

# THE CAUCUS

The F.M.C.S. Retiree Newsletter

By Friends of FMCS History Foundation      Volume 27, Issue 2 Spring 2016

## The National Office is Moving

The building at 21<sup>st</sup> and K St. N.W that the FMCS National Office has occupied since 1976 will be demolished in November 2016. The National Office will move to Independence Square 250 E St. SW. Washington D.C. 20002. The soon to be demolished building was the site of some memorable events. \*Press conferences on the side- walk in front of the building with the FMCS sign clearly on camera.

\*An open top semi trailer loaded with rotting tomatoes parked at the curb encouraging L-M being mediated in the Ching Room eight floors above.

\*Paintings of former Directors on the top floor. \*From my seventh floor corner office window watching President Carter's young daughter being dropped-off and picked-up by a White House car at the Stevenson public grade school a half block up 21<sup>st</sup> Street. Any reader with a recollection of the building, please share it! See page 7 for directions to 250 E SW.

## DC LERA Lunch Speaker

The December 2015 announcement of the LERA D.C. Chapter read as follows: "The pressures of the global economy and the changing nature of work are making labor-management relations more contentious. More states are passing right-to-work legislation. Fewer and fewer workers in private enterprises are represented by unions. And the growth of the "gig" economy is upsetting customary patterns of labor relations. Fortunately, the U.S. has a highly respected agency chartered to assist managers and workers with constructive responses to rapidly changing workplaces. It is the Federal Mediation and Conciliation Service, or FMCS, led by **Allison Beck**. One of her first actions after moving from Deputy Director to Director was to conduct an unprecedented, in-depth review of the Agency's structure and services. The result has been a more aggressive outreach to the labor-management community using 21st Century technology to provide a fresh, broad menu of services and training."

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200 N. Maple Ave. No. 212

Falls Church, VA. 22046

Email: [winjerwin@aol.com](mailto:winjerwin@aol.com)

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## **What's FMCS Doing Now?**

The following is for those readers who left FMCS twenty or more years ago, who may wonder what FMCS mediators are doing now given the decline in collective bargaining and the limited number of strikes. This list of agency's activities comes from the FMCS website:

- Resolving Labor-Management Disputes
  - Collective Bargaining Mediation
  - Alternative Bargaining Process
  - Grievance Mediation
  - Arbitration
- Building Labor-Management Relationships
  - Effective Contract Administration
  - Effective Contract Communications
  - Labor-Management Partnership Building
  - Organizational Development
  - Repairing Broken Relationships
- ADR for Government
  - Workplace Mediation
  - Administrative Program Dispute Facilitation
  - Dispute Resolution Systems Design
  - Regulatory Negotiations
  - Public Policy Dialogues
- Education and Outreach
  - Skill Development Training
  - FMCS Institute
  - International
  - Grants
  - Conference and Workshops

## **Have You Heard of Affinity Bargaining?**

The Affinity Approach to Bargaining is an innovative model of negotiation pioneered by FMCS Mediators! Join representatives from the South Bend Orchestra and the American Federation of Musicians as they share their story of how using the Affinity Model transformed their negotiations and their relationship. The Affinity Approach uses collaborative principles, "group-sourced" idea identification, and discussion based evaluation to reach tentative agreements on both non-economic AND economic issues in record time! – all while enhancing the labor-management relationship and allowing for meaningful input from the collective voices of all bargaining team members.

## **Good News for Labor Unions**

Last year, three unions filed a lawsuit shortly after Wisconsin Governor Walker signed the Right-to-work law prohibit businesses and unions from making agreements that require all workers, not just union members, to pay union dues. Twenty-five other states have such laws.

The unions argued that Wisconsin's law was an unconstitutional seizure of union property since unions now must extend benefits to workers who don't pay dues. Dane County Circuit Judge William Foust agreed. He wrote that the law amounts to the government taking union funds without compensation since under the law unions must represent people who don't pay dues. That presents an existential threat to unions. While those losses today could be characterized by some as minor, they are not isolated and the impact of (the law) over time is threatening to the unions' very economic viability.

## **Missing Retirees**

As a public service, readers are invited to use the Caucus to locate missing retirees. Send the name(s) of anyone you'd like contact information on, and if you have contact information on anyone listed here, let us know. Does anyone know the whereabouts of Hal Davis or Julia Greer? If you know of any retiree who has passed-on, please send that too.

## **Other Countries Have US Problem**

The U.S. isn't the only country where collective bargaining has come under extreme pressure. An ILO survey of 48 countries between 2008 and 2013 showed that collective bargaining coverage declined on average 4.6%, while union density declined an average of 2.3%. Some US data: public employees are 35.2% unionized, private sector employees are 6.7% unionized. The highest unionized state is New York at 24.7%, and lowest is South Carolina 2.1%. Union density rates differ across countries by wide margins. Unionization rates in Finland and Sweden are above 70 per cent, compared with figures below 20 per cent in France, Spain and the United States.

## **USCS and FMCS History Facts You may not have Heard**

1. USCS had staff mediators who conducted time and motion studies, as well as job evaluations. Former Regional Director Robert Donnahoo and Charlie Tilton did that work. You can listen to Donnahoo's interview at [mediationhistory.org](http://mediationhistory.org).

2. USCS also had some staff mediators who were allowed to arbitrate. The only restriction was they arbitrate only in areas where they don't mediate.
3. USCS had WAE arbitrators who the agency paid when they were assigned arbitration cases.
4. USCS mediators were called Commissioners of Conciliators.
5. Cyrus Ching, the first FMCS Director, considered dropping the Commissioner title because he believed it was too grand for someone trying to help labor and management. (Retiree Jim Elmore famously said that when he told his Irish Dad his new title, his Dad said: "that sounds like the water department boss.")
6. Cyrus Ching was 6 foot 7 inches tall. He occasionally referred to his height as being 5 foot 19 inches.
7. Ching referred to his pipe as a useful tool in mediation because it frequently needed attention, which provided pregnant moments of awkward silence. (When I was an intern in 1964, Larry Schultz arranged lunch with Ching for a group of new mediators. That's when I heard about his pipe. See Ching's "interview" at [mediationhistory.org](http://mediationhistory.org))
8. John Steelman's 1928 PhD dissertation title was: "A Study of Mob Action in the South." It involved the Ku Klux Klan.
9. After serving as USCS Director, John Steelman was the first person in history to hold the title of Assistant to the President. From that position, he mediated several major disputes.
10. When FMCS replaced USCS in 1947, all USCS staff was transferred to FMCS. That included the following job titles: 188 Commissioners of Conciliation, 27 Commissioners of Conciliation (Arbitration), and 19 Commissioners of Conciliation (Industrial Analysis).
11. Created in 1914, USCS hired its first women mediator in 1922. A second woman mediator was hired in 1941.
12. Created in 1947, FMCS hired its first women mediator in 1968. A second woman mediator was hired in 1970.

## **The Interest-Based Bargaining Story at the Federal Mediation and Conciliation Service \***

Jerome T. Barrett, EdD

In 1965, when Richard Walton and Robert McKersie's *A Behavioral Theory of Labor Negotiations* appeared, the practice of traditional, adversarial collective bargaining seemed to be functioning well and no one was seeking an alternative to it. Thus, when the Federal Mediation and Conciliation Service (FMCS) used the book to train new mediators in 1975, it was because of the many ways that it explained the adversarial dynamics of collective bargaining. Federal mediators were aware of the integrative aspects of negotiations and skilled mediators highlighted these to help bring about settlement, but this occurred in a context that was still primarily distributive.

Historically, the Federal Mediation and Conciliation Service (FMCS) has treated dispute mediation separately from what it has termed "preventive mediation." The former involves negotiations to

revise a collective bargaining agreement (CBA) or to create a new one. Preventive mediation (PM), on the other hand, involves mediator activities to improve relationships during the term of an agreement. The only other mediator activity during a CBA term is grievance mediation, which is typically similar to collective bargaining in its traditional adversarial character.

Traditional collective bargaining was the primary choice of labor and management until the late 1970s and early 1980s, when its effectiveness began to diminish. Prior instances of labor–management cooperation had been the exception rather than the norm. Preventive mediation initially took the form of training stewards and foremen how to better handle their grievance procedure and day-to-day relationship. Subsequently, programs such as the FMCS’s “Relationship by Objectives” (RBO) program, which focused directly on improving the relationship between labor and management leadership, emerged.

Mediators also helped the parties form labor–management committees, some of which were focused on specific issues such as safety or quality, and some of which were general forums for dialogue and problem solving. Most of the PM work has used integrative processes without ever identifying them as such or without making a connection to Walton and McKersie’s work.

The publication of *Getting to Yes* in 1981 (Fisher and Ury 1981) was greeted by many in labor and management with skepticism. It was seen as overly simplistic because it did not take into account the power dynamics present in the labor context. The arrival of the administration of President Ronald Reagan in that same year ultimately proved detrimental to unions and their traditional style of bargaining. The striking air traffic controllers were fired that year, which emboldened corporate management to take on the unions, move jobs and industries overseas, and demand reductions in wages and benefits. Management apologists explained that the new world economy offered extremely low labor costs overseas, which gave American employers no option but to shift work overseas while seeking cost reduction in U.S. labor markets. Faced by those threats, many unions gladly extended their CBAs rather than risk renegotiating in such a difficult environment, although there were some notable exceptions, such as the 1982 United Auto Workers-Ford Motor Company agreement and the Tennessee Valley labor–management partnership.

Adversarial bargaining was so prominent and resistance by management to unions so shockingly intense in the 1980s that some FMCS mediators took early retirement rather than mediate sessions of what they called “give-back bargaining.” They did not want to facilitate a process that involved no improvement for the union, but rather reductions in wages and benefits. In response to these developing conditions, the Department of Labor created the Bureau of Labor-Management Cooperation to encourage cooperation between management and labor unions during their CBA terms in the face of the rapidly changing economy.

Having read both the Walton and McKersie classic and Roger Fisher and William Ury’s *Getting to Yes*, I was intrigued with the idea that the bureau could promote non-adversarial bargaining. I received permission from John Stepp, the FMCS deputy director, to look into developing an approach to cooperative collective bargaining. I visited the Program on Negotiation at Harvard Law School several times for events and discussions, and spent a day with Bob McKersie. I read, researched, and talked to people involved in collective bargaining, including FMCS mediators and academics.

It became clear to me that any model or training would need to directly challenge the well-established adversarial model of collective bargaining. I began working on a cooperative model, which I called the PAST Model of Win-Win Bargaining, with PAST an acronym for principles, assumptions, steps, and techniques. Then I developed a two-day training program, wrote exercises, prepared an instructor guide, and tested the model and training with colleagues from

the Bureau of Labor-Management Cooperation (BLMC), which was led by Stepp.

After months of work, I thought it was ready to be tested with labor and management bargainers. I contacted Floyd Wood, the FMCS regional director in San Francisco. We discussed the model, the training, and the need for a new approach to collective bargaining, and launched our training program at two workplaces that were about to begin contract negotiations, a manufacturing plant in California and a large school system in New Mexico. Federal mediators observed the training and the facilitation that followed it. Facilitating these negotiations gave us the opportunity to critique and improve the training and the model, and also succeeded in helping the parties avoid reverting back into their traditional bargaining habits.

Between the first training in January 1989 and the last in April 1990, when I retired, I conducted twelve training programs, with at least one FMCS mediator observing each one. In all but two cases, the parties successfully reached agreement, in most cases with the mediator facilitating. During that same period, I presented to formal and informal gatherings of mediators, explaining and demonstrating the model and training, and making the case that introducing these ideas to labor and management bargainers made sense at this time in history. Many mediators responded less than enthusiastically because many of them were wed to traditional bargaining — it was all they knew and they were comfortable with it. A 2002 article on new approaches to collective bargaining at the FMCS concluded, “Though the PAST model of interest-based negotiation had some problems, the benefits far outweighed the drawbacks” (Brommer, Buckingham, and Loeffler 2002).

It took several years, but a number of additional models eventually emerged at FMCS. An FMCS mediator in central Michigan, Donald Power, developed a model that emphasized mutually agreed-upon targets to guide a more integrative approach. Another, Joel Schaffer, a West Coast mediator, developed an approach connected to the concept of appreciative inquiry. In 1996, Bob McKersie and Joel Cutcher-Gershenfeld developed a seminar for the Program on Negotiation on “Negotiating Labor Agreements” that operationalized principles from the book *Strategic Negotiations* that they co-authored with Dick Walton (Walton, Cutcher-Gershenfeld, and McKersie 1994). They offered this seminar four times a year and always reserved free seats for FMCS mediators, who participated frequently over the fourteen years that the seminar was offered.

These models conclusively demonstrated that parties could bargain labor contracts cooperatively using carefully structured processes. The authors of the 2002 article on new approaches to collective bargaining were struck by how seldom Walton and McKersie offered examples of successful interest-based labor negotiations (Brommer, Buckingham, and Loeffler 2002). Was it because they felt that the design of a truly integrated bargaining process remained elusive? The authors observed, “Other important contributors, such as Fisher and Ury, offered a powerful vision of integrative bargaining that seemed difficult to apply to the hard realities of labor-management collective bargaining. As far as FMCS was concerned, the PAST model of cooperative negotiation was an integrative process that essentially worked — not once but time and again” (Brommer, Buckingham, and Loeffler 2002: 469).

By the time that article was written, “interest-based bargaining” (IBB) had become the dominant term in labor-management bargaining. The authors reported that the “FMCS has been actively involved in slightly over 1500 IBB negotiations in the last five years (1996 to 2001). This represents an average of 5.44 percent of total contract negotiations involving an FMCS mediator” (Brommer, Buckingham, and Loeffler 2002: 479). The report also quoted findings from a National Performance Review study conducted by Thomas Kochan and Joel Cutcher-Gershenfeld: “Data from a 1999 survey report that ‘over 80 percent of union negotiators and 67 percent of management negotiators were familiar with IBB and a majority of both sides had used these techniques.’” The authors of the 2002 article did note, however, that parties frequently reverted

back to traditional forms of bargaining on economic issues.

After years of working with IBB, FMCS concluded that some labor– management pairs with an interest in a more cooperative bargaining style were unable to engage in IBB because many union members were convinced that traditional bargaining was the only way to achieve the union’s goals and/or because many management representatives believed that IBB only worked for negotiating non-financial issues. A mediator confronting either of these attitudes would typically learn that previous bargaining had undermined trust. In response, FMCS developed two other approaches that the service described as going beyond IBB. They are modified traditional bargaining (MTB) and enhanced cooperative negotiation (ECN). Hybrid approaches such as these have become the norm for collective bargaining today.

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## Direction to the National Office

To get to the new FMCS National Office: From Independence Ave. turn away from the Mall on 4<sup>th</sup> street. (The Native American Museum is at that intersection.) Proceed to E. St. SW, then turn left. Approximately, a half block down on the right is the Independence Square building at 250.

## Fund Raising Effort

I wrote a brief issue of the Caucus on April 1<sup>st</sup> seeking funds to add a significant amount of materials to the Friends website ([mediationhistory.org](http://mediationhistory.org)), and to make the site more user friendly. The response to my appeal has not been overwhelming, but I have heard from ten individuals who wrote generous checks. I hope other readers will respond to my appeal. I need at least 40 more donations.

I am continuing to record oral history interviews. For the first time, I’ve recorded

several interviews via phone. I was reluctant to give up interviewing face to face with the interviewee. However, the phone is much less expensive. A typical interview takes an hour or two. If you read this and think you might be interested in being interviewed, email me and we can discuss. ([winjerwin@aol.com](mailto:winjerwin@aol.com))

**The Caucus 200 N. Maple Ave. #212**

**Falls Church, VA. 22046**

FIRST CLASS MAIL



