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Increasing productivity due to advancing technology has caused difficult problems in manpower utilization and job security. The pressures on management to reduce production costs and on labor to maintain job security have increasingly caused management and labor to maintain conflicting positions where job elimination is involved. In attempting to find ways to prevent long and costly strikes over this problem, Mr. Teple examines some of the rulings which involve employee displacement to determine to what extent particular contract provisions have a bearing upon the outcome of disputes. He concludes that much of the difficulty in this area could be solved by the drafting of job elimination terms when contracts are being written. To the extent that the parties are unable to work out agreeable terms, the author suggests the use of arbitrators to settle the issues connected with job elimination as they arise during contract negotiations.

THE ELIMINATION of jobs has always occasioned considerable strain in the relationship between labor and management; and in recent years, with advancing technology, the problem has become more serious. This has been evident in arbitration hearings involving grievances on this subject, and it may safely be assumed that this same subject is receiving at least equal attention during the course of contract negotiations.

THE AUTHOR (A.B., Ohio Northern, University, J.D., Ohio State University) is a Lecturer in Law at Western Reserve University School of Law, a labor arbitrator, and a practicing attorney in Cleveland, Ohio.

On the management side, there are pressures to reduce production costs, whether through the introduction of better equipment or simply by finding ways to operate more efficiently. Any resulting reduction in jobs, however, is of grave concern to both the employees affected and the union. To the man who loses his job, it is little comfort that this is evidence of increased efficiency; to the union the loss of jobs means fewer members and a reduction in financial support. These conflicting considerations are usually considered worthy of a firm position on both sides, further increasing the possibility of long and costly strikes over this issue.

As the Secretary of Labor once explained, the 116-day strike in the steel industry in 1959, the brief airline strike and the stoppage of all East Coast shipping in 1961, the strikes which closed all West Coast ports on three occasions in 1961 and 1962, the stoppage

of most building construction in New York City, Northern California, and the Pacific Northwest for substantial periods, as well as the 1962 strike that stopped a Midwest railroad for thirty days involved, at least in some degree, the basic issues of manpower utilization and job security.[1] In some instances, he said, this had been the result of technological developments; and in others, new competitive forces had pushed employers to manpower economies not previously considered necessary. In the words of the Secretary:

> These developments have placed severe new strains on collective bargaining. It is one thing to bargain about terms and conditions of employment; and quite another to bargain about the terms of unemployment, about the conditions on which men are to yield their jobs to machines. To the extent, furthermore, that these problems of employee displacement can be met at all in private bargaining, it can only be a process of accommodation and arrangement which is almost impossible in the countdown atmosphere of the 30 days before a strike deadline.[2]

The purpose here is to explore some of the rulings which involve certain aspects of employee displacement and to determine to what extent particular contract provisions may have a bearing upon the outcome. This may serve not only as a guide in determining the usefulness of existing terms, but it may suggest new approaches for draftsmen of new agreements who are not yet in the clutches of a strike deadline.

I. WHERE A SPECIFIC CONTRACT PROVISION CONTROLS

In an arbitration hearing in the chemical industry in 1962 the major question had developed from a company decision to reduce the staffing of a particular departmental operation from sixteen to twelve men.[3] The hearing lasted six days and exhaustive briefs were submitted by both sides. The company listed a total of nine technological advances which had led to improved plant operation and free time for the operating personnel — most of the improvements listed having occurred during a period of two or three years prior to the filing of the grievance. Despite the improvements shown, the union felt that the men were reasonably well occupied, and refused to accept the company's estimates of their idle time. In addition to the elimination of certain jobs, the company created a

[1] Wirtz, *The Challenge to Free Collective Bargaining*, PROCEEDINGS OF THE SIXTEENTH ANNUAL MEETING OF THE NATIONAL ACADEMY OF ARBITRATORS, 296 (1963).

[2] *Id.* at 299-300.

[3] The author served as arbitrator in this proceeding, which is unreported.

new general classification which combined the duties of the older jobs. This led the union to argue that the classifications had been changed but not the duties thereunder. The union further argued that a major change in the duties of a job must take place as a result of improvements in production methods before a new job could be created.

It was ruled that the issues thus raised were controlled by a provision in the collective bargaining agreement which recognized the company's right to make job changes where "improvements in production" occur or where this becomes necessary as a result of changes in "methods, processes and means of manufacturing."[4]

[4] Specific provisions of this type are not too common. The provision in this instance was more detailed and specific than most of those that have come to the author's attention. The complete section read as follows:

> Due to necessary changes or improvements in production which may be instituted by Management, the duties in connection with certain job classifications may be changed or modified. Employees affected by such changes, who do not accept the changed conditions, shall have the right of remaining under the changed conditions of the job and performing the necessary work subject to their rights under grievance procedure, or, shall bump back to their previous job, or, shall be otherwise handled as provided for in bumpback procedure as outlined in Section 5. The election to stay on the job and perform the work will not deny the employee his other rights in this paragraph to return to his former job or otherwise bump back within thirty (30) days after the Second Step answer is rendered. If an employee has chosen to remain on the changed job and then decides to bump back under the procedure outlined in Section 5 during the 30-day period, his vacancy will be offered to the next eligible employee affected by the change. If no recall is accepted, the vacancy shall be posted in accordance with the posting procedure. In the event the changes create a new job, or jobs, the employees in the job group, or groups, shall be given first consideration on the new jobs if qualified. After a trial period of thirty (30) days, employees staying on new jobs will carry with them their old seniority. At any time during the 30-day trial period, an employee may return to his previous posted job. In the event this occurs, the vacancy he creates will be offered to the next eligible employee affected by the change. If no recall is accepted, the vacancy shall be posted in accordance with the posting procedure. It is agreed that the Company has the right to make necessary changes in job duties which are caused by changes in methods, processes and means of manufacturing. Changes and modifications will be made under this paragraph only after the reasons for such changes and the expected results are made known to the employees affected and the District steward. Major changes will be discussed with the Labor Relations Committee. The Union has the right to review, in line with the grievance procedure set forth herein, the question of job rate and/or working conditions.
>
> If it is necessary to increase or decrease the number of employees in the piecework groups, the Company will meet and discuss the reason for such changes with the Union.

In an earlier decision involving the same contract language, it was ruled by another arbitrator that the employer had a right to eliminate two job classifications and combine the residual duties thereof with other existing jobs in the same department in consideration of the effect of a 10-year modernization program which resulted in improvements that reduced the work loads of the eliminated jobs by more than 50%. Diamond Alkali Co., 37 Lab. Arb. 24 (1961).

The controlling section, by its reference to new jobs, further supported the determination that when these changes occurred, it was entirely possible that they might result in the creation of new job classifications. As a result, it was found that the job classifications listed in the rate sheet attached to the agreement were not frozen and were subject to change without the union's approval.

II. Effect of Less Specific Contract Provisions

The contractual guidance furnished by a specific provision is quite helpful. Without the language recognizing the employer's authority to change jobs when improvements in production were instituted, the decision would have been more difficult. At the same time, the trend of arbitral opinion appears to support management action eliminating jobs where there is evidence of technological improvement or increased efficiency otherwise accomplished, even without contractual support as definite as this.

A. Arbitrability

Occasionally, under a contract which is silent on the particular subject of job elimination, the issue of arbitrability is raised. One successful effort by management to prevent the arbitration of a job elimination situation resulted from a broad provision excluding from the arbitrator's authority "any matter that is reserved to management," in combination with a clause reserving to the employer the right "to manage its business, operations and affairs and to establish the terms and conditions of employment," except as expressly qualified.[5]

It is doubtful, however, that management normally will succeed in preventing the consideration of job elimination at the arbitration step absent some specific limitation. In most instances where the arbitrator's jurisdiction has been questioned, arbitrability has been upheld.[6]

[5] Riegel Paper Corp., 38 Lab. Arb. 916 (1962). A grievance protesting the employer's operation of two kilns, after a change in methods and job duties, with the same number of employees as had been used previously to operate one kiln, was found not to be arbitrable. The reservation of general authority in such broad terms is a common type of management functions clause. It is doubtful that the view on which the determination in this instance was based, will gain very wide acceptance.

[6] In Lone Star Cement Co., 41 Lab. Arb. 1161 (1963), the company had contended that the elimination of three jobs and the assignment of the residual duties thereof to the remaining employees, was one of the inherent reserved rights of management and could not be challenged through a grievance. The contract provided that "grievances arising out of the interpretation, application, or alleged violation of this Agreement . . . shall be referred to arbitration . . ." if they could not be resolved by the parties. The

B. Effect of Job Classification Provisions

On the merits, much depends upon the reason for the employer's action and the particular provisions of the contract involved. The situation may become more difficult when the work is simply rearranged, resulting in the elimination of particular classifications. Under a contract providing that job descriptions and classifications are to continue in effect unless changed by mutual agreement, it has been found that the employer did not have the right unilaterally to discontinue an established classification in the interest of more efficient operations.[7] Although this contract authorized the establishment of new classifications whenever a new job was created or an existing job was changed to a substantial degree, it was ruled that this language did not authorize the combination of one job with other jobs where the duties continued to exist in substantially their original form. The same result followed where the employer abolished one of the listed classifications, transferred minor supervisory duties to supervisors outside the bargaining unit, and reas-

arbitrator ruled that the question of management's right to eliminate jobs went to the merits of the dispute and not to its arbitrability. In the absence of a clear reservation to management of the specific subject of job elimination for the specific exclusion of such matters from arbitration, it was ruled that the union's claim of contract violation constituted a grievance within the contract definition.

In McGough Bakeries Corp., 36 Lab. Arb. 1388 (1961), the agreement provided that "any charge of violation of this agreement, charge of discrimination, grievance or dispute" is arbitrable. The arbitrator found that a complaint that the employer was using one employee to perform a job previously handled by two employees following the installation of automated machinery, related to a change in job content. There was no provision governing job content, but the classification of minimum wage rates, it was ruled, impliedly referred to job content and made the complaint arbitrable. In view of the very broad arbitration clause, this much analysis hardly seems necessary. Under a general arbitration clause covering all differences between the parties, it was held that the question of whether a helper was required after a new machine had been introduced, was arbitrable. Structural Steel Ass'n v. Shopmens Union, 43 L.R.R.M. 2868 (D.N.J. 1959).

A dispute as to the number of longshoremen to be employed in connection with the operation of a monorail system was held to be arbitrable after negotiations to settle the dispute had failed, in view of a clause providing for arbitration of all disputes "of any kind or nature whatsoever" arising under the contract; notwithstanding another clause providing that when technological advancements are introduced, the number of men to be employed shall be subject to negotiation. Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 382 Pa. 326, 115 A.2d 733 (1955).

These rulings seem entirely consistent with the Supreme Court's decision in United Steelworkers v. Warrior & Gulf Nav. Co., 363 574 (1960). The elimination of jobs, for whatever reason, is certainly as much a concern of the respective parties as is work that is contracted out.

[7] Lone Star Steel Co., 26 Lab. Arb. 160 (1956). The employer had contended that the duties of the discontinued classification were no longer being performed, but it was found from the testimony that the same duties were in fact being performed by employees in other classifications. *Accord,* Wyandotte Chem. Corp., 38 Lab. Arb. 808 (1962), where convenience seemed to be the basis for the action taken.

signed the incumbent to a lower classification with the remaining duties.[8]

The existence of job classifications, however, has not prevented the elimination of jobs or the transfer of duties when necessitated by technological changes or improvements in production facilities. Management was upheld, for instance, where a significant change in the operation of the machine in question permitted the elimination of the job of the gaugeman.[9] In another instance, the loading of asphalt had been performed by loaders at the old asphalt plant but in the new plant the man-hours required for this operation were reduced and loading was included as an incidental duty of employees in the operating department. The union contended that this work had always been done by loaders, that it was substantially the same work at the new plant, and that the reassignment of the loading function violated a provision against arbitrary or unwarranted reassignment of established work. The arbitrator denied the grievance on the basis that this provision could not be read to freeze job classifications or to require duplicate manning when the production processes had changed.[10]

[8] Dewey Portland Cement Co., 25 Lab. Arb. 838 (1956). See also Continental Oil Co., 39 Lab. Arb. 1058 (1962); National Biscuit Co., 38 Lab. Arb. 799 (1962); Continental Oil Co., 22 Lab. Arb. 880 (1954). *Contra,* Georgia-Pacific Corp., 40 Lab. Arb. 769 (1963), where it was emphasized that the employer's action was not discriminatory or taken in bad faith. In National Lead Co., 38 Lab. Arb. 20 (1961), it was ruled that the employer could not unilaterally eliminate a job classification where the duties remained, but the employer was not required to reinstate unneeded employees.

[9] United States Steel Corp., 64-3 CCH LAB. ARB. AWARDS 6117 (1964). Although the change was slight, it removed the underlying condition which had prevented the operator of the machine from assuming the duties of the gaugeman. The arbitrator ruled that if the operator could not continue to handle his job with the gaugeman's duties added, he might request additional help and the company should then assign a gaugeman as needed.

In most contracts, job classifications are listed in some manner, often in an appendix, and frequently in connection with a table of hourly rates.

In this connection see Bernheim Distilling Co., 28 Lab. Arb. 441 (1957), holding that a contract supplement containing the schedule of wage rates for enumerated job classifications did not indicate the parties' intent to keep classifications intact for the contract period or prohibit the employer from combining or adding classifications. Such lists, it was felt, should be interpreted as simply setting forth the rate that must be paid to holders of jobs in the particular classifications listed. *Contra,* Kansas Grain Co., 29 Lab. Arb. 242 (1957), holding that where the contract established job classifications and rates, the employer did not have the right to discontinue the assistant maintenance classification and assign the duties to the maintenance job itself even though the extra duties did not create an undue burden upon the latter. The employer's right to combine duties in the interest of efficiency and economy, it was ruled, was limited to the duties of jobs within a single classification. By the establishment of job classifications, it was said, the employer agreed that such classifications and rates would apply as long as the work continued.

[10] Sinclair Ref. Co., 61-1 CCH LAB. ARB. AWARDS 4047 (1960). See also Ameri-

Notwithstanding a provision which in general terms dealt with the continuance of existing job descriptions and classifications, it was determined that the employer had a right to discontinue the job classification of reamer after the introduction of improved machinery which eliminated the need for the reamer's duties, where the agreement also provided that classifications would remain unchanged except when changes in equipment or method resulted in substantial changes in job duties or requirements.[11] In still another case, it was ruled that the employer had a right to combine three existing job classifications into two new classifications in order to rearrange the employees' multiple machine assignments and permit greater utilization of available working time, even though no change had occurred in the production or operating skills involved.[12]

C. *Importance of the Basis for the Action*

Although it may often be dicta, many of the opinions favorable to management stress the fact that the employer's action was based on such factors as plant efficiency,[13] the utilization of improved equipment,[14] or economic advantages.[15] Where the company elimi-

can Chain & Cable Co., 63-2 CCH LAB. ARB. AWARDS 5097 (1962), where, subsequent to the installation of a prescheduling production control system in its new operation, the company abolished certain job classifications which eliminated some jobs. It was ruled that the recognition of job classifications and rates did not mean that these classifications were frozen, particularly in view of a different section of the agreement which appeared to contemplate changes in jobs and rates. After discussing certain dicta in other opinions respecting the arbitrary reassignment of job duties, it was specifically found in this instance that there had been an adequate and reasonable basis for changing the existing job classifications.

[11] Allegheny Ludlum Steel Corp., 32 Lab. Arb. 446 (1959). It was found that the employer had the right to add the operation of this machine as a minor and incidental task to the job description of the cut-off operator. In Penn-Dixie Cement Corp., 33 Lab. Arb. 442 (1959), the contract stated that "job descriptions and classifications for each job shall continue in effect unless . . . [the] job is terminated by management," and it was ruled that the employer still had a right to eliminate the third man on a drilling crew and divide the remaining duties between the other two.

[12] Metal Textile Corp., 32 Lab. Arb. 434 (1958). In this instance, the parties had entered into a memorandum of understanding specifying that "the Union recognizes the Company's right to make job changes which the Company may find necessary." This understanding, it was felt, qualified the contract provision preserving classifications except in cases of fundamental changes in occupation or the establishment of a new occupation. The opinion mentioned the fact that the change was consistent with the company's continuous search for efficiency.

[13] United States Steel Corp., 40 Lab. Arb. 911 (1963); Mansfield Tire & Rubber Co., 35 Lab. Arb. 434 (1960); H. J. Heinz Co., 34 Lab. Arb. 226 (1960); Diamond Gardner Corp., 34 Lab. Arb. 209 (1959); Phillips Petroleum Co., 33 Lab. Arb. 379 (1959) (duties of two former classifications combined in new classification after survey of job duties and requirements).

[14] Bethlehem Steel Co., 40 Lab. Arb. 850 (1963) (modernization program made power house a less critical factor in plant operations and installation of an annunciator

nated three old job classifications and created two new ones on the basis of a consulting firm's recommendation, it was found that the action was for a legitimate business purpose and did not violate the terms of the agreement.[16] Where the automatic processing of information gathered for other purposes through an IBM machine eliminated the need for the essential duties of a box scheduler, no additional employees were added outside the unit to perform these duties, and the remaining duties of a ministerial nature were assigned to others in the existing work force, it was found that no violation of the agreement had occurred.[17] In another case involving the same concern, it was found that the employer had a right to contract for automatic protection equipment to replace guards when, for economic reasons, the plant was converted into a warehouse and the use of such equipment resulted in substantial savings.[18] Neither did a violation occur where the employer installed modern automatic ovens and eliminated the job of second oven-man.[19]

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made possible the elimination of the power house operator's job); Phillips Pipe Line Co., 40 Lab. Arb. 276 (1963); Ohio & W. Pa. Dock Co., 39 Lab. Arb. 1065 (1962); Meyers Bakery, 38 Lab. Arb. 1135 (1962); Hanna Ore Mining Co., 37 Lab. Arb. 1019 (1961); Libby McNeil & Libby, 37 Lab. Arb. 466 (1961); Braun Baking Co., 37 Lab. Arb. 169 (1961); McGough Bakeries Corp., 36 Lab. Arb. 1388 (1961); Bethlehem Steel Co., 36 Lab. Arb. 394 (1961) (new stranding machines had relocated control panels and electronic features); United States Steel Corp., 36 Lab. Arb. 273 (1960) (pendant controls eliminated the need for overhead crane operator); United States Steel Corp., 34 Lab. Arb. 127 (1960); Quaker Oats Co., 34 Lab. Arb. 24 (1959) (where job of package-shipping lead man was eliminated after technological improvements removed need for job); Duval Sulphur & Potash Co., 33 Lab. Arb. 311 (1959); Schlitz Brewing Co., 30 Lab. Arb. 147 (1958); National Container Corp., 29 Lab. Arb. 687 (1957); Bethlehem Steel Co., 26 Lab. Arb. 146 (1956).

The author had occasion to consider a case in 1964 in which the record clearly established that numerous improvements in the equipment and the method of operation had occurred over a period of years in a machine shop. Interestingly enough, many of these improvements had been suggested and introduced by one of the grievants. It was also established that the design of boilers produced by the company in that case had basically changed and the tubing was no longer as large or complicated as it had been. Under these circumstances, it was ruled that the employer's action did not violate the terms of the agreement, particularly in view of the evidence that the use of the same number of helpers had not been eliminated entirely but had been changed only with respect to the lighter or simpler work which resulted from the improvements shown by the record.

[15] Independent Lock Co., 36 Lab. Arb. 1392 (1962); Marion Power Shovel Co., 35 Lab. Arb. 749 (1960); Penn-Dixie Cement Corp., 33 Lab. Arb. 442 (1959) (stressing competitive conditions in industry as well as introduction of technological improvements).

[16] Simonize Co., 32 Lab. Arb. 115 (1959).

[17] Reynolds Metals Co., 32 Lab. Arb. 249 (1959).

[18] Reynolds Metals Co., 32 Lab. Arb. 815 (1959).

[19] Continental Baking Co., 32 Lab. Arb. 836 (1959). It was found in this instance that only one oven-man was needed after the installation since the initial setting of the speed and heat controls, done by supervision after the change in equip-

This emphasis upon the underlying reason for the action taken suggests caution in the application of the statement, sometimes made, that the employer has the right, if exercised in good faith, to transfer duties from one classification to another, to change, eliminate, or establish new classifications, unless the agreement specifically restricts this right.[20] Much depends upon what is meant by good faith in this connection. If the application of this statement is limited to situations where technological changes or improvements in the production process have occurred, it would have support which in other situations would be lacking.

D. Manning Provisions

Some collective bargaining agreements contain specific provisions on the subject of job manning. The most effective of these, from the union's standpoint, is a provision specifying crew size. Where the agreement provided that "no less than three men shall be employed in a crew," it has been ruled that the employer may not reduce the size of the crew below this number, notwithstanding the fact that a reduction in the volume of work, together with technological changes, may have eliminated the necessity of a three-man crew. The arbitrator pointed out that the contractual requirement was unqualified and did not, by its terms, depend upon the maintenance of a particular volume of work or any other conditions.[21]

Essentially the same effect was obtained in a more recent instance where it was agreed that the existing manning scales should not be reduced during the life of the contract and that the minimum manning scale for any vessel should include a master and four mates. It was found that this minimum became an absolute minimum and the employer was bound to meet its requirements.[22]

ment, took a maximum of thirty minutes per day and this was no more than supervisors had always done.

[20] Reynolds Metals Co., 25 Lab. Arb. 44, 49 (1955).

[21] Weston Biscuit Co., 21 Lab. Arb. 653 (1953).

[22] Sinclair Oil Corp., 41 Lab. Arb. 878 (1963). The controversy arose when a vessel in excess of 38,000 tons was activated and the company felt that various improvements in design, construction, and materials had reduced the need for deck officers so that only one third mate, instead of two normally employed, was needed. The same section included a provision that when vessels over 38,000 tons were put into operation, the issue of manning scales should be negotiated between the parties. In the opinion of the arbitrator, this left room for negotiation concerning a possible increase in the size of the crew, namely, whether the minimum should be raised, but not whether the minimum might be lowered. He added that this did not fix for all time the manning scales to be maintained on vessels of a new type, pointing out that the question of suitable manning scales could be debated and resolved when negotiations were undertaken for a new agreement.

When the contract provision is less explicit, the result becomes more uncertain. In *Air Reduction Chem. & Carbide Co.*,[23] the employer attempted to reduce the number of full-time testers to one assigned to the day shift, and to require first aid attendants to perform testing on other shifts. The contract specifically recognized that although there were four workers in the testing department, the need for testers in the future could change. It was agreed, however, that certain procedures would be followed "as long as conditions remain as, or near, to what they are at present." The arbitrator concluded that the contract provided for full-time testers as long as conditions were relatively the same as they were during negotiations. In the absence of evidence of some process, equipment, or method change compelling the elimination of a full-time tester, he ruled that the employer could not reduce the number below the four testers specified.[24]

In *American Petrofina Co.*[25] the agreement provided that there should be no negotiation during the term thereof in classification differentials or classifications. It was ruled that the employer did not have a right unilaterally to eliminate the assistant platform operator classification and assign the remaining duties thereof to platform operators, even though the assistant's duties may have required no more than two and one-half hours of work during the eight-hour shift. The duties of the assistant operator, it was pointed out, had not diminished substantially from the time the classification and rate were established in the agreement.[26]

In *Chesapeake & Ohio Ry.*[27] the agreement not only listed the classification of ticket seller but provided that no classification within the scope of the agreement could be removed from the application of its provisions without prior negotiation and agreement with

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[23] 41 Lab. Arb. 25 (1963).

[24] It is rather clear from the opinion, however, that if sufficient technological change had been shown, the company's action would have been upheld. The opinion recognized that fewer than four full time testers might be justified, but the arbitrator apparently found that conditions were relatively the same as they were during negotiations. He particularly noted the fact that there was no evidence of process, equipment, or method change compelling the elimination of any full-time tester as contemplated by the contract language.

[25] 32 Lab. Arb. 614 (1958).

[26] This result may have been partly due to the fact that the employer had attempted to negotiate certain changes in the assistant platform operator classification, without success. In any event, the arbitrator concluded that the proper place to accomplish the company's aim in this instance was around the bargaining table.

[27] 29 Lab. Arb. 381 (1957).

the union. In the light of this requirement, it was ruled that the employer was in violation when it abolished the ticket seller's position and distributed the duties thereof to employees not covered by the agreement with this union, even though business at the station had declined substantially. On the other hand, where a contract required the employer to provide "adequate help" at all times on all "present and newly installed machinery" it was found that the employer was not in violation when it eliminated the job of conveyor-switchman on a dumping operation after installing new conveyor equipment.[28]

The contract in *Dana Corp.*[29] provided that senior employees should be allowed to move with a machine "in cases where more than one machine is grouped either by automation or otherwise." It was found that the employer had the right under this language to combine two external grinders that had been adapted to automatic operation and to assign one employee to operate both machines.[30]

Where an agreement provided that any new teletype setter process involving the use of perforated tape to set type "will not be used, but is left for future negotiations," it was found that the employer was not required to wait for the expiration of the agreement to initiate negotiations with the union concerning the use of new high speed outside tape for casting type on stock market quotations and baseball scores. However, it was ruled that no contract change could be made without mutual consent.[31] But where a contract stated that the parties would cooperate to further economy of operations, it was found that the employer had the right unilaterally to eliminate some job classifications listed therein and change the duties of others even though this resulted in the displacement of twenty-five employees. The employer's action in this instance was

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[28] Schlitz Brewing Co., 30 Lab. Arb. 147 (1958). The arbitrator found that the switchman's job involved control of the conveyor system, and when the new equipment was installed it eliminated the control function so that there was practically no work left for the switchman. It was also found that the elimination of the job had imposed no burden on other members of the dumping crew.

In Continental Can Co., 35 Lab. Arb. 602 (1960), the contract stated that the employer "will attempt at all times to maintain a full production crew," but the arbitrator found that the elimination of one employee per shift from the work crews in the beater room did not violate this provision in view of the technological changes that had lightened the work.

[29] 33 Lab. Arb. 537 (1959).

[30] The opinion also referred to management rights generally and pointed out that the change was made in good faith and in furtherance of legitimate business considerations.

[31] Daily Newspaper Publishers, 33 Lab. Arb. 898 (1960).

based on a study which indicated that certain operations could be handled more efficiently.[32]

In *Anheuser-Busch, Inc.*[33] the agreement stated that "present job assignments shall be frozen as of the date of this agreement," as well as "all classification and shifts." The arbitrator found, however, that this language did not operate to freeze the content of the jobs in the face of bona fide changes in equipment or operations.[34]

E. Maintenance of Local Working Conditions

Clauses providing for the maintenance of local working conditions, most common in the basic steel agreements, have not been a decisive factor in job elimination cases unless the record fails to establish a change in the underlying basis of the local condition. Technological improvements or the introduction of new equipment usually furnish the required change in conditions.[35]

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[32] Hudson Pulp & Paper Corp., 34 Lab. Arb. 7 (1959). The contract also contained a provision relating to the negotiation of wage rates for new or changed jobs, which the arbitrator noted.

[33] 36 Lab. Arb. 1289 (1961).

[34] Evidence indicated that the provision in question was agreed upon in response to the union's objection to the former practice of changing work assignments from day to day, and was intended to freeze assignments of individuals to the extent that jobs remained available and to maintain the stability of duties associated with each job.

[35] Most provisions of this type, although not all, in the basic steel agreements specify that the employer may change or eliminate any local working condition if the basis for the existence thereof is changed or eliminated. For additional cases upholding job elimination on the basis of technological change, see Pittsburgh Steel Co., 43 Lab. Arb. 770 (1964); United States Steel Corp., 41 Lab. Arb. 468 (1963); 41 Lab. Arb. 334 (1962); 41 Lab. Arb. 56 (1961); 35 Lab. Arb. 588 (1960).

In the latter case a helper's job was eliminated on the basis of a minor technological change along with the elimination of part of the work process and streamlining the remaining duties. The company's action was sustained on the basis of these changed conditions. See also Reserve Mining Co., 39 Lab. Arb. 341 (1962); Pickands Mather & Co., 38 Lab. Arb. 228 (1961); Bethlehem Cornwall Corp., 37 Lab. Arb. 318 (1961); United States Steel Corp., 34 Lab. Arb. 127 (1960).

In United States Steel Corp., 34 Lab. Arb. 556 (1960), it was ruled that the employer did not violate the maintenance of local working conditions requirement when it ceased to assign a helper to the water treater and added some of the helper's duties to the water treater job description. The discontinuance of this local working condition, it was said, would not have been justified by any one of the changes initiated by the employer over the years, but it was found that the elimination of the helper was warranted in view of the cumulative effect of such changes as the elimination of units to be serviced, installation of improved equipment to eliminate manual stirring of chemicals, installation of new equipment to reduce the amount of treated water required, and other changes in methods and materials.

In American Chain & Cable Co., 33 Lab. Arb. 362 (1959), on the other hand, it was ruled that the employer did not have the right to change the complement of millwright crews from millwrights and oilers to millwrights, helpers and oilers where the employer failed to show that the basis for the crew complement had changed. Economic hardship and practice throughout the industry were rejected as inadequate

The agreement between the Republic Steel Company and United Steelworkers of America, Local 5000 required the maintenance of "any custom and practice consistent with this agreement which is in effect and has been consistently observed on a fleet-wide basis for at least two years." This provision, according to the arbitrator, encompassed the matter of crew size, and the employer's removal of one deck hand from vessel crews was a violation.[36]

F. Safety as a Factor

Safety is often raised as one of the reasons for resisting the elimination of jobs, whether or not due to technological change. Collective bargaining agreements contain a great variety of clauses relating to safety, many of them quite general in nature. Even without a specific clause on the subject, the safety aspect, if raised, is entitled to serious consideration; but in the reported cases this has not been an effective means of avoiding job elimination. In most instances the employer seems to have been careful to avoid crew reductions which might create a risk to health or safety. There is little doubt that if such care had not been exercised and any real, additional danger to the remaining crew appeared in the record, the outcome would be different under many of the health and safety provisions.

Cutting a power-house crew from nine to five men after installing new automated control equipment did not violate the contract's safety and health provisions where the evidence failed to bear out the claim that unnecessary hazards had resulted or that increased activity of remaining crew members was so physically demanding as to jeopardize their health.[37] In another case, where it had been suggested that it was unsafe to leave an employee alone on jobs in isolated areas in the plant, it was held that the danger was not sufficiently real.[38] Also, slippery stairs have been found to be no more hazardous with a smaller crew, since it was felt that crew size could have no direct bearing on the condition itself.[39]

reasons for making the change. Likewise, in a later case involving the same firm, it was found that most of the intervening changes had been aimed at getting more efficiency from the furnace in question and did not constitute a technological change sufficient to warrant a reduction in the size of the crew that had been established as acceptable over a period of more than three years. American Chain & Cable Co., 39 Lab. Arb. 432 (1962).

[36] Republic Steel Co., 40 Lab. Arb. 73 (1963).

[37] Allied Chem. Corp., 35 Lab. Arb. 289 (1960).

[38] International Salt Co., 42 Lab. Arb. 1188 (1964).

[39] United States Steel Corp., 41 Lab. Arb. 432 (1963).

A clause in some agreements prohibits "unsafe conditions, changed from the normal hazards inherent in the operation." It has been ruled that the removal of the fourth man from road crews after the introduction of new safety and communication equipment did not violate this provision. While the improvements did not eliminate entirely the dangers of occasional human error, it was found that the situation had not been changed from the normal hazards inherent in the operation.[40]

In *Union Carbide Metals Co.*,[41] the contract stated that the "Company shall continue to make reasonable provisions for the safety and health of its employees." The arbitrator ruled that no violation of this provision occurred when the employer began assigning a two-man crew to a new locomotive, using radio communication between the switchman and the engineer instead of following the former practice of assigning three-man crews and using hand signals for communication. According to the arbitrator, even if it were assumed that the hand signals were safer, the use of radio communication was reasonable since inquiry had been made concerning the safety of the system and there was enough experience with the operation of radio equipment to establish its reliability.

In most of the job elimination cases in which the issue of safety has been raised it has been found that no increased safety hazard was demonstrated.[42] In *Dana Corp.*,[43] however, while finding that the new arrangement did not appear to be unsafe, the arbitrator directed the employer to obtain the approval of the state safety inspection agency in accordance with a contract provision requiring the employer to meet "requirements of factory inspection laws."

G. Effect of Seniority Provisions

Provisions which relate to the application of seniority have also been urged as a bar to job elimination. The remoteness of such arguments, however, usually renders them ineffective. In *Fabricon Prods.*,[44] it was found that the employer did not violate a contract

[40] Reserve Mining Co., 39 Lab. Arb. 341 (1962). To similar effect, see Bethlehem Steel Co., 37 Lab. Arb. 143 (1961).

[41] 37 Lab. Arb. 501 (1961).

[42] United States Steel Corp., 40 Lab. Arb. 911 (1963); McGough Bakeries Corp., 36 Lab. Arb. 1388 (1961); Erie Mining Co., 36 Lab. Arb. 902 (1961); Bethlehem Steel Co., 36 Lab. Arb. 217 (1961); Texas Gas Corp., 34 Lab. Arb. 807 (1960); Penn-Dixie Cement Corp., 33 Lab. Arb. 442 (1959).

[43] 33 Lab. Arb. 537 (1959).

[44] 35 Lab. Arb. 63 (1960).

provision stating that "men and women should be divided into separate, non-interchangeable seniority groups" when it installed new equipment that significantly altered the manufacturing process and assigned the operation of the entire process to men, thereby depriving women of riveting work that had been done by them formerly. Seniority rights, it was said, did not guarantee the existence of jobs or their continuation without change. It was also found that the employer's action in this instance was taken to improve methods and processes of manufacturing and not for the purpose of impairing seniority rights or job opportunities of the affected employees. Likewise, where an agreement contained a provision requiring the establishment of job progression charts for the purpose of promotion on a seniority basis, it was found that the employer had the right, after completing a program of modernization, to combine three former classifications, each of which had been filled by one employee per shift, into a single classification manned by two employees on each shift.[45]

In some instances, the union adopts a shotgun approach. It is not unusual to have two or three general provisions of the agreement advanced as a bar to job elimination, but occasionally the list is almost as long as the number of titles in the agreement. Morris Stone[46] reports an example of this where, beginning about 1953, the employer began installing automatic control and reporting equipment at its water injection wells. Ultimately, nine out of the thirteen operators lost their jobs.[47] Starting with the seniority clause, the grievants also alleged violation of maintenance-of-crews, wage and classification, safety regulation, duration-of-the-agreement, and wage reopening provisions. Each of the charges was examined, but no violations were found.[48] Nothing is normally gained by such a broad attack.

III. Impact on Rates of Pay

One result of the elimination of jobs may be a demand that the pay of the remaining employees be adjusted to reflect changes in their duties. In one case, following technological improvements in

[45] Mansfield Tire & Rubber Co., 35 Lab. Arb. 434 (1960).

[46] Managerial Freedom and Job Security 207 (1964).

[47] It was at first thought that the project would make it unnecessary to have any operators on duty, but partly because of the union's resistance, four remained so that the process could be manned by a single operator at all times in case anything should go wrong at the automatic controls.

[48] Long Beach Oil Dev. Co., 49 Amer. Arb. Ass'n 11.

the oiling system which permitted a reduction in the number of oilers, an employer assigned some duties and responsibilities for servicing and operating the new system to tracto-shovel operators. It was ruled that the employer was required to negotiate an adjustment in the wage rate for the latter classification so as to fairly reflect this change and the increase in work content.[49]

In another case, under an agreement which required the employer to study job changes and establish new rates where necessary, the employer had determined rates of pay at the front end of a production line following automation which cut the crew at that end in half. New rates were established which were higher in some instances and lower in others. The arbitrator found that the employer had failed to make a sufficient study of the changes and ordered the new methods restudied and re-evaluated with attention to be given to the various functions of *all* members of the crew, not just those at the front end.[50] In another case, an increase in the wage rate was awarded on the basis of a substantial change in job duties where the contract provided that the wages for a job which had been substantially changed would be open for negotiation and subject to arbitration.[51] In *United States Ceramic Tile Co.*,[52] on the other hand, an increase in wage rate was denied for two jobs to which the residual duties of an eliminated job were added after the introduction of new equipment, since the evidence failed to show a sufficient change in job duties to warrant an increase.

Merely increasing output or realizing savings by the introduction of new equipment does not necessarily entitle the operator to a higher rate of pay.[53]

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[49] Ohio & W. Pa. Dock Co., 39 Lab. Arb. 1065 (1962).

[50] Carlyle Tile Co., 65-1 CCH LAB. ARB. AWARDS 4155 (1965). The arbitrator found that no attention had been given to the back workers on the line.

[51] Giant Portland Cement Co., 64-3 CCH LAB. ARB. AWARDS 6641 (1964). Some of the duties of three job classifications eliminated because of automation had been added to the job in question.

In Reynolds Metals Co., 33 Lab. Arb. 385 (1959), the agreement provided that "if, in the future, the Company places into operation different types of machinery, apparatus, or new processes which necessitate the installation of new job classifications, or the making of major changes in the present job classification, the Company will establish wage rates for such job classifications which will be in proper relationship to the wage rates of other job classifications in the plant." When the employer installed a mechanically operated rammer so that fewer men were needed for tamping in connection with cell relining, although the regular crew of seven was still required for other aspects of the job, it was ruled that the establishment of new job classification was not required and the union was limited to questioning the rate applicable to the existing classification.

[52] 35 Lab. Arb. 113 (1960).

[53] Wickes Corp., 12 Amer. Arb. Ass'n 4; Armco Steel Co., 30 Amer. Arb. Ass'n 15.

IV. CONCLUSION

The cases reviewed give some indication of the extent to which collective bargaining has been able to cope with the difficult problem of job elimination. Although ranging all the way from provisions which recognize the employer's right to eliminate jobs where technological changes occur to provisions prohibiting reductions in the size of crews or the elimination of particular jobs, many of these contract provisions are uncommon in most industries. Much more can be accomplished in the drafting of particular contract terms to meet the exigencies of job elimination and adjustment which are bound to occur with greater frequency as equipment is replaced and new ways are devised to improve and simplify production methods.

It is impossible to suggest provisions for this purpose since the needs of various industries will vary considerably, and particular plants within any given industry may have quite different problems and backgrounds in their labor-management relationship. If a direct approach seems undesirable in a particular situation, some help may be obtained by providing for the procedure to be followed when changes in equipment or process occur, and by specifying the manner of accomplishing adjustments in wage rates when duties are added to remaining job classifications or new classifications are created. Some sense of accomplishment may be gained in this manner, and the prospect of higher rates of pay based on greater responsibility or added duties for remaining jobs may offset, from the union's standpoint, part of the disappointment over the loss of the jobs.

It is recognized, of course, that drafting may be the smallest part of the problem in many instances. The pressure of competition upon management may be matched by the pressure upon union officials from members in fear of losing their jobs. Both sides may be reluctant to open the subject, and when it does appear in the list of demands or counterproposals, the fireworks may make the solution difficult to discern.

Neil Chamberlain, a professor of economics at Yale University, has said the following in this regard:

> If traditional collective bargaining methods are inadequate in the modern economy this only underscores the necessity of our discovering new procedures for accommodating change without

Both decisions are reported in STONE, MANAGERIAL FREEDOM AND JOB SECURITY 210-11 (1964). In the former case it was said that the objective of sharing in such savings would have to be secured through negotiation, not arbitration.

> exacting too high a price from those on whom the burden of change primarily falls. There is a need for new devices which satisfy both business requirements and the legitimate demands of the workers, the households whom they represent, and the unions which represent them.
>
> The principal specifications for such new procedures are apparent. If management wants flexibility in adapting to changes in plans and variances in budgets, it must give the union a chance to be heard on all the decisions affecting the interests of workers on a continuing basis. If management wishes to avoid the rigidities of "past practices" and custom, it has to accept a bargaining process which is as continuous as its own planning process. At the same time the union must recognize that a right of initiative must lie with management or else the whole purpose of flexible planning is lost. If continuous bargaining means that management is prevented from acting until agreement has been reached with the union, then it stands in the way of that prompt adaptation to changed circumstances which is the objective of continuous planning.[54]

Professor Chamberlain made particular reference to the Kaiser Long-Range Plan for the Equitable Sharing of the Fruits of Economic Progress, and the Human Relations Committee, jointly sponsored by eleven other employers in the steel industry, as two recent efforts to meet this problem.[55] The Kaiser plan makes use of so-called "informed neutrals" — individuals selected by the parties jointly to assist them in solving their more difficult problems. The Human Relations Committee is a "family affair," meeting throughout the year to discuss major problems in an atmosphere of informality.

He also suggested that perhaps the problems of job changes and employee rights may lead to more flexible agreements by a return to shorter contracts which enunciate a few basic essentials that can be agreed upon, in contrast with a code which attempts to cover all conceivable contingencies.[56] This approach would certainly enhance the role of the arbitrator.

Still another approach, and one which may hold as much or more promise than any of the others mentioned, it is submitted, would involve the use of professional arbitrators to settle the issues connected with job elimination, as well as other forms of job erosion, as they arise during contract negotiation. To the extent that the parties themselves may be unable to work out agreeable terms in

[54] *Work Assignments and Industrial Change,* PROCEEDINGS OF THE SEVENTEENTH ANNUAL MEETING OF THE NATIONAL ACADEMY OF ARBITRATORS 224, 230-31 (1964) (Comments of Professor Chamberlain).

[55] *Id.* at 231.

[56] *Id.* at 237.

these critical areas, such provisions may be highly appropriate subjects for arbitration of contract terms. This has been tried in a few industries with some degree of success.[57]

This device, said to be used more widely in England, deserves a fuller trial in this country. It is not compulsory arbitration, since it would only be utilized by those who provide for this alternative in their own agreement as a means of resolving impasses which may develop when the contract is reopened, or when the time arrives to negotiate a new agreement. Such a provision could certainly be given a continuing effect, beyond the expiration date of other terms.

If this be considered too much responsibility for a single arbitrator, provision might be made for the selection of three- or five-man panels composed entirely of experienced, neutral arbitrators. The cost would be nominal compared with any prolonged strike.

It is not difficult to determine the effect of existing provisions upon the various aspects of job elimination, or to draw better terms to handle the issues which may arise. It is much more difficult to reach an agreement on these matters, and here is where the work of the future must be done.

[57] Pittsburgh Plate Glass Co., 33 Lab. Arb. 614 (1959), is one example. A panel of three experienced and well-known arbitrators (Lehoczky, Fisher, and Myers) made a series of awards affecting crew sizes in this employer's plant.