AN ANALYSIS OF THE SCOPE OF MANAGEMENT RIGHTS IN LABOR CONTRACTS

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Dean of the School of Graduate Studies
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CHAPTER I

INTRODUCTION

The dynamic nature of modern collective bargaining produces many controversial issues. One of the outstanding conflicts is the question of management rights or management prerogatives. As the scope of collective bargaining continues to expand, the task of defining what is or is not bargainable (or what is a management right) has become increasingly difficult. In view of recent decisions by the courts and arbitrators there is a need to re-examine the status of management rights. The scope of the analysis will be limited to an evaluation of management rights as evidenced by arbitration awards and the National Labor Relations Board's abstention versus intervention policy.

To date the prevailing approach to postcontractual labor-management relations in the United States has been the residual rights doctrine. Under this doctrine an employer retains all rights to manage except for those specifically modified by the collective bargaining agreement. Management does not look to the collective agreement to ascertain rights but only to ascertain the extent to which rights and powers have been modified. Management is limited by the contract not to the contract. That is, management has the authority to proceed if the right hasn't been modified in
the collective bargaining agreement.

While management's rights are only limited by the contents of the collective bargaining agreement there has not been an adequate definition of the scope of management rights. Unions have been unwilling to agree on any listing of specific management functions as this would limit their bargaining power. Management desires to maintain rights not only as owner and employer, but more importantly to function as the coordinating force that operates an enterprise. Unions consider management rights as obstacles to their own freedom of action in the attempt to attain a better bargaining position. The collective bargaining agreement must be reached by a two way statement of rights and obligations.

In recent years Congress, the National Labor Relations Board, and the courts have given increased attention to the subject matter of collective bargaining. Under Section 8 (a) (5) of the National Labor Relations Act it is an unfair labor practice for an employer to refuse to bargain collectively on rates of pay, wages, hours of employment or any other conditions of employment. This duty does not compel either party to agree to a proposal or require the making of a concession, it does require that neither party

\footnote{National Labor Relations Act (Wagner Act), United States Statutes at Large, 49 Stat. 452 (1935).}
take unilateral action until an impasse has been reached in the negotiations. The National Labor Relations Board's influence on management rights has been particularly significant in evaluating its abstention versus intervention policies. Section 10 (a) of the Labor Management Relations Act empowers the National Labor Relations Board to act in any unfair labor practice regardless of the existence of private arrangements for resolution by arbitration. Under the National Labor Relations Board's decisions governing Section 10 (a) of the Labor Management Relations Act the parties are free to limit their bargaining or extend it as they see fit since the Board seldom intervenes except at the request of one of the parties. The Board will then decide whether intervention is desirable or required and will act according to this judgment.

The following group of definitions contains terms that will clarify the discussion of the scope of management rights.

**Residual rights.** Residual rights are the rights of management not specifically modified or ceded by the collective bargaining agreement.

**Mercantilism.** Mercantilism is the economic system that grew out of the dark ages when exports were stressed and imports severely restricted in an attempt to maintain a
favorable balance of trade.

**Laissez faire.** Laissez faire is the economic system promoting individualism and the idea that the Government should keep its hands off the economy of a country.

**Yellow-dog contract.** A yellow-dog contract is an employment agreement, oral or written, providing that, as a condition of employment, an employee will not become or remain a union member. This was ruled illegal under the Norris-LaGuardia Act.

**Management rights or prerogatives.** Management rights or management prerogatives are the rights and powers essential to operation of a business such as hiring, production methods and the like, which management claims are outside the scope of collective bargaining and over which management maintains authority and responsibility.

**Arbitration.** Arbitration is the settlement of a dispute between an employer and a union or between an employer and employees or between rival unions, by an impartial third party whose decision on the dispute is final and binding.

**Award.** The award is the written decision of an arbitrator or arbitration board on disputes submitted to them for settlement.
Grievance. A grievance is an employee's or employer's dissatisfaction with some aspect of the employment relationship. It may or may not be limited to dissatisfaction due to interpretation and application of the contract.

Seniority. Seniority is the rights and privileges that employees gain over other employees because of length of service.

Subcontracting. Subcontracting is a system in which all or part of the product or the work to be done is sublet to a contractor.

Layoff. A layoff is the temporary termination of employment because of lack of work. This sometimes refers to a suspension for disciplinary reasons.

Job classification. A job classification is a grouping of jobs on some specified basis such as kind of work or pay. It can refer to a grouping by any selected characteristic, but is used most often in connection with pay and job evaluation.

National Labor Relations Board. The National Labor Relations Board is the agency established under the National Labor Relations Act to determine collective bargaining representation and to prevent unfair labor practices.

The sources of data for this paper are major periodi-
cals in the Industrial Relations field including Labor Law Journals, Industrial and Labor Relation Reviews, and monthly labor publications. Books that concern the study of management rights and union interest are another major source of information.

The procedure of this thesis will include: (1) the historical position of management rights, (2) the scope of management rights as influenced by arbitration awards and the National Labor Relations Board's abstention versus intervention policy.
CHAPTER II

THE HISTORICAL POSITION OF MANAGEMENT RIGHTS

The primary source of American judicial heritage is English common law. It was a natural and logical extension of English custom and tradition for the Colonists to adopt and develop the common law as a system of industrial jurisprudence. The doctrines of English common law which were most important in the development of the American branch of the common law were restraint of trade, monopoly, combinations and conspiracy. From these beginnings we have developed the basis of our present philosophy of management rights and labor relations.

Under the feudal system the master-servant relationship was strictly defined by custom or statute. The working class had no choice except to obey the laws of the guild which were strictly enforced. This control of wages and working conditions by guilds was first challenged after the Black Death when artisans tried to take advantage of a scarcity of labor and demand higher wages for their services. Their efforts were stifled by the passage of the Statute of Laborers in 1351 in a Parliament controlled by the employers. The Statute of Laborers required every man under sixty years of age to work and held wages at the point they had occupied before the plague.
The Elizabethan Statute of Apprentices was a comprehensive labor code. Its adoption in 1562, in effect, "established a system of national regulation of industry." Provisions of the law included the requirement of seven years of apprenticeship before an artisan could practice a craft. It gave Justices of the Peace the power to settle disputes and to fix wages. These provisions of the act were in accord with the economic philosophy of mercantilism that was predominant in the country at that time. Mercantilism is the philosophy of economic unity, the internal phase of which provides for careful regulation of most conditions of employment.

The doctrine of conspiracy in its early beginnings was broadly applied and not confined to labor combinations alone. The doctrine of conspiracy was based upon the idea that group action would affect society more than if each person would commit the same act as an individual. The Bill of Conspiracies and Craftsmen in 1548 was one of the first

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2 Under mercantilism rulers could get needed money for government only by engaging in profitable commerce and industry or by encouraging people to do so and taxing them. Unemployment would reduce these sources of revenue.

3 The doctrine of conspiracy is often referred to as the catchbag of the common law.
statutes concerning conspiracy as related to labor. It was followed by a 1720 law which regulated the wages and hours of the trade in reaction to a combination formed to advance wages. The culmination of these actions was the Combination Acts of 1799 and 1800. These Acts coordinated and condensed the common and statute law that had developed in the earlier centuries concerning labor and the doctrine of conspiracy.

During the last part of the eighteenth century the philosophy of *laissez faire* became the dominant economic philosophy. This philosophy of natural regulation gave rise to the Combination Act of 1825 which repealed the Combination Acts of 1799 and 1800. The Combination Act of 1825 provided that laborers who combined were not subject to punishment by conspiracy. This resulted in numerous strikes and the Combination Act of 1825 was repealed.

It was not until the Conspiracy and Protection Act of 1875 that the threat of criminal conspiracy was removed from labor unions. However, legal decisions held that the individual union members and the unions could be held civilly liable for damages of their illegal act.¹

In the United States the doctrine of conspiracy was first applied to a group of journeymen shoemakers who had

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combined to raise wages in 1806. Several similar cases were reviewed in the following decade with the same result. In 1842 the Supreme Judicial Court of Massachusetts, in the landmark case, Commonwealth v. Hunt, ruled, "that it was not a crime for workers to join together into a union even though one of their purposes was to refuse to work for employers hiring non-member help." This ruling initiated the decline of the doctrine of criminal conspiracy as applied to labor relations in the state of Massachusetts. It was gradually adopted by the other states. By the middle of the nineteenth century the American courts had generally abandoned the idea that workers are guilty of criminal conspiracy if they had combined and struck for higher wages.

The second doctrine of English common law that has had an influence upon the United States is the doctrine of restraint of trade. This doctrine is derived from the idea that contracts or agreements may be illegal if they restrain trade or create a monopoly. The result is that combinations in restraint of trade were made unenforceable:

\[1\] Yoder, op. cit., Sec. 1023.

\[2\] People v. Fisher, 14 Wendell (N. Y.) 9 (1835).

\[3\] Commonwealth v. Hunt, 4 Metcalf (45 Mass.) 111 (1842).

\[4\] Restraint in this instance is defined as contracts which restrict the implied rights of third parties to engage in trade without interference.
It (the law) does not prohibit the making of such contracts; it merely declines, after they have been made, to recognize their validity. The law considers the disadvantage so imposed upon the contract a sufficient shelter to the public.1

The application of this doctrine is in accord with the laissez faire philosophy. The original doctrine of restraint of trade has been expanded to include agreements or combinations that would restrain trade by restricting the right of contract and/or creating a monopoly.

In all restraints of trade, where nothing more appears, the law presumes them bad; but if the circumstances are set forth, that presumption is excluded, and the Court is to judge of those circumstances, and determine accordingly; and if upon them it appears to be a just and honest contract, it ought to be maintained.2

Eventually the doctrine was applied to labor unions.

The restraint of trade doctrine was embodied in the Sherman Anti-trust Act of 1890.3 This Act applied the doctrine of restraint of trade to interstate and foreign commerce. A major controversy arose concerning the question of whether or not the activities of labor unions were included

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3Sherman Anti-trust Act, United States Statutes at Large, 26 Stat. 209 (1890).
in the Sherman Act. 1 The significance of the Danbury Hatters case of 1908 was that the Supreme Court took the position that the Sherman Act applied to labor and that suits for damages might be brought against individual union members. 2 Two other cases sharpened the union's fear of the anti-trust laws. In 1907 the Iron Moulders boycotted a non-union stove company. The company obtained an injunction against the union, and when it was not obeyed three union officials were imprisoned. 3 An attempt to organize mines in West Virginia was also stifled because the combination was seen as "clearly a common-law conspiracy, too far reaching to be reasonable, in restraint of trade, and a direct violation of the Sherman Anti-trust law." 4

The Duplex case, Bucks Stove case, and Hitchman Coal case all encouraged the labor injunction and the application of the anti-trust laws to be heated issues in the 1912 election. The disenchantment by organized labor of the overall

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1 Evidence indicates Congress intended to exempt unions but failed to enact the necessary language. To do so, however, may have been of no affect in view of the interpretation of restraint of trade by the Federal Courts.

2 Loewe v. Lawlor (Danbury Hatters), 208 U.S. 274 (1908).


enforcement of the Sherman Act coupled with the Supreme Court's decision in the Danbury Hatters case encouraged the enactment of the Clayton Act of 1914. The Clayton Act although not amending the Sherman Act was intended to clarify the interpretation and enforcement of the law. It allowed private parties to secure injunctions against continued violations of the Sherman Act, regulation of the issuance of labor injunctions (Sec. 20) and to state the position of organized labor to the Sherman Act (Sec. 6). ¹

Labor leaders were enthusiastic about the Clayton Act with Samuel Gompers, then president of the American Federation of Labor, referring to it as the Magna Charta of labor. Labor leaders were of the opinion that unions were no longer subject to the Sherman Act. They felt that labor organizations would not run the danger of being classed as combinations in restraint of trade. ²

The optimism of labor over their new "Magna Charta" was short-lived since the Act was soon subjected to the scrutiny of the Federal Courts. ³ The Sherman Act had per-

¹The Clayton Act, United States Statutes at Large, 38 Stat. 730 (1914).
²Yoder, op. cit., Sec. 1043.
mitted, in addition to criminal prosecution and treble damages, only injunctions obtained at the request of the government. But Section 16 of the Clayton Act permitted injunctions to be obtained by private parties, permitting employers their favorite weapon. The result of the Duplex case established that the legal position of union activities under the Sherman Act had not been changed by the passage of the Clayton Act. The decision established that the employer's business is a property right and may be protected by an injunction. This injunction is limited solely to disputes between employers and his employees. Furthermore, a labor organization becomes an illegal combination in restraint of trade if and when it departs from lawful objects or acts. ¹

Labor was left with few of the gains it had hoped for when the Clayton Act was first placed upon the statute books.

The majority of the Federal and State legislation that was enacted to restrict management rights was in the direct interest of the public. These restrictions are found in laws relating to minimum wages and maximum hours, child labor, health and safety, workmen's compensation, unemployment insurance, yellow-dog contracts and fair employment practices. Of this legislation the most direct restriction upon management rights came about through the Railway Labor Act.


The Railway Labor Act of 1926 as amended in 1934 accepted the basic premise of the employees' right to organize and bargain collectively with set penalties for violations of the act. The law holds carriers and employees criminally liable for violating sections of the law relating to: (1) selection of representatives, (2) employees' right to organize and bargain through representatives, (3) prohibition against yellow-dog contracts, (4) duty to give notice of contract changes, and (5) duty to post required notices. ¹

Other provisions provided that representation disputes were to be settled by the National Mediation Board without employer interference. It also created the National Railway Adjustment Board to settle contract interpretation disputes. The amendment set the pattern for the National Labor Relations Acts.

The National Labor Relations Act of 1935 (Wagner Act) encouraged collective bargaining and set the stage for the over-all restriction of management rights. The Act stated:

Employees shall have the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of

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¹ Railway Labor Act, United States Statutes at Large, 44 Stat. 577 (1926).

their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.\(^1\)

The Wagner Act set up the National Labor Relations Board to administrate the provisions of the act in individual cases. It provided positive protection for employee self-organization against employer interference\(^2\) and made it an unfair labor practice for an employer to refuse to bargain collectively with the duly authorized representatives of his employees.\(^3\)

When Congress passed the Wagner Act in 1935, it established the foundation for a national labor policy. It avoided setting rates of pay and other details of employment. It instead aimed to equalize bargaining power and to leave labor and management free to agree on terms of the process of collective bargaining.

When Congress amended the National Labor Relations Act in 1947 many lawmakers and citizens believed that limitations and regulations of collective bargaining subjects were necessary. Labor was no longer the underdog. The public was disenchanted with strikes and rising prices. Congress felt the Wagner Act had been one-sided, that it

\(^1\)National Labor Relations Act, op. cit., Sec. 7.
\(^2\)Ibid.
\(^3\)Ibid., Sec. 8 (5).
favored labor and put all the penalties upon the employer. 1

At the end of World War II President Truman called a National Labor-Management Conference at which employers and union leaders tried to draft a statement of principles defining management's "right to manage." 2 The employers proposed to exclude a large number of subjects from collective bargaining including, among many others, products manufactured, location of plants, plant layout, method of production, distribution, financial policies, prices, job duties, size of work force, work assignment, production standards, number of shifts, and maintenance of discipline.

The unions replied that while they agreed that the functions and responsibilities of management must be preserved, "they consider it unwise to build a fence around the rights and responsibilities of each party." 3 To make such a sharp division would create "much unnecessary strife," as each side would be tempted to invade the other's domain.

In 1947 the National Labor Relations Act was amended by the Taft-Hartley Act. The original National Labor Relations Act contained a finding that industrial strife was

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2 Ibid., p. 85.
3 Ibid.
4 Ibid.
traceable to the denial of employee rights by employers. The Act as amended incorporates an additional finding that such strife is in part caused by certain undesirable practices by labor unions. The original Act provided for only employer unfair labor practices; the amended Act provides for union unfair labor practices. The Act includes provisions which bar the closed shop, define unfair labor practices, expand the National Labor Relations Board from three to five members, rules secondary boycotts and jurisdictional strikes as illegal, and provide for an eighty-day Government injunction under certain circumstances. The Act provides that employers must bargain with the appropriate employee representatives\(^1\) and that employee representatives are under a similar obligation to bargain.\(^2\)

Section 8 (d) of the Labor-Management Relations Act provides, in part, that:

\[\ldots\] to bargain collectively is the performance of the mutual obligation of the employer and the representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.\ldots\]^3

\(^1\)Labor-Management Relations Act (Taft-Hartley Act), United States Statutes at Large, 61 Stat. 136 Sec. 8 (a) (5), (1947).

\(^2\)Ibid., Sec. 8 (b) (3).

\(^3\)Ibid., Sec. 8 (d).
The duty is to bargain upon request. 1

Section 8 (d) also provides that there is no duty to bargain about proposals to make changes in the collective agreement that would take effect during the term of the contract. Nor is the employer required to bargain during the term of the contract on any subject which was discussed in pre-contract negotiations but not included in the contract. This clause has since been conditioned in the Jacobs Manufacturing Company case. The Board held that "Those bargainable issues which are in no way treated in the contract, remain matters which both the union and the employer are obliged to discuss at any time." This decision was affirmed by the Federal Court of Appeals.

The duty to bargain in good faith does not mean that agreement must be reached. Where bargaining fails to produce agreement upon a matter, management is privileged to take unilateral action. This was emphasized by the United States Court of Appeals, Sixth Circuit, in the "Nichols" case, wherein the court spoke in terms of residual rights of common law:


2 Union Carbide and Carbon Corp., 100 NLRB 689, 690-91 (1952).

The Labor Management Relations Act in defining the phrase to bargain collectively expressly provides... but such obligation does not compel either party to agree to a proposal or require the making of a concession... It would seem to logically follow that the common law right on the part of the employer to select his employees and to terminate their employment at will continues to exist except to the extent that it may be modified by the bargaining contract with the union... Instead of making this right dependent upon a provision to that effect in the contract, it is a right which an employer normally has unless it has been eliminated or modified by the contract.¹

The National Labor Relations Act of 1935 and 1947 had set the stage for the overall restriction of management rights, the task of defining management's right to manage was left unanswered. Employers are required to bargain in good faith and some have attempted to retain the right to make decisions and enforce policies by insisting upon a so-called management rights clause.² Such a clause includes: the issuing of rules and regulations, causes for discharges, promotion, transfer, demotion of employees, and contracting work to other companies. These provisions include the two categories of management which have been most affected by union programs, personnel and production. Although management usually sees in the rights clauses a declaration of

their existing or residual rights, the student of labor does not consider them to be a resolution of the problem. Residual rights must be exercised in a manner consistent with other provisions of the agreement.¹

Under the common law applicable to the relationship between an employer and his employees, an employer may operate his establishment as he chooses, except where his common law rights have been limited by such statutes as the National Labor Relations Act, the Clayton Act, state laws, and other applicable laws. Restrictions are further superimposed on the employer's rights by collective bargaining agreements. Hence all the employer's rights are not and cannot be recited in a collective bargaining agreement.²


CHAPTER III

THE SCOPE OF MANAGEMENT RIGHTS

Since 1930 there has been progressive challenges of subjects which were previously considered to be exclusively within the management domain. Topics which were once regarded as the rights or prerogatives of management have ceased to be so characterized. 1 The scope of management rights has been changing as evidenced by developments in arbitration and the policies of the National Labor Relations Board.

Impact of Arbitration upon Management Rights

"Sometimes belief is expressed that arbitration is a device by which a union may broaden its authority within an industrial enterprise." 2 Management rights may be lost through the use of wide open arbitration clauses under which the arbitrator is given authority to decide questions raised by the union concerning any matter. Warning is also given that management rights may be lost through ambiguities due to inept use of the English language which enables an arbi-


trator to interpret a clause in a manner not intended.¹

However, management rights may be protected through the arbitration provisions of an agreement.²

When a grievance is submitted to arbitration, there is some substitution of the arbitrator's judgment for that of the parties as he interprets the contract and issues a binding decision.³ "To the extent that his decision finds in favor of the union, whether in whole or in part, he becomes the instrument by which union power has been extended." One board of arbitration has explained the surrender of management prerogatives in interests arbitration as follows:

Each collective bargaining contract that is executed necessarily entails a reduction in management's prerogatives and a corresponding reduction in its freedom of absolute action. Thus when management agrees with a union to pay a stipulated wage, it, in effect, surrenders its 'prerogative' to determine its employees' wages by unilateral action.

Such surrender of 'prerogative' is even more pronounced when management agrees to arbitrate a dispute. An agreement to arbitrate constitutes a complete surrender of a company's right to determine the con-


³Elkouri, op. cit., p. 298.

troversy by unilateral action or voluntary agreement or by a test of economic strength. It likewise constitutes a complete surrender of the union's right to test its contentions by a show of economic strength.¹

Management clauses give the employer certain rights or prerogatives. These rights are subject to interpretation and the labor-management parties have turned to arbitrators for answers. It is through arbitration cases that the scope of management rights is best indicated.²

Arbitration awards are divided into two categories. One type involves the interpretation and application of management rights clauses which specify in detail the reserved rights. When certain powers are specified in a management clause, the parties have bargained and reached agreement, but what is their bargain? What is the scope of management's prerogatives under the adopted provision?

The second type of awards involves agreements which contain no management rights clause or contain a general clause reserving to management all rights not contracted away. The responsibility of the arbitrator in this type of case is to rule as to what management can do and how far it

¹Ibid.

can go under the so-called "residual" powers.1

Control of operations methods. Only rarely do collective agreements restrict management in the determination of methods of operation, and as a usual rule arbitrators appear to take the view that it is the exclusive right of management to make such determination. Unless restricted by contract, as Arbitrator Jacob E. Courshon has stated, it is management's "prerogative to determine what is to be produced, when it is to be produced, and how it is to be produced."2 Management must have some discretion as to the method of carrying on its operations. Arbitrator Marshall has stated that the primary function of management is to operate on the most efficient basis.3

In the operation of any plant, management has a fixed obligation to see that unnecessary costs are dispensed with and that production programs are changed to meet changing production demands. This right is an inherent right and is recognized by all unions as such.4

A statement regarding the prerogative of management to determine methods of operation was made by Arbitrator Whitley P. McCoy, who, in considering an employer's unilat-

2Torrington Co., 1 LA 35, 42 (1945).
eral change in a method of operation, said:

The decision as to whether or not to run a particular operation as continuous is a function of management... just as much so as the decision whether or not to replace an old machine involving simple operations requiring ten men with a new labor-saving and more complicated machine requiring only five men. Such changes are not the sort of changes in working conditions as require negotiation. As long as such decisions are made in good faith, in the interest of efficiency of operation, and do not involve the imposing on employees of conditions different from those already existing with respect to other employees on similar machines or operations, no injustice is done the employees. No employee has a vested right that would preclude the company from changing the method. If the new machine or the new method on the old results in too heavy a work load, too low pay, or any other hardship, the employee has his remedy in the grievance machinery. But he does not have the right to delay the exercise of managerial functions by insisting on prior negotiations.¹

The right of management to determine the types of machinery and equipment to be used and to determine the processes of manufacture may be stated specifically in the agreement. This right also might be included in a clause reserving the right of general management of the plant to the employer.² It has been held that even if such right is not specified in the agreement, it can be exercised as a residual management power except as it has been restricted

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¹Goodyear Tire and Rubber Co. of Ala., 6 LA 681, 687 (1947).
by the agreement.

It has been suggested that the exercise of this management function serves to protect the interests of the employees as well as of the employer, for if the employer is permitted to operate new machinery "his competitive position will be enhanced, improving his chance to win new business and thereby to provide greater employment."^2

Changes in operation methods which are largely left within the discretion of management, often necessitate adjustments in wage rates. While the employer has wide discretion in determining operations methods, he is restricted in the determination of wage rates for new or changed processes.

The authority initially to determine the job rate for a new or altered job may be given to management by the agreement. If the agreement does not give the employer the right initially to set the new rate, an arbitrator may require him to bargain before setting a rate. Arbitrator Henry H. Platt speaking as chairman of an arbitration board ruled that under an agreement recognizing the union "as the sole collective bargaining agency for the employees of the company"^3 and in the light of the continuing legal duty of

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^1 Ibid., p. 539.  
^2 Ibid.  
^3 Copco Steel and Engineering Co., 6 LA 156, 164 (1947).
the employer to bargain during the entire life of the contract, the employer could not unilaterally establish the rate for a new job.\(^1\)

Many disputes concerning rates for new or changed operating methods have reached arbitration. Arbitrators have recognized certain principles or standards to be considered in determining rates for new or changed operations. Whether wages are computed on a time or incentive basis, there is usually some informal determination of the output expected of employees. The expected production is called the work load or production standard and represents the amount of work expected to be done in a given time by the average operator under normal conditions.\(^2\)

The general rule in the case of employees who work by the hour is that an increase in hourly rates should accompany any material increase in the workload. Arbitrator Whitley P. McCoy has held that where the matter was not specifically covered by the contract and a change is made in job content, the job should be restudied to determine whether the original workload has been changed sufficiently to necessitate an adjustment in the wage rate.\(^3\) Arbitrator

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\(^1\) Ibid.

\(^2\) Glikouri, op. cit., pp. 307-308.

\(^3\) Goodyear Tire and Rubber Co. of Ala., op. cit., p. 925.
McCoy stated that it does not follow simply because work has been added to a job there must necessarily be an increase in pay, though presumptively there should be. Whether there should be an increase in pay depends upon whether the workload was too light and the increase does not make it too heavy or whether the load was proper and the increase is material and makes it too heavy.

Arbitrator Clarence M. Updegraff appears unwilling to give much weight to the factor of a previously light workload where the agreement provides that consideration shall be given to the adjustment of rates when the workload is materially increased. He has ruled that such a provision does not permit the employer to discount entirely a material increase in the workload on the ground that the previous workload was too light, but that this is one of the factors which without having a decisive effect, may be taken into consideration as limiting the increase to be granted.

Reduction of incentive rates has been allowed where the introduction of new machinery has resulted in increased production without requiring an increase in effort. Reduction of incentive rates has been ordered where employees

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1 Ibid.
3 *Jenkins Bros.*, 11 LA 432, 435 (1948).
controlled production on new machines at a very low level.\(^1\) It can be expected that no adjustment in incentive rates will be required as long as the change in the workload is slight.\(^2\)

**Control of quality standards.** Management has the right to exercise control over the standards or quality of its products since "a lowering in the degree of quality under a competitive market may have serious and disastrous results."\(^3\) Thus, management has the right to determine what work was faulty and whether it should be reworked or scrapped where the determination was made by men well qualified and experienced in all departments and where it was the employer's policy to resolve all doubts in favor of the employees.\(^4\)

The company may have a legitimate concern not only with respect to the sale of its product, but also with regard to its reputation and the safety of persons who use its product. In this connection the grievance of an employee who was discharged for faulty work was denied by Arbitrator Robert G. Howlett, who stated:

In such situations the manufacturing concern must

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\(^1\)Associated Shoe Industries of Southeastern Mass., Inc., *op. cit.*, pp. 538-539.


\(^4\)Ibid.
be in a position to protect its reputation and the quality of its product. A company's failure to do so would rebound to the detriment of all persons connected with the enterprise . . . owners, management and employees.¹

While management has wide freedom to control quality standards, the fairness of penalties imposed for faulty work may be closely scrutinized by arbitrators.²

**Job and classification control.** It is difficult to formulate neat or precise categories in the discussion of cases involving the right of management to establish, eliminate, or combine jobs or job classifications, or cases involving its right to transfer duties between jobs or between job classifications. This is likewise true of cases involving the right of management to assign duties and tasks to workers. This difficulty springs in part from the fact that the words "job" and "classification" at times are used synonymously and at other times are intended to carry different meanings.³

The right of managements to establish new jobs or job classifications may be specifically stated in the agreement, along with some provision for union challenge of management.

¹ Valley Steel Casting Co., 22 LA 520, 525 (1954).
ment's actions via the grievance procedure and arbitration. The right also has been recognized as being inherently vested in management where not expressly limited by the agreement, and it likewise might be included within the scope of a general management clause. ¹

Arbitrators often have held that unless restricted by the agreement it is the right of management to eliminate jobs where production justification exists, as long as they are not eliminated for the purpose of discrimination. ²

Selected decisions have also recognized management's right where not restricted by the agreement to eliminate job classifications done in good faith. Similar results have been reached where arbitrators have spoken in terms of combining jobs or job classifications. It has been held that management has the right, where not restricted by the agreement, to combine jobs or job classifications in determining methods of operation. ³

In one decision Arbitrator Wettach has recognized a distinction between "jobs" and "classifications" to prevent management from eliminating or combining classifications


while not preventing it from eliminating or combining jobs within classifications. In another such case, Arbitrator Whitley P. McCoy stated that, "Combining the duties of classifications recognized in the contract is a different thing from combining the duties or job content of various jobs, or abolishing those jobs."²

Management has been permitted to exercise much more discretion in assigning individual duties and tasks to workers than it is permitted to exercise in assigning workers to regular jobs. While the assignment of workers to regular jobs often requires the observance of contractual seniority, fitness and ability considerations, collective agreements less frequently contain direct restrictions upon the right of management to assign duties and tasks to workers.³

Management has been held to have considerable discretion in unusual situations to make temporary or emergency assignments of tasks across job or classification lines. Arbitrator James P. Miller has ruled that in case of emergency or breakdown it is reasonable for an employer to require maintenance employees with certain occupational

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¹Great Lakes Carbon Corp., 19 LA 797, 799 (1953).
²Esso Standard Oil Co., 19 LA 569, 571 (1952).
³Elkouri, op. cit., p. 319.
titles to assist employees with other occupational titles:

Many years of experience have proven to me that a plant maintenance crew is somewhat similar to the crew of a ship or a football team. Each member has a designated position or title and spends most of his team time attending to the duties and tasks associated with his designated position. However, when an emergency arises, they all respond as a crew and assist in getting the ship back on an even keel or as in the case of the football team, advancing the ball to the opposing team's goal line.¹

What Arbitrator Miller said in regard to maintenance employees would apply to all plant employees. For instance, an employer was held to be within his rights in assigning an emergency job which arose on a non-workday to the only two employees scheduled to work that day, despite the fact that the work did not fall within the duties of their job classifications. The arbitrator stated that management should have the right to meet unusual situations in this manner unless restricted from doing so by the agreement.²

Hiring of employees. Except as restricted by the collective agreement or by statutes prohibiting employer anti-union or other discriminatory practices, management retains the right to hire or not to hire. Contractual restrictions upon this right exist most often in seniority or union security provisions.

¹Youngstown Sheet and Tube Co., op. cit., p. 520.
²Thompson Mahogany Co., 5 LA 397, 399 (1946).
Specific restrictions on hiring contained in the seniority provisions of the collective agreement may be to the effect that the employer may not hire new employees to fill vacancies until the rehiring list of laid-off employees is exhausted,\(^1\) or that the employer must consider present employees for vacancies before hiring new workers.\(^2\)

Where the contract neither explicitly nor by strong implication restricted the right of management to hire new employees, one arbitration board refused to read a restriction into the contract. That board distinguished between the right to hire and the right to promote under a contract which did not specifically restrict management's right to hire but did require the observance of seniority in the event a promotion was made. The arbitrators stated that this "agreement to promote by seniority does not as such, exclude either explicitly or implicitly the right of the company not to promote but to hire."\(^3\) Other arbitrators, while not speaking in terms of the right to hire, did find a violation of the seniority provisions requiring preferential consideration of senior employees when the company failed to

\(^1\)San Francisco Chronicle, 21 LA 253 (1953).
\(^3\)Travelers Insurance Co., 18 LA 534, 535 (1953).
consider its employees for a vacancy and hired an outsider. ¹ By contrast a company conceded that its right to hire was qualified by the seniority clause, the company was nevertheless held not required to fill a job opening from present employees when none of them could perform the job without intensive training. It was permitted to hire an already qualified person. ²

Under contracts providing for union referrals in hiring but containing the requirement that referrals be satisfactory to management, arbitrators have allowed employers considerable discretion in rejecting union offered candidates. But it has been held that the employer must exercise good faith in reaching his decision. ³

Arbitrators have held that it is the prerogative of management to grant or deny reemployment to employees who have resigned voluntarily. ⁴ Also, where employees terminate their employment relationship by an unauthorized strike or are discharged by reason of such participation, their reemployment is entirely within the discretion of management. ⁵

² Wagner Electric Co., 20 LA 768, 775 (1953).
⁵ Reliance Steel Products Co., 24 LA 434, 439 (1957).
Determination of size of crews. It has been held that management has the right unilaterally to determine the size of crews necessary for the operation of the plant, either under a general management rights clause, or as a matter of management prerogative, so long as no other provision of the agreement is violated by the employer's determination.

This right may be limited that "no less than three men shall be employed in a crew", or one stating that "adequate help will be provided", or one requiring the employer to schedule the "normal number" of employees on a shift. However, even where the contract required continuance of all local working conditions, an employer was not required to assign the same number of employees to a new "line" as were working on the old one.

Management's right to determine the size of work crews has sometimes been challenged on the ground that a reduction in the size of the crew results in a safety or

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4 Pabst Brewing Co., 29 LA 617, 621 (1957).
1 health hazard, or that it results in a workload that is too heavy for the remaining employees. 2 Sometimes management's right to determine the size of a crew is involved indirectly when the union charges that a contract provision (such as seniority or lay-off clauses, or clauses concerned with filling vacancies) has been violated by some action of management. 3

Scheduling work. Arbitrators have ruled that, except as restricted by the agreement, the right to schedule work remains in management. When an agreement is silent as to the workweek insofar as its commencement and end are concerned the employer may change the day on which the workweek begins, if the change is not made arbitrarily and is made in conformance with industry practice in the area. 4 Similarly, where the contract contained no express restriction on the employer's right to determine the starting time for work shifts, the employer has been permitted unilaterally to change the starting and stopping time. 5

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1 Jones and Laughlin Steel Corp., 30 LA 395, 396 (1958).
3 Ibid.
4 Schulze's Bakery et. al., 5 LA 255, 257 (1946).
If a work schedule has been traditionally on a normal workweek basis of five consecutive days this does not in itself establish a vested interest in the employees in the continuation of the schedule. The union had argued to the contrary despite the fact that the agreement contained a clause permitting the employer to change schedules in the interest of plant efficiency if not done indiscriminately.  

Right to require overtime. Arbitrators have held that if the collective agreement is silent on the subject of hours of employment or failed explicitly to limit the length of the workday or workweek beyond which no further work may be required, management has the right to demand overtime work from employees. It has also been held that management may require overtime work in the absence of contract prohibition so long as it is of "reasonable duration, commensurate with employee health, safety and endurance, and the direction is issued under reasonable circumstances."  

On the other hand an agreement definitely establishing the length of the workweek may call for a different conclusion. This was the case where the agreement provided that the "eight (8) hour day and forty (40) hour week . . .

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3Texas Co., 14 LA 146, 149 (1949).
shall be in effect without revision, during the term of this contract." It has been held that an agreement specifies a normal workweek as one of a certain number of days does not prohibit management from requiring employees to work overtime since the use of the normal implies occasional resort to abnormal. This is said to be especially so where the agreement provides for time and one-half for hours over a certain number a week, since such provision "clearly recognizes an obligation on the company to pay for overtime, and surely by implication, that workers are obliged to work reasonably necessary overtime unless specifically excused."  

If the agreement does not expressly state whether overtime work is optional or compulsory, the arbitrator may rule that the determination of whether it is optional must depend upon past practice in the plant, practice in the industry, and the general circumstances of the case. An agreement may specifically or by implication provide that the employee has an option and that he may ask to be excused from doing overtime work. Under such a provision, it has been held that the employee is obligated to indicate whether

3 Nebraska Consolidated Mills Co., 13 LA 211, 214 (1949).
he will work overtime. Under a clause giving the employees an option, management has been held not to have the right to force employees who have rightfully rejected an overtime assignment to perform prearranged weekend work by calling such work an assignment which must be protested under the grievance procedure.

**Right to subcontract.** The right of management to subcontract, in the absence of a specific contract restriction, has been the subject of numerous arbitration cases. The basic and difficult problem is that of maintaining a proper balance between the employer's legitimate interest in efficient operation and effectuating economies on the one hand, and the union's legitimate interest in protecting the job security of its members and the stability of the bargaining unit on the other.

In earlier cases, arbitrators held that management has the right, if exercised in good faith, to subcontract work to independent contractors (the work thus to be done by non-employees of the employer) unless the agreement specifically restricts the right. This view is also stated in some

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of the later cases. The basic reason is indicated by the following statement by Arbitrator I. Robert Feinberg:

It is true, of course, that job security, and an opportunity to perform available work, is of concern to a union and that the letting of work to outsiders by an employer may in some instances be said to be a derogation of the basic purposes of their collective bargaining agreement. Nevertheless, it is also true that where the subject has assumed importance in the relations between the parties a provision is generally inserted in the agreement defining their respective rights. It has almost been universally recognized that in the absence of such a provision an employer may under his customary right to conduct his business efficiently, let work to outside contractors if such letting is done in good faith and without deliberate intent to injure his employees.¹

Most of the later cases have somewhat modified the above view. Where the agreement does not deal specifically with subcontracting the recent cases fall into either of two categories: (1) The essence of some cases appears to be that the recognition, seniority, wage and other such clauses of the agreement limit management’s right to subcontract, and certain standards of reasonableness and good faith are applied in determining whether these clauses have been violated.² (2) The essence of other cases is that management can subcontract if it does so reasonably and in good faith.³

It appears that the end result ordinarily would be the same.

¹ National Sugar Refining Co., 13 LA 991, 1001 (1949).
regardless of which of these approaches is taken, that is
the right to subcontract depends upon reasonableness and
good faith. 1

Plant rules. When the agreement is silent upon the
subject of plant rules, management is said to have the right
to formulate and enforce plant rules as an ordinary and
proper means of maintaining discipline and efficiency and
directing the conduct of the work force. Management may
also establish plant rules to insure the health and safety
of employees.

This unilateral right of management to establish
plant rules also exists under the various types of manage­
ment rights clauses. Even where the agreement required man­
agement to discuss plant rules with the union before being
put into effect, Arbitrator Harold M. Bilden observed:

The purpose of the discussion is to ascertain
whether the rule itself contains any loopholes, or
whether its enforcement will give rise to unexpected
problems. After a discussion the company at its
option may put the rule into effect, even though
the union approval is not obtained. 3

After plant rules are promulgated, they may be chal­
lenged through the grievance procedure (including arbitra­

tion) on the ground that they violate the agreement or that they are unfair, arbitrary, or discriminatory.¹

Management should be permitted to change plant rules, if not restricted by the agreement, to meet changed circumstances.² Moreover, new or changed plant rules which curtail employee privileges supported by long established past practice may be subject to challenge.³ It has been emphasized that "sound industrial relations policy dictates that abrupt changes in rules should be accompanied by a gradual educational process."

Layoff of employees. In the absence of contractual restriction it is the right of management to determine the number of employees to be used at any given time and to layoff employees, giving any required recognition to seniority.⁴ Recognition of seniority is the only type of restriction placed by most agreements upon the layoff right.

The meaning of the term "layoff" is frequently an issue in arbitration. Arbitrators have ruled that the term must be interpreted to include any suspension from employ-

²Florence Stove Co., 19 LA 650, 651 (1952).
³Standard Oil Co. (Indiana), 11 LA 689, 690 (1948).
ment arising out of a reduction in the work forces, and the use of the term, "not scheduled", by management does not make the occurrence any the less a "layoff." ¹

Downgrading is often tied to layoffs. Some arbitrators have held that downgrading "is such an intimate concomitant of layoff" that layoff seniority provisions must be applied in downgrading. ² Many contracts contain provisions permitting employees to accept layoff in lieu of downgrading. Where the contract was silent regarding the right of employees to choose layoff rather than downgrading, one arbitrator held that they are deemed to have such a right if downgrading involves a significant reduction in pay. ³

Transfer and promotion of employees. A commonly recognized distinction between transfer and promotion is made clear in a statement by Arbitrator George Cheney wherein he pointed out that the term promotion generally appears in a context of collective bargaining agreements connoting an upward movement to a higher occupational classification requiring superior skills or greater effort and to which, for such reasons, a higher minimum wage scale is

¹Bethlehem Steel Corp., 5 LA 578, 581 (1946).
²Kenworth Motor Truck Corp., 8 LA 867, 869 (1947).
attached. It has also been held that a lateral or downward movement may lead to higher pay, a job more to the liking of the worker, and a higher ultimate maximum pay.\(^2\)

In the absence of a contract provision to the contrary, the employer has the sole right to effect promotions; and he is not obligated to consult with the union before selecting the employees to be promoted.\(^3\) The right of management to promote employees is frequently qualified by the seniority provisions.

Temporary assignments to better jobs, such as may be made while incumbents are on vacation, might be held not to be "promotions" so as to require the application of contract seniority provisions governing promotions. To require the recognition of seniority in such cases would impose a handicap and serious detriment to management in its direction of the working force. It has been held that management has the right to require designated employees to accept temporary promotions against their will.\(^4\) Management has not been permitted unilaterally to change qualifications customarily required for a job if the change would impair the right of

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\(^3\) Parke Davis and Co., 17 LA 568, 569 (1951).

senior employees to be promoted in accordance with the contract's promotion clause.¹

**NLRB Policy (Abstention versus Intervention)**

The reserved rights approach assumes that arbitration becomes the primary arena for unions to challenge management's action during the term of a collective bargaining agreement. A necessary corollary is that the NLRB will honor contractual arbitration procedures where the union is alleging that the company has acted unilaterally on a matter which is a mandatory subject of bargaining and is subject to the contractual grievance procedure.² The statutory provision directly governing the relationship of the Board to arbitration is Section 10 (a) of the Labor Management Relations Act which provides that:

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.³

The Board has acted in some unfair labor practice cases regardless of the existence of private arrangements.

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¹ *Kuhlman Electric Co.*, 26 LA 885, 890-891 (1956).


³ National Labor Relations Act (Wagner Act), *op. cit.*, Section 10 (a).
between the parties for resolution of disputes by arbitration.\(^1\) To supply a guide to the Board for exercising its discretion Congress declared in Section 203 (d) of the Labor Management Relations Act of 1947 that:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.\(^2\)

The Board has used this as a guide to develop a policy of either abstention or intervention when exercising its discretion to defer to arbitration. The Board's influence on the scope of management's rights can be illustrated best by outlining cases of abstention and intervention.

The abstention tradition began with Consolidated Aircraft Corp., where the employer established the working hours for a third shift and adopted a job classification schedule without notifying or consulting the union with which it had a collective bargaining agreement. While finding that the employer had taken "unilateral action in a matter involving the interpretation and administration of its collective contract with the Union."\(^3\) The Board dismissed the complaint "without prejudice" insofar as it

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2. Labor Management Relations Act (Wagner Act), op. cit., Section 203 (d).
charged an unlawful refusal to bargain on the ground that the Union had "failed to utilize the contractual machinery for the settlement of the dispute which had arisen from the events giving rise to the present proceeding."¹

Abstention received strong judicial endorsement in *Timkin Roller Bearing Co. v. NLRB* when the Sixth Circuit held explicitly that "The duty to bargain . . . may be channeled and directed by contractual agreement,"² and that therefore there is no duty to bargain outside of the framework established in the agreement. The court found that the purpose of bargaining is to reach agreement resulting in a contract binding on both parties and to provide a framework for the process of collective bargaining to be carried on. The law invites a collective bargaining agreement. Industry may concede much for a no-strike agreement and orderly grievance procedures and may also concede little for promises which may be insisted upon only at the risk of condemnation for unfair labor practices.³ The NLRB has also followed the intervention rule in contractual disputes. The policy of intervention received its clearest exposition in *Cloverleaf Div. of Adams Dairy Co.*, where the employer uni-

laterally subcontracted a substantial part of its delivery operations. The union filed refusal to bargain charges and on the basis of the previous abstention cases, the employer argued that the complaint should be dismissed because the union failed to proceed to arbitration. The Board, however, found these cases contradictory on the grounds:

The contract subjects to its arbitration procedures only such disputes as concern 'the interpretation or application of the terms of this Agreement'. As the particular dispute between the Union and Respondent now before us thus involves basically a disagreement over statutory rather than contractual obligations, the disposition of the controversy is quite clearly within the competency of the Board, and not of an arbitrator who would be without authority to grant the Union the particular redress it seeks and for which we provide below in our remedial order.  

The Board concluded that this was not an appropriate situation for it to exercise its discretion and defer to arbitration since the case was not one that involved an alleged unfair labor practice. The case was primarily an interpretation of specific contractual provisions. It is highly conjectural that arbitration in this case could have effectively disposed of the basic issue, whether or not management acted lawfully in engaging in the unilateral action to which the complaint is addressed.

Although agreeing with the majority's finding that


2 Ibid., p. 1415.

3 Ibid., p. 1416.
the employer had violated Section 8 (a) (5) and 8 (a) (1).

Board Member Brown disagreed with majority's approach. In particular, he dissented from the majority's failure to articulate criteria or guidelines regulating the Board's relations to arbitration. According to Board Member Brown, such standards can be derived from a consideration of the different functions served by arbitrators and the Board. The arbitrators provided retrospective adjudication by determining rights under existing agreements and the Board provided prospective adjudication by creating new rights or modifying existing rights through enforcing the duty to bargain.1 Applying this framework to the problem of whether the Board should defer acting where no arbitration award has been rendered, Board Member Brown thought it:

... inconsistent with the statutory policy favoring arbitration for the Board to resolve disputes which, while cast as unfair labor practices essentially involve a dispute with respect to the interpretation or application of the collective-bargaining agreement.2

The abstention cases have been based upon disputes over contractual obligations, and the intervention cases have been based upon disputes over statutory obligations.

The Board's influence on management rights has been exhibited through the exclusion of some bargaining issues

1 Ibid., p. 1422. 2 Ibid., p. 1423.
largely of a nonpecuniary nature. Since under the Taft-
Hartley Act the Board must define good-faith bargaining for
unions as well as employers, the exclusions have restrained
both unions and employers. Under Board decisions employers
may not insist upon bargaining over internal union disci-
pline or require a secret-ballot vote of all employees on
the employer's last offer.¹ A union may not insist upon
bargaining over illegal provisions such as the closed shop,
nor may it insist upon a performance bond which would be
forfeited upon any substantial but undefined breach of con-
tract.² Neither union nor employer may legally insist that
the other negotiate extension of the agreement beyond the
designated bargaining unit, nor may either require the other
to forgo any of the rights it is entitled to under the Taft-
Hartley Act.³ The Board has therefore, in this last
instance, protected the weaker bargaining position from
having to bargain over, and possibly give up, rights and
designations guaranteed by law.⁴

¹Chamberlain and Kuhn, op. cit., p. 301.
²NLRB v. Jinona Textile Mills, Inc., 160 F. 2d 201
(1947).
³Chamberlain and Kuhn, op. cit., p. 302.
⁴George W. Torrence, Management's Right to Manage
(revised edition; Washington, D. C.: Bureau of National
Some employers have refused to bargain over issues of subcontracting, plant location, profit sharing, and income security on the grounds that they are matters involving managerial authority and responsibility. With court approval the Board has broadly interpreted "wages, hours, and conditions of work" to include all the varieties of pecuniary emoluments involved in cases which disputing unions and employers have brought before it. In declaring the various pecuniary issues bargainable, the Board and courts have reiterated what Chief Justice Hughes emphasized, that the parties are under no legal requirement to reach an agreement, no matter what subjects they may have to bargain over.

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1 Taft-Hartley Act, op. cit., Section 9 (a).
2 NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1, 45 (1937).
CHAPTER IV

SUMMARY AND CONCLUSIONS

The determination of the appropriate subject matters of collective bargaining is not a matter of fixed principle. Even when the National Labor Relations Board and the courts require bargaining over certain issues, management does not have to surrender those areas of control to unions. Management must realistically measure the cost of maintaining "rights" against the willingness and ability of the union to insist upon their demands.

Most collective bargaining agreements provide for arbitration of "rights" disputes involving the application or interpretation of the agreement. Many employers and unions have recognized arbitration awards to be a rapidly expanding body of labor-management rules with the parties sometimes directing or specifically authorizing their arbitrator to consider awards of other arbitrators. This has provided guidance to arbitrators in their decisions.

Arbitration awards have given management almost an exclusive right to manage in the areas of quality control and determination of plant rules unless specifically restricted by the agreement. Only rarely have collective bargaining agreements restricted management in the determination of size of crews or in the control of quality stan-
Even though management has wide freedom in controlling quality standards, arbitrators closely scrutinize penalties imposed for faulty work.

Except as prohibited by statutes or other discriminatory practices, management has retained the right to hire, transfer and promote employees. Contractual restrictions upon these rights most often exists in seniority or union security provisions. The recognition of seniority is the prime type of restriction placed by most agreements upon the layoff right.

Since the first collective bargaining agreement numerous disputes have reached arbitration over wage rates. A usual rule is that an increase in wage rates should accompany a material increase in the workload. In contracts where the agreement is silent on a specific management right and a general management rights clause exists, arbitrators have ruled in favor of management. This has been true in the determination of length of workday or workweek and the right to require overtime.

The right of management to subcontract has been the subject of numerous arbitration cases in the last ten years. The basic problem has been the maintaining of a proper balance between the employer's interest in an efficient operation and the union's legitimate interest in protecting the job security of its members. The end result of most subcon-
tracting cases has been influenced by any restrictions placed by the labor-management agreement and the dependence of the "reasonableness" and "good faith of management".

Section 10 (a) of the Labor Management Relations Act empowers the National Labor Relations Board to act in any unfair labor practice case regardless of the existence of private arrangements for resolution by arbitration. Under National Labor Relations Board decisions the parties are free to limit their bargaining or to extend it as they see fit, since the Board seldom intervened except at the request of one of the parties. If one party disagrees and wishes government support in its stand that an issue is not bargainable, the Board will consider whether intervention is desirable or required and will act according to this judgement.

Collective bargaining has been too dynamic to permit drawing a statutory line between management's prerogatives and the areas of joint responsibility. No interested party has been able to clearly define management rights and the only feasible approach is to leave the settlement of such questions to collective bargaining.
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<td>Continental Can Co.</td>
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<td>Jenkins Bros.</td>
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Note: NLRB stands for National Labor Relations Board
ALAA stands for American Labor Arbitration Awards