

CHAPTER VI

SENIORITY CONCEPTS

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In developing the subject of seniority it is my intention to place the subject in its industrial relations setting instead of concentrating on particular arbitration problems. At meetings of this sort, it seems to me, we should strive to drive below the surface and get at some of the fundamentals of the problems considered.

The seniority question stems initially out of one particular fact of the wage payment system. Up until now, at any event, labor is purchased on a retail basis. Management employs the services of labor, only for so long as those services are required, and on a hand to mouth basis. There are a few exceptions. Call-in pay provisions have become standard in labor agreements and the time for which men must be compensated each day has become longer in recent years. By and large, however, labor is purchased on a retail basis. With a few exceptions, management possesses the right to lay off employees on short notice, whenever their services are not required. One function of seniority is to determine who gets laid off and who continues to be employed. There are industries, however, where seniority is no part of the labor relationship, even though the services of employees may not be on a full-time basis or for regular hours week after week. The problems of employees arising out of the uncertainty of their term of employment are dealt with in various ways. Seniority is but one way which has emerged under circumstances to be noted presently.

In a few industries, particularly the garment trades, division of work is the device used to allocate work opportunity. But, this device cannot adequately serve the purpose unless it is related to the size

of the workforce and to policies respecting the use of overtime. Otherwise division of work could entail the employment of too many people for too long a time on a greatly curtailed work schedule.

In the garment industries, "seniority" is virtually an unmentionable word. As already indicated, however, in the garment industries there is considerable bargaining over the number of employees who constitute the regular work force. A rather critical problem may arise when management says, "We want to increase the number of employees on our regular work force." An undue increase, however, could result in undue underemployment during slack seasons under the division of work policy. In negotiations, then, consideration is given to the question of whether or not the need for more employees is occasioned by a higher general level of business or merely because of a seasonal demand peak. Provision for increased overtime work might be the outcome instead of increasing the size of the work force.

Bargaining on the size of the work force and on the use of overtime as a means of keeping a balanced work force is a concomitant of the work-sharing program. This is one approach to meeting the employee's job insecurity arising out of the fact that the services of employees are not engaged on a bulk basis. There are numerous variations of this general program. For example, in the cutting branch of the men's clothing industry in Philadelphia, each cutter has a home base in a designated company where he always has the right to share work. He may take a job elsewhere if business falls off in the home company at the same time another company's needs have increased. He can return to his home company, however, and share work there whenever he desires to do so.

It formerly was the practice in the garment industry to share work throughout the day. Some changes in the work sharing practices have occurred because of the unemployment insurance eligibility requirements.

The point I am making is that the basic problem under discussion concerns the practice of buying labor services on a retail basis. How

are the costs of layoff apportioned? The use of seniority to designate employees for layoff is not the only approach. A system of bargaining over the total number of people in the work force, over the use of overtime, and for a work sharing program can be utilized to meet this problem.

Such an approach is perhaps neither acceptable nor feasible in other industries. When work opportunity declines, management may desire work sharing all right, but it may not concede to bargaining over the work force components. Neither of the parties to a labor agreement may conceive of overtime as a matter for bargaining in relation to the work stabilization objective.

In most manufacturing industries, work sharing is practiced either not at all or to only a limited extent. Some labor agreements provide for the reduction of hours to thirty-two per week in slack periods and, after that, for the layoff of the least senior man so that scheduled hours never decrease below 32 per week. Even that degree of work-sharing seems to have been extensively discarded in recent years. The demand of workers in many industries has not been to share work, but to insure that the older men be retained on the job and be provided with full-time employment, even though the people of lesser seniority receive no employment at all. This is quite different from the work sharing approach, as previously outlined, as a method for meeting the employee problems arising out of the purchase of services on a retail basis.

In many industries, then, seniority is looked upon as "a fair and equitable" way of determining who stays on the job and who does not, in times of a scarcity of work opportunity. Seniority is thus a means of providing work guarantees for a variable and fluctuating number of employees.

If the problem is analyzed from that point of view, one can make this observation: The current idea of some unions—that short-time employment should be eliminated, i.e., that there should be guaranteed annual employment or a guaranteed annual wage—is related to the seniority question. If annual work or wage guarantees are

installed, one of the uses of seniority is changed. This is particularly the case if it is assumed that the objective is not to pay employees for not working, but to regularize employment.

The claim of unions that labor should be purchased in bulk, or on a wholesale basis, raises many questions about the utilization of labor. Again, this is on the assumption that the objective is for regularization of employment rather than pay for not working. In these terms, the guaranteed annual wage need not be looked upon as something brand new. It constitutes an approach to the problem of the uncertainty of job opportunities which has been dealt with through a division of work programs or by seniority systems. The significance of this observation is that each of these approaches involves operating costs and requires an adjustment of production practices.

One company recently investigated very carefully the costs of the seniority practices which had been built up over the years. Layoffs entailed much bumping and extensive re-allocations of jobs and of job assignments. I know of one situation where, in contracting the total work force by ten per cent, over forty per cent of the people had to be reassigned. This is perhaps unusual. But the shifting of employees inside the plant and the interferences with production that occur in the process of effectuating work guarantees to the men with high seniority can be very costly.

In terms of a query rather than as an assertion, one might ask: Could a type of guaranteed annual employment be developed which, along with necessary changes in the manner in which labor is utilized, would be less costly than the seniority system of allocating jobs?

It is significant that the so-called annual wage is presently being urged in the seniority-oriented industries rather than in other industries, such as the needle trades or in the building trades, where employees have not used seniority as a part of the industrial relations arrangements.

A pertinent question about guaranteed work or wages concerns the adjustments in seniority which might be entailed. There is not time now to discuss this whole question of the relations between

seniority and the problem posed by GAW. Much depends, of course, upon whether the guarantees are developed as the payment of income supplementing unemployment insurance benefits, i.e., extra pay for not working, or, essentially as an aspect of the utilization of labor. If the issue is conceived as a labor utilization problem, the seniority question then becomes an integral part of the problem.

Assignments to Better Jobs

Since this paper deals with seniority concepts, it should be made quite clear that the discussion so far has been limited to but one important function of seniority. There is another aspect of seniority, besides the determination of who gets laid off and who keeps a job and therefore has a form of guaranteed employment. To understand the other major functions of seniority, it is important to point out that seniority is no part of the labor management relationship in most craft unions. The building trades are an example. Yet, seniority may become almost a fetish in some manufacturing establishments. The reasons, it seems to me, are found in the significant differences in wage payment methods and in the economics of the two situations.

There are actually two contrasting systems of wage payment for craftsmen and factory workers. The concepts of wages are quite different. A craftsman stands ready to perform any and all tasks encompassed by his craft jurisdiction. He receives an hourly rate, usually standard for the labor market, for performing any task within the craft jurisdiction, whether it is a simple or a complex task. The wage is not directly related to the specific work which the employer seeks to have performed. If a plumber is engaged to do a simple job within his craft jurisdiction, such as changing the washer on a tap, or putting in a drain pipe, I suppose the rate is the same. Each task is encompassed within the craft jurisdiction.

The concept underlying the system for paying a craftsman wages seems to be something like this: the craftsman is the embodiment of a reservoir of skill. It is often said by the unions in this field that "a man is worthy of his hire." So if the employee performs any task

within his craft jurisdiction, he receives the rate for the trade. Not the rate for a particular job. That point of view is an extremely interesting one which we have simply accepted. Payment is to the man, not for the job. The reasons for that, I judge, are that the craftsmen's skills are readily transferable to other employers and because, in many of the crafts, employment is casual in nature there is, incidentally, little chance for promotion for craftsmen.

Craft employees, like factory workers, seek to maximize job security because, with few exceptions, the craftsman is employed as his services are required. He is also subject to layoff upon short notice. But, the craftsman looks to the market for his job security rather than to a particular employer. His emphasis on craft jurisdiction, and on the preservation of jurisdictional lines, is roughly comparable to the emphasis placed by factory workers upon seniority. It is the way craftsmen seek to augment job security, and to increase the possibility of job regularity, under the unique circumstances of their employment. Emphasis upon the right of the craftsmen to perform their trade which is available in a market is another avenue for maximizing job opportunities even though lay-off without advance notice is the general rule.

There are many industries, then, in which the employees look to the market rather than to the employer for their job security. One of the consequences to be noted is the differences between the pension programs that are set up, or the health and welfare programs, in the two types of industries. The market-oriented employees set up market funds. They do not ask their employers to assume a responsibility for paying a pension to employees who attain a certain age. They can't, because their employers change. So, they ask their employers to pay a certain percentage of each payroll into a pension fund which is used to provide benefits to employees after a designated service in an industry.

It might here be noted, too, that in industries like the needle trades, where there is little or no interest in seniority, the employees are also market-oriented. They are essentially craftsmen. Operators

are not promoted to become pressers, or cutters. Operators can transfer their skills between plants, and they do so. Companies are unstable and go out of business, so that it is a characterization of the needle trades that pensions and health programs are established on a market basis.

Most employees in factory operations, in large scale manufacturing operations particularly, are not market-oriented. Their skills are not readily transferable, especially if they have accumulated seniority in one company and would have to start over at the bottom of the seniority ladder of another concern.

I remember in younger days, and some of you undoubtedly also remember, that a young man planning how to make a living was traditionally advised to "Learn a trade. No one can take that away from you. You will have something that you can sell anywhere." Some career counsellors doubtless say the same thing today to some young men. But I would judge more often than not, they say, "Get with a large corporation and get seniority." This is the modern counterpart of learning to be a craftsman.

Employment in the manufacturing enterprise frequently does not depend upon the capacity immediately to take over a certain job and perform efficiently. Most large manufacturing enterprises have a training department. Employees are trained to do the jobs in the manner in which management wants them performed.

Hiring for the great mass of so-called semi-skilled jobs in manufacturing industries does not require great prior experience or specialized ability. Most employees readily adapt themselves, under training programs of the company, to perform the job satisfactorily after a relatively short period of time.

Here then is a great pool of jobs in manufacturing enterprises which require no extensive prior training, and for which most people can qualify with a limited amount of training. The wage rates paid for those jobs vary considerably. The system of wage payment for factory operation is a marked contrast to that used to pay craftsmen. The man is not paid for any reservoir of skills. He is paid for the

job actually performed. Indeed, the value of lifting a piece of steel from point A to point B is measured and given a separate wage value. In other words, jobs are broken down into elements and each element is given a wage value.

These jobs, in the vast semi-skilled category, are evaluated in terms of some objective measurement of job relationship. Unlike the craftsmen, the particular job which is assigned to an employee determines the wage. Assuming that most employees can do any of the jobs with a minimum of training, by what rule are the better paying jobs allocated?

Not only do the wage rates of this great mass of semi-skilled jobs vary, but so does their attractiveness in respect to hours (day shift and night shift), location, and other working conditions. By what rules do those jobs get allocated? The second major function of seniority is in allocating semi-skilled and unskilled jobs of varying attractiveness among employees of relatively similar capacity to perform the jobs. The way in which these jobs are allocated with respect to promotions, layoffs, recall, transfer, temporary assignments, and so forth, are all encompassed by this second function of seniority.

Timing of Seniority

Seniority has been extensively utilized in the mass production industries in which job specialization can be practiced and where wages are paid in relation to the job actually performed. The method of allocating jobs has a bearing upon the total number of employees on the payroll and also upon labor costs. Job assignment rules determine the manner in which labor is utilized.

An extreme use of seniority can lead to bizarre situations. I am thinking now of a case I encountered not too very long ago, arising out of an extreme use of seniority. In this case, what was called instantaneous seniority had become a standard practice. The senior employees had a right of assignment to any job vacancy, irrespective of its nature or duration. When work started in the morning some employees were not present. Nobody knew whether those not on the

job were absentees for the day or were simply late in reporting. The demand of the union, acceded in by management, was that the employees who were present would immediately receive job assignments on the basis of their departmental seniority. Job assignments would then be made with high seniority employees receiving the most desirable jobs.

Then employees would straggle in with excuses for their tardiness. The need for production happened to be so urgent that the excuses were accepted. But, jobs would then be reallocated, to work in the tardy employees, on the basis of departmental seniority. A new re-shuffling took place in order to get the jobs finally allocated for the day's work. Well, not really finally allocated, because, if somebody had to go to the hospital for a cut on his finger, the jobs would be reallocated again on the basis of seniority. That constituted an allocation of jobs on the basis of giving a preference to high seniority men right down to the last inch. Such practices, and others like them, evidently come into being because of the great emphasis upon production during the past ten or fifteen years.

Most of the problems about seniority arise out of its use as an allocator of the semi-skilled jobs among employees who are reasonably competent to perform the various jobs after a minimum of training.

I know that a paper presented earlier on this program dealt with the factor of "ability" as an allocator of these jobs among the employees. I am sorry that I was not present when that paper was delivered. In my experience, management has not generally been able to make these job assignments on the basis of ability rather than of seniority. The foremen find it difficult to be persuasive in convincing the employees of the superior ability or potentiality of Employee A as compared to Employee B. And, perhaps it is expecting too much of foremen to ask them to make such evaluation in view of all their other responsibilities. In nine cases out of ten, it seems the foreman finds advantages in using seniority as an objective measurement for allocating the job opportunities. The problem is not a question of

using seniority or ability but of using seniority in a reasonable manner.

There is no doubt that costs are affected if transfers, job reassignments, and re-shuffling of job assignments becomes excessive. Even if training for no more than a few days or a week is required to do a job satisfactorily, the cost can become consequential if a large proportion of the work force is constantly under training for jobs which will be held but briefly. The use of seniority exclusively to allocate these job opportunities, as each brief job vacancy occurs, can be carried so far that, in order to provide preference for a relatively few long service employees, the majority of the workers can be placed at a great disadvantage.

The seniority clauses of labor agreements are among the least thought-out clauses in the agreement. In consequence, seniority practices in the plant are highly variable. Under the same clause, widely dissimilar methods for allocating jobs have grown up. I know of no field where the gap between the words of the agreement and the performance under the agreement is wider than in seniority.

It is important to arbitrators that the bargaining of the parties with respect to seniority has been not definitive. Loose phraseology of the labor agreement, and a wide divergence in practices, indicate that a complete meeting of the minds about how seniority would operate has often not been achieved with the consummation of a labor agreement. After all, arbitration is usually about as good or as bad as the collective bargaining which brings arbitration into being. If collective bargaining with respect to seniority is exceedingly poor, not only with respect to the seniority clause but the practice under it, an arbitrator can scarcely straighten out the difficulty. In that connection, I will finally and briefly refer to a few of the types of arbitration cases that arise in the area of seniority.

Some seniority cases are relatively simple. They relate to an alleged error in the administration of a program. John Doe was called into work after a lay-off while William Roe believed his seniority gave him a better right to a prior call. Or, it is claimed that the wrong

man was promoted and the rights of a senior man were violated. Sometimes an outright clerical error has been made. Sometimes there is a difference of interpretation about the seniority rules. They are among the less difficult kinds of seniority cases because in deciding them, the arbitrator's decision usually has no particular impact upon the broad program for job allocation through seniority. If an arbitrator decides that A's seniority entitled him to promotion instead of B, no great fundamental principle is involved.

But consider some other cases which can arise under a seniority clause. There may be claims of improper job assignment at a time of a change in methods of operation or as a result of the merger of two departments or of the contraction of a department. People can lose seniority rights in a department made smaller and then go to another department to dilute the seniority rights of employees there. The manner in which such a case is handled might very well determine whether an employee is kept on the job or gets laid off when short time operations ensue. Such cases go to the heart of the system of job guarantees based upon seniority rights. When a methods change or a technological change is made the resulting effect upon seniority similarly affects the structure of the job allocation program.

There is another kind of seniority case which ends up in arbitration. The rules are clear, and everyone knows what they call for, but the result is said to be "impossible to live with." Many arbitrators have had those cases in which it is said, "Sure, sure, we know what the practice is, but we can't live with it." This is an example of inadequate collective bargaining and this deficiency cannot usually be overcome in arbitration.

Then, recall the kind of seniority case which is of critical importance but the labor agreement is silent or obscure about how the case should be handled. This kind of case arises when there is a major unanticipated problem of job assignment which must be settled. The layoffs of 1954 provide a significant example of a situation out of which these cases arise. Many agreements were entirely silent, or

inadequate in providing how seniority should operate in the event of layoff.

When this seniority question is considered broadly, then, it appears as a part of the problems faced by employees as a result of their being subject to lay-off on short notice and because of the need for a system for allocating semi-skilled jobs of varying degrees of attractiveness among those who are reasonably competent to perform them. The seniority approach is particularly useable as respects the great mass of unskilled jobs in the mass production industries, which represent a significant portion of the total jobs that are available in factories.

It is significant that the response of employees to the risk of lay-off without notice varies as between industries. The work-sharing program in the needle trades and the preservation of craft jurisdictional lines by craftsmen have a motivation which is comparable, in many ways, to the seniority programs in the mass production industries. The seniority question is also closely related to the problem of the guaranteed annual wage, because it too is a response to the difficulties faced by employees through having their labor purchased retail.

Discussion—

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I should warn you at the outset that I am something of a ringer here this afternoon, in more ways than one.

Harry Shulman could not make the discussion, so the job fell to me, and I assure you at this point I am sorry for you as well as myself that he could not make it.

However, I have jotted down a few points and written a few paragraphs, necessarily out of my own particular experience and my thinking on seniority problems, and I will try not to take up too much time. I do not have a paper prepared to tackle the specific points of
