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The FMCS Role In Age Discrimination Complaints: New Uses of Mediation

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THIRD-PARTY MEDIATION, the most utilized dispute settlement technique in labor-management relations, is virtually an extension of the collective bargaining process. Mediation, simply stated, is a process in which disputing parties are aided in resolving their disagreement by an impartial, neutral, third party. Even when other forms of dispute resolution are used—factfinding, board hearings, arbitration, and court proceedings—they often function in parallel with mediation rather than as a substitute for it.

While labor and management have recognized mediation as an effective method for resolving labor disputes during the past ten years, disputants in controversies involving other social, economic, and legal settings have also turned to mediation in the United States. Today, it is not uncommon to find mediators resolving disputes in the formerly litigated areas of divorce, family, neighborhood, consumer, housing, environment, civil rights, prison, and civil complaints.

The Federal Mediation and Conciliation Service, the major provider of mediation services in labor-management disputes since 1947,¹ has extended its expertise to these new users of mediation by training staff members of a number of federal and state agencies on the use of mediation (i.e., Community Relations Services and the former

*The authors wish to thank Eileen Hoffman, Mediation Information Specialist, and Nancy Fibish, Health Care Disputes Coordinator, both mediators who have served as Age Discrimination Act Coordinators. The authors also wish to acknowledge the contributions of Harold Davis, Mediation Coordinator of New Area Dispute, and James Power, Office of Mediation Services. The views expressed in this paper are not necessarily those of FMCS and may be attributed to the authors only.

¹The Federal Mediation and Conciliation Service is an independent agency created in 1947 with the enactment of the Labor Management Relations Act, 1947, Title II. FMCS is charged with preventing or minimizing interruptions in the free flow of commerce growing out of labor disputes.

Law Enforcement Assistance Administration of the U. S. Department of Justice; the U. S. Department of Transportation; Civil Rights Division, U. S. Department of Health and Human Services; and the U. S. Department of Labor). FMCS also has advised agencies and private groups planning to establish a mediation function (i.e., District of Columbia government and Equal Employment Opportunity Commission) and actively mediated in a limited number of ad hoc nonlabor disputes (the most widely publicized involved the Hopi-Navajo land dispute in Arizona.²)

In 1979, for the first time, FMCS formally became involved in routinely mediating non-labor-management disputes.³ At that time, Secretary Joseph Califano, of the U. S. Department of Health, Education, and Welfare, designated FMCS to mediate age discrimination complaints under the Age Discrimination Act. The HEW Secretary was authorized by Congress to publish the general implementing regulations and to coordinate similar regulations issued by the other federal funding agencies. The uniqueness of this arrangement for FMCS, HEW, and civil

rights enforcement was expressed in the Secretary's statement.

"We propose, for the first time in the history of Civil Rights enforcement, to enlist the Federal Mediation and Conciliation Service to review claims of discrimination and resolve them promptly, within no more than 60 to 90 days. No other civil rights program in our government employs such a process of third party mediation. But perhaps, in time, every one of our civil rights programs should feature such a mediation process."⁴

This paper discusses the FMCS experience with this experimental program.

Provisions

The Age Discrimination Act was enacted by Congress in November 1975 with the express purpose of prohibiting unreasonable discrimination based on age in programs and activities receiving federal financial assistance, including governmental units under the State and Local Fiscal Assistance Act of 1972. The Act did, however, permit federally assisted programs, activities, and recipients of federal funds to continue using some age distinctions and reasonable factors other than age.

that purpose gave FMCS the authority to appoint a mediator. In January 1975, former FMCS National Director William E. Simkin was appointed. After nine months of negotiations, the mediator submitted his report and recommendations to the District Court for the District of Arizona.

² Assistance provided by FMCS has resulted in attempts to designate FMCS as the provider of mediation services to Alaska in certain environmental disputes, and the U. S. Department of Commerce in industry standards disputes. However, prior to 1979, FMCS had avoided any permanent obligation in non-labor-management disputes.

³ Taken from remarks of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, to the National Journal Conference on the Economics of Aging, November 30, 1978, Washington, D. C.

² The FMCS involvement in attempting to settle the Navajo-Hopi dispute originated with the passage in December 1974 of Public Law 93-531. The bill did several things in seeking a solution to the dispute, including authorizing the FMCS to appoint a mediator to work with both tribes to try to reach a peaceful solution to the problem. Basically, the dispute involved claims by both tribes to a large portion of land in northeast Arizona. The land was set aside by the federal government in 1882 for the "Hopi's and other Indians." In 1962, an Arizona District Court ruled that the 2.5 million acre reservation was joint property of the two tribes but held that it lacked the authority to make a division of the property. P. L. 93-531 confers that authority to the court but provides first that the tribes try to settle their differences by themselves and for

Unlike the Discrimination Act of 1967, which prohibited age discrimination against persons 40 and 70, the ADA covers age discrimination in all practices except for public employment. Comprehensive Act.

Prior to the implementation of the Act, it was required that the employer conduct a hearing before being charged with the violation. The Act changed this to a requirement of written notice based on age discrimination in programs and activities. Any federal activity showing otherwise of participation in or subjected to on the basis of age.

The Commission to the President in January 1979. After the second part of 1979. After the initial report of the Act, striking from the Act a clause so as to prohibit age in prohibiting federal age discrimination, however, distinctions than age.

⁴ The Age Discrimination Act, 1975, 29 U.S.C. § 621.

³ The EEOC has been criticized by some for its slow pace of action, though it has been successful in many cases.

Unlike the EEOC-administered Age Discrimination in Employment Act of 1967, which prohibits discrimination against persons between the ages of 40 and 70, the ADA applies to all, young and old alike. Excluded from ADA coverage are most employment practices administered by EEOC, except for programs funded under the public employment titles of the Comprehensive Employment and Training Act.

Prior to the issuance of regulations implementing the Act, the statute required the Commission on Civil Rights to conduct a study of age discrimination. The Commission was specifically charged with documenting the extent of unreasonable discrimination based on age in federally funded programs and activities and identifying any federally financed program or activity showing evidence of persons, otherwise qualified, excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of age.

The Commission transmitted its study to the President and Congress on January 10, 1978,⁵ and published the second part of its report in January 1979. After receiving the Commission's initial report, Congress amended the Act, striking the word "unreasonable" from the Act's statement of purpose clause so that the intent of the Act is to prohibit discrimination based on age in programs and activities receiving federal financial assistance. It did, however, retain the use of some age distinctions and reasonable factors other than age.

⁵ *The Age Discrimination Study* (Washington, D. C., U. S. Commission on Civil Rights, January 10, 1978).

⁶ The EEOC has been the prime target of critics pointing to backlogged cases, although former Chair Eleanor Holmes Norton had indicated a drop in the number of pending cases and faster turnaround

FMCS Role and Internal Procedures

Implementation of the Act became official with the publication of proposed regulations by the U. S. Department of Health, Education, and Welfare on June 12, 1979, although the formal announcement was not published in the *Federal Register* until October 29, 1979. Prior to their publication, a series of meetings were held between the staffs of FMCS and HEW to develop an innovative approach to administer this newest civil rights legislation. The approach sought by the two agencies would avoid the criticism frequently directed at other civil rights enforcement. These criticisms ordinarily involve slow, protracted investigations and large backlogs of cases.⁶ Under the traditional civil rights enforcement procedures, a full field investigation is conducted including interviewing witnesses, taking sworn statements, and examining relevant documents. If discrimination is found, the parties are offered an opportunity to informally settle before the enforcement agency imposes any sanction or initiates litigation. The Equal Employment Opportunity Commission, for example, has introduced a mediation or conciliation component, called early complaint resolution, into its traditional process. However, the neutral third party feature was absent, since mediation is carried on by the EEOC staff which in some instances performs other roles on the same case during the enforcement proceedings.

time. According to Chair Norton, "85 percent of all individual complaints are resolved within 115 days and the remaining 15 percent are resolved in an average of 133 days." Remarks before the 1980 Working Women's Conference sponsored by the Women Employed Institute, October 11, 1980. BNA *Daily Labor Report*, 201: A 10-11.

Discussions held between FMCS and HEW very quickly concluded that third-party mediation would provide a more acceptable method for handling age discrimination cases. The use of a third-party neutral would remove the funding agencies from the dual role of mediator and adjudicator and, at the same time, would provide the complainant with a disinterested and professional neutral trained in dispute resolution.

When the question of who would actually mediate the cases arose, two options were advanced. One option would exclusively use the FMCS staff of labor-management dispute mediators, while the second plan called for the hiring of persons specifically assigned to age discrimination mediation. From the two options offered, a third evolved combining elements of the first two. This alternative was finally selected. This option, known as the "4 + 4" plan, divided the eight FMCS regions into two groups. In four of the regions, complaints were handled by the FMCS mediators. In the other four, FMCS recruited special community conciliators to process only age cases.⁷ This plan permitted FMCS to determine if ADA cases could be efficiently managed during its peak labor-management caseload periods and to test whether community conciliators could be a consistently dependable source of mediators.

Under the rules issued by HEW, the mediation process can last no longer than 60 days from the date the funding agency first receives the complaint. If the funding agency is slow in forwarding the complaint to FMCS, less time is available for mediation. When the FMCS National Office re-

ceives the complaint, the 60-day due date is noted and the case is forwarded either to a regional office for assignment to an FMCS mediator or assigned directly to a community conciliator depending on the location of the complainant. An FMCS national ADA coordinator was appointed to assist in solving administrative problems as they occur, monitor deadlines, and assign cases directly to the community conciliators.

Although FMCS did not issue formal regulations concerning its role, it developed a flowchart showing the ideal sequence of events and maximum time for each step. For example, the time a complaint is first filed with the funding agency and screened for sufficient information should take the first ten days. During the next two days, the funding agency should forward the complaint to the FMCS. Another three days is spent forwarding the complaint to the FMCS regional office or sending it to the conciliator, depending on the place the complaint originates. During the next forty days, the mediator contacts and meets with the parties to determine whether mediation will be productive. In the final five days of the 60-day period, the mediator/conciliator sends a report to the National Office from which a report is sent to the funding agency.

Typically, the FMCS mediator or community conciliator contacts the complainant and the recipient agency at which the complaint is directed. The neutral informs the parties of their rights and describes the mediation process. In followup joint meetings and/or separate sessions with the parties, the mediator identifies the issues in-

South). The four regions in which conciliators are employed are Regions 2 (Mid-Atlantic); 3 (Southeast); 6 (Midwest-Texas); and 8 (West-North).

⁷The four regions in which FMCS mediators are assigned age discrimination complaints are Regions 1 (New York and New England); 4 (Michigan and Ohio); 5 (Upper Midwest); and 7 (West and

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involved and attempts to get the parties to reach a voluntary settlement of the dispute. If an agreement mutually satisfactory to both sides is concluded, the mediator or conciliator sends a report and a written copy of the understanding reached to the FMCS National Office. The coordinator then forwards a final report to the funding agency while retaining the written agreement and the case is closed.

If no settlement is reached within the 60 days, or if the mediator determines that mediation is unproductive and terminates the effort, then a final report with that information included is sent to the funding agency by the coordinator. If mediation is not successful or if a mediated settlement is violated, the funding agency will engage in informal factfinding and then, if necessary, proceed to a formal investigation. Violations of the Act can ultimately lead to terminating a recipient agency's funds.

As in labor relations disputes, mediators and conciliators are prohibited from disclosing any information obtained in the course of their duties. This confidentiality restricts mediators and conciliators from testifying in any legal or administrative proceeding or from producing any documents.⁸ In introducing themselves to the parties, FMCS representatives dis-

cuss this policy which assists in gaining the acceptability and trust of both sides. Mediators or conciliators also indicate that they will make no contact with the funding agency. Rather, all questions and information are transmitted through the FMCS Age Discrimination Act Coordinator.

Selection of Conciliators

The selection of community conciliators was one of the most crucial factors in achieving the goals of the age discrimination program and represented a unique approach for FMCS. Recruitment began by identifying those agencies throughout the United States which currently perform some mediation function in the nonlabor area. These nongovernment and nonprofit agencies were asked to help identify qualified individuals who would apply for the position of community conciliator. Since the community conciliator would be on the FMCS payroll only when actually assigned age discrimination cases, it was possible for staffs of these various agencies to remain employed by them and serve as ad hoc age dispute resolvers for FMCS. Particular emphasis was placed on agencies within the four regions where FMCS would be using community conciliators.

The selection system was based on a modified assessment center concept⁹

⁸ "The Mediator Confidentiality Policy Preventing Mediators from Testifying or Otherwise Providing Information Gained in Mediating a Dispute," was the subject of a special bulletin issued to all FMCS Professional Staff on July 13, 1978 (78-BUL-107). This bulletin addressed the legal status of the relationship of the mediator with the parties. "The mediator confidentiality policy has been supported by the National Labor Relations Board, the courts, and the Congress. For example, in providing an exemption to the disclosure requirements of the Freedom of Information Act (5 U.S.C. 522, as amended 88 Stat. 1561) for confidential commercial or finan-

cial information, the Congress explicitly included within that exemption information and materials acquired by the government in the course of mediating labor-management disputes. See H. R. Regs. No. 1497, 89th Congress, 2nd Session, p. 10 (1966). ... The Board has ruled that the public interest in maintaining the neutrality and effectiveness of the mediator outweighs the parties' interest in obtaining his or her testimony."

⁹ Assessment centers are used by hundreds of employers in selection, promotion, and training of employees. For more on this concept, see Dodd, W. E., A. I.

(Continued on the following page.)

using four basic components. These were: a supplemental application form which attempted to elicit information about past behaviors that indicated an ability to perform the community conciliator function; specific selection criteria with an emphasis on behaviors; a structured and focused interview also emphasizing behaviors; and an assessment exercise in which behavior could be systematically observed. This system was developed with the help of a consultant who also provided training to a small group of FMCS staffers who conducted the actual selection process. The selection was conducted in compliance with all relevant laws and the agency's employment practices.

Individuals who achieved sufficient points on their supplemental application forms were invited to FMCS headquarters in Washington for the structured interview and the assessment exercises. These were accomplished in a single day with expenses paid by the Service. A review and assessment of the selection process by the FMCS staffers who had participated in it indicated a high degree of satisfaction with the procedures.

After a review of the applicants, nine persons were selected. All chosen had some experience with mediating community and interpersonal disputes and ranged in age from 33 to 72, three of whom were over 65. Aside from the common element that they had served in some capacity as mediators, their individual backgrounds varied. Two were attorneys, one was a dentist, another had nursing experience, two were officers of a large city's community conciliation service and the others had social and volun-

teer work as part of their backgrounds. Two were men, seven women, and two were minorities.

FMCS mediators were chosen based on their interest and the recommendation of their regional directors. All twenty FMCS mediators selected had extensive labor-management experience when initially hired and have acquired many years of resolving collective bargaining disputes through mediation. Included in the group are three women, five minorities, and the youngest FMCS mediator. Turnover has dropped the number of participating FMCS mediators to eighteen.

The training of community conciliators was conducted in Washington by FMCS during a five-day workshop which included orientation to FMCS and the administrative requirements of the program, as well as sessions on age discrimination and dispute settlement. On age discrimination, instruction emphasized provisions of the statute and criteria identifying age discrimination. Additionally, the course attempted to increase the conciliators' sensitivity to the existence of age discrimination. The dispute resolution program emphasized the use of mediation techniques to resolve disputes. It included several simulations in which each of the community conciliators was given an opportunity to act as the mediator in a simulated age discrimination case.

Before being assigned age complaints, FMCS mediators were trained for two and one-half days. The training covered much of the same subject matter contained in the community conciliator's workshop except dispute resolution.

(Footnote 9 continued.)

Kraut, S. H. Simonetti, "Selected Annotated Bibliography on Identification and Assessment of Management Talent," *Professional Psychology* (1972), 3 (2), 193-199;

and Cohen, B. M., J. L. Moses, and W. C. Byham, "The Validity of Assessment Centers," *Journal of Industrial and Organizational Psychology* (Fall 1973).

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Types of Complaints

In order to determine how effective the program has been and to review characteristics of the complainants, FMCS conducted an informal analysis of the ADA cases during the first year and a half of its administration. From the time FMCS began its ADA involvement, late in November 1979, until June 20, 1981, the Service participated in 94 complaints (an additional four cases were sent back to the funding agencies for lack of jurisdiction, i.e., the complaints involved employment concerns). A total of 57 complaints were closed during 1980 and another 37 by June 1981. An interesting note is that conciliators have actually handled more cases than their mediator counterparts, because there are fewer conciliators and the incidence of complaints originating in their regions have been higher.

While the Act of 1975 was specifically designed to deal with age discrimination problems, age was the only factor listed in less than one-half of the total complaints, 42 of the 94. Complainants in the other 52 cases also cited sex, race, and/or handicaps as well as age. FMCS anticipated multiple-based complaints and decided that it would attempt to resolve the age question first, which might, in turn, make the others moot. If these other bases for the complaint were not moot, the complaint could be processed further by the funding agency, once FMCS returned the closed cases.

In 13 instances, the complainant was "too young." For example, a nursing facility refused to admit patients who were not at least 60 years old and the complainant was 59. Another case involved a 17-year old and her child who were denied welfare because eligibility for benefits began at age 18.

While some 30 separate agencies are impacted by the ADA provisions, FMCS receives all its cases from only five agencies. The largest number of complaints centers on education issues and involves the U. S. Department of Education; 59 complaints of the total 94, or three out of every five cases, concerned admission to college, graduate, medical, law, vocational, or special schools. This total includes complaints received while the Department of Education was still part of the Department of Health, Education, and Welfare (although HEW claims all education-related cases originated before the separation of the agency into HHS and DE in May 1980).

The second largest group of complaints, 19, originated from the U. S. Department of Health and Human Services, while housing complaints from the U. S. Department of Housing and Urban Development totaled 11. Four complaints involving food stamps were received from the U. S. Department of Agriculture and a National Guard complaint came from the U. S. Department of Defense.

Although FMCS formally handled 94 cases from start to termination, within that number are 11 related or duplicate cases. For example, one person filed five separate complaints against five institutions for admission to the Ph.D. program and each was counted as a separate case; another person filed complaints against three colleges.

Mediation Results

A key question is "has mediation worked?" When closing cases, mediators or conciliators are asked to assess the disposition of the complaint using one of four options: agreement reached; no agreement; mediation terminated; and other. One measure of how effective mediation

has been is to simply divide all cases into those settled during the 60 days and those requiring further formal processing by the funding agencies. When the 94 cases are divided into those two categories, the evidence clearly shows that mediation does work. Of the 94, 52 cases or 55 percent were terminated at this initial step. Not all of these complaints included a formal agreement, however, and may have been dropped because the complainant withdrew the case or for other reasons. Nonetheless, a step beyond mediation was unnecessary.

"Is this success rate comparable to other nonlabor dispute resolution results?"¹⁰ One source of comparison is found with the Home Owners Warranty Corporation dispute mechanism using mediation to resolve differences between builders and owners. This program is administered by the National Academy of Conciliators and was originally formulated with assistance from FMCS. In preliminary statistics developed over a 12-month period, HOW handled 1700 disputes, of which approximately 50 percent were resolved by mediation, 30 percent went to arbitration, and the remaining 20 percent were settled by some combination of mediation and arbitration.¹¹ Since mediation is the terminal step before the formal procedure begins in ADA complaints, the rate of settlement at this step approximates the HOW mediation results.

A review of the ADA cases shows that disputes involving educational institutions are the most difficult to

resolve through the mediation process. Of the 59 complaints received from the U.S. Department of Education, including those from the predecessor agency, HEW, resolution occurred in about 40 percent of them. Complaints filed as a result of denial of admission to law or medical schools and Ph.D. programs appear to be the most difficult to solve. In 19 complaints centering on these issues, agreement could be reached in only two situations involving admission or readmission and in another which was withdrawn after the applicant was accepted elsewhere. With issues concerning tuition, vocational education, training or counselling, college courses, or admission or continuing as an undergraduate, disputes are more likely to be settled by mediation. This was not unforeseen given the high degree of competition for the few slots at these schools and the more subjective nature of the selection process at the graduate level.

The complaints involving age plus another factor such as handicap, sex, or race are successfully resolved at about the same rate as those in which the individual claims age discrimination alone.

Both mediators and conciliators find that reaching the parties and arranging for a meeting, although it is an apparent mechanical step, is frequently most difficult. In a few instances, not being able to reach the complainant becomes the basis for closing the case. Generally, noncooperation by the recipient agency or the complainant has not impeded mediation, nor has the need to explain the function of the mediator.

as tending to reduce the likelihood of settlement at the mediation step. In undertaking the ADA mediation program, no ideal or target success rate was suggested.

¹¹ Unpublished data from Home Owners' Warranty Corporation.

In age discrimination techniques, separate caucus and suggested mediation to achieve a settlement, though only a 60 percent success rate for mediation, conciliators feel since the time place pressure on the parties. In those few situations where additional time for mediation have been requested, the funding agency mediator in action.

Frequently, mediators are concerned about the right to representation phase. Attorneys are generally not present when they are at the agency who is legally representing the employee, whether legal or not, or hinders settlement by FMCS.

From its experience, FMCS identified a number of distinguishing features for effective mediation: For effective mediation, collective bargaining, highly trained mediators, years of negotiation experience, awareness of the needs of the parties, and necessary to achieve a acceptable settlement.

¹⁰ One of the sources, Peter H. 1979, "The mediator, however, may be diverting a large portion of the cost." "The Graying Age Discrimination Journal" (1979). A shorter version was contained in Peter of Civil Rights (Summer 1980).

FMCS Role

¹⁰ A comparison of the success rate in age discrimination mediation with other FMCS cases is inappropriate, because in labor-management disputes mediation is the terminal step except in some public employee disputes. The existence of steps beyond mediation is generally recognized

In age discrimination cases, the dispute resolvers use the same mediation techniques, formal joint meetings, separate caucuses, probing questions, and suggested solutions in attempting to achieve a settlement. And, although only a 60-day period is allotted for mediation, most mediators and conciliators feel that is sufficient time since the time constraints tend to place pressure on both sides to settle.¹² In those few situations requiring additional time for mediation, extensions have been requested and granted by the funding agency, thus aiding the mediator in achieving the settlement.

Frequently, civil rights advocates are concerned about the individual's right to representation. In the mediation phase of the ADA cases, attorneys are generally not present but, when they are, it is the recipient agency who feels it necessary to be legally represented. The question of whether legal representation assists or hinders settlement was not pursued by FMCS.¹³

From its experiences, FMCS has identified a number of elements distinguishing labor from nonlabor disputes. For example, practitioners of collective bargaining are frequently highly trained professionals with many years of negotiating experience, fully aware of the give-and-take process necessary to arrive at mutually acceptable settlements. By contrast, in

an age discrimination dispute, the complainant and the recipient agency frequently are unaware of the principles of bargaining, are personally involved, and are not detached professionals schooled in the art of negotiations. The multiple issues in labor-management disputes facilitate the give-and-take process in contrast with the single issue typical of age discrimination cases. In an ideal labor-management situation, two groups of nearly equal power meet and reach a settlement or, if one is not reached, the threat of a strike by the union or a lockout by the employer presents the forces necessary to conclude negotiations. In age discrimination disputes, it is typically a lone individual confronting an agency, although the threat of a suit or the cutting off of funds tends to balance the power.

Normally, in labor-management situations, a bargaining relationship exists that has been institutionalized or occurs on a regular basis whereas, in an ADA dispute, the complaint is an ad hoc one-time relationship. Both the mediator and the parties in a non-labor case, therefore, must be more sensitive and creative in attempting to establish a relationship which already exists in ongoing collective bargaining. By understanding these differences and others, mediators and conciliators are better able to produce conditions necessary to achieve a settlement.

¹² One of the early observers of the process, Peter H. Schuck, commented in early 1979, "The brief time periods provided, however, may prevent mediation from diverting a large number of complaints away from the courts." See Peter H. Schuck, "The Graying of Civil Rights Laws: The Age Discrimination Act of 1975," *Yale Law Journal* (1979), Vol. 89: 27, source note 164. A shorter version of his paper is contained in Peter H. Schuck, "The Graying of Civil Rights Law," *The Public Interest* (Summer 1980), No. 60, pp. 69-98.

¹³ The National Conference on "Constitutional and Legal Issues Relating to Age Discrimination Act," was held May 7-9, 1981, in Chicago, Illinois. Papers presented during the Conference cover a wide range of issues about the ADA, including the rights of complainants, and are expected to be published during the 1981-82 school year in a special issue of the *Kent College of Law Review*.

Conclusion

FMCS's involvement in the resolution of age discrimination disputes marks a significant departure from its traditional role in labor-management disputes and creates a new model of third-party involvement in civil rights disputes. Based on experience to date, it appears that the experiment has proven successful. About one-half of all complaints are resolved within the 60-day period allocated for mediation. While not all complaints are resolved with a formal written agreement between the complainant and the recipient agency, they have been withdrawn or terminated without proceeding to a formal investigation or litigation.

The mediation process has been found useful in bringing together two

sides who have differences, may not be communicating, and, in fact, may have a great deal of hostility toward each other. Both mediators and conciliators have been very creative in assisting the parties to reach a settlement. Their roles have ranged from educating the parties to the ADA program and the mediation process and then to securing reasonable solutions in disputes involving rights to housing, training grants, stipends, treatment of the elderly patient, and school admissions. While the ADA program is still in a very early stage, its success during the first year and one-half suggests a model for other forms of conflict normally involving lengthy and costly proceedings. [The End]

REQUIRING STRIKERS TO MAKE UP TIME IS LAWFUL

An employer did not unlawfully discriminate against two strikers by withholding vacation benefits from them, the NLRB decided (*Lincoln Hills Nursing Home*, 1981-82 CCH NLRB ¶ 18,353). The strikers were told that they had to make up for time off on strike before they could receive vacation or sick leave benefits. The majority of the Board panel found that the action by the employer was not discriminatorily motivated but rather was part of an overall policy on time spent away from work adopted before the strike.

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