

Discrimination in seniority system

Among the many gains won by U.S. labor's big offensive in the 1930s was the all important seniority right. Hammered into virtually every union-management contract for the last four decades, the provision has assured that when layoffs were to be made, the decision as to who to fire was out of the hands of the employer.

Much as he might like to get rid of militant workers or older wage-slaves whose pace had slowed, he was bound by the seemingly just rule: "last hired, first fired."

But recent massive layoffs in nearly every industry, coupled with the rising consciousness and militance of women and oppressed nationalities are now leading to challenges against some discriminatory aspects of the seniority system.

The "last hired, first fired" provision must be modified, it is being said, so that it does not act to help perpetuate capitalism's inherent use of women and minorities as a reserve army of labor.

Whether to modify seniority rules and how to do it is a debate now raging among workers, in the courts where contradictory rulings have been handed down, among unions and employers who have generally united in opposition to changing seniority rules.

In some ways, the debate is a replay of the arguments that have risen in the last 10 years as women and minority workers pressed companies to implement "affirmative action" plans, and took employers to court if they didn't.

While most union bureaucrats cried "reverse discrimination" if companies hired women and minorities over supposedly "more qualified" white males, most workers, particularly women and minorities, agreed that modification of general hiring procedures was necessary in order to correct -- to however slight a degree -- some longstanding wrongs.

Out of the struggle, the Labor Department, the Civil Rights Office, the Equal Employment Opportunity Commission (EEOC) and the courts were forced to draw up sets of guidelines and rules for preferential hiring, upgrading, training and transfer of women and minority workers.

As a result of the current economic crisis, these same institutions are now being forced to consider modification of "affirmative action" in a hitherto untouched area: layoffs.

The debate on "preferential layoffs," which has only recently begun, is a result of suits filed by fired minority and women workers. Four suits filed to date have brought about contradictory rulings.

Black workers in Harvey,

La., filed the first such suit. In 1971 the Continental Can Co. hired 400 workers including 50 Blacks. Recently, however, the company fired all but 151 workers, among whom are only two Afro-Americans.

The fired Black workers took their case to court, where Federal District Court Judge Fred Cassibry ruled that the seniority-based layoffs were illegal. He ruled that they penalized the Blacks for their low seniority when the company was at fault because of its past refusal to hire Blacks. He ordered reinstatement and back pay for seven Blacks according to a formula that would maintain their steady percentage representation in the work force.

Cassibry also prohibited the company from firing any more workers during the reinstatement and ordered a kind of shared-work plan. He required that "Available work shall be allocated among the entire workforce, including the persons reinstated, until normal attrition or expansion of production brings the size of the workforce to its most efficient level." Both the company and the union, Local 2369 of the United Steelworkers, are appealing the ruling.

Another suit, filed in Wisconsin was settled in short shrift in favor of the status quo. In a case involving the Wisconsin Steel Works of International Harvester Co. and the Bricklayers union, the Seventh Circuit Court ruled last August that the seniority system "is not of itself racially discriminatory."

To change this system, the court said, "would be tantamount to shackling white employees with a burden of a past discrimination created not by them but by their employer." The ruling said in effect there is nothing that can be done to remedy discrimination.

A third suit now getting wide publicity also involves Black workers. In September the Jersey Central Power & Light Company wanted to lay off 400 workers, most of whom would be Black if the seniority clause was adhered to. The company asked a federal court to decide which of two contracts took precedence: the one with seven locals of the International Brotherhood of Electrical Workers, with its seniority clause; or the one signed with the EEOC last December in which the utility was forced to hire up to 15 percent minorities and women in its total workforce.

Avoiding the question of whether the union contract was discriminatory, the judge told the company "to work something out" so as not to "frustrate" the contract with the EEOC. Again, the union sided with the company, and the U.S. Circuit Court of Appeals in

Philadelphia was scheduled to hear the case last week.

One of the most explosive suits was filed recently against the General Motors plant in Fremont, California. When the company fired 1500 workers including 500 women (nearly every woman in the plant) last March, the women went to federal court.

The women declared in a leaflet they passed out at the plant: "We are basing our

suit on the fact that no women were hired at the Fremont plant until 1968. We feel that this was in violation of the 1964 Civil Rights Act. We don't think we should have to suffer for GM's failure to hire women when they should have."

The women claim they were thus illegally deprived of the possibility of gaining nearly four additional years of seniority.

The women suggested a shared-work program such as reduced workday for all the workers: "We want GM to implement their affirmative action program even during a period when people are laid off," they said. "But we are making it clear that no men should be laid off in order to keep women in the plant. There's plenty of work for everyone."

Another solution to layoffs in the auto industry was recently implemented at the Ford plant in New Jersey, according to Jeff Washington of the United Auto Workers manpower training department. Taking account of the relatively high layoff benefits (95 percent of regular salary) paid to long-time auto workers, the plant agreed to a short-term plan to fire by inverse seniority.

Charlotte Casey, one of the GM plaintiffs, touched on the heart of the layoff controversy when she said: "Without special measures, workers who have suffered discrimination in hiring won't even have the chance to 'gradually' gain seniority because they are always the first to be laid off.



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made to learn real work skills rather than to become fixated at the crafts level.

The Dartmouth Children's Centre, albeit an institution, also has a great deal to recommend it. It's bright, cheerful and competently staffed and the children, many with physical problems are given a lot of stimulus.

The Developmental Day Care Centre, operated by the Dartmouth CAMR is an excellent facility too. Here little children have a tremendous opportunity to acquire developmental skills.

There are also sour notes. In Halifax, the Abbie Lane Hospital, a psychiatric facility, is only half full. On the current list of people who are eligible for immediate release

are, there are seventy-seven individuals who are classified as either congenitally or functionally retarded. This is a loaded piece of information on several counts. To begin with, mental retardation and mental illness are two separate and different conditions that ought not to be confused. When people who have them are mixed in together, there is an overwhelming probability that the mentally ill are treated as retarded, the retarded are treated as mentally ill and nobody is treated properly. Secondly, retarded individuals don't belong in hospitals at all (except in cases of medical complications) and certainly not in mental hospitals. Thirdly, those who are now classed as functionally retarded have, by the definition of that term, normal intelligence which has been stultified as a result if the environment to such a

Charitable groups, including the CAMR, will have to get their shit together and get mean. Soliciting small donations by mailing out marigold seeds comes nowhere near a solution. Neither does TV bingo when its advertised the way it has been. The parents and teachers of the retarded should start to infiltrate the association and lobby for the degree that the mind can no longer function at its normal level. Lastly and most saddening of all is the fact that none of these 77 people eligible for immediate release has any place to go. In time they will probably be transferred to Homes for the Disabled (where they don't belong) or to other mental hospitals (where they don't belong) or maybe they'll just die waiting.

The Nova Scotia Hospital is another case of the same type. Mentally retarded people shouldn't be there, but there's no place for them to go. In all fairness to these institutions, the treatment given by staff is not under fire, nor are their decent and valiant attempts to provide stimulus within the institutional environment. What is tragic is the principle that the handicapped and the disabled in our society are misfiled and forgotten.

There is work to be done at all levels of the problem. The government must one day admit that, in addition to cost benefit, smaller and more specialized facilities are better equipped to serve the needs and respect the rights of the handicapped. This will do a lot less to grease the palm of the building contractor but it will greatly enhance the quality of life for the presently disadvantaged.

governmental concessions that belong to the retarded by right, not by privilege as much as we all like cute old ladies, its time for them to give up as martyrs and take on the role of militants.

College kids, if they'd get involved, could do wonders but don't expect to cut any ice with CAMR because it's a tight clique and they don't take anyone seriously who isn't at least forty and fraying at the seams. It's pretty hard, after all, to give up all the adoration you get for being noble and humane enough to work with "Them." ("Them" is a common name for the retarded.) If a person were working to make "Them" independent, he/she'd be at cross-purposes with the custodial humanitarian so bear that in mind. Still, if you are the patient type, try offering to do volunteer work in one of the facilities or join the local branch of the CAMR (they meet once a month at the Newman Centre) and try to affect some change from within.

Mental retardation is a massive field and can't be covered in a few paragraphs. Direct relationship with retarded individuals haven't even been touched here. For a moving and personal account of a sister/brother relationship, try reading the article in the last issue of *Chatelaine*. The attitudes and events described by the writer are touching, real and honest.

If you want technical information, the definitive work on the subject is called: **Normalization in the Human Services** by Dr. Wolf Wolfensberger. The provincial office of the C.A.M.R., located at 2070 Windsor Street also has printed information.