

Union Organizing In National Labor Relations Board Elections

Report by
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Introduction

The National Labor Relations Board (NLRB), the federal government agency responsible for enforcing our labor laws and the rights of workers to organize, strike, and engage in collective bargaining, is broken. But does that mean it is irrelevant for workers attempting to organize? No. In fact, as data in this paper shows, particularly when focused on certain demographic groups, labor unions are still using the NLRB and, in many cases, using it very effectively.

This paper examines the use of the NLRB election process since 2000, especially from 2008 to 2012. We find that the vast majority of new union members in the private sector since the 1990s have come from non-NLRB processes.¹ However, about 50,000 workers did win representation through NLRB elections during this period, which represents roughly a quarter of new private sector union members.

Although the data show a notable decline in the numbers of workers gaining unionization through the NLRB, the “win” rates of workers who do use the process have increased over the last decade. Based on analysis of original data on the demographics of those organized using the NLRB process, the win rate for workers in NLRB elections increases in more diverse workplaces. Specifically, workers of color, women, and especially women of color overwhelmingly vote in favor of unionization through the NLRB election process.

The implications of these findings are that while we debate and devise new and more pro-worker labor law proposals, we should also focus on organizing and developing effective strategies to unionize American workers using the existing National Labor Relations Act.

The Context: Organize or Die

The American labor movement is in crisis. That truism has been a mantra within the House of Labor for almost two decades now. In the mid-1990s, SEIU president John Sweeney won a contested election as President of the AFL-CIO and expectations were raised that unions would again organize on an unprecedented scale and reverse the sharp decline in union membership. Yet since 1995, union density has continued to decline from roughly 16 percent to 11.3 percent of all workers and just 6.6 percent of workers in the private sector.²

This trend was mitigated in 2013, when the number of unionized workers grew for the first time since 2008. The 8.1 million private sector workers covered by a collective bargaining agreement was the most since 2009. Unions gained 281,000 new members in the private sector, the largest number in over 30 years, primarily in three industries: construction, manufacturing, and services. The large organizing of new private sector workers offset the loss of 118,000 union members in the public sector, leaving the overall union density rate unchanged in 2013 from 2012.³

However, most of the new members did not come from the predominant process set out in the 1935 National Labor Relations Act (NLRA), also known as the Wagner Act: union elections held by the NLRB. Instead, a majority of new union members came from one of two other processes for gaining union recognition and bargaining: National Mediation Board elections for transportation sector

¹ For instance, for FY2012, the National Mediation Board (NMB) certified elections in either railroads or airlines resulting in only 3,128 new workers organized. In FY2013, unions organized many more workers as the NMB certified elections

workers (as laid out in the Railway Labor Act), and non-NLRB “card-check” and “neutrality” campaigns in which unions have engaged successfully over the last two decades.

A Broken NLRB

There are several distinct stages to a union organizing campaign that are important to understand in order to interpret the significance of the data presented above. First there is the initial period in which the first contact is made between the workers and the union, leaders are identified, and an organizing committee is established. The second phase is when the union, through the organizing committee, reaches out to the bargaining unit members and gradually builds up support until the workers are ready to petition for an election.ⁱⁱ The third phase is the period between the date the petition is filed and the election date. This is when both the union and employer campaigns are most out in the open. Finally, the fourth phase is the period between the date of election and the date of certification, which can include waiting for election objections, Unfair Labor Practices (ULPs), and possible rerun elections to be resolved.⁴

Dozens of research studies confirm what workers and union organizers have known for decades: American employers continue to be exceptionally hostile to workers’ rights and unions. Over the past three decades, employers have become much more aggressive in violating workers’ rights to organize under a toothless and outdated labor law regime. Contrary to the intent of the NLRA when it was passed in 1935, making it national policy to encourage and promote collective bargaining, the NLRA today provides incentives for employers to break the law and routinely ignore incentives to negotiate collective bargaining agreements. It is therefore no surprise that union membership is at its lowest rate since 1916 while income and wealth inequality are at their highest rates since the Great Depression.

At almost 80 years old, the NLRA is a relic of the industrial economic and political New Deal context under which it was enacted.⁵ Scholars have described its “ossification” and inability to address the major challenges facing workers in a new economic context with new norms and practices, particularly with the emergence of a low-wage, service-based economy.⁶ The dominant features of the contemporary post-industrial, service-based, “digital” workplace are job instability and insecurity caused by increased global competition for goods and services, contingent and part-time work, short-term contracts and employment attachments, and volatile and frequent shifts in consumer demand that require flexible management practices (Stone 2004).

Taking advantage of the obsolescence of the Wagner Act and the perverse incentives of a much less protective labor law regime, employers have become much more aggressive at violating workers’ rights to organize (Weiler 1990).⁷ Firms have increased their “union avoidance” practices, with drastic consequences for labor.⁸ Economists Richard Freeman and James Medoff first described the consequences of the this employer hostility and its effects in their classic 1984 book *What Do Unions Do?*⁹ In 1984, they estimated 25–50 percent of the decline in union density was due to increased management opposition. By 1994, the Clinton-appointed Dunlop Commission confirmed the increase in employer opposition and illegal conduct during union organizing drives. The Commission found that, “In the early 1950s, approximately 600 workers were reinstated each year because of a discriminatory discharge during a certification campaign. By the late 1980s, this number was near 2,000 a year.” From the mid-1950s to 1990, the Commission concluded “the probability that a worker will be discharged or otherwise unfairly discriminated against for

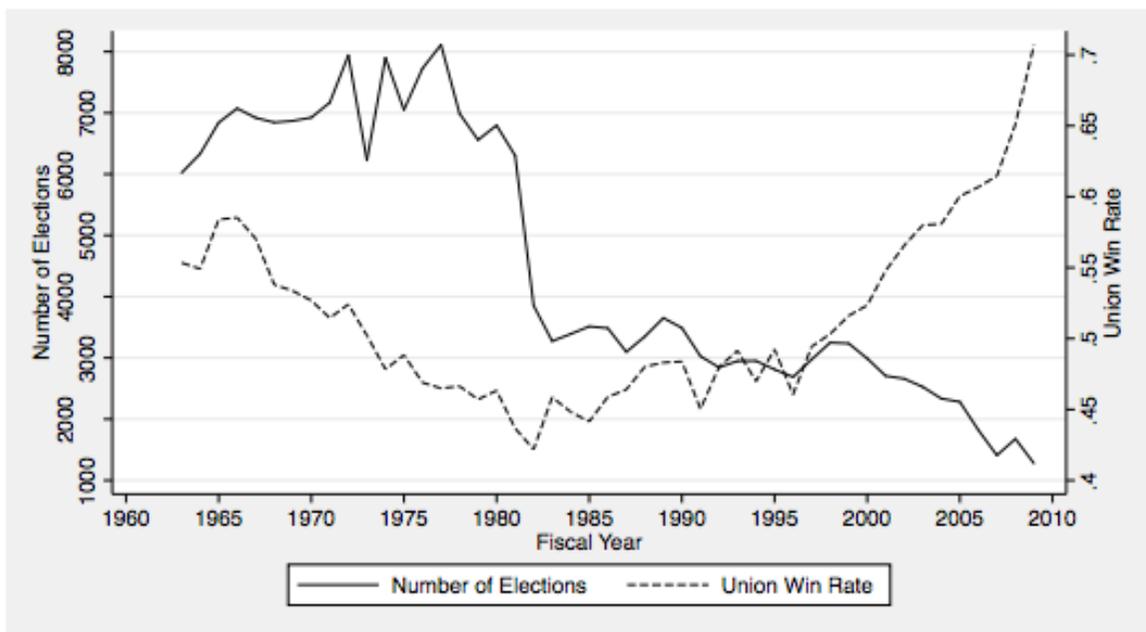
ⁱⁱ Although under the law unions only need to file with a minimum of 30 percent of the bargaining unit on cards to qualify for an election today 60 percent of all unions filing for NLRB elections file with at least 60 percent of the unit on cards.

exercising legal rights under the NLRA has increased over time”.¹⁰ A more recent study with data through 2003 finds that employers illegally fire pro-union workers in 34 percent of union election campaigns, in addition to using other unlawful tactics.¹¹

Using NLRB Elections to Win Representation of New Workers

The now-decades-long history of business campaigns against worker organizing through the NLRB is the context in which workers must attempt to find a voice at work through union representation. Figure 1 presents data showing the number of NLRB elections and the union win rate from 1962 to 2009. Two striking trends are clear. First, the overall number of NLRB elections has declined steeply, from over 7,000 a year in the 1960s and 1970s to less than 2,000 a year by the mid-2000s. Second, despite this overall drop in the number of union elections held yearly, the union win rate has sharply increased in the last decade, from under 50 percent in the 1980s and 1990s to well over 60 percent now. These two trends indicate that many workers and unions have abandoned the NLRB process as the primary route to workplace recognition, yet the process is also being used more strategically in unionization campaigns: The significant increase in the union win rate shows that the process is still being used when workers and unions are confident they will succeed over employer opposition.

Figure 1: NLRB Elections & Union Win Rate, 1962–2009



Source: Farber 2013¹²

Table 1 presents data on the number of NLRB elections held since 2000, the percentage won by unions, and the resulting number of new union members.¹³ The number of union elections in 2012 was roughly a third of the number in the year 2000 (only 1,202 in 2012 versus almost 3,000 elections in 2000). And the number of new workers organized was down to under 40,000 in 2012 compared to over 100,000 in 2000.¹⁴ Again, we see both the overall number of NLRB elections and the yearly number of workers organized into unions through elections continue to decline while union win rates have stayed well over 50 percent, even reaching 71 percent in 2011.

Table 1: NLRB Representation Elections, Win Rates, & Number of New Workers Organized, 2000–2012

Year	No. of Elections	Percent Won by Union	New Workers Organized
2000	2,957	52.00	106,459
2001	2,672	54.60	79,611
2002	2,580	56.50	78,731
2003	2,457	57.20	74,828
2004	2,262	57.00	79,132
2005	2,215	61.10	69,537
2006	1,746	60.90	67,566
2007	1,523	59.90	57,290
2008	1,610	63.60	68,004
2009	1,333	68.60	54,104
2010	1,577	65.90	65,029
2011	1,297	71.40	40,481
2012	1,202	65.00	38,714

Which Unions Are Successful

Three unions lead the labor movement in the use of NLRB elections and in the number of new members organized through the process: the Teamsters, Service Employees International Union (SEIU), and the United Food and Commercial Workers (UFCW). The Teamsters, as they have over the last decade or so, use the NLRB election process more than all others—almost twice as much as SEIU and UFCW combined since 2008.

While SEIU has used the NLRB process less than half the number of times as the Teamsters, it has won representation of the most members. For SEIU however, NLRB elections represent only a portion of the new members the union has organized; the vast majority of new SEIU members have come from public sector elections and in the private sector through non-NLRB processes.ⁱⁱⁱ

Among the three unions that are using the NLRB to organize the most members, SEIU has the highest success rate, winning two out of three elections (67.2 percent). While this is higher than the Teamsters (58.6 percent) or UFCW (54.4 percent), many other unions had win rates comparable or higher than SEIU's.

ⁱⁱⁱ This inference is based on the total number of new SEIU members per year subtracted from the number of new members through NLRB elections.

Table 2: NLRB Representation Elections and Win Rates, by 10 Most Active Unions, 2008–2012

Union	# Elections Held	% Union Wins	# Workers Organized
IBT (Teamsters)	1,801	58.6	54,144
SEIU (Service Employees International Union)	752	67.2	62,491
UFCW (United Food & Commercial Workers)	568	54.4	23,348
IAM (International Association of Machinists)	463	72.1	11,869
IBEW (International Brotherhood of Electrical Workers)	439	56.5	7,726
IUOE (International Union of Operating Engineers)	395	64.8	5,104
SPFPA (Security, Police & Fire Professionals of America)	262	68.7	10,560
United Steelworkers	236	53.4	6,526
AFSCME (American Federation of State, County & Municipal Employees)	234	69.2	10,014
IUJAT (International Union of Journeymen & Allied Trades)	214	66.4	5,069

Source: Bureau of National Affairs

Success Rates by Industry

When we look at NLRB elections by industry from 2008 to 2012, the overwhelming majority are in services, followed by transportation, communications and utilities, and then manufacturing.

The NLRB union win rates in the services sector and in the transportation, communications, and utilities sector, as well as several other sectors, are considerably higher than in manufacturing, which has the lowest success rate (46.8 percent) of any of the eight sectors. The fact that the majority of union representation elections in manufacturing result in losses is no doubt due to a range of factors, but one we know that contributes greatly is employer behavior. According to Kate Bronfenbrenner, employers illegally threatened to cut wages or benefits in 47 percent of union elections, threatened to close the plant if the union won in 57 percent of elections, and in 15 percent of union elections actually closed the plant after the union won.¹⁵

Table 3: NLRB Representation Elections and Win Rates, by Industry, 2008-2012

Industry	# Elections Held	% Union Wins
Services	3,166	70.8
Transportation, Communications & Utilities	1,555	69.1
Manufacturing	973	46.8
Construction	654	73.1
Retail	363	55.6
Wholesale	226	50.0
Finance, Insurance & Real Estate	141	76.6
Mining	62	56.5

Source: Bureau of National Affairs

Success Rates by Size of Workplace

Finally, the data on bargaining unit size in NLRB elections indicates that the vast majority of elections held are in small workplace units of 1–49 workers. While the union win rate is the highest in these elections relative to larger unit sizes, the small numbers still do not add up to the level of recruitment necessary to stop the decades-long decline in union density.

Table 4: NLRB Representation Elections and Win Rates, by Unit Size, 2008–2012

Unit Size	# Elections Held	% Union Wins
1–49	4,924	68.4
50–99	1,187	64.2
100–499	1,098	60.2
500 or more	96	62.5

Source: Bureau of National Affairs

The Demographic Keys to Success

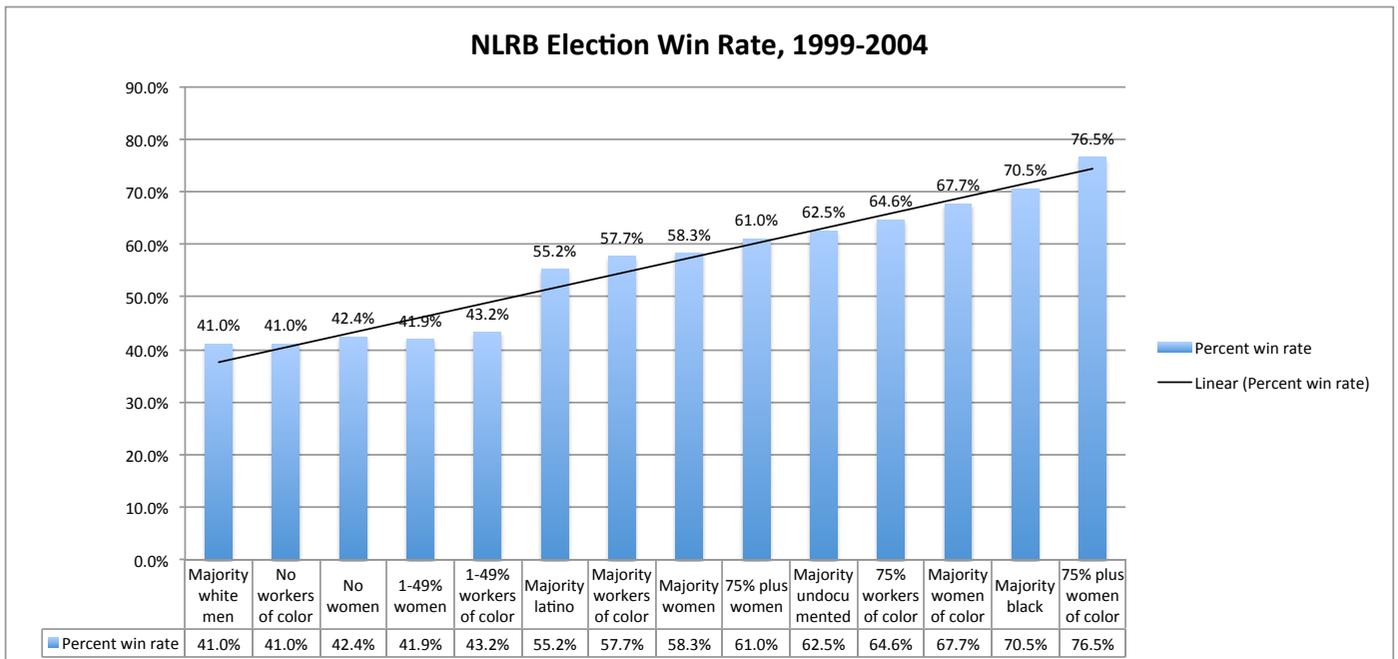
Data on NLRB union elections from the early part of the 2000s shows that workers of color, women, and especially women of color have the highest election win rates among all demographic groups.¹⁶ For example, units with a majority of white men have the lowest win rates (41 percent) compared to units that are majority workers of color (57.7 percent), majority women (58.3 percent), majority Latino (55.2 percent), majority undocumented (62.5 percent), majority black (70.5 percent), and especially units that are majority women of color (67.7 percent) and more than 75 percent women of color (76.5 percent).^{17,18}

Data indicates that the color and gender of the labor organizers also is a significant factor in success. According to previous data collected by Bronfenbrenner, when organizers and lead organizers reflect the workers they are organizing, they are much more likely to win. While the overall win rate in NLRB campaigns for female lead organizers averages 53 percent (compared to 42 percent for men), the average win rate for lead organizers of color is 58 percent (compared to 41 percent for white leads), and for lead women of color organizers is 69 percent (compared to 43 percent). And when the lead organizer is a woman of color in units with over 75 percent women of color, the NLRB election win rate is an astounding 89 percent.¹⁹

The Future of NLRB Elections? -- A Thought Experiment

Given the data presented above on the declining number of union elections, is the NLRB election process still a viable route for workers to win union recognition? There are at least two reasons to think so: one demographic and one strategic.

Developing more lead organizers who are female, people of color, and especially women of color, who often bring a more holistic perspective to all the issues affecting workers' lives, is a formula for success, especially when combined with a comprehensive union-building strategy.²⁰



This evidence suggests that there is still much potential for organizing gains through the NLRB election process in occupations where workers of color, women, and women of color predominate and where the union density rates are low, such as health care and social services or hospitality and food services.²¹ But this would mean that unions would have to commit serious resources to organizing these new workers, something that all but a handful have thus far failed to do. Today, unions on both the national and local levels still allocate on average just 10–15 percent of their budgets to organizing.

Imagine this thought experiment: What if, for one year, the five most active organizing unions poured all of their organizing resources into targeting worksites with a majority of women, people of color, and women of color for NLRB campaigns? And what if they preceded that with a focused effort to recruit and train more organizers who are women of color? With win rates of more than 50 percent, and when combined with effective leadership and strategic and comprehensive campaigns, the potential numbers of new workers organized through the NLRB process could increase sharply.

To be most effective, this demographic strategy should be combined with other key factors to successful campaigns. As Bronfenbrenner has shown in over two decades of research, simply targeting units with majorities of women and workers of color is not enough. The most successful organizing campaigns are those able to overcome intense employer opposition by engaging in a comprehensive union-building strategy.²² In addition to “adequate and appropriate staff and resources” and “strategic targeting and research,” among the 10 key elements of such a comprehensive strategy are an “active and representative rank-and-file organizing committee,” “active participation of member volunteer organizers,” and a focus on “issues which resonate in the workplace and community.” These latter three elements mean that unions, to be successful in

organizing campaigns, must engage in a different model of unionism—one that requires extensive changes in organizational structures and practices in order to create campaigns that speak to the multiple class, racial, and gender injustices workers face in the workplace.

The sophisticated and often relentless employer opposition to NLRB elections, and the overall rigidity of the NLRB process—particularly in a 21st century economy characterized by large service sector employers and extensive supply chains—has led many labor organizers to despair of using NLRB elections. And clearly there are urgent and compelling needs to modernize the NLRB to both correct built-in employer advantages and support organizing workers in today's economy.²³

However, even under the current NLRB scheme in the current political and economic climate, workers can be successfully organized by unions that build engaged community labor campaigns, focused on organizing workers of color and led by organizers of color—and better still, women of color. If embraced, the new demographics emerging in America offer a pathway to greater organizing success.

¹ National Mediation Board. 2013. "National Mediation Board Annual Performance and Accountability Report FY2013." Washington, DC:

² Bureau of Labor Statistics. 2014. "Union Members—2013." Bureau of Labor Statistics, U.S. Department of Labor. Retrieved October 2, 2015 (<http://www.bls.gov/news.release/pdf/union2.pdf>).

³ Bureau of Labor Statistics. 2013. "Union Members—2013." Bureau of Labor Statistics, U.S. Department of Labor. Retrieved October 2, 2015 (<http://www.bls.gov/news.release/pdf/union2.pdf>).

⁴ Bronfenbrenner, Kate and Robert Hickey. 2004. "Changing to Organize: A National Assessment of Union Organizing Strategies," in *Rebuilding Labor; Organizing and Organizers in the New Union Movement*, Ruth Milkman and Kim Voss, eds. Ithaca, NY: ILR Press.

⁵ Ptoke, David. 1996. *Building a Democratic Political Order: Reshaping American Liberalism in the 1930s and 1940s*. Cambridge: Cambridge University Press.

⁶ Estlund, David. 2002. *Democracy*. Malden, Massachusetts: Blackwell Publishers, Inc.

⁷ Bronfenbrenner, Kate. 2009. "No Holds Barred: The Intensification of Employer Opposition to Organizing." (Economic Policy Institute Briefing Paper #235). Washington, DC: Economic Policy Institute.

⁸ Logan, John. 2006. "The Union Avoidance Industry in the United States." *British Journal of Industrial Relations* 44(4):651-675.

⁹ Freeman, Richard B., James L. Medoff. 1984. *What Do Unions Do?* New York: Basic Books.

Freeman strongly defends this argument 20 years later in a reassessment of the 1984 book.

¹⁰ Commission of the Future of Worker-Management Relations. 1994. *Fact Finding Report: Commission of the Future of Worker-Management Relations*. Washington, DC: U.S. Department of Labor and the U.S. Department of Commerce.

¹¹ Op. Cit. Bronfenbrenner 2009.

¹² Farber, Henry S. 2013. "Union Organizing Decisions in a Deteriorating Environment: The Composition of Representation Elections and the Decline in Turnout." (Working Paper #577). Princeton University Industrial Relations Section 577. Retrieved October 2, 2015 (<http://arks.princeton.edu/ark:/88435/dsp01mg74qm23v>).

¹³ National Labor Relations Board. 2015. Washington, DC: National Labor Relations Board. Available at NLRB.gov.

Data taken from 2000 to 2009 and Election Reports from 2009 to 2013. Election reports prior to 2009 were organized by calendar vs. fiscal year. The numbers presented here are only for "RC" elections seeking union representation in non-union workplaces, as opposed to union elections among already unionized employees or decertification elections.

¹⁴ Amber, Michelle. 2013. "Unions Won More NLRB-Conducted Elections In First Half of 2013 Than Same Period of 2012." *Labor Relations Week* 27 (LRW 2267).

Although, according to the Bureau of National Affairs (BNA), it is important to note that unions organized 65,185 new workers in the first half of 2013, more than in all of 2011 or 2012. However, this number is a bit misleading, as the BNA counts an election of 45,000 health care workers won by SEIU in their overall union election numbers, even though those workers were already organized via another union. The numbers reported above are only of "new" workers organized, that is, those without existing union representation.

¹⁵ Op. Cit. Bronfenbrenner and Hickey 2009.

¹⁶ Data collected as part of the "Union Organizing in the New Millennium" project with Kate Bronfenbrenner.

¹⁷ Bronfenbrenner, Kate. 2005. "Organizing Women: The Nature and Process of Union Organizing Efforts Among US Women Workers Since the 1990s." *Work and Occupations* 32 (4):1-23.

¹⁸ Bronfenbrenner, Kate and Dorian T. Warren. 2007. "Race, Gender, and the Rebirth of Trade Unionism." *New Labor Forum* 16(3):142-148.

¹⁹ Ibid.

²⁰ McAleve, Jane and Bob Ostertag. 2014. *Raising Expectations and Raising Hell*. London, UK: Verso.

²¹ Ibid.

²² For more detail on the ten key elements of comprehensive union-building strategies:

Op. Cit. Bronfenbrenner 2004.

²³ For review of both NLRB reforms and broader structural reforms see:

Kirsch, Richard. 2014. "The Future of Work in America: Policies to Empower American Workers and Secure Prosperity for All." Washington, DC: The Roosevelt Institute. Retrieved October 2, 2015 (<http://rooseveltinstitute.org/policy-and-ideas/big-ideas/report-future-work-america-policies-empower-american-workers-and-secure-p>).

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