**Highly Disruptive Technologies: Some Lessons from Roads Taken**

MICHAEL J. RYBICKI

Whether it be self-driving vehicles or robotic warehouses, future technologies have the potential to impact a wide range of businesses and vast numbers of employees. But while the pace and breadth of change may have intensified, the opportunities and challenges of highly disruptive technologies are not new and the lessons learned from roads already taken remain relevant and instructive.

**Computers and Containers**

If a newspaper compositor or longshoreman working in the sixties had been transported fifty years back in time, he ­ and it would have been a “he” ­ would have recognized the workplace and been able to adjust to it with little or no effort. But send that same worker from the sixties fifty years into the future and he would have found either his job transformed almost beyond recognition or, in the case of the compositor, totally eliminated. *See e.g*., [*The Lost World of the Craft Printer*](https://archive.org/details/lostworldofcra00holt), Maggie Holzberg, University of Illinois Press (1992); [*Effects of automation in the lives of longshoremen*](https://libcom.org/library/effects-automation-lives-longshoremen).

It is virtually impossible to overstate the impact of computer technology on the creation and manufacturing of newspapers. In the case of compositors, the highly skilled craftsmen who set news and advertising content in “hot type,” “cold type” computer composition sounded what ultimately was the death knell for a craft stretching back to the Middle Ages. Containerization had a similarly dramatic impact on shipping and shipping-associated operations and, while longshoremen can still be found in every port, today there are far fewer of them performing dramatically changed work ­ work that continues to shrink.

In the sixties, both groups of employees were represented generally by powerful labor unions, compositors by the International Typographical Union (ITU) and longshoremen by the International Longshore and Warehouse Union (ILWU), which initially bitterly fought the introduction of the new technologies and thereafter engaged in a decades-long struggle to control or limit the impact on their members and the unions themselves. While these experiences may have the greatest relevance today for a logistics company with Teamster-represented drivers contemplating a future of driverless vehicles, approaches utilized by the newspaper and the longshore industry are instructive for even non-union employers.

**Employment Commitments**

In both industries, the employers made certain commitments to employees and their unions in exchange for the right to introduce and deploy new technologies. For example, on the West Coast the 1975 ILWU contract contained a Paid Guarantee Plan and Boston longshoremen negotiated a Guaranteed Annual Income plan. Additionally, employment cutbacks were accomplished by attrition.

In the newspaper industry, many employers offered job-guarantees of “lifetime employment” for then current employees. Examining the implications of how these commitments played out, both in practice and in the courts, offers insights into what employers should or should not do, and the implications and risks of such commitments over the long term. Because of Seyfarth’s extensive, decades-long experience representing newspapers, this blog post focuses on what occurred in that industry as illustrative of some of the employee-related issues arising from the implementation of highly disruptive technology.

Merely listing the major issues litigated provides a fair taste for the challenges facing employers with respect to employment-related issues. These issues included both the nature and scope of the commitments and the extent to which they were subject to change or even elimination.

In the newspaper industry, one of the first issues litigated was whether “lifetime” job guarantees meant just that, particularly where there was a change in the “employer” or the nature of the employer’s operations. In *[Heheman v. E.W. Scripps Co.](https://openjurist.org/661/f2d/1115/heheman-v-e-w-scripps-company-a)*, 661 F.2d 1115 (6th Cir. 1981), the court resolved these issues in favor of the job guarantee holders, setting the stage for what became a clear trend in court and arbitration decisions.

It is noteworthy that *Heheman*was brought by the job guarantee holders (rather than the union) and that subsequent court and arbitration decisions generally recognized employment guarantees as being “vested” in the employees holding them. This illustrates that employment commitments are actionable regardless of whether they are made to union or non-union employees. (Another frequently litigated commitment is what employers have “promised” retirees, regardless of whether they are or were untion-represented.)

Other issues arose with respect to whether employers could make changes in terms and conditions of employment, such as work assignments or wages, that negatively impacted guarantee holders. For example, when most job guarantees were extended, employers were generally picking up virtually the full cost of employee and family medical coverage. A half century later, that is no longer true (at least in the private sector).

So, what happened when an employer wanted to modify its “commitments” to its employees? With respect to employment guarantees in the newspaper industry, a distillation of the relevant decisions establishes that generally an employer is subject to a covenant of good faith and fair dealing with respect to employment commitments and may not take actions inconsistent with the spirit of those commitments absent compelling circumstances. It is not unreasonable to expect that this standard may be applied to employment commitments in other situations and industries.

Certain societal changes beyond the employers’ control also significantly impacted newspapers. For example, when most job guarantees were negotiated, employers were permitted to retire employees at age 65, which newspapers counted on to thin the ranks of redundant compositors. After the mandatory retirement age was first raised to age 70 and thereafter eliminated, newspapers found themselves left with more compositors than expected for longer periods of time with little to no productive work to be performed.

**Conclusion**

While employee-relations issues and societal implications of an approaching crescendo of highly disruptive technologies may well require “thinking outside the box,” experience suggests that the implications of seemingly well-thought out and well-intended “solutions” are likely to be more complex than might generally be assumed, even by the thoughtful. Seyfarth’s experience representing and advising clients with respect to highly disruptive technologies illustrates the breadth of the issues, the need to delineate commitments with precision, and the risks of not having an exit strategy (or “escape hatch”), particularly in extreme circumstances.