the minds of the jurors, thus preventing the fair administration of criminal justice. It potentially reverses the presumption of innocence to one of guilt. The effectiveness of the exclusionary order as a remedy for press abuses is, however, open to doubt. Exclusion may tend to preserve the presumption of innocence to a degree, but it fails to counteract the evil of "trial by newspaper" which arises in many cases before the trial begins. The order tends to punish the innocent, for all newspapers are not guilty of this vice in the sensational cases. Thus while the exclusion protects the accused's right to a fair trial, it may unnecessarily encroach on freedom of the press and the public right to know and participate in the governmental process. At the present time, only through the weighing process and a liberal policy towards intervention as *amicus curiae* by representative members of the public, where rights are threatened to be foreclosed, can the public's right to know be protected against arbitrary restriction.

TECHNOLOGICAL CHANGE: MANAGEMENT PREROGATIVE VS. JOB SECURITY

Recent congressional hearings[1] have focused attention on the growing problems wrought by technological changes[2] and consequent displacement. Because its purpose is to increase productivity and profits by reduced labor costs,[3] technological change is opposed by some fearful

determine whether there has been a violation of a constitutional right. Bridges v. California, 314 U.S. 252 (1941). "The courts are then limited to doing what they can to insulate jurors from the prejudicial effect of such publicity, as by cautionary instructions or by the granting of continuances, or in some cases granting a change of venue." Delaney v. United States, *supra,* at 113. The courts have, perhaps, found in exclusion an effective deterrent to "trial by newspaper."

1. H.R. RES. 221, 84th Cong., 1st Sess. (1955). "Resolution creating a select committee to conduct an investigation and study of the effects of increasing automation upon the American economy." 101 CONG. REC. 4180 (daily ed. April 21, 1955). The committee held hearings in October 1955 at which representatives of management and labor testified.

2. Technological change is used in a broad sense and in this note and means the use of labor saving devices and all types of modern manufacturing methods. These methods include automation, mechanization, and improved operational and organizational techniques. The discussion is chiefly related to the mass production manufacturing plants.

3. "The Annual Improvement Factor . . . recognizes that a continuing improvement in the standard of living of employees depends upon technological progress, better tools, methods, processes, and equipment, and a cooperative attitude on the part of all parties in such progress. It further recognizes the principle that to produce more with the same amount of human effort is a sound economic and social objective." 5 CCH LAB. L. REP. (4th ed.) ¶ 59923.095 (1955) (Ford Motor Co.-UAW Contract).

workers and their labor unions;[4] at the other extreme are those of management who refuse to recognize the interest of labor in preserving employees' rights of job security. Progressive labor groups know that complete automation is limited to a fairly small portion of industry, that it will be comparatively slow in evolution,[5] and that it eventually will result in more jobs and greater consumer demand.[6] Moreover labor saving devices bring higher wages, less effort on the job, greater fringe benefits, and hasten the possibility of a shorter work week.[7] These long range benefits, however, do not lessen the severity of the economic and psychological impact which technological displacement, however temporary its duration, has upon the wage earner.[8]

The employer is required to recognize labor organizations for purposes of bargaining with respect to employee wages and working conditions.[9] Each concession by management to employees strengthens labor's claim to joint administration of the plant and, consequently, limits the area in which management is free to exercise its powers unilaterally.[10] Thus, even though management specifically reserves the right to change operating and manufacturing methods, the NLRB and arbitrators have shown a tendency to limit the unilateral exercise of these functions be-

4. For discussions of labor opposition to technological change by means of work restrictions and featherbedding, See Selekman, *Productivity—and Labor Relations,* 27 HARV. BUS. REV. 373 (1949); Aaron, *Governmental Restraints on Featherbedding,* 5 STAN. L. REV. 680 (1953). A recent case illustrating one union's resistance to modern methods is Austin v. Painters District Council, 339 Mich. 462, 64 N.W.2d 550 (1954), 53 MICH. L. REV. 486 (1955).

5. Diebold, *Automation—The New Technology,* HARV. BUS. REV., Nov.-Dec. 1953, p. 63, 71.

6. Phillip Murray, the late CIO president stated: "I do not know of a single solitary instance where a great technological gain has taken place in the United States of America that it has actually thrown people out of work. I do not know of it—I am not aware of it—because the industrial revolution that has taken place in the United States in the past 25 years has brought into the employment field an additional 20 million people." 101 CONG. REC. A1521 (daily ed. March 8, 1955).

7. See Business Week, Oct. 1, 1955, p. 75. One view is that in the automobile industry the "high wage and fringe costs imposed by the UAW, combined with the fierce competition, makes further technological progress both necessary and inevitable." Northrup, *The UAW's Influence on Automotive Management Decisions,* 78 MONTHLY LAB. REV. 170, 173 (1955).

8. The Wall Street Journal, Oct. 18, 1955, p. 24, col. 1; The Wall Street Journal, Oct. 25, 1955, p. 2, col. 2.

9. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing. . . ." Representatives designated . . . shall be the exclusive representatives . . . for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . ." LMRA, 61 STAT. 140, 143 (1947), 29 U.S.C. §§ 157, 159 (1952).

10. For a commentary on this proposition in one industry, See Northrup, *supra* note 7.

cause of their effect on areas of joint control under the agreement.[11] The most significant limitation on management's right to effect technological changes is job security.[12]

Job Security

Seniority, the status achieved by employees through length of service, gives rights under the contract with respect to jobs; it probably has done more to encourage union membership than any other protective feature of the labor agreement.[13] Seniority was, at first, a means by which employers favored older, experienced, and dependable workers. By giving seniority privileges, the employer could reduce employee turnover, protect his training investment, encourage skilled workers to remain with him,[14] and reduce their desire to take action which might jeopardize their job security.[15] In the absence of other criteria, seniority provided an understandable basis for promotion and layoff.[16] As the principle of collective bargaining became recognized, and ultimately required by the Wagner Act,[17] these privileges were converted into valuable contract rights which insured employee job status.[18] Seniority rights were extended to the unskilled worker who, because of his weaker bargaining position, had been more subject to arbitrary action.[19]

When skills, which formerly offered a basis for job security, are eliminated by advancing mechanization, the desire and need to provide job security is increased. This, perhaps, largely explains why seniority is well established, both as a bargaining subject and as a feature of plant management;[20] its inherent complexities[21] and resistance to its strict

11. See discussion p. 394-96 *infra*.

12. The limitation results from the personnel movements which naturally arise from technological change. It has been categorically stated that seniority tends to cause employee opposition to technological change. Mitchem, *Seniority Clauses in Collective Bargaining Agreements,* 21 ROCKY MT. L. REV. 156, 326 (1949).

13. "The promise of job 'ownership' . . . or the complete elimination of 'favoritism'" was this encouragement. Knowlton, *Recent Problems in Arbitration of Seniority Disputes.* 9 ARB. J. (n.s.) 194 (1954).

14. LAPP, HOW TO HANDLE PROBLEMS OF SENIORITY 2-3 (1946).

15. Certain actions by employees can result in the loss of seniority under contract provisions. *Id.* at 61-63. "Seniority is not lost by strikes or lockout." *Id.* at 64.

16. "Since in most cases management has no really effective means for measuring the relative ability of the vast majority of its unskilled or semi-skilled workers, it may have little objection to considering length of service as a major factor governing layoffs and rehiring." HARBISON AND COLEMAN, GOALS AND STRATEGY IN COLLECTIVE BARGAINING 39 (1951).

17. NLRA 49 STAT 449 (1935), 29 U.S.C. §§ 151-166 (1952).

18. LAPP. *op. cit. supra* note 14, at 3.

19. *Id.* at 9.

20. HARBISON AND COLEMAN, *op. cit. supra* note 16, at 39.

21. For a comprehensive outline of seniority provisions, See Mitchem, *supra* note 12.

application,[22] however, raise many problems in negotiation and administration.[23]

Seniority provisions and their application are as varied as are the different types of industries and job classifications.[24] The degree to which seniority is used as the basis for contract rights depends on its practicability, the bargaining power of the labor representatives, and the management's acceptance of the principle.[25] In the typical agreement the exercise of seniority rights is conditioned upon requirements of skill and ability. Because of the difficulty of evaluating these factors,[26] they are probably the most arbitrated part of seniority plans. Management would like maximum emphasis on skill and ability, while unions usually attempt to secure maximum use of seniority for job-bidding, transfer rights, and upgrading.[27]

Another important factor in seniority plans is the unit in which seniority rights accrue. Where occupations are similar and skills are fairly equal, a broad seniority unit, such as the whole plant, may be adopted.[28] Where operations are complex, the seniority unit must be narrower and seniority rights typically exist within a department or a similar unit.[29] Management prefers departmental seniority in order to establish competition between similar skills and to prevent excessive bumping, numerous transfers, and consequent high training costs.[30] From the employee point of view a broad seniority unit provides greater job

22. See Fairweather, *Seniority Provisions in Labor Contracts: Social and Economic Consequences,* 1 DEPAUL L. REV. 191 (1952). The author criticizes strict seniority and advocates maximum use of ability.

23. Brown, *A New Technique in Seniority Administration,* 9 IND. & LAB. REL. REV. 32 (1955).

24. LAPP, *op. cit. supra* note 14, at 10.

25. Collective bargaining is a process in which labor's desire for broad seniority and management's desire for plant efficiency is attempted to be reconciled. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-11, COLLECTIVE BARGAINING PROVISIONS, SENIORITY 14, 15 (1949). Seniority is often adjusted for local situations. "Seniority shall be by . . . groups of departments or plant wide, as may be negotiated locally in each plant. . . ." 5 CCH LAB. L. REP. (4th ed.) ¶ 59905.20 (1955) (General Motors Corp-UAW Contract).

26. For discussions of the variations in ability-seniority provisions, See Knowlton, *supra* note 13; Note, 38 VA. L. REV. 655 (1952).

27. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-11, COLLECTIVE BARGAINING PROVISIONS, SENIORITY 2 (1949).

28. *Contract Clauses on Seniority as a Factor in Layoffs,* 78 MONTHLY LAB. REV. 766, 767 (1955).

29. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-11, COLLECTIVE BARGAINING PROVISIONS, SENIORITY 14-15 (1949). Departmental seniority is more common. The seniority unit is dependent on the size of the plant, scale of operations, skill requirements, diversity of processes, and interchangeability of types of work. *Id.* at 14.

30. *Ibid.*

security because, in the event of displacement,[31] it gives those with seniority some cushion and a wider area in which to assert job rights.

When expansion accompanies modernization, the employer is in a position to absorb employees displaced from a particular operation.[32] If no contractual obligation exists, the employer may consider only the ability and morale of the workers; he would prefer to place his most able employees where he desires[33] and retrain only the workers who would best benefit his business for the longest time.[34] Very likely, he would attempt to keep wages and job classifications as nearly the same as possible.[35] Where there is no expansion, however, contract provisions[36] and economic conditions may prevent a ready answer to the problem of the displaced worker. By limiting the unilateral exercise of management prerogatives which affect job security, unions have attempted to anticipate and prevent displacement hardships.[37]

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31. Mitchem, *supra* note 12, at 161 (1949).

32. Without the productivity benefits there would be higher prices and less of a tendency for the economy to expand. This is the case in Great Britain where innovations are opposed. U.S. News and World Report, Feb. 18, 1955, p. 92-95. Firms which do not adopt new techniques may be forced out of business by competitors who do. Weinberg, *A Review of Automatic Technology,* 78 MONTHLY LAB. REV. 637, 644 (1955). Changes are usually introduced in times of high demand when the chances for expansions are greatest. Segal, *Factors in Wage Adjustments to Technological Change,* 8 IND. & LAB. REL. REV. 217, 224 (1954).

33. "The transferring of employees is the sole responsibility of Management subject to the following: (a) In the advancement of employees to higher paid jobs when ability, merit and capacity are equal, employees with the longest seniority will be given preference. (b) It is the policy of Management to cooperate in every practical way with employees who desire transfers to new positions or vacancies in their department." 5 CCH LAB. L. REP. (4th ed.) ¶ 59905.22 (1955) (General Motors Corp.-UAW Contract),

34. SLICHTER, UNION POLICIES AND INDUSTRIAL MANAGEMENT 279 (1941).

35. One company expresses this policy: "In lieu of severance allowance, the Company may offer an eligible employee a job, in at least the same job class for which he is qualified, in the same general locality. . . ." 5 CCH LAB. L. REP. (4th ed.) ¶ 59908.77 (1955) (United States Steel Corp.-USW Contract).

36. Interdepartmental transfer is a method of allowing displaced workers to find jobs in new departments. Job bidding and posting plans allow the employee to choose a position if he has the requisite length of service and ability. Some contracts allow bumping only in the case of technological change. Pittsburgh Plate Glass Co., 15 Lab. Arb. 659 (1950).

37. "A wide variety of provisions dealing with employment problems created by technological change are to be found in collective-bargaining agreements in many industries. They range from outright prohibitions against the introduction of technological changes . . . to elaborate arrangements covering such matters as notification by the employer to the union of proposed changes. . . ." Aaron, *supra* note 1, at 688. "When new type machinery is to be introduced, the Employer shall notify the Union. . . . The parties shall meet and discuss the proposed installation . . . and such discussion shall include the proposed duties and job assignments. . . ." 5 CCH LAB. L. REP. (4th ed.) ¶ 59932.19 (1954) (American Woolen Co.-CIO Textile Workers Contract).

Conflict of Management Prerogative and Job Security

The unit of seniority may prove to be a substantial obstacle to absorption on the basis of seniority. This problem arose, for example, when a manufacturer laid off long service employees with only departmental seniority after the operations they had been performing were transferred to a new type of machine in another department.[38] During negotiations to determine whether "employees affected can be retained in the service of the company,"[39] the company held firmly to the position that allowing the employees to follow their former jobs to the new machines would violate the departmental seniority provisions. Management did not agree with the union's contention that retention of long service employees was of more importance than maintenance of strict departmental seniority.[40] When the grievance of the employees affected was taken to arbitration, the arbitrator referred the parties to the bargaining table.[41]

Even though plant modernization does not result in actual worker displacement, changes which alter departmental organization will affect the relative standing of employees on the seniority roster. In one instance where a steel company split a department for purposes of improved operational management due to a difference in work done between two groups,[42] a unilateral change was effected in the employees' seniority unit and in their relative standing on the seniority roster. The company maintained that its action was taken in the interests of efficient operation and was justified under the management prerogative clause of the contract. It was the union's position that because of the effect on seniority rights, the change must be submitted to prior bargaining rather than to subsequent arbitration. The contract provided for departmental seniority units to be determined by management and employee grievance committees from the departments involved. The arbitrator was unwilling to recognize that this provision imposed a limitation on management's right

38. Robershaw-Fulton Controls Co., 9 Lab. Arb. 380, 384 (1948).

39. The contract provided for negotiation "if, due to the introduction of new machines, methods, apparatus, etc. there is a substantial reduction of force in a department. . . ." *Id.* at 385.

40. Manipulation of seniority provisions during collective bargaining due to internal union politics is an interesting sidelight. See Sayles, *Seniority: An Internal Union Problem,* HARV. BUS. REV., Jan.-Feb. 1952, p. 55.

41. "[The] employees in the Corrugating Department do not have the right to exercise their seniority rights in the Hydraulic Dept., unless the Company and the Union see fit to alter the contract terms by further negotiation and agreement." Robershaw-Fulton Controls Co., 9 Lab. Arb. 380, 386 (1948).

In other cases the elimination of a skilled worker from a job simplified by new methods or the complete elimination of a job have been ruled to be management prerogatives on the basis of plant efficiency. McDonnell Aircraft Corp., 21 Lab. Arb. 424 (1953); West Virginia Pulp and Paper Co., 15 Lab. Arb. 754 (1950).

42. Youngstown Sheet and Tube Co., 16 Lab. Arb. 394 (1951).

to effect changes but recommended that the parties negotiate on the question of the seniority rights of the affected employees.

A similar situation involved the purchase of a new plant;[43] in the process of moving and modernizing the entire industrial operation, new departments were created and others were split. The contract provided that seniority rights would accompany the employee in departmental transfers made by mutual agreement. The union, without questioning the companies motive for effecting the changes, maintained that the action resulted in a unilateral alteration of the employees' seniority status and violated the spirit of the contract.[44] The arbitrator, emphasizing the importance of seniority rights to job security,[45] found that the company's unilateral action was not authorized and held that the company must negotiate the effects of the changes upon the employees' seniority.

The recognition by management of an obligation and need for prior negotiation may not solve all problems. The Bethlehem Steel Company, the United Steel Workers of America, and five locals recognized that the company's modernization program would jeopardize the job security of many long service employees.[46] Extensive negotiations were carried out to allow employees with seniority to transfer from abandoned mills to the new plant. An expanded seniority unit and transfer plan was devised; but, even then, a displaced employee's grievance was taken to arbitration. The arbitrator noted that the understanding of the parties contemplated that seniority workers from the abandoned mills would be able to bump workers in the new plant and that persons displaced must abide by the terms of the agreement.[47] Planning does not obviate displacement but insures maximum protection for senior employees.

A trend toward decentralization and relocation of plants in connection with technological improvements[48] is a source of further concern to labor.[49] Plant moves for valid economic reasons are within the preroga-

43. Jenkins Bros., 16 Lab. Arb. 261 (1951).

44. *Ibid.*

45. "A collective bargaining agreement is an instument one of the basic purposes of which is job security. . . . This is a major working condition for which the Union bargains and which it strives to protect in the agreement." *Id.* at 263.

46. Bethlehem Steel Co., 21 Lab. Arb. 599 (1953).

47. *Id.* at 602.

48. It is often easier to modernize a new plant than to alter an old one. Saturday Review, Jan. 22, 1955, p. 38. See discussion p. *supra.*

49. The UAW brought an action to attempt to prevent the Ford Motor Company from engaging in a decentralization program. In an elaborate brief the union stated that valuable, hard-won contract benefits, including wages, fringe benefits and seniority were jeopardized by the company policy of gradually moving its operations from the bargaining area. In dismissing the complaint the judge discounted the union's allegation that there was misrepresentation or an implied condition against decentralization. Management's prerogative of running the business included the right to decentralize, and the

tive of management,[50] but the duty to bargain requires that management inform the union and negotiate the problems of displaced workers.[51] Similarly, even though a company is not obligated to bargain about the discontinuance of a department for bona fide economic reasons, the contract may require bargaining about the reemployment of the displaced men. In such a case the company's duty to the employees may be fulfilled by adequate notice of the displacement and an offer to absorb the workers in other departments as soon as possible.[52] Unilateral changes must be paralleled with reasonable solutions of employee problems.

The extent to which job security impinges upon management prerogative is not an appropriate question for determination in the grievance procedure.[53] The answer should not be delayed until a change is

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contract was held to have reserved the prerogative. Local 600, United Automobile Workers, CIO v. Ford Motor Co., 113 F. Supp. 834 (E.D. Mich. 1953). In subsequent negotiations a provision for automatically extending the union agreement to new units of the company was included. 5 CCH LAB. L. REP. (4th Ed.) ¶ 59923.005 (1955) (Ford Motor Co.-UAW Contract).

50. When a textile company moved its plant from New England to the South, the NLRB ruled that the move amounted to a refusal to bargain. It required the company to reinstate and transfer former employees at company expense. This was reversed on appeal; the court held that the plant had not "run away" from union difficulty. The decision to move the plant was made in good faith and, the total New England layoff was for valid economic reasons. The trend of the textile industry to move to the South was noted. Mount Hope Finishing Co. v. NLRB, 211 F.2d 365 (4th Cir. 1954). See E-Z Mills Inc., 106 N.L.R.B. 1039 (1953). For a discussion of the attitude of the NLRB toward the relocation or sale of industry, See Note, 5 WESTERN RES. L. REV. 84 (1953).

51. California Portland Cement Co., 101 N.L.R.B. 1436 (1952); Brown Truck and Trailer Manufacturing Co., 106 N.L.R.B. 999 (1953); Auto Stove Works, 81 N.L.R.B. 1203 (1949); Rome Products Co., 77 N.L.R.B. 1217 (1948).

52. National Gas Co., 99 N.L.R.B. 273 (1952). For a comprehensive review of management functions which are limited by the LMRA, See Lang, *Unilateral Changes by Management as a Violation of the Duty to Bargain Collectively,* 9 Sw. L. J. 276 (1955).

53. Arbitration should be limited to the narrow issues specified in the contract. Broad questions of technique should not enter into the grievance procedure. Often neither arbitrators nor union representatives have the technical knowledge to participate in management functions. Complicated engineering and financial decisions can best be made by persons trained for the jobs. The effects of these decisions on plant personnel are better subjects for negotiations. Some arbitrators are unwilling to enter this sphere and recommend that the parties negotiate. See discussion p. 394-95 *supra.* "Some employers feel too that arbitrators, in emphasizing job security as against plant efficiency, have imposed technical rules, such as burden of proof, against the employer to such an extent that he is unable to sustain his case against the employee and hence the award reverses management." Ferguson, *An Appraisal of Labor Arbitration, A Management Viewpoint,* 8 IND. & LAB. REL. REV. 79, 82 (1954).

In one case a union failed in an attempt to require management to arbitrate in the case of displacement by technological change. The court found nothing in the agreement to require grievance procedure treatment of this type of discharge. "Such job eliminations are the normal and expected incidents of the modernization of industrial methods." Industrial Trades Union v. Woonsocket Dyeing Co., 122 F.Supp. 872, 876 (1954).

For a review of subjects frequently excluded from arbitration, See U.S. BURVAU OF LABOR STATISTICS, DEP'T OF LABOR BULL. No. 908-16, COLLECTIVE BARGAINING PROVISIONS,

proposed because the atmosphere of dispute is not conducive to intelligent planning, and hastily drawn solutions are inadequate. Definitive contract provisions are desirable to aid management in necessary planning and to assist employees in understanding their rights.[54] These can best be achieved through mutual understanding and cooperation at the bargaining table.[55]

Contract Provisions

Union contracts sometimes contain specific provisions which affect management's right to relocate plants; these may range from total prohibition to a requirement of prior negotiation.[56] Prohibition is an extreme measure of doubtful enforceability.[57] Although prior negotiation affords a process for working out the problems when they arise, more adequate employee protection may be gained by a provision extending hiring preference, transfer rights, retention of fringe benefits during layoff, severence pay, or unemployment compensation to the occasion of temporary or permanent displacement.[58]

Practical methods of interdepartmental and interplant transfer have been devised in some contracts to facilitate the absorption process. The recently negotiated contract of the Ford Motor Company allows affected employees to transfer without loss of seniority when operations are moved to new plants.[59] When a seniority unit is permanently discontinued, employees are allowed to bump on a plant-wide basis; workers whose seniority does not give them priority within their job classifications may bump probationary employees, first, on a plant-wide, and then on a company-

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GRIEVANCE AND ARBITRATION PROVISIONS 88 (1950).

54. For a discussion of management prerogatives and labor's rights, See Note 4 WESTERN RES. L. REV. 169 (1953).

55. "The problems of insecurity of employment are dealt with by those who are most intimately affected and in a manner best suited to their particular needs. . . . Thus, in many instances unions help employers to introduce new machinery and methods as in the mining and clothing industries, in return for which employers cooperate with unions in minimizing the impact upon workers." Aaron, *supra* note 1, at 688.

56. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 908-12, COLLECTIVE BARGAINING PROVISIONS, UNION AND MANAGEMENT FUNCTIONS RIGHTS AND RESPONSIBILITIES 3, 17 (1949). For similar restrictions on technological change see note 37 *supra;* U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 908-10, COLLECTIVE BARGAINING PROVISIONS, UNION-MANAGEMENT COOPERATION, PLANT EFFICIENCY AND TECHNOLOGICAL CHANGE 33, 36, 38 (1948).

57. Prohibition of plant reloeation could probably be obtained only if the employer did not fulfill his obligation to bargain. See discussion p. 395-96 *supra.*

58. The CIO has claimed that the cost to management of maintaining displaced workers would be a deterrent to the irresponsible relocation of plants. Saturday Review, Jan. 22, 1955, p. 20, 38.

59. 5 CCH LAB. L. REP. (4th ed.) ¶ 59923.072 (1955) (Ford Motor Co.-UAW Contract).

wide basis.[60] The provisions of the General Motors Corporation contract are not as specific, but it is generally provided that in cases of major technological displacement, employees may be transferred with full seniority if they can qualify for a new job.[61] If adequately articulated in the contract and properly administered, broad seniority will usually be the fairest and most orderly method of absorption.[62]

Most contracts are silent on retraining obligations.[63] Absorption procedures which allow lateral transfer without requiring ready qualifications necessitates a retraining program. Transfer rights are ordinarily, however, conditioned on skill and ability to perform the work.[64] Thus, the creation of new jobs for which previous experience does not qualify the worker may force him to either become a part of the unskilled labor force or terminate his employment. As a matter of company policy, long service employees may be retrained for jobs at or near the same wage level; the uncertainty of this guarantee, however, may warrant contract provisions on the subject.[65]

Various forms of monetary payment for relieving the hardships of displacement have been designed in recent years, and others have been modified to reflect changing needs.[66] Provisions for supplemental unemployment compensation plans and severance pay have been important additions to labor agreements. Besides providing a source of income, supplemental unemployment compensation agreements are designed to encourage management to plan industrial changes so as to avoid displace-

60. *Id.* at 59923.073.

61. 5 CCH LAB. L. REP. (4th ed.) ¶ 59905.43-.44 (1955) (General Motors Corp.-UAW Contract).

62. Contracts sometimes provide for broadening of seniority in case of technological change. "When changes in methods, products or policies would otherwise require the permanent laying off of employees, the seniority of the displaced employees shall become plant-wide. . . ." 5 CCH LAB. L. REP. (4th ed.) ¶ 59905.20 (1955) (General Motors Corp.-UAW Contract).

63. One contract stated: "Nothing in this agreement shall be interpreted as requiring the Company to train any employee for any job. . . ." However, the arbitrator decided that if the employer voluntarily decided to train a worker he must consider seniority in making the selection. Diamond Power Speciality Corp., 24 Lab. Arb. 60 (1955). See also Purolator Products Inc., 25 Lab. Arb. 60 (1955).

64. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-10, COLLECTIVE BARGAINING PROVISIONS, UNION-MANAGEMENT COOPERATION, PLANT EFFICIENY AND TECHNOLOGICAL CHANGE 48-50 (1948).

65. Union leaders advocate that management obligate itself to retrain workers who cannot be absorbed in the company to assist them in finding new work. The Wall Street Journal, Oct. 18, 1955, p. 24, col. 1.

66. Baldwin and Shultz, *Automation: A New Dimension to Old Problems.* 78 MONTHLY LAB. REV. 165, 168 (1955). Some Labor spokesman recommend pensions for workers if the size of the labor force needs to be cut down. The Wall Street Journal, Oct. 18, 1955, p. 24, col. 1.

ment of workers.[67] These plans usually provide greater benefits for the long service employee,[68] thereby encouraging the employer to consider the absorption and retraining of senior workers. Severance pay, provided to carry a permanently displaced worker over his period of unemployment or to compensate him for loss of job rights,[69] also serves to encourage planning which avoids displacement. These principles are illustrated by the U. S. Steel Company contract which allows severance pay only in the event that a terminated employee had three years seniority and was not able to exercise his bumping rights to retain a job.[70] If the company offers the employee a job of the same class in the same general locality, he may elect between the transfer or the separation and severance pay. The amount of the severance payment is increased according to length of service and is, most frequently, unavailable to employees who do not have a substantial period of service.[71] This is also true with respect to other forms of monetary payment.[72] Insofar as this class of employees corresponds with the class affected by displacement, these contract benefits do not aid in solving displacement problems.[73]

In view of the difficulty in drafting agreements which anticipate every problem likely to arise out of a displacement situation, the success of labor and management in achieving a harmonious resolution of the difficult problems depends upon management's willingness to recognize that responsibility for solutions must be shared with the employees' representative.[74] The decision to make major changes is clearly a management function but one which so profoundly affects employee status under

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67. Harris, *Economics of the Guaranteed Wage,* 78 MONTHLY LAB. REV. 159, 161 (1955).

68. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-15, COLLECTIVE BARGAINING PROVISIONS, GUARANTEED EMPLOYMENT AND WAGE PLANS 29-30 (1950).

69. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 908-5, COLLECTIVE BARGAINING PROVISIONS, DISCHARGE, DISCIPLINE, AND QUITS; DISMISSAL PAY PROVISIONS 34-36 (1948).

70. 5 CCH LAB. L. REP. (4th ed.) ¶ 59908.76-.81 (1954) (United States Steel Corp.-USW Contract). A similar plan is found in the contract between American Woolen Co. and the CIO Textile Workers. *Id.* at ¶ 59932.22. But compensation is paid only when the displacement results from technological change. *Ibid.*

71. See note 69 *supra,* at 45.

72. Low seniority workers complained that, under one supplemental unemployment compensation plan, they would have to work 173 weeks in order to obtain the 26 weeks maximum coverage. Fortune, Aug. 1955, p. 55. See also note 68 *supra.*

73. Most employers would feel a greater obligation toward long service employees. If there are limited funds available for these benefits, senior workers may suffer if junior workers deplete the funds. Senior workers may have missed out on a wage increase in order to establish supplemental compensation funds which will most benefit the junior worker. Harris, *supra* note 67.

74. For one analysis of the attitudes which exist in union-management relations, See HARBISON AND COLEMAN, *op. cit. supra* note 16. For a survey of contract provisions, See note 64 *supra,* at 1.

the terms of the collective bargaining agreement that the labor representative is compelled to assert its interest in *the manner* in which the changes are affected.[75]

In this area of conflict between management prerogative and legitimate objectives of labor there is an obvious need for establishing a process to which the problems can be submitted. The GM-UAW contract preserves management's prerogative to initiate industrial changes but, if specific contract provisions fail to effectively absorb seniority employees, the company is obligated to negotiate an "equitable solution" when the changes would result in the permanent release of seniority workers.[76] A more controversial plan is the industrial council or operational joint committee composed of labor and management representatives.[77] This group is charged with responsibility for planning operations so as to accommodate the interests of management and labor. This approach is premised upon management's belief that the success of the endeavor requires labor's full participation.[78] Obviously the mutual trust necessary to achieve this relationship is not widely present.[79] The resolution of these conflicting interests is a problem of accommodation in the collective bargaining process.[80] A recognition of the fact that equally important interests exists is a prerequisite to solution of the problems of worker displacement.

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75. Phillip Murray's position has been stated as: "union policy stands forth as one of unquestioning acceptance of technological change implemented by proper protection for members, so far as may be possible from potentially adverse consequences." Selekman, *supra* note 1, at 385.

76. See note 61 *supra.*

77. See Note, 4 WESTERN RES. L. REV. 169, 171 (1953).

78. For a discussion of this type of labor-management relationship, See HARBISON AND COLEMAN, *op. cit. supra* note 1, at 89-117. One critic has said that the former president of the CIO had advocated the use of industry councils to govern industry. Riesel, *Walter Reuther: Where is He Going?,* Town Journal, July 1955, p. 24, 60.

79. "Neither Ford, nor General Motors or Chrysler, has ever permitted the development of labor-management committees to discuss production problems or to suggest methods of improving production or operations. The independents have been much more willing to engage in such activities, but the actual effect of such union participation on actual policy decisions is certainly not great." Northrup, *supra* note 7, at 173.

80. The degree to which this accommodation is effected depends on the extent "management adjusts its policy and actions to meet the challenges of the union" and the extent the "unions' policy and actions is conditioned by a concern for the economics and organizational well-being of the company." HARBISON AND COLEMAN, *op. cit. supra* note 16, at 118, 119.