

II. AN ARBITRATOR'S RESPONSE

JEANNE M. VONHOF*

Thank you, Jay, for your keen insights into the changing nature of the workplace and the workforce. All of us, as arbitrators or as members of labor or management, must and will deal with these changes. It is good to have a session like this, which can help us get a feel for the bigger picture of what is going on in the workplace.

I am going to respond briefly today with remarks about how some of the changes that Jay has addressed affect the unionized sector of the workforce. In particular, I am going to focus on some of the generational aspects that he talked about, and then discuss very briefly the increasing diversity in the workforce.

In preparing my response for this session, I thought it might be interesting to look at the different generations and see how they show up in the unionized workforce.

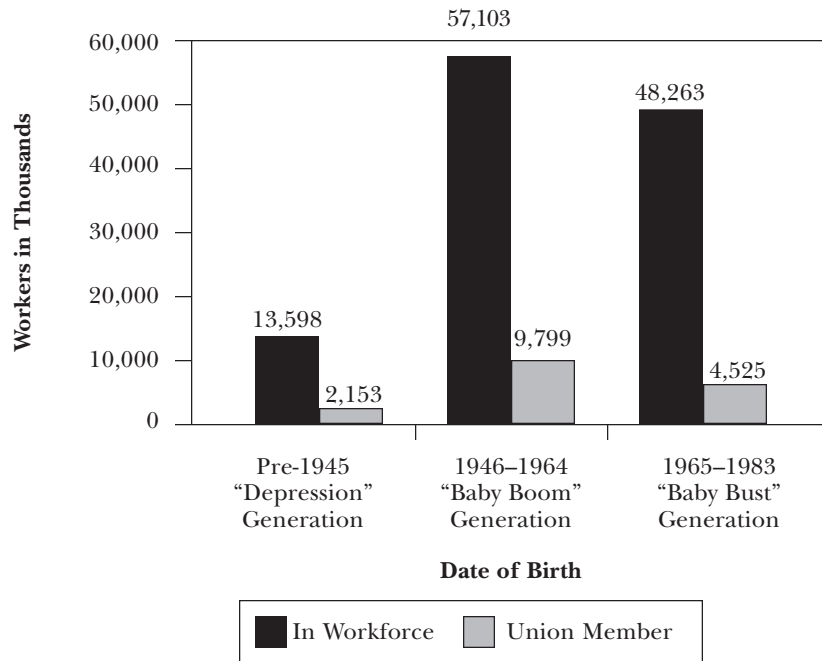
Baby Boom Generation Dominates the Unionized Workforce

Figure 14, "Union Membership by Age—1999," presents overall employment figures for 1999. As this figure shows, the generation most heavily represented in the workforce as a whole is the "Baby Boom" generation. Baby Boomers now make up more than 57 million employees in an overall workforce of more than 118 million.

This figure also depicts that the Baby Boom generation makes up the largest share of the unionized workforce. In fact, Baby Boomers are overrepresented in the unionized sector, as compared with the workforce as a whole. Figure 14 shows that Baby Boomers make up nearly 10 million union employees, in a unionized workforce of about 16.5 million. Thus, even though Baby Boomers make up about half of the total workforce, which is an impressive figure in itself, they make up 60 percent of the unionized workforce.

Why are Baby Boomers so predominant in jobs in the unionized sector? This phenomenon is largely due to where Baby Boomers are in the cycle of their work lives. Baby Boomers are at the peak of their work years. Very few Boomers have begun to retire yet.

*Member, National Academy of Arbitrators, Chicago, Illinois. I received significant help in preparing the research and graphs accompanying this response from John Vonhof, Esq.

Figure 14. Union Membership by Age—1999

Source: News Release, Bureau of Labor Statistics, Union Members Summary, Table 1 (Jan. 19, 2000), available at <<http://stats.bls.gov/newsrel.htm>>.

Figure 15, "Rate of Union Membership by Age—1999," shows how the sheer number of Baby Boomers coincides with age to create the high rate of Baby Boomers in the organized sector of the economy. The highest rates of union membership in 1999 occurred among workers who are in the middle of their work lives. That is, employees are more likely to be union members if they are age 45 rather than age 18 or 65. Some of that difference, of course, relates to the types of jobs that employees have when they are very young or old—those jobs are less likely to be in the unionized sector of the economy.

This pattern is not new. Figure 16, "Rate of Union Membership by Age—1985," depicts a similar pattern: There was a greater likelihood that one would belong to a union in the middle years of one's work life at that time as well. Of course, the overall rate of unionization, for each decade of work life, was higher in 1985 than

Figure 15. Rate of Union Membership by Age—1999

Source: News Release, Bureau of Labor Statistics, Union Members Summary, Table 1 (Jan. 19, 2000), available at <<http://stats.bls.gov/newsrel.htm>>. The author has calculated the percentages for this figure using the raw data contained in the source table.

Figure 16. Rate of Union Membership by Age—1985

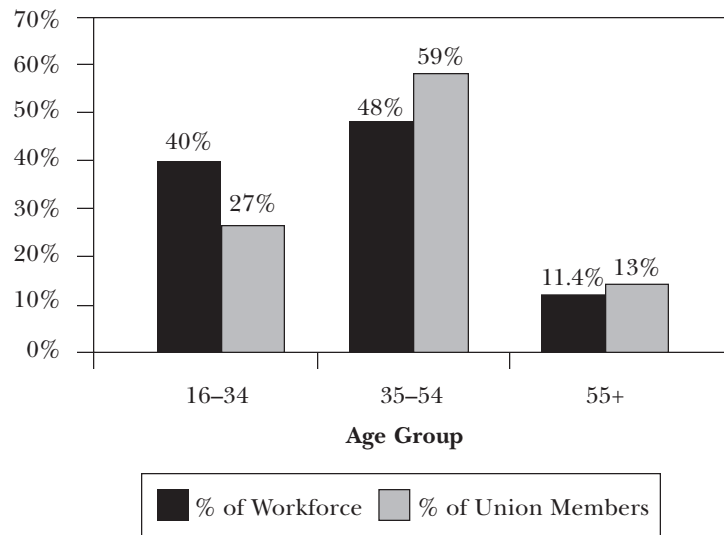
Source: Department of Commerce, Statistical Abstract of the U.S. 1999, Abstract No. 893, Union Members by Selected Characteristics: 1983 to 1985. The author has calculated the percentages for this figure using the raw data contained in the source.

in 1999. However, the same pattern of a higher likelihood of holding a job in an organized workplace in one's middle years was true in 1985.

However, the sheer size of the Baby Boom generation has exaggerated this effect. What we have now is a huge generation moving through the years when an employee is most likely to work in the unionized sector. The effect of this is clear in the next two figures. Figure 17, "Workforce Composition by Age—1999," shows that although Baby Boomers make up about 48 percent of the workforce, they make up nearly 60 percent of the unionized workforce. Contrast that with the "Baby Bust" generation, which although it accounts for 40 percent of the workforce, accounts for only 27 percent of the unionized sector.

Going back to 1985, in Figure 18, "Workforce Composition by Age—1985," it is clear that the Baby Boomers generally were younger than 35 years old at that time. Again, because there were

Figure 17. Workforce Composition by Age—1999



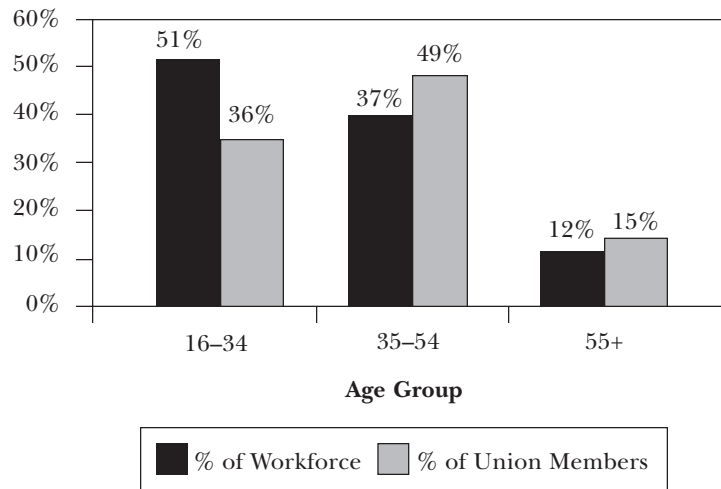
Source: News Release, Bureau of Labor Statistics, Union Members Summary, Table 1 (Jan. 19, 2000), available at <<http://stats.bls.gov/newsrel.htm>>. The author has calculated the percentages for this figure using the raw data contained in the source table.

so many Boomers, 51 percent of the overall workforce was in the younger-than-35 age group, compared with only 40 percent of the workforce occupying that category now. Because there were simply more Baby Boomers in the younger age group, there was a more even balance among the generations in the unionized workforce of 1985. Thus, as Figure 18 shows, 36 percent were in the younger category, 49 percent were in their middle years, and 15 percent were in the older age category. Contrast that with Figure 17, where the union workforce now is very dominated by those in the middle group.

What does this mean? As the figures clearly show, there are more Baby Boomers in the unionized portion of the workplace than any other generational group. As the Baby Boomers age, this will mean that the unionized sector will probably age as well. The “average” employee in the unionized sector will be older than in the past.

In addition, there are some factors that suggest that the predominance of the Baby Boomers in the unionized sector may continue for some time. Jay talked quite a bit about the tight labor market. Given the smaller size of the Baby Bust generation, which follows

Figure 18. Workforce Composition by Age—1985



Source: Department of Commerce, Statistical Abstract of the U.S. 1999, Abstract No. 893, Union Members by Selected Characteristics: 1983 to 1985. The author has calculated the percentages for this figure using the raw data contained in the source.

the Baby Boom generation, there is some suggestion that the tight labor market may continue, perhaps until the following generation, which Jay has called the “Baby Boomlet” generation or “generation.com,” becomes a major part of the workforce. Some economists are predicting that the tight labor market will continue for at least 20 years. It is not unrealistic to predict that if the labor market continues to be so tight, employers may be begging Baby Boomers to stay in the workplace longer than the generation before them.

Improvements in health and longevity are also factors. Baby Boomers may reject the idea that just because they reach age 65, they are “old” or they must retire. In addition, the need to finance an ever-longer retirement, and the low savings rate among Baby Boomers, may cause them to remain in the workplace for a longer period of time than the Depression generation.

There are economic and cultural factors pushing the other way as well. After all, the Baby Boomers in the unionized sector may be the last large group of employees with good defined benefit pension plans. Further, as Jay discussed, many Baby Boomers are working longer hours than their predecessors at the same age, and feel a sense of burnout. With more active, interesting lifestyles tempting them in retirement, there may be an increasing feeling among Baby Boomers that one need not be “old” in order to retire.

Arbitration Issues in an Aging Workforce

But at least for the next ten years or so, it appears that we will be facing an aging workforce, dominated by Baby Boomers. What does this mean for those of us involved in labor relations and particularly labor arbitration? What kinds of issues are we likely to see arising in the workforce and in the grievance and arbitration process? I intend to play the role of “arbitration futurist” for the next few minutes and suggest some possible answers to these questions. Because these are predictions, they are not based upon any empirical study of arbitration awards, but rather upon discussions with other arbitrators and perhaps glimmers of trends developing from our caseloads.

There are some obvious issues that arise with an aging workforce, like increased attention to pension and retirement benefits, and the increased possibility of age discrimination claims. But there are also less obvious issues that are likely to assume more importance as the workforce ages. Health care issues and costs have been

important items in collective bargaining for some time now, due to many changes in the health care system. But I predict that these issues will only grow in importance, because older workers often need more health care. This is an important benefit that is about to become even more crucial to a large number of employees.

Issues related to health care benefits have not been a prominent part of labor arbitration caseloads in the past, but I predict that they will become more important. Evidence from my own practice, and that of other arbitrators, suggests that this is already happening. We are resolving disputes over contract language regarding employee and employer contributions to health care premiums. And what about changes in medical coverage that may occur when an employer changes medical plans in the middle of a contract's term? In some cases, unions are seeking recourse under the labor agreement itself in that situation.

Other health-related issues may arise under the guise of grievances relating to the Americans with Disabilities Act. Many arbitrators have reported to me that they are seeing more of these cases. Older workers are more likely to experience disabilities arising from medical problems or injuries. Thus, all of the issues that these cases raise—Under what circumstances should an arbitrator apply the standards of the external law, or at least look to the law for guidance? What is a disability? What is a reasonable accommodation?—are likely to become more prevalent in labor arbitration caseloads.

Cases implicating the Family and Medical Leave Act (FMLA) are also on the rise. When the law was first enacted, many people focused on the fact that it allows parents to take some time off to care for newborn or sick children. However, the law also provides that employees who have chronic ailments themselves may use the FMLA to attend to those illnesses, even on an intermittent basis. This right is already raising potential conflicts with attendance plans and paid leave provisions. These disputes are likely to increase with an aging workforce, where chronic illnesses are likely to show up more often.

In addition, the FMLA provides the opportunity for the employee to take some leave time to care for elderly parents. An employee is more likely to be caring for an elderly parent when the employee is 40 to 50 years old than at a younger age. Thus, this aspect of the FMLA is more likely to become important for employers and unions over the next ten years, especially at work

sites that are predominantly female, because women assume the caretaker role more often than men.

With regard to discipline and discharge issues, we may see these cases consuming less of our overall caseload, because the incidence of some kinds of misconduct—insubordination, theft, fighting—is less among older workers. The emphasis in discipline cases may shift to performance-related issues rather than outright misconduct. However, to the extent that a regular, substantial portion of our discipline and discharge cases are driven by alcohol abuse, that portion may not decline. Alcoholism is a progressive disease, and we all have seen the cases of employees who work for 15 or 20 years with this problem, but gradually it overcomes them. At that point, they are long-term employees, and unions may be more likely to take their cases to arbitration than those of younger employees.

As an arbitrator, it seems to me that alcoholism runs out of control in middle age not only because of the progressive nature of the illness, but also because of the cumulative effects of stress over time. An aging workforce is more susceptible to the physical and psychological effects of long-term stress. For example, National Public Radio recently did a story on bus transit workers in San Francisco.¹ They reported that of employees with more than 20 years' service, more than half of them had hypertension. Many of them are retiring just a few years before they qualify for full pensions, because they are so worried about having strokes. Employers and unions may need to institute more changes to make jobs less stressful—in order to keep Baby Boomers in the workforce in a tight labor market, and in order to keep them healthy.

Employers and unions may also need to rethink training strategies for Baby Boomers. Jay tells us that the Baby Boomers are not as technologically savvy as the generation before or after them. Of course, this comes as no surprise to those of us who must consult our children on the fine points of how to use our computers or the Internet. As the workplace becomes ever more computerized, and employers are seeing significant productivity gains from these advances, training becomes a more important issue. In addition, the smart employer may need to provide different kinds of training to Baby Boomers than to the younger employees, and this may become a more important issue for unions as well.

¹National Public Radio, Morning Edition, May 31, 2000, Wendy Schmelzer reporting.

Further, employers and unions may need to deal head-on with potential generational conflict. One major West Coast company, with a workforce in which more than two-thirds of the employees are older than age 40, recently instituted diversity training based upon age.² The training addressed attitudes toward older workers, and older workers' attitudes toward their younger colleagues. Younger employees feel that their technical expertise is not sufficiently respected, or that older workers treat them like children. On the other hand, the Baby Boomers feel that there is not enough respect for their experience. The old ethic said that the employee earned the rewards of the workplace after putting in many years of service. As Jay discussed, many employees in the Baby Bust generation "want it all" right now, and they do not necessarily expect to remain loyal to a job, or to an employer, long enough to wait years for a promotion. In the unionized workforce, this may arise as disputes over seniority versus ability in promotions. I have seen an increase in these types of cases in my own workload over the past several years.

Increased Diversity in the Workplace

Finally, I would like to just touch on the increased diversity in the workforce. Although the Baby Boom generation in America is about 24 percent non-white, the next generation in the workforce will be about 34 percent non-white.³ The unionized workforce may well show even greater diversity—already African American men show the highest rate of unionization among any racial group.⁴

In addition, there seems to be a renewed interest by unions in organizing immigrants. The April 2000 Service Employees International Union (SEIU) janitors strike in Illinois brought thousands of union members to picket lines in downtown Chicago. I was struck by the fact that about one-third of the picket signs were in English, another third in Polish, and the rest in Spanish.

There is not enough time here for serious discussion about the ramifications of this change for labor-management relations and the grievance arbitration process. This issue has been addressed at earlier meetings of the Academy, notably in papers presented by

²National Public Radio, Morning Edition, June 1, 2000, Robert Smith reporting.

³See Figure 7, above.

⁴News Release, Bureau of Labor Statistics, Union Members Summary (Jan. 19, 2000), available at <<http://stats.bls.gov/newsrel.htm>>.

Lamont Stallworth and Martin Malin in 1993⁵ and by Bruce Fraser several years earlier.⁶

So at this point I will say only that we in the National Academy must continue to seek out and nurture arbitrators who add to our diversity. We have made some progress in the past ten years, particularly in admitting women to our ranks. But we need to do more. Of course, I do not mean to suggest that there must be a match between the race, gender, or age of the arbitrator and those characteristics of the grievant, in any given case. As arbitrators, all of us hear cases all the time involving people who are different from us in race, gender, ethnicity, language, age, and other characteristics. One of the requirements of our profession, I think, is to try to be sensitive to the concerns and sensitivities of individuals, which may be affected by their gender, race, or other “identity” factors. However, there is so much to be gained from having our profession more clearly reflect the incredible diversity of the American workforce. We always have a lot to learn from each other. We gain in energy, insight, and wisdom from listening to each other’s stories.

Many of you who are advocates may not be aware of the wonderful encouragement and mentoring that goes on between many of the more established members of the Academy and the newer members of the arbitration profession. It has made such a difference in the careers of so many of us, and in protecting the quality of the arbitration process. Much of this mentoring goes on long before an arbitrator is ready to apply for membership to the Academy. I would encourage our members to seek out able members of your communities and to offer your guidance to people who represent all the diversity of the workplace so that we, as arbitrators—and the people we serve—can all reap the benefits of this diversity.

⁵Stallworth & Malin, *Conflicts Arising Out of Workforce Diversity*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 104.

⁶Fraser, *A New Diversity in the Workplace—The Challenge to Arbitration: I. The U.S. Experience*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 143.