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I. Introduction

Pennsylvania's changing labor law framework has been instrumental in furthering the right of public employees to organize and bargain collectively.[1] The traditional unilateral decision-making of administrative managers has been altered through the influence of public employee collective bargaining legislation,[2] public employee organizational goals and leadership, community opinion, and administrative effectiveness in coping with public sector collective bargaining. Essentially, all these influences originate from the premise that Pennsylvania's administrative managers must now confront employees united in an organization. The days of dealing with employees as isolated individuals are numbered, even in areas of Pennsylvania that appear unaffected by the emergence of public sector collective bargaining.[3]

This article focuses upon the special problems of public employee union representative superseniority in Pennsylvania, a matter that is currently evoking considerable attention. "Superseniority" is seniority granted by a collective bargaining agreement to certain classes of employees in excess of that which length of service would justify. It is protected from reduction by events that reduce other employees' seniority.[4]

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1. The Act of July 23, 1970, P.L. 563, No. 195, established the rights for public employees to organize and bargain collectively through selected representatives. 43 PA. STAT. ANN. §§ 1101.101 *et seq.* (Supp. 1976).

2. *Id.*

3. For example, small municipalities, boroughs, and other local government units. As yet, the pressure to organize these groups of employees into identifiable bargaining units has not been great. It is anticipated, however, that the next move in public employee organization will extend to this level of government.

4. BUREAU OF NATIONAL AFFAIRS, PRIMER OF LABOR RELATIONS 108 (1973). Union stewards and veterans are sometimes accorded superseniority. The granting of superseniority

In Pennsylvania, superseniority for public employee union representatives is being questioned over its potential conflict with the Civil Service Act.[5] Because of the unique nature of public sector collective bargaining and the lack of Pennsylvania case law on the issue, guidance must be sought from a variety of sources. These include the following: Pennsylvania's collective bargaining legislation;[6] Pennsylvania's Civil Service Act;[7] Pennsylvania's case law addressing public sector bargaining; other jurisdictions' public sector collective bargaining practice and procedure; and practice, procedure, and decisions of the National Labor Relations Board (NLRB) and the courts under the National Labor Relations Act (NLRA).[8] Given this background, one may begin to formulate a definitive answer concerning public employee superseniority. Much will still be left to uncertainty, however, due to the novelty of this procedure and a lack of experience with it.

II. Public Sector Seniority—Some General Considerations

The concept of "seniority" is deemed significant by both private and public sector unions. "Seniority" is a term describing the criteria used in determining matters of hiring, promoting, laying-off, and firing. The character of a collective bargaining agreement's seniority clause has an appreciable impact upon efficient operations in private and public sector organizations. Moreover, to an employee the seniority clause can be more important than wage rates or fringe benefits. For example, it matters little to the laid-off employee that the wages provided by the collective bargaining agreement were generous.[9]

The principle of seniority, under which the employee with the greater length of service receives increased job security, is not a new concept in either sector. For at least four reasons seniority has received increasing stress in collective bargaining agreements during the past decade.[10] First, both management and union representatives have become convinced that there is a certain amount of equity to the seniority system. This is especially true with regard to layoffs and recall opportunities after layoffs. Second, the application of seniority is an objective one, and is calculated to avoid arbitrariness in the selection of personnel for positions, promotions, layoffs, and recalls. Consequently, seniority may be less troublesome for labor negotiators to deal with than alternative devices. Third, employee benefit programs have been geared almost exclusively to seniority. This

to strikers' replacements, however, has been held to be an unfair labor practice. *See* NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963).

5. 71 PA. STAT. ANN. §§ 741.1 *et. seq.* (Supp. 1976).
6. 43 PA. STAT. ANN. §§ 1101.101 *et seq.* (Supp. 1976).
7. 71 PA. STAT. ANN. §§ 741.1 *et seq.* (Supp. 1976).
8. 29 U.S.C. §§ 151-68 (1970).
9. A. SLOANE & F. WITNEY, LABOR RELATIONS 409 (2d ed. 1972) [hereinafter cited as SLOANE & WITNEY].
10. *See* S. SLICHTER, J. HEALEY & E. LIVERNASH, THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT 104-41 (1960).

orientation has been intended to make these programs more acceptable to the employer since the number of employees entitled to benefits can thereby be controlled. Fourth, outside agencies, notably government labor boards and impartial arbitrators, have tended to weigh seniority heavily in their decisions.

Almost every public sector collective bargaining agreement now includes a seniority provision. In this sector, an ideal seniority structure would be one that protects employee job rights. At the same time, it should not impose unreasonable restraints on the employer's right to determine work assignments by sacrificing productivity and efficiency.[11]

III. Superseniority—An Exception to the Public Employee Seniority System

In public sector collective bargaining agreements there may be some exceptions from the normal operation of the seniority structure.[12] One of these is superseniority for union representatives. Some public employers and unions have agreed that designated union representatives shall have a preferred status in the event of layoffs and furloughs. These employees are protected in their job status regardless of their length of service, and are entitled to such consideration by holding union office. When their term of office expires, however, they lose their superseniority status.

There is no doubt that unions consider seniority one of the more important features in any public sector collective bargaining agreement. This refers, however, to actual seniority—seniority based upon length of service and giving preference to older employees in accordance with the provisions of the collective bargaining agreement. On the other hand, superseniority has a fundamentally different purpose. It gives preference to younger employees based upon their retention of union office. As such, superseniority is clearly an exception to the seniority rule. To the extent younger employees are favored by superseniority, the rights of older employees are reduced.[13]

IV. Applicability of Superseniority to the Public Sector

Superseniority for union representatives is a relatively new concept in the public sector. In order to determine its parameters, it may be helpful to

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11. *See* SLOANE & WITNEY, *supra* note 9, at 411.

12. *See* AGREEMENT BETWEEN COMMONWEALTH OF PENNSYLVANIA AND AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO, Article XXX, § 14 (July 27, 1976) [hereinafter cited as AGREEMENT]. Section 14 provides:

> For the purpose of furlough, union stewards and the four chair officers of the Union Locals shall have super seniority. It is clearly understood and agreed that this section shall not become effective until the Employer and the Union have reached agreement as to the number of union stewards who will be granted the privilege of this section. The Union shall provide the Employer on a quarterly basis a list of all employes who have been granted superseniority in accordance with the provisions of this Section. The list shall contain the employe's name, union title, agency of employment, bargaining unit, work location and local union number.

13. American Monorail Co., 40 LAB. ARB. & DISP. SETTL. (BNA) 323, 326 (1963).

examine its use within the private sector. Public sector superseniority cannot, however, be interpreted solely by reference to the rulings, decisions, or case law of the private sector.[14] At best, only guidance can be sought.

Barring legislation,[15] private and public sector seniority rights derive their scope and significance from collective bargaining agreements.[16] In the private sector, the underlying purpose of superseniority has been to assure the fullest possible union representation by experienced individuals.[17] It provides that there will be adequate union representation present at all times, even during layoffs. This is accomplished by continuing certain union representatives on the payroll in a special seniority status.[18] Superseniority provisions amount to an agreement that though these representatives may be junior in service to other employees, they will be treated as having seniority in service when forces are reduced.[19]

Essentially, the superseniority provision is coupled with the operation of the grievance procedure. In fact, the only valid reason for superseniority in either the public or private sector lies in the provisions of the grievance procedure.[20] For the purpose of lending orderliness and centralizing authority in matters between the union and employer, the unions customarily insist upon recognition of an employee union member as the union's representative. This representative then acts as the initial medium for adjusting differences between the employer and employees in the grievance procedure. Consequently, one of the safeguards insisted upon by private and public sector unions for the effective functioning of the grievance procedure is continuity in office for its union representatives.[21] In this way, a limited number of union representatives can be assured of employment during any layoff[22] and can actively represent the remaining employees on the job whenever the need arises. They are also available to the employer when needed for the adjustment of grievances.

In order for the private or public sector grievance procedure to function properly, each employee must be represented by a union representative.[23] These representatives are not regarded merely as individual

14. State College Educ. Ass'n v. Pennsylvania Labor Relations Bd., 9 Pa. Commw. Ct. 229, 306 A.2d 404 (1973).

15. For example, in the public sector, where the collective bargaining agreement cannot contain any provision in violation of, inconsistent with, or in conflict with any statute. *See* 43 PA. STAT. ANN. § 1101.703 (Supp. 1976).

16. *See* Trailmobile Co. v. Whirls, 331 U.S. 40, 53 n.21 (1946).

17. F. ELKOURI & E.A. ELKOURI, HOW ARBITRATION WORKS 135 (3d ed. 1973) [hereinafter cited as ELKOURI].

18. Borg-Warner Corp., 33 LC. ARB. & DISP. SETTL. (BNA) 655, 661 (1959).

19. General Electric Co., 39 LAB. ARB. & DISP. SETTL. (BNA) 587 (1962).

20. Clark Grave Vault Co., 17 LAB. ARB. & DISP. SETTL. (BNA) 291 (1951).

21. Aeronautical Lodge No. 727 v. Campbell, 337 U.S. 521, 527 (1949).

22. United States Plastics Products Corp., 36 LAB. ARB. & DISP. SETTL. (BNA) 808, 811 (1961).

23. These union representatives may be appointed by the union or elected by the membership of the union. The method of determining union representatives depends entirely on the substantive law and policies of the particular union. Generally, though, these union representatives are designated by elective rather than by appointive process. *See* I. ROTHENBERG, LABOR RELATIONS 56 (1949).

members of the union, but are in a special position in relation to collective bargaining for the benefit of the whole union.[24] To retain them in this position is not an encroachment on the seniority system, but a due regard of union interests that embrace the system of seniority rights.[25]

A collective bargaining agreement in either the private or public sector assumes the proper adjustment of grievances at their source. It is in this way that union representatives play an instrumental role. This makes it highly desirable that union representatives have the authority and skill that is derived from continuity in office.[26] A provision for retaining union representatives beyond the routine requirements of seniority cannot be deemed arbitrary or discriminatory. Rather, this modification in seniority is in the mutual interest of unions and management, as it preserves the continuity of the grievance adjustment process.[27]

V. Limitations Upon Public Sector Superseniority

Union representative superseniority in the private and public sectors is expressly limited by the collective bargaining agreement.[28] It is a bargaining concession to the union rather than to individuals. Thus, the exercise of superseniority must be limited to the purpose clearly indicated by the collective bargaining agreement.[29] Since it is an exception to the normal operation of seniority provisions, the application of superseniority, by the terms of the particular agreement, often does not extend to all the advantages that seniority affords. Therefore, superseniority does not entirely replace actual seniority.[30]

Under superseniority in the private and public sectors an individual receives no other "rights" not open to fellow employees and no "privileges" not enjoyed by fellow employees. Superseniority does not accord the union representative the right to remain in a particular position classification.[31] It provides only that the union representative will be the last to remain on the job in any layoff or furlough. Moreover, the union is responsible to notify the employer which employees hold union office for

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24. Aeronautical Lodge No. 727 v. Campbell, 337 U.S. 521, 527 (1949).
25. *Id.*
26. *Id.* at 528.
27. While there is not complete agreement on the advantage of superseniority for union representatives, it is certainly within the area of collective bargaining. *See* NLRB v. Proof Co., 242 F.2d 560 (7th Cir. 1956), *cert. denied*, 355 U.S. 831 (1957). The National War Labor Board recognized

> that the functions of shop stewards and other local union officials were of value to a company as well as to its employees in settling and preventing labor grievances. For this reason, it usually directed seniority preference for union officials in disputes over the issue.

I U.S. DEPT OF LABOR, THE TERMINATION REPORT OF THE NATIONAL WAR LABOR BOARD 147-48 (1948).

28. Pittsburgh Metallurgical Co., 45 LAB. ARB. & DISP. SETTL. (BNA) 1109, 1115 (1966); United States Motor Corp., 37 LAB. ARB. & DISP. SETTL. (BNA) 991, 995-96 (1961).
29. Rola Div., 40 LAB. ARB. & DISP. SETTL. (BNA) 675, 679 (1963).
30. American Monorail Co., 40 LAB. & DISP. SETTL. (BNA) 323, 326 (1963).
31. Bauer Bros. Co., 52 LAB. ARB. & DISP. SETTL. (BNA) 415, 417 (1969); Rola Div. 40 LAB. ARB. & DISP. SETTL. (BNA) 675, 679 (1963).

superseniority status.[32] The union's failure to provide such notification entitles the employer to not recognize a union representative as having superseniority.

Consequently, the purpose of superseniority in either sector is not to clothe a union representative with "privileges." It is to ensure that the union representative remains on the job to function as an official within the grievance procedure. Superseniority provides representation for employees in the grievance procedure, not employment to a selected group. The primary purposes of superseniority are to prevent a union representative from being laid off as long as anyone else in the department remains at work, and to maintain the grievance procedure.[33]

VI. Some Special Public Sector Superseniority Problems

A. Designation of Superseniority Status

A fundamental problem in the negotiation of a superseniority clause in either the private or public sector is the designation of employees to receive this status. Frequently, collective bargaining agreements limit this protection to the major local union officers, since if too many employees are accorded superseniority status, the effective and equitable operation of the seniority structure might be disturbed.[34] It is common practice to specify exactly which union members are to be granted superseniority.

B. Civil Service and Superseniority

Another problem of particular importance to the public sector involves civil service employees and their superseniority status. The issue of superseniority's relationship with collective bargaining and the "merit principle" of the civil service system is especially vexing. The "merit principle" holds that selection, assignment, promotion, and retention should be based on ability to perform duties satisfactorily rather than on such extraneous considerations as political affiliation, race, and religion.[35]

There is concern that the civil service principle will be damaged by collective bargaining if it is not preserved in such personnel matters as promotions, transfers, and layoffs. This originates from the belief that the assertion of seniority criteria through collective bargaining is basically incompatible with the "merit principle."[36] It is argued that length of service itself is not necessarily related to competence and ability. This substitution of seniority for relative competence as the *controlling* factor in

32. Rex Windows, Inc., 41 LAB. ARB. & DISP. SETTL. (BNA) 606 (1963).
33. Pittsburgh Metallurgical Co., 45 LAB. ARB. DISP. SETTL. (BNA) 1109, 1113 (1966); Rola Div., 40 LAB. ARB. & DISP. SETTL. (BNA). 675, 679 (1963); Clark Grave Vault Co., 17 LAB. ARB. & DISP. SETTL. (BNA) 291 (1951).
34. SLOANE & WITNEY, *supra* note 9, at 417.
35. J. GRODIN & D. WOLLETT, COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT 162 (2d ed. 1975).
36. *Id.* at 163.

promotions, transfers, and layoffs cannot be reconciled with civil service, even if seniority is coupled with minimum qualifications.[37] The fear is that unless competence is made the *controlling* factor, the civil service system's "merit principle" may be gradually eroded.[38] Outwardly it might seem that the concept of superseniority would conflict with the civil service system or "merit principle."

Four views can be presented regarding superseniority and its relation to the civil service structure. First, it can be argued that the uniqueness of public sector employment stresses the potential for conflict of superseniority under the collective bargaining agreement with Pennsylvania's Civil Service Act.[39] Under the Act, employees are divided into five classes: emergency,[40] temporary,[41] provisional,[42] probationary,[43] and regular.[44] The Act's furlough procedure is based on these classes. Section 741.802 prescribes this procedure and suggests that certain classes of employees be furloughed first, and that a "lowest quarter regular service ratings" requirement be followed.[45] Under this section, however, these furlough requirements can be preempted if a collective bargaining agreement exists covering civil service employee furloughs.[46] In such cases, the collective bargaining agreement's furlough procedure for civil service employees controls.[47]

The Commonwealth's new collective bargaining agreement with the American Federation of State, County, and Municipal Employees (AFSCME) purports to fall within the preemption language of section 741.802 for furlough of civil service personnel.[48] Section 8 of the collec-

37. *Id.*
38. *Id.*
39. 71 PA. STAT. ANN. §§ 741.1 *et seq.* (Supp. 1976).
40. *Id.* § 741.606.
41. *Id.* §§ 741.3(i), 741.605.
42. *Id.* § 741.604.
43. *Id.* §§ 741.3(t), 741.603.
44. *Id.* § 741.3(k).
45. *Id.* § 741.802. This section in part provides:
In case a reduction in force is necessary in the classified service, no employe shall be furloughed while any probationary or provisional employe is employed in the same class in the same department or agency, and no probationary employe shall be furloughed while a provisional employe is employed in the same class in the same department or agency. An employe shall be furloughed only if at the time he is furloughed, he is within the lowest quarter among all employes of the employer in the same class on the basis of their last regular service ratings, and within this quarter he shall be furloughed in the order of seniority unless there is in existence a labor agreement covering the employes to be furloughed, in which case the terms of such labor agreement relative to a furlough procedure shall be controlling: Provided, That the appointing authority may limit the application of this provision in any particular instance to employes in the same class, classification series or other grouping of employes as referred to in any applicable labor agreement, and which are in the same department or agency with headquarters at a particular municipality, county or administrative district of the Commonwealth. . . .
46. *Id.*
47. *Id.*
48. AGREEMENT, *supra* note 12, art. XXX, § 8. This section provides:
Before any furlough is implemented in a classification in the classified service in a seniority unit, all emergency employes will be separated before any temporary employes; temporary employes will be separated before any provisional employes; provisional employes will be separated before any probationary employes are

tive bargaining agreement sets forth a furlough order for civil service employees: employees shall be furloughed in the order of emergency, temporary, provisional, probationary, and regular.[49] Basically, section eight of the collective bargaining agreement[50] follows the same furlough procedure suggested by section 741.802 of the Act,[51] but the Act's "lowest quarter regular service ratings" requirement is eliminated.[52] Thus, it can be said that section 741.802 of the Act is limited only to the furlough *procedures* to be followed under either this section or a collective bargaining agreement, if in existence.[53] If a collective bargaining agreement exists it preempts section 741.802 only as to the *procedure* to be followed for furlough.[54] Section 741.802 does not permit a collective bargaining agreement to alter or change any *substantive* requirement for a civil service class.[55] Consequently, the language of section 741.802 should be strictly construed, even though it appears to be broad in scope.[56] It should not be read to abrogate other provisions of the Civil Service Act. By limiting its application to *procedure* the potential for altering the *substantive* element of any civil service class is not threatened. The concept of superseniority would clearly alter the *substance* of civil service classes, for it would extend, without regard to merit, almost regular civil service status to any non-regular employee in a furlough situation.

The Civil Service Act makes no mention of the superseniority concept and there is nothing in the act analogous to superseniority.[57] Clearly, superseniority is in conflict with the civil service system. If it conflicts with the Civil Service Act,[58] superseniority under the collective bargaining agreement[59] cannot be extended to civil service employees. Therefore, Pennsylvania's collective bargaining act mandates that superseniority cannot be extended to civil service employees since such a collective bargaining agreement provision would be in violation of, inconsistent with, or in conflict with the Civil Service Act.[60]

Second, it might be found that superseniority under the collective bargaining agreement applies to civil service employees in a limited sense. It can be reasoned that section 741.802 of the Civil Service Act is

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furloughed; and all probationary employes will be furloughed before any regular status members of the classified service.

49. *Id.*
50. *Id.*
51. 71 PA. STAT. ANN. § 741.802 (Supp. 1976).
52. AGREEMENT, *supra* note 12, § 8.
53. 71 PA. STAT. ANN. § 741.802 (Supp. 1976).
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at § 741.1 *et seq.*
58. *Id.*
59. AGREEMENT, *supra* note 12, art. XXX § 14.
60. PA. STAT. ANN. tit. 43, § 1101.703 (Supp. 1976), which provides:
The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

sufficiently broad to permit superseniority's extension to a civil service employee, but *only* within the employee's class and seniority unit.[61] For example, superseniority for a probationary employee would only make such an employee the most senior of all the probationary employees within the immediate seniority unit for furlough purposes. In reality, however, such a construction of section 741.802 would be ineffectual and defeat the purposes of superseniority.[62] Only if the seniority unit had a particularly large number of probationary employees would such a construction prevent an immediate furlough. Otherwise, extending superseniority by class within a seniority unit would serve no purpose. Therefore, under such a construction continuity and adequate representation in the grievance procedure could not be assured.

Third, it can be reasoned that superseniority under the collective bargaining agreement can be extended only to regular or permanent civil service employees. This is based on the assumption that this does not substantially alter a civil service class especially since such employees are already permanent in their status.

Fourth, it can be argued that no conflict exists between superseniority under the collective bargaining agreement and Pennsylvania's Civil Service Act.[63] This is based upon the rationale that superseniority is part of the *procedure* to be followed in furloughs. As such, it falls within the preemption that a collective bargaining agreement enjoys under section 741.802 pertaining to civil service furlough procedures.[64] Such a rationale can be further buttressed by accepting the private sector's basis for superseniority—that superseniority is essential for preserving continuity in the grievance procedure. This view fails, however, to take into account the uniqueness of the public sector employment relation and the concept of civil service.

From the above, it is evident that a variety of views can be set forth either supporting or denying superseniority's applicability to Pennsylvania's civil service employees. The arguments basically concern whether superseniority is to be regarded as a *substantive* or *procedural* element of the Civil Service Act's section 741.802.[65] Regardless of the view taken, some important questions are presented pertaining to superseniority's conflict with the Civil Service Act[66] and its subsequent survival under Act 195.[67]

C. *Waiver of Conditions Placed Upon Superseniority Status*

If the collective bargaining agreement provides conditions upon conferring superseniority status, a waiver, or accord by the public em-

61. PA. STAT. ANN. tit. 71, § 741.802 (Supp. 1976).
62. *Id.*
63. PA. STAT. ANN. tit. 71, §§ 741.1 *et seq.* (Supp. 1976).
64. *Id.* § 741.802.
65. *Id.*
66. *Id.* § 741.1 *et seq.*
67. PA. STAT. ANN. tit. 43, § 1101.703 (Supp. 1976).

ployer, may result. For example, a problem relating to public employees might involve any non-regular or permanent employee who attains superseniority status under a broad collective bargaining agreement provision that sets forth no requirements concerning who shall hold superseniority status. A careless public employer might find that superseniority status is granted to employees never contemplated by the provision, for example, probationary and temporary employees.

Even if specific conditions are provided by the collective bargaining agreement, the public employer may effectively waive them by failing to object at the time of designation of an employee who does not satisfy the conditions.[68] Moreover, the public employer's continued failure to make an objection for a reasonable period thereafter will constitute a waiver of any requirement for superseniority status. Such a waiver can occur with or without a provision providing that the public employer and union must reach agreement regarding the number of union representatives who will be granted superseniority.

D. The Relation of Bumping and Transfers to Public Sector Superseniority

Another problem is raised by bumping rights of public employees protected by a superseniority arrangement. Collective bargaining agreements usually state clearly the positions to which employees are entitled when they are scheduled for furlough.[69] Also, it is common to make clear the rate of pay that the employee will earn in the new position. Thus, if an employee protected by superseniority takes a lower-paying position to avoid layoff, the collective bargaining agreement should specify the rate to be paid. When these problems are resolved in the collective bargaining agreement, there is less chance for controversy during a layoff.[70]

In most collective bargaining agreements superseniority does not apply to transfers. Although seniority governs choice of shifts, superseniority is generally deemed to apply only in case of layoffs. When a superseniority clause does not mention transfers or shift preference, the silence is generally interpreted to mean that there was no intention to apply superseniority in transfers.[71] By the same token, however, employees ordinarily are not deprived of normal seniority rights by virtue of service as union representatives.[72] Seniority provisions characteristically represent a compromise with efficiency, and the need for competent union representatives requires that employees not be prejudiced by reason of their union position.[73]

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68. *See* F.L. Jacobs Co., 11 LAB. ARB. & DISP. SETTL. (BNA) 652 (1948).
69. SLOANE & WITNEY, *supra* note 9, at 417.
70. *Id.*
71. Bell Aircraft Corp., 25 LAB. ARB. & DISP SETTL. (BNA) 856 (1956).
72. ELKOURI, *supra* note 17, at 136.
73. American Lava Corp., 42 LAB. ARB. & DISP. SETTL. (BNA) 117, 119-20 (1964).

VII. Conclusions

The purpose of this article has been to suggest a means for dealing with public sector superseniority that will complement legitimate employer and employee interests. It can be seen that the concept of union representative superseniority has been borrowed from the private sector and incorporated into Pennsylvania's public sector collective bargaining agreements. Superseniority is particularly important for public sector unions since it relates to the continuity and overall functioning of the grievance procedure. It is suggested that provisions for public sector superseniority be drafted with great specificity. In this way, the costly process of learning from experience can be minimized, and expensive and time-consuming litigation can be avoided.

Public employers with superseniority provisions would be well-advised to examine their collective bargaining agreements. Problems to consider include possible conflicts with civil service, designation of employees to receive superseniority status, the possibility of waiver resulting in superseniority status, and bumping and transfer rights. If the superseniority provisions are deficient, the collective bargaining agreement should be formulated with specificity so that the scope and workings of superseniority provisions are better understood. If this is not done, problems will certainly arise. Moreover, in resolving any superseniority question the rules will be the same as in negotiations—the public employees will go after all that the "traffic will reasonably bear."

The foregoing examination of superseniority for public employee union representatives in Pennsylvania has not purported to offer the only, or necessarily the preferable method of dealing with this situation. Undoubtedly, other methods exist; it is believed, however, that superseniority is a concept of particular importance for public employment. The need for immediate and thoughtful study is clear, especially with regard to superseniority's potential conflict with civil service laws. This is where the main problem exists for public employee unions in Pennsylvania. Until this is remedied the application of superseniority to union representatives within the civil service will be uncertain. Many of Pennsylvania's public employees may not be adequately assured of representation in the grievance procedure.