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The Guaranteed Annual Wage and Other Types of Job Security Plans-- An Explanation and Analysis

Frank Solomon Jr.

I. Introduction

ALTHOUGH there has been talk about Guaranteed Annual Wages (GAW) and guaranteed wage plans for several years it is only recently that this phrase has become a major factor in collective bargaining negotiations and public economic discussions. The demands of the United Automobile Workers (UAW) and the supposedly revolutionary contracts which this union signed in 1955, first with Ford and General Motors, and later with more than 70 other firms in the automotive and aircraft industries, has made this a topic of major importance. This importance has been increased as other unions have either copied the UAW plan, as in the can industry, or provided substantially different significant plans of their own to provide additional protection against unemployment, as in the plate glass industry. The concept of Guaranteed Annual Wages figured in the unemployment compensation referendum defeated by the Ohio voters in November 1955. It has created great interest, not only in labor and management circles, but also among the general public. The proposal that American business firms either guarantee wages of all employees, or provide substantial Supplementary Unemployment Benefits (SUB) is of considerable economic and political consequence. Adoption of certain types of GAW proposals could reshape the entire American economy. The speed with which SUB and other employment security plans are being adopted, and the large number of contracts with provisions of this type which have been adopted in the past several months, indicate that some form of job security plan is very likely to be forced on many, if not most, American corporations and other business enterprises. The exact nature of the plans which these firms adopt will be very important both to the firms themselves, and to the American economy.

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In the coming months, lawyers may expect to be faced, not only with

the problems of planning job security programs for their clients, but with important questions of the interpretation and desirability of legislation in this field. Ohio and many other states will have to determine whether or not to allow workers to draw both unemployment compensation and supplementary unemployment benefits.[1] In several states, rulings have already been made authorizing the payment of unemployment compensation to workers covered by SUB plans.[2] The plans are so designed that if Ohio now provides that this may be done, the SUB plans will become effective.[3]

The SUB and related plans also present significant tax problems, concerning the taxability of benefits under the plans, the time at which beneficiaries are to be taxed, and the deductibility of payments made into SUB and other job security funds.

This article deals with the nature and economic implications of the various types of job security and unemployment benefit plans. It attempts (1) to classify these plans, (2) to describe some of the more important

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[1] In the last days of the 1955 session of the Ohio legislature, a proposal to amend the Ohio law to allow supplementation was tabled. In November 1955, a referendum which would, among other things, have raised the level of unemployment benefits, *and* allowed supplementation, was overwhelmingly defeated. The problems most often presented for determination by administrative ruling are whether persons drawing such benefits are "unemployed" within the meaning of the statute, and whether such benefits constitute "compensation" forbidden to persons drawing such benefits. The Ohio provision appears not to be more stringent than those of other states in which rulings by the attorneys general have been made that SUB benefits are not "compensation" or "remuneration" and that SUB beneficiaries are "unemployed." Cf. OHIO REV. CODE §§ 4141.01, 4141.29, and 4141.46, with similar provisions cited in rulings cited in note 2, *infra*.

[2] As of December 1955, rulings had been made in six states that SUB benefits would not disqualify recipients from receiving state unemployment benefits. No states had ruled to the contrary. The states in which rulings have been made are: Michigan, 36 Labor Relations Reporter 439 (July 18, 1955); Connecticut, 36 LAB. REL. REP. 450 (July 18, 1955); Massachusetts, 36 LAB. REL. REP. 519 (Aug. 8, 1955); Delaware, 36 LAB. REL. REP. 693 (October 10, 1955); New York, 36 LAB. REL. REP. 715 (October 17, 1955), for first ruling, 37 LAB. REL. REP. 68 (Nov. 28, 1955), for full attorney general's ruling; New Jersey, 37 LAB. REL. REP. 53 (Nov. 21, 1955). It is estimated that about 65% of Ford and GM workers are in states which have such favorable rulings. In some states, the rulings are unequivocal. In New York, the rulings suggest the desirability of legislative clarification. In Maryland, one of the few states in which the legislature will meet during 1956, legislation allowing concurrent payments of state and SUB benefits was unanimously approved by a legislative subcommittee, after favorable testimony by labor, management and Baltimore Association of Commerce representatives. 36 LAB. REL. REP. 693 (Oct. 10, 1955).

[3] The contracts require that states in which at least 2/3 of the employees work, allow integration of state and SUB benefits. In the case of Ford and GM, and contracts which are written to go into effect when Ford and GM do, the states in which favorable ruling have been obtained, plus Ohio, include more than 2/3 of the respective labor forces.

variants, (3) to analyze the coverage given to workers who stop working for various reasons and (4) to determine the economic nature and effect of these plans.

II. What Is A "Guaranteed Wage"?

A. *In General*

There has been a great deal of heat, and relatively little light, generated by arguments about the guaranteed annual wage. In part, this heat has been the result of misconceptions as to exactly what kinds of plans may be called "guaranteed wage" plans. The UAW campaigned for the slogan "work or wages guaranteed." Many corporations, equally wrapped up in semantics, insist that such a program would be guaranteed annual loafing, and would bankrupt firms that consented to such a foolish and outrageous proposal. Actually, the UAW plan is not a "guaranteed wage" plan at all, but a highly complex Supplementary Unemployment Benefit Fund not much different from state Unemployment Compensation and private welfare funds such as that of the mine workers, only smaller. And the UAW plan is neither the first, nor the best plan now in use to provide payments to workers laid off through no fault of their own. Nor is it, either now or potentially, nearly as large or expensive a fringe benefit as funded pensions, which managements now grant with hardly a second thought.

There are quite a number of different "guaranteed wage" plans, covering some or all of the several possible types of unemployment with varying degrees of completeness. Basically, these plans break down into three major categories: Unilateral employer guarantees; partially funded limited benefit plans; and fully funded limited benefit plans. Of course, hybrid plans are also possible. For example, certain benefits may be covered by a fund, and additional benefits may be provided by unilateral employer guarantees. Or a plan may be fully funded under certain conditions, or for certain benefits, and partly funded otherwise. But these three major types of "guaranteed wage" programs involve markedly different problems and result in strikingly different economic consequences.[4]

B. *Unilateral Employer Guarantees*

Conceptually, unilateral employer guarantees are the easiest kind of "guaranteed wage" programs to understand. The employer simply guarantees that under certain circumstances, it will pay certain benefits. This

[4] For examples of various other guaranteed wage plans, existing and proposed, see Bureau of National Affairs, The Guaranteed Annual Wage 9 *et seq.* (1955); CCH Lab. L. Rep., Par. 51,350 *et seq.;* Lab.Rel. Rep., vols. 36 and 37; Casey, Pay Plans, Par. 10,520 *et seq.*

is very much like a "double your money back" guarantee for the manufacturer's product. If things go well, the employer need not pay anything, or need pay very little. If things go badly, the employer may have to pay out a substantial amount. A unilateral wage guarantee, however, may be somewhat less predictable than a product guarantee in cost of operation because of the influence of external economic forces.

In a unilateral guarantee, the employer's liability is contingent until he fails to provide the guaranteed work out of regularly scheduled production. Then the employer must either "make" work or pay workers for not working. Thus, the cost of the guarantee must be paid, not in the period when work is available, but in times of low production (which are often periods of low profits). To protect the employers from having to pay too much under the plans at the time when they cannot safely do so, there are generally a number of "safety valve" provisions. Only workers having a certain minimum of seniority are covered. Often the guarantee is for less than 52 weeks pay in a year, or for less than a full work week, or both. Typically the unilateral plans provide for straight time pay for work between 40 and 56 hours a week.[5] And many of the plans allow the employers to discontinue the plans under certain conditions.[6] Generally, the plans except certain types of unemployment.[7]

Unilateral guarantees may exist in firms having collective bargaining agreements, such as Hormel, and in non-union companies, such as Procter and Gamble. They may provide a guarantee of a full year's work, or they may provide only a few days layoff pay. It should be noted that some collective bargaining agreements provide some form of unilaterally guaranteed layoff or severance pay, at least for senior workers. These agreements appear to have all the essential features of a guaranteed annual wage except the name and duration of benefits.[8] Moreover, in some instances, the benefits actually paid or payable under these traditional severance pay plans may equal or exceed the benefits actually provided under the UAW and similar so-called "revolutionary guaranteed annual wage" plans. And some unions which have shied away from the term "Guaranteed Annual Wage" have seen to it that its contracts provided liberal

[5] This is allowed under § 7 (b) 2 of the Fair Labor Standards Act of 1938, as amended [29 USCA § 20.7 (6)(2).] As of March 1955, fewer than two dozen plans of this type were in operation. See, B.N.A., THE GUARANTEED ANNUAL WAGE 3 (1955), note 4, *supra.*

[6] This occurs chiefly where the continuation of the plan would seriously hurt the employer, as where the employer must shut down for a long period. For further discussion of plan by plan conditions see B.N.A., THE GUARANTEED ANNUAL WAGE 9 *et seq.* (1955), note 4, *supra.*

[7] See discussion in Section III, *infra.*

[8] Illustrations of such provisions may be found in a number of contracts negotiated by the typographers' union.

severance pay provisions. There are a number of long established unilateral employer guaranteed wage plans, and a number of other plans that were established during the 1930's and subsequently discontinued.[9] Two of the best known existing plans are the Hormel plan and the Procter and Gamble plan.[10]

C. FUNDED PLANS

1. *In General*

Although discussions of "Guaranteed Annual Wage" have traditionally been based on the assumption that unilateral guarantees would be established on a non-funded basis,[11] and most of the vociferous objections which have been made to GAW proposals have been made to proposals

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[9] For example, General Electric. B.N.A., THE GUARANTEED ANNUAL WAGE 2 (1955); 2 CASEY, PAY PLANS ¶ 10,501 *et seq.*

[10] The Hormel plan calls for 52 paychecks per year, to be computed at the employee's hourly rate multiplied by the number of hours in his normal work week. Additional hours worked in any week over the normal numbers of hours, up to 53 hours, are paid at straight-time rates, and not at time-and-a-half. Generally, hours worked by an employee in excess of 53 hours in any week are paid at time-and-a-half, and all hours in excess of 56 hours worked by an employee in any one week are paid at time-and-a-half rates. If an employee works more than 2080 hours in a year, his wages are recomputed so that he receives time-and-a-half for all hours in excess of 2080 in the year. If an employee works less than a normal work week, he still receives his full normal wage. Employees who resign or are fired are paid for all excess hours worked over the number for which they have been paid, but are not required to return any pay received for normal work weeks in excess of the number of hours they have worked. The plan provides that any guaranteed wages paid shall be in addition to any unemployment compensation payable for weeks in which the workers are eligible to receive benefits. But workers suffering disabilities covered by workmen's compensation are not covered by the wage guarantee for the period covered by workman's compensation benefits.

The Hormel plan also includes an employee incentive plan, a profit sharing plan, and a work budget. The work budget is designed to keep the work force at the proper size in the various departments, and is subject to collective bargaining grievance procedure.

The Procter and Gamble plan attempts to guarantee 40 hours work per week for every covered employee. The normal work week under the plan has been 48 hours. The plan calls for 48 weeks of employment per year, averaging 48 hours per week. Overtime work in busy weeks may be substituted for time in weeks where less than 48 hours work is provided. Workers may be transferred to other jobs and paid at the rate applicable to the job to which they are transferred. The guaranteed work week can be reduced by the company to 75% of the normal guarantee. The plan covers only workers with two years seniority. The plan is not subject to collective bargaining, as Procter and Gamble employees are not represented by a union.

See B.N.A., THE GUARANTEED ANNUAL WAGE 9 *et seq.* (1955); CASEY, PAY PLANS, ¶ 10,520 *et seq.* For full text of the Hormel Contract, See CCH LAB. L. REP., ¶ 59,956.

[11] Indeed, most GAW proposals prior to 1954 were for unilateral guarantees. B.N.A., THE GUARANTEED ANNUAL WAGE 9 *et seq.* (1955).

for such non-funded guarantees, the bulk of the plans now being adopted are funded plans. The UAW plan for so-called supplementary unemployment benefits (SUB), the Plate Glass plan, the Nunn-Bush plan,[12] the New York Electrical Workers plan, and most of the other plans which have been recently adopted, or are now under consideration, are limited liability, funded plans.

In a funded plan the employer contracts to pay a certain amount per unit of work into a fund from which such benefits are to be paid as conform to the plan and do not exceed the amount of money in the fund. Funded plans may be categorized as fully funded and partially funded plans, and as vested and non-vested plans.[13] Generally, fully funded plans tend to be vested, and partially funded plans tend to be non-vested, though this need not inevitably be so.

A plan is fully funded if the amount which is to be accumulated in the fund out of which benefits are to be paid, is the maximum amount of benefits called for by the plan in the most adverse possible circumstances. It is partially funded if, under some circumstances, the benefits which are to be provided would have to be decreased from the normal amount or duration, or could not be paid from the fund because the fund had insufficient assets.

2. *Partially Funded Plans*

The most important of the partially funded, non-vested job security plans are the so called Supplementary Unemployment Benefit (SUB) plans negotiated by the United Automotive Workers (UAW) and copied recently by a few other unions. More than 70 companies, employing nearly a million workers, have accepted these plans more or less voluntarily. These plans are extremely complex, with many ramifications that are still virtually unexplored. Other than their adoption, the most significant factor in these plans is that they do *not* provide a guaranteed annual wage. They merely establish funds into which employers pay a few cents for each hour of covered work. Out of these funds are paid certain strictly limited and variable benefits, under designated conditions, so long as there is money in the fund to pay the benefits. The cost to the employer is fixed, and the guarantee to the workers is contingent on money being available in the fund to pay the benefits. The plan is very complex. The

[12] The Nunn-Bush plan is one of the traditional guaranteed wage plans. It is rather complex, but is similar to the draw against commission compensation plans under which many salesmen work. For a fuller description of this plan, see B.N.A., THE GUARANTEED ANNUAL WAGE 11 (1955).

[13] A plan is vested if the rights of the beneficiaries are vested and indefeasible. It is non-vested if an employee loses his rights by leaving the employer or for other reasons.

text of the Ford SUB plan alone would cover about 55 law review pages.[14]

The provisions of the SUB contracts vary from contract to contract. Some contracts, with less prosperous employers, postpone the date on which the plan is to commence operation. Benefit and administrative features also vary somewhat from contract to contract. But the features of most of these contracts are much more similar than they are different.

There are several conditions precedent to the operation of the SUB plans. Benefits are not to be paid from SUB funds until one year's employer payments have gone into the fund. And before any employer payments are to be made, favorable rulings on wage-hour and tax law status must be obtained from the Labor and Treasury Departments.[15]

The contract also provides that the plan shall not become effective unless states in which are employed two-thirds or more of the employees under the contract, shall have approved the payments of benefits from the SUB fund to persons who at the same time are also receiving unemployment compensation.[16]

Once the Treasury ruling is obtained, the employer is required to pay five cents per hour for each covered employee. In most SUB plans, only hourly employees are covered. The Chrysler contract, however, includes salaried and office workers.[17] The Ford, G. M. and similar plans provide that contributions shall be made only for work of 32 or more hours a week. The Allis Chalmers plan provides that payments shall be made for any hours worked by covered employees.[18]

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[14] For this text, see 36 LAB. REL. REP. 216 (June 13, 1955). For the text of the General Motors contract, which is in many sections identical, and in most others similar, see 36 LAB. REL. REP. 347 (June 27, 1955). Later numbers of this reporter summarize the developments in the guaranteed wage contract field as they occur.

[15] A favorable ruling was obtained from the Labor Department on September 8, 1955, holding that payments into SUB type funds need not be counted as compensation for the purpose of computing overtime pay. See 36 LAB. REL. REP. 617 (September 12, 1955). As of December, 1955, the tax ruling had not yet been made. There are a number of very important tax aspects to be considered in planning guaranteed wage contracts. These and other important planning considerations will be covered by this author in a subsequent article.

[16] Once the plan does take effect, it provides for alternative supplementary benefits in those states which do not allow beneficiaries to receive state and SUB benefits at the same time. The alternative benefits are either to be accumulated for a certain period and then paid in weeks in which no state benefits are obtained, or accumulated into a lump sum and paid at the end of the state benefit period or on the beneficiaries' return to work. The plan also provides that on certain conditions, the plan may be terminated, and benefits continued, or a wage raise substituted, or both. See 36 LAB. REL. REP. 224-6 (June 13, 1955).

[17] See 36 LAB. REL. REP. 600 (September 5, 1955).

[18] According to Leonard Woodcock, Vice President of the United Automobile Workers (UAW), the Allis Chalmers contract has the best SUB provisions yet negotiated by the UAW. The contract represents an improvement over the Ford and GM

The UAW plans provide that employer contributions shall cease once the trust fund reaches a certain size. This fund size at which contributions are to cease is called the maximum fund position. The maximum fund position is an amount of about 60% of the amount sufficient to pay every worker the maximum benefit allowed under the plan for the full 26-week benefit period.[19]

Benefits are to be paid to workers covered by the plan who become unemployed for certain reasons.[20] To be covered by the plan, a worker must have a certain amount of seniority. At Ford and G. M. the seniority required for coverage is one year.[21]

If a worker is otherwise eligible for benefits, he still will not receive them unless there is a certain amount of money in the fund. Under the Ford, G.M. and similar contracts, there must at all times be 4% of the maximum fund position in the fund, or no benefits will be paid. Some of the later contracts provide that benefits shall be paid so long as there is any money in the fund.[22]

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contracts in sixteen respects. These include: The continuation of benefits at 65% of base pay for the entire period of benefits; a 65% benefit from the fund in weeks in which the beneficiary is not covered by state unemployment compensation, a provision that benefits may reach a maximum of $25 a week *plus* $2 a week per dependent up to 4 dependents, so long as the combined SUB and state benefits do not exceed 65% of base pay; a provision that all workers shall receive ½ credit unit per week worked, regardless of seniority; a provision that partial credit units will be granted for short work weeks, at the rate of ⅛ credit unit per work day; a more liberal provision for benefits for workers per credit unit; a provision that the plan will start on the anniversary date of the contract, or at the date either the Ford or GM plan starts, whichever is later; a provision that the plan will remain in effect as long as at least 40% of Allis Chalmers workers can draw any sort of benefits under it; a liberalization of the substitute benefit formula; a provision that benefits will be neither reduced nor terminated so long as any money remains in the fund; a provision that benefits of less than $2 per week will be cumulated, and paid to beneficiaries after 13 weeks, or on their recall to work; a provision that the continued receipt of disability benefits during layoff will not disqualify a beneficiary; a provision that laid-off workers will not be disqualified from drawing benefits for refusing to accept other work offered them by the company unless it is work to which they may properly be assigned; a provision giving the administrative board additional power, and the duty of publicizing and interpreting the plan; and other administrative improvements, and simplifications of language. All of these modifications were made without any increase in the amount which the employer was required to contribute into the plan per hour of work. See 36 LAB. REL. REP. 635 (Sept. 19, 1955).

[19] At Ford, the maximum fund position is $55,000,000 (approximately $390 per worker), which may be adjusted as the labor force changes. At GM, the maximum fund position is $400 per worker. If benefits are sufficiently less than $25 per week, the maximum fund position will be lowered accordingly. See 36 LAB. REL. REP. 217 (June 13, 1955), and 36 LAB. REL. REP. 348 (June 27, 1955).

[20] See discussion in Section III, *infra.*

[21] There are provisions for some credit units for work during the first year once a worker has obtained a year's seniority. See 36 LAB. REL. REP. 220 (June 13, 1955).

[22] See discussion in Section III, *infra.*

For the first week of unemployment, no benefit is paid. This is similar to provisions in most unemployment compensation laws. Thereafter, benefits of not more than 65% of base pay, and in no event more than $25 per week, may be paid, under the UAW plans. The actual amount and duration of these benefits are not fixed in the UAW plans, but are determined by complex formulae. The Ford, G.M. and some other plans cut the benefits to 60% of base pay after four weeks of benefits. Some other contracts do not. In all UAW contracts, the amount and duration of benefits is based on complex formulae involving so-called credit units. These credit units are intangible units with no fixed value. Workers get credit units for time worked. In general, with certain exceptions, a worker receives one-half credit unit for each week worked. The maximum number of credit units a worker may accrue is 26. A worker must surrender at least one credit unit for each weekly benefit received. He may be required to surrender more, depending on the size of the fund relative to the maximum fund position and on the seniority of the particular worker. The result of this credit unit arrangement is that workers may get a maximum of 26 weeks of benefits, and a minimum of 2.6 (or less in a few cases). If the fund position is fairly low, no worker, no matter what his seniority, would receive a full 26 weeks of benefits.[23]

Most of the contracts provide for integration with state unemployment compensation plans. The contracts between the steelworkers and the can companies do not.[24]

Resources of the SUB funds may be invested only in bank deposits and government securities. The funds are to be handled by a trustee, and the plans administered by joint union-management boards. An elaborate administrative procedure is provided, including rule making, determination of eligibility of employees, determination of the correctness and validity of claims, appeal procedure, etc. The contract outlines the power and authority of the board, and provides that the trustee and the company shall make a considerable number of specified reports at specified times. Expenses shall be met from the fund, except for a few which are specifically allotted to the company.

The contracts include a number of other complexities. For example, the Ford contract provides not one, but two SUB funds — one for "defense workers" and one for "non-defense workers."[25]

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[23] See 36 LAB. REL. REP. 222 (June 13, 1955) for table showing the number of credit units required to provide one week's benefit under all possible seniority and fund position circumstances.

[24] See 36 LAB. REL. REP. 553 (August 22, 1955).

[25] See 36 LAB. REL. REP. 216 *et seq.* (June 13, 1955).

3. *The Vested Fully Funded Plans*

a. General Discussion

A number of different fully vested plans have been adopted in the last two years. These plans in general usually provide for accrual in one or more funds of a fixed amount per unit of work until a sufficient amount has been accrued to provide the maximum benefits indicated, or until the employee leaves the employ of the employer. These plans are rather similar to the tax exempt "profit sharing trusts" except that the amount paid into the funds is not dependent on the profits of the employer. They are also similar to the "employee welfare funds" established in the coal and other industries, except that the rights of the beneficiaries are fixed and vested, and may not be changed by a union committee, nor transferred by such a committee to other beneficiaries.

Since fully funded plans have been adopted in different areas and different industries over a period of time, in response to different needs, there is more variety in these plans than in the UAW negotiated plans, and those copied after the UAW plans. To indicate some of the possible fully vested plans, and the uses to which they may be put, three such plans will be discussed. The Plate Glass Plan is an industry-wide plan negotiated by a few large employers and a single union. The second, the New York Electrical Contractors Plan, is a craft plan negotiated by a craft union with a large number of employers represented by a trade association in New York City. The third, the GM Road Machinery Workers Plan, is a single company plan, negotiated by a single firm and a small union, covering several hundred workers only.[26]

The various vested plans all provide that the workers are not limited in obtaining benefits to situations where they are temporarily unemployed without fault, and without the unemployment being caused by *force majeur* or labor disputes. They all provide ultimate payment in the event of death or retirement, of any unpaid accruals credited to the employee. They may provide for benefits to be paid the employee in every type of unemployment. Some provide fixed benefits, while others leave the amount of benefits to the discretion of the employee, subject in all cases to the limitation that benefits may not exceed the amount in the employee's account. Some appear integrated with state unemployment compensation laws. Others are clearly not so integrated. In all such plans, the employer's liability is fixed at a certain contribution per unit of work.[27] Administration can be by the employer alone, by a joint board,

[26] For other vested plans, see CASEY, PAY PLANS and B.N.A., note 4 *supra*.

[27] In the electrical plan, the unit is a day. In many plans, it is an hour. In the Nunn-Bush plan, it is a total compensation consisting of a percentage of value added to raw

or by an independent trustee. The total amount of benefits that each worker is to get is fixed and easily ascertainable. The period of benefits is determined by the total amount in an employee's account, divided by the amount withdrawn per week, or other unit of time of withdrawal. In general, there are no conditions precedent to the operation of the plans. No governmental rulings are required before they may become effective.

b. The Plate Glass Contract

The Plate Glass Contract, between the Glass, etc. workers, CIO, and Pittsburgh Plate Glass, and certain other glass companies, was signed in September 1955 and has received commendation from some union and management officials who dislike the UAW plans. If its tax consequences prove to be favorable, it may be the basis of many other contracts in the next several years.

Although the text of this contract does not seem to be generally available, the contract provisions appear to be much simpler than those of the UAW SUB plans summarized above. The company establishes fund accounts for each employee. Into each account it places five cents per hour worked. In September 1956, the union and management will consider whether this contribution should be raised to ten cents per hour. Each worker has vested rights in his account. He may not draw on the account at once, however. If he is laid off for a full pay period, or if he is sick for two full pay periods, he may apply for any amount between $15 and $30 from his account, so long as the withdrawal does not exceed 10 per cent of the funds in his account. Thereafter, he may continue to do so so long as he remains ill or unemployed. If his employment is terminated for any reason, he may draw out the money remaining in his account. At his death, any money which remains in the account is paid to such beneficiary as the worker has named.

The maximum amount which may be accrued in any one worker's security account is $600. If after the account has reached that amount, the worker draws against it and thereafter returns to work, payments into the security account will be resumed until it again reaches $600. When the security account has accrued to the full $600, the contributions which the company would otherwise make into the security account are to be paid instead into a vacation account for the worker. The worker's rights in this vacation account are also fully vested.[28]

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materials by the firm. Other measures, such as the number of units produced, are also possible.

[28] See 36 LAB. REL. REP. 644 (Sept. 19, 1955).

c. The 1954 New York City Electrical Plan

In 1954, a fully vested welfare fund type plan was provided in a contract between the New York City Electrical Contractors and the AFL Electrical Workers. The plan provides that each employer shall pay $4.00 per day worked by each employee, into a jointly administered trust fund. The principal amount of the contribution for each employee is credited to the employee. In case any employee becomes ill, is injured, or is disabled, he may draw $25.00 per week, from the account credited to him, for the period he draws full benefits under the State Unemployment Compensation, Disability or Workman's Compensation Laws. If a worker dies while in the industry, he receives a $2000 death benefit. The death benefits are paid out of the investment income of the fund, except that if the investment income is insufficient to pay these benefits, each individual worker's account is charged equally. When a worker leaves the industry, he may either get a death benefit certificate in the amount in his account (with a $2000 maximum) or he may draw $50.00 a month from his account until it is exhausted. If a worker transfers from one firm in the New York Electrical Industry to another, his rights are not affected.[29]

d. The GM Road Machinery Plan

In July 1955, some weeks after General Motors had (somewhat reluctantly) agreed to the UAW SUB plan, it signed a contract with the Road Machinery Workers Union for its Euclid, Ohio plant. This contract provides fully vested individual trust accounts. The company pays 5c per hour worked by each employee into an individual trust account. When the employee leaves the GM Euclid Division, either by retiring, dying, or for any reason, the amount credited to his individual trust account is paid to him *with accrued interest.* If an employee is laid off or otherwise temporarily unemployed, he may elect to draw from this fund either to supplement his state unemployment compensation, or to maintain himself during periods of ineligibility for unemployment compensation.[30]

III. THE APPLICATION OF GUARANTEED ANNUAL WAGE AND OTHER JOB SECURITY PLANS TO THE VARIOUS TYPES OF UNEMPLOYMENT

A. *In General*

One of the complicating factors in planning for job security for employees is that there are a number of different kinds of unemployment to be considered. These may, for the sake of convenience, be broken down into eleven basic types of employment interruption and termination, as follows:

[29] See B.N.A., THE GUARANTEED ANNUAL WAGE 44 (1955).

[30] See 36 LAB. REL. REP. 512 (Aug. 8, 1955).

1. Termination on death of employee,
2. Termination through retirement,
3. Termination resulting from permanent disability,
4. Termination through voluntary resignation by employee,
5. Termination resulting from firing for cause,
6. Termination or interruption resulting from acts of God, etc.,
7. Interruption caused by a labor dispute,
8. Interruption resulting from the temporary illness or disability of the employee,
9. Interruption resulting from seasonal fluctuations in demand or production,
10. Interruption resulting from temporary layoff or furloughing due to a cyclical or other temporary decline in business,
11. Termination resulting from a decrease in a firm's business of long term or permanent duration.

B. *Unilateral Plans*

In general, the unilateral guaranteed wage plans do not provide protection against most or all of the first eight of these eleven causes. They are designed to protect the employee against unemployment which the company might prevent, or, at most, which the employee cannot prevent. Death, retirement, permanent disability and resignation are not of this sort. Firing for cause may be considered a form of discipline (even, perhaps, a variety of punishment) and is not therefore generally rewarded with extra benefits. In general, because of the highly contingent nature of riots, floods, fires, etc., and their often catastrophic effect, the guarantees contain *force majeur* clauses. The payment of guaranteed wages after a major fire could indeed be catastrophic for some firms. Also, most unilateral plans contain exceptions for unemployment resulting from labor disputes. If they did not, some managements fear that a union could call a strike either at the plant or at that of a key supplier, or of the truckers entering the plant, and shut down the guarantor-employer, forcing the employer to make a choice between acquiescing in any demand the union might make, or paying full wages to unemployed workers.

Most unilateral plans also except temporary illness or disability. The employers guarantee (strikes, acts of God and civil strife, and firings excepted) to provide employment for those ready, willing and able to work. Sick and disabled employees do not so qualify. So guaranteed wage plans do not usually include sick pay, which is considerd a separate fringe benefit.[31]

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[31] See provisions for health insurance in the Ford and GM contracts, 36 LAB. REL.

In general, the unilateral guarantees have provided a fair amount of protection against seasonal and cyclical unemployment. One of the advantages claimed for unilateral guarantees is that they force the employer so to plan his production that there are no major seasonal production patterns. Hormel and Procter & Gamble have apparently been occasionally required to provide work which they would otherwise not have provided, either by producing a larger volume than they would otherwise produce at a period of cyclical low demand or low prices or by adjusting inventory or price plans. Procter & Gamble, with an unusually strong position in a very stable industry, has been able to maintain its plan by moderate inventory adjustments. Of course, all these plans have some measure of flexibility resulting from normal labor force turnover,[32] and in their provisions allowing overtime work to be compensated at straight time rates. The partially funded plans, in general, do not provide benefits for workers who leave the work force by reason of death, retirement, disability, illness or who are fired for cause. Terminations caused by death, retirement disability, etc., are provided for by the myriad of other fringe benefits now common in collective bargaining contracts. And workers fired for cause may be treated as being penalized through losing these rights, just as they lose other rights when fired. It is typical of non-vested plans in the fringe benefit field, whether for pensions, profit sharing, insurance or guaranteed wages that for the beneficiary to obtain any benefits, the contingency for which the fund is gathered (e.g. retirement) must occur while the employee is in the employ of the employer (or its successors). This, it is submitted, is socially and economically extremely undesirable,[33] but it is typical in the fringe benefit field, and is in part the result of the present tax code.[34]

REP. 187 *et seq.* (June 13, 1955) and 36 LAB. REL. REP. 279 *et seq.* (June 27, 1955). For other sick pay provisions, see CASEY, *op. cit. supra* note 4.

[32] In any firm, there are a certain number of employees dying, retiring, being fired, or leaving voluntarily in any period of time. To keep a labor force up to normal size, hiring must be done more or less steadily. When a firm with a wage guarantee wishes to reduce its labor force, or when a firm needs to do so for any reason, it can sometimes do so by merely reducing or stopping its normal hiring. In any case, at least part of a desired reduction in work force can be obtained by cutting down normal hiring.

[33] The requirement that in order to draw any benefits, a worker must remain in the employ of the firm providing the benefits, has had far-reaching effects which will become much more severe in the future. As a worker's interest in a benefit (e.g. pension) fund increases, he is less willing to change employment. Eventually he may build up a non-vested equity of well over $10,000 which he would forfeit by taking another job. This is a contractual penalty which in other employment contracts has been held contrary to public policy (e.g. Britton v. Turner, 6. N.H. 481, 26 Am. Dec. 713 (1834); *cf.* RESTATEMENT, CONTRACTS § 357 (1932). Also, the non-vested pension and insurance plans have made it more difficult for older workers to be hired, if they get laid off. This is having far-reaching effects on the American social structure.

C. *Non-vested Partially Funded Plans*

The UAW plans provide that benefits are not to be paid in the event of unemployment resulting from strike, slowdown, work stoppage, picketing (whether or not by employees), or concerted action, or any dispute of any kind involving employees, whether at a company plant or plants or elsewhere, or any fault attributable to the applicant or any war or hostile act of a foreign power (but not government regulation or controls connected therewith), or sabotage, or insurrection, or any act of God.

Thus, the UAW plan does not apply to all, or even most employment interruption or termination; it specifically provides that benefits shall be paid only to covered employees who have been laid off. Even then, the plans provide that under certain conditions (e.g. if the size of the fund is less than a certain amount) no benefits shall be paid. The plan is thus clearly *not* a guaranteed wage plan. It is merely a plan to provide certain benefits for certain types of layoffs if a number of preconditions have been met. These layoffs are the mass-layoffs-not-for-cause which are, for practical purposes, either short term (generally seasonal) layoffs, and longer term (generally indefinite) layoffs resulting from cyclical or longer-term decreases in demand (or occasionally technological change).

The UAW SUB plans are similar to the unilateral plans in the types of employment termination and interruption covered. And the reasons for exclusion of all types of unemployment except seasonal and cyclical and

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Another strong legal objection to such non-vested funds is that the benefits on which workers rely, and which form a significant part of their compensation, may be illusory. If, for example, a worker is laid off as the employer's business diminishes, he gets nothing. In a declining industry, virtually all workers may be laid off without getting benefits from a non-vested fund. At the liquidation of the employer, almost all of the millions of dollars that might be in the fund would then vest in the stockholders of the employer. Thus, a worker would lose the compensation which he had been promised, through no fault of his own. In participating in such a plan, a worker is gambling, not only that he will live long enough to draw benefits and will remain in sufficiently good health to continue to be employed, but also that the business will continue prosperous enough so that he will not be laid off before his rights to compensation vest. In view of the heavy business mortality shown by the periodic *Dun and Bradstreet* reports, this would appear to be a huge gamble indeed. And at present, more than $11 billion dollars are in pension trusts alone, according to recent studies by the Securities Exchange Commission, and total pension fund and group annuity assets are estimated (see CCH and Prentice Hall Pension and Profit Sharing Reporters) to exceed $20 billion. The author estimates that such funds may, within the foreseeable future, exceed $100 billion, if present trends continue. The effects of this would indeed be important.

[84] See INT. REV. CODE of 1954, §§ 401-04, for provisions relating to pension and profit sharing plans. The operation of these sections and others affecting the various guaranteed annual wage plans, the probable tax consequences of these and other important planning considerations affecting the establishment and technical provisions of these plans, will be considered by this author in a subsequent article.

longer term layoffs or furloughs are more or less similar in SUB and unilateral plans. Some of the other types of employment and termination are supposedly covered by other fringe benefits, and the plans are designed not to encourage firings, resignations, riots, strikes, and malingering.

The UAW plans do provide a considerable amount of help to auto workers furloughed in model changes and other seasonal layoffs. The amount paid into the fund is 8% of the maximum benefit payable if the entire work force were laid off. Thus, if seasonal unemployment is less than 8%, the plan is self-supporting. And, after 1957, a worker would accumulate about 26 credit units a year, which would, depending on the state of the trust fund position and the worker's seniority, provide from 2.6 to 26 weeks of benefits. Since no benefits would be payable the first year, when benefits commenced, the fund would then be about 25% or more of the maximum fund position, and a worker would then be entitled to eight weeks of benefits for each 26 credit units, or about 8 weeks of benefits for each 52 weeks employed for the low seniority workers, and more for workers with higher seniority.

The UAW plan provides little protection against large scale cyclical or longer term layoffs. If more than 8% of the labor force is unemployed, the trust fund position would begin to drop. As it dropped, the duration of benefits would also drop. Thus, the low seniority workers, who are laid off first, would find that they received far less than 26 weeks of benefits. And as the fund decreased, the medium seniority workers, laid off later, would have a similar experience. Were a major part of a company shut down for any considerable period, or were the firm shut down entirely, none of the workers would receive 26 weeks of benefits. Thus, if on June 1, 1957, the Ford Company were to shut down for six weeks because of an inventory glut and a sharp decrease in the demand for Ford cars, the fund would not provide benefits for the entire period of shutdown. Assuming that the fund started at 25% of maximum fund position, which is about 60% of the maximum possibile liability under the plan, there would be benefits for less than a month, for the fund would only have three twentieths of the amount required to pay benefits for six months (1/4 x 3/5 x 6 months) and no benefits would be paid once the fund dropped to 4% of the maximum fund position.

It should be noted that, since the automobile industry traditionally has annual model changes during which virtually all of its work force is temporarily unemployed, the trust fund would not be expected to reach a fully funded position as rapidly as would be theoretically possible with no unemployment. This would decrease the effectiveness of this plan in dealing with cyclical and longer-term unemployment.

D. *Vested Plans*

The vested plans in general provide assistance to employees in all or most of the types of employment termination or interruption. All provide ultimate payment of accrued funds at death. Generally, they provide either immediate or gradual payment on retirement, for the retired employee presumably does not need further work guarantees. Generally, they provide benefits on permanent disability for the same reason. Resignations and firings are treated variously. The plate glass contract provides that accrued funds shall be paid on leaving the company. The New York electrical contract provides that benefits shall be paid on leaving the industry. Other contracts may provide that benefits will be deferred until death or retirement, particularly if it is thought that the resignation or firing may not be permanent. It should be noted that since the rights in a vested plan are vested, there is not the same policy ground for refusing benefits to workers fired for cause, as being extra benefits to which the employee would not otherwise be entitled, that there is in a non-vested plan.

The vested plans need not except unemployment resulting from labor disputes or acts of God. In each case, the payment of benefits does not cost the employer anything. Nor does the employee benefit, for he receives only money which he would otherwise receive at another time. However, the treatment of these situations appears mixed. The electrical and plate glass plans appear to provide benefits for layoffs resulting from acts of God, and similar circumstances. The electrical plan, tied in as it is to state unemployment compensation, would appear to include layoffs resulting from outside labor disputes, and from such other strikes as do not disqualify a worker for New York state unemployment compensation. The plate glass contract appears to cover layoffs caused by labor disputes, but not strikes or lockouts. And other plans appear to have various features in this regard.

The vested plans generally appear to provide benefits in prolonged interruption of work resulting from illness. They all provide benefits in the case of seasonal, cyclical, and longer-term layoff or furlough, though some provide a waiting period before benefits can begin.

IV. The Social and Economic Effects of Guaranteed Wage Plans

A. *In General*

Most of the discussion to date on guaranteed wage plans has focused primarily on the supposed economic effects of such plans. As mentioned earlier, much of this discussion has been productive of heat, and not of light. There has been relatively little consideration of the magnitude of the plans as compared to other fringe benefits. And much of the discus-

sion has been based on the implied assumption that a non-terminable unilateral plan was the only possible type of guaranteed wage plan. But in fact, the economic effects of guaranteed wage plans on the individual workers, on the firms adopting such plans, and on the general economy, vary markedly, depending on the type of plan adopted and the level of benefits provided by the plan. These will be considered in turn.

B. *Effects on the Individual Workers*

1. Effects Common to All Plans

The only sure effect of a guaranteed wage plan regardless of its nature, on all covered workers, would be some leveling of peaks and valleys of income. In periods in which they would otherwise be unemployed, workers would, depending on the type of plan, either work on "makework" projects, or receive pay or supplementary benefits of one kind or another.[35]

The magnitude of the effect that guaranteed wage plans would have in leveling peaks and valleys in workers' incomes would depend on the nature of the industry and the provisions of the plan. In an industry which had marked seasonal peaks and valleys in employment, and in the length of the work week, the effect might be substantial. At the other extreme, in an industry where covered workers would almost never be laid off in any event the adoption of a guaranteed wage plan would do little to diminish such peaks and valleys as might exist in workers' incomes.

This leveling of income might induce workers to spend a larger portion of their income, or go further into debt, for current purchases than they would otherwise do. The workers might feel that, since they were at least partially protected against certain kinds of unemployment they did not need to save as much as they otherwise would to protect themselves against possible unemployment. There does not seem to be any proof that this would, or would not, actually occur.

2. Effects Peculiar to Unilateral Plans

There are probably no effects peculiar to unilateral plans as such which are common to all unilateral plans. But two significant points may be mentioned that are common to certain varieties of unilateral plans. In a

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[35] This money paid to workers in periods when they would otherwise be unemployed, would in the long run decrease the amount they would receive at peak income times. For the workers would not get something for nothing. In plans such as the Hormel plan and the Procter and Gamble plan, which take advantage of the Fair Labor Standards Act provision allowing straight time pay for some overtime work if there is a specified type of Annual Wage (see note 4 *supra*) money paid at slack seasons primarily would be in lieu of overtime pay during peak periods. In funded plans, the money would come from funds accumulated during the periods in which the worker

unilateral plan which meets the FLSA requirements[36] the workers do not get paid for part or all of their overtime, so long as they do not work more than 54 hours in any week, or more than 2080 hours in a year. In some cases, this may actually decrease their total annual compensation from what it would be were such a plan not in effect. And in a unilateral plan in which the employer may unilaterally cancel the plan, the workers may be in a position analogous to a widow dependent on a son-in-law for support. The support may be continued faithfully for many years, and the beneficiary may always have an ample income. But the beneficiary is not nearly as secure, emotionally or legally, as if this income were provided from a trust fund or annuities to which the beneficiary had an enforceable legal claim.

3. Effects Common to All Funded Plans

Probably the most significant single economic feature of all types of funded guaranteed wage plans is that they are forced savings plans. Money which would otherwise, except for the existence of the plan, be paid directly to the workers as additional wages,[37] is paid instead into a trust fund for the future use of the workers, whether the workers like it or not.

Mass industrial forced savings plans are not new. Pension and profit-sharing plans, whether or not vested, are forced savings plans. Funded guaranteed wage plans are just another in the series of industrial forced savings programs. But the fact that these plans *are* forced savings plans has a number of important effects, particularly in the case of the non-vested plans. Some of these effects are primarily effects on the economy as a whole. But some are of direct importance to the individual workers involved.

The most obvious effect of a forced savings plan is an immediate decrease in take-home pay. This may not be visible if the guaranteed wage plan is instituted as part of an increase in compensation. In such a case, take-home pay may be increased at the same time that a guaranteed wage plan is started. But the decrease in take-home pay is just as real, for, were it not for the plan, a larger wage increase would have been possible, and the take-home pay without the guaranteed wage fund would have been greater than the take-home pay with the plan.

In a vested plan, the worker will eventually receive the money which goes into the fund, and which he would otherwise receive immediately as wages. If he dies, his estate or beneficiary gets the money, just as would

was employed, and which would, except for the operation of the plan, have been paid him then as additional wages.

[36] See note 35 *supra.*

[37] The UAW contracts specifically provide that if the plan does not go into effect, or is terminated, the workers will receive an additional 5c per hour in lieu of the money which would otherwise be paid into the SUB fund.

occur if the worker had put the money in a savings bank account. But in a non-vested plan, the worker may never get the money which he would receive in wages but for the operation of the SUB-type plan.

This is so for two reasons. First, to operate a funded benefit plan of any kind, a substantial fund must first be built up. In a vested fund, the assets all belong directly to individual beneficiaries. In a non-vested fund they do not. Under certain conditions, the rights of beneficiaries could all terminate and the company would then be the residuary beneficiary. One instance in which this might happen is if all employees resigned. Another is if the firm were forced out of business by a prolonged strike.

This problem of the residual interest in a non-vested forced savings fund is of crucial importance in the pension fund field, and has not received nearly the attention it deserves.[38] The Internal Revenue Code, Section 401(a)(2), requires that a qualified pension, profit-sharing, or stock bonus plan must make it

> . . . impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus and income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries.

This obviously implies that corpus *may be* diverted back to the employer once the liabilities to the employees have been met. In the case of non-vested forced savings plans, therefore, whether pension, profit-sharing, or guaranteed wage, the rights of the workers may indeed terminate, leaving a tremendous fund accumulated out of money which the workers would otherwise have received in wages and which they in fact never receive.

The second reason why a worker may never receive the money put into a non-vested guaranteed wage or other forced savings fund on his behalf, is that it may be paid instead to someone else. The worker may have so much seniority that he is never laid off, and the benefits may instead be paid to low-seniority workers who are laid off. Or the worker's employment may end because of death, illness, or other non-covered cause, before

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[38] In recent months, more attention has been given to this problem. One of the more interesting developments is the litigation in Portland, Oregon which challenges the J. C. Penney pension trust. This non-vested trust is now worth more than $50,000,000. It is being challenged as a gambling contract, contrary to public policy, and void, on the grounds, among other things, that one must survive and remain in the employ of J. C. Penney in order to benefit. So far as the author has been able to determine, there has not yet been a successful challenge to non-vested pension or similar plans either on this ground, or on the ground that the plans have an *in terrorem* effect, work a penalty, and deprive participants of part of their compensation without cause. The plans have been developed on the assumption that the beneficiaries are getting something for nothing, and so, if the plans are not very good, the beneficiaries have no complaint coming. This is arrant nonsense, as anyone who has any training in economics knows or should know.

he receives any benefits from the fund. Money which worker A is forced to save may be paid to worker B. It is this transfer feature of non-vested guaranteed wage funds that causes most of their complexity, and is the basis of much opposition to them on the part of employers and others. Because those who draw benefits from the funds do so at the expense of those who continue working, care must be taken to insure that the level of benefits is not so high as to cause workers to wish to be laid off, or to make the high-seniority workers dissatisfied because their money is being used to pay for fancy living for laid-off low-seniority men.

The transfer feature of SUB-type plans also make necessary elaborate administrative procedure to determine who is entitled to benefits, and to allow for appeals by workers whose claims are denied. This in turn is one of the reasons that some managements insist that benefits be tied into state unemployment compensation plans (despite the attendant increase in complexity) because the state plans have developed standards to prevent malingerers from getting benefits to which they are not entitled. The state screening provides some measure of protection to the SUB-type funds against similar fraudulent or unfair claims.

The opposition of some managements to the transfer feature of non-vested funded plans was very succinctly put, some months ago, by the Timken Roller Bearing Company in a series of advertisements addressed to its workers. Many of these advertisements asked "Where would you rather put *your* money — in *your* own bank account or in someone else's?" One of the ads was headed "WHY PUT YOUR MONEY IN SOMEBODY ELSE'S BANK ACCOUNT?" And another, pointing up the basic issue of all guaranteed wage proposals showed a big sack labeled "Timken Company payroll," and was headlined "HERE IT IS — HOW DO YOU WANT IT?"

4. Effects Peculiar to Non-vested Plans

As mentioned earlier, the transfer provisions in the non-vested funded plans introduce a number of special problems and effects that do not occur in vested funded plans. Some of these problems are administrative, others are economic. The economic problems peculiar to non-vested plans may be summed up in the question: Does the plan destroy incentives to work? Many of the most violent arguments against the guaranteed wage proposals are based on the proposition that they do. This is a debatable point. Some people work even without pay, as volunteers in hospitals and other welfare agencies, submarginal small business men, etc. But to the extent that guaranteed wage plans decrease or destroy workers' incentives to work, three major problems arise: 1) Workers who are laid off, might not try to get new employment. 2) When part of the labor force is laid off, the

low-seniority workers will be paid for not working, while the high seniority workers must work, even though they might rather go fishing and draw benefits. 3) Workers might try to force layoffs. These effects may be important or unimportant, desirable or undesirable, depending on the amount and duration of benefits provided, and the type of layoffs involved.

In the case of seasonal layoffs, as for automobile retooling, or in lake shipping, it is expected that workers will return to their jobs after the seasonal layoffs. In such cases, many workers do not now try, and if they do try are often not able, to get satisfactory short term employment during the off season. Frequently they receive higher pay during the working season than they would otherwise get, to compensate for the loss of earnings during the off season. If such workers would prefer to take a smaller amount of compensation during their working season than they would otherwise get in order to have income during the off season there is no harm done to anyone. For they would merely refrain from trying to get jobs which they would not seek or could not get even if they sought them.

In the case of long term layoffs, the problem might be more difficult. It is not desirable that workers who are laid off without good prospects of being recalled, refrain from seeking work. Moreover, the SUB plans require that the beneficiary be seeking work in order to be eligible. And, the partially funded plans provide only a limited amount of benefits for long term layoffs of the entire working force. To the extent that that might occur the problem would be of temporary duration.

The problem of dealing equitably with the high-seniority workers in a non-vested plan is a difficult one, and is just as important to the unions as to management. The UAW plans attempt to accomplish this by their complex credit unit provisions. But this means that low-seniority workers may get only a very few weeks of benefits. This means that they do not really have a "guaranteed annual wage." They do not even have the 26 weeks of extra benefits which Mr. Reuther announced. Thus, in order to be fair to high-seniority workers in a non-vested partially funded guaranteed wage plan, it may be necessary to so construct the guaranteed wage plan that it does *not* provide a guaranteed annual wage for those workers who may be expected to be unemployed!

The possibility that workers might try to get laid off if they had sufficient layoff pay protection is not a serious obstacle to such plans. The non-vested plans provide that if individual workers are laid off for cause, they get no benefits. And if the work force as a whole wishes to be laid off at periodic intervals, they are merely seeking a vacation with part pay. They can generally obtain this through collective bargaining any time they wish by sacrificing some other economic bargaining goals.

Whether such layoffs are called "extra vacations" or "unemployment with supplementary benefits" seems to be only a matter of language.

It seems, then, that the problem of work incentives in non-vested plans is partly a problem of equity among the workers in the plan, and partly a problem of encouraging workers laid off for long periods to seek work elsewhere. There are two types of possible solutions to these problems. The UAW contracts include both. One is to limit the level of benefits to an amount small enough so that there remains an economic incentive to work. The UAW plan does this by limiting benefits to 65% of base pay. This is, in practical effect, an extension to higher paid workers of the percentage benefits presently provided by the state unemployment compensation plans to low paid workers.[39] The other type of solution is to decrease the amount and duration of benefits after a certain period of time. This the UAW plans to do both by the credit unit arrangement, and by cutting benefits from 65% to 60% after four weeks.[40]

C. *Effects on Firms Adopting Guaranteed Wage Plans*

1. Effects Common to All Types of Plans

The only inevitable effect on all firms adopting all kinds of guaranteed wage plans is an increase in the complexity of payroll accounting and personnel administration.

To the extent that workers feel more secure in their jobs, and are less worried about the dangers of unemployment, improved employee morale and lowered employee turnover might be anticipated. This is reported to have occurred under the older plans,[41] but whether it will actually occur in the new funded plans is conjectural.

2. Effects Peculiar to Unilateral Plans

The adoption of a unilateral plan may or may not have major effects on an employer, depending on the exact nature of the plan, the type of

[39] In Ohio, under the present unemployment compensation law, workers with base wages of $400 a quarter ($31 per week) can receive state benefits of up to 78% of their highest base quarterly earnings including dependents' allowance; workers with base wages of $600 a quarter ($200 a month, or $46 a week) can get up to 67% of base wages, counting dependents' allowance, and workers earning $821 a quarter ($63 per week) can get up to 62% of their highest quarterly earnings during the base period. The SUB plans call for 55-60% of average base earnings, which the Ohio State law already provides to some workers earning as much as $60 a week. I am indebted to Mr. Roger Arnstine for the material in this note, which is presented in his unpublished paper on state unemployment benefits prepared at the Western Reserve Graduate School.

[40] Most UAW negotiated plans provide that benefits are cut to 60% after four weeks. The UAW does not like this provision, and the Allis Chalmers contract has eliminated it. See note 20 *supra.*

[41] See BNA citations in note 10 *supra.*

industry in which the firm functions and the size and strength of the firm. In almost all cases, a unilateral plan will noticeably decrease the amount of unemployment compensation tax paid by the employer.[42] If the plan qualifies under the FLSA, overtime costs may be substantially reduced.[43] In some cases, the size of the work force may be kept more stable, with substantial resulting savings in the cost of hiring and training workers.

Where a firm is sufficiently strong, or where long term demand is sufficiently stable, so that one year's excess production can be sold in the following years, the unilateral plan would not threaten the firm's existence. This is particularly true in industries where there is a relatively large amount of capital, and a small labor force, *e.g.*, the petroleum industry.

Where a firm is not strong financially, or where it is in an industry with a relatively large labor force and little capital (*e.g.*, garment manufacturing), and particularly where long term demand is highly erratic and unpredictable (*e.g.*, the novelty industry), the adoption of a unilateral wage guarantee might destroy the firm. It might be forced to pay the total wage guarantee in bad times, when it could least afford it. And this could occur after several unprofitable years, so that the firm could not take advantage of the tax deduction resulting from the payment of guaranteed wages. The amount required to pay these guarantees might cause the insolvency of the guarantor firm.

An illustration of the markedly different effect of unilateral wage guarantees on different types of firms may be illustrated by comparing the hypothetical effects of such a guarantee on two firms, both old, strong, substantially debt-free firms, important in their respective industries, with their stock listed on the New York Stock Exchange. Each has about 2,000 employees. One, Amerada Petroleum, a favorite company with investment trusts, may be taken as an example of a relatively highly capitalized firm, with 1971 employees, and more than $112 million in assets.[44] Another, Hat Corporation of America, manufacturer of Knox and Dobbs Hats, has about 2000 employees and less than $10 million in assets.[45] It may be taken as an example of a relatively lightly capitalized firm. Were Amerada to grant a unilateral wage guarantee of $50 per week for 52 weeks, the maximum possible cost if all its labor force were laid off would be about 80c per share on its 6,309,400 shares.[44] Amerada stock closed at $98 per share on December 7, 1955. Were Hat Corporation to grant a similar guarantee, the maximum cost per share would be about $8 per share on each of its 656,929 shares.[45] Hat Corporation stock closed at $6.25 per share on December 7, 1955.

[42] See BNA citations in note 10 *supra.*
[43] See BNA citations in notes 10 *supra* and notes 4 and 36 *supra.*
[44] MOODY'S INDUSTRIALS 2521 (1955 ed.)
[45] *Id.* at 1311.

Unilateral plans might also be expected to have some effect on the work scheduling and production planning of the guarantor firms. They would tend to try to even out production somewhat, in order to lessen the costs of the guarantee. How significant this may be is conjectural. Certainly there are many other factors of considerable importance tending towards the same result, such as unemployment compensation, overhead, the desire to obtain the maximum production from a given amount of capital equipment, etc.

Another possible effect of unilateral plans would be the further concentration of production in the major firms, and the use by such firms of subcontractors as a buffer to keep the major firm's work force stable. This effect has often been claimed to be of major importance. Whether or not it would occur is at least questionable. Firms have other problems beside wage guarantees to consider in deciding whether or not to sub-contract. This author has not seen any quantitative studies showing the probable extent to which this might be expected to occur. Nor has he seen any recent quantitative studies indicating the extent to which wage guarantees might cause firms to refuse to increase production in periods of high demand. Although this is claimed to be a result of these plans, there does not seem to be any proof that this is so. Factors other than wage guarantees may be more important in the determination of whether a firm should expand. General Motors, for example, invests much more in a three-year period than the total amount of a unilateral wage guarantee, which it might have been required to make. The unilateral wage guarantee might tend to be a deterrent, but the magnitude of the effect is difficult to estimate. Again, the effect would be more noticeable to an under-capitalized firm than to a heavily capitalized one.

3. Effect of Funded Plans

Except for the additional administrative burden, there would appear to be no direct economic effect on firms adopting any type of funded wage guarantee plan. At all times, the cost to the firm is the same as if it had merely granted a direct wage increase of the amount which it agrees to put into the fund. And the cost of a labor contract to an employer will normally be the same regardless of the manner in which the costs are to be distributed. Generally, contract negotiations appear to agree first on the amount, and then to decide how the amount will be distributed.

The only apparent situation in which the adoption of a funded plan might directly affect the firm adopting it would be in the case of a non-vested plan where funding ceased. Thereafter, the firm would be in a position where it was paying the costs of the unemployment directly, subject to a limit on liability. The effects then would be similar to those of a

unilateral plan, but presumably smaller in magnitude, and without the possibility that the firm would be hurt by the plan as a financially weak unilateral guarantor might be. Under these circumstances, the guarantor would have *lower* labor costs and the workers would have *lower* incomes than if no such plan had been adopted. But this seems unrealistic. So long as the employer is prosperous, it would seem very unlikely that the union would allow it to *decrease* compensation. As the non-vested funds approach a maximum or full position, the unions may be expected to require that the plans be so changed that the employers continue to pay the money which was being paid into the funds, either directly into the funds, or into some other type of program to benefit the workers.

D. *Effects of Guaranteed Wage Plans on the General Economy*

1. Effects Common to All Plans

There are a number of effects of guaranteed wage plans on the general economy that will occur regardless of the type of plan adopted.

All guaranteed wage plans tend to be anti-cyclical. As shown above, workers' incomes are leveled out. They receive lower incomes in times of prosperity and higher incomes in times of unemployment than they would otherwise receive. Since spending, and therefore economic activity, is related in part to the incomes received by workers, the effect is anti-cyclical.[46]

To the extent that workers might spend more if they had guaranteed wage security, the plans would tend to be inflationary. This author believes that this tendency is quantitatively less important than the deflationary effects of the plan which are discussed below. But this is conjectural.

To the extent that a wage guarantee was granted without its being a substitute for other economic benefits, the plans would of course tend to be inflationary. But this does not seem to be the way such plans are granted.

While the guaranteed wage plans would have these effects, the magnitude would generally be only moderate. If the UAW plan, for example, were to cover every industrial worker in the United States, the total amount which would go into the funds would be less than $2 billion a year.

To the extent that guaranteed wage plans discourage workers who are laid off seasonally from seeking other employment, they would have a beneficial effect. For there is a very substantial cost involved in hiring and training new workers. While employers in seasonal industries may argue that their workers can get other jobs during the seasonal layoff, they

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[46] SAMUELSON, INTRODUCTION TO ECONOMICS (1947), and KEYNES, GENERAL THEORY (1935) for the exposition of the business cycle theory on which this section is based.

actually hope (and expect) that the workers will not get any sort of permanent employment.[47]

2. Effects Peculiar to Unilateral Plans

Because of the variety of possible unilateral plans, it is difficult to be sure that all would have the same effect on the general economy.

To the extent that the plans satisfied the requirements of the FLSA[48] there would be a slight tendency to regulate hours by fluctuations in the work week rather than in the work force.

To the extent that firms failed to expand out of fear of the GAW, there would be a stagnating effect. To the extent to which firms tried to stabilize employment at the expense of subcontractors, there would be a tendency towards further monopolization of production. And to the extent to which firms undertook contingent liabilities under unilateral GAW plans which they could not afford, and which might cause their insolvency, there would be a tendency towards further monopolization, and a cyclical effect on unemployment. This may be of some importance. If the guarantors are driven out of business by wage guarantees, workers would have less income rather than more, and the unfortunate effects of the business cycle would be intensified.

3. Effects Common to Funded Plans

Funded plans, being forced savings plans,[49] are deflationary. This does not mean that they will cause a depression. It means that they would help counteract inflationary forces, and help intensify other deflationary forces. The effect is similar to that of funded pension plans, only much smaller. To provide for a worker six months of supplementary unemployment bene-

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[47] This is ilustrated by a rather surprising statement in a speech made a few months ago by Mr. Malcolm L. Denise, the general industrial relations manager at Ford, quoted in 36 LAB. REL. REP. 677, 687 (October 3, 1955). Mr Denise said, in part: "Some layoffs, for example, those occasioned by model changes, are of short duration and purely temporary in nature. Contrary to the statements made by some critics of our settlement, we believe employees affected by such layoffs should seek other employment during such periods; but we also know, as a practical matter, it is generally more difficult for them to obtain other jobs when prospective employers know that they will be returning soon to us. And, being honest with ourselves, we acknowledge that it would hamper our operations very materially if major proportions of such employees should permanently abandon their Ford jobs to obtain other employment upon such occasions."

[48] 29 USCA § (207) (6) (2), and see notes 4, 36 and 44, *supra.*

[49] See SAMUELSON *op. cit. supra* note 46, and KEYNES, HOW TO PAY FOR THE WAR (1940), for a fuller discussion of the economic effects of savings in general, and of forced savings in particular.

fits of $25 per week would require $650; to provide $25 a week pension for a worker at age 65 would require more than $16,000.[50]

To the extent that these savings are invested in the firms accumulating them, or in private securities, they would tend to increase the availability of capital and decrease its cost. To the extent to which they are invested in short term government securities, and later reinvested or made available for reinvestment, they would tend to increase corporate liquidity.

V. SUMMARY

Guaranteed Wage Plans of various sorts have been in existence for a number of years. With the successful efforts of the United Automobile Workers Union (UAW-CIO) to obtain a modified type of guaranteed wage plan, known as supplementary unemployment benefits (SUB) the topic of guaranteed annual wages has become of considerable current importance. More than a million workers are now covered by these plans. There are a considerable number of guaranteed wage plans now in existence, partly funded non-vested plans (SUB type) and the fully funded vested type.

The effects of guaranteed wage plans differ markedly depending on the type of plan adopted. Unilateral and partly funded plans cover only a few of the 11 major types of unemployment, and do not cover firings for cause, resignation, death, illness, etc. Vested plans cover all or most types of unemployment. Unilateral plans involve possible dangers to the solvency of the guarantor. Partly funded non-vested plans involve a number of complexities, including problems created by the fact that they transfer money that would normally be paid to worker A and pay it to worker B. All funded plans, whether or not vested, are forced savings plans. Funded plans do not directly affect the labor costs of employers agreeing to such funds, as the money put into such funds would otherwise be used for wage increases.

The social and economic effects of the plans, while significant, are much smaller than those of the present pension plans. The cost of the plans is borne by the participating workers, who would, but for the plans, receive larger wage increases. The basic issue in guaranteed wage plans has been summed up by the advertisement showing a company payroll, and proclaiming to the workers: "HERE IT IS, HOW DO YOU WANT IT?" The answer to this question will depend on many factors, including tax and planning considerations, which will be discussed by this author in a subsequent article.

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[50] Based on the 1937 Annuity Table, set back 2 years, 2¼% interest assumption, with an 8% load factor.