

"The Board agent here followed established procedure in allowing more than one observer per side shortly before the election was to commence and in suggesting to the employer that it maintain a parity with the union in the number of observers," the court concludes. "The imbalance in observers here was the result of a choice freely made by the employer and is no cause for holding a new election."

(*NLRB v. Best Products Company, Inc.*; CA 9, No. 84-7645, July 10, 1985.)

(Decision appears in Text Section D.)

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✓ SURVEY DISPUTES REPORTED TREND TOWARD WORKPLACE SMOKING POLICIES

The "widely-reported trend" toward restrictive workplace smoking policies in large corporations is a myth, according to a Dr. Lewis Solmon, dean of UCLA's Graduate School of Education and president of Human Resources Policy Corporation (HRPC), a social science and economic research firm.

Solmon's conclusions regarding workplace smoking policies are based on an HRPC survey sponsored by the Tobacco Institute, a trade association of tobacco product manufacturers. The survey respondents were corporations from the *Fortune* 1000 list of service and industrial companies and from *Inc.* magazine's list of the 100 fastest growing corporations in the U.S.

Only 32 percent of the 445 respondents reported that some type of smoking policy is in effect at the workplace. The most common smoking policies in place are ones that prohibit certain employees from smoking while working or restrict smoking by employees holding certain jobs, the survey found. Employees most likely to be restricted from smoking are those working with dangerous substances, sensitive machinery, or food.

The survey also found that almost one-fourth of the respondents had considered and rejected workplace smoking policies. Reasons given for discarding plans for no-smoking policies include rejection of the policy by employees, the employees' ability to handle workplace smoking problems on their own, difficulties in implementing the policies, and the belief that a ban on smoking would harm employee morale.

A majority of the survey respondents — 70.8 percent — reportedly encourage employees to settle disagreements about smoking at the workplace through "common courtesy." Approximately 87 percent of the companies surveyed refuse to take into account smoking habits when assigning employees to work stations or offices, and about 40 percent of the respondents said they do not modify the work environment to accommodate nonsmokers.

"Companies will provide adequate ventilation, post signs or even rearrange certain work areas to accommodate nonsmokers. But few are willing to construct new partitions or segregate smokers from nonsmokers," according to a summary of the survey results.

While approximately 43 percent of the surveyed companies offer smoking cessation programs, the study said, only 29 percent of them pay for the programs and only about 16 percent permit employees to participate in the programs on company time.

Job applicants who smoke do not appear to be discriminated against in favor of nonsmokers. According to the survey report, 99 percent of the respondents have no policy prohibiting the hiring of smokers, and 81 percent of the respondents do not ask whether a job applicant smokes. Predictions that smokers will be unemployable by the end of the 20th century are "true," Solmon said.

Most of the companies that reported having workplace smoking policies have had them in place for over five years. "Since public pressure for restrictive workplace smoking legislation has come about in the past three to five years, most company smoking policies cannot be attributed to this factor," the survey summary said.

Approximately 17 percent of the survey respondents are located in states or localities covered by workplace smoking legislation, and only 60 percent of those companies have instituted smoking policies, the survey found.

Workplace smoking policies are more likely attributed to longstanding "realities and dangers in the workplace" than to no-smoking legislation, the survey said. "This is demonstrated by the fact that industries most likely to have had a policy for over five years are food (48.3 percent), pharmaceuticals (35.7 percent), and chemicals (31.8 percent). And 39.9 percent of companies where there are hazardous materials or sensitive machinery have had smoking policies for over five years," according to the survey.

"[L]egislation mandating workplace smoking restrictions is not necessary," Solmon said. "This survey shows that companies can and do regulate smoking as circumstances warrant."

Solmon attributed the push for no-smoking legislation to a "small but vocal group that wants to ban smoking in the workplace." He maintained, however, that "across-the-board legislation is inequitable" and that companies will respond on their own if there is a need for a no-smoking policy.

Copies of the survey report, *Smoking Policies in Large Corporations*, can be obtained without charge from Teri Everett, Ogilvy & Mather, 1901 L St., N.W., Suite 320, Washington, D.C., 20036-3540; telephone (202) 466-7590.

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EMPLOYMENT OUTLOOK SAID BLEAK FOR OLDER DISLOCATED WORKERS

More than 40 percent of job losses caused by the trade deficit since 1981 have been borne by workers in their forties or older, the House Select Committee on Aging is told.

Furthermore, the employment outlook for older persons is deteriorating and neither the government nor the private sector is doing much about it, according to Jack Ossofsky, executive director of the National Council on the Aging. Ossofsky was one of several witnesses to testify before the committee on the difficulties faced by older workers who face sudden, unwanted retirement because of plant closings or other labor market problems.

"The very first thing that this committee, the Congress and the Administration must do is to understand that the continuing trade deficit and the consequent massive and growing loss of American jobs is an older worker problem and could become a massive older persons' poverty problem over the next two decades," Ossofsky said.

He cited a recent study by the Bureau of Labor Statistics that found that more than four in 10 displaced workers were over the age of 40, the age of "older workers" as defined in the Age Discrimination in Employment Act. Of the 5.1 million displaced workers studied, 58 percent of workers over age 55 and 71 percent of those over age 65 lost their jobs because of plant shutdowns or moves. "In short, the older the displaced worker, the more likely he will lose his job in a plant or company permanent closing rather than through shorter-term slack periods of work," Ossofsky said. The study also found that older workers had much lower rates of obtaining new employment.

The personal struggle of a 52-year-old laid-off steelworker from McKeesport, Pa., to find a new job was related to the subcommittee. Richard Pomponio said he worked at U.S. Steel's National Tube Company in the western Pennsylvania city from 1952 until his layoff in July 1982. Since that time, he said, he has unsuccessfully sought full-time employment, and a part-time job was offered to him only recently. Pomponio said he believes his job search has been unsuccessful in large part because of his age and because employers are reluctant to hire him at a wage far less than the average \$16 an hour he earned in the mill.