

CHAPTER III

THE FACTOR OF ABILITY IN LABOR RELATIONS

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There is a growing conviction expressed by many persons that the ability of an individual employee is no longer of much significance in determining his status. The policies developed through collective bargaining are attacked on the ground that there is no incentive for a man to use his initiative when he is restricted in advancement by seniority rules and practices, that seniority provisions make it difficult, if not impossible, for the young, ambitious employee to move ahead rapidly on the basis of merit or performance.¹ From these assumptions the further, dark conclusion is drawn that productive efficiency will be impaired and society's material standards will suffer.

It is surprising that our researches into the field of labor relations have progressed so far without any systematic and empirical analysis designed to test the validity of these pessimistic views. A review of the literature suggests that there has been too much preoccupation (in research endeavors) with the principle of seniority and far too little attention given to the factor of employee ability. Given our knowledge of the field at this time, to what extent can we make even informed guesses concerning the answers to the following questions:

1. Does individual employee ability play little or no part in determining his economic and social role in the work community?

¹ *Individual Initiative in Business*, Edited by G. H. Allen, Harvard University Press, 1950, p. 150.

2. If the ability factor is of less significance, is this to be attributed largely to the emphasis upon seniority under union policies and collective bargaining agreements?
3. To what extent is there a correlation between an employee's length of service and ability?
4. What meaning is to be given to the concept of ability? Obviously it is a word of many meanings and many dimensions. To what extent should the meaning employed in personnel policy and collective bargaining vary from one situation to another? Should the test of ability mean one thing in deciding lay-offs, another in making promotions or wage increases within rate ranges, and still another in deciding whether an employee is unfit for continued employment?
5. Is it proper to differentiate between types of industries or between types of jobs in deciding what weight shall be assigned to employee ability?
6. Is recognition of individual employee ability a strong motivating force, one which stimulates a man to greater effort and nurtures initiative? Is it a stronger psychological force than recognition of a man's length of service?
7. Finally, what evidence is there that the growth of the seniority principles—if it has been at the expense of the ability determinant—has harmed industrial efficiency?

These are only a few of the questions which must be answered before we can affirm or deny the generalizations of those who claim that present day labor relations policies tend to destroy individual initiative. Several months ago a research project was started on this subject at the Harvard Business School. It is obvious that such a study will require many more months before even tentative conclusions can be suggested. Therefore, some of the observations presented in this paper cannot even be dignified by the label of "tentative conclusions." They are defended only on the terms expressed by Montaigne, when he said:

All I say is by way of discourse, and nothing by way of advice.
I should not speak so boldly if it were my due to be believed.

I

There is little doubt that the personal abilities and qualifications of employees do not play a predominant part in determining his status within the unit covered by a labor-management agreement. During the last two decades there has been a decreasing wage recognition of differences in ability among employees on the same job. In part this has been caused by the success of Unions in substituting single rate payments for rate-ranges. Such success in no small way was attributable to Union allegations or proof that within-range merit increases were less a function of *bona fide* variations in ability than of favoritism and discrimination; or Unions were able to argue persuasively that no Company could measure the subtle variations of ability reflected by the distribution of employee rates within the range.

In part, the war years and the policies pursued voluntarily by employers or those adopted by the War Labor Board did much to emasculate the "merit" or "ability" connotations of rate range movements. Notwithstanding wage stabilization regulations, many employers hired new people at the midpoint or the maximum of the range, and such payments did not reflect greater skills or experience on the part of the new hires. Similarly, tight labor market conditions developed pressures for automatic progressions within the rate range, at least to the midpoint and in some cases to the maximum. It is true that incentive systems of payment reflect individual differences in effort, but in the main, the payment of an employee on a given job is less influenced by his ability and merit.

At this stage of our investigation a review has been made of 85 uninterrupted bargaining relationships over the period 1940 through 1953. In 52 of the 85 relationships, there has been at least one contract language change which has the effect of reducing the consideration of ability in making layoff or promotion decisions, thereby enhancing the importance of seniority. Most of these changes affected layoff procedures; of 76 contract changes in these 52 relationships only 13 involved promotions within the bargaining unit.

In 8 of the 85 contract histories studied, language changes were made which can be construed as strengthening the influence of individual employee ability. It is recognized that language *per se* is not an entirely accurate guide to trends in the influence of the ability factor; the application of such language on a daily basis is much more significant. But an informed guess can be made that ability has become progressively less determinative than length of service in deciding which employees are to be retained in a layoff period; the ability factor—by the test of contract language—continues to play an important part in promotion decisions.

II

One of the major difficulties encountered by management in its attempt to preserve the ability criterion is the inherent vagueness of any contract expression to describe the criterion. The isolated terms of "ability", "qualifications", "qualified to do the work", "satisfactory experience" and the many others now used in layoff and promotion clauses mean many things to many people. The relatively precise meaning of seniority, by comparison, gives it an immediate advantage. It is the fashion in academic circles today to preface chapter headings with relevant—and more often than not—irrelevant quotations from "Alice in Wonderland", and it is appropriate to recall the brief interchange between Alice and Humpty Dumpty on the meaning of words:

"When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," replied Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."

In the early days of collective bargaining management could use the word "ability" with little fear of its being watered down by grievance discussions or by an arbitration decision. Many contracts

specified that the determination of the relative abilities of employees, particularly in the making of promotions, was the exclusive judgment of management and only if the judgment was clearly discriminatory could it be subject to challenge.

In a real sense management was the "master" of the meaning of the word "ability", and the word meant just what management chose it to mean at any given time. Indeed, this very mastery of the meaning undoubtedly contributed to the present low status of the ability factor. To illustrate: one of the most interesting cases discovered in the historical analysis of contracts was that of a Company and Union which had incorporated the following promotion clause in their initial bargaining agreement in 1943:

In all cases of promotion of employees from one classification to another, the factor of ability, as determined solely by management, shall govern. If in management's judgment the ability of the men under consideration is relatively equal, seniority shall govern.

Presumably the clause worked reasonably well until 1945 when the Union charged discrimination by the Company in the exercise of its judgment. The Company had promoted a junior employee to the position of fireman, first class, even though a senior applicant had some part-time satisfactory experience on the job. The Union argued that in other promotions, such experience was given considerable weight by management. The Company agreed, but said that in this case it could not be satisfied by demonstrated ability to do the specific work in question; it was more concerned with a man's potential promotability to an engineer's position. In essence, it was admitting to the use of two different meanings of the word "ability". Rightly or wrongly, the arbitrator found this to be discriminatory application of the clause and the Company's decision was reversed. In the 1946 contract all references to management's sole exercise of judgment as to ability were deleted.

More and more the parties jointly have become masters of the meaning of the word ability, and if the relationship pattern is that

of cooperation or accommodation—to use Dr. Selekman's helpful categories—disputes are infrequent. But even this optimistic evidence is misleading and should not be interpreted to mean that the ability factor necessarily is better protected in such an atmosphere. One industrial relations director is quoted as saying:

The Union is constantly pressing for more consideration for seniority. The infrequency of union grievances on this score is misleading. Actually, operating management gives in to the union pressure many times, because of the difficulty of proving greater ability and in order to avoid a fight with the union. I'm convinced that in many of our promotions seniority gets more consideration than either merit or ability—the clause in the contract notwithstanding.²

Perhaps to an even greater extent arbitrators have become the true masters of the meaning of this word "ability" as used in the contract clauses. It is suggested cautiously that the influence of arbitration awards helps to explain the continued decline in the consideration of ability.

First, there is a tendency among arbitrators—whose jurisdiction to decide the question of relative abilities is established by the contract—to join with the Union on the overemphasis of seniority, even though seniority is to govern only when ability is relatively equal. This is understandable, given the objective quality of seniority vis-a-vis the normally subjective nature of the ability measurement. One always feels more secure with the tangible and familiar guides.

Second, arbitrators have tended to transfer the locus of the burden of proof to management, perhaps far more than the contract language intended it to be transferred.

Third, there are those arbitration opinions which lend to standard language an interpretation which would frustrate the most well-intentioned management. To illustrate: it has been held that unless an employee is proved to be "head and shoulders" above the senior

² Chamberlain, Neil W., *The Union Challenge to Management Control*, p. 281, Harper & Bros. 1948.

employee in ability, he is not entitled to promotion under a clause which reads:

In the advancement of employees to higher paid jobs when ability, merit and capacity are equal, employees with the longest seniority will be given preference.

Others have held that "ability" can only be measured or tested by an actual trial period on the promotional job, irrespective of complete contract silence on this right and an absence of past practice implying such right. These predilections of arbitrators—as word masters—do not provide a favorable climate for the employee ability factor.

III

Nevertheless, the facts marshalled thus far do not justify any conclusion that arbitrators are the prime culprits in the waning role of the ability factor. On the contrary, their decisions, if carefully studied in retrospect, are a most useful clue to the real cause of the problem. Further, it is submitted that the Union pre-occupation with seniority is not the cause of the problem, if a problem is assumed to exist. Three facets of the research which has just been started suggest some interesting propositions:

1. Fifty-eight arbitration awards were investigated in which the arbitrator had set aside management's decision to promote a junior employee over a senior employee on the basis of superior ability. No decision was less than three years old at the time of investigation. Inquiries were sent to the Companies involved asking for a work history of the senior employee since his grievance was sustained and for an objective statement of whether he had proved able in the higher position. Forty-six written or verbal responses have been received, and in no less than 29 the senior employee is said to have proved himself able on the new job either immediately or within a very short period. Even more significant is the frank statement in 22 of the 29 cases that supervision doubts whether the junior employee originally favored by management would have done any better on

the job. In 16 of the 29 cases the senior employee has advanced subsequently to still higher-rated jobs.³ In only 10 of the 46 cases does management assert that the arbitrator's decision was unsound. In the 7 remaining cases no judgment could be given because of demotions in lieu of layoff or voluntary quits shortly after the arbitrator's decision was rendered.

It would be tempting—but wrong—to draw the *facile inference* from these data that arbitrators possess a special insight which is not available to management. The qualitative analysis of these replies is more meaningful than this brief quantitative study. Unfortunately the time is too limited to discuss the qualitative analysis. Several explanations may account for this reassuring record. It may be that management was entirely correct in its original judgment concerning the superior ability of the junior employee; but it erred in relating this ability to the job in question. Some industrial relations directors claim that the arbitration proceeding itself was helpful in changing the attitude of the senior employee; it gave the Company an effective opportunity to highlight his shortcomings, and when the arbitrator sustained his claim to the job the employee decided to prove to everyone concerned how good he was.

2. Some research has been started to determine the percentage of promotions in which the senior person was selected in organized and unorganized firms. Three metal trades firms of approximately the same size have been studied for the period of 1951 through 1953; two were unionized and one was not. In the two unionized firms 81% and 86% respectively of the persons promoted were the senior bidders for the jobs. Interestingly, in the firm which had no union, 83% of the persons promoted were senior employees. Obviously the unit of seniority could influence the interpretation of these data, but on the basis of the inquiries made there is little reason to impute to this variable any significance.

³ The influence of the Korean war period tight labor market may explain some of these additional promotions. Further study is needed to determine this.

These preliminary findings suggest that the criteria for promotion in the unorganized Company are not very different from those used in the unionized Company. Further, they suggest one of two things: (a) that in an industry in which semi-skilled jobs predominate, there is a high correlation between ability and seniority or (b) that the clearly discernible differences in ability among a large group of employees is so slight that they do not govern the selection of persons for promotion.

3. A third research approach indicates a high correlation between arbitration verdicts favoring the Company's promotion of a junior employee and the presence of an orderly program for periodic review of employees. Conversely, where ability is appraised on an *ad hoc* basis—at the time of a promotion—the chances of convincing an arbitrator of the junior employee's superiority are less. This does not mean that the gadget-conscious employer can develop the ability factor by the simple device of installing a so-called "scientific" merit-rating system. No such infallible system has been devised. It does mean, however, that a systematic and well-administered merit rating program can "make a very worthwhile contribution" as an *additional* source of information; it has real evidential value to an arbitrator.⁴

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In his book on the *Challenge of Industrial Relations*, Sumner Slichter has stated:

The determination of merit is a responsibility of management. Merit will obviously differ in various situations. An important aspect of merit is a man's adaptability to the people with whom he must work. Will he be a good member of a team? Will he add the proper qualities to the team? Will he improve the balance of the team? Managers are in the best position to answer these questions. Indeed, that is what they are hired for. The requirement that promotions be based on seniority deprives

⁴ Shaeffer, Robert E., *Merit Ratings as a Management Tool*, Harvard Business Review, Vol. XXVII, November 1949. See also *Rating Employee and Supervisory Performance*, American Management Association, 1950.

managers of the opportunity to exercise some of their most important skills.

Slichter goes on to say:

Incidentally, disputes over whether A or B is the better man for a job do not present the kind of question which should be referred to arbitration. That would merely be asking a neutral who is not necessarily skilled as a manager and who cannot begin to master the facts in the case, to substitute his judgment for that of management—in other words, to replace the judgment of a professional with the judgment of an amateur . . .”⁵

This paper in no way questions the soundness of the basic tenets expressed by Professor Slichter. But the research has progressed to a point where one can question the professionalism of the judgments made by management. Very seldom are promotion clauses based on straight seniority. If they tend to operate in that manner, however, it is not necessarily the fault of the clause or the fault of irrational union pressure or the fault of an arbitrator's less professional judgment. Each of these undoubtedly contributes to the superior status of seniority. But we should be equally alert to the lack of skills, the imperfect application of skills, and outright defeatism on the part of managers in their efforts to assign proper weight to the employee ability factor.

Discussion—

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I want to begin by saying that I find myself in the company of those persons characterized, I believe by John Stuart Mill, as individuals “whose minds are unprejudiced by any knowledge of the facts.” I should like to paraphrase this by saying that the commen-

⁵ Slichter, S. H., *The Challenge of Industrial Relations*, pp. 37-8, Cornell University Press, 1947.