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CONTROL OF MOBILITY OF LABOR IN THE SOVIET UNION

GEORGE M. ARMSTRONG, JR.*

INTRODUCTION

Soviet ideologists maintain that governmental control over the resources used in production is one of the primary advantages of a planned economy, permitting rational allocation of productive capacity to achieve national goals.¹ Indeed the government maintains control over most of the resources utilized by state enterprises in the public sector.² All land is owned by the government, as are all buildings and fixed assets that are operated by state owned enterprises.³ The State Bank regulates all loans made to enterprises for the purchase of goods⁴ and the Construction Bank extends all credit that is necessary for capi-

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1. See, e.g., V. GRIBANOV, *KHOZIAISTVENNOE PRAVO* 67 (1977). Gribanov states that:

The principal distinction of the socialist form of production is the action of the objective law of planning on the development of the national economy, dictating the necessity and permitting the possibility of planned development of social production. Planning, emphasized V.I. Lenin, as an objective characteristic of the socialist form of production, consists of the constant and conscious adherence to proportionality. "Socialism is unthinkable," he said, "without planned state organization, upheld by tens of millions of individuals strictly observing a single norm in the task of production and distribution of goods."

Id.

2. A. NOVE, *THE SOVIET ECONOMY: AN INTRODUCTION* 87-110 (2d ed. 1968). Nove discusses the planning process and the system of supply of raw materials, investment and construction, agricultural planning, planning of trade and governmental means for determining whether enterprises perform their planned tasks.

3. *THE CONST. (FUNDAMENTAL LAW) OF THE R.S.F.S.R.* § 11.

4. *Ustav Gosudarstvennogo Banka SSSR*, 1960 SP SSSR No. 18, st. 160. "The State Bank, on the basis of the plan of development of the national economy, organizes and regulates capital formation in the nation, retains surplus monetary resources of state, cooperative and social enterprises . . ." *Id.* § 1. "The USSR State Bank, in the process of supplying credit, organization and regulation of monetary transfers, assures control through the Ruble of the course of performance of plans of production and turnover of goods . . ." *Id.* § 2.

tal improvements.⁵ Gosplan,⁶ the Union of Soviet Socialist Republics (U.S.S.R.) Committee on Planning, and governmental ministries directly supervising producing firms determine which goods these enterprises will produce and, if the goods are to be sold to another socialist enterprise, generally determine the buyer. Fuel and other sources of energy are distributed to enterprises through the annual Plans of industrial ministries.⁷

The only significant resource used in production that is outside the sphere of economic planning is labor power. Aside from "young specialists,"⁸ graduates of Higher Education Institutions, over whom the government retains some control for three years following graduation, workers in the Soviet Union retain a high degree of freedom to change employment at will. Moreover, Soviet law provides the worker with a meaningful, although not airtight, guarantee that his enterprise, or the ministry which supervises it, will not reassign him to other employment without his consent.

This paper will discuss the rights of a worker under Soviet law to change jobs, or to retire at will, and the authority of the enterprise or government ministry to transfer him to other employment. In addition, it will examine the methods that the government uses to influence workers to retain their present employment or to accept a transfer, the most significant of which is the loss by workers of financial benefits accruing from uninterrupted employment. Finally, it will set forth the benefits and disadvantages which Soviet commentators claim can result from the present system of relatively unhindered labor mobility

5. *Ustav Vsesoiuznogo Banka Finansirovaniia Kapital'nykh Vlozhenii (Stroibanka SSSR)*, 1964 SP SSSR No. 19, st. 122, § 2. "The basic task of the USSR Construction Bank is fulfillment in accordance with the directives of the Party and government of supervision of the correct and effective use of capital investment . . ." *Id.*

6. Gosplan is "the central organ of state administration in the area of planning." *O Sovete Ministrov SSSR*, 1978 *VEDOMOSTI VERKHOVNOGO SOVETA SSSR* No. 28, st. 436, § 9(2).

7. *Obshchee Polozhenie o Ministerstvakh SSSR*, 1967 SP SSSR No. 17, st. 116, § 31. For additional information, see Maggs, *Soviet Corporation Law: The New Statute on the Socialist State Production Enterprise*, 14 *AM. J. COMP. L.* 478 (1965); Speer, *Contract Rights and the Planned Economy: Peaceful Coexistence Under the 1969 Soviet Statutes on Deliveries of Goods*, 3 *LAW & POL'Y INT'L BUS.* 510 (1971); Comment, *Role of State Arbitrazh Under the New Conditions of Economic Management in the Soviet Union*, 116 *U. PA. L. REV.* 1285 (1968).

8. *Polozhenie o Personal'nom Raspredelenii Molodykh Spetsialistov, Okonchaiushchikh Vyshie i Srednie Zavedeniia SSSR*, 1968 *BIULLETEN' MINISTERSTVA VYSHEGO I SREDNEGO SPETSIAL'NOGO OBRAZOVANIIA SSSR* No. 6, § 1; *SBORNIK ZAKONODATEL'NYKH AKTOV O TRUDE* 202 (1977) [hereinafter cited as *Polozhenie o Personal'nom Raspredelenii*].

and the proposals for change in legislation that some of them have advanced.⁹

I. DURATION OF EMPLOYMENT CONTRACTS AND WORKER MOBILITY

The Principles of Legislation of the U.S.S.R. and Union Republics on Labor,¹⁰ which are applicable to all employment contracts in the country, provide for several types of contracts of varying duration. The Principles of Labor Legislation state that:

Labor contracts are concluded:

- 1) For an undefined period;
- 2) For a defined period of not more than three years;
- 3) For the period of performance of particular work.¹¹

The term of the contract under which any given person is employed depends upon the industry in which the employee works, the educational benefits that the government supplies to the worker in preparation for employment and the financial bonuses which are the perquisites of the job.

A. Contracts for Undefined Periods

The standard employment contract for industrial labor appears to be the contract for an undefined period. Pashkov, who writes extensively in the field of labor law,¹² observes that legislation regulating the length of employment contracts "is based on the principle of free choice of the type of work and profession, taking account of the interests of society."¹³ One of the legislator's methods of protecting the interests of workers, he writes, is "the principle of free expression of will

9. This paper sets out the legal framework regulating the mobility of Soviet labor, emphasizing contractual restrictions and economic incentives. Two areas of labor regulation that will not be considered are labor in prison camps and disciplinary-instruction labor. These subjects are significant, but they are outside the basic framework of legislation with which the average worker is concerned.

10. OSNOVY ZAKONODATEL'STVA SOIUZA SSR I SOIUZNYKH RESPUBLIK O TRUDE (1971) [hereinafter cited as Principles of Labor Legislation].

11. *Id.* § 10.

12. A.S. Pashkov's books in the field of labor law include: ZAKONODATEL'STVO O TRUDE (1972); OSNOVY SOVETSKOGO TRUDOGO PRAVA (1972); PRAVOVYE OSNOVY NAUCHNOI ORGANIZATSII TRUDA (1967); SOVETSKOE TRUDOVOE PRAVO (1966); PRAVOVOE REGULIROVANIE PODGOTOVKI I RASPREDELENIIA KADROV (1966); PRAVOVOE POLOZHENIE PROFESSIONAL'NYKH SOIUZOV SSSR (1962); PRAVOVYE FORMY OBESPECHENIIA PROIZVODSTVA KADRAMI v SSSR (1961).

13. A.S. PASHKOV, ZAKONODATEL'STVO O TRUDE 174 (1972).

in selection of the place and type of work."¹⁴ This principle "presupposes recognition of the worker's and professional's (*sluzhashchii*) right to leave the job on his own initiative."¹⁵ One Soviet scholar states that 90% of all instances of employment termination occur at the behest of the worker.¹⁶

Soviet scholars claim that the labor contract for an undefined period protects the worker's right to free choice of place and type of employment. Indeed, the worker may terminate such employment on two weeks notice.¹⁷ Moreover, "the worker or professional is not restricted to any type of motives in quitting on his own initiative."¹⁸ He may exercise this right "without hindrance" from the director.¹⁹

B. Contracts For Seasonal Work

Section 10 of the Principles of Labor Legislation also permits the formation of employment contracts for the duration of a particular job.²⁰ The primary importance of these contracts is in the agricultural sector where collective farms may employ workers from outside the farm for the growing or harvesting season. In 1974 the Supreme Soviet of the U.S.S.R. issued regulations governing these contracts.²¹ These regulations provide that a labor contract for seasonal work "may be entered for a period of time not exceeding the length of a season."²² Workers who are parties to seasonal contracts have the right to terminate the employment agreement on three days notice.²³

C. Contracts For a Term Not Exceeding Three Years

The other variation of the labor contract for a particular period permitted by the Principles of Labor Legislation includes the contract

14. *Id.*

15. *Id.*

16. S.A. IVANOV, TRUDOVOE PRAVO I NAUCHNO-TEKHNICHESKII PROGRESS 157 (1974).

17. Principles of Labor Legislation, *supra* note 10, § 16.

18. A.S. PASHKOV, *supra* note 13, at 214.

19. *Id.* at 175. It has been noted that: "The law does not require the worker to state the reasons for resigning and does not link the resignation to any recognition by management of the respectability of those reasons. The worker is entitled to cease work at will without the agreement or permission of management." Iu. N. KORSHUNOV, R.Z. LIVSHITS & M.S. RYMIANTSEVA, SOVETSKOE ZAKONODATEL'STVO O TRUDE 57 (1980) [hereinafter cited as Iu. N. KORSHUNOV].

20. Principles of Labor Legislation, *supra* note 10, § 10.

21. Ukazanie Prezidiuma Verkhovnogo Soveta SSSR, 1974 BIULETEN' VERKHOVNOGO SUDA SSSR No. 6, 40.

22. *Id.* § 4.

23. *Id.* § 6.

for a term not exceeding three years.²⁴ With the exception of employment agreements in particular sectors of the economy in which legislation requires the parties to enter a contract of three years duration,²⁵ Soviet authorities frown upon long term labor contracts.²⁶ Some enterprise directors have abused the three year contract, using it to deprive workers of rights to pay raises, professional training and vacations to which employees would have been entitled under a contract which lasted for an indefinite period.²⁷ Although the Principles of Labor Legislation allow the parties to agree to the duration of the contract, some Soviet commentators believe that such agreements should generally be restricted to those sectors of the economy for which there is special legislation.²⁸

The most important economic sectors in which legislation requires a definite term contract are in the employment of "young specialists" who have received advanced education at the expense of the state²⁹ and in the recruitment of workers for employment in the "Far North."³⁰ Under existing legislation, a student who completes a course of study in higher or middle special education is obligated to work at

24. Principles of Labor Legislation, *supra* note 10, § 10.

25. A contract for work in the "Far East," i.e., outer Siberia, may not be of less than two years duration. A person contracting to work at enterprises and construction sites in Northern Siberia must agree to stay on the job for three years. "Individuals transferred, called up or directed to work in the Far North and adjacent areas receive a variety of supplementary benefits as a condition of entering the contract of labor for three years and for working on islands in the North Polar Ocean for two years." Iu. N. KORSHUNOV, *supra* note 19, at 8.

26. *Id.* It is also noted that: "Formation of a contract for a specified period leads to a variety of unprofitable consequences for the worker in comparison to a contract for an undefined period." *Id.*

27. Gal'tsov, *Ukrepnenie Predpriatii—Vazhnyi Faktor Snizheniia Tekuchesti Kadrov*, 1977 SOTSIALISTICHESKII TRUD No. 1, 39.

28. See, e.g., A.I. PROTSEVSKII, *METOD PRAVOGO REGULIROVANIIA TRUDOVYKH OTNOSHENII* 165 (1972). Protsevskii states that:

Formation of a contract for a definite period is permitted in cases provided for in various normative acts, e.g. with temporary, seasonal workers, in organized recruitment, etc. In this manner the legislator has moved along the route of establishing the types of work, the categories of workers with which it is possible to enter a contract for a definite period.

Id. "In practice, formation of a labor contract for a defined period for the performance of work which is by its nature of indeterminate duration is permitted only in cases specified by law . . ." Iu. N. KORSHUNOV, *supra* note 19, at 8.

29. See *Polozhenie o Personal'nom Raspredelenii*, *supra* note 8, and accompanying text.

30. *Instruktsiia o Poriadke Predostavleniia L'got*, Komitet Soveta Ministrov SSSR po Voprosam Trudi, Dec. 16, 1967, *SBORNIK ZAKONODATEL'NYKH AKTOV O TRUDE* 900 (1974) [hereinafter cited as *Instructions of December 16, 1967*].

an assigned job for not less than three years.³¹ The personnel committee of the educational institution has full power, in consultation with the relevant governmental ministries, to decide "all questions arising in the process of allocating young specialists."³² A student who disregards his work assignment and assumes other employment is discharged when the infraction is discovered by the appropriate ministry, and the director of the enterprise at which he has illegally taken work enters into his labor book the inscription: "Dismissed in connection with violation of the established rules on employment of young specialists."³³ Such an inscription can be a great hindrance to the student's subsequent career inasmuch as he must produce the labor book for inspection by all prospective employers.³⁴ In certain cases the young specialist who assumes employment with the enterprise to which he has been assigned may resign before the expiration of his three year term.³⁵

Legislation requires the use of employment contracts of extended duration for work in the Far North because of the hardship of living in that remote and inhospitable region and because of the financial benefits that workers receive to compensate for these hardships. The relevant legislation is designed to avoid a situation in which a worker or engineer, after receiving extensive training for his new job and relocating his family to the Far North, both accomplished at the expense of the enterprise at which he plans to work, decides after a brief period in the region to return to warmer climes. Legislation requires workers who prematurely terminate such contracts to return their bonus in an amount proportional to the time remaining before expiration of the contract.³⁶ Moreover, an employee who resigns his position in the Far

31. E. VOILENKO & IU. ORLOVSKII, *SPRAVOCHNIK MOLODOGO SPETSIALISTA* 32 (1969) [hereinafter cited as E. VOILENKO].

32. *Polozhenie o Personal'nom Raspredelenii*, *supra* note 8, § 9.

33. E. VOILENKO, *supra* note 31, at 31.

34. IU. N. KORSHUNOV, *supra* note 19, at 27, wherein it is stated that: "Admission to employment without a labor book is not permitted." *Id.* The importance of the labor book is that:

The labor book is the basic document of labor activity of workers and professionals. On the basis of entries in the labor book the general, uninterrupted and special periods of labor are established which are necessary for determining the amount of sick pay for temporary incapacity, payment of compensation for meritorious service, awarding benefits to individuals who work in the Far North, and for awarding government pensions.

Id.

35. See *infra* text accompanying notes 41-43.

36. Instructions of December 16, 1967, *supra* note 30, § 16.

North is required to reimburse his employer for the expense of relocating his family to the region.³⁷

D. Justifiable Termination of a Contract For Defined Period

The Principles of Labor Legislation do, however, allow an employee who is a party to an employment contract extending for a defined period to resign in certain cases. Section 16(2) provides:

An employment contract for a term may be terminated prematurely at the request of a worker in the event of illness or disability, preventing performance of the work according to contract, for breach by the director of the legislation on labor, the collective or labor contract or for other respectable reasons.³⁸

Other "respectable reasons" for premature termination of the contract include "personal, family, or social-productive circumstances."³⁹ The worker is generally entitled to resign if he has only one surviving parent, living in a distant city, who becomes seriously ill or if he or she marries someone who lives in a different region.⁴⁰ Young specialists and workers in the Far North, in addition to other workers who have contracts for a defined period, are entitled to avail themselves of these justifications for resignation.⁴¹ Young specialists, who may resign only with the permission of the governmental ministry, are recommended for resignation in appropriate cases by the manager of their enterprise.⁴² If the young specialist has a "respectable reason" for leaving work and the manager refuses to recommend his resignation, the Factory Committee of the trade union may recommend his resignation to the ministry.⁴³

37. Gintsburg, *Srochnyi Trudovyi Dogovor*, 1973 SOTSIALISTICHESKII TRUD No. 2, 137.

38. Principles of Labor Legislation, *supra* note 10, § 16(2).

39. A.S. PASHKOV, *supra* note 13, at 227.

40. E. VOLENKO, *supra* note 31, at 56. Anecdotal evidence gathered by the author suggests that young specialists, upon completion of their education, often seek a spouse who resides in a warm region of the country.

41. A.S. PASHKOV, *supra* note 13, at 227; Iu. N. KORSHUNOV, *supra* note 19, at 60.

42. E. VOLENKO, *supra* note 31, at 56.

43. *Id.* at 57. Korshunov points out that: "Final assessment of the justifiable nature of the reasons leading to premature termination of the labor contract is the prerogative of the organs which adjudicate labor disputes," the factory committee of the trade union and the courts. Iu. N. KORSHUNOV, *supra* note 19, at 60. He also states:

In many enterprises the administrators, officials in the personnel office or members of the factory committee of the trade union uncover the reasons leading the worker to request ter-

Cases arise, moreover, in which the manager does not object to premature termination of the contract even though the worker cannot rely on one of the enumerated justifications for resignation. In these situations the Principles of Labor Legislation allow the parties to terminate the contract by agreement.⁴⁴ The manager may permit the employee to resign in order to assume employment at another enterprise which is better suited to the skills or domicile of the worker or in order to permit the employee to learn a new specialty. Some enterprises now draft employment contracts which allow the worker to change jobs within the enterprise or to transfer to a different factory after six or twelve months.⁴⁵ A worker may transfer to a different enterprise, subordinate to the same governmental ministry as his own factory, by securing the permission of the ministry.⁴⁶ He may also transfer to a different enterprise subordinate to the same ministry if the managers of the two firms concur.⁴⁷

E. Penalties For Unjustified Termination

An employee who terminates a labor contract extending for a defined period without the permission of the manager or without a "respectable reason" is subject to certain penalties. "The unjustified resignation of a worker or professional is analyzed as the crudest type of breach of loyalty in the area of labor relations."⁴⁸ Unjustified resignation may be treated as absence from work without excuse, and a corresponding notation may be made in the worker's labor book.⁴⁹ Salary and benefits may be withheld, and the worker may forfeit compensatory payments which he received in connection with relocation.⁵⁰

II. FINANCIAL INCENTIVES AS A CONTROL ON LABOR MOBILITY

As employment contracts for a definite duration play a significant role only in narrowly defined sectors of the Soviet economy such as the employment of young specialists and workers in the Far North, the

mination and adopt measures aimed at removing those causes. Such work assists in preserving a stable work force. However, such measures may not take the form of coercion upon the worker and limitation of his right to quit at his own request.

Id.

44. Principles of Labor Legislation, *supra* note 10, § 15(1).

45. A.S. PASHKOV, *supra* note 13, at 95.

46. E. N. BOROVSKAIA, PEROVOD NA DRUGIU RABUTU 33 (1963).

47. *Id.* at 34.

48. A.S. PASHKOV, *supra* note 13, at 209.

49. I. N. KORSHUNOV, *supra* note 19, at 27 & 105.

50. A.S. PASHKOV, *supra* note 13, at 228.

penalties for unjustified, premature termination of such agreements are not the government's primary control on the mobility of labor. The government prefers to promote stability of the labor force through economic incentives rather than legal sanctions.⁵¹ The use of incentives in labor relations accords with the government's policy of financial rewards in other areas of the planned economy, such as bonuses for enterprise managers whose firms exceed their production plans, supplementary vacations for exemplary workers, cultural, social and educational preferences for the personnel of highly productive firms.⁵² The widespread use of material incentives to encourage performance of the National Economic Plan began in earnest in 1965, when the government expressly adopted the policy of linking self-interest of individuals to the national interest in industrial productivity.⁵³

The most significant forms of financial incentives that the government has designed to promote labor stability are: 1) bonuses for continuous employment in the economy as a whole, either at one firm or in a combination of jobs; 2) rewards for continuous service in a specialized capacity; and 3) bonuses for seniority within a single firm.

A. Incentives For Uninterrupted Employment

Many benefits which a Soviet worker receives depend upon the length of his uninterrupted employment either at one firm or in a combination of jobs (*nepreryvnyi stazh*). These benefits include the amount of compensation for temporary incapacity, bonuses, retirement pensions and a special addition of ten percent to the pension if an em-

51. KOMMENTARIJ K POLOZHENIU O SOTSIALISTICHESKOM GOSUDARSTVENNOM PREDPRIATII 7 (V. Laptev ed. 1971). "Economic methods of guidance are more flexible and effective [than criminal or administrative sanctions] for they influence the behavior of people through their interests, create the conditions through which the enterprise profitably operates well and unprofitably operates poorly." *Id.*

52. Polozhenie o Porjadke Raspredeleniia Pribyli (Planovoi i Sverkhplanovoi) Promyshlennykh Predpriatii, Peredannykh na Novuiu Sistemu Planirovaniia i Ekonomicheskogo Stimulirovaniia, Utverzhdeno Ministerstvom Finansov SSSR, Gosplanom SSSR i Gosbankom SSSR, Apr. 12, 1967, 1967 EKONOMIKA 127, § 10.

53. See V. LAPTEV, KHOZIAISTVENNOE PRAVO 114 (1967); G. Armstrong, *The Right to Control Property and the Construction of Communism: Property in the U.S.S.R.* 282-93 (1982) (unpublished Ph.D. dissertation in Princeton University Library). The cornerstone of the reforms of 1965 was the Statute on the Socialist State Production Enterprise, 1965 SP SSSR Nos. 19-20, st. 155. The statute gave managers much broader rights to dispose of the assets of their enterprises and expanded the terms on which managers could negotiate contracts for the goods which their firms produced. Reforms commencing in 1965 also provided for material incentive funds for workers at firms which fulfilled or over-fulfilled their production plans.

ployee has fifteen years of uninterrupted service.⁵⁴

A worker who resigns from an employment contract of definite duration for justifiable reasons or who exercises his option to terminate a contract of indefinite duration does not automatically lose his period of uninterrupted work. If he assumes a position at another firm within a month of his resignation, he is entitled to transfer his period of uninterrupted service to the second enterprise.⁵⁵ The government's objective in adopting the incentives for continuous employment was to encourage workers, who lawfully leave one job, to re-enter the work force quickly.

A worker who leaves employment because of sickness or temporary incapacity retains his uninterrupted period of service regardless of the length of his incapacity.⁵⁶ Moreover, if the employee agrees to a transfer to another enterprise at the request of the factory manager, he also retains his uninterrupted period of service. Regulations governing labor in the Far North, for example, provide:

In the transfer of a worker from one enterprise (establishment, organization) to another, according to a directive of a superior organ (in relation to the subordinate enterprise, establishment, organization) or by agreement between the management of the enterprises, establishments, organizations and also by directives of Soviet, Party, trade union, and Komsomol organizations, the effectiveness of the employment contract, entered for a definite period, does not terminate.⁵⁷

B. Incentives For Service in a Specialty

Some economic enterprises also provide bonuses and benefits that are calculated on the length of time an employee has worked in his specialty. Special legislation, for example, governs the benefits of machinists who work in the timber industry.⁵⁸ A machinist who leaves his employment in the timber industry loses his term of prior work in the

54. N. Gudimov, *L'goty Rabochim i Sluzhashchim za Nepreryvnyi Stazh Raboty*, 1968 SOVETSKAIA IUSTITSIA No. 5, 10.

55. Ukazanie Verkhovnogo Soveta SSSR, Jan. 25, 1960, 1960 VEDOMOSTI VERKHOVNOGO SOVETA SSSR No. 4, st. 36.

56. A.S. PASHKOV, *supra* note 13, at 226.

57. Instructions of December 16, 1967, *supra* note 30, § 11.

58. Polozhenie Gosudarstvennogo Kommiteta po Voprosam Truda, Nov. 13, 1969, 1970 BIULLETEN' GOSKOMTRUDA No. 2, 577.

specialty, even though he later returns to that profession.⁵⁹ Return to work in the timber industry after a period of military service, illness, arrest for a petty crime or the birth of a child are exceptions to this general rule.⁶⁰ If the ministry transfers a machinist to another organization at which he continues to work in his specialty, the bonuses to which he is entitled are paid proportionately by each firm.⁶¹

C. Incentives For Prolonged Service in One Enterprise

Finally, certain organizations pay special bonuses for prolonged, meritorious service (*vyslugu let*) in one firm. Legislation adopted in 1957 allows bonuses on the basis of seniority commencing after two years in the case of miners and after three years for all other employees.⁶² The use of such incentives has intensified since 1965.⁶³ According to one Soviet author, "now every enterprise, in accordance with its economic capacity and local conditions, is required to give benefits and advantages to workers and professionals who for a lengthy time work in that enterprise."⁶⁴ The following chart illustrates timber industry bonuses calculated as a percentage of annual pay.⁶⁵

<u>Seniority</u>	<u>Managers and Specialists</u>	<u>Other Workers</u>
3-5 years	15%	10%
5-10 years	20%	15%
10-15 years	25%	20%
More than 15 years	30%	20%

The bonus for prolonged meritorious service is a lump sum payment made upon retirement or resignation from the job.

In attempting to control the movement of labor, the Soviets have adopted a three-tier system of financial incentives. Of these three forms of financial incentives, only those rewards based on continuous service to the economy as a whole offer tangible benefits to the young worker who is least likely to have family financial responsibilities but who is most likely to change jobs frequently. These incentives are the most significant, for incentives based on the length of uninterrupted work are not designed to retain an employee in a particular job but

59. *Id.* § 5.

60. *Id.* § 6.

61. *Id.*

62. 1957 SP SSSR No. 4, st. 43.

63. *See supra* note 53.

64. Gudimov, *supra* note 54.

65. O Poriadke Vyplaty Voznagrazhdeniia za Vysluga Let, SBORNIK ZAKONODATEL'NYKH AKTOV O TRUDE 546 (1974).

rather are designed to keep him in the work force at large. The second class of financial incentives, bonuses for duration of work in a specialty, are designed to retain skilled workers in the profession for which they have been trained and to avoid the costs of training new workers. Finally, the third class of incentives, bonuses for prolonged service in one firm, are designed to encourage employees to remain at particular factories, to reduce the costs to the enterprise of recruiting workers and to enhance employees' loyalty to the firm.⁶⁶

III. THE RIGHT TO RETAIN A JOB

The converse of the worker's right to change jobs at will is his right to retain his present job when the manager, or the ministry, wishes to transfer him. The U.S.S.R. Principles of Labor Legislation and the R.S.F.S.R. Labor Code⁶⁷ permit the factory manager to transfer a worker permanently to another job only with the employee's consent.⁶⁸ Management may temporarily reassign a worker in the event of an industrial emergency,⁶⁹ idleness of the facility at which the worker

66. Soviet experts disagree on the effectiveness of these incentives. See *infra* text accompanying notes 102-18.

67. The Labor Code of the Russian Soviet Federated Socialist Republic, Dec. 9, 1971 [hereinafter cited as R.S.F.S.R. Labor Code].

68. Section 25 of the R.S.F.S.R. Labor Code provides:

Transfer to other work at the same enterprise, institution, organization, and also transfer to work at another enterprise, institution, organization or to a different locale, except together with the enterprise, institute, organization, is permitted only with agreement of the worker or professional with the exception of cases provided in [sections] 26, 27 and 135 of this Code.

Relocation of the worker or professional to a different work place within the same enterprise, institute, organization without change of specialty, qualification, responsibility, amount of wage, benefits, advantages and other essential conditions of labor is not considered transfer to different work.

R.S.F.S.R. Labor Code, *supra* note 67, § 25.

69. Section 26 of the R.S.F.S.R. Labor Code provides:

In case of production necessity for the enterprise, institution, organization, the manager has the right to transfer workers and professionals for a period up to one month to work not specified in the employment contract at the same enterprise, institute, organization or to a different enterprise, organization, institution but in the same locale at a wage no lower than the average rate of pay for the previous work. Such transfer is allowed for combatting or liquidating natural disaster, a production accident or for rapid correction of their consequences; for overcoming unfortunate accidents, idleness, destruction or

is presently employed⁷⁰ or as a disciplinary measure.⁷¹

A. Permanent Reassignment

In order to determine what constitutes "transfer to different work," section 25 of the R.S.F.S.R. Labor Code must be read in conjunction with section 12 of the U.S.S.R. Principles of Labor Legislation. Section 12 provides that "[t]he management does not have the right to demand from the worker or professional the performance of work not provided for in the labor contract."⁷² Moreover, section 8 of the Principles of Labor Legislation states that the labor contract "obligates the worker to perform work in a defined specialty, qualification or responsibility."⁷³ Although many terms in a Soviet labor contract are established by the central government, including length of work-

spoilage of state or social property and in other extraordinary cases and also for replacing absent workers or professionals.

The duration of the transfer to other work for replacement of an absent worker may not exceed one month in a calendar year.

Id. § 26.

70. Section 27 of the R.S.F.S.R. Labor Code provides:

In case of idleness, workers and professionals are transferred in consideration of their specialty and qualification to different work at the same enterprise, institution, organization for the entire period of idleness, or to another enterprise, institution, organization in the same locale for a period of up to one month.

In a transfer to lower paying work as a consequence of idleness, the average rate of pay at the previous job is retained for the workers and professionals fulfilling output norms; but for workers and professionals not fulfilling norms or transferred to work paying an hourly wage, their rate of wages (basic pay) is retained.

Id. § 27.

71. Section 135 of the R.S.F.S.R. Labor Code provides:

For the violation of labor discipline, the administration of an enterprise, institution or organization shall apply the following disciplinary sanctions:

- (1) reproof;
- (2) reprimand;
- (3) severe reprimand;
- (4) transfer to lower paying work for a term of up to three months, or removal to a lower position for the same term;
- (5) dismissal.

Id. § 135.

72. Principles of Labor Legislation, *supra* note 10, § 12.

73. *Id.* § 8.

day,⁷⁴ safety standards,⁷⁵ and funds for payment,⁷⁶ "some of the conditions of work are regulated by the contract."⁷⁷ Pashkov finds that the specialty and qualifications of the job are terms which are particularly appropriate for negotiation.⁷⁸ The R.S.F.S.R. Labor Code is designed "to orient the management of the factory to include labor functions in the contract . . . corresponding to the professional interests of the worker, to his personal inclination."⁷⁹ If the contract defines the worker's position with specificity, he is protected from the threat of involuntary transfer. "Any change in the character and terms of work established in the labor contract may be analyzed as a transfer to other work."⁸⁰

Commentators, statutes and cases provide examples of transfer to different work. Pashkov notes that the R.S.F.S.R. Labor Code permits the manager to move a worker within the enterprise if his specialty, qualifications and responsibility are not changed.⁸¹ A transfer consists of "such changes as touch the character of the work itself and the conditions of its fulfillment."⁸² If the contract requires the worker to work for one store, shop or geological expedition which is not itself a juridical person, transfer to another place of employment performing precisely the same task for an entity which is owned by the same juridical person is, nonetheless, transfer to different work.⁸³ A 1975 U.S.S.R. Supreme Court case involved a physics teacher in the town of Erevan who was ordered to transfer to a different school in the same town.⁸⁴ The Armenian Supreme Court dismissed the teacher's suit, noting that he would have the same responsibilities and salary and that both schools were operated by the same legal entity.⁸⁵ Upon appeal instituted by the Deputy Procurator General of the U.S.S.R., the High Court of the Union reversed the Armenian Supreme Court. The teacher had entered a contract to work at a particular school, observed the Court, and his transfer constituted movement to a new organization.⁸⁶

The R.S.F.S.R. Supreme Court has held that a worker who is

74. R.S.F.S.R. Labor Code, *supra* note 67, §§ 41-56.

75. *Id.* §§ 139-159.

76. *Id.* §§ 77-101.

77. A.S. PASHKOV, *supra* note 13, at 181-82.

78. *Id.* at 85.

79. *Id.*

80. *Id.* at 195.

81. *Id.* at 196.

82. *Id.* at 198.

83. R.S.F.S.R. Labor Code, *supra* note 67, § 25.

84. 1976 BIULLETEN' VERKHOVNOGO SUDA SSSR No. 2, 25.

85. *Id.*

86. *Id.*

transferred without his consent may immediately terminate the contract.⁸⁷ Moreover, he may accept the transfer without being deemed to have acquiesced if he simultaneously appeals to the courts.⁸⁸ If a worker under special contract to work in the Far North refuses to transfer to other work, the enterprise must pay the expenses of the worker and his family connected with relocation to his previous position.⁸⁹ In addition, any employee who consents to transfer to a lower paying job in the same factory retains his previous grade of pay for two weeks.⁹⁰

Ordinarily an employee may be transferred with his consent. However, young specialists who have received advanced training in a particular academic discipline or field of engineering "cannot be transferred to different work not in their specialty even if they consent."⁹¹ Any such transfer must be approved by the governmental ministry supervising the firm.

B. Temporary Reassignment

In contrast to the R.S.F.S.R. Labor Code's restrictions on involuntary permanent transfers of employees, legislation does allow *temporary* transfer in extraordinary situations on account of production emergencies,⁹² idleness of the facility at which they are employed⁹³ or as a disciplinary measure.⁹⁴ Soviet scholars do not report satisfactory results from extraordinary transfers of workers. Ivanov notes that "transfer in connection with production necessity is not satisfactory to the worker insofar as he is often compelled to perform different work than that to which he had become accustomed."⁹⁵ The process "yields unprofitable results for the enterprise as the worker is not used according to his skills and is paid at his own wage rate irrespective of the results of his labor."⁹⁶

A worker who refuses to change jobs temporarily because of production necessity "is considered to be in violation of labor discipline."⁹⁷ The enterprise will countenance certain excuses such as physical inca-

87. 1957 SOVETSKAIA IUSTITSIIA No. 4, 77.

88. E.N. BOROVSKAIA, *supra* note 46, at 8.

89. Instructions of December 16, 1967, *supra* note 30, § 18(b).

90. A.S. PASHKOV, *supra* note 13, at 204.

91. E. VOILENKO, *supra* note 31, at 36.

92. *See supra* note 69.

93. *See supra* note 70.

94. *See supra* note 71.

95. S.A. IVANOV, *supra* note 16, at 136.

96. *Id.*

97. A.S. PASHKOV, *supra* note 13, at 207.

capacity, lack of necessary skills or medical excuses.⁹⁸ A recent R.S.F.S.R. Supreme Court case considered a worker's refusal to submit to temporary reassignment.⁹⁹ S., a laboratory employee, was transferred to work in an assembly line for one month because of production necessity. When he refused the assignment, the manager gave S. a "strict scolding." S. sued in court claiming that this disciplinary measure was unjustified. The Supreme Court was satisfied that a production necessity had existed and that installation of new technology in the factory justified transferring forty-two workers to the assembly line. The Court observed that rule 11 of the "Model Rules of Internal Labor Direction"¹⁰⁰ requires workers to follow promptly the directives of the manager, and that section 135 of the R.S.F.S.R. Labor Code allows disciplinary measures. Thus the trial court properly refused the worker's appeal.¹⁰¹

IV. CRITICISM AND PROPOSALS FOR REFORM

The worker's right to work at the enterprise of his choice entails both the right to resign and the right to remain in a position despite attempts by management to transfer him. Although some commentators suggest that the temporary reassignment of workers on account of production emergencies is an inefficient use of skilled labor,¹⁰² Soviet literature contains no recent proposals for reform in this area. On the other hand, a variety of solutions are proposed by Soviet commentators to the problem of excessive labor mobility. Most commentators prefer economic inducements to labor stability rather than prohibition of movement or the creation of administrative obstacles.

Pashkov notes that if "the principle of freedom of labor law contract is not to be onesided . . . the right of the worker to select his place of work and labor function must correspond to the right of the

98. *Id.*

99. 1979 BIULLETEN' VERKHOVNOGO SUDA RSFSR No. 10, 1.

100. *Id.* The Model Rules of Internal Labor Direction for Workers and Employees of Enterprises, Establishments and Organizations, Postanovlenie Gosudarstvennogo Komiteta Soveta Ministrov SSSR po voprosam truda i zarabotnoi platy, SBORNIK ZAKONODATEL'NYKH AKTOV O TRUDE 497 (1977), provide that:

Section 11: Workers and employees are obligated to

. . . .
 b) observe labor discipline, the basis of order in production (timely arrival at work, observance of the duration of the work day, using all work time for productive labor, prompt and precise performance of directives of management, etc.).

Id.

101. *Id.*

102. See *supra* text accompanying notes 95-96.

enterprise to choose the most skilled, best workers."¹⁰³ He and other commentators who hold this view object that hindrances to workers' resignations, such as requiring the trade union to approve all resignations, "contradict the principle of free choice of work place."¹⁰⁴

Prior to the economic reforms of 1965 and the intensified use of material incentives, one Soviet scholar suggested that a worker who resigns an indefinite term employment contract without justification should be deprived of accrued benefits arising from his period of uninterrupted employment even if he resumed work within a month and should be deprived of his right to a pension, in the event of temporary disability, for six months.¹⁰⁵ The editors of the journal in which the article appeared agreed that "we should not preserve the uninterrupted period of work for those employees who resign at their own request without justification."¹⁰⁶

Subsequent legislation did not adopt these proposals, and since 1965 commentators have argued that reform should remove the causes of workers' dissatisfaction with their present jobs rather than chilling the exercise of their right to seek other employment. "It is essential to find a more rational solution, answering the spirit of our time and current tendencies in the development of labor legislation. It is necessary to resolve the reasons giving rise to resignation at the request of the worker."¹⁰⁷

The cause of excessive mobility in the work force has been the subject of lively debate in the Soviet press in recent years. Some scholars believe that workers have insufficient financial incentive to remain in an employment position.¹⁰⁸ Other authors suggest that managers might diminish the turnover of their work force by adopting a more solicitous attitude to the problems of their employees.¹⁰⁹ A third group of commentators note that workers often change jobs because they initially enter their employment without giving sufficient consideration to their career objectives.¹¹⁰ Protsevskii, for example, believes that the solution to labor mobility is "in establishing benefits and advantages in the area of pay, vacation time for those who work freely and for a long period and unprofitable consequences for those who frequently move

103. A.S. PASHKOV, *supra* note 13, at 139.

104. *Id.* See Pravovye Voprosy Bor'by s Tekuchest'iu Kadrov, 1964 SOVETSKAIA IUSTITSIIA No. 1, 12 [hereinafter cited as Pravovye Voprosy].

105. Pravovye Voprosy, *supra* note 104, at 12.

106. *Id.*

107. *Id.*

108. See *infra* text accompanying note 111.

109. See *infra* text accompanying notes 114-15.

110. See *infra* text accompanying note 119.

from one enterprise to another."¹¹¹ Although Protsevskii believes that "the unjustified movement of personnel objectively contradicts planned, proportional development of the economy,"¹¹² he argues that adopting laws which prohibit the movement of workers would be "artificial" in an era of rapid technical progress.¹¹³ Ivanov concurs, stating that: "To fight the mobility of labor it is necessary, obviously, not to make it more difficult to leave a job, but to remove the reasons which give rise to the request to resign."¹¹⁴ Gudimov notes that one factory in Krasnodar has an unusually high turnover rate. "One of the reasons for this is that the factory management and the factory committee did not provide in the collective contract for awarding benefits and advantages to production leaders, and workers for long periods."¹¹⁵

Another author believes that enterprises should actually compete with one another to attract workers. "Competition among enterprises should be as unceasing as worker movement itself is. There is no limit to the material and cultural improvements that can be made in workers' lives. The constant 'differences in potential' among enterprises benefit both production and workers."¹¹⁶ Such competition may, of course, *increase* labor mobility. "Attempts at retaining personnel through creation of advantages in pay have had no influence on reducing mobility and in a variety of cases have actually brought about its increase."¹¹⁷ One manager relates that two plants in his region have been competing for years for the best workers. "One day a director builds a swimming pool and young workers whose occupations are in short supply flock to him; the next day another director institutes free lunches and the move is on to his plant."¹¹⁸

Finally, some commentators maintain that a primary cause of labor mobility is absence of adequate information about the skills which a position will require and the training which employment in a factory will offer. Ivanov believes that a significant percentage of workers change jobs because of dissatisfaction with the position as a work experience.¹¹⁹ The towns of Ufa and Kaluka tried to remedy this problem by requiring all local factories to hire workers through a central office

111. A.I. PROTSEVSKII, *supra* note 28.

112. *Id.* at 183.

113. *Id.* at 186.

114. S.A. IVANOV, *supra* note 16, at 157-58.

115. Gudimov, *supra* note 54, at 10.

116. Kuznetsov, *Turnover or Mobility*, 31 CURRENT DIG. OF SOVIET PRESS No. 29, 16 (1979).

117. Gal'tsov, *supra* note 27, at 32.

118. Kuznetsov, *supra* note 116.

119. S.A. IVANOV, *supra* note 16, at 120.

in the town, rather than on site, and to provide information in the office that would allow applicants to compare potential employers. In Ufa the movement of production workers declined from 18.1% in 1970 to 16.5% in 1971. In the construction industry movement fell from 19.6% to 19.3%. In the town of Kaluka mobility declined from 17% to 14.8%.¹²⁰ Little additional information about this experiment is available, and there are no reports of other towns adopting its design.

CONCLUSION

In contrast to all other resources which Soviet industrial enterprises require for production, labor is not allocated to socialist firms by the Plan.¹²¹ The average Soviet worker has substantial freedom to choose the career that he will pursue, limited by his attainment of education and practical skills and by the availability of employment positions, and to select the enterprise at which he wishes to work. Soviet authors note that labor resources are distinguished from other components of production such as raw materials, capital, transport and fuel because of the traditional concern of Marxist ideology for such humanistic values as the complete development of each person's talents,¹²² the individual's right to choose the capacities that he will develop,¹²³ and a working environment in which the worker finds fulfillment rather than alienation.¹²⁴

The actual reason for distinguishing labor from other components of production that are subject to national planning is probably practical rather than humanistic. The Soviet press often expresses criticism of substandard production of goods and the failure of firms to perform tasks assigned by the Plan.¹²⁵ The press attributes many of these problems to inadequate "labor discipline," poor morale and insufficient concern by directors for labor-management relations.¹²⁶ Assigning workers to employment in firms through the economic planning mech-

120. *Id.*

121. *See supra* note 7.

122. Gal'tsov emphasizes the necessity of providing workers with opportunities to use skills which they already possess and to develop new talents. *See supra* note 27, at 33.

123. A.I. PROTSEVSKII, *supra* note 28, at 186.

124. *Moral'nyi Klimat Kollektiva*, Pravda, Oct. 27, 1982, 1. Lenin also wrote that increasing national economic efficiency and removal of the alienating aspects of industrial labor were inextricably related tasks. V.I. Lenin, *State and Revolution* in THE LENIN ANTHOLOGY 379 (R.C. Tucker ed. 1975).

125. Three recent examples of criticism of industrial production are *Neotlozhnye Zaboty Stroitelei*, Pravda, Oct. 22, 1982, 1; *Metall po Zakazam*, Pravda, Oct. 14, 1982, 1; *Ukrepleniaia Sodruzhestvo Smezhnikov*, Pravda, Oct. 8, 1982, 1.

126. *Norma Truda*, Pravda, Nov. 1, 1982, 1.

anism would augment labor's discontent and further aggravate problems of production. Accordingly, the government attempts to increase the commitment of labor to productivity by permitting free choice of place of employment.

Soviet commentators have urged management to reduce the causes of labor turnover rather than hinder mobility. The discussion above demonstrates that the years since 1965 have been a period of experimentation with various methods of attracting and retaining workers.¹²⁷ In addition to bonuses for seniority and penalties for prolonged unemployment, the government encourages managers to offer fringe benefits and economic incentives for high productivity. Although the recent transition in Soviet leadership aggravates the difficulties in prediction of future policy, the government will probably continue to experiment with various forms of material incentives as a means of enhancing the commitment of the labor force to production and to their firms.

127. See *supra* text accompanying notes 107-20.