

CHAPTER II

PROBLEMS OF COLLECTIVE BARGAINING AND DISPUTE SETTLEMENT IN THE EAST AND GULF COAST LONGSHORE INDUSTRY

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It might be said that in the title of this paper there is a certain amount of redundancy. To speak of collective bargaining in the longshore industry is to speak of problems. For more than a decade the longshore industry on the East and Gulf Coasts has been the epitome of labor relations turmoil. This chaotic condition is evidenced by the fact that six times since the enactment of the Taft-Hartley Act it has been necessary to use the injunction procedures of that Act; every contract renewal in the past ten years has involved the same pattern—a strike, a Taft-Hartley injunction, and, except in one instance, a renewal of the strike after the 80-day period of the injunction.

Essentially, the materials and ideas I will present come from my experience as a participant in the Longshore Project conducted by the Department of Labor.

There are, I am sure, several questions which come to mind when I speak of a longshore project conducted by the Department of Labor. For example: (1) How and why did the Federal Government become involved in this project? (2) How was the project set up and what type of investigations were made? (3) What were the findings? (4) What degree of success did the study achieve in its basic goal of improving labor relations in the longshore industry? The last question may be particularly apropos in view of the prolonged strike that took place after the recent negotiations.

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To answer the first question—"How did the Federal Government become involved?"—we have to look briefly at the negotiations prior to 1962. Traditionally, negotiations begin in New York, but the bargaining there is confined to the local agreement. While negotiations are going on in New York, however, negotiations in the other ports are at a standstill. Since 1956, the New York Shipping Association has been authorized to negotiate five specific items for the North Atlantic ports: wages, hours, contributions to welfare and pension funds, and termination date; these items constitute the basic money package.¹ In practice, however, the ILA urges acceptance of the New York money package by all other ports, a goal it has been reasonably successful in accomplishing. Therefore, until the money package has been determined in the New York negotiations, both the companies and the unions in other ports are understandably reluctant to discuss local bargainable issues even though many of their problems are very different from those of the port of New York.

Once settlement has been reached in New York, great pressures are then brought to bear by the union and the shipping interests on the other ports for immediate settlement. This bargaining pattern leaves little or no time for negotiations by the parties at the other ports with the result that most of the local issues in ports other than New York have been left unresolved. Consequently, over the years some of these local problems have intensified to serious proportion.

In 1962 when negotiations began in New York, the parties immediately reached a complete impasse on the matter of established contractual gang size and certain other manning practices. The New York Shipping Association insisted on a substantial reduction in the 20-man gang for general cargo, as well as reductions in certain specialized gangs. The union, on the other hand, insisted that the 20-man general cargo gang was necessary for efficient operations and refused to discuss any other issues until the Association withdrew its demand for gang reductions.²

This stalemate continued through the termination of the contract on September 30, 1962, and through the 80 days of the Taft-

¹ The North Atlantic District includes all ports from Maine to Norfolk, Virginia.

² The 20-man general cargo gang in New York did not include tractor drivers attached to the gang (usually two) or the gang foreman.

Hartley injunction. Despite intensive mediation efforts, the strike was resumed when the injunction expired, closing all ports on the East and Gulf coasts even though in most ports a reduction in gang size was not the problem. In many ports in the South Atlantic and Gulf, no contractual minimum gang size had been established, and the employer was free to use any size gang he deemed efficient or necessary. In other ports where a contractual minimum gang size had been established, it was either a smaller gang than in New York, or, due to other accompanying factors, the issue of size was not a major problem. Meanwhile, none of these other ports had made progress in resolving their local issues.

After all ports on the Atlantic and Gulf coasts had been tied up for nearly a month, President Kennedy appointed a special Board, consisting of Senator Wayne Morse, Chairman, Jim Healy, and Ted Kheel, to try to achieve a settlement. Shortly thereafter, the Board persuaded the parties to accept a mediation proposal based on the following terms. The parties would enter into a two-year contract containing specific adjustments in wages, pensions, and health and welfare contributions. Action on the manning and job security issues, however, was to be postponed pending a comprehensive study of the problem by the Department of Labor. The Board's proposal specified that, upon completion of that study, the parties were to bargain in an attempt to implement the findings of the Department of Labor. If by July 31, 1964—60 days before the contract expired—no agreement had been reached, the parties were to "select a neutral board to study the areas of disagreement and to make recommendations for resolving any remaining differences in a manner consistent with the findings of the Department of Labor and the interests of the parties." The Board's mediation proposal, although it was addressed to the negotiators for the New York contract, also provided that the Department of Labor would make similar services available to other ports having manpower utilization and job security problems.

Agreement on the Morse Board proposal brought an end to the dispute in New York. Immediately, the New York parties and government representatives pressed negotiators in other ports to accept a similar settlement in order to terminate the strike. Within a few days all other ports had complied and the 1962

strike was ended. Once again, however, local problems, many of which were serious, were "swept under the rug" as they had been in the past several contract renewals.

Longshore Industry Study

Acceptance of the Morse settlement by the parties imposed the responsibility on the Department of Labor to conduct a study of the longshore industry in the East and Gulf ports.

At the outset, Secretary Wirtz emphasized that the primary purpose of the study was to facilitate agreement between the parties, and that the goal was to help the parties to resolve their differences. In line with this purpose, the parties were invited to participate in the planning, were consulted at frequent intervals, and were kept fully informed as the study progressed.

Time pressures were heavy. The Department had little more than twelve months to design the study—one like this had never been done before—conduct it, analyze the data, and transmit the results to the parties, if the findings were to be of any use in the next negotiations. Various approaches, ranging from time and motion types of analysis to adversary proceedings, were considered and rejected before the final study plan was developed.

Areas of Investigation

The gathering of the factual data were divided into three areas conducted simultaneously by regular Department of Labor employees, chiefly from the Bureau of Labor Statistics, who were trained and experienced in making industry studies of various types. One area of investigation dealt with the characteristics of the labor force. This was basically the statistical part of the study covering such items as hours, earnings, age distribution, employment opportunities, size of the workforce, and degree of attachment to the industry. In New York there was an abundance of data available from the NYSA and the Waterfront Commission; in the other ports, usable data were limited.

The second area of investigation, the hiring and seniority systems, was developed through observations of the hiring process and interviews with key representatives of both parties.

The third and major area of study was manpower utilization. The data were gathered: (1) by actual observations of all phases of cargo handling; and (2) through extensive interviews. These interviews, conducted separately with representatives of management and labor at each pier, took from three to five hours each. The interviewer was guided by a carefully prepared questionnaire designed to elicit information on pier problems and suggested solutions. No checklists were used. Thus, we sought to avoid drawing comment on problems not paramount in the situation of the person being interviewed. If contradictory information was obtained, the participants were not confronted with this discrepancy; rather, the conflict was resolved in accordance with observations of the work by the interviewer.

While the data were being gathered on the piers, other sources of information were being tapped and working papers prepared. I would like to mention just one. Through the courtesy of Pete Jensen and John Dunlop, Pete's book, *Hiring of Dock Workers*, was made available to us in galley proof quite some time before publication.³ Thus, we were able to utilize material from Pete's excellent study of longshoring in several major European ports in our presentations to the parties.

At first it had been anticipated that the study would be conducted in depth only in New York and that brief visits to other ports, noting any differences, would provide sufficient information to permit findings to be made. It soon developed, however, that the variances among ports were so substantial that studies in depth were required in each port in order to have comparable data. Nine other ports were selected. These were Boston, Philadelphia, Baltimore, Charleston, Jacksonville, Mobile, New Orleans, Houston, and Galveston.

A tremendous amount of information was gathered. This factual information was analyzed and put into the form of charts, tables, and working papers by the technical staff. We were then faced with a problem of time if we were to prepare a detailed, carefully edited report for publication. Moreover, there had been no softening in the fixed positions that both parties had

³ Jensen, Vernon H., *Hiring of Dock Workers* (Cambridge: Harvard University Press, 1964).

taken at the outset with regard to acceptance of any results of the study on the issue of gang size. To solve both of these problems, it was decided, in what turned out to be one of our most productive decisions, to present the material orally to high level committees to be named by the parties in each port. We made it clear to the parties that we wanted a small committee, preferably of their top negotiators, but we made it equally clear that we were not planning negotiating sessions with them. They were to consider themselves as study participants in these meetings.

This technique had several advantages. It was possible to get a great deal of detailed information into the hands of the parties at the earliest possible date. To present the New York material, for example, required eight days; the New Orleans presentations required four days; the other ports took about one day each. A second advantage was that the meetings permitted us to present our information and to identify problems to both labor and management at the same time since these were joint meetings. Further, it gave us a final opportunity to check the accuracy of the material we had obtained. A third advantage in this method of presentation was that we were able to plan the timing and use of the material in such a way as to stimulate the thinking of both parties in broad problem areas prior to the opening of negotiations. The factual information was packaged in chart form where possible, and designed to highlight the problems and to guide the parties toward possible solutions.

After leading the parties through the facts, we scheduled a final session for summing up. At that meeting we did not review the factual data previously presented, but instead tried to bring into focus the problems as we saw them, and to make evident to the parties possible alternative approaches by which they themselves could reach the best mutual accommodation. The Department findings, when they were formally issued some time later, were essentially the same as the summing up that had been presented orally. Thus, the reports contained no surprises for either side; more importantly, at the conclusion of the oral presentations, both parties indicated that they felt they had adequate room to bargain within the framework of the study findings and the suggestions presented for solutions to their problems.

In the time available for this paper it would be impossible even to list, much less discuss, all of the findings which came out of the study. I can only try to summarize them in broad areas.

Findings of Study in Port of New York

Before doing this, however, let me point out that it soon became apparent that the Port of New York was much further down the road toward a mature labor-management relationship than were any of the other ports. This progress may be attributed primarily to three factors in the New York situation.

Stabilized Workforce

First, New York had attained a fairly stabilized workforce. The progress that had been achieved in this respect over a decade can be seen in Chart A. (See p. 52)

Chart A shows that total employment was reduced from 51,282 in 1951-52 to 27,134 in 1961-62. The significance of this reduction for the workers in the industry becomes apparent when we examine Chart B. (See p. 53)

The pie chart on the left, showing the situation in 1951-52, indicates that 35 percent of the workforce were employed less than 100 hours annually, while only 26.3 percent were working 1600 hours or more. Throughout the study we arbitrarily considered 1600 hours to be the beginning level of what might be called full employment. During that same year, 52 percent of all employees worked less than 700 hours, the number of hours of annual employment which the industry itself had established as the minimum requirement to qualify for pension eligibility and which we, again arbitrarily, considered as the upper limit for the designation of casual employment. Turning to the pie on the right of Chart B, which represents the final year of the ten year period in Chart A, 55.4 percent were in the full employment category of over 1600 hours, while the casual group had dropped to 17 percent of the total and only seven percent worked less than 100 hours. Thus, by the end of the ten year period, the proportion of the workforce having relatively stable attachment to the industry had increased significantly, and there had been a dramatic decline in the number of casual workers.

Chart A

LONGSHORE EMPLOYMENT IN PORT OF NEW YORK

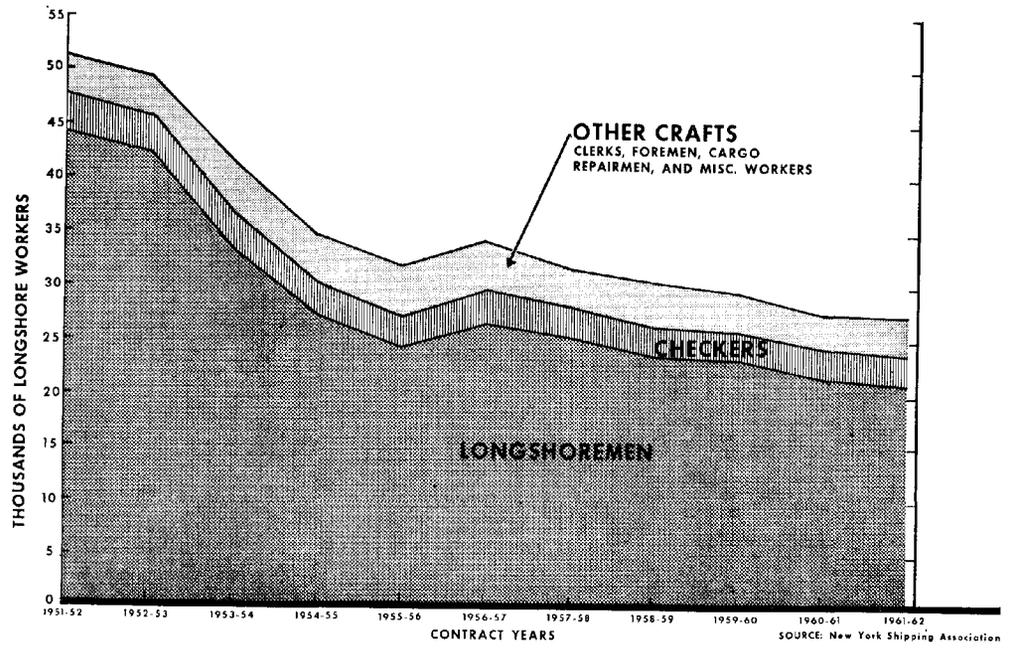
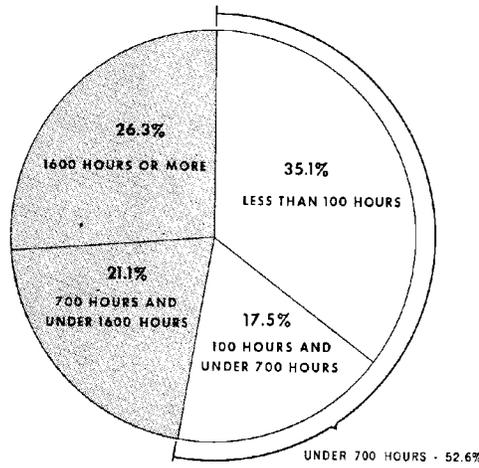
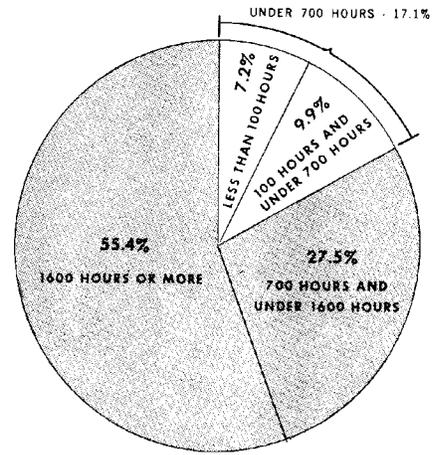


Chart B

INCREASED HOURS AND EARNINGS FOR LONGSHORE WORKERS



51,282 EMPLOYEES
CONTRACT YEAR 1951-52



27,134 EMPLOYEES
CONTRACT YEAR 1961-62

SOURCE: New York Shipping Association

This change from a predominantly casual to a relatively stabilized work force came about largely through changes in the hiring system. Since 1953, a register of longshore workers has been maintained by the Waterfront Commission of New York Harbor, a bi-state agency established by the governments of New York and New Jersey. Only men who are registered with the Commission may be employed on the waterfront. The Commission also has the responsibility of administering a decasualization program which removes from the register those workers who fail to meet fixed minimum work requirements during a given period. This program has reduced the supply of labor to levels more closely related to demand.

Seniority System

A second factor in the New York situation was its seniority system. In the longshore industry, where men are hired on a daily basis, the seniority system serves only as the method by which men are accorded priority for employment.

In 1957, the parties agreed on the principle of seniority. A joint committee was set up to work out the details. Later referral of unresolved issues to an arbitrator, Pete Jensen, produced an award which incorporated items previously agreed to by the parties and decisions on the unresolved issues. Minor changes in the system have since been made from time to time by the parties. Although the New York seniority system is extremely complex, it meets the basic test of an effective system—it works.

Established Grievance Machinery

The third factor in New York was that the parties had established grievance machinery, comparable to that in other industries, providing for steps at the piers, at the port level, and final arbitration. The effective operation of the grievance procedure was a major factor in the elimination of quickie strikes which had long plagued the piers in New York.

Thus, New York, in contrast to the other ports, had a fairly stabilized work force, an established seniority system, and a functioning grievance system. These three factors, together with the great size of the port in terms of cargo handled and men employed,

tend to distinguish New York from the other ports. For these reasons I have chosen, for the purpose of this paper, to highlight the major findings for the Port of New York separately and to present those for the other nine ports in terms of common problems rather than the specifics contained in the separate findings issued for each port.

Major Problems

The New York study revealed that efficient utilization of manpower and the need for job security were major problems. The source of these problems in the longshore industry, as in other industries, can be found to a great extent in changing technology. With new cargo handling methods, less manpower is required. This causes management to seek a reduction in the number of its employees, and, on the other hand, creates a union reaction to preserve the jobs that exist, and, further, to increase the application of customs requiring limitations on assignments.

There was in New York, moreover, a very evident relationship between the problem of manpower utilization and a maze of restrictive work rules. These rules had originated in earlier attempts of the longshoremen to gain some measure of job security and, in course of time, had been cemented into the agreement. The restrictions varied from pier to pier within the Port of New York; there was no over-all pattern. In general, however, the older port sections had a greater number of restrictive practices.

Let me illustrate this problem. In some terminals restrictive work practices had created specialized jobs in the clerical and checking activities where no specialization was needed and, once created, had to be continued regardless of need. Theoretically, a clerk or checker should be able to handle any type of cargo, but gradually their areas of activity became more specialized. They became clerks for inbound cargo or clerks for outbound cargo and by practice were not interchangeable. Nor could they be assigned to other clerking work even if there was no work in the areas of their specialized assignments. Likewise, special details of checkers for specific commodities developed, such as automobile checkers. In some areas of the port, if only one automobile was to be loaded or unloaded, the automobile checker had to be hired and paid for

eight hours even though he could not be assigned to other types of checking during the remainder of the day.

Special details of checkers evolved in other areas of work, such as location men, hatch, crib, or public stores checkers. Similarly, among dock workers, there was the striking illustration of the harbormaster who handled berthing of lighters. Although lighters once were used extensively in the port, they are now seldom required, yet on some piers a harbormaster still must be employed and cannot be assigned to other work. Thus, while detail men often had no work to perform, the restrictive work rules forced the hiring of extra men to do work the detail men could have done. As a point of interest, these special details had become known as "frozen details"; later, in negotiations, the elimination of such specialized assignments was referred to as "defrosting the frozen details."

In gang operations, although the problem of efficient utilization of manpower involved the number of men required in the general cargo and special cargo gangs, the size of the gang appeared less important than the effect of the restrictive work rules. Let me explain the reason for this. The minimum size of the general cargo gang in New York is 20 men; eight holdmen, four deckmen, and eight dockmen. All 20 gang members were fully utilized only when cargo being discharged had to be sorted on the dock. During loading operations, or when cargo was sorted in the hold prior to unloading, two dockmen, instead of eight, were sufficient to perform the amount of dock labor required. Under these conditions, the work rules at most piers permitted reassignment of four of the dockmen to work in the hold where they could be utilized. This practice of moving dockmen reduced the amount of idle time attributable to the contractual gang size to two men. However, at some piers such reassignments were prohibited by restrictive work rules, resulting in a surplus of six dockmen, rather than two, for most operations. Further, when there were gang-associated duties to be performed, extra men had to be hired even though some gangmen were not being utilized.

The flexibility required to move some men from the dock to the hold, to reassign extra men or tractor drivers as needed, to use men in the gang for other duties connected with the same hatch,

to shift gangs from hatch to hatch or ship to ship has a direct bearing on efficient utilization of manpower. The flexibility to do these things was restricted in greater or lesser degrees on most piers in New York. Also, effective utilization of the fourth man on deck, which was directly related to changes in ship design, was a growing problem.

In summary, we did find that there was under-utilization of manpower in the Port of New York and that the problem was as much one of flexibility of assignment as it was of minimum gang size requirements.

We found several other problems in New York. There was an imbalance between job opportunities and the size of the work force available in different sections of the port, together with a lack of mobility to adjust to these varying needs. As a result, there was a tendency for a reserve of casual workers to accumulate in each section of the port. The study also revealed a high rate of absenteeism, reaching as much as 21 percent in some areas, which further contributed to the need for reserves of casual workers. It became obvious that, if job security were to be achieved in the port, the parties would have to deal with all of these problems.

Findings in Study of Outports

Let us turn for a moment to the other ports. There were three principal problems common to all of the ports outside New York: (1) a highly casual work force; (2) inadequate hiring practices and seniority systems and a total lack of any form of job security; and (3) a lack of grievance machinery. The degree of casual employment shown by the disproportion between the numbers in the work force and the number needed at any given time was nothing short of astounding. By limiting eligibility under the pension plan to employees who worked in the industry a specified minimum number of hours per year, the parties had established a dividing line between workers they looked upon as casual and those who formed the basic work force of the industry. In most agreements, this was 700 hours per year. By applying this standard, we found that more than 75 percent of the work force in Charleston, Jacksonville, Mobile, and Galveston were casual employees. In fact, more than 50 percent of the workers in those

four ports worked less than 100 hours annually. Two thirds of the work force in Boston and Houston were casual employees; and even in the larger ports of New Orleans and Philadelphia some 60 percent and 50 percent, respectively, were casual workers.

The effects of a casual longshore work force are two-fold. *First*, an excess number of available workers, who may be hired with little regard to industry attachment, siphons off employment opportunities which could otherwise accrue to the more basic work force, the men who look to longshoring as their principal means of employment. *Second*, hiring from the casual ranks could affect both manpower utilization and productivity through the employment of individuals who have little longshoring skill and who use the industry only as an incidental means of employment.

Little or no progress had been made toward job security outside New York. In all of the other ports, hiring was conducted through a form of the daily shape up. Under this system there was no guarantee that a man would work if he reported at the hiring point.

Another problem was the fact that none of the ports except New York had any effective grievance machinery. Many grievances in this industry, especially those relating to safety, require on-the-spot determination. Claims of unsafe conditions generally relate to transient situations, such as working next to the edge of a sharp drop which is in the process of being filled with cargo, or the use of unsafe ship's gear or handling techniques. A few hours later the sharp drop will no longer exist, or the ship will have sailed and no evidence will remain to present to an arbitrator. Most ports had no formal grievance machinery and, when they did, it was seldom, if ever, used.

Recommendations

My discussion of our recommendations in the study, like that of the problems, is necessarily limited to a few general points. Each recommendation made to the parties was placed in the framework of good labor relations principles. To the audience present here, many of these statements may seem trite, but to the parties in the longshore industry we were breaking new ground. The reports which presented the findings were planned to serve as a

basis for negotiations by identifying the problems and placing them in the perspective of all relevant facts. The objective was to provide the parties with a means to reach their own solutions to their problems, not to make their decisions for them. In general, recommendations were directed toward guiding principles and alternative solutions.

The parties were urged to recognize the interlocking nature of many of their problems and to accept the necessity for long-range planning to solve them. It was pointed out that the basic concerns of both parties—manpower utilization and job security—were, in fact, opposite facets of the same problem. Neither could be resolved without an accompanying adjustment in the other. For this reason it was important for the union to recognize the economic and competitive problems that exist for management when the services of employees cannot be used productively. Conversely, it was equally important that management should recognize, and should share, the union's concern for the welfare of the men employed in the industry.

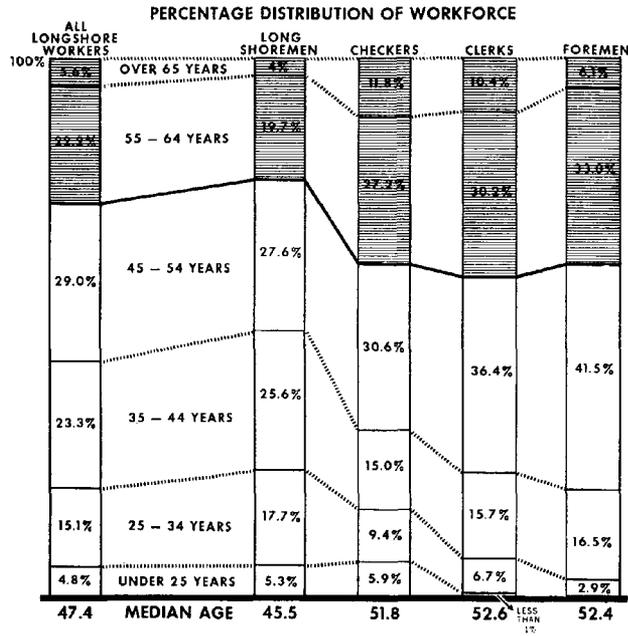
Approach to Bargaining

In urging these considerations upon the parties, we outlined recommendations for their approach to bargaining. First, it was suggested that they examine the entire scope of their problems and determine their inter-relationships. For example, if job opportunities were to be reduced in New York by the elimination of restrictive work practices and/or by decreasing the size of the gang, an even further reduction in the total work force would be necessary. In light of the age characteristics of the workforce, this reduction could be accomplished by attrition over a period of time. As illustrated by Chart C, nearly 28 percent of all longshore workers in New York were 55 years of age or older at the time the study was made. (See p. 60)

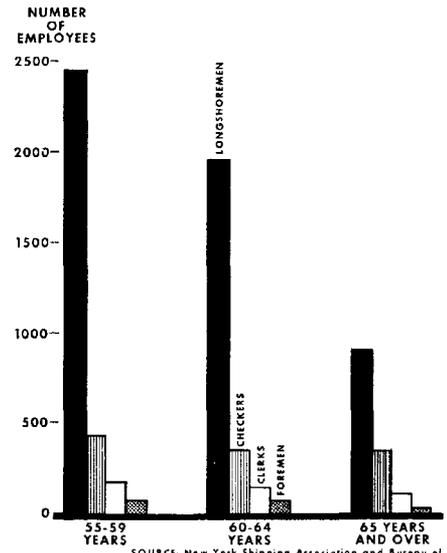
Thus, by normal attrition alone, the size of the workforce could be reduced substantially, particularly if new entrants to the industry were limited. Furthermore, if an improved pension program were adopted, the entire process might well be accelerated. It was also pointed out that if, at the same time, the parties wished to increase job security by adopting a system of work guarantees, it would be necessary to increase the mobility of longshoremen in

Chart C

AGE DISTRIBUTION OF LONGSHORE WORKERS BY OCCUPATIONS - MID 1963



NUMBER OF EMPLOYEES AGE 55 AND OVER



the port and to control absenteeism in order to reduce the number of casual reserves required in the port. Otherwise, job guarantees in any form would not be workable.

Planning

Our second suggestion was that both parties accept a responsibility to plan ahead. For example, in all of the ports except New York, if they were ever to consider work guarantees in the future, they would first have to resolve the problems created by the absence of a formal hiring system and the lack of a seniority system. The parties were urged to recognize that a hiring and seniority system must be adapted to the needs of each individual port, but certain guiding principles were outlined for their consideration in establishing such a system. These included: (1) registration of the workforce; (2) grouping of the workers according to the degree of their past attachment to the industry; (3) a means to eliminate surplus workers from the register; (4) limitation of the intake of new workers to avoid returning to a surplus labor situation; and (5) procedures to insure that men in the basic workforce are available when and where needed. Further, we pointed out that, unless the workforce was stabilized, little progress could be made toward establishing reasonable job security or eliminating certain manpower utilization problems. This point is illustrated by Chart D showing the New Orleans workforce. (See p. 62)

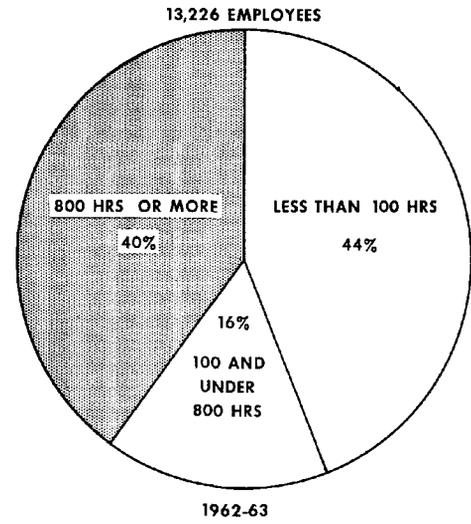
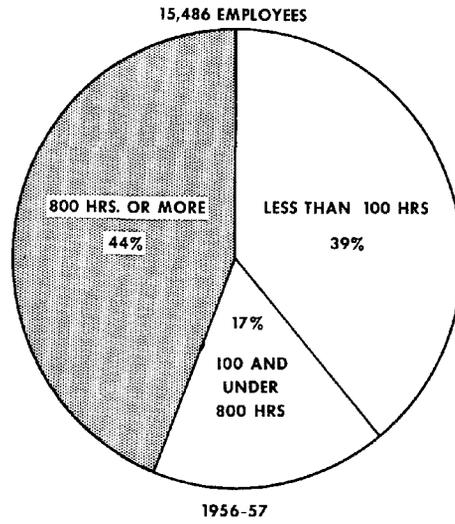
Chart D indicates that, unlike New York (Chart B) the employment situation in New Orleans had remained static over the five-year period preceding the study. Casual employees constituted 56 percent of the workforce in 1956-57, and 60 percent in 1962-63, while only about ten percent reached the 1600 hour level in the latter year. Clearly, unless the parties make changes in the hiring procedures, this situation could continue indefinitely.

Establishment of Goals

Since it was clearly unrealistic to believe that all details could be resolved in the approaching negotiations, our third suggestion was that the parties agree in principle, then provide a succession of steps to achieve these goals and to establish machinery by which

Chart D

DISTRIBUTION OF WORKFORCE BY HOURS WORKED



the steps could be implemented. For example, if the parties could agree in principle on a seniority system, they could, through continuing joint meetings, develop and adapt that principle to meet the particular needs of the individual port.

Development of Procedures

Our fourth suggestion to the parties was to develop procedures through which new problems could be resolved as they occur in the years ahead. This recommendation encompassed not only their day-to-day problems, for which we suggested improved grievance machinery, but such long-term problems as future technological change in the industry, for which we suggested that they provide means for advance joint consideration.

The 1964 Negotiations

The 1964 negotiations are a story in themselves. Both Jim Healy and Ted Kheel were deeply involved in the New York negotiations and may want to add some comments concerning them.

At the outset, I should point out that perhaps the basic reason for some of the difficulties in negotiations was the existence of a paradox. In New York, the shipping companies were seeking change. They were seeking relief from what they felt to be oppressive work practices and excessive manning requirements. The union was seeking to maintain the status quo. However, in the South Atlantic and Gulf ports, we had the reverse situation. Here the union was seeking change through the establishment of a contractual minimum gang size, whereas the employers sought to retain the status quo.

There were probably two other factors contributing to the failure to achieve settlement without a strike in 1964. The first was the inability, or perhaps reluctance, of the parties to change their past pattern of bargaining. Such an effort was made in New Orleans and to a certain degree in the South Atlantic ports, but these efforts were not sufficient to affect the sum of all the negotiations. I will return to this point later, but first I would like to discuss the second reason for the difficulty in reaching agreements, namely, the reaction of the parties to the challenges contained in the study.

There is no doubt that the study placed on the bargaining table for the first time many problems that had been postponed, ignored, or unrecognized in the pressures of earlier negotiations. For the first time, the parties had impartial factual data; for the first time, each side had a statement of their problems in the context of possible solutions to them; for the first time, the outports had a basis and an opportunity to examine their own situations, completely apart from the New York negotiations. Thus, it is not surprising that we encountered so often the attitude that this was "the year of decision." Both sides, in some ports, appeared to feel that anything not gained in these negotiations would be permanently lost. Under these circumstances, it was almost impossible to have anything but slow, hard bargaining.

Reynolds Board

There was a promising start to the negotiations in New York. Two small committees of the NYSA and the ILA opened the bargaining in July, 1964. By the end of the month, however, the parties were far apart and the union had gone back to its large negotiating committee of some 100 members. At that time both sides agreed to request appointment of a neutral board, as provided in the Morse settlement. The parties asked that the former Morse Board be re-established for this purpose. Since Senator Morse was deeply involved in his official Senate duties and was unable to serve, Assistant Secretary of Labor James J. Reynolds was named chairman in his place. Jim Healy and Ted Kheel again agreed to serve on the board.

After nearly two months of mediation efforts, and in accord with the agreed-upon procedure, the Reynolds Board issued recommendations. With respect to matters included in the study findings, the Board's recommendations implemented in specific terms the solutions outlined in the report.

It was increasingly evident that there was recognition on the part of management that if they were to obtain the relief they sought, there would have to be a substantial improvement in job security for the men. There was also recognition by the union that if there was to be any advance in the area of job security or

wage guarantees, management would have to obtain the relief they sought from restrictive work rules.

We thought at first we were approaching a settlement, but it foundered on the "year of decision" attitude. Despite very substantial agreement along the lines of the Board's recommendations, an adamant stance on "a one more change" item, namely, eliminating hatch checkers because the companies believed they were not needed, took us to the contract deadline without an agreement.

Results

There followed: *first*, the Taft-Hartley period, toward the end of which the parties settled in New York; *second*, a 20-day contract extension by the ILA to permit the outports to conclude contracts; *third*, rejection of the New York settlement by the membership of the New York locals, promptly followed by the strike; *fourth*, an all-out campaign by the ILA leadership in New York to explain the terms they had agreed upon, a re-vote, and final acceptance of the original terms; *fifth*, an impasse in both the South Atlantic and West Gulf ports on the issue of a contractual provision for minimum gang size; *sixth*, appointment by President Johnson of a special board composed of Secretary of Labor Wirtz, Secretary of Commerce Connor, and Senator Morse to conduct a hearing on the remaining issues in the South Atlantic and West Gulf ports and to make recommendations; and *seventh*, final agreements in all ports some three weeks later.

When the dust of battle had settled, contracts were examined to see to what extent the parties had resolved their problems and whether or not the study findings had had an impact on these solutions. We found a wide range of answers to that question. In New York, Philadelphia, New Orleans, and the South Atlantic, great strides were made. There was some progress in the West Gulf area. In Boston,⁴ Baltimore, and Mobile, not only was there no improvement, but both Baltimore and Mobile eliminated contract provisions which, during the study, we had indicated had value in reducing their problems.

The gains in New York were particularly significant. In

⁴ Since the presentation of this paper, the parties in Boston have agreed on a number of changes to eliminate problems pointed out in the study.

gradual steps over the period of the four-year contract, the union agreed to reduce minimum gang size by three men, to "defrost" the frozen details, and to reduce one classification, hatch checkers, by attrition until 250 such jobs were eliminated. One of the most noteworthy achievements was agreement upon an annual work guarantee of 1600 hours straight time pay for all the men in the basic workforce. Management also agreed to substantially improve pension provisions, and to increase wages and vacation and holiday benefits. The settlement also provided for a joint NYSA-ILA "Human Relations and Implementation Committee" to: (1) seek ways to increase the mobility of longshoremen within the port; (2) establish a system of penalties for consistent absenteeism; (3) establish a variety of specific standards necessary to implement the annual guarantee provision; and (4) handle all other issues dealing with the implementation of the settlement which may be referred to the Committee by either party during the life of the contract. If the Committee fails to reach agreement on any matter, it is to be referred to final and binding arbitration, with Ted Kheel as arbitrator. Another joint committee was established through which the parties would confer with the Waterfront Commission to obtain the closing of their register to new employees and to permit union representatives to be present in Commission hiring centers.

Thus, the New York settlement incorporated virtually all of the major elements suggested by the study findings.

In New Orleans, Philadelphia, and the South Atlantic, negotiations centered on the issues cited as problems in the study findings, and in each case some 90 percent of the suggestions were adopted. All three contracts provided for decasualization of the workforce through improved hiring and seniority procedures, and established joint committees to implement the new procedures and to handle problems arising from them. In all three ports approaches suggested in the study to resolve a number of specific local problems were adopted. New Orleans, the West Gulf, and the South Atlantic established new grievance machinery with intermediate steps before arbitration. Philadelphia, like New York, agreed upon a three-man reduction in the gang and an annual wage guarantee; the guarantee, however, was lower than

that in New York and was to be incorporated in steps, as the workforce becomes stabilized under the new hiring system.

The manpower issue in the South Atlantic ports, as in the West Gulf ports, was the union demand for contractual provision for a minimum gang size. The South Atlantic ports, however, had negotiated a virtually complete contract before bargaining reached a standstill over the gang size issue. In the West Gulf ports, on the other hand, the parties were at the same impasse as New York had been on the gang size issue in 1962, and no bargaining on other issues was undertaken while both parties maintained fixed positions with respect to gang size. The final settlement in both the South Atlantic and West Gulf ports contained provision for a 16-man minimum general cargo gang.

Prospects for 1968

Let us now look ahead for a moment and give some consideration to the collective bargaining prospects for 1968, when the present contracts expire.

There is no question but that many problems will arise as the parties apply the new contract provisions and attempt to implement contract gains. In those ports where substantial changes have been made, there is little doubt that rough spots will have to be smoothed out and that continuing adjustments to adapt to daily problems will be required. Moreover, new machinery has been incorporated into many contracts to deal with long-range problems. Whether or not such devices as the Human Relations Committee, the Implementation Committee, or the committees formed to develop and administer new hiring procedures and new seniority systems can function effectively will determine the degree of success or failure of the solutions to many of the industry's major long-run problems. Certainly there are a number of areas of potential difficulty. Most evident among the major problems are: (1) the mechanics of gang reductions in New York and Philadelphia; (2) the functioning of the annual guarantee provisions in New York; (3) the problems which may be encountered in Philadelphia where the workforce is less well defined; and (4) the initiation and carrying out of the decasualization programs in other ports.

Further, certain of the problems which were revealed by the study and whose existence was recognized by the parties, were not resolved in the last negotiations. Probably the most significant of these is failure in a number of the ports to plan for future technological change, but there are other problems of varying degrees of importance in certain ports which may be expected to arise in future bargaining. Moreover, internal union jurisdictional problems between ILA locals in several ports have not yet been resolved. So long as these jurisdictional disputes continue, they may be expected to handicap collective bargaining in those ports.

A final word should be said concerning the broad aspects of collective bargaining in this industry. These are matters quite apart from the Labor Department study, but they became clear as we examined the parties' problems. They have their foundation in the collective bargaining structure. This structure is a key factor in making strikes almost inevitable in this industry. Theoretically, each port bargains autonomously; yet, serious bargaining usually does not begin elsewhere until the money package is settled in New York. Although management from other ports is not represented in the New York negotiations, the economic package is determined there. Thus, money concessions in the outports are already discounted by the union when the local bargaining begins elsewhere.

Drive for Standardization

Moreover, the management in New York bargains as if that port were the only one involved. The timing of the negotiations there is geared to the contract termination date as the goal for settlement for New York alone, even though it is well understood that the union will strike all ports if the parties at any one port have not reached agreement. On the other hand, there is no incentive for the parties in the outports to proceed with bargaining and achieve a settlement before an agreement is reached in New York, since they cannot thereby have assurance of avoiding a strike as long as a stalemate and a strike at one port will result in strikes at all ports.

Although management has been ignoring the clear existence of the interrelationship of bargaining in other ports to the New

York settlement, the union has been trying to create a standardized pattern applicable to all ports. The union's efforts in the past have been directed primarily toward the money package, but they are now seeking standardization of other contract provisions, identical with those in New York. There has been little recognition on the part of the union of the fact that the New York agreement does not necessarily fit the other ports.

Port characteristics have an important influence. For example, types of cargo vary. New York has a great deal of small package, high value cargo, while some ports handle primarily large cargo units such as cotton, other baled products, and sack goods. Again, New York cargo is relatively balanced between exports and imports, but this is not true everywhere. In one port we studied, the cargo handled was about 90 percent export; in another, it was about 90 percent import. There are other significant factors, such as tonnage handled and frequency of sailings. The differences between New York and other ports in this respect are great. There is no steady flow of work opportunity in most ports as is true in New York. Further, a ship in New York usually provides work for two or three days, while in some ports the tonnage handled provides work for only some four hours. Job opportunities vary widely from day to day in each port. Unless the union recognizes these differences and their effects on manpower needs and job security, their drive for standardization, certainly in the present bargaining framework, could create new problems for future negotiations. The parties must give immediate and serious consideration to changing their present bargaining structure, quite possibly in the direction of full "coastwise" bargaining.

To conclude on a more optimistic note, I should point out that there is reason to hope that the parties can overcome all these problems. Fortunately, an imaginative and responsible leadership has been emerging in the union. As a result of the high level of professional leadership in the New York Shipping Association, a new appreciation and approach to bargaining is evident on management's side.

Progress has been excellent in the joint labor-management committees in New York. The joint committee established to review problems in the South Atlantic is functioning well. The

new grievance machinery in the West Gulf is extremely successful.

The parties are now headed in the right direction. The basis has been laid for moving from an industry plagued by casual employment to one with stable employment and with some form of work guarantees. The supreme test will be whether the parties have the private capacity, as opposed to government intervention, for the joint cooperative effort which will be required in the future.

Discussion——

THEODORE W. KHEEL *

I thought I should tell you right off that in connection with this 3.2 dispute between Bill Wirtz and Mayor Lindsay, I have offered my services as mediator.

I might also say that in connection with the Manpower and Implementation Committee of which I am the arbitrator in the event of disagreement, I have heard from Johnnie Bowers, representing the union, and Alex Chopin, the spokesman for the employers, that practically complete agreement has been reached and that if any issues remain for arbitration, fortunately for me and for them, they will be very few indeed.

I wish to be brief. No one left during Dave's presentation, and I want to keep you here during mine by being brief. I have only a few comments to make:

Firstly, I would say this: You have heard considerable this morning about the problems of collective bargaining in this industry. They are monumental. But the significant thing, to my way of thinking, is that notwithstanding the staggering obstacles that collective bargaining in this industry face, some imposed by the parties and some imposed on them, they have achieved what is probably the most unique and historic agreement in longshoring, if not in industry generally. And this must be viewed, since it was the product of collective bargaining and not of arbitration or

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legislation, as one of the great triumphs of collective bargaining and a tribute to the process, indicating that bargaining is bigger than the bargainers, and that it is possible, through voluntary decision-making, to solve problems of tremendous complexity.

Secondly, I would say, that we very frequently talk mistakenly about fact-finding when we mean boards of recommendation, particularly in connection with wage disputes. The facts found are relatively unimportant. Indeed, they probably were never lost. The parties are fully aware of them when they get the fact-finding report; they look only to the last page to see how much was recommended.

In this instance there was fact-finding in its truest, literal sense by Dave Stowe and his staff, and I think it was a unique contribution to labor-management relations.

What Dave did was to find the facts and present them to the parties. He spoke of recommendations which he made, but actually, he did not make recommendations in the sense that we normally think of them. He did not recommend a specific solution in connection with the gang size or a specific form of job security. He did recommend that these problems should be dealt with, and he did, as he said, point the way toward a solution through collective bargaining.

There was something else that Dave did that seems very simple on reflection, but it was unique, and again, tremendously helpful. What he did was to explain orally the findings to the parties first and before any release was made to the newspapers. There is a terrible temptation for all of us, especially when we write a very good report, to get it out to the press in order to see what it will look like when it is printed in the newspapers. Nothing can be more disconcerting, especially to union representatives, than to have a report made to their members through the press before they, themselves, have the opportunity to digest it and explain it to them.

This is a very important point that all true fact-finders should bear in mind in presenting their findings to the parties. We know from this very dispute how much confusion can arise among the rank and file in view of the subsequent history of the rejection of the agreement that was reached in late December.

Subsequently, one of the New York radio stations provided time for members of the ILA to telephone in their questions and to receive answers from their leaders about the meaning of this very complex agreement. I happened to have listened to this program. It was absolutely fascinating because there were real, bona fide questions stemming from confusion and uncertainty which were being put to the union leadership and which the union leadership was then able to answer.

It is a fact also, unfortunately, that the reporting in the press of this particular dispute was very inadequate. The tendency was for the newspapermen to pick a lead, and usually to pick the most sensational lead, which, depending on one's point of view, could be very good or very bad. In this case it was bad.

There was very little confusion in the Port of New York when the agreement was finally reached, reflecting again the value and the significance of what Dave Stowe did in meeting with the parties in New York for eight days and going over his findings with them before any public dissemination. As a matter of fact, I don't believe the findings were publicly disseminated even after that. But the important thing was that the leadership of the employer and the union organizations received the information before they read about it.

I have only one more comment that has to do with the role of mediators. We came into this by a contractual provision, as Dave has recounted. It was a provision recommended by the Morse Board in connection with the study made by the Department of Labor. I believe that study had been agreed to by the parties themselves before the Morse Board came in and worked out the final implementation. I think the concept was sound, but perhaps we did not think enough about the significance of the timing. The provision in the contract was that our Board, in assisting the parties to implement the study, should act in a recommendatory capacity. We were commanded to make recommendations before the termination of the contract, which, I believe, was on October 31st. We were under compulsion to make recommendations before that date.

The history of bargaining in this industry indicated, however, that invariably the parties would reach the contract termination

date without a settlement and then get enjoined for 80 days. That had become a fact of collective bargaining in this industry. It was mentioned by Arthur Stark quite properly as one of the horrible historical events in this industry, but actually the parties did not really have a contract expiring on October 31st; actually they had a contract expiring on December 20th, and the bargaining was conducted with reference to the contract expiration of December 20th.

There was a hope, we all had the hope, that we could wrap this up at the time of the technical expiration date on October 1st, but this was a vain hope. I now know there was no real chance of reaching agreement by that date, even though I believe both the employers and the union were anxious to do so. The realities of bargaining were such that, in my judgment anyway, this was not a realizable expectation. I would have preferred, therefore, to have had greater flexibility, in retrospect, with regard to when, if at all, recommendations should have been made. I think the device of a mediator's proposal which reflects the course of the bargaining rather than some kind of an objective application of criteria, which we used finally in the New York Transit dispute, is one of the most useful devices in mediation. But I do believe the mediators should have the discretion to use it or not to use it, because there is a time when it is appropriate and there is a time when it is inappropriate; if that flexibility had been given to us, that is, if Jim Reynolds, Jim Healy, and Ted Kheel had been provided with that flexibility, the situation would have been improved before the expiration of the contract and the 80-day extension began.
