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ADMINISTRATION OF
NEGOTIATED PENSION,
HEALTH, AND
INSURANCE PLANS

Bulletin 1425-12

May 1970



U.S. DEPARTMENT OF LABOR

BUREAU OF LABOR STATISTICS

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U.S. DEPARTMENT OF LABOR
George P. Shultz, Secretary

BUREAU OF LABOR STATISTICS
Geoffrey H. Moore, Commissioner

Preface

This is the 12th in a series of studies designed to survey the entire scope of the collective bargaining agreement. Previous publications in this series are listed on the last page of this bulletin.

This study is concerned with the administration of collectively bargained single and multiemployer pension, health, and insurance plans. It is based on a sample of major collective bargaining agreements in the United States and the plan documents associated with the agreements studied. The data and conclusions, therefore, do not reflect practices in smaller collective bargaining agreements. All of the agreements used are a part of the current file maintained by the Bureau of Labor Statistics for public and government use in accordance with section 211 of the Labor-Management Relations Act of 1947. The documents examined were either part of the Bureau's contract file or were those filed separately by plan administrators with the Labor-Management Services Administration in the Department of Labor.

The clauses quoted in this report and identified in the appendix are not intended as model or recommended clauses. The classification and interpretation of clauses reflects the understanding of outsiders and not necessarily that of the parties who negotiated them.

This bulletin was prepared in the Bureau's Office of Wages and Industrial Relations by Dorothy R. Kittner and Harry E. Davis, assisted by Majella A. Leary under the supervision of Donald M. Landay, Chief, Division of General Compensation Structures.

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Administration of Negotiated Pension, Health, and Insurance Plans

Chapter I. Introduction

Managing a pension plan or a health and insurance plan, and administrating its operations and finances involves day-to-day administrative matters such as maintaining employee records and handling benefit applications and appeals. It involves also more specialized functions like determining procedures, rules, and regulations. Similarly, the management of a plan's resources involves functions ranging from the routine processing of contributions to the selection of appropriate investments.

Although most of these functions must be performed in the management of all plans, responsibility for their performance does not always reside with the same party. Union participation varies from a "hands off" approach to the sharing of some or all administrative functions, and, in rare cases, to virtually complete control. The scope of the parties' participation also depends on the extent to which they have delegated plan administration to insurers and prepayment organizations such as Blue Cross.

A review of how employers and unions have shared the responsibility of managing negotiated plans shows that current practices have been shaped by the early development of unilateral plans, the later development of negotiated plans—particularly multiemployer plans—and by Federal legislation. Early employee benefit plans were outside the scope of collective bargaining, and thus, responsibility for their management rested with the employer or union responsible for initiating them. Most early plans were unilaterally established by employers and administered exclusively by them. By the beginning of World War II, some unions had established multi-employer plans financed entirely by employer contributions and administered exclusively by the unions.

Multiemployer pension plan operation under exclusive control of unions subsequently aroused the concern of Congress when certain abuses were revealed. The Congress, therefore, included section 302 in the Labor-Management Relations (Taft-Hartley) Act of 1947, requiring joint employer-union management of trust funds. Trust funds established prior to January 1, 1946, were exempted, but a few old plans also switched to joint administration to forestall possible criticism.

Equal representation on the joint boards of multiemployer plans has not, however, always led to equal participation in the managerial functions. Employer representatives frequently have entrusted most management decisions to the union representatives. This was done willingly in some situations and under pressure in others.¹

Moreover, employer representatives on these joint boards frequently are interested mainly in warding off union demands for increased benefits which would require increased employer contributions. Many of them feel that protecting the workers' rights to benefits is the responsibility of the union representatives. Thus, the boards, which generally determine all of the provisions of the plan (including benefit levels and eligibility and participation requirements), largely are involved in an extension of the collective bargaining process.

¹ See, for example, Ralph C. and Estelle D. James, Hoffa and the Teamsters: A Study of Union Power, Princeton, N.J. Van Nostrand, 1965.

Since passage of the Taft-Hartley Act, Congress has shown a continuing interest in the operation of employee benefit plans. The Welfare and Pension Plans Disclosure Act, enacted in 1958, requires public disclosure of plan provisions and finances, including "party-at-interest" transactions of both single employer (unilateral and negotiated) and multiemployer plans. To protect workers' interest in their pension plan, the Welfare Disclosure Act also requires the bonding of all individuals (administrators, officers, and employees) who handle money or other plan property. In 1962, the act was amended to make specified offenses, including bribery and kickbacks, embezzlement and theft, and false statements, criminal offenses under Federal law.

Single employer plans were not affected by section 302 of the Taft-Hartley Act. However, that they were within the scope of collective bargaining was made clear by two National Labor Relations Board decisions upheld by the Supreme Court in the late 1940's.² Although many plans have been negotiated since then, employers frequently have sole responsibility for their management. Among the reasons for this are: (1) Many unions have, as in others matters, left the initial decision to management but retained their right to appeal decisions through the grievance procedure; (2) many unions lack expertise in plan management; and (3) many companies view plan management as a prerogative of the employer, particularly since they have assumed the responsibility of providing specified benefits without regard to cost.

None of the international unions has become involved in all aspects of the management of single employer plans. The Auto Workers (UAW) is the only union found in this study of large plans that has equal representation on joint union-employer boards handling the day-to-day aspects of single-employer plan management. Although some unions are interested in having pension funds invested to benefit workers before as well as after retirement, for example, through loans and investments in rental housing for plan members, only those with multiemployer plans have a voice in setting investment policy.

The roles of plan administrators are affected by the plan's fiduciary arrangements. Almost all health and insurance plans and most pension plans, especially small plans, are funded through an insurance company or a prepayment organization such as Blue Cross. On the other hand, trustees (often third parties) are responsible for the financial management of most large pension plans, including nearly all of those analyzed in this report.³ If benefits are insured, the carrier determines the cost of the plan (usually subject to dividends determined by investment and claims experience). It also invests the plan's monies and either handles all claims or prescribes or approves procedures, rules, and regulations established by the employer or joint board. The employer or joint board keeps the records necessary to determine an individual's eligibility for benefits and their amount. To facilitate claims payments, especially by prepayment plans, duplicate records may be kept by the plan.

If a funded pension plan is noninsured (commonly called a "trusteed" or "self-insured plan"), the financial management is, with few exceptions, handled by a bank or trust company (corporate trustee). The employer or joint board generally appoints a corporate trustee and signs a trust agreement which outlines investment policy and the duties and responsibilities of the corporate trustee. Sometimes, especially under multiemployer plans, investments are selected by the employer or by the joint board, with the advice of a bank (that is, the corporate trustee) or an investment advisor. The nonfinancial administrative functions are performed by the employer or joint board, as in the case of insured plans.

² Inland Steel Co. v. NLRB, 170 Federal Reports 2d series 247 (1948), 251 (1949). Cross and Co. v. NLRB (U.S. Ct. of App. (1st), 1949).

³ Where pensions for large groups are provided through insurers, they are nearly always provided through "Deposit Administration" contracts which mostly operate in the same manner as trust agreements with corporate trustees, that is, except for providing life annuities for retired employees and furnishing actuarial services. Under such contracts insurance companies only provide the investment services and benefit payment services commonly furnished noninsured plans by banks and trust companies.

The table summarizes how the responsibility for each of the major functions of plan management usually is handled. It shows that employers are almost invariably the key party in managing a single-employer pension plan, and joint boards are the key party in managing multiemployer plans. However, where plan benefits are provided through an insurance company or prepayment organization, they also perform many of the day-to-day functions.

A major difference between insured and self-insured pension plans arises in handling grievances. Plans with insured benefits may permit workers to challenge factual data (for example, data on credited service or earnings) submitted to the insurance carrier by the employer in connection with a specific claim, but the insurers' decision is otherwise final and binding. The insurer's decisions are not subject to the grievance machinery in the collective bargaining agreement; to do otherwise would subject to collective bargaining the expert judgment of a neutral party, for which part of the premium is paid. If the plan is self-insured, provisions for handling grievances are explicit in all jointly administered plans and in some administered by the employer. However, where the plan doesn't have grievance provisions, one may properly infer that the regular grievance procedure in the collective bargaining agreement is applicable.

Parties Responsible for Performing Administrative Functions of Negotiated Pension, Health, and Insurance Plans

<u>Administrative function</u>	<u>Single employer plan</u>	<u>Multiemployer plan</u>
Determination of medium of funding	Employer	Joint board
Determination of contributions by Worker	Collectively bargained	Collectively bargained
Employer	Insurer or based on recommendation of employer-appointed actuary	Collectively bargained
Collection of contributions from Worker	Employer	Joint board through employer
Employer	Not applicable	Joint board
Disposition of contributions	Employer	Joint board
Determination of benefits	Collectively bargained	Joint board
Determinations of procedures, rules, and regulations	Employer and insurer	Joint board and/or insurer
Maintenance of records	Employer and insurer	Joint board and/or insurer
Receiving and approving benefit applications	Employer and insurer	Joint board or insurer
Payment of benefit	Employer-appointed corporate trustee or insurer	Joint board, or by its appointee: corporate trustee or insurer
Financial management of plan	Employer-appointed corporate trustee or insurer	Insurer or corporate trustee appointed by joint board
Periodic reporting to parties	Employer; corporate trustee; and/or insurer	Joint board; corporate trustee; and/or insurer
Communicating with workers	Employer and/or union	Joint board
Affording dissatisfied workers a hearing and review	Employer, insurer and/or special appeals machinery	Joint board and/or insurer

NOTE: Joint board refers to a board on which employer and union representatives have equal representation. Insurer includes insurance companies, prepayment plans, that is, Blue Cross and Blue Shield, and deliverers of service, that is, group practice plans.

Scope of Study

This study is concerned with negotiated pension, health, and insurance plans in major agreements.⁴ It involves an analysis of plan provisions that designate the party or parties responsible for the performance of the various administrative functions. This study is based on a 25-percent sample of the Bureau's file of all agreements of this size, exclusive of government, railroad, and airline agreements.⁵ Most workers employed by major companies under the terms of union agreements are covered by both types of plans.

Because the administrative machinery is affected by the type of bargaining unit, the management of single employer and multiemployer plans is discussed separately. As noted, unions rarely have a voice in the financial management of single-employer plans. Consequently, this aspect of plan management is only included in the analysis of multiemployer plans.

⁴ A major agreement is one that covers 1,000 workers or more. During the course of this study, a few of the situations declined in employment to less than 1,000. These, however, were kept in the study.

⁵ To assure representation of each industry, the sample of 475 agreements were selected by taking every fourth agreement from a list of agreements arranged by Standard Industrial Classification industry groups.

Some contracts, particularly those which provide for participation in multiemployer plans, do not provide the details of the agreed upon pension or health and insurance plan but indicate only that a plan exists. The administration of such plans, as well as the level of benefits, are described in separate documents. In general, when such a contract was included in the sample, the plan documents examined were those filed by the plan administrators with the Department of Labor's Office of Labor-Management and Welfare-Pension Reports.

Chapter II. Single-Employer Pension Plans Administered Solely by the Employer

The responsibility for administering most single-employer pension plans rests entirely with the employer. Some agreements include a clause stating simply and directly that only the company has this responsibility.¹

- (1) . . . the company shall have the sole responsibility for the administration of the pension plan, in accordance with its provisions.
- (2) The administration of the . . . retirement program . . . shall continue to rest with the company.

Occasionally, a department of the company is designated to perform some of the day-to-day administrative duties such as processing applications.

- (3) The personnel department of the company shall act promptly upon applications for benefits . . .

Other clauses permit the directors of the company to designate an employee to handle some, if not all, of the administrative duties.

- (4) The board of directors may appoint a pension administrator (who must be in the regular service of the company) to perform such administrative and ministerial functions with respect to the plan as the board of directors from time to time prescribes.

Most frequently, however, single-employer plans are administered by a management appointed committee or board.²

- (5) The administration of the pension benefits shall be in charge of a board, which shall consist of such members from management, have such authority and perform such duties, as may be determined from time to time by the company.

Who appoints the board members is not always indicated. Many agreements, however, require the company's directors to do so.

- (6) The administration of this plan shall be in charge of a pension board to be appointed by the board of directors of the company.

The benefits provided under a pension plan are, with few exceptions, paid by a fund established by the employer, by an insurance carrier, or by both the fund and a carrier. Selecting the means of providing the benefits, that is, selecting the medium of funding, is usually outside the jurisdiction of the individual or board responsible for the administration of the plan. This is the responsibility of the company and is stated in all but a few plans. Some plans require the establishment of a trust fund.

- (7) To carry out the provisions of the plan, the company shall enter into a trust indenture with a person or persons or corporation, as trustee, which trust indenture shall become a part of the plan and under which the trustee shall receive the contributions of the company and deposit them in the fund to be either (a) held, invested, reinvested and distributed by such trustee, or (b) paid over to an insurance company under the terms of an insurance company contract, or (c) used partially under (a) and partially under (b) as the company shall elect.

The company reserves, in its sole discretion, the right to determine and change the method of funding and the time of making and the amount of its contributions and all matters relating to the financing of the plan.

¹ Hereafter, in the text of this report, the term "board" is used regardless of the terminology (board or committee) used in the agreement or plan.

² The clauses cited come from both general collective bargaining agreements and separate (supplemental) pension agreements. These agreements are identified in the appendix.

Other programs permit the employer to decide whether the plan is to be funded, and how.

- (8) . . . the company may but shall not be required to establish or cause to be established a pension trust or trusts. The company is free to determine the manner and means of making provision for funding, if any, and paying the pension benefits set forth in this agreement.

Because an employer may use several different insurance carriers or trustees during the life of the plan, usually no organization is mentioned in the pension plan. However, a few agreements named the insurance carrier currently being used.

- (9) The plan provides for funded retirement benefits insured by the . . . Insurance company name and is administered by the company.

The grievance procedure established by some plans for handling individual pension disputes may be used to settle a disagreement between the employer and the union pertaining to the selection of a particular insurance carrier or trustee.

- (10) . . . any dispute between the company and any local union concerning the responsibility or recognized good standing of any insurance company or trustee with which any funds contributed by employees are deposited or of any insurance company from which any annuities are purchased with such employee contributions shall be subject to the grievance procedure . . .

In some cases, the union's right "to grieve" also may stem from its interest in protecting benefits purchased with employee contributions.

The administrator of a pension plan generally is responsible for its efficient operation. He establishes the rules and regulations according to plan provisions, and interprets and applies the provisions in determining the eligibility of a worker for benefit payments and the amount of the payment. He also may have to determine the amount that has been contributed into the pension fund on behalf of each worker and the value of each worker's benefit. The preparation of reports on the operation of the plan is also his responsibility.

Many agreements do not include much detail on the responsibilities of the administrator. Agreements requiring the establishment of an administrative board or the appointment of an individual to administer the plan, generally describe the administrator's duties and responsibility in greater detail than those which simply make the company responsible for the administration of the plan. An example of the latter follows:

- (11) Administration of the plan shall be the sole responsibility of the company, and shall, among other things include (a) authorization of payment of such retirement income or other benefits as are provided for under the plan, (b) establishment and enforcement of such rules and regulations as it shall deem necessary or proper for the effective administration of the plan; provided that such rules and regulations shall not be inconsistent with other provisions of the plan, and (c) resolution of any other administrative questions that may arise in connection with the operation of the plan.

The duties of the administrator, as defined in plans administered by an employer-appointed individual or board, vary in scope from those which relate solely to eligibility and benefit payment determinations to those which also relate to actuarial determinations. The following clause illustrates the amount of detail that might be included in these agreements:

- (12) The administrator shall administer this plan in accordance with applicable provisions thereof and his authority with regard to interpretation of said provisions shall be final and binding on the parties hereto . . .

. . . The administrator shall have such powers only as are specifically provided herein, including the following:

- (a) To prescribe procedure to be followed by employees in filing applications for benefits, and for furnishing of evidence necessary to establish employees' rights to such benefits;
- (b) To make determinations as to the rights established by the plan of any employee applying for or receiving benefits because of retirement or permanent and total disability, and to afford any such employee dissatisfied with any such determination the right to a hearing thereon before the administrator;

- (c) To develop procedures for the establishment of credited service, as prescribed by the plan, of employees, and after affording employees an opportunity to make objections with respect thereto, to establish such credited service conclusively in advance of retirement;
- (d) To obtain from the company, from the union, from the trustee, the actuary and from the employees such information as shall be necessary for proper administration of the benefit provisions of the plan;
- (e) To prepare an annual statement of the aggregate assets, receipts, and disbursements of the fund and a report on the funding status of the plan. Such annual report shall be prepared as quickly as practicable after January 1 of each year and shall be made available to the union and to such agencies of Federal, State or local governments as may be now subsequently required;
- (f) To authorize the trustee to pay benefits from the trust fund in accordance with the plan and to establish necessary procedures therefor;
- (g) To approve and distribute in such manner as the administrator determines appropriate, information explaining the plan; and
- (h) To furnish the company and the union upon requests, such reports as are reasonable and appropriate.

The Employer-Appointed Board

Size. The size of the board is often not specified. It may be as large or as small as management deems necessary. Some plans, however, stipulate the minimum number of board members, the maximum number, the minimum and maximum number, or the exact number.

- (13) The administration of this plan shall be in the charge of a pension board, which shall consist of three or more persons from the management of the company to be appointed annually by the board of directors of the company . . .
- (14) The general administration of the plan and the responsibility for carrying out the provisions hereof, shall be placed in an administrative pension committee consisting of not more than 12 members . . .
- (7) The general administration of the plan and the responsibility for carrying out its provisions shall be vested in a pension committee of from three to five persons . . . Any one or more of the members of such committee may be officers or directors of the company and need not be employees entitled to benefits under the plan . . .
- (15) The administration of the pension benefits shall be in charge of a board, which shall consist of three members from the company . . .

As illustrated in the above clauses, individuals appointed to the board may be employees of the company, officers, or directors. Some plans require a specified number of officers.

- (16) The administration of the plan shall be by a pension board of five officers and/or employees of the company, not less than three of whom shall be officers.

Only rarely are designated officers required to serve on the board.

- (17) The board shall choose annually five persons who together with the president of the company shall act and be known as the service annuity committee.

Other plans permit the appointment of individuals who are not employees of the company.

- (18) The company may, however, delegate any or all of its administrative powers, duties and discretions under the plan to such persons as may be appointed by the company, and no additional compensation will be paid to them for services in such capacities, if such persons are employees of the company.

The Chairman and Secretary. Although a board member always serves as the board's chairman, some plans do not indicate whether he is elected or appointed. Many, however, required that the board elect its chairman.

- (19) The retirement committee . . . shall appoint from among its members a chairman and a secretary . . .

In a few, an officer of the company is designated.

- (17) The president of the company shall ex-officio be chairman of the committee, and the committee shall select a secretary . . .

Sometimes the secretary as well as the chairman must be a member of the board as required, for example, in clause 19 (page 7). Often the secretary need not be a board member or an employee eligible for pension benefits.

- (20) The retirement board shall elect . . . a secretary . . . who may, but need not be, a member of the retirement board. . . .

- (7) The committee . . . shall appoint as secretary a person who may, but need not, be a member of the committee or eligible for benefits under the plan.

The following clause designates an employee in the company's industrial relations department as secretary of the board. Unlike most secretaries, this one performs the duties normally performed by an administrator.

- (21) The secretary of the pension board shall be charged with responsibility for the efficient operation of the pension plan and shall have the following duties and powers:

1. To establish rules and procedures . . .
2. To receive and act upon applications from individual employees for pensions;
3. To find the facts and determine the rights of any employee, or retired employee, under the plan;
4. To prepare and furnish to the pension board an annual report with respect to the operation of the pension plan; and
5. To furnish, when called upon by the pension board, such additional information as may be required by it so that the pension board may be informed on the operation of the pension plan.

Clerical and Technical Assistance. As provided in clause 19 (page 7) and in the following clause, the office staff usually is appointed by the board.

- (22) It /the committee/ shall be empowered to employ a secretary and such other assistants as may be required in the administration of the plan.

Services of an actuary are required by all funded plans.³ Insured plans obtain them from their insurers; noninsured plans retain consulting actuaries. Although under noninsured trustee plans, selection of the actuary is often the responsibility of the trustees, under some plans it is the responsibility of the employer.

- (23) . . . The committee shall avail itself, as necessary, of the services of the actuary, accountants and counsel selected by the board of directors.

- (24) . . . the actuary designated by the retirement board shall make annual actuarial valuations . . .

Compensation and Expenses. Many agreements do not indicate if board members are paid for their services, probably because they are regular employees, officers, or directors of the company. However, some plans specifically require them to serve without compensation; others only prohibit their being paid by the fund.

- (19) Members of the retirement committee shall serve without compensation, but they shall be entitled to reimbursement from the company for any expense reasonably incurred by them in the performance of their duties.

- (12) The plan shall be administered by an individual . . . appointed by the company who shall serve without compensation from the fund . . .

³ Actuarial services always are used to maintain a financially sound plan and to determine required contributions to the fund. All tax qualified plans are required to make actuarial evaluations at periodic intervals.

Occasionally, the directors of the company determine the compensation of board members. In some cases they are paid by the company; in others, by the fund.

- (7) The board of directors shall at its sole discretion determine compensation, if any for the services of the members of the committee. Such compensation shall be paid by the company.
- (25) The members of the corporate employee benefit committee may receive from the fund such reasonable remuneration for their services as the board of directors of the company may from time to time determine.

The administrative expenses of the plan usually are paid by the company. This is explicitly stated in many plans in clauses similar to the following:

- (26) The company shall pay all administrative expenses of the plan.

Under some plans, the company is responsible for payment of expenses not paid by the fund.

- (27) Any fees and expenses of administration of the fund and other expenses incident to the operation and management of the plan may be paid by the company unless paid from the fund, except that any and all such expenses incurred after the termination of this agreement shall be paid from the fund.

Under others, the fund must pay the expenses not paid by the company.

- (25) All expenses incurred by the corporate employee benefit committee in the administration of the plan or otherwise, including compensation of such officers, actuary, counsel, agents or agencies as the corporate employee benefit committee may appoint or employ, shall be paid from the fund to the extent that the same are not paid by the company.

Union Representation. Plans rarely called for union representatives to serve on the administrative board. Where this occurred, either the union representative or the entire board had primarily nonadministrative responsibilities. For example, the first clause below permitted the union representative to participate only when the committee was handling a worker's grievance. The second clause limited the duties of the board to reviewing factual data which a worker had questioned. Under the latter plan, the secretary of the board, a management representative, established rules and procedures and received and acted upon workers' applications for pension benefits.

- (28) The membership of the committee shall consist of . . .

One grievance member, appointed by the union or unions involved, for the specific purpose of representing an employee or employees directly involved in a specific grievance to be heard by the committee, to be a member of the committee during its consideration of such grievance.

- (21) The pension board shall have the following duties and powers:

To review any questions raised by an employee, or a retired employee concerning his rights under the plan with respect to: His age; date of the beginning of his continuous service; the number of years of his continuous service; the amount to be deducted from the amount of any pension which he is entitled to under the plan; the amount of his pension; . . .

Occasionally, plans not requiring the establishment of an administrative board permitted the company to delegate certain responsibilities to committees or to share its responsibilities with the union.

- (29) The company shall be responsible for general administration . . .

. . . The company shall have all such powers as may be necessary to carry out the provisions of the plan except as the powers and duties of the company may be modified by any agreement with a collective bargaining agent.

This type of clause presumably permits the establishment of a joint board of company and union representatives, as established by plans described in chapter III.

Under employer-administered plans, it is customary, though not required, to notify the union of the individual appointed as administrator. The few that required it expressed it as follows:

- (12) The company shall promptly notify the union in writing of the appointment of the administrator of the plan and shall promptly notify the union in writing in the event such appointment is rescinded and some other administrator is appointed.

A few agreements explicitly require advance disclosure to the union of determinations by the administrator, and that the union be given an opportunity to discuss them with him.

- (17) There shall be advance disclosure to the union, and an opportunity for discussion, of all administrative determinations with respect to eligibility for retirement and amounts and continued payment of service annuities of employees within the bargaining units of the company, that are contemplated under and in accordance with the amended service annuity system. Discretionary determinations made in such administration in good faith shall be conclusive.

Procedure for Final Determination of Pension Claims. Many employer-administered pension plans include a clause emphasizing the finality of the board's or administrator's decision. Under these plans the board or administrator is not required to give a hearing to a dissatisfied worker.

- (30) The administration of this plan is vested in the board of benefits and pensions . . . and its decision in all matters involving the interpretation and application of this plan shall be final.
- (7) . . . the committee's determination of all questions arising under the plan shall be binding upon all employees, pensioners, disability pensioners or others concerned. All matters falling outside of the scope of the powers and duties of the committee, and not otherwise provided for in the plan or in the trust agreement, shall be referred to the board /of directors/ which shall have the power to act thereon.

Under a few employer-administered pension plans providing for an equal number of company and union representatives to review worker's complaints, disputes that cannot be settled by a majority of the members are decided by a person selected by the board.

- (21) In the event a dispute arises that cannot be settled by the pension board, a majority of the board will choose some individual to sit with the board and decide the issue.

In a few plans, the sole duty of the union representative is to represent aggrieved workers before the board.

- (28) One grievance member, appointed by the union or unions involved, for the specific purpose of representing an employee or employees directly involved in a specific grievance to be heard by the committee, to be a member of the committee during its consideration of such grievance.

Under some agreements, the employee has the right to question the accuracy of the data supplied to the administrator by the company on the findings of the physician who examined him. These plans may include a clause, similar to the following, in which a meeting of company and union representatives is the final step in the grievance procedure.

- (1) However, notwithstanding section 19J of the pension plan /regarding a worker's right to file written claim for correction of statement furnished him by company/, an employee who files a claim for correction of any statement furnished to him pursuant to section 19E /concerning statement furnished worker by company regarding pension earned during year and credited service/, . . . and who is not willing to accept a decision of the company after the company's review of such claim, or who is not willing to accept a decision as to his eligibility for disability pension, may, within 90 days after he is informed of such decision, request the union to represent him in discussing the matter further with the company. In that event, a committee of three members appointed by the union and a committee of three members appointed by the company's headquarters will meet for the purpose of further reviewing the matter. The company's records or the decision regarding eligibility for disability pension, as either modified or maintained without change after the review of such two committees, shall be final and conclusive and shall not be subject to further review.

At times, agreements refer to the settlement of pension disputes but fail to spell out procedures or machinery.

- (31) Representatives designated by the company and the union shall, through the proper processes of collective bargaining, endeavor in mutual good faith to resolve any disagreement as to the rights of any applicant for a pension hereunder.

More often, however, plans specifically designate the machinery for the settlement of disputes arising out of pension determinations. Under most of these, the grievance machinery established under the collective bargaining agreement is used.

- (32) It is agreed that the grievance procedure established in the contract between the company and the union will be used if any differences arise between the company and any employee represented by the union or any former employee on pension represented by the union, as to the application of the plan to said employee or said pensioner.

Any problems arising under the retirement plan shall be handled by the local company management with the union, as above outlined.

To expedite matters, some agreements bypass the early steps of the grievance procedure, since the officers involved at that stage, usually foreman and shop stewards, have little or no responsibility for the operation of the pension plan.

- (33) Any dispute arising hereunder shall be considered to be a grievance subject to the grievance procedure . . . except that the consideration of any such dispute shall originate with the final step in the local grievance procedure in effect at the local plant of the company where such dispute arises.

Usually, as in the case of grievances, differences that cannot be resolved by negotiation at the final step in the procedure are settled by arbitration.

- (34) If any difference shall arise between the company or the board and any employee who shall be an applicant for a pension as to such employee's right to a pension or the amount of his pension and agreement cannot be reached between the board and a representative of the International Union, such question shall be referred to an impartial umpire to be selected by the board and by the union.

Occasionally, the appeals procedure for a pension grievance specifically excludes arbitration.

- (35) Nothing herein shall be construed to subject the plan or its administration to the arbitration . . . of this agreement, but such matters may be subject to the grievance procedures of this agreement . . .
- (36) The provisions of this article shall be subject to the grievance procedure of the contract, excluding arbitration . . .

Disability Claims. With few exceptions, plans with grievance procedures for pension disagreements have special machinery for challenging medical opinions used to determine a worker's eligibility for a disability pension or in determining whether a worker should be continued on the disability pension rolls. This procedure usually calls for physical examination of the aggrieved worker by two physicians—one appointed by the employer and one appointed by the union or employee. If these two cannot agree, they submit the question to a third physician for a final and binding decision.

- (13) If any difference shall arise between the company and any employee as to whether such employee is or continues permanently disabled, such difference shall be resolved as follows:

The employee shall be examined by a physician appointed for the purpose, and compensated by the company, and by a physician appointed for the purpose, and compensated by the employee. If they shall disagree concerning whether the employee is permanently disabled, that question shall be submitted to a third physician selected by such two physicians. The medical opinion of the third physician, after examination of the employee and consultation with the other two physicians, shall decide such question.

Under such agreements questions concerning permanence and totality of disabilities are handled by physicians; questions concerning whether the disability was due to an unavoidable cause or was self-inflicted usually are handled according to the procedure prescribed for nondisability disputes. The following clause, for example, specifies the same procedure for such disputes as the agreement requires for all disputes, except for those relating to the medical aspects of a disability.

- (37) If any difference shall arise between the company or the board and any employee who shall be an applicant for a pension as to:

The number of years of continuous service of such applicant; or

The age of such applicant; or

The average monthly compensation used for pension calculation under paragraph . . . or

Whether an applicant, who shall have been determined to be permanently incapacitated and who shall have at least 15 years of such continuous service but shall not have attained the age of 65 years, shall have become so permanently incapacitated through some unavoidable cause;

and agreement cannot be reached between the board and a representative of the union, such question shall be referred to an arbitrator to be selected by the board and by the union.

Under a few plans, only disability determinations can be appealed by the worker. Although most of these limit the appeals to determinations involving total and permanent disabilities, a few permit appeal of the employer's decision to retire a worker due to a chronic physical ailment.

- (38) If, during the term of this agreement, any difference shall arise between the company and a pensioner retired by the company on a normal pension . . . as a result of a medical examination . . . or between the company and any applicant for a disability pension as to whether he shall have become totally and permanently incapacitated, such difference shall be resolved as follows: . . .

Time Limits. Agreements seldom impose time limits on the handling of pension grievances. However, some do require that grievances involving certain issues be initially presented to the employer within a specified period.

- (39) . . . the company shall not be required to recognize any difference between the company and any employee regarding his age, number of years of continuous service or average earnings unless the employee notifies the company in writing of such difference and the nature thereof within 30 days after advice from the company as to the facts shown by its records with respect to such matter.

Finality of Decisions. Pension grievances, like other grievances, usually are settled outside of courts of law. However, agreements rarely prohibit legal action. In the absence of arbitration, a few include a clause recognizing the right of a worker to take such action.

- (36) The provisions of this article shall be subject to the grievance procedure of the contract, excluding arbitration, without prejudice to an individual agents' legal rights, including the right to action at law or equity for the enforcement of his rights to the benefits provided under the insurance and retirement programs.

Reports to the Union or Joint Union-Management Committee. As a rule, union officers and employees are entitled to receive periodic reports concerning the operation and administration of the pension plan.

- (40) The pension fund shall be audited annually by a qualified firm of public accountants selected by the company, and a report based on such annual audit shall be published by the company in at least one newspaper of general circulation in each city in which the company has a plant in which employees covered by this plan work, and concurrently with release to the newspapers, a copy of said report shall be furnished to the union.

Additional information as to pension fund.

The company agrees to arrange to have the administrator furnish the following additional items of information to the union:

Information designated as annual shall be furnished (1) to the district director at Canton, Ohio in five copies (2) effective as of December 31 of the years in which this agreement is in effect and (3) within 120 days from the 31st day of December of the years in which this agreement is in effect. Information designated as current shall be supplied to the local union president of the local union covering the bargaining unit in which the employee was working who has filed the application for a pension. Such information shall be submitted within 5 days following the date of the denial of such an application.

Annual information.

- a. Name of trustee.
- b. Actuarial assumptions being used as to (1) interest rate (2) mortality tables used for retirement and disability pensions (3) setback for female employees (4) net actuarial functions not loaded (5) factor used by actuary for employees over 65 who are separated without pension.
- c. Average number of employees in each unit covered by the plan.
- d. List of pensions which became effective during preceding year showing:
 - (1) Serial number, badge number, name, and address of recipient.
 - (2) Sex.
 - (3) Date of birth.
 - (4) Date hired.
 - (5) Date pension began.
 - (6) Accredited service.
 - (7) Total earnings in last 260 bi-weekly pay periods.
 - (8) Total amount of original pension or lump sum pension payment as the case may be less amount of social security deduction if any.
- e. Financial information.
 - (1) Assets of fund at beginning of year.
 - (2) Receipts. Company contributions during year broken down for past service and current service.
 - (3) Net amount of income for year.
 - (4) Net amount of disbursements by each type of pension.
 - (5) Assets of fund at end of year.

Current information.

Denial cases showing applications filed by employees and denials of applications by administrator.

- (13) The pension board shall prepare, or cause to be prepared, an annual report within a reasonable period of time after the end of each calendar year after the effective date setting forth in reasonable summary the operation of the plan for such year. Copies of such report shall be made available for examination by all employees and their recognized collective bargaining representatives in the offices of all plant managers and personnel directors.
- (10) The international union shall be furnished with such pertinent information as it may reasonably request, from time to time, concerning the operation and administration of the retirement program insofar as it affects employees or pensioners. The president of any local union shall be furnished with such pertinent information as he may reasonably request concerning the application of the employee benefit programs to any employee, including any employee who has retired during the life of this agreement in the appropriate bargaining unit.

Under some plans this right was waived.

- (41) The federation agrees that by furnishing it with the information listed . . . the company will fully comply with any statutory or other obligation to supply the federation with information concerning the operation of the pension plan, and the federation hereby expressly waives any right to receive further information concerning the operation of the pension plan for any purpose whatsoever.

Other agreements call for a joint union-management board to receive plan reports. In addition to the reports that the company is required to submit, the board usually can request extra information needed to evaluate the plan's operation.

- (8) The company and the union shall establish a joint committee on pensions consisting of not more than 10 members, one-half of whom shall be designated by the company and one-half of whom shall be designated by the union. . . . such committee shall be furnished annually a report regarding the operation of the pension benefits insofar as it affects employees as provided in this agreement. From time to time such committee shall be furnished such additional information as shall be reasonably required for the purpose of enabling it to be properly informed concerning the operation of the pension benefits insofar as they affect the employees.

Some plans, which did not establish a joint board to examine the operation of the plan, required the company to meet with union representatives for that purpose.

- (42) The company agrees that once a year upon the request of the union, it will meet with representatives of the union . . . and with a representative or representatives of the pension trustee, to discuss and examine the operations of the pension plan.

Chapter III. Single-Employer Pension Plans Administered by a Joint Board

Many single-employer agreements provide for joint employer-union administration of the pension plan insofar as it covered workers in the bargaining unit. Most of the plans, which usually are companywide or multiplant in scope, make the company responsible for the general administration of the plan. However, joint boards to administer the plan as it applies to workers in the bargaining unit often are provided in amendments to the basic plans.

- (43) The company shall be responsible for the general administration of the amended plan and for carrying out the provisions thereof. The company may, from time to time, establish rules for the administration of the amended plan. The company may, however, delegate any or all of its administrative powers, duties and discretions to such persons or committee or committees as may be appointed by the company or pursuant to the terms of any applicable collective bargaining agreement. Any decisions made by any persons, committee or committees appointed pursuant to the preceding sentence, to the extent that such decisions are within the powers, duties and discretions delegated, shall be binding on the company.

The amended plan shall be administered, as hereinafter set forth, by the board of administration as it applies to employees covered by this agreement.

Other companywide plans provide for the establishment of two joint administrative boards—one for workers in the bargaining unit and one for those outside the unit, as in the following examples:

- (44) Employees in the bargaining unit:

There shall be established a joint board of administration consisting of six members, three of whom shall be appointed by the company . . . and three of whom shall be appointed by the union . . . which board shall administer the benefit structure of the plan to the extent provided by the plan . . .

There shall be established local pension committees, each consisting of four members, two of whom shall be appointed by the company . . . and two of whom shall be appointed by the union. . . . Each local pension committee shall meet and conduct its business subject to rules prescribed by the joint board of administration . . .

Out-of-unit hourly rated employees:

There shall be established a joint board of administration consisting of six members, three . . . shall be representatives of the company and three . . . shall be representatives of the employees, one from the engineering division, one from the manufacturing division and one from any of the other divisions of the company. Said board shall administer the benefit structure of the plan to the extent provided in the plan.

- (45) The term "board of administration" shall mean such administrative committees as may be agreed upon between an employer and the representatives of the employees of such employer. Each administrative committee created for purposes of this plan by agreement between an employer and the representative or representatives of each group of employees covered by the plan shall act only with respect to employees in and employees retiring from such group. Any group of employees to whom this plan is applicable who are not represented by a union may cause representatives to be elected from such group for the purpose of establishing, by agreement with their employer, an administrative committee with respect to the employees in and employees retiring from such group. In the event an administrative committee for any group of employees is not selected as provided above, [the company] may perform the functions of the board of administration with respect to employees in and employees retiring from such group until such time as an administrative committee for such group of employees is selected as provided above.

It may be implicit, as in the first clause cited above, that until a board is formed to represent nonbargaining-unit workers, management representatives will serve as the board—a point explicitly stated in the last clause.

Less frequently, the only provisions on plan administration found in single-employer agreements and in the applicable pension plans require the plan to be administered by a joint employer-union board.

This section of the report is based solely on agreements which require joint administration of the pension plan.¹

Limitations on the Authority of the Joint Board

The jurisdiction of joint administrative boards of single-employer pension plans is not as broad as the jurisdiction of joint boards administering multiemployer plans. For example, none of the former agreements gives the board the power to determine types or levels of benefits or to amend plan provisions. This is explicitly stated in many agreements.

- (46) The board shall have no power to add to or subtract from or to modify any of the terms of this agreement or of the plan nor to change or add to any benefit provided by said agreement or by the plan nor to waive or fail to apply any requirement or eligibility for a benefit under said agreement or the plan.

Also, unlike joint boards administering multiemployer plans, the boards administering single-employer plans do not determine if the plan is to be insured or self-insured. This is either agreed to by the parties at the time the pension plan is negotiated or left to the discretion of the employer.

- (47) The company shall execute a trust agreement with a trustee or trustees selected by the company, or shall enter into a contract, or contracts with one or more insurance companies selected by the company, or both.

The company will determine the form and terms of any such trust agreement or insurance contract and may, by agreement with the appropriate trustee or insurance company, modify any such instruments from time to time, or remove or replace any trustee or insurance company.

In addition, the employer, with few exceptions, selects the insurance carrier, the corporate trustee, or both. Only an occasional agreement permits the union to participate in the selection of the corporate trustee or requires the joint board to select him.²

- (46) The company shall execute a trust agreement with a trustee or trustees selected by the company and the union to manage and operate the trust fund and to receive, hold and disburse such payments . . .

- (48) All of the funds of the plan shall be held by a trustee appointed by the retirement board, in trust under a trust agreement adopted, or as amended, by the retirement board for use in providing the benefits of the plan and paying its expenses . . .

In the few agreements which require the union or the joint board to participate in the selection of the trustee, the company and the union share the right to determine the terms and forms of the trust agreement.

- (46) The company and the union shall have the right to, and will, determine the form and terms of any such trust agreement, which shall not be inconsistent with the provisions of the plan or the agreement of which it is a part; may modify any such trust agreement from time to time to accomplish the purposes of this plan, may remove any trustee, and select any successor trustee.

A small number of agreements imply that the corporate trustee was at least approved by the union. Some go further. The clause cited below, for example, states that the company and the union have entered into an agreement with a designated corporate trustee.

- (49) The company and the union have entered into an agreement of trust with the trust company, . . .

Copies of the trust agreement or insurance agreement signed by the employer are usually available to the union and the board. Many agreements include a clause requiring the employer to furnish the board with a copy.

¹ Unless specifically stated, this report does not differentiate between statements in the basic collective bargaining agreement, the supplemental pension agreement, or the complete text of the plan which is incorporated by reference in the agreement. Clauses are cited from any one of the three sources.

² No clause requiring the joint board to select the insurance carrier was found in the sample of agreements examined.

- (47) The company will provide the board with . . . a copy of the trust agreement or insurance contract.

The standard of conduct expected of the trustee usually is defined in the trust agreement rather than in the collective bargaining agreement or in the pension plan. Seldom are the union and the joint board participants in the selection of the corporate trustee or parties to the agreement with the corporate trustee, and they seldom have a right to approve or disapprove the trust agreement. They rarely have a voice in the investment of the monies in the fund established under the plan for the payment of benefits. Clauses giving the joint board or the union an active voice in investment policy were found only in those agreements which permitted the board or union to participate in the selection of the trustee or to be a party to or approve the trust agreement. For example:

- (50) . . . With respect to the investment and reinvestment of the trust funds, the administration board may (1) direct the trustee to purchase or sell such individual stocks or securities as the board may deem advisable, or (2) prescribe the limits within which the trustee shall exercise its discretion in the purchase and sale of common stock, preferred stock, bonds or any other type of stock or securities. The board shall exercise the judgment and care which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but in regard to the permanent disposition of their funds, and shall, in so doing, consider the probable income as well as the probable safety of the principal entrusted to the board.

Many agreements, however, require that the union and/or the board be given periodic reports covering financial and related aspects of the plan. These reports may stimulate specific financial recommendations from the union to the company at the time the pension agreement or trust agreement is being renegotiated.

- (51) The corporation will cause the board of administration to be furnished annually with a statement, certified by a qualified actuary, that the amount of the assets of the pension fund is not less than the amount then required . . . to be in such pension fund on the basis of the normal cost and the initial and supplementary past service cost of pensions and on the basis of funding being used for the cost of supplemental allowances under this pension plan.

- (47) Information to be provided by the company.

The company will provide the board with the following information with respect to the operation of the plan: . . .

An annual report of the receipts and disbursements of the trustee or trustees of the pension fund.

Commencing with the calendar year ending December 31, 1964, the company shall cause to be furnished to the board annually a complete actuarial report, prepared by the actuary, in respect of each year's valuation of the plan (with respect to benefits payable . . . except as otherwise provided below), including the following:

The amount of the normal cost and prior service contribution;

A statement of the method and of the assumptions, such as the interest rate, mortality rates, withdrawal rates, and retirement ages adopted for the valuation of the benefits payable . . . and adopted for the funding of the benefits . . .

The actuarial liability, as of the end of each calendar year, separately for retired employees and other persons receiving benefits under the plan, nonretired employees, former employees, and the total;

The amount of assets used in the actuarial valuation;

The amount, as of the end of each calendar year, of the unfunded actuarial liability; and

The contribution made during the year toward the cost of supplemental allowance . . . the amount of supplemental allowances paid during the year and the cumulative balance of such contributions less payments.

A copy of the trust agreement or insurance contract.

Information annually as to age, sex and service of employees of the company as a whole in the United States and as to the number of pensioners and amount of pensions by age groups, as the board may reasonably require, but in no event shall the company be required to furnish the board with any data not furnished by the company to the actuary.

Agreements rarely include a clause, such as the one cited below, in which the union agrees not to question the selection of the trustee or his investment policy.

- (52) The union hereby agrees that until on or after October 1, 1975, the union will not attempt to negotiate or raise any dispute with respect to the selection of the trustee or its investment policy.

The joint board does not normally determine the amount the employer must contribute to the pension plan. Occasionally, this is determined, as in multiemployer plans, at the time the pension agreement is negotiated. Usually, it is based on the recommendations of a qualified actuary selected by the employer. However, as illustrated by the following clause, some agreements permit union members of the board to challenge the actuary's determinations and establish machinery to resolve disagreements.

- (52) In the event that the union designated members of the joint pension board shall disagree with the determination of the actuary as to the level of contributions required to be made by the employer . . . the union designated members of the board shall have the right to demand a meeting with the actuary of the pension plan for the purpose of resolving any disputed matters in connection therewith. In the event that the respective parties are unable to resolve the disputed matters, such matters shall be finally resolved by arbitration in the following manner:

From among the Fellows of the Society of Actuaries, there shall be selected by the parties an impartial arbitrator who shall determine by arbitration an acceptable level of contributions required to be made by the employer in any one fiscal year to cover the cost of benefits accrued and currently accruing under the pension plan and the liquidation of accrued liability for past service. In the event that the parties fail within 10 days after written demand for arbitration hereunder, to select an actuary who qualifies under the above provisions, then the impartial arbitrator shall be selected by the superintendent of the Department of Insurance of the State of New York from among the Fellows of the Society of Actuaries. The decision of the impartial arbitrator shall be final and binding. . . .

Jurisdiction and Authority of the Joint Board

Agreements usually define clearly the authority and the jurisdiction of the board. In addition to being responsible for the interpretation and application of plan provisions, boards also have the authority to develop and implement procedures, rules, and regulations. However, they do not ordinarily become involved in the initial processing of pension applications. The board reviews the facts and makes the final determination of the benefits to be paid.

In some cases, however, the board's duties are not described in detail. For example:

- (53) All functions in connection with the administration of the plan shall be vested in a joint pension committee . . .

The pension committee shall from time to time cause checks to be drawn by the trustee . . .

The employer payroll department shall aid and assist the pension committee without cost in carrying out its duties . . .

The pension committee shall adopt rules and regulations appropriate to the performance of its duties hereunder not inconsistent with the terms of the plan . . .

Presumably under such agreements, the board, by implication, is responsible for all the duties involved in the operation of the plan, including determining procedures and rules, accepting and processing pension applications, determining benefit payments, and authorizing payments. Not all agreements specify that the board may receive assistance from the company, although it usually is permitted.

Most agreements limit the board's duties, responsibilities, and authority to those specifically listed. The pension application is filed with the company, which makes the initial determination as to the worker's eligibility for retirement benefits. Its determination, together with supporting data and the workers's application, then is submitted to the board which makes the final determination and authorizes the trustee

or insurer to make the appropriate pension payment. This procedure is explicitly or implicitly indicated by many agreements, as illustrated by the following clauses.

- (54) The company shall . . . accept and process all applications for pension payments.

Any information or data necessary to the pension board . . . for reviewing the administration of this pension plan shall be made available by the company to the pension board.

- (47) . . . if an employee desires to retire pursuant to any provision of the plan he shall make written application to the company on forms prescribed for this purpose. Such application shall state the employee's reason for requesting retirement and the date upon which the proposed retirement is to become effective . . .

The company shall furnish a secretary to the board . . . It will be the function of the secretary to: Receive, on behalf of the board, pension, supplemental allowance, and survivor benefit applications, notices of retirement, disputed cases and appeals, and to present such data to the board, together with any additional necessary information. . . .

- (55) Upon receipt of an application for a pension benefit (normal, early, disability, or vested deferred) filed by an employee and in all cases of automatic retirement, the company after securing appropriate information and reports with respect to social security and other benefits involved in the computation of pension or disability benefits under the agreement, will prepare the appropriate authorization for the monthly pension benefit payment. All copies (3) will be forwarded to the board of administration through the industrial relations division for review and approval.

Copies will be furnished to the employee, the company, and the trustee or insurance company.

Under some companywide plans, an application initially is submitted to and reviewed by a joint plant committee.

- (51) An employee or former employee desiring to apply for a pension or a supplemental allowance under this pension plan must make an application in writing. . . . The application must be filed with a committee consisting of the chairman of the plant shop committee (or any member of the plant shop committee of the local union of that plant appointed by the local union and the international union) and the labor relations supervisor (or the plant manager or his representative). . . . If the committee approves the application, they shall transmit the application with the recommendation to the board of administration. If the committee fails to agree, they shall transmit the application with a report in writing by the members of the committee.

Other agreements require pension applications to be submitted directly to the board for processing.

- (46) No eligible employee shall be entitled to receive any pension under the plan unless he shall make and file with the board written application therefor.

Even though some agreements permit the application addressed to the board to be accepted by the company, the company must give it to the board for processing, as in the following example:

- (49) . . . The company shall also accept all written communications from participating employees or their beneficiaries addressed to the committee and submit such communications to the committee for processing . . .

Regardless of who initially processes the pension application, final determination always is made by the joint board. Once it has approved the pension application, the board or its representative, usually the secretary, must either authorize the corporate trustee or insurance company to make the benefit payments or direct the company to authorize them to do so. An example of a clause covering benefit payment authorization is cited below.

- (47) It will be the function of the secretary to: Authorize the trustee to make, adjust, or suspend pension, supplemental allowance, and survivor benefit payments as directed by the board.

The trustee rarely may make the payment without authorization from the company or the board. A few agreements, however, permit this to be done under certain conditions—for example, when an arbitrator determines the amount of the pension payment and the joint board does not promptly submit to the trustee an authorization for payment.

- (56) Where the arbitrator's award determines the amount of the pension benefits to be awarded an employee, in the event that the board of administration shall not promptly execute an authorization to the trustee to make payment pursuant to the arbitrator's award, the original or a certified copy of the arbitrator's award shall constitute authority to the trustee to make payment in accord therewith.

One important function of joint administrative boards is to establish the procedure to settle a worker's complaint. The cause of the worker's dissatisfaction may relate to the determination of one of the factors relating to his pension eligibility (for example, years of credited service, age, and earnings) or to the board's final determination. The board may, therefore, grant a hearing to dissatisfied workers.³ In multiplant companies, the board may establish procedures for settling disputes at the plant level.

- (57) Except as otherwise provided in this plan, the powers of the pension board shall be limited to matters involving employees represented by the union and shall consist of the following: . . . to make findings of facts and determinations as to the rights of any employee applying for pension benefits, and to afford any such individual dissatisfied with such finding or determination the right to a hearing thereon.

- (47) It shall be the function of the board to: Establish appropriate procedures for reviewing and approving applications for pension.

Establish local procedures for the disposition of disputes arising with respect to an applicant's length of credited pension service, his age, or the amount or effective date of pension, supplemental allowance, or survivor benefit payments.

In some agreements joint boards serve solely as review boards, approving or disapproving company action and affording hearings to dissatisfied workers.

- (54) The pension board shall have the following duties and responsibilities insofar as they affect those employees in the bargaining unit:

Review and/or act upon disagreements arising under section 5, article II [section relating to credited service] and section 5, article III [section relating to retirement on or after age 68] hereof.

Review and/or act on disagreements with determinations made by the company as to amounts of pensions, within the limits herein provided, or method of payment to the party entitled to receive the same.

Review and act upon any disagreements with determinations made by the company as to the correct age of the employee arising under any provision of the plan.

Within the restrictions herein provided to make findings of fact and determinations as to the rights of any employee applying for retirement benefits, and to afford any such individual dissatisfied with any such finding or determination the right to a hearing thereon.

Frequently, the authority of subordinate plant pension committees established under companywide or multiplant pension plans also is defined in agreements.

- (58) Each committee shall have the following duties and powers with respect only to employees and retired employees at the company's works for which the committee is established:

To furnish the board with suggestions and advice concerning rules and procedures.

To find the facts and determine the rights of any employee, retired employee, or surviving spouse under the plan, and to afford such employee, retired employee or surviving spouse, or the company, if dissatisfied with any such finding of fact or determination, the right to a hearing; and promptly to certify to the board its findings and determination, or a report of disagreement, as the case may be.

To furnish the board with suggestions and advice concerning procedure for determining past service and future service and to determine, in the manner prescribed by the board, questions presented to it regarding these determinations.

To assist in the preparation and distribution of information and reports.

To make recommendations to the board with respect to payment of small benefit amounts, payment to incompetents and nonalienation of pensions and survivor benefits.

³ The adjustment of disputes is discussed on pp. 39-40.

Often, however, agreements simply indicate that the plant committee will perform duties assigned to it by the joint board.

- (44) There shall be established local pension committees, each consisting of four members, two of whom shall be appointed by the company (herein referred to as the company members), and two of whom shall be appointed by the union (herein referred to as the union members). Each local pension committee shall meet and conduct its business subject to rules prescribed by the joint board of administration, and the members thereof shall be appointed and removed in the manner prescribed . . . with respect to members of the joint board of administration. A local pension committee shall be established and shall meet and conduct its business in the vicinity of each of the company's divisions, and shall be concerned exclusively with the administration of the retirement benefits of employees and former employees of such division. The powers of the local pension committee shall consist of such powers of the joint board of administration as may from time to time be delegated to them by the board. Any dispute which is not resolved by a local pension committee shall be resolved by the board.

Although the joint administrative board cannot amend, modify, or revise the pension plan, the board or any member may submit recommendations to company or union negotiators. This is implicit in all agreements; it is, however, explicitly stated in many, as illustrated by the following clause:

- (59) The members of the committee; either jointly or singly, may make recommendations on proposed amendments to the plan from time to time. The impartial persons . . . shall not participate in such recommendations. The adoption of any such recommended amendments shall be in the province, and at the initiative, of the employer and the union in the normal process of collective bargaining.

Size and Composition of the Joint Board

Agreements stipulating a joint board always specify the number of union and employer representatives to serve on the board. Usually, the employer and the union have an equal number of representatives, but to assure representation of all important interest groups, the union occasionally has a greater number. However, the voting strength of both parties are equalized by voting rules described below.

- (53) All functions in connection with the administration of the plan shall be vested in a joint pension committee, which is hereby established, of six members, three of whom are to be appointed and certified to the union and the trustee by the employer, and the other three of whom are to be appointed and certified to the employer and the trustee by the administrative officer of the union.
- (57) . . . there shall be established a pension board of six members, two of whom shall be appointed by the company, two of whom shall be appointed by the New Hampshire Shoe Workers Union (of Nashua), and two of whom shall be appointed by the New Hampshire Shoe Workers Union of Manchester, which board shall have, with respect to employees represented by the union and included under this plan, the powers enumerated . . .

The total number of board members varied somewhat, but four or six are most frequent. It rarely consists of only two members, one representative of each party.

Sometimes, the agreements specify that management representatives must be officers or employees of the company.

- (60) The administration of the plan will be in charge of the pension committee . . . consisting of a representative appointed from among its members by each of the collective bargaining units . . . and a like number of representatives appointed by the company from among its officers . . .

Although agreements usually do not indicate the employment or occupational status of union representatives, a limited number indicated whom the union may or must appoint. For example, some agreements permit an international union's representative to be on the board, whereas others require it.

- (54) There shall be established a pension board consisting of six members, three of whom shall be appointed by the company (hereinafter referred to as the company members), and three of whom shall be appointed by the union—one of whom may be a representative of the international union (hereinafter referred to as the union members). The union and the company in addition to regular members of the board, may each appoint one alternate. The union members (other than a representative of the international union) and the union alternate member shall be employees of the company.

- (61) There shall be established an eligibility committee . . . The union members shall be as follows: Two from local 201 and one from the parent international union so that all parties to the contract are represented . . .

In some cases, as illustrated above, the union members, except for the international union representative, must be employees of the company and presumably covered by the plan. Some specifically require all union representatives to be appointed from among employees in the bargaining unit.

- (62) A joint company-union pension board . . . shall be established, consisting of six members . . . three of whom shall be appointed by the union from among the employees in the bargaining unit represented by the union. . . .

A few agreements stipulate that neither the company nor the union representative can be a plan participant.

- (49) To further administration of this plan, a pension committee (herein sometimes referred to as the "committee") shall be created consisting of two members. Of these, one shall be nominated by the company and the other by the union. Both members of the committee shall have alternates who shall be appointed in the same manner. In no event shall either member of the committee or his alternate be an employee covered by this plan.

Eligibility requirements other than employment or occupational status rarely are found in agreements. Occasionally a service requirement is specified. For example, one plan requires both company and union representatives, except for the international union representative, to have 5 years of credited service with the company. If there are no long-service qualified employees to serve on the board, this qualification is waived.

- (54) The members and the alternate members of the board appointed by the company and the members and alternate members of the board appointed by the union other than the representative of the international union, shall each be employees of the company with at least 5 years of continuous service with the company. Exception may be made if either the company or the union does not have qualified persons to serve on the board with the company . . .

As previously mentioned, a companywide multiplant pension plan frequently provides, in addition to the joint board of administration, plant pension committees which assist the joint board in performing its duties. Generally, neither the company nor the union representatives may serve on both the joint board and the joint plant committee. Occasionally, however, the joint board includes union members from each plant committee.

- (63) There shall be established a board of administration and for each individual unit, as designated herein, a pension committee consisting of three company members and three union members. One each of the company and the union members shall be designated as a board of administration member.

The board members of the pension committees, together with one additional member appointed by the international union and one additional member appointed by the corporation shall constitute the board of administration.

In some multiplant agreements, the international union or a designated officer appoints the union representative to the board.

- (51) There shall be established a board of administration consisting of six members, . . . three of whom shall be appointed by the international union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW) (hereinafter referred to as the union members) . . .

- (64) There shall be established a board of administration consisting of six members, three of whom shall be appointed by the company (hereinafter referred to as the company members), and three of whom shall be appointed by the national director of the union (hereinafter referred to as the union members), which board shall administer the benefit structure of the plan.

In addition to appointing regular board members, each party usually appoints one or more alternates who attend meetings that regular members cannot attend. As

specified in the following clause, the alternate member must meet the eligibility requirements of a regular member. When attending a meeting, he has the voting rights of the regular member.

- (54) The union and the company, in addition to the regular members of the board, may each appoint one (1) alternate. The union members (other than a representative of the international union) and the union alternate member shall be employees of the company. . . . The company alternate member may act in the absence of one of the regular company members, and the union alternate member may act in the absence of one of the regular union members.

Under some agreements regular and alternate members are appointed at the same time, as provided in the clause cited above. Under other agreements, they may be appointed when needed.

- (45) If a member of the board shall be absent or incapacitated at a time when a meeting of the board is deemed necessary or desirable, the employer or the union, whichever shall have appointed such member, shall appoint an alternate who shall attend such meeting in the place of such member and shall be deemed a member for the purposes of such meeting.

Usually, the term of office for representatives on the joint board is indefinite, as illustrated by the following clause:

- (60) The administration of the plan will be in charge of the pension committee . . . each member shall serve until his successor shall have been appointed.

They can, however, resign or be removed from the board by the party appointing them.

- (54) Either the company or the union at any time may remove a member appointed by it, and may appoint a member to fill any vacancy among the members appointed by it.
- (45) A member may resign at any time by written notice filed with the secretary of the board. An employer member of the board may be removed at any time by the employer and a union member of the board may be removed at any time by the union. A union member shall cease to be a member if and when he ceases to be an employee (as defined in the plan) who is represented by the union.

Where board members serve for a certain number of years, their term of office is often equal to the term of the basic agreement; in others, it is for a shorter duration.

- (53) Appointments of the pension committee and the sub-committee are to be made for a period of 2 years. Reappointments are to be made at the end of each 2-year period.

Another provided 1-year terms under a 3-year agreement.

- (65) The general administration of the plan shall be placed in the pension plan committee. The committee shall consist of three members appointed by the president of the company and three members appointed by the executive committee of the . . . union annually in the month of April, to serve during the ensuing plan year commencing May 1 and until their successors are duly appointed. Vacancies shall be filled by the agency which appointed the member of the committee whose place is vacant.

Although the term of office for each board member is usually the same, in some instances, members initially appointed serve staggered terms.

- (52) Each party shall designate members for initial terms of 1, 2, and 3 years respectively, and thereafter for terms of 3 years. Each party will be obligated to fill any vacancy among its designated members within 30 days.

The Impartial Chairman or Umpire. Many agreements required that an impartial person be appointed to serve as permanent chairman of the board. As distinguished from an arbitrator selected to rule on disputes, he may participate in the administration of the plan. Nonetheless, his most important function is the role of impartial umpire, breaking a tie vote or rendering a decision when the board members are unable to agree.

- (66) The impartial chairman . . . will vote only in case of a failure of the corporation and union by vote through their representatives on the board to agree upon a matter which is properly before the board . . .

The impartial chairman's presence at a meeting usually may not be counted in determining whether there is a quorum.

- (67) . . . To constitute a quorum for the transaction of business, the presence of four members of the board shall be required . . . The impartial chairman will not be counted for the purpose of a quorum . . .

He sometimes is prohibited from voting on issues involving recommendations for changes in plan provisions, a matter left entirely to the discretion of the negotiating parties.

- (59) The members of the committee, either jointly or singly, may make recommendations on proposed amendments to the plan from time to time. The impartial persons . . . shall not participate in such recommendations.

Under some agreements, the chairman is selected by the company and the union. Under others, he is chosen by the members of the board.

- (66) The corporation and the union shall mutually agree upon and select an impartial chairman, who shall serve until requested in writing to resign by three board members.

- (62) The members of the central board, by unanimous vote, shall appoint an impartial umpire who shall act as a member and chairman of the board . . .

Under the following provision, the chairman of the appeals (grievance) board, established under the basic collective bargaining agreement, also may serve as the impartial chairman.

- (51) . . . the corporation members and union members may by agreement request the impartial chairman of the appeal board to serve as the impartial chairman of the board of administration.

Permanent impartial chairmen or umpires usually are appointed for an indefinite period, subject to removal by a certain number of board members (clause 51, above). Some agreements, however, limit their term of office to a certain period but permit them to be reappointed.

- (68) An impartial chairman may be selected by mutual agreement of the company and union members. He shall serve as such for a period of 1 year following his selection unless requested to resign by four members of the board. He shall continue to serve as such from year to year unless at the expiration of any year he shall have been requested to resign by three members of the board, in which event his successor may be selected as hereinabove provided.

Where the agreement does not provide for a permanent chairman, the board may select a neutral on an ad hoc basis who casts the deciding vote.

- (60) In the event of a tie vote on any matter properly before the pension committee, the members of the pension committee shall name a disinterested person to cast the deciding vote.

In some agreements, the chairmanship is rotated between company and union representatives.

- (54) The union and the company shall alternate the chairmanship unless otherwise agreed on.

Few agreements require the appointment of a vice-chairman. Those that do, however, prohibited both the chairman and the vice-chairman to be of the same party, as illustrated in clause 45 (page 24).

Many agreements provide for the selection of an impartial umpire or arbitrator to decide disputes arising out of board operations. In these instances, the impartial umpire functions as an arbitrator, similar in most respects to arbitrators acting on grievance disputes.

- (54) The company and the union agree that a single impartial umpire will be appointed to serve on a year-to-year basis for the term of this pension agreement, for the purpose of arbitrating and determining disputes properly referred to him thereunder. He shall be agreed upon by the company and the union, and shall be removable at the end of each yearly period upon either party serving 30 days' prior notice on the other party of its desire to terminate the services of the impartial umpire. In the event they are unable to agree upon such impartial umpire the party desiring the arbitration shall notify the director of the Federal Mediation and Conciliation Service who shall name an impartial umpire in accordance with the procedure of the U. S. Conciliation Service.

Impartial umpire so appointed shall serve only for the purpose of determining the specific issue submitted to him. Issues resolved by the vote of the impartial umpire shall be binding and conclusive upon all parties hereto.

- (44) In the event the board of administration cannot resolve the dispute, then an impartial chairman shall be selected by mutual agreement of the company and union members of the board. The impartial chairman shall vote only in the event of a failure of the board of administration to resolve the difference.

Where the impartial umpire is not designated by name, he may be selected from among a panel of arbitrators, as in the following agreement.

- (56) A list of five arbitrators will be agreed upon by the parties for the term of this agreement one of whom will be selected by mutual agreement at the time of an arbitration. Any two members of the board shall be entitled to remove the name of an arbitrator from the above list of five arbitrators by written notice filed 10 days in advance with the board. In such event, the board shall promptly agree upon a replacement for the arbitrator whose name shall have been so removed from the list of arbitrators. . . .

In other agreements, the selection is left to an outside agency, such as the American Arbitration Association, while a few are silent on this matter.

- (57) . . . If the pension board cannot come to a decision on any issue, the issue shall be submitted to arbitration before a group consisting of the pension board (each member having the votes specified . . .) and an impartial umpire who shall have one vote, to be chosen under the rules of the American Arbitration Association or as otherwise mutually agreed. A majority vote of the arbitration group shall be binding on all parties.

In case of a deadlock over the appointment of an arbitrator, the selection also may be made by the Federal Mediation and Conciliation Service, a district court, or by the permanent arbitrator serving under the basic collective bargaining agreement.

- (50) Manner of acting in the event of deadlock.

In the event of a deadlock of the board in any matter pertaining to the administration of the plan, the board shall agree on an impartial umpire to decide such dispute, and in the event of failure to agree upon such an umpire within a reasonable time, an impartial umpire to decide such dispute shall be appointed by the District Court of the United States for the Eastern District of Wisconsin.

- (49) . . . Should the committee fail to agree upon and select such neutral person within 2 weeks of its inability to obtain a unanimous vote, then a neutral person shall be appointed by the Director of the Federal Mediation and Conciliation Service, or its duly authorized representative, upon request of either member of the committee.

- (62) In the event that the members of the board are unable to agree upon a chairman, or a replacement of a chairman, . . . the arbitrator provided for under the terms of the existing labor agreement between the parties shall serve as board chairman.

Before the board submits a dispute to an arbitrator, some agreements permit the company and the international union representatives who are not board members to attempt a settlement.

- (54) Before any issue shall go to arbitration as provided herein, the international union office shall be notified. The representative of the international union may then meet with the director of industrial relations, or a duly authorized representative, and attempt to settle this issue. In the event same is not settled within 30 days, either party may refer the issue to the impartial umpire for final determination.

The Chairman. Instead of a neutral, many boards select one of their members as chairman. In that case, he has all the rights and privileges, including voting rights, of the other members.

- (54) The board shall elect one of its members as chairman who shall serve for a period of 1 year and who shall have the right to vote on all questions presented to the board.

- (45) The board shall appoint annually from among its membership a chairman and a vice-chairman, one of whom shall be a union member and the other of whom shall be an employer member, and shall appoint a secretary.

In a few cases the company or its representatives designates one of the latter as chairman.

- (69) The corporation members shall appoint from their number a person to act as chairman who shall serve at the pleasure of the corporation members.

The Secretary. Frequently, agreements include a clause pertaining to the selection of the secretary of the joint board. Some require him to be a member of the board; others permit the board to employ someone to fill the position.

- (56) The company and the union shall designate one of their appointees to act as chief representative for the purpose of receiving forms, notices, and other information required under the plan from the secretary who shall be a company member of the board of administration, and delivery of any such form, notice or other information to such chief representative shall constitute delivery to both appointees of the company or the union, as the case may be. The company and the union shall notify each other in writing as to the selection of the chief representative.
- (60) The pension committee may appoint a secretary who may, but need not, be a member of the pension committee, and may avail themselves of such agents and such clerical and other services and such counsel, accountants and actuaries as may be made available to them by the company for the purpose of administering the plan.

Some agreements prohibit a plan participant from serving as secretary.

- (54) The board shall also elect a secretary who may or may not be a member of the board but who shall be an employee of the company outside the pension group.

Others require the company to furnish a secretary to the board.

- (47) The company shall furnish a secretary to the board. Such secretary shall not be a board member, nor will the secretary have any right to vote.

Occasionally, agreements designate a management or union representative as secretary or secretary-treasurer, and a representative of the other party as chairman.

- (50) The officers of the board shall consist of a chairman who shall be an employee member and a secretary-treasurer who shall be an employer member. . . .

If the secretary is a board member, he has all the rights and privileges of the other members. On the other hand, if he is not a board member, he does not have any voting rights. Despite this, his position is often an important one because, under many agreements, he is responsible for the initial processing of benefit applications, for recommending their approval or disapproval to the board, and for related administrative matters.

- (62) The duties of the secretary shall include the following:

To receive on behalf of, and at the next regular meeting to distribute to the members of the board, the information to be furnished to the board by the company as hereinafter provided.

To receive on behalf of, and at the next regular meeting to distribute to the members of the board, exhibit P-3, notice of Deferred Vested Pension Benefit, of any employee who has vested pension benefit rights.

To receive on behalf of, and at the next regular meeting to distribute to the members of the board, a copy of any notice by the company to an employee of his normal or postponed retirement date.

To receive on behalf of the board any pension applications concerning any member(s) of the bargaining unit represented by the union for review and disposition at the next regular board meeting.

To receive and present to the board at the next regular meeting, employee requests for review which are appealed to the board for final determination, as herein provided.

To secure additional information requested by the board for the review and disposition of cases presented to it.

To notify employees and authorize the trustee to make pension payments in the detailed amounts as directed by the board.

To take the official minutes and keep all official board records, such minutes being subject to approval by the members of the board, sufficient copies of which will be furnished to the members of the board. "Sufficient" shall mean six copies for the three members appointed by each party.

To notify the members, prior to any monthly meeting date, when there is business to be considered by the board.

To notify the chairman, at the direction of the board, of any meeting at which a tie vote is to be resolved.

To perform such other incidental duties as the board, within its powers, directs.

Clerical and Technical Assistance. The joint board usually arranges for whatever clerical assistance or other types of assistance it deems necessary. Usually, this assistance is furnished by the employer.

- (51) The board of administration shall . . . arrange with the corporation for office space, equipment and clerical and other assistance as may be reasonably necessary for performing the duties of the board, which the corporation will furnish and for which it shall be reasonably compensated from the pension fund, with due regard to economical administration of the plan.

Some agreements explicitly give the board the right to employ an actuary, an attorney, and other advisers.

- (49) The committee shall appoint an actuary to serve as its technical advisor in the operation of the plan . . .

It may appoint such agents, advisors or nominees or employ such counsel as it may deem necessary for the administration of this plan. Such appointees need not be members of the committee.

- (70) As of November 4th, 1960, and thereafter once every 3 years, the board of administration shall select an actuary having on its staff a member qualified by Fellowship in the Society of Actuaries to make an actuarial revaluation of the pension plan. The actuary shall submit to the board of administration, the company and the union, a report on the operation of the pension plan in relation to estimated costs.

Other agreements indicate that board members representing the union are entitled to counsel from officers of the union.

- (45) The union members of the board shall be entitled to counsel from officers of the union.

Still others specifically permit the attendance of company and union advisers at board meetings.

- (55) Either company or the union members may have present at any meeting of the board nonmember advisers (not over two) who may participate in such meetings without vote, but in such cases, the other members of the board shall be advised of the names of such advisers at least 3 days in advance.

Bonding. Because board members and their staff rarely, if ever, handle funds set aside for the payment of benefits, bonding of these individuals seldom is referred to in agreements, except to indicate that it is not required.

- (48) No member of the retirement board shall receive any compensation for his services as such, and no bond or other security shall be required of him in such capacity in any jurisdiction.

Under a few agreements requiring bonding, the employer or the fund must pay the premium.⁴

- (60) The members of the pension committee shall serve without bond unless the company shall require otherwise, in which event the company shall pay the premium thereon.

- (50) The administration board shall provide for fidelity bonds, the cost of which shall be paid out of trust funds, in such amounts as they may determine, for all persons who shall be authorized to withdraw moneys from the trusts.

Meetings. Procedure to be followed by the board in transacting board business is not prescribed in the agreements. The frequency of board meetings usually is left to the discretion of the board.

- (48) The retirement board shall hold meetings upon such notice, at such place or places, and at such time or times as it may from time to time determine.

Many agreements require the board to meet at least once a month.

- (46) The board shall meet once each month, or more often if mutually agreed upon by the board, for the transaction of necessary business.

Some permit the board to meet even though there is no official business to transact.

- (62) Although there is no official business to be considered, a regular monthly meeting of the board can still be held, or a special meeting of the board may be called by unanimous vote of the members.

On the other hand, a limited number of agreements, while permitting the board to meet whenever necessary, prohibit it from meeting more than once a month.

⁴ Where bonding is required pursuant to the requirements of the Welfare and Pension Plans Disclosure Act, the cost would ordinarily be paid by the pension fund or the employer.

- (54) The board shall meet at such time and for such periods for the transaction of necessary business as may be mutually agreed upon by the members, but not more frequently than once each month. The board shall meet at reasonable times upon the signed request of three members filed with the secretary of the board.

Few agreements indicate the day of the month on which the board must meet. Even in these, the board has the option of agreeing to meet on another day, as illustrated in the following clause:

- (47) The board shall meet on the third Monday of each month, unless otherwise agreed by the board, in the city of Chicago at quarters to be furnished by the company.

Infrequently, agreements restrict the duration of the meetings.

- (43) The company and union representatives on the board shall meet once a month for a period not to exceed 1 day, unless a meeting is called by mutual agreement of a majority of the company and union representatives on the board and it is agreed that such meetings will be limited to those matters that require extraordinary meetings of such board.

An occasional agreement will require the board to have an annual meeting at a certain time during the year. Other meetings must be held at specified times or whenever it is deemed necessary by some of the board members or officers of the board. In addition, some agreements permit the board to act without a meeting, as illustrated below:

- (50) The regular annual meeting of the board shall be held during the month of January of each year at a date fixed by the board. The chairman, the secretary-treasurer, or any two members may call a meeting at any time by giving at least 5 days' notice of the time and place thereof to each board member. Such notices may be delivered in person, by mail or by telegram. Meetings may also be held at any time without notice if all the board members consent thereto. In the event the members concur in writing upon any proposition, no meeting thereon need be held.

The administration board shall keep true and accurate minutes of all their transactions at meetings. Action taken by the administration board on any proposition, without a meeting, shall also be entered into said records and minutes.

- (53) Action of the pension committee shall be by affirmative vote of not less than four of the six members at a proper meeting of the committee or the pension committee may act by the written consent of not less than four members although not formally convened.

Voting and Quorum Requirements. Most agreements specify the quorum required to transact board business. With few exceptions, an equal number of company and union-appointed members has to be present.

- (50) A quorum of the board for the transaction of business, except as otherwise specifically provided herein, shall consist of at least two employer members and two employee members.

A few agreements, however, simply require that a majority of members of the committee be present.

- (59) A majority of the committee shall constitute a quorum for the transaction of business, and all action by the committee shall be upon the vote of at least four of the six members.

Voting at meetings held by boards operating under such a rule may be overwhelmingly in favor of either the company or the union, depending on the number of members of each party present. To prevent this the boards usually follow rules equalizing the voting strength of both sides or in a few instances, allow the members present to vote the proxies of absent members.

Voting rules frequently are designed to give company and union representatives on the joint board equal voting strength, even though the number of representatives each party has on the board or in attendance at a meeting may differ. Under some agreements, each party has a single vote (unit rule) or the total votes assigned each party may be divided proportionately among the members present.

(56) . . . At all meetings of the board, the members present appointed by the company shall have, in the aggregate, a total of one vote to be cast as a block vote on behalf of the company and the members present appointed by the union shall have, in the aggregate, a total of one vote to be cast as a block vote on behalf of the union.

(44) At all meetings of the board, the company members shall have a total of three votes and the union members shall have a total of three votes, the vote of any absent member being divided equally between the members present appointed by the same party.

Equal voting strength also may be achieved by giving each representative the number of votes inversely proportionate to the number of members of his party on the board. If, as in the following example, there are twice as many union representatives as management representatives, each of the former may be given one vote and each of the latter two votes.

(57) A quorum shall consist of one member appointed by each union and one member appointed by the company. Each member appointed by the union shall have one vote, and each member appointed by the company shall have two votes. Proxy votes may be cast for those not in attendance. Decisions of the pension board shall be by a majority of the votes cast.

Under most agreements board decisions are made by the majority present and voting. By contrast, in agreements requiring block or unit voting, each party's decision is determined by the majority of its members. This is also true of a few agreements under which each side has an equal number of votes, but decisions are based on a concurrent vote by a majority of the members representing each party. The following clause, for example, is taken from a plan with a six-member board:

(65) All resolutions or other actions taken by the committee shall be by concurrent vote of at least four of its members, two of whom shall be company appointees and two of whom shall be union appointees.

In contracts not providing for alternates, the vote of an absent member usually is divided among present members of his party.

(51) At all meetings of the board the corporation members shall have a total of three votes and the union members shall have a total of three votes; the votes of any absent member being divided equally between the members present, appointed by the same party. Decisions of the board shall be by a majority of the votes cast.

An occasional agreement permits an absent member to vote by proxy.

(57) Each member appointed by the union shall have one vote, and each member appointed by the company shall have two votes. Proxy votes may be cast for those not in attendance . . .

Compensation and Expenses. With few exceptions, board members serve without compensation from the pension fund.

(58) The company and union members shall serve without compensation from the pension fund. The company and the unions each shall be responsible for the fees and expenses of any physician, expert or advisor selected by their members. Fees and expenses of physicians, experts or advisors selected by the board or a committee shall be paid out of the pension fund.

Agreements sometimes require that union members of the board, who lose worktime to attend board meetings, be compensated by the company at their regular rate of pay.

(54) The company agrees to pay to each of its employees who are members of the board representing the union for time lost from regular company employment while engaged in meetings of the pension board 100 percent of his average hourly earnings.

(43) For their service on the board the union representatives shall receive from the company such compensation as they would have received during their regular day's work at their occupational step rates.

Some plans limit the number of hours for which members will be compensated by the company.

- (62) The company shall compensate each union appointee for work time lost in any regular meeting of the local board, as herein provided, up to but not in excess of 2 hours per month, and, in the event of a special meeting requested by the company members, the company shall compensate each union appointee for work time lost in such special meeting, as herein provided, up to but not in excess of 2 hours per month, in each case computed on the same basis as pay for steward grievance time.

On the other hand, a few agreements explicitly stated that neither the company nor the fund would pay union members for serving as board members.

- (71) All company and union members shall be regularly employed by the company. No compensation for the time spent in performing their duties as members of the board shall be paid from the trust fund, and under no circumstances shall the company be obligated to pay for the time so spent by the union members.

Fees and expenses of the impartial chairman generally are shared equally by the company and the union.

- (72) The fees and expenses of the impartial chairman will be paid one-half by the company and one-half by the union . . .

Under a few agreements compensation for the impartial chairman depends on the status of the worker. In the cases involving active workers, the company pays half and the union pays half; for retired workers, the fund pays the full amount of the chairman's remuneration.

- (58) The company and the unions shall share equally the fees and expenses of the impartial chairman in cases involving employes. The fees and expenses of the impartial chairman in cases involving retired employees shall be paid out of the pension fund.

Sometimes the fund pays all fees and expenses of the impartial chairman.

- (46) The fees and expenses of the impartial chairman will be paid out of the trust fund.

In a few instances, the company has the option of paying the chairman's fee or having the fund pay it.

- (71) The expenses and fees of the impartial chairman approved by the board may be paid directly by the company or upon its option and direction by the trustee from the trust fund.

Most plans prohibit payment by the fund for salaries of individual board members.

- (55) The compensation and expenses of the company members will be paid by the company, and the compensation and expenses of the union members will be paid by the union, and no part of such compensation or expenses will be paid from any fund established for the purpose of financing benefits under this agreement.

Expenses of plans with joint boards frequently are paid by the corporate trustee from the trust fund, as illustrated by the following clause:

- (64) The board shall have such powers as are necessary for proper administration of the plan . . .
. . . and to authorize payment by the trustee from the pension fund of expenses necessary for the proper administration of the plan.

In a few agreements, however, the company pays the expenses of the board.

- (52) . . . The employer also agrees to pay the expenses of the pension plan.
(65) The members of the committee shall serve without compensation and its necessary expenses shall be paid by the company.

Records. The joint board usually must keep records of its meetings and activities. This is explicitly required by some agreements.

- (45) The board shall cause records to be kept of all its meetings and actions, the method of keeping and the custody of such records to be determined by the board from time to time.

However, keeping records pertaining to the operation of the plan, including data required in its administration, is usually the responsibility of the company.

- (52) The employer shall, at its own expense, maintain all records in connection with the administration of pension plan and trust fund and such records shall not be destroyed without the prior consent of the joint pension board. Such records shall be available to the joint pension board and, at such time as the employer ceases to perform its function as provided above, such records shall be turned over to the joint pension board who shall thereafter maintain them and any cost incurred in so doing shall be a charge against the trust fund.
- (49) The company shall keep all records and compile all data with reference to or required under the plan. Such records and data shall be submitted to either member of the committee upon request.

The committee shall have the right at all times to call for additional information concerning any or all applications forwarded to the committee and to examine all records or data pertaining to the plan.

This requirement is implicit in other agreements under which the company is to submit to the board periodical reports concerning the operation of the plan, and whatever data the board needs to act on benefit applications.

Occasionally, however, the board also maintains the records pertaining to the operation of the plan.

- (65) The committee shall cause to be maintained accounts and records reflecting the administration of the plan, and such accounts and records shall be subject to audit at the close of each plan year by the company or by qualified accountants appointed by the committee.

Procedures for Final Determination of Pension Claims

The decisions of jointly administered boards usually can be appealed by dissatisfied workers. In most agreements, however, the use of the grievance procedure established in the basic collective bargaining agreement is ruled out; instead, the boards usually are required to develop a separate review procedure.

- (72) As soon as possible after the effective date of this agreement, the union and company members of the board shall work out matters such as but not limited to: (1) The procedures for reviewing applications for pensions; (2) the handling of complaints regarding the determination of age, service credits, and computation of benefits; (3) procedures for making appeals to the board; (4) means of verifying, in disputed cases, service credits to which an employee is entitled under the plan; (5) how disputes over total and permanent disability claims will be handled; (6) how benefit payments will be authorized by the board. All such matters shall be consistent with all other provisions of the plan and this agreement. The working out of the procedures outlined in this section shall be the responsibility of the company and union members of the board, and the impartial chairman shall have no power to decide any question with respect thereto.

In some agreements, the scope of the review procedure is described in detail:

- (44) If any difference shall properly arise under the terms of this plan concerning a participant about (a) the age of the participant, (b) the date of the beginning of his credited service, (c) the amount of his credited service, (d) the amount of the deductions from his pension, or (e) the amount of pension to which he claims to be entitled, the participant shall prepare a written statement which he shall sign in duplicate of all facts and circumstances concerning the matter and submit it to the board of administration with a request for settlement of the difference. The decision of the majority of the board shall be binding on the company, the union and the participant involved.
- (73) The union and company members of the board shall, from time to time, work out such matters as: (1) The procedures for reviewing applications for pensions; (2) the handling of complaints regarding the determination of age, service credits and computations of benefits; (3) procedures for making appeals to the board; (4) means of verifying service credits to which employees are entitled under the plan; (5) methods of furnishing information to employees regarding past and future service credits; (6) how disputes over total and permanent disability claims will be handled, including disputes, if any, with respect to whether a disabled pensioner engages in gainful employment; . . .
- (74) If any dispute should arise concerning an employee or a pensioner with respect to:
 - (a) The number of years of his credited service;
 - (b) His age;
 - (c) The amount of monthly benefit payable to him; or
 - (d) His inability to perform work assigned to him . . .

such dispute may be referred to the board by the employee or pensioner, or by the union on his behalf.

Some agreements permit certain pension disputes to be brought under the grievance procedure of the collective bargaining agreement.

- (65) The committee shall have the exclusive right to determine any question arising in connection with the interpretation, application, or administration of the plan; and its decision or action in respect thereof shall be conclusive and binding upon any and all participants, employees, and pensioners: Provided, however, that in respect of the specific matters of service, accredited service, and normal annual earnings any union employee shall have the right to have the question determined under the grievance procedure provisions of the appropriate union agreement and a nonunion employee shall have the right to have the question determined by the appeal board under its established procedure. Any such determination shall supersede the decision of the committee in regard to the matter so brought into question.

Disability Claims. Most agreements require the board to get the advice of a physician before deciding a claim for permanent and total disability benefits.

- (75) The board of administration shall have the following powers and duties: . . . To make determinations as to the rights of any employees, including all questions of . . . existence of total and permanent disability . . .

An employee shall be deemed to be totally and permanently disabled when the employee is found by the board of administration on the basis of a report by a physician appointed by the board of administration to be wholly and permanently prevented from engaging in any occupation or employment for wage or profit as a result of injury or disease, either occupational or nonoccupational in cause . . .

Others go further by stating that the physician appointed by the board determines whether the worker is permanently and totally disabled or that his opinion is binding on the board.

- (63) In any case where the board is required to make a determination with respect to the total and permanent disability of any employee applying for, or of any retired employee during total disability retirement, the employee first shall be required to submit to an examination by a competent physician or physicians selected by the corporation and the report of such examination shall be filed with the board. The board shall appoint a second physician or physicians to make such further examination as may seem desirable to determine his physical or mental condition, and the opinion of such physician or physicians shall decide the question and be binding upon the board, which shall thereupon make its findings in accordance with such opinion. An employee or retired employee who shall refuse to submit to any physical examination properly requested under the pension agreement, shall not be placed or continued on total and permanent disability retirement.

- (47) Since the question whether an employee is totally and permanently disabled is not made subject to arbitration nor to determination by the board, no arbitrator or the board shall undertake to make a determination regarding the same. Such question shall be determined in the manner hereinafter set forth.

Should disagreement arise as to whether an employee is totally and permanently disabled and should the disagreement not be resolved on the basis of the examination of the physician appointed by the company, the board shall appoint a physician or a clinic to examine the employee and render a decisive medical opinion concerning the totality and permanence of disability involved. Such physician shall be a member of the Medical Society nearest the employee's place of employment. The fees and expenses of such physician or clinic shall be borne equally by the company and the union. Should it be the judgment of such physician or clinic that at the time of making his examination it was too early to determine definitely whether the disability is total and permanent, the decision shall be postponed until the physician or clinic considers that sufficient time has elapsed to make such definite determination.

- (58) An employee shall be deemed to be permanently and totally disabled only if the board shall determine, on the basis of the report of the appropriate committee and on the basis of medical evidence that:

1. He has been totally disabled by bodily injury or illness so as to be prevented there-by from engaging in any occupation or employment for remuneration or profit for the company and
2. Such disability will be permanent and continuous throughout the remainder of his life.

An employee applying for a disability retirement pension shall be required by the appropriate committee to submit to an examination or examinations, by a competent physician or physicians selected by the committee, as may be necessary to determine (1) whether the employee is permanently and totally disabled, and (2) the date such disability, if any, commenced. Any two members of the committee may require the employee to submit to an examination by a physician of their choice, who shall consult with the physician or physicians appointed by the committee before the committee takes final action.

The committee shall promptly submit to the board a report of its recommendation or disagreement, as the case may be, such report to include in full the reports of the examining physician or physicians. On the basis of such reports, the board shall make its determination; provided, however, that it may direct the committee to procure, at a time specified, such further medical examination of the employee as in its judgment the circumstances of the case may require.

Finality of Decisions. Decisions of the joint board or of the impartial chairman or umpire are final and binding; they are not subject to challenge by the company or the union.

- (43) Decisions of the board shall be by a majority of the votes cast, shall not be subject to review by the company or the union and shall be conclusive and binding on all employees.

Finality of board decisions is emphasized further in a few agreements by a union pledge to discourage legal actions.

- (66) There shall be no appeal from any ruling by the board which is within its authority. Each such ruling shall be final and binding on the union and its members, the employee or employees involved and on the corporation.

The union will discourage any attempt of its members and will not encourage or cooperate with any of its members, in any appeal to any court or administrative board or agency from a ruling of the board of administration.

Chapter IV. Administrative Procedures in Multiemployer Health and Insurance Plans

About 85 percent of the multiemployer collective bargaining agreements studied specified that the health and welfare program be administered jointly by the company and union. The high proportion of multiemployer programs that are jointly administered can be attributed to subsection 302(c)(5)(B) of the Labor-Management Relations (Taft-Hartley) Act, 1947, which requires equal union and employer representation in the management of a health, welfare, or pension program if an employer contributes to a trust fund established after January 1, 1946; those established before then are exempt from this subsection of the act. Therefore, some plans (14 in the sample, chiefly in the apparel industry) that were in existence before that date continue to be administered solely by the union. Thirteen other multiemployer agreements required the employer to provide a health and welfare plan for eligible employees, but allow each employer to establish and administer his own plan.

Generally, the joint board has very broad powers, including the determination of the types and amounts of health and welfare benefits the fund will provide eligible employees; the selection of the medium for funding; the designation of funding methods; and the responsibility for day-to-day administration. In addition, the board often can negotiate reciprocal agreements with other funds to permit employees to move from its jurisdiction to that of another fund, and vice versa, without loss of coverage. These reciprocal agreements are particularly important in industries with high turnover rates such as construction and motor transportation.

The administration of multiemployer benefit plans requires formal rules of procedure, particularly since the funds are the responsibility of groups whose interests often differ. Moreover, procedures for the settlement of disputes between members of the board by neutrals are required by the Labor-Management Relations Act (LMRA).

The composition, powers, and functions of the board of trustees, as provided in the collective bargaining agreements and the trust agreements, are described in this chapter. First, clauses establishing the program under the collective bargaining agreement and specifying the type of administration are considered. Next, the composition of boards, methods of selection and removal of members of the board, and voting rules are examined. This is followed by illustrative clauses showing the methods used to select an arbitrator when members of the board are deadlocked.

Establishment of the Health and Insurance Program

The amount of employer contributions and type of administration are specified in the collective bargaining agreement. Generally, the agreement stipulates that the employer's contribution will be paid into a trust fund to be administered by the board of trustees according to the trust agreement.

- (76) . . . The employer shall contribute \$25 per month on each employee to the retail clerks union and employers health and welfare trust . . .

Such contributions to be used to provide health and welfare benefits as determined by the trustees as provided in the retail clerks union and employers health and welfare trust agreement.

These agreements are usually an implicit or explicit part of the collective bargaining agreement. One agreement made this explicit in the following words:

- (77) The welfare fund shall be administered pursuant to an agreement and declaration of trust administered jointly by an equal number of representatives of the employers and employees, which agreement and declaration of trust shall conform to all requirements of law. A copy of the agreement and declaration of trust, together with any amendments thereto, shall be considered as part of this agreement as though set forth here at length.

A few multiemployer agreements that do not stipulate the establishment of a trust fund require the employers to provide specified health and welfare benefits through an insurance carrier. In such cases, the selection of the carrier and other administrative functions is the responsibility of the employers.

- (78) The association shall secure for and on behalf of the employers, a group policy of insurance which shall provide health and welfare benefits for all employees under this contract, and for their eligible dependents, as set forth in the sections below.
- (79) The association and its member shoe companies will wholly and solely activate and pay for the insurance and hospitalization benefits and will solely administer same in conjunction with the insurance company underwriting the insurance and hospitalization benefits mentioned in section 1 of this article.

Composition of the Board

Joint boards usually have an equal number of union and employer trustees. There are usually 4 to 12 trustees, but the number may range from 2 to 20 or more.

- (80) The trustees of said insurance fund shall be two persons designated by the wrecking contractors association of the City of New York, Inc., and two persons designated by the union.
- (81) The trustees of this trust who shall administer this trust and the fund created pursuant hereto shall be eight in number; four of the trustees shall be selected from representatives of the employer trustors and four shall be selected from representatives of the trustors who are labor organizations.

Membership usually is not limited to a specified term; trustees serve until removed by the party that appointed them or until they leave office.

- (82) Each trustee shall serve until his death, resignation or removal from office.

A trustee may resign at any time by serving written notice of such resignation upon the chairman and cochairman of the board of trustees, and upon the employers and the union, at least 30 days prior to the date on which such resignation is to be effective.

Any employer trustee may be removed from office at any time, for any reason, by an instrument in writing signed by the employers, and served on the trustee, the chairman and cochairman of the board of trustees and the union. Any employee trustee may be removed from office at any time, for any reason, by an instrument in writing signed by the executive officer of the union, bearing the union seal and served on the trustee, the chairman and cochairman of the board of trustees and the employers.

Under a few programs employer trustees serve at the pleasure of the employer group, but union trustees serve a specified period. In the following example, the employee trustees' terms of office are staggered probably because the union wanted to maintain continuity on the board, although the employer trustees serve for indefinite terms.

- (83) Each employer trustee shall serve as such trustee until he shall die, become incapable of acting hereunder, resign or be removed as herein provided.

The initial employee trustees shall serve the following terms: . . . until March 31, 1952; . . . until March 31, 1953; . . . until March 31, 1954. Thereafter, each successor employee trustee shall serve for a term of 3 years. A successor trustee appointed to succeed an employee trustee or successor employee trustee before the expiration of his term shall be appointed for the balance of the unexpired term of said trustee. Each employee trustee shall continue to serve after the expiration of his term until his successor shall be duly appointed and shall accept his trust hereunder in the event such successor shall not have been duly appointed and have accepted this trust on the expiration of his term. There shall be no prohibition of the reappointment of an employee trustee on the expiration of his term.

Usually, a trustee can be removed at anytime by the party that appointed him.

- (81) Any trustee may be removed at any time by the party by whom he was designated, effective upon the giving of written notice by such party to the board. A trustee may resign at any time upon giving similar written notice.

If, however, he has committed a breach of trust, he could, in some plans, be removed by legal action initiated by the board as well as by the appointing party.

- (83) A trustee may be removed for violation of his fiduciary obligations under this declaration of trust, or other good legal grounds by action in a court of appropriate jurisdiction initiated by any two trustees or by the party which appointed said trustee.

A few plans have specific attendance requirements; a trustee who violates them may forfeit his office.

- (84) In the event any trustee hereunder shall fail to attend at least two successive meetings of the board of trustees, such trustee shall thereby automatically forfeit his office and he shall be replaced and his successor appointed forthwith in the manner hereinafter provided, by the party that originally appointed him.

Ordinarily, the appointment of successor trustees is the prerogative of the party that named the original trustee.

- (85) In the event of termination of service as hereinbefore provided for, resignation, death, disqualification, inability or refusal to act of any of the original trustees or the successor of any such trustee, a successor in trust shall be appointed by the party originally selecting the trustee who has ceased to act for any of said reasons.

In addition to the regular procedures for replacing trustees, a few programs have alternate methods of appointment to be used in case of delay or neglect in filling board vacancies. Some plans, for example, permitted any two trustees to petition the courts to fill offices that have remained vacant for a specified period.

- (83) In the event of the failure of any party to appoint a successor trustee to fill a vacancy in the office of trustee, which such party has the power to fill, for a period of 30 days, any two trustees may petition a court of appropriate jurisdiction for an order requiring such party to appoint a successor trustee forthwith, and, in the event of a failure of said party to comply with such order, may petition a court of appropriate jurisdiction for the appointment of a successor trustee to fill such vacancy.

Other plans stipulated that a vacancy or vacancies on the board of trustees would not affect the power of the remaining trustees to administer the affairs of the trust.

- (85) No vacancy or vacancies in the board of trustees shall impair the power of the remaining trustees, acting in the manner provided by this agreement, to administer the affairs of the trust notwithstanding the existence of such vacancy or vacancies.

Under union administered plans, changes among the union's officers frequently are reflected in the composition of the board of trustees.

- (86) Whenever a vacancy among the elected officers and G. E. B. members of the upholsterers' international union including the president emeritus shall have been filled in accordance with the general laws of the upholsterers' international union, the new officer or G. E. B. member or president emeritus shall automatically hold a corresponding position on the board of trustees as set forth on the foregoing sections of this article.

Union managed health and welfare plans also are administered by a board of trustees consisting entirely of union members and generally including one union officer or more.

- (86) The fund shall be governed by a board of trustees (hereinafter designated as the "Trustees"), composed of the elected members of the general executive board including the president emeritus, of the upholsterers' international union (hereinafter designated as the "G. E. B.").

- (87) The fund shall be administered by a committee known as the health and welfare fund committee (hereinafter referred to as the "Committee"), which shall consist of six members, to wit, the manager of the union; two members of the union elected by the general membership of the union at the general election for officers of the union and whose term of office shall be for the same period as the elected officers of the union; and three persons who shall be elected by the executive board of the union from among its own members to serve for the same period.

Under some agreements where the employer contributes to a union administered health and welfare fund established before 1946, the effective date of the LMRA, the employer is not responsible for any aspects of administration of the fund or of providing benefits to eligible employees.

(87) Each member of the association [employee] shall pay weekly to the union a sum equivalent to six and one-half percent of the gross payroll of all its workers covered by this agreement. . . .

. . . The fund shall be maintained and administered by the union in accordance with the by-laws and rules and regulations adopted by the union for said purposes, or as same may be amended.

Officers of the Board

Although most plans do not enumerate the specific powers and duties of the board's officers, they presumably give the chairman the right to call and preside over meetings; the vice chairman would act as a replacement for the chairman, when needed; the secretary would have the duties of keeping the records of meetings; and the treasurer would be responsible for the plan's finances. Occasionally the agreement enumerates the duties of the board's officers.

(88) The chairman shall be the chief executive officer of the carpenters' union welfare fund; he shall preside at all meeting of the trustees and in the interval between trustees' meeting shall have general supervision and control over the business of the fund. He shall require the administrator and employees of the fund to keep proper books of account containing a complete record of all its transactions and shall perform such other duties as the trustees may direct. He shall appoint such temporary and permanent committees from among the trustees and alternate trustees as he shall deem appropriate or as shall be directed by the trustees, but the persons to serve on any such committee shall be designated by the chairman.

The vice chairman shall have all of the powers and duties of the chairman in the latter's absence or inability to act.

The secretary shall supervise the keeping of the minutes of the meeting of the trustees, as well as all records of all minutes, proceedings and actions of the trustees, and the giving of notices required by the agreement and declaration of trust and these regulations. He shall perform such other duties as may be assigned to him by the trustees.

The assistant secretary shall have all of the powers and duties of the secretary in the latter's absence or inability to act.

Selection of Officers

Although boards generally select their own officers, plans commonly stipulate that certain positions cannot be filled by members of the same party. For example, if the chairman is from the union group of trustees, the vice chairman or another officer must be from the employer group. Occasionally the trustees could select, by majority vote, a chairman from either party. Failing to do so, cochairmen are designated, one by each group.

(89) The trustees shall select, by a majority vote, a chairman. Upon failure of any trustee to receive a majority vote as chairman, cochairmen shall be selected, one by the employer trustees and one by the union trustees.

Many plans also require that the positions alternate between the different parties. Although annual changes are most common, more frequent changes may be required.

(83) The trustees shall select one of their number who shall act as chairman of the trustees for a term of 6 months, commencing on April 1 of each year, and one of their number who shall act as cochairman of the trustees for the same period of time, provided, that if the chairman shall be an employer trustee, the cochairman shall be an employee trustee, and if the chairman shall be an employee trustee, the cochairman shall be an employer trustee and provided, further, that at the end of the 6-month term of the chairman, the cochairman shall become chairman of the trustees for a term of 6 months, and the chairman of the trustees shall become the cochairman of the trustees for the same term of 6 months.

The trustees shall select one of their number who shall serve as secretary-treasurer of the trustees and of the trust estate for a period of 1 year, commencing April 1 in each year.

When the chairmanship and cochairmanship alternate, plans frequently permit the secretary-treasurer to come from either group.

- (90) During the month of July in each year, the trustees shall select from among the trustees a chairman and a cochairman of the trustees, to serve for a term of one year commencing July fifteenth in each said year. In even-numbered years the chairman shall be selected from among the union trustees and the cochairman from among the employer trustees, and in odd-numbered years the chairman shall be selected from among the employer trustees and the cochairman from among the union trustees.

The trustees may from time to time designate one of their number to act as secretary-treasurer of the trustees and of the trust estate.

However, the chairman and the secretary-treasurer more frequently must come from different parties.

- (91) When the chairman is elected from the employer trustees, the secretary-treasurer shall be selected from the union trustees and vice versa.

Under other plans the officers may be selected without regard to affiliation, although it is often customary to select them from different groups.

- (92) The officers of the board of trustees shall consist of a chairman and a secretary-treasurer, the officers to be elected by the board of trustees for a period of 1 year.

A few plans provide for selecting additional officers.

- (88) The officers of the fund shall consist of a chairman, a vice chairman, a secretary, an assistant secretary, and such additional and assistant officers as the trustees may from time to time deem advisable.

Meeting of the Board of Trustees

Regular meetings of the board generally are required by the trust agreement. In addition, special meetings usually can be called at any time by the chairman, the cochairman, another officer, or by a specified number of trustees.

- (93) Meetings of the trustees shall be held at least once a month and at such other times and at such place or places as may be agreed upon by the chairman and secretary and may be called by the chairman or secretary upon 5 days' notice if all the trustees consent thereto.

Where regular board meetings are held once a year, other meetings usually held as required.

- (94) Special meetings may be called by the chairman or the secretary-treasurer or at the request of any two trustees upon 7 days' written notice to all members of the board of trustees. . . .

- (84) A meeting of the board of trustees shall be held each year and the trustees shall hold such other meetings from time to time as may be required.

On the other hand, where regular board meetings occur once a month, there may be no provision for calling special meetings. Some trust agreements permit the board to determine the time and place for regular meetings and allow designated officers or a specified number of trustees to call special meetings.

- (82) The board of trustees shall determine the time and place for regular periodic meetings of the board. Either the chairman or the cochairman, or any four members of the board, may call a special meeting of the board by giving written notice to all other trustees of the time and place of such meeting at least 5 days before the date set for the meeting. . . . Any meeting at which all trustees are present, or concerning which all trustees have waived notice in writing, shall be a valid meeting without the giving of any notice.

Quorum

Virtually all of the jointly administered health and welfare programs required a quorum for the transaction of business by the board of trustees. A quorum usually is defined as the presence of a specified number of trustees or their alternates. For example, one plan with four board members requires that at least one member of each party be present.

- (92) A quorum of the trustees shall consist of at least two trustees, provided, that in the taking of any vote or action by the board of trustees, the quorum consists of an equal number of representatives of the union and the employers.

Another plan with eight board members requires the attendance of three out of four members from each party.

- (91) Six trustees shall constitute a quorum for a meeting of the trustees, provided three are union trustees and three are employer trustees.

Some plans, however, simply require a majority of the board. Others permit boards to meet in the absence of a quorum but require that their actions be subsequently ratified by the absent members.

- (95) . . . To constitute a quorum at any meeting there shall be present at least one trustee representing the contributors [employers] and one union trustee; provided, further, that in the event no quorum is present at any meeting, any action taken at said meeting may be ratified in writing by all the absent trustees, in which case the action of the trustees shall be as valid as though a quorum were present at such meeting.

Voting Rules and Procedures

Voting rules and procedures to be followed by the board, although differing in details, usually are expressed in terms of either a majority rule or a unit rule. The former was defined as a majority of the entire board; as a majority of the board attending the meeting; or, less frequently, as a majority of those voting. The parties, nevertheless, frequently were given equal voting power, regardless of the number of trustees actually present at the meeting.

Where a majority vote of all members of the board is required, there is often a procedure for casting the votes of absent members.

- (82) The board shall not take any action or make any decision on any matter coming before it or presented to it for consideration or exercise any power or right given or reserved to it or conferred upon it by this trust agreement except upon the vote of a majority of all fourteen of the trustees at a meeting of the board duly and regularly called or except by the signed concurrence of all fourteen trustees without a meeting, as provided in section 5 of this article. In the event of the absence of any employer trustee from a meeting of the board, the employer trustees present at such meeting may vote on behalf of such absent trustee and if such employer trustees cannot all agree as to how the vote of such absent employer trustee shall be cast then it shall be cast as the majority of them shall determine or, in the absence of such majority determination, it shall be cast as the employer trustee, chairman or cochairman of the board shall determine. In the event of the absence of any employee trustee from a meeting of the board, the employee trustees present at such meeting may vote on behalf of such absent trustee pursuant to the same method and in the same manner as above provided for employer trustees to cast the vote of any absent employer trustee.

If a majority vote of trustees present at a meeting is required, absent trustees often may submit their votes in writing.

- (85) The decisions of a quorum of the trustees shall be determined by majority vote of the trustees present at the meeting.

The vote of the trustees may be cast by them in person at a meeting or may be evidenced by written instruments signed by them or telegrams from them.

In addition to a majority vote of the trustees, a minimum number of votes sometimes is required.

- (94) All decisions and determinations shall be by majority vote, and a majority shall, in all cases, consist of not less than four trustees. A vote of the majority of trustees shall govern and be binding upon any issue.

Under the unit rule of voting, the vote of each group is decided by the majority of its members and one vote is cast on each issue. This procedure discourages the use of undue pressure to influence an individual trustee's vote.

- (93) For any action taken by the trustees, the three trustees appointed by the union shall have one vote between them, and the three trustees appointed by the companies . . . shall have one vote between them.

The majority rule may be modified to achieve the results of the unit rule. For example, a majority of votes from each group may be required. In the following illustration, taken from a trust agreement providing for a board with three trustees from each group, two votes from each group make up a majority of that group.

- (90) Decisions of the trustees shall be made by the concurring vote of at least two trustees from each group of trustees.

Arbitration

Unlike single employer plans, nearly all jointly administered multiemployer plans have separate machinery for settling disputes or breaking deadlocks between the union and employer trustees. When the board is deadlocked, the dispute is submitted directly to arbitration.¹ In addition, some plans provide that either party may request arbitration if a quorum is not present at a specified number of consecutive meetings.

Collective bargaining agreements often state that the regular grievance machinery is not available.

- (81) . . . Any dispute arising in the administration of said fund shall not be deemed to be a dispute hereunder and shall not be subject matter of the grievance procedures . . .

When an arbitrator is needed, he is selected by the board. However, if the board is unable to agree on an arbitrator, virtually all plans provide that an outside agency appoint one. A U.S. District Court, for example, might be requested to select him, as provided in the LMRA. One plan paraphrased the act, thus:

- (96) In the event a disagreement shall arise resulting in a deadlock among the trustees over the administration of the fund, the dispute shall be referred for decision to an impartial chairman selected by agreement between the employer trustees and the union trustees. The decision of the impartial chairman shall be final and binding on the trustees. In the event the union trustees and the employer trustees cannot agree on an impartial chairman within a reasonable time either the union trustees or the employer trustees may petition the United States District Court for Hawaii to appoint such an umpire.

A few plans designate a municipal official.

- (90) In the event of a deadlock between the trustees, the question shall be decided by a person designated by the then Mayor of the City of New York.

Others specify that a government labor conciliator or the American Arbitration Association be asked to name an arbitrator.

- (94) In the event a majority of the trustees cannot agree on any given issue, any two trustees shall, upon 5 days' notice to the other trustees thereupon be entitled to call upon the Minnesota State Labor Conciliator to appoint an impartial person as neutral trustee to deliberate with the trustees and to vote upon the disputed issue. Any decision so made by a majority of the trustees (including such impartial person) shall be final and binding on the parties.

- (97) In the event of a deadlock between the trustees, the question shall be decided by a person designated by the American Arbitration Association.

Under some plans the trustees select a permanent impartial trustee who votes only to break deadlocks. If he is unable to act, the board would select an ad hoc arbitrator, or failing that, either group could petition the U.S. District Court to appoint one.

- (85) After the appointment of the union council and employer association trustees, they may select a person to act as impartial trustee who shall accept this agreement in writing before engaging in the performance of his duties as trustee. Preferably the impartial trustee shall not be directly affiliated with the building industry or be a member of any union. . . . He shall not vote except in case of deadlock between council and association trustees. In the event that the trustees shall be unable to appoint an impartial trustee, or in the event that the designated impartial trustee is unable to act and a deadlock develops between the council and association trustees, the trustees shall appoint a neutral person empowered to break such deadlock within a reasonable length of time, failing which, an impartial umpire to decide such dispute, shall, on petition of either the council or the association trustees, be appointed by the District Court of the United States in Chicago, as provided by law.

¹ Section 302(c)(5)(B) of the Labor-Management Relations Act, 1947, requires that if employer and employee trustees deadlock on the administration of the trust fund, and there are no neutral persons empowered to break the deadlock, the agreement must provide that the "two groups shall agree on impartial umpire to decide such a dispute." It goes on to say that if they are unable to agree on an impartial umpire, he shall be appointed by the appropriate U.S. District Court on the petition of either group.

Although the arbitration procedures of most jointly administered health and welfare programs are separate from those in the collective bargaining agreement, a few programs use the arbitration procedures of the collective bargaining agreement.

- (98) Upon failure to reach such vote, i.e., reach agreement⁷ . . . the trustees shall refer the matter to arbitration under arbitration clause of the articles of agreement then in effect between the union and the employers.

Functions and Duties of the Administrator

The administrative functions and duties of the board of trustees range from the initial decision of the types and amounts of benefits the plan will provide to the procedures to be followed in the event the program is terminated. They include provisions for routine tasks such as recordkeeping and the paying of benefits to eligible employees.

In many plans certain duties are delegated to a paid administrator or to an individual trustee responsible to the board. Some programs delegate specific duties such as recordkeeping and processing claims to a service agency or an insurance company. Under some programs an executive committee of the board is appointed to administer the trust between meetings of the board. Nevertheless, the ultimate responsibility for all administrative functions rested with the board of trustees.

- (84) The chairman of the board shall annually appoint an executive committee of the board of trustees to consist of any two trustees, provided one shall be selected from the trustees appointed by the employers and one shall be selected from the trustees appointed by the local union, and which committee shall hold office for a period of 1 year and until their successors shall be appointed and qualified. Said executive committee shall have power in the interim between meetings of the board of trustees to act in the name of and on behalf of the trustees in all administrative matters concerning the trust and fund and on all discretionary matters concerning the trust and fund, subject to ratification of such acts, by the majority of the trustees at the next meeting thereof.

Type of Benefit

The board usually selects the benefit package, and the collective bargaining agreement only stipulates the amount of the contribution; sometimes the collective bargaining agreement specifies the benefits to be provided.

- (99) With this fund the publishers will purchase group insurance coverage providing the following benefits to the extent possible and practical: Life insurance for employee; accidental death and dismemberment benefits for employee; hospitalization for employee, spouse and children; surgical benefits for employee, spouse and children; and sickness and accident benefits for employee.

More often, all aspects of the benefits to be provided are determined by the board.

- (91) The benefits to be provided by such fund shall be one or more, the number and kind of which is left to the determination of the trustees, of health, welfare, death or related benefits, and in accordance with the collective bargaining agreements between the associations and contributing employers and the unions.

Amendment of Program

The boards of trustees of most multiemployer health and welfare plans are authorized to amend the program at their discretion. This right, which usually is stated in the formal trust indenture, frequently is restricted to revising the types and amounts of benefits provided; employees eligibility for benefits; procedures; and so forth. Although the board usually is empowered to amend the plan at any time, some plans impose certain restrictions.

- (81) To adopt a plan for the provision of welfare benefits, and to amend, alter or otherwise change said plan from time to time.

Joint Administration With Other Plans

Some trust agreements allow their trustees to join other funds in the procurement of insurance policies. They also permit the trustees to establish a central administrative office in cooperation with other plans.

- (95) . . . the trustees may join with the trustees of other trust funds having generally similar trust agreements and health and welfare insurance programs in contracting for benefits or in the procurement of blanket coverage insurance policies for such benefits, and may maintain jointly with the trustees of said other trust funds a centralized administrative office; subject, however, to the provision that the trust agreements of such other trust funds shall provide for identical eligibility requirements and identical contributions as provided in this trust agreement, and that the beneficiaries of each of said other trust funds shall be covered by the same blanket coverage insurance policy or policies for payment of benefits that covers the beneficiaries of this trust fund for payment of benefits; subject further, that separate records and accounts shall be maintained and kept reflecting the financial results and condition of each trust fund, separate records shall be maintained of the minutes of trustees' meetings and other records relating to the trustees of each of said trust funds, and that each of said trust funds shall remain and be autonomous; and, provided further, that no action, resolution or other matter taken by the trustees, whether collectively or individually, of any of said other trust funds, or all or any number of said funds, shall be binding on the trustees of this fund unless the trustees of this fund shall expressly join therein by the appropriate exercise of the power and authority of the trustees hereof as specifically expressed in this trust agreement.

In some cases plans seek such coordination to minimize the duplication of contributions and benefits as well as to reduce administrative costs.

- (82) The board of trustees may, by unanimous vote, coordinate its activities in the administration of the fund and the health and welfare plan with the administrative activities of the boards of trustees of other trust funds and health and welfare plans established or to be established for building tradesmen in California to such extent as may be necessary or desirable to minimize costs, eliminate unnecessary bookkeeping and other expenses for the individual employers and avoid or eliminate duplicating employer contributions or insurance coverage with relation to the same employee.

Under some trust agreements trustees may enter into reciprocity agreements with other plans so that their members could move among plans without losing their eligibility for health and welfare benefits.

- (100) The trustees shall have the power to enter into reciprocity agreements with any other fund or funds, wherein it is agreed between such funds that the accrued eligibility of employees transferring from one fund to the other is given full faith and credit between such funds. The employee's benefits, if any, shall be determined in accordance with the eligibility requirements of the fund which the employee is working under at the time any claim accrues.
- (101) The trustees, acting by vote or by written instrument, in accordance with the provisions of this agreement, shall be empowered to contract with trustees of other trust funds having jurisdiction of other geographic areas subject to the application of similar trust funds which provide employee benefits. Such agreements between trustees of this fund and trustees of similar funds shall be reciprocal in nature, and shall be on such terms and conditions and shall provide for such procedural matters as in the discretion of the trustees of this fund are applicable. In such agreements, provision shall be made to continue eligibility of covered employees when employment is within more than one geographic area, and one or more areas are covered by welfare funds. Such reciprocal agreements shall also provide for the transfer of contributions or the payment of contributions covering the employment in each respective area.

Plan Termination

Specific procedures to be followed in the event the plan is terminated are found in all multiemployer health and welfare programs. Following the cessation of contributions, some boards are to apply existing funds to the purposes specified in the agreement until they are exhausted. The trust then is terminated.

- (97) In the event that the obligation of the employers to make employer contributions shall terminate or upon any liquidation of the trust estates, the trustees shall continue to apply the trust estates to the purposes specified . . . of this agreement and none other, and upon the disbursement of the entire trust estates, these trusts shall terminate.
- (102) . . . if for any reason this trust should be terminated, any and all monies remaining in the fund after the payment of all unpaid insurance premiums and other expenses and obligations of the trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinbefore specified, until such monies have been exhausted.

If the parties agree, trustees may transfer the remaining funds to another trust providing similar benefits.

- (103) In any event, upon termination the trustees may, with the consent of the majority of the unions and the majority of the employers, transfer the group insurance policy and the balance, if any, of the assets of the trust fund remaining in the hands of the trustees, or any portion thereof, to the trustees of any fund established for the purpose of providing substantially the same or greater group insurance coverage than that contemplated by the plan or plans.

In other plans the trustees are given broad latitude to meet the objectives of plan.

- (104) In the event this trust is terminated, the trustees are authorized and empowered to dispose of the funds remaining in their hands in accordance with any plan conforming to the purposes of the statute and the objectives of this agreement. . . .

Administration

Specific provisions for day-to-day administrative duties, such as record-keeping and the processing and paying of employee benefit claims, generally are not found in the collective bargaining agreement or in the trust agreement. Instead, the board is empowered to hire legal, administrative, and clerical assistants, as required, to administer the fund.

- (96) To provide for the payment of all reasonable and necessary expenses of collecting the employer contributions and administering the affairs of the trust fund, including all expenses which may be incurred in connection with the establishment of said trust and fund, the employment of such administrative, legal, expert, consultant, and clerical assistance, the leasing of such premises and the purchase or leasing of such materials, supplies or equipment as the trustees, in their discretion, find necessary or appropriate in the performance of their duties.

Financial Administration

The board of trustees is invariably responsible for the financial management of trust funds. They have to collect contributions, select an insurance carrier, make investments, and pay benefits. Although these duties may be, and frequently are, delegated to a corporate trustee or an insurance company, the responsibility for them rests with the board.

Collection of Contributions

Provisions for the collection of contributions always are included in the collective bargaining agreement or trust indenture.

Employer contributions usually are required shortly after the end of the month or pay period. If they are tardy, the board or union can compel payment by court action or economic sanctions. Collective agreements often subject delinquent employers to fines and union members to the removal from their jobs.

- (105) Employers shall prepare and send monthly reports with payments in full to the health and welfare, and pension fund office. Payment shall be made to the funds by the 15th of the following month. A registered notice, copy to the employers' association, shall be sent to employers failing to make payments within this 15-day period. If payments are not received within 10 days of receipt of this notice, the employer will be deemed to have violated the agreement and no union journeyman painter shall be allowed to work for this employer until payments are brought up to date.

Some collective agreements also require delinquent employers to pay the costs of litigation.

- (106) Payment shall be made to the welfare fund office not later than 60 days following the month in which the work was performed but in no event later than 20 days following the end of the calendar quarter. Should payment be made later than 60 days following the month in which work was performed or 20 days following the end of the calendar quarter, the contractor agrees to add 10 percent to the amount due as penalty.

If it becomes necessary for the fund office to file suit against the contractor for delinquent payment of welfare fund money due, the contractor agrees to pay, in addition to the 10 percent penalty mentioned above, all litigation costs, including a reasonable attorney fee, which attorney fee shall not exceed \$250 in any one suit.

Others specifically give the union the right to call a strike against delinquent employers.

- (107) The prohibition against strikes in article XXX of this agreement shall not be applicable if employer, after reasonable written notice (which shall not be more than 30 days in any case), shall have failed to pay contributions to the health and welfare plan or the pension plan on or before the 20th day of the second calendar month with respect to which such contributions became payable.
- (80) Failure on the part of an employer to make payments as hereinabove provided, for the preceding week after 3 days' written notice by registered mail from the union, shall be deemed a breach of this agreement, and the union may order a stoppage of work on the employer's job without resort to the arbitrable provisions of this agreement, upon the continuation of said default beyond the time set forth in said 3-day notice.

On or after the third day set forth in the notice above referred to, a proper official of the union, shall, on the employer's request, grant additional reasonable time not to exceed 1 day, within which to make the required payments, and thereafter may order a stoppage of work if such payments are not made, and all time lost by the workers shall be paid by the employer.

The provisions hereof shall survive the expiration of this agreement.

To minimize delinquencies the trustees may require deposits.

- (81) The trustees may in their exclusive discretion require a good faith deposit in the amount of not more than \$500 from an employer where the trustees find that such employer is composed of one or more persons, firms or corporations who were or are principals or stockholders in any other employer which owes an indebtedness to the fund on account of unpaid contributions or liquidated damages, or which at any time had a record of delinquency within the meaning of section G of this article.

Medium of Funding

With few exceptions, the board of trustees decides how the benefits are funded. The board's authority to provide benefits on either an insured or self-insured basis often is expressed as follows:

- (85) Provisions for rendering such benefits above described and other related welfare purposes shall be made from time to time by the trustees, either on an insured or self-insured basis, and such payments and provisions, limitations and conditions for benefits shall be scheduled and prescribed as the trustees shall determine from time to time.
- (96) The benefits may be provided by contract with service plans, by purchase of insurance policies, or directly from the fund.

Other plans required that benefits be provided through an insurance carrier or prepayment organization.

- (84) The trust and the fund are created for the purpose of providing and maintaining through policies issued by duly qualified insurance carriers.

In addition the boards frequently are responsible for selecting the insurer.

- (102) To procure a policy or policies of hospital medical or group life insurance for the employees as authorized and permitted by the insurance code of the State of California, and to do any and all acts and things necessary or advisable to effectuate such insurance plan for the benefit of such employees.

In some cases the union selects the insurer and the trustees paid premiums from the trust fund. In the following clause the union also selects the group insurance policy, including the types and amounts of benefits.

- (80) To pay or provide for the payment of premiums on such policies of group life insurance, group accident and health insurance for medical and surgical care and hospitalization for members of the union, their wives and their children under 18 years of age, as the union may select. . . .

Others required the board to submit the proposed insurance contracts for union approval.

- (108) The forms and type of insurance as may be selected by the trustees shall be submitted to the union for its preference.

Investments

The board of trustees was, of course, responsible for investments. This includes both investment policy and the selection of specific investments. These functions could be delegated, but the trustees still are responsible for overall policy.

- (109) In their discretion appoint a bank or trust company whose capital is not less than \$2,500,000, to be designated as the "Corporate Trustee," and to enter into and execute a trust agreement with such bank or trust company to provide for the investment and reinvestment of the trust fund, with such other provisions incorporated therein as may be deemed desirable in the trustees' sole discretion for the proper management of the health and welfare fund, and upon such execution to convey and transfer to the corporate trustee any part of the health and welfare fund, and without limit with respect to the powers which the trustees may grant to the corporate trustee in such agreement. The trustees shall be forever released from any responsibility or liability with respect to any funds which they may convey to the "Corporate Trustee".

Some agreements require the trustees to use the judgement and care of a "prudent" man.

- (103) . . . in acquiring, investing, reinvesting, exchanging and selling and managing the property of the trust fund, the trustees shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

More frequently, the boards' authority was restricted by the terms of the trust.

- (97) The trustees shall deposit all monies received by them for the purpose of providing social insurance in such bank or banks as they may designate for that purpose, and may invest and reinvest a sum not exceeding one percentum of such funds as they do not require for current expenditure in bonds or other obligations of a foreign sovereign government selected by the trustees, and may invest and reinvest the balance of such funds as they do not require for current expenditure in the following types of securities:

- (1) Bonds which are legal for the investment of trust funds under the laws of the State of New York.
- (2) Common stocks, listed on a stock exchange, under supervision or regulation by the Securities and Exchange Commission, and preferred stocks to the extent that, immediately after their purchase, the inventory value of all common and preferred stocks held will not exceed 35 percent of the inventory value of the assets of the fund.
- (3) Bonds and mortgages and notes and mortgages issued by the federal housing commissioner or guaranteed under Title III of the servicemen's readjustment act of 1944, whether or not the same may be legal investments for New York trustees.

Some plans can invest only in bonds, in life insurance contracts, or U.S. Government obligations.

- (85) The trustees shall have the power to invest and reinvest the trust fund in any bonds or fixed income obligations of the United States Government, any state government, any municipality, any governmental corporation or any private corporation, and may sell or otherwise dispose of such bonds or fixed income obligations at any time and from time to time as they see fit; provided, however, the trustees may, in their discretion, invest the trust fund or any part thereof in life insurance contracts issued by legal reserve life insurance companies authorized to do business in the State of Illinois as may be selected by the trustees for the purpose of providing for all or any part of the benefits payable under this trust.

- (92) To invest and reinvest funds of the trust in bonds or obligations of the United States Government, and to sell or otherwise dispose of such bonds or obligations at any time and from time to time as the trustees may see fit.

Bonding

Since both the Labor-Management Reporting Act of 1959 and the 1962 amendments to the Welfare and Pension Plan Disclosure Act require the bonding of any union or welfare plan officers and employees that handle the money or property of these plans, all of the trust indentures examined had bonding provisions. Typical examples of bonding provisions are as follows:

- (110) The trustees shall, by resolution duly adopted, provide for fidelity bonds with such companies and in such amounts as they may determine, for trustees or other persons who shall be authorized to receive or withdraw funds from the trust estate.
- (92) The trustees may, by resolution duly adopted, provide for fidelity bonds with such companies and in such amounts as they may determine, for trustees or other persons who shall be authorized to receive or withdraw funds from the trust estate.

Audit

Annual audits are required by the trust agreements.² Copies are furnished to the signatory parties, and a copy is available at the office of the trust for inspection by interested persons.

- (81) The bond shall cause an annual audit to be made of the fund by a certified public accountant. Copies of said audit shall be furnished to the parties, and a copy shall be available at the principal office of the trust for inspection by interested persons.

Under some plans a copy of the audit is available at the fund office and other places that are designated by the board.

- (111) An annual audit of each fund shall be made by accountants designated by the board of trustees. A statement of the results of such audit shall be made available for inspection by interested persons at the principal office of the fund and at such other places as may be designated by the board of trustees.

Others provide that a copy of the audit be given to each trustee, to the parties to the agreement, and a copy made available at the fund office.

- (85) The trustees shall procure an audit of the books of the trust by a certified public accountant not less frequently than once each year and a copy of each such audit shall be furnished to each trustee, the association, and the council, and a copy of such audit shall be kept available for inspection by authorized persons during business hours at the office of the trustees.

Payment of Trustees

Trustees usually serve without compensation.

- (95) The trustees, and each of them, shall serve without compensation of any kind or nature whatsoever from the trust fund for the time during which they may be required to perform their duties.

Others are not paid for their services but are reimbursed for their expenses.

- (112) The trustees shall receive no compensation for their services hereunder, but they shall be reimbursed for all reasonable and necessary expenses which they may incur in the performance of their duties. In lieu of said expenses, the trustees may each receive the sum of \$20 for attendance at a duly called meeting.

In a few plans, the trustees are allowed to set the compensation they will receive for the performance of their duties.³

- (80) The trustees of the insurance fund shall be paid a reasonable compensation as fixed by the board from time to time, for each day necessarily engaged in the work of the trust fund, and the trust indenture, in this regard, is hereby deemed accordingly amended.

² Section 302(c)(5)(b) of the Labor-Management Relations Act, 1947, requires an annual audit of health and welfare trust funds subject to the provisions of the act. The act also requires that the results of the audit be available for inspection at the principal office of the trust fund. The Welfare and Pension Plans Disclosure Act specifies for plans with over 25 participants, the information that must be included in an annual financial report, and the publication requirements.

³ Payments to trustees who are full-time union officials would be contrary to AFL-CIO policy as expressed in paragraph 1 of "Ethical Practices Code II" which states: "1. No union official who already receives full-time pay from his union shall receive fees or salaries of any kind from a fund established for the provision of a health, welfare, or retirement program. . . ." (AFL-CIO Codes of Ethical Practices, AFL-CIO Publication No. 50, 1958, (p. 23).

Appendix. Index to Clauses Cited

Effective dates are shown because many pension or trust agreements have no expiration date. Where amendments are quoted, their effective dates are shown. All unions are affiliated with the AFL-CIO except those followed by (Ind.).

Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
1	Westinghouse Electric Corp., Standard Control Division Electrical Workers (IBEW)	Nov. 1, 1969	
2	Hughes Tool Co., Oil Tool Division Steelworkers (USA)		Sept. 15, 1967
3	Motor Wheel Corp. Allied Industrial Workers (AIW)	Sept. 1, 1964	
4	Honeywell, Inc. Utility Workers (UWU).	Apr. 4, 1962	
5	The Duriron Co., Inc. Steelworkers (USA)	Sept. 1, 1963	
6	Combustion Engineering, Inc. Boilermakers (BBF)	Aug. 10, 1964	
7	Bristol Manufacturing Corp. Rubber Workers (URW)	July 1, 1963	
8	True Temper Corp. Steelworkers (USA)	Oct. 11, 1962	
9	I-T-E Circuit Breaker Co. Electrical Switchgear Union (Ind.)		Feb. 6, 1970
10	The B.F. Goodrich Co. Rubber Workers (URW)	July 15, 1967	
11	Morse Chain Co., Subsidiary of Borg-Warner Corp. Machinists (IAM)	Sept. 22, 1965	
12	American Metal Climax Co., Climax Molybdenum Co. Division Oil, Chemical and Atomic Workers (OCAW)	Nov. 1, 1958	
13	General Tire and Rubber Co. Rubber Workers (URW)	Aug. 1, 1967	
14	Olin Mathieson Chemical Corp. Machinists (IAM)	Jan. 31, 1965	
15	Grable Manufacturing Co. Steelworkers (USA)	Jan. 1, 1964	
16	Kelly-Springfield Tire Co., Subsidiary of Goodyear Tire and Rubber Co. Rubber Workers (URW)	July 24, 1967	
17	Commonwealth Edison Co. Electrical Workers (IBEW)	Jan. 1, 1964	
18	Hamilton Manufacturing Co. Carpenters (CJA)	Dec. 31, 1951	
19	Weyerhaeuser Co., Paper Division Papermakers and Paperworkers (UPP)	Aug. 1, 1963	

Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
20	Cincinnati Gas and Electric Co. Independent Utilities (Ind.)	Jan. 1, 1962	
21	Borg-Warner Corp., York Division, Ice Machinery Independent Employees Association (Ind.)	Nov. 11, 1964	
22	New England Telephone and Telegraph Co. New England Federation of Telephone Traffic Workers (Ind.)	Apr. 1, 1967	
23	Potlach Forests, Inc. Woodworkers (IWA)	June 1, 1962	
24	Georgia-Pacific Paper Corp. Papermakers and Paperworkers (UPP)	Jan. 1, 1959	
25	Philip Morris, Inc. Tobacco Workers (TWIU)	Jan. 1, 1966	
26	Kelly-Springfield Tire Co., Subsidiary of Goodyear Tire and Rubber Co. Rubber Workers (URW)	July 24, 1967	
27	Motor Wheel Corp. Allied Industrial Workers (AIW)	Sept. 1, 1964	
28	Wisconsin Electric Power Co. Office, Sales and Technical Employees (Ind.)	Jan. 1, 1962	
29	North American Rockwell Corp., Aerospace and Systems Group Auto Workers (UAW). (Ind.)	Nov. 1, 1968	
30	E.I. du Pont de Nemours and Co. Chemical Workers Association (Ind.)	Dec. 21, 1964	
31	Atlantic Steel Co. Steelworkers (USA)	Dec. 31, 1965	
32	Tennessee Copper Co., Division of Tennessee Corp. Chemical Workers (ICW)		Sept. 15, 1969
33	John Morrell and Co. Packinghouse Workers (UPWA)	Jan. 1, 1965	
34	Duriron Co. Steelworkers (USA)	Sept. 1, 1963	
35	Western Electric Co., Inc. Communications Workers (CWA)		Sept. 28, 1971
36	Metropolitan Life Insurance Co. Insurance Workers (IWIU)		Apr. 30, 1968
37	International Harvester Co., Wisconsin Steel Works. Progressive Steel Workers (Ind.)	Jan. 27, 1964	
38	Continental Can Co., Paperboard and Kraft Paper Division Papermakers and Paperworkers (UPP) Pulp and Sulphite Workers (PSPMW)	June 30, 1965	
39	Weyerhaeuser Co., Wood Products Division Woodworkers (IWA)		June 1, 1969
40	Timken Roller Bearing Co. Steelworkers (USA)	Sept. 19, 1965	
41	Westinghouse Electric Corp. Federation of Westinghouse Independent Salaried Unions (Ind.)	Oct. 17, 1966	

Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
42	West Virginia Pulp and Paper Co. Papermakers and Paperworkers (UPP)		Nov. 17, 1964
43	American Seating Co. Auto Workers (UAW) (Ind.)	July 1, 1964	
44	Martin-Marietta Corp., Martin Co. Division Auto Workers (UAW) (Ind.)	Jan. 1, 1964	
45	Clevite Corp., Cleveland Graphite Bronze Division Mechanics Educational Society (Ind.)	Jan. 1, 1966	
46	McInerney Spring and Wire Co. Auto Workers (UAW) (Ind.)	Feb. 5, 1968	
47	International Harvester Co. Auto Workers (UAW) (Ind.)	Feb. 6, 1968	
48	Alabama Dry Dock and Shipbuilding Co. Marine and Shipbuilding Workers (IUMSW)	Mar. 2, 1962	
49	Xerox Corp. Clothing Workers (ACWA)	Dec. 22, 1964	
50	Milwaukee and Suburban Transport Corp. Amalgamated Transit (ATU)	Jan. 1, 1958	
51	Chrysler Corp. Auto Workers (UAW) (Ind.)	Sept. 22, 1964	
52	Mergenthaler Linotype Co. Division of Eltra Corp. Auto Workers (UAW) (Ind.) and other participating unions	Feb. 8, 1965	Feb. 14, 1971
53	General Refractories Co. Mine Workers-District 50 (Ind.)		Oct. 31, 1969
54	Mohasco Industries, Inc. Textile Workers (TWUA)	Jan. 1, 1951	
55	Maytag Co. Auto Workers (UAW) (Ind.)	Nov. 7, 1967	
56	Fafnir Bearing Co. Auto Workers (UAW) (Ind.)	Mar. 15, 1967	
57	J. F. McElwain Co. New Hampshire Shoe Workers (of Nashua) (Ind.) New Hampshire Shoe Workers of Manchester (Ind.)	Apr. 30, 1965	
58	Allis Chalmers Manufacturing Co. Auto Workers (UAW) (Ind.)	Nov. 16, 1964	
59	Johnson and Johnson Textile Workers (TWUA)		Nov. 1, 1969
60	The Trane Co. Machinists (IAM)	Jan. 1, 1962	
61	Beaunit Corp. Textile Workers (UTWA)	Nov. 21, 1964	
62	Deere and Co. Auto Workers (UAW) (Ind.)	Dec. 28, 1967	
63	Dana Corp. Auto Workers (UAW) (Ind.)	Dec. 1, 1967	
64	Ford Motor Co. Auto Workers (UAW) (Ind.)	Oct. 25, 1967	
65	Leeds and Northrup Co. Auto Workers (UAW) (Ind.)	Dec. 21, 1964	

Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
66	General Motors Corp. Electrical Workers (IUE)	Dec. 19, 1967	
67	Campbell, Wyant and Cannon Foundry Co., Division of Textron, Inc.	Apr. 1, 1965	
68	TRW, Inc., Michigan Division Auto Workers (UAW) (Ind.)	Jan. 1, 1965	
69	American Enka Corp. Textile Workers (TWUA)	Oct. 16, 1964	
70	Weyenberg Shoe Manufacturing Co. Boot and Shoe Workers (BSW)	Mar. 20, 1967	
71	Champion Spark Plug Co. Auto Workers (UAW) (Ind.)	July 23, 1965	
72	Armour and Co. Packinghouse Workers (UPWA) ¹	Mar. 13, 1967	
73	Clark Equipment Co. Auto Workers (UAW) (Ind.)	Apr. 16, 1965	
74	Massey-Ferguson Inc. Auto Workers (UAW) (Ind.)	Mar. 1, 1964	
75	Interco, Inc. Boot and Shoe Workers (BSW)	Oct. 1, 1957	
76	Kroger Co., Houston Division Retail Clerks (RCIA)	Feb. 1, 1969	
77	Dayton Area Construction Industry Association Carpenters (CJA)	Apr. 30, 1968	
78	Franklin Association of Chicago Bookbinders (IBB)	June 6, 1970	
79	Associated Shoe Industries of Southeastern Mass., Inc. Shoe and Allied Craftsmen (BSAC) (Ind.)	Dec. 31, 1968	
80	Wrecking Contractors' Association of the City of New York Laborers (LIUNA)	June 30, 1969	
81	Associated General Contractors of America, Arizona Chapter and four others Southern Arizona Building and Construction Trades Council	June 1, 1959	
82	Associated General Contractors of America, Northern and Central California Chapter Carpenters (CJA)	Mar. 4, 1953	
83	Hartford General Contractors Association Carpenters (CJA)	June 1967	
84	Associated General Contractors of America, Inc., Oklahoma Chapter, Builders Division Carpenters (CJA)	Apr. 23, 1965	
85	Builders Association of Chicago Carpenters (CJA)	Nov. 7, 1952	
86	Picture Frame Manufacturing Companies Upholsterers (UIU)	Jan. 1, 1959 ²	
87	Pleaters, Stitchers and Embroiderers Association Ladies' Garment Workers (ILGWU)	Jan. 1, 1968 ²	Feb. 28, 1970

¹ The Packinghouse merged with Meat Cutters subsequent to the preparation of this bulletin.

² Bylaws and regulations.

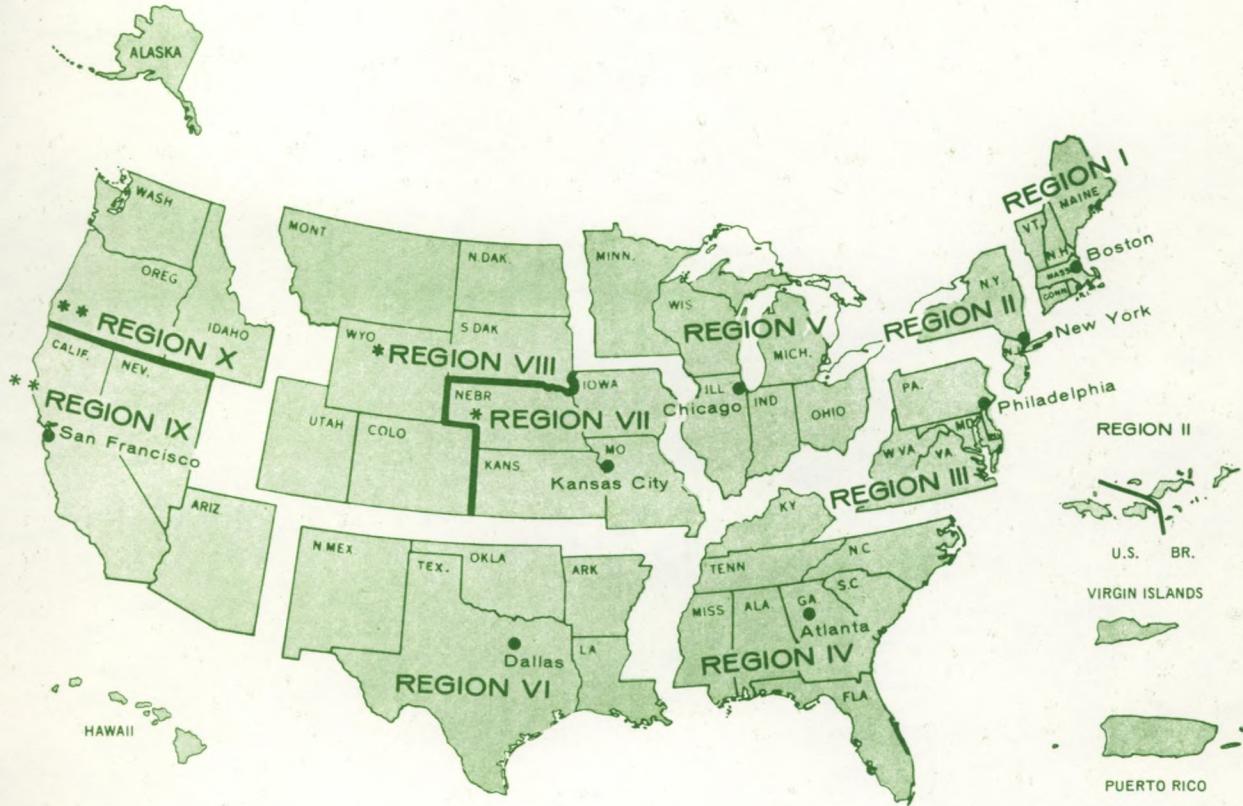
Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
88	Associated General Contractors of America, Inc., Baltimore Builders Chapter Carpenters (CJA)	Sept. 2, 1965	
89	Associated Retail Bakers of Greater Chicago Bakery and Confectionery Workers (BCW) (Ind.)	Dec. 31, 1960	
90	Sheet Metal Contractors Association of New York City, Inc. Sheet Metal Workers (SMW)	Aug. 1, 1968	
91	Detroit Association of Plumbing Contractors and Mechanical Contractors Association of Detroit Plumbers (PPF)	Oct. 20, 1958	
92	Chicago Dry Cleaners Association Laundry, Dry Cleaning and Dye House Workers (LWIU) (Ind.)	June 13, 1955	
93	Glass, Glazing and Mirror Contractors of Los Angeles and Vicinity Painters (BPDP)	July 1, 1952	
94	Painting and Decorating Contractors of America, Minnesota Council, Minneapolis Chapter, Inc. Carpenters (CJA)	May 1, 1961	
95	Illinois Association of Breweries Teamsters (IBT) (Ind.)	Sept. 13, 1957	
96	Various Hotels, Hawaii Hotel and Restaurant Employees (HREU)	Dec. 15, 1964	
97	Association of Master Painters and Decorators of the City of New York Painters (BDDP)	Jan. 9, 1962	
98	Associated Milk Dealers, Inc. Teamsters (IBT) (Ind.)	Dec. 31, 1958	
99	Boston Daily Newspapers Typographical Union (ITU)		Dec. 31, 1969
100	St. Paul On-Sale Liquor Dealers Hotel and Restaurant Employees (HREU)	Oct. 19, 1965	
101	Eastern New York Construction Employers, Inc. Laborers (LIUNA)	Mar. 2, 1960	
102	Alameda County Milk Dealers Association and Bay District Ice Cream Manufacturers Association Teamsters (IBT) (Ind.)	May 1, 1954	
103	Western Washington Dairy Trust Teamsters (IBT) (Ind.)	Oct. 17, 1962	
104	Southwest Operators Association Teamsters (IBT) (Ind.)	Mar. 19, 1957	
105	Painting and Decorating Employers of Boston Painters (BPDP)		June 30, 1969
106	Heavy Constructors Association of the Greater Kansas City Area Laborers (LIUNA)		Aug. 1, 1969
107	Dairy Industry, Pennsylvania, New Jersey, and Delaware Teamsters (IBT) (Ind.)		Sept. 30, 1968

Clause number	Employer and union	Pension or trust agreements effective date	Collective bargaining agreement expiration date
108	Motion Picture Service Industry (New York City) Stage Employees (IATSE)		Oct. 1, 1971
109	West Virginia Freight Council Teamsters (IBT) (Ind.)	June 23, 1960	
110	Associtated Retail Bakers of Greater Chicago Bakery and Confectionery Workers (BCW) (Ind.)	Dec. 31, 1960	
111	Kansas City Garment Manufacturers Association Ladies' Garment Workers (ILGWU)		May 1, 1969
112	New England Road Builders Association, Inc. Operating Engineers (IUOE)	May 3, 1951	

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