

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—

JOHN A. HOGAN

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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

George Taylor's fine presentation. As a matter of fact, I didn't know until now just what he was going to say, but on the basis of his outline, I have tried to tie in a few points of my own, perhaps to relate some of the things he said to certain problems that he has not emphasized because of the time limits on his discourse.

First, I think it is generally agreed that seniority clauses are the most difficult of all contract clauses to write. With the possible exception of individual wage rate questions, they give unions and management the most trouble, and if your experience is similar to mine, you will agree they give arbitrators the most trouble.

George Taylor has shown us how complex the problem is. He has indicated the difference in emphasis on seniority, depending upon conditions, market conditions particularly. I shall emphasize certain time factors and general business conditions.

The lack of emphasis on seniority in market-oriented situations, where the employees are market-oriented, and where the job goes with the man, as in the crafts and in the construction trades, was pointed out by Professor Taylor. The greater emphasis on seniority where employees are company-oriented indicates that you must have some degree of employer stability to make seniority an important consideration.

Greater emphasis on seniority where higher degrees of skills are involved is a familiar consideration. Possibly less emphasis on seniority under currently proposed guaranteed annual wage plans is a matter for discussion.

Now, the importance of seniority, obviously, varies with the business cycle and with the long-run employment outlook in individual trades, and that is where it has hit us in New England the hardest, I think. In New England we are vexed with scores of seniority problems, particularly in textiles. Not only does job security become highly important to employees, but the pressure to attain economies through the reassignment of jobs, creates many problems in applying the contract in a reasonable manner to specific situations. The conclusion

would appear to be that seniority works best when you don't have to use it, and I suppose that is true of most rules.

I would like to take up with you briefly a few considerations on the seniority question:

First, if it is not possible to write a seniority clause that will satisfactorily meet the practical requirements of future situations, does not this mean that arbitrators should be more willing to rule against strict application of seniority? In many situations (of course, where the contract is ambiguous—I always have to add that), should not arbitrators be less willing to worship at the shrine of seniority?

Secondly, seniority, of course, is a method of distributing job opportunities among the employees. When ruling on seniority, the arbitrator is ruling for one employee against the other, as well as "for the company" or "for the union". What does this consideration mean then to the arbitrator in setting up his standards? Does it not again indicate the need for a flexible interpretation, where the problem is not just company-union, but where there are other variables involved, employee versus employee, company and union, as well as policy considerations and political grievances?

In textiles, where the industry is declining employment-wise, we have many tough situations due to cutbacks and liquidations of mills. We are vexed with the question of termination. What is the seniority situation of the employee who is "terminated"? In connection with vacation pay, for example, does he retain seniority status for purposes of vacation pay and other benefits if he has been permanently terminated; or where the plant has been liquidated? What is the difference between "termination" and discharge "for just cause", in breaking seniority? A "permanent" layoff, so called, we find is not permanent. Employees may be recalled after they have been terminated "permanently".

Seniority and Work-Load Clauses

A particularly vexing problem to me has been the question of seniority status of employees under work load clauses, work assign-

ment changes, as George Taylor suggested in discussing technological changes.

In recent years in the textile industry, as you know, the parties have negotiated rather liberal work-load-change rights for management. The unions have faced up to a situation of declining employment, economic pressure, southern competition, and so forth, and the contracts have been rewritten on work assignment rights.

Now, where the contract gives management the right to change work loads and work duties in the interests of efficiency, and the change combines elements of two jobs which are classified under separate *occupational* seniority lists, is the combination job proper? As far as I can see, you just simply have a definite impasse there. You have to choose which clause under the circumstances takes precedence under the contract. The tests are workability of the decision, purpose of the clause, and so forth, because seniority definitely bumps into the work load clause.

Of course, you might take into consideration the fact that the work load clauses have been specifically negotiated subsequent to the seniority clauses for specific purposes, and the problem is whether or not you render them meaningless by ruling on the basis of seniority and not allowing the work load clause to become effective in achieving its objective, which is the objective of the union as well as of management, to increase efficiency and to maintain, at least, half of the mill, which is better than no mill at all.

On the question of "ability," I have little to add. You may want to discuss it. One point which was raised yesterday we might think about a little today; the question whether or not you can or should try to refine the tests or the measures of ability; whether that wouldn't raise more problems than it would solve; ability being, after all, an over-all judgment factor, depending on a total situation, which, to my mind, is not reducible to statistics, and attempts to refine it too much might actually lead to more trouble.

The over-all question, which may be of interest to those who are not arbitrators here, as well as to us, is whether or not seniority in-

creases or decreases production in the long run. Under that heading several questions are raised:

Why do people work hard is the first question; or better, why do people work well? You might find that, although seniority may reduce the number of pieces produced, quality may be improved. This is important. The number of rejects may be fewer.

Do people work harder when they fear the loss of job, or do they work harder or better when they have the peace of mind which seniority tries to give, to some degree at least?

In 1949, in some of our cities in New Hampshire we had a severe recession. Ours was about twice as deep as the rest of the country, and a survey of some situations did indicate that there was no question but that efficiency went up very rapidly in mill and plant situations where the threat of loss of jobs was very real indeed. This was not due to the fact that the poorer employees were laid off. I don't mean that the increase in efficiency was due to the fact that inferior workers were laid off. There was no question that the individual efficiency of the same people went up surprisingly in some cases upon fear of loss of their jobs, after going through many years when that fear did not exist.

However, that is not a satisfactory way, it seems to me, of trying to solve the problem in the long run—with fear as motivation. Is fear a mature motivation? It is obviously negative and immature, and furthermore, to face the total problem—what are you really working for? What are the total satisfactions involved? The question of peace of mind is very important indeed, obviously important, in terms of life satisfactions, which are the goals, after all.

The "labor problem" is fundamentally a problem of making the job not only a means to the good life, but part of the good life itself. So that you may sacrifice certain so-called efficiency factors in order to attain the larger objective.

Furthermore, I don't think that you can prove very much on the basis of the data that we have, as to whether seniority reduces efficiency *in the long run*.

Finally, I think George Taylor's paper and the discussion yesterday point up the real problem, which is that seniority, more than any other simple problem, is the problem of the parties. While the arbitrator may not be imprisoned within the words of the contract, our powers are certainly severely limited, and we are not able, in many situations, to rule in favor of common sense and workability.

The parties are not so limited. Their obligation is to employ flexibility insofar as it is needed to attain workability.

Even though the contract may not force one party to apply it in a certain way, it may make sense to do so. I mean that *the right way may be unenforceable*. But that recalls a very fine article by Judge Hofstadter, in the latest issue of the *Arbitration Journal*, in which the Judge suggested that there is a higher obedience, which is *obedience to the unenforceable*—that "self-restraint is becoming to authority, and the grace of self-discipline is the crown of power." And so it is.

Discussion—

CHARLES C. KILLINGSWORTH

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The discussion thus far has been so comprehensive and so penetrating that there is very little that needs to be added. What I am going to do is to pick up a few points already touched upon by the preceding speakers and try to develop them a little further.

I would like to suggest that seniority has an important negative aspect which is too frequently overlooked, by arbitrators as well as by company and union representatives who deal with seniority problems. The most obvious negative aspect has already been mentioned: seniority giveth but seniority taketh away. There is almost always a forgotten man in seniority matters. He is the man who got the job and who will lose it if the claim is upheld. Sometimes the forgotten man turns up in unexpected ways. I have heard of a situation in which a shop steward presented a seniority grievance on behalf of a man who failed to get a particular promotion; after negotiation with