 grants
	2. Determine percentage of committees sustained beyond grant period	2. 66% of labor-management committees remained active past grant period
<b>Regional Labor-Management Conferences</b>	1. Conduct 51 Agency-sponsored conferences at regional level	1. Conducted 75 Agency-sponsored conferences at the regional level

In addition to the above chart, it should be noted that the Agency continues its success rate in dispute cases. In this fiscal year, 76% of our dispute mediation cases resulted in settlement. Although we were unable to secure collective bargaining agreements in 24% of our cases, this does not mean that we were not otherwise successful. In this regard, the mediator could have assisted the parties in reducing the number of open or unresolved issues. While we could not persuade the parties to reach agreement in 24% of the cases, only 4.86% of those cases resulted in a work stoppage. Avoidance of a work stoppage is a measure of success. If only 4.86% of our mediated cases resulted in a work stoppage, the mediation process has succeeded to a large extent.

Another important measurement of success includes the number of times the labor-management community consented to a mediator's intervention. As noted above, not every case is assigned to a mediator. Once a case is assigned, the mediator contacts the parties to offer his/her assistance. Even where cases are assigned to mediators and the mediator offers assistance, the parties must consent to the mediator's intervention.

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<sup>4</sup> There is an increase in the number of private and public facilitators to perform the highly technical task of facilitating regulatory negotiations. Some of the Agency's work has gone to other mediators.

Mediation is a voluntary process and even a skilled mediator cannot intervene in the absence of consent.

Bearing this in mind, in fiscal year 2001, we assigned 19,116 cases to mediators. It is presumed that, in each case, the assigned mediator contacted the parties and offered his/her services to resolve the dispute. Of those 19,116, the parties accepted mediation 6424 times, roughly 33.6%. In fiscal year 2002, the mediation process fared better: we assigned 19,303 cases, and the parties consented to mediation 6,757 times, an increase to 35%.<sup>5</sup> The Agency will continue to educate the public about the mediation process and its advantages in order to increase the number of situations where our services can be utilized and work stoppages are avoided.

### **E. Technology:**

In FY 2000, the agency introduced Technology Assisted Group Solutions System (TAGS). The TAGS system uses a powerful network of mobile computers and customized software that skilled mediators use to solve problems more effectively, help groups brainstorm, gather and organize information, prioritize, evaluate and build consensus faster than traditional group meetings.

Use of TAGS is economically sound for two reasons: (1) the technology requires less face-to-face time and allows negotiations to take place between parties that are geographically separated, thereby saving travel costs; and (2) it reduces the number of days required for face-to-face meetings because it increases the efficiency of decision-making.

We have also incorporated TAGS technology into the Agency's culture. We use it to communicate with our field offices, conduct surveys, and lead focus groups. We also use it to share documents, presentations and other items that might be useful for field communications.

### **1. Electronic Conference Centers:**

We continue to maintain seven electronic conference centers (ECCs) that incorporate TAGS technology. These ECCs are located in Newark, Minneapolis, Oakland, Cleveland, Atlanta and Washington D.C. While these centers are designed to be stationary, they have mobile capacity and can be shipped to customer locations when needed and can be combined with equipment from other ECCs to accommodate larger groups. Additionally, the ECCs can be linked electronically. Each ECC has 14 laptops and most have mobile servers available to them, all of which have been shipped around the country when parties request it.

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<sup>5</sup> As indicated above in footnote 1, the increase in dispute cases appears to be linked to the increase in the number of contract expirations this fiscal year.



## **2. Academic Partnerships:**

In FY 2001, the Agency began academic partnerships with universities, colleges and/or institutes that allow us to share research, curricula, internships, and mentoring opportunities. Researchers at academic institutions have developed theories of dispute resolution techniques and new approaches to collaborative systems. In order to benefit from the ongoing knowledge that the academic world can provide, we continue to develop relationships with the following institutions, some of whom maintain a TAGS ECC:

- The Uesry Center at Georgia State University (also an ECC);
- The Kennedy School at Harvard (also an ECC);
- North Texas University (also an ECC);
- The School for Conflict Management at George Mason University
- The Strauss Institute at Pepperdine
- Sullivan University (also an ECC)
- Southern Illinois University (also an ECC)
- The ADR and Law Schools at the University of Missouri

## **F. New Initiatives:**

### **1. Registry of Neutrals**

In addition to our collaborative efforts with academic institutions, the FMCS embarked on a credentialing initiative in fiscal years 2000 and 2001 that has continued in fiscal year 2002. We have considered establishing a registry of neutrals who could accept employment-related disputes (i.e., EEO cases) where this Agency might be unable to assign a mediator to attend to that dispute. Accordingly, we explored methods for referring employment-related disputes to private neutrals, and for maintaining confidence in the referral and in the quality of services provided by the neutral.

We convened focus groups in fiscal years 2000, 2001 and 2002, among academicians, practitioners, alternate dispute experts, and FMCS commissioners and managers, to determine how a registry of neutrals can be established and utilized. The focus groups discussed criteria for selection, procedures for selection, and procedures to request or select a neutral from our roster. Based on all of the above, we have developed the following plan to build a registry or roster of neutrals:

- **First Step:** Applications for inclusion on the roster will be accepted during the last quarter of FY 2003.
- **Second Step:** Applications will be reviewed and placement on the roster is based on a flexible point system. An applicant must receive a minimum number of points for acceptance as an FMCS neutral. Points are awarded for:
  - experience in handling alternative dispute resolution cases;
  - educational background in alternative dispute resolution processes;

- work experience in handling employment related conflicts; and
- educational experience in employment related areas.

- **Third Step**: FMCS Institute will develop classes and programs to satisfy the educational requirements for initial inclusion on the roster, although applicants may satisfy the educational requirements through courses taken at other academic institutions.
- **Fourth Step**: Registry members will be required to accumulate continuing education hours, including ethics and/or professional education hours. The FMCS Institute will provide classes to meet the continuing education requirement for retention on the registry.
- **Fifth Step**: A consumer complaint system will be developed for receiving and evaluating complaints regarding a neutral, and for checking the effectiveness of the process.

As of this writing, the registry of neutrals program has been published in the Federal Register, inviting comment by the public.

## **2. Resource Center:**

In fiscal year 2002, we completed The Resource Center, an on-line resource available to field mediators via the FMCS intranet. The Resource Center provides electronic access to books, articles, preventive mediation training materials, and videos on labor relations and collective bargaining, labor-management partnerships, conflict resolution, negotiated rulemaking and, resolution of EEO and ADA disputes. The Resource Center has sample contract language used in different industries throughout the country. Our goal is to improve the quantity of tools available to assist mediators in their work by providing a mediator resource kit. This kit will include documentation on joint labor-management process mission statements, examples of labor-management education programs, exercises for facilitating meetings, a rich array of case studies and case study summaries, an assortment of assessment and evaluation tools used in joint labor-management programs, joint process contract language, and materials on alternative bargaining processes and alternative dispute mechanisms.

## **G. Summary**

All FMCS activity is aimed at promoting and improving the conflict resolution and collective bargaining processes in the United States. This helps American businesses become and remain more competitive in the international marketplace and increases the quality of working life of American workers. Through dispute mediation, FMCS averts or minimizes the impact of work stoppages on the U.S. economy, either in initial bargaining relationships, or in mature bargaining relationships. Preventive mediation services offers labor and management the skills to improve long-term workplace relationships. Arbitration services provides the internal jurisprudence that helps the parties administer their collective bargaining agreements. The grants program promotes innovative, joint approaches to building effective labor-management relationships. Through alternative dispute resolution services, FMCS helps government agencies reduce

the likelihood of litigation, speeds up federal processes, and improves the delivery of regulated government services. Our international services offers training to foreign governments in these same techniques, promoting the establishment of sound labor-management relations and conflict resolution systems in strategic areas of the world.

While there are fewer cases involving work stoppages in recent years, strikes and lockouts that do occur are often more protracted, difficult, and contentious. The complexity of issues in today's collective bargaining arena require FMCS mediators to play increasingly important roles in critical negotiations and in guiding the parties to constructive agreements.

## **II. DISPUTE MEDIATION:**

### **A. Dispute Mediation Process:**

In collective bargaining, Dispute Mediation is a voluntary process which occurs when a third-party neutral assists the two sides, or parties, in reaching agreement in contract negotiations. This includes initial contract negotiations, which take place between an employer and a newly certified union representing its employees, and negotiations for successor collective bargaining agreements.

In dispute mediation, FMCS mediators are in touch with both parties even before negotiations actually begin. The legally required notice of intent to open a collective bargaining agreement triggers the contact. During negotiations, effective mediators use knowledge of the parties and issues "on the table" to guide negotiators through potential deadlocks to a settlement acceptable to both sides. Mediators may make suggestions, and offer procedural or substantive recommendations with the agreement of both parties. However, they have no authority to impose settlements. Their only tool is the power of persuasion. Their effectiveness derives from their status as respected neutrals, their acceptability to the parties, their broad knowledge and experience in the process of collective bargaining, and, especially, the quality of their ideas, suggestions and perspectives.

### **B. FY 2002 Cases of Significance:**

#### **1. First Energy/International Brotherhood of Electrical Workers:**

The relationship between First Energy, a nuclear power plant, and the International Brotherhood of Electrical Workers became increasingly adversarial when the company, as a successor employer assuming the terms of the collective bargaining agreement, laid off 124 union members. When contract negotiations commenced, the company sought contract terms that paralleled its other locations, and wanted increasing flexibility to improve efficiency. The union viewed those positions as seeking significant concessions that would impact employees' quality of life. The parties had 15 negotiations sessions without a mediator and failed to reach agreement on any contractual provision. A number of mediators held 20 negotiation sessions that narrowed the issues, but nevertheless some issues remained open. When the company proposed its last offer, the union rejected it, and thereafter, the company suspended negotiations. Although the membership voted to strike, the mediators prevailed on the parties to return to the table, and after two lengthy bargaining sessions, a contract was reached and ratified by the membership, averting a strike at the nuclear power plant.

#### **2. Hershey Foods/Bakery, Confectionary, Tobacco Workers and Grain Millers Union:**

The parties in this case negotiated under the terms of an expired collective bargaining agreement, and ultimately reached an agreement which was not ratified by the membership. After the intervention of the mediator, the parties reached a second agreement, which also was rejected by the membership. A strike commenced, but

throughout, the mediator maintained contact with the parties, exploring alternative solutions. When the strike continued for more than a month, the mediator held marathon negotiation sessions and reached a tentative agreement. This time, the agreement was ratified by the membership and the 44 day strike ended.

**3. Eaton Aerospace (Vickers Fluid Power)/Communication Workers of America:**

Eaton Aerospace manufactures hydraulic pumps and motors for airplanes. Due to the uncertainty of the airline industry in the wake of September 11, this company's future was equally uncertain and the pressure pervaded the negotiations. The mediator attended many negotiation sessions, and although the talks were difficult, they progressed and the parties reached agreement. The agreement was rejected by the membership because they were dissatisfied with the wage package and changes to long-standing work rules. The company changed its economic package, but refused to change the language regarding the work rules. When the membership rejected the second agreement, the mediator explained to the parties that the language regarding work rules impeded ratification. After a series of lengthy sessions, the parties ultimately revised the language and the contract was ratified.

**4. University Hospitals Incorporated/Ohio Nurses Association:**

University Hospital Inc., the largest hospital in the Cincinnati area, employs 887 nurses. Staffing shortages plagued this negotiation and the shortages were directly linked to mandatory overtime issues. Frustration mounted when no agreement was reached, and the membership voted to strike. The hospital indicated that it would close 20 of its 22 operating rooms and reduce bed space from 400 to 50 if the strike proceeded as scheduled. The mediator convinced the parties to continue negotiation during the ten day period leading up to the strike. The parties met for 5 consecutive days, for 12 to 14 hours every day, and an agreement was reached 48 hours prior to the commencement of the strike that would have resulted in significant disturbance in patient care.

**5. Tyson Foods (Iowa Beef Processors) United Food and Commercial Workers:**

Tyson Foods purchased an Iowa Beef Processor plant in Waterloo, Iowa, where 2,000 union members work. The parties rejected mediation during their negotiation and, although far apart, they reported slow progress. The company submitted its last and final offer, which was rejected by the membership and a strike was authorized. The parties then consented to mediation, and two days of intense negotiations focused on the primary issue of wages, health insurance and contract duration. A new agreement was reached and ratified by the membership, averting a strike.

**6. Cook County (Chicago, Illinois)/Service Employees International Union/American Federation of State and County Municipal Employees:**

Over 11,000 employees of Cook County are employed in three different bargaining units. AFSCME represents 6,000 court-system employees (including public

defenders and judicial clerical staff), and SEIU represents the remaining 5,000 employees in hospitals and clinics throughout the county. After nine months of bargaining without mediator assistance, the unions set a deadline for a one-day strike to pressure the county. Several mediation sessions were held with a team of mediators while the strike deadline loomed, and the issues narrowed to wages, health insurance and retroactivity of wages. Eventually, agreements were reached covering the SEIU units, but the AFCSME unit struck, effectively shutting down the court system. After a number of one day strikes, AFCSME returned to the table and reached agreement.

### C. Dispute Mediation Program Data

Intake					
Fiscal Years 1998 Through 2002	1998	1999	2000	2001	2002
Union and Employer Notices <sup>6</sup>	50,170	36,854	34,038	33,344	40,677
NLRB and FLRA Certifications <sup>7</sup>	1,750	1,631	1,492	1,446	1,389
Public Sector Board Requests <sup>8</sup>	207	198	191	152	173
Union and Employer Requests <sup>9</sup>	1,872	1,903	2,521	2,704	3,100
Total	53,978	40,586	38,242	37,646	45,339
Case Numbers Issued					
Fiscal Years 1998 Through 2002 <sup>10</sup>	1998	1999	2000	2001	2002
	27,802	25,676	26,323	25,071	25,282
Case Numbers Assigned					
Fiscal Years 1998 Through 2002 <sup>11</sup>	1998	1999	2000	2001	2002
	20,263	19,200	19,574	19,116	19,303
Cases Closed Fiscal Years 1998					
Through 2002 <sup>12</sup>	1998	1999	2000	2001	2002
By consolidation after assignment <sup>13</sup>	972	685	1,125	619	727
By Final Report with meetings <sup>14</sup>	5,784	6,188	6,321	6,424	6,757
By Final Report with no meetings <sup>15</sup>	13,011	12,422	13,291	12,107	10,861
Total	20,139	19,295	20,737	19,150	18,345

<sup>6</sup> Notifications to the Service by one or both parties desiring to modify a contract that is expiring, or for a specific reopening of an existing contract.

<sup>7</sup> Notifications from these two agencies regarding certification or recertification of bargaining units. Bargaining for an initial contract usually follows such certifications.

<sup>8</sup> Requests for mediation assistance from public sector parties where a state has a Public Sector Board with jurisdiction over labor contracts, but no state mediation service is available.

<sup>9</sup> Requests from the parties for mediation assistance where no notification to the Service has been filed.

<sup>10</sup> Case numbers assigned to notifications, certifications, and requests received by the Service. Some notifications are subsequently consolidated into a single case with a specific case number; therefore, the lower total of case numbers issued when compared to the intake.

<sup>11</sup> Cases assigned to a mediator. The decision to assign a case involves many factors and not all cases are assigned.

<sup>12</sup> Closed by Final Report filed by the mediator assigned to the case or by consolidation of a case with other cases after assignment.

<sup>13</sup> Some cases are subsequently consolidated after assignment where it is determined that multiple parties will be involved in the same negotiations.

<sup>14</sup> Cases closed where the mediator met with both parties on one or more occasions.

<sup>15</sup> Cases closed where mediation assistance did not require any meetings with the parties, but where the mediator was in contact with the parties during the negotiations.

Dispute Meeting Conferences					
Fiscal Years 1998 Through 2002 <sup>16</sup>	1998	1999	2000	2001	2002
	17,923	19,329	17,837	17,933	17,920
Work Stoppage Information					
Fiscal Years 1998 Through 2002 <sup>17</sup>	1998	1999	2000	2001	2002
Work stoppages beginning in the fiscal year	421	362	400	432	308
Work stoppages in closed cases in the fiscal year	405	411	392	445	327
Average duration of work stoppages in closed cases (number of days)	43.7	50.5	39.0	40.7	53.7
Contract Mediation Analysis By Sector					
Fiscal Years 1998 Through 2002	1998	1999	2000	2001	2002
INTAKE	53,978	40,586	38,242	37,646	45,339
CASE NUMBERS ISSUED					
Private Sector	26,006	23,856	24,386	23,135	23,170
Public Sector	1,145	1,141	1,216	1,185	1,362
Federal Sector	649	678	720	750	749
ASSIGNED					
Private Sector	18,487	17,444	17,681	17,241	17,266
Public Sector	1134	1,089	1,168	1,139	1,296
Federal Sector	641	666	725	739	741
CLOSED CASES <sup>18</sup>					
Private Sector	18,036	17,394	18,786	17,219	16,331
Public Sector	1,105	1,199	1,209	1,150	1,297
Federal Sector	626	701	742	781	717

<sup>16</sup> The number of meetings in closed dispute mediation cases where a mediator was present in a meeting between the parties.

<sup>17</sup> The Bureau of Labor Statistics reports work stoppages over 1,000 employees. FMCS reports all work stoppages.

<sup>18</sup> Excludes cases closed by consolidation after assignment.



### **III. INITIAL CONTRACT NEGOTIATIONS:**

#### **A. Initial Contract Negotiations and Processes:**

Initial contract negotiations are critical because they are the foundation for the parties' future labor-management relationship. A bad start in relations between the employer and the union may be felt for years afterward, and ultimately injure the economic health of the organization. Initial contract negotiations are often more difficult than established successor contract since they frequently follow contentious representation election campaigns.

Negotiations can be further complicated by one or both parties' inexperience in collective bargaining and labor-management relations. Current data indicates less likelihood of agreement on initial contracts than in successor contract negotiations, even with the assistance of FMCS mediators. There are higher incidences of strikes or lockouts, and permanent replacement workers are used with greater frequency during initial contract negotiations. Unfair labor practice charges are more common in this environment and can deter an agreement.

For the last several years, FMCS has placed special emphasis on mediation of initial contract negotiations between employers and newly certified or recognized bargaining units. Under an arrangement with the National Labor Relations Board, FMCS is immediately notified of all new union certifications. It is our policy that all initial contract cases are promptly assigned for mediation, and that mediators make every effort to become actively involved in assisting the parties in achieving agreements.

Since 1996, FMCS maintained a rule requiring all initial contract cases remain open for two years pending an agreement between the parties, or the closing of the case for other reasons.

#### **B. Initial Contract Bargaining Data**

Initial Contract Bargaining	FY 98	FY 99	FY2000	FY2001	FY2002
Private Sector initial contract cases received:	1,800	1,715	1,715	1,745	1,486
Assigned to mediators:	1,730	1,657	1,677	1,702	1,458
Assigned from NLRB certifications:	1,503	1,397	1,296	1,282	1,185
Assigned from other sources: (e.g. voluntary recognition)	227	260	381	420	273
Cases closed by FMCS: (Mediated and non-mediated)	597	661	867	1,892	1,361

Mediated cases closed with agreement reached:	119	137	231	360	243
Percentage of mediated cases	68.4	47.9	52.9	55.1	50.3
Mediated cases closed without agreement reached:	55	149	206	293	240
Percentage of mediated cases <sup>19</sup>	31.6	52.1	47.1	44.9	49.7
Non-mediated cases closed with agreement reached:	277	249	255	676	538
Percentage of non-mediated cases:	65.4	66.4	59.3	54.6	61.3
Non-mediated cases closed without agreement reached:	146	126	175	561	339
Percentage of non-mediated cases <sup>20</sup>	34.5	33.6	40.7	45.3	38.7
Percentage of mediated and non-mediated cases	66.3	58.3	56.0	54.8	57.4
Closed with agreement reached:					
Closed cases involving ULP charges <sup>21</sup> filed by either party:	65	75	128	263	221
Closed cases involving work stoppages:	24	19	24	43	29
Closed cases involving work stoppages with Agreement reached:	10	10	14	21	20
Average number of days between statutory notice	175	166	176	85	75
Receipt by FMCS and closure: <sup>22</sup>					
Average number of days for cases carried over	337	351	363	432	396
And closed in next fiscal year:					
Assigned cases carried over to next year:	1,416	1,001	813	792	784

<sup>19</sup> Cases closed with agreement reached occur with final agreement on an initial contract.

<sup>20</sup> Cases closed without agreement occur after two years if agreement has not been reached on initial contract.

<sup>21</sup> Unfair labor practices.

<sup>22</sup> For cases closed in the same fiscal year they are received.

## **IV. PREVENTIVE MEDIATION:**

### **A. Preventive Mediation Process:**

In today's changing workplace and economic environment, business organizations and unions recognize that the quality of the labor-management relationship is an important factor in an organization's ability to compete. As a result, the role of federal mediators has evolved beyond traditional crisis intervention during the last few days of collective bargaining negotiations. More frequently, mediators are involved during the life of a contract to address workplace issues between the parties, and train both sides in effective bargaining, communications, joint problem solving and innovative conflict resolution methods. Increasingly, FMCS offers a broader range of services to respond to changing customer requirements. These "preventive mediation" (PM) services are collaborative union-management processes and are as important as our dispute mediation services.

### **B. FY 2002 Preventative Mediation Cases of Significance:**

#### **1. Kaiser Permanente/United Association of California/Service Employees International Union/American Federation of Nurses:**

With our assistance, the Los Angeles Metro Kaiser Permanente operation created 20 labor-management partnership committees to deal with ongoing disputes in different departments. Using interest-based problem solving techniques to identify issues and resolve persistent issues that plagued their relationship, FMCS has trained approximately 1000 employees, managers and union leadership in cooperative efforts designed to improve the relationship between the parties.

#### **2. Frederick County Maryland/Emergency Services Division/Career Fire Fighters Association of Frederick/International Association of Fire Fighters/Frederick County Volunteer Fire and Rescue Association:**

Frederick County has one of the country's largest fire fighting departments. The parties sought a relationship-by-objective program to improve and create a better working environment. Elected officials participated in the training as well. Although the parties relationship improved, problems remained and a follow up training session was conducted. This time, the parties elected the use of TAGS to sort through information and brainstorm. The participants accomplished their objectives in only three days, and created a code of conduct and a problem solving process when disputes arise.

#### **3. United States Air Force Material Command/American Federation of Government Employees:**

AFGE represents 46,000 employees in 10 different bargaining units employed by the United States Air Force. These parties have an adversarial history; their last round of negotiations went to the Federal Impasse Panel and required 6 years of litigation. To avoid protracted litigation with a successor contract, the mediator

suggested interest based bargaining. The parties received extensive training in interest based bargaining techniques and ultimately, the parties utilized the same mediator to negotiate a successor agreement, requiring only 3 months of bargaining.

**4. Iowa Association of School Boards (IASB)/Iowa State Education Association/Iowa Public Employment Relations Board:**

Iowa State education stakeholders filed a joint request for a labor-management grant. The grant was awarded and a labor-management partnership committee was built with the express purpose of educating school board members, administrators and teachers in the principles of interest based bargaining. More than 530 individuals, representing 88 school districts, participated in one of five regional conferences held throughout the state. Intensive interest based bargaining training was offered to another 38 teams and the training was jointly provided by FMCS mediators and members of the state partnership committee. In the end, twelve local school districts utilized interest based bargaining to resolve their successor contracts and reported great success.

**5. Levi Strauss/UNITE:**

Two task forces were charged with studying the company's distribution processes and recommending changes to improve efficiency. The union and the employer approached FMCS to provide committee effectiveness training, with an emphasis on analytical tools, interest based problem solving and consensus decision making. The training assisted the task force in preparing and submitting their recommendations for improvements to efficiency.

**6. City of Los Angeles/Various Unions:**

Employees of the City of Los Angeles were poised to form a labor-management committee in certain city departments. We were approached to provide training on interest based bargaining theory and practice. Training was provided separately to labor representatives and management representatives. Thereafter, we provided joint training to both groups to coach the labor-management committee through any issues. The training was so successful that the city's goal is to implement labor-management committees in every city department.

**C. Preventive Mediation Program Data**

Preventive Mediation Cases					
Fiscal Years 1998 through 2002 <sup>23</sup>	1998	1999	2000	2001	2002
Assigned <sup>24</sup>	2,776	2,891	2,782	2,629	2,610
Closed by Final Report <sup>25</sup>	2,813	2,954	2,792	2,655	2,618
Education, Advocacy and Outreach Cases					
Fiscal Years 1998 Through 2002 <sup>26</sup>	1998	1999	2000	2001	2002
Assigned	5,797	5,518	5,504	5,436	5,800
Closed by Final Report	5,932	5,626	5,621	5,645	5,881

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<sup>23</sup> Preventive mediation involves the assistance of a mediator where a party or parties desires such help in improving the relationship during the term of the contract. Such assistance may include training, arranging labor-management committees, and special programs.

<sup>24</sup> Cases assigned to a mediator.

<sup>25</sup> Closed by a Final Report filed by the mediator.

<sup>26</sup> Education, Advocacy and Outreach involves mediator meeting with various members of the public to discuss and/or explain the processes of mediation.

## **V. ARBITRATION SERVICES:**

### **A. Arbitration Services:**

In collective bargaining, voluntary arbitration is the preferred method of settling disputes over contract interpretation or application. Since its creation, FMCS provided access to voluntary arbitration services. Rather than using full-time government employees, the Service maintains a roster of the nation's most experienced private professional arbitrators who have met rigid FMCS qualifications. Upon request, FMCS furnishes a panel of qualified arbitrators from which the parties select a mutually satisfactory individual to hear and render a final and binding decision on the issue or issues in dispute. We retain a roster of over 1,300 private arbitrators, knowledgeable practitioners with backgrounds in collective bargaining and labor-management relations. FMCS charges a nominal fee for the provision of arbitrator lists and panels, or other major services.

The FMCS computerized retrieval system produces a random panel of potential arbitrators from which the parties may select. However, panels can be compiled on the basis of geographic location, professional affiliation, occupation, experience with particular industries or issues, or other criteria when specified by the parties. FMCS also furnishes current biographical sketches of arbitrators for parties to establish their own permanent panels.

To join the FMCS Roster, arbitrators must be approved by an Arbitration Review Board, which meets quarterly to consider new applicants for appointment to the roster by the FMCS Director. There is also an arbitration user focus group, which reviews and makes recommendations to the FMCS Director on changes in Arbitration Service policies and procedures.

### **B. FY 2002 Accomplishments:**

The following represents the activities and accomplishments of the Office of Arbitration Services during fiscal year 2002:

- **E-filing:** To encourage on-line filing for arbitration panels, we have asked the Office of Management and Budget to increase fees for non-electronic panel requests, while maintaining the \$30 on-line fee.
- **Timeliness of awards:** Instituted a timeliness requirement in discharge cases. If an award in a discharge case is late, we no longer make that arbitrator available for additional work until the award is rendered.
- **Revisions to the R-43:** We revised this form to expand acceptable forms of payment, and the ability to select an arbitrator based on a particular geographical region, subregion, or metropolitan areas. As a result of these targeted requests, we now provide the parties with the names of arbitrators whose principal business

address is within 125 miles of the site of the dispute. This results in substantial savings on travel expenditures.

- **Expansion of arbitrator biographies:** The arbitrators’ biographies now include more information regarding fees and expenses, awards rendered, significant publications, and their ability to work on an interest arbitration case or an expedited case.
- **Capture data on current issues:** Revised the “issues” lists to conform with current issues facing the labor-management community.
- **Capture data on costs associated with arbitration:** We reinforced our policy regarding the submission of R-19 form. This form captures the expenses associated with arbitrations and critical information regarding costs of arbitration as a whole.
- **FMCS Institute:** Conducted two arbitrator training courses to increase the professionalism and expertise of new arbitrators.

**C. Arbitration Services Program Data**

Number of Panel Requests, Panels Submitted and Arbitrator Appointments Fiscal Years 1998 Through 2002

<b>Activity</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Panel Requests	17,357	17,514	16,976	16,594	17,282
Panels Issued <sup>27</sup>	31,295	19,062	19,485	18,275	18,891
Arbitrators Appointed	10,391	8,984	9,561	8,706	8,335
<b>Activity Charged For</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Travel Days	.34	.41	.51	.43	.45
Hearing Days	1.23	1.20	1.18	1.15	1.09
Study Days	2.30	2.38	2.58	2.40	2.44
<b>Total</b>	<b>3.74</b>	<b>4.02</b>	<b>4.27</b>	<b>3.98</b>	<b>3.98</b>
<b>Charges</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Per Diem Rate	598.50	641.49	672.12	693.12	720.75
Amount of Fee	2,296.46	2,592.00	2863.49	2761.04	2884.46
Amount of Expenses	252.00	248.92	321.67	341.92	318.03
<b>Total Charged</b>	<b>2,548.46</b>	<b>2,840.92</b>	<b>3185.16</b>	<b>3102.96</b>	<b>3202.49</b>

<sup>27</sup> Frequently, the labor-management parties request more than one panel for arbitration cases, resulting in an increase in the number of panels issued over the number of requests received.

<b>Total Number of Issues And Specific Issues</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Total</b>	<b>2,132</b>	<b>2,132</b>	<b>2,723</b>	<b>1902</b>	<b>1989</b>
<b>General Issues</b>	<b>409</b>	<b>391</b>	<b>585</b>	<b>434</b>	<b>463</b>
Overtime Other Than Pay*					
Distribution of Overtime	36	30	48	34	26
Compulsory Overtime	4	8	12	8	12
Other Overtime	17	15	18	10	10
<b>Seniority</b>					
Promotion & Upgrading	49	42	86	54	52
Layoff Bumping & Recall	52	48	65	46	48
Transfer	22	13	16	17	21
Other Seniority	31	33	38	25	25
Union Officers**	6	4	12	9	14
Strike & Lockout	2	2	4	3	2
Working Conditions***	15	19	35	35	29
Discrimination	12	21	27	19	24
Management Rights	37	49	75	51	63
Scheduling of Work	49	45	50	43	67
Work Assignments	77	62	99	80	70
<b>Economic Wage Rates &amp; Pay Issues</b>	<b>231</b>	<b>239</b>	<b>298</b>	<b>227</b>	<b>229</b>
Wage Issues	39	46	32	29	36
Rate of Pay	48	65	75	53	60
Severance Pay	7	6	5	6	8
Reporting, Call- in & Call-back Pay	6	10	12	13	7
Holidays & Holiday Pay	34	15	33	31	26
Vacations & Vacation Pay	36	31	54	29	39
Incentive Rates & Standards	12	17	25	13	7
Overtime Pay	49	49	62	53	46
<b>Fringe Benefits Issues</b>	<b>81</b>	<b>63</b>	<b>100</b>	<b>69</b>	<b>99</b>
Health & Welfare	35	27	58	29	58
Pensions	15	6	14	11	8
Other Fringe Issues	31	30	28	29	33
<b>Discharge &amp; Disciplinary Issues</b>	<b>1,032</b>	<b>1004</b>	<b>1203</b>	<b>849</b>	<b>947</b>

\* Overtime pay issues included under this category Economic: Wage Rates and Pay Issues.

\*\* Included in this classification are issues concerning super seniority and union business.

\*\*\* This classification also includes issues concerning safety.



<b>Technical Issues</b>	<b>79</b>	<b>102</b>	<b>139</b>	<b>81</b>	<b>86</b>
Job Posting & Bidding	38	36	52	32	38
Job Evaluation	18	24	28	18	11
Job Classification	23	42	59	31	37
<b>Scope of Agreement</b>	<b>78</b>	<b>61</b>	<b>74</b>	<b>45</b>	<b>65</b>
Subcontracting	54	40	48	29	41
Jurisdictional Disputes	15	10	16	8	14
Foreman, Supervision, etc.	5	7	5	5	8
Mergers, Consolidations, Accretion, Other Plants	4	4	5	3	2
<b>Arbitrability of Grievances</b>	<b>81</b>	<b>146</b>	<b>193</b>	<b>109</b>	<b>100</b>
Procedural	43	98	120	76	60
Substantive	29	35	42	14	23
Procedural & Substantive	9	13	24	19	17
Other Arbitrability Questions	0	0	7	0	0
<b>Not Elsewhere Classified</b>	<b>43</b>	<b>126</b>	<b>131</b>	<b>88</b>	<b>115</b>
<b>Total Number of Cases</b>					
<b>State &amp; Region</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Mountain</b>	<b>97</b>	<b>142</b>	<b>85</b>	<b>123</b>	<b>115</b>
Arizona	8	9	15	10	15
Colorado	30	47	28	40	30
Idaho	4	6	3	7	5
Montana	14	8	11	16	7
Nevada	13	30	12	13	31
New Mexico	18	35	11	26	19
Utah	7	5	4	5	5
Wyoming	3	2	1	6	3
<b>Pacific</b>	<b>150</b>	<b>153</b>	<b>128</b>	<b>140</b>	<b>151</b>
Alaska	6	8	6	13	7
California	56	86	59	66	73
Hawaii	0	2	2	0	1
Oregon	34	17	32	28	31
Washington	54	40	29	33	39
<b>Miscellaneous</b>	<b>7</b>	<b>9</b>	<b>16</b>	<b>9</b>	<b>13</b>
Philippines	0	0	0	0	0
Puerto Rico	2	2	4	1	2
Virgin Islands	1	4	4	4	10
Guam	0	0	0	0	0

Others	4	3	8	4	1
<b>New England</b>	<b>34</b>	<b>20</b>	<b>29</b>	<b>45</b>	<b>17</b>
Connecticut	4	5	10	13	0
Maine	10	2	2	2	2
Massachusetts	11	9	11	12	9
New Hampshire	3	2	0	2	1
Rhode Island	1	1	0	6	3
Vermont	5	1	6	10	2
<b>Middle Atlantic</b>	<b>567</b>	<b>233</b>	<b>289</b>	<b>307</b>	<b>246</b>
New Jersey	20	31	22	30	26
New York	81	95	111	121	71
Pennsylvania	233	107	156	156	149
<b>South Atlantic</b>	<b>288</b>	<b>285</b>	<b>349</b>	<b>385</b>	<b>375</b>
Delaware	5	4	6	12	3
District of Columbia	20	53	31	36	35
Florida	98	55	92	112	125
Georgia	35	25	51	58	41
Maryland	32	48	35	29	49
North Carolina	17	7	21	29	29
South Carolina	15	8	15	14	14
Virginia	32	47	56	30	43
West Virginia	34	38	42	65	36
<b>East North Central</b>	<b>790</b>	<b>673</b>	<b>866</b>	<b>715</b>	<b>950</b>
Illinois	127	207	191	145	216
Indiana	101	71	67	63	84
Michigan	159	187	190	194	158
Ohio	343	154	338	224	413
Wisconsin	60	54	80	89	79
<b>West North Central</b>	<b>408</b>	<b>222</b>	<b>316</b>	<b>314</b>	<b>273</b>
Iowa	88	49	61	68	51
Kansas	36	27	32	38	28
Minnesota	103	40	90	84	82
Missouri	148	85	101	94	89
Nebraska	19	16	17	19	12
North Dakota	10	1	5	8	4
South Dakota	4	4	10	3	7
<b>East South Central</b>	<b>191</b>	<b>118</b>	<b>236</b>	<b>239</b>	<b>221</b>
Alabama	57	23	53	57	51
Kentucky	49	35	70	81	66
Mississippi	16	9	17	32	20

Tennessee	69	51	96	69	84
<b>West South Central</b>	<b>207</b>	<b>110</b>	<b>227</b>	<b>237</b>	<b>308</b>
Arkansas	30	11	35	40	53
Louisiana	21	9	28	23	43
Oklahoma	69	26	68	70	104
Texas	87	64	96	104	108
<b>Totals</b>	<b>2,506</b>	<b>1,965</b>	<b>2507</b>	<b>2514</b>	<b>2669</b>

## **VI. GRANTS PROGRAM:**

### **A. Grants:**

FMCS is authorized by the Labor-Management Cooperation Act of 1978 to award grants to support and encourage joint labor-management cooperative activities that “improve the labor-management relationship, job security and organizational effectiveness.” Congress funds FMCS Grants Program each year in the agency’s appropriation.

In fiscal year 2002, the FMCS awarded 13 new and 5 non-competitive (continuation of prior grants) at a cost of \$1.5 million. These grants supported labor-management committees representing approximately 1.6 million employees in both the private and public sector. In FY 2002, 67 grant applications were received. An independent FMCS Grants Review Board, chaired by the Director of Labor-Management Grants, does preliminary scoring of each application. Final selection is made by the program director.

### **B. Fiscal Year 2002 Grant Funding Summary**

#### AREA

##### Lake Superior Area Labor Management Association, Inc. (Duluth, MN)

\$32,327 to assist in outreach to the area east of the Duluth-Superior region and Iron Range and enable the grant to identify labor and management needs for cooperative initiatives.

#### PLANT

##### Virgin Islands Water & Power Authority (Christiansted, VI)

\$48,000 to assist incorporating better communication systems through the development of video/dvd media and to enable the use of programs such as TAGS.

##### Newport News Shipbuilding (Newport News, VA)

\$39,952 to propose a strategy on monitoring the progress of the return-to-work initiatives and identify “at-risk” injured workers who may need additional management, assistance, training or alternate medical treatment to successfully return employees to work.

#### INDUSTRY

##### Building & Construction Trades Department (Washington, DC)

\$50,000 to assess skills that are lacking in the construction industry.

##### International Association of Machinists And Aerospace Workers (Upper Marlboro, MD)

\$100,000 to create a partnership that meets the challenges of decision-making in the global marketplace.

Mobilization Optimization Stabilization & Training (Kansas City, KS)

\$149,850 to organize a national, ad-hoc committee to oversee the development, implementation and evaluation of a pilot program designed to create financial incentives to attract and retain Boilermakers.

Wisconsin Regional Training Partnership (Milwaukee, WI)

\$125,000 to implement an education and leadership development program for contractors, unions and craft workers to improve union construction and cover market share.

Atlanta & North Georgia Building Trades (Atlanta, Georgia)

\$100,000 to improve cooperation between labor and management to increase the quality and productivity of construction.

Delaware Construction Council (Wilmington, DE)

\$103,485 to improve communication and cooperation between management and labor and to develop a structure to resolve jurisdictional disputes that occur on projects.

Upper Midwest Labor Management Health Care Coalition (South St. Paul, MN)

\$115,000 to expand innovation in labor-management collaboration in solving health care and related issues.

Alliance of Construction Professionals (Toledo, OH)

\$72,794 to revamp recruitment efforts through outreach to the Hispanic community to establish workplace diversity and offer economic development.

Pacific Coast Maritime Labor Management Consortium (Seattle, WA)

\$123,386 to establish practical programs for career advancement within the maritime sector by developing an approach to outreach, recruitment and training to decrease the skills shortages in the industry.

**PUBLIC SECTOR**

State of Rhode Island (Providence, RI)

\$112,500 to assist in the development of a diversity plan in the state and strengthen communications between labor and management.

New Hampshire Federation of Teachers (Bow, NH)

\$47,237 to create and implement an assessment system that improves student performance through effective teaching and professional development.

Clark County (Las Vegas, NV)

\$64,123 to build an organizational structure and process to improve service outcomes and organizational effectiveness through implementation.

Superior Court of California (Oakland, CA)

\$65,000 to establish a training program to improve the operational effectiveness of the Court and to facilitate career development of all employees.

## **VII. FMCS INSTITUTE:**

### **A. Purpose and Course Offering:**

Education and training in labor relations and conflict resolution are an integral part of the Agency's mission for more than half a century. The Institute's primary mission is to offer training and education to labor and management practitioners in a classroom format that is structured, accessible, and convenient to individuals and small groups rather than the site-based preventive mediation programs. The institute was established to respond to the changing needs of modern collective bargaining, providing essential training in meeting the challenges of labor-management relations and organizational change.

In fiscal year 2002, the Institute offered the following classes:

- Labor Arbitrator Skills Training
- Advanced Facilitation Skills
- Negotiating Contracts
- Mediation Skills for Workplace Violence
- Information Technology and Conflict Resolution
- Facilitating and Mediating Multi-Party Disputes



Fees received for delivery of training services fund the FMCS INSTITUTE. All fees collected will be utilized to recover expenses and administrative costs of the Institute. Training fees charged to customers are set at a level that allows the Institute to provide a professionally delivered product from one year to the next.

## **VIII. ADR/INTERNATIONAL:**

### **A. Services Provided:**

Alternative Dispute Resolution (ADR) services are available to agencies of government. These range from mediation, conflict resolution systems design, education, training and mentoring, to the facilitation of multi-party regulatory, environmental and public policy negotiations. All these services are successful alternatives to costly and time-consuming litigation in the settlement of conflict.

FMCS mediates disputes both within agencies (e.g., age discrimination and other unfair employment complaints, whistleblower complaints) and between agencies and their regulated public (e.g., environmental disputes).

The longer-term objective is to assist agencies in institutionalizing these processes. FMCS “trains the trainers,” imparting these skills to agency personnel so they can construct their own dispute resolution system, and also train others within their organization.

#### **1. Domestic Alternative Dispute Resolution (ADR)**

FMCS concluded nearly 1114 ADR cases for numerous governmental agencies in fiscal year 2002. For most of the governmental agencies listed below, we mediate workplace and discrimination disputes. Our government contracts include:

- **Equal Employment Opportunity Commission**
- **United States Postal Service**
- **Health and Human Services**
- **Department of the Interior**
- **Internal Revenue Service**
- **Department of Agriculture**
- **Department of the Navy**
- **Immigration and Naturalization Service**
- **U.S. Geological Survey**
- **Federal Bureau of Investigation**
- **Housing and Urban Development**
- **Veteran Affairs**
- **Peace Corps**

Additional domestic ADR work included:

**City of Chicago Fire Department:** Trained 25 mediators, jointly selected by management and labor, for training in communications, conflict resolution, problem-solving techniques, and the mediation process. Assisted in the creation of an “agreement to mediate” form and development of a mediation evaluation process.

**Iowa Department of Economic Development:** Held multiple negotiation sessions with various stakeholders in the animal confinement industry. The state established stringent regulations on the location and operation of animal confinement facilities and the state



law required that each county have local input for scoring applications for construction or expansion of these facilities. Participants in these negotiations included employer groups, state universities, the environmental community, state agencies, farmer organizations, and a representative from the county board of supervisors. TAGS technology was utilized in these negotiations and it enabled the parties to engage in organized brainstorming to comply with state regulations.

## **2. Regulatory Negotiations:**

Authorized by the Administrative Dispute Resolution Act of 1996, FMCS offers government regulatory and enforcement agencies a better way to formulate new rules and regulations. In the traditional rulemaking process, agency personnel draft new regulations with little or no outside input, publish the draft regulation in the Federal Register for the required public comment period, and then await criticism, or legal challenges, from those affected by the new regulation.

In contrast, FMCS convenes and facilitates Regulatory Negotiations, a process in which those affected by a regulation jointly draft a proposed rule or regulation by consensus. Early involvement by potential antagonists allows the agency to resolve its problems by working together with the agency's stakeholders. The result is better regulation because those facing regulation took an active role in the process. In addition, subsequent court challenges are greatly reduced.

Our most significant achievement in FY 2002 in this area was our involvement in a public meeting held by the National Institute of Standards and Technology, Department of Commerce. The agency gathered comments and suggestions related to the building and fire safety investigation of the World Trade Center collapse on September 11, 2001. A team of mediators played a key role in planning this very public meeting, involving 200 attendees commenting on issues that remain crucial to the safety of the nation's structures.

## **3. International Dispute Resolution, Education and Training:**

FMCS is responding to increasing requests for conflict resolution services outside the traditional domestic labor-management. It is adapting the same skills and processes provided here to friendly foreign governments and organizations. Briefing sessions for foreign union and management officials familiarize them with U.S. labor-management history, laws, and practice enabling them to more fully understand how American industry and its workers function in today's economy.

The International ADR Team develops a program plan, outlining specific services, potential venues for those services and possible funding sources. Since FMCS receives no appropriated funds for its ADR or International programs, mediator salaries and expenses are reimbursed through such entities as the Department of State, The United States Agency for International Development (USAID) and the United States Institute of Peace.

Overall, we assisted 73 foreign government organizations in FY 2002. Some examples include the following:

- **Asia-Pacific Economic Cooperation (APEC)**: Provided training to 7 APEC member economies in prevention and resolution of labor and employment disputes and assisted the participants in preparing action plans for adapting their economies to conflict resolution processes.
- **Argentina**: Provided training in labor techniques and win-win negotiations to address the backlog of discharge cases pending in parts of the country. Training also provided on how to deal with difficult issues raised in negotiations.
- **Australia**: Training to the Royal Austrian Navy on cultural competency and alternative dispute resolution.
- **Bulgaria**: Two week training course on a developing a commission for mediation and arbitration.
- **China**: Provided institutional consulting regarding labor issues arising from privatization efforts.
- **Puerto Rico**: FMCS mediators, in a program sponsored by the United States Department of Labor, mediated a backlog of pending wage and hour cases.
- **Mozambique**: In a program sponsored by the United States Department of Labor, we conducted a five phase program designed to educate the Mozambique Ministry of Labor on labor-management relations and conflict resolution.
- **Croatia**: In a project funded by USAID, training was provided in communication skills and dispute resolution for 60 labor, management and government officials.
- **East Africa**: Under ILO auspices, training was provided to 60 labor officials from Kenya, Uganda and Tanzania in negotiation skills and mediation.
- **Indonesia–ILO/US Declaration Project**: Provided training to 40 high-level government officials, mediators, trade union and employer representatives to build a mediation model similar to that in the United States. Training also provided in alternative dispute resolution techniques and interest based problem solving.
- **Latvia, Lithuania and Estonia**: Funded by the United States Department of State, this project trained labor relations teams in women’s labor issues, collective bargaining, dispute resolution and workplace improvements. The program also allowed for foreign officials to “shadow” FMCS mediators while they performed their work.

## **IX. FMCS ORGANIZATION:**

The functions and responsibilities of each office within FMCS are set forth below:

### **Office of the Director**

*The Director*, appointed by the President with the advice and consent of the Senate, is responsible for establishment of policy and overall administration of the Service. The Director serves as agency liaison with the White House, members of the President's Cabinet, Congress, and major labor and management customers, while providing direction for, and participating in, the mediation of major disputes and preventive mediation cases.

*The Executive Assistant to the Director* assists the Director in the administration of his duties, has overall responsibility for the coordination of meetings and events involving the Director and represents the Director in many National Office activities, such as the National Office Partnership Council.

### **Chief of Staff**

*The Chief of Staff* serves as the principal operations officer in the internal administration of the Service, responsible for managing the daily operations and implementing policies for the program and support functions of the National Office. The Chief of Staff also serves as an advisor to the Director in establishment of policy, and represents the Director in a variety of forums with the White House, the President's Cabinet, Congress, leaders of labor and management, and federal, state and local government officials.

### **National Office Departments**

*The Office of Arbitration Services* provides the labor-management community, upon request, with "panels" of highly qualified arbitrators to settle disputes arising during the life of labor contracts. This office maintains a computerized roster more than 1,350 qualified, private sector arbitrators.

*The Office of Budget and Finance* develops budget estimates and supporting material to cover the financial needs of the Service, coordinates and assists in the presentation of the budget to the Office of Management and Budget and to the Congress, and ensures that enacted appropriations are properly executed. The office also provides an integrated system of accounting controls, records, and reports to meet management's needs and ensure compliance with applicable laws.

*The Office of Education and Training* develops educational and training curricula for FMCS Preventive Mediation programs, and oversees all training and professional development functions for FMCS leadership, mediators and staff, including the assessment of staff training needs and the coordination of training programs.

*The Office of Human Resources* is responsible for providing human resource programs to meet management's needs and ensure compliance with applicable laws and regulations. Major programs include hiring of qualified employees, classification of all positions, implementation and monitoring of appraisal systems, and coordination of employee relations programs.

*The Office of Information Systems and Administration* provides a full range of administrative support functions to the National Office in Washington, D.C. and the seventy one field locations throughout the country. These services include procurement, contracting, supply, office space, mail services, records management, printing and distribution, desktop publishing, communications and transportation management, building security, and maintenance. This office is also responsible for the Service's automated data processing support with the major focus on systems that handle case processing and reporting.

*The Office of International and Alternate Dispute Resolution Services* is responsible for International Domestic Alternative Dispute Resolution, International Labor and International Dispute Resolution activities and projects, coordinating the provision of conflict resolution services with other government agencies, including joint problem-solving approaches used in lieu of agency adjudication, courtroom litigation and traditional government rulemaking. This office also coordinates programs with sponsoring organizations that send FMCS mediators abroad and bring delegations from other countries to FMCS Headquarters.

*The Office of Programs and Labor-Management Grants* administers the FMCS program for labor-management grants, supporting the establishment and operation of plant, area, and industry wide joint labor-management committees, and coordinating the National Labor-Management Conference.

*The Office of the General Counsel* provides legal support and advice necessary for the Service to carry out its mission. Working with the Department of Justice, the office represents the agency in proceedings before the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and other administrative bodies. This office is also responsible for the agency's compliance with the Freedom of Information Act.

*The Designated Agency Ethics Officer* is responsible for assuring high ethical standards by all FMCS employees, and for preventing any financial conflicts of interest, or the appearance of conflict by FMCS personnel. This office manages the agency's Ethics program, which includes annual ethics training for all employees, and oversight of all required financial reporting by certain FMCS personnel.

### **FMCS Field Organization**

Leadership Teams in each of the Service's five geographic regions are comprised of a *Regional Director* and two *Directors of Mediation Services*, who report to the Regional Director and each work hands-on with approximately twenty mediators.

**Mediators** are the largest group of employees. They provide services to the agency's customers, mediating disputes in the negotiation of collective bargaining contracts, and training in cooperative skills and processes as part of Preventive Mediation services. To be selected as mediators, they must have extensive experience and knowledge of collective bargaining and a strong commitment to become proficient in the delivery of all FMCS services. Their knowledge of labor-management relations and the collective bargaining process is key to their ability to assist and influence bargainers in settling their differences.

## **X. LEGISLATIVE 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 whose mission is to prevent and minimize labor-management disputes affecting interstate commerce by providing mediation, conciliation, and voluntary arbitration. That primary duty remains unchanged. All mediation and conciliation functions of the Secretary of Labor and the United States Conciliation Service were transferred to FMCS at that time. Its independence and neutrality were highlighted by the Act's legislative command that "The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor." The FMCS mission includes both the private and public sectors, except for the railroad and airline industries, which are covered by the Railway Labor Act and the National Mediation Board.

In 1990, the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act authorized the agency to assist other Federal agencies in resolving disputes arising out of grants, contracts, licenses, or other agency rules, regulations or 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.

The National Performance Review recommended creation of the National Partnership Council to promote the formation of labor-management partnerships in the Federal government as a way of reforming government. FMCS has continued its mediation and other services available to federal sector parties in an effort to avoid costly litigation and adversarial disputes.

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 collective bargaining disputes and the improvement of labor-management relationships. Specific statutory and other authorizations of agency programs are described below.

□

**The Labor-Management Relations Act of 1947 (Public Law 80-101, 29 U.S.C. Sec. 173)** directs the Service to prevent or minimize interruptions of 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 Service 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 a situation, the President may appoint a board of inquiry to ascertain the facts with respect to the dispute. After receipt of the report, the President may seek to enjoin the strike for not more than 80 days, 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.

**The Health Care Amendments of 1974 (Public Law 93-360, 29 U.S.C. Sec. 158(d))** (amending the National Labor Relations Act) include special responsibilities 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. section 183). The board has 15 days within which to operate 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.

**The Civil Service Reform Act of 1978 (Public Law 95-454, 5 U.S.C. Sec. 7119)** directs the Service to provide mediation assistance and services in disputes arising from negotiations between Federal agencies and the exclusive representatives of their employees.

**The Postal Reorganization Act of 1970 (Public Law 91-375, 39 U.S.C. Sec. 1207)** requires the Service to establish fact-finding panels and arbitration boards if disputes between the Postal Service and the exclusive representatives of its employees are not resolved prior to certain statutory deadlines.

**Presidential Statement, March 24, 1953.** President Eisenhower established the Atomic Energy Labor-Management Relations Panel within the Service in March 1953, 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 FMCS under President Carter in April 1980 and renamed the Energy Labor-Management Relations Panel (ELMRP).

**Executive Order 11374, dated October 11, 1967,** transferred the responsibilities of the Missile Sites Labor Commission (created by Executive Order 10946) to FMCS.

**The Federal Insecticide, Fungicide and Rodenticide Act of 1978 (Public Law 95-396, 7 U.S.C. 136a(c)(f)(ii))** requires the Service to provide for the appointment of

arbitrators to decide disputes concerning compensation for the use or development of pesticide registration data.

**The Labor-Management Cooperation Act of 1978 (Public Law 95-524, 29 U.S.C. 175a)** amended sections 175 and 302 of the Labor-Management Relations Act and authorizes and directs the Service 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.

**The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) 5 U.S.C., 571, et seq.** 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 date (expiration dates) and the reporting requirements of the Acts suggest that the ADR and regulatory-negotiation "experiments" have become well accepted processes of Federal agencies.

A lead agency or interagency committee will be designated by the President to facilitate and encourage use of alternative dispute resolution. Federal agencies are now required to consult with that lead agency or committee and are now permitted to participate in binding arbitration in some situations. 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 directs FMCS to develop guidelines to expedite the acquisition of neutrals and to encourage 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 FMCS may provide all forms of ADR assistance to Federal agencies. Under this legislation, FMCS continues to assist agencies in negotiated rulemaking processes as well as other ADR procedures by providing training, facilitation, mediation, and other neutral skills.

**The U.S. Code of Federal Regulations at 45 CFR 90.43**, issued by the Department of Health and Human Services, implementing its authority under the **Age Discrimination Act of 1975, 42 U.S.C. 6 101 et seq.**, authorizes the Service to provide mediation assistance for the resolution of age discrimination charges.

**The Air Traffic Management Performance Improvement Act of 1996 (Public Law 104-264, 49 U.S.C. Section 40122)**, directs the FMCS to mediate disputes between the Administrator of the Federal Aviation Administration and its employee representatives if these bargaining parties fail to reach a negotiated agreement.



