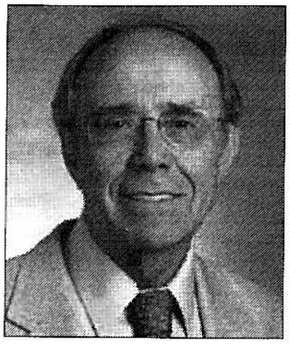

Jerome T. Barrett

FMCS at 60 Years

—Jerome T. Barrett, Founder, Friends of FMCS History Foundation

Sixty years ago, in the immediate post war period, several important industrial relations organizations were born. The year 1947 witnessed the creation of the Industrial Relations Research Association (now LERA), the Industrial and Labor Relations School at Cornell University and University of California at Berkley, the National Academy of Arbitrators, and the Federal Mediation and Conciliation Service, to replace its predecessor, the United States Conciliation Service.

This paper describes the FMCS history based on an archive containing papers, memorabilia, records, books, reports, photos, equipment, film and tape recordings, and over 175 taped interviews of mediators from both FMCS and USCS.

60 Years Ago

The historic context offered perfect timing for reforming labor law at the time FMCS was created. The extensive wartime controls on collective bargaining had just ended. Practitioners who had begun bargaining during the late 1930s had forgotten how to bargain during the environment created by wartime controls, no-strike pledges by unions and the extensive use of arbitration for grievances.

The largest number of strikes in U.S. history occurred during Winter and Spring of 1946. There were industry-wide strikes in coal, steel, auto, meatpacking, and electrical manufacturing during that period as wage and price controls ended. No substitute suppliers were available, since no other country had the industrial capacity to replace those five major industries.

Giants like John L. Lewis cast their shadow across the labor scene, engendering both admiration and fear. Editorial writers and cartoonist had a field day taking shots at labor bosses and foreign ideologies. No labor leader today can match the attention John L. could command.

In anticipation of the pent-up demands as the economy shifted from war to peace, President Truman appointed at National Labor-Management Conference, a tripartite commission composed of major labor, management and government players. Following lengthy meetings, the Commission's 1945 report showed no agreement on what to do about labor and management problems. The only exception was that both labor and management wanted the government's mediation function strengthened.

In January 1947, a newly elected Republican Congress came to town with labor reform in mind. Two new congressmen, a Democrat and a Republican (both veterans of the recently ended WWII), were assigned seats on the committee that considered the legislation that became Taft-Hartley. Like other members, these two congressmen debated on opposite sides of Taft-Hartley, before moving on to larger issues. They were John Kennedy and Richard Nixon.

In June, Congress passed the *Taft-Hartley Act* creating FMCS, among a number of other things. The chief features of Taft-Hartley impacting mediation and the new FMCS were: a) 30-day notice to FMCS before termination of an existing collective agreement; b) voluntary mediation; and, c) good faith bargaining required of both labor and management.

President Truman vetoed Taft-Hartley. Congress easily over-rode his veto and, on Friday, August 22, 1947, FMCS was born. The staff, records, equipment and office space of USCS shifted to FMCS control. It is interesting to note that the mediation function remained headquartered in the Department of Labor building, with the FMCS director's office next to the Labor Secretary, until the 1970s.

Cyrus Ching, the first Director of FMCS, in recalling the shift from USCS to FMCS, said: "We just changed the name on the door and the stationery." Later, he made more substantive changes.

United States Conciliation Service (USCS)

To understand FMCS, it is important to have a sense of USCS in the Department of Labor and the evolution of the federal government's mediation function. The mediation function started shortly after the Department's creation in 1913. The Act creating the Department authorized the Secretary to mediate disputes and to appoint commissioners of conciliation. The word 'Commissioners' in the Act is the reason FMCS mediators even today are called Commissioners.

Initially, the Secretary assigned staff from other functions within the Department as ad hoc conciliators to handle specific disputes. As more disputes occurred during WWI, the USCS was created as a Division within the Department. In 1917, Congress approved a budget for the USCS.

From a modest beginning in 1913-14, with only 33 cases conciliated, the number increased to 1,217 by 1918 and to 1,789 by 1919. Following the War, during the 1920s, conciliated cases decreased, never exceeding 560 per year during that decade. The volume of cases increased in the '30s with the passage of legislation encouraging collective bargaining. All bargaining had previously been completely voluntary, except for parties covered by the *Rail Road Labor Act* (RRLA). In 1939, conciliators handled 3,541cases, about 3,000 per year more than during the 1920s.

John Steelman, who became Director in 1937, said the primary job of his mediators in the 1930s was teaching negotiators how to negotiate, coaching them on how the process worked, assisting with proposal drafting,

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discussing strategies, and writing contract language.

While most of the staff mediated, some USCS staff worked as grievance arbitrators. Many grievances were also mediated by USCS, since the USCS considered both contract negotiations and grievances as labor disputes. A few USCS staff worked as technical experts providing the parties with objective time and motion studies, as well as job evaluation studies.

During WWII, conciliation cases increased tremendously: 6,500 in 1942, 14,000 in 1943, over 20,000 in both 1944 and 1945. The USCS can be viewed as the grandparent of mediation, since it institutionalized mediation in this country with a permanent staff functioning under policies and developing and maintaining a body of practice. FMCS has continued this institutional history. In the practice of labor-management arbitration, USCS/FMCS share credit for institution building with the American Arbitration Association, the National War Labor Board, the National Academy of Arbitrators and the U.S. Supreme Court.

Federal Mediation and Conciliation Service

During Congressional debate in Spring 1947, the Senate and the House disagreed on what to call the new agency. The Senate favored mediation, while the House favored conciliation. Since neither chamber was willing to defer to the other, FMCS was given both names.

Director Ching made several early changes from the USCS practice that amounted to privatization. He replaced staff arbitration with a panel of qualified private arbitrators from which the parties could choose. He also abandoned the practice of allowing mediators to provide time and motion studies, and job evaluations. Ching believed that such work was more appropriate for private sector consultants.

It is important to understand that mediation is a companion to collective bargaining. Without labor-management negotiations (collective bargaining) there would be nothing to mediate. The volume of collective bargaining determines the volume of mediation. The history and fortunes of FMCS are tied to the extent and robustness of collective bargaining. During its 60-year history, trade union membership, collective bargaining and FMCS grew and declined together.

The '50s through the '70s

In contrast with today, the '50s through the '70s were the hey-day of collective bargaining and, thus, the hey-day for mediation. The economy was expanding, wages, benefits and working conditions were all being improved during each negotiation. Here are some features of that robust era for collective bargaining and mediation:

All large newspapers had a labor reporter who knew that subject, wrote about current negotiations, and called the mediators to find out what was happening. FMCS field offices heard from local reporters regularly. The *New York Times*, the *LA Times* and the *Wall Street Journal* each had nationally-known labor reporters. In that era, any newspaper article that included the word 'mediation' would be a story about labor-management mediation, since this was long before today's other conflicts using mediators.

Taft-Hartley National Emergency Boards were used on major disputes with nationally-known third parties and major news coverage—29 times in the first 20 years of Taft-Hartley. Some major disputes received Presidential or at least White House attention. Both President Johnson and President Nixon were reported to have been involved personally in major disputes.

Photo—Truman Library

***John R. Steelman** was appointed USCS Director in 1937 by Labor Secretary Perkins after serving as a mediator for one year, and as the Secretary's special assistant for a year. Prior to his government service, he had been a college professor in Alabama. After leaving USCS in 1944, Steelman was a special assistant to President Truman where he continued mediating major disputes.*

The '50s through the '70s was an era of coordinated and corporate-wide bargaining in industries such as oil, steel, aluminum, meat packing, coal, copper, auto, aerospace, electrical manufacturing and telephone. Such negotiations commanded news coverage featuring intriguing strategies and other complexities. For FMCS, co-ordination among the mediators assigned to these industries or corporations was demanding. An example of that co-ordination would be a mediator in Houston calling a mediator in Washington D.C. to report that Shell Oil was about to put a 'final' wage offer on the table. The mediator would ask what was happening at the other oil negotiations, since the union would refuse to meet until they knew what was happening elsewhere.

During this era, the FMCS National Office created the office of mediation and the practice of intervening in disputes being handled by a local FMCS mediator. This was not popular with local mediators, who preferred to handle their cases alone. The national office mediators, jokingly referred to as paratroopers, were accused of using tactics which placed a premium on settlement over relationships—leaving the local mediator to fix the relationship after the paratrooper moved on. During the '60s, there were six to eight mediators assigned to the national office to act as paratroopers.

This era presented new issues to collective bargaining and mediation: new fringe benefits, new pay schemes, new forms of union security, and strange new issues like juniority (the opposite of seniority).

Beyond the challenge of new issues for the mediators, there was a vexing, new problem with mediated agreements being rejected by a membership vote.

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These contract rejections, which previously had been very rare, occurred increasingly during that period. FMCS responded by establishing a policy covering the circumstances under which a mediator could attend a union membership meeting when a new contract was being voted. It also provided guidance on what the mediator might do or say at such a meeting.

FMCS responded to evolving new circumstance during this era on a number of different fronts with new programs and practices. By the mid 1970s, the mediation staff had expanded to its largest level, and included more women and minorities. Greater emphasis was placed on training new mediators and updating senior mediators on emerging issues and new sectors, such as public employee collective bargaining. The preventive mediation program, in which mediators assist labor and management in improving their working relationship, was promoted and expanded with new audio visual aids and new processes including Relationship by Objectives. More collective bargaining background information was provided to staff for their mediation work. A 1974 amendment to the *Taft-Hartley Act* expanded coverage to non-profit hospitals and health-care facilities, increasing mediation work and adding a new board of inquiry procedure for that industry.

Throughout its history, FMCS has had to deal with statutes and other forms of regulation that impacted collective bargaining and mediation. During the 1950s through the 1970s, FMCS accommodated the following statutes and regulations: National Emergency Boards under Taft-Hartley; Atomic Energy Labor-Management Panel; Missile Site Labor Commission; Energy Crisis Czar; Economic Controls on wages and benefit costs (guidelines); *Post Office Reorganization Act* of 1970; Health Care Amendment to Taft-Hartley in 1974; *Labor Management Cooperation Act* of 1978; Federal sector employees collective bargaining under Kennedy and Nixon Executive Orders and Civil Service Reform Act of 1978, and various state laws allowing collective bargaining for state and local public employees.

With each of these developments, FMCS worked to support free collective bargaining, assure non-compulsory mediation, and safeguard the independence and neutrality of their mediator. In all of this, FMCS sought to work in the public interest while providing competent mediation services.

The success of collective bargaining and mediation during the 1950s through the 1970s cannot be seen as an effortless time for mediators. Most mediators would characterize their work as challenging and satisfying. Reaching an agreement between a powerful and well represented union and a worthy management often was just that—challenging and satisfying. In addition, the period confronted mediators with the impact of regulations and statutes referred to above, as well as both good economic times and economic slow-downs.

The '80s and '90s

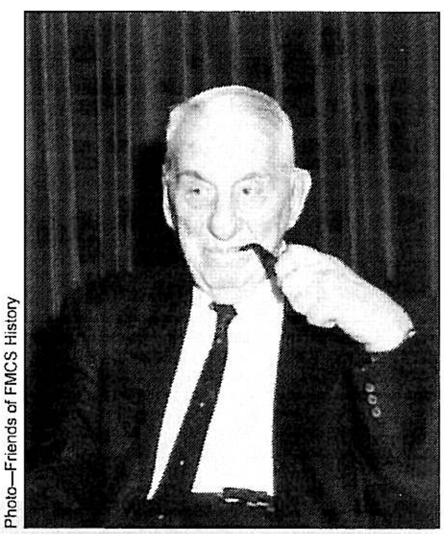
In contrast with the '60s and '70s, the '80s and '90s were not kind to collective bargaining or FMCS. It is difficult to imagine how collective bargaining could prosper when one of President Reagan's early actions was the highly public firing of thousands of striking Air Traffic Controllers. This presidential action emboldened employers to take-on the unions, to depict them as the problem and not part of the solution in dealing with competition and the global economy. Thus began a series of management and governmental initiatives to diminish collective bargaining and union influence. The result was a major paradigm shift in employment relations in which management gained the dominant position.

Those initiatives included: two-tier wage settlements and give-back bargaining; double-breasted building contractors; more part-timers and contract workers; growth and success of union-free consultants, and union decertification; down-sizing and reinventing; foreign competition and off-shore operations; a decidedly pro-employer National Labor Relations Board; tight government budgets and efforts to privatize; and the shift in public opinion against unions.

It is not an exaggeration to say that during the '80s many union negotiators would have gladly extended their labor agreement without reopening it just to maintain what they previously had in their labor agreement. Not a happy time for collective bargaining.

During the 1980s, union membership declined from 20.1 million (23% of the workforce) to 16.7 million (16% of the workforce). To deal with the accompanying decline in income, 42 national union mergers occurred, along with significant staff reductions and member services curtailment.

With the decline in collective bargaining, FMCS mediation cases declined as well. That resulted in major cuts in FMCS budget and staffing during the 1980s. During an 18-month period, the budget was cut from $26.7 million to $22 million eliminating 75 employees from a staff of less than 500. Mediators who had never mediated reductions in pay, benefits or working conditions



Photo—Friends of FMCS History

Cyrus Ching, FMCS Director 1947-1952

Appointed by President Truman, Cy Ching was sworn in as the first FMCS Director on September 5, 1947, just two weeks after FMCS's official birthday. John Steelman persuaded him to take the job based on Ching's work with the War Labor Board the as Head of Labor Relations for U.S. Rubber. Born in Canada, Ching came to the U.S. and worked for the Boston Transit while earning a degree in a night law school. He wrote: Review and Reflections: A Half Century of Labor Relations, *after five years as director. He died at the age of 90.*

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FMCS at 60 Years

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struggled to deal with this new collective bargaining reality.

The budget and staff cuts forced FMCS to identify new ways of fulfilling its mission. The assignment of cases to mediators was moved from regional offices to the national office. With the firing of all field clerical staff, primitive recording machines were provided to handle mediator phone calls from labor and management. Travel, training and office expenses were significantly reduced. Offices were closed or merged and conference room spaces were given-up. Hiring and promotions were frozen. Preventive mediation and other non-dispute mediation activities were curtailed.

As union membership continued to decline in the 1990s, FMCS continued to struggle to find its role. Two new federal statutes offered an opening for FMCS in Alternative Dispute Resolution (ADR). While FMCS had done some work beyond labor management relations, its specific statutory role was limited. In the 1970s, FMCS had been directed by statute to assist in a hundred-year-old land dispute between the Hopi and Navaho Nations in Arizona. On occasion, federal agencies had asked for FMCS help beyond its legislative mandate. For the Department of Interior, FMCS conducted elections for the Sioux Nation in South Dakota, and the Health and Human Services Department arranged for FMCS to mediate their discrimination cases arising under grant programs.

One new statute in the 1990s urged Federal Agencies to use ADR in administrative matters, and another statute required regulatory agencies to use ADR in their rule making processes. Given this new ADR work via statute, FMCS was encouraged to seek other opportunities for its mediators in the expanding ADR field.

Also in the 1990s, an Executive Order by President Clinton opened another opportunity for new work by directing federal agencies to use partnership arrangements and interest-based negotiation (IBN) in dealing with their employee unions. While FMCS had only begun to use and promote IBN, the Clinton Order served as a significant milestone in the FMCS adoption of IBN, which has now become a major program in FMCS. IBN has offered FMCS a more enlightened negotiating and problem solving process that filled a need in post-1980 labor-management relations.

FMCS began to charge for services previously provided free: overseas training and consulting, preventive mediation to Federal agencies and their unions, fees charged to parties seeking arbitrators from the FMCS roster, and fees from arbitrators listed on the FMCS roster. FMCS created an institute through which it offers multiple-day courses on mediation, negotiation, and problem-solving. Unlike previous training offered to labor and management without cost, Institute courses are open to the public at market rate tuition fees.

Recent Years

FMCS has taken full advantage of the Information Technology (IT) age. Every mediator has a laptop and cell phone as a constant companion, to keep in continuous touch while traveling and at home. This has made office space much less important. Their Blackberry-equipped boss, the National Office, and what they now call their 'customers' are just a text message, voice message, e-mail or a live voice away. Technology has transformed FMCS as it has workplaces everywhere. From home or hotel room, the mediator can, electronically, check voice, text and e-mail messages; modify their agenda; file a travel reimbursement claim or case report; receive new case assignments and close old assignments; schedule or cancel a meeting; check a data base on industry trends for tomorrow's mediation session; download a power point file for a luncheon presentation; read FMCS news releases, policies, and ethical guidance; draft a new power point or training lesson plan; and check the FMCS website or Wikipedia.

IT has allowed FMCS to move some national office functions to field locations where rent is lower. The FMCS Institute for Conflict Management is now headquartered in Seattle and the Labor-Management Grant program is located in New Jersey. Also, cost savings were realized by eliminating small field offices and allowing mediators to work from home.

It has also allowed FMCS to institute a program called Technology Assisted Group Solutions (TAGS), which utilizes computers to help parties reach consensus either on the internet or in face-to-face meetings. This process has even been used to conduct a long standing program called Relationship by Objectives.

When Congress urged FMCS to share its conflict resolution expertise to help reduce youth violence, another innovative program resulted. FMCS has partnered with communities and other organizations nationwide to teach children and young adults the skills needed to manage conflicts in their lives. In support of this effort, FMCS produced a publication called: "*Creating Harmony in the Classroom*."

To help focus its role in the post-Reagan era, FMCS has engaged professional help to survey its customer-base and gain data on how well FMCS is performing and what other assistance is needed. FMCS contracted with the Employment Policy Foundation to develop a model to determine the cost of work stoppages. By using that model on strikes during the past two years, FMCS learned how significant strikes impact the economy: $950 million in lost wages, $263 million in company lost profits, and $1.7 billion impact on ancillary business. Using the model, FMCS demonstrated to Congress that a savings of $1.7 billion in lost wages and company profits was achieved when FMCS mediators reduced strike duration in 196 cases and prevented 251 strikes.

Much has changed over the 60 years since the creation of FMCS as the successor to USCS in 1947. The most dramatic is the decline of the labor movement and collective bargaining since the 1980s. The response by FMCS to its new environment is remarkable, given FMCS's initial mandate. The large increase in grievance mediation stands in stark contrast with strict restrictions FMCS formerly placed on using resources on grievances. Only a strike threat would have allowed grievance mediation in the early days. The amount of overseas work was very limited before

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Appointments...

New Executive Director at the Washington State PERC

Cathy Callahan has been named as the new Executive Director of the Washington State Public Employment Relations Commission. She came to PERC on November 1, 2006, after 24 years with the National Labor Relations Board. While with the NLRB, Cathy worked in the agency's Seattle office where she earned a well deserved reputation as a skilled field examiner and, in 1998, was promoted to Officer in Charge of the agency's Portland office. She is well-respected in the labor and management community, and has great ideas for PERC's future. On a personal note, taking the job at PERC actually was a homecoming for Cathy—she grew up in the Olympia, Washington area.

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1980, and none of it was as comprehensive as recent work. But the most surprising development is the mediation of employment cases in organizations without union representation.

The technology advancement is also remarkable. The number of communication routes available for today's mediator is in sharp contrast with a 1960s mediator, who had to reach a federal phone operator to place a call, and then often wait five minutes to be connected. A more dramatic example is the vision of 1970s mediator struggling from the parking lot carrying a 75-pound, 16mm film projector with a pick-up reel and film container, then climbing two flights of stairs to a union office to conduct a steward-training program. Today's mediator simply carries a lightweight laptop containing power point presentations and several training CDs.

Happily, some things remain the same. There has been no change in the commitment to helping, to working things out peacefully, to maintaining neutrality and confidentiality, to struggling for another idea or process suggestion, to feeling the work is a calling.

This paper is dedicated to all the mediators who have responded to that calling.

Link: Friends of FMCS History: www.mediationhistory.org
Comments or suggestions? Contact: Jerome T. Barrett, winjerwin@aol.com , (703) 241-3854. ⌘

Awards...

FMCS Mediator Receives Gold Award

Commissioner Ditillo (left) displays his "Gold Award" with FMCS Director of Mediation Services, **John Pinto**.

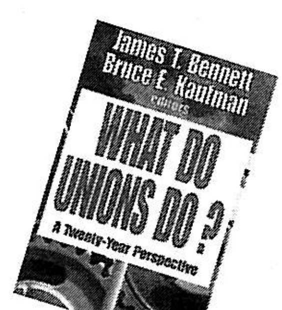
As a result of his demonstrated commitment over numerous years, FMCS Commissioner **Robert (Bob) Ditillo** received the Gold Award in the category of "Outstanding Service to the Public" from the Pittsburgh Federal Executive Board in May 2007.

The Gold Award is the highest level of recognition given by the Pittsburgh Federal Executive Board. Commissioner Ditillo was recognized for his accomplishments as a mediator and for his successful work in the labor-management community. Each year, the Office of Personnel Management sponsors a program, through local Federal Executive Boards, titled Excellence in Government Awards.

The program is designed to recognize and honor federal employees who best represent their agency's mission and goals. The program encourages innovation and excellence in government, reinforces pride in federal service, and it helps call public attention to the broad range of services provided by federal employees.

From the bookshelf...

What Do Unions Do? A Twenty-Year Perspective



This edited volume provides a twentieth-anniversary retrospective and evaluation of the book *What Do Unions Do?* by Richard Freeman and James Medoff. It has three objectives: to evaluate and critique the theory, evidence, and conclusions of Freeman and Medoff's book; to provide a comprehensive update of the theoretical and empirical literature on unions since the publication of their book; and to offer an assessment and critique of the effects of unions on the economy and society. Articles discuss such topics as the effect of unions on wages and benefits, productivity, income inequality, dispute resolution, and job satisfaction.

—Edited by James T. Bennett and Bruce E. Kaufman, New Bruswick, N.J.: Transaction Publishers, 2007. 660 p. ISBN:978-1-4128-0594-0