

## § 1420.9

### § 1420.9 FMCS deferral to parties' own private interest arbitration procedures.

(a) The Service will defer to the parties' own privately agreed to interest arbitration procedure and decline to appoint a Board of Inquiry (BoI) as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsibilities under the Act. The Service will decline to appoint BoI if the parties to a dispute have agreed in writing to their own interest arbitration procedure which meets the following conditions:

(1) The interest arbitration procedure must provide that there can be no strike or lockout and no changes in conditions of employment (except by mutual agreement) during the contract negotiation covered by the interest arbitration procedure and the period of any subsequent interest arbitration proceedings.

(2) It must provide that the award of the arbitrator(s) under the interest arbitration procedure is final and binding on both parties.

(3) It must provide a fixed and determinate method for selecting the impartial interest arbitrator(s).

(4) The interest arbitration procedure must provide for a written award by the interest arbitrator(s).

(b) The parties to a dispute who have agreed to such an interest arbitration procedure should jointly submit a copy of their agreed upon procedure to the appropriate regional office of the Service at as early a date as possible, but in any event prior to the appointment of BoI by the Service. See §1420.5(f) for the addresses of regional offices.

These new regulations are a part of the Service's overall approach to implementing the health care amendments of 1974 in a manner consistent with the Congressional intent of promoting peaceful settlements of labor disputes at our vital health care facilities. The Service will work with the parties in every way possible to be flexible and to tailor its approach so as to accommodate the needs of the parties in the interest of settling the dispute. This was the motivating principle behind these new regulations which permit input by the parties to the Board of Inquiry selection and allow the parties to set up

## 29 CFR Ch. XII (7-1-20 Edition)

their own factfinding or arbitration procedures in lieu of the Board of Inquiry procedure. We encourage the parties, both unions and management, to take advantage of these and other options and to work with the Service to tailor their approach and procedures to fit the needs of their bargaining situations.

### PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

Sec.

1425.1 Definitions.

1425.2 Notice to the Service of agreement negotiations.

1425.3 Functions of the Service under title VII of the Civil Service Reform Act.

1425.4 Duty of parties.

1425.5 Referral to FSIP.

1425.6 Use of third-party mediation assistance.

AUTHORITY: 5 U.S.C. 581(8), 7119, 7134.

SOURCE: 45 FR 62798, Sept. 22, 1980, unless otherwise noted.

#### § 1425.1 Definitions.

As used in this part:

(a) *The Service* means Federal Mediation and Conciliation Service.

(b) *Party* or *Parties* means (1) any appropriate activity, facility, geographical subdivision, or combination thereof, of an agency as that term is defined in 5 U.S.C. 7103(3), or (2) a labor organization as that term is defined in 5 U.S.C. 7103(4).

(c) *Third-party mediation assistance* means mediation by persons other than FMCS commissioners.

(d) *Provide its services* means to make the services and facilities of the Service available either on its own motion or upon the special request of one or both of the parties.

#### § 1425.2 Notice to the Service of agreement negotiations.

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with the FMCS Notice Processing Unit, 2100 K Street, N.W., Washington, D.C. 20427, at least 30 days prior to the expiration or modification date of an existing agreement, or 30 days prior to the reopener date of an existing agreement. In the case of an initial

## Federal Mediation and Conciliation Service

## § 1425.2

agreement the notice shall be filed within 30 days after commencing negotiations.

(b) Parties engaging in mid-term or impact and/or implementation bargaining are encouraged to send a notice to FMCS if assistance is desired. Such notice may be sent by either party or may be submitted jointly. In regard to such notices a brief listing should be general in nature e.g., smoking policies, or Alternative Work Schedules (AWS).

(c) Parties requesting grievance mediation must send a request signed by both the union and the agency involved. Receipt of such request does not commit FMCS to provide its services. FMCS has the discretion to determine whether or not to perform grievance mediation, as such service may not be appropriate in all cases.

(d) The guidelines for FMCS grievance mediation are:

(1) The parties shall submit a joint request, signed by both parties requesting FMCS assistance. The parties agree that grievance mediation is a supplement to, and not a substitute for, the steps of the contractual grievance procedure.

(2) The grievant is entitled to be present at the grievance mediation conference.

(3) Any time limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

(4) Proceedings before the mediator will be informal and rules of evidence do not apply. No record, stenographic or tape recordings of the meetings will be made. The mediator's notes are confidential and content shall not be revealed.

(5) The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

(6) The mediator has no authority to compel resolution of the grievance.

(7) In the event that no settlement is reached during the mediation conference, the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

(8) If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties or the mediator during the grievance mediation session can be used during arbitration proceedings.

(9) When the parties choose the FMCS grievance mediation procedure, they have agreed to abide by these guidelines established by FMCS, and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service to conduct the mediation conference harmless of any claim of damages arising from the mediation process.

FMCS FORM F-53  
REVISED 5-92

Form Approved  
OMB No. 3076-0005  
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FEDERAL SECTOR LABOR RELATIONS  
NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE

MAIL TO: NOTICE PROCESSING UNIT  
FEDERAL MEDIATION AND CONCILIATION SERVICE  
2100 K STREET N.W.  
WASHINGTON D.C. 20427

THIS NOTICE IS IN REGARD TO: (MARK "X")

- AN INITIAL CONTRACT (INCLUDE FLRA CERTIFICATION NUMBER) # \_\_\_\_\_
- A CONTRACT REOPENER REOPENER DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_
- THE EXPIRATION OF AN EXISTING AGREEMENT EXPIRATION DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

OTHER REQUESTS FOR THE ASSISTANCE OF FMCS IN BARGAINING (MARK "X")

2 SPECIFY TYPE OF ISSUE(S):

3 ISSUE(S):  REQUEST FOR GRIEVANCE MEDIATION (SEE ITEM # 10) (MARK "X")

4 NAME OF FEDERAL AGENCY NAME OF SUBDIVISION OR COMPONENT, IF ANY

STREET ADDRESS OF AGENCY CITY STATE ZIP

AGENCY OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

5 NAME OF NATIONAL UNION OR PARENT BODY NAME AND / OR LOCAL NUMBER

STREET ADDRESS CITY STATE ZIP

UNION OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

6 LOCATION OF NEGOTIATIONS OR WHERE MEDIATION WILL BE HELD

STREET ADDRESS CITY STATE ZIP

7 APPROX. # OF EMPLOYEES IN BARGAINING UNIT(S) >> IN ESTABLISHMENT >>

8 THIS NOTICE OR REQUEST IS FILED ON BEHALF OF (MARK "X")  UNION  AGENCY

9 NAME AND TITLE OF OFFICIAL(S) SUBMITTING THIS NOTICE OR REQUEST AREA CODE & PHONE NUMBER

STREET ADDRESS CITY STATE ZIP

FOR GRIEVANCE MEDIATION, THE SIGNATURES OF BOTH PARTIES ARE REQUIRED:

10 SIGNATURE (AGENCY) DATE SIGNATURE (UNION) DATE

\*Receipt of this form does not commit FMCS to offer its services. Receipt of this form will not be acknowledged in writing by FMCS. While use of this form is voluntary, its use will facilitate FMCS service to respondents. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FMCS Division of Administrative Services, Washington, D.C. 20427, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20603

For Instructions, see back.

INSTRUCTIONS

Complete this form, please follow these instructions.

In item #1. Check the block and give the date if this is for an existing agreement or reopener. The FLRA Certification number

should be provided if available. If not known, please leave this item blank. Absence of this number will not impede processing of the Form.

In item #2. If other assistance in bargaining is requested please specify: e.g.; impact and

implementation bargaining (I&I) and/or mid-term bargaining and provide a brief listing of issues, e.g. Smoking, Alternative Work Schedules (AWS), ground rules, office moves, or if desired, add attached list. This is only if such issues are known at time of filing.

In *item #3*. Please specify the issues to be considered for grievance mediation. Please refer to FMCS guidelines for processing these requests. Please make certain that both parties sign this request!

In *item #4*. List the name of the agency, as follows: The Department, and the subdivision or component. For example: U.S. Dept. of Labor, BLS, or U.S. Dept. of Army, Aberdeen Proving Ground, or Illinois National Guard, Springfield Chapter. If an independent agency is involved, list the agency, e.g. Federal Deposit Insurance Corp. (FDIC) and any subdivision or component, if appropriate.

In *item #5*. List the name of the union and its subdivision or component as follows: e.g. Federal Employees Union, Local 23 or Government Workers Union, Western Joint Council.

In *item #6*. Provide the area where the negotiation or mediation will most likely take place, with zip code, e.g., Washington, D.C. 20427. The zip code is important because our cases are routed by computer through zip code, and mediators are assigned on that basis.

In *item #7*. Only the *approximate* number of employees in the bargaining unit and establishment are requested. The establishment is the entity referred to in item 4 as name of subdivision or component, if any.

In *item #8*. The filing need only be sent by one party unless it is a request for grievance mediation. (See item 9.)

In *item #9*. Please give the title of the official, phone number, address, and zip code.

In *item #10*. Both labor and management signatures are required for grievance mediation requests.

#### NOTICE

- Send original to F.M.C.S.
- Send one copy to opposite party.
- Retain one copy for party filing notice.

[60 FR 2509, Jan. 10, 1995]

#### **§ 1425.3 Functions of the Service under title VII of the Civil Service Reform Act.**

(a) The service may provide its assistance in any negotiation dispute when earnest efforts by the parties to reach agreement through direct negotiation have failed to resolve the dispute. When the existence of a negotiation dispute comes to the attention of the Service through a specific request for mediation from one or both of the

parties, through notification under the provisions of §1425.2, or otherwise, the Service will examine the information concerning the dispute and if, in its opinion, the need for mediation exists, the Service will use its best efforts to assist the parties to reach agreement.

(b) The Service may, at the outset of negotiations or at any time in the dispute, set time limits on its participation. If no settlement of the dispute is reached by the expiration of the time limits, the Service may make suggestions for settlement to the parties. If suggestions for settlement made by the Service are not accepted by the parties within time limits set by the Service, the matter may be referred to the Federal Services Impasses Panel (FSIP).

#### **§ 1425.4 Duty of parties.**

It shall be the duty of the parties to participate fully and promptly in any meetings arranged by the Service for the purpose of assisting in the settlement of a negotiation dispute.

#### **§ 1425.5 Referral to FSIP.**

If the mediation process has been completed and the parties are at a negotiation impasse, the Service or the parties may request consideration of the matter by the Federal Services Impasses Panel. The Service shall not refer a case to FSIP until the mediation process has been exhausted and the parties are at a negotiation impasse.

#### **§ 1425.6 Use of third-party mediation assistance.**

If the parties should mutually agree to third-party mediation assistance other than that of the Service, both parties shall immediately inform the Service in writing of this agreement. Such written communication shall be filed with the regional director of the region in which the negotiation is scheduled, and shall state what alternate assistance the parties have agreed to use.

### **PART 1430—FEDERAL MEDIATION AND CONCILIATION SERVICE ADVISORY COMMITTEES**

Sec.  
1430.1 Scope and purpose.