Bulletin No. 1199-1
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PART I

Hiring
Retention
Job Termination

UNITED STATES DEPARTMENT OF LABOR
James P. Mitchell, Secretary

BUREAU OF LABOR STATISTICS
Ewan Clague, Commissioner

Reports on the Department of Labor's Older Worker Program:

Job Performance and Age: A Study in Measurement

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Part I. Hiring, Retention, Job Termination

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Preface

As part of the U. S. Department of Labor's comprehensive program relating to older workers, the Bureau of Labor Statistics has analyzed the status of older workers under collective bargaining agreements. This report covers provisions of the basic agreement affecting the employment and retention of older workers. A companion report deals with the status of older workers under health, insurance, and pension plans, which are frequently set up apart from the agreement proper. The agreements and plans analyzed were selected from the Bureau's current files which are maintained for public and governmental use in accordance with Section 211 of the Labor Management Relations Act of 1947.

The incentive for these studies was provided by the Department's deep concern for the economic well-being of older workers. The purpose of these studies, however, was to investigate, not to influence, collective bargaining provisions relating to older workers. Practices that tend to deter, as well as those conducive to the hiring and retention of older workers, were given the emphasis that their prevalence and significance appeared to merit.

This study of agreement provisions was conducted in the Bureau's Division of Wages and Industrial Relations by Harry P. Cohany, under the direction of Joseph W. Bloch. Ralph G. Wright assisted in the analysis of agreements.

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Older Workers Under Collective Bargaining

Introduction

During the past two decades, the number of workers covered by collective bargaining agreements has multiplied severalfold. Over the same period, as years of life have lengthened in the total population, older workers have accounted for an increasingly larger proportion of the labor force. Two developments of major importance to older workers covered by collective bargaining agreements, as well as to others, have been the Federal Old Age and Survivors Insurance program and the rapid spread of supplementary private pension plans. These have made it feasible for the worker reaching 65 (or an earlier age in some cases) to retire, thus avoiding for himself and his employer some of the problems on the job attributable to aging.[1] This study discusses the ways in which collective bargaining agreements deal with the hiring, retention, and job termination of older workers still in the labor force.

All workers in the bargaining unit share equally in some of the fruits of collective bargaining, such as general wage increases. Some benefits occasionally vary by earnings or skill levels. It is a common practice, however, to provide greater job security through seniority provisions and more liberal benefits (e.g., longer paid vacations) to workers of long service. It is far less common, indeed relatively rare, to negotiate provisions directed specifically to workers of an advanced age, whether seeking employment or already on the payroll. Although this study deals with these latter provisions—length-of-service benefits and specific provisions for older workers—it must be emphasized that the general status of the older worker under collective bargaining agreements is obviously not determined exclusively by such provisions.

Scope and Method of Study

To determine the status of the older worker within the framework of formal union-management relationships, the Bureau of Labor Statistics analyzed virtually all collective bargaining agreements in the United States covering 1,000 or more workers of which it had record, exclusive of railroad and airline agreements (table).[2] The 1,687 major agreements studied covered approximately 7.5 million workers or roughly somewhat less than half of the estimated coverage of all collective bargaining agreements, excluding the railroad and airline industries.[3]

The agreements analyzed were in effect during 1955 or 1956. In the absence of earlier and equally comprehensive studies, it is not possible to determine whether collective bargaining agreements (excluding pension and health and insurance provisions) as a whole now devote more attention specifically to the older worker than they did 10, 20, or 30 years ago. The concept of "older," or the age borderline that separates "workers" from "older workers," may well have changed over these periods. Recognizing that the concept of being "older" is an elastic one and that it differs widely among occupations, the Bureau considered all references in the agreements studied to employees 45 or more years of age, employees with 20 or more years of service, and "over-age," "superannuated," or "long-service" employees to be within the scope of the study. It should be noted in the provisions quoted how frequently older workers and handicapped workers are grouped together.

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[1] A forthcoming report deals with collectively bargained pension and other welfare plans as they relate to the older worker.

[2] For a detailed account of these agreements, see Characteristics of Major Union Contracts, Monthly Labor Review, July 1956 (p. 805). A reprint of this article (No. 2197) is available on request.

[3] The Bureau does not collect railroad or airline agreements, hence their omission from this study.

The study was designed to uncover all types of provisions relating specifically to the older worker, no matter how uncommon these provisions might be. This was not intended, basically, as a prevalence study; examination of a smaller group of contracts would also have disclosed that such provisions were infrequent but it would undoubtedly have failed to uncover many of the interesting devices for resolving older worker problems reproduced in the following pages. The illustrative clauses should not be considered as typical, or necessarily taken as ideal or model provisions. Each was negotiated for a particular situation and each operated in the context of the agreement as a whole.[4]

An agreement for a large establishment or a number of establishments employing, in the aggregate, a large number of workers tends to be more specific than one covering a small establishment. A study of formal provisions in major agreements is thus likely to be more fruitful, in terms of coverage and details, than a study of equal time and effort covering smaller agreements. It should not be inferred, however, that major companies or associations actually treat the older worker differently than smaller companies or that the problems are not the same.

Several limitations of this approach should be kept in mind. The absence of a specific contract provision dealing with older workers does not necessarily mean lack of policy or concern for those of advanced age. Such an omission may be based on the existence of satisfactory informal arrangements. In industries or localities with a predominantly young labor force, older worker problems may have been so rare that they were not an issue. Also, in some establishments where a relatively low wage structure and lack of promotional opportunities do not attract younger workers the labor force would normally include a large proportion of older workers and the agreement could logically be expected to contain no reference to age discrimination. Finally, as in most human endeavors, there may be a gap between intentions and practices. The manner in which the provisions quoted in this report were actually carried out and what adjustments in policy were necessitated in the process are significant questions but beyond the scope of this study.

Summary

With the above limitations in mind, it is, nonetheless, significant to note the diverse ways in which some agreements have attempted to deal with older worker problems. For instance, clauses banning maximum hiring ages or age discrimination have been written to ease the older job seeker's entry into the plant. Some agreements require that a certain proportion of workers hired must be over a specified age. For the worker grown old in the service of the company and no longer able to meet the requirements of the job, special transfer rights to less taxing jobs or to specific occupations have been provided in some agreements, frequently with the active participation of the company's medical department. Seniority problems occasioned by such transfers have been, in some instances, solved by granting the older worker superseniority; in some contracts, union and management pledged to work out, on an individual basis, special adjustments to existing seniority rules. Frequently, such transfers involved adjustments in rates of pay as well as in seniority. These problems, relating to the worker's earnings, have likewise been resolved in a variety of ways ranging from the retention of his former pay to the establishment of personalized rates.

The rule of seniority and protection against arbitrary discharge are probably the most effective practices unions have developed to protect the job security of long-service employees and older workers. Seniority finds its most important application in layoffs and in subsequent rehiring, but it is also applicable in such matters as promotions, transfers, choice of shift, and choice of vacation period. However, in many instances seniority based solely on length of service is modified by introducing factors such as skill, efficiency, and physical fitness. Such "qualified" seniority clauses tend to dilute an older worker's job security to the degree that it places him in more direct competition with his juniors.

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[4] Some of the clauses were subject to minor editorial change to enhance clarity; irrelevant parts were omitted where feasible.

The widespread acceptance of provisions which have the effect of banning discharge on the basis of age alone (without consideration of the worker's efficiency) affords a basic protection for the older worker. This protection is strengthened by the availability of grievance and arbitration procedures. Moreover, in about 1 out of 6 agreements, provisions for dismissal pay, typically graduated by years of service, cushion the effect of loss of job for reasons beyond the workers' control.

The status of the older worker under the collective bargaining agreement as a whole cannot be defined in concrete, measurable terms. Consideration of what major agreements provide in the way of special treatment for older workers, the rights and benefits accruing to workers by reason of long service, the security and benefits available to all workers which are of particular importance to older workers, and the presence or absence of specific limitations on management prerogatives, leads to these general observations: The older job applicant, whether or not he is a member of the union, can expect no preferential treatment and little protection against discrimination on the basis of age from the terms of most agreements. Only a relatively small proportion of the major agreements studied contained a requirement that some older workers must be hired or a pledge on the part of management to avoid discrimination against older applicants. On the other hand, the worker growing old in the service of the employer is generally assured a greater degree of protection on the job and more liberal benefits than his juniors in point of service. This contrast between the status of the older worker on the outside and the older worker on the inside underscores the change in the status of the worker who loses his job after attaining a substantial degree of seniority.

Major collective bargaining agreements studied by industry group

Industry group	Agreements	Workers (thousands)
All agreements studied [1]	1,687	7,448.9
Manufacturing	1,126	4,732.5
Ordnance	16	31.1
Food and kindred products	106	347.1
Tobacco manufactures	12	29.9
Textile-mill products	56	151.2
Apparel and other finished textile products	44	426.3
Lumber and wood products (except furniture)	17	40.5
Furniture and fixtures	17	27.1
Paper and allied products	52	105.6
Printing, publishing, and allied industries	30	72.2
Chemicals and allied products	60	120.2
Products of petroleum and coal	27	80.4
Rubber products	22	171.9
Leather and leather products	20	57.3
Stone, clay, and glass products	41	117.7
Primary metal industries	117	675.9
Fabricated metal products	68	175.2
Machinery (except electrical)	132	321.2
Electrical machinery	108	451.6
Transportation equipment	136	1,237.6
Instruments and related products	27	60.5
Miscellaneous manufacturing industries	18	31.9
Nonmanufacturing	561	2,716.5
Mining, crude petroleum, and natural-gas production	24	328.3
Transportation [2]	96	527.8
Communications	68	509.9
Utilities: Electric and gas	78	196.6
Wholesale trade	11	20.7
Retail trade	81	246.5
Hotels and restaurants	22	101.8
Services	45	124.9
Construction	127	633.1
Miscellaneous nonmanufacturing industries	9	26.8

[1] All agreements covered 1,000 or more workers and were effective in 1955 or 1956.
[2] Excluding railroads and airlines.

NOTE: Because of rounding, sums of individual items do not necessarily equal totals.

Part I.—The Hiring Aspect

The selection of new employees is essentially a prerogative of management. With relatively few exceptions among the 1,687 major agreements studied, the right of management to establish hiring policies—to set an age limit if it so chooses—had not been abridged by provisions of the union contract. Although the employer has yielded his previous decisionmaking authority to joint negotiations in many matters affecting the employed worker, he has not yielded the right to choose and hire new employees. This management right is frequently expressed in collective bargaining agreements, as in the following example:

> The right to hire, promote, transfer, discharge, or discipline, and to maintain discipline and efficiency of employees and the orderly operation of its plants is the sole responsibility of the company, subject to provisions of this agreement. In addition, the products to be manufactured, the schedules of production, the methods and processes or means of manufacture, the direction of the working force, including its composition and number, are solely and exclusively the responsibility of the company.

Even though no provision in the union contract may prohibit the employer from hiring anyone he chooses, certain provisions in the agreement may influence the choice. In the case of an older worker, the question of possible subsequent reassignment, pay adjustment, or even termination may be important. Do the contract's seniority provisions allow the older worker, or the worker growing old, to be shifted to lighter and less remunerative work? Or can he be kept on the same job, but at a reduced rate of pay? The employer may also take into account the possible increase in pension and group insurance costs occasioned by the employment of older workers. If the older worker is unable to keep up with production demands, how easily can the employer invoke the rules governing discharge? These aspects will be discussed later in this study,[5] but their influence on hiring policies needs to be emphasized at this point.

For the most part, union concern with management hiring policies historically has tended to center on acquiring exclusive or preferential employment rights for union members, a type of security assured by a closed-shop agreement. In 1946, a year before the enactment of the Labor Management Relations (Taft-Hartley) Act, which banned the closed shop in covered industries, about a third of all workers under collective bargaining were covered by closed-shop agreements. Under such agreements, management may have retained the right to choose among applicants referred by the union, or to hire any union member available, but the right of selection was inevitably curtailed. Where justifying a selection to the union was necessary, this would undoubtedly be difficult if the selection were based on age alone. By restricting union membership, or through the process of referrals, many unions exercised influence on the hiring of workers, frequently for the purpose of safeguarding employment opportunities for the older members. To the extent that such motives prevailed, the prohibition of the closed shop in industries under the jurisdiction of the Labor Management Relations Act removed the union's influence and gave management greater latitude in the selection of new employees. In collective bargaining agreements, however, management could agree to restrictions on the free exercise of its hiring prerogatives.

In this study, agreements were examined for specific mention of hiring policies affecting the older worker. It is important to emphasize that informal labor-management arrangements to provide employment for older workers would not be revealed in an examination of written agreements. For example, wage-rate concessions or the adoption of individualized rates in particular situations, devices which run counter to traditional union wage policy, may be practiced without specific agreement reference. On the other hand, some employers may find it convenient to hire all or most union referrals without the compulsion provided by a closed-shop clause. The frequency of these and other practices cannot be determined.

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[5] See footnote 1.

Provisions Affecting the Hiring of Older Workers

Provisions which required or encouraged the hiring of older workers were found in only 76 of the 1,687 major agreements surveyed. The most common type of provision, found in 26 agreements, was a general statement banning hiring age limits or discrimination because of age. A slightly smaller number of agreements (23) required the employment of one older worker to a specified number of journeymen employed. Nineteen contracts granted special wage-rate concessions to encourage the hiring of elderly job seekers. A scattering of other provisions relating to the hiring of older workers, such as clauses designating specific jobs to be set aside for those of advanced age, completed the group.

Ratio Clauses.—One type of contract provision which specifically requires the employer to hire older workers is known as a ratio clause. Such clauses provide that a certain ratio of the work force must consist of men past middle age.

Unions which have negotiated agreements embodying such mandatory provisions include the painters, electricians, bricklayers, carpenters, plasterers, hod carriers, sheet-metal workers, and plumbers. All of these agreements applied to building construction. The reasons for this concentration may be surmised: Union contracts in building construction ordinarily do not contain seniority provisions (perhaps because employment is intermittent), a fact which may have influenced the unions to seek ratio clauses to obtain some form of job security for older workers who comprise a substantial proportion of their membership; the construction industry has a long history of experience under closed-shop arrangements; the practice of multiemployer bargaining and uniform agreements assures each employer in the area that his competitors observe similar rules, and tends to encourage among employers as a group an industry point of view—in this case directed toward providing employment opportunities for the older worker.

The following three agreements, covering electricians, carpenters, and painters, respectively, phrased the ratio requirement as follows:

> On all jobs employing 5 or more journeymen, if available, every fifth journeyman shall be 50 years of age or older.
>
> * * *
>
> Where there is a job employing 15 members of our organization there must be 1 member over the age of 60 years employed. With every addition of 15 men another member over 60 shall be employed and these men must not be discriminated against on account of their age.
>
> * * *
>
> An employer employing 10 or more journeymen shall take in his employ at least 1 journeyman of 60 years of age for every 10 men in his employ, who shall receive the prevailing rate of wages set forth in this agreement.

Although the contract quoted above coupled a ratio statement with a specific requirement that older workers be paid journeymen's wages, in two other contract provisions—the first covering plasterers and the second, painters—the union was willing to make wage concessions in order to provide employment for such members:

> There must be a ratio of not less than 10 percent of superannuated men on all jobs where there are more than 10 journeymen plasterers at work, and in no case shall there be more than 10 percent of superannuated men employed on any job. The minimum hourly wage for such superannuated men shall be $2.75 per hour. (Rate for journeymen plasterers is $3.60 per hour.)
>
> * * *

> All employers who employ 5 men or more shall employ 1 or more over 60 years of age for every 5 men so employed. Such men shall have the privilege of asking for a reduced wage scale . . .

Unlike the agreements cited above which make the hiring of older workers mandatory, two ratio clauses were found which gave employers operating retail meat markets the option of either hiring superannuated men or apprentices:

> One apprentice or superannuated man shall be allowed to every 4 journeymen or fraction thereof per market. Markets employing less than 4 journeymen shall be entitled to 1 apprentice or superannuated man . . . Superannuated man's rate of pay will be decided by the man involved, the employer involved, and the union.

A contractor's pledge to cooperate with the union in the hiring of the elderly was found in a bricklayers' agreement. In this case, wages for such workers were to be arrived at by the employer and the employee on an individual basis:

> Employer agrees to cooperate with the bricklayers in employing superannuated men in the ratio of 1 man to every 10 bricklayers employed and the shop steward shall keep the foreman advised as to the number of such men on the job. These men shall be free to work for whatever wages are agreed upon by him and the employer.

Wage Adjustment Clauses.—As these clauses illustrate, unions have occasionally agreed to make special wage concessions in order to induce employers to hire older men. When viewed in the light of traditional union efforts to protect uniform wage scales, these concessions constitute a concrete effort to widen employment opportunities for elderly workers. However, union participation in the rate setting process is generally maintained by the requirement that such rates be specially negotiated, either by the company and the union, or by the company, the union, and the employee. Some of these and other clauses cited below were not limited to hiring situations; they would apparently also apply to workers grown old in the service of the company. The agreements cited below covered warehousemen, fur workers, and molders, respectively:

> A person whose earning capacity is or shall become limited because of age, physical or mental handicap, or other infirmities may be employed or placed on light work at a wage below the minimum established by this agreement, subject to the approval in each instance of the employer and the union.
>
> * * *
>
> It shall be the duty of the Committee on Immediate Action or a special joint Committee established for the purpose, to adopt measures to secure employment for unemployed and elderly workers. The Committee on Immediate Action may establish wage adjustments for such elderly workers, irrespective of the wage provisions of this agreement.
>
> * * *
>
> The local union shall allow an old or physically incapacitated member of the union to work for such wage as may be mutually agreed upon between him, his employer, and the local union.

A bartenders' agreement permitted part-time employment for "oldtimers" with a corresponding scale to be negotiated or, failing this, to be decided by arbitration.

> In order to provide work for older and unemployed bartenders who are either unable or do not desire full-shift employment, it is understood that 3- and 4-hour shifts may be utilized in those establishments where short shifts are feasible. A realistic rate of pay for

> short shifts shall be negotiated by the parties. Guarantees shall be established so that no present bartender suffers a reduction of wages from his present employer and so that the oldtimers who are not available for full-shift employment will be given an opportunity at part-time employment. This provision shall become effective when the details and the guarantees are agreed upon by the parties. Failing agreement upon guarantees and wage rates, the matter may be submitted to a merit arbitration under the grievance procedure.

Three agreements—all covering painters—allowed the hiring of aged members at a lower rate than that paid to journeymen, but a minimum guarantee was provided:

> Handicapped workers whose earning capacity is limited because of age, physical disability, or other infirmity, may be employed at a wage below the minimum upon approval of the District Council but they shall not be employed for a lesser wage than 75 percent of the journeymen's per hourly rate. Said workers need not be employed unless requested by employers.

In addition to setting a minimum-wage floor, three agreements negotiated by the International Ladies' Garment Workers' Union also limited the maximum number of people employed under such arrangements:

> It is further agreed that in any event 20 percent of the employees of any department of any shop, weekwork, or piecework, may receive less than the minimum scales above provided for, but in no event less than $31 per week. Said 20 percent shall include superannuated or physically defective employees or apprentices who may be employed in the shop . . . (This agreement was negotiated in 1954).

Four other contracts of this type, 2 in manufacturing and 2 in retail trade, stipulated that an employee engaged at a special rate first obtain written permission from the union, or that the employer notify the union of such hiring. In a carpenters' and a teamsters' agreement, these points were expressed as follows:

> A person who is incapacitated by age, physical or mental handicaps, temporary disability, or other infirmities may be employed at an hourly rate of wage below the minimum established by this agreement, provided he shall first have obtained a written dispensation from the union.
>
> * * *
>
> The employer may hire any individual whose earning capacity is impaired by age, physical or mental deficiency, or injury, at wage rates less than those set up in this article. It shall be the practice of the employer to notify the union as to the identity of any employee hired hereunder.

Unlike the mandatory ratio clauses, which were concentrated in the construction industry, wage-adjustment clauses were scattered through a number of manufacturing and nonmanufacturing industries, ranging from warehousing to fur shops and restaurants. The 19 agreements in this category were negotiated by 9 different unions. Most of the agreements covered skilled crafts, such as painters, meat cutters, and carpenters. Geographically, the greatest number of these situations (9) were found in California.

Special Jobs for Older Workers.—Two provisions which stipulated that older workers be hired to fill specific jobs were found—in both cases the jobs referred to were dead-end jobs. A group of maritime employees were covered by the first agreement, construction workers by the second.

> Men over 50 years of age may be preferred in obtaining jobs of fire watchmen.
>
> * * *
>
> In an endeavor to find employment for superannuated members of the union, the employer agrees that he will employ as watchmen, members of Local 95, as he may require, on the site of any demolition operation. In the event that the union cannot furnish a watchman when requested within a reasonable time, the employer shall be privileged to employ such watchmen on the outside.
>
> Said members so employed as watchmen shall be paid as a minimum wage, the prevailing legal minimum wage and shall be guaranteed a minimum of 8 hours work in each day or 40 hours work in each week, or its pay equivalent.

Banning Discrimination on the Basis of Age.—A number of contracts expressed the intent of management and the union to eliminate age limits in hiring or discrimination against applicants on the basis of age alone. Such clauses are undoubtedly difficult to enforce since in some situations a rejected applicant may have no recourse to normal enforcement channels, i.e., the grievance and arbitration procedures, but the appearance of antidiscrimination clauses in agreements is nonetheless of significance to the unions involved. This type of clause was found in 26 of the 1,687 agreements studied.

Eighteen clauses were found which stipulated a ban on maximum hiring ages:

> The company agrees that there shall be no established maximum age limit in the hiring of employees.

Ten agreements embodying this type of clause were negotiated by the International Association of Machinists. Seven were found in the West Coast aircraft industry.

Eight other agreements contained general statements to the effect that age should not be used to discriminate against an applicant, nor should it deter his employment. Workers in the New York handbag industry and employees of a California aircraft plant, respectively, were covered by the two agreements cited below (note the enforcement provision in the first clause):

> There shall be no discrimination in the hiring of any union worker because of union activity, age, sex, or prior employment with the firm. Any dispute arising hereunder shall be subject to the decision of the Impartial Chairman.
>
> * * *
>
> It is mutually agreed that advanced age by itself will not be a deterrent to employment with the company.

Similar antidiscrimination clauses were found in two maritime contracts covering licensed personnel.

Limits on Hiring Age.—As a rule, labor agreements do not impose specific hiring age limits; that is, unions and managements do not agree, formally, to restrict the employment of workers beyond a certain age. However, specific age limits may be incorporated in clauses defining entrance requirements into certain jobs, particularly in provisions relating to apprentices. The highest age limit for entry into an apprenticed trade is normally in the middle twenties. In only one agreement, in the chemical industry, did a statement such as the following occur:

> The maximum acceptable age to qualify as an apprentice shall be 45 years. To qualify as a mechanic a 4 years' apprenticeship must be served. This apprenticeship shall consist of 1 year as helper and 3 years as apprentice.

Medical Examinations.—Medical examinations for new employees may be part of the hiring procedure established by management; references to such examinations were found infrequently in collective bargaining agreements. Where they were found, they typically underscored the right of management to be the sole judge as to an applicant's physical fitness, as in this example:

> Applicants for employment, before being employed, shall be required to undergo a physical examination by a physician selected by the company. The company's decision as to eligibility of such men for employment shall be final . . .

Only six agreements contained an outright prohibition of physical examinations. All clauses of this type were found in conjunction with "no age limit" statements:

> In hiring, employees shall not be required to take a physical examination and there shall be no age limit except as provided by law.

Four of the 6 contracts in this category covered workers represented by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers. The other two agreements were negotiated by the Metal Trades Department, with which this union is affiliated. Here again the preponderance—5 out of the 6—was found in West Coast installations.

Other Older Worker Hiring Clauses.—One department store contract studied granted the company the sole right to exclude new employees of advanced age from the bargaining unit:

> . . . New employees whose earning capacities are limited by reason of physical handicap or by reason of age shall be excluded from the union [bargaining unit] at the sole discretion of the management . . .

Further restrictions on workers hired after reaching a specified age, circumscribing their seniority rights and claim to severance pay, were found in agreements negotiated by a foundry and a chemical plant, respectively:

> Any employee hired on or after his 55th birthday and who continues in employment beyond his 65th birthday shall not be considered as having seniority for the purpose of layoff or recall to work.
>
> * * *
>
> No (severance pay) allowance shall be made to persons employed after January 1, 1948, who had attained age 60 at the time of their hiring . . .

Part II.—The Retention Aspect

Once the worker is on the payroll, or has served a probationary period, some form of job, wage, and health protection is provided him under the terms of collective bargaining agreements. This protection is generally available to all qualified workers, young and old alike. However, many of the provisions that have become common in agreements are of special importance to the older worker, helping him to maintain his efficiency and to add years to his working life.

For example, the almost universal practice of providing for paid vacations and paid holidays, the adoption of the 2-day weekend, the deterrent effects of premium-pay requirements on the scheduling of overtime, weekend, and holiday work reduce the number of consecutive working days and, consequently, help to combat fatigue. The increasing prevalence of paid rest periods and paid time allowances for washup and clothes changing—practices which tend to reduce daily working pressures—is also of particular importance to older workers. These practices are by no means limited to plants and workers under collective bargaining agreements.

In addition, collective bargaining agreements provide numerous types of wage and job protection. For example, the general practice of setting rates for the job rather than for individual workers in the job prevents discrimination on the basis of age alone. Perhaps most important of all, the widespread banning of discharge on the basis of age alone (discussed in part III of this report) affords a basic protection for the older worker.

This section deals with the types of provisions which are more directly related to the older worker. Two aspects are covered: (1) A brief review of the benefits and protection accruing to workers by reason of length of service, that is, the status of the worker growing older in the service of the company, and (2) an analysis of agreement provisions directed to problems of older workers or, more specifically, to the aged or superannuated worker.

Length-of-Service Benefits

Rewards or accrued rights for workers with long service are common features of personnel administration and collective bargaining agreements. Specific rights and benefits which accrue to workers on the basis of their length of service are spelled out in most collective bargaining agreements. Such provisions may relate to retirement annuities, paid vacations, paid sick leave, and automatic increases under wage progression plans, or they may define the job security status of an employee with reference to other employees, as in seniority clauses. In general, the worker growing older in the service of a particular company enjoys a more secure status and greater supplementary or fringe benefits than his juniors in point of service.

Seniority.[6]—The rule of seniority is probably the most effective measure unions have developed to protect an older worker's job security. It has particular importance in reductions in force or layoffs and in subsequent rehiring, but it is also applicable in such matters as promotions, transfers, choice of shift, and choice of vacation period.

The collective bargaining agreement does not restrict the employer's right to lay off workers when business conditions so require. The typical agreement, however,

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[6] The Bureau of Labor Statistics has in progress a comprehensive study of layoff, recall, and work-sharing provisions of major collective bargaining agreements in which the matter of seniority is a key factor. A part of this study, which presents a variety of agreement clauses, has been issued as BLS Bull. 1189, Collective Bargaining Clauses: Layoff, Recall, and Work-Sharing Procedures, February 1956. Forthcoming reports will analyze the prevalence and significance of the various types of arrangements.

does spell out the procedures which are to govern such a reduction of the work force. In many agreements, layoffs are scheduled to take place on a "straight" seniority basis, that is, length of service is the only factor considered.

> In case it shall become necessary for the employer to lay off one or more employees, seniority rules shall apply, within classifications. The employee who has been with the (company) the shortest length of time shall be the first to be laid off and in rehiring, those laid off first shall be the last to be reemployed.

However, clauses which modify seniority based solely on length of service by introducing factors such as skill, efficiency, or physical fitness are more common among major agreements. For example:

> In all cases of recall, increase, or decrease of forces, the following factors shall be considered, and where factors (2) and (3) are relatively equal, length of adjusted seniority shall govern:
>
> (1) Length of adjusted seniority as herein-before defined.
>
> (2) Knowledge, skill, and efficiency on the job.
>
> (3) Physical fitness for the job.

Such "qualified" seniority, which tends to come into play in promotions and permanent reductions in force rather than in temporary layoffs, puts the older worker in more direct competition with his juniors in service. Clauses such as the one quoted above obviously establish a large area for judgment and, possibly, bias, but the availability of grievance and arbitration procedures places upon management the obligation to justify its actions. In a study of arbitrators' decisions in cases involving a clause similar to the one quoted above,[7] the Bureau of Labor Statistics stated:

> In the application of the seniority clause, the principal issues reaching the arbitrator centered about the interpretation of "relative ability" in the various circumstances. The measurement of length of service presented no special problem (aside from the question of seniority units), because of the availability of the company's employment records; and the matter of physical fitness, which was rarely an issue, could usually be decided on the basis of medical evidence. But the determination of "relative ability" involved the evaluation of the abilities of two or more individuals for a particular job. For this, there were seldom any objective measures which could be used, and subjective comparisons were not conclusive.

Retention rights of long-service employees are sometimes enhanced by "bumping" provisions which permit such employees to displace shorter service employees at the time of layoff. The displaced employee is either laid off, or in turn displaces someone with less seniority. Most agreements which permit bumping specify that a worker exercising this right must be capable of performing his new job at time of transfer or after a short training period. In other contracts, such backtracking is limited to former jobs or departments.

The recall of laid-off employees is generally scheduled in the reverse order of separation. Typically, those qualifications which modify seniority in the original layoff situation also apply in reemployment.

Transfer of workers from one department or shift to another is, in many agreements, also conditioned by seniority. However, agreements which list the right to

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[7] See Arbitration of Labor-Management Grievances, Bethlehem Steel Company and United Steelworkers of America, 1942-52, BLS Bull. 1159. Note particularly parts II and III of this study, dealing with discipline and discharge and seniority.

transfer as one of the exclusive prerogatives of management are common. Seniority rules, where they do apply, may permit an employee to retain his accumulated service credits in his former department, or he may carry them to his new one. Either arrangement provides job protection for workers with long service.

Assuming that a high degree of correlation exists between length of service and age, seniority clauses offer a substantial measure of job protection to elderly employees.[8] However, they offer little or no protection to the older worker with short service.

Supplementary Benefits

Many supplementary or fringe benefits of particular value to the older worker have developed into common practices during the past 15 years, including: Retirement plans, health and welfare programs, paid vacations, paid holidays, and paid rest periods. Although few, if any, contract provisions establishing such practices favor older workers as such (except retirement plans), many provide more liberal benefits to long-service employees. Full retirement annuities are, of course, a major economic benefit accruing to long-service employees. In addition, most of the paid vacation plans under collective bargaining provide vacation leave and pay graduated by length of service. Sick-leave plans are not common, but where they are in effect they typically offer greater allowances to long-service employees. As indicated in part III of this report, various layoff or termination allowances are based on length of service.

Provisions Dealing With the Older or Aged Worker

Collective bargaining agreements contain a variety of clauses designed to keep workers of advanced age gainfully employed. Numerically, however, agreements with such clauses constitute only a small fraction of the total—only 212[9] of the 1,687 agreements examined in the course of this study contained clauses relating specifically to job protection for the older worker (in terms of age rather than length of service). Of these, 149 clauses referred to a transfer of older workers to lighter or more suitable work or to certain reserved occupations. Sixty-seven of these transfer clauses contained various provisions for pay adjustments. In 30 other contracts, special rate-setting procedures for such employees were set forth, but no reference was made to reassignment. Other contract clauses defined special seniority rights during layoff and recall, provided for possible part-time employment, or banned discrimination based on age.

The clauses dealing with retention of older employees did not fall into a well-defined union or industry pattern. Of those studied, the International Association of Machinists, the United Steelworkers, the United Automobile Workers, and the International Brotherhood of Electrical Workers each accounted for 15 or more agreements with such clauses. On an industry basis, by far the largest number of clauses (33) occurred in public utilities. The rest were scattered over 19 manufacturing and 15 nonmanufacturing industries.

When considering the relatively small number of clauses which refer directly to wages and working conditions for older workers, it is necessary to keep in mind: (1) That informal arrangements may exist, and (2) that such workers are protected by the entire collective bargaining agreement. For instance, general contract provisions defining matters such as intraplant transfers and corresponding changes in remuneration may well have been adequate to solve problems occasioned by aging workers, and consequently no separate clauses specifically referring to this segment of the work force were incorporated in the contracts.

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[8] In many mass-production industries, the seniority unit is typically not the entire plant but, more frequently, a department or a homogeneous occupational group. Where the seniority unit is thus restricted, an employee's total length of service may be of little help to him in averting unemployment. Business requirements may be such that a department made up of short-service employees continues to operate while one with long-service employees is scheduled to be shut down. These limitations of seniority rules must be kept in mind, especially as they apply to the older worker.

[9] Note that the number of clauses found exceeds the number of agreements. Several agreements contained more than one clause.

Transfer Clauses—No Reference to Pay Adjustment.—Clauses covering transfer to lighter or more suitable jobs for workers who, for reasons of age, were unable to continue their present duties, but which made no reference to the new rate of pay for such workers, were included in 82 of the 1,687 collective bargaining agreements examined.

In the greatest number of cases (28), the company agreed to "give consideration," or to "make every effort" to place long-service employees in jobs geared to their (reduced) physical capacities. The two clauses cited below, from agreements in a bakery and a rubber company, respectively, illustrate the phraseology typically employed:

> Employees who have given long and faithful service and who become unable to handle the work at which they have been regularly employed will be given preference on lighter work which they are able to perform.
>
> * * *
>
> Employees who have a record of long and faithful service and who have become unable to handle or engage in heavy work will be, as far as practicable, transferred to work more suitable and in keeping with their physical condition.

One agreement—in local transit operations—made such a reassignment subject to a 10-year service requirement:

> Company will endeavor, as heretofore, to furnish employment for employees, when practicable, who have been employed continuously by company for 10 years or more and who have become unfit because of old age or physical disability, to continue in their usual occupation.

The 28 agreements containing transfer clauses like those illustrated above were negotiated by 13 different unions and were dispersed over 11 manufacturing and 3 nonmanufacturing industries.

In only a few instances (7) were transfers made subject to union approval or to special agreement between union and management. In two steelworkers' agreements, this proviso was expressed as follows:

> Employees who have grown old in the service of the company and employees partially disabled as a result of compensable injury who are not physically able to perform the full job content of their classification may be assigned to lighter work that they are able to do. The assignment will only be made after approval of the union.
>
> * * *
>
> Transfers due to disability and age: Cases of this type shall be determined by agreement between management and the union. Such transfers may be used for the purpose of rehabilitation.

Four clauses were found which permitted workers of advanced age to request a transfer. The following illustration, taken from an agreement in the automobile industry, sets forth the manner in which such workers may exercise their seniority rights. Note also the role played by the company's medical department:

> An employee who obtains a written statement from his doctor or from the company's medical director stating that because of an occupational injury, advanced age, or illness, he is unable to perform his regular job, may make a request to the Personnel Department for a transfer.
>
> The company's medical director in conjunction with the employee's personal physician will determine the type of work which the employee is capable of performing and will so inform the Personnel Department.

> The Personnel Department will arrange a meeting with the employee and his union representatives to discuss the case and will bring to the attention of the employee and his representatives any open job or jobs held by employees with less seniority which the employee is capable of performing.
>
> The employee shall be transferred to a job which he is capable of performing in the following order:
>
> (1) To an open job in his own department.
>
> (2) To a job occupied by another employee with less seniority in his own department.
>
> (3) To any open job in the bargaining unit.
>
> (4) To any job in the bargaining unit held by an employee with less seniority.
>
> An employee who is transferred under the above provisions may not automatically return to his original job when his disability is removed, but shall be considered for transfer and promotion in the same manner as other employees.
>
> An employee displaced from his job by an employee not capable of performing his regular job as outlined above shall be considered as being laid off and shall have all the rights accruing to an employee being laid off under the contract.

As indicated by the above illustration, issues relating to seniority may have to be considered when transferring older workers. In some contracts, a transfer is permitted only if carried out under existing seniority rules, whereas in other contracts this requirement is waived, thus granting an elderly employee superseniority. These two points were exemplified in the following agreements which covered workers in a toy manufacturing and plumbing supply plant, respectively:

> An employee who has become unable, due to sickness, accident, or age, to perform or discharge his regular work or duties shall be given preference to whatever lighter work there is available, if any, if competent to perform the job to which he would be entitled on a seniority basis.
>
> * * *
>
> Employees who have given long and faithful service, and who have become unable to perform heavy work by reason of age, physical handicap, or otherwise, shall be given light work they are able to perform, regardless of seniority rights, if such work is available.

In a similar vein, a glass industry contract granted special seniority consideration to long-service employees; and in a lead refinery such workers were eligible for transfer without following the job bidding procedure:

> Special consideration relative to seniority shall be given to employees with more than 25 years' continuous service with the company, in accordance with past company practice, insofar as practicable, consistent with efficient operation. Such employees with more than 25 years' service who have become unable to handle their regular work will be given preference to such available work as they are able to perform.
>
> * * *

> Employees having long service with the company, who have become unable to handle heavy work to advantage, will be given preference to such light work as is available. Such employees will be assigned to work of this nature without following the bidding procedure.

Aged workers in a chemical plant were given transfer rights regardless of seniority rules, provided the medical department recommended such action:

> By mutual agreement between the Bargaining Committees, an employee in any one of the categories listed below may be placed on an open job which he can do with a reasonable amount of training, prior to departmental posting, and without regard to any seniority provisions of this agreement.
>
> This privilege is only available to employees who meet at least one of the conditions stated below:
>
> . . .
> An employee with 10 years or more service, whom the Medical Department recommends because of illness or old age should not continue on his present work.

Eleven agreements provided that a transferred employee was entitled to carry his previously accumulated seniority to his new job. This protection against loss of seniority was expressed in agreements of a public utility and a furniture factory, respectively, as follows:

> In the case of a regular employee who has given long and faithful service and who is unable to carry on his regular work to advantage, the company will attempt to place such employee on work which he is able to perform. In such cases , . . the employee shall be accorded seniority in his new job equal to that which he had in the job classification he left if he is transferred to an equal or lower job classification.
>
> * * *
>
> Whenever any employee who is on the seniority list is unable to carry on his or her normal work, due to physical disability or infirmity, then such employee shall be given the privilege of doing lighter work or be transferred to a different department without loss of seniority, provided the employee is qualified to perform the work available.

A total of 32 agreements were found in the course of the analysis which dealt with the various seniority aspects discussed above. The largest number of contracts (10) were negotiated by the United Automobile Workers. Six bargaining situations covered workers in machinery manufacturing, and four each in automobile plants and public utilities.

The possibility of transferring aged workers to specific jobs or reserved occupations was mentioned in 11 agreements. Typically, jobs such as janitor, guard, fireman, or elevator operator were listed. The following two clauses, the first relating to workers in an explosive manufacturing plant and the second to furniture workers, phrased this matter thus:

> It is understood that employees within the bargaining unit who, because of age or physical condition, must secure light work will be given consideration by the company in the filling of vacancies for guards and watchmen.
>
> * * *

> An employee, less than 65 years of age and with continuous service of 20 years or more, who on account of physical condition is unable efficiently to perform the job content of his classification may, upon application to the Industrial Relations Director of the company, be assigned to the classification of elevator operator or janitor to replace an employee so classified who is receiving pension benefits on account of services performed elsewhere or, if there are no such employees, then to replace an employee so classified who is over 60 years of age and has less than 4 years of continuous service with the company.

An agreement covering pulp mill workers indicated the procedure to be followed in setting up reserved occupations for long-service employees. Similarly, in a steel plant such occupations were to be established after joint agreement on seniority exclusion:

> Employees of the company who through age or partial disability are unable to fulfill the requirements of their occupations may be transferred to a reserved occupation in which an opening exists. A schedule of reserved occupations will be maintained as mutually agreed upon by the company and the union.
>
> Jobs included on the schedule of reserved occupations will not be governed by the Job Bidding System.
>
> The reserved occupations are listed on a schedule signed by the parties hereto, copies of which are on file with the company and the union and hereby by reference made a part hereof and said schedule may be altered from time to time.
>
> * * *
>
> A Board of Review consisting of 3 members appointed by Works Management and 3 members appointed by the officers of the Employee Representatives Committee shall investigate and agree on such occupations as may by excluded from departmental or sectional seniority agreement. Employees who have given long and faithful service while in the employ of the corporation, who have become unable to perform arduous work, will be given preference for assignment to such agreed upon jobs.

Transfer and Methods of Pay Adjustment.—Unlike the transfer clauses cited above, in 67 other agreements the wage rate or methods of rate setting for transferred older workers was discussed. By far the largest number of agreements in this category—18—covered workers in public utilities.

Nearly half of the clauses (31) specified that the worker receive the rate of the job to which transferred, as illustrated in this meatpacking agreement:

> Employees who have given long and faithful service in the employ of the company and have become unable to handle their positions, will be given preference to such other work as is available. Wages paid to such employees shall be the wage of the position assigned.

In four other agreements, the specific wage to be paid a transferred elderly worker was not spelled out; rather, the company was to make a "minimum" adjustment in rate, or establish a special one. In the two illustrations listed—the first, relating to operators in a yarn mill, and the second, to public utility employees—these points were stated in this manner:

> Management will continue its present practice with respect to an employee who, because of age, illness, or injury, has become incapable of properly performing his usual work; viz, such employee may be

> transferred, in accordance with the Rules of Job Progression covering disabled employees, to such other work in the plant which, in the opinion of management, the employee is capable of performing. Every practicable effort will be made to make necessary placement and adjustment for the purpose of assuring continued retention of the employee so transferred with a minimum adjustment in rate. The union shall be notified in advance of such placements. This provision shall not be construed as a guarantee of employment.
>
> * * *
>
> Employees who are incapacitated through age or physical infirmity or other causes beyond their control may be assigned to work which they can do safely and efficiently, provided such work is available. Special rates will be applied in all such cases, taking into account the circumstances in each case.

In some instances, the setting of a new rate for such long-service employees was a matter for special agreement between the company and the union, the company and the employee, or by the three parties jointly.

Rate setting by the company and the union was exemplified in a textile and a structural steelworkers' agreement, respectively:

> A handicapped employee whose earning capacity is limited by advanced age, physical or mental handicap or other infirmity, may be employed upon light work at such wage as may be mutually agreed upon between the union and the company.
>
> * * *
>
> The company shall make every reasonable effort to find work for handicapped or superannuated employees which they are able to perform and the wage rates for such employees shall be subject to special negotiations between the company and the union.

Employer and employees were permitted to arrive at a mutually agreeable rate in the first clause cited below. The workers covered were janitors. The second clause—from a furniture workers' contract—provided for the employer, the union, and the affected worker to participate in the rate setting:

> As to any employee whose earning capacity is limited because of physical handicap, or who has reached, or reaches the age of 65 years, the employer will endeavor to find such employee suitable work at a wage agreeable to the employer and employee, but shall be under no obligation to do so.
>
> * * *
>
> Superannuated or incapacitated employees may be given suitable less onerous work at appropriate rates of pay by mutual agreement between the company, the union, and the employees.

Eleven agreements provided for a pay adjustment based on age and/or length of service. Where the adjustment was based on length of service, a sliding scale was introduced which, generally, permitted workers with 25 or more years' service to retain their pretransfer rate. The details were set forth in this public utility agreement:

> In the event that an employee who is 45 or more years of age and has 15 or more years of service, becomes partially disabled from injury or natural causes, which cannot be attributed to his gross negligence or which cannot reasonably be corrected to the extent that he is able to continue in his regular occupation, but can satisfactorily perform another useful occupation, he shall thereupon be

transferred to that occupation when a vacancy occurs. Such employee shall be compensated at a rate established by his regular rate less an amount equal to a percentage of the differential between such employee's regular rate and the recognized rate for the new occupation, such percentage being determined from the following table. (Note: Should an uneven figure result, hourly rates will be rounded to the nearest whole cent per hour, weekly rates to the nearest 50 cents per week and monthly rates to the nearest whole dollar per month.)

Years of service at time of transfer	Differential percentage reduction
24	5
23	10
22	15
21	20
20	25
19	30
18	35
17	40
16	45
15	50

Further, any employee who has attained 25 years' of service, regardless of age, and becomes physically disabled as referred to above shall not be reduced in rate as the result of such an occupational change.

No reduction in pay for transferred employees after reaching a specified age was stipulated in the two public utility agreements below. Note that the second clause lists separate ages for male and female employees:

An employee with 20 or more years of service with the company who becomes incapacitated so as to be unable to perform his or her regular work to the satisfaction of the company may, in the sole discretion of the company, be placed at any work the employee can perform at an appropriate rate of pay. "Appropriate rate of pay" shall be determined by the company in relation to the circumstances in each individual case but shall not exceed the maximum rate of pay of the position to which an employee is assigned, unless such employee is 50 or more years of age. In that case an employee's existing rate shall not be lowered by virtue of the assignment to the lower rated job. The Head Shop Steward will be notified of such transfers at the time such transfers are made.

* * *

An employee who becomes incapacitated for his regular work may, at the option of the company, be placed at any work he can do at an appropriate rate of pay and without regard to the seniority provisions of this agreement. "Appropriate rate of pay" shall be determined by the circumstances in each individual case, including length of service with the company, and shall not be considered to be limited by the maximum rate of pay of the position to which such employee is assigned. Further, in the case of any male employee, who, at the time of his assignment to a lower position because of incapacity, is 60 years of age or over, or a female employee who is 55 years of age or over, his existing rate shall not be lowered by virtue of the assignment to the lower rated job.

> If a male employee who is 60 years of age or over, or a female employee who is 55 years of age or over, is assigned to a lower classification not for incapacity, but because of the elimination of his job, his existing rate shall not be lowered by virtue of the assignment to a lower rated job.

Employees transferred because of age were specifically made subject to further pay increases in 5 agreements, while in 2 other agreements such progression was ruled out. The following clauses illustrate these points:

> In the event an employee with 20 years' or more service becomes unable to perform his normal duties because of permanent partial physical disability, whether compensable or not under the Workman's Compensation Act, the company will provide him with such related departmental work as the incapacitated employee can do. If the assignment is to a lower grade job, he shall receive at the time of such assignment a special rate equal to his rate at the time the disability started. The special job rate shall be effective until the rate for his new classification reaches his special rate, after which he will advance with the classification.

* * *

> An employee with 25 or more years of service with the (company) who cannot thereafter perform his regular duties due to some physical condition or other impairment, and is assigned to a work function which he is capable of performing, shall, for the duration of his employment by the (company), retain the same job title and continue to receive the same rate of compensation as theretofore, regardless of the range of pay attaching to the job classification for such work function, but shall not be eligible for wage increases beyond the maximum rate for that work function which he is performing.

Both agreements covered workers in public utilities.

In two other agreements—in the toy industry—the matter of transfer and/or pay adjustment for elderly employees was to be decided by the permanent arbitrator:

> If because of advanced age or nontemporary physical disability, a worker's ability to perform his job has been substantially impaired, the member of the association may submit the matter as a grievance . . . In the event that the grievance shall reach the second step and be submitted to the Impartial Chairman, he shall make an award applicable during such impairment only, which shall either (1) dismiss the grievance or (2) transfer such worker to another job, which the worker can perform with average ability at the rate for such job or (3) reduce the rate of the worker in his present job commensurate with the decrease in production resulting from such impairment, but in no event below the minimum for such job.

To ease financial hardships caused by downgrading due to layoffs or organizational plant changes, one contract—in the candy industry—provided for a cushioning allowance whereby employees transferred to lower rated jobs were to continue to receive their regular rate for specified periods, depending upon their length of service. Maximum benefits accrued to workers with 20 or more years' service.

> In the case of abolition, combination, or permanent reduction of a department or the permanent reduction of personnel in a job, the persons permanently transferred shall have their job rate continued according to the following schedule, unless the rate of the new job is higher, then they shall receive the higher rate:

Seniority	Job rate to be continued for—
Less than 3 years	0 weeks
3 years but less than 5 years	4 weeks
5 years but less than 10 years	8 weeks
10 years but less than 20 years	16 weeks
20 years and over	26 weeks

Pay Adjustment for Older Workers—No Reference to Transfer.—A smaller number of agreements (30) provided for special or individualized wage rates for older workers, but made no mention of reassignment. It may therefore be inferred that in these situations such a worker was to be permitted to remain on his old job, but at lower remuneration.

In 12 agreements in this category, the union and the company were to negotiate a special rate which, in some instances, could be below the contract minimum.

> Employees producing less than 90 percent efficiency are subject to dismissal. However, in the case of aged or handicapped employees now on the payroll, a reduction in wages comparable to the rate of efficiency can be adopted by mutual agreement of company and union.
>
> * * *
>
> The employer, subject to separate agreement with the union in each instance, may retain an employee whose earning capacity is limited because of age, physical or mental handicap, or other infirmities, at a rate of pay below the minimum wage herein provided.

Production workers in an electronics plant were covered by the first agreement cited above, and warehouse employees by the second.

A possible change in wages or hours of work for those of advanced age was outlined in a seafood cannery agreement:

> . . . It is acknowledged by all parties that there are now persons, and there may be others, who, because of physical disability, injury, or old age, are unable to perform a satisfactory day's work but who could be employed to do less work or to work shorter hours than the average within the various classifications. As to such persons the employer or association and the union shall confer and determine upon a reasonable adjustment of wage or hours, as the case may be, to permit of their employment. It is hereby declared to be the policy of all parties not to discriminate against said handicapped persons but to offer them reasonable opportunities for employment under terms fair to them and to the employer.

In 11 other agreements, a wage rate was to be worked out by the company, the union, and the employee. The phraseology employed was virtually identical with the one used in the pay adjustment clause for transferred older workers quoted earlier.

A restriction on the number of aged workers whose wages were exempted from established minimum job rate provisions was found in an agreement covering workers in a machine-tool plant:

> The rate of pay of superannuated and physically handicapped employees, not to exceed 5 percent of the employees, shall not be governed by the provisions of this Article (wages).

Special Seniority Rights in Layoff and Recall.—As pointed out earlier, a worker's most important protection against layoff rests on his seniority standing within the bargaining unit. Seniority, of course, is not based on a worker's age but on length of service. However, as several of the clauses cited above indicated, employees of advanced age are sometimes given superseniority for transfer purposes. Very rarely is such superseniority extended to reduction-in-force situations.

The strongest expression of superseniority for older workers is cited in the first clause below, and was found in only one agreement (in the structural steel industry). The second clause refers to a household appliance factory where certain elderly employees were not subject to bumping.

> In the event of any layoff, handicapped or superannuated employees will be retained, regardless of seniority, and will be exempt from the seniority provisions of this agreement in that respect.
>
> * * *
>
> Employees over 65 with 5 years' seniority listed on approved handicap list also will be immune to being bumped.

In another agreement (construction machinery), an exception to the normal application of seniority rules governing layoff and recall was made for long-service employees, but the number so affected was limited on a departmental and plant basis:

> . . . The company shall have the right, because of employee's special skills and long and faithful service to the company, to hire and retain or to call back to work after layoff, without regard to seniority, not more than 10 percent of the regular number of employees before layoffs began in any one department, but it is understood and agreed that the total number of such exceptional employees . . . shall not exceed 100 employees.

Length of service displacement rights were spelled out in a radio and television worker agreement. However, the procedure outlined applied only in a layoff due to occupational changes, and not in a general layoff situation.

> When occupations are abolished, any affected employee who has attained the seniority specified in the following table shall be absorbed in such other occupation in any department within the bargaining unit as he shall choose in accordance with the following table, provided such employee is capable of performing the work and provided further that before effecting any transfers in accordance with this section the company shall advise the union:

An employee with—	May displace any employee with—
25 years' seniority and up	5 years' seniority
20 years' seniority but less than 25 years	4 years' seniority
15 years' seniority but less than 20 years	3 years' seniority
10 years' seniority but less than 15 years	2 years' seniority

The section of an agreement defining seniority qualifications for promotions and layoffs made the following reference to age:

> When factors (ability to perform the work) and (physical fitness) are equal, length of continuous service shall govern. It is understood and agreed, however, that the factor of "physical fitness," as used above, is not intended to be applied to the age of employees.

Miscellaneous Clauses Relating to the Older Employee.—In a small number of agreements, clauses were found which dealt with various other benefits and conditions of employment for older workers. Many of these were one-of-a-kind clauses. The topics covered ranged from "no discrimination" to tour assignments and bargaining unit exclusion.

Seven agreements contained clauses banning age discrimination against employees. In 5 situations, this ban was part of a general one prohibiting discrimination because of race, color, creed, etc.; in the other 2, age was the sole subject referred to. The first point was illustrated in an agreement covering brass workers; the second, public utility employees:

> The company and the union agree that the provisions of this agreement shall be applied, as in the past, to all employees within the bargaining unit without discrimination on account of sex, race, color, creed, national origin, or age.
>
> * * *
>
> It is the request of the union that there shall be no discrimination toward employees because of their age, if they are capable of performing their duties.

A stipulation that an employee's age was to have no bearing on his continued employment was found in three interstate bus company agreements. Similarly, retirement and reassignment for reasons of age were banned in a steelworkers' agreement:

> The age alone of an experienced employee shall have no bearing on his qualifications as to continued employment.
>
> * * *
>
> The company shall not retire, discharge, transfer, or demote any employee on account of age.

A special wage increase to employees with 25 years' service was granted to public utility employees. Another agreement in the same industry listed length of service bonuses, with maximum payments going to workers employed 30 years or longer.

> All employees on the weekly payroll who complete 25 years of continuous service in the calendar year 1955 shall be granted a 25-Year Service Increase of 5 cents per hour, effective as of the next pay period beginning after his completion of such continuous service. An employee who has been granted a 25-Year Service Increase shall be continued thereafter in the wage structure relationship created by granting him such 25-Year Service Increase.
>
> * * *
>
> Employees will be paid a Christmas Bonus of 4 percent of their annual earnings in accordance with the rules covering this payment as agreed to by the company and the union.
>
> A length-of-service annual bonus will be paid on the following terms:
>
> Employees having from 15 through 19 years of adjusted service—$\frac{1}{2}$ percent annual bonus.
>
> Employees having from 20 through 24 years of adjusted service—1 percent annual bonus.
>
> Employees having from 25 through 29 years of adjusted service—$1\frac{1}{2}$ percent annual bonus.
>
> Employees having 30 or more years of adjusted service—2 percent annual bonus.

Possible part-time employment was outlined in a textile agreement. In meat-packing plants, such employment was limited to workers receiving social security benefits:

> For reasons of age, health, home responsibilities, or other justifiable causes, an employee with a regular job may give up his job and go to the spare floor by mutual consent of the overseer and the shop steward. A person so permitted to go to the spare floor shall be placed according to the seniority and qualification on those days he or she reports for work.
>
> * * *
>
> Effective January 1, 1956, an employee who works for the employer who has reached the age of 65 and desires to secure old-age survivors' benefits under the Federal Social Security Act and if he has worked for the employer 15 years or more and is able to perform the work assigned to him by the employer, the employer will schedule him for sufficient work to make it possible for the employee to earn $100 per month or not more than $1,200 per calendar year. He will not be entitled to holiday pay unless he works during the holiday week. He will not be entitled to future vacations or weekly guarantee.

Insurance agents and employees of a telephone company were the recipients of various other benefits. In the first clause quoted below, those with 25 or more years' service were not required to punch the time clock; in the second, such long-service employees were given their choice of tours.

> Employees who have been in the service of the company for 25 years or more shall not be required to punch the time clock. This privilege may be withdrawn from any employee whose record is not comparable with the average employee who is required to punch the time clock.
>
> * * *
>
> Subject to the needs of the business, regular assignments to night tours for coverage purposes in the central office, repair service bureau, and outside repair forces will be provided on a basis of rotation among the available employees with the following limitations:
>
> 1. Employees with 25 or more years of net credited service may be exempted from such rotating assignments if they so desire.
>
> 2. Employees who as of September 30, 1950, had 25 or more years of service and had been on night-tour assignments for a period in excess of 5 years may, if they so desire, be scheduled to work such assignments.
>
> 3. When the number of employees with 25 or more years of net credited service who either desire exemption as provided in 1 above or desire to be scheduled as provided in 2 above is more than can be accommodated, choice among such employees with 25 or more years of net credited service shall be in the order of seniority based on net credited service.

A public utility agreed to consider a program for elderly employees:

> The company agrees to give consideration to the development of a program to cover regular employees of long service who are unable to carry on their duties because of age or disability.

In two agreements—both covering department store employees—employees with 25 or more years' service were given the choice of either retaining or yielding their union membership. Furthermore, in the second agreement, regular employees of advanced age could be excluded from the bargaining unit by mutual agreement between the company and the union.

> Superannuates.—Such term is herein used to designate persons whose earning capacities in the judgment of the employer are limited by physical handicaps because of age and shall include all employees employed 25 years or more; which latter employees shall retain all their accrued seniority. Any employee who shall attain 25 years of seniority after the effective date of this agreement and while a member of the union may retain union membership should he or she so desire. Upon attaining the 25th year the employer shall notify the employees as heretofore of their privilege to remain in the union or resign as they desire, copy to be sent to the local, and the employers and the union shall be bound by the employees' choice.
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> * * *
>
> Regular employees whose earning capacities become limited by reason of physical handicaps or by reason of age shall be excluded from the union by mutual agreement of the management and the union . . . Employees who have completed 25 years or more of continuous employment shall have the choice of maintaining or discontinuing membership in the union (bargaining unit).

Part III.—The Termination Aspect

The older worker may leave his job for a variety of reasons, voluntary or involuntary. He may quit for other employment; he may become sick or disabled; he may retire; or he may die. He may be discharged; he may be laid off with the expectation of being recalled to work when business picks up; or he may be laid off permanently through no fault of his own. Except in the case of a worker who quits, collective bargaining agreements impose certain obligations on the employer designed to protect the worker from arbitrary action, to cushion the economic impact of unavoidable changes or occurrences on the worker and his dependents, and to provide for an orderly and more secure retirement.

In large measure, discharge or layoff based solely on age, without consideration of efficiency, is prohibited by collective bargaining agreements. On the other hand, plans established to cushion the impact of layoff, although they do not favor the older worker as such, tend to provide more liberal benefits to the worker with long years of service. These aspects of the collective bargaining agreement are discussed below.[10]

Discharge

As the management prerogative clause cited in part I (p. 5) illustrates, the company generally retains the right to discharge employees. However, such action must be in conformity with the agreement rules governing discharge. Typically, the contracts analyzed provided that an employee could only be discharged for "just and reasonable cause," or for "good and substantial reasons." Where the reasons were further elaborated, matters such as incompetence, inefficiency, dishonesty, drunkenness, or insubordination were mentioned frequently.

Discharge clauses illustrating the above points follow:

> The company will not discharge any employee except for good and substantial cause.
>
> * * *
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> An employer shall have the right to discharge employees for just cause, such as, but not limited to, slowdown in production, inefficiency, dishonesty, falsifying time cards, insubordination, intoxication, lateness, or absence without reasonable excuse in excess of 3 times in any 1 month; having salary garnisheed or wages assigned more than 3 times, smoking on the employer's premises, or for any violation of the employer's reasonable working rules. If the union shall dispute such discharge, the same shall be handled as provided for in the arbitration provisions of this agreement, and if arbitrated, then the arbitrator shall determine whether or not such discharged employee shall be reinstated, and whether with or without back pay.
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> * * *
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> The company and the union recognize the principle of a fair day's work for a fair day's pay. Employees who repeatedly fail to meet normally expected production requirements shall be advised of such failure. The departmental committee shall also be informed. If this employee still fails to meet such requirements, except for reasons beyond his control, he shall be subject to disciplinary action, including discharge.

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[10] Other aspects of voluntary and involuntary separations, as well as the key issue of compulsory retirement, are covered in a forthcoming report (see footnote 1).

The worker's age was not mentioned as a cause justifying discharge in any of the 1,687 agreements analyzed. In one agreement, however, discharge at a specified age was permitted, but only if the worker was unable to perform his job:

> Any employee having reached the age of 65 years, and who is no longer capable of performing his duties, his services will be terminated.

In other instances, where age was mentioned in this context, the contract explicitly prohibited discharge on such grounds.[11]

Provisions which define the causes for which an employee may be discharged are designed to prevent arbitrary and discriminatory action on the part of the employer in a vital matter for the individual employee. Unions regard the widespread prevalence of clauses banning arbitrary discharge as one of their major achievements. It is recognized, however, that these safeguards would have little effect if there were no provisions for protesting or appealing discharges—to a third party if necessary. Consequently, virtually all agreements establish procedures through which grievances in this area, as well as others, may be resolved.[12] Thus, a worker facing discharge, or the union acting for the worker, may invoke the general grievance and arbitration machinery of the agreement or, perhaps, special procedures which may have been set up to settle discharge cases. In proceedings of this kind, the burden of proof tends to rest with the employer; that is, he must convince union representatives or the arbitrator that the termination was a proper one under the terms of the contract.[13] Since agreements do not permit discharge for reasons of age alone, any attempt to remove a worker on such grounds would presumably fail in an established grievance and arbitration procedure.

Dismissal and Layoff Pay

Provisions for severance or dismissal compensation, a payment made to workers whose employment is terminated through no fault of their own, were found in approximately one-sixth of major agreements, primarily in the communications, primary metals, and printing and publishing industries.[14] Such payments help to ease the employee's financial burden while looking for a new job, at the same time making the layoff of long-term employees a matter of substantial expense to the employer.

The conditions under which workers are eligible to receive separation allowances are, in some agreements, stated broadly, such as "lack of work" or "reasons beyond the workers' control." In other situations, however, they are tied specifically to technological changes, plant mergers, or job elimination. A severance allowance is occasionally made to workers who have become unadaptable to plant requirements but are not eligible to be retired under the pension plan.

In the great majority of dismissal pay plans, the amount of pay is based on length of service with the company. In some of these plans, no ceiling is established; that is, all years of service are taken into account in computing the allowances. Examples of dismissal pay clauses follow:

> The company agrees to the principle of 1 week's severance pay for each year of plant service for employees with at least 2 years' plant service who lose employment solely because of technological change.

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[11] See clauses cited in part II (p. 23).

[12] See Grievance Procedures in Union Agreements, 1950-51, Monthly Labor Review, July 1951 (p. 36), and Arbitration Provisions in Collective Agreements, 1952, Monthly Labor Review, March 1953 (p. 261).

[13] See Arbitration of Labor-Management Grievances in Bethlehem Steel, op. cit. (p. 11).

[14] A separate study of dismissal pay provisions is in preparation.

In the event that an employer shall convert one or more elevators in his building to operatorless elevators and the job or jobs of one or more regular elevator employees are eliminated after October 3, 1955, on that account, the employer shall pay to the elevator employee or employees whose job or jobs are thus eliminated, conversion pay in the amount and upon the terms and conditions as follows:

(a) The elevator employee must have had at least 5 years' service in the building;

(b) Elevator employees of 5 or more years, but less than 20 years of service in the building, shall receive conversion pay in the amount of $100 plus $50 for each additional year of service in excess of 5;

(c) Elevator employees of 20 or more years' service in the building shall receive conversion pay in the amount of $1,000 plus $50 for each additional year of service in excess of 20; . . .

* * *

Employees having 10 years or more of service whose employment is terminated because of their physical inability, due to reasons other than those covered by the State Workmen's Compensation Act, to perform the duties of any established job in their department shall, if such termination occurs prior to the normal retirement age (65), be entitled to termination pay in addition to any other benefits to which such employees may be entitled.

Such termination pay shall be computed at the rate of 80 hours' pay for each year of employment to a maximum of 26 years of service.

The hourly rate of pay shall be the base rate of the classification held at the date on which the employee last worked.

* * *

Regular employees who are laid off due to lack of work and regular employees who retire at the compulsory retirement age and who are not eligible for pension shall be paid a termination allowance determined as to amount by their net credited service and basic weekly wage rate, at the time of leaving the service, in accordance with the following table:

Time of employment	Amount of pay
Less than 6 months	None
6 months but less than 1 year	1 week's pay
1 year but less than 2 years	2 weeks' pay
2 years but less than 3 years	3 weeks' pay
3 years but less than 4 years	4 weeks' pay
4 years but less than 5 years	5 weeks' pay
5 years but less than 6 years	6 weeks' pay
6 years but less than 7 years	7 weeks' pay
7 years but less than 8 years	8 weeks' pay
8 years but less than 9 years	10 weeks' pay
9 years but less than 10 years	12 weeks' pay
10 years but less than 11 years	14 weeks' pay
11 years but less than 12 years	16 weeks' pay
12 years but less than 13 years	18 weeks' pay
13 years but less than 14 years	20 weeks' pay
14 years but less than 15 years	22 weeks' pay
15 years but less than 16 years	26 weeks' pay
16 years but less than 17 years	30 weeks' pay
17 years but less than 18 years	34 weeks' pay
18 years but less than 19 years	38 weeks' pay
19 years but less than 20 years	42 weeks' pay

> For a term of employment in excess of that specified for payment of 42 weeks' pay, 42 weeks' pay plus 5 weeks' pay for each year or fraction thereof of such excess.

Under some agreements, employees accepting severance pay lost all reemployment rights, and, if rehired, were to be classed as new employees, without credit for seniority accumulated prior to termination. In other agreements, an employee faced with layoff had the option of rejecting severance pay and in this manner maintaining his claim to reemployment. These points are exemplified as follows:

> Any employee who has received dismissal pay from the company shall lose all seniority and shall cease to be in any way connected with the company. Should such employee thereafter by reemployed by the company, he shall accept such reemployment as a new employee.
>
> * * *
>
> An employee on being laid off shall have the right to elect not to receive severance pay and thereby retain all seniority and any other privileges to which such an employee may be entitled.

A slightly different type of severance allowance—one which grants payments only at time of retirement—was found in a small number of agreements, primarily in the textile industry. Such plans, negotiated in the absence of conventional pension plans, called for a lump-sum separation benefit to be paid to workers who retire voluntarily at age 65, usually after having completed 15 or more years of service. All of the textile agreements which incorporated retirement separation provisions established a maximum allowance of 20 weeks' pay. The standard textile clause read as follows:

> It is agreed that the company will pay retirement separation pay to an employee who, having attained the age of 65 voluntarily retires during the term of this agreement from the employment of the company and has at the time of his retirement completed 15 years of continuous service with the company with an average employment of 1,000 hours or more for each service year. The amount of the retirement separation pay shall be 1 week's pay for each service year, with a maximum of 20 weeks' pay.

Supplementary unemployment benefit plans, a recent development in collective bargaining, also take length of service into account. The establishment of employer-financed trust funds from which payments are made to laid-off workers to supplement benefits received under State unemployment compensation plans was initiated by the Ford Motor Co. and the United Automobile Workers in mid-1955. The plan provides for allowances graduated in duration by the amount of money in the fund and the seniority of the laid-off worker.

Under later agreements, in the flat-glass industry, the employer sets up a separate "security benefit account" for each employee, from which the worker may make withdrawals at time of unemployment or sickness. Unlike the Ford plan, payments are not related to earnings or seniority. All funds in an employee's account are paid to him or his family when he quits, retires, or dies.

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