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THE STEEL INDUSTRY CONSENT DECREE

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ABSTRACT

This study analyzes the Consent Decree of the United States' basic steel industry which reformed plant seniority systems to accommodate issues of equal employment opportunity. The plant-by-plant litigation brought under Title VII and Executive Order 11246 is shown to be the main catalyst which brought representatives of the steel industry, of the United Steel Workers of America, and of the appropriate government agencies to negotiate this industry-wide solution. The principal terms of the steel industry Consent Decree are: the establishment of a mechanism to implement the Decree; the uniform institution of plant-wide seniority; the retention of pay rates after transfer to a position that provides a lower pay rate than the previous position; the establishment of goals for minority representation in trade and craft jobs; and a back pay settlement. The analysis of these provisions reveals two related points. Black representation in trade and craft jobs increased in the four year period after the Decree, with an indication that the increase was greater than pre-1974 employment trends would have predicted. However, 1978 black/white employment figures indicate that underutilization of blacks in these positions still persists.

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The production workforce in the basic steel industry totaled 530,000 employees in 1974, so that when, on April 15, 1974, the United Steelworkers of America and nine companies in the industry entered into a Consent Decree with the United States as represented by the Attorney General's Office, the Department of Justice, the Secretary of Labor, the Office of Federal Contract Compliance (OFCC), and the Equal Employment Opportunity Commission (EEOC), the employment practices of a key segment of the United States manufacturing sector were affected. The nature of the basic steel industry, the nature of the actors involved, the historical relationship of these principal actors, the economic climate and general timing of the negotiations are factors specific to the case of the Steel Consent Decree that helped to determine the unique process and outcome embodied in the Decree.

Consent decrees had been emerging since the time of the American Telephone and Telegraph Consent Decree as a method for parties to form the substance and implementation mechanisms of the equal employment opportunity policies with which they would live. Many consent decrees, particularly those involving white-collar jobs, were negotiated in settings without unions. In cases in which employee organizations were present, their role tended to be limited. In the steel case, not only was the United Steelworkers of America (USWA) a principal actor, but it instigated the process. The USWA was also a union operating in a multiemployer setting. The relationship between the USWA and the array of employers had reached a stage of maturity in which collective bargaining was being governed for the first time by the Experimental Negotiating Agreement (ENA). The negotiations of the Decree coincided with the initial ENA collective bargaining negotiations. Furthermore, through the early 1970s, the steel industry was a contracting industry hard pressed by increased

competition from imports, by a general economic recession, and by the compounding problems of extensive new capital investment to modernize the domestic steel production process. All such environmental factors which helped to determine the process, as well as the outcome, of the Decree deserve attention in an analysis of the steel industry's consent decree. Moreover, employment policies in this key manufacturing sector impact on other sectors, so that an analysis of the Decree should be mindful of such spillovers.

Specifically, this paper is divided into four sections. Section I describes the setting in which the actors came to negotiate the Decree. This section will consider the following categories of environmental factors: the demographics of employment, the economic environment of the industry, the environment described by pre-existing litigation, and other political and positioning considerations of the parties. Section II describes the principal terms and features of the Consent Decree. For the substantive features of the Decree, there is an analysis of the impact of each feature on employment outcomes in the steel industry in Section III. In the final section, broader impacts of the Steel Consent Decree are indicated -- specifically the spillover of the Steel Decree's terms to the aluminum industry.

I. The Setting for Negotiations

Employment Trends in Basic Steel

One factor shaping the perceptions of employer and employee representatives in the period leading up to the formulation of the Consent Decree was the size and distribution of the minority workforce within the steel industry's total workforce. The larger the percentage of minorities, and the more unequal the distribution of minorities between positions affording different economic opportunities, the greater the effort one would expect from the minorities within the USWA to move the union to address the issues of equal employment opportunity. In this section, such employment trends in the steel industry are considered for the decade preceeding the Consent Decree.

Table 1 presents employment changes in the steel industry workforce from 1966-74. In 1966, one observes the basic pattern of employment that the Consent Decree would ultimately be designed to change. Out of a workforce of 798,556 employees, 14.26% or 113,860 were black. This black workforce was heavily concentrated in blue-collar occupations, and within the blue-collar occupations, black employees show a higher representation in lower skilled jobs. Of all craftsmen in 1966, 6.31% were black, as compared to 20.28% of all operatives and 28.19% of all unskilled laborers.

However, the trends over the next eight years, presented in Table 1, do not show movement toward greater inequality in this employment distribution. Industry employment fluctuated over this eight year period with an overall downward trend. Within this relatively unstable employment framework, black representation in all major occupational categories is very stable. Black employment in the industry increases slightly from 14.26% in 1966 to 14.82% in 1974, while total employment fell from 798,556 to

TABLE 1

BLACK EMPLOYMENT IN THE STEEL INDUSTRY BY OCCUPATION AND YEAR

PERCENT BLACK

OCCUPATION CATEGORIES	1966	1969	1970	1971	1972	1973	1974
Office Managers	.94	1.78	2.18	2.33	2.44	2.86	3.29
Professionals	.25	.72	1.05	1.04	1.12	1.21	1.36
Technicians	1.27	2.58	2.94	2.86	3.06	3.14	3.29
Sales Workers	.25	.19	.42	.31	.26	.40	.75
Office & Clerical	1.68	2.96	3.70	3.60	3.63	4.14	4.91
Total White-Collar	1.14	2.13	2.63	2.62	2.68	3.03	3.50
Craftsmen(skilled)	6.31	7.41	7.44	7.43	7.31	8.15	8.46
Operatives(semiskilled)	20.28	22.03	20.94	20.62	20.42	20.48	20.51
Laborers(unskilled)	28.19	30.03	20.11	27.87	26.25	26.10	26.00
Service Workers	19.02	20.67	21.23	19.62	19.27	17.06	17.93
Total Blue-Collar	18.04	19.46	18.78	18.18	17.70	17.84	18.10
Industry Total	14.26	15.60	15.23	14.70	14.41	14.53	14.82

Source: EEO-1 Forms, 1966, 1969, 1970, 1971, 1972, 1973, 1974 for SIC Industry #331, Blast Furnance and Basic Steel and SIC Industry #332, Iron and Steel Foundries.

699,245 over the same period. Black representation in white-collar jobs shows modest increases through the period, while in blue-collar positions there is little fluctuation. Throughout this time, blacks are relatively underrepresented in white-collar jobs and in trade and craft jobs within blue-collar occupations. Despite a slight upward trend in black representation in trade and craft positions, in 1974, the year of the Consent Decree, black representation in these positions is only 42% of their representation in the blue-collar workforce.

Although one does not observe any trend toward greater inequality in the occupational distribution by race over these eight years, the pattern of underrepresentation of blacks in trade and craft and white-collar occupations persisted over time. The persistence of this pattern formed the basis for complaints in litigation in the steel industry that ultimately brought on the negotiations over Consent Decree I which governed the distribution of minorities across production and maintenance occupations and Consent Decree II which addressed the issue of minority employment opportunities in white-collar jobs.

The Economic Environment of the Steel Industry

Even with gains in industry employment in 1973 and 1974, employment in basic steel decreases by nearly 100,000 employees from 1966 to the year of the Consent Decree. This general employment decline is consistent with the decline in the competitive position of the United States basic steel industry. Such a position would reinforce the companies' interest in avoiding costly settlements of discrimination charges. Furthermore, an effective remedy of the inequality of employment opportunity would necessarily have to consider any business contraction which would translate into contracting employment.

Figures presented in Table 2 describe business trends in the steel industry in the period prior to the Consent Decree. From 1960 to 1970, profits as a percent of sales declined steadily from 5.8% to 2.6%,^{1/} with increases in profitability in 1973 and 1974. Comparatively modern steel production processes abroad also hurt the competitive position of the United States steel industry in the world market. Steel imports increased steadily over the decade, accounting for 4.7% of domestic consumption in 1960. In 1968, the percentage had increased to 16.7%.^{2/}

Furthermore, the problems confronting the steel industry during the business contraction of the early 1970s were compounded by extensive capital investment projects to replace obsolete and energy inefficient production equipment. In 1970, \$1.73 billion of new capital investment was undertaken in the basic steel industry.^{3/} In 1975, the figure was \$3.71 billion.^{4/}

Imports of steel and industry employment and profitability point consistently to contraction in the basic steel industry through the 1960s and early 1970s. However, statistics for 1973 and 1974 just as consistently indicate expansion of the industry. The protracted period of contraction may well have been a factor that heightened industry's interest to avoid costly litigious proceedings concerning employment opportunity in the industry, yet the 1973-74 upturn in the industry may have presented negotiators of the Decree with brighter prospects for the industry. One representative of the USWA familiar with the negotiation of the Steel Consent Decree felt that the long-term declining position of the industry was not an important or explicit consideration in the negotiation of the Decree.^{5/} The improving position of the industry in 1973 and 1974 may have partly been responsible for this perspective, yet a mechanism that would effectively address the issues of minority employment opportunity required a design which

TABLE 2

STEEL INDUSTRY STATISTICS

Year	Iron & Steel Industry Profits as % of Sales	Imports as % of Apparent U.S. Consumption	New Capital Expenditures Steel Industry (Billions of \$)
1960	5.8	4.7	1.52
61	5.3	4.7	.96
62	4.1	5.6	.91
63	5.4	6.9	1.04
64	6.1	7.3	1.60
65	6.0	10.3	1.82
66	5.9	10.9	1.95
67	4.9	12.2	2.15
68	5.2	16.7	2.30
69	4.5	13.7	2.05
70	2.6	13.8	1.73
71	2.8	17.9	1.70
72	3.5	16.6	1.57
73	4.5	12.4	1.76
74	6.4	13.4	2.62
1975	4.6	13.5	3.71

Source: American Iron and Steel Institute, Statistical Division.

recognized long-term industry contraction and the accompanying employment contraction which basic steel was to face through the remainder of the 1970s. The Decree's design and its effectiveness in light of this industry situation are discussed in the following sections.

A Background of Litigation

The environment as described by the employment and industry trends set the framework within which the USWA, the steel companies and the government would operate. More specifically, it was the litigation brought under Title VII and Executive Order 11246 which provided the catalyst that brought the parties to negotiate over the industry's basic seniority/employment opportunity practices. The steel industry had been confronted with issues concerning the possible discriminatory effects of seniority systems in place at various plants in several cases over a long history. The decisions on this issue are divided into two distinct groups by the Second Court of Appeals decision in United States v. Bethlehem Steel Corporation (Lackawanna Plant) in June 1971. The set of decisions prior to this appeals court decision did not provide for any seniority "carryover" or "rate retention" and generally did not threaten any plant's seniority system. These decisions include Whitfield v. United Steelworkers of America, Local 2708 (1958);^{6/} Federal District Court decisions in United States v. H.K. Porter (1968)^{7/} and the United States v. Bethlehem Steel Corporation (Lackawanna Plant) (1970);^{8/} and In the Matter of Bethlehem Steel Corporation (Sparrows Point Plant) OFCC Docket #102-68 (1970),^{9/} The second set of cases reversed the trend set by the early decisions, and threatened seniority systems in place by providing for remedies of rate retention and seniority carryover generally for the affected class of minority employees. These

cases include the Court of Appeals decision in United States v. Bethlehem Steel Corporation (Lackawanna Plant) (1971),^{10/} In the Matter of Bethlehem Steel Corporation (Sparrows Point Plant) (1973),^{11/} and the District Court decision in United States v. United States Steel Corporation (Fairfield Plant) (1973).^{12/}

The first case to address the possible inequalities inherent in a steel seniority system was Whitfield v. United Steel Workers of America, Local 2708 (1958). Before the Fifth Circuit prior to Title VII in 1958, the court left the seniority system at the Armco Steel Corporation's plant in Houston, Texas unaltered, stating that when "...a large company substitutes a program of equal job opportunity for previous discriminatory practices...it is impossible to place Negro incumbents holding certain jobs, especially unskilled jobs, on absolutely equal footing with white incumbents in skilled jobs." The court "...attach[ed] particular importance to the good faith effort of the parties in working toward a fair solution...The Union and the Company...have a contract that from now on is free from any discrimination based on race. Angels could do no more."^{13/} As this language indicates, the Whitfield opinion focusses on how fairly the company and union represent the interests of minority employees. Court opinions for cases heard after the enactment of Title VII would require language that would encompass both the duty of fair representation and the provisions of the equal opportunity legislation.

Following Whitfield is the array of cases brought under Title VII and Executive Order 11246. The case responsible for the first decision under this legislation on these seniority-based issues was United States v. H.K. Porter Company (1968) heard in the northern district of Alabama. Despite the fact that the departmental seniority system in Porter helped

to maintain inequalities in the racial compositions of departments, the trial court rejected the government's arguments for a remedy of the institution of a plant-wide seniority system. Rather, the court found that skills, training, and hazards differed significantly from job-to-job, and it would therefore be inappropriate to assume:

...that the employees in this steel mill are in no danger of injury from the performance of the jobs around them by employees with less than the full amount of experience...^{14/}

As the appeals process began in Porter, United States v. Bethlehem Steel Corporation (Lackawanna Plant) (1970) was brought under Title VII in the western district of New York and a hearing panel was established In The Matter of Bethlehem Steel Corporation (Sparrows Point Plant) (1970) under Executive Order 11246. Both cases involved larger steel plants than in the Porter case (1968), and thereby were more typical of steel mill operations. In the Lackawanna (1970) case, the government again sought a revamping of a department-wide seniority system which helped maintain a system in which 83% of all black employees were concentrated in eleven of the company's eighty-two departments^{15/} by allowing blacks employed in these eleven departments to transfer with rate retention and without loss of seniority privileges.

The trial court rejected the government's argument here as well. Among the reasons for the court upholding the department-wide system were:

(1) that the eleven departments in question were by no means exclusively black departments, with two-thirds of the employees white;

(2) that the earnings of blacks in these departments were 96.7% of the average hourly earnings of all plant employees, despite greater seniority of white employees throughout the plant;

(3) that these eleven departments provided more stable employment

subject to fewer cyclical layoffs;

(4) that the level of transfers was significant under the existing seniority system without rate retention and carryover;

(5) that the company had in place a system to cure the racial imbalance in representation in departments;

(6) and that the government's remedy was fraught with potential disruptive effects on incentive pay programs, the job classification scheme, and expectations for promotion of employees outside the "affected" class.^{16/}

The affirmation of the department-based seniority system was mitigated by the trial court's granting of preferential transfer rights to employees (white as well as black) in the eleven departments based on plant seniority, but without rate retention or seniority carryover.

Following on the Lackawanna (1970) decision, a hearing panel for the Office of Federal Contract Compliance's case, In the Matter of Bethlehem Steel Corporation (Sparrows Point Plant) (1970) followed the trend of the previous cases, rejecting the need for any remedies, much less remedies with rate retention or carryover. The decision of the hearing panel stressed, in much the same fashion as did the trial court in Porter (1968), the business necessity for the existing system in the steel industry setting.

The decisions consistently left in place the department-wide seniority systems in each case. As the appeal process continued for this set of cases, the consistent trend of the trial courts and the OFCC case hearing panel would be reversed. In June of 1971, the Second Circuit Court of Appeals reversed both the trial court in Lackawanna (1970) and the trend of decisions on such seniority issues. The fact that the departmental segregation did not impact greatly on earnings did not convince the Second Circuit that the affected class of minorities should therefore not be given special

consideration in future transfers. As for the effect on promotion expectations of those in the non-affected class, the appeals court posited that those "hopes arise from an illegal system," and further that "if relief under Title VII can be denied merely because the majority group of employees, who have not suffered discrimination, will be unhappy about it, there is little hope of correcting the wrongs to which the Act is directed."^{17/} The Appeals Court felt the trial court "put it backwards" in denying relief because the existing system did not deter all transfers. The criterion of the Appeals Court was "what would be necessary to insure sufficient incentive to transfer so that the effects of past discrimination would not be perpetuated."^{18/}

In connection with this line of argument, the Second Circuit granted seniority carryover and rate retention for members of the affected class and removed the special transfer privileges of white employees in the eleven departments. The "black only" or affected class only approach was to be a strong catalyst in moving the USWA to adopt the Consent Decree approach of addressing these issues.

In January of 1973, after review of the hearing panel's recommendations, the Secretary of Labor, James Hodgson, ignored the panel's recommendations in his decision on Sparrows Point, OFCC Docket #102-68. Secretary Hodgson "framed a remedy which is consistent with the evidence and the relevant court decisions, particularly relying on the Second Circuit Court of Appeals in United States v. Bethlehem."^{19/}

As the trend in decisions was being reversed, a case involving the seniority system of the large Fairfield plant of the United States Steel Corporation was pending in the northern district of Alabama. Wishing to settle Fairfield out of court, the USWA and the government representatives

urged the Fifth Circuit to deliver a decision on the appeal of Porter (1968), still awaiting a hearing. A Fairfield settlement could then be reached based on the guidelines that the Fifth Circuit would prescribe in Porter.^{20/} No decision was forthcoming, and so the Fairfield case was heard in the northern district of Alabama over several months in 1973, "with more than 10,000 pages of testimony, and over ten feet of stipulations and exhibits."^{21/} Judge Pointer's decision would form the basis of the substance eventually embodied in the Steel Consent Decree.

Pointer's decision partially adopted the government's request for a remedy involving rate retention and carryover. But seeking an "even-handed" approach, the provision that plant seniority would govern promotions, layoffs, and other areas would apply to all employees in the plant. Rate retention applied to those minorities that were included within the definition of affected Fairfield employees. Pointer's decision was the last decision to have a significant impact on the seniority discrimination issue. The decision in the Porter (1968) appeal would be based upon a stipulation of the parties in 1974.

Other Positioning Considerations

With the trend in key cases modifying seniority systems with "black-only" remedies, and with the Fairfield decision presenting a middle-ground remedy, potential benefits of negotiation of the Consent Decree now existed. In review of the development of this environment conducive to negotiation, three specific factors moved the USWA to promote negotiation. The trend in decisions toward remedies providing for black only modifications to seniority systems, the USWA felt, would create undesirable fragmentation within their membership, and other disruptions at the plant level. Second,

the USWA had advocated plant-wide seniority for some time, but left the determination of the system to the discretion of locally autonomous bargaining. Finally, the cases that were being decided were but a fraction of all cases involving seniority and equal employment opportunity in basic steel. According to one company representative, the ability of the companies, the USWA, and the government representatives to avoid the escalating costs associated with a plant-by-plant approach to seniority remedies was the principal factor which motivated these parties to adopt an industry-wide solution.^{22/}

Beyond these specific reasons that made the time right for the Consent Decree, the declining condition of the industry was a broader environmental factor that made it more desirable to avoid court cases and settlements that would be costly to the industry. This was particularly important, since, even after Fairfield, industry representatives felt they could win appeals of the decisions and win decisions in upcoming cases on grounds of "business necessity," as in the H.K. Porter case of 1968.^{23/} Industry conditions would not allow the company representatives the luxury of overlooking less costly approaches to the issue. Also pointed out, the general employment picture did not indicate any easing of the problems as blacks, from 1963 to 1974, were still by and large segregated out of trade and craft occupations.

One final consideration in the development of the environment necessary to allow negotiation of the Consent Decree was the well-developed bargaining relationship of the USWA and industry representatives. In 1974, the basic collective bargaining agreement was expiring and to be replaced by a successor agreement negotiated for the first time under the Experimental Negotiating Agreement (ENA). Parties had planned on taking advan-

tage of the opportunity of memorializing the negotiated settlement of the seniority/employment opportunity issues in the collective bargaining agreement. Once it was decided to include the result of these negotiations in the collective bargaining agreement, timing of ENA negotiations put pressure on the parties to reach agreement by the expiration date of the previous collective bargaining agreement. If issues on the Consent Decree were left unresolved, the parties were fearful that such issues would be subject to the decision of a third party arbitrator,^{24/} since under the ENA any issue of successor collective bargaining agreement unresolved by the bargaining deadline was to be decided by an arbitrator. Furthermore, the USWA Executive Board felt the seniority issues could even threaten the ENA procedure itself:

It would be unwise to subject that negotiating procedure [ENA] to the stress of reforming seniority. The success of the new procedure will depend heavily upon the effectiveness with which it meets our [USWA's] members needs in 1974. If the seniority issue were to be handled under the new procedure, the resulting tensions could seriously threaten the ENA. 25/

The economic and employment settings in the basic steel industry came together with the trend of legal decisions on seniority systems' discriminatory impact in such a way that it was of mutual interest to the USWA, the steel companies, and government representatives to negotiate an industry-wide solution to the problem. Pressure to address the issue was also brought to bear on the negotiations by the bargaining deadline of the industry's collective bargaining agreement.

II. The Provisions of the Consent Decree -- Consent Decree I

Once parties decided to address the seniority system and discrimination issues in negotiation, the remedies focused on a concept that had

been inherent in debates on civil rights issues since the late 1950s, the concept of "rightful place." Under this doctrine, the remedy devised would have to concern itself with the fact that seniority systems in plants throughout the industry had denied blacks and other minorities their rightful place in terms of occupation, earnings and future job opportunities. This doctrine can be applied in two ways. Retrospectively, how would a remedy address the fact that minorities had been denied their rightful place over past years and thereby been on lower earning paths for a significant part of their careers? Prospectively, how would the Consent Decree alter the seniority provisions in plants across the country to permit minorities to reach their rightful occupational and earnings levels. This section describes the remedies prescribed for the steel industry in Consent Decree I; that is, the part of the Consent Decree package that considered the situation of the production and maintenance workforce in basic steel (Consent Decree II will not be directly addressed in this discussion, as the negotiation of Decree II did not involve the USWA. Decree II altered employment practices in white-collar positions and in hiring practices. Generally, Decree II, formulated after Decree I had been settled, followed the outline of Decree I in form and substance.) More specifically, the basic features of Consent Decree I were: the establishment of a mechanism to implement the Decree; the uniform institution of plant-wide seniority; the particular application of plant continuous service for transfer opportunities; the retention of pay rates, or "red circling" when transferring if the new positions' rate of pay was lower than the rate at the former position; the establishment of trade and craft goals for minority representation; and a back pay settlement. For the provisions which altered employment practices and relationships among employees, the impact of the provision

in the first four years of the Decree, from 1974-78, will be analyzed in Section III.

The Implementation Mechanism

Because of the familiarity with the steel industry achieved by Judge Pointer from the lengthy Fairfield hearing, the government asked Pointer to be the judge to enter the Consent Decree. The first of three levels of the mechanism for implementing the Decree was thereby established. The District Court of Northern Alabama would maintain jurisdiction over the Decree, its substance as well as implementation, for a period of at least five years from the date of the Decree.

At a second level, and coordinating the implementation activity at all plants covered by the Decree, is the Audit and Review Committee. The A&R Committee was a continuation of the Seniority Study Committee of the Coordinating Committee of Steel Companies and the United Steelworkers of America. To this Seniority Study Committee the government added a representative to form the A&R Committee. The Decree sets out four broad responsibilities for the A&R Committee:

(1) oversee the implementation of and compliance with the Consent Decree at the plant level;

(2) take up the resolution matters that remain in dispute at the plant level;

(3) begin a review of the experience under the Decree no later than December 31, 1975 with regard to transfer opportunities and records, achievement of trade and craft goals, and related matters;

(4) bring to the District Court any issue which it is unable to resolve or clarify on its own.

The lowest tier of the mechanism is occupied by plant-level Implementation Committees. The role of these committees as defined in the Decree is to:

- (1) take the functional steps necessary to assure compliance with trade and craft goals, timetables, and implementation ratios;
- (2) provide information to plant employees;
- (3) consider grievances which are "Decree related" (other grievances are to be handled by the pre-existing grievance machinery);
- (4) be available to employees at convenient hours.^{27/}

This self-enforcing monitoring mechanism benefits from the knowledge and experience of the USWA and the companies with these issues. Furthermore, the provision for evaluation built a legitimizing influence into the process.

The Institution of Plant-Wide Seniority

At the heart of the Decree is Section 4(a) which provides in part:

plant continuous service...shall be used... for all purposes in which a measure of continuous service is presently being utilized [under the contract.] 28/

Plant service date would be the ruling criterion in selection of employees for promotion, transfer, layoff and recall. Furthermore, in contracts which provide for use of seniority in such matters as vacation selection, overtime allocation, and shift scheduling, plant continuous service governs the selection. This section specifically forbids "leap-frogging" or a reshuffling of the relative positions of employees at the time of the Decree; rather it is a prospective remedy applying to future job vacancies or closings. As the Consent Decree is further described, the experience under the first four years of the Decree will be analyzed in considering the effec-

tiveness of this prospective remedy, particularly in the area of transfers and the achievement of equality in minority representation in trade and craft positions.

Transfers

An important distinction to be made on the transfer according to plant service aspects of the remedy is that the Consent Decree does not alter lines of progression within departmental units. In this way, a permanent vacancy within a department will be filled from below within a department. Once employees fill the chain of vacancies within a department, an entry level vacancy occurs. This resultant opening is then filled on the basis of plant continuous service. To promote transfer within these limitations, the Decree provides for criteria governing distribution of the information concerning job openings, for the availability of training opportunities, and for a forty-five day trial period during which an employee who transfers may return to his old position.

Rate Retention

The notion of rate retention is a feature of the Decree intended to promote transfers. Any employee whose plant service date predates January 1, 1968, whether the employee is a member of the "affected class" or not, will receive upon transfer the rate of the new job or the rate of his previous position (based on an average of pay rates from the last several pay periods prior to transfer) whichever is greater. The rate retention feature applies for a two year period, with each eligible employee allowed two transfers with rate retention.

Trade and Craft Goals

The Audit and Review Committee is instructed to carry out an analysis of the utilization of blacks and other minorities in trade and craft occupations in plants covered by the Consent Decree. This analysis is to identify whether minorities are underutilized in various groups of trade and craft occupations. Where it is identified that "underutilization" exists, goals and timetables are to be formulated to move employment toward the standards developed in the Decree. A fifty percent implementation rate is established by the Decree, so that where underutilization exists, one-half of entry level vacancies which occur are to be made available to minorities. Underutilization is generally decided on the goal of having minority representation in trade and craft positions equal to the minority representations in the plant as a whole.

Back Pay

The above provisions of Consent Decree I are primarily forward looking, addressing the prospective "rightful place" notion; that is, how were minorities to be given the opportunity to attain a representative position within the economic system of the basic steel industry. However, inherent in the forward looking remedies is the understanding that minorities had been denied their rightful place in that system for past years due to a seniority system which locked employees into relative positions determined partially by past discrimination. The back pay provision of Consent Decree I specifically recognizes the past discrimination and the loss of economic opportunity due to that discrimination. Negotiations led to the establishment of a \$35 million fund from which "affected class employees" would be able to claim back pay. However, toward the end of the

process, the Inland Steel Company withdrew from the negotiations and final settlement to reduce the total number of companies involved from ten to nine. Since Inland is basically a single plant company it may not have benefited as much as other companies from a solution designed to avoid plant-by-plant remedies. The \$35 million fund was reduced in proportion to estimates of Inland's share of "affected class" employees to a new total of \$30,940,000. The minimum payment a claiming employee could receive would be \$250, with the actual amount determined by a formula based on minority/non-minority earning differentials and factors related to length of service. An important feature of the back pay provision is that for an employee to claim back pay it was "required [that he] sign a release relieving the USWA and the company from all claims arising out of pre-Decree acts," including existing Title VII or Executive Order 11246 cases.^{29/}

III. Living with the Consent Decree -- An Analysis of Impact

All of the provisions of Consent Decree I come together with the stagnant economic environment of the steel industry of the mid-1970s to create a particular set of incentives and opportunities for production and maintenance (P&M) employees in the industry. This specific set of incentives and opportunities determine how quickly the industry would realize the employment goals of the Decree, if at all. In this section, the experience of the industry in changing employment patterns, specific resolutions of back pay issues, and other issues related to Consent Decree I are analyzed.

Minority Representation in Trade and Craft Occupations

At the center of the Decree as well as the prior litigation was the

underrepresentation of minorities in trade and craft positions in the industry. Here, the changing patterns of representation of the black workforce in trade and craft positions is analyzed. The method for the analysis is based on the Chi-square test. For 103 plants in 1974 and 124 plants in 1978, data on the number of blacks and non-blacks in trade and craft positions and non-trade and craft positions are compared to the expected number of blacks and non-blacks in those positions. The expected number is calculated based on the Decree's goal that minorities should be represented in trade and craft positions in the same proportion as their representation in the plant as a whole. In addition to the Chi-square analysis, the deviation of the expected number of blacks in trade and craft positions from the actual number is calculated.^{30/} This deviation is standardized according to the binomial standard deviation formula, $NP(1-P)$, where:

N = total number of black and white
trade and craft employees,

P = percentage of all black and white
production and maintenance employees
that are black.

Before results of the analysis are presented, certain factors inherent in the employment situation should be noted. Since expected representation figures are based on current percentages of minorities within plants, it will become more (less) difficult for a given plant to realize the goal of equal representation in trade and craft positions should minorities gain (lose) in plant-wide representation from 1974 to 1978. Table 3 illustrates this point. Although industry totals show a very stable minority representation in the P&M workforce with an increase of 0.41 percentage points in minority representation, plants of certain companies show more marked changes. Specifically, certain plants of the Armco Steel Corporation are expected to

TABLE 3
EMPLOYMENT CHANGES FROM 1974 TO 1978 BY COMPANY

Company	Employment Totals		Percent Black
	- All Employees	- Black Employees	
Allegheny-Ludlum Industries	- 2,155 (7,447 to 5,292)	- 91 (317 to 226)	+ .01 (4.26 to 4.27)
Armco Steel Corporation	+ 2,897 (10,992 to 13,889)	+ 1,083 (1,029 to 2,112)	+5.85 (9.36 to 15.21)
Bethlehem Steel Corporation	-17,585 (65,835 to 48,250)	- 2,656 (10,700 to 8,044)	+ .42 (16.25 to 16.67)
Jones & Laughlin Steel Corporation	+ 596 (21,286 to 21,882)	- 366 (3,173 to 2,807)	-2.08 (14.91 to 12.83)
National Steel Corporation	- 114 (12,347 to 12,233)	- 370 (2,213 to 1,843)	-2.85 (17.92 to 15.07)
Republic Steel Corporation	+ 1,281 (27,429 to 28,710)	+ 39 (5,488 to 5,527)	- .76 (20.01 to 19.25)
United States Steel Corporation	+ 6,214 (79,729 to 85,943)	+ 1,491 (14,623 to 16,114)	+ .41 (18.34 to 18.75)
Wheeling-Pittsburgh Steel Corporation	- 5,021 (14,559 to 9,538)	- 196 (691 to 495)	+ .44 (4.75 to 5.19)
Youngstown Sheet & Tube Company	- 4,037 (18,654 to 14,617)	- 867 (3,987 to 3,120)	- .02 (21.37 to 21.35)
Industry Totals	-17,924 (258,278 to 240,354)	- 1,933 (42,221 to 40,288)	+ .41 (16.35 to 16.76)

Source: Audit and Review Committee, "Report on Minority and Female Employee Utilization," Appendices A and C, for sample of plants reporting in both 1974 and 1978.

have a more difficult task in equalizing representation in trade and craft jobs as minority representation at Armco plants increased 5.85%. The opposite is expected to hold for the Jones and Laughlin Steel Corporation and the National Steel Corporation.

Summary statistics indicate the general situation in regards to black representation in the steel industry. In 1974, in 106 plants blacks held 3824 of the 42,221 trade and craft positions. Based on the proportion of blacks in the total P&M workforce, blacks would have been expected to hold 10,163 of these craft jobs. This deviation is represented by a Chi-square statistic of 6223.1, significant at well above the .001 level, while the expected black representation in craft jobs is 68.75 standard deviations off the actual. (The size of this industry-wide deviation should be thought of as a cumulative account, not an average of underutilization in individual plants.)

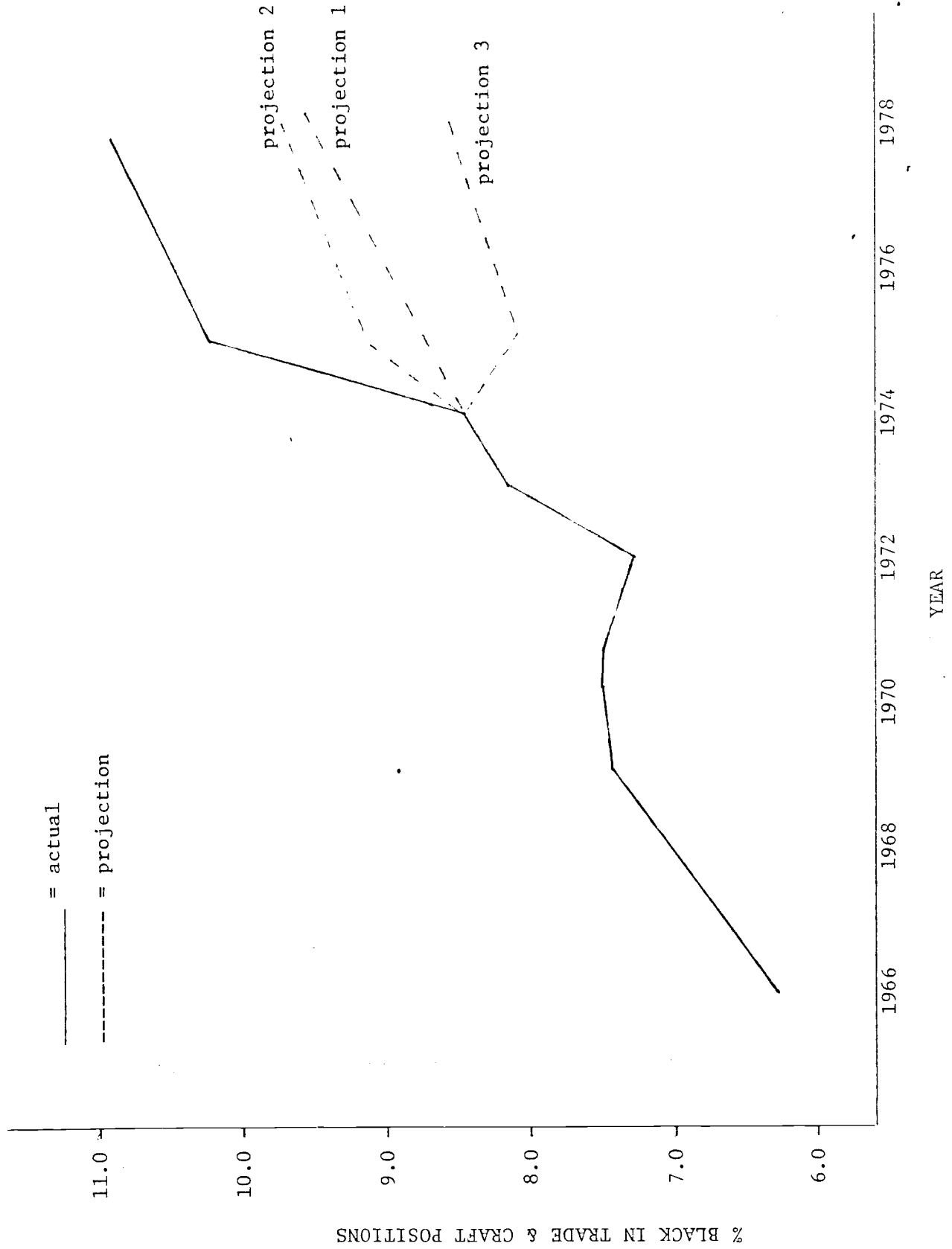
The 1978 figures show movement toward equalizing the distributions of black employees across the P&M workforce; however, the inequality is still very evident. Blacks held 4949 of the 40,348 craft positions, whereas they were expected to hold 10,215 of these positions. This fact is summarized by a Chi-square statistic of 4358.9, while the actual number of blacks in trade and craft jobs is a slightly lower but still significant 57.08 standard deviations from the expected.

Aside from asking whether Consent Decree I realized the goal of equalizing the racial composition across blue-collar occupations, a different question in gauging the industry impact of Consent Decree I is: to what degree is the employment distribution in trade and craft positions different from what it would have been in the absence of the Decree? Ideally, one would apply characteristics of individual employees at each plant to seniority rules as they were prior to the Decree, and compare that outcome to the actual out-



FIGURE 1

Actual and Projected Racial Employment Trends in Trade and Craft Positions

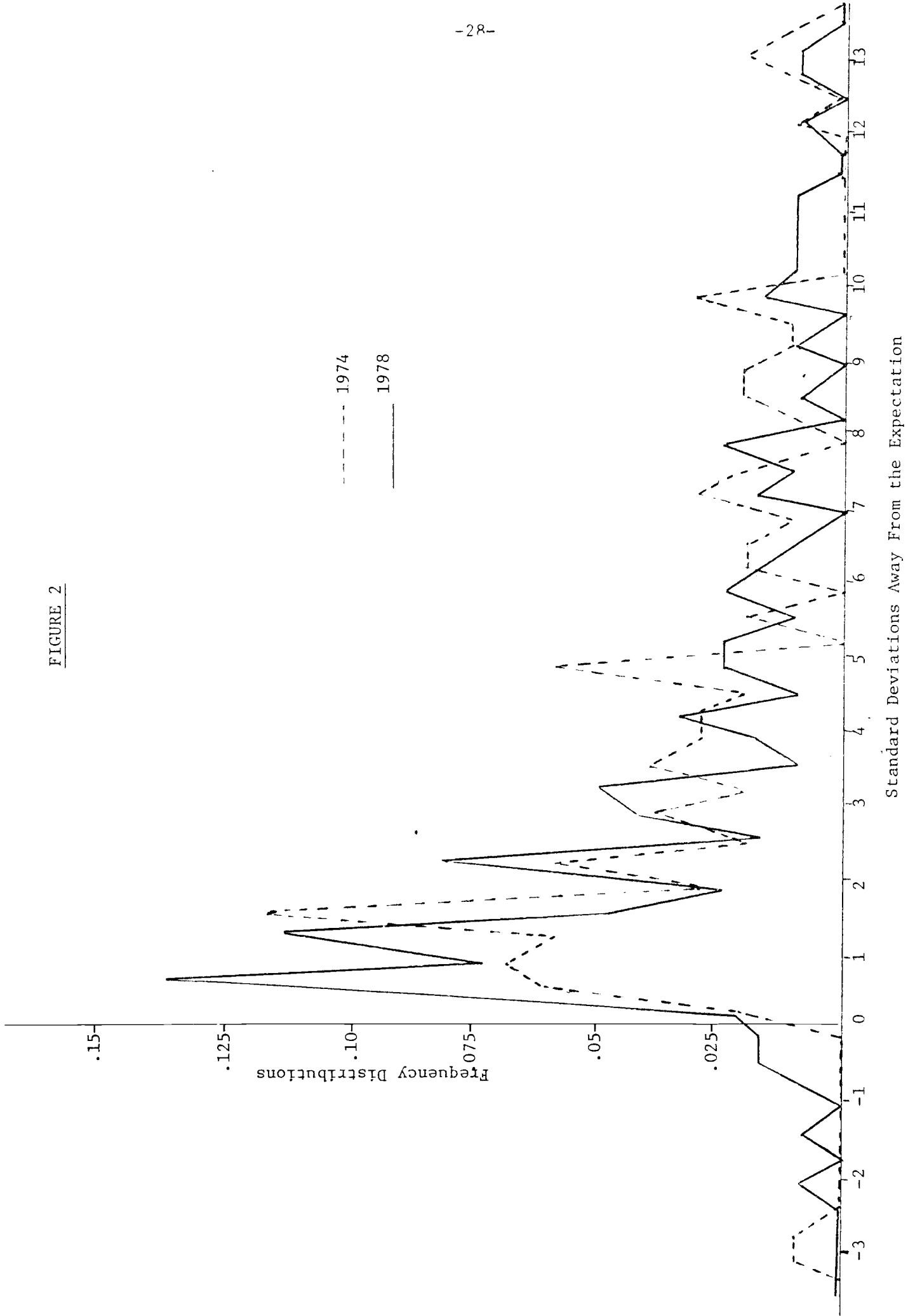


All projected trends fall short of the actual increases in black representation in trade and craft jobs from 1975 to 1978. From the actual employment trend it appears that the Consent Decree had its largest impact from 1974 to 1975. Due to the lack of data from EEO-1 forms for 1976 and 1977, annual changes in minority representation cannot be tracked from 1975 to 1978. However, the average annual increase over this three year period is comparable to the average increases yielded by the three projections. The projections yield the following average percentage point increases for 1975 to 1978 respectively: 0.27%, 0.18%, 0.15%, while the actual increase after 1975 in black representation is 0.23%.

Industry data from the A&R Committee and from EEO-1 Forms show movement toward equality in the racial composition of blue-collar workforce across occupational categories, with some evidence supporting the claim that this movement was more rapid than it might have been in the absence of Consent Decree I. Although the movement is toward equality, the racial distribution in 1978 is one of inequality. These two facts are also evident in the analysis of data on the plant level. Figure 2 shows the distribution of standard deviations of expected black representation in craft jobs from actual for the plants in 1974 and 1978. A plant in which blacks are represented in trade and craft positions in the exact proportion as they are in that plant's total P&M workforce will be represented by a standard deviation of zero in the distribution. Any plant in which the expected number of blacks in craft jobs is greater than the actual number will be represented by a positive standard deviation.

From inspection of the 1974 distribution the underutilization of blacks in plants is immediately obvious. Virtually all of the 103 plants show an underutilization of blacks. Any standard deviation greater than

FIGURE 2



1.645 indicates a deviation of expected from actual representation that is significant at the .05 level. For 1974, the mean of the deviations is 5.07, the median is 3.12. Approximately 82% of the plants have significant deviations from expected representations.

For 1978, after four years under Consent Decree I, one sees from inspection a shift in the distribution of standard deviations to the left, consistent with the industry-wide trend. The mean and median of the 1978 distribution are 3.75 and 2.12 respectively, both still significantly positive. Approximately 56% of all plants in 1978 continue to show significant underutilization of blacks in trade and craft positions. Blacks have gained in their representation in trade and craft positions. However, one cannot say that blacks have attained their "rightful place" after four years.

Figures 3a-e and 4a-e are histograms showing the geographic breakdown of these overall distributions according to a geographic classification of plants described by Richard L. Rowan in The Negro in the Steel Industry.^{34/} In both years, the Great Lakes Midwestern region accounts for a substantial proportion of the underutilization of blacks in craft jobs. The mean of the Midwest distribution is 2.8 units and 2.0 units greater than the mean of the industry-wide distribution in 1974 and 1978 respectively. However, the mean of the Midwest distribution also shows the greatest percentage decrease over the four year period.

Further investigating the nature of underutilization of blacks in trade and craft positions, the analysis turns to the investigation of underutilization of blacks in the six broad classifications of trade and craft positions defined by the industry's Audit and Review Committee. These craft categories are electrical, metalworks, machinist, moulder, bricklayer, and millwright. Table 4 shows the changes in employment by race for each of

Standard Deviations Away From Expectation, 1974

FIGURE 3a

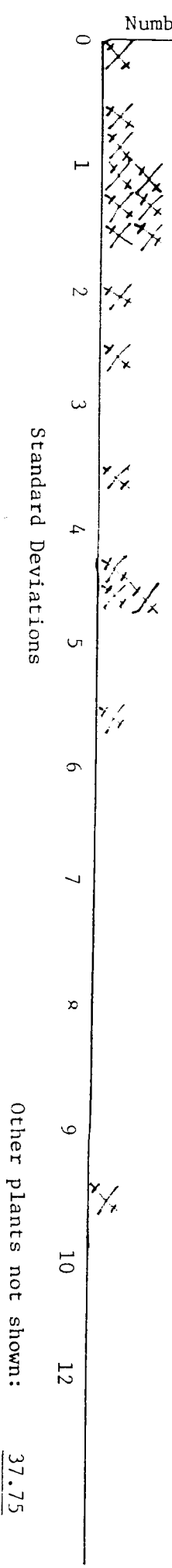
EASTERN REGION: Connecticut, Maryland, Massachusetts, New Jersey, Eastern New York, Eastern Pennsylvania

N = 18

MEAN = 4.720

STANDARD DEVIATION = 8.60

MEDIAN = 1.62



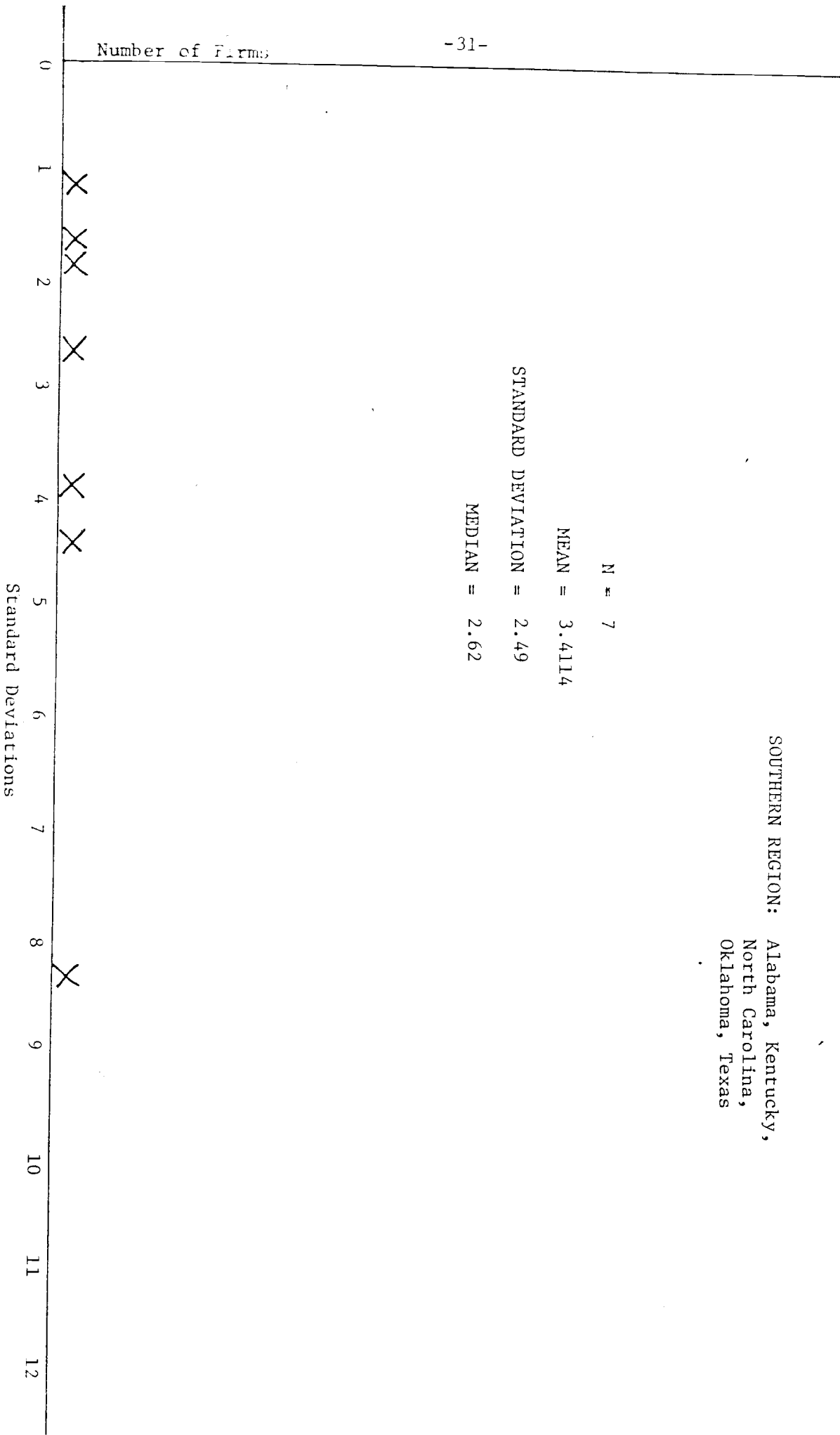
Other plants not shown:

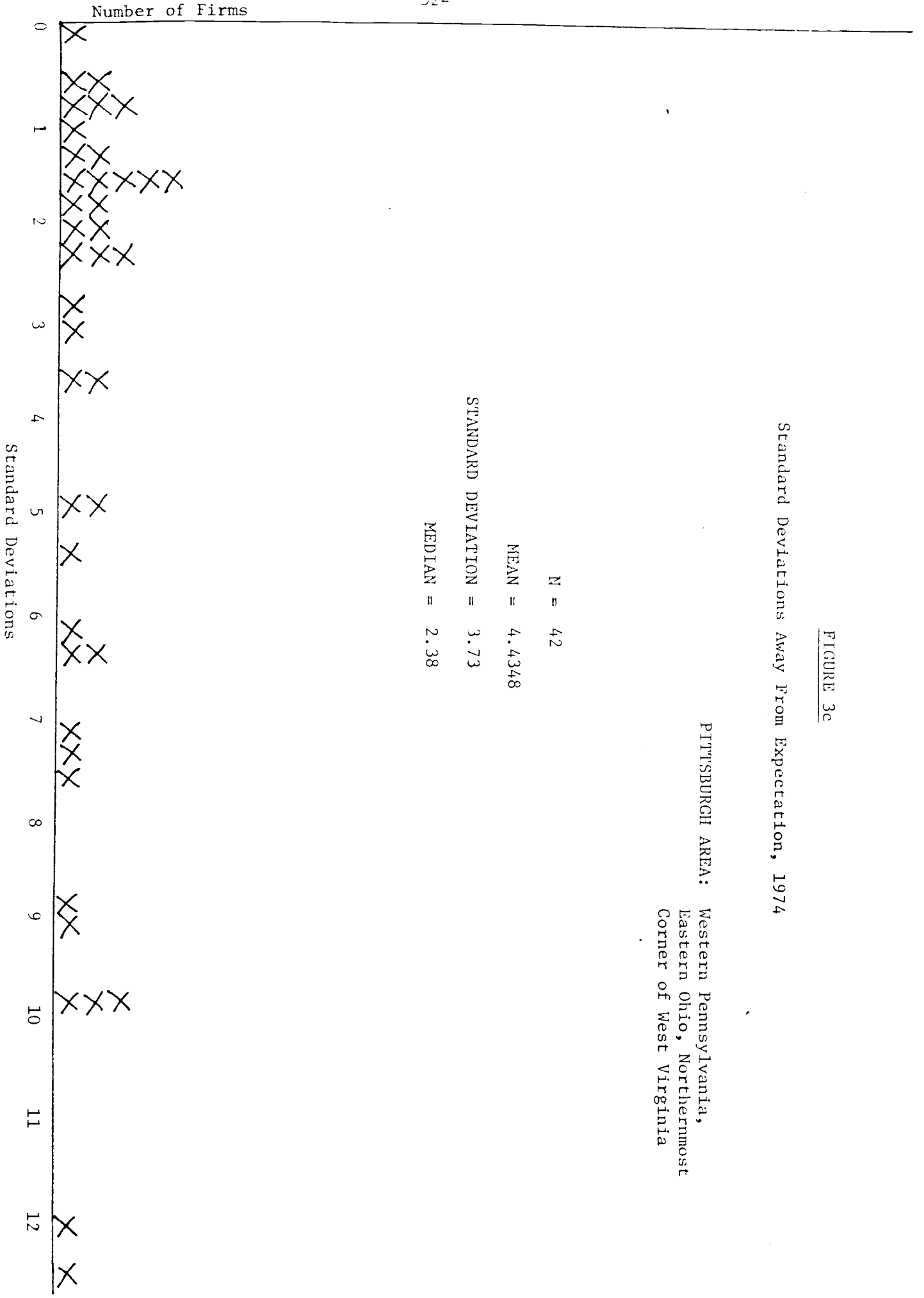
37.75

FIGURE 3b

Standard Deviations Away From Expectation, 1974

SOUTHERN REGION:
Alabama, Kentucky,
North Carolina,
Oklahoma, Texas





Standard Deviations Away From Expectation, 1974

FIGURE 3c

PITTSBURGH AREA: Western Pennsylvania,
 Eastern Ohio, Northernmost
 Corner of West Virginia

FIGURE 3d

Standard Deviations Away From Expectation, 1974

GREAT LAKES &
MIDWEST REGION:
Illinois, Indiana,
Michigan, Minnesota,
Missouri, Ohio (Lake
Counties), Colorado,
Utah

N = 28
MEAN = 7.8143
STANDARD DEVIATION = 7.73
MEDIAN = 4.88

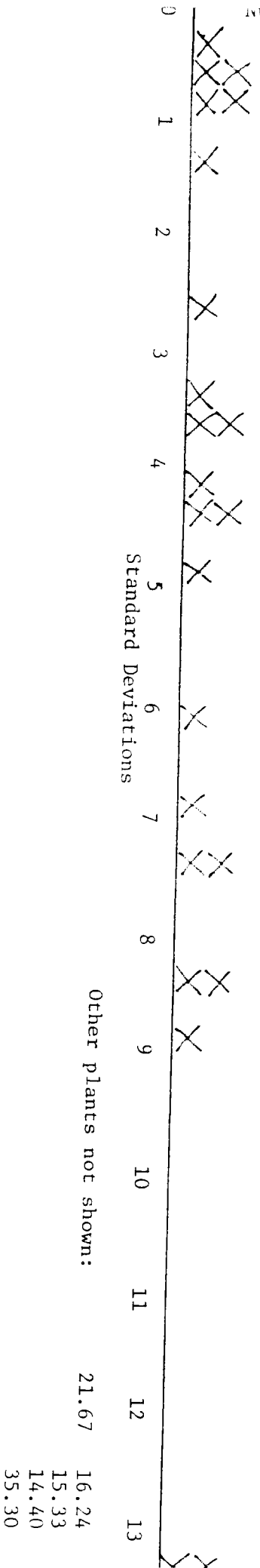


FIGURE 3e

Standard Deviations Away From Expectation, 1974

WEST COAST: California,
Washington

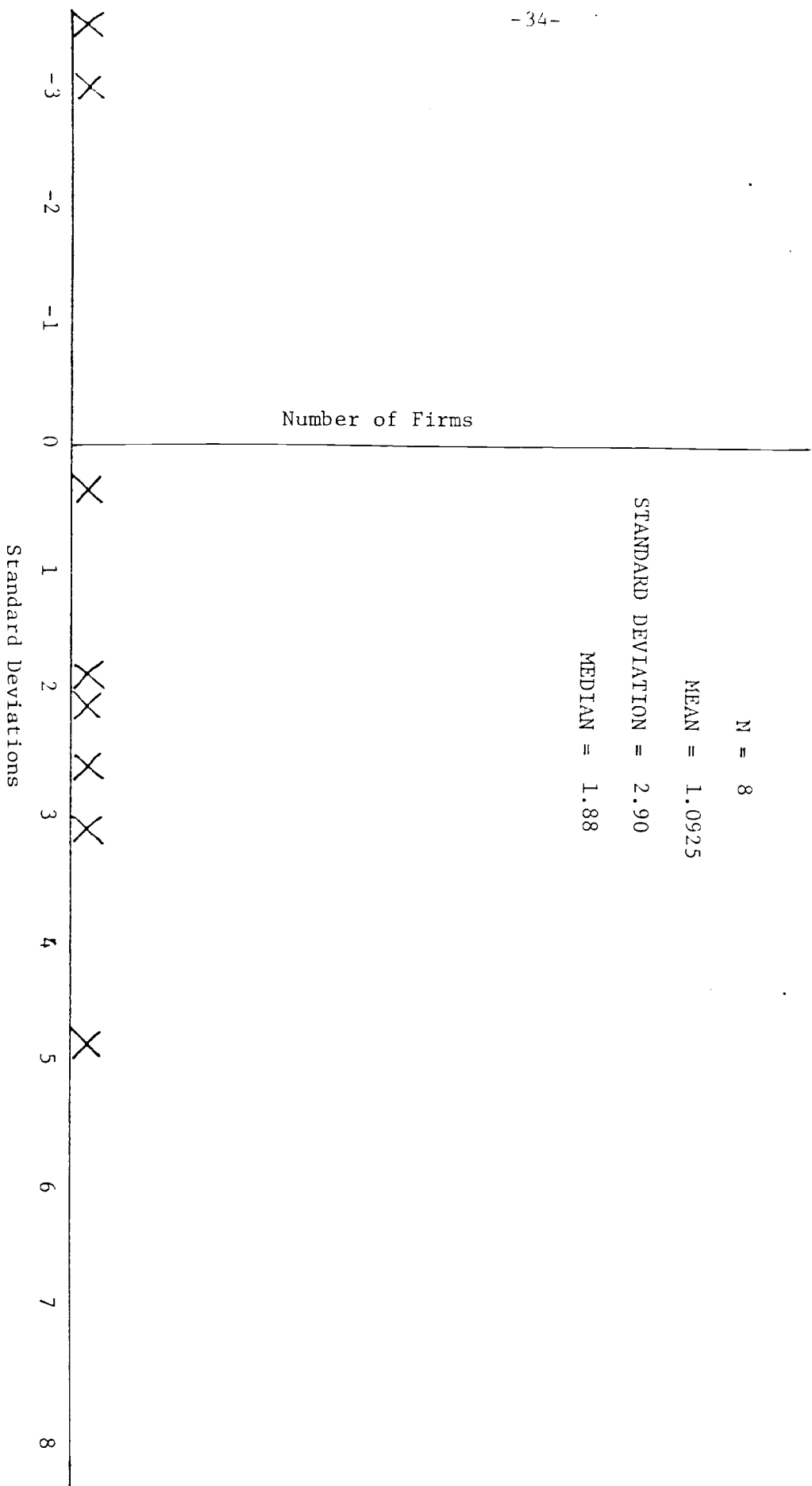
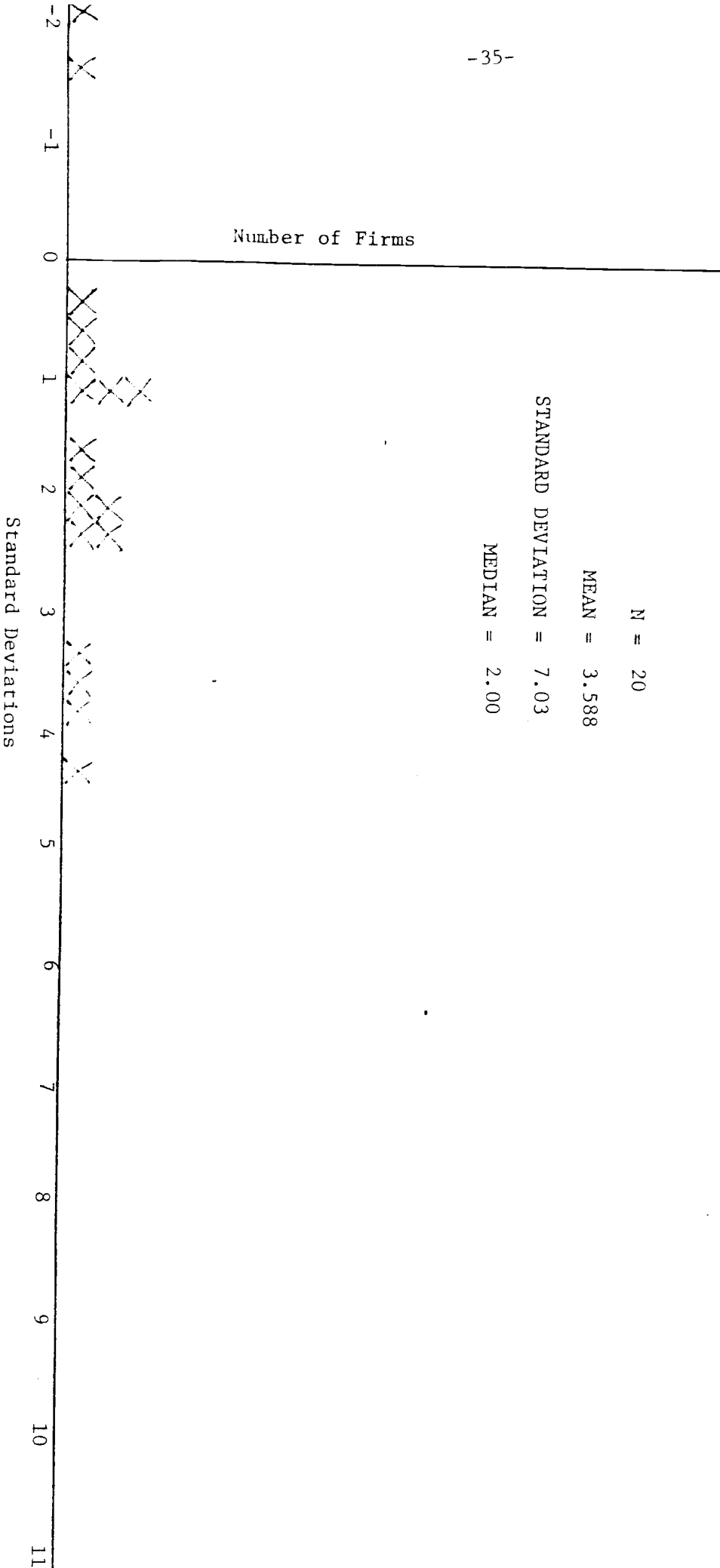


FIGURE 4a

Standard Deviations Away From Expectation, 1978

EASTERN REGION: Connecticut, Maryland,
Massachusetts, New Jersey,
Eastern New York, Eastern
Pennsylvania



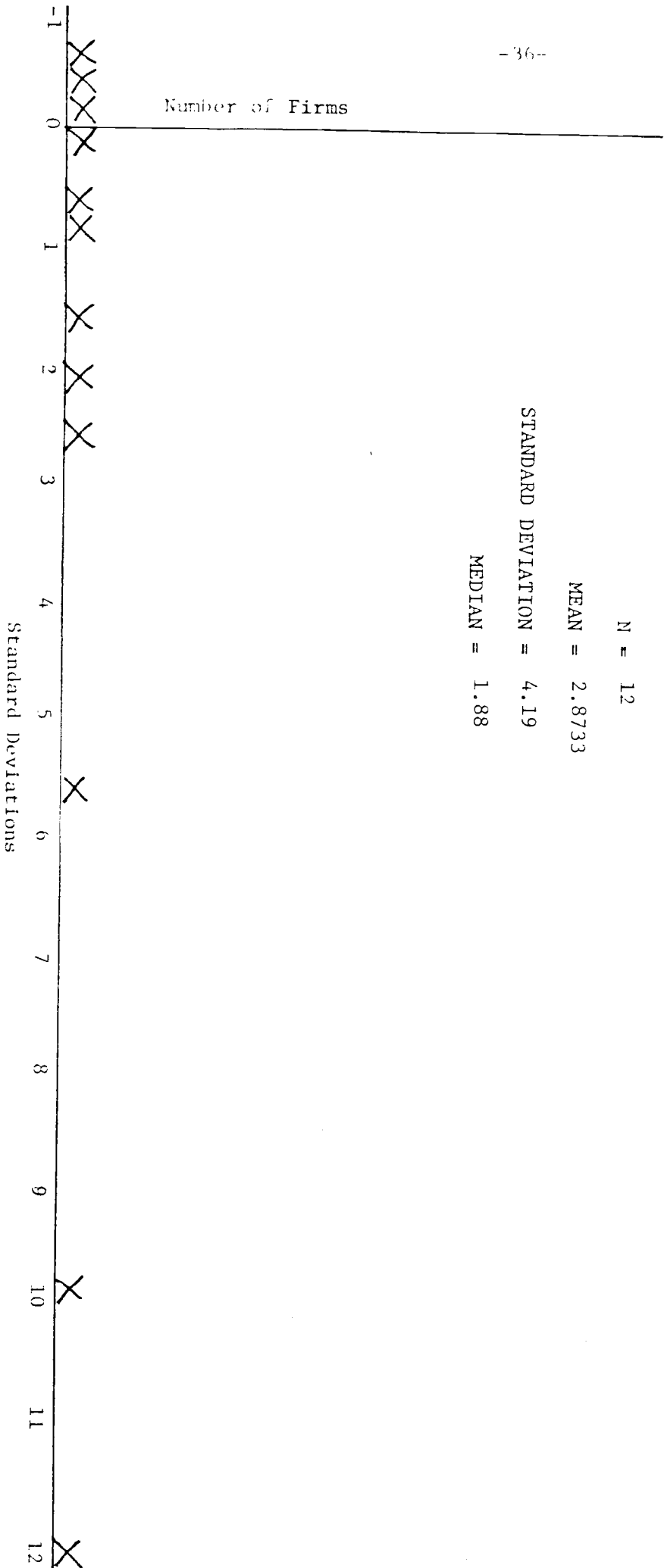


FIGURE 4b

Standard Deviations Away From Expectation, 1978

SOUTHERN REGION: Alabama, Kentucky,
North Carolina,
Oklahoma, Texas

Standard Deviations Away From Expectation, 1978

FIGURE 4c

PITTSBURGH REGION: Western Pennsylvania,
Eastern Ohio, Northernmost
Corner of West Virginia

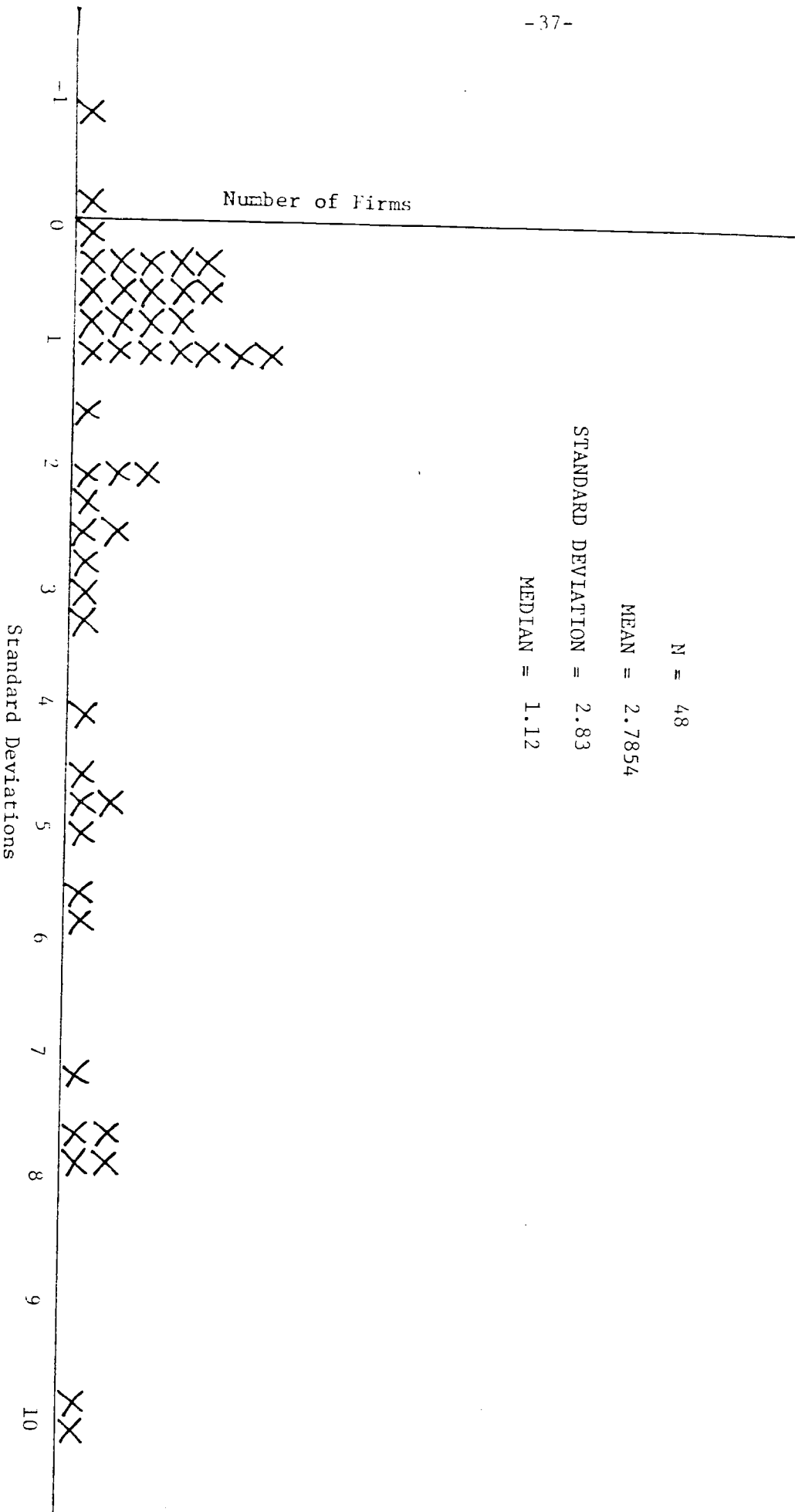


FIGURE 6d

Standard Deviations Away From Expectation, 1978

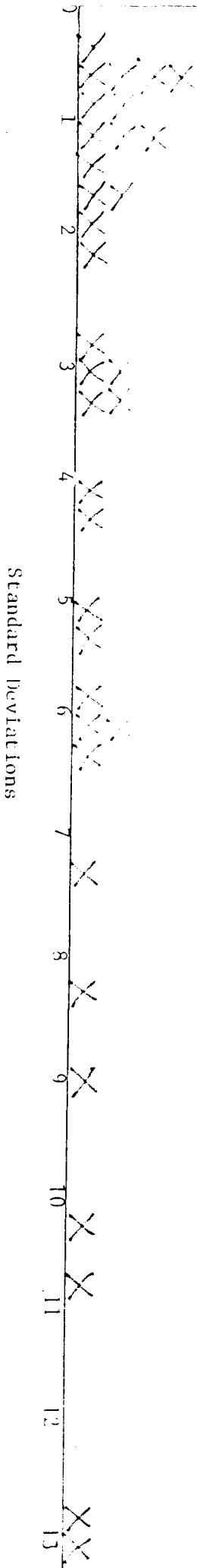
GREAT LAKES & MIDWEST REGION: Illinois, Indiana, Michigan, Minnesota, Missouri, Western New York, Ohio (Lake Counties), Colorado, Utah

N = 38

MEAN = 5.7563

STANDARD DEVIATION = 6.51

MEDIAN = 3.38



Other plants not shown:

- 16.58
- 25.07
- 28.75

Standard Deviations Away From Expectation, 1978

FIGURE 4e

WEST COAST:
California,
Washington

N = 6
MEAN = 2.1633
STANDARD DEVIATION = 1.44
MEDIAN = 1.88

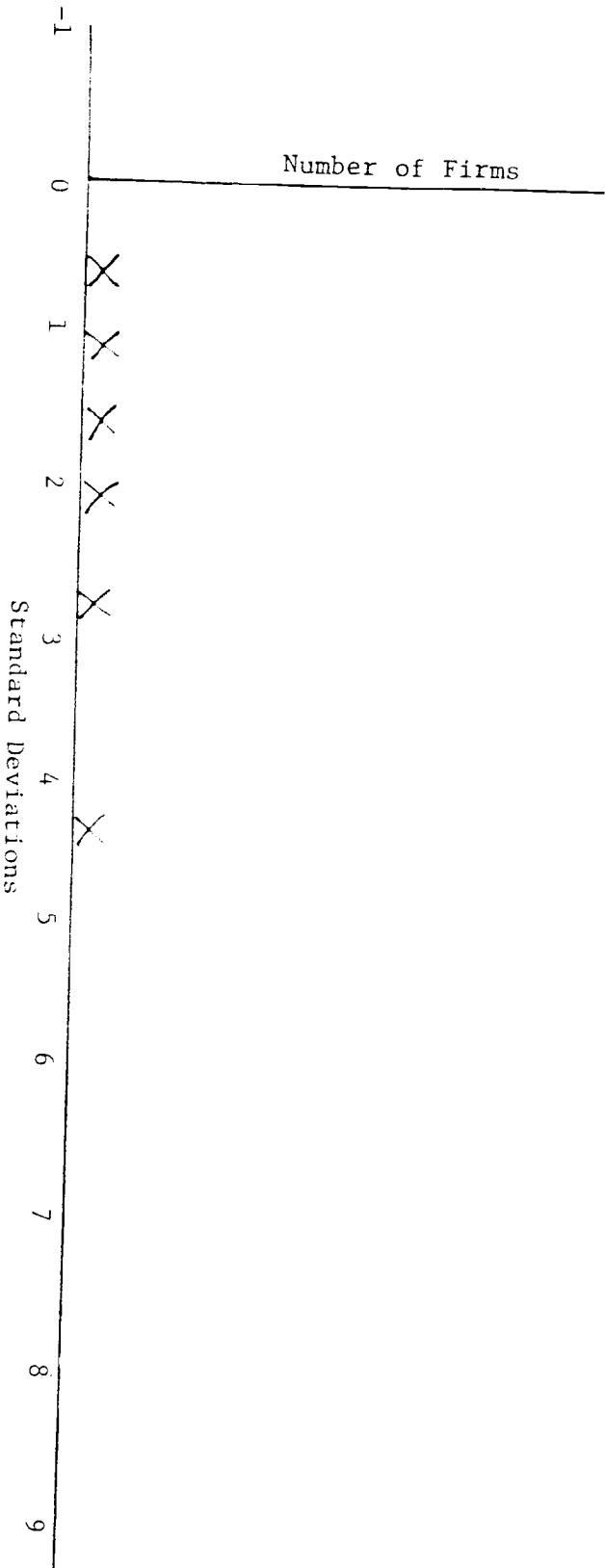


TABLE 4

TRADE AND CRAFTSMEN EMPLOYMENT BY REGION AND OCCUPATION

REGION:	1974		1978	
	Non-Black	Black	Non-Black	Black
EASTERN (Total)	10,721	546	8,757	609
Electrical	2,403	124	2,162	132
Metalworks	483	71	399	58
Machinist	1,929	11	1,037	31
Moulder	435	17	307	8
Bricklayer	1,780	98	1,448	83
Millwright	3,691	225	3,404	297
SOUTHERN (Total)	1,889	24	3,121	201
Electrical	547	6	921	58
Metalworks	209	2	272	9
Machinist	193	0	275	26
Moulder	37	0	52	2
Bricklayer	265	8	492	37
Millwright	638	8	1,109	69
PITTSBURGH (Total)	20,954	618	18,898	876
Electrical	4,980	108	4,667	172
Metalworks	1,868	51	1,699	65
Machinist	2,597	36	2,233	61
Moulder	767	14	691	24
Bricklayer	3,430	156	3,111	182
Millwright	7,312	253	6,497	372
GREAT LAKES (Total)	24,034	2,376	24,947	3,129
Electrical	6,282	444	6,853	765
Metalworks	1,730	225	1,760	254
Machinist	2,570	181	2,253	124
Moulder	721	79	667	86
Bricklayer	3,651	583	3,977	554
Millwright	9,080	864	9,437	1,346
WEST COAST (Total)	1,000	137	698	43
Electrical	215	25	166	7
Metalworks	47	0	53	1
Machinist	202	16	112	5
Moulder	19	2	16	0
Bricklayer	151	57	119	8
Millwright	366	37	232	22
TOTAL INDUSTRY (Total)	58,598	3,701	56,421	4,858
Electrical	14,427	707	14,769	1,134
Metalworks	4,337	349	4,183	387
Machinist	7,491	244	5,910	247
Moulder	1,979	112	1,733	120
Bricklayer	9,277	902	9,147	864
Millwright	21,087	1,387	20,679	2,106

Source: Audit and Review Committee "Report on Minority and Female Employee Utilization," Appendices B and D.

these six occupational classifications in each of the five geographical regions. In most cases one observes that black employment in these classes for all regions increases. Where black employment in a category decreases it does not decrease as quickly as does the white employment. As with trade and craft employees as a whole, blacks are not represented as expected in the individual categories. For 1974, the standard deviation away from expected black representation for each class of jobs is:

<u>Occupational Groups</u>	<u>Standard Deviation</u>
Electricians	55.82
Metalworks	26.62
Machinist	43.02
Moulder	20.02
Bricklayer	35.89
Millwright	62.79

In 1978, the corresponding statistics are:

Electricians	52.60
Metalworks	26.12
Machinist	38.36
Moulder	18.61
Bricklayer	38.29
Millwright	55.64

All categories in both years show significant underutilization of blacks in the industry. The bricklayer grouping shows a movement away from the expected black representation over these four years, while electricians and millwrights show the largest discrepancy between expected and actual representation for blacks.

Transfer Experience Under Consent Decree I for Non-Trade and Craft Positions

Black representation in trade and craft positions shows movement toward the expected representation. Still, by 1978, whether at the plant level, by region or by specific craft grouping, blacks were "underutilized." Trade and craft goals were established by implementation committees in accordance

with the terms of Consent Decree I, while the implementation ratio of 50% continued in effect. What was the specific experience with regards to transfers in the industry in the early years of the Decree, and how did employees react to the incentives contained in the Decree? Whereas, the previous analysis shows how transfer activity into trade and craft jobs has operated over the first four years of the Decree, this section will concern itself with transfer activity between non-trade and craft jobs.

In a report filed with the United States District Court in the Northern District of Alabama, the Audit and Review Committee examines the experience under the first two years of the Decree. Table 5 summarizes this transfer activity.

Among males, transfer activity is relatively equal for all races while white males make somewhat greater use of the voluntary return experience. Females, particularly black females, make relatively greater use of the transfer experience; however, females still make up only 3.2% of the P&M workforce.

In this same report, the Audit and Review Committee makes another point: although the transfer provisions were designed to allow employees to select more desirable positions, the experience of the first two years demonstrates that younger employees benefited most from the system. Transfer systems, depending on the size and logistics of plants, are either two or three stage processes. No matter what the system design, or the race or sex of the employees, younger employees (those with less than five years of service) accounted for over half of all transfers as shown in Table 6. Voluntary returners also were accounted for primarily by younger employees. Among the reasons employees gave for using the 45-day return option, the most common was that the new position did not meet expectations "in terms of

TABLE 5

TRANSFER EXPERIENCE BETWEEN NON-TRADE AND CRAFT POSITIONS

All Plants With Two-Step or Three-Step Bidding
Procedures
(All Inter-Unit Steps)

Employees	P & M Populations	Non T & C Transfers	% of Populations	Voluntary Returns	% of Transfer
White Males	201,893	21,463	10.63	2,494	11.62
Black Males	42,611	4,816	11.30	410	8.51
SSA Males	8.187	858	10.48	65	7.58
White Females	4,608	839	18.21	89	10.61
Black Females	3,586	840	23.42	100	11.90
SSA Females	<u>188</u>	<u>28</u>	<u>14.89</u>	<u>5</u>	<u>17.86</u>
	261,073	28,844	11.05	3,163	10.97

Source: Audit and Review Committee, "Audit and Review Committee Report on Transfer and 45 Day Voluntary Return Experience Under Paragraph 7 of Consent Decree I," United States, et. al. v. Allegheny-Ludlum Inc., et. al., filed November 22, 1977, p. 6.

TABLE 6

PERCENTAGE OF TRANSFERREES WITH FIVE OR LESS YEARS OF SERVICE

Employees	Second Step of 2-step	Second Step of 3-step	Third Step of 3-step
White Males	57%	55%	65%
Black Males	60%	54%	66%
SSA Males	62%	66%	61%
White Females	96%	87%	91%
Black Females	89%	93%	91%
SSA Females	75%	100%	100%

Source: Audit and Review Committee, "Audit and Review Committee Report on Transfer and 45 Day Voluntary Return Experience Under Paragraph 7 of Consent Decree I," United States, et. al. v. Allegheny-Ludlum Inc., et. al., filed November 22, 1977, p. 6.

(a) overall earnings, (b) incentive earnings, (c) shift or turn assignments, (d) temporary and permanent promotional opportunities, or (e) general working conditions." ^{35/} Other reasons include using the option to call attention to other grievances, to improve short-term earnings due to brief periods of overtime opportunities in specific departments or to obtain better seasonal working conditions. Based on these latter reasons, the Audit and Review Committee altered the Decree, with the courts' approval, to prohibit an employee from transferring for a six month period after using the 45-day re-^{36/}turn option.

Benefits Conferred Under Rate Retention

Male employees with service predating 1968 and female employees in the workforce on the effective date of Consent Decree I were eligible for the rate retention option. The Audit and Review Committee's analysis of the experience under this provision shows that 2555 employees made use of rate retention through March 31, 1977. The Committee estimated that 13% of all transferring employees benefited from the rate retention provision. The breakdown of employees using this provision by race and sex is shown in Table 7.

Back Pay Tenders

The Consent Decree provides for a \$250 minimum payment to any employee in the affected class and general guidelines for the calculation of actual payments. Table 8 summarizes the results by the Audit and Review Committee. The \$30,940,000 fund was so allocated to "affected class" employees, that an average payment of \$660 was made. The unions' contribution to the \$30,940,000 fund was \$4,420,089.

TABLE 7

TOTAL RATE RETENTION TRANSFERS AND RRP PAID

Employees	Number	Total RRP	Average RRP
White Males	1,914	\$984,960.32	\$514.61
White Females	11	6,370.09	579.10
Black Males	552	288,303.68	522.29
Black Females	2	28.18	14.09
SSA Males	76	54,213.63	713.34
SSA Females	--	--	--
TOTAL	2,555	\$1,333,875.90	\$522.06

Source: Audit and Review Committee, "Audit and Review Committee Report on Rate Retention Transfer Experience," United States, et. al. v. Allegheny-Ludlum, Inc., et. al. filed November 22, 1977, p. 7.

TABLE 8
COMPANY SHARES OF BACK PAYMENTS AND ELIGIBLE EMPLOYEES

Company	Number Eligible	% of Total	\$250 Minimum	For Service Pre-1968	Share
Allegheny-Ludlum	262	.56	65,500	107,764	\$ 173,264
Armco	1,733	3.70	414,750	695,809	1,144,780
Bethlehem	11,082	23.64	2,470,500	4,553,782	7,314,216
Jones & Laughlin	2,634	5.62	582,500	986,770	1,738,828
National	2,787	5.95	547,500	1,207,376	1,840,930
Republic	5,218	11.13	1,233,000	2,127,454	3,443,622
U.S. Steel	18,860	40.24	4,229,500	7,428,911	12,450,256
Wheeling-Pittsburgh	600	1.28	115,500	190,780	396,032
Youngstown	3,694	7.88	853,000	1,488,546	2,438,072
TOTAL	46,870	100.00			\$30,940,000

Source: Audit and Review Committee, "Audit and Review Committee Report on Back Pay Calculations," United States et. al. v. Allegheny-Ludlum, Inc., et. al., filed November 25, 1975, pp. 6-10.

TABLE 9
INDUSTRY EXPERIENCE IN BACK PAY TENDERS

Company	Tendered	Not Accepted at 12/31/76	% Cashed	
			Money	Employees
Allegheny-Ludlum	\$ 175,470/ 265	\$ 4,006/ 13	97.7	95.1
Armco	1,149,027/ 1,738	27,587/ 74	97.6	95.7
Bethlehem	7,459,619/ 11,375	760,939/ 1,190	89.8	89.5
Jones & Laughlin	1,770,381/ 2,629	41,139/ 81	97.7	96.9
National	1,850,433/ 2,797	21,387/ 81	98.8	97.1
Republic	3,522,539/ 5,357	138,099/ 178	96.1	96.7
U.S. Steel	12,742,050/ 19,369	315,544/ 486	97.5	97.5
Wheeling-Pittsburgh	405,362/ 612	26,090/ 45	93.6	92.7
Youngstown	2,505,802/ 3,746	52,055/ 90	97.9	97.6
TOTAL	\$31,580,783/ 47,888	\$1,386,846/ 2,238	95.6	95.3

Source: Audit and Review Committee, "Audit and Review Committee Report on Back Pay Tenders," United States et. al. v. Allegheny-Ludlum, Inc., et. al., filed January 26, 1977, p. 15.

Finally, the Audit and Review Committee compiled statistics showing the acceptance rates of back pay tenders by company through December 1976. Bethlehem Steel's experience shows the lowest acceptance rate of just under 90%, as opposed to approximately 97% for other companies. This rate was attributable to that company's Lackawanna and Sparrow's Point plants, at both of which private Title VII cases were pending, and at both of which concerted efforts were made by the proponents of those suits to deter acceptance of tenders.^{37/} The complete set of acceptance rates is shown in Table 9. Indeed, a representative for the union familiar with the Consent Decree's negotiation, expressed the view that those who were most vocal in expressing disapproval with the terms of Consent Decree I were representatives of organizations that would be deprived of fees from the "undermining of pending lawsuits."^{38/}

In connection with the back pay and rate retention provisions of the Consent Decree, an understanding of the nature of the earnings differentials between occupations is necessary. No specific information on the steel industry wage bill by occupation is available. Furthermore, job classes and working pay scales in the basic labor agreement do not apply consistently to given occupations in plants across the country. However, certain facts about pay rates are revealing. Trade and craft jobs often fall in classes 14 to 18 of the basic agreement which sets out a total of 34 classes.^{39/} Not rarely, operative positions, in which black representation exceeded 20% through the 1970s, are classified above these mid-range positions. Furthermore, many non-trade and craft jobs offer incentive pay opportunities greater than those in trade and craft jobs.^{40/} Despite the focus of the Consent Decree on changing marked racial inequalities in the occupational distribution, the industry minority-to-nonminority

ratio of earnings in 1973, adjusted for seniority, was 0.92.^{41/} To the degree that this ratio is not far from unity, transfers will not necessarily provide strong economic incentives. By 1978, this seniority adjusted differential for the set of employees whose length of service in the industry predated the effective date of the Decree stood at 0.96.^{42/}

IV. Impacts Outside of the Steel Industry

Outside of the impact of the Steel Industry Consent Decree analyzed here, the negotiation of this industry's equal employment opportunity policy had an impact reaching well beyond the scope of the steel industry. As mentioned previously, the terms of the Steel Consent Decree were included as part of the terms of the industry's collective bargaining agreement. Historically, the negotiations for the steel industry are visible and pattern-setting. Most pronounced among such bargaining spillovers is the relationship of basic steel with the aluminum industry. What makes this relationship particularly strong is the fact that the USWA is the principal employee representative in both industries.

As a result of this historical pattern the terms of the basic steel Consent Decree were incorporated practically verbatim within the framework of the aluminum industry's collective bargaining agreement. The legal setting of the aluminum industry's equal employment policy did not directly involve government or court participation. The policy was the product of collective bargaining. This fact was eventually to have a significant impact on future processes of the determination of equal employment policies. Specifically, with the array of litigation associated with United States v. Brian Weber taking place in the setting of the aluminum industry, an opinion with a great impact on the scope of collective bargaining was put forth by the

Supreme Court. In this way, the Steel Industry Consent Decree was to have an impact on industrial relations even beyond the implications for the specific field of equal employment opportunity.

V. Conclusion

The process of negotiation that produced the Consent Decree must in the end be evaluated against the alternative that had been available to minority employees - litigation conducted on a plant-by-plant basis. The major steel companies and the USWA were able in the negotiation process to bring their expertise to the issue of seniority reform more directly than might have been possible under a process carried out in court; moreover, once responsible for the outcome, these key actors in this employment setting, together with the participating government representatives, were in a position of defending that outcome. Although litigation might have allowed for greater direct participation of minorities, the Consent Decree negotiation helped to limit the costs involved in reaching a settlement. Furthermore, under the Decree, a mechanism for self-enforcement and evaluation of progress that would not have been possible under the litigation of individual cases was instituted.

While the employment outcomes for the steel industry that might have resulted from case-by-case litigation cannot be known, the experience of the industry in the first four years of the Consent Decree I does reveal two related points. Black representation in trade and craft jobs increased over the period, particularly from 1974 to 1975, with an indication that the increase was greater than pre-1974 employment trends would have predicted. However, the 1978 black/white employment figures show that extreme underutilization of blacks in these positions still exists. The

lack of more rapid movement toward equality in the occupational distribution could be due to earnings differentials that do not always favor trade and craft jobs or to a mechanism for changing the distribution that is ineffective in the post-1974, contracting steel industry (after the brief 1973-74 upturn). To gauge the degree to which these or other factors are responsible requires the analysis of more detailed data.

FOOTNOTES

- 1/ American Iron and Steel Institute, "Comparison of Total Revenue, Profits, Federal Income Taxes, Depreciation and Depletion, Production and Shipments Reported by Companies Making About 93% of Total Steel Output," 1948 to 1968; and "Comparison of Total Sales, Taxes on Income, Net Income, Depreciation, Depletion and Amortization, Production and Shipments Reported by Companies Accounting for Almost 90% of Steel Output," 1970 to 1979. Data compiled from AIS Form 11-A.
- 2/ American Iron and Steel Institute, "Apparent Steel Supply," 1954 to 1978, table from AIS Statistical Division.
- 3/ American Iron and Steel Institute, "The Steel Industry Today," p. 25.
- 4/ U.S. Department of Commerce, "Securities and Exchange Commission Confidential Unit Report," p. 13.
- 5/ Interview with USWA representative, May 1980.
- 6/ 263 F. 2d 546 (Fifth Circuit, 1958).
- 7/ 296 F. Supp. 40 (N.D. Ala. 1968).
- 8/ 312 F. Supp. 977, 994-95 (W.D.N.Y. 1970).
- 9/ Recommendations of Hearing Panel, OFCC Docket #102-68.
- 10/ 446 F. 2d 652 (Second Circuit, 1971).
- 11/ Decision of the Secretary of Labor, OFCC Docket #102-68.
- 12/ 371 F. Supp. 1045 (N.D. Ala. 1973).
- 13/ 263 F. 2d at 551.
- 14/ 296 F. Supp. at 67-68.
- 15/ Bernard Kleiman and Carl B. Frankel, "Seniority Remedies Tender Title VII: The Steel Consent Decree -- A Union Perspective," New York University 28th Annual Conference on Labor, May 19-21, p. 17.
- 16/ Kleiman, pp. 21-27.
- 17/ 446 F. 2d at 663.
- 18/ 446 F. 2d at 660.
- 19/ Decision of the Secretary of Labor, OFCC Docket #102-68, pp. 68-69.
- 20/ Kleiman, p. 27.
- 21/ 371 F. Supp. at 1048.
- 22/ Interview with company representative, March 1981. This position was also expressed by a USWA representative in an interview in May 1980.

- 23/ Interview with USWA representative May 1981.
- 24/ Ibid.
- 25/ Executive Board, United Steel Workers of America, "Statement of Policy on Seniority Adopted by the International Executive Board, USWA," June 26-27, 1973, Pittsburgh, Pennsylvania, p. 10.
- 26/ "Consent Decrees on Equal Employment Opportunity in Steel Industry (Text)," United States, et. al. v. Allegheny-Ludlum, Inc., et. al., in Bureau of National Affairs Daily Labor Reporter, (BNA; Washington, D.C.), pp. D-9, 10.
- 27/ Ibid, p. D-9.
- 28/ Ibid, p. D-5.
- 29/ Kleiman, p. 41.
- 30/ Audit and Review Committee, "Report on Minority and Female Employee Utilization," Appendices A-D.
- 31/ EEO-1 Forms, 1966, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1978.
- 32/ Ibid.
- 33/ U.S. Department of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics 1971 (Bulletin 1705) and Handbook of Labor Statistics 1977 (Bulletin 1966), (U.S.G.P.O.; Washington, D.C.).
- 34/ Richard L. Rowan, "The Negro in the Steel Industry," in Negro Employment in Basic Industry, ed. Herbert Northrop, (Industrial Research Unit, Wharton School of Finance; University of Pennsylvania, 1970) p. 306.
- 35/ Audit and Review Committee, "Audit and Review Committee Report on Transfer and 45 Day Voluntary Return Experience Under Paragraph 7 of Consent Decree I," United States, et. al. v. Allegheny-Ludlum, Inc., et. al., filed November 22, 1977, p. 12.
- 36/ Ibid, pp. 12-13.
- 37/ Audit and Review Committee, "Audit and Review Committee Report on Back Pay Tenders," United States et. al. v. Allegheny-Ludlum, Inc., et. al., filed January 26, 1977, p. 15.
- 38/ Interview with USWA representative, May 1980.
- 39/ Agreement Between United States Steel Corporation and the United Steel Workers of America, Production and Maintenance Employees, Appendix A, August 1, 1974 (Pittsburgh, Pennsylvania), p. 154.

40/ Interview with Department of Justice representative, July 1980.

41/ Ibid.

42/ Ibid.