

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 . . .”<sup>5</sup>

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-

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

tators this afternoon are, in a way, unprejudiced by much advance knowledge of the content of Mr. Healy's paper, since we received it only yesterday morning. However, in listening to Mr. Healy, you probably share my judgment that he has presented a most stimulating and fruitful paper which opens a great many avenues for both empirical and theoretical research. I, for one, am grateful to Mr. Healy for his willingness to unveil the preliminary design of a research project and to share with us the tentative findings of the study to date.

I would like to attempt a restatement of Mr. Healy's thesis, just to be sure that I understand it correctly, and also in order to pose a question at the end as to whether there is some lurking contradiction in the final proposition which he has advanced. My restatement covers four questions which the paper asks and answers.

1. Is the ability factor declining as a criterion used for the retention of employees, for the payment of employees, for the promotion of employees, and the discharge of employees? In other words, is seniority becoming the principal criterion used in making these decisions?

2. If this is true, why is it true?

3. If it is true that the ability factor is declining as a criterion, does it really matter? That is, in terms of efficiency, may we be getting just as good results from the use of the seniority principle as we do from the ability criterion?

4. If it is true that the same results may be gained from the use of seniority as against ability, should we deplore this state of affairs? Does it matter? I will come back to this question a little later, because Mr. Healy apparently thinks it does matter that management has not developed methods for applying the criterion of efficiency, whereas his own evidence thus far would seem to indicate that this apparent negligence does not make much difference.

Let me go back now to the preliminary research findings on each of these questions. On the initial inquiry as to whether seniority is taking a more predominant role, with ability falling by the wayside, Mr. Healy comes up with an affirmative answer. The evidence for this

conclusion seems to lie in the 85 contracts which he studied over a 14-year period, from 1940 to 1954, and analyzed in terms of changes made in the contract language. Now, without disparaging this research or even suggesting that the sample is too small, which is usually what academic people do when they cannot take refuge in any other criticism, I should like to raise two questions about the evidence itself.

I am a little troubled by the shortness of the period, not by the size of the sample. Is the period 1940 to 1954 a sufficient one for analyzing changes in contract language over time? Do you get, from using this period, merely a reflection of cyclical changes and incomplete cyclical changes at that? Can you really detect a secular trend over a period largely characterized by inflation, with modest degrees of recession? I simply make this suggestion. If possible, changes in contract language should be analyzed over at least a complete economic cycle before generalizations are made about trends.

In the second place, I want to raise what I consider a more formidable question: Can contract language itself, or even changes in contract language, really be interpreted definitively? How does one construe changes in contract language without a check on practice or on application in the plant?

Simply to sharpen this point about the ambiguity of contract language, I should like to present this problem to Mr. Healy. Here is a change in contract language in a company which in 1954 asked me to interpret their seniority clause. There was no submission. The company simply said, "If we should arbitrate the interpretation of this clause, would you give us an advisory opinion on what an arbitrator might conclude as to relative weight given to seniority and ability?"

The initial agreement had merely provided that seniority would govern in matters of layoff and promotion. Four years ago a clause in the contract language was mutually agreed upon, and embodied in a more detailed seniority clause. This is how it read in part:

Preference in promotion and transfers within the bargaining

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unit to fill vacancies shall be given to employees with qualifications of background and experience, and seniority.

Then, just to emphasize the point a little more, this was written in on procedure:

A list of job vacancies will be given to the shop chairman, and, said vacancies will be filled by mutual agreement, according to seniority, if the applicant has the qualifications of background and experience for the job, and as far as practical.

How would a research analyst classify this change in the contract language? The company said, "It is obvious to us, but we still feel a little shaky in our position, that we have now added recognition of ability to seniority, and not only added it, we have underscored it by using such words as 'experience', 'as far as practical', and so on."

I wrote an analysis of this contract provision for the company. I found it very baffling. What I concluded was:

Any arbitrator looking for a clear statement of intent as to the relative weight to be given seniority and ability in such matters as promotion and transfer, under your contract, would, I believe, find his search unrewarding. Not only is the language extremely ambiguous; it is at points either fuzzy, contradictory or meaningless. If the intent was to confuse the arbitrator, however, the language is admirably conceived.

Now, this was a contract change. If you looked only at the language, you might well interpret it as introducing some emphasis on the ability factor. But the company admitted that even though the clause had been in the contract for four years, it had never deviated from the practice of promoting according to seniority. My recommendation to the company was that they should negotiate this matter with the union, and not try to arbitrate.

To summarize here, I think that more evidence than can be found in an analysis of contract language is needed before we can conclude that the ability factor is declining. I realize that Mr. Healy has said this is only the beginning of the research effort.

Let us now turn to the second question. If the ability factor is in

fact declining, why has it declined? Mr. Healy suggests several reasons. His principal answer, which stands out clearly at the conclusion is that this is management's fault; that the "timely acquiescence" of management and the lack of professional skills on the part of management, are responsible for the neglect of the ability factor. To what extent arbitrators may be absolved of responsibility for this shift in emphasis requires more research than has thus far been accomplished. I would be inclined to defer judgment on this point until more evidence has been unearthed.

Finally, Mr. Healy seems to underemphasize the role which unions may have had in the matter. It does not seem to me to be completely conclusive to say, as Mr. Healy does, that because non-organized plants also promote on the basis of seniority, therefore the influence of unions can be discounted or disregarded. I would suspect that one of the reasons why some unorganized companies follow seniority is very much related to union activity. May it not be the fear of union organization which makes certain companies feel that the use of seniority is the better part of discretion?

The third question that Mr. Healy's paper answers is: Does the emphasis on seniority matter in terms of efficiency? Here I think is the heart of his research work to date. Apparently Mr. Healy has found through his check or "post mortem" on what happened to the seniors who were promoted against management's better judgment, that in most instances they made good on the job. From this I infer, as Mr. Healy does, that seniority is perhaps as good a guide to ability as the ability criterion itself.

If it is true, then, that seniority may be as good a guide as ability, why should Mr. Healy try to encourage companies to go out and make more use of the ability criterion? Perhaps management is showing more "professionalism" by recognizing the value of group morale through the use of the seniority principle, than it would through reliance upon individual initiative and enterprise. I should think from my knowledge of the Harvard Business School and what it has been teaching for the past 20 or 30 years, that this recognition

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of the morale factor may be part of the new professionalism that is emerging. In other words, I would be inclined to soften the indictment of management with which Mr. Healy concludes and which does not seem to be well-substantiated by his own preliminary research findings.

*Discussion—*

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If I may, I would like to emphasize some of the practical decision-making aspects of the problem. The contract phraseology with which I am most familiar goes like this.

*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.*

Another version of the dichotomy with which we are now concerned is this:

*Promotion and lay offs will be made on the basis of ability and seniority.*

Now the words "ability" or "ability, merit and capacity" are much less specific in their meanings than the word "seniority". Exceptional instances aside, the comparison of the seniority of two or more persons is a relatively simple and direct process. One looks at a seniority list, or checks some dates of hire and arrives at an unequivocal answer as to which employee has the greatest seniority. Not so with "ability".

"Ability", in the terms of the semanticists is a term of high abstraction. Its meaning in customary usage is loose, vague, and resists exact definition. Among the more specific concepts included in it are these: Physical strength, physical coordination, intellectual capacity, formal education, work experience and personality and character traits. I know of no formula by which these or other components included in the broad concept "ability" may be synthesized into a positive and reliable concept applicable as a uniform standard