

Railroad Craft Seniority: The Essence of Railroad Society and Culture (and its “State”)

Frederick C. Gamst

Introduction

My first field research paper in ethnology was done on railroaders for Gerald Berreman’s graduate seminar on ethnological field techniques in the fall of 1961. The paper became my first presentation at a conference, of the Kroeber Anthropology Society, in spring 1963 (Gamst 1963). This research interest, first developed under Berreman, continues. After four decades of researching on the railroad, what appears to be the essence of the social relations and structuring of railroad work? The answer, explored in this article, is the social system of seniority, encompassed in a complex web of rules.¹

As an institutionalized age grouping imposing on members’ rights and duties and allocating privilege and power, contemporary seniority is actually a form of corporate structure familiar to ethnologists. As an institution, seniority has a charter, or rationale of its nature including purpose. Broadly considered, seniority is one kind of social linkage, constraining actions and fostering a social order.

On railroads across the United States and Canada (hereinafter, North America) employment is heavily unionized, even for first-line supervisors.² In the webs of rules of rail industrial relations and their encompassing law, *craft seniority* has loomed central in the creation and maintenance of a bargaining unit of a grouping of employees represented by a component of a labor union. Indeed, the term *seniority* has traditionally served as a metaphor for railroad employment and the job. Craft seniority embodies the very foundation of railroad social relations and norms, including industrial relations and unionism. Seniority’s webs of both work rules and supporting comprehensive federal labor laws, since 1888, developed first for the railroad industry and consequently furnished partial models for other industries. During the often-contentious maneuverings in 2001 for the proposed merger of the Brotherhood of Locomotive Engineers (BLE) and the United Transportation Union (UTU), protection of seniority rights was always a central matter (BLE 2001a, 2001b; UTU-BLE 2001).

In the U.S., jurists view the comprehensive laws for rail industrial relations as forming a state within a state.³ Lloyd K. Garrison summarized the web of railroad rules: “the railroad world is like a state within a state...[where] the reign of law has

been firmly established" (1937:568-69). The U.S. Supreme Court, in *Taylor vs. California*, 1957, used this view of the existence of a railroad state.

On the economically strategic railroads, how did the worker-empowering, socioeconomic web of craft seniority develop, and what are its characteristics?⁴

The Development of Seniority

Early Seniority Apart from the Railroads

Age is a culturally relative construct. For example, Western cultures have differing legal definitions of the age of majority. The Cushitic-speaking Qemant peasants and Semitic-speaking Wayto hunters of Ethiopia have an epoch-event determination of personal age ("*Haile Sellassie bäfit*"—born before the reign of this monarch). Undoubtedly, all specific cultures have linguistic forms with which they classify persons in the life course by some age construct. Use of the characteristic of age for determining social status is universal. Organizing humans for a structural ranking by age may well be universal, if only done informally. Almost no institution disregards length of time in an occupation or leadership status, and for good reason. Social ranking by age inspires societal confidence and individual peace of mind: few if any people want their war chief, medicine man, commander in chief, surgeon, accountant, or airline captain to be new at the worktasks. No one complains that by a Constitutional work rule of the founding fathers, the President of the United States shall have attained the age of thirty-five.

For hundreds of African societies, formal, sequential age sets of persons moving together up through formal, hierarchically ranked age grades are part of or are the dominant factor in structuring society (Baxter and Almagor 1978; Bernardi 1985). *Age sets* are groupings of people linked by a culturally delimited similar span of age. And so it is among many of the 23 million Oromo people I have surveyed ethnographically in Ethiopia and taught about since a Berkeley seminar in 1963 (Gamst 1999).

In Anglo-Saxon cultures, at least, concepts of a generalized seniority constitute part of the worldview. The age ranking of individuals and of groups (as diverse as military units, colleges, youth athletic teams, and street gangs) by some form of seniority provides an idea of social order and fairness deeply valued and historically rooted in the normative system. Seniority rules became embedded in the cultures of our earliest large bureaucratic organizations, such as the church, army and navy, and legislative and administrative bureaus of government. As early as 1450, we find the seniority ranking of clerics: "Eche [each] in hys order after their seniorite in religion" (OED 1971:2726). In the sixteenth century, we find praiseworthy lists of

persons ranked by seniority: "Where in an honorable Index they shall be placed according to their degree and segnioritie" (OED 1971:2726).

During the eighteenth century, in the British Army, seniority became fully institutionalized, thereby reflecting still earlier development, and dominated its social relations, structure, and norms. This institutionalization also held for its offspring, the American Army (Great Britain, Army 1774). As the leading British military dictionary of the times explained: "SENIORITY, in military matters, is the difference in time betwixt the raising of two regiments, whereby the one is said to be so much senior to the other. All regiments take place [position] according to seniority in numerical order. The differences in time betwixt the dates of two commissions of officers of the same rank, roll by the seniority of their commissions" (James 1810: "Seniority"). Seniority ranking abounded in all army activities. Even when "serjants" conferred with an adjutant, they ringed themselves around him "according to the precedency of their companies" and repeated his orders in rank order from the senior-most sergeant to the junior-most (Anon. 1778). The regulations of the British army for 1816 have the rules for seniority of officers near its beginning. Each unit had to maintain lists of personnel by rank and its date, hence, classified seniority lists (Great Britain, Army 1816:4-9, 292-93).

Necessarily, the units of the offspring American Continental Army and their men were arranged by British work rules for seniority (Spaulding 1937:50-51), and such rules continued long afterward in the U.S. (Scott 1968: 484-86, 549). During the 1880s, Admiral David D. Porter, age 75 in 1882, and other senior naval officers opposed a plan for retiring senior officers. Porter said he abhorred such a "total disregard & ignoring of seniority" (Karsten 1986:242). U.S. Army officers commissioned in 1861-1864 "had created a 'choke' in the Army's seniority-only promotion system similar to that of the Navy's." In 1883, an Army first lieutenant calculated that he would need at least thirty years of service for his promotion, by seniority order, to the next rank, of captain (Karsten 1986:259).

Legislatures are also seniority-bound, and not just for allocations of office space. Committee assignments and chairmanships in the U.S. Congress have been generally awarded, respectively, by Congressional and committee seniority for almost two centuries (McConachie 1898:156-57, 271, 326; Goodwin 1959:417-18). "In no other place, perhaps, does seniority or length of service carry so much weight as it does in the Congress of the United States" (Galloway 1953:367). "Congresses may come and go, but the seniority rule stays on indefinitely" (Pollack 1925:235). Furthermore, as in other occupations, seniority work rules in Congress generally have efficient results. "The seniority rule is based on years of service and hence is more likely to secure parliamentary skill and general ability for Congressional work than some other system which makes years of service only one factor in the choice" (Pollack 1925:245). George Goodwin concludes after studying the Congressional

seniority system that “an acceptable alternative is extremely difficult to devise” (1959:436).

The civil service is also ordered by seniority (Jenckes 1867). To reform the American political practice of the Jackson era, “to the [electoral] victor belong the spoils,” demands for civil service reform began in the 1830s. President Grant attempted to rationalize federal employment. But it was not until the Pendleton Act of 1883—enacted after a disappointed office seeker assassinated President Garfield—that federal reform became truly effective. Under the act, a bipartisan civil service commission administered a partial merit system for appointments to federal employment, below the positions of cabinet and agency heads. The Civil Service Rules and Orders of President Theodore Roosevelt enhanced the act. On the state level, New York enacted civil service laws in 1883, Massachusetts in 1884, and other states a few decades later. For civil service, “the seniority rule was adopted in the interest of both justice and efficiency” (Anon. 1913b). In many modern organizations, then, seniority systems provided both fair relationships for individuals and efficient structures for organizations.

Pioneering Seniority on the Railroads

It is not surprising that the earliest widespread and consequential web of rules for occupational seniority outside of the church, armed services, and government is found in the oldest industry enormous in cost, colossal in scale, and vast in dispersion—the railroads. This advent rests in the bureaucratic complexity of managing railroads, of vital consequence to developing or developed countries.

Because of the strategic economic power inherent in the skills and responsibilities of locomotive engineers, members of this craft pioneered on the railroads North America’s first seniority systems of large scope and organizational impact. Thus, in part, locomotive engineers pioneered seniority for all industries. Railroad seniority originates in a managerial *grant*—giving the principle to employees.

The earliest known complete record of seniority rules by principle in North American railroading is discussed in the BLE’s *Monthly Journal*. In “A Step in the Right Direction,” Charles Wilson, the BLE’s Grand Chief Engineer, discussed a general order of Jay Gould, president of the Erie Railway, granting a principle of seniority for various railroad crafts (Wilson 1870; Gould 1870a). Without question, then, “these rules and regulations” for seniority were management’s, permitting construction of craft seniority rosters classified by the territory of an operating division or the span of a department.

On January 31, 1870, Gould ordered that "hereafter" a list (roster) of all employees of the Erie be kept showing date of first employment, occupational position first held, and dates of any promotion or other change of position. The list would be "classified so near as may be according to the respective qualifications of each party" (Gould 1870a).

Jay Gould directed that "this principle," of rank-order seniority date would apply to new hires, who must be placed at the bottom of the craft-classified seniority rosters, and be used for filling vacancies and for making promotions. Thus rail seniority by craft emerged in a highly developed form, on one of the largest railroads, as a managerial mechanism for efficient command and control in the operation of the carrier. The employer, here arch-capitalist Jay Gould, implemented craft seniority to manage better his diversely specialized and territorially dispersed army of employees (Gould 1870b).

In all, just as bilateral seniority on railroads has its origin in a unilateral form granted by management, so too the bounding of crafts and the classification of well-defined kinds of jobs within them stems originally from managerial policy. Rail management desired separated specialized crafts for cost-effectiveness in the market and efficient, safe operations. Thus, management prohibited the various crafts from exchanging duties as a matter of unilateral work rule.

The idea of work rules defining seniority by craft and delimiting it by operating territory could not have exploded full-blown into Jay Gould's mind in January 1870. It was undoubtedly discussed and drafted by his staff officers in the previous year and was necessarily based on still earlier policy and practice of such managers, on the Erie and elsewhere. Across the second half of the nineteenth century, we can see beginnings of the policy and practice of work rules regarding railroad seniority. From well over a century ago through the present, accounts of American railroad work show management's informal and formal practice with seniority principle, when not superseded by seniority right.

Today, most North American railroaders are unionized with their employment fixed by the terms and conditions of collective labor agreements. Employees and management call such agreements schedules. In general, the term *schedule* refers to a written list of items providing explanation with exactness and a permanent record for a monetary transaction. For some industrial relations on railroads, unilateral schedules existed before bilateral schedules. My research shows a good number of documents for *preagreement schedules* still preserved, all of which set the patterns for later *agreement schedules*.

As one railroader wrote, back when agreement schedules had just become common on the larger railroads: "in the earlier days of railroading, it was the practice of railroad companies to formulate a schedule of wages to be paid the employees, in

certain branches [crafts] of the service” (Tucker 1893). The preagreement schedules discussed by Tucker covered, for an operating craft such as locomotive firemen, lists of rates of pay classified by kind of service, district, and, often, by years of employment (“first year, second year, full” rate of pay) (CB&Q 1878). In the 1880s, management added the weight, hence power and productivity, of a locomotive as a fourth element of pay classification.

Perhaps the first record of an attempt to bargain collectively on railroads was in 1853, when engineers on the New York Central & Hudson River petitioned their general superintendent, unsuccessfully, for a small increase in pay (Anon. 1877). One of the earliest preagreement schedules, in 1864, reacted negatively against another engineer’s petition (Perlman 1926:12-16). This schedule for engineers and firemen on the Galena & Chicago Union had rates of pay for the two crafts on various districts plus eight paragraphs of work rules (Perlman 1926:14-15).

The Chicago, Burlington & Quincy’s (CB&Q) preagreement “Schedule of Wages for Locomotive Firemen, January 1, 1878” has several pages, containing rates of pay for the various classes of service and one nonseniority work rule for conditions of employment. The Southern Pacific’s notice of February 15, 1884, providing a schedule for engineers and firemen, similarly lacks a seniority rule. Generally similar but with a modest unilateral provision for seniority are Atchison, Topeka & Santa Fe Circular no. 1 of October 20, 1883—a schedule for conductors, brakemen, and train baggagemen—and Santa Fe schedules of 1890 and 1893 for trainmen. Still unilateral but far more detailed in its 34 work rules, including seniority, is Pennsylvania Railroad, General Notice of 1903 for trainmen (PRR 1903). In such unilateral beginnings, then, the premise of craft seniority spread across North American railroads. Well into the 1910s, some crafts such as clerks and telegraphers had no bilateral schedules with a number of railroads; thus unilateral schedules, including seniority, still obtained (see GR 1917).

Developed Seniority on the Railroads

From a unilateral principle, craft seniority evolved into a cardinal right, the underpinning of bilateral labor agreements between rail management and union bargaining agent for a craft of employees. The first agreement schedule of record, in 1875, is between the New York Central & Hudson River and a committee of the BLE. It contains basic rules on rail craft seniority, and its intricacy shows it had to be developed from an earlier schedule. Rule 7 said the agreement “shall take the place of all previous agreements.” It is an example of the direct development of an agreement schedule from a preagreement one (preagreement IC 1876 and agreement IC 1885 are also examples).

The new agreement schedules increased the number and scope of the work rules, which always included a central place for craft seniority. As on the Illinois Central (IC), these labor agreements at first were only somewhat evolved from their unilateral predecessors. The BLE reprinted many pioneering agreements (1892). The reprintings were valuable to the union committees requiring information for bargaining their initial and subsequently adjusted labor agreements. Thus, union committees, from Florida to British Columbia, could learn what other such committees had obtained as provisions in their contracts. By the end of the nineteenth century, bilaterally negotiated schedules, always containing seniority rules, were common for at least the "big four" operating-craft brotherhoods on all sizable railroads.

After 1900, the "big four" craft unions (engineers, firemen, conductors, trainmen) began standardizing the seniority provisions of agreements in two ways. They ushered in concerted bargaining across a broad region of the U.S., such as the West (U.S. Bureau of Labor Statistics 1912:44-45; Wark 1913). Also they made interunion compacts to limit rivalry and conflict, as in the Chicago Joint Agreement between the BLE and Brotherhood of Locomotive Firemen & Enginemen (BLF&E) (Anon. 1913a). By the 1910s, as the bilateral work rules including seniority continued to develop, agreement schedules grew into small pamphlets. With the advent of the schedules negotiated by the federal U.S. Railroad Administration during World War I—which in collective bargaining agreed to work rules in lieu of employee requested wage increases (Wolf 1926:69)—schedules expanded to sixty or more pages.

The steady expansion of agreement wordage is reflected in the Southern Pacific's contracts for engineers of 1888 (14 work rules on 1 long sheet) and 1919 (38 extensive rules containing up to 36 sections each on 62 printed pages). Those of the San Pedro, Los Angeles & Salt Lake for firemen had 8 extensive rules on 24 pages in 1908, but by 1915, covering both firemen and engineers, had 51 rules and 27 explanatory examples on 48 pages. By 1954 on this Salt Lake Line, then part of the Union Pacific, the firemen's agreement had 172 work rules (many with subrules) on 109 pages of some 42 dense lines each, plus 55 pages of supplemental agreements. The seniority rules covered 6 such pages (UP 1954). In 1972, this line's engineers' agreement had 143 rules on 124 pages plus 123 pages of supplemental agreements (UP 1972).

Whatever their format, the evolving work rules in agreements developed job fairness and codified the conditions of employment. Most of these rules were the result of lengthy, often difficult, and arduous collective bargaining wherein managers and the union representatives made give-and-take exchanges regarding their respective requests about wage rates and employment conditions.⁵

Seniority Principle and Seniority Right: Two Essences

Originally, seniority on railroads was a unilaterally (from management only) based policy *principle*. Later, on most railroads, it became a bilaterally (management-labor) created legal *right*. Comprehension of the full construction of current seniority provisions rests on an understanding of the genesis of railroad seniority systems and on the features of preagreement seniority principles.

Principle refers to that which belongs to a person or group—apart from law—by a rule adopted as a guide to action. By *right* is meant that which belongs to a person or group by a law or a tradition (sometimes moral). Right is a just claim of a person or group against others, legally enforceable by the state. It is an interest existing along a continuum narrowing at one end into an interest legally constructed by rules defining a thing held to be property. Rail seniority rights, however, have not fully become those defining property.

On North American railroads, seniority *principle* comes from an employer's policies and practices, and seniority *right* comes from a labor agreement between a bargaining agent and an employer. The seniority right stems from the provisions of relevant work rules in an agreement resulting from negotiations between a craft bargaining unit of employees and an employer.⁶ Over time, such seniority becomes further shaped by bilateral interpretations of such provisions and, when the two parties cannot bilaterally interpret, from third-party arbitral, court, and Congressional interpretations.

The rail bargaining unit is often represented by a General Committee of Adjustment (GCA), a component of an international or national labor union and headed by a General Chairman (GC). The *adjustment* concerns changing the wages and conditions of employment of unit members. The GCA has been the sole actor to bargain initially, modify subsequently, and interpret as necessary for bargaining unit members a labor agreement and its written and unwritten supplements and understandings. The general committee's members assist the GC. They are, depending upon the union, either Local Chairmen of Local Committees of Adjustment or differently titled heads of union locals. A GCA's jurisdiction is ordinarily a contract district on all or part of a railroad. Sometimes a general committee represents several, or several parts of, railroads. Elected by his GCA, the GC acts for it when not convened, but must always answer to it. The GC handles grievances, complaints, pay claims, and issues forwarded to him by local units. Among the central matters thus forwarded are those involving seniority, and its craft and territorial jurisdictions, concerning which the GCA has full power. Frequently, regarding wages and conditions of employment, a GCA authorizes a regional or national *concerted movement* for bargaining with the railroads of a region or a nation.

At times, seniority may be a right first constructed and imposed on the employer by a court, arbitrator, or government administrator. Under the federal control of the railroads in World War I, the U.S. Railroad Administration (USRA) imposed seniority provisions not previously agreed to by the carriers (Hines 1928; USRA 1919a and 1919b; Jones 1954).

Because lawful contractual rights are, "recognized or established by law," the webs of evolving statute law and, more important, case law, alter the characteristics of seniority rights over time. See, for example, the discussion in a following section on the refinement of seniority right during 1937 in the U.S. by the National Railroad Adjustment Board (NRAB). In industrial democracies, the web of rules for industrial relations systems is, ideally, pluralistic. Thus the employers, their employees, and the state are each independent bodies of involved actors lawfully empowered to share in the making of work rules. Although in North America it is customary to speak of work rules as bilateral, between management and labor, on railroads they have long been trilaterally derived, among these two parties and the state.

Today, seniority as principle is still found in many industries—including on some railroads—not having a union agreement but where management grants seniority to employees. On the Florida East Coast, which had abrogated its standard seniority-bound agreements after a losing strike by rail unions in 1963, management felt a variety of seniority was necessary. Management unilaterally melded all crafts into one roster, with seniority determined by the date first hired on the struck railroad (Harwell 1996:38). On the Wisconsin Central in 1989, absent a union bargaining agent, management promulgated unilaterally a procedure establishing "a length of service (seniority) list of all employees categorized by departments," where vacancies were filled "by selecting the most qualified employees" (WC 1989:1-2). In practice, management filled vacancies mainly by seniority, I was told.

As a right, seniority has at its core a number of formal contractual rules, protecting an employee's interest in a job. Fundamental is a rule establishing an employee's seniority date, usually the earliest time of paid work of a designated kind (for example, as a switchman or when promoted to conductor). The essential roster for seniority's rules include maintaining and posting, periodic updating, and appeal processes and their durations for changing errors. Also found are rules for the periodic bulletining and filling of job vacancies, assigning of vacation times, and regulation of other employee *job prerogatives*. (*Job prerogative* is employment benefit or advantage for a worker's welfare and happiness.) Seniority determines both *sequence of persons for receiving prerogatives* such as in promotion, demotion, furlough, recall, temporary forced assignment and forced transfer, and *choice of prerogatives* such as in a job's kind, location, time, and rate and number of days of remuneration.

The General Functions of Seniority

From the broadest perspective, seniority concerns employment security for the individual employee. Thus, it is valued even more than increases in wages or fringe benefits. These two directly remunerative gains are worth little if a worker faces arbitrary job loss at the whims of the employer. Accordingly, the rail unions have expanded the seniority provisions of an agreement in give-and-take bargaining with management. It appears that as seniority increases so does loyalty to a union (Anon. 1958), thereby providing the membership solidarity needed to effect union goals.

Under seniority rules, the employee having the longest service in a craft with a railroad receives the greatest protection from layoff and undesired pressures of work and the most desired allocation of job prerogatives. Seniority thus favors those with greater length of service over those with less. This uniform seeming inequity becomes increasingly equitable over time for those remaining in a particular seniority unit. Operating employees in freight service, and formerly in passenger service, are paid on a piece-work basis per so many miles. As noted by the BLF&E at a time when many railroaders were killed or injured on the job: "a combination of piece-work and seniority assures high wages to the comparatively few whose fortunes have led them safely through...years of railway service" (Anon. 1916:634). Overall, the matter of the underlying fairness of a seniority system accords with widely held core values regarding longevity in the U.S. and Canada.

On its fundamental level, for a worker, seniority may be considered a variety of fairness and justice serving as insurance against the risks of market fluctuations creating unemployment. "As workers acquire seniority they store up advantages over their fellow workers" (Miller and Form 1980:248). But seniority is broader than this: seniority is also advantage over all who are not fellow workers. At least since the time of Jay Gould, new railroaders may be added to a seniority roster's bottom only when none of those on the list are furloughed.

In terms of social relations, seniority is also an overall protection for an employee against insecurity of employment stemming from the employer's capricious whim, including displeasure over an action, nepotism, or other discrimination. It protects from managerial arbitrariness in discipline, promotions or demotions, wage increases or decreases, allocation of tasks, allocation of work sites, transfer, layoff, recall from layoff, and other circumstances subject to arbitrariness. Without seniority, an employer could dismiss employees not held in esteem. They include the person who asks questions about managerial directives or the work process, the aged or ill worker, a member of a particular minority, the union organizer, the political activist, or the holder of nonconforming ideas.⁷ Accordingly, for unionized workers, the consequences of the subjective displeasure of a manager concerning an employee are almost eliminated (Abraham and Farber 1988). A seniority system necessarily limits

the employer's ability to have unrestricted control over employees, most likely more so than with other work rules. Consequently, most firms resist the introduction of seniority.

In its broadest dimension, then, agreement seniority involves some degree of union control of an employer's jobs and work processes on behalf of represented employees. For each employee, therefore, seniority contains some amount of a limited property-like interest of value (a continuing equity) in a job and its included work. "The job, in a sense, 'belongs' to the worker; it is a scarce and valued commodity, to the use of which he has received certain limited rights" (Schneider 1969:351).

Along with the rest of rail labor agreements, seniority in its encompassing web of labor law does not just benefit the railroad employee. "The national Railway Labor Act [RLA] is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a railroad to comply...so, too, may it compel obedience by unions" (Brown, circuit judge dissenting in *B.R.T. v. Central of Georgia Ry. Co.* 29 Labor Cases 69.745, 229 F.2d 901 [CA-5, 1956]). Under the RLA, management benefits from a seniority system. Among its employees, seniority fosters maintenance of an interpersonal tranquility at work, approval of the managerial ordering of the practices for conducting business, and acceptance of the legitimacy of management's allocation of work. A seniority system lessens uncertainty and unrest in industrial relations.

Regarding employment longevity, William Boyes and Michael Melvin repeat a generalization often found in economics and industrial relations: "An older worker is more productive or more valuable to the firm than a younger worker." Also, "Seniority may bring higher income because of the additional human capital an older worker embodies" (Boyes and Melvin 1991:779).

Management may, for just cause and by special agreement, limit the prerogatives of seniority for an individual. Thus an operating employee, because of health problems or disciplining for causing a large-scale accident can be "restricted" in his or her seniority choice of jobs, with a coding of his or her seniority line on the roster by typed symbols (*, #, !, %) signifying restriction to "yard service," "branch line and yard service," "hostler service," "freight brakeman," "helper service" provided by locomotives assisting trains over grades, and so forth. If the employee cannot pass the required written and practical promotional examinations, then that person does not become a locomotive engineer, conductor, track foreman, train dispatcher, or whatever. In many instances, such as the promotional examinations to engineer, failure means loss of railroad employment.

Besides promotion and periodic examinations, operating employees, train dispatchers, control operators, and other employees are given practical efficiency tests. Such in-field tests range from a signal improperly displayed or extinguished to a red (stop) signal flare. As with many kinds of efficiency tests, running past a signal displaying a stop indication, even by a foot, ordinarily means being fired, after an agreement-based investigation of the incident. Rail seniority, then, does not negate managerial assessment of ability and disciplining, to the point of terminating employment, for lack of ability.

Under Section 1, Fifth the RLA differs markedly from the National Labor Relations Act (NLRA), in that the term “employee” is linked with “subordinate officials.” That is, first-line supervisors, such as yardmasters, foremen of various kinds, and train dispatchers, may form unions. Such linkage is contrary to the usual practice outside of railroads. The Inter-State Commerce Commission defined, somewhat, the line between subordinate officials and higher officers on railroads (USICC 1947), and the National Mediation Board (NMB) certified bargaining units of first-line supervisors (NMB 1948-2000).⁸

The Rail Bargaining Unit and its Essence of Seniority Rights

Seniority is the sine qua non of the rail bargaining unit. At the very heart of any bargaining unit must be a mechanism for fairly allocating to unit members jobs and other prerogatives of employment that are part of the unit’s jurisdiction. Without such a mechanism of unit stability, strife would result among members and lead to internal chaos in relations with management and non-unit personnel. In short, without this mechanism of social stability, a bargaining unit could not easily be created and, if founded, could never endure. The mechanism is seniority rights, arranged on railroads by craft.

Placing a person on craft seniority list “A” confers membership for the listee in the corresponding craft bargaining unit. The membership of a particular bargaining unit might be entirely on one seniority roster, or could be on two or more such lists, each for a separate jurisdictional territory of the unit. On railroads, the day-to-day administration of the seniority-driven apportioning of job prerogatives is left with the employer. But the process is monitored closely by the concerned GCA. After all, seniority matters more among employees than between employer and employee. If a railroad employee contests either a GCA’s interpretation of an agreement’s seniority clause or its theory of processing a seniority grievance against management, he or she may appeal against the GCA’s view. The appeal is through the formal internal review process of the national or international union (Dulen 1953; BLE 1993). A rail union’s constitution specifies the process (UTU 1968:25-29, 81-84).

If an employee has a seniority grievance against the employer, he or she must submit it to the union bargaining agent for prescribed review and possible handling. If

review finds the grievance has merit, the union negotiates with management on behalf of the employee. In the U.S., if the carrier and union cannot agree, the parties must settle the matter by compulsory arbitration, as a minor labor dispute under the RLA. The NRAB or a public law board settles the dispute.⁹

Given a union member's contesting the manner of handling a grievance, the NRAB, a public law board, or their superordinated NMB¹⁰ will not casually overturn the union's actions and views on the matter. Indeed, only arbitrary or grossly unreasonable handling by the union would be a cause of arbitral rejection of the organization's view. Once the parties agree to a seniority clause through collective bargaining, and it is protected by internal union review, it is interpreted largely by the union.

In seniority and other contractual provisions reached collectively between a carrier and a union bargaining agent, the labor organization has the authority to bind legally all the members of a seniority group, which it is authorized to represent under the RLA. Members of this group not belonging to the bargaining agent union are equally bound by the provisions. Legally, the carrier and labor organization must treat members and nonmembers of the bargaining agent union in the same way.¹¹ In short, what the union bargaining agent in good faith agrees to in the nature of seniority, all contractually covered employees must abide by, subject to modification by the internal appeals process within the agent's union.

Beyond managerial disciplining of employees is the disciplinary action of rail union officers over their members (Gamst 1986). A seniority system of a bargaining unit cannot exist without union discipline.

Generally, an agreement is not violated if a union member does any anti-union transgression other than not paying union dues. This is the only anti-union infraction causing a railroad, by agreement, to fire an agreement-covered employee. Thus railroaders belonging solely to the United Railroad Operating Crafts (UROC), a union not found to be a standard labor organization under the RLA were fired (Gilbert 1958). One could protect one's seniority, however, by "double heading," belonging to the union of one's desire and to the required union, for example, UROC and Brotherhood of Railroad Trainmen. A railroad is not required to fire an employee refusing to honor his own union's picket line.

Craft and Territorial Limits of Seniority Right

For effective operation, some delimiting of the seniority unit, both occupationally and territorially, has been necessary on railroads. Such limits are ordinarily reached bilaterally, by agreement. But, as discussed previously, the

limitations originated in unilateral principle before any agreement and are today found only as principle on some small railroads.

Craft limits to seniority in railroading concern an agreed (or else granted) set of worktasks to be performed by a designated group of employees. Further, the seniority an operating employee acquired in craft X does not *carry over*, that is, become added, to seniority later acquired after he or she transfers to craft Y. Thus in North American railroading, an employee with a seniority date of June 1, 1980 as a brakeman who is promoted to and first works as a conductor on May 15, 1984, and then is promoted to and first works as an engineer on August 20, 1991 retains the earliest date on the brakemen's roster, has the second, separate, date on the conductors' roster, and gains the last, separate, date on the engineers' roster. None of the years of seniority as a brakeman can be added to the employee's craft-separate conductors' or engineers' seniority, and none of the years as conductor can be added to those as an engineer. With a seasonal or cyclical downturn in traffic, when furloughed as an engineer, this employee can exercise his seniority as a conductor, displacing any junior working conductors. When furloughed as a conductor, the employee can displace any working junior brakemen.

Each operating craft is autonomous from another, even in multicraft unions such as the UTU (UTU 1969a; 1969b). This holds for nonoperating crafts also. However, some rail unions in recent decades at times represent a unitary combined craft replacing a number of related operating or nonoperating crafts. For example, on the Providence & Worcester beginning in 1973, the UTU represented a general operating craft combining both engine and train service employees, differentiated by skill qualifications (P&W 1973). Thus a brakeman not qualified as a conductor or as an engineer could not work in such positions.

The terms of an agreement limit the geographical area for claim to particular work by covered employees. In other words, the members of one craft seniority roster are spatially bounded by the territories of any other rosters in the same bargaining unit and by the rosters of other such units of the same craft. For example, engineers in the Union Pacific's (UP) former Los Angeles-Salt Lake bargaining unit had two distinct territorial seniority rosters with corresponding jurisdictions. These two are from Los Angeles northeastward to the west switch at Caliente, Nevada, and from this point to but not including Salt Lake City. From this last point, the former Oregon Short Line runs northwest and contained another seniority district, and former bargaining unit for UP engineers. No carry-over seniority exists between different territories of a craft.

On a railroad, a seniority *territory* for a craft might be limited to a *point* such as a particular facility; it could extend across a *district* such as a stretch of main and branch lines, perhaps a superintendent's division; or it might comprise the entire railroad. Over the years, through negotiated and imposed collective bargaining, a tendency has emerged toward larger seniority territories. With *point seniority* in the

past, seniority of clerks was often limited to one office or terminal, machinists to one shop or roundhouse, and switchmen to one or a few contiguous yards. In recent decades, the trend toward increased size of territory has almost eliminated point seniority and extended *district seniority* to include all of one or more divisions, or a larger unit such as a region of a railroad.

U.S. railroad mergers since 1980 have reduced the number of Class-I railroads from many to just eight, including four mega-carriers (AAR 2001). The railroads claim efficiencies of scale and consequent enhancement of service to shippers to justify mergers. But, clearly, the mergers of the UP and the Chicago & Northwestern in 1995, the UP and the Southern Pacific in 1996, and the Norfolk Southern and half of Conrail in 1999 did not result in improvements for the customers. Just the opposite resulted. Frank N. Wilner (1988) correctly cites an important reason for the merger mania, since these merged railroads can overthrow existing labor contracts. Accordingly, new federally imposed labor agreements for a mega-railroad resulted in the forced combination of seniority districts and the unilateral termination of negotiated work rules of all kinds. This imposing was done over the objections of rail unions that their legal labor agreements, negotiated across a century or more, were unilaterally abrogated by management.

During 2001, seven rail unions and the five largest freight railroads negotiated an agreement to end "cramdown," the practice permitted by the Surface Transportation Board in its approving railroad mergers of unilaterally abrogating collective bargaining agreements. Under the 2001 agreement, if there is any combination of work and two or more labor agreements apply, the union(s) concerned decide which one applies. Importantly, when the carrier integrates seniority rosters, it must give deference to the seniority integration plan developed by a union (BLE 2001c).

The Features of Craft Seniority in a Bargaining Unit and Persons Excluded

What are the specific features of the allocating mechanism comprising rail craft seniority? To begin, a distinction must be made between longevity in employment and seniority from an agreement roster. *Longevity* is the total length of time spent in a person's employment with a single employer, or else with an employer and its successor. A useful explanation of employment *seniority* on railroads flows from the discussion in this article. Initiated by a specified first date of service and functionally governed by the rostered rank order of an employee in a schedule-bounded employment group, seniority is a mechanism for regulating social relations in the allocation of scarce prerogatives among employees in the group and for the protection of this monopolistic advantage against all persons outside of the group. Seniority rules provide uniform procedures for allocating desired schedule-defined prerogatives from employment and for setting fair priorities among disputed claims

concerning the prerogatives within the group. Seniority can be delimited by a craft of employees and by a territory in the range of an employer's facilities. As on railroads, an employee could simultaneously have several different craft seniority dates.

Any explanation must consider two distinct quantitative measures of time inherent in the actual use of seniority and longevity systems (Gamst 1993:112-19). *Seniority*, although initiated by a *ratio* measure of time (a specified first date of service), is operationally an *ordinal* measure of time (a ranking of times). *Ratio time* is exemplified by calendar and clock time. It has a fixed absolute base, or zero, point, and its differently designated durations of time have equal units in a fixed relationship, such as December 10, 11, and 12 or 2:31, 2:32, and 2:33 P.M. *Ordinal time* has no base point. It consists only of temporal sequences, or rankings, with no measure of a quantity of time between ranked items. The everyday operation of a seniority roster is an example. All that matters on the roster is the total number of ranks, or lines of individuals, and the sequential relation of a particular employee's rank to all others listed. In other words, the worth of an employee's seniority can only be calculated relative to that of other employees on the same roster. Not the formal absolute (ratio) date or duration of seniority, but the dynamic relative (ordinal) rank of it determines sequence and choice of job prerogatives. As Dan Mater warned regarding use of units of calendar time to understand seniority: "seniority as measured in units of time is meaningless" (1940:390).

Longevity is based solely on the absolute (ratio) calendar total length of employment with an employer, including its successor. Unions and railroads usually label it as "years of continuous service with the employing carrier." It governs access to labor agreement benefits (UP 1986b), including number of days of paid vacation, amount of any severance pay or buyout payment, and amount of retirement pay. Of course, the calendar dates on which one takes vacation days is determined purely by seniority. In examining a particular employee's seniority and longevity, the latter often reflects a greater total time with a railroad and the former a lesser segment of this time in a particular craft with the company.¹² This is so for those promoted from one craft to another, say, from trackman to section foreman.

The value of longevity, then, accumulates and increases for an employee by virtue of his formal, ratio, and length of employment, but that of seniority does not. No covariation exists between the formal, structural, ratio variable of longevity and the dynamic, functional, ordinal variable of rank in seniority. In short, except for fringe and other benefits, not calendar date of first service, but seniority's rank, is all-important. For example, on the morning of one day, an employee with a seniority date of July 1, 1998 could be ten roster positions (ranks) from obtaining a desired job. On that afternoon, ten employees on his craft roster—all older in seniority—could end employment for various attritional reasons. Now, with the exact same ratio seniority (July 1, 1998) as earlier that day, the employee's ordinal seniority (ten ranks/lines higher on the roster) and ability to take a job increases dramatically.

Conversely, an employee could wait across the span of three years for an improvement in his seniority, but in a period when there is no attrition of those older than he on the seniority roster. Consequently, his ratio measure increases (three additional years of seniority), but to no job avail because his ordinal measure (no ranks higher) has not changed. In another example, one could hypothesize a railroad with three contiguous seniority districts of approximately the same length. Each has about the same number of persons on its conductors' seniority roster and the same number of trains running through daily in each direction (1 regularly scheduled and 6 to 8 irregularly scheduled freights). The "best run" is the regular train, having a fast trip and predictable hours on duty, and goes to the conductor with the greatest seniority on a district. On the first district, he is a 35-year man, on the second a 41-year man, and on the third a 29-year man. The total (ratio) number of years of seniority per person is of unequal value on the three similar districts, because of unequal (ordinal) ranking on district seniority rosters.¹³

As an emergent and not a full equity/property right, a railroaders' seniority could not always be sold for money, until recently. Seniority can by agreement rules be exchanged in the same craft between different seniority districts of a single railroad system, say a conductor on the UP in Los Angeles with one in Omaha. Today, such exchange may not formally include money, contrary to in the past when one operating craft employee sometimes gave a monetary inducement to another person of the same craft for exchanging seniority dates. Given the unequal ranking on different seniority rosters, a seniority exchange could be quite advantageous for one party. This was even more so when an "old head" relative, prior to retirement, exchanged with a nephew. In recent times, the two parties to a seniority exchange must each take the seniority date of the junior-most of the pair. Because, to date, seniority exists solely by virtue of a labor agreement, its property aspect is limited. This incorporeal thing of seniority has no independent existence, as do a material car or house, or an incorporeal copyright of an author to a book.

Beginning in the 1980s, seniority is commonly said to be "sold to the company" by railroaders of certain crafts in agreement programs of "seniority buyouts." Here a carrier reduces the members of particular craft seniority rosters having agreement rights to work in jobs that management no longer desires. The employer pays a lump sum in an exchange for surrendered seniority rights, for example, in 1991 on the Chicago & Northwestern, from \$50,000 to \$100,000 to a trainman and somewhat lesser amounts on other railroads (UP 1986a; SPT 1987a and 1987b; Anon. 1990, 1991a, 1991b). Clearly, the emergent property of seniority held by a railroader now has a union-negotiated price for restricted sale in the marketplace. Such restricted sale is similar to selling a house in a national seashore reserve: sale must be solely to one party, the government.

A rail craft seniority roster creates more than just a limited membership. The work rules create for roster members an exclusive preference regarding specified

worktasks and responsibilities, thereby relegated solely to the particular membership. Seniority lawfully includes a roster monopoly over designated work. The right of agreement seniority was further defined in this way during 1937 by the NRAB's First Division (Award No. 1842:132, *Caldwell Case*; Award No. 1843:147, *Haileyville Case*) as follows: "seniority, in railway service, is a preferential right to perform a certain class of work to the exclusion of all others not holding such seniority in that service. Once established it cannot be arbitrarily destroyed." The federal NRAB thus gave the authority of law to the premise that agreement seniority right includes a monopoly on the performance of the tasks of a craft by its practitioners from a specified roster, upon its roster territory. Except for the "cramdown" practice no party can unilaterally either abrogate the roster monopoly in seniority right or give part of it to those not on the seniority list.

Further, those excluded from a bona fide monopolizing right are a class of all of the world's people not included in the roster group. As affirmed by the NRAB, no particular class of persons is, by virtue of existence of seniority right, a target for exclusion from performance of right-protected work. Instead, the global class of all those not on the governing seniority roster are excluded, without prejudice to any subclass within this universal group. The rights of persons already on a seniority roster may not be diminished by the extra-agreement addition of a new person. The lawful seniority rank order used in furloughing and recalling of employees could frustrate affirmative action goals (MacLeod 1987).¹⁴

Retrospection on the Contractual Basis of Seniority Right

An employee's seniority rights are not unlimited. The seniority rights of a worker are conditioned by the wording of the labor agreement creating them. Because seniority right is contractually based, it can only be modified by agreement between a bargaining agent and management. And the right is enforceable only in accordance with the terms of the latest version of the agreement. Broadly speaking, because seniority rights issue from an agreement, they do not go beyond the life and provisions of a contract. In *Local Lodge 2040, International Association of Machinists v. Servel, Inc.*; (268 F.2d 692 698 (7th Cir), *cert. denied* 361 U.S. 884 [1959]), the court held that "seniority rights depend upon an employer-employee relationship; they do not guarantee such a relationship but merely define the rights of an employee when that status is in existence." Thus, under the NLRA, seniority rights do not survive the termination of an agreement unless provided by the wording of the agreement or by a subsequent agreement.

In the "state" of the U.S. rail labor relations, the matter is entirely different. Under the RLA, a labor agreement remains continuously in effect until renegotiated by the parties and cannot expire so long as the carrier and bargaining agent, or their successors, exist. Rail craft seniority rights, accordingly, do not terminate because a contract lapses owing to passage of time. Changes or terminations in particular work

rules, therefore, must be renegotiated. Railroaders could work with an agreement not adjusted for several years past an expiration of a moratorium prohibiting renegotiating of the contract.¹⁵

Employees furloughed from employment have seniority rights only as provided by the contract. When duration of rights is not limited by the contract, furloughed workers retain the rights so long as they are both available and able to work. Until the federally imposed agreements of 1985 and 1986 in the U.S. (Anon. 1986), an unlimited time of furlough had been true for new hires in all the operating crafts.

In sum, it is not empty talk when a person "hires out" on a railroad and the first thing heard is: "the only thing you will ever have on this railroad is your seniority." It takes years of on-the-job discussion, practice, and reflection to comprehend the words.

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¹ For the development of constructs in industrial relations of webs of rules, see Gamst 1995.

² In Canada during and immediately after the First World War, rail labor agreements and their work rules, including those for crafts and seniority, became structured by U.S. forms (Rountree 1936:57-61).

³ For Title III of the Transportation Act of 1920 as comprehensive federal labor law, see Jones 1941. Frank N. Wilner (1991) provides the most informing current treatise on the RLA. For the U.S., the RLA shaped views on the relations among employers, employees, and government. Federal laws for the railroad "state" foreshadowed general labor law for the land. For example, the Federal Employers' Liability Act of 1908 predated state workmen's compensation acts; the Adamson Act of 1916 included provisions found in the National Industrial Recovery Act of 1933 and the Fair Labor Standards Act of 1938; aspects of the RLA, including its amendments of 1934, provided similar statutory wording for the National Industrial Recovery Act of 1933 and the National Labor Relations Act of 1935; the RLA's periods of "fact finding" and "cooling off" were incorporated into the Taft-Hartley Labor Management Relations Act of 1947; the Railroad Retirement Act of 1937 was drafted in 1934, but not enacted, prior to the passage of the Social Security Act of 1935; and the Railroad Unemployment Insurance Act of 1938 provided the first national system of unemployment and disability benefits. The "rail state" was in the forefront of the women's labor movement during World War I, when rail unions sought and received the first agreements providing full "application of the principle of equal pay for equal work by women and men" (Anon. 1918c; Goldmark 1919). In April 1917, the federal Director General of Railroads equalized, and pioneered, national rates of pay for the same class of rail service "without regard to sex or race" (USRA 1918a).

⁴In this article, a *bargaining unit* is a group of employees holding a set of jobs in an industry, or some part of it, possessing enough of a sharing of common characteristics and interests to constitute such a clustering. This unit is represented by a bargaining agent for collective bargaining with an employer or grouped employers of an industry. A *bargaining agent* for such a unit may be a labor union, but for railroads it is ordinarily a union component, a General Committee of Adjustment. Here, a *craft* among workers of any kind, anywhere is one or two or more closely related, skilled to highly skilled trades. It is an occupation with both manual and mental tasks necessitating extensive training and the possession of considerable ability. (For the railroad operating crafts and the craft of train dispatcher demonstrated as mental in addition to manual occupations, see Gamst 1980 and 1990.) In railroading, members of the *operating crafts* crew trains and engines. *Nonoperating craft* members provide mechanical (regarding equipment), engineering (regarding structures and right-of-way), traffic control, and clerical support for the movement of trains and engines and related tasks.

⁵Because the employer often agreed to provide particular work rules in lieu of increases in pay or other work rules, one could reason as follows. Customarily, a party to collective bargaining agrees to surrender something only in return for gaining another thing. There are no work rules gained in past bargaining that are not still being continuously paid for by railroaders. Such payment is in the form of a past reduction of a good in perpetuity, for example, a forgone increase in wages or rule advantage.

⁶During our discussion of craft seniority, *class* is included. Thus, under Section 2, Fourth of the RLA, either "craft or class" constitutes the unit for bargaining and representation. Bargaining units and crafts were originally intertwined in rail labor relations. By World War I, especially for the operating crafts, the bargaining unit, even without a formal label as such, had become explicit. During federal control of railroads from 1917 through 1920, almost all current craft bargaining units were formalized (Anon. 1918a and 1918b; USRA 1919a, 1919b, 1919c) and even employees who were not craftsmen were allowed collective representation, in classes instead of crafts. An example is Supplement No. 8 of General Order No. 27 of the U.S. Railroad Administration, created the early bargaining units for maintenance-of-way employees. Its Article I speaks, among other employees, of "track laborers and all other classes of maintenance-of-way labor not herein named" (USRA 1918b). Thereby, collectivities of noncraft employees were recognized as having some manner of community of interest and labeled as employees constituting a class. Where craft skills were not involved, the USRA found a craft-analogous class.

⁷Job opportunities decline with age (Hutchens 1988). Seniority protects against such decline.

⁸Even railroad officers outside of the RLA are protected by craft seniority. They "have a job insurance" of always being able to fall back to their craft seniority employment, because the labor agreements allow maintenance of a seniority date when becoming a full-time company officer, union official, or government rail regulatory administrator.

⁹Under the RLA, a *public law board* is a local, three-person, special adjustment body created by agreement of the parties. A *minor dispute* concerns interpretation of an existing labor agreement and its work rules, hence a grievance dispute. Decisions of either board are final and binding on the two parties; thus, rail labor cannot strike over and management cannot ignore concerning a minor dispute.

¹⁰The RLA requires and supports voluntary bargaining, with no time limit, between labor and management. The primary purpose of the Act is not to reach settlements quickly but to "avoid

any interruption to commerce or to the operation of any [rail or air] carrier engaged therein.” For failures of the parties to reach a settlement, under Section 4, the Act includes the services of the NMB, like the NRAB an independent agency in the executive branch of the federal government. A *major dispute* concerns negotiation for a revised or an initial labor agreement involving, under Section 5 “changes in rates of pay, rules, or working conditions not adjusted by the parties.” Beyond this charge, the NMB could handle “any other dispute not referable to the National Railroad Adjustment Board” and not adjusted by the parties. In a major dispute, the NMB could impose its mediation services, thus effecting mandatory involvement for the parties, for whom a settlement is not compulsory; act upon a request for its mediation from either or both parties; proffer its arbitration services leading to a “final and binding award,” thus necessitating both parties accepting the process voluntarily; or accept from either or both parties a request for its arbitration services, which either party may reject. When, under Section 10 of the RLA, the NMB believes a dispute threatens “to deprive any section of the country of essential transportation service,” then it might recommend to the President that the matter be submitted to an emergency board (PEB) which, if appointed by the President, recommends a settlement. At the President’s request, only the Congress can impose, legislatively, upon the parties either the PEB’s recommendation or an arbitration. The NMB has no power to compel a settlement. Section 5, Second of the RLA empowers the NMB to interpret provisions in disputes “over the meaning or the application of any agreement reached through mediation.” The Board little uses this power, owing to its desire not to tarnish its aura of neutrality in disputes.

¹¹ That the nonunion members may not be discriminated against has been upheld since *Steele v. Louisville & Nashville Railroad*, 323 U.S. 192 (1944), a pivotal rail seniority case precursor to the landmark *Brown v. Board of Education*.

¹² Related to the seniority and longevity just discussed, the National Labor Relations Board, courts, and arbitrators differentiate *seniority* from *net credited service*. The former includes the duration of the calendar time since the employee received a seniority date, and the latter is the duration of time an employee actually worked with an employer. Net credited service governs amount of and entitlement to remunerations such as sick benefits, vacation, termination payment, and pension. Seniority governs allocations of prerogatives of work among members of a seniority group as previously discussed.

¹³ Even on the new “spun-off” railroads, when a labor agreement is completed, it is rank order in seniority that is sought by the union. On the Montana Rail Link, a newer, but more experienced, hiree might be qualified to take a promotion to locomotive engineer before a previous, but less experienced, hiree. Accordingly, “in the event a junior employee is promoted to engineer ahead of a senior employee, the junior employee...having made a service trip as a qualified, promoted Locomotive Engineer, will establish a seniority date for all employees his/her senior in their respective rank order on the date of such first service of the junior employee” (MRL 1991:19).

¹⁴ Seniority rules are today found in almost all labor agreements and civil service statutes and are protected in the U.S. by Title VII of the Civil Rights Act of 1964 which says: “It shall not be considered an unlawful practice for an employer to apply different...terms, conditions, or privileges of employment to a bona fide seniority...system” (42 U.S.C. § 2000e-2[h]). Further, the U.S. Supreme Court held in *Firefighters' Local Union No. 1784 v. Stotts* (464 U.S. 561 [1984]) that the authority of federal courts is limited in granting injunctions which weaken

or undercut a “bona fide seniority system,” even when the system conflicts with court orders to increase the numbers of protected minority and women employees in a firm. Just one negative or positive fact for a seniority system rarely allows a determination of “bona fide.” A court instead looks to the “totality of circumstances” (*James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 352, 5th Cir. [1977]). A bona fide seniority system is free of discrimination or its intent against particular classes of employees. In *Teamsters v. U.S.*, (431 U.S. 324 [1977]), the Supreme Court found a seniority system bona fide because it was not created for discrimination and “it was negotiated and has been maintained free from any illegal purposes.”

¹⁵ Rail labor agreements ordinarily have no fixed period but can be adjusted on dates mutually agreed by the parties. As per Section 6 of the RLA, a party desiring to change a labor agreement must give thirty days written notice. Included in an agreement ordinarily is a specified period, often three years, during which a moratorium exists regarding the reopening of matters just negotiated. Matters not included in the moratorium during this period may be presented in a Section 6 notice. Some moratoria are permanent.