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# PENSIONS AND HEALTH AND WELFARE PLANS IN COLLECTIVE BARGAINING

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*A Conference Conducted in  
Los Angeles and San Francisco*

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**FEW AREAS** in the domestic social life of the nation are vested currently with greater public concern than the field of industrial relations. The development of better relationships between organized labor and organized employers, and the integration of these relationships with the interests of the individual citizens and the nation as a whole, constitute one of the most serious problems facing our economic and social system today.

The Legislature of the State of California expressed its desire to contribute to the solution of this problem when, in 1945, it established an Institute of Industrial Relations at the University of California. The general objective of the Institute is to facilitate a better understanding between labor and management throughout the state, and to equip persons desiring to enter the administrative field of industrial relations with the highest possible standard of qualifications.

The Institute has two headquarters, one located on the Los Angeles campus and the other located on the Berkeley campus. Each headquarters has its own director and its own program, but activities of the two sections are closely integrated through a Coordinating Committee. In addition, each section has a local Faculty Advisory Committee, to assist it in its relations to the University; and a Community Advisory Committee composed of representatives of labor, industry, and the general public, to advise the Institute on how it may best serve the community.

The program of the Institute is not directed toward the special interests of either labor or management, but rather toward the public interest. It is divided into two main activities: investigation of the facts and problems in the field of industrial relations, which includes an active research program and the collection of materials for a research and reference library; and general education on industrial relations, which includes regular University instruction for students and extension courses and conferences for the community.

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*Second Annual Conference Presented by the  
Institute of Industrial Relations, University of California  
and the Conference of Junior Bar Members  
in Cooperation with the Committee on  
Continuing Education of the Bar of the  
State Bar of California*

EDITED BY  
ANNE P. COOK

INSTITUTE OF INDUSTRIAL RELATIONS  
AND UNIVERSITY EXTENSION

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WILLIAM M. LEISERSON, Visiting Professor of Economics, University of California,  
Berkeley; formerly Member of the National Labor Relations Board

## COLLECTIVE BARGAINING ON PENSIONS

### *Speakers*

HERBERT R. NORTHRUP, Labor Economist, National Industrial Conference Board,  
New York  
LOUIS SHERMAN, General Counsel, International Brotherhood of Electrical Workers,  
Washington, D. C.

### *Panel Discussion*

Chairman: R. G. KENYON, Vice-President, Southern California Edison Co.  
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RON STEVER, Pension Consultant

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JOSEPH E. MOODY, President, Southern Coal Producers' Association, Washington,  
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### *Panel Discussion*

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#### *Introduction*

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### HEALTH AND WELFARE PLANS

#### *Introduction*

WILLIAM M. LEISERSON

#### *Speaker*

JOSEPH E. MOODY

#### *Panel Discussion and Questions*

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# FOREWORD

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FOR THE SECOND TIME the Institute of Industrial Relations has joined with the Junior Bar of California in presenting a conference of particular interest to lawyers. In March, 1949, the discussions centered around the role of the attorney in collective bargaining and arbitration. This year the participants have focused their attention on the complex problems involved in setting up pension plans and health and welfare funds through collective bargaining.

The subject is a timely one. Along with the gradual aging of our population and the deceleration of the postwar inflationary spiral, new interest has developed in the problem of the security of workers. As a result, many unions and employers have been giving increasing attention to the establishment of private pension and health programs. With the rapid development of these plans, lawyers in the field of collective bargaining have been faced both with technical problems and with some differences of opinion on basic policy as well as on procedural matters. It is hoped that this joint discussion may have helped to clarify the issues involved in the whole complex question of retirement and welfare programs.

Mr. Gordon Howden, President of the Conference of Junior Bar Members, Mr. Howard J. Finn, Member of the Board of Governors of the State Bar of California, and Mr. Lloyd A. Carlson, Chairman of the Northern California Committee of the Junior Bar, served as chairmen of the meetings at Berkeley. Mr. Sharp Whitmore, Vice-President of the Conference of Junior Bar Members, Mr. R. G. Kenyon, Vice-President of the Southern California Edison Co., and Mr. Benjamin Aaron, Research Associate, Institute of Industrial Relations, served as chairmen of the meetings on the Los Angeles campus.

An important part of the Institute's program is to share with the community broad experience in industrial relations through conferences of this type. Previous conferences have dealt with Wages, Prices and the National Welfare, Industrial Disputes and the Public Interest, Industrial Relations in World Affairs, and Collective Bargaining and Arbitration.

CLARK KERR, Director  
Institute of Industrial Relations  
Northern Division

EDGAR L. WARREN, Director  
Institute of Industrial Relations  
Southern Division



# Introduction

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WILLIAM M. LEISERSON

I WISH TO WARN YOU that while I know something about collective bargaining, both in theory and in practice, I am not familiar with the details of pension and health and welfare plans. So my remarks will necessarily have to be in the realm of general ideas by way of introduction to more detailed discussion that the other speakers will undertake.

A good way to begin, perhaps, is to illustrate some of the problems by a story. A friend of mine many years ago told me of an experience he had as an individual worker and individual bargainer. It was way back during the depression after World War I. He had walked the streets for many weeks without being able to find a job, and he even tried to horn in on the prizefighting game. He thought he was a good boxer and he thought maybe he could earn a little money that way. But he couldn't get anything to do. Finally he did manage to get a job with a little building construction firm as a timekeeper, and he was happy. He had enough wages to keep him from being hungry and he was quite happy on the job.

Then he noticed that it was getting cold in the shanty in which he worked and there was no stove there. He worried about that. He did not want to think that he might lose his job. But after it got to be colder and colder and his tummy was fuller and fuller as a result of a steady wage for some weeks, he went and talked to the boss.

"How about putting a stove in here?"

The boss just sort of put him off. He did that two or three times, and each time he was put off.

Finally, when the idea of freezing to death was almost the equal of starving to death, he got up courage and told the employer: "You'll have to put a stove in here. I can't work in here."

The employer told him that there never was a stove in there and "I am not going to put any in for you."

So my friend hauled off, punched the boss, laid him out on the floor, and walked out.

I want to draw some lessons out of that experience for this discussion. The first one is that it is interesting to know that that fellow finally ended up as an executive of an employers' association that inaugurated

what was known in the ladies' garment industry in New York as the Sanitary Code. It was a form of welfare code by which the employers and the workers' union put into their contract that the places of employment must be decent and sanitary, warm and ventilated, and the like. That is the first lesson to draw.

The other is this: When the fellow was getting his job, he was thinking only of wages. He had to feed his tummy. But when that was fairly well satisfied, he began to think of something else: cold, convenience. I think it is important for us to bear in mind in connection with unions bargaining on pensions, welfare, sickness, health, life insurance, and so on, that that is not their primary business. Unions start naturally with the hunger part of it. They have to get wages. But afterwards they take on more and more territory. And what we have now with regard to pensions and welfare plans is just that. The unions that have established themselves, that have done some good bargaining for themselves, think of the other things now. That is what we are up against here.

There is another lesson from that story. When the employer told my friend there had never been a stove there and "I am not going to put one in," the employer was fully within his legal rights. My friend violated the law by punching him. Originally the employer, as part of his right to do business, had the right to manage his business in any way he pleased. He fixed his wages, he fixed the kind of physical conditions he had, and he did everything. It was up to him to decide. He was an absolute monarch. And so was that particular employer in that case.

Later two things came along. First there was legislation on safe and sanitary conditions. Then the workers organized and challenged the employer's absolute power. But at first when they wanted to bargain about wages, the law said, "The law of supply and demand takes care of that. Bargaining by workers about wages is a conspiracy."

In time, the law conceded it was proper for workmen to bargain about wages. Then they went on to other things. Hours went with wages. But then unions went into rules, all sorts of regulations as to how to conduct the work to do a good job, and so on; and now they have rules. Then the employers started a new monkey-business with time studies; and the workers said, "We are going to have something to say about those time studies."

During the war we had big rows here as to whether the union could bargain about incentives that the employer put in. "The law requires you to bargain about the minimum wage or the scale that will be paid according to union agreement," said the union. The employer answered, "But if we want to offer something more on incentives, that's the em-

ployer's prerogative." I am not passing judgment as to who is right or wrong in these matters.

There are many other things workers through their unions will want. For instance, there is the question of safety and sanitation in a plant. Neither employers nor the workers know very much about it. There are sanitary and engineering professions that might better set the standards than either of them. But the point that I am trying to make is that wage earners will want to bargain about everything that affects their interest; and employers and advising attorneys who think that they will get anywhere by saying, "This is not a bargainable matter," are just putting things in the way of helping them settle current problems. These problems are bound to come up. The wage earners are going to ask for whatever the employer does or offers to keep his employees loyal to him. They say, "If it affects our interest, we want a voice in that; we want to have something to say about it."

Without being a lawyer, I want to tell you lawyer folk that that will always happen. Wage earners will get to bargain about the things that they feel affect their interest, despite opposition. If you go back to the history of these matters, you will find that at each point employers said, "This isn't bargainable" and "That isn't bargainable." But in the end the law provided that it was bargainable. I think that is a very important thing to remember.

What is it that wage earners really want? Anything that employers have thought or will think up as a good device in managing the employees and in bettering labor relations from the company's point of view. Anything the employer ever thought up on that question or will think up in the future, the wage earners will want to bargain about. And in the end they will do it. They will succeed in doing it, and it will become legal, judging by history, which is the only way we know how to judge.

However, unions are not primarily concerned with the details of these matters. You will find that workers in different industries, craftsmen as compared with less skilled labor, will take different views of how to handle a particular problem. You will find craft unions will say and said originally, "We can't have any business of working with a stop watch"; and some of them still have that prohibition in their constitutions. On the other hand, industrial unions now have engineering departments where they use stop watches along with the employer; and the craft unions, as they become more industrialized and take in the less skilled, go in the same direction and finally set up their policy on what is called scientific management, which they opposed so bitterly

before. "We have no objection to it, provided some of the savings are passed over to us and provided also we have some say in the matter."

Back of collective bargaining is a union, and back of a union is one fundamental idea in its relationship with employers, as I see it. Unions want a rule of law that governs the relations between employer and employee; not an arbitrary decision of management, but a rule of law. If you will look at the growth in the size of agreements in collective bargaining, you will find that they grow this way. There were some kinds of grievances during the year not covered by the agreement. When the next time for negotiating the agreement came along, the union said, "We want a rule like this to cover those grievances."

And so it is with health and welfare programs. The employees will differ. Some will want a pension plan; some will want it contributory and some noncontributory for various reasons; some will want it funded and others will want something else. That is not so important. Those questions need to be handled, I think, in each of the industries or in whatever groupings they bargain by. People will have to work that problem out. The main point is that there should not be any of that business of saying, "This isn't a bargainable question." Everything within human relations in industry is bargainable. And when I say "a rule of law," I mean a rule of industrial law which is made by management and labor together. Call one the House of Representatives and the other the Senate, by way of analogy. And that is what is happening in this field.

Now let us try to get away from this celestial region and down to a more "pedestrian" level. Before there was a union on the railroads, for example, the employers deducted a dollar a month from every employee's wage and did not ask him about it. That was for hospital service. Hospital service was a good cause and under some of the plans the men got good value for their dollar even though they opposed those plans. There was no use talking at that stage about its being an unsound solution, that there ought to be a national or a state hospital or medical system. The employers were starting to deal with a union problem. The employers thought their plan was the way to deal with the problem. Then they used the plan for physical examinations and they used it when the Workmen's Compensation Act came in, thereby saving some money for themselves.

After the industry became well organized and the unions had fixed up their wages and rules questions, they made a demand, for instance, right here on the Southern Pacific Railway: "We're paying a dollar a month. We want a say in controlling that fund." They did not want to

strike about it, and both sides agreed to arbitrate it. Finally the Board of Arbitration ruled that there should be a joint board of directors with an equal number from each side. I think in the Southern Pacific case they even said that the employees should have a majority—one over. I am not sure about that, but I think that is true. If there were twenty-five members of the board, thirteen would be employee representatives and twelve on the other side. Then they worked the plan out by agreement. They readily agreed that the board would select the chief physician who would have charge. In fact, they kept on the old one; they had confidence in him. Over all medical affairs the physician is boss; neither side will have anything to do with that. The plan takes care of hospitalization of not only the men but their families and many others.

That has been the trend. If the employer had the right to introduce a hospital system (I might question whether he had the right to tax his employees a dollar a month originally, but he could make it a condition of employment), nobody should be surprised that the union would want to bargain about that. And there should not be any arguments about it.

I remember after World War I the insurance companies discovered the great value in group insurance. And what did they do? They put their efficient insurance salesmen to sell all the companies on group insurance. "It is a way of reducing turnover and holding the people to the plant and making them feel better towards the company." They were dealing with the problem of life insurance.

Then there were the other types of insurance: nonindustrial accident, sickness, disability, and the like. Employers started plans of this kind because they knew those things were a part of human relations, that they had to do with production problems. And now to say that these plans are wrong in principle, that employers ought not to bargain about them, does not seem to make much sense either from a logical point of view or from an historical point of view. It seems silly to raise such questions when you see how things are growing and have grown in labor relations.

The same applies to welfare and recreation programs. The interesting thing is that unions first opposed every one of those improvements. They said they were "anti-union" and "We can't have them," just as they said, "We can't have scientific management."

Well, that was when unions were weak and ineffective, and they had not settled their other questions yet of getting decent wages. They opposed machinery originally, but what happened to the machinery? They turned around and said, "We want to control the introduction of the

machine. We can't leave the employer to decide under what conditions this machine will be installed." It is the same with each of these plans. They want to be in on all of them. They want to have a rule of law made by management and labor together: "This is how this thing will be run"; and not "This is a gift which the company gives, for which you must be duly grateful."

The soundness of those plans is not of primary importance. Some plans I know say, "When there isn't enough money, we will just reduce it in proportion," or something like that. They are all experiments. Of course, it is wise for the union and the employers and their advisers to work out as sound a plan as they can, as they see it. But there is no use in somebody coming up and saying, "This is the only sound plan and the only way in which we can do it." It has to be handled on a problem basis. What have we here? How do the people feel about it? What do they want in the way of control over it?

After all, the soundness will really have to be left to actuaries and various kinds of experts, who disagree just as employers and unions disagree. All you have to do is to listen to experts testify in a lawsuit. The same science upholds the position of each side. It is the same with actuaries and accountants. I have had accountants tell me about the financial condition of certain industries where the wages, according to the agreement, could be changed on the basis of financial condition. Both sides agreed to employ certified public accountants to make a study, hide the identity of the firms, and tell the parties what the condition was. The question was jointly posed, and the report was made to each side and to the arbitrator. Then the employers hired an accountant to tell the arbitrator what that report really showed. They hired a CPA and the union hired a CPA. They were both high-grade CPA's. I was told by one that the report showed the financial condition was just awful, and the other said that the financial condition was just as rosy as you want and that there was no justification for wage cuts but that the employees should have increases.

One reason pension plans have come so fast now is, of course, because last year prices decreased a little and there was not much chance of getting more money. Unions had to think up "fringe" issues, just as the War Labor Board had to think up issues. If you turn the problem over to government, the same thing happens. "Fringe" issues were used to get around the "Little Steel" formula ceiling. People think up "fringe" issues when the cost-of-living argument does not work any more. And so a development that might have taken maybe ten years to develop slowly suddenly becomes a nationwide problem. Somebody says, "Now, this is

a sound plan and everybody ought to have it." Arguing about health and welfare and pension plans on that basis is just as bad as arguing about wages and terms of employment and rules on that basis. It is a defect in collective bargaining and not a defect in welfare plans.

I think I have done my duty about opening the discussion, and I want to conclude with two observations:

First, health and welfare plans, of course, go with a national health program, and a pension goes with national old age and survivors' insurance. I do not think enough attention is given to the problem of administration of these plans. The greatest value in bargaining sessions about pensions and welfare is not that they will solve the old age or welfare problem. That is silly. The number of unions that have plans or that are likely to get them in the next ten years will hardly make a dent in the national problem, because there are more employees who are not covered by collective bargaining agreements than are covered even now. So what is the use of saying, "This is going to solve the old age problem"?

We need a national plan and we want all the experimentation in the various bargaining units that is possible, both to contribute to the handling of the problem generally and to learn how to administer it without a lot of red tape and bureaucracy; so that when a man says, "I am entitled to a pension" or "I need to go to a hospital," he does not have to fill out seven pages of forms that some clerks look over.

Many people say that can be done best by decentralizing, but I do not think decentralizing to the state governments is any better than administering by the national political unit. We should embark upon all these experiments and maybe we will learn how to weave them into, say, a national pension plan, which must be the basic method of handling the matter because not everybody who needs a pension is an employee. Also we will want to keep the mobility of labor, so that men can go and get what jobs they want and employers who want to start new industries will not be up against the proposition, "I don't want to lose my pension over there."

I think the administration of both health and welfare plans is something that ought to be studied. I do not know how to study it and my notion may be all wrong about it. But if these industrial plans develop as they are bound to and some way can be found of integrating them with a national system, then we may have a contribution toward effective decentralization, and not merely decentralizing by taking it away from one set of politicians and giving it to another set of politicians.

It is very interesting to me to hear employers say that the only way to handle pensions is by a national social security system, but they oppose

handling illness, medical care, in a national social security system. The people who are now advocating pensions on a national basis do not want a federal health program; they call it "socialized medicine." Well, we need national handling of both sickness and pensions, but we also need as much decentralization as we can possibly have, so that people can govern themselves as much as possible in dealing with these problems. Union and employer plans are all experiments in that direction. We want to encourage them, whether for sickness or pensions, for that reason. We will want some national control. But if all of these things get done nationally, the rest of us will not have anything to do. We will just have experts governing us, like those the labor people used to call "slide rule artists" in the Stabilization Division of the War Labor Board.

"What wages are you entitled to? Well, let me look at my slide rule and I will get you the answer."

We want to avoid that as much as possible, and I think the experimentation by industry and unions is a good step in that direction.

Finally, the growth of the right of employees to challenge the employer's property right in his business—that he can run it as he pleases—is part of the American democratic movement, and the development of welfare and pension plans is also part of it.

I have always wondered about one thing concerning democracy. In democracy we organize it this way, and I do not see any other way to do it: on the most important problems, the broad policy problems, we say the most ignorant man must have the right to vote in determining policy. Every voter elects the representatives to deal with the broad, important questions. The laws that really govern us, the foreign policies, the taxation policies, are things about which the average man knows very little.

That is the basis of democratic government, and I do not see how you can get away from it. The expert who knows something about these questions cannot get elected to office. I do not think he should. He can only be an employee to carry out the policies made by the ignorant people. Then after that he can advise them, or he can advise them before, but the final judgment must be in the rank and file. And we, the ordinary uninformed people, have to decide those questions if we want to remain a democracy.

I get a little impatient at the testimony of experts, that we need an accountant to decide this question, an actuary to decide that one, or we need health experts and sanitation experts. Of course we need them, but they have to be like the military. They are subject to the civilian population, which means the ignorant mass of us. If we are wise we edu-



cate ourselves so that we will not be so ignorant, but we can never know all of these problems. I think the place of the expert as a subordinate needs to be emphasized. We have to consider first: What is it that we want as a social policy or a labor relations policy? That will be very largely compromised, as all democratic legislation is. We can ask the expert for advice; there is no harm in that. Then when we have decided what we want, we say to the expert, "You show us how to do this." But we ourselves have to make the policy decision.

# Collective Bargaining on Pensions

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HERBERT R. NORTHRUP

AFTER ONE YEAR of pension patterns one might think that we were gathered here like disciples of Confucius, who, if the tales can be believed, advised the acceptance of the inevitable with the words, "Relax, and enjoy it." For bargained pensions have made an impact that is probably permanent and the issue of whether such pensions should exist has apparently been determined.

However, the fact that the bargained pension may be here to stay raises another and, I think, equally important question: Shall the bargained pension be the primary method of providing for old age security in the United States? It is to this question that I wish to address myself, and for that purpose a little background will be helpful.

Bargained pensions are a post-World War II development. Long before then, however, private pension plans were developed by unions and companies, separately, and outside the scope of collective bargaining.

Pension plans operated and financed by unions were inaugurated mostly prior to World War I. They had a high mortality rate and few survived. Company pension plans blossomed in the twenties as part of industry's joint attempt to develop a personnel program and to offset unionism. After a reversal occasioned by the great depression and the inauguration of the Federal Old Age and Survivors Insurance program in 1935, interest in company pension plans was revived by a change in the Internal Revenue Code in 1942. The new revenue regulations permitted employers to deduct costs of pension plans which met certain requirements at a time when profits were high and rising. Company pension plans increased from approximately 600 in 1939 to 9,000 ten years later. Of 255 postwar company pension plans studied by the National Industrial Conference Board, 150 were found to be contributory and 105 noncontributory.

The drive for bargained pensions got its greatest boost in 1947 and 1948, when John L. Lewis was able to secure the favorable intervention of, first, a Cabinet officer and then, a Congressman. In 1948 Mr. Lewis negotiated the Krug-Lewis Agreement after the government had "seized"

the mines. Then, following a strike in 1948, Lewis obtained the intervention of Representative Martin, at that time Speaker of the 80th Congress, and the appointment of Senator Styles Bridges as a neutral member of the Miners' Welfare Fund. Mr. Bridges voted with Mr. Lewis to establish the \$100-a-month pension. Later the National Labor Relations Board in the *Inland Steel* case<sup>1</sup> made pensions compulsory bargaining and the Steel Fact-Finding Panel endorsed this idea. The bargained pension had become a goal which union leadership could not neglect.

The present extent of bargained pensions is not as great as some believe. In a recent survey of 576 union agreements negotiated in 1949, the Conference Board found that only forty-three make any mention of pensions. Of this number only two-thirds contain the details of the pension plan and ten of these twenty-five are with the United Steelworkers (CIO), whereas only three are with AFL unions. Of the remaining agreements, four go so far as to state that the pension plan is a management prerogative and seven provide only for a study of pension plans. Nevertheless, the agreements which do exist cover workers in the great basic industries and are therefore of real significance, and additional pension agreements have been negotiated since January 1, 1950.

How much security do these pensions provide for those covered for old age? What effects do they have on old age security for those not covered?

Bargained pensions meet the problem of old age security in a manner which leaves much to be desired. In the first place, their payment depends with few variations upon employment with a particular concern and/or membership in a particular union. Generally, where the plans are noncontributory, there is no vesting. In case the plan is contributory, some provision that an employee has a vested right in his own contributions is usual. Even when the latter case is true, however, the employee's contribution is frequently insufficient to provide the basis for an adequate retirement income if the employee leaves his original place of work. Thus, bargained pensions tend to decrease labor mobility. Vesting, such as is included in the recent agreement between the Oil Workers International Union and the Sinclair Refining Company, may alleviate this problem, but some loss of pension credits will plague the mobile worker.

By the same token, the bargained pension is likely to reduce the older workers' employment opportunities. An employer whose labor agree-

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<sup>1</sup>*Inland Steel Co.*, 77 NLRB 1, enforcement granted, 170b 2d 247 (1948), cert. denied, 336 U.S. 960 (1949).

ment includes a pension plan may attempt to hire only younger men in order to reduce future liability costs. With a population that is growing older, this poses a very serious problem.

Bargained pensions also place great authority over individual security in the hands of employers and union leaders. As Professor Clark Kerr has put it:

Pension plans can be used to induce too much conformity. Discharge by the company, or by the union under maintenance of membership rules, can then deprive a man simultaneously of his job and his stake in a pension plan. Greater subservience to company and union may ensue than is proper for a free man.<sup>2</sup>

Most of us thought that the major benefit which would derive from the current pension drive would be employers' support for an expanded and more adequate Federal Old Age and Survivors Insurance program. The fact that the steel agreements have a direct tie-in with the OASI and the statements of prominent industry spokesmen pointed in that direction. The official paper of the United Automobile Workers (CIO) also supported this view with the statement: "The UAW-CIO and labor generally have always maintained that the most satisfactory method of providing old age security is through Federal Social Security Legislation."<sup>3</sup>

Then came UAW's demand on Chrysler for a stated company contribution regardless of the course of federal legislation. This has caused some industrialists to wonder whether an expanded OASI will reduce or add to their pension costs. Yet the UAW-CIO, at least, has always been quite candid as to its aims. In the same statement quoted above there also appears this significant paragraph:

As improvements are made in Federal Social Security, a larger portion of the Ford company's 8¾ cents contribution will be used to retire past service credits. As increased federal benefits make it possible to pay off past service credits at a faster rate, the road will be cleared for the union through collective bargaining to win additional company-financed benefits in pensions and hospital and medical programs.

Since labor in general regards expanded social security as a sure thing, the Chrysler demand—set eventually by Mr. Reuther at \$300 per month—may be viewed as an opening step in securing these "additional company-financed benefits."

The inherent political nature of unions—which must be if the internal affairs of unions are democratic—does not make Mr. Reuther's \$300-per-month pension as fantastic as it may seem. The temptation to

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<sup>2</sup>Speech before the 308th Regular Meeting of the National Industrial Conference Board, New York, November 22, 1949.

<sup>3</sup>*United Automobile Worker*, October, 1949, p. 4.

play politics with pensions is very great, and now that pensions are a part of the collective agreements of major unions, we may expect them to become involved in the political tug of war within many union organizations.

Consider, for example, the situation in many unions today. The seniority rule has given preference in both promotions and layoffs to older men. Now pensions are added to payrolls in lieu of wage increases. Pension costs will be heavy in the next two decades if the movement continues, and therefore will reduce the amount which can be put to wages.

Given the fact that younger persons cannot be expected to be as interested in pensions as are those nearer retirement age, pensions seem likely to increase the already existing schism in unions between older and younger men. Such a cleavage can be a significant factor in union demands and in internal union politics. At one extreme, a union controlled by older men could stress retirement benefits to such a degree that direct wage increases would be forced to a minimum or even that future benefits themselves would be endangered. At the other extreme, a union controlled by younger men might renegotiate pension payments downward in order to increase wages or other more immediate benefits. The difficult fiscal problems, as well as plain headaches, which such possibilities involve for management are virtually unlimited.

Political pressures are not confined to internal union politics. The United States is a land of rival unionism in which each leader is on the spot not only from within his organization but, perhaps more important, from outside rivals as well. Indeed, "we have reached the stage where a limited number of key wage bargains effectively influence the whole wage structure of the American economy."<sup>4</sup> The union leader who fails to keep up the pace not only suffers loss of face, prestige and esteem, but may lose part of his union as well. When John L. Lewis won pensions for the miners, Philip Murray was challenged to do likewise for the steelworkers. Pattern setting and following can determine the size and character of the pension as well as the size and character of the wage increase. In both cases the economic facts pertaining to the individual firm and its employees are likely to be lost in the shuffle.

The rival union situation is especially acute when an employer deals with several unions. Here each organization may try to secure a better deal than the other, whereas the employer invites disaster unless all are

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<sup>4</sup>John T. Dunlop, "American Wage Determination: Its Trend and Significance," in *Wage Determination and the Economics of Liberalism* (Washington: United States Chamber of Commerce, 1947), p. 42.

treated uniformly. The difficulties inherent in bargaining on pensions, first with this union, then with that one, and at the same time trying to develop a coherent, sound pension system, are almost endless.

All this adds up to the fact that pensions are not an easy subject to determine at the bargaining table, especially in the light of pressures inherent in the American labor movement. Certainly, the emergence of pensions as a significant element in collective bargaining is fraught with dangers for both labor and management.

Another great danger of bargained pensions, combined with a failure to adopt an adequate Federal Old Age and Survivors Insurance program, is that it increases the tendency of the state to solve the old age problem with assistance handouts. This is unfortunate because assistance is open to grave abuses since, in the words of Professor Sumner Slichter,

Objective tests for defining need are extremely difficult to establish and to administer. The standards which fit one case do not fit others. Lack of objective tests opens the door to pull and favoritism. Furthermore, the lack of objective tests is virtually a standing invitation for older persons to organize pressure groups to bring about the payment of handouts out of general taxation. This danger is enhanced by the fact that about half of the money for old age assistance now comes from the Federal government, but that the states determine how it is spent. In fact, the Federal government now provides 75 percent of the first \$20 per month of assistance and one-half of the remainder up to an individual maximum of \$50 a month. This means that a state may greatly increase the number of persons on the old age assistance rolls with very little expense to itself.<sup>5</sup>

The dangers of turning to assistance as a means of solving the pension program are easily illustrated. In Louisiana, no less than four out of five persons of 65 years of age or more are receiving old age assistance—a sudden doubling of the number since June, 1948. In Washington, old age assistance payments are considerably more generous than Federal Old Age Insurance benefits. In California, the old age movement succeeded in 1948, by an amendment to the state constitution, in raising old age payments to an all time high and in giving old age assistance first lien on the state treasury. Fortunately, an aroused public opinion under the leadership of business interests and parent-teachers' associations, which saw the threat to California's excellent school system, repealed this amendment in 1949.

Bargained pensions thus require supplementation for the uncovered. If we are to rely upon them for our basic old age security program we must count on heavy demands for old age assistance for the uncovered.

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<sup>5</sup>Speech before American Management Association, Chicago, February 13, 1950.

In the long run, this would be a most costly, most inefficient and most political alternative, as Californians well know.

Nor can thrift be counted upon to take up the lack of universality of private plans. Americans have done more to provide for their old age through savings than any other national group. Yet the extent to which individual saving solved old age insecurity in the past has frequently been exaggerated. About 37 percent of American families do not save, and saving is concentrated among not more than 40 percent of the families. Moreover, the 20 percent with the highest incomes do 60 percent of all positive saving.<sup>6</sup>

Actually, however, most persons save in order to secure particular objectives, not the least of which are education for children, purchase of homes in which to live and of cars and appliances to use. The use of savings for these objectives is certainly as worthy as saving for old age security, and the purchase of houses, cars and appliances with savings provides a tremendous impetus to industry and employment.

The inability of families to care for their own aged has been more marked in recent years by several factors which are familiar to you: (1) the aging of the population; (2) the tendency to retire persons at 65 (of which I shall speak later); (3) the urbanization of the population and the decline in average house size which leaves less room for grandmother; and (4) the wealth of appliances and objects upon which one can spend savings.

All this is not to condemn thrift, but to praise it. For thrift is a means, not an end. History never approved of the miser. But since savings can be used in so many ways for the betterment of all, for housing and education, for example, and since the savings of most of us would not provide an adequate retirement income, it is both wiser and more realistic to depend primarily on insurance for retirement income.

Of prime importance, however, is the fact that there is no certainty that bargained pensions can provide old age security even for those covered. More than likely, in the words of a *New York Times* editorial, many bargained pensions will find "that the first major economic collapse will send them toppling with attendant disillusionments and hardships to those who counted on them for security."<sup>7</sup>

If that should happen—and persons familiar with the fact that most bargained pensions are on a pay-as-you-go basis fear it will happen—what next? No doubt the federal government will be called upon to bail

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<sup>6</sup>See "1949 Survey of Consumer Finances," *Federal Reserve Bulletin*, January, 1950, pp. 14-34.

<sup>7</sup>*New York Times*, April 9, 1949.

out the various private plans—a sort of RFC operation for pensions. Indeed, there is already ample precedent for this. The Railroad Retirement Act provided that “pensions that were being paid by employers to individuals in the spring of 1937 were assumed by the [government] plan to the extent of \$120. a month, and any general reductions that had been made in these [then private] pensions after the year 1930 were restored.”<sup>8</sup> Although the railway pension system is supposed to finance itself through taxes which are now set at 6 percent of the first \$3,600 of payroll for carriers and a like amount for employees, most authorities agree that some of the cost has been met through general taxation and that the federal treasury will be called upon for increasing contributions in the future.<sup>9</sup>

Thus, already the taxpayer is supporting a pension system for a special group, and one, moreover, which provides more liberal benefits than does the general Federal Old Age and Survivors Insurance. The collapse of bargained plans in the steel, coal or automobile industries could result in the establishment of a series of government single-industry plans similar to the railroad setup. The impediments to mobility, the invitation to old age lobbies, and the administrative difficulties which would result are well imaginable. Even today, these problems exist for those who have transferred from railway to general employment, or vice versa. And what is more important, a series of one-industry plans tends to provide better security for the favored few at the expense of the many who do not happen to work in a favored industry or belong to a favored union.

Fortunately, there is an alternative to the hodgepodge of private plans, special government plans, and old age assistance handouts. That alternative is a basic federal old age insurance program, financed largely by joint employer-employee contributions, paid to insured beneficiaries as a matter of right rather than as a matter of need, and with payments based upon past earnings so that the efficient, the hard-working, the better-earning will receive, as they deserve, a higher pension than those lower on these competitive scales.

We have the basis for this program today in Federal Old Age and Survivors Insurance. Unlike privately bargained plans, it does not impede mobility or adversely affect the older worker's chance of a job. It is fully contributory and, in principle, meets nearly all the requirements of a sound pension system.

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<sup>8</sup>R. B. Robbins, *Railroad Social Insurance* (New York: American Enterprise Association, 1945), p. 9.

<sup>9</sup>Robbins, *loc. cit.*; and E. M. Burns, *The American Social Security System* (Boston: Houghton, Mifflin, 1949), pp. 224-262.



In practice, however, Federal Old Age and Survivors Insurance has several defects. It leaves uncovered two-fifths of the population; the benefits are grossly inadequate; its eligibility requirements are too strict; and it encourages compulsory retirement at 65.

The Senate Finance Committee of the 80th Congress appointed an Advisory Council on Social Security composed of distinguished and representative industry, labor and public members who made recommendations which would take care of all of these deficiencies except the question of compulsory retirement. H.R. 6000, however, which has passed the House of Representatives and is now before the Senate falls short of the Advisory Council's recommendations.

Whatever Congress does, government, labor and industry must re-examine the question of retirement age. Compulsory retirement at 65 has much to commend it. It appears objective, and it opens up top jobs to the younger men.

Yet the disadvantages are great. Some of our best brains and ablest hands are forced into premature idleness. Not only is this a loss to society in itself, but it greatly increases the costs of pensions. If pensions ordinarily began at the age of 68 or 70 instead of 65, fewer people would receive them, and those that did, would receive them for fewer years. Therefore, a contribution which will buy a given pension beginning at age 65 will buy a  $33\frac{1}{3}$  percent larger pension beginning at age 68 and a 50 percent larger pension beginning at age 70.<sup>10</sup>

Spurred by this problem, a number of medical schools are now doing research on tests to determine physiological age. Such tests will probably help, but their accuracy may be questioned for years.

What appears a more practical plan, at least in the immediate future, is a combination of protection for the 65-year-old who stays on the job and an incentive for the employer to keep him there. Along these lines, Professor Sumner Slichter has proposed a payroll tax rebate for the employer based on the number of his employees 65-70, and provision for permanent disability benefits for those 65-70 who are forced to retire, since the disability rate rises rapidly after age 65. Such a plan, the details of which can be worked out, would still permit compulsory retirement at 65 where that is advantageous to the business. At the same time, it provides an incentive to keep the "young" old man on the job, thereby reducing the nation's retirement costs. And since, according to the Social Security Administration, only one out of twenty persons retires voluntarily, this proposal will meet the needs of many of the active

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<sup>10</sup>Slichter, *op. cit.*

older workers. Sixty-five is often too early to retire in an age of vigorous Veeps and heroic bassos.

Let me add one more thought on this retirement question. Retirement is more than a financial problem. It involves a psychological uprooting of tremendous dimensions. Yet neither the government nor industry nor labor unions are spending sufficient time and effort on this problem.

As medical science continues to advance, the retirement years will be longer, even if the retirement age is raised to 70. There is no reason why retirement cannot be a useful, constructive and satisfying experience, both for the individual and for the economy. But that will not be so unless immediate steps are undertaken by government, industry and labor to prepare persons for retired life.<sup>11</sup>

However universal and adequate the federal social security program, it always will be supplemented by private plans. So long as these plans are supplementary, they are certainly not objectionable. In order to maintain private plans in their proper function, however, there is need for some changes in law and in practice.

In the first place, employers should be permitted to *decline* to bargain on pensions without being charged with an unfair labor practice. Note that I did not say that companies should be permitted to *refuse* to bargain. But as the National Labor Relations Act is now interpreted, companies which have long bargained in good faith may be judged violators of the Act even if, with good and sufficient reason, they take the position that an intricate pension problem, which is as closely related to fiscal and to tax matters as it is to personnel relations, should be resolved by the company; or it may be that the National Labor Relations Board will recognize a management position of this character as a legitimate one.<sup>12</sup> A matter so important as this invites resolution by Congress rather than by administrative discretion.

Other problems facing private plans include the necessity for their integration with the federal program, and proper provisions for vesting and financing. In contemplating a private pension, management and labor should always be aware of the bitterness of unfulfilled promises. It is far better to promise nothing, than to promise what cannot be delivered.

The search for security is not new. Great American businesses—life

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<sup>11</sup>Cf. S. A. Raube, "An Easy Graduation to Retirement," *The Conference Board Management Record*, June, 1948, pp. 297-304.

<sup>12</sup>Cf. Archibald Cox and John T. Dunlop, "Regulation of Collective Bargaining by the National Labor Relations Board," *Harvard Law Review*, Vol. 63 (1950), pp. 389-432.

insurance, savings banks, etc.—have aided the search. The twentieth century, however, has witnessed the most intensive concern with security. We live in an era of “security searching” and pensions are part of the search.

The issue today, therefore, is not whether we shall have pensions. That we may regard as settled with finality. Now the problem is different and more difficult. We are at the crossroads and we must make the vital decisions for ourselves and for posterity. The question is whether we shall decide upon a basic comprehensive program of social insurance in the main paid for by contributions by employers and employees, with benefits dependent upon past earnings, and supplemented by private plans which meet certain standards; or whether we shall decide upon private plans which can only cover one-half the population and which may develop into government single-industry plans, such as exist now in the railway industry. If we choose the latter, we also choose major dependence upon old age assistance, with all the attendant problems which have already been mentioned. And this means that we shall be choosing not only the method which will yield the least pensions for the many, but also the one that is the most inefficient, most costly, and most unrelated to the worker’s preretirement income.

On the other hand, if we choose the first method, that is, if we place our basic reliance on social insurance, with private plans serving only in a supplementary role, we shall not have solved all the problems of old age security. But we shall obtain the most universal and satisfactory results for the least cost. Here, happily, a decision in the national interest will be a decision in the interests of each of us.

#### LOUIS SHERMAN

I SHOULD LIKE to enter the subject of pensions and collective bargaining in the spirit of a good collective bargaining negotiation. I think the first task is to define the issues. There is a good deal of confusion today on the subject of pensions and there will be for some time, because it is complicated. However, with the development of skills and understanding in this field, it should be possible to overcome these complexities, and I think it will be better to face them than to exaggerate them.

To begin with, I think there is a very wide area of agreement on the desirability of the objective of pensions. The individual worker wants it. Everybody wants to feel that when the time has come to lay down the tools, there will be a self-respecting, independent means of existence, without reliance upon old age assistance, the charity of friends or relatives or even the children. That desire for individual security is not

peculiar to the worker. It goes through all reaches of our society. We know that it is a problem even for lawyers and corporation executives.

This objective also has aspects of desirability as far as management is concerned. Pensions did not come into being with the *Inland Steel* case, nor with the action in the coal mining industry. For many years companies had established retirement plans, partly out of concern for the welfare of the men and women who work for those companies and partly because of the importance of the plan to the actual productive efficiency of the plant. The retirement plan was considered useful by industry in terms of providing an easy transition for the man who had reached the age when he no longer could produce as effectively, without creating the feeling in the plant that the company was ruthless and did not care about its folks; nor was the company placed in the position of having to make work for someone who really should be in retirement.

So we see that both for labor and management the objective of the pension is a good thing. The public has always supported the idea of a pension, and we have seen the demonstration of that support in the legislative policies of the Congress, both in terms of the Social Security Act and also (and I think this is important) in terms of the revenue amendments which provide for special treatment of the monies laid aside to take care of the pension plan. I am referring here, of course, to Section 23 (p) of the Internal Revenue Code, and Section 165 (a), which permit the deduction of the expense if the proper conditions are met.

I do not think there is any point in going backwards and forwards over the question of whether pensions are good or bad. As far as we can have an area of agreement, we have it here. We all agree that the idea of the pension is a good thing. And so we come to the real question, the question which faces us with respect to so many things. And that is, not what we want, but how do we get it? I say "we" because I think that in this matter there is agreement among labor, management and the public on the desirability of what it is that we are trying to get.

There are different ways of doing the job. The old-fashioned way, and I think the one that is probably most appealing to all of us in labor and management, if it could be done, is through individual thrift and savings. That is a splendid idea. It retains private initiative; we are taking care of ourselves. Unfortunately, however, the development of society—the development of our economic system—does not seem to make it easy to do the job through individual savings. And it is not easy, not only for the man who is on the assembly line or in the building trades or on the railroads, but also for the man who in the old days was

able to accumulate an estate. It may be because of taxation, it may be for other reasons, but we do know that most companies take care of their higher-paid executives through a pension system financed by the company. This does not mean that we should not save, but we do know that we cannot rely on savings as the sole means of taking care of people in their retirement.

Now we have government legislation. We all agree on the desirability of that method. Social security is here. No one in labor is arguing that we should abolish social security and supplant it with private pension plans through the collective bargaining process. We look on the private pension plan through collective bargaining as a supplementary means of providing for satisfactory retirement.

After the government procedure, we come to the unilateral plans. It may be that in certain areas and in certain industries there is no need for improvement, because the plans are so fine, so workable. But we are finding that the people in the plants, in the mines, and in other productive facilities, believe that they ought to have something to say about their pensions, their future wages, just as they do now about their present wages.

And so we come to the fourth method, which is the private pension plan through collective bargaining. As far as that method is concerned, I think it would be well to realize that there, too, just as in the case of the desirability of the pension, much of the discussion is about what is past, not what is present. There is a duty to bargain. That duty to bargain (and I use the phrase very broadly) is based either on the laws of economics or the laws of the statute books. There are certain industries where the employer did not think he should bargain on the subject. The union did not go to the National Labor Relations Board, but there was bargaining. I call that the law of economics.

The second law, the one that has attracted the most attention and which probably has the widest application to our present problems, is, of course, the National Labor Relations Act. Again, all the discussion about the legal duty to bargain is somewhat beside the point, because the question has been settled. It has been settled not only by the National Labor Relations Board, which is, of course, only an administrative agency, but also by a Federal Circuit Court of Appeals. As far as the Supreme Court of the United States is concerned, it did not consider the question of sufficient importance even to grant certiorari. When it denied certiorari in the *Inland Steel* case, the legal duty to bargain under the National Labor Relations Act was established.

We have had some discussion on that subject in the public prints, if

I can refer to the *Harvard Law Review* in that sense, and we hear of the rather novel idea that "there may be a duty to bargain, the employer should not refuse to bargain, but he should have the option of bargaining as to whether he will bargain." I think that kind of reasoning is not very helpful to either labor or management. It is unsound, it does not convince people, and it can only lead to unnecessary labor-management conflict. When men want to bargain about pensions, and they think they have the right to do so, they are not going to be satisfied with the academic idea that they should bargain about the question of whether they are going to bargain. That is not the case in wages and I think it will not be the case in pensions.

Of course, the employer has the right to refuse a pension. There is nothing in this law that says that he must grant a pension. He can bargain about that. He can point out to the union, if he has the facts, that it is not an appropriate idea. But to say that he wants to bargain about whether he will bargain is not a useful concept in working out the practical labor-management relations that confront those who are working in the field.

If we accept the idea that there is a legal duty to bargain but recognize that the employer can refuse to agree on pensions, if he wishes, in terms of proving that it is not an appropriate idea, we must also take into account the fact that there may be certain circumstances under which the union itself will feel that this is not a particularly appropriate idea at the time. There may be a very large ratio of turnover, the workers may not be interested in the question, or the wage structure of the plant may be of such character that the most pressing problem is wages. I think that the duty-to-bargain idea is flexible enough so that all of these things can be worked out without a shotgun being held at anybody's head.

We come, then, to the question which I think is probably confronting most people across the bargaining table, namely, what the pension ought to be, assuming that they have agreed that it is desirable in that particular establishment. The crucial problem, today, centers on the provisions of the pension plan, and all these other discussions are not very useful in terms of the facts—in terms of the actual problems which now confront labor and industry.

With respect to the provisions of the pension plan, we know that the process is complicated; we know that it requires a maximum of good will and good faith in bargaining if it is to be successful. I think that sometimes it is not realized that there are provisions of law which have considerable relationship to the actual provisions of the pension plan.

As you know, the Taft-Hartley Act in Section 302 has established certain requirements with respect to the trust funds set up for pension or health and welfare purposes. We think that the approach which led to the enactment of that section of the Act was not very desirable. The section is couched in terms of an exception to a prohibition against paying money to union people. The main language of the section prohibits the employer from paying money to union people unless the payment falls within certain stated exceptions, and one of the exceptions is this very considerable problem of the trust fund for pension benefits. We do not think that the atmosphere in which that legislation was passed permitted the kind of thinking that should have gone into the enactment of a section dealing with pension plans. Nor do we think it is particularly appropriate that the legislation dealing with the establishment of these complicated financial plans should have as its sanction criminal penalties applicable to both the employer and union. However, as long as that statute is on the books, we have to keep its provisions in mind when drafting the plan.

The other branch of the law which has a considerable impact on pension plans is the tax law. As you know, provision is made for allowing the contributions to be deducted as expenses. That is very important, because it is the basis on which most of these plans are formulated. I believe you will find that the plans which are the subject of so much public discussion today are made conditional upon approval by the Commissioner of Internal Revenue.

I do not believe it would be particularly fitting to go into all of the complicated rulings that have come out on the subject. I mention them, however, as an indication of an outside limit on the collective bargaining process. Both parties in the negotiations will be agreed on the point that the plan should qualify under the tax law, and therefore it will be necessary to take these sections of the law into account in determining the provisions of the plan. The parties also will be concerned to a lesser degree with social security, in terms of its integration with the provisions of the pension plan, and the wage and hour law, which permits the payments to be kept in a compartment aside from the regular rate of pay, so that there is no question of paying overtime on such payments. I believe the recent wage-hour amendments have cleared that problem up, so that a bona fide plan does not raise questions any more under the wage and hour law.

I think it might be helpful if I describe the plan which the IBEW established quite a few years ago in the electrical contracting industry. At first, that plan was financed solely by the union. In the 1927 conven-

tion the union established the plan and handled it through contributions made by the members themselves. It was a pooling arrangement by the workers, without any contribution by the employer. The plan continued in effect all during the years, and many millions of dollars were paid out under it. Then it was found that more assets were necessary to shore up the plan, and we turned to the employers and made a collective bargaining agreement with them whereby they agreed to contribute a stated amount which would be available for the support of the pension system of the Brotherhood.

It is of particular interest to note that this was done without any fuss or bother, without creating any excitement, and without all the horrendous discussion about complexities and complications which we hear today. Moreover, the basic facts in this industry were much more complicated than those in other industries. For, here, labor was not dealing with one large company employing thousands and thousands of men. It was dealing with an industry which comprised a very large number of just ordinary small businessmen. No one of them could have established a pension plan for his workers. At the present time there are, I believe, as many as 8,500 contractors who are contributing to this plan. They are not located in one state or one city; they are located all over the country, in every hamlet, in every village and in every town. Nevertheless, a procedure was worked out whereby the individual worker could get a pension, and machinery was set up to bring to bear the total contributions of all these contractors.

The eligibility test in this plan is membership in the union, which in this particular industry is fairly close to the test of employment in the industry. That has been held legal by the federal district courts in other industry plans. They have held in the first Mine Workers' case, and more recently in the Upholsterers' case, that the definition of eligibility in terms of union membership is valid. Of equal importance is the fact that the Commissioner of Internal Revenue, in his interpretations of the applicable sections of the tax law, has held that this definition of eligibility is consistent with the tax law and permits the handling of the contributions as expenses deductible under the law.

I want to say a word here about the question of the mobility of labor. This plan is set up on a national basis. It does not make any difference if the individual works for John Smith today in Oshkosh or for John Jones tomorrow in San Francisco. He is covered by the plan.

The benefits are reasonable and they have not placed an excessive burden on the industry. The individual pension member gets \$50 a month. When you look at the figure, it looks a lot less than what is pre-



scribed today. But that \$50 a month is fixed. It is not on a sliding-scale arrangement. Nor does it include the advertising device of describing the total amount, *including* social security, as so many dollars a month. The man who gets the \$50 benefit also gets social security. In other words, the \$50 is the supplement he gets from this industry for his welfare when he retires.

The plan provides for the joint-trustee system. We did not leave it up to the district court to pick an impartial chairman. We selected one. He is Professor Edwin E. Witte of the University of Wisconsin.

I cannot say that we have a completely funded plan. I think that when anyone goes into the actuarial estimates which are the bases of these funding propositions, one finds that all of them are not as solid and certain as the Rock of Gibraltar. The funded plans are not based on simple rules of arithmetic. They are based largely on estimates, assumptions and numerous variables. So it is a little illusory to say, "We have a funded plan" and "We are sure of what is happening." And if we have something less than that, we should not feel it is "terrible" and everybody's expectations are going to be defeated.

We have, of course, accumulated a substantial reserve, and we are hopeful that the practical experience of more than twenty years and the stability of the industry as a whole will permit the continued operation of the plan, with such adjustments as may be necessary from time to time as we go along.

I think our plan has some value in many areas of the country, where the ordinary lawyer and businessman are not talking about the problems of an industry like the railroad or steel industry. It is a plan which is adaptable to the needs of small business. In our case, the contractors on the average employ about ten or eleven men. Many thousands of them employ from one to five men. Nevertheless, this over-all setup throughout the whole country produces the benefits for the individual, whether he works for the large contractor who may employ hundreds of men or the small contractor who employs a few men.

I do not know how the plan fits all the logical concepts that we hear today or what it means in terms of universality and the like. But it is something that works, it is something that fits the needs of the electrical contracting industry, and there are undoubtedly other industries which, with some adaptation, would find it a useful model. However, in the IBEW, which represents employees not only in the building trades but also in the public utilities, the railroads, television, electrical manufacturing, etc., we have an opportunity to see the very obvious fact that industries do differ, that they have different problems, and that they

require individual solutions. A plan which we might establish in the building trades and which meets the needs of the building trades may not be the thing to put in some other industry. We may find that, although in the building trades we have a matching proposition between the employee and the employer, there are other industries where it is more appropriate not to have any contributions from the employees.

We believe that with respect to all of these things there are no pat solutions. The answer to the pension plan problem will be found in the ordinary fundamentals of collective bargaining—a realization on the part of both sides that they are going to live together with each other for quite a while, that they are going to have to understand each other's problems, and that they are not going to take advantage of each other this year, because next year somebody is going to catch on.

I want to say one word, though it is a little out of my field, on this general trend toward uniformity, universality, and the like. There is an idea that if the government takes care of this problem, we are going to get something very desirable known as "uniformity." Anyone who has had any experience with government pension plans knows that they are not uniform. There is social security, which is set up on a more or less uniform basis, but the employees of the federal government themselves have an entirely different retirement plan. There have been some in the federal government who have been most anxious to put them in the blueprint, to get the federal employees into the right part of the chart. And they resist it; they don't want it. We do not hear much discussion about the men in the military end. We know that they are on retirement, and their retirement plan is very different from either the Federal Civil Service or the social security setup. We also know that the railroad plan, which is in a sense a government plan because it is administered under legislation, is different from all of these three plans.

I do not think there is anything particularly shocking in this, nor is there anything shocking in the idea that industries may develop different forms of supplements to the basic social security system. Although these differences do not lend themselves to blueprints, charts or symmetrical diagrams, it is my own view that we will meet the problems before us most effectively on the basis of the particular facts before us and in the industries with which we are dealing.

I feel that although we are talking here in terms of labor and management, because they are the active parties, we all are more and more cognizant of the fact that as we do our bargaining we have to take into account not only the problems of the people we represent, but we have to understand the problems of the fellow across the table, and both

sides have got to take into account the public interest. They have to do that not only because it is a nice thing to do; I think it has to be done out of sheer self-interest. Ultimately in any field of collective bargaining and particularly in this, where large sums of money are accumulated and consequences are created which last over a period of time, we have to consider the public interest because of the fact that ultimately it can work itself out in such a way as to upset our own little house of cards. This entire field of pension plans through collective bargaining, as I pointed out at the beginning, has a very close relationship to federal legislation; and that is one point where the future of the private pension plan as a means of supplementing the government setup can be affected quite seriously by public opinion.

I think with the working out of our problems in this field, skills and abilities will be developed whereby all three interests—public, management and labor—can be satisfied adequately and whereby we can finally effect a means of improving the existing condition. I do not see any perfect solution. There is none. I do think that the practical values of the private pension plan can be secured through collective bargaining, and we do not have to drop the idea because sometime in the future somebody is going to do something about social security.

# Panel Discussion

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R. G. KENYON

INFLATION IN THE POSTWAR PERIOD made blanket wage increases a habit in collective bargaining. However, for the past year, economic conditions have not been conducive to further wage increases. Therefore, labor representatives have shifted their objective to the pursuit of retirement pensions.

Unions are competing vigorously among themselves for members who have become accustomed to one concession after another. With unions unable to stop the momentum of their own demands without economic strife, managements are being jockeyed into positions where they are apt to make commitments which future income may not be able to support. In view of this contingency, the popularity of tax-financed retirement plans administered by the federal government is constantly growing.

But loading it on all the people does not solve the problem. It only shifts the burden and enlarges it. It extends a pernicious tendency in our current political life. We are pauperizing ourselves by borrowing against the future to provide ourselves with material benefits which we have not earned.

We are forcing the early retirement of active people who can still contribute effectively to their own support. We are increasing the demands upon our productive capacity, which will be manned by the fewer remaining skilled people. Such a situation can only lead to the impoverishment of our country.

ROSS P. ALTHOF

ALL WORKERS are confronted with problems of insecurity which they cannot meet by acting alone. The need for protection against insecurity is unlike the problem of food, clothing and shelter. Few individuals can make adequate provision for the common hazards of life—sickness, accident, unemployment, old age and death—because the cost is unpredictable and cannot be budgeted by individuals acting alone. Only organized effort and group action offer a solution to the problem in a modern and industrialized society if it is to remain free and healthy. Social insecurity is the greatest threat to our democratic society. For

these reasons the problem of insecurity is a concern of labor and management alike.

The alternative to social security, poor relief or charity, treats only the symptoms of the problem and not the problem itself: which is fear—fear of the economic and social consequences of old age, sickness and death. The poor relief and charity approach requires a “poverty status” and “second-class citizenship” before assistance is available and, therefore, can never meet the problem. To eliminate fear, protection against old age, illness and disability must be assured as a matter of *right*.

Management recognizes as a cost of doing business the cost of repair and replacement of machines. There is, likewise, a worker “repair” and “replacement” cost which management must recognize. Machines produce the economic wealth out of which the cost of depreciation is met. Labor, likewise, produces economic wealth out of which the cost of social security must and can be met.

The way open for direct and immediate improvement in workers’ security is collective bargaining. An individual worker is aware of his problem of insecurity and, knowing that he can meet it only through group action, turns to the established democratic method—collective bargaining—for discussing the matter with his employer. Collective bargaining is not a substitute for government action in providing a solid foundation for workers’ security. But workers need protection over and above the national minimum provided by government. They need flexible programs under collective bargaining to supplement, and to fill the gaps in, government programs.

The need for security programs is immediate and acute. In June, 1947, a government study showed that the cost of living for an elderly couple on a very modest budget was as much as \$148 a month. At the same time the Federal Old Age and Survivors Insurance system was paying an average benefit of \$39 a month to retired workers with wives 65 years or older. Thirty-nine dollars a month provides far less than “security” in old age when it costs \$148 a month to live decently. Since the time these figures were reported, the cost of living for an elderly couple has gone still higher, while the average monthly benefit provided by the government program has increased by less than one dollar. Until retirement income from all sources is sufficient to meet the essentials of a decent standard of living the problem has not been met.

The need for protection against the hazards of illness and disability is as great as the need for old age retirement income. Protection against the uncertain cost of unpredictable illness and accidents is a necessity for every worker because no worker knows when or how hard he or his

family will be hit—every worker is exposed. The need for protection, therefore, is not the problem of a few; it is a matter of urgent concern to all workers.

During recent years, while prices have been climbing higher and wages have increased, the cost of being sick has risen sharply. At the same time, the rise in the cost of living has magnified the economic problem when the wage earner himself becomes unable to work and his income stops. To meet the cost of food and other household expenses, that continue when the family provider is ill, the amount of income needed during disability has doubled in recent years. The inadequate protection workers have had, if any at all, has been continually shrinking, day by day, with every increase in prices. Workers have less security today than ten years ago!

Therefore, the UAW-CIO believes that industry must provide this protection for all workers by employer-financed programs assuring: (1) old age retirement income, a minimum of \$100 per month at age 60 years, including OASI; (2) incapacity retirement income; (3) hospital care for worker and family; (4) medical and surgical care for worker and family; (5) income during periods of disability; and (6) death benefits. The labor agreement must also include: contract clauses requiring that employer-payments be deposited in trust funds which can be used only for workers' security benefits, and contract clauses for the establishment of a board of trustees on which the union has equal voice with management in administering the trust funds. This is the program of the UAW.

#### RICHARD H. FORSTER

THERE ARE substantial tax advantages available to pension plans qualified under Section 165(a) of the Internal Revenue Code. Although the contributions made by the employer are deductible at the time of contribution, nevertheless the employees do not realize taxable income until the benefits are distributed or made available to them, and even then the employee generally pays less tax than if the contributions had been taxable to him when made by the company.

Under a qualified pension plan, neither the contributions nor the distributions are subject to withholding, social security taxes, or the wage and hour law. In addition, the income of the trust used in connection with a pension plan is exempt from taxation.

The employer can secure a Treasury ruling as to whether or not his plan will qualify for a particular year, and has two and one-half months after the end of the year within which to amend the plan to meet any requirements imposed by the Treasury.

Because of the preferential tax treatment given to qualified pension plans, the Treasury bears a substantial part of the cost of the plan. Therefore, the Commissioner very properly has laid down strict requirements for compliance. Generally speaking, these requirements are designed primarily to assure that the plan is for the exclusive benefit of the employees as a whole, and not for the sole benefit of the employer or the highly compensated or supervisory employees.

If a plan is not qualified, then contributions by the employer are not deductible for income tax purposes except to the extent that they vest in the employee at the time of contribution. To this extent they are taxable income to the employees at the time of contribution. Furthermore, the contributions are subject to withholding, social security taxes, and wage and hour laws.

It should be apparent that it behooves any employer and all employees to be certain that their particular pension plan does qualify under the Internal Revenue Code.

#### EDWARD M. SKAGEN

THE INTERNATIONAL ASSOCIATION OF MACHINISTS is opposed to the principle of establishing private pension plans. As a labor organization we believe that old age retirement benefits should be provided by a federal system such as the Social Security and Railroad Retirement Acts. The benefits presently provided should be increased so that an employee who reaches retirement age would receive payments not less than one-half the average monthly salary he earned during the ten years preceding his retirement.

Every worker is entitled to such a pension—not just certain groups—because pensions paid to certain groups are paid for, directly or indirectly, by all groups of the consuming public. They tend to foster a kind of aristocracy of the aged. Those who work for rich and strong companies and are members of strong unions will have their old age pensions. Those less fortunate will not.

The problem of caring for old age is serious and complex. We need to overhaul our thinking about pensions. If the man in the large corporation needs \$100 or \$125 per month in his old age, so does the man in the corner garage whose boss can't afford a private pension plan. What is really needed is a vastly improved social security program to cover all of our workers alike. Otherwise we see nothing but chaos and hardship resulting from the present trend in pensions.

Under present privately-operated pension plans recently negotiated, younger employees are paying toward pensions which only the older

employees will cash in on. Our union believes that one of the results of continued negotiations such as those recently concluded in the steel industry will be the refusal of employers to hire older workers.

Another possible result of private pension plans is a gradual return to the company-type union of the twenties and early thirties. Imagine, if you will, the spectacle of a labor union affiliated with a large body whose members are afraid to demand a fair wage for fear of incurring their employers' displeasure simply because a strike might cause them to lose their old age pensions.

Another tragic influence would be freezing the fluidity of the labor force. The free movement of our labor force has been one of the important reasons for our success as a manufacturing nation. Private pensions will tend to seriously retard movements from job to job.

Then there is the important question of pensions calculated in the form of current dollars which will be paid back to the employees at some future date. Who can say that pensions of \$100 per month, or 1 percent, 2 percent or even 3 percent of a worker's annual pay, will be sufficient to keep him in his old age at some future date? Will \$100 a month provide a standard of living sufficient for a person of 65 to retire on in 1970 or 1980?

The IAM has and is negotiating pension plans but it believes a pension system on an over-all basis, administered by the government, is much more desirable than any private plan. Federal pensions can be provided at lower cost. If economic conditions warrant, they can be amended more easily. Employees will receive continuous coverage.

We are conscious of the tremendous difficulties in federal security planning for the aged. The question of whether our economy can survive if we take from today's earnings enough to lay aside for old age is constantly in our thoughts. We wonder whether we can effectively transfer the productivity of one generation to the next. We don't know what changes could be brought about by the transfer of inflationary losses in stocks, bonds and security investments formerly affecting the wealthy, to losses in pension, insurance and other benefits held by working people.

In conclusion, let me reiterate that private pensions will provide only temporary relief for a small fraction of those who work. The IAM, therefore, will not be lulled into a feeling of false security regarding such pensions, which might render us ineffective in doing our part to provide adequate old age security to all those men and women who are furnishing the money to pay for a security in which they are now being denied the right to participate.



## RON STEVER

THE CHAIRMAN has asked me to comment briefly on some of the technical problems in setting up pension plans. The first concern of the "pension planner" must be with the actuarial soundness of the plan. While there are myriad variations in the design and financing of pension plans, *Fortune* magazine, in its November, 1949, article on the subject, offered an excellent yardstick. The *Fortune* article had this to say:

Whatever may be the employer's decision with regard to this problem, he will do well to stick to two criteria: his plan must be one the company can afford in bad times as well as good times; and it must have an actuarial stability that will relieve both himself and his employees from worrying about it.

The essential elements of pension planning have been referred to as the Who, When, What and How: *Who* gets a pension from the plan? *When* does the pension start? *What* are the pension benefits? *How* is the plan financed?

The answers to these questions can only be resolved after an exhaustive study of the particular company concerned. Such a study would include an analysis of personnel to determine: (1) age groups—whether or not an immediate retirement problem exists; (2) anticipated turnover of employees prior to reaching retirement age; (3) financial characteristics; and (4) competitive factors within the industry.

The actual cost of a pension plan to a given company is determined by: (1) the number of employees remaining in its service until the retirement age, times (2) the dollar amounts of annual pensions paid, times (3) the number of years the pensioners live after retirement, less (4) the interest earned on the pension reserve funds.

The major problems in pension planning are concerned with the cost factor. These problems have been accentuated in recent years by the following conditions: (1) more people reach age 65; (2) more people live longer after age 65; (3) money earns less; therefore, larger reserves are necessary; (4) money buys less; therefore, larger dollar benefits must be provided.

Finally, pensions are essentially long-term in concept; negotiated plans are often related to short-term objectives.

## JAY A. DARWIN

I THINK it is fair to say that there is a good deal of divergence of view in this very complex field of private pension plans and health and welfare plans in collective bargaining. We find at times that organized labor is charged with "paternalism" in trying to obtain adequate plans for

union members, and we still hear that labor's efforts along that line are characterized as "welfare unionism." For instance, my good friend Professor Clark Kerr, Director of the Institute of Industrial Relations of the University of California at Berkeley, recently stated in an address to the National Industrial Conference Board in New York City that:

Welfare unionism and company paternalism can make too large an area of a man's life belong to these institutions. Instead of going into social service work, industry might do better to continue to concentrate on efficient production and the union might do better to stick to representing the worker on the job.

We have moved away from this archaic notion that pensions are in the nature of a gift and depend upon the bounty and "paternalism" of an employer. This change in thinking was well summarized by the Steel Industry Fact-Finding Board appointed by President Truman last year, which stated:

Social insurance and pensions should be considered a part of normal business costs to take care of temporary and permanent depreciation in the human "machine" in much the same way as provision is made for depreciation and insurance of plant and machinery.

I agree with that concept.

It has been suggested by one of the speakers today that in some situations the company should *decline* to bargain on pension plans with a union with which it has a contract. I do not know what the word "decline" means, in the light of the requirement under the law that *negotiations must be carried on in good faith*.

Now let me turn to a bread-and-butter discussion of some of the things with which we have to concern ourselves in setting up a pension plan. The requirements under the Taft-Hartley Act have already been referred to. Since lawyers should know the provisions of law with which they are concerned, I should like to be a bit more specific. Section 302 (c) of the Labor Management Relations Act requires that contributions to the fund, to be valid, must be

... held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; . . .

The arrangement must be under a written agreement, and the employer and the union must have equal representation in administering the fund. If there is a deadlock, there has to be an impartial man in the middle to try to untangle the disagreement. Segregation of this fund into a

trust account and an annual audit are required. Exception is made for plans that were set up by collective bargaining before 1946 and plans providing for vacation benefits which had been established previously.

To give the highlights of what such a contract usually contains, I should like to refer briefly to the famous *Bethlehem Steel* agreement on pensions. This is a noncontributory retirement-disability plan. There is no compulsory retirement. It provides a minimum of \$100 a month in pension benefits. If a man becomes disabled prior to becoming 65, he has certain accrued benefits. To establish eligibility, a man must have been on the job for fifteen consecutive years. There is provision for arbitration in case of disagreement on administration of the plan. This was the forerunner of pension plans, at least in the steel industry, and other plans follow pretty generally the same pattern.

The complexities in this field are varied and manifold. As a lawyer representing organized labor, I have every confidence that pension, health and welfare plans, soundly negotiated, will work.

#### ROBERT LITTLER

COLLECTIVE BARGAINING on pension plans is a new experiment. It involves a new body of knowledge, new problems, and an entirely new manner of approach. Compromise is of the very essence of collective bargaining. Yet in the field of pensions compromise is of no advantage. A pension plan has to be right or it fails. No matter what may be the extent of good will on either side or the desire to compromise, the pay-off on the pension plan is whether it works. It is either well administered or it is poorly administered; it either complies with the law or it does not comply with the law; and eventually it either pays off or it does not pay off.

Many people who are not familiar with pensions have failed to appreciate the importance of the commitment involved. A pension plan has to be considered in terms of at least from thirty to fifty years. The last pension checks for the War of 1812, for instance, were mailed out in 1945. It is of the highest importance to both the employer and the employees that the pension plan work. It is the source from which the employees expect to receive their sustenance after they retire. It is equally important to the employer because nothing can create more ill feeling than pensions which are reasonably expected but which are not ultimately received.

Obviously, to set up an excellent and workable pension plan in collective bargaining is not impossible. But it has been my observation that there is no field of professional work for the lawyer which requires

more versatility. The field is comparatively new. The rules are not altogether certain. Decisions are required on a multiplicity of questions, none of which is too difficult in itself, but the mere number of which causes a great deal of confusion. I have found in the legal field that most of us, if we fail to perform our duty, do not ordinarily fail by reason of acts of commission; but we fail by acts of omission.

First of all, one has to consider whether or not the pension plan complies with the requirements of the Taft-Hartley Act. Roughly, this requires (1) a joint administration and (2) a specification of the plan itself.

Second, the plan should meet the requirements of the Internal Revenue Code in order to be qualified by the Bureau of Internal Revenue for proper tax deduction.

Third, under a recent amendment to the wage and hour law, certain types of plan can be excluded in the computation of the regular rate of pay for purposes of overtime.

Fourth, there is the question of whether or not the plan qualifies under the Social Security Act so that payments to the plan do not have to be included as compensation for purposes of deduction under social security.

Finally, attention must be given to the state laws which may be applicable, to the field of trusts, and to the field of future interest.

#### SIGVALD NIELSON

I FEEL entirely guilty in injecting myself into this discussion. I have never been guilty of participating in a collective bargaining engagement in my life—and if I am lucky, I hope to live it out that way! I have had something to do with pension plans and the nonlabor relations implications thereof.

It has been suggested that in some instances what we are really talking about are wages and not collective bargaining about pension plans. Unless the validity or invalidity of that question can be solved, I do not look for anything very hopeful in the field of collective bargaining on pensions. My own impression is that, unless a pension plan is rather carefully thought out in an unheated atmosphere, no good can come out of it. If the suggestion is simply being used for purposes of an increase in wages or some other benefits, obviously that atmosphere is not too wholesome.

On the other hand, if we are concerned with one employer and one bargaining group and if we are really talking about pension plans, then it seems to me entirely possible that the injection into that picture of

the collective bargaining unit should not raise insurmountable difficulties. The orderly process in commencing any plan is to call in somebody who knows something about a pension plan. That is not the function of the lawyer; that is not the exclusive function of the corporation executive. There are people who make life studies of this business, who concern themselves with such problems as costs, the ability of the company to carry the plan, and all of the many things that go into the make-up of a sound pension plan. If we would be guided by such people, within the limits of our own desires, it seems to me that the thing is quite workable.

This much is certain: that the problem is infinitely more simple where you are dealing with one employer and one bargaining unit. Many of my clients have had pension plans for a very long time. They have proven workable and they have paid off. These same clients very often bargain with twenty, thirty, maybe a hundred, labor unions. I cannot help but feel that the injection into such a situation of collective bargaining about the pension plan creates insuperable difficulties. Insofar as a pension plan may cover an industry as distinct from an employer, I had always understood that under the existing provisions of Section 165 of the Internal Revenue Code, the qualification had to do with the relation between an employer and his employee and no farther. Similarly, under Section 165, which I think must be amended if we are to embark, as we have embarked, upon this collective bargaining on pensions, there is at the present time very serious difficulty about discrimination, which is forbidden by the provisions of that section. It is quite conceivable that if one union succeeds in one set of demands, there is another union that succeeds in another set of demands, and as to persons working across the aisle from each other different results occur.

#### CHARLES P. SCULLY

CONTRARY TO an implication in the remarks of Mr. Northrup, I believe one of the serious implications of our discussion today involves the question of aid to the needy. I do not believe that question can be completely disassociated, because as far as most pension plans that I have seen are concerned and as far as most statutes are concerned, there are no conversion rights upon death of the pensioner. Under these circumstances the dependent survivor of the retired individual may certainly face a dilemma. I think that initially, even though many plans ignore the matter completely, in the field of collective bargaining on this type of program the parties must have in mind the question of conversion privilege.

Secondly, I am surprised to hear today that the question is only what

type of plan, since everyone apparently agrees on the desirability of pension plans. I believe some groups must be among the unenlightened, because, for example, I am sure the agricultural groups are made to believe that others should pay for the pensions of their employees and that coverage should not be expanded at any place along the line. I think the apparent agreement perhaps is not quite so universal as it would appear.

One of the elements necessarily involved in the question of private plans is the question of coverage. Some groups may use the pressure of collective bargaining on pensions to try to obtain a liberalization of the basic federal program. Thus, instead of the private plan being the supplement to an existing plan, the private plan may be used as a weapon to extend and perfect the basic plan. Certainly it would appear that if, as inferred, there is universal acceptance of a pension program, then the amendment of the existing federal legislation should be immediate and not delayed.

There is another problem in connection with the federal program. I think it will be conceded that, even assuming the extension of coverage, the program will have to be liberalized legislatively. If private plans are used currently to supplement an admitted insufficient federal program, we may have the awkward situation of the private carriers opposing the necessary and logical liberalization of the basic program because they fear they will then lose the supplementation of that program. This is not merely an academic question. Here in California we find insurance companies and private carriers opposing liberalization of legislation in the field of disability insurance on the ground that it will drive them out of business. Therefore I say, very practically, we must consider the relationship of private plans to an insufficient basic program.

Finally, I believe there are serious defects in the private pension program because of the transfer of employees in and out of industries. While a certain specific union may have worked out a successful national program, some of us feel that difficulties are presented by differences in the statutory provisions of each state and the changed conditions, both with regard to income and working conditions, that may exist from state to state. I believe the sound position is that taken by the President of the AFL, Mr. Green, that primarily the need is for liberalization of the basic program, federally controlled.

We think this is particularly important when you review certain of the private-plan contracts. In many of them management has a unilateral right to terminate; there is the question of vesting as against nonvesting rights; and, even more important, there has been creeping

in lately the requirement that, as a condition precedent to the receipt of benefit rights, the union will not only have to give up any right to strike or to demand additional wage increases, but will also have to agree not to reopen the contract for a definite period of years, in certain cases running well beyond two years. So I think it is necessary to evaluate the benefits that can be received, admittedly on only a partial and insufficient basis, through a private plan as against the losses that will be sustained on the over-all program from a collective bargaining standpoint.

# Collective Bargaining on Health and Welfare Plans

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JOSEPH E. MOODY

I WOULD LIKE to make one fundamental assumption in the beginning of my remarks. I believe in the continuance of the American system of government and assume others taking part in this discussion do also. In saying this I am not indulging in flag waving. By American system, I mean a competitive system and one whose industries are in private hands. Some of you may believe in a system of government ownership, a socialistic system. That is your privilege, but to talk about health and welfare plans and pension plans from the standpoint of maintaining a capitalistic system is one thing. To talk about them from the standpoint of a socialistic system is quite another.

I believe that the maintenance of a capitalistic system, a profit system, if you will, is the best thing for the majority of people in this country. The matter is debatable, I know, and the trend in recent years all over the world has been towards the socialistic state. That trend, however, has not proved an unmixed blessing. In Soviet Russia, for example, it has produced the police state. In every country where government takes over, sooner or later there comes interference with the liberties of its citizens. The exchange is liberty for a fancied security which degenerates into tyranny. I shall not belabor this point. I shall simply repeat that I am assuming today that we are discussing private pension plans and health and welfare plans with the idea that they should fit into a system of competitive and private industry.

The question of welfare and pension funds has become increasingly important in collective bargaining within recent years. In many contract negotiations nowadays welfare and retirement demands share equal consideration with wage and hour demands.

The union-management welfare fund is usually thought of as a relative newcomer in the social security field. Actually, it goes back primarily to the old organization of employee benefit associations. Assistance to members in old age from these associations was not unusual and, of course, members who were ill or in other distress were helped.

One of the first benefit plans in the United States, if not the first, was



established by a printers' union in New York City. Its primary purpose was the payment of unemployment benefits. I am not familiar with the details of the early welfare and retirement funds but the first pension plan, in the modern sense, appears to have been one set up for the workers of the Grand Trunk Railroad in 1874. This was followed a few years later by one in the utility field, a plan established by the Consolidated Edison of New York. Other pioneers in this field were companies such as Procter & Gamble, Eastman Kodak and some of the steel companies.

These early programs were relatively few in number and, so far as my information goes, all have been radically revised or have gone out of business in the ensuing years. Most of these early plans contemplated contributions by both employers and employees. The emergence of funds paid for wholly by employers is a recent phenomenon and, I might point out, this concept has arisen during a period of almost unparalleled prosperity. Most of the recent welfare and retirement plans call for complete support by employers or a substantial contribution from employer sources.

Many of you are more familiar than I am with the developments of recent years. We in the coal industry have had experience with the bituminous coal United Mine Workers Welfare and Retirement Fund, but in this instance the operators have been on the outside looking in. My assignment today is to talk about health and welfare plans. To do so intelligently, I think it necessary to draw a fundamental distinction between pension plans and health and welfare programs.

I have never been able to see how a satisfactory private pension and retirement system for industry can be established on a continuing basis. And parenthetically, I might add that a continuing basis is the only satisfactory basis for such a program. I feel that welfare programs fall into a somewhat different category. Such programs will expand, or contract, depending upon industrial activity. While the continuity so vital to a pension or retirement program is desirable, it is not absolutely essential to a health and welfare plan.

A retirement system which means anything cannot simply promise a man who has worked, let us say, thirty years for a company or industry and has reached the retirement age of 65, \$100 monthly for 1950, or 1951, or just one month at a time. If a retirement plan is to mean very much it must give assurance of continuity during the period of retirement—something, incidentally, which the United Mine Workers Fund does not do.

There is relationship to and justification for a plan which assists employees who are in need, or distress, from causes arising out of their

employment. But it is difficult for me to understand how an industry, in a competitive economy, can accept responsibility for all the ills of man which occur inevitably during the passage of time, including resultant old age. I do not quarrel with the desirability of such a program. I simply do not feel that it is practicable or will result in anything but disillusionment and disaster for all concerned.

Some of the obstacles facing continuous pension and retirement programs are almost insurmountable. Obviously, the payments into such a fund are dependent upon productivity and profits. These rise and fall with business conditions. The lines which show these increases and declines show high mountains and deep valleys. For example, national income in 1932 was \$43,605,000,000; in 1948 it was \$210,339,000,000.

The onset of the depression in the 1920's wiped out almost all unfunded pension plans, and quite a few that were funded. If a pension plan covers all employees of a company, or an industry, and is funded, the capital which must be tied up in such a program grows to alarming proportions. If such a program is unfunded, it vanishes with the onset of depression.

There may be ways of covering a limited number of workers by group insurance. There may be ways of providing limited retirement payments through funding. But the visions of union leaders are grandiose visions. The retirement figure fixed in several recent contracts is \$100 a month and union demands always go upward.

I am sorry to be a pessimist but I just do not see how retirement programs of this scope can be financed by private industry. Bear one thing in mind. Industry has no guarantee of profits. The government shares in the profits, if any, but not the losses. So long as industry continues profitable, the money can be raised, perhaps, to pay current pensions and a start made towards the funding needed to keep the program on a sustaining basis. But if we run into bad times, all our guarantees are worthless. Furthermore, the unions or industry, or both, will be open to the charge of having deceived employees who depended upon them.

Some recent pension programs are tied in with the social security system to the extent that any retirement payments made under social security are deducted from the amount promised the employees. We have yet had no answer as to the relationship between private pension plans and the social security system. In the first session of the 81st Congress, the Truman Administration proposed an all-embracing compulsory retirement system. If such a system is put into effect, what place in our economy is to be taken by the private pension plans? Are they to supplement income for workers in the fortunate industries that can

afford—even for a comparatively limited period—private company pension plans? Can the economy afford both an almost all-embracing government system and numerous private company pension plans?

Many of the persons advocating pension programs do not deal in realities. Either they evade and will not be pinned down, or else they talk in emotional terms and in terms of human needs. Some persons warned John L. Lewis, President of the United Mine Workers of America, that his Welfare and Retirement Fund was likely to go broke unless he took steps to put it on a sound and continuing basis. His answer, under such circumstances, was to talk in terms of the men killed and injured in coal mining and of their dependents. Yet some of the very persons, injured while mining coal, who had come to depend upon payments from the Welfare and Retirement Fund, found last year that it could not be depended upon. The money just wasn't there.

The situation with regard to private health and welfare programs in industry also is chaotic and confused. Some funds are jointly financed and some are financed by employers. Some are limited to need and distress arising from employment with a company or industry. Others leave discretion to trustees. The benefits from such funds vary widely. In coal, for example, the trustees have almost unlimited discretion, a point I shall elaborate later. Other funds try to spell out the purposes for which the monies paid into them can be used.

Health and welfare funds are subject to many of the limitations and obstacles which confront pension and retirement funds. The amount of monies which can be paid for death, sick and accident benefits during a company's, or industry's, prosperous years is far different from the amount which can be paid out during bad years.

Our Southern Coal Producers' Association has proposed that the benefits which should be paid from a welfare fund should be confined to need and distress arising directly in the course of employment. If this principle is sound, and we think that it is, what will happen if welfare funds are expanded to cover the illness and distress which lie outside the course of employment? As we have learned from the coal fund, the drain resulting from efforts to cover all types of distress among employees and their families is tremendous. Let us say, for example, that a miner is permanently injured in the course of his employment. If no limitations are put upon the benefits from a fund, what will happen to this employee if a depression ensues and a welfare fund goes broke?

Most of our experience with pension plans and welfare programs has been during remarkably prosperous years. Government nowadays bulks very large in our affairs by comparison with predepression years, but I

doubt very much that either government or business has found any way to prevent depressions.

I have great respect for the economists and other business experts but I have noted that their hindsight is a good deal better than their foresight. They can explain, and satisfactorily, the great depression which began in 1929. Few of them predicted that it would come. I recall that some brilliant economists in government strongly felt that a business decline was in order after V-J day. They, consequently, pressed a policy of wage increases to soften the effects of the expected setback. It now is history that inflation, not deflation, followed V-J day.

If and when a depression comes, we must revise our ideas about private pension and welfare funds in the light of that experience. And, if I may enter the realm of prediction, the more elaborate and costly and far-reaching our programs, the greater the ensuing crash and disillusionment. I hope I am in error about future business declines. Certainly, if they come, government and business should do all that they can to restore prosperity quickly. Knowing as we do, however, that declines are likely, we should shape our plans for pension and welfare funds accordingly.

Today, I am not prepared to tell you what constitutes the best type of private pension and welfare funds. We have our ideas which I shall give you, for what they are worth. I am prepared, however, to tell you some of the things to avoid. I have learned by our experience with the United Mine Workers Welfare and Retirement Fund. It represents, in my opinion, about all that a pension and welfare fund program should not be.

Under the plan, the trustees—controlled by the United Mine Workers—are given almost unlimited discretion as to the expenditure of the funds. If, for example, local union officials decided that a trip for the brother-in-law of a miner was necessary for preserving his health, that trip could be paid for out of the Fund. I have heard lawyers venture the opinion that strike benefits could be paid from the Fund. I suspect it could even be used for the payment of rent and groceries. After enumerating a long list of benefits and welfare fund provisions of the coal contract, add: "benefits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid 'Labor-Management Relations Act, 1947'." This just about covers the waterfront, for "related welfare purposes" can be almost anything relating either to health, wealth, liberty or the pursuit of happiness.

The pension plan established under the Fund is exceedingly gener-

ous. The age of retirement is not 65 years, as is customary, but 60 years. The pension is \$100 a month and any social security payments, or other payments from tax funds, are over and above the \$100.

The coal Welfare and Retirement Fund went broke last September even though hospital services were just being started when payments were suspended. Many of its medical services allowed under the agreement had not even been inaugurated, and no person was eligible for a pension unless he had been employed in the industry on or after May 22, 1946. For example, the total paid out for hospital and medical services prior to July, 1949, was about \$4,700,000. Although payments were stopped on September 13, over \$6,000,000 was paid for these services in July, August and September, or more than in all the previous period. Quite apparently, the future costs of the Fund promise to far exceed payments which bankrupted the Fund when collections of 20 cents a ton were being made.

We have been able to learn very little at first hand about the operations of the coal Welfare and Retirement Fund. No reports, save a few periodical statistics, are made available to the operators who furnish the funds. Applications for benefits are made to local officials of the United Mine Workers and apparently their recommendations are accepted by the trustees as final. In this connection, I would like to quote from a story which appeared in the *Indianapolis Times* of November 13, 1949. So far as I know, the article has never been denied by the union. The statements made are similar to many reports we have had from our area. The article says, in part:

The great "gold rush" in the Indiana coal fields played out two months ago.

In 14 months the United Mine Workers union had spent \$8,250,000 for miners pensions and welfare that had taken three whole years to collect.

The money was gone. Pensions stopped. Welfare payments stopped.

Collapse of the welfare-pension program was one of the big causes of the mine strike that began in September and ended last week, without a solution to the problem. It is clear today that:

Either the royalties on coal that fed the fund were too small to maintain an adequate pension program, or:

The FUND had been squandered.

I would like to comment at this point that every bit of available evidence indicates that the Fund had been squandered. The story continues:

Indiana's United Mine Workers tried to "take care of everybody" with pensions and welfare payments.

The rush to get on the "gravy boat" had sunk it.

Hundreds, maybe thousands, of men who quit coal mining 20, 25, or even 30 years ago, get \$100-a-month pensions or welfare payments.

Men who have owned and run farms, stores, restaurants, even coal mines, for the past 10 or 20 years received benefits.

Whole union "locals" were organized and abandoned coal mines reopened—apparently solely to qualify scores of elderly men for life-time pensions.

Some of them are men who worked briefly and doubtfully in coal mines in the boom days of the First World War and haven't worked at mining since. Some of them are men who can show no reasonable evidence they ever worked in a coal mine. They came to work this year, puttered around a few days . . . and then "retired."

Their families swamped doctors' offices and prescription counters for "free medical" treatment. Some of them needed treatment. Many did not, but went anyway because "the welfare fund pays for it."

Local friendships and local goodwill, and local politics—both union politics and village politics—helped "qualify" men and women whose eligibility is doubtful, or doesn't exist at all. It was hard to turn down a plea from a neighbor or a customer . . . or a man who swung a handful of votes in a local election.

The story continues at length and gives details, but I think I have quoted enough to give you an idea of what went on in Indiana and other coal mining sections. I also want to say that I would not have quoted from the article unless I believed that the conditions in Indiana referred to are substantially true of conditions in other bituminous coal mining areas.

I do not want what I have said to be interpreted as simply an attack upon the United Mine Workers. I think the union is at fault for insisting upon a fund of this type and for insisting that it have complete control of the Fund. But the control of the Fund gives the union a powerful weapon over its own members, and this weapon is added to already powerful control which the union officials exert on the rank and file.

In the negotiations which ended in a new coal contract in March, 1950, the union resisted all efforts to rewrite the Fund provisions in line with suggestions which we made. Today, if anything, it has even more complete control over its operations than it had under previous contracts. The union succeeded in obtaining from the industry an additional 10 cents per ton of coal mined, making the total 30 cents per ton. If the union operates the Fund in the future as it has in the past, the 30 cents will not be nearly enough and the industry will be confronted with demands for an increase beyond the 30 cents.

The Southern Coal Producers' Association had some very definite ideas about the kind of fund which should be established for the bituminous coal industry. I have stated that we felt that our industry should accept the responsibility of providing benefits for employees whose sickness or injury clearly can be attributed to occupational causes. We were willing to sit down with representatives of the union to work out what these benefits should be and to raise the funds to provide for them. We proposed:

- 1) A carefully written trust agreement, based on sound actuarial principles, which would detail eligibility and the amount of benefits to be paid under the eligibility rules.
- 2) Balanced administration of the Fund so that neither the union nor the operators controlled its operations.
- 3) Provisions for screening of the applicants for benefits by persons directly connected neither with the union nor the operators.
- 4) Regular and detailed reports on the Fund's operations, including the maintenance of registers of beneficiaries and benefits open for inspection by interested parties.
- 5) Provisions for competent and continuing advice.
- 6) Contributions to the Fund both by employers and employees.
- 7) Provisions for periodic reviews of the status of the Fund and adjustment of eligibility rules and benefit payments in the light of those reviews.

The union paid little attention to our proposals.

We felt that if we went beyond the principles I have outlined, our employees, to whom we owed a real responsibility, would be left in the lurch, just as some of them have been. Miners disabled in the course of employment, who were being cared for by the Fund, found themselves dependent upon charity, or inadequate federal and state assistance, when the Fund went broke. They have a real grievance, but I think it was with their own union officials.

The attitude of Mr. Lewis, himself, towards the Fund clearly indicates, I think, that he realizes its unstable character. For example, he has been careful not to promise permanent pensions, or even continuing benefits, even though the mere fact they were paid led men to depend upon them. Perhaps he sees that he simply is extracting funds from the coal industry on a temporary basis and is not concerned with a welfare fund, soundly financed and based on clearly defined principles—a fund which could be a boon to his members.

The question naturally arises: Why did the Southern Coal Producers' Association accept a contract which contained welfare fund provisions that it thinks are unsound in character? The answer can be stated simply: If we wished to continue in business, we had no alternative. A powerful union faced a divided industry. Mr. John L. Lewis simply bided his time until the lack of coal created an emergency. The government stepped in but the government, in my opinion, made little or no effort to get at the facts in the case or to find if the union demands were justified. The government sidestepped a test of strength with the United Mine Workers of America. To put it bluntly, the government played politics and most of the pressure it exerted for a settlement was upon the divided industry.

Finally, one segment of the industry gave way and agreed to terms.

The members of the Southern Coal Producers' Association had the choice of keeping its mines closed or signing the contract agreed to by the rest of the industry. We signed. We had no choice. But in so doing we made it plain that we thought the contract was a bad one, one that would further injure the already hard-pressed coal industry and one that established precedents that were dangerous and damaging to all concerned.

I did not come here to make a political speech. Yet we might as well face the facts. Collective bargaining in some major industries, coal included, is a travesty today. The unions have power today that makes the Rockefellers, the Ryans and Morgans of the past look like pikers. Today, an industry like coal is faced with continuous labor warfare. There are periods of temporary truce and then labor renews its attack. The industry resists to the best of its ability, realizing full well, however, that eventually the government will step in. The industry knows also that when this time comes, government is almost certain to side with labor and the result is capitulation for industry.

Today, the unions are exempt from the antitrust laws. The United Mine Workers can decree a three-day work week in the industry with impunity. If the employers agreed on a limited work week, they would be liable immediately to prosecution for conspiracy in restraint of trade. The United Mine Workers insists upon industry-wide bargaining and a uniform wage and hours contract, even though conditions vary greatly in the industry. Such a contract destroys genuine competition in the coal industry, for our coal economy—and the entire economy, in fact—has been built on competition in wages, as well as other things. This situation will eventually make it impossible for any but the strongest companies in the coal industry to survive. The little fellow is up against a hopeless situation.

Sooner or later, the government, itself, must meet the challenge to its power from the big unions. Whether the government meets that challenge in time to preserve the system in which we all profess to believe is something else again.

Why, someone may ask, have I injected this discussion of union power into a discussion of pensions and health and welfare funds? I have done so for a very pertinent reason. All of you realize that welfare funds today are bargained for in almost every major wage contract. I have stated that genuine collective bargaining has vanished, or is vanishing, in many major industries.

How can labor and management arrive at any sound agreement with regard to health and welfare funds unless bargaining over them is a



matter of give and take? If one group has the upper hand and has only to exert pressure until the other side gives way, what can we expect? To answer my own question: We can expect health and welfare funds whose provisions are unsound and which make promises that cannot be kept. Under such circumstances the employees, the persons who depend upon the funds, are like cripples who are given rubber crutches.

If we are concerned with health and welfare funds which meet a genuine need and which serve a real purpose, we must restore genuine collective bargaining. We must have the government in the role of an impartial arbiter and not in the role of a partisan politician, whose interest lies primarily in the next election.

Otherwise what do we face? The alternatives are not pleasant. We may face chaos in industry and the destruction of the unions themselves. It is not inconceivable that a period of depression would confront millions of union members with acceptance of wages and benefits far below those contained in existing contracts, or unemployment. Or the government may be called upon to assume the responsibilities which industry no longer can carry out. If the government, for example, assumes the burden of paying pensions and benefits which industry cannot pay, the government must assume control over the industry, itself. This is nationalization. Once the step is taken in one major industry, it will be taken in others.

I do not relish this prospect. I feel that this country is one of the few left in the world with dynamic possibilities. Perhaps it was inevitable that Britain, an overpopulated island with limited resources, had to share poverty. I do not think so, but the point is debatable. Fortunately, we are not in that situation. We are the richest country in the world. We can continue to grow and flourish but, in my opinion, only if we keep the drive and the spirit which have made us grow and flourish thus far. This is possible only if we maintain the proper balance between all our groups, and our traditions and ways of life. It is possible only if we maintain what has been tritely, but truly, termed the American system.

# Panel Discussion

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ERIC A. EGGE

THE PRINCIPAL PROBLEMS encountered in setting up health and welfare plans have to do with overcoming the differences of opinion that apply to the establishment of the plan itself. These differences may be over such matters as who is to pay the cost, whether the plan is to be insured or trustee, or how adequate benefits can be provided on a basis that will keep the costs within reasonable limits. Other problems may arise if there is collective bargaining, especially if such bargaining results in getting certain responsibilities of establishment and maintenance of the plan into the labor contract.

In resolving these differences of opinion, it should be recognized that they are no doubt very genuine and legitimate. They arise from differences in business experience, training, understanding, objective and approach, and they frequently are the basis for serious disputes between management and labor.

I think it should also be kept in mind that there is a good deal of evidence that employees generally want the type of protection that is afforded by these plans and are willing to pay all, or a fair share, of the cost if the plan is a good one and is considerate of their needs.

There is considerable opinion that health and welfare plans belong to the employer-employee relationship, that such benefits are a part of the transaction between the employer and his employees and thus should be arranged for through voluntary action by the employer. As a matter of fact, my own observation is that the majority of employees in any organization want to rely on the good sense and judgment of their employer.

There is also other opinion (held principally by some of the unions) that health and welfare benefits should be one of the advantages of union membership and, therefore, are a responsibility of the union leadership. Walter Reuther, for instance, has taken a very dominant position in that regard and, according to the press, the executive board of UAW-CIO has gone on record in favor of a "negotiate or else" policy.

We have heard a good deal today about collective bargaining. My own experience indicates that some of the problems encountered in collective bargaining are also factors in bringing about, or in delaying,

the establishment of health and welfare plans. I refer especially to such matters as (1) reluctance of employers to bargain about anything, (2) lack of experience by management people in the establishment of these plans, (3) lack of vital information by both management and employees or their representatives on which to make a decision, and (4) unrealistic approach to the matter.

It should be kept in mind that there is plenty of information available to management and to employees in all these matters. It has been very interesting to learn of the approach that has been made in certain instances by employee representatives—the UAW-CIO is a good example. We have had an opportunity recently to review proposals they have given to management and we have found them to be very complete. Management might very well take a leaf from the experience of the Steel Corporation, Chrysler and other employers who have come up against this careful preparation of union representatives in advance of negotiations.

Perhaps the most significant point involved in this whole matter is that employers decide whether or not they will take a definite position and then determine if they want to gear their plans—whatever they may be—to the over-all objective of the employer-employee relationship in their organizations rather than merely follow along on what might be called the industry trend or pattern.

If a bit of philosophical comment isn't out of order, I would like to suggest that we keep in mind the over-all value of the confidence that employees will have in the reliability of their security, as well as the respect they will have for their management leadership, if the health and welfare plan that is available to them is a part of their employer-employee relationship.

#### IRVING J. HANCOCK

THE EMPLOYEES' BENEFIT PLAN was organized by the Union Oil Company in 1915 in recognition of the importance of safeguarding the health of its employees and to lessen the financial burden resulting from accident or illness. The plan is self-supporting and is operated by the employees through a Board of Administrators who are elected by the membership at large by mail ballot and serve for three years. This board is charged with the responsibility of hearing and determining controversies respecting the benefits and obligations, reviewing the financial affairs, and recommending to the company and members any necessary adjustments in monthly contributions or amendment of benefits.

Any full-time employee who completes three months of accumulated

service is eligible to and *must* become a member effective immediately upon completion of such service. Each member contributes \$3.00 per month to the plan, which is handled through payroll deduction. The company provides office space and the services of employees necessary to administer the affairs of the plan, acts as a depository for all contributions and makes disbursements therefrom authorized by the plan.

The maximum amount paid for medical, surgical and hospital services and expenses for any one illness or condition is \$750. Upon the expiration of two years of uninterrupted recovery from such illness or condition, treatment will then be furnished as though the same were a new illness or condition and previous expenditures are disregarded in determining the maximum benefit.

Exclusions under the plan are: injuries or occupational diseases covered under the Workmen's Compensation Acts, an illness or disability originating prior to the member's date of eligibility, obstetrical attention, optical refractions, dental conditions, special nursing service, and drugs and medicines, except those prescribed and used while a member is hospitalized.

Each member has the right to select his own physician and surgeon from the list of panel doctors appointed by the Board of Administrators. The doctors' fees are limited to an established schedule, covering first and subsequent visits, home and office calls, and night emergency visits. Surgical benefits are \$150 for major surgery, up to \$100 for minor surgery, and include laboratory and X-ray fees at standard rates. Hospitalized members are entitled to the general ward rate only, except in serious cases where greater privacy is deemed absolutely essential by the attending physician. All laboratory, X-ray, transfusion, ambulance, drug and medication fees are covered.

In 1915 the Union Oil Company also adopted a noncontributory group life insurance plan, to provide cash benefits for beneficiaries of employees who may die while in company service and also to provide cash payments to employees who may become totally and permanently disabled prior to attaining age 60. The contract now offers insurance coverage for amounts varying from \$500 to \$2,000, based on length of service with the company. Today the plan has an average membership of 7,101 employees who are registered for insurance amounting to \$11,143,750, the entire cost of which is paid by the company.

Realizing the need for added protection, in 1925 the company offered its employees a contributory group life insurance program, under which they pay a very low premium rate. This plan also carries a total and permanent disability provision.

Employees terminating their services with the company have the right of converting any part or all of their group insurance within thirty-one days to any form of life insurance other than term insurance without medical examination.

Since the inception of both noncontributory and contributory group life insurance plans, a total of \$5,862,227 has been paid out in death and total and permanent disability claims. It has been a great satisfaction to the company to know that its employees have had this financial assistance in time of great need.

### M. C. IGLOE

THE ORIGINAL AIMS of unions were to secure better conditions in the factories, shorter working hours and better pay. In the absence of economic protection for workers during sickness and disability, the development of sick benefits by trade unions became a logical solution. The International Ladies Garment Workers Union sought methods of providing cash assistance during periods of illness when income ceased. After accomplishing this purpose, the next goal was the provision of much needed medical services, when unions recognized the inability of the individual worker to secure good low-cost medical care because of the complexities and the rising cost of advancing medical science.

The high cost of providing medical care places this service beyond the means of most garment workers. The alternative of applying at free public clinics, with subsequent loss of working time, or undergoing treatment as charity patients was not satisfactory to these workers.

The question then arose as to what form this medical care should take. The ILGWU feels that the health center plan is most applicable for the purpose, and this is based upon forty years' experience. The first union health center was established in 1913 in New York City. Now there are seven all told, including the one being established in Los Angeles.

Under this plan, which is employer-financed, the entire concentration is on the discovery of a potential ailment, the discovery in this case being forced on the worker by the union. Such clinical techniques serve to reveal conditions which might have become aggravated through negligence before the ailing worker turned to the channels of customary medical care. In this way the union is rendering a genuine service, not only to its members, but to the community, which benefits in reduction of charges to the city and state welfare agencies. Contributions of employers toward health programs have been more than repaid by continuity of production and reduction in absenteeism.

The health center plan is based on the group-practice technique and is primarily a diagnostic and preventive service. The worker-member goes to one place for a health examination in a convenient location and at convenient hours. Specialists for all services are available to him. These specialists have all diagnostic facilities at their command and are not too rigidly restricted as to cost to the patient. The internist is the patient's personal physician, using other specialists as consultants. Non-ambulatory patients are referred to the member's physician of choice. Such services are covered by disability insurance, maternity and hospitalization benefits. Under the fee for service plan, the member is subjected to many physicians, many locations, at inconvenient hours and without a direct coordination of these services.

The union health center plan has proved to be economical and efficient due to the consolidation of personnel and high-cost equipment. The early recognition of disease has tended to lower the resultant cost of rendering curative medical services.

#### HARRY SMULYAN

THE SOCIAL SECURITY PROGRAM of the Upholsterers' International Union is a nonprofit insurance plan designed exclusively to provide protection for our members and their families against sickness and accidents. It includes health and accident, dependents' hospitalization and life insurance sections. This program could not exist without the generosity of our employers to whom we owe our sincere gratitude for joining with the UIU in extending its benefits to our members.

Our one objective has been to furnish medical service which our members otherwise could not afford. In 1944 the UIU formulated a plan that would provide uniform sickness, accident and insurance benefits to all its members, regardless of sex, race, age, craft, industry, wage classification, geographical location or size of shop in which they work. The plan provides for full fifty-two weeks' coverage for the membership, and also for coverage in case of layoffs.

How is the program paid for? The UIU requests that the employer pay for insurance a sum equal to 3 percent of the gross payroll of the employees subject to the collective bargaining agreement between the employer and the UIU. The employer pays the full 3 percent; the worker pays nothing. The 3 percent rate was established after a full study had been made by UIU and insurance company actuarial experts.

The UIU Social Security Department is set up with a Board of Trustees, composed of members of the International Union who are elected every two years at the convention of the International. The

whole program is administered by the union, which collects the premiums from employers throughout the United States and Canada and transmits them to the insurance company, collects claims, etc. This arrangement decreases administration costs. It is facilitated by the fact that our organization reaches into every city, town and village where our members are employed. There are no middleman expenses, which further contribute to the total cost of insurance. Because we administer the program ourselves, the UIU Social Security Program can provide high sickness, accident and life insurance benefits to members and their dependents.

If a member submitting a claim is not satisfied with the benefit received, he can appeal through the UIU Resident Counsel to the UIU Claims Appeal Committee. If dissatisfied with the committee's decision, he has a right to appeal further to the state or federal courts. Approximately 75 percent of the claims appealed to the committee have been resolved in favor of the member. Since the inception of the program no law suit has ever been brought to recover benefits due under it.

Why is the UIU Social Security Program a national program, and not established on a separate basis for individual employers and firms? It has been set up on a national basis for the same reasons that the union strives to achieve uniform wages and conditions of employment for its members throughout the industry.

The first five years of the program are a record of phenomenal growth. There are 1,469 employers in the plan, employing 25,499 insured members in ninety-seven locals. As of December 31, 1949, \$2,638,550.69 has been paid in benefits to our members and their families. We expect an even greater expansion in the future, until all UIU members are covered. Increased membership will permit increased benefits. In addition, we have in mind such plans as medical clinics offering free health service, a preventative medicine program, and a separate pension plan, all based on a cost which will at no time exceed 3 percent of the employers' gross payroll. Our Social Security Program is considered outstanding in the country. With the cooperation of our progressive employers, we can and will make it still better, so that all UIU members and their families will be assured of the fullest possible assistance in time of need.

#### ALAN THALER

IN HIS DISCUSSION Mr. Egge pointed out some of the difficulties that are being encountered in the development of satisfactorily negotiated welfare plans. I should like to suggest that many of these difficulties arise

from the fact that both labor and management do not always seek advice of experienced insurance men on the soundness and practicability of their approach to the problem before committing themselves to an agreement. Participation by insurance experts in the early stages of negotiation is extremely valuable.

With regard to the problems involved in providing medical care on a group basis, I believe it is important to stress the principle of a coinsuring interest with the insurance company on the part of the insured. If an insured suffers a small financial loss whenever the insurance company does, there is a mutual interest to keep benefit payments down to a minimum. The current trend towards complete medical care largely eliminates this important control and results in a much higher claim rate.

I should also like to stress the fact that every avenue must be explored by private industry with a view towards providing medical coverage at reasonable cost to the bulk of the population if coverage by the state or federal government is to be avoided.

#### GEORGE O. BAHRS

I WOULD LIKE to make some observations of a more or less elementary nature on problems involved in drafting agreements or trust indentures covering health and welfare programs. In the first place, as far as I can see, the requirements of the Taft-Hartley Act apply only in the cases where money is paid to a labor organization. I have been unable to find a provision covering a payment directly, for example, to an insurance carrier.

I have some distinct reservations with regard to the propriety or legality of an agreement making benefits payable to union members only. I believe that such a provision has been held illegal by a district court, at least in one case; and personally, because of the requirement of the law that benefits should be paid to employees, I think they should be paid to all employees in the bargaining group and that a selection only of union members would probably constitute discrimination.

Whether there should be a trust fund at all is a pretty good question. In providing benefits for the employees of a single employer, a trust fund does not seem necessary. I think the trust fund originated where a large number of smaller companies tried to get in on the benefits of group insurance and pooled their employees. Insurance companies were willing to write groups if they did not have to chase each individual employer to get the premium. Under these agreements each employer makes his contribution to the trustee and the trustee in turn pays the



premium to the insurance company. The indentures usually provide that the trustee is not liable for anything the union does or for anything the employers do or anything the insurance company does; and the insurance company is not liable for the acts of the employers or of the union, and so forth. Nobody is liable for anybody else involved, but in many cases the rights of the employees or beneficiaries are not clearly specified.

I think there is room for a little more clarity in thinking and drafting with respect to exactly what the deal is. There is still some question as to whether the insurance company makes a contract directly with each employee or whether it makes a contract with a trustee and the trustee is supposed to enforce as to the employee.

Who buys the insurance and pays for it? While the National Labor Relations Board has held that an informal employers' association constitutes a single appropriate bargaining unit, I think the courts would still call it an unincorporated association and hold that it is not a valid legal entity. There is a strong probability in my mind that each one of the members would be exposed to full individual or partnership liability. Employers ought to realize that they are probably liable individually for the promises of their association. Moreover, as regards relieving the insurance company of the need to chase each employer, it is, after all, the employers who are promising to pay the premium, and I cannot see where a promise by some association is going to accomplish that result.

There are other problems: Which is preferable, to bargain for dollars' worth of contributions or to bargain for benefits?

With regard to the question as to what is included in a promise to pay so many cents-per-hour, there are a number of uncertainties, such as whether the cents-per-hour includes vacation, holiday and sick leave pay. In addition, there is the almost mathematical impossibility of trying to convert cents-per-hour into some sort of a uniform payment per month to the insurance company. From a practical standpoint, I think it is more desirable that the arrangement be on the basis of cash payments of so much per month.

Then there is the question of the trustees' expenses which may be charged to the trust fund. How high should they be permitted to go? It has been suggested that their expenses should normally not exceed 5 or 6 percent of the amount of contributions.

Two last points: I believe the health and welfare program should not be subjected to the grievance or arbitration procedure of a collective bargaining agreement. After all, you cannot compromise the law of

averages or cannot arbitrate how much return you are going to get back out of your trust fund. Management has a duty to convince labor that this is something we have to buy on a businesslike basis. This, of course, does not exclude arbitration of the question whether an individual was in fact an employee, how many hours he worked, and so forth.

Also, I should like to mention the problem of strikes. In the case of a group insurance program, the premium is paid monthly in advance. If you have the premium for the month of July paid on July 1 and the employees stage a wildcat strike on July 10, there is not much to be gained by putting in the agreement that the benefits are suspended for the time they are on strike. Moreover, I am not altogether sure that the health and welfare benefits should be used as a means of buttressing a no-strike clause in the contract. We have had some pretty good experience with no-strike clauses, and I do not see any reason for duplicating what we already have in the matter of forbidding strikes during the term of a contract.

#### PAUL ST. SURE

THE THINGS that employer groups which I represent have been attempting to do have been based upon, first, overcoming the employer's objection to dealing with this subject at all. I agree with the view expressed previously that the things which employers do and with which employees themselves are concerned are bound to come within the scope of bargaining. I can recall the time when we had strikes over recognition and majority representation and over problems of seniority; I can recall when we have had strikes over welfare plans. However, in my experience, employers have pretty largely come to accept the view that welfare issues are negotiable, and where they have found that unions would approach the subject from the point of view of endeavoring to arrive at some reasonable conclusion, they have been able to work out jointly what seem to be reasonable and workable welfare plans. Death benefits, hospitalization and medical care apply immediately to current employees and do not involve questions of prior service, layoffs and retirement. There is a definite price for protection of this kind and it can be paid for currently.

I do not think that welfare programs of the type we are discussing now have any peculiarity in them which distinguishes them from wages when you consider them as cost items. Whether industry can carry the burden, like the question of whether industry can carry high wages, is something that, of course, the future alone will tell.

The work that we have been doing in the practical negotiation of

health and welfare plans has been a matter of experimentation. First we say, can we write a specification of the kind and type of coverage we would like to have? Then, can we get a price on it from some of the people who are in the business of supplying that kind of protection? It has worked out pretty well. We have even been able to overcome the problem, in some degree at least, of multiple employer bargaining. By using the specification method and offsetting minimum benefits against those programs that are nationwide and cannot be changed in a particular area without wrecking the entire plan, we have been able to maintain the nationwide plans that are in operation.

Several problems have been brought up today about which we have not thought. I do not recall that in the plans we have written we have considered what happens when workers go on strike. So far our experience has been that if we can translate welfare plans into immediate benefits on a current basis, place a value on them in so many cents per hour, and provide for enough flexibility so that neither employers nor unions are driven into a particular "package," we can work out some rather reasonable plans at rather reasonable cost. I think that the experimentation now being carried on may lead all employers and all unions, and perhaps all of those outside of unions, closer to an answer to this entire problem.

#### MATHEW O. TOBRINER

AS THE UNION approaches the concept of total protection of the worker in a society which has become more and more threatening to him, it inevitably assumes new and greater social, economic and political undertakings. Until the state takes over the whole field of social security protection, the union will surely, more and more, insist upon affording social security via the collective bargaining process.

The idea of a health and welfare plan is an old one. The present drive for such benefits began during World War II. Wage stabilization regulations limited the amount of wage increases. Thus many employers and employees agreed to health and welfare plans as a means of augmenting limited wage increases, and, in several cases where there was no agreement, the War Labor Board ordered the employer to establish a benefit plan. Between 1942 and 1947 health and welfare plans under the stimulus of Board approval grew from coverage of 600,000 to 1,250,000 persons. The *Inland Steel* decision has further influenced the growth of these plans.

I shall discuss briefly the major problems raised in our experience by the establishment and operation of health and welfare plans:

- 1) The amount of employer contribution must be sufficient to establish the plan on a sound financial basis
- 2) The type of plan and the scope of the benefits must be considered.
- 3) There is the question of the application of a new plan to employers with established plans. Of course, it is best in dealing with employer associations to have all employees of all employers covered by a uniform plan.
- 4) Who is to be covered? Questions regarding part-time employees, laid-off employees, dependents, etc. enter into negotiations.
- 5) Carefully worked out trust agreements and proper administration of the excess funds are vital matters.
- 6) It is important that the plan provide expeditious service to employees with a minimum of red tape.
- 7) Proper machinery should be set up to handle disputes that may develop between any of the parties to the program.

In the final analysis the value of a health and welfare program must be measured in terms of the degree to which it provides for the health needs of the workers and their dependents, meets the medical, hospital and surgical costs incident to illness, and reduces the economic loss due to lack of wage payments. A mere enumeration of the benefits payable under a given plan and of the conditions under which they become payable does not, by itself, indicate whether the needs of the workers are being met. Plans often sound much better than they actually work out in operation. Programs must be analyzed to find out, for example, what proportion of the illness costs are actually paid for, and how the medical services received by the workers compare with their medical needs. It is clear that existing plans have many limitations and will have to be expanded. Most plans make no provision for dental care, eye examinations and other common medical requirements. Programs must be established which will cover workers during periods of unemployment and layoffs.

The future alone holds the keys to these problems of today. That the union has assumed a new and potent role in an area of first importance to American workers cannot be denied. This growth demonstrates again the dynamic force of American unionism.

#### HENRY C. TODD

THERE ARE TWO REASONS why employers should be interested in a benefit program: First, management has a social and moral obligation to protect employees against financial emergency arising out of disability or death. Second, the returns from such a program tend to be highly rewarding on several counts, such as helping to promote employee loyalty and better morale, helping to reduce labor turnover, and in-

creasing efficiency through increased morale and improved health. Employee health is particularly aided because immediate care avoids the spreading of infection among the other workers.

One of the main problems from the unions' point of view has been that employers wish to undertake a complete study of various plans, without making an advance commitment. The unions, of course, are much more inclined to undertake such a study if the employer is committed to the basic policy of a social obligation on the part of management.

It seems to me obvious how imperative health and welfare plans are in time of need. I would like to discuss particularly plans to insure the income of employees where sickness and accident are concerned. The payments should be high enough to enable the employees to get by but not so high as to encourage absenteeism. The benefit may be uniform for all or it may depend on how much the employee earns. The payment of the maximum through the Industrial Accident Commission is entirely too low, and a wise employer will see to it that the benefits payable to his employees will be substantially higher than this figure.

Since most disabilities tend to last a comparatively short period of time, a balance will often have to be struck between larger benefits for a short period of time or smaller benefits for a comparatively longer period. Most of the existing plans to my knowledge cover benefits for either thirteen or twenty-six weeks.

Another factor in setting up the plan is the determination of when benefits are to commence. Common practice has been to require a wait of three to seven days before benefits are paid. This is based on the rule that the wait should be long enough to make certain that the illness or accident is bona fide and not so long as to cause real hardship. In the case of injury the waiting period should be definitely shorter than that for sickness.

Occupational disabilities covered by workmen's compensation laws are usually excluded from sick benefit coverage. The best plans provide that if the payments from workmen's compensation are less than the payments from the plan, the employee will be paid an amount necessary to bring his income up to the level set in the plan.

Conventional insurance policies covering health and accidents continue to cover an employee either for thirty-one days after a layoff or until the end of the month in which the layoff takes place. I believe that the better type of plan is that which covers the employee as long as he shall be considered an employee of the company. Certain plans to my knowledge allow the coverage to continue for a period of days and then

permit the employee to continue what would be premium payments, himself.

Hospital and surgical benefits are vitally necessary where the employee has the misfortune to have a serious operation or illness. Too often, without them, the employee is left in desperate financial straits. Coverage for hospitalization and surgical fees will relieve his burden and return him to the employer a much better employee than if he is forced to undertake extra work to pay off his debt or take long years to pay it off a little at a time.

Benefit plans have always provoked sharp discussion over the bargaining table, but today we are going forward with a more reasonable outlook on the subject than has existed in the past. Old suspicions are giving way to enterprising, enlightened and logical approaches which I am certain will redound to the benefit of the American people as a whole.

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