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Use of Permanent  
Strike Replacements

Statement of  
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Human Resources Division

Before the  
Subcommittee on Labor-Management  
Relations  
House Committee on Education  
and Labor



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**SUMMARY OF TESTIMONY BY FRANKLIN FRAZIER  
ON USE OF PERMANENT STRIKE REPLACEMENTS**

The National Labor Relations Act of 1935 allows workers to strike and prohibits employers from firing those who do so. However, the U.S. Supreme Court ruled in 1938 that the act's protection of workers' right to strike does not prevent employers from hiring employees to temporarily or permanently replace workers who strike for economic reasons such as wages.

This testimony summarizes our report issued in January 1991, in which we documented trends in strikes and the use of permanent strike replacements. We obtained the data about the number of strikes from the Federal Mediation and Conciliation Service (FMCS). The information about use of permanent replacements came from interviews we conducted with employers and union representatives who were knowledgeable about specific strikes that occurred in 1985 and 1989.

**Decrease in the number of strikes.** The number of strikes in the United States during the 1980s was about one-half what it was during the 1970s. During the 1980s, there were about 1,250 strikes a year compared with about 2,660 a year during the 1970s.

**Permanent replacements were hired in about 17 percent of the strikes in 1985 and 1989.** We estimate that employers announced they would hire permanent strike replacements in about one-third of the strikes reported to FMCS in 1985 and 1989, and that they were actually hired in about 17 percent of all strikes in both years. We also estimate that in both years:

- about 4 percent of all striking workers were permanently replaced.
- employers more often made the announcement to hire permanent replacements after the strike began rather than before.
- permanent replacements were hired more often when the strike lasted more than 1 month.

**Little difference in use of replacements in large versus small strikes.** We generally found no statistically significant differences in the percentage of large strikes (1,000 or more strikers) and small strikes (less than 1,000 strikers) in 1985 and 1989 in which employers (1) announced the use of permanent replacements, (2) actually hired permanent replacements, and (3) made the announcement before rather than after the strike began.

**Permanent replacements believed to have been hired less often in the late 1970s than in the late 1980s.** We estimate that about 45 percent of the employers and about 77 percent of the union representatives involved in strikes reported to FMCS in 1985 and 1989 believe that permanent replacements were hired less often in the period 1975 to 1980 than in the period from 1985 to 1990.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our recent report on the practice of hiring permanent employees to replace striking workers.<sup>1</sup> Some of the information included in that report was provided to this subcommittee during hearings on June 13, 1990.<sup>2</sup> After that testimony, we further analyzed some of the data and obtained additional information on the use of permanent replacements. The results presented in our report and included in my statement today reflect our additional work and, thus, differ from the data we reported in previous testimony.

Today, I will document the trends in the number of strikes in the United States in the 1970s and the 1980s. I will also describe the extent to which permanent strike replacements were being used in the late 1980s. In addition, I will discuss the opinions of employers and union representatives about the change in the use of permanent strike replacements since the late 1970s.

Our major points are the following:

- The number of strikes in the United States during the 1980s was about one-half what it was during the 1970s. More specifically, strikes declined about 53 percent in the 1980s compared with the 1970s.
- We estimate that, in strikes reported to the Federal Mediation and Conciliation Service (FMCS) in 1985 and 1989, employers announced they would hire permanent replacements in about one-third of the strikes in both years and hired them in about 17 percent of all strikes in each year. We generally found little difference in the use of permanent replacements by employers in large strikes (1,000 or more strikers) versus small strikes (less than 1,000 strikers).
- We estimate that many employers (45 percent) and union representatives (77 percent) involved in strikes in 1985 and 1989 believe permanent strike replacements were hired more frequently in the late 1980s than they were in the late 1970s. However, we estimate that, if we had interviewed all employers and union representatives, 33 percent of the employers and 13 percent of the union representatives would have said they had no basis on which to provide an opinion.

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<sup>1</sup>Labor-Management Relations: Strikes and the Use of Permanent Strike Replacements in the 1970s and 1980s (GAO-HRD-91-2, January 18, 1991).

<sup>2</sup>Trends in the Number of Strikes and Use of Permanent Strike Replacements in the 1980s(GAO/T-90-41, June 13, 1990).

Before discussing these points in detail, I would like to provide some background on the purpose of our study and the methodology we used to carry out our work.

### **BACKGROUND**

The National Labor Relations Act (NLRA) of 1935 is the principal federal law governing private sector labor relations. The act provides basic protection to workers in most industries. Major exceptions from coverage under NLRA are the rail, airline, and agricultural industries.

NLRA establishes the right of workers to join unions and to strike. Also, it prohibits employers from firing workers because they strike. However, in 1938, the U.S. Supreme Court in NLRB v. Mackay Radio & Telegraph Co. ruled that NLRA's protection of workers' right to strike does not prevent employers from hiring employees to temporarily or permanently replace striking workers in strikes over economic issues, such as wages.

Unions and some labor-management relations experts contend that employers rarely used the right established by the 1938 decision until 1981. They believe employers have increasingly hired permanent strike replacements since President Reagan fired and permanently replaced about 12,000 striking air traffic controllers in that year. They also believe that the number of strikes has decreased, and that the decrease is due, in part, to workers' increasing fear of being permanently replaced.

### **OBJECTIVES, SCOPE, AND METHODOLOGY**

Because of concerns about the hiring of permanent strike replacements, the Chairman of the Subcommittee on Labor, Senate Labor and Human Resources Committee, and the former Chairman of this subcommittee introduced bills to amend NLRA to prohibit this practice. To help assess the need for such legislation, they asked us to document trends in strikes and the use of permanent strike replacements.

To answer their question about trends in the number of strikes, we obtained data from the Federal Mediation and Conciliation Service (FMCS) on the number of strikes that occurred between 1970 and 1989. We did not verify the FMCS data.

To develop information on the use of permanent strike replacements, we selected, from a computerized FMCS data base,

samples of work stoppages that began in 1985 and 1989.<sup>3</sup> We selected 1985 and 1989 because they were the earliest and latest years for which automated information was available that we needed to conduct our study.

Initially, we selected a random sample of about 150 work stoppages of any size that occurred in 1985 and in 1989. We conducted our interviews for these stoppages between May 21 and 31, 1990, and the results were reported in our June testimony. After the testimony, because we wanted to compare the use of permanent strike replacements in large and small strikes, we selected from the data base all of the work stoppages in each of those years with bargaining units of 1,000 or more workers which were not included in our initial sample. We conducted our interviews for these stoppages between September 26 and November 19, 1990.

Using a computer-aided telephone interview technique and a standardized interview questionnaire, we attempted to interview both the employer and union representative identified in the FMCS data base as knowledgeable about the work stoppages in our samples. If we could not reach the individual identified in the data base, we tried to speak with another employer or union official familiar with the selected stoppage.

We asked respondents whether the work stoppage was a strike or a lockout.<sup>4</sup> If it was a strike, we interviewed them about the use of permanent replacements. We also asked their opinions about the hiring of permanent strike replacements nationwide during the late 1970s and 1980s.

From our interviews, we obtained information on 181 strikes (90 percent of the work stoppages) in our 1985 sample and 192 (95 percent) of those in our 1989 sample. About 68 percent of the cases in both years were described by both the employer and the union representative. Our results are weighted so that our estimates describe the information we would have obtained if we had surveyed employers and union representatives associated with all strikes reported to FMCS in 1985 and in 1989. For example, our estimate of the percentage of 1989 strikes in which employers hired permanent replacements applies to all strikes reported to FMCS but does not include all strikes in industries, such as airlines, not required to be reported to FMCS.

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<sup>3</sup>Employers and unions covered by NLRA are required to report to FMCS when agreement is not reached in negotiations terminating or modifying collective bargaining agreements. This requirement does not extend to industries not covered by NLRA.

<sup>4</sup>Work stoppages initiated by employees are strikes, while work stoppages initiated by employers are lockouts.

Our methodology is discussed in greater detail in our January 1991 report.

## **STUDY RESULTS**

As previously mentioned, our study addressed (1) the trend in the number of strikes, (2) use of permanent strike replacements in 1985 and 1989, and (3) opinions about how often employers hired permanent replacements in the late 1980s compared with the late 1970s.

### **Strikes Reported to FMCS Declined Sharply in 1980s**

The number of work stoppages reported to FMCS during the 1980s was about one-half what it was during the 1970s. During the 1980s, there were about 1,250 work stoppages a year compared with about 2,660 a year during the 1970s, a decline of about 53 percent. The vast majority of work stoppages were strikes rather than lockouts.

### **Permanent Replacements Were Hired in About 17 Percent of the Strikes**

We estimate that employers in strikes reported to FMCS announced they would hire permanent replacements in about 31 percent of the strikes reported in 1985 and about 35 percent of the strikes in 1989. We also estimate that employers actually hired permanent replacements in about 17 percent of all strikes in both years. We estimate that about 4 percent of all striking workers were permanently replaced in both years.

Many labor-management relations experts believe that employers are increasingly announcing the intention to hire permanent replacements even before a strike begins as a way to keep workers from going on strike. We found, however, employers made the announcement before the strike less often in 1989 than in 1985. In both years covered in our survey, employers most often announced their intended use of replacements after the strike began. In addition, our analysis shows that in both years employers hired permanent replacements more frequently when the strike lasted more than 1 month than when it lasted less than 1 month.

### **Little Difference in Use of Replacements in Large versus Small Strikes**

We generally found no statistically significant differences in the percentage of large and small strikes in 1985 and 1989 in which employers (1) announced the use of and hired permanent replacements, and (2) announced replacements after, rather than

before, the strike began. However, we did find some issues with statistically significant differences, which are described in our report. For example, in 1958, the majority of the striking workers replaced were in small strikes (about 80 percent), while in 1989 the majority of those replaced were in large strikes (about 70 percent).

**Employers and Union Representatives  
Believe Replacements Were Hired Less  
Often in Late 1970s Than in Late 1980s**

We estimate that about 45 percent of the employers and about 77 percent of the union representatives involved in strikes reported to FMCS in 1985 and 1989 believe permanent strike replacements were hired in proportionately fewer strikes in the late 1970s than in the late 1980s. However, we estimate that--if we had surveyed all those employers and union representatives--33 percent of the employers and 13 percent of the union representatives would have told us they had no basis to provide an opinion on a change in the hiring of permanent replacements from the period 1975 to 1980 to the period 1985 to 1990.

This concludes my statement. I will respond to your questions about our work.