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SDNY Judge Says No to FMCS Mediation Cuts

Labor Relations Update on **January 7, 2026**

On December 30, 2025, a federal judge in the Southern District of New York vacated a recent Federal Mediation and Conciliation Service ("FMCS") policy that laid off a substantial number of federal mediators and sharply limited when the agency would provide mediation services.

In March 2025, FMCS – the federal agency charged with mediating labor disputes – adopted a policy limiting its mediation services to disputes involving bargaining units of at least 250 employees in the healthcare industry and at least 1,000 employees in most other sectors. The policy also implemented a reduction in force leaving FMCS with only six mediators. FMCS adopted the policy in response to a March 14, 2025 executive order issued by President Trump instructing federal agencies to reduce headcount to the greatest extent possible, an order that was permanently enjoined in November 2025 by a Rhode Island federal court in *State of Rhode Island v. Trump*.

Approximately one month later, on December 30, Judge Arun Subramanian of the Southern District of New York granted summary judgment in favor of several labor organizations in *American Federation of Teachers, AFL-CIO v. Davis*. The plaintiff unions alleged that the FMCS policy disrupted ongoing collective bargaining negotiations and unlawfully restricted access to mediation services. Judge Subramanian first rejected the government's threshold arguments, holding that the plaintiff unions had standing based on concrete harms such as canceled and delayed bargaining sessions. He further held that the policy was a "final agency action"—not a purely discretionary internal agency staffing decision—such that it is not insulated from judicial review under the Administrative Procedure Act ("APA").

On the merits, Judge Subramanian held the policy was invalid under the APA because FMCS failed to explain any basis for the numerical threshold for bargaining unit size to trigger FMCS mediation, which made the policy "arbitrary and capricious." Judge Subramanian further held that the policy expressly conflicted with the statutory mandate of Section 8(d) of the National Labor Relations Act which requires FMCS to use its "best efforts" to mediate collective bargaining disputes in the healthcare industry. Thus, with respect to the healthcare industry, Judge Subramanian concluded that Congress intended for FMCS to at least attempt to assist in resolving all such disputes and rejected the government's argument that the provision of mediation services was discretionary and could be conditioned on the size of the bargaining unit.

Judge Subramanian vacated the policy and ordered FMCS to reverse the reduction in force. The court declined to address broader constitutional arguments regarding separation of powers and the Take Care Clause.

Takeaways

The government has 60 days to commence an appeal of Judge Subramanian's decision; however, such an appeal appears unlikely. Shortly before Judge Subramanian's decision, on December 23, government defendants in *State of Rhode Island v. Trump*, filed a notice of compliance with the court's summary judgment order permanently enjoining President Trump's March 2025 executive order. The notice of compliance stated that the government intended to comply with the court's order at several federal agencies including FMCS by reinstating laid off personnel and voiding "the underlying policies to which the Executive Order-related actions at issue in this case were taken."

Absent some unanticipated appeal, FMCS operations—including its labor mediation services—should continue without interruption. Employers and unions may continue to rely on FMCS mediation services to assist parties with collective bargaining and resolving labor disputes. While not required in all industries, FMCS mediation can be a powerful tool to help parties reach compromise and avoid prolonged disputes.

We will continue to monitor this case and other decisions and agency actions that may impact labor relations.

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