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The Federal Mediation and Conciliation Service Should Strive to Avoid Mediating Minor Disputes

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The report identifies improvements the Federal Mediation and Conciliation Service can make in managing its activities and describes opportunities for the Service to end its involvement in most labor disputes having only a minor impact on commerce. The review was made to determine whether the Service's activities were within the authority of enabling legislation and to evaluate the adequacy of its management practices for determining jurisdiction in a labor dispute and for reporting on resources used.

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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

The Federal Mediation And Conciliation Service Should Strive To Avoid Mediating Minor Disputes

The Service's involvement in many labor disputes is questionable. Although the Taft-Hartley Act directs the Service to avoid mediating minor disputes when State services are available, it has not done so and it has not established cooperative agreements with States that have mediation services. As a result, the Service has mediated many disputes that did not pose a threat to substantially interrupt commerce.

Even though the act specifically excludes State and local government disputes from its coverage, the Service has mediated such disputes and its involvement in them is increasing.

GAO recommends that the Service's Director ensure that criteria for determining the need for the Service's involvement in disputes are properly applied and that the Director obtain information on how mediators' time is used.

GAO also recommends that Congress determine whether the Service's involvement in State and local public employee disputes is appropriate. The Congress also should consider the desirability of continued Service involvement in minor disputes in States without mediation services.

HRD-81-14
OCTOBER 30, 1980

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-198656

To the President of the Senate and the
Speaker of the House of Representatives

This report identifies improvements the Federal Mediation and Conciliation Service can make in managing its activities and describes opportunities for the Service to end its involvement in most labor disputes having only a minor impact on commerce. We made this review to determine whether the Service's activities were within the authority of enabling legislation and to evaluate the adequacy of its management practices for determining jurisdiction in a labor dispute and for reporting on resources used.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Director, Federal Mediation and Conciliation Service.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

THE FEDERAL MEDIATION AND CONCILIATION SERVICE SHOULD STRIVE TO AVOID MEDIATING MINOR DISPUTES

D I G E S T

The Federal Mediation and Conciliation Service was created by the Taft-Hartley Act in 1947 to carry out the policy that sound and stable industrial peace and the Nation's economic welfare can best be served by resolving labor disputes through collective bargaining.

The Service was directed to prevent or minimize interruptions to the free flow of commerce resulting from labor disputes and was authorized to assist parties in industries affecting commerce to settle such disputes through conciliation and mediation.

The act provides for the Service's involvement in any labor dispute in industries affecting commerce if, in the Service's judgment, such dispute threatens to cause a substantial interruption of interstate commerce. Also, the act directs that the Service avoid attempting to mediate disputes that have only a minor impact on interstate commerce if State services are available. State and local governments are specifically excluded from the act's coverage.

GAO found that the Service has not followed the criteria provided by statute.

According to the Service, 19 States have mediation services, that is, each State had at least one full-time mediator. GAO focused its analysis in these 19 States.

LITTLE SELECTIVITY IN PROVIDING MEDIATION SERVICES

In reviewing a random sample of 404 dispute mediation cases closed during fiscal year 1978, GAO found that the Service's involvement was questionable in 103 cases. The

Service did not make a determination of the potential for substantial interruption of interstate commerce before it became involved in disputes in States with a mediation service. Instead, the Service considered such factors as the number of employees in the union, the potential impact on the local community, whether the parties had asked for the Service's assistance, or whether the Service mediated the parties' last dispute. As a result, the Service mediated many cases that did not appear to threaten a substantial interruption of interstate commerce.

The Service believes it may mediate disputes having only a minor impact on interstate commerce even when State or local mediation services are available, if it deems that those services are inadequate. However, it has not determined which States have inadequate mediation services. (See pp. 7 to 9.)

Sixty-five percent of the Service's workload was in the 19 States having mediation services. Although the act authorizes the Service to establish cooperative agreements with these States, it had not done so. As a result, the Service appeared to compete with the States for some dispute cases. (See pp. 12 and 13.)

INVOLVEMENT IN STATE AND LOCAL PUBLIC EMPLOYEE DISPUTES SHOULD BE REEXAMINED

The Taft-Hartley Act specifically excludes, by definition, State and local governments from the Service's coverage. The Service disagrees with GAO's interpretation of the act, and therefore, it has mediated State and local public employee disputes. Its involvement in these disputes is increasing.

The Service believes it can offer services in these cases when there is a void in State

services. The Service's field offices, however, mediated these disputes even when State mediation mechanisms existed. As a result, 316 cases, or about one-half of the Service's public sector mediations in fiscal year 1978, were in States that had legislated specific procedures to resolve State and local public employee disputes. (See pp. 14 to 17.)

GAO believes that the Service's involvement in these disputes is of questionable legality. (See p. 18.)

INADEQUATE BASIS FOR DETERMINING STAFFING NEEDS

The Service does not have adequate information on the use of its staff resources. Accordingly, it cannot determine the level of resources used in performing its several activities that, in addition to dispute mediation, include providing technical assistance and public information. GAO believes such information is needed to assure an appropriate match of staff with the caseload activity at the field, regional, or national levels. (See pp. 24 to 27.)

AGENCY COMMENTS

The Service stated that, with one or two exceptions, it was in basic disagreement with GAO's report. It believed that, with two exceptions, specific comments on GAO's report would not change the thrust of GAO's analysis and recommendations. Accordingly, the Service believed it appropriate to await GAO's final report and comment at that time, as required by law. The Service did not comment on several GAO recommendations. (See pp. 18 and 19.)

The Service stated that it would welcome a congressional review of its public sector mediation activity which GAO recommends. (See p. 21.)

Regarding a system to account for resources used, the Service stated that it has a system and that past staffing level decisions and budget submissions have been made to, and accepted by, the Office of Management and Budget on the basis of its present procedures. Also, the Service stated that it is continuously looking to make refinements to its present procedures. However, GAO noted that the Service's procedures did not require mediators to report the time spent on individual cases.

GAO continues to believe that the Service needs information on the time spent on individual cases and the total time spent on various categories of cases to provide a more reliable basis for allocating resources, assessing the appropriateness of how mediators' time is allocated, and preparing budget submissions to the Congress. (See p. 28.)

RECOMMENDATIONS

The Director of the Federal Mediation and Conciliation Service should:

--Require a determination that a dispute threatens substantial interruption of interstate commerce before the Service becomes involved in labor disputes when a State or local mediation service is available.

--Monitor the basis for the Service's involvement in labor disputes to assure that its criteria are properly applied.

--Establish written cooperative agreements with State and local mediation agencies to define the types of cases each will mediate.

--Establish and implement a timetable for transferring complete responsibility for mediating minor disputes to State agencies. (See p. 22.)

--Establish a system to account for the resources used on individual and total dispute mediation, technical assistance, and public information activities.

--Use the information from the system in making future staffing level decisions and in preparing budget submissions to the Congress. (See p. 28.)

RECOMMENDATION TO THE CONGRESS

The Congress should determine whether the Service's involvement in State and local public employee disputes is appropriate. If so, the Congress should amend the Taft-Hartley Act to specify the conditions under which the Service's involvement would be appropriate. If not, congressional committees should assure that the Service end its involvement in State and local public employee disputes. (See p. 23.)

OTHER MATTERS FOR CONSIDERATION BY THE CONGRESS

The Service's continued involvement in minor disputes in States without a mediation service creates a disincentive for these States to provide such services. The Congress should consider the desirability of continued Service involvement in minor disputes in these States. If the Congress wishes to increase the involvement of these States in the mediation of minor disputes, it should define the Service's role for encouraging States to establish mediation services. If the Congress wishes to remove the existing disincentive, it should amend the Taft-Hartley Act to direct the Service to avoid mediating any disputes which would have only a minor impact on interstate commerce. (See p. 23.)

Contents

ABBREVIATIONS

FMCS	Federal Mediation and Conciliation Service
GAO	General Accounting Office

CHAPTER 1

INTRODUCTION

The Federal Mediation and Conciliation Service (FMCS), an independent agency, provides mediation and other related services to unions and management. The Director of FMCS is appointed by the President with the advice and consent of the Senate.

The Congress, through the Taft-Hartley Act, 1/ created FMCS to carry out the policy that sound and stable industrial peace and the Nation's economic welfare can best be served by resolving labor disputes through collective bargaining between employers and representatives of their employees. FMCS was directed to prevent or minimize interruptions to the free flow of commerce resulting from labor disputes by assisting parties in industries affecting interstate commerce to settle such disputes through conciliation and mediation.

FMCS, headquartered in Washington, D.C., has 8 regional offices and 72 field offices located throughout the United States.

FMCS ACTIVITIES

The services provided by FMCS include dispute mediation in the private and public sectors, technical assistance, and public information and education.

Dispute mediation provides assistance, when needed, in the negotiation or renegotiation of a collective bargaining agreement. This assistance can range from simply talking to one of the parties to bringing both parties together to discuss positions and resolve differences.

Under the Taft-Hartley Act, a party planning to terminate or amend an expiring collective bargaining contract must notify FMCS of its intent. In recent years about 100,000 such notices have been received annually. In processing the notifications, FMCS' policy is to screen out cases with relatively low priority, those where adequate mediation resources are available outside FMCS, and those not within the jurisdiction

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1/Formally titled the Labor Management Relations Act of 1947 (29 U.S.C. 141).

of FMCS. The other notifications are given to mediators who contact the parties to inquire into the status of the negotiations and to offer mediation assistance. If the parties request FMCS' assistance, a mediator is assigned to the dispute. Approximately 25 percent of the original notices result in assignments.

Under the Civil Service Reform Act of 1978 (5 U.S.C. 7101), FMCS provides mediation assistance and service to Federal agencies and labor organizations in resolving labor disputes. Under its interpretation of the Taft-Hartley Act, FMCS also is involved in State and local public employee disputes. (See ch. 2, pp. 14 to 17.)

Technical assistance activities provide labor and management with methods to improve communications and collective bargaining practices. An example of a technical assistance activity would be a mediator instructing management and union representatives on collective bargaining techniques. These activities encourage parties to avoid disputes by working out problems before contract expiration or strike deadlines.

Public information and educational activities are intended to provide an understanding of the uses of mediation, technical assistance, arbitration, and collective bargaining.

FMCS also provides assistance to help resolve disputes that arise during a contract's term. Most collective bargaining agreements contain grievance procedures ending in binding arbitration. At the parties' request, FMCS provides a roster of private arbitrators qualified to hear and decide on the specific dispute. FMCS does not serve as an arbitrator.

The extent to which FMCS was involved in the previously described activities during fiscal year 1978 is shown below.

Activity	Number
Dispute notifications	89,943
Private dispute cases	24,591
Federal dispute cases	539
State and local dispute cases	617
Technical assistance cases	1,535
Public information and education cases	1,090
Requests for arbitrator rosters	25,735

FMCS GROWTH

Appropriations to FMCS have grown from about $3 million in 1948, its first full year of funding, to about $23 million in fiscal year 1979. The following table shows FMCS' funding, staff size, and the number of dispute cases closed for fiscal years 1973 to 1979.

Fiscal year	Appropriation	Staffing level authorized		Dispute cases closed
		Total	Mediators	
	(000 omitted)			
1973	$10,818	431	254	16,930
1974	11,900	483	266	18,809
1975 (note a)	16,245	499	280	19,771
1976	18,332	575	311	19,856
1977	21,177	540	290	23,450
1978	22,465	540	286	20,257
1979	23,214	523	286	20,414

a/For comparison purposes, the transition quarter was omitted.

OBJECTIVES, SCOPE, AND METHODOLOGY

We reviewed FMCS' operations to determine whether its activities were within the authority of the enabling legislation. Also, we evaluated FMCS management practices to determine the adequacy of

--the basis for deciding whether dispute mediation cases were within its jurisdiction and

--the system for obtaining information on the use of resources.

Our review was made at the FMCS national office in Washington, D.C.; the Chicago, San Francisco, and Seattle regional offices; and the Los Angeles field office.

We interviewed FMCS national, regional, and field office officials and interviewed, by telephone, State labor officials from the 50 States and the District of Columbia. We reviewed

the history of the authorizing legislation, FMCS regulations, policies, operating procedures, and performance data.

We selected a random sample of 404 cases from 20,257 labor dispute cases closed in all eight regional offices during fiscal year 1978. For the cases selected, we reviewed FMCS' justification for its decision to mediate. We also reviewed documentation in the mediation files, and where it was not clear to us why FMCS decided to mediate, we discussed the reasons for FMCS involvement with the cognizant regional officials.

In 1978, FMCS classified 19 States as having mediation services, that is, each State had at least one full-time mediator. We accepted FMCS' classifications and, in making our analysis relating to State mediation services, we focused on FMCS activity in these 19 States.

CHAPTER 2

FMCS SHOULD BE MORE SELECTIVE IN PROVIDING DISPUTE MEDIATION SERVICES

FMCS' involvement in many labor disputes is questionable. The Taft-Hartley Act directs FMCS to prevent or minimize interruptions to the free flow of commerce growing out of labor disputes in industries affecting commerce. The act authorizes FMCS to assist parties in settling such disputes through conciliation and mediation. Further, the act authorizes FMCS to offer its mediation services whenever labor disputes threaten to cause a substantial interruption of interstate commerce. The act also states that FMCS should avoid mediating disputes which would have only a minor impact on interstate commerce if State or other mediation services are available. FMCS has not followed these criteria.

FMCS mediated labor disputes in States with mediation services after determining that the dispute would affect commerce, without assessing whether the effect would be substantial. FMCS considered such factors as the number of employees in the union, the potential impact on the local community, whether the parties had asked for its assistance, or whether it had mediated the parties' last dispute. As a result, FMCS mediated many disputes which did not appear to threaten a substantial interruption of interstate commerce. Moreover, many of these disputes were in States with mediation services.

Furthermore, although the act authorizes FMCS to establish procedures for fostering cooperation with States that have mediation services, it has not done so.

Even though the act specifically excludes, by definition, State and local government disputes from its coverage, FMCS has mediated such disputes. Moreover, its involvement in these disputes is increasing.

INTERPRETATION OF JURISDICTION TOO BROAD TO ASSURE APPROPRIATE CASE SELECTION

The Taft-Hartley Act created FMCS and established its authority to mediate labor disputes. Section 203(a) of the act describes FMCS' duty to minimize interruptions to commerce as follows:

"It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation." 1/ (29 U.S.C. 173(a)(1976))

Section 203(b) of the act further addresses the extent of FMCS' involvement.

"The Service may proffer its services in any labor dispute in any industry affecting commerce * * * whenever in its judgement such dispute threatens to cause a substantial interruption of commerce."

The act further directs FMCS "to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties * * *" (29 U.S.C. 173(b)(1976)). FMCS' jurisdiction, therefore, is amplified in terms of the effect a labor dispute may have on interstate commerce and the availability of mediation services in the States.

To comply with the terms of the act, we believe a series of determinations should be made before FMCS' involvement in a labor dispute. FMCS should determine whether a dispute, in a private industry affecting commerce, threatens a substantial interruption of interstate commerce.

--If substantial interruption is expected, FMCS should determine the need for mediation and whether to offer its service.

--If FMCS determines that a dispute would have only a minor effect on interstate commerce, it should determine whether a State or other mediation service is available. If a State or other mediation service is not available, FMCS should decide the need for its mediation services. If available, FMCS should avoid mediating the dispute.

1/Commerce, as defined by the Taft-Hartley Act, means interstate commerce.

In many cases, FMCS did not follow this process. As a result, we believe that its involvement in many disputes was questionable.

FMCS jurisdictional criteria

FMCS' criteria for determining jurisdiction in a labor dispute are set forth in its policy manual. The manual defined this jurisdiction as labor disputes that affect interstate commerce, but the policy on jurisdiction did not require any consideration of whether the effect of a particular dispute on interstate commerce was substantial or minor as intended in the Taft-Hartley Act.

In labor disputes where FMCS' jurisdiction was unclear, the policy manual provided further criteria. It stated that, in determining whether FMCS should become involved in a labor dispute, the regional director should consider the following factors:

1. A tandem case--the impact of a stoppage by one unit on other units in the same plant or independent plants.

2. Defense impact or critical material case--the impact a stoppage would have on the national defense posture or materials considered critical to the maintenance of a stable economy.

3. Pattern-setting case--the impact of a particular series of negotiations in establishing a pattern for settlement of other units in that particular industry, company, or area.

4. State agency--the existence of an adequate State mediation facility.

The first three factors seem to be good guides to the types of cases that may threaten interruption of interstate commerce; however, they still require case-by-case judgments as to the significance of the potential threat.

FMCS involvement in States with mediation services is questionable

We randomly selected 404 of the 20,257 labor dispute cases closed by FMCS during fiscal year 1978. After a review

of case files and discussions with regional management, it was not clear to us why FMCS mediated 133 cases (33 percent).

Further discussion with the FMCS general counsel disclosed that FMCS mediates disputes with only a minor effect on interstate commerce even when State or local mediation services are available, if those services are deemed inadequate. While the act does not indicate that the adequacy of State and local mediation services is to be considered when FMCS determines its jurisdiction to mediate a dispute, we did not challenge the validity of FMCS' interpretation.

During our review, we asked FMCS officials for a list of States having adequate mediation services. They responded to our request with a 1978 document which, they stated, classified 19 States as having adequate State mediation services. Accordingly, we focused our analysis on cases in those States; of the 133 cases for which we questioned the basis for FMCS jurisdiction, 103 were in the 19 States. These 103 cases represented about 25 percent of our sample.

For FMCS to comply with the law, its involvement in these cases should have been based on a threatened substantial interruption of interstate commerce, because these disputes were in States with mediation services. We therefore asked FMCS officials why FMCS became involved in these 103 cases. Threatened substantial interruption of interstate commerce was not the reason given for jurisdiction in any of the cases. Further, FMCS officials mentioned inadequate State mediation services in only two cases. Other reasons given and their frequency were

--effect on commerce (30 percent),

--number of employees in the bargaining unit or establishment (27 percent),

--request by one or both of the parties (20 percent),

--community welfare (18 percent),

--mediated a similar dispute in the past (2 percent), and

--other reasons (3 percent).

Later, in discussing the results of our work, FMCS' deputy director told us that all of the 19 States did not have viable mediation services and that very few States can handle their workload. He did not explain the apparent inconsistency between FMCS' 1978 classification of 19 States as having adequate mediation services and his statement regarding States not having viable services. We asked for a list of States FMCS considered to have viable services; however, FMCS does not maintain such a list.

In a July 9, 1980, letter commenting on our draft report, FMCS stated that it maintains no list of adequate State mediation agencies. It stated that the list provided to us consisted of States that had one or more persons employed full time as mediators.

The availability or adequacy of State mediation services was not documented by the mediators or the regional offices in the 103 cases we questioned. Furthermore, as discussed on page 8, when asked why they became involved in these cases, FMCS officials mentioned inadequate State mediation services in only two cases.

Following are six examples of cases in which we questioned FMCS involvement because it was not clear to us why they threatened a substantial interruption of commerce.

--The first case involved a meat processing company. There were 25 employees in the union's bargaining unit and 40 employees in the establishment. The FMCS deputy regional director told us that he assumed the impact on interstate commerce because of the establishment's size. He also stated, however, that if a work stoppage occurred, the meat normally processed by the company probably would be processed by another company.

--Another case involved a local company that manufactured corrugated paper boxes in a large metropolitan city. The company had 40 employees, of whom 25 were in the union's bargaining unit. According to the FMCS regional director, the case was accepted because of the number of employees in the bargaining unit.

--The third case involved a labor dispute between movie theater projectionists in five Pennsylvania cities and a theater management corporation. There were 45 employees in the bargaining unit and a total of

65 employees. The deputy regional director stated that ordinarily this case would not have been mediated, but the union requested mediation assistance.

--Another case involved a soft drink beverage company employing 30 people, of whom 22 were in the bargaining unit. The deputy regional director said that this case was mediated because one of the parties requested the mediator's assistance and he had time to help.

--A fifth case involved a firm that manufactures buffing and polishing compounds. There were 31 employees in the union's bargaining unit and 40 in the establishment. The deputy regional director told us that FMCS became involved because it had mediated the parties' contract before.

--Another case involved a pharmaceutical manufacturer in a small New Jersey town. There were 55 employees in the union's bargaining unit and 100 employees in total. The deputy regional director told us the case was mediated because a strike at a company employing 100 people would significantly affect the small community. He also stated that FMCS became involved probably because it had mediated the parties' disputes in the past.

Because the Taft-Hartley Act gives FMCS broad latitude in deciding what constitutes a substantial effect on interstate commerce, we are not suggesting that FMCS' mediation of the cases we questioned is illegal. However, FMCS' policy of mediating after simply determining that a labor dispute affects interstate commerce ignores the distinction between substantial and minor effects set out in the act.

Reasons for mediation inconsistent with jurisdictional requirements of Taft-Hartley

Although portions of FMCS' criteria appear reasonable (see p. 7), they were seldom used as the basis for FMCS' mediation of the 103 cases we questioned. As discussed on page 8, the common reasons given by FMCS officials for providing mediation services included effect on commerce, number of employees in the bargaining unit, and request by one or both of the parties. These reasons seem to be inconsistent with the intent of the Taft-Hartley Act because they

do not provide for determining or measuring the impact on interstate commerce. This is not to say that it is inappropriate for FMCS to consider some of these reasons when determining the impact on commerce, but these reasons alone do not seem to provide the basis for determining or measuring such impact.

Mediators make the initial recommendation to regional management that FMCS should mediate a dispute and provide the necessary facts to justify its involvement. FMCS' regional management makes the decision to mediate based on the mediators' justifications. These justifications, however, were rarely documented. In the 103 cases questioned, only 5 had the factual basis for jurisdiction clearly described, 27 had marginal descriptions, and 71 had no description.

In deciding whether to mediate a dispute, FMCS' regional management generally did not determine whether the dispute threatened a substantial interruption of interstate commerce. Moreover, regional management did not always use FMCS criteria (see p. 7) for determining jurisdiction. For instance, three regional directors said that they always provided mediation services in cases where the parties request mediation, regardless of whether the impact on interstate commerce was substantial or minor.

In discussing the results of our work, FMCS' deputy director stated that FMCS had recognized the problem that all minor disputes were not being screened out because of different regional office practices. Accordingly, in October 1979, FMCS revised its general mediation policy to offer its services in labor management disputes in any industry substantially affecting interstate commerce.

Under the revised policy, the factors to be considered by regional directors were not changed, and one was added. In addition to tandem relationships, defense impact, pattern-setting cases, and the adequacy of State services, the regional directors were instructed to consider whether the employer is a major supplier 1/ when deciding the threat to interstate commerce.

1/Defined by FMCS as a major supplier of products essential to the production of other companies, so that any interruption of production in the company immediately involved may lead to layoffs or curtailment of hours at other companies.

This policy change does not assure that case selection will comply with statutory criteria. The Taft-Hartley Act states that the Service may offer its services whenever "* * * such dispute threatens to cause a substantial interruption of commerce." FMCS' policy is to offer its services in "* * * disputes in any industry substantially affecting commerce." This broad interpretation may not result in FMCS mediating only those disputes which the Congress contemplated in the Taft-Hartley Act. Even though an industry may substantially affect interstate commerce, one dispute involving one employer in that industry may not threaten to cause a substantial interruption of interstate commerce, which is what the act sets forth for FMCS involvement.

Community welfare as jurisdictional basis for mediation not warranted by Taft-Hartley

In addition to the reasons for mediation in its policy manual, FMCS believes that it has the implied authority to mediate a labor dispute that would have an impact on community welfare. In determining whether a dispute would affect community welfare, regional directors consider whether the dispute could disrupt the entire community's economy.

As discussed on page 8, in 18 percent of the cases we questioned, FMCS officials cited community welfare as their justification for involvement.

While FMCS efforts in this area may be beneficial from an intergovernmental relations standpoint, they do not seem consistent with the intent of the Taft-Hartley Act to mediate labor disputes that threaten to substantially affect interstate commerce. In addition, these cases occurred in States that FMCS reported as having mediation services.

FMCS NEEDS TO IMPROVE COOPERATION WITH STATE MEDIATION SERVICES

The Taft-Hartley Act allows the Director, FMCS, to establish suitable procedures for cooperation with State and local mediation agencies. However, FMCS has not established any formal procedures for such cooperation. According to FMCS' associate general counsel, there are no formal written agreements between FMCS and State agencies. Some FMCS regional offices have informal working relationships with State

agencies; however, these arrangements appear to be very narrow in scope.

We discussed FMCS-State agency cooperation with two FMCS regional directors. Both directors told us that they did not have formal written agreements with State mediation agencies in their regions, but that they did have informal agreements with some States. However, these agreements generally related only to State and local public employee disputes. For example, one regional director said that the region has an informal agreement with a State agency to mediate State and local public sector disputes only if both disputing parties request FMCS mediation services.

In some States, instead of fostering cooperation, FMCS appeared to compete for cases with the States. The FMCS deputy director said that there was competition for the major disputes between FMCS and some States that have effective mediation services. One State mediation service director told us that the time had come for the duplication and sometimes ill feelings between the State and FMCS to end. This official believed that a formal written jurisdictional agreement between FMCS and the State was needed.

The Vice President of the Association of Labor Relations Agencies addressed this situation in a January 1979 general analysis paper of Federal-State relations in the mediation field when he wrote

> "* * * the Taft-Hartley limitations on the activity of the FMCS, as included in Sec. 203(b), limiting the agency's intervention to disputes which threaten to cause substantial interruption of commerce, have steadily deteriorated in the past 30 years."

Because the 19 States that FMCS classified as having mediation services involve the major portion of FMCS' activity--including a large number of minor disputes--FMCS should improve cooperation with these States. Our analysis of FMCS' fiscal year 1978 workload revealed that 65 percent of the cases closed were within these 19 States. (See app. I for FMCS' workload in each State.) Accordingly, it is important that FMCS establish good procedures for cooperation with these States so that labor disputes can be mediated by the States if a substantial interruption of interstate commerce is not threatened, as provided by the Taft-Hartley Act.

FMCS INVOLVEMENT IN STATE AND LOCAL PUBLIC EMPLOYEE DISPUTES SHOULD BE REEXAMIMED

The Taft-Hartley Act specifically excludes, by definition, State and local governments from FMCS' coverage. FMCS disagrees with our interpretation of the act, and therefore, it has mediated State and local public employee disputes. Further, FMCS' involvement in these disputes is increasing.

Most States have collective bargaining laws or executive orders covering public employee disputes and have established mechanisms to resolve them. Accordingly, FMCS' policy on public employee disputes is to offer mediation services when there is a void in State services. FMCS field offices, however, mediated such disputes when State mediation mechanisms existed.

Before FMCS' inception, the Secretary of Labor had broad authority to mediate any labor dispute whenever, in his judgment, the interests of industrial peace would be served. The statute did not require consideration of the size of the dispute or its effect on interstate commerce. When the Congress transferred this authority to FMCS, it limited FMCS' jurisdiction. Section 203 of the Taft-Hartley Act authorized FMCS "to assist parties to labor disputes in industries affecting commerce * * *." (29 U.S.C. §173(a)). While the term "parties" is not defined, when read in conjunction with the terms "labor dispute" it clearly refers to "employers" and "employees." Moreover, the terms "employer" and "employee" are used interchangeably in other parts of the act.

The term "employer" is defined by the act to specifically exclude "* * * the United States or any wholly owned Government corporation, * * * or any State or political subdivision thereof * * *." (29 U.S.C. §152(2) (1976)). The definition of "employee" similarly excludes public sector employees. (29 U.S.C. §152(3) (1976)). These definitions were made applicable to the subchapter defining FMCS authority by 29 U.S.C. §142(3), manifesting the policy that the relationship between a State and its employees is not to be controlled by the Federal Government even where those employees may be engaged in interstate commerce.

FMCS justification for mediating public employee disputes

In a 1973 memorandum to the FMCS Director, the Solicitor of the Department of Labor commented on sources of authority to justify FMCS' involvement in public employee disputes. The Solicitor cited what he perceived as the inconsistency between the broad mediation and conciliation jurisdiction the Congress originally granted the Department of Labor and the mediation and conciliation functions transferred to FMCS, which were limited by defining the terms employees and employers in FMCS' enabling legislation, as excluding Federal, State, and local employers. The Solicitor stated that an argument could be made that FMCS could intervene in public employee disputes if the Director determines that intervention is justified by the dispute's importance. However, he added that FMCS' routine involvement in public sector cases would be more difficult to support. The Solicitor concluded that the Director had authority to assist in matters of special importance involving public employees, but daily staff level functions dealing with public employment seemed to be the type of activity that the Congress pointedly omitted from FMCS' enabling legislation.

The extent and nature of FMCS involvement

The mediation of State and local public employee disputes is an increasing percentage of FMCS' caseload. Over one-half of these cases have been in the education sector, such as school teachers' disputes with their local school board. FMCS' involvement in State and local public employee disputes appears to be routine because of the many cases it becomes involved in and the reasons it gave us for mediating some of them.

In fiscal year 1968, FMCS mediated only 9 public employee cases, while in fiscal year 1978, it was involved in 617 State and local public employee dispute cases. In the same year, the mediation of State and local public employee disputes represented 5 percent of the total number of joint

conferences 1/ held by FMCS. This percentage has been increasing and FMCS expects it to continue to rise.

The following table shows, for fiscal year 1978, the number and percent of public employee cases that FMCS was involved in at State and local levels and the government functions involved.

Functions	Number of cases	Percent
Education	374	60.6
Fire protection	49	7.9
Utility and public works	24	3.9
Health care	17	2.8
Transportation	15	2.4
Other	15	2.4
Law enforcement	5	.8
Unidentified	118	19.1

Of the 404 dispute mediation cases in our random sample, 13 were State and local public employee cases. Of these cases, 11 were disputes involving public school employees; the other 2 involved city workers. Included were cases involving

--9 employees in an Illinois township high school,

--198 secretaries in an Iowa school district, and

--18 teachers in an Alaska town.

In discussing these cases, FMCS regional officials advised us that they became involved in these disputes because the parties requested their services. One deputy regional director said that his office accepts all requests from large school districts in Delaware. Another deputy regional official stated that he understood that FMCS' policy was to mediate all public school cases if its assistance is requested.

1/In a joint conference, both parties to a dispute carry on active bargaining in the mediator's presence. As discussed in chapter 3, FMCS management uses these statistics to evaluate mediators' performance and to match staffing levels with caseload activity at the field offices.

Most States have public employee dispute resolution mechanisms

Even though most States have collective bargaining laws or executive orders covering public employee disputes and have established mechanisms to resolve them, FMCS mediates many public employee disputes in these States.

According to a 1979 Department of Labor "Summary of Public Sector Labor Relations Policies," 38 States have statutes or executive orders for collective bargaining covering some or all State and local public employees. Also, 32 of these States have dispute resolution mechanisms for covered employees.

The comprehensiveness of these laws and executive orders varies widely. Twenty-three States have enacted comprehensive statutes covering all public employees, 11 have comprehensive legislation limited to specific groups of employees, and 4 grant limited collective bargaining rights to some or all public employees. The dispute resolution mechanisms also vary widely. Some States provide mediation services similar to FMCS, whereas other States simply maintain lists of mediators that can be chosen on an ad hoc basis.

State dispute resolution mechanisms were not available in only 2 of the 13 public employee dispute cases in our sample. Furthermore, 316 cases--about one-half of FMCS' State and local public employee dispute cases in fiscal year 1978--were in three States having dispute resolution mechanisms. A mediation service official in one of these States told us that the State's service had been relegated to the "step-child role" of mediating only when FMCS' caseload was heavy or when the parties absolutely insist on the State's service.

CONCLUSIONS

FMCS mediates many labor disputes in States with mediation services after merely determining that the dispute would affect interstate commerce, without assessing whether the effect would be substantial. FMCS criteria to determine threatened substantial interruption do not appear to be used by regional management in determining whether FMCS will become involved. Many of the reasons given by FMCS to justify mediation seem inconsistent with the intent of the Taft-Hartley Act. For example, disputes are mediated because of the potential impact on a local community, not because of the potential

effect on interstate commerce. Accordingly, management action is needed to ensure that criteria for determining the need for FMCS jurisdiction are properly applied.

Also, FMCS has done little to foster cooperation with State and local mediation services. Because the Taft-Hartley Act directs FMCS to avoid mediating minor impact cases in States that provide mediation services, improved cooperation is needed to assure that States mediate disputes falling within their jurisdiction. Furthermore, FMCS should encourage States to expand their present roles by establishing target dates after which FMCS would no longer mediate minor impact cases in a State having such a service.

The specific exclusion of the employer-employee relationships of State and local governments in FMCS' enabling legislation would seem to indicate that, when the law was passed, the Congress did not intend that FMCS mediate these cases. Furthermore, even though the Solicitor of Labor suggested that FMCS may have the authority to intervene in an occasional public employee dispute, if justified by the dispute's importance, FMCS has not followed this interpretation. In any event, FMCS' mediation of State and local public employee disputes is of questionable legality. Since FMCS' involvement in these disputes is increasing, we believe that specific congressional guidance is needed on the conditions, if any, under which such involvement would be appropriate.

AGENCY COMMENTS AND OUR EVALUATION

FMCS, in a July 9, 1980, letter (see app. II), stated that, with one or two exceptions, it was in basic disagreement with our report. It believed that with two exceptions, specific comments on our report would not change the thrust of our analysis and recommendations. Accordingly, FMCS believed it appropriate to await our final report and comment at that time, as required by law.

FMCS stated that it believed that

> "* * * disagreement stems from several understandable but largely incorrect assumptions made by GAO about the nature of collective bargaining in the United States, the intent of the Taft-Hartley Amendments that established this independent agency, the practical developments under the law that have taken place over the

past thirty-three years and the changes that have taken place in our industrial system."

In its letter, FMCS elected not to address our recommendations dealing with the (1) procedures FMCS should use in determining its jurisdiction in labor disputes, (2) need to improve cooperation with State and local mediation agencies, and (3) opportunities to have the States assume increased responsibilities for minor disputes.

Contrary to FMCS' position we believe that our understanding of the nature of collective bargaining, the intent of related legislation, and developments that have occurred over the years is adequate and that the data in this report supports our positions.

In reference to the portions of our report where we discuss FMCS' interaction with State mediation services, FMCS stated that:

"The Statute requires deferral to state agencies in minor impact disputes when mediation services are available to the parties to that dispute (§203(b)). Many states which have mediation services employ only one or two persons. A state service with one mediator stationed in the State Capitol is hardly 'available to the parties to a dispute' hundreds of miles away. The GAO thesis that statewide automatic deferral to State agencies is warranted whenever such a service exists is totally unrealistic in the collective bargaining sense and is contrary to the requirements of the statute."

In this regard, FMCS said also that:

"FMCS has neither authority nor resources to determine the actual role of the employee, his or her acceptability to the parties, or the training, experience, support staff, physical location, budget or other factors which enable mediation to function."

Our report does not suggest that FMCS evaluate the proficiency of individual State mediators, determine their locations, or judge the adequacy of State support. Instead we suggest it inquire if a State has mediators available

for a particular dispute. Doubtless the number of mediators employed by the State and their accessibility to the location of the dispute would be factors taken into account in the State's judgment of the availability of a mediator. And as stated in the report, we did not challenge FMCS' view that the concept of availability reasonably implies the adequacy of State services, presumably a matter on which FMCS would wish to consult with the States providing such services. We simply pointed out that the availability or adequacy was not documented in any of the 103 cases we questioned.

Also we noted that, in disputes that would have only a minor effect on commerce, the law requires FMCS to avoid mediating the disputes if State or other services are available to the parties. To comply with the law, FMCS has no choice but to make a reasonable effort to ascertain the availability of State or other mediation services in minor disputes.

FMCS disagreed with our statement that it has not established formal procedures to cooperate with State services. FMCS stated that it "has formal liaison committee with the association of labor relations agencies (the body to which all State agencies belong) to deal directly with issues of State-Federal cooperation and complaints concerning jurisdiction."

We recognize that one of the functions of the Association of Labor Relations Agencies is to maintain liaison between State and Federal mediation agencies to minimize jurisdictional disputes. However, in its 28 years of existence, the Association has not eliminated jurisdictional disputes. We continue to believe that FMCS should establish written cooperative agreements with State and local mediation agencies to define the types of cases each will mediate.

In our draft report, we stated that 35 percent of FMCS' caseload was in States not having a mediation service and some of these States had a large volume of labor disputes. Caseloads from two of these States accounted for 10 percent of FMCS' workload. Accordingly, we proposed that the Director, FMCS, encourage States not having mediation services but having a large volume of labor disputes to establish such services. In commenting on our draft report, FMCS stated that it had no authority to lobby State governments and does not believe it to be a proper activity for a Federal agency. FMCS stated that it has and does offer training and assistance to States that desire to establish mediation agencies. We do not dispute FMCS' position.

However, FMCS' mediation of minor disputes in States not having a mediation service creates a disincentive for those States to develop a service. Because many of the cases being mediated by FMCS are minor labor disputes and because of the disincentive created by such mediation, we believe the Congress should reconsider the desirability of FMCS' continued involvement in minor disputes in States without mediation services.

Further, FMCS involvement in minor disputes provides little incentive for States with mediation services to continue their support. In periods of fiscal austerity, the States could cut the budgets of their mediation services and anticipate that the Federal Government would fill any void created by the reduction.

With regard to our recommendation that the Congress should determine whether FMCS' involvement in State and local public disputes is appropriate, FMCS stated that it

> "* * * welcomes the Congressional review of FMCS public sector mediation activity which GAO recommends. The Mediation Service plays a vital role in maintaining peaceful and effective public sector labor relations. We would be pleased to have Congress examine that role in light of the greatly expanding scope and impact of public sector bargaining."

Our recommendation for congressional review contemplates consideration of whether the responsibility for mediating State and local public employee disputes resides with the Federal Government. Neither the effectiveness of FMCS nor the increasing incidence of State and local labor disputes is in question.

FMCS disagreed with our position that the Taft-Hartley Act specifically excludes, by definition, State and local governments from FMCS' coverage. FMCS stated that

> "Section 203 sets out FMCS mandate and jurisdiction. Nowhere in Section 203 does the word 'employer' or 'employee' appear. The section directs FMCS to assist 'parties to labor disputes' which is broader than 'employer' and 'employee'. Section 204 is not jurisdictional."

In constrast to FMCS' position in its letter, the Solicitor of Labor, in a memo dated May 23, 1973, wrote:

> "Sections 203 and 204, in setting out the duties of the service and of parties to disputes affecting commerce, refer to 'employers' and 'employees.' Under sections 501(c) and 2(2)(3) of LMRA, the terms employers and employees specifically exclude 'the United States or any wholly owned Government corporation * * * or any State or political subdivision thereof.'"

We continue to believe that our position is correct. Section 203(c) of the act, concerning the settlement of disputes by other means upon a failure of conciliation, refers to "party/ies" and "employers/ees" interchangeably. Moreover, section 204, while not jurisdictional, nevertheless further emphasizes the reasonableness of defining the "parties to labor disputes" as being the "employer" and the "employees." In defining "employer" and "employee," the act specifically excludes coverage of the public sector, and in subsequent amendments to and considerations of the act, the Congress has continued to maintain this exclusion.

RECOMMENDATIONS

We recommend that the Director, FMCS:

--Require a determination that a dispute threatens substantial interruption of interstate commerce before FMCS becomes involved in labor disputes when a State or local mediation service is available.

--Monitor the basis for FMCS' involvement in labor disputes to assure that its criteria are properly applied.

--Establish written cooperative agreements with State and local mediation agencies to define the types of cases each will mediate.

--Establish and implement a timetable for transferring complete responsibility for mediating minor disputes to State agencies.

RECOMMENDATIONS TO THE CONGRESS

The Congress should determine whether FMCS' involvement in State and local public employee disputes is appropriate. If so, the Congress should amend the Taft-Hartley Act to specify the conditions under which FMCS' involvement would be appropriate. If not, congressional committees should assure that FMCS end its involvement in State and local public employee disputes.

OTHER MATTERS FOR CONSIDERATION BY THE CONGRESS

The Congress should consider the desirability of continued FMCS involvement in minor disputes in States without mediation services. If the Congress wishes to increase the involvement of these States in the mediation of minor disputes, it should define FMCS' role for encouraging States to establish mediation services. If the Congress wishes to remove the existing disincentive, it should amend the Taft-Hartley Act to direct FMCS to avoid mediating any disputes which would have only a minor impact on interstate commerce.

CHAPTER 3

BASIS FOR STAFFING LEVEL DETERMINATIONS NEEDS IMPROVEMENT

FMCS does not have adequate information on the utilization of its staff resources. Accordingly, it cannot determine the level of resources used in dispute mediation, technical assistance, or public information assignments on a field office, regional, or national level. Such information is needed to determine whether staff are used appropriately and to monitor and assess progress in achieving targeted levels of activity in the technical assistance and public information areas as set out in FMCS' budget justification.

NEED FOR BETTER INFORMATION ON RESOURCE UTILIZATION

The primary means FMCS has to assess its staffing requirements and allocations is by number and type of case mediated, without regard to the time spent on each. The limitations of basing staffing decisions primarily on the quantity of cases are depicted by how FMCS adjusted staffing levels in response to a recent reduction in personnel ceilings imposed by the Office of Management and Budget. Because FMCS had no information on the amount of time used by its various regions to mediate past disputes, it based staffing adjustments on rough estimates of past resource utilization. These estimates were made through an analysis of all cases closed during fiscal years 1975-78.

In December 1978, the Office of Management and Budget approved personnel ceilings for fiscal years 1979 and 1980 at 523 and 515, respectively. These ceilings were a reduction from the 1978 level of 534. To meet these levels and the increased workloads in some geographical areas, FMCS had to evaluate its staffing needs and reapportion the existing mediator work force.

To accomplish the staffing evaluation, FMCS conducted a comprehensive but laborious office-by-office survey. For each office, FMCS compiled statistics on the number and type of cases closed and meetings conducted. These gross figures were factored by agencywide workload averages to derive the approximate mediator staff-years used on joint conference

cases and joint conferences. 1/ After giving consideration to such factors as client proximity, dispute case complexity, and bargaining party sophistication, FMCS determined desired staffing levels for each of its 80 regional and field offices.

For example, during fiscal year 1978, the Parkersburg, West Virginia, field office closed 65 joint conference cases and conducted 191 joint conferences. The agencywide averages were 34 joint conference cases and 110 joint conferences per mediator for that year. The result of dividing the office's totals by the agency's averages was that 1.9 mediator staff years were required for joint cases and 1.7 for joint meetings. After considering all other factors, a staffing level of two was determined; therefore, FMCS believed one of three mediator positions could be eliminated.

We discussed with three FMCS regional directors the amount of mediator effort generally associated with dispute mediation assignments, and they stated that the time and effort involved in individual dispute cases can vary widely and is dependent on several factors. One official said that the primary factors affecting the effort required to successfully complete a case include (1) complexity of the dispute, (2) bargaining skill and sophistication of the parties, and (3) history of the bargaining relationship.

The three regional directors stated that the way FMCS measures workload activity tells nothing about the time or effort involved. One regional director voiced concern that FMCS headquarters is putting more and more pressure on the regions to generate numbers of cases, and no consideration is being given to how much effort a mediator puts into a dispute mediation case. In a 1979 FMCS national office seminar committee report to the Director, mediators complained that they did not like chairing meetings only to obtain a case statistic. Moreover, 15 of the 19 mediators we talked to said that case statistics indicate little about the amount of work involved.

In addition to their primary activity--dispute mediation--mediators also spend time in technical assistance and public information activities. The primary objective of these

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1/A joint conference is where both parties to a dispute carry on active bargaining in the mediator's presence; a joint conference case is any dispute mediation assignment that has one or more joint conferences.

activities is generally to improve the labor-management relationship between employers and employees.

In its fiscal year 1979 appropriations submission to the Congress, FMCS budgeted 433 staff years 1/ for mediation services and 14 staff years 1/ for technical assistance and public information activities. Without a system to account for the amount of resources used on each activity, neither the Congress nor the Service knows how FMCS performed in comparison to its goals.

Technical assistance and public information activities are measured in a manner similar to that of dispute mediation activities--by counting the number of conferences and meetings held. Also, like dispute mediation activities, the amount of time and effort associated with individual technical assistance and public information cases can vary significantly. For example, a mediator could spend a great deal of time in preparing an intensive labor-management training seminar for a company, but this activity would be counted the same as showing an FMCS informational film. Accordingly, a simple counting of case activity tells nothing about the effort associated with individual cases, nor does it provide information to management to enable them to assess the progress in achieving objectives set out in FMCS' budget.

The following examples of technical assistance and public information cases conducted by FMCS mediators illustrate the differences not only in the amount of effort required to carry them out, but also in their potential for significantly furthering improvement in labor-management relations.

--In one public information assignment, a mediator gave a 15-minute talk to a college speech class. He explained to the class a mediator's role in bargaining sessions and emphasized the need for improved face-to-face communication. He also told the class how the mediator often serves as a communicator and aids the parties in defining the real problems involved in a dispute as compared with the symptoms.

1/Budgeted staff years include time for mediators and direct administrative support.

--In a technical assistance assignment, two mediators attended a company's employee awards presentation program where representatives from both labor and management were speakers.

--In another technical assistance assignment, a mediator identified a significant problem between a company and a union concerning the grievance handling mechanism. After discussions with FMCS regional management, the mediator held a joint conference in which two key obstacles to resolving the problem were identified. The mediator persuaded the parties to schedule a series of meetings, without the mediator's presence, concerning the grievance handling mechanism based on understandings reached at the joint conference. Subsequently, the company industrial relations manager told the mediator that many grievances had been resolved at the first meeting.

During fiscal year 1978, mediators closed 2,625 technical assistance and public information cases. FMCS has no way of determining the amount of resources used on these activities.

CONCLUSIONS

FMCS has little reliable information on the utilization of its staff resources. Available caseload data are not a good indicator of staff utilization because they do not show the total amount of time or level of effort associated with the cases. Accordingly, there is little assurance that the allocation of resources among field offices is appropriately matched to the workload or that there is an appropriate mix of technical assistance and public information case activity.

A system that would provide information on the time spent on individual cases and the total time spent on the various categories of cases would provide a more reliable basis for management to allocate resources and to assess the appropriateness of how mediators' time is allocated among dispute mediation, technical assistance, and public information cases.

Such a system also would enable FMCS to provide the Congress with information comparing staff year usage with goals set out in annual appropriation budget justifications.

AGENCY COMMENTS AND CUR EVALUATION

FMCS stated that it has a system and that past staffing level decisions and budget submissions have been made to and accepted by the Office of Management and Budget on the basis of its present procedures. FMCS acknowledged that improvements could be made to its present system and added that it is continuously looking to make refinements through its own efforts and at the request of the Office of Management and Budget. Further, these refinement efforts are continuing this year.

This chapter describes FMCS' procedures and identifies their limitations. FMCS' procedures did not require mediators to report the time spent on individual cases. We continue to believe that FMCS needs a system to provide information on the time spent on individual cases and the total time spent on various categories of cases. Such information would provide a more reliable basis for allocating resources, assessing the appropriateness of how mediators' time is allocated, and preparing budget submissions to the Congress.

RECOMMENDATIONS

We recommend that the Director, FMCS, establish a system to account for the resources used on individual and total dispute mediation, technical assistance, and public information activities. This information should be used in making future staffing level decisions and in preparing budget submissions to the Congress.

APPENDIX I

FMCS DISPUTE MEDIATION CASES CLOSED

FISCAL YEAR 1978

	Total cases closed (note a)
States having at least one full-time mediator:	
California	2,082
Pennsylvania	1,490
Illinois	1,468
New York	1,341
Michigan	1,025
New Jersey	910
Wisconsin	783
Missouri	667
Indiana	665
Massachusetts	646
Minnesota	633
Washington	493
Oregon	286
Connecticut	267
Maine	105
Rhode Island	98
New Hampshire	83
Nevada	73
South Carolina	63
	13,178
Other States:	
Ohio	1,367
Texas	599
Iowa	495
Florida	408
Tennessee	352
Georgia	302
Kentucky	277
Maryland	273
Alabama	260
Colorado	251
Kansas	233
Louisiana	210
	5,027

APPENDIX I

	Total cases closed (note a)
Other States:	
Virginia	195
Arkansas	166
North Carolina	135
West Virginia	126
Oklahoma	124
Arizona	118
Montana	108
Nebraska	105
Mississippi	104
New Mexico	103
Idaho	81
Utah	69
Vermont	68
Alaska	59
Delaware	53
Hawaii	52
North Dakota	41
South Dakota	36
Wyoming	28
	6,798

a/Does not include cases closed in the District of Columbia, Puerto Rico, or the Virgin Islands.

FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

July 9, 1980

OFFICE OF THE DIRECTOR

Mr. Gregory J. Ahart
Director, Human Resources Division
United States General Accounting Office
Washington, D C. 20548

Dear Mr. Ahart:

My staff and I have reviewed the most recent draft of the General Accounting Office report on the Service's jurisdiction and involvement in labor disputes.

I sincerely regret that we find ourselves, with one or two exceptions, in basic disagreement with the report. I am convinced that that basic disagreement stems from several understandable but largely incorrect assumptions made by GAO about the nature of collective bargaining in the United States, the intent of the Taft-Hartley Amendments that established this independent agency, the practical developments under the law that have taken place over the past thirty-three years and the changes that have taken place in our industrial system.

Since, in my opinion, it is unlikely that specific comments with respect to the report, with the exceptions I will note below, will change the thrust of your analysis and recommendations, I believe that the appropriate thing for us to do is to await your final report and comment at that time as required by law.

On two items, however, I would like to make the following comments:

The Federal Mediation and Conciliation Service (FMCS) welcomes the Congressional review of FMCS public sector mediation activity which GAO recommends. The Mediation Service plays a vital role in maintaining peaceful and effective public sector labor relations. We would be pleased to have Congress examine that role in light of the greatly expanding scope and impact of public sector bargaining.

Chapter 3 of the report recommends that the Director of FMCS establish a system to account for the resources used

GAO note: Page references have been changed to agree with the final report.

APPENDIX II

on individual and total dispute mediation, technical assistance and public information activities. The report further recommends that this information should be used in making full staffing level decisions, as well as in preparing budget submissions to the Congress.

On more than one occasion we have informed representatives of the General Accounting Office that we have a system in place, and that staffing level decisions and budget submissions have in fact been made to, and accepted by the Office of Management and Budget on the basis of our present procedures. It seems that the General Accounting Office is more in disagreement with the type of system we are utilizing. We do not represent that our present system could not be improved. In fact, we are continuously looking to make refinements through our own internal efforts, not only because we are desirous of improving our procedures, but also because we have been requested to do so by the Office of Management and Budget in preparing our annual budget submissions each fiscal year since I became Director in 1977. These efforts at further refinements are continuing this year as well. We are now working on this with OMB in preparing our requests for Fiscal Year 1982.

Although I do not believe that it will change our substantive disagreements in any way, I am attaching a short list of some specific factual inaccuracies which now appear in the draft report.

Sincerely,

Wayne L. Horvitz

Wayne L. Horvitz
Director

Attachment

APPENDIX II

I believe the following inaccuracies should be corrected in the final report. Page 2 of the draft report contains some inappropriate designations and figures as follow:

Activity	Number
Dispute notifications (Can't break out private sector notices)	a/94,966
Private dispute cases closed	b/19,020
Federal dispute cases closed	b/596
State and local dispute cases closed	b/641
Technical assistance cases closed	1,535
Public information and education cases closed	1,090
Requests for arbitrator panels	25,735

MAJOR FACTUAL INACCURACIES RELATING TO PUBLIC SECTOR, STATE AGENCIES, AND SUBSTANTIAL IMPACT

FMCS believes that 19 states have adequate mediation services (p. 8 middle and p. 13 middle). FMCS maintains no list of "adequate" state mediation agencies. The GAO statement to that effect is simply incorrect. The list of state agencies which GAO describes as "adequate" consists of states which had one (or more) persons employed full-time in a status which the state designated mediation or arbitration.c/Many of those states had only one or two such employees. FMCS has neither authority nor resources to determine the actual role of the employee, his or her acceptability to the parties, or the training, experience, support staff, physical location, budget or other factors which enable mediation to function.

GAO notes:

a/The corresponding figure on page 2 is the number of 30-day notifications received as required by the Taft-Hartley Act. FMCS' figure includes these 89,943 notices, requests from parties, and bargaining certifications from the National Labor Relations Board.

b/The corresponding figures on page 2 are the number of cases assigned. FMCS' figures are the number of cases closed.

c/The report has been revised to recognize FMCS' position that the list it provided to us does not describe "adequate" mediation services. (See pp. 8 and 9.)

APPENDIX II

FMCS mediates disputes having minor impact when state services are available if those services are inadequate. (p. 8). The Statute requires deferral to state agencies in minor impact disputes when mediation services are available to the parties to that dispute (§203(b)). Many states which have mediation services employ only one or two persons. A state service with one mediator stationed in the State Capitol is hardly "available to the parties to a dispute" hundreds of miles away. The GAO thesis that statewide automatic deferral to state agencies is warranted whenever such a service exists is totally unrealistic in the collective bargaining sense and is contrary to the requirements of the statute.

FMCS has not established any formal procedures for cooperation with state services (p. 12, first paragraph). FMCS has formal liaison committee with the association of labor relations agencies (the body to which all state agencies belong) to deal directly with issues of State-Federal cooperation and complaints concerning jurisdiction.

§§203 and 204 of Taft-Hartley describe FMCS duties in terms of "employers" and "employees," (thereby excluding public sector) (p. 14). Section 203 sets out FMCS mandate and jurisdiction. Nowhere in Section 203 does the word "employer" or "employee" appear. The section directs FMCS to assist "parties to labor disputes" which is broader than "employer" and "employee." Section 204 is not jurisdictional.

FMCS should encourage states without a mediation service to establish one (p. 25). d/ FMCS has and does offer training and assistance to states who desire to establish mediation agencies. But FMCS rejects the GAO thesis that FMCS should lobby state legislatures or governors regarding statutory change or state budget allocations to set up or fund such services. FMCS lacks authority to do so and does not believe it proper activity for a Federal agency.

d/This subject was discussed in the draft report. Based on FMCS' comments, this discussion has been revised. (See pp. 20 and 21.)

(205006)

END

DATE

FILMED

2-23-81

NTIS