

**FMCS**

**Federal Mediation & Conciliation Service**



# 2008 Annual Report



## Report for Fiscal Year 2008



*FMCS Director  
Arthur F. Rosenfeld*

### Message from the Director

It has been a challenging year for labor relations in the United States. Workers experienced heightened concern for their personal financial situations and job security. Management focused intensely on competitiveness issues and the resources needed to weather a global financial crisis.

Faced with intense global competition, many U.S. companies have moved to low cost off-shore operations. And the perilous financial conditions have caused other U.S. companies to downsize, dramatically increasing unemployment numbers in this country. Given the confluence of global competition and financial unrest, not surprisingly we have noted an increase in labor-management tension at the bargaining table. Negotiations have become more stressful and challenging.

Paradoxically, though tough times benefit from better labor-management cooperation, often the opposite happens, with the parties regressing to a hardened “us-versus-them” mentality at the bargaining table. Granted, given the demands of the current environment, it is difficult for bargaining parties to find spare time to focus on resolving problems in labor-management relations. However, today’s business environment of rising raw materials prices, tightening credit markets, escalating benefit costs and fierce global competition calls for labor-management collaboration, not confrontation. Building a labor-management relationship based on cooperation, trust and joint problem-solving requires a sustained level of effort, but tough times demand no less.

In these difficult times, FMCS plays a critical role. We provide training for employers and unions in the best practices that are essential to successful collective bargaining. Among our training activities are specific programs that FMCS mediators deliver to improve union-employer relationships and thus the collective bargaining process. In other words, many times, even before negotiations begin, we help the parties understand how better to communicate and to manage or perhaps avoid conflict. I’m not suggesting that all labor-management conflict is negative. However, unmanaged conflict is nearly always harmful, and it is certainly possible, and definitely preferable, to help the parties find ways to better manage conflict.

As we head into another potentially difficult year for American workers and the companies that employ them, it is important for all to remember that mediation is a proven help in resolving labor disputes and averting disruptions to our economy that affect workers, their families, and communities. America has always responded strongly in trying times. We have always overcome adversity, and will do so again. FMCS is prepared to play its part in aiding labor and management in creating and sustaining a resilient, prosperous economy.



Arthur F. Rosenfeld  
Director

## FY 2008 Agency Services

### **Agency Mission**

For more than 60 years, the Federal Mediation and Conciliation Service (FMCS) has delivered neutral and confidential conflict resolution assistance to the nation's unionized workplaces. The core mission of FMCS is to help employers and unions avoid costly work stoppages and minimize their potentially devastating effects on regional or national commerce. The FMCS was created by Congress as an independent agency in the Labor-Management Relations Act of 1947. Our highly trained mediators provide conflict resolution services to the nation's employers and their unionized employees. Our goal is to prevent or minimize interruptions to the free flow of commerce that grow out of labor disputes and to improve labor-management relations. The core activity of the Agency is collective bargaining mediation; a voluntary process in which mediators serve as third-party neutrals to facilitate the settlement of issues in the negotiation of collective bargaining agreements.

### **A. Collective Bargaining Mediation**

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

During mediation, the mediator's task is to identify alternative solutions and compromises, encourage settlement where appropriate, control the critical timing of offers, and persuade the parties to honestly discuss their differences. In FY 2008, FMCS mediators were actively involved in over 4,800 collective bargaining contract negotiations in every major industry throughout the United States.

### **B. Grievance Mediation**

Grievance mediation involves the use of a neutral party to mediate disputes that may arise over the terms and conditions of a collective bargaining agreement. Agency mediators provide this service to the private and public sectors with the goal of preventing unresolved contract interpretation issues from spilling over into future contract negotiations. Lengthening contract terms increase the importance of resolving contentious issues arising during the term of a contract. In FY 2008, FMCS mediated 1,728 grievance mediation cases and helped the parties reach agreement in 1,299 of these.

### **C. Relationship-Development and Training**

Preventing conflict that may arise during the term of a collective bargaining agreement is another important goal of the Agency. The Agency's relationship-building training programs are designed to improve labor-management relationships by helping labor and management to develop collaborative problem-solving approaches. Effective use of these programs better enables the parties to jointly respond to rapidly changing business and economic conditions during the term of the contract and also make future mediation efforts more effective.

### **D. Employment Mediation**

Outside the collective bargaining arena, FMCS provides employment mediation services to the federal sector and to state and local governments on a cost-reimbursable basis. The Administrative Dispute Resolution Act of 1990, the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996 expanded FMCS' role as a provider of these services. The legislative intent behind these acts was to expand the use of alternative dispute resolution throughout the Federal government, reduce litigation costs, and promote better government decision-making. The Agency also provides employment mediation to the private sector to resolve workplace disputes falling outside of the traditional collective bargaining context, i.e., equal employment opportunity disputes. In FY 2008, FMCS mediated 1,220 employment cases.

### **E. International Training and Exchange**

Beyond the nation's borders, FMCS plays an important role in promoting collective bargaining and conflict resolution around the world. FMCS' international work is a small, but integral, part of its services. Emerging market economies often struggle to compete effectively in a globally integrated marketplace. FMCS helps establish the labor relations institutions that are essential to the smooth functioning of free market economies. These programs are also a knowledge-sharing experience: FMCS mediators gain familiarity with complex issues affecting the global economy and, as a result, are more effective in resolving labor-management disputes with international implications.

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

## **F. Arbitration Services**

National labor policy favors arbitration for settling contractual disputes. FMCS' Office of Arbitration Services maintains a roster of approximately 1,400 independent arbitrators who are qualified to hear and decide disputes over the interpretation or application of collective bargaining agreements. Upon request from the parties, FMCS furnishes a list of names from which they may choose an arbitrator to hear their case and render a decision. During FY 2008, the Office of Arbitration Services processed nearly 15,900 requests for arbitration panels nationwide. Arbitrators on the FMCS roster heard and decided nearly 2,100 labor arbitration cases.

## **G. FMCS Institute for Conflict Management**

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

## Mediation Services Program Data

<b>PROGRAM SERVICES</b>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
<b>1. COLLECTIVE BARGAINING MEDIATION.....</b>				
Assigned Cases <sup>1</sup>	17,102	15,072	14,663	14,308
-Private Sector	15,596	13,539	13,245	12,914
-Public Sector (state and municipal)	1,160	1,219	1,107	1,083
-Federal Sector	346	314	311	311
Mediated Cases <sup>2</sup>	5,215	5,484	5,329	4,836
-Private Sector	3,873	3,874	3,907	3,437
-Public Sector (state and municipal)	1,086	1,319	1,145	1,145
-Federal Sector	256	291	277	254
Closed Cases	13,928	15,664	14,478	13,480
Closed Mediated Cases	4,084	4,486	4,426	3,914
Activity Rate <sup>3</sup>	30%	29%	31%	29%
Settled and Closed Mediated Cases	3,557	3,864	3,818	3,396
Percentage of mediated cases settled through FMCS <sup>4</sup>	87%	86%	86%	87%
Activity rate in significant cases <sup>5</sup>	47%	45%	51%	38%
<b>2. GRIEVANCE MEDIATION .....</b>				
Assigned Cases	1,705	1,632	1,768	1,749
Mediated Cases	1,621	1,625	1,753	1,728
-Private Sector	1,232	1,219	1,282	1,296
-Public Sector (state and municipal)	263	270	316	314
-Federal Sector	126	136	155	118
Settled GM Cases	1,212	1,219	1,254	1,299
Percentage of cases settled through FMCS <sup>6</sup>	72%	75%	74%	75%
<b>3. RELATIONSHIP-DEVELOPMENT AND TRAINING.....</b>				
Number of training programs provided	2,085	2,445	2,548	2,356
-Private Sector	1,273	1,552	1,591	1,390
-Public Sector (state and municipal)	708	730	730	712
-Federal Sector	104	163	227	254
<b>4. EMPLOYMENT MEDIATION .....</b>				
Mediated Cases	1,008	1,022	1,060	1,220
-Federal Sector	917	993	1,038	1,205
-Public Sector (state and municipal)	31	13	5	11
-Private	60	16	17	4
Settled EM Cases	484	523	532	576
Percent of EM cases settled through FMCS <sup>7</sup>	48%	51%	50%	47%
<b>5. OUTREACH .....</b>				
Outreach cases <sup>8</sup>	3,513	3,859	3,847	3,347

<sup>1</sup> Section 8(d) of the NLRA, as amended, 29 U.S.C. §158(d) requires that any employer or labor organization provide notice to FMCS 30 days prior to contract expiration. Not all cases providing notices are assigned. Actual FY 2008 FMCS case intake exceeded 22,000.

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

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

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

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

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

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

<sup>8</sup> FMCS requires all mediators to engage in outreach efforts. These kinds of activities include non-bargaining meetings with labor and management representatives, attendance at conferences, meetings with local and state officials to offer FMCS services, and presentations designed to increase public knowledge.

<b>Work Stoppage Information</b>					
	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Work stoppages carried from preceding FY	29	25	52	31	19
Work stoppages beginning within FY	269	289	247	164	193
Work stoppages closed within FY	273	262	268	176	181
Work stoppages open at end of FY	25	52	31	19	31
Average duration of work stoppages in closed cases (number of days)	76.7	41.1	70.9	63.1	51.2
Estimated number of worker-hours lost due to work stoppages (1,000s)	71,501	18,064	25,175	29,734	20,147

<b>Work Stoppage Cost Information</b>			
	<b>Direct Costs</b>	<b>Indirect Costs</b>	<b>Total Costs</b>
<b>Year</b>	<b>(\$1,000s)</b>	<b>(\$1,000s)</b>	<b>(\$1,000s)</b>
1999	883,010	896,481	1,779,490
2000	3,350,203	3,672,152	7,022,355
2001	495,484	476,000	971,484
2002	363,522	461,289	824,811
2003	372,678	329,595	702,273
2004	1,102,475	267,260	1,369,735
2005	488,075	450,737	938,812
2006	725,180	686,468	1,411,648
2007	801,314	931,108	1,732,422
2008	533,971	567,397	1,101,368
<b>Savings to Parties Attributable to Mediation</b>			
	<b>Reduced Incidence</b>	<b>Reduced Duration</b>	<b>Total Savings</b>
<b>Year</b>	<b>(\$1,000s)</b>	<b>(\$1,000s)</b>	<b>(\$1,000s)</b>
1999	756,974	211,149	968,122
2000	1,992,529	303,092	2,295,621
2001	667,206	60,372	727,578
2002	840,936	272,595	1,113,531
2003	717,239	224,287	941,525
2004	2,259,575	173,177	2,432,752
2005	1,269,679	798,666	2,068,345
2006	1,320,946	374,872	1,695,818
2007	888,376	383,386	1,271,762
2008	1,155,903	(501,807)	654,096

## **Arbitration Services Program Data**

<b>Activity</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Panel Requests	16,382	15,370	15,572	14,287	14,444
Panels Issued <sup>9</sup>	18,033	16,787	16,854	16,264	15,717
Arbitrators Appointed	7,875	7,592	6,860	6,485	6,568
<b>Activity Charged For</b>					
Travel Days	.45	.46	.46	.45	.45
Hearing Days	1.09	1.15	1.11	1.10	1.07
Study Days	2.37	2.40	2.40	2.34	2.43
<b>Total</b>	<b>3.91</b>	<b>4.01</b>	<b>3.97</b>	<b>3.89</b>	<b>3.95</b>
<b>Average Charges</b>					
Per Diem Rate	\$802	\$836	\$860	\$883	\$913
Amount of Fee	\$3,197	\$3,396	\$3,605	\$3,571	\$3,780
Amount of Expenses	\$344	\$336	\$335	\$359	\$391
<b>Total Charged</b>	<b>\$3,542</b>	<b>\$3,732</b>	<b>\$3,940</b>	<b>\$3,929</b>	<b>\$4,171</b>

<sup>9</sup> Frequently, the labor-management parties request more than one panel for arbitration cases, resulting in an increase in the number of panels issued over the number of requests received.

	2004	2005	2006	2007	2008
<b>Total Number of Issues</b>	<b>2,581</b>	<b>2,629</b>	<b>2,473</b>	<b>2,172</b>	<b>2,066</b>
<b>General Issues</b>	<b>417</b>	<b>308</b>	<b>320</b>	<b>243</b>	<b>267</b>
Overtime Other Than Pay <sup>10</sup>					
Distribution of Overtime	41	2	6	1	1
Compulsory Overtime	3	2	1	1	0
Other Overtime	1	4	4	0	2
<b>Seniority</b>					
Promotion & Upgrading	42	26	40	20	26
Layoff Bumping & Recall	69	57	39	32	36
Transfer	9	0	0	2	1
Other Seniority	15	8	24	19	44
Union Officers <sup>11</sup>	21	0	1	0	0
Strike & Lockout	2	1	0	0	1
Working Conditions <sup>12</sup>	20	12	23	16	15
Discrimination	18	18	18	13	14
Management Rights	61	72	85	82	77
Scheduling of Work	61	62	50	45	39
Work Assignments	54	44	29	12	11
<b>Economic Wage Rates &amp; Pay Issues</b>	<b>209</b>	<b>167</b>	<b>178</b>	<b>157</b>	<b>146</b>
Wage Issues	95	134	156	154	135
Rate of Pay	33	7	1	1	2
Severance Pay	1	2	1	0	0
Reporting, Call- in & Call-back Pay	6	0	0	0	1
Holidays & Holiday Pay	14	8	7	0	2
Vacations & Vacation Pay	26	0	4	0	0
Incentive Rates & Standards	9	3	1	0	5
Overtime Pay	25	13	8	2	1
<b>Fringe Benefits Issues</b>	<b>104</b>	<b>100</b>	<b>127</b>	<b>76</b>	<b>63</b>
Health & Welfare	46	47	48	25	24
Pensions	8	7	19	11	6
Other Fringe Issues	50	46	60	40	33
<b>Discharge &amp; Disciplinary Issues</b>	<b>996</b>	<b>937</b>	<b>913</b>	<b>728</b>	<b>762</b>
<b>Technical Issues</b>	<b>69</b>	<b>47</b>	<b>59</b>	<b>54</b>	<b>28</b>
Job Posting & Bidding	39	43	43	38	18
Job Evaluation	14	1	14	11	9
Job Classification	16	3	2	5	1

<sup>10</sup> Overtime pay issues included under this category are economic, wage rates and pay issues

<sup>11</sup> Included in this classification are issues concerning super seniority and union business.

<sup>12</sup> This classification also includes issues concerning safety.

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Scope of Agreement</b>	<b>58</b>	<b>50</b>	<b>28</b>	<b>31</b>	<b>31</b>
Subcontracting	44	42	24	24	27
Jurisdictional Disputes	7	7	4	7	4
Foreman, Supervision, etc.	7	1	0	0	0
Mergers, Consolidations, Accretion, Other Plants	0	0	0	0	0

<b>Arbitrability Issues</b>	<b>289</b>	<b>219</b>	<b>191</b>	<b>275</b>	<b>228</b>
Arbitrability of Grievances	96	38	26	23	29
Procedural	62	68	96	123	93
Substantive	18	28	37	41	40
Procedural & Substantive	16	10	17	24	22
Other Arbitrability Questions	0	0	0	0	0
Not Elsewhere Classified	97	75	15	64	44