

GAO

Testimony



141499

For Release
on Delivery
Expected at
9:30 a.m. EST
Wednesday
June 6, 1990

Trends in the Number of
Strikes and Use of Permanent
Strike Replacements in the 1980s

Statement of
Franklin Frazier, Director of
Education and Employment Issues
Human Resources Division

Before the
Subcommittee on Labor,
Senate Committee on Labor and
Human Resources



048650 / 141499

SUMMARY OF TESTIMONY BY FRANKLIN FRAZIER
ON TRENDS IN THE NUMBER OF STRIKES AND USE OF
PERMANENT STRIKE REPLACEMENTS IN THE 1980s

Both the National Labor Relations Act of 1935 and the National Railway Labor Act of 1926 allow employers to hire employees to permanently replace striking workers, even if the striking workers unconditionally agree to return to work. It has been widely believed, although there are little supporting data, that employers have hired permanent strike replacements much more often since 1981 when President Reagan fired and permanently replaced about 12,000 striking air traffic controllers. That use, in turn, has been seen as increasing workers' fear of being permanently replaced if they strike and decreasing their willingness to strike.

To assist in deliberations regarding legislation that would eliminate the use of permanent strike replacements, you asked us to document the trends in strikes and use of permanent strike replacements. We obtained the data about the number of strikes from the Federal Mediation and Conciliation Service. 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 work stoppages a year compared with about 2,660 a year during the 1970s. Between 1970 and 1981, the annual number of work stoppages ranged from 1,937 to 3,111. In contrast, the number of work stoppages since 1981 has ranged from 647 to 1215--never reaching the lowest level of strike activity in the 1970s.

Employers announced they would hire permanent replacements in about one-fourth of the strikes in 1985 and 1989. We estimate that employers announced they would hire permanent strike replacements in about one-fourth of the strikes reported to the Federal Mediation and Conciliation Service (FMCS) in 1985 and 1989: about 23 percent of the strikes in 1985 and about 30 percent of the strikes in 1989. In both years, about 15 percent of them actually hired permanent replacements.

Permanent replacements were hired less often in the late 1970s than in the late 1980s. In the opinion of both employers and union representatives, permanent strike replacements were hired in proportionately fewer strikes in the late 1970s than in the late 1980s. About two-thirds of the employers and almost 90 percent of the union representatives responding to this question said permanent replacements were hired less often in 1975-1980.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to provide some information about the practice of hiring permanent employees to replace striking workers. As you requested, I will document the trend in the number of strikes in the United States during the 1970s and the 1980s. I will also describe the extent to which permanent strike replacements were being used in the late 1980s and opinions about the change in their use 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.
- We estimate that employers announced they would hire permanent strike replacements in about one-fourth of the strikes reported to the Federal Mediation and Conciliation Service (FMCS) in 1985 and 1989, and about 15 percent of them actually hired permanent replacements.
- Both employers and union representatives we interviewed agreed that permanent strike replacements were hired in proportionately more strikes in the late 1980s than in the late 1970s. Union representatives described a greater increase in the use of permanent representatives than did employers.

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 of 1935 (NLRA) is the principal federal law governing private sector labor relations. The NLRA covers labor relations in most industries with the major exceptions of the rail, airline and agricultural industries. It also excludes federal, state and local government employees. The NLRA provides basic protections to workers. Among these are the right to bargain collectively, to strike, and to cease employment during a labor dispute.

In 1938, the U.S. Supreme Court in NLRB v. Mackay Radio & Telegraph Co. interpreted the NLRA's protection of workers' right to strike as not precluding employers from hiring employees to temporarily or permanently replace striking workers. If the strike is deemed to be for unfair labor practice reasons (employer conduct prohibited by the act), the striking workers are entitled to full reinstatement upon their offer to return to work. If the strike is for economic reasons (related to terms and conditions of employment), the employer must only rehire striking workers when or if vacancies become available.

An earlier law, the National Railway Labor Act of 1926, governs labor relations between employers and carriers (railroads and airlines among others) that affect interstate commerce. Courts have ruled that employers covered by this act have an analogous right to replace striking workers permanently, even if the striking workers unconditionally agree to return to work.

It has been widely believed, although there have been little supporting data, that employers rarely hired permanent strike replacements until 1981 when President Reagan fired and permanently replaced about 12,000 striking air traffic controllers. Labor unions contend that, because of President Reagan's actions, the hiring of permanent replacements has increased substantially and the number of strikes has declined significantly since 1981. They believe that workers' increasing fear of being permanently replaced if they strike has contributed greatly to the decline of strikes and has effectively eroded the bargaining power of unions.

Because of these concerns, the Chairman of this Subcommittee and the Chairman of the Subcommittee on Labor-Management Relations, House Education and Labor Committee, introduced bills (S.2112 and H.R.3936) that would prohibit employers from hiring permanent strike replacements. To help assess the need for such legislation, they asked us to document the trends in strikes and use of permanent strike replacements.

OBJECTIVES, SCOPE, AND METHODOLOGY

To answer your question about trends in the number of strikes, we obtained data from FMCS on the number of work stoppages of any size and duration that occurred in industries covered by the National Labor Relations Act. The act requires covered employers and unions to notify FMCS when a proposal to terminate or modify an existing collective bargaining agreement has been made but no agreement has been reached. Since 1947, FMCS has maintained records on work stoppages occurring when that lack of agreement results in a strike or lockout.¹ Since 1985, these records have been in a computerized data base.²

¹Strikes are work stoppages initiated by employees, while lockouts are work stoppages initiated by the employer.

²The FMCS data base should include most work stoppages in industries covered by the NLRA which occurred at the termination of a collective bargaining agreement. In addition, it includes some work stoppages associated with agreements outside of the scope of the NLRA. For example, the file includes some strikes by primary and secondary school employees covered by state collective bargaining laws. The data base does not distinguish

In extensive discussions with representatives of the Bureau of Labor Statistics, the National Labor Relations Board, FMCS, several unions, and members of academia, we discovered that no comprehensive data are available on the use of permanent replacements for striking workers. Thus, to answer your question about the use of permanent replacements, we identified a random sample of work stoppages from the FMCS computerized data base and collected data from employer and union representatives to determine whether permanent replacements had been used. We selected samples from 2 years, 1985 and 1989, which were the earliest and latest years for which the information we needed to conduct our survey was readily available. Because we could not obtain data on the actual use of permanent strike replacements in the late 1970s, we also assessed opinions about the change in use of permanent replacements from the late 1970s to the late 1980s.

In May 1990, we interviewed by telephone the union and management representatives identified in the FMCS data base as knowledgeable about each of the strikes.³ We asked them about the use of permanent strike replacements both in the specific strike in our sample and in the United States in the late 1970s and late 1980s in general. If we could not reach the individual identified in the FMCS data base, we tried to obtain the information from another union or employer representative familiar with the selected strike.

We attempted to reach employer and union representatives for about 150 strikes in each year, a total of about 600 interviews regarding 300 strikes. We were successful in getting information on 132 strikes (87 percent) that occurred in 1985 and 141 strikes (93 percent) that occurred in 1989. This represented completed interviews with 442 individuals: 224 employers and 218 union representatives.

About two-thirds of the strikes were described by two respondents. If only one person described the strike, we used that description. Where the two disagreed, we did not use information about that strike. (This happened in 17 percent of the strikes that occurred in 1985 and 14 percent of those that occurred in 1989.)

From the results of our survey, we can estimate the use of permanent strike replacements in all strikes reported to FMCS in 1985 and 1989. We can also estimate the opinions of other

between lockouts and strikes.

³We eliminated from the study any work stoppages respondents identified as lockouts rather than strikes.

employers and union representatives we did not interview regarding use of permanent replacements generally in the U.S.⁴

STUDY RESULTS

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

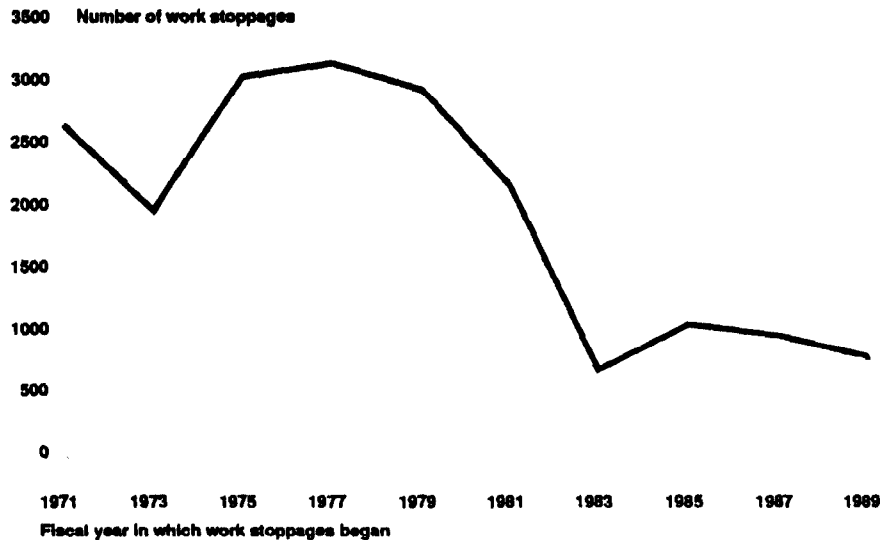
Number of Strikes Declined Sharply in 1980s

Substantially fewer work stoppages were reported to FMCS during the 1980s than the 1970s and, according to FMCS officials, the vast majority of the work stoppages are strikes rather than lockouts. Therefore, we conclude that the number of strikes declined sharply in the 1980s. 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. Between 1970 and 1981, the annual number of work stoppages ranged from 1,937 to 3,111. In contrast, the number of work stoppages since 1981 has ranged from 647 to 1215--never reaching the lowest level of strike activity in the 1970s. The greatest decline occurred between 1979 and 1983. In 1979, there were 2,897 work stoppages compared with 647 in 1983, a decrease of almost 80 percent. (See figure 1.)

We did not attempt to determine the extent to which this trend in strike activity is related to use of permanent strike replacements rather than other factors thought to influence work stoppages. These other factors include general economic conditions and the overall volume of collective bargaining activity.

⁴Estimates derived from a statistical sample are subject to a certain amount of sampling error, given as a plus and minus value around the estimate. The sampling errors for percentages reported did not exceed plus/minus 8 percent for any estimate.

GAO Work Stoppages Reported to FMCS



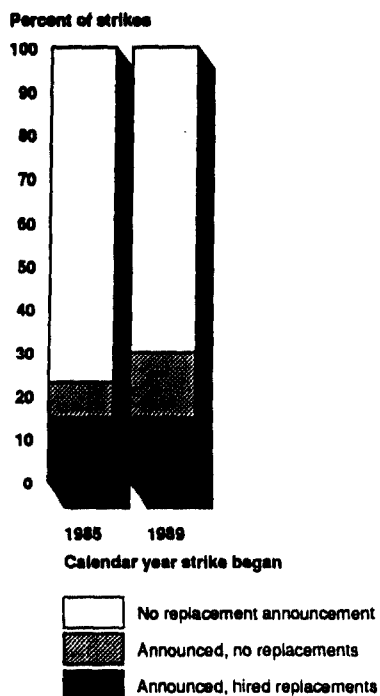
1

Employers Announced They Would Hire Permanent Strike Replacements in About One-Fourth of the Strikes

We estimate that employers announced they would hire permanent strike replacements in about one-fourth of the strikes reported to FMCS in 1985 and 1989: about 23 percent of the strikes in 1985 and about 30 percent of the strikes in 1989.⁵ (See fig. 2.)

⁵Considering the sampling error of our estimates, the actual percent of strikes in which announcements of permanent replacements were made was probably between 15 and 31 percent in 1985⁵ and between 22 and 38 percent in 1989. Therefore, the apparent increase between 1985 and 1989 is not statistically significant

GAO Use of Permanent Strike Replacements, 1985 & 1989



2

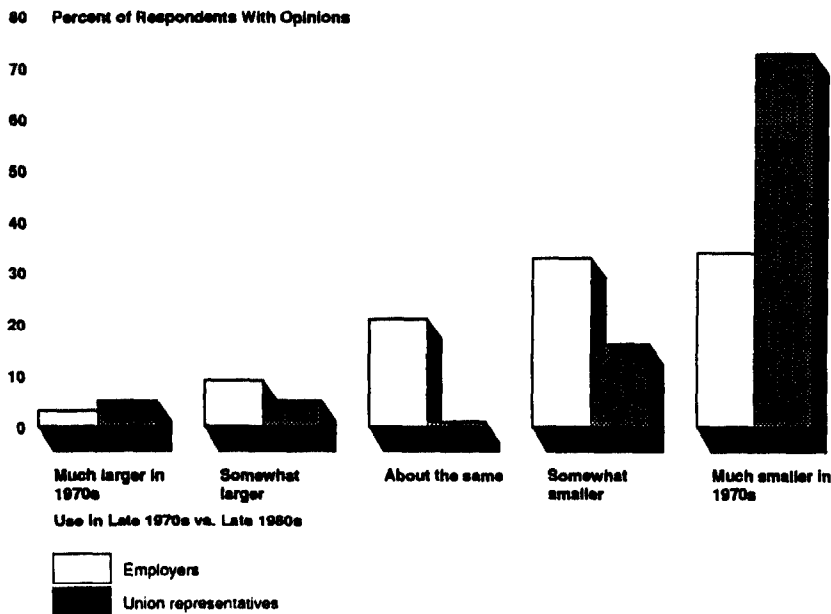
As figure 2, shows, however, some employers who announced that they would hire permanent replacements did not actually do so. According to our respondents, when announcements had been made, about two-thirds of the employers actually hired replacements in 1985, and about one-half of them did so in 1989. We estimate that employers actually hired permanent strike replacements in about 15 percent of the strikes in each year.

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

Both employers and union representatives believe that permanent strike replacements were hired in proportionately fewer strikes in the United States from 1975 to 1980 than in strikes from 1985 to 1990. (See fig. 3.) However, union representatives

described a greater shift in the hiring of permanent representatives than did employers. Based on those responding to this question, about two-thirds of the employers believe permanent replacements were hired less often in 1975-1980, but almost 90 percent of the union representatives believe they were hired less often. Overall, almost one-half of the employers (45 percent) and one-third (34 percent) of the union representatives felt they had no basis to answer this question.

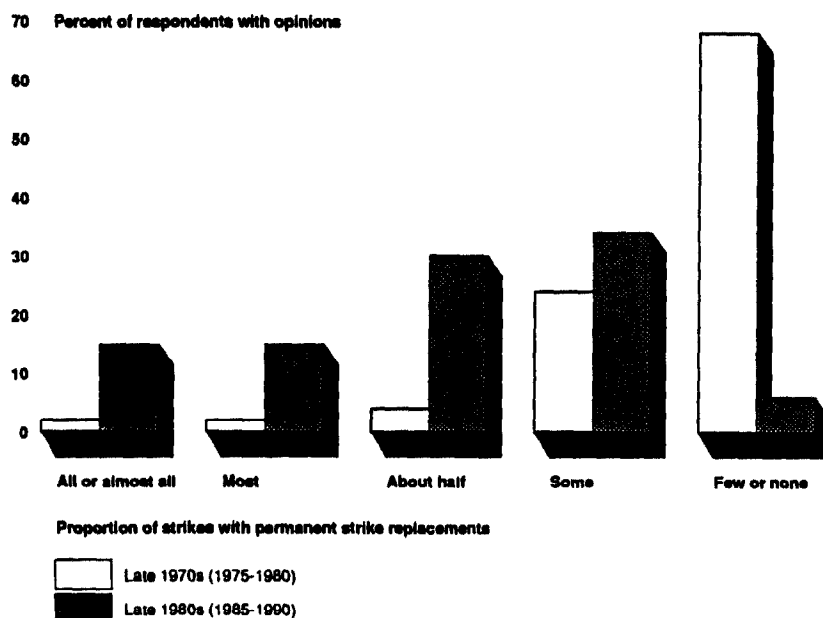
GAO Opinions on Change in Hiring Permanent Strike Replacements



Note: 45 percent of the employers and 34 percent of the union representatives could not answer this question.

In addition to asking them about the change in hiring permanent replacements, we also asked employers and union representatives how often they believed replacements were hired in each of these periods. Again, employers and union representatives generally agreed, but union representatives described a greater shift. As figure 4 shows, about two-thirds of the union representatives believe that employers hired permanent replacements in few or none of the strikes in the late 1970s while about 60 percent of them believe employers hired permanent replacements in half or more of the strikes in the late 1980s.

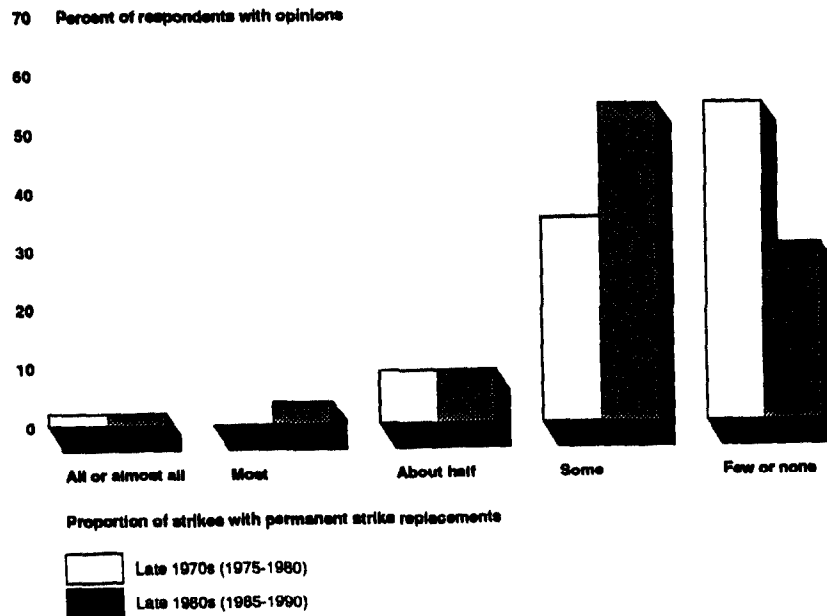
GAO Union Opinions: Hiring Permanent Replacements



Note: 40 percent could not answer this question regarding the late 1970s and 39 percent could not answer it for the late 1980s.

Of the employers who answered this question, about half of them believed employers hired permanent replacements in few or none of the strikes in the late 1970s. However, in contrast with the union representatives, only 16 percent of them believed employers hired permanent replacements in half or more of the strikes in the late 1980s. (See fig. 5.)

GAO Employer Opinions: Hiring Permanent Replacements



Note: 50 percent could not answer this question regarding the late 1970s and 44 percent could not answer it for the late 1980s.

5

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