

FEDERAL MEDIATION

Q - What is the difference between mediation and arbitration?

A - Mediation is a voluntary process, bringing a neutral third party into a negotiation as a facilitator. It may or may not lead to an agreement between the parties. Arbitration is a process agreed to by the parties in which, at its conclusion, a neutral third party will impose a binding agreement on both parties.

Q - When should a mediator become involved in negotiations?

A - The mediator is involved from the time a [contract notification](#) is received by FMCS and the case is assigned. The real question is: how actively involved should they be. The answer is: as active as necessary to improve the bargaining process. More and more parties are asking the mediator to conduct [training](#) for bargaining teams. This is particularly helpful in the negotiation of an initial contract between a company with no union experience and a newly certified union.

Q - What is dispute mediation?

A - In collective bargaining, dispute mediation is a voluntary process that occurs when a neutral third party mediator assists the two sides in reaching agreement in contract negotiations. For over 50 years, Federal mediators have provided these services, including mediation of initial contract negotiations, which take place between a company and a newly recognized union.

Q - Does using a mediator mean negotiations have failed?

A - Absolutely not. It means the parties to the negotiation are using a tried and true resource available to them to improve their bargaining and to create an environment in which people are more likely to listen. Mediation can add a lot to the bargaining before the final offer hits the table, or the parties hit an obstacle and progress is stalled. Mediation is an integral part of the collective bargaining process.

Q - What can a mediator add to collective bargaining negotiations?

A - The mediator can improve the bargaining process in a number of ways:

1. Help establish ground rules for the negotiations, and realistic expectations.
2. Help the parties decide what form of negotiation will be most effective in a particular situation: [traditional](#), [interest based](#) or a hybrid.
3. Help clarify and crystallize issues and differences. Mediators try to deal in the world of interests rather than positions. Frequently, the parties both want a similar outcome. They just have a different view of how to get there, or sometimes, they just phrase it differently. Often, their goals are separate, but not contradictory. When the parties understand the underlying interests that drive bargaining positions, they can identify and agree on matters that are not really in dispute and then focus on the real issues that separate them.
4. Help the parties define the problem. What is perceived as a personal or relationship problem may actually be a systems problem. Just as importantly, the mediator can help the parties fully explore and understand long and short-term alternatives to their proposed solutions. If there is no agreement on a particular issue, what happens? If there is no agreement on a contract, what is the worst alternative? What is the best alternative? What are the costs of non agreement or continued disagreement?
5. Convene and adjourn bargaining sessions and joint meetings. An effective mediator knows when joint or separate meetings are productive and when they're not. They know that, sometimes, it's important to let the parties vent in joint meetings, and sometimes it's better to adjourn and give one or both sides time to regroup, reconsider, or just cool off.

6. Help keep the talks moving along, focused and on track.
7. Generate new options. It's very natural for negotiators, who've been developing and living with contract issues, to "lock in" on one approach. The mediator, as a neutral third party, can take a more objective view and suggest options that more smoothly achieve bargaining aims.
8. Help improve communication, which is usually the greatest impediment to successful outcomes. This can range from rephrasing statements so that all parties clearly understand what is being said and what is meant, to mediator "supposals." These supposals allow exploratory proposals to be offered for discussion by the mediator without ownership and attendant risk to either party. Mediators can also meet off the record with the parties, and they often engage in "shuttle diplomacy," moving back and forth between separate meetings of the parties carrying offers and counter-offers.
9. Provide or share information. When both parties have access to the same information, miscommunication and misunderstanding can frequently be avoided. Obviously, there might be information that one party considers proprietary and does not wish to share, but just as often, there is information that both parties can use to better evaluate the situation. And sometimes, it's as simple as the mediator letting both parties know what's going on elsewhere in the country or in a particular industry that would be relevant to the negotiations.
10. Handle or help manage relations with the news media. Mediators understand the sensitivity of negotiations. They may ask the parties to refrain from making any statements to the news media while the talks are in progress, or at least, to avoid trying to negotiate in the press. At other times, the parties may ask the mediator to handle the press contact. The mediator can assess the impact of the negotiations on a community and decide what to say and what not to say.

Q - Can a mediator be trusted with negotiating strategies and bottom lines on positions?

A - Federal mediators have an absolute commitment to confidentiality in collective bargaining. The critical importance of mediator confidentiality to the process has been upheld in the courts. Because federal mediators know that if their confidentiality with the parties or neutrality were ever compromised, they could not be effective, they do not convey information without the permission of its owner.

Q - What else can FMCS do to help the collective bargaining process?

A - In today's highly competitive global economy, workplace relations are changing. An important aspect of this is the changing labor-management relationships within those workplaces. There is a growing need for strong, **positive working relationships** between management and workers, so that U.S. companies and their employees can both succeed and prosper. Since 1947, FMCS services have continued to expand by statute and practice. The Labor- Management Cooperation Act of 1978 authorized and directed FMCS to offer services to improve economic development, job security, and organizational effectiveness. For companies and unions committed to, or exploring, improved labor-management relations, a variety of **education and training processes (link to Learning 1.3)** and services are available to help break down barriers and build better working relationships which benefit employer and employee alike. Ask your **FMCS mediator (link to 1.4.1)** about **Preventive Mediation** services.

Q - Is there a charge for FMCS services?

A - For the most part, no. The Federal government provides most FMCS mediation services in support of collective bargaining free of charge to the parties. FMCS also offers other government subsidized services for community and organizational conflict resolution. There are modest charges for some services such as arbitration referral.

Q - How can NSEA help?

A - Discuss the matter with your UniServ Director. They can put you in contact with the Federal Mediator who works this region. NSEA is also willing to be present at the Mediation and assist you in the process.

Call NSEA at 1-800-742-0047 and ask for your UniServ Director or . . .

e-mail Larry Scherer at larry.scherer@nsea.org or
e-mail Karen Hunt at karen.hunt@nsea.org