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## FMCS on the Cutting Edge

Richard Barnes, Director  
Federal Mediation and Conciliation Service

More than a half century ago, The Federal Mediation and Conciliation Service ("FMCS") was born in a turmoil of extraordinary labor strife in America, and entrusted with a sweeping mandate: keep peace between employers and their employee unions. It was just after World War II had ended and following those years of rationing, price controls and product shortages, the consumer economy was ready to explode. The nation's manufacturing was shifting from battleships, bombs and bullets to automobiles, refrigerators and household appliances.

There was also a volatile mixture in this economy: pent-up consumer demand, an explosion in hiring as businesses rapidly expanded to meet the demand, and a workforce dominated by returning military veterans who weren't shy about standing up for what they thought they deserved. Predictably, this mixture boiled over, resulting in more strikes and labor disputes in 1946 than any other year in American history.

Congress responded with the Labor-Management Relations Act of 1947, and the creation of this new independent agency of government to help keep labor peace in the nation. This new agency's mission was carried out by a cadre of Federal Mediators, experienced in the world of collective bargaining and skilled as third-party neutrals. These FMCS peace-makers helped labor and management negotiators maneuver around the pitfalls and obstacles of collective bargaining and increased the likelihood of agreement on a contract.

More than 50 years later, that's still the elemental role of the Federal Mediator, and more than 50 years later, we're dramatically increasing our effectiveness. FMCS is constantly adapting to the changing environment of collective bargaining and conflict resolution and meeting those challenges of change through a variety of new initiatives. The need for the Federal Mediators' peace-making skills—mediation, training, alternative dispute resolution, facilitation, conflict management and prevention—and the ability to transfer those skills, have expanded far beyond the traditional labor-management bargaining table. Today, they find wider and wider application throughout the U.S. economy, in local, state and federal governments, and in schools and other private and public institutions of American society.

FMCS has been actively involved in non-labor Alternative Dispute Resolution (“ADR”) services processes since 1971. And, with the passage of the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act of 1990, FMCS began to provide these additional conflict resolution services to other agencies of government. Since 1991, the use of Federal Mediators by federal agencies and state and local governments has increased exponentially. Mediating workplace disputes, discrimination and whistleblower complaints is now commonplace among Federal Mediators. Other ADR services provided by Federal Mediators include mediating statutory employment claims, designing conflict resolution systems, providing training and education, facilitating public policy and environmental disputes, and facilitating the highly successful negotiated rulemaking, also known as regulatory negotiation or “reg-neg.”

Traditionally, a government agency, when implementing a new statute enacted by Congress, drafts the new rule or regulation internally, then publicizes the draft for public comment. Those comments tend to be loud and accusatory, as those affected by the rule or regulation, express their dissatisfaction. Failure to address these complaints or concerns often results in protracted legal challenges. This is why many federal agencies would not consider proceeding through the minefields of government rulemaking without bringing in Federal Mediators to conduct a Negotiated Rulemaking.

In FMCS Negotiated Rulemaking, the rule is written in open group sessions, which generally include representatives of the government agency, those they regulate and other interested parties. Mediators lead the group through a consensus-based process that, more often than not, turns adversaries into colleagues and negotiators into problem-solvers. Regulatory negotiations tend to result in better rules and regulations because more viewpoints have been considered. And, the likelihood of subsequent challenges to the rule or regulation is significantly reduced because the people most affected participated fully in the drafting.

This process has been adapted to environmental and public policy disputes as well, with application among virtually every regulatory agency of the federal government.

The Federal Mediators’ skills and experience have also become highly prized commodities abroad, particularly in the past decade, as other nations have sought FMCS services for a level of experience and skill in conflict resolution that simply does not exist in their country or region of the world. At various stages of societal, institutional and industrial development, foreign governments and non-government organizations have sought FMCS assistance in building and maintaining sound and stable re-

lations between emergent manufacturing sectors and their labor organizations. More broadly, FMCS is helping to develop the capacity to manage a wide range of organizational and societal conflict.

Federal Mediators have provided ADR services on four continents to thirty-eight nations. Mediators recently facilitated discussions on economic integration in South America and utility infrastructure in Bosnia. Other mediators worked in the Republic of Panama to help prepare for the transfer of the Canal from the U.S. to the Panamanian government. We provided labor-management training for the U.S. Panama Canal Commission and the Panama Canal Authority, and eventually established a mediation center where mediators were trained for the government of Panama.

FMCS is continuing to develop new services and applications for its conflict resolution skills and training, such as:

- The facilitation of consensus building dialogs related to economic growth and legal/institutional reform in developing countries;
- Mediation/negotiation skills building for employees of regional private and public organizations;
- Negotiation/conflict resolution training for police forces in post-conflict societies;
- Sponsorship of Best Practices seminars dealing with conflict in trade and investment, public policy and environmental disputes;
- Consultation and assistance in establishing international centers of dispute resolution, similar to FMCS activities in Panama; and
- Training of co-mediation teams to mediate NAFTA disputes.

In 1996, FMCS responded to congressional interest in expanding its conflict management services to address the growing violence in America's schools. The agency developed a curriculum in Youth Conflict Resolution and Peer Mediation, which Federal Mediators draw on when working with elementary and secondary school students and staff in establishing school-wide peer mediation programs. We identify underlying causes of conflict and then respond with training in new skills in anger and conflict management. Our goal is to reduce the number of disputes that become violent or hurtful and the staff time spent on discipline. Students, staff and parents are trained in basic conflict resolution skills to prepare them to resolve their disputes in a more constructive manner. And, a smaller group of students and staff are trained to act as mediators. This year we will be introducing our technology approaches to youth initiatives following Congressional funding of our schoolyard programs.

Yet another recent, highly productive application for the Federal Mediator's skills and expertise is in helping organizations manage grief in the workplace. The loss of a loved one is a traumatic experience that can diminish an employee's energy, productivity, motivation and creativity. And, although a vast majority of the American workforce has either suffered or had a colleague who has suffered the loss of a loved one, few are prepared for such situations.

FMCS training is aimed at creating a workplace environment that recognizes the cycles of grief and provides ways to effectively address the grieving employee's morale and work capacity. In addition to evaluating leave policies, FMCS can help build a comprehensive program of support: awareness workshops, flexible work schedules, Employee Assistance Program referrals and counseling.

As stated earlier, FMCS is adapting to the changing world of conflict resolution in which it is operating. In addition to meeting the needs of new areas in which the art and practice of mediation and conflict resolution is being used, we have developed new tools to increase the reach and capability of the Federal Mediator. Technology has had a profound impact on the American workplace in many industries, literally changing the way work is done. And, it has brought with it a whole new range of labor-management challenges and problems, from automation to the need for employee training in entirely new skill sets. FMCS has adapted technology to its processes, and by doing so has created new and exciting opportunities and services for its customers.

The TAGSystem, or Technology Assisted Group Solutions, is a powerful network of computers and customized software adapted as a tool to improve group processes. Linking participants electronically, TAGS adds speed, efficiency and focus to brainstorming sessions, group problem solving and decision-making. And because computers link participants, the group sessions can take place at the same location or, by linking computers through the Internet, meeting participants can join in from almost anywhere. TAGS has also been integrated into collective bargaining contract negotiations, bringing a decidedly new look and feel to a very traditional process.

As a national organization with a proud and distinguished history in conflict resolution, FMCS has always felt a particular obligation to promote professionalism and public confidence in the mediation process. In light of the growing number of individuals who identify themselves as "mediators", and the lack of any uniform standards for the practice of mediation, FMCS is the first national organization to credential outside private and public sector mediators. We are focusing on three specific dispute resolution disciplines: labor, employment, and regulatory negotiations. Credentialing does not restrict

mediation practitioners to the extent that licensure and certification would. Rather, credentialing distinguishes those who meet requisite standards from those who do not, and relies upon the principles of free market choice for consumers of the service.

FMCS has been joined in this initiative by both academic institutions and professional associations. We have developed core competencies and experience levels for each discipline to be credentialed, including negotiation skills, mediation skills, facilitation, and multi-party conflict management.

The work of the Federal Mediator will continue to evolve as the forces that affect work, business and human relations continue to exert their influences on our society. And, the practice of conflict resolution will undoubtedly continue to find new and different venues to help organizations, groups of people and individuals resolve differences and work together more peacefully.

We are grateful to Pepperdine University and the Pepperdine Dispute Resolution Law Journal for the opportunity to share these FMCS initiatives with the public. We invite you to visit with your local FMCS Commissioner or join us online at [www.fmcs.gov](http://www.fmcs.gov) for any assistance we may provide.

