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SENIORITY PRINCIPLES IN TRADE AGREEMENTS
DEFINITION AND APPLICATION

By
Martin T. Canacho
Chief, Labor Relations Division
ECONOMIC SECTION
KANTO CIVIL AFFAIRS REGION
GHQ - SCAP
TOKYO

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SENIORITY PRINCIPLE IN TRADE AGREEMENTS

DEFINITION AND APPLICATION

The Principle of Seniority

This pamphlet is intended to cast some light on the principle of seniority, which, while being one of the great and universally accepted principles of trade unionism, is still badly neglected by management and labor in Japan. The more basic reasons for this neglect may be due to characteristics which are peculiar to the Japanese people in general and to the relationship between Japanese employers and employees in particular. These in part may be explained by the casts and feudalistic concepts which are still very strongly ingrained in the psychology of the Japanese mentality. The idea of being laid-off because of slack work due to poor business conditions in general is a matter most strange and unheard of among a good many employers and workers in Japan. That is, once an employee has been hired by an employer he becomes an integral part of the employer's industrial family of employees. The employer and his employees bear through all the changing economic vicissitudes, through smiling prosperous days, and through dark days of want and need. Under the feudalistic concept, the workers' economic status never rose beyond a given level of prosperity, but the workers have always had the comforting assurance that their employers would supply them with their basic needs, meager as they were. Under such a feudalistic and caste concept, seniority rules as to layoffs are meaningless. As to promotions and transfers, the average Japanese worker has demonstrated little inclination to challenge the rule of his employer. In Japan, the employer's judgment in this regard, in the past and very substantially in the present, still governs matters as to promotion and transfers.

Since the end of the war, however, the Japanese people, and particularly Japanese workers, have been thrown into a whole new social scheme of things. Labor has been given rights which would set it free from the paternalistic, albeit subsistence bonds of feudalism. It is not sufficient, however, merely to accept these rights. Labor must also accept responsibility if it is to obtain its fair share of the produce of its labor. Responsibility in this instance means labor standing on its own two feet and being independent of its employer so far as paternalistic practices are concerned. When labor becomes free from management and is given the privilege of bargaining for its rights, one of the things it asks of management is fair dealing without discrimination of any kind. When the business conditions of a company suffer reverses so that reduction in force become necessary, if no rules for the lay-off exist, management can discharge whom it pleases. Management can practice discrimination by singling out and discharging those persons whom it does not like.

In the scheme of labor relations as introduced since the end of the war, there has entered a discussion of the subject of "Seniority." There is

nothing mysterious about seniority. It is merely a principle from which has emanated a set of rules governing such matters as lay-offs, promotions and transfers in modern industries. It is a principle labor should strive for, and management should agree to if it is sincere.

The principle of seniority may be simply defined as a rule of preference measured in accordance with an employee's length of service. The rule in effect provides for extra job protection and job opportunity for those with longer service records. Wherever a free labor movement has been permitted to exist, the principle of seniority has gained acceptance by the trade unions. However, it must not be assumed that the seniority rule is one-sided, or that it exclusively benefits the trade unions. If it were just a one-sided rule, it very likely would not have attained the universal acceptance which it has. Thus the principle of seniority in western countries has been widely accepted by employers in both organized and unorganized plants or industries.

Seniority and Management

Management has accepted the principle of seniority as a sound principle of good personnel policy. Management has learned that the adoption of good seniority rules will greatly enhance the workers' sense of security in their jobs. This sense of security, management has observed, contributes substantially toward the development of more satisfactory relations between management and the workers, i.e., makes possible an atmosphere of mutual trust and dependence in which there is apt to be much better understanding of one another's problems. This sense of job security has also contributed substantially toward the workers' productive efficiency because it has freed the workers from any undue anxiety as to where he or she stands in the industrial world of the employer. As the years pass on, a worker's accumulated seniority binds him closer and closer to the work in which he is engaged, and he naturally begins to feel more and more the close ties between his own economic wellbeing and that of the firm by which he is employed. Because the rules of seniority give the worker such a vital interest in his position and in the economic wellbeing of his employer, management is assured of a more steady work force and minimum man-power turnover. Thus the National Association of Manufacturers, an American organization whose membership is exclusively management, advised that "a sound written seniority policy is desirable in every enterprise, whether established by collective bargaining or, in a non-unionized plant, by action of management alone." The N.A.M. further advised that satisfactory employer-employee relations depend in a large part on the existence of a sensible, fair, and clearly defined personnel policy. In the development of such a policy, the principle of seniority cannot be disregarded.

Because of the importance of seniority rights, employers are apt to be more thorough in the selection of their employees. For example in union shops when workers are initially hired employers will, during the usual probationary period of employment, keep a close watch on the worker to make certain that he or she possesses the attributes of a good prospective

employee. The rules of seniority will also put the employee on his guard in the matter of closer observance of the rules of employment.

Seniority and the Union

As noted above from the point of view of the workers the sense of security is the most important consideration which is felt within the working community from the establishment of the seniority principle. From the point of view of the union, the seniority principle may become a matter of life and death of the union, for, if during periods of slack work or poor business conditions, management were to have full choice as to whom it would dismiss as surplus workers, employers could very easily eliminate the leadership in the union by selecting all the active union leaders as proper subjects for dismissals.

In other words, the adoption of proper rules of seniority protects union membership from acts of discrimination as to its leadership because of union activities, and also assures each union member of job protection and job opportunity in accordance with the worker's employment status in the shop.

Seniority in the United States

Let us assume, as we can safely assume, that there are approximately 150,000 trade agreements in the United States. On the basis of this assumption let us consider the following statistical tables taken from the pamphlet entitled "Basic Pattern in Collective Bargaining Contracts," published by an impartial agency in the United States, the Bureau of National Affairs Division. Tables I and II show the extent to which seniority determines who is laid off or promoted as set forth in these agreements. Table III simply notes the differences in practice as to the application of the rule of seniority in the individual trade agreements as to layoffs and promotions.

Table I - Role of Seniority in Layoffs

	% of Contracts
Seniority governs	70 - 75
Seniority given equal weight with other factors	1 - 5
Seniority secondary, applied only if other factors equal ..	15 - 20
No reference to layoff	5 - 10

Table II - Role of Seniority in Promotion

	% of Contracts
Seniority governs	35 - 40
Seniority given equal weight with other factors	5 - 10
Seniority secondary, applied only if other factors equal ..	30 - 35
No reference to promotions	25 - 30

Table III - Role of Seniority in Layoff as Against Promotion

	% of Contract
Seniority rights same in layoff and promotion	45 - 50
Seniority governs in both	35 - 40
Seniority secondary in both	10 - 15
Seniority governs in layoff -	
but secondary in promotion	25 - 25
but given equal weight in promotion	5 - 10
but no reference to promotion	10 - 15
Seniority secondary in layoff, but no reference to promotion	5 - 10
No reference to either layoff or promotion	5 - 10

As can be seen from Table I above in nearly three-fourths of the trade agreements the seniority rule is the controlling factor in the matter of layoffs.

Seniority Rule in Layoff

Seniority rule in layoffs means that in periods of slack work or poor business conditions when employers find it necessary to dismiss some of their employees because they have no work for them to do, they will lay off the workers in the inverse order of their employment, i.e., "those who were last hired will be the first to be laid off." This in effect is the simplest form of the rule of seniority in the matter of layoffs due to slack work or poor business conditions. The rule, however, does not end here. The rule is further extended to provide the order in which employees will be rehired in case of a revival of business conditions, at which time, because of increased workloads, management finds itself too limited in its work force. In such a case, the rule will provide that when rehiring is to be done, the workers will be rehired in the inverse order of that in which they were laid off, i.e., "those who were last laid off will be the first to be rehired."

The rule of seniority as to layoffs, like any other rule of human conduct, has no set ironclad application. Its application varies in accordance with the exigencies or peculiar needs of the industry which seeks its adoption. The scope of the unit to which the rule may be made to apply is a matter requiring much consideration.

In some trade agreements, the rule may be made to apply on a plant-wide basis; in order agreements it may be made to apply on a divisional or departmental basis, or there may be a combination of units to which it may be made to apply. In still other trade agreements, the application of the seniority rule as to layoffs will depend on the nature of the layoff, i.e., whether it is temporary or permanent. If the layoff is one of a temporary nature, it may, under the circumstances, be wholly inadvisable to apply the rule on a plant-wide basis. This may be clearly appreciated by taken into

consideration the following illustration: The Average large size industrial plant is divided into various departments and/or workshops. In a particular workshop or department of a plant, there may be many work operations which require experienced, skilled, and deft hands. If a layoff were merely of a temporary nature and the general rule as to seniority on a plant wide basis were to be made applicable, it would perhaps, taking all the circumstances into consideration, work an undue hardship on management and unnecessarily impede the smooth running operations of the plant. A skilled worker or a man who has, through a long period of service in a certain department or workshop, acquired the necessary knowledge, experience, and skill in operating any given machine or in performing certain work operations would be difficult to supplant. The mere fact that a workman has more plant seniority does not necessarily mean that he would have the requisite knowledge and experience to undertake the job of the fellow whom he supplants in another department or workshop. The chances are likely that he would have but little knowledge of the other man's work, let alone the necessary skill and experience. Such a man would have to undergo, in many instances, intensive instruction and guidance before he would be performing his job with the degree of efficiency which normal operations would require. In view of these considerations, it may easily be seen that when the layoff is to be one of a temporary nature, the application of departmental seniority as to layoffs would be a more prudent rule to follow. Conversely, where the layoff is expected to be one of a permanent nature, then the application of the rule on a plant-wide basis would be more apt to be just and apropos.

There are several other considerations in the matter of layoffs. The question may be asked as to how long a period of time after the layoff are employers obligated to recall former employees. The period of time varies considerably, six months being most common. Thus, if an employee is not recalled within a period of six months after he has been laid off, he loses all seniority rights and the employer is under no further obligation in the matter of rehiring him.

Workers are usually given so many days in which to answer a recall notice by the employer. Failure to answer the employer's recall notice may result in the worker forfeiting his seniority and rehiring rights. The extent to which the worker will lose his seniority and rehiring rights again varies greatly.

Seniority in Promotion

As has been already shown in Table II, although seniority is often the governing factor in promotion, it is of secondary consideration in almost as many instances, skill and capacity being of primary importance. Thus, it must not be assumed that the rule of seniority has an inflexible application. For it is recognized that the mere accumulation of years in no way assures the accumulation of wisdom and experience, and the mere fact that a worker has many years of service is no sure indication that he is a man of sufficient competency and experience to warrant a promotion, and in the case of a transfer, to undertake new duties and responsibilities. Thus the rule of

seniority in regard to promotions and transfers is not to be taken as synonymous with superannuation. Clauses relative to seniority as to promotion may set forth that where there are two or more workers of equal competence and experience, then the senior man shall be entitled to the promotion. If it is deemed, however, that the senior man in service is incapable of holding the job because he does not possess the requisite competence and qualifications, then the promotion shall fall to the next man in line of service having such qualifications. In many contracts, the major judgment as to the general competence of the worker in matters of promotion rests in the hands of management. This, however, does not mean that the company can simply select one worker as against another by the mere imperative declaration that such and such a worker is capable of handling the job whereas another worker, senior in time of service, is not capable. The company must exercise good faith in its judgment. The general practice is to provide for a trial or probationary period of reasonable duration, in which the worker has an opportunity to demonstrate whether he is capable of handling the job.

Seniority Lists

In order to make the seniority standing of each employee clear to both management and union, seniority lists are prepared and made available. The man with the longest service is placed at the top of the list and newcomers are added to the list in the order of their employment. It is customary for seniority lists to be presented to the union and all changes in this list should be reported to the union at periodic intervals. Any employee may protest the length of his service as set forth on the list, and usually, such protest are handled through the grievance machinery.

Superseniority as Applied to Union Officials

In more than twenty-five percent of the trade agreements in the United States, union representatives are given top seniority for layoff purposes and are placed at the top of the seniority list, thus insuring the stability and continuity of union leadership even during periods of slack work or poor business conditions. This extra preference, which is commonly known as superseniority, however, is lost at such time as the worker ceases to represent the union as a full time union official. It may be said that the general policy is for management to be liberal in granting leaves of absence to workers who are to engage in full time union business.

Conclusion

In conclusion, the primary seniority clause is that having to do with layoffs due to slack work or cuts in production. A clause of this nature usually set forth that in such cases, those who were last hired shall be the first to laid off and when rehiring takes place those who were last laid off are the first to be rehired.

Rules of seniority as to layoffs, promotions, transfers and other matters, assures the workers, on the one hand, of equitable standards of

treatment in job security and job opportunity, and management, on the other hand, of a more stable and efficient work force.

The attached three sample seniority clauses, which have been taken from trade agreements actually concluded between management and union in the United States, should serve as a guide in preparing seniority clauses in Japanese trade agreements.

EXAMPLE NO. 1

EXTRACT FROM THE 1947 MASTER CONTRACT OF THE BAKERY AND CONFECTIONARY WORKER'S INTERNATIONAL UNION OF AMERICA, LOCAL 20, EMBRACING THE AREA OF GREATER BOSTON

ARTICLE XVI
SENIORITY

A. It is agreed that there shall be a system of departmental seniority as set up in the Schedule of Wage Rates and Classification, governing the lay-off and rehiring of employees; that is, the longer an employee has been in the service of the Company in said department, the later he shall be laid off and the sooner he shall be rehired.

B. It is agreed that there shall be a system of departmental seniority in the case of job openings. Vacant jobs shall be posted on the bulletin board by the Company and described as to shift, hours and type of work. The bidding period will be three (3) days. There shall be no changes of jobs except when jobs are open for bid.

C. In the event of an opening in any department, after all former employees of that department have been re-hired, laid-off employees shall be given preference to the opening in accordance with their seniority regardless of department, providing they report on notification.

D. When an employee has accepted a job temporarily in another department, he shall be transferred back to his former department when work in that department becomes available and regain his old department seniority.

E. Seniority shall terminate upon:

- (1) Discharge
- (2) Voluntary quitting of employment, except when absent on Union business or when attending a school for bakers.
- (3) Laid off for period of six (6) months.
- (4) Not available for call when needed, after a notice of ten (10) days.
- (5) Obtaining withdrawal or retiring card from the Union, except to enter Armed Services.

F. At the close of each week the Company will give the Union a list of all employees laid off and hired during such week.

G. When an employee is requested to temporarily fill a job carrying a higher rate of pay, the supervisor or foreman shall request the filling of the job according to seniority, and he shall receive the higher rate of pay for all hours worked in the higher classification, provided he works one (1) hour or more at any one time in the higher classification.

H. If an employee is required to temporarily take the place of any other employee receiving a lower rate of pay, or if for any other reason temporarily transferred to a job calling for a lower rate of pay, his own rate of pay shall be paid. However, if an employee is permanently transferred to a lower classification, he shall receive the rate of pay which applies to that classification.

I. The company is to be the sole judge in selecting non-working foremen, non-working foreladies and executives.

J. Employees who have a record of long and faithful service, and who have become unable to handle or engage in heavy work, will be, as far as practical, transferred to work more suitable and in keeping with their physical condition.

EXAMPLE NO. 2

EXTRACT FROM TRADE AGREEMENT BETWEEN THE SULLIVAN DRY DOCK & REPAIR CORPORATION AND INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 13

ARTICLE IV

SENIORITY ---SHOP STEWARDS---PROMOTIONS AND RECLASSIFICATION---SNAPPERS---
SUBCONTRACTORS

SECTION 1. The following departments shall be recognized in the yard: Hull, Welding, Pipefitting, Rigging, Burning, Inside Machinist, Outside Machinist, Blacksmiths, Carpenters, Joiners, Wood Caulkers, Laborers, Fire Watchers, Guards, Timekeepers, Chippers, and Caulkers, Dock Hands and Water Tenders.

SECTION 2. The Company shall prepare and post for each such department a list showing the length of service of each employee according to his trade classification within the department. Such lists shall be arranged in order of length of service and copies shall be furnished the Union. The Company shall deliver to the Union from time to time a Termination List of employees who have terminated employment.

Any employee may protest in writing the length of his service as posted by the plant providing he does so within two weeks time after his name is posted on the list. Such protest shall be handled as any other grievance.

SECTION 3. All seniority rights shall be lost by employees if:

- (a) They terminate their services voluntarily, when needed.
- (b) They are discharged for proper and sufficient cause
- (c) They do not report for work when notified unless within three days they present a reasonable excuse. In an emergency, however, the Company has the right to employ new help, but such help will be replaced if senior men report within three days after proper notification.
- (d) They do not work for the plant for three (3) months consecutively, unless absence is due to illness or injury (as evidenced by a proper medical certificate) or unless leave of absence has been granted.

SECTION 4. An employee in one classification (trade) when transferred temporarily to any other classification (trade) shall have his name placed at the bottom of that classification (trade) list, but shall retain his standing in his own classification (trade) when rehiring takes place.

No employee shall be transferred to a department when such transfer will prevent the return to work of an available and competent employee.

SECTION 6. The Company agrees to grant reasonable leaves of absence or reasonable period of time off to any employee who shall be appointed or elected to office by the Union or who shall be assigned by the Union to do Union Work. Such employees shall retain their seniority standing, and leave of absence or period of time off, as the case may be, shall be counted toward the seniority of such employees as if they were actually and continuously employed by the Company. No leave of absence or period of time off, however, shall extend beyond one year and ten days, unless extended by mutual consent of the parties hereto. The Company shall be notified in advance of such leave.

SECTION 7. Promotions and reclassifications and increases or decreases in the working force shall be based upon length of service and ability to do the job. Wherever, between two or more men, ability is fairly equal, length of service shall be the controlling factor.

EXTRACT FROM AGREEMENT BETWEEN THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND GENERAL MOTORS CORPORATION, March 19, 1946

55. Employees shall be regarded as temporary employees until their names have been placed on the seniority list. There shall be no responsibility for the reemployment of temporary employees if they are laid off or discharged during this period. However, any claim by a temporary employee made after 30 days of employment that his layoff or discharge is not for cause may be taken up as a grievance. Such claims must be stated in detail in writing at the time of the filing of the grievance.

56. Employees may acquire seniority by working six months during a period of twenty-four months, in which event the employee's seniority will date back six months from the date seniority is acquired. The foregoing may be modified by local plant agreement to provide that seniority may be acquired only by working six continuous months.

57. When an employee acquires seniority, his name shall be placed on the seniority list for his occupational group in the order of the date of hiring except as provided in the preceding paragraph. Men and women shall be divided into separate non-interchangeable occupational groups, * unless otherwise negotiated locally. If negotiations are requested by either party and are not concluded within sixty days from the date of such request, the matter will be reviewed between representatives of the Corporation and the international union.

58. Seniority shall be by non-interchangeable occupational groups within departments, group of departments or plant-wide, as may be negotiated locally in each plant and reduced to writing. It is mutually recognized by the parties that written local seniority agreements are necessary. The Corporation and the Union will review the status of local seniority agreements ninety days after the signing of this agreement.

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 and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available, at the rate for the job to which they have been transferred.

59. Up-to-date seniority lists shall be made available to all employees for their inspection within the plant either by posting where practical or by a satisfactory equivalent method. The method of displaying seniority lists is a matter for local negotiation.

Footnote: 1/ The term "non-interchangeable groups" means that all movement in lay-off and rehiring, etc., shall be by occupation, and that there shall not be "bumping," for example, of machinists by electricians. An occupational group may include one or more job classifications.

These are similar enough in nature so that any worker in the group can do any other worker's job.

60. Each six months the chairman of the shop committee shall be given an up-to-date copy of the complete seniority list of the plant containing only the names, seniority dates, and occupational group numbers of the employees. This will not require a change in any mutually satisfactory local practice now in effect.

a. Each two months the chairman of the shop committee shall be furnished a list of the names and seniority dates of employees who during the preceding period of two months have:

- (1) Acquired seniority
- (2) Lost seniority
- (3) Been granted other types of leaves of absence of more than sixty days duration.

61. When an employee is transferred from one occupational group to another for any reason, there shall be no loss of seniority. However, in cases of transfers not exceeding sixty days an employee will retain his seniority in the occupational group from which he was transferred and not in the new occupational group, unless a longer period is specified for any plant or particular occupational group by written local agreement.

62. 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. Accordingly, such employees who make application to their foreman or the personnel department stating their desires, qualifications and experience, will be given preference for openings in their department provided they are capable of doing the job. However, employees who have made application as provided for above and who are capable of doing the job available shall be given preference for the openings in their department over new hires. Any secondary job openings resulting from filling jobs pursuant to this provision may be filled through promotion; or through transfer without regard to seniority standing, or by new hire.

Any claim of personal prejudice or any claim of discrimination for union activity in connection with transfers may be taken up as a grievance. Such claims must be supported by written evidence submitted within forty-eight hours from the time the grievance is filed.

63. Seniority shall be broken for the following reasons:

- a. If the employee quits.
- b. If the employee is discharged.
- c. If the employee is absent for three working days without properly notifying the management, unless a satisfactory reason is given.
- d. If the employee fails to return to work within three working days after being notified to report for work, and does not give a satisfactory reason.
- e. If he is laid off for twenty-four consecutive months. However, if his seniority exceeds twenty-four months, he shall not lose his seniority until he is laid off for a continuous period equal to the seniority he had acquired at the time of such lay-off period: However, employees with five or more years' seniority shall break seniority if they are laid off in excess of five continuous years.

64. For temporary reductions in production not exceeding four weeks, the work week may be reduced before any employees are laid off, unless otherwise extended by local plant agreement.

65. a. For extended periods of reduced production exceeding four weeks, temporary employees will be laid off, and thereafter the work week will be reduced and/or seniority employees will be laid off to comply with paragraph c below, unless otherwise extended by local plant agreement.

b. Omitted.

c. Operation of a plant or any part thereof on a schedule of employment of less than an average of twenty-four hours per week for a period of more than two consecutive weeks or less than an average of thirty-two hours per week for a period of more than four consecutive weeks shall only be by local written agreement with the shop committee.

66. Employees will be laid off and rehired in accordance with local seniority agreements.

67 & 68 omitted.

69. Temporary employees will not be called back until all employees with seniority capable of doing the work have been called back.

70. Omitted.

71. Any employee who has been incapacitated at his regular work by injury or compensable occupational disease while employed by the Corporation, any be employed in other work in the plant which he can do without regard to any seniority provisions of this agreement.

72. The employment of the following persons shall not be governed by seniority rules: indentured apprentices, exceptional employees as defined below, students and graduates of technical or professional schools and special employees receiving training as a part of a formal training course. Exceptional employees are employees who have a skill needed in facilitating the start of a new model or at times working forces are reduced. A separate list of such employees will be posted in the employment department and be available to the committeemen. Any employee whose name is removed from this will be subject to the rules regarding seniority. Any complaint by the Union in regard to the listing of any employee on the list shall be handled according to the grievance procedure.

73. To protect his seniority, it is the employee's responsibility to keep the plant management informed of his proper home address. The method of notification of change of address is to be established by the respective plant managements for their operations.

74. Provisions pertaining to shift preference may be negotiated locally as a part of local written seniority agreements subject to the approval of the Corporation and the International union. Any such agreements must have sufficient flexibility to give full protection to efficiency of operations under all circumstances and conditions.