



Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

Highlights

Wages Up Over Year

The average first-year wage increase under contracts negotiated in the first three quarters of 2004 was 3.3 percent, compared with 3.2 percent a year ago, BNA reports **123**

Cases on Privacy, Lockout

An appeals court ruled that a lawsuit over workplace surveillance is not preempted because privacy issues do not require interpreting the collective bargaining agreement, and the National Labor Relations Board ruled that an employer did not illegally lock out strikers.... **126**

In the Manual

Unemployment Data

September unemployment data are added at 18:8202. The government report is available at <http://www.bls.gov/news.release/empstoc.htm>

Contract Expirations

A list of contracts scheduled to expire in the fourth quarter of 2005 is added at 19:421.

Contract Settlements

Terms of settlements reported Sept. 28-Oct. 11 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4201.

Workers in NYC Office Buildings Swap Pay For Continued Employer-Paid Health Care

Agreement on a one-year wage freeze in return for continued employer-paid health care premiums paved the way for negotiators of the Service Employees International Union and New York City commercial office building owners, represented by the Realty Advisory Board for Labor Relations, to reach a tentative three-year contract for about 26,000 workers Oct. 1.

Although the current contract will not expire until Dec. 31, negotiators agreed to early talks in an effort to address what the union termed a "crisis" in health care costs—a widening gap between annual employer contributions of \$6,700 per worker and the \$10,200 per worker annual cost of coverage.

Under health care provisions that also would apply to 28,000 residential building workers covered under a separate contract (8 COBB 49, 05/1/03), employers would continue to pay the full cost of health care premiums. Including dependents, the health plan covers about 135,000 people, SEIU said.

Employers would pay an additional \$475 million into the plan, a 64 percent increase in contributions. That amount, coupled with \$75 million in savings offered by the union, would "close the gap" between current payments and the cost of health care, SEIU said. The union-proposed savings package calls for shifting the health plan from a clinic-based preferred provider organization model to a point-of-service plan, and for a new prescription drug plan.

Wages would increase 4.7 percent over term, with the first raise effective Jan. 1, 2006, followed by semiannual raises through the remainder of the contract. Foremen, handymen, and elevator starters currently earn \$848 per week, and porters, cleaners, and elevator operators earn \$743 a week.

The agreement also contains "significant new language giving management greater flexibility in operating their buildings in the post-9/11 environment," the board said. Beefed-up security requirements in New York City office buildings, especially in sensitive locations such as Manhattan's financial district, have created new employment issues related to background checks for building workers. The tentative agreement calls for more employee cooperation in background checks and sets processes for dealing with transfers, discharges, seniority, and other issues for workers who do not pass them or who are otherwise rejected by tenants for security reasons.

A ratification vote on the agreement is expected to be completed by Oct. 29.

Layoff Protection, 401(k) Plan Changes Highlight 31-Month Entergy, IBEW Contract

Wage increases totaling 7.84 percent, limits on the conditions under which workers can be laid off, and changes in a 401(k) plan are included in a new 31-month contract between Entergy Gulf States and the International Brotherhood of Electrical Workers that was ratified Sept. 30.

Wage for about 1,300 transmission, distribution, gas operations, customer service support, and corporate business services employees who work in the area from Denham Springs, La., to Calvert, Texas, increase 3 percent retroac-

tive to Aug. 15, 3 percent in the second year, and 1.84 percent for the last seven months, the union told BNA.

The parties agreed to a two-year, seven-month contract in order to shift the expiration date to a time of the year when it is not hurricane season and not a peak-load season, the union said, adding that the change was made with customer service in mind.

Job security language guaranteeing that employees will not be laid off solely as the result of Entergy's subcontracting is the biggest gain in the contract, the union said.

Under the 401(k) plan, Entergy will match 70 cents on each dollar up to 6 percent of employee contributions. Under the previous contract, Entergy matched 50 cents on the dollar up to 6 percent for non-Entergy investments, but matched 75 cents per dollar for company stock.

Workers now pay 25 percent of health care premium costs, up from 20 percent under the previous contract, but coverage remains the same.

Raytheon, IBEW Agree to Tie Health Payments to Pay Rate

International Brotherhood of Electrical Workers members Oct. 2 ratified a three-year contract covering 2,050 production workers at Raytheon Co. plants in Massachusetts.

The new agreement provides a first-year bonus of \$3,500, with \$2,500 payable upon ratification and \$500 payments in January 2005 and in April 2005, and second- and third-year wage increases of 3 percent. Average annual pay at the end of the prior contract was \$45,718, according to the company.

Maximum worker contributions to health insurance premiums will vary depending on wage rates. In the first

year, the maximum weekly premium will range from \$10.03 to \$24.16 for those earning \$20 per hour or less, from \$10.80 to \$33.83 for those earning between \$20 and \$25 per hour, and from \$12.35 to \$38.66 for those earning more than \$25 per hour.

The agreement also calls for increases in employee deductibles, office and emergency room copayments, and out-of-pocket maximum payments, and a reduction in the coinsurance amount paid by the health plan after the deductible is met.

Monthly pension benefits increase by \$1 per year of service each year, reaching \$43 in the third year.

Airline Maintenance Workers Receive Bonuses, Job Security

Members of the Transport Workers Union by a vote of 700-254 Sept. 27 ratified a three-year contract covering maintenance workers at American Eagle Airlines.

Workers receive signing bonuses ranging from \$250 to \$1,000, depending on seniority, and pay raises of 4 percent initially and 2.5 percent in the second and third years, according to the union. Under the prior accord, hourly pay for maintenance workers ranged from \$11.01 to \$21.30. The contract also increases license premiums from \$1 per hour per license to \$1.50, capping the premium at \$3.

The contract specifies that if American Eagle integrates with an affiliate of the carrier's parent AMR Corp., the parties will meet to determine seniority integration. If they fail to agree, the issue will be submitted to binding arbitration.

Other contract provisions give employees on layoff recall rights for 10 years, permit workers to wear union insignia on their clothing, and stipu-

late that employees will not be required to participate in bomb scare investigations or searches against their wishes.

'Major Benefit' Changes Bargained for Rheem Workers

What the company called "major changes" in employee benefits are included in a three-year contract covering about 1,250 employees at Rheem Manufacturing Co.'s heating and air conditioning equipment factory in Fort Smith, Ark., that was ratified Sept. 30 by members of the United Steelworkers.

Employees, who earned \$15.33 per hour on average under the previous contract, will receive increases of 31 cents per hour in the first year and 32 cents per hour in the second and third years. However, the start rate for new hires will decrease for three production grades, the union said. Employees will start at \$11.50 per hour and receive an increase to \$12 after 12 months and an increase to \$12.50 after 24 months.

While weekly employee contributions to health care premiums of \$8 for single coverage remain unchanged, employees who had been paying \$15 for family coverage now pay an additional \$8 to cover a spouse and an additional \$8 to cover other dependents.

Health care deductibles and employee out-of-pocket maximums increase, the coinsurance ratio of 85/15 changes to 80/20, and prescription drug plan copayments increase for both retail and mail order purchases.

Current employees retain both defined benefit and defined contribution pension plans, but new hires will have only a defined contribution plan under the new contract.

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Facts & Figures

Average Wage Hike of 3.3 Percent Reported to Date in 2004

The all-settlements average first-year wage increase under contracts negotiated in the first three quarters of 2004 was 3.3 percent, compared with 3.2 percent reported in the first three quarters of 2003. Second- and third-year average increases in agreements reported in the first three quarters of 2004 were 3.7 percent and 3.2 percent, respectively, compared with second- and third-year increases of 3.4 percent reported in the first three quarters of 2003.

The first-year median increase in agreements reported in the first three quarters of 2004 was 3 percent, the same increase reported in the first nine months of 2003. Second- and third-year median increases in agreements reported to date in 2004 each were 3 percent, compared with a second-year median of 3 percent and a third-year median of 3.2 percent reported in the corresponding period a year ago.

The first-year weighted average increase in agreements reported to date in 2004 was 2.4 percent, compared with 2.3 percent reported in the first three quarters of 2003. Second- and third-year weighted average increases in agreements reported in the first nine months of 2004 were 3 percent and 3.1 percent, respectively, compared with second- and third-year increases of 2.9 percent and 3.2 percent, respectively, reported in the year-ago period.

The analysis was based on a database of 645 agreements covering more than 1.2 million workers reported in CBNC's Table of Contract Settlements (tab 19) during the first three quarters of 2004. Not included in tabulations of averages, medians, and weighted averages were wage increases of unspecified amounts and cost-of-living adjustments.

Forty-nine percent of contracts reported to date in 2004 called for first-year wage raises in the more than 2

percent to 4 percent range, 22 percent called for increases of more than 4 percent, 16 percent called for increases of up to 2 percent, and 12 percent called for a wage freeze.

The manufacturing average first-year wage increase in contracts reported in the first three quarters of 2004 was 2.7 percent, compared with 2.4 percent in the first three quarters of 2003, and the median increase was 2.5 percent, compared with 2.8 percent reported a year ago.

The nonmanufacturing (excluding construction) average first-year increase reported to date in 2004 was 4 percent, compared with 3.8 percent in the year-ago period, and the median increase was 3.1 percent, compared with 3.5 percent.

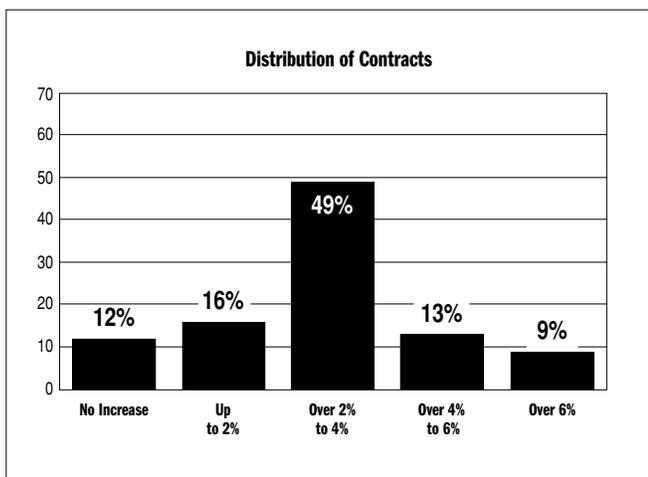
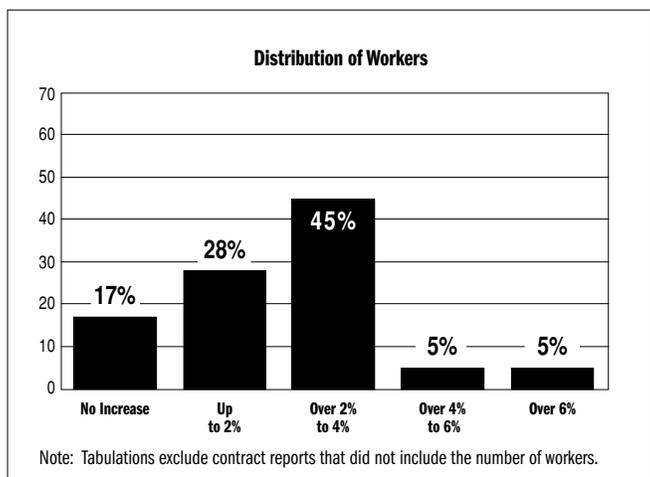
Construction contracts reported in the first three quarters of 2004 showed an average first-year wage gain of 3.1 percent and a median first-year increase of 3 percent, compared with an average increase of 2.7

FIRST-YEAR WAGE INCREASES IN PERCENT—FIRST THREE QUARTERS OF 2004 AND 2003

	All Settlements			All except Construction/Govt.			Manufacturing			Nonmfg. except Construction			Construction			State/Local Government		
	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median	Wgt. Avg.	Avg.	Median
Without lump sums:																		
2004 Year to Date	2.4	3.3	3.0	2.4	3.5	3.0	2.2	2.7	2.5	2.5	4.0	3.1	2.3	3.1	3.0	2.1	2.8	3.0
First Quarter	1.8	3.4	3.1	1.5	3.6	3.1	1.7	2.5	2.4	1.5	4.0	3.4	2.9	3.4	3.2	2.3	3.2	3.0
Second Quarter	3.5	3.4	3.0	3.4	3.7	3.0	2.1	2.7	2.7	4.0	4.2	3.1	4.5	3.4	3.2	1.4	2.4	2.5
Third Quarter	2.3	3.0	3.0	2.5	3.2	2.9	2.8	2.7	2.5	2.5	3.5	3.0	1.8	2.9	2.2	2.2	2.8	3.0
2003 Year to Date	2.3	3.2	3.0	2.4	3.3	3.1	2.8	2.4	2.8	2.3	3.8	3.5	1.7	2.7	2.8	2.1	3.1	3.0
First Quarter	2.4	3.4	3.1	1.8	3.3	3.0	4.6	1.8	2.4	1.4	3.9	3.5	3.4	3.4	4.1	3.2	3.5	3.5
Second Quarter	2.7	3.4	3.1	3.0	3.7	3.3	2.8	2.8	3.0	3.1	4.3	3.9	1.7	2.7	2.8	1.7	3.0	3.0
Third Quarter	1.8	2.8	3.0	2.3	2.9	3.1	2.3	2.2	3.0	2.2	3.3	3.3	1.6	2.6	2.6	1.1	2.8	3.0
With lump sums:																		
2004 Year to Date	2.8	3.6	3.0	3.0	4.0	3.1	4.3	3.5	3.0	2.8	4.2	3.3	2.3	3.1	3.0	2.1	2.8	3.0
First Quarter	2.4	3.8	3.3	2.3	4.0	3.4	4.2	3.5	3.1	2.0	4.3	3.5	2.9	3.4	3.2	2.3	3.2	3.0
Second quarter	4.1	3.7	3.0	4.4	4.1	3.1	5.0	3.6	2.9	4.1	4.4	3.2	4.5	3.4	3.2	1.4	2.4	2.5
Third Quarter	2.5	3.3	3.0	2.8	3.7	3.0	3.6	3.5	3.0	2.8	3.8	3.1	1.8	2.9	2.2	2.2	2.8	3.0
2003 Year to Date	2.5	3.4	3.2	2.8	3.7	3.4	3.9	3.3	3.0	2.5	3.9	3.5	1.7	2.7	2.8	2.1	3.1	3.0
First Quarter	2.4	3.4	3.1	1.8	3.4	3.0	4.6	2.0	2.4	1.4	3.9	3.5	3.4	3.4	4.1	3.2	3.5	3.5
Second Quarter	3.1	3.8	3.4	3.6	4.5	3.7	5.3	4.6	3.5	3.1	4.4	3.9	1.7	2.7	2.8	1.7	3.0	3.0
Third Quarter	2.1	3.0	3.0	2.7	3.2	3.3	2.6	2.7	3.0	2.7	3.4	3.5	1.6	2.6	2.6	1.1	2.8	3.0

NOTE: The statistical summary above is subject to revision as more information becomes available. The summary does not include automatic increases effective after 12 months (designated as deferred increases) or cost-of-living adjustments. Portions of construction wage increases may be diverted to benefits. For comparison purposes, the 2003 year-to-date figures reported above are taken from the 2003 third-quarter report (8 COBB 121, 10/16/03).

First-Year Wage Settlements—First Three Quarters of 2004



Source: BNA PLUS® Database
 Note: Sums may not add to 100 percent due to rounding.

percent and a median of 2.8 percent negotiated in the year-ago period.

State and local government contracts reported in the first nine months of 2004 provided an average first-year increase of 2.8 percent, compared with 3.1 percent in 2003, and a median of 3 percent, the same as that reported a year ago.

Lump-sum payment provisions were found in 14 percent of contracts reported in the first three quarters of 2004, compared with 8 percent reported in the first three quarters of 2003 and 11 percent reported in the first nine months of 2002. The all-settlements average first-year wage increase with lump-sum factoring was 3.6 percent in the first three quarters of 2004, compared with 3.4 percent reported a year earlier. The median increase with lump-sum fac-

toring in all settlements reported to date in 2004 was 3 percent, compared with 3.2 percent in the year-ago period.

Benefit changes were detailed in 375 contracts, or 58 percent of settlements reported in the first three quarters of 2004. Most often mentioned was insurance, found in 78 percent of contracts itemizing changes.

Of 293 contracts specifying insurance changes, the most frequently modified benefits were life insurance and prescription drug insurance (each 11 percent), dental insurance (7 percent), and sickness and accident insurance (5 percent). Seventy-four contracts contained measures to control health care costs.

Pension plans were altered in 170 contracts reported in the first nine months of 2004. In 35 contracts speci-

fying increases, monthly payments by end of term were to average \$43.77 per year of service. Increases in monthly benefits over term were to average \$5.45 per year of service under 35 contracts specifying amounts.

New or revised 401(k) plans were called for in 5 percent of contracts reported in the first three quarters of 2004, compared with 6 percent reported in the comparable period a year ago.

Duration of settlements reported to date in 2004 broke down as follows: terms of more than three years, 35 percent; three-year terms, 49 percent; two-year terms, 10 percent; and terms of one year or less, 6 percent. Thirteen agreements extended the contract term by an additional time ranging from one year to five years.

FIRST-YEAR WAGE INCREASES AND REVISED BENEFITS¹ BY REGION—FIRST THREE QUARTERS OF 2004

	Middle Atlantic	Midwest	New England	North Central	Rocky Mountain	Southeast	Southwest	West	Multistate
Total contracts ²	135	53	69	137	13	52	34	100	52
First-year increase (wgt avg).....	3.3%	2.0%	3.8%	2.1%	3.0%	4.9%	0.6%	1.7%	2.2%
First-year increase (avg).....	3.8%	2.8%	3.6%	2.9%	2.2%	3.6%	2.3%	3.9%	2.4%
First-year increase (median).....	3.4%	2.6%	3.0%	3.0%	2.3%	3.0%	2.5%	3.0%	2.2%
Deferred increase.....	129	51	61	129	9	49	26	95	51
Cost-of-living clauses.....	2	1	1	2	—	—	1	1	7
Vacations.....	16	5	5	13	1	3	3	9	4
Holidays.....	10	4	3	11	1	6	5	11	5
Pension plans.....	38	16	16	31	1	12	10	28	25
Insurance.....	74	31	34	73	4	27	17	45	31

¹ Figures pertain to new or revised benefits implemented over the term of the contract.

² Includes some contracts carrying wage increases of unspecified amounts, which are not included in tabulations of weighted averages, averages, or medians.

News in Brief

Work Stoppages Down in 2004

Work stoppages in fiscal year 2004 totaled 271, down from 289 in fiscal 2003, according to Federal Mediation and Conciliation Service figures released Oct. 4. The average duration of work stoppages was 60.3 days in fiscal 2004, compared with 60.5 days in fiscal 2003. Federal mediators were asked for assistance in approximately 5,000 collective bargaining negotiations in fiscal 2004, out of 18,493 negotiations nationwide. The agency said it helped the parties reach agreements in 3,786 of those cases; the cases not resolved include cases where either a work stoppage or negotiations continued past the end of the fiscal year, the company went out of business, or the union was decertified. Health care continues to be the most contentious issue in contract negotiations, with 55 percent of the agency's cases involving health care costs, FMCS said. The complete annual report should be available by the end of October.

Workplace Deaths Up in 2003

A total of 5,559 fatal work injuries were reported nationwide in 2003, a slight increase when compared with the revised total of 5,534 on-the-job fatalities in 2002, according to data released Sept. 22 by the Bureau of Labor Statistics. Fatal injuries involving homicides, fires and explosions, and being struck by objects increased, while deaths from highway incidents, falls, and electrocutions all were lower in 2003 than in 2002. The data are available at <http://www.bls.gov/news.release/cfoi.nr0.htm>.

Harassment Fact Sheet Updated

The latest anti-harassment standards under federal law are explained in the updated *Preventing Sexual Harassment and Other Workplace Harassment: A Fact Sheet for Employees, 2004 Edition*, published by BNA. In addition to sexual harassment, the fact sheet addresses harassment based on age, race, disability, national origin, and religion. Prepared by David Kadue, an attorney with Seyfarth, Shaw, Fairweather, and Geraldson, the fact sheet (Order No. 1439-PRY4) is available at a minimum order of 50 copies for \$1.05 each from BNA Books at www.bna-books.com or 800-960-1220.

Health Care Surveys Show Increased Costs for Workers

Employers can expect about an 8 percent increase in 2005 health care costs, a significant reduction from the double-digit hikes incurred for more than half a decade, according to a survey released Oct. 6 by consulting firm Towers Perrin. However, the study predicted employees will be asked to pay more out-of-pocket

costs for their health care in 2005. Information is available at <http://www.towersperrin.com/hrservices>.

A report released Sept. 28 by consumer group Families USA showed workers' health insurance premiums rose an average of 35.9 percent from 2000 to 2004, while average earnings over that period rose just 12.4 percent. The report and fact sheets on health care in the 50 states are available at <http://www.familiesusa.org/site/DocServer?docID=4601>.

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(Include advertiser's proof and exchange copies)	324	505
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I certify that the statements made by me above are true and complete. (signed) Joseph A. Boswell, Manager, Delivery Services, 10/01/04

Legal Developments

Decisions on Contract Interpretation, Lockout Handed Down

A lawsuit over workplace surveillance is not preempted by the Labor Management Relations Act because questions about expectations of privacy do not require interpreting the collective bargaining agreement, the U.S. Court of Appeals for the Third Circuit ruled Oct. 6 (*Kline v. Security Guards Inc.*, 3d Cir., No. 03-3610, 10/6/04).

The dispute arose after the company installed a surveillance system at its facility that was monitored by employees of a security firm.

About a week after the system was installed, employees learned that guards could listen to oral communications taking place in the entryway. They sued in state court, asserting 69 counts against the employer and the security firm, including claims under Pennsylvania's wiretap law, under a private detective act, and various common law tort actions.

The firms removed the claims to district court and filed motions to remand based on LMRA preemption. The trial court rejected the preemption claim and retained jurisdiction.

Sending the case back to state court, the Third Circuit found it was unnecessary to interpret the collective bargaining agreement between the company and the employees' union to determine whether the company violated the workers' privacy and committed a series of torts by installing the surveillance system.

"[O]ur analysis indicates that the state laws invoked by Appellants confer upon them substantive rights that are independent of any rights available under the [collective bargaining agreement]," the court said.

The Third Circuit rejected the employer's contention that the state law claims go to "core" management rights, a subject of collective bargaining. The company argued that the state claims "necessarily implicate" the management rights and shop rules clauses in the collective bargaining agreement and therefore the issues cannot be analyzed without reference to that agreement.

"[T]he mere fact that we must look at the [collective bargaining

agreement] in order to determine that it is silent on any issues" relevant to the state law claims "does not mean we have 'interpreted'" the contract, the court said.

The employees did not allege a violation of the bargaining agreement nor did they allege claims founded upon rights created by the agreement, the court said. Although the state claims related to workplace conduct, they were grounded in substantive rights granted under state law.

"[T]he essential question is not whether Appellant's rights relate to a subject—management's rights—contemplated by the [collective bargaining agreement]," the court said. "Rather, the dispositive question here is whether Appellant's state claims require any interpretation of a provision of the [collective bargaining agreement]." Because there was no mention of surveillance in the agreement, there was no reason for the court to interpret the bargaining agreement, the court concluded.

Lockout of Strikers Legal

An employer did not violate federal labor law by locking out former strikers who stayed out for the entire length of the strike while not locking out nonstrikers or those who returned to work during the strike, the National Labor Relations Board ruled Sept. 30 (*Midwest Generation EME LLC*, 343 N.L.R.B. No. 12, 9/30/04 [released 10/5/04]).

When employer and union negotiators failed to reach a successor contract, the union began an economic strike on June 28, 2001. All but eight of the approximately 1,150 bargaining unit workers walked off the job; 47 strikers returned to work before the walkout ended.

On Aug. 31, the union ended the strike and made an unconditional offer to return to work on behalf of all the strikers. Six days later, the company declined the offer and instituted a lockout of all workers who were still on strike as of Aug. 31. Bargaining unit members ratified a contract on Oct. 16, and the company ended the lockout on Oct. 22.

After the union filed an unfair labor practice charge, the NLRB general counsel issued a complaint against the company alleging that it was illegal to lock out the full-term strikers but not the nonstrikers and the "crossover" workers.

The Supreme Court held in *American Ship Bldg. Co. v. NLRB*, 380 U.S. 300, 58 LRRM 2672 (1965), "that a lockout for the 'sole purpose of bringing economic pressure to bear in support of [the employer's] legitimate bargaining position' is not unlawful and is not inherently destructive of employee rights," the board said. It found the evidence in this case clearly established that the employer brought the lockout in support of its legitimate bargaining position.

The board also has recognized the legality of partial lockouts when they are justified by operational needs and are not based on union membership, NLRB said. It found that the company's "retention of the crossover employees and nonstrikers during the lockout augmented its effort to maintain continued production" and that the parties stipulated that the company did not decide who to lock out based on union affiliation.

There is no evidence that the lockout was motivated by antiunion animus, the board said, noting the parties stipulated that the company bargained in good faith. The board also found that the company complied with the union's information request and that it allowed crossover workers to return to work regardless of their union membership.

Distinguishing between nonstrikers and crossovers on the one hand and full-term strikers on the other is not illegal if there is a legitimate and substantial justification for it, in this case to exert pressure in support of the company's bargaining position, the board said. Regardless of why the nonstrikers and crossovers decided to work, "it was no longer necessary for [the company] to place additional pressure upon them in order . . . to achieve its bargaining goals, for these employees had already eschewed the strike weapon during the strike."