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THE INLAND STEEL DECISION AND PENSION POLICY

CONTENTS

INTRODUCTION

In recent years, union demands upon companies for benefit plans and other fringe objectives have been mounting. Unions sought and many employers willingly granted concessions of this sort in collective bargaining agreements when direct wage increases were legally prohibited or at least controlled. Such concessions seemed cheap when the major part of the cost could be charged against high taxes. Even with the temporary stimuli of federal wage controls and high wartime tax rates removed, the union demands will continue, although the vigor with which they are pressed will vary from time to time and circumstance to circumstance. Unions have won sick leave pay, group life, sickness, accident and hospitalization insurance, and pensions in a sufficient number of cases to establish enduring precedents and to set, if not yet a pattern of prevailing practice, at least standard objectives with which all employers must henceforth reckon.

Special interest attaches therefore to the National Labor Relations Board decision on April 13 that employers must bargain collectively about pensions[1] and to the successful coups by which John L. Lewis has won pensions for the bituminous coal miners.

Although it is too early to assess the full impact of this double-barreled development on collective bargaining and on management and union pension policy, the following preliminary discussion is submitted to aid in stimulating management's necessary reconsideration of policy and tactics in this area.

After a quick review of these developments, the substance of the present memorandum boils down to the contentions that all employers, despite their varying circumstances, should

1. Begin at once to arm themselves with pension cost data and with decisions about what constitutes sound pension policy,

2. Try to restrict negotiations, when they become necessary, to broad questions of policy and costs and to avoid bargaining about technical details,

3. Enter negotiations with a firm resolve to make no concessions that would violate sound pension principles.

INLAND STEEL DECISION AND ITS BACKGROUND

The Inland Steel Company operates directly two steel plants, a fleet of Great Lakes ore carriers and several mines. Four wholly-owned subsidiaries have warehouses and manufacturing plants in some sixteen cities throughout the country.

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[1] Matter of Inland Steel Company and Local Union, Nos. 1010 and 64, United Steelworkers of America (CIO), NLRB Case No. 13-C-2836, April 13, 1948.

A chronology of the principal events relating to the National Labor Relations Board decision provides a background for understanding its significance:

January, 1936—The company adopted a contributory pension plan to be applicable in both the parent and subsidiary companies for employees earning $3,000 per year or over.

August, 1941—A union, now the United Steelworkers of America (CIO), was certified as the bargaining agent for production, maintenance, and transportation workers in the two main plants. The first contract was signed in August, 1942. The company at present also bargains with twenty-three other labor organizations, of which thirteen represent employees in bargaining units having less than 100 employees.

Because of the manpower shortage, the pension plan provision making retirement at age sixty-five compulsory was suspended.

December, 1943—The coverage of the retirement plan was extended to make all employees eligible to participate upon completing five years' service and reaching age thirty.

April, 1945—A second contract was negotiated with the union.

December, 1945—A pension trust was established to provide annuities for prior service of participating employees at an estimated total cost to the company of $10,400,000.

Early in 1946—The company resumed the practice of retiring employees at the normal retirement age of sixty-five.

August, 1946—The union charged the company with engaging in unfair labor practices on three counts: (1) by establishing the prior service pension trust in December, 1945, without notifying or consulting the union, (2) by refusing in March, 1946, to entertain a grievance and to negotiate with the union about management's announced intention to retire employees who had reached age sixty-five, and (3) by subsequently retiring such employees and granting them benefits without first discussing the matter with the union and in alleged violation of the seniority and discharge notice provisions of the agreement.

January, 1947—The trial examiner's intermediate report found against the company on all three counts.

April 13, 1948—The National Labor Relations Board in a 4 to 1 decision sustained the trial examiner's findings and recommendations.

In substance, the decision holds that it is an unfair labor practice to refuse to bargain collectively about pension and retirement plans and practices, because retirement benefits constitute "wages" and the age and other terms of retirement constitute "conditions of employment." The company is ordered (subject to the union's compliance with the filing requirements of the Taft-Hartley Act) to cease and desist from refusing to bargain collectively with respect to pension and retirement plans and from making any unilateral changes in such plans without prior consultation with the union. The board expressly finds that pension and retirement plans are within the area of compulsory collective bargaining under both the original Wagner Act and the Taft-Hartley Act.

No weight was given the company's claim that, since pensions were not discussed during the negotiations nor mentioned in the agreement, they were reserved as a residual matter left to management's discretion under the "management's rights" clause of the agreement.[2] Neither the failure of the union during the 1945 negotiations to protest the 1943 extension of the retirement plan nor its acceptance of the agreement with full knowledge of the existence of the plan are regarded as constituting a waiver, even for the duration of the contract, of the right to negotiate about the plan or to protest decisions about its application. In its decision the board notes that the union "acquiesced" in the plan only during the period when compulsory retirements were not being made and sought to invoke the grievance procedure as soon as the company announced its intention of restoring that practice. It is not clear how much significance the board attached to these particular facts nor whether union acquiescence in a plan being normally applied would justify a company's subsequent refusal to bargain about it at least until time for renegotiation of the contract.

The case undoubtedly will be appealed to the United States Supreme Court but there is little expectation that the court will reverse the board's decision. Although this is the first decision of the NLRB on this subject, the stand taken did not come wholly as a surprise, since it is consistent with a significant number of similar decisions about benefit plans made by the National and Regional War Labor boards.[3] Other cases are now pending in which the same reasoning will probably be applied to other types of benefit plans. In February, 1947, a trial examiner rendered his intermediate report holding that W. W. Cross and Company, Inc., had been guilty of unfair labor practices by refusing to bargain about insurance plans. In January, 1948, the general counsel of the board obtained a temporary injunction to prevent the General Motors Corporation from putting a new insurance plan into effect without having negotiated with the union after having agreed to do so. While

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[2] The clause reads: "The management of the plants and the direction of the working forces, including the right to hire, promote, demote, suspend, and discharge employees for cause, and to relieve employees because of lack of work or for other legitimate reasons, and the right to introduce new and improved methods or facilities and to manage the properties in the traditional manner, is vested exclusively in the company, provided that nothing shall be used for the purpose of discrimination against employees because of membership in or activity on behalf of the union. These provisions shall not apply to nullify the other provisions of this agreement."

[3] Industrial Relations Counselors, National Collective Bargaining Policy, New York, 1945, pp. 34-36.

the board has not taken final action in either of these cases, it will doubtless rule, as the Inland Steel decision implies, that all types of employee benefit plans fall within the scope of compulsory collective bargaining.

PENSIONS FOR COAL MINERS

The board decision was released on the very day after John L. Lewis had succeeded in setting a new pension target by winning, subject to court review of some aspects of the plan, a pension of $100 per month for bituminous coal miners at age sixty-two after twenty years' service.

There could be no clearer illustration of the difficulty and dangers of collective bargaining about pensions than the experience of the mining industry. Despite express agreement that part of the industry welfare fund created by the levy of a royalty of 10 cents per ton on all coal mined should be used to pay pensions "on an actuarially sound basis," Lewis frankly disregarded the actuarial findings of an independent actuary and of the Social Security Administration that the fund as now financed could support pensions of only $50 per month at age sixty-five and insisted on a pension of $100 per month for all miners aged sixty or over who had had twenty years of service in coal mining, no matter with whom and no matter when such service was terminated. The settlement also illustrates the danger of leaving the determination of pension policy in the hands of impartial arbitrators. Senator Bridges, the newly appointed neutral trustee, without having had adequate time for a study of the problem, recommended a "tentative" pension plan only slightly less liberal than that requested by Lewis. His compromise of restricting eligibility to miners who retired after May 29, 1946, and setting the retirement age at sixty-two almost certainly failed to put the plan on an actuarially sound basis. In adopting a flat pension rate without regard to variations in the age and length of service of pensioners and in making sixty-two the normal retirement age, the welfare board majority flew in the face of pension experience and set a standard of pension policy that many other unions will feel compelled to adopt.[4] Unfortunately, it is a standard that our economy as a whole can probably not afford. The steady improvement in mortality experience means that the proportion of the aged in our total population is increasing so rapidly that questions are being raised about the economic feasibility of retaining sixty-five as the normal age of retirement.[5]

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[4] The United Steelworkers have submitted to the United States Steel Corporation and other companies demands for a comprehensive social insurance program that would provide for employees pensions of $150 per month, weekly sickness and accident benefits of $35 per week for as long as fifty-two weeks and $1,500 life insurance, and for both employees and their dependents hospitalization together with maternity and surgical benefits. The demand is presumably for the employers to bear the full cost of this program. Demands for various combinations of pension and other benefit plans have been formulated by many other unions, such as, those of the automobile, communications, electrical, men's clothing and transport workers in the Congress of Industrial Organizations and the Great Lakes maritime unions, electricians, ladies garment workers and teamsters in the American Federation of Labor.

[5] H. W. Steinhaus, Financing Old Age, New York: National Industrial Conference Board, 1948, (Studies in Individual and Collective Security No. 4) 63 pp.

SIGNIFICANCE OF THE DECISION FOR BARGAINING ON PENSIONS

Managements generally have resisted bargaining about pensions and other benefit plans,and customarily these have not been covered in collective agreements. Such plans involve long-range policy that should not be subject to change every year or so, and particularly in large organizations there are practical difficulties in bargaining with several unions about a company policy which should be uniform for all. Compromise and balancing of advantage can easily throw the technical elements of a plan out of line and wreck its financial foundations. Finally, bargaining is limited to some extent by the requirements of insurance companies and the United States Treasury. Many companies that have never bargained on pensions make it a practice to discuss their benefit plans with union representatives solely for their information after the plan provisions have been determined, but prior to making any general announcement.

Management's reasons for refusal to bargain about pension or other benefit plans apparently have been swept aside by the NLRB. Henceforth, an employer may not install, change or terminate any pension plan unilaterally except at the risk of being charged with an unfair labor practice. He may have to bargain annually about possible changes in what should be a rather settled matter of long-range policy. Seemingly it makes no difference whether the plan antedates recognition of the union, whether the union has acquiesced in the plan, whether the plan is contributory or noncontributory, or whether participation is voluntary or compulsory.

It is in respect to the effect on long-range policy that bargaining about pensions will always cause more problems than bargaining about other kinds of benefit plans. Most types of group insurance, for example, are on a term basis, with premium rates subject to annual recomputation on the basis of experience. Since in a sense, therefore, the policies are subject to annual renewal, annual negotiation is not inconsistent. A group life insurance program can be dropped with no loss to employees except that of the future protection not yet bought and can be resumed later at whatever rates would then in any case have been applicable. But a retirement program completely fails to achieve its objective unless it remains continuously in force for successive groups of workers. To meet the needs of employees, to accomplish the purposes of the employer, and to comply with present Treasury regulations, a retirement plan must be permanent. But when it is one of the terms of an annual agreement, a plan, in the absence of special provision for its continuance, is terminated if the agreement is not renewed.[6]

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6 The anomaly of annual agreements about a permanent plan is seen clearly in the litigation over an arbitrator's award of a pension plan in a collective agreement covering employees of the New York City Omnibus Corporation. The company contended that pensions under the plan were payable only during the life of the agreement but was finally overruled by the New York Court of Appeals, which held that, although the plan dies with the agreement, an employee retired while the agreement is in force is entitled to a pension for life. New York City Omnibus Corporation v. Quill, New York Court of Appeals, March 11, 1948; aff'g 73 N.Y.S., 2d 289.

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Not all employers will be affected by the NLRB decision in the same way. Companies with old, established pension plans, well accepted by employees, are most fortunately situated, since the unions involved probably will not raise the issue for some time at least. Employers who have been planning to liberalize existing plans may feel hesitant about whether or how to proceed, as will those who have been studying the possibility of introducing a plan and the others who actually have started to install one. All these will be forced to consider and reach decisions concerning slightly different but closely related questions of what now constitutes safe policy and tactics. Both the character of the pension demands and the spirit in which negotiations are conducted will be factors in determining whether employer-employee relations improve or deteriorate. Despite the variety of circumstances in which employers may now or later find themselves, there seem to be some general considerations about collective bargaining on pensions that should be called to attention.

Normally an employer cannot be required to negotiate concerning either the revision of an existing contract provision or the introduction of a new provision bearing on a matter not previously covered until the time when the contract is about to expire and must be renegotiated. It may not be safe, however, to assume that an employer may refuse to bargain about an existing pension plan until the expiration of an agreement that does not refer to the pension plan. While deferring negotiations on any basic modification of the plan until the time for renewal of the agreement probably would not be regarded as an unfair labor practice, refusal to entertain a grievance about the application of certain provisions of the plan presumably would be held unlawful. Thus any action by the employer, such as retiring an employee or even refusing to retire an employee on request, would give the union an opportunity to raise the issue.

If pensions constitute an element in wages, as the NLRB has ruled, the argument may be held valid that wage reopening clauses authorize the presentation of demands for pensions and other benefit plans. Employers would, however, have good grounds for contending that pensions might be included in the general term "wages" for purposes of the National Labor Relations Act without necessarily being included in the specific schedule of wages that is to be reconsidered.

This question suggests consideration of a rather broader matter of policy. Pensions and other benefit and fringe plans involve costs to the employer but do not constitute current income or take-home pay for employees. Consequently, managements traditionally have drawn a distinction between wage rates as such and supplements to wages and have not offered pensions and other benefit plans as alternatives to or substitutes for satisfactory wage rates, hours and other terms of employment. Generally also, such supplements

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As the necessity for periodic negotiations almost logically implies, some unions have indicated that financing of pensions on a pay-as-you-go method would be acceptable. Such proposals should be rejected as serving no good purpose to the employer, the beneficiaries or the union. American Management Association, Trends in Employee Health and Pension Plans, New York, 1948, (Personnel Series No. 118) p. 8.

have been disregarded in determining comparative or prevailing wage rates. Although it may be desirable to compute and announce the costs of pension and benefit plans in annual reports and otherwise, and to discuss their cost when demands for wage increases and for fringe benefits must be negotiated at the same time, managements should continue to insist that questions of wage rates and benefit plans should be treated separately. To consider benefit plans as part of the wage structure or to say that wage rates include the costs of benefit plans might encourage employees to demand cash instead of certain benefits and thus undermine their own security and defeat management's objectives in adopting such plans. The criteria of the adequacy of wage rates and of pensions and other benefit plans are entirely different.

The issue of bargaining about pensions has developed at a time when even companies with carefully thought-out pension plans find themselves peculiarly vulnerable. For many years to come, unless the present law is changed, the pensions payable under the old age and survivor's insurance provisions of the Social Security Act will remain clearly inadequate, even if the pension maximum should be raised slightly above the present average of about $38 per month for a married couple.[7] Meanwhile, the adequacy of supplementary private pensions has also declined. A more favorable mortality rate and lower interest rates have greatly increased the cost of a given amount of annuity; the rise in wage rates has lowered the percentage relationship that any annuity based on prior earnings will bear to final pay; and the mounting cost of living has reduced the purchasing power of annuities that otherwise would have been reasonably adequate. Managements would be well advised, therefore, to prepare for demands that impose substantial costs. In this connection employers individually and through their associations should protect their own long-run interests by taking the initiative in supporting liberalization of social security old age benefits. By so doing they would somewhat reduce union pressure on employers to establish pension plans and any necessary bargaining about such plans would be restricted to a narrower range of possible benefits.

Companies with established plans, in anticipation of demands for increased benefits, should examine their pension experience. They should determine the costs of their plans, and if, as is unfortunately probable in many cases, the existing provisions are found to be somewhat substandard, the companies should, further, determine precisely the costs of desirable revisions and in the light of such costs decide what additional expenditures can be incurred. Buttressed by these data, managements can then enter negotiations, when required to do so, prepared to bargain on a defensible basis.

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[7] The Social Security Administration and the Advisory Council on Social Security have recommended more realistic provisions. These include extension of coverage to farm workers and other excluded groups, the increase of taxable wages to $4,200 or $4,800 per year, the increase of maximum benefits from $85 to $120 or more per month, and lowering the qualifying age for women beneficiaries to sixty years. Federal Security Agency, Annual Report of the...Section One, Social Security Administration, Washington, 1947. pp. 39-64; United States Senate, Old Age and Survivors Insurance—A Report to the Senate Committee on Finance From the Advisory Council on Social Security, Washington, April 20, 1948, (80th Congress, 2d Session, Senate Document No. 149) pp. 15-47.

There may be a strong temptation, under pressure, to make certain patchwork concessions. At all costs these should be avoided, as setting precedents that may impair the integrity of the plan. The company should hold single-mindedly to the objective of maintaining the best and most completely rounded retirement scheme that is within its means.

There will be a wide difference of opinion about whether a management should take the initiative in raising any question about pensions or wait until faced by a union demand. A tendency to let sleeping dogs lie should probably not deter a management that has already realized the deficiencies of its retirement program, or more especially one that has decided to revise and improve its program, from proceeding with this matter of management policy, despite the new requirement that union agreement to any change must be obtained.

Since it is technically possible to "bargain in good faith" without making concessions, a company cannot necessarily be forced to change the terms of an established plan, but a refusal to incorporate the plan or a reference to it in the collective agreement would certainly lay the management open to the charge of refusing to bargain. Probably the best clause that management can hope to secure is one to the general effect that, except by mutual agreement or as required by governmental laws or regulations, the provisions of the retirement plan (identified by date, contract number or other documentary reference) will not be changed during the life of the contract. Management should try to reserve the right to make minor administrative changes in the plan, such as those required by refinement or clarification of Treasury regulations, as long as such changes do not basically affect the contribution-benefit formulas or the payment of pensions. An effort also should be made to retain management's right to administer the plan and, where agreements provide for arbitration as the last step in the grievance procedure, to provide that pension and retirement questions do not constitute arbitrable grievances. In some contracts these objectives could be sought by amendment of the "management's rights" clause. In others they could best be secured in separate clauses. It is of the utmost importance to have no misunderstanding of the relationship between the retirement plan and provisions having to do with seniority, layoff and discharge.[8]

If unionized, companies without established pension plans may expect eventually to be asked to adopt them. They should not wait for a formal demand but should begin immediately to familiarize themselves with pension problems and should start estimating the costs of alternative plan provisions.

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[8] There have been a few cases in which arbitrators have held that management did not violate the seniority provisions of the agreement by compulsory retirement of employees under the provisions of the pension plan, notably cases involving the General American Transportation Corporation and the United Steelworkers of America (CIO); RCA Victor and the United Electrical, Radio and Machine Workers of America (CIO); and Swift and Company (Denver plant) and the United Packinghouse Workers (CIO). Bureau of National Affairs, <u>Labor Arbitration Reports</u>, Washington, D. C., 1947, Vol. 7, p. 773, and Prentice Hall, <u>Pension and Profit Sharing Letter No. 29</u>, January 3, 1947, p. 8.

A difficult question will have to be faced by the companies which find that at most they can really afford to finance only an inadequate, substandard pension plan. Under such a plan, a company may incur relatively heavy expenses without achieving the managerial or industrial relations benefits that are sought. In fact, the establishment of a faulty plan often impairs employee morale instead of improving it. Hitherto, it has seemed sound policy not to adopt any plan unless the retirement income provided approximates reasonable standards. Some companies may now feel that something is better than nothing and may wish or be forced to start on a limited basis. The first move might then be to credit only current service. Pensions would become significant in amount only after the passage of many years or if the company later was able to make provision for service prior to the time the plan was established.

The adoption of a pension plan means the adoption of a long-range program, surrounded with complex actuarial and legal problems and involving very heavy expenditures. Any mistakes made in this field are difficult to correct and usually very expensive. With respect to pensions perhaps more than with respect to most other matters, on which concessions can sometimes be made and later withdrawn or mistakes rectified at some later date, management must be prepared for hard bargaining and be resolved when necessary to say "No." Bargaining must be supported by irrefutable factual data, and management must enter negotiations with a firm resolve to make no concession whatever about principles of pension policy and practice which experience has shown to be sound. Some of these fundamental principles are set forth briefly in the following section.

Since the field is full of pitfalls, management should try to restrict negotiations and agreements about pensions to broad matters of policy and cost and to avoid debate about complex administrative details or other technicalities. In other words, management should try to confine negotiations to whether the company shall establish any plan, or to the amount of money the company will invest in the plan, or to a half dozen or so of the basic principles of the established or proposed plan, and should try to retain freedom to adjust the details of the plan as may be required by actuarial and legal considerations.

In an address on April 23, Paul M. Herzog, chairman of the National Labor Relations Board, admitted that compulsory collective bargaining about pensions would cause many difficulties but expressed confidence that employers could overcome them and that unions will bargain on pensions with moderation.

Union demands can be kept moderate only if employees understand some of the basic arithmetic of pension planning. It is therefore more necessary than ever for management itself to become familiar with financing problems, not only to protect its own interests but to discharge its responsibility for employee education in this field.[9]

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9 Very few employees have any conception of the cost of annuities or pensions. Management should take every opportunity to dispel this ignorance, which gives rise to unreasonable demands. Publicity should be given to such basic facts as:

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As previously suggested, it seems reasonable to assume that the Supreme Court will sustain the present position of the NLRB. But, if union pension demands are not kept within reasonable limits and if pension disputes disrupt the economy by causing many stoppages of work like the recent coal strike, the pressure of public opinion may force corrective action by Congress.

FUNDAMENTALS OF PENSION PLANNING

A century of experience with private retirement plans has led to the very general acceptance of the following principles as constituting some of the basic elements of sound pension policy.

Importance of Funding

Funding arrangements under which each year's pension credit is set aside during the year in which it is earned constitute an indispensable element of a sound pension plan. Financing on this basis provides for the orderly accumulation during the productive working life of employees of the necessary moneys with which to pay future pensions regardless of the fortunes of the company and to assure that thereafter such funds cannot be used for any other purpose.

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1. For a male employee aged sixty-five, an immediate annuity of $100 per month, with payments ceasing at death, costs about $16,000; for a man aged sixty-two, about $17,500; for one aged sixty, nearly $19,000.

2. For a male employee, a straight life annuity of $100 per month payable at age sixty-five can be bought with contributions of about $25 per month from age thirty-five, $44 per month from age forty-five, but over $106 per month from age fifty-five.

3. If a man aged sixty-five, entitled to a pension of $100 a month for his own lifetime, chooses to make provision for his wife (aged sixty), he can do so by accepting a reduction in his own pension. The pension would then be reduced to $66 per month as long as either of them lived or to about $80 per month while both lived and $40 for the survivor.

4. If a man who would be entitled to a pension of $100 per month at age sixty-five decided to retire at an earlier age, his pension would be reduced by about 7 per cent for each year, and he would be entitled to only about $64 per month from age sixty or $44 per month from age fifty-five.

A major source of misunderstanding arises from the fact that average employees get their ideas of proper pensions from the liberal standards of certain types of public pensions. If firemen or policemen can retire on half pay or some similar basis after twenty-five or thirty years of service, industrial employees wonder why they should not have the same privilege. They do not realize how costly such pensions are. Many public pension funds that failed to finance pensions adequately have gone bankrupt, to the painful disillusionment of the beneficiaries. Liberal pensions of this sort are usually possible only if they rest on the unlimited power to tax. No company that must finance its share of pension costs out of receipts from the sale of its products can afford to incur costs that would force its products out of the competitive market.

Whether funding should be arranged by contract with an insurance company or by the establishment of a trust depends on various considerations, which each company must weigh in the light of its particular situation. While it seems that employees generally have more confidence in insured plans, unions may lean to the establishment of trusteed plans in order to claim representation on the board of trustees and be in a position to secure concessions in the terms of the trust. Insured plans have the value of restricting the possible area of negotiation, since insurance companies have necessarily somewhat standardized group annuity and other insurance contracts. If agreement can be reached that a plan shall be of the insured type, carrier policy will preclude the granting of certain kinds of unsound demands and the employer will secure protection against the possibility of future mistakes.

Some companies that cannot afford the heavy initial outlay involved in providing pension credits for the service of employees prior to the establishment of a pension plan may be tempted to agree to pay pensions on a current "out of pocket" basis, at least temporarily, under a self-administered plan. As was pointed out earlier, such a course is very dangerous. It gives employees little real security, and, consequently, does not produce the industrial relations values that justify the expense. As a long record of pension plan failures attests, it is very likely to lead later to financial difficulties that will wreck the plan or even the company. The management of one of the largest companies in the United States was shocked a decade or so ago to discover that under its unfunded plan it had reserves of only $12 million against accrued liabilities of about $200 million.

Provision for All-Inclusive Coverage

The objective of a pension or retirement plan is not solely to provide pensions for employees at some prescribed age. From management's point of view it is a policy or device to secure three managerial objectives: (1) to reduce turnover and improve morale by giving employees a sense of security, (2) to avoid the hidden costs of retaining on the payroll employees who can no longer earn their salary or wages by providing a method of retiring employees without adverse reaction from other employees or the community, and (3) to keep channels of promotion open and provide incentives for younger employees. From management's viewpoint a retirement plan is fundamentally a means of maintaining or improving productivity. The industrial relations and managerial values of a retirement plan can be achieved only if the plan covers all regular full-time employees, without restriction to salaried employees only or to employees earning over $3,000 per year, the present maximum earnings for social security purposes.

Since the plan is intended for permanent employees, it is reasonable to restrict eligibility to employees who have had some prescribed period of service. There can be some flexibility in the determination of these eligibility conditions, but the facts of turnover in relation to length of service almost always indicate the limits within which such eligibility conditions should be set.

Special resistance should be offered to the not unlikely union demand that the plan be limited to union members.[10] And particular care should be taken to establish the plan, especially if it is trusteed, for the benefit of employees, as such, rather than as members of the union. Otherwise there may be discrimination against employees not in bargaining units or not union members, and employees' freedom of choice about possible changes of bargaining representatives will be seriously impaired.

If an employer wishes to establish a pension plan and has reason to expect union opposition to some of its provisions, the question will arise whether the employer should install it, or announce the intention of installing it, for employees not included in any bargaining unit and offer it simultaneously for consideration by the union or unions. To do so, with proper regard for the timing of each step, would seem sound policy, on the broad principle that management should not surrender its right nor neglect its duty to initiate improvements in its industrial relations policy just because of the expansion of the area of compulsory collective bargaining. To surrender this right would be tantamount to encouraging further union organization by the confession that employees could expect further improvements only as the result of union pressure. Moreover, managements cannot neglect consideration of the problems a satisfactory pension plan is designed to solve nor overlook the fact that delay in tackling retirement problems increases the cost of their eventual solution.

To follow the course above recommended involves some risk—pending the adjustment of Treasury regulations to the new requirements—that a plan which limited participation because of an impasse in collective bargaining might fail to qualify under the regulations. But competent legal advisers can doubtless devise ways to avoid irrevocable commitments to employees and irrevocable payments of substantial sums of money to an insurance company or trust until a plan is formally approved.[11]

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[10] See, for example, sample contract clauses recommended by the American Federation of Labor, such as "and such insurance shall cover only union members" or "...only employees of a contributory employer...who are in good standing in the union shall be eligible to receive benefits...." American Federation of Labor, Health—Benefit Plans by Collective Bargaining, Washington, 1946, pp. 8-9.

The plans negotiated by the Amalgamated Clothing Workers, United Furniture Workers, United Hatters, Cap and Millinery Workers, Upholsterers International Union, Federation of Dyers, Finishers, Printers and Bleachers, American Federation of Hosiery Workers, and International Brotherhood of Electrical Workers all require union membership and good standing as a condition of eligibility. Helen Baker and Dorothy Dahl, Group Health Insurance and Sickness Benefit Plans in Collective Bargaining, Princeton: Princeton University, 1945, pp. 31 and 33; Prentice Hall, Pension and Profit Sharing Letter No. 34, March 14, 1947, p. 4.

[11] Since the Treasury will not formally approve a plan until it is actually installed, the necessary steps in developing and installing a plan might follow some such order as:

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Every time the coverage base of a pension plan is narrowed, whether by restriction to employees earning more than a given amount or to salaried employees, as is now permitted by the Treasury under certain circumstances, or, as unions may now demand, to employees in a particular bargaining unit, the actuarial basis for the estimate of future costs is weakened. Considerations of equitable and uniform treatment of all employees, of sound financing and of securing and retaining Treasury approval, all point to the desirability of trying to establish and maintain a single company plan. This may seem difficult and may in fact sometimes prove impossible in companies dealing with many unions,[12] but management should set that as its goal and may have not very much more difficulty in eventually achieving it than has been encountered in getting substantially uniform provisions on other complex matters in many separate agreements.

Desirability of Having Employees Contribute

There may be differences of opinion about where the cost of a pension plan finally falls and the incidence of costs may well vary according to the economic circumstances of companies and industries. But management should try to insist on employee contributions to assure larger pensions than would be possible if the employer in the first instance had to absorb the total cost. Employee contributions also give some protection against future demands to increase benefits unless employees are also willing to increase their contributions. But the most important argument for employee

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1. The board of directors authorizes management to develop a plan on the basis of a pension study. Usually this takes several months.

2. When the plan is first developed, management informally consults union representatives and others about its major provisions.

3. When the plan has taken nearly final shape, and unless consultation has uncovered insuperable collective bargaining obstacles, it is submitted to the board for formal approval and thereafter to the regional office of the Bureau of Internal Revenue for an "informal ruling" as to whether it qualifies under Section 165(a) of the Internal Revenue Code.

4. Upon receipt of a favorable informal ruling, management announces its intention to install the plan for employees not in bargaining units and notifies all bargaining representatives that it wishes to negotiate about the application of the plan to employees in organized units.

5. If negotiations proceed satisfactorily and the plan is accepted in one or more major bargaining units, after installation it is submitted again to the Bureau of Internal Revenue for formal approval.

6. If negotiations deadlock and the plan can be installed only for employees not covered by collective agreements, management should use every possible channel of communication to acquaint all employees with its proposal but should submit the plan for Treasury approval as one offered to all employees but now applicable only to a limited group not in bargaining units. The covered group will largely constitute workers usually classified as "salaried," a classification which heretofore the Treasury has regarded as reasonable.

7. Pending such formal approval, management should try to get the plan started on the basis of "token" payments or payments in escrow, and thus avoid irrevocable commitments of substantial sums of money.

12 One company is known to operate under 230 different union agreements.

contributions is that a co-operative contributory plan elicits greater employee interest and thus produces greater industrial relations value than one under which the company pays the total cost. All employees should contribute a uniform percentage of earnings, as in group insurance, except for any differential designed to integrate the benefits with federal old age benefits. It has been found impractical to increase the contribution rate of employees who enter a plan in their later years in order to provide them adequate benefits, and the current practice under fixed benefit plans is for the employer to bear a larger proportion of the cost of benefits for this group of employees. Employers should adamantly resist demands to establish new plans on a noncontributory basis or to abolish employee contributions under established plans.

While the matter will have to be settled with reference to financial considerations, there may be room for negotiation about the basis on which the company and the employees should share the cost. Approximately equal contributions seem the simplest and most logical division, but many employers now contribute from one and a quarter to twice as much as the total contributions of all employees, in part to offset recent increases in the costs of annuities. Employers customarily absorb the full costs of benefits based on service prior to the establishment of a plan.

Voluntary Participation

Participation should be voluntary when the plan is first offered to employees and should not be compulsory for employees hired thereafter, though as a practical matter every reasonable effort should be made to persuade employees to sign payroll deduction authorization cards when they are hired or, subsequently, when they become eligible. A requirement for compulsory participation may create grievances in the minds of the minority who for their own reasons definitely do not wish to join and to that extent defeats one of the objectives of the plan. Automatic participation under a noncontributory plan, as indicated above, also deprives management of a natural opportunity for necessary employee education and frees each employee from the necessity of making a decision. When participation is voluntary on the other hand, the company has to do a job of employee education and salesmanship, without which the industrial relations values of a plan cannot be secured and which has become even more necessary to forestall unreasonable demands based on misunderstanding and misinformation. Where participation is already compulsory, management should therefore be prepared, in negotiations or otherwise, to make participation voluntary for new employees. It is unlikely that this adjustment will meet opposition.

Prohibition Against Withdrawal

A pension plan is a long-term commitment undertaken by a company to achieve a given end. Withdrawal from the plan with refund of the employee's own contributions while a member continues to be eligible for participation should not be permitted, since this would interfere with the systematic accumulation of adequate retirement income. Otherwise employees would be tempted to let temporary difficulties, real or imaginary, defeat their long-run interest. If management is forced to make any concession in this area, it should not go further than an agreement to permit temporary suspension of contributions in certain defined circumstances.

Inclusion of Provisions for Conditional Vesting

Under the earlier pension plans, an employee of long service who quit or was laid off or discharged a short time before retirement age lost substantially all his pension rights. This caused widespread distrust of employer pension policy and damaged employee morale. With the introduction of contributory plans, employees became entitled upon termination of employment to a refund of their own contributions with interest. But the serious loss of the pension credit built up by the employer's contribution tended both to deter employees from quitting when it was otherwise to their own advantage to do so and to deter management from laying off or discharging certain employees whom it would have been better to separate from the payroll. An employee who remains in a company chiefly because he cannot afford to lose a substantial part of his pension credit is often dissatisfied or unsatisfactory. In the interests of employees' security and to leave employees free to change employments, the best modern pension practice is to provide that after service or membership in the plan for a given period the employee has a vested right to all or part of the annuity that could be purchased with the employer contributions, on condition that the employee leaves his own contributions in the plan thus electing to take his entire benefit in the form of a pension at normal retirement age. Such vesting provisions immeasurably increase the value of a pension plan in the eyes of employees. A not uncommon stipulation is that after ten years' service an employee is entitled to receive a vested right to 50 per cent of the employer's contributions on his behalf, with further vesting after additional service.

The tendency is to liberalize such provisions. Experience shows that the additional cost of vesting after fifteen or twenty years' service is only nominal. With this as a minimum proposal, management might be prepared to negotiate more liberal vesting provisions with due regard to the costs involved.

Employers, however, should resist demands to permit employees to withdraw their share of employer contributions in cash upon termination of employment, since this would defeat the old age security objective of the plan, might induce unnecessary voluntary separations, and could substantially increase costs. It might also involve complications under the Wage and Hour Law since such withdrawals might be held to be wages that should have been taken into account in computing overtime rates.[13]

Adjustment to Earnings and Length of Service, and Integration With Social Security Benefits

Modern practice is to relate pensions to earnings and length of service. This facilitates the financing of pension plans year by year and makes an instinctive appeal to the average man's sense of equity.

The Treasury regulations forbidding discriminatory requirements as well as cost considerations make a certain degree of correlation of plan

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[13] Prentice-Hall, Pension and Profit Sharing Report No. 21, New York, April 9, 1948, p. 5.

benefits with social security benefits practically mandatory, and, in any case, private pension plans in covered employments should be designed as supplements to the basic government program. Plans should also be kept sufficiently flexible to permit adjustment to major changes in the government program. Obviously, it is better to design a plan with its benefits considered as additional to social security than to follow the practice under some plans of computing a benefit figure from which the amount of the employee's actual social security benefit is deducted.

There is reason to fear that some unions will demand pensions of flat amounts unrelated to either earnings or length of service. In bituminous coal mining, electrical contracting and the men's clothing industry such pensions are already established. Employers should resist such demands to the utmost. It may be possible to obtain some employee support for such resistance, since flat pensions so obviously discriminate against long-service and higher paid workers. It is true that flat pensions do command a growing measure of public support, as evidenced by the response to the Townsend and Beveridge plans. But it cannot be seriously argued that a company or industry has the same responsibility to provide for the old age of a worker after only a few years' service that it has with respect to a worker of twenty or thirty years' service. Flat pensions may be appropriate under governmental plans. They have no place in private pension planning.

Adequacy of Pensions

It is easier to secure agreement on the abstract principle that pensions should be adequate than to define "adequacy" or to explain in the face of rising costs how companies in certain situations can afford to install an adequate plan or improve a substandard plan. Nevertheless, it is clear that a plan providing pensions less than sufficient to permit employees to live comfortably after retirement or to reconcile them to retirement fails to achieve its major objectives. A commonly accepted standard of adequacy is that the pension after about thirty years' service should, including social security benefits but subject to some maximum limitation, approximate 50 per cent of final pay. In view of recent increases in earnings levels, many plans under which pensions are based on the employee's average earnings now yield retirement incomes far below this level.

Pension planning thus presents certain dilemmas, since commitments must be made and funds set aside to provide pensions after the passage of many years, during which unpredictable changes may occur both in the factors affecting costs, such as interest rates and mortality, and in the factors determining the adequacy of benefits, such as general levels of earnings and the cost of living. The best that can be hoped for is to devise a retirement plan that will be reasonably adequate for "normal" times. It may also be necessary to provide a formal supplementary procedure to meet the decline in the value of pensions caused by periods of inflation.[14]

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[14] This will be discussed in our forthcoming Industrial Relations Memo Number 100, "The Postwar Period and the Social Reckoning."

Provision for Compulsory Retirement at a Specified Age

The managerial objectives of a pension plan, to which reference was made above, cannot be achieved unless the plan provides for compulsory retirement at a fixed age. Other advantages of a compulsory retirement age are that it gives an employee notice on the basis of which he can plan for his retirement, prevents grievances that would arise if the question of every elderly employee's continued employability had to be decided on a case-to-case basis, and prevents accusations of favoritism if some employees are retired while others are retained. It is hardly an exaggeration to say that without provision for compulsory retirement few pension plans would be worth their cost from management's point of view.

Tradition and the provisions of the Social Security Act have led to the almost universal acceptance of age sixty-five as the normal retirement age for men. There has been some tendency to set age sixty as the retirement age for women.

It is in this area that employer policy must be most definitely fixed and the greatest skill in bargaining exercised. Union demands will range from deferred retirement, when, as now, employment is good and wages high, to earlier retirement without a reduction in pensions, when employment is low and wages perhaps reduced.[15] There may also be demands for special retirement ages for hazardous occupations, such as coal mining.

Wartime experience somewhat revised prevailing notions about the productivity of aged employees. Medical science and the increase in the average age of the population may necessitate a revision of current concepts of a normal working life. Pending the crystallization of knowledge and opinion in this field employers must nevertheless be guided by prevailing practice. They should resist to the utmost the impairment of the compulsory retirement provisions of established plans and should never agree to the establishment of a new plan without some such provision.

In special circumstances, as the facts may justify, there may be room for negotiation within fairly narrow limits about precisely where the normal retirement age should be set. If the company can afford the very substantial increase in costs involved, consideration might be given to setting a retirement age below sixty-five. If experience in light industry shows that productivity continues at a satisfactory level after age sixty-five, a slightly later retirement age might be agreed to. However, such variations from prevailing practice will increase the difficulty of integration with and adjustment to social security benefits. Every plan should provide for compulsory retirement at some fixed age. The application of the policy should so far as possible be a matter of routine, not subject to

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[15] In one company with a plan that is probably already more liberal than the average, the Oil Workers' International Union (CIO) has recently demanded the abolition of compulsory retirement, the setting of sixty as the normal age for retirement on full pension, optional retirement at age fifty-five or after twenty-five years' service regardless of age, and full pensions for disability regardless of age. It is apparent that such demands are formulated in ignorance of or at least in complete disregard of cost considerations.

negotiation, and with the making of exceptions only in very special cases subject to the year-to-year approval of the board of directors.

Obviously, management success in resisting the consideration of alleged grievances about automatic retirement will depend in some degree on the general adequacy of pensions payable under the plan.

Separation of Retirement and Disability Benefits

It is almost certain that unions will demand provisions under which disabled employees may receive, perhaps after some specified minimum period of service, the full pension to which they would have been entitled at normal retirement age. The demand seems reasonable on its face.

Unfortunately no satisfactory tables have been developed covering the incidence of disability or the mortality of disability cases and no accurate estimates of the costs of disability benefits can be made. It is also very difficult to frame a definition of disability that will permit proper control of claims. There will always be confusion and misunderstanding about the difference between total disability for any employment and inability to continue in a customary occupation. It is unsound, therefore, to attempt to finance such benefits as part of a regular retirement plan. The most that should be done is to provide that at some prescribed age and after some substantial period of service, disabled employees may retire, as others may voluntarily, on an actuarially reduced pension, but the actuarial reduction for early retirements is so great that this does not really solve the problem. Nevertheless, to protect the retirement plan, any special provision for disability benefits should be financed separately and perhaps on a current cost basis.

Avoidance of Package Plans

There has been some tendency toward the adoption of so-called "package plans" in which provision is made for various benefits to cover different contingencies—death, sickness, accidents, disability, medical and surgical expense, hospitalization, old age, etc. Such combinations have a popular appeal as providing in one program well rounded and comprehensive protection, but such "tie-in sales" have serious disadvantages. They may arouse resentment among those employees who want some types of coverage which they can get only by accepting also others which they do not want or for which they have already made separate provision. They make changes in any one part of the total plan more difficult. This aspect has become more important under compulsory collective bargaining, since a proposal to effect a minor change in, say, group life insurance, might open up the whole contract and entail negotiations not only with the unions but with the insurance company about pensions and other parts of the program. Furthermore, costs of different types of benefits can be estimated only with varying degrees of accuracy. Each should, therefore, be financed separately to permit any necessary adjustments to changed conditions. A company benefit program should, of course, be as comprehensive as possible and regarded in some degree as a unit, but financial safety requires and the need for flexibility suggests that each element in the program be established on its own basis as a separate plan. Management should keep in mind the need for covering all hazards and in negotiations about pensions or any other specific benefit program should make no financial commitment that would bar the possibility of developing a balanced security program.

Plan Administration

Until union demands for health and welfare funds became common it was usually taken for granted that management would administer the pension or other benefit plans financed wholly or in part from company funds. The situation has somewhat changed by reason of the fact that the Taft-Hartley Act in prohibiting employer-financed but union-administered funds gave joint administration the stamp of official approval.

After the preliminary determinations of prior service and earnings, etc., have been made, insured pension plans require little day-to-day administration beyond the collection of contributions, remittance to the insurance company and notice to the insurance company of the occurrence of specified contingencies. Unions are less likely to press demands for a share in the administration of plans of this type.

Trusteed plans require more continuous day-to-day administration in such matters as the handling of the trust investments or the payment of persions, the purchase of annuities when claims mature, and the periodic actuarial re-evaluation of the plan. It is here that unions are most likely to demand a share in administration. If the trust is carefully drawn and a bank or trust company is selected as the custodian trustee, there can be little serious objection to employee representation on an advisory committee to the trustee or on any other administrative committee that it may be necessary to establish. But such representation should be of participating employees not of the unions as such, nor of union employees only. Large multi-unit companies may find that the practical difficulty of selecting representatives of all unions and all classes of employees, while keeping committees to a reasonable size, in itself proves a sufficiently convincing argument with which to meet insistence on union or employee representation in administration.

Demands for union representation in administration become serious when they express the union's objective of getting almost exclusive control of the plan or fund, as may well be the case in the bituminous coal industry. Requests of this type should be resisted to the bitter end. Pension plans should be designed to make their administration as far as possible a matter of routine and management should never concede anything beyond joint management-employee administration of any plan financed in whole or part by the employer.

Special care should be taken to avoid careless drafting or apparently harmless initial concessions that would permit any plan to become a union instrument operated for union purposes rather than for the benefit of all employees.

CONCLUSIONS AND RECOMMENDATIONS

The foregoing discussion can be summarized as follows:

1. Despite their varying circumstances, managements should expect pension demands that involve substantial costs.

2. Union pressure for pension plans can be reduced if companies take the initiative in supporting current proposals to provide more adequate benefits under the Social Security Act.

3. Managements should maintain the essential distinction between wages and benefit programs and should seek to keep negotiations about each separate from negotiations about the other.

4. Managements should fortify themselves with estimates of pension costs without waiting for formal demands from unions.

5. The initiative in developing new or improved plans should not be surrendered, just because of the requirement to bargain collectively about them.

6. Managements should avoid temporary patchwork concessions.

7. Since collective bargaining in good faith does not necessarily involve the making of concessions, a company cannot necessarily be forced to change an existing pension plan but can be required to incorporate it in an agreement by reference.

8. Managements should seek to secure agreement that pension and retirement questions do not constitute arbitrable grievances.

9. The right to make minor administrative changes in the pension plan should if possible be reserved to management.

10. Managements must be prepared for hard bargaining on a factual basis, must be resolved to yield no concession violating the sound principles of pension policy, and should seek to limit negotiations to broad matters of policy and costs.

11. A special effort should be made to educate employees in matters of pension policy and costs.

12. In accordance with the generally accepted principles of sound pension planning, management should seek to establish and maintain the following plan provisions:

a. Provisions for funding—making no temporary concession of a self-administered plan financed out of current expenses,

b. Coverage for all employees under a single plan—resisting any demand for its limitation to union members and being prepared to install a new plan or any plan improvement, subject to Treasury approval, only for employees not covered by collective agreements, if agreement cannot be reached on its application to organized employees,

c. Contributions by employees—being ready to negotiate how the company and the employees shall share the cost,

d. Provision for voluntary initial participation,

e. No voluntary withdrawal after participation except on termination of employment—conceding no more than provision for temporary suspension of contributions in certain circumstances,

f. Vested rights in some part of the employee's contributions—rejecting demands that employees be permitted to withdraw in cash upon termination of employment their vested share of the employer's contribution,

g. Benefits related to earnings and length of service, and reasonably adequate for normal times—resisting demands for pensions of flat amounts,

h. Compulsory retirement at fixed ages—resisting the demand to make every retirement a matter of joint negotiation,

i. Provision for an actuarily reduced pension on retirement for disability—leaving more adequate provision for disability benefits for a separate plan or policy,

j. Separate benefit plans rather than package plans,

k. Administration largely as a matter of routine, to minimize demands for union participation—conceding, if necessary, representation of all participating employees on joint advisory committees so far as practicable.