

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 22-08

April 27, 2022

To: All Regional Directors, Officers-in-Charge,
and Resident Officers

From: Joan A. Sullivan, Associate General Counsel

Subject: Promoting Productive Collective Bargaining Through NLRB-FMCS Collaboration

Section 1 of the National Labor Relations Act provides that it is the policy of the United States to encourage the practice and procedure of collective bargaining. This policy is advanced when we coordinate with other agencies to have a whole-of-government approach, which builds on the strengths, expertise, and resources of each Agency to advance national policy. This whole of government approach is reflected in the recent [White House Task Force on Worker Organizing and Empowerment Report](#), which notes the ways that the NLRB and the Federal Mediation and Conciliation Service (FMCS) can work together to support collective bargaining.

FMCS is an independent agency whose mission is to preserve and promote labor-management peace and cooperation. FMCS provides a range of services that can be helpful through many different phases of a collective bargaining relationship, all of which are provided free of charge. Many are aware of FMCS' mediation services, which can assist parties during initial contract bargaining or for successor contracts. But FMCS also provides extensive training on how to engage in productive collective bargaining and contract administration, including on collaborative contract negotiation, conflict resolution, labor-management partnership building, and other important skills. FMCS is now also offering to assist parties in conducting card counts where an employer has entered into a verbal or written agreement with a union to voluntarily recognize the union upon a showing of majority support in an agreed upon bargaining unit. More information about the FMCS card count services is available here: <https://www.fmcs.gov/services/building-labor-management-relationships/card-check-services/> The other services can be accessed directly through contacting an FMCS mediator, which parties can do on FMCS' website here: <https://www.fmcs.gov/aboutus/locations/find-a-mediator/> or by calling 202-606-8100.

Regional offices should integrate the services of the FMCS more directly into our processes in the following ways:

- (1) By including the attached insert **NOTICE OF FEDERAL MEDIATION AND CONCILIATION SERVICES FOR INITIAL CONTRACT BARGAINING** when sending Certification of Representative to unions and employers and copying the FMCS at initialcontract@fmcs.gov;
- (2) By including the attached insert **NOTICE OF FEDERAL MEDIATION AND CONCILIATION SERVICES FOR BAD FAITH BARGAINING ALLEGATIONS** in letters docketing unfair labor practices alleging violations of bad faith bargaining under 8(a)(5) or 8(b)(3) and copying the FMCS at info@fmcs.gov;

- (3) By seeking remedies in appropriate 8(a)(5) and 8(b)(3) bad faith bargaining cases of the engagement of a mediator from the FMCS to help facilitate good-faith bargaining between parties (as stated in GC 21-06) or FMCS training on collaborative bargaining. If there is an order or settlement that includes an FMCS related remedy, please send a copy of it to info@fmcs.gov.

The Division of Operations-Management will also continue its practice of regularly notifying FMCS when new bargaining units are certified and will be working with FMCS to provide training on the Act to FMCS mediators.

If you have questions about this memorandum, please contact your Deputy or AGC or DAGC Dolores Boda.

/s/
J.A.S.

cc: NLRBU

Release to the Public

Memorandum OM 22-08

NOTICE OF FEDERAL MEDIATION AND CONCILIATION SERVICES FOR INITIAL CONTRACT BARGAINING

As a workplace where employees are now represented by a union, both the employer and union have a number of obligations under the law, including the duty to bargain in good faith. These duties can have a practical impact on the bargaining process, as well as the ongoing labor-management relationship at a worksite.

As you navigate this set of obligations and their resulting impacts, we encourage you to take advantage of the following resources from the Federal Mediation and Conciliation Service (FMCS) (<https://www.fmcs.gov/>). FMCS is a non-regulatory, independent federal agency, separate from the National Labor Relations Board (NLRB), whose mission is to preserve and promote labor-management peace and cooperation. FMCS services include:

- Skills development training for collective-bargaining negotiation, committee effectiveness, and conflict resolution (available at <https://www.fmcs.gov/services/education-and-outreach/skills-development-training/>);
- Education on contract administration (available at <https://www.fmcs.gov/services/building-labor-management-relationships/>); and
- Mediation, if you need additional assistance and support with your initial contract negotiations (available at <https://www.fmcs.gov/services/resolving-labor-management-disputes/collective-bargaining-mediation/>).

FMCS is a Congressionally funded agency offering support to both unions and employers at workplaces and these FMCS services and resources are provided **at no cost**. FMCS services are customized to the specific needs of employer and union leadership groups and FMCS is available to assist with next steps and/or answer questions that come up throughout an initial collective-bargaining agreement negotiation process, as well as for future stages of a labor-management relationship.

For more information on the full range of FMCS services and how these services can be helpful throughout various stages of the collective bargaining process, see OM 22-08. To discuss the specific needs of your group, please reach out to FMCS via email at initialcontract@fmcs.gov or by phone at (202) 606-8100.

NOTICE OF FEDERAL MEDIATION AND CONCILIATION SERVICES FOR BAD FAITH BARGAINING ALLEGATIONS

Under the National Labor Relations Act, both the employer and union have a number of obligations under the law, including the duty to bargain in good faith.

We encourage you to take advantage of the following resources from the Federal Mediation and Conciliation Service (FMCS) (<https://www.fmcs.gov/>). FMCS is a non-regulatory, independent federal agency, separate from the National Labor Relations Board (NLRB), whose mission is to preserve and promote labor-management peace and cooperation. FMCS services include:

- Mediation, if you need assistance and support with your contract negotiations (available at <https://www.fmcs.gov/services/resolving-labor-management-disputes/collective-bargaining-mediation/>);
- Skills development training for collective-bargaining negotiation, committee effectiveness, and conflict resolution (available at <https://www.fmcs.gov/services/education-and-outreach/skills-development-training/>);
- Education on contract administration (available at <https://www.fmcs.gov/services/building-labor-management-relationships/>).

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