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ABSTRACT

This document contains the oral and written statements of witnesses who testified at a hearing on the Reemployment and Retraining Act of 1994 and the WARN [Worker Adjustment and Retraining Notification] Amendments Act. Witnesses included Senator Howard Metzenbaum of Ohio, several union and public employment program officials from several states, and several dislocated workers. Additional material submitted for the report includes questions submitted by Senator Metzenbaum to several state and federal officials, a summary of a publication of the Association of Outplacement Consulting Firms International, and several communications to local officials. The witnesses testified about the need for a one-stop service that would link dislocated workers with unemployment benefits, job retraining programs, income-replacement during retraining, and social services programs. Several examples of local and state programs were described. Witnesses also stressed the need for early warnings about plant and office closings so that agencies and workers can prepare for retraining and career change. (KC)

S. HRG. 103–736

REEMPLOYMENT ACT AND WARN: HELPING WORKERS MAKE SUCCESSFUL TRANSITIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

AUTHORIZING FUNDS TO STATE AND LOCAL GOVERNMENTS TO PROVIDE JOB SEARCH ASSISTANCE, CAREER COUNSELING, SKILLS ASSESSMENT, AND JOB TRAINING REFERRAL FOR PERMANENTLY LAID-OF WORKERS AND LONG-TERM UNEMPLOYED INDIVIDUALS

JULY 26, 1994

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TUESDAY, JULY 26, 1994

ADDITIONAL MATERIAL

REEMPLOYMENT ACT AND WARN: HELPING WORKERS MAKE SUCCESSFUL TRANSITIONS

TUESDAY, JULY 26, 1994

U.S. SENATE,
SUBCOMMITTEE ON LABOR, OF THE COMMITTEE ON LABOR
AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:18 a.m., in room SD–430, Dirksen Senate Office Building, Senator Howard M. Metzenbaum (chairman of the subcommittee) presiding.

Present: Senators Metzenbaum and Wellstone.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. This morning the Labor Subcommittee will hear testimony on the Reemployment and Retraining Act of 1994 and the WARN Amendments Act. These bills address one of the most serious issues facing working men and women today—worker dislocation.

I think it is important that we hear from the witnesses and the chair is under considerable pressure to be in another meeting at 10:00 and I am trying to work it out. So I am going to put the balance of my statement in the record.

[The prepared statement of Senator Metzenbaum follows:]

PREPARED STATEMENT OF SENATOR METZENBAUM

This morning the Labor Subcommittee will hear testimony on the Reemployment and Retraining Act of 1994 and the WARN Amendments Act. These bills address one of the most serious issues facing working men and women today—worker dislocation.

The changing economy has meant that more and more Americans find themselves without a job. Between 1987 and 1992, 15 million Americans lost their jobs. Seven million are currently unemployed. Increasingly, dislocated workers have to find not only new jobs, but new careers. This trend affects all Americans—from workers on the factory floor to CEO's—who are facing a new workplace with changing skill requirements and little or no job security.

The administration's response has been the Reemployment Act which I introduced on behalf of President Clinton and Secretary Reich. Their vision is to create a state of the art reemployment guidance in their job search, referral and funding to retrain for a new career, and income support to allow for longer, more effective training. I commend the administration for its attention to this issue. Serious investment in our Nation's workforce is long over-

due, and helping dislocated workers to reenter the workforce is the right place to start.

Assisting dislocated workers who are the innocent victims of economic trends and fluctuations of the economy is our moral obligation. But ultimately, this assistance is no substitute for jobs. We have to face facts: too many of the jobs we are creating are part-time or temporary. Creating good full-time jobs must be part of any dislocated worker assistance policy.

In today's first two panels we will hear from organized labor as well as workers who have been through the sometimes trying process of getting back on their feet after losing their jobs. We will also hear about two programs that are already bringing state-of-the-art assistance to dislocated workers.

Our third panel this morning will help us understand the importance of giving workers and local communities advance notice of dislocations. Advance notice is critical to early intervention efforts, and to the success of dislocated worker assistance programs as a whole.

Many have benefited from the WARN Act's advance notice requirements, but there are substantial problems. First, half of the mass layoffs in this country are not even covered by the law. Second, half of the employers that are covered are not complying with the Act's 60 day notice requirement. Third, the enforcement rate for the many thousands of WARN Act violations has been absurdly low, at about one percent.

I have introduced the WARN Amendments Act, S. 1969, to address these problems and give the Reemployment Act's programs a chance to work. The third panel this morning will focus on the critical link between advance notice and dislocated worker assistance programs.

I look forward to the testimony of today's witnesses.

Our first panel today, our first witness is John Sweeney, President of the Service Employees International Union. We are happy to have you with us, John. Good morning.

STATEMENT OF JOHN SWEENEY, PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, WASHINGTON, DC.

Mr. SWEENEY. Good morning, Senator. I am John Sweeney, president of the Service Employees International Union. With me is our policy director, Peggy Connerton.

Senator METZENBAUM. I think all the witnesses have been told that oral statemen6ts are limited to 5 minutes.

Mr. SWEENEY. Right, Senator.

Senator METZENBAUM. Thank you.

Mr. SWEENEY. SEIU represents over 1 million members including some 15,000 who work in the employment security system. These workers provide career counseling, job search assistance, and other services to unemployed and dislocated workers. On their behalf I want to thank you, Mr. Chairman, for this opportunity to testify on S. 1964, the Reemployment and Retraining Act of 1994.

I am heartened that we finally have an administration that is willing to tackle the problems of rising long-term unemployment. SEIU is strongly supportive of the President and Secretary Reich's efforts to provide these workers with expanded training, retraining,

and job search services. For many workers the variety of services provided, particularly the income support while in training, would be a significant improvement over the benefits currently available to them.

Our union also supports the administration's goal of consolidating many existing training programs and services and making them available in one-stop career centers. We also want to commend the Clinton administration for its efforts to develop a national labor market information system. This system would provide employers and job seekers alike with easily accessible information about job opportunities, training programs, and labor market conditions.

SEIU also fully supports the administration's plan to use .2 percent FUTA Federal surtax as the financing mechanism for the retraining income support account established in the act.

Although SEIU is generally supportive of the goals of the Reemployment and Retraining Act there are also some aspects of the proposal that we would like to see changed. In particular, we oppose the use of the competitive model in the selection of the one-stop career center operators. We believe that a competitive approach would be counterproductive, not only for the employment services but for those using the centers as well. Instead, we strongly advocate the consortium model which promotes greater cooperation and coordination among service providers with the employment service in charge of bringing all of these groups together.

We are also concerned over the use of performance standards as the exclusive means for terminating a center's operating agreement after 2 years. We believe that this "two strikes and you're out" proposal is overly punitive given that the value of customer-driven performance standards have not been developed or tested. After suffering from years of underfunding, the employment service may need some additional time to regain its competitive edge. We suggest that, at least initially, centers that fail to meet the performance standards should be placed on probation and given an additional year to take corrective action.

One final concern we have with this proposal relates to the governance structure of these one-stop career centers. We would like to see a more balanced representation on the workforce investment boards of all stakeholders with equal representation of business, labor, and community organizations as the ultimate goal.

We believe that the Reemployment and Retraining Act lays some of the critical building blocks needed to formulate a comprehensive workforce development policy. But more is needed. In particular, the advance notice requirement of the 1988 WARN law should be strengthened and better enforced so that workers and their unions have adequate time to plan an effective early intervention strategy. And to make the advance notice requirement even more effective, the unemployment insurance system needs to be reinvented.

In conclusion, Mr. Chairman, I want to reiterate the strong support of the Service Employees International Union for the goals and principles of the Clinton administration's Reemployment and Retraining Act. While SEIU may disagree with the administration on certain aspects of the proposal, we fully endorse the legislation's objective of providing more effective help for the unemployed and

other job seekers. We look forward to working with you and the other members of the subcommittee to pass the legislation this year.

Senator METZENBAUM. Thank you very much, Mr. Sweeney, for your strong statement.

According to your testimony, current programs to assist dislocated workers have not reached workers in the service sector. Why do you think that is?

Mr. SWEENEY. Well, we feel—we strongly agree with you in terms of how they have addressed the issues of service workers in the past who in many cases are workers who lack basic skills training. We see this as a major improvement over current programs for service workers in particular, many of whom do not qualify for the more lucrative employment and training programs.

We also feel it will provide them with income support while in training; something few, if any, service workers are eligible for today.

Senator METZENBAUM. Thank you very much, Mr. Sweeney. We appreciate your being with us and always cooperative with the legislative committees.

Mr. SWEENEY. Thank you, Senator.

Senator METZENBAUM. Our next panel consists of Paula Halloway, former employee of Eastern Stainless Steel of Baltimore, MD; Arnold Page, former employee of Armco Steel of Baltimore, MD; Stan Lundine, Lieutenant Governor of New York representing the New York State Gateway Project, of Albany, NY; and John Kiley, director of the Eastern Iowa Job Training Program of Davenport, IA.

Lt. Governor Lundine, I understand that you are under some pressure and so we will hear from you first. You know our five-minute rule.

STATEMENTS OF PAULA HALLOWAY, FORMER EMPLOYEE OF EASTERN STAINLESS STEEL, BALTIMORE, MD; ARNOLD PAGE, FORMER EMPLOYEE OF ARMCO STEEL, BALTIMORE, MD; STAN LUNDINE, LIEUTENANT GOVERNOR OF NEW YORK, REPRESENTING THE NEW YORK STATE GATEWAY PROJECT, ALBANY, NY; AND JOHN KILEY, DIRECTOR, EASTERN IOWA JOB TRAINING PROGRAM, DAVENPORT, IA

Mr. LUNDINE. Thank you, Mr. Chairman. It is nice to see you again. I would like to ask that my entire statement be made a part of the record.

Senator METZENBAUM. Without objection, it will be.

Mr. LUNDINE. I am not a dislocated worker, and I hope that after November I still will not be a dislocated worker. But I have talked to dislocated workers all over New York State and I am pleased to be here today to testify on one of our most successful initiatives.

Governor Cuomo started in 1990 this program that we call Gateway. It is a State and local collaborative effort that focuses on the customers' needs more than the system's procedures. Gateway has relied on State and local partnerships, and encouraged local design and creative experimentation. The State simply assists in the implementation.

The key to Gateway is that it looks at these services from the customer's viewpoint. Let me give you one example. One of our best Gateway sites is in Niagara Falls, NY. A man named John Hahn who at age 58 had worked for 28 years in an aerospace company in Niagara County lost his job because the plant closed. He came to Gateway and was told by the Niagara Falls Gateway program, we will take care of your needs. We will be your advocate. And the result of that was that Mr. Hahn got the services he needed, got the training he needed, and is now employed as a biomedical technician.

The Gateway approach to service delivery is that there is no wrong door to enter. You can enter through our department of labor, department of social services, or job training system, and you can have the same information available to you. The building blocks of Gateway are our department of labor's community service centers which offer one-stop services by co-locating and integrating many employment and social services.

Second, education. Our access centers and comprehensive employment outreach service centers that we call CEOSCs, provide our on-site educational and training services, child care, and all the other support services that somebody might need if they are looking for a job for the first time, or if they have been dislocated from a previous employment. The other building block is our community college system which is absolutely essential and a powerful research tool.

The three key elements in Gateway's success are local design with State empowerment, creating win-win situations for partners through shared services and resources, and the linking of existing programs without compromising their identity and avoiding duplication. We have found some barriers to integration of services, and the first and foremost is fragmented Federal programs and meeting the requirements of a variety of Federal programs, and the lack of Federal funds for information systems technology.

The Reemployment Act contains some very positive steps toward the consolidation of programs. We are supportive in general of the Reemployment Act proposal. Our principal concern with it, echoed by President Sweeney, is that we do not agree that in every case there ought to be a local decision between competition and the consortium approach. In our case, we would like to have the Governor have the authority to make the consortium approach a statewide basis rather than competition.

We believe that we now have the Gateway successfully operating in 21 counties and we are anxious to expand it. And we think having the consortium approach is very crucial to that. So that is our principal concern. There are others and we have stated them for the record.

But I want to conclude by saying that we remain committed to the passage of reemployment legislation this year and are very supportive of your efforts to try to bring the administration proposal together with the suggestions that are made from the field.

Senator METZENBAUM. Thank you very much, Lt. Governor.

Let me ask you, about how many people would you say have gone through the program, and how do you measure the success of the program?

Mr. LUNDINE. We have a very careful evaluation system and we do it by survey; we do it by analysis of comparing our Gateway counties to others in terms of reemployment and other objective measures. I will have to get back to you and for the record give you the number of people who have been serviced in these 21 counties. I do not have that at my fingertips, but I will do so.

Senator METZENBAUM. Thank you very much and we may have some questions for you in writing since our time is short and we are trying to move on.

Mr. LUNDINE. We would be happy to respond, and I thank you for your courtesy.

Senator METZENBAUM. Thank you, Lt. Governor. It is always a pleasure to see you.

Our next witness is Paula Halloway, former employee of Eastern Stainless Steel, Baltimore, MD. Ms. Halloway?

Ms. HALLOWAY. Good morning. My name is Paula Halloway. It is a pleasure to tell the committee how I made the transition from being laid off from the steel industry to a new career. I am now working as a claims processor for Prudential Health Care, but 3 years ago when Eastern Stainless Steel started laying workers off, I was out of a job.

We knew it was coming, there were rumors. At the beginning of the shift you would check the schedule to see if you were laid off. I had only been with Eastern Stainless for about 2 years, so I knew that I would be one of the first to be laid off, and I was. Before I worked at Eastern I spent 10 years working on and off at Armco Steel. There I was temporarily laid off over and over until I changed companies, so I had been through this before.

Every time I was laid off the job market seemed harder and tougher. At first I looked for jobs through the job service, but there was not anything out there. I realized I needed to get new skills, and decided to find a training program.

I learned about Baltimore Works from a TV ad. Twice a week I went in for counselling. They gave me job leads and helped to set up appointments for interviews. I was able to work on my interviewing skills, improve my resume and also it gave me the opportunity to talk with others looking for jobs. When you are unemployed, sometimes you feel that you are out there all alone. Meeting others you realize that a lot of people are in the same situation.

Through our group meetings we discussed the current job market and exchanged information concerning possible openings. We sympathized, encouraged, and supported each other.

Job hunting is tough because there are not a lot of jobs. What makes it even harder is you do not have access to positions that are open. There is the job service and there are want ads, but there are jobs that you only hear about through word-of-mouth. Networking with the other job seekers in Baltimore Works helped.

When inquiring about job openings employers are reluctant to give information. Even if I had the skills, it is difficult to get an interview because they want at least two to 3 years experience. That is where Baltimore Works really helped. They can talk to personnel, find out about future openings and inform employers about their clients.

I enrolled into a 13-week claims processing training course through Baltimore Works. I was fortunate because the timing was right and I did not have to wait to start training. I was receiving unemployment insurance, but I was worried because my benefits were going to expire before I could finish the course. I had bills to pay and other obligations. Just as my benefits were almost exhausted, they were extended. That was a blessing. Otherwise I would not have been able to finish the course. I would have been forced to take a minimum wage job and lose out on the opportunity to gain new skills.

During the training, insurance companies came to our class to talk to the students. They inquired about the curriculum and looked into the quality of the training course. They found that the program included skills they were looking for. Prudential was willing to give me a chance to prove myself by allowing me to do an internship with their company. At the end of my internship they offered me a full-time position.

Had it not been for the training and internship it would have been difficult for me to get a job in the medical field; something I always wanted. My salary is not the same, but I have adjusted and have the opportunity to advance. I was fortunate to get the training and start a new career with a full-time job. Everything fell into place for me. But there are those who are not so fortunate. We do need services such as those at Baltimore Works to help others gain access to job training and reemployment. Thank you.

Senator METZENBAUM. An excellent statement, Ms. Halloway, and we appreciate it very much. I may have a question for you but I think I would like to hear from Mr. Page first.

Mr. PAGE. Good morning. My name is Arnold Page. I would like to thank the subcommittee for letting me tell my story of how I tried to get back on my feet after I was laid off from Armco Steel in East Baltimore 3 years ago.

I started working at Armco Steel 15 years ago. I began as a janitor working for $8.50 an hour and worked my way up into a job where I was making $40,000 a year. When I first went there I had 100 percent medical, dental, and optical benefits. I had made a place for myself with Armco Steel. I had learned a skill and I had a job that I enjoyed and a wage and benefits to support my family. I thought Armco Steel was where I would stay until I retired.

When I got laid off 3 years ago, it was 15 years down the drain. I had no skills, at least no marketable skills and everywhere I looked there was nothing but minimum wage jobs available. I had 1 year of medical benefits through my union contract and I had unemployment benefits. My wife was working part-time and tried to find a full-time job, but could not. We lived off my wife's salary from a part-time job and our savings.

I had never worried about not being able to be the breadwinner for my family. But the world has changed. You used to be able to walk out and get a new job the next day. It has been rough. When I used to see people on the street corner I used to think, Why don't they just get a job? Now I know what it is like. I have tried everything humanly possible to get a good job. I have followed every lead. I have sent out over 100 resumes and found nothing.

I always thought that the older you get the better off you would be. But these last 3 years I have not known how to put food on the table, not known where the next dollar is coming from. I received an eviction notice. I just sat and cried. We had nowhere to go. Both my wife and I have very little family left.

After a year my extended medical coverage ran out. I called to find out how much the coverage would cost to extend it if I paid it myself. When I was told that it would cost $500 a month I almost fell to my knees. My wife has no health benefits. I have a daughter. Then when the company my wife worked for was sold she was also laid off. We had no health insurance, no income except her unemployment because mine had run out.

Not having a job and medical benefits has literally taken years off my life. I am an insulin-dependent diabetic and when the money was tight I tried to stretch out my insulin by taking it only every other day. I ended up in the emergency room almost in a diabetic coma.

If I had known when I was laid off or before I was laid off that I should and could retrain, I would not be here talking to you now. I would have already completed a program and could be in a new job. Instead, I exhausted my unemployment benefits. I used up my savings. We almost lost our home and I put my life in danger because I had no health benefits.

I do not know what I would have done without Baltimore Works. They helped me take care of the basic necessities of life. They helped me keep a roof over my family's head by talking to the people at the bank. They helped me get a Pell Grant for my daughter so she could go to college. The staff at Baltimore Works have definitely been there for me. Even at Christmas when there was no money to buy presents, they found a program that gave us a gift basket and $50. With their help, we could begin to put the pieces back together, help us start to feel better about ourselves.

They told me that I was eligible to receive retaining through Trade Adjustment Assistance. They helped me get certified and find a training program in building maintenance. Now I get income support so I can stay in training. I know that I am lucky. The problem with most training programs is that you cannot support your family while you are in school. I would not have been able to take the training without the income support. I would have had to take a minimum wage job.

When I graduate from my training program, it is still going to be tough. I will have to start at the bottom and work my way up again—find an entry level job or apprenticeship. I have got skills but no work experience at a new trade. You can train the rest of your life, but that is not the same thing as getting a job. Even with skills it is tough to land a decent job with decent benefits. But at least with the training and new skills I have a fighting chance.

When I was laid off from Armco Steel, I realized it was a different world. Today you have to be flexible. You have to be ready for change. I am going to continue to do everything I can to get back into a job, and with the good people and information I got from Baltimore Works I think I have a chance. Thank you.

Senator METZENBAUM. In listening to both your stories, I was actually struck by the fact that you were both steelworkers laid off

around the same time in the same city, yet your experiences are completely different. It seems that the difference lies in how quickly or slowly each of you went into a training program. I gather that you both would agree that early assistance in the search for a job and the opportunity to get back to work quickly is extremely important. Would you agree, Ms. Halloway?

Ms. HALLOWAY. Yes, I agree.

Senator METZENBAUM. And you, Mr. Page?

Mr. PAGE. Yes, definitely.

Senator METZENBAUM. I think your testimony is very interesting. It is obvious that the Baltimore Works program seems to be working, and I congratulate them for their success in that direction.

I have other questions which we may submit in writing, but I think we ought to move on because time is running out and I am concerned about some of our other witnesses.

Mr. Kiley is director of the Eastern Iowa Job Training Program, Davenport, IA. We are very pleased to have you with us.

Mr. KILEY. Thank you, Senator. Good morning, Mr. Chairman. I want to start by thanking you and the members of your staff for your cooperation and their excellent support in preparing for this. And I also want to congratulate you on having dislocated workers testify because I think the real story is being told by these people that have experienced dislocation, and it is really important for you to hear that story.

I work as the job training director for Eastern Iowa Community College District and I am pleased and honored to appear before you today. I represent a somewhat rare and special partnership between community colleges and job training programs. This may be why I am here today, but I know that it is one of the key reasons for our success in serving dislocated workers.

Over half of the job training programs in Iowa are administered by community colleges, and the ones that are not work very closely with them in the design and delivery of their programs. Another unique feature of our community college-administered job training program is the strong relationship we have forged in our local area with the employment service in delivering welfare reform services through the jobs program. I would like to report that one-stop is well on its way in Iowa.

I would like to share with you some of the elements of our successful program in the hope that this legislation can enable other local programs to become even more effective at serving the dislocated workers and other people who need services in our country.

One of the key elements is early notice and intervention to assure that workers know what their options are and how to access the training and services they need. I think you just heard that from the two previous witnesses. We have an outstanding track record in our area in serving dislocated workers, but we still feel badly about the ones who got away. Typically our programs serve only about a third of the workers who are affected by a plant closing or a layoff.

Workers often experience many of the same emotions that people feel when someone close to them dies. And this combination of emotions I think sometimes makes it difficult for them to take practical steps to help themselves. It is real important for us to acknowledge

that, and we try to do that by having peers. We hire dislocated workers themselves to go out and do outreach, to find these workers and to make sure they know about the services that are available to them.

We also need flexibility and local control because community services vary widely from one part of the country to another. We think that it is real important that you put together the best quality mix of training and services in your local area. We also want to make sure there is fairness in the local decision-making process; to be certain that the honest brokers mentioned in the legislation utilize the best mix of training and employment services and do not exclude key partners

As a representative of a community college, we have dealt with this issue of conflict of interest for the last 10 years and it has worked very well in our area. The community college administers the program and also is a major training provider, and our private industry council oversees that process to make sure that it is a fair and honest process. We believe that procedures should be established to allow providers of education and training services recourse if they believe a career center is not acting as an honest broker.

The Reemployment Act really needs to have an investment focus. We must invest in our workforce, invest in our new and expanding employers, invest in high quality education, and invest in great local programs. And we need to expect a return on our investment. I think it is real important to expect some kind of a return for what we do in these programs.

Investments and efforts to train and place dislocated workers should be linked directly to Federal, State, and local economic development efforts to be sure that the retraining offered to dislocated workers is relevant to the skills needed by new and expanding employers.

Our community college district is responsible for the Iowa training program. This unique program is designed specifically to help currently employed workers keep their jobs by offering necessary skill training and upgrading to them through their employer. In 4 years over 15,000 workers, their jobs have been saved by this program in Iowa, and we think that is a very significant savings. People were helped——

Senator METZENBAUM. How many?

Mr. KILEY. 15,000 in the State of Iowa, by helping people while they are still employed. This is the earliest kind of intervention you can have, helping people who are in danger of losing their jobs. I understand that a provision in this legislation allows that to happen at the State level. We would like to see that authority granted at the local level as well.

I also want to mention that there is a House bill, H.R. 4222, that provides a loan program that helps workers to retrain while they are still employed.

The Reemployment Act must be responsive to workers' individual needs. Dislocated workers are a diverse group of individuals who have diverse needs. We serve older workers, people who have lost their farms, women who must train to find nontraditional employ-

ment, and other people who have never been exposed to job training and employment training services.

We believe that education is a key to successful retraining and that our Nation has a tremendous education resource in its community college system. Too often that resource has been neglected or ignored by job training programs. Through the community colleges' efforts we have been able to establish a training consortia of employers who have common skill needs, and that has resulted in short-term skill training for dislocated workers with 100 percent placement effort.

Dislocated workers and the programs that support them need your sustained support. It has been mentioned before, but the 78-week gap in support between unemployment insurance and the length of time it takes most people to retrain is a serious gap that must be overcome by this legislation. People need support while they are in training.

I would like to conclude by saying that the teamwork that we have been able to establish at the local level has really been the key to our success, and I would encourage you to create an environment that is a win-win environment, as somebody said earlier, not a winner-take-all environment which goes with the presumptive service provider. We think that local communities can make those decisions, and that private industry councils or other local councils can help to oversee that process.

I want to conclude by stating that I support the quick passage of the Reemployment Act, and that the concerns I have shared with you are intended just to address issues that I feel will help to improve the program and the services to dislocated workers. Thank you for this opportunity.

Senator METZENBAUM. Thank you very much, Mr. Kiley.

We have some questions, but I am going to submit them to you in writing, if you do not mind so we can move on to hear the other three witnesses we have scheduled for today.

Mr. KILEY. That would be fine. Thank you very much.

Senator METZENBAUM. I also want to welcome Senator Wellstone, who has joined us. Thank you very much.

Our next witnesses are Patrick McManus, mayor of the city of Lynn, MA, on behalf of the U.S. Conference of Mayors; Charles Best, director of King County Reemployment Support Center, Seattle, WA; and Christine Marie Scriver, former employee of Greenbrier Industries. The chair will be back in 1 minute. I must take a phone call.

Senator WELLSTONE. Mr. McManus, I think we will start with you, if that is all right. Welcome.

STATEMENTS OF HON. PATRICK McMANUS, MAYOR, LYNN, MA, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; CHARLES L. BEST, JR., DIRECTOR, KING COUNTY REEMPLOYMENT SUPPORT CENTER, SEATTLE, WA; AND CHRISTINE MARIE SCRIVER, FORMER EMPLOYEE OF GREENBRIER INDUSTRIES, LAKE CITY, TN

Mayor MCMANUS. Thank you very much, Senator. I deeply appreciate the opportunity to join you. I am Pat McManus, the mayor of Lynn, MA, and a member of the United States Conference of

Mayors Advisory Board. I am here to speak on behalf of the Conference this morning.

We deeply appreciate the interest that is being taken in the WARN Act and the Reemployment Act. It is critical to the people who may be dislocated in this country that they have an opportunity with some advanced warning to try to reestablish their employment opportunities.

In our city we have General Electric, which has been dramatically affected over the past eight or 9 years by not only the defense downsizing, but also the commercial airline markets. Our workforce at General Electric has been reduced from 15,000 to 6,000 employees; a loss of 9,000 jobs in about six years. Normally, that would be catastrophic to the community. But fortunately, because we had had some rapid response pre-planning and because GE is very helpful to work with, we have managed to get through it. That is not to say that clearly there is not an impact on the community, but we did manage to get through that.

I do believe that the WARN Act was critical in that process and some modifications that could extend to perhaps a little broader economic and business environment should there be layoffs could be helpful. One great concern that I have that we did not have a problem with, but I have become aware of as a problem in some areas of the country, is the incremental layoffs of employees to specifically circumvent having to comply with WARN.

If they are laying off in allocations of less than 50 employees, there can be a long-term intent to decrease the size of a facility, but they do not necessarily have to comply with the 60-day notice and the subsequent responsibilities that go with that. So I would very strongly support the notation that there should be some sanctions for those that do not comply with those specifics. I know that is relevantly loosely structured, but I do feel that was a key in our success in at least being able to adjust to the downsizing of General Electric.

Additionally, some concerns that we have are the increased evaluation of the coverage, compliance, and enforcement mechanisms in the WARN Act. I think it has worked very well for us, although that is because of the voluntary responsiveness of the business environment in our city. I do think it is tremendously well-intended, but there are not the provisions in there that will mandate that workers get a fair opportunity necessarily if we do not have the capacity to have some sanctions and oversight that does force those few businesses that may not be responsive to comply.

Additionally, under the Title I of the Reemployment Act we have some concerns that we feel strongly about, one of which is broader coverage for workers regardless of the cause of dislocation. A lost job is a lost job. In our circumstance, one facility lost 9,000 jobs, but the residual loss of jobs was tremendous as well. Certainly for all of the employees that unfortunately had to readjust their work prospects, I think it is a tremendous concern that they all be treated equally if possible, because there is that residual benefit. Rapid response and early intervention is critical in that process.

So I think the WARN Act in conjunction with the Reemployment Act, Titles I and III, provide a tremendous opportunity to get ahead of the curve because I think the suffering tends to transfer

exponentially when someone loses their job. In addition, to even have perhaps a period of prior notice that would be longer than 60 days—as I know has been discussed—could be tremendously helpful, because that exponential expansion of hardship, and in turn the exponential opportunities that can be provided by the prior notice provide a tremendous opportunity to the communities to help the dislocated workers.

One tremendous concern and priority of the Conference of Mayors has been the economic conversion and base closings that have started and will continue to affect the work environment of many of our communities. And both the Reemployment Act and WARN in conjunction with an evaluation of the base closings and conversion environment I think would be well-coordinated if possible and can provide an opportunity to adjust to those base closings. As I said, we lost 9,000 jobs in one facility over about a six-year period. We did manage to make it through but it was a stretch.

Additionally, the final concern we have is to make sure that there is local design and local flexibility in designing these programs. That was our key. We tailored programs around the opportunities in our environment rather than just having a patented formula that goes in there. And the one-stop entry as well as continued one-stop service throughout the whole process I think must be tailored locally in conjunction with the WIB. We have a tremendous partnership with the business environment and that was critical in our community.

Thank you very much.

Senator METZENBAUM. Thank you very much, Mayor, for very impressive testimony and we appreciate it much.

Mr. Charles Best, Jr., director of the King County Reemployment Support Center in Seattle. We are happy to have you with us, sir.

Mr. BEST. Mr. Chairman, Senator Wellstone, my name is Charles Best, Jr. and I direct the King County Reemployment Support Center in Seattle, WA. I will not go into details on the background, it is in the written statement. But we are local service provider of dislocated worker services. We work directly with the victims of plant closures and mass layoffs.

Since 1989 our community response team has relied heavily on early notification pursuant to the WARN Act as the main mechanism for initiating a locally-coordinated response to worker dislocation. Upon receipt of a WARN notice, our State employment service and other members of our community response team organize transition committees in advance of the closure to begin working on that transition before folks even leave their employer. Many of the services that we provide are in fact provided prior to the closure or the layoff.

As you can see, significant early notification is critical to this kind of a response. I believe two local examples from Seattle might illustrate both the best and the worst of WARN as it is currently written.

In 1991, the 50 employees of the Westin Hotel's Trader Vic's restaurant received 90 days' notification of closure.

Within 48 hours the employer and the Hotel Employees and Restaurant Employees Union Local No. 8 were contacted by the State's dislocated worker unit, a member of our team. A meeting was set

up with the community response team where it was determined that the older immigrant workforce of this theme restaurant would require significant reemployment support and assistance. We therefore agreed to establish the Trader Vic's reemployment committee.

Through an employee survey which was developed, distributed and collected by the reemployment committee we identified the workers' needs and provided pre-layoff assistance including intensive outreach to other food and beverage employers across our county, on-site presentations on unemployment insurance, vocational training, community-based resources, retirement, credit matters, and significant reemployment counseling.

By the date of the closure, 42 of the 50 employees had secured new employment, entered self-employment, or availed themselves of their union retirement programs. In addition, several of the workers were enrolled in or were investigating vocational training through the local private industry council.

It is evident that ample, early notification allowed the community response team, together with the employer and the union, to provide a high level of reemployment services resulting in a successful transition to new employment for the victims of this closure.

I have here a letter that I would like to introduce, if that is possible, from the manager of that hotel that speaks to the success of that operation.

Senator METZENBAUM. Without objection, it will be included in the record.

[The letter referred to follows:]

THE WESTIN HOTEL,
Seattle, WA, June 28, 1991.

Mr. Charles L. Best,
Seattle Worker Center.

DEAR CHARLIE, On behalf of the Westin Hotel and Trader Vic's, thank you for your fine efforts during our closure. You, Laurie Luongo, Marie Kurose, Dave Mumm and Eugene Suzaka all made the job a lot easier.

It's great to see the private and public sector, as well as our largest union, work together for a common goal. I am impressed with your results and appreciate your dedication.

Thank you, again.

Sincerely,

DOUG HALES
Managing Director.

Mr. BEST. While the WARN Act worked wonderfully at Trader Vic's, it failed miserably at Advanced Technology Laboratories. On August 23rd of 1993, ATL informed its 170 employees at lunch time that they would be laid off effective 5:00 p.m. that very same day. To add insult to injury, this mass layoff had been part of a long-planned workforce reduction. It was known about in advance.

ATL relied on the one-third of the workforce or 500 employees loophole, otherwise known as the mass layoff exemption in the WARN Act, to claim that it was not required to provide its employees advance notice. To date, our community response team has been unable to identify those affected workers, much less be able to provide them any support. No workers are enrolled in readjustment programs or vocational training through the local private industry council.

Senator METZENBAUM. You say no workers?

Mr. BEST. Zero.

Our center's seven-year experience with similar situations tells us that absent notice and any sort of pre-layoff assistance many of these ATL workers will fall through the cracks, they will struggle to gain new employment, and secure the new employment that they do get at considerably less pay with inferior benefits.

With these examples in mind, in order to build on the strengths and eliminate the weaknesses of the WARN Act, the King County Reemployment Support Center strongly recommends the following. No. 1, eliminate the mass layoff loophole by covering all layoffs that affect 25 or more employees in any six-month period. No. 2, lower the company size threshold to 50 or more employees in order to cover more dislocated workers. And number three, provide a longer notification period. As the Trader Vic's example proved, more time to prepare means more successful transitions to new employment.

In conclusion, the King County Reemployment Support Center sees the WARN Act as the key to effectively responding to plant closures and mass layoffs. Significant early notice allows the employer, affected workers, and most significantly, local communities and local community service providers the opportunity to plan and implement a coordinated and comprehensive program of reemployment support. This kind of program in turn results in a more orderly and successful transition to new jobs for dislocated workers. Thank you.

Senator METZENBAUM. Thank you very much.

I like your suggested amendments. In fact, they are included in the legislation I have introduced to strengthen the WARN Act. It will be tough to get that passed on the floor of the Senate, but I intend to try. Thank you, I think your testimony is very helpful.

Our last witness is Christine Marie Scriver. Ms. Scriver, I want to apologize to you but I have a meeting. I must be at a crime bill conference at 10:00. So my leaving is not by reason of indifference or lack of interest. It is just because I cannot be two places at one time. Fortunately, Senator Wellstone has agreed to preside in my absence, and I could not have a better replacement.

Senator WELLSTONE. He always says that to me when he is leaving and he wants a replacement. [Laughter.]

Senator WELLSTONE. Thank you, Senator Metzenbaum. And I apologize too, Mr. Best. I had to, because of this same meeting on the crime bill, I had to step outside for a moment just because of an amendment I am working on. It is not lack of interest or commitment.

Ms. Scriver, if you would please go ahead?

Ms. SCRIVER. My name is Chris Scriver. I live in Lake City, TN. I am here representing the Greenbrier Workers Committee. I am here to try and stop what happened to us from happening to anyone else.

I worked at Greenbrier Industries for 7 years. We made clothing and tents for the U.S. military. At the time of the plant shutdown last July, 450 people worked there. People at Greenbrier made an average of $5.00 an hour.

Last year, during our usual July 4th vacation, we began to suspect something was wrong. Our vacation was extended an extra

week. Greenbrier said there was no problem, just temporary shortage of material. We really could not find out anything. I found out about the plant closing from a TV reporter who called me. Other workers found out about the plant closing on the 6:00 news that night. We had absolutely no notice at all.

There was plenty of work in the building. At the time of the plant closing, the plant had $34 million in Government contracts. The closing tore us up. The first week I cried every day. I went to bed crying and got up crying. Everybody was upset. Nobody knew what was going to happen, how we were going to pay our bills.

One young lady I worked with was 8 months pregnant. They had taken insurance out of her check. She did not have insurance. She went and complained, got another check; the check bounced. She called me in tears. She did not have the money to cover a bounced check.

Another fellow I worked with named Red wanted to buy a new vehicle during vacation. He was told everything was fine, buy it. He bought the vehicle; the company was bankrupt. He had a heart attack.

We got no notice. We had no chance to prepare. If we had gotten notice people could have maybe gotten ahead on their bills. If we had gotten notice people could have gotten medical bills straightened out. We got no notice. We had no time to prepare for anything. We had no time to prepare for a job training program.

There are not many jobs in our area. I had to go back to work right away. When I was working at Greenbrier I drove 14 miles a day. Now I am working and I drive 62 miles a day.

The worst result of the closing is what happened with our medical bills. Greenbrier was completely self-insured. When it closed we lost all insurance and had no chance for a COBRA extension. But even worse than not having insurance was that Greenbrier had not even paid on past bills, so people got stuck with big bills that they have to pay. They are liable for those bills.

My brother worked at Greenbrier. His first baby was born in December, 8 months before the plant closed. He got pre-approval for the birth. When the plant closed he thought everything was fine. The baby had an ear infection in April, so he called the management company, and got approval. After the shutdown, there are $4,000 in medical bills that he is liable for.

Mary Gibson's, husband died of cancer. Greenbrier should have paid $38,000 in medical bills, $10,000 in life insurance. She has got nothing. Louise Lowe's husband, cancer. Greenbrier paid nothing. She owes $15,000. Jack Taylor's son had his tonsils out. Greenbrier has paid nothing. He has $8,000 in medical bills. Sandra Hampton, $44,000; Donna Burke, $1,700. There are a lot of people who owe money through Greenbrier's default.

Remember, hospitals did not tell people that they owed this money until after the closing. These folks are just like my brother, they thought things were fine until the closing and then everything came out. Right now I do not believe these bills will ever be paid.

The WARN Act should have helped us, but it did not. We talked to several lawyers about filing WARN Act lawsuits. None of these lawyers would even talk to us because we had no money to pay them. If I break into your house and steal your money, you do not

have to hire an attorney. Why should I have to hire an attorney? My money was stolen.

To us Greenbrier workers, the most important change that needs to be made in the WARN Act is Government enforcement of this law. The Department of Labor should be able to investigate, and prosecute people for violation of this law. Lots of the Greenbrier workers feel like we got shafted and nobody has even noticed it. If Greenbrier was convicted or fined or could be made to do right, then we feel like there may be justice.

The punishment available should include damages, not just actual cost. Under the present law no company can end up paying more for violating the law than if they would have followed it.

The law should cover all workers, part-time workers and full-time workers.

Longer notice would help. For people like us, 90 days is a little more time to save money and prepare for training.

WARN Act rights should be posted. Most of the Greenbrier workers did not even know they were entitled to a notice.

I urge you to support these in the improvement of the WARN Act. Thank you.

Senator WELLSTONE. Thank you very much.

I know that what we are going to do is submit some written questions to you all because of the crunch of time. But I did want—I do not want to hold you but I did want to just make one comment.

By the way, Ms. Scriver, I really appreciate the power of your testimony. It seems above and beyond the WARN Amendments Act, which I am proud to be a co-sponsor of, these stories about people's lives and the way in which you kind of convey it, enables us to connect where we are in health care right now to this issue. I mean, one of the most terrifying things is to lose your health care coverage. And I really hope that we will be able to pass a health care reform bill that will deal with that.

The only point I want to make, Lake City, what is the population?

Ms. SCRIVER. About 1,400 people.

Senator WELLSTONE. Is that anywhere near over by Petros, TN, or Jackson, in that area?

Ms. SCRIVER. Petros.

Senator WELLSTONE. You do not happen to know an organization called SOCM, do you; Save Our Cumberland Mountains?

Ms. SCRIVER. Yes.

Senator WELLSTONE. I have done some work with them.

Now to get to the point. One thing that I think that is really compelling about the panel here is that—and I think, Mayor McManus, you would not disagree with this, nor would Mr. Best, although you're from cities of different sizes—is that all too often we think of these issues dealing with employment and health care as—for some reason we keep thinking of this as urban, exclusively urban. Every time we talk about these kinds of problems of decent jobs, or health care, or child care, or whatever, we always seem to think of urban areas. And these issues are every—I mean, the problems are more hidden, but they are no less real in Lake City or elsewhere in rural America.

I think it almost becomes the same question regardless of where people live. I think the foremost goal, economic goal, in life for most all of us is to have a decent job that we can support ourselves and our loved ones on. So I am glad that you were here so that we could get a feel for that.

I thank you all very much and I hope we will do well for you. Thanks for coming.

[Additional material and statements supplied for the record follow:]

STATEMENT BY REPRESENTATIVE MARILYN LLOYD
BEFORE SENATE LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON LABOR
JULY 26, 1994

Mr. Chairman, I rise to support the American worker's right to fair notice in the event of a plant closing. Employees, individuals whose lives and livelihoods rely on work at plants and factories, have the right to be informed of the future operational stability of the company. For that reason, I supported the Worker Adjustment and Retraining Notification (WARN) Act in 1989. Unfortunately, that act has not proven to be strong enough to protect workers.

Under the law as it stands, companies such as Greenbriar Industries in Clinton, Tennessee, can demonstrate a total disregard for their employees without penalty. A new solution must be found. It is my hope that the Worker Adjustment and Retraining Notification Amendments, S. 1969, will ensure a new level of security for workers under the law, by strengthening the existing law.

In a clear example of employee neglect, Greenbriar Industries left almost five hundred individuals with no option on July 5, when it posted a letter on the locked door of the plant stating that "Your supervisor will call you when work is available." Several individuals were left with medical bills which the company was responsible for and all were left in the lurch. In a community with 14 percent unemployment, it is hard to find a job in 60 days, but almost impossible to find one over night. There is little question that the action taken by Greenbriar was irresponsible and in violation of the spirit of the WARN Act, if not the letter.

The WARN Act relies on the individual or class action suits filed in the United States district courts to enforce notification. However, in Campbell County Tennessee there is not enough money to fight long court battles. The amendments offer a reasonable solution to this problem, by providing for an administrative review process conducted by the Secretary of Labor which can result in recovery of lost wages by the employees. I hope that this is a solution that will bring companies like Greenbriar back to the table.

Responses of Lieutenant Governor Stan Lundine to Questions Asked by Senator Metzenbaum

1. ALTHOUGH YOU DON'T SPECIFICALLY MENTION IT IN YOUR TESTIMONY, I UNDERSTAND THAT A NUMBER OF THE GATEWAY PROGRAMS INVOLVE PARTNERSHIPS WITH ORGANIZED LABOR, FOR EXAMPLE, THE DISLOCATED WORKER ADJUSTMENT CENTER IN UTICA WHICH IS A PARTNERSHIP BETWEEN THE LOCAL SERVICE DELIVERY AREA AND THE AFL-CIO. COULD YOU COMMENT ON THE IMPORTANCE OF INVOLVING DIFFERENT MEMBERS OF THE COMMUNITY, SUCH AS LABOR, IN IMPROVING SERVICE TO WORKERS.

1. Our experience has shown that GATEWAY serves workers best when the network is as inclusive as possible. Our GATEWAY networks are designed locally, but they typically include organized labor, employer groups, schools, colleges and community based organizations. In each of the 23 GATEWAY communities, planning groups have found that including many diverse organizations brings more resources to the network and gives customers better access to information and services. The result is very large networks; Suffolk GATEWAY, for example, is made up of 75 partner organizations.

At several sites, organized labor has further joined with state and local agencies to provide direct services. For example, labor unions are providing staff to act as peer counselors at the Dislocated Worker Adjustment Center in Utica; at the Griffiss Air Force Base in Oswego County; and at the Niagara County site, which has been responding to a Bell Aerospace closing.

2. THE GATEWAY "HELPLINE" ALLOWS EMPLOYERS TO CALL ONE NUMBER TO GET IN TOUCH WITH JOB CANDIDATES.
A) IS THERE ANY SIMILAR SERVICE FOR JOB SEEKERS TO FIND OUT ABOUT JOB OPENINGS?

2. A. The GATEWAY "Helpline" for employers was first started in Rochester, New York, and a similar line for job seekers was created at the same time. Since then, Niagara County has begun a job seekers helpline, and Suffolk County on Long Island plans to open an 800 number for job seekers this fall. Job seeker helplines are proving very effective in encouraging individuals who have not been in contact with agencies to avail themselves of services. In our application for "one-stop career center" funds to the United States Department of Labor we will be seeking funding assistance to create job seeker helplines throughout New York State.

B) WHAT SHOULD WE BE DOING TO GET EMPLOYERS TO BE MORE FORTHCOMING ABOUT JOB OPENINGS?

2. B. In our experience, employers will list job openings with GATEWAY if doing so proves to be an effective, low cost way to recruit qualified workers. We are creating "community job banks" where several agencies can share job listings and employers can reach more qualified workers.

We are also experimenting with technology that enables job seekers to input their resume or skills directly into an automated "skills bank." The purpose of the "skills bank" is to further match skills with job openings and demonstrate to employers that workers with necessary skills are available through GATEWAY.

The technology to help qualified workers and employers find each other is available, but it is costly. States need assistance from the federal government to help fund this technology.

3. IF WE GIVE STATE AND LOCAL GOVERNMENTS MORE FLEXIBILITY, I AM CONCERNED THAT WE WON'T KNOW HOW FEDERAL MONEY IS BEING SPENT. HOW SHOULD THEY BE HELD ACCOUNTABLE FOR THE FUNDS THEY RECEIVE?

3. States and localities must have flexibility to respond quickly to problems and opportunities. This should not exempt states from accountability, but we should measure performance by bottom line results -- such as customer satisfaction and job placements -- not by process (i.e. how many calls were received on a particular day). New York has been designated as a pilot state by USDOL to develop national performance measures for both adult education and job training programs. We are confident that this project will result in measures of effectiveness that meet federal and state needs.

The federal government can have a positive impact on state reporting by working towards reporting requirements that are consistent across programs and agencies. Congress should also support efforts underway to develop consistent terms and definitions.

4. BASED ON THE EXPERIENCES OF THE GATEWAY PROGRAM, WHAT TYPES OF ASSISTANCE DO WORKERS NEED THE MOST?

4. Recently dislocated workers need a combination of several services. These services are best delivered quickly, before the impact of dislocation sets in.

GATEWAY has shown that all workers need to know that there is someone, a peer counselor from the union for example, who they can rely on. In addition, workers need information about job opportunities in their community and the employment outlook for various occupations, in order to decide whether to seek a job in the same field or switch to another field, and whether to relocate. They also need information about benefits and education and training opportunities.

Most workers require direct assistance beyond access to the information above -- in the form of counseling, career planning, assessment, referral, job finding workshops and other job finding assistance. Workers who enter retraining programs also benefit from case management support to facilitate supportive services while they are in training.

While many communities with large numbers of dislocated workers have centers specifically targeted to their needs, GATEWAY has proven effective in helping the centers provide a complete array of services. In communities where such centers do not exist, GATEWAY has made a comprehensive package of services easily accessible to dislocated workers.

Responses of John Kiley
to Questions Asked by Senator Metzenbaum

SDA IX Job Training Partnership Act Private Industry Council Eastern Iowa Community College District
304 West Second Street, Davenport, Iowa 52801-212 (319) 326-0744 FAX (319) 322-8241

September 2, 1994

Senator Howard M. Metzenbaum
Chairman, Subcommittee on Labor
Room 608 Hart Senate Office Building
Washington, DC 20510

Dear Senator Metzenbaum:

Thank you again for the opportunity to testify before the Senate Subcommittee on Labor. I especially want to thank you and your staff for the assistance I received in preparing to testify. Marina Cole was very patient in helping me to clarify the type of information needed by the Subcommittee. The following is our area's response to the follow-up questions sent to me. Thank you again for giving me a chance to assist you in this important endeavor.

1. What types of assistance do you generally find workers need?

Response: Dislocated Workers need career guidance and planning based on an assessment of their interests and abilities. Over half of the workers do not know which careers are open to them. They also do not have sufficient information on the training required to enter these careers. They need realistic local labor market information (wages, jobs available, skills needed). Most also need personal contact with a professional who can assist them with the other difficulties they experience because of their dislocation. Dislocated Workers typically have many questions that need prompt response and of course, they also need encouragement.

Dislocated Workers need retraining and income support while they are learning new skills. This income support must last at least as long as the training in order to sustain workers and their families while they retrain. Customized training can be very effective because it allows a Job Training Program to work directly with an employer or consortia of employers to develop training that will result in job opportunities. Procurement barriers to this type of contracting still present a problem for local program administrators. The Request for Proposal process is time consuming and usually does not result in a competitive procurement process (most training providers are averse to developing lengthy proposals at their own cost). We would recommend competitive bids based on training specifications developed by the consortia of employers.

Job development for Dislocated Workers often requires more than the availability of labor market information on job openings. The efforts of an individual job developer working with a job club consisting of Dislocated Workers can really make a significant difference in the time it takes for a Dislocated Worker to find a new job. This approach also provides the moral support and encouragement that is critical for Dislocated Workers when their own confidence is at an all time low.

2. Do state and federal agencies get the money to the local level fast enough to maximize the benefit to workers?

Response: The State of Iowa does a very effective job of mobilizing resources to assist Dislocated Workers. However there is not nearly enough money available to serve the Dislocated Workers who need assistance. Our Dislocated Worker Program is often fully obligated for the entire year three to four months into the new fiscal year. We then must either enroll Dislocated Workers under other Job Training Programs or turn them away, offering to put them on a waiting list. We believe this is not only bad social policy, but also bad economics: the investment we make in retraining Dislocated Workers is repaid many times over by the gain from their renewed productivity and the savings in cost for other social programs, e.g., food stamps, welfare, mental health, etc.

3. If we give more control to local entities, how can we make sure that they are held accountable for the funds they receive?

Response: Local control and community involvement in Job Training Programs is critical to their success. Local programs can't be held responsible without being given commensurate authority to achieve the results expected. Restrictions on program design and services only tend to reduce the effectiveness of local training efforts. We recommend the use of outcomes based performance standards adjusted for local labor market conditions and the characteristics of the Dislocated Workers served by the program. By involving the Private Industry Council directly in the design and oversight of the programs, we have been able to build private sector support for our efforts to place Dislocated Workers.

Program accountability and credibility at the local level is assured by a combination of Private Industry Council review, local and state monitoring, and annual audits performed by independent accounting firms using the comprehensive standards established for Job Training Programs. Enforcement of the existing rules will help to assure that those few program operators who are not sufficiently motivated by pride and integrity are wary of the consequences of mismanaging or abusing the programs.

4. A) In your experience, how difficult is it to bring together different agencies to coordinate programs?
B) Have you encountered many turf battles?

Response: Our experience has been that coordination between local organizations with similar missions is not overly difficult. It should be noted that there are many federal and state rules that make this type of coordination more difficult than it needs to be. Through the efforts of the Private Industry Council, we have had excellent cooperation with the Employment Service, the Community College District, the Community Action Programs, Title V Older Americans Act contractors, and the Department of Human Services. These organizations are also represented on our local Workforce Development Council that has been active for the past two years working on plans to implement a One Stop approach to employment and training services.

Budget and staff constraints from some local agencies make on site service at smaller plant closings (<100) difficult.

5. In determining how funding should be divided between federal, state and local governments, how can we ensure that as much money as possible finds its way to the workers?

Response: We would recommend tighter limits on the amount the federal and state governments can retain. National research efforts have their place but much can be learned by using existing tracking systems to monitor and report the results obtained by local programs. Current and proposed funding distribution formulas could result in less than half of the funds appropriated at the federal level reaching local programs where Dislocated Workers are served. National discretionary grants can offset this imbalance to some extent but the money could be used to help workers more quickly if more of it was available at the local level. Cost categories that discourage spending on assessment, counselors, job seeking, budget training and other readjustment services do not allow us to assist Dislocated Workers as effectively as we could.

6. About how many dislocated workers are older workers? What special concerns do they have?

Response: During the past year, 71% of the Dislocated Workers we served we between the ages of 30 and 54. While we did not serve any Dislocated Workers who were 55 and older, our experience with these workers in the past tells us that they need even more encouragement because of the fear of age discrimination and their belief that they have nothing of value to offer an employer.

I understand that a substitute Amendment has been introduced in the House of Representatives. This Bill appears to restrict the ability of training providers such as Community Colleges to continue to serve in the role of a training provider if they become the Administrative Entity for local employment and training programs. Having worked over ten years in a Job Training Program that is administered by the Eastern Iowa Community College District, I can tell you that such restrictions are unnecessary. We have implemented all the necessary protections against conflict of interest by working with the local Private Industry Council and state officials in developing our contracting and procurement procedures. I hope that the information we have provided is helpful and I look forward to working with you again. Thank you

Responses of Charles Best, Jr.
to Questions Asked by Senator Metzenbaum

1. The purpose of the Reemployment Act is to help dislocated workers make successful transitions to new jobs and new careers. In your view, how important is advance notice to the success of these efforts?

2. You stated in your written testimony that A.T.L. provided some severance to workers who lost their jobs. Was that an adequate substitute for advance notice?

KING COUNTY REEMPLOYMENT SUPPORT CENTER

a core program of the SEATTLE WORKER CENTER
...serving Seattle and King County's unemployed since 1987

August 12, 1994

The Honorable Howard M. Metzenbaum
United States Senator
U.S.Senate
Washington, D.C. 20510-3502

Dear Senator Metzenbaum,

Pursuant to your letter of August 2, 1994 the following reflects our experience since 1987 in responding to plant closures and mass layoffs.

The King County Reemployment Support Center views advance notice as critical to early intervention and the organized and orderly delivery of dislocated worker services. In our community, the Washington State Employment Security Department, the Seattle-King County Private Industry Council and ourselves have organized a Community Response Team. The Community Response Team assists workers affected by dislocation through the organization of Employee Transition Committees. These transition committees, described in detail in my statement before your committee, have proven to be an essential component in our delivery of dislocated worker services. Since 1989 our Community Response Team has relied heavily on early notification pursuant to the WARN act to trigger our community response and the organization of transition committees.

At this time I would like to note that Employee Transition Committees have been identified by many as enhancing reemployment assistance. The United States General Accounting Office reported in November of 1989(GAO/HRD-90-3) that such committees "played a key role in achieving the four elements critical to the success of dislocated worker services: 1) tailored services resulting from worker involvement and oversight, 2) early intervention 3) coordination of services, and 4) on-site activities." This has been the experience of the King County Reemployment Support Center. Absent advance notice the Community Response Team's ability to employ this effective tool is eliminated. This in turn drastically reduces the opportunity for workers to make successful transitions to new jobs and new careers!

Advanced Technology Laboratories' severance payment to workers was NOT a substitute for advance notice! Advance notice is about planning. Advance notice provides workers and their families time to plan for a successful transition and to initiate the necessry steps it will take to find new employment. Advance notice provides the local community and dislocated worker service providers an opportunity to plan a coordinated response. It is my personal view that advance notice in this case would also have allowed the "survivors" at ATL to plan for this large workforce reduction. None of this was possible in the ATL situation. In short, there is no substitute for significant advance notice of closure or layoffs.

To summarize, the King County Reemployment Support Center sees the WARN Act and the reforms that you are considering as the key to assisting dislocated workers make successful transitions to new jobs and new careers.

Yours for quality dislocated worker services.

Sincerely,

Charles L. Best Jr.
Director

Summary

Members of the Association of Outplacement Consulting Firms International (AOCFI) provide an estimated 70 percent of private outplacement (reemployment) services in the United States. The industry assists over 1 million Americans each year transition from one job to another, funded by employers without government subsidies. The industry also helps employers plan for and carry out workforce reductions, including helping employers identify alternative employment for the workers within the company. Employers spent more than $700 million for private reemployment services in 1993.

The Administration has initiated a dramatic expansion of government-funded reemployment and training assistance to dislocated workers. The Administration has requested $1.5 billion for FY 1995, almost three times the FY 1993 appropriation and a 36 percent increase over the FY 1994 appropriation. These government programs are intended to provide many of the same services as are provided by the private outplacement industry.

These large budget increases could result in the replacement of private funding of reemployment services with public funds, creating two serious problems. First, there could be no net increase in the number of displaced workers served if only the funding source changes from downsizing companies to taxpayers. Second, competition, which provides choice and improves quality, will be diminished as private outplacement firms are forced out of business. AOCFI believes that encouraging public-private partnerships is essential to maximizing the return on the government's investment in dislocated worker programs. AOCFI recommends that the Committee require the Labor Department and states to match employers' expenditures for dislocated workers rather than replace them. AOCFI also strongly supports section 313 of the Reemployment Act of 1994 which allows private, for-profit outplacement organizations to compete to operate the one-stop career centers authorized by the bill.

The Private Outplacement Industry

Private outplacement firms are retained by downsizing companies to help laid-off workers transition to new employment and to assist the companies with the workforce reduction process. The industry serves about 1 million dislocated American workers each year. AOCFI members provide an estimated 70 percent of total private reemployment services in the United States. Employer expenditures for these services exceeded $700 million in 1993. The industry, which had its origins in the early 1960's, experienced substantial growth in the 1980's as companies increasingly reorganized, repositioned and relocated in response to technology changes, import competition, deregulation, and financial and other pressures. Most private outplacement firms have been providing services for more than ten years and all of the major firms have fifteen or more years experience.

Outplacement services generally consist of two components:

- Consulting to Employers Contemplating Workforce Reductions

  Outplacement firms help employers address issues with respect to workforce reductions. Outplacement firms help employers achieve consistency and fairness in the application of severance policies and practices. They apprise employers of applicable federal and state laws and the duties imposed on an employer. In some cases, outplacement firms help employers identify alternative employment within the company for workers and thus reduce the number of dislocated workers.

- Counseling for Employees Whose Employment is Terminated

  Reemployment services help employees plan and execute job searches to obtain new employment at the earliest possible date. Services are purchased by employers and are provided to all levels of employees, from blue collar and clerical workers to executives. The services are designed to fit the needs of the individual being outplaced and routinely begin the moment the employee is notified of termination.

The design of an outplacement program for employees whose employment is to be terminated is governed by the particular characteristics of the affected individuals. Factors that are taken into account include an individual's job history and compensation, the trade or business engaged in, the current demand for that specific trade or business in the marketplace, as well as many subjective factors such as the individual's personal goals, age and willingness to relocate.

Services typically include assessment, development of career objectives, development of job search strategy, identification of job opportunities, assistance in preparing job applications and resumes, training in interview and communication techniques and referral to training and retraining where appropriate.

Concerns about Federal Dislocated Worker Programs

The Administration has undertaken a dramatic expansion of government-funded employment and training assistance to dislocated workers. In its FY 1994 budget request, the Administration asked for $1.9 billion to fund dislocated worker programs, a $1.3 billion increase over FY 1993. Congress agreed to a $550 million increase for these programs -- almost doubling FY 1993 funding. The FY 1995 request is for $1.5 billion and the Administration plans to seek further increases to an annual funding level of $3.5 billion over five years. Under the Reemployment Act of 1994, the Administration has also proposed to broaden eligibility for dislocated worker services and reorganize the delivery of services.

Federally funded worker adjustment programs provide reemployment services to employees without cost to their employers, in effect providing a government subsidy to companies seeking to restructure for businesses purposes. Although federal programs, such as the Economic Dislocation and Worker Adjustment and Assistance Act (EDWAA), provide training and other services not provided by outplacement firms, there is substantial overlap between the two sectors.

Many employers currently pay for reemployment services to help employees affected by major layoffs and plant closings find new jobs. In fact, private expenditures for job transition assistance in 1993 exceeded the federal budget for such purposes. A study by the American Management Association found that 46 percent of its members responding to the survey had downsized between June 1992 and June 1993 and that more than half of these companies provided outplacement assistance to all affected workers. Seventy-eight percent of these downsizing employers provided outplacement to at least some employees compared to just over 50 percent four years ago. The exponential growth and broadening of the federal programs threatens to significantly reduce employers' incentives to buy services for their departing employees. Increasingly, companies, regardless of their financial condition, are turning to government agencies to provide reemployment services.

There are two significant issues involved. First, it is not an effective use of government resources to replace private spending on reemployment services with public spending. Second, the public loses the benefit of the professional services that the private outplacement industry has been providing for 30 years and the choice and quality generated by a competitive market.

Although private entities are technically eligible to receive contracts to provide services under EDWAA programs, in practice public displaced worker funds rarely find their way to private outplacement firms. The state and local bureaucracies that administer these funds often have established working relationships with community colleges and other publicly funded entities that offer training and outplacement services. Another concern is that the tax-exempt status of community colleges and other organizations often allows these organizations to underbid even the highly competitive private firms.

If federal programs supplant private services, the private outplacement infrastructure will be undermined and firms that now serve companies and their employees will go out of business. This will create a ripple effect as more and more companies and dislocated workers become dependent on publicly funded programs, increasing federal spending and the burden on taxpayers.

The Labor Department has estimated that approximately 2.2 million dislocated workers per year need help transitioning to new jobs. This estimate does not include the 1 million dislocated workers currently served by the private system, many of whom find jobs before their severance payments expire. If federal funds supplant private outplacement efforts, the number of workers in need of publicly funded assistance would increase by 50 percent.

Recommendations Regarding On-Site Transition Centers

Workers affected by plant closings and mass layoffs will be served better and more efficiently if the private and public sectors work together and do not duplicate efforts. In view of the predicted restructuring of the American economy in the 1990s, there are likely to be far more dislocated workers than even the most generously funded state and federal programs will be able to serve. Government should seek to maximize the use of private reemployment services so that government funds are used most effectively, i.e., where private industry does not fully meet the need.

We recommend that the Committee require the Department of Labor and states to avoid whenever possible displacing the voluntary provision of private reemployment services by employers. The Labor Department and the states should be required to partner with the private sector by offering to match downsizing companies' outplacement expenditures with public funds and report to the Congress regarding these activities.

The Reemployment Act recognizes the importance using public funds to leverage the continuation of employer-funded private reemployment services. Section 115 of the Act authorizes Governors to establish on-site reemployment assistance centers using federal or state funds matched with substantial private funds. AOCFI supports this approach, but believes that clarifications in the legislation are needed to ensure that employers have sufficient incentives to participate and that the Act does not create unnecessary obstacles to their involvement.

- The Act should make clear that the initiative to set up an on-site career center can and should come from an employer as well as the Governor's office. An employer (or other eligible entity) should clearly have the opportunity to apply for matching funds if it is willing to make a contribution substantially equal to the ultimate grant. In addition, there should be a requirement for prompt response to such applications.

- The Act should be modified to permit Governors to match any private reemployment efforts of a certain size (e.g., downsizings involving 50 or more employees). As drafted, the Act would authorize matching only in geographic areas with a substantial increase in dislocated workers. Any employer willing to contribute its own resources should be able to apply for matching funds.

- In cases where an employer contributes the required matching amount, the employer should have the authority to choose, in consultation with employees or their representatives, the firm or agency that will provide the reemployment services. A major incentive for employers to participate is the prospect of being able to assure the quality of services received by departing employees. To do this, an employer must be able to hire (and fire) the service provider.

- The Act should be clarified to require employers (or other private entities) to provide matching funds for only those reemployment services traditionally provided to dislocated workers by employers. As drafted, the Act could be interpreted to require employers to fund additional services such as travel and moving allowances that would be authorized under the Act. These additional, non-traditional services, would act as a disincentive to employers to participate.

- Private providers of reemployment services should be eligible to receive notice of planned downsizings, plant closures, etc. under the WARN Act.

- The Act should require the Labor Department to report to Congress on its activities to encourage private sector involvement in the provision of dislocated worker assistance.

Support of Competition Regarding Operation of One-Stop Career Centers

In U.S. Congressional testimony, Department of Labor officials have affirmed that the key to the success of any and all worker reemployment programs is that they must be market-driven. AOCFI believes that a market-driven program is possible only if there is full and fair competition to operate the one-stop career centers authorized by the bill. AOCFI strongly supports section 313 of the bill which allows all interested for-profit and not-for-profit entities to compete to operate the career centers. Without this type of competition, workers and the government will fail to benefit from the professional experience of the outplacement industry that served over 1 million laid off employees last year alone. Without this type of competition, there will be no incentive for reemployment services to be of the highest quality.

STATEMENT OF KARY L. MOSS
EXECUTIVE DIRECTOR, GUILD/SUGAR LAW CENTER
FOR ECONOMIC AND SOCIAL JUSTICE

I. INTRODUCTION

My name is Kary L. Moss.[1] I am an attorney and the Executive Director of the Maurice and Jane Sugar Law Center for Economic and Social Justice (Guild Law Center). Thank you, Mr./Ms. Chairperson and members of this committee for convening this hearing and for again giving the Guild Law Center the opportunity to submit our comments.

The Guild Law Center is a national public interest law office located in Detroit, Michigan. Founded on the belief that economic, social and civil rights are inextricably bound to one another, we have focused our work on economic and social justice issues. One of our first acts when we opened our doors on February 1, 1991, was to establish a Plant Closing Project. As a result, we have become directly involved in the representation of hundreds of dislocated workers in WARN Act cases throughout the country. We also provide technical assistance to lawyers, unions and workers across the country, which includes the provision of legal advice, a pleadings bank, and a case update service. As a result of these efforts, the Guild Law Center has become the national clearinghouse and resource center for all WARN related litigation. We have been able to develop a practical and unique overview of those situations which have resulted in the filing of cases. We have also been able to recognize and analyze cases which could not be brought because of the various loopholes and ambiguities within the current version of the WARN Act, but which could have been brought under the current proposed amendments.

The Guild Law Center's experience with the WARN Act has been extensive and our commitment to protecting and assisting dislocated workers throughout the country runs deep. For these

[1] I would like to thank Emily Houh, a law student at the University of Michigan, for her contributions to the preparation of this testimony.

reasons, I am pleased to have the opportunity to provide my insights and comments on how and why the new proposed amendments to the WARN Act are necessary to making the Act as effective as it can and should be.

On behalf of the Guild Law Center and those dislocated workers whom we represent, I wish to thank all of you again for convening today's hearing.

II. **THE WARN ACT**

On February 23, 1993, the Guild Law Center appeared before this Committee, at the request of Senator Metzenbaum (D-Ohio), to discuss substantively areas of the WARN Act that needed revision. Then Executive, Director Julie Hurwitz, speaking on behalf of the Guild Law Center, appeared before this committee and described the history of the fifteen-year-long struggle that engendered WARN's enactment. She made clear, and her testimony was confirmed at that time by a GAO study of the law, that while the passage of WARN in 1989 was a laudable event for workers throughout the country and while it has resulted in larger numbers of working people receiving notice of their impending employment losses,[2] WARN has fallen far short of its goals. Most glaringly, the Act in its current form excludes 98% of American businesses and leaves 64% of our workers unprotected against sudden plant closings and mass layoffs.[3] For the sake of these workers, we cannot afford to be lulled into complacency, particularly when the numbers warn us so loudly that WARN needs to do more so that its goals can be realized.

These goals were articulated by Senator Kennedy, a sponsor of the original Act, during the Senate debates:

> First, advance notice is essential to the successful adjustment of the workers to the job loss caused by changing economic conditions. Times have changed for American workers. The person who will stay with one employer for thirty years is becoming more the exception and less the rule. Frequent changes are becoming more common. An advance notice provision insures that large numbers of workers will not be displaced without warning and without planning. . . .
>
> Second, advance notice saves the Government money. The Office of Technology Assessment estimated that advance notice could help save between $257 million and $386 million in unemployment compensation benefits each year. . . .
>
> Third, advance notice makes each dollar that we appropriate for adjustment efforts to go further. We know that with advance notice, adjustment programs are more effective in getting employees back to work more quickly, and at better wages.
>
> Fourth, and perhaps most important, an advance notice requirement assures fair play for American workers.[4]

(emphasis added).

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[2] Dislocated Workers: Worker Adjustment and Retraining Notification Act Not Meeting Its Goals (GAO/HRD-93-18, February 23, 1993).

[3] GAO/HRD-93-18, February 23, 1993.

[4] Remarks of Senator Kennedy, 134 Cong. Rec. S8376 (June 22, 1988), Legislative History, 184.

Fortunately, with the benefit of hindsight and experience, we can now see that additional steps are needed so that WARN does not provide a hollow protection for American workers. It is essential to all of our economic and social well-being to ensure "fair play for American workers." Indeed, the most common refrain we hear from dislocated workers who come to us seeking assistance is that they have been treated unfairly and deserved far more than they received from businesses which refused to give them the notice due them.

III. PROPOSED AMENDMENTS TO THE WARN ACT

In its current form thousands of American workers have been excluded from WARN's protection due to definitional thresholds that dictate--quite separately from the purposes of the Act--who receives protection and who gets left out in the cold. Unfortunately, under the current version of WARN, far more workers fall into the latter category than into the former.

Our comments on the proposed amendments along with case analyses of 'failed' WARN cases follow. As you will see, dislocated workers who did not receive timely or adequate notice were unable to obtain relief under the current version of WARN, but would have done so under the amended Act. That oppositional discrepancy in itself makes our point clear: the enactment of the proposed amendments is absolutely necessary to maximize WARN's effectiveness.

A. COVERAGE

1. "Employer" Threshold: Drop the "Employer" Threshold From 100 Workers to 50 Workers.

Currently, WARN exempts businesses that employ fewer than 100 employees, and those exempt businesses employ 55% of American workers.[3] This threshold exempts roughly 98% of American businesses. Significantly, the threshold exempts whole industries, some of which have less than exemplary histories of fair labor practices. The apparel industry, for example, averages only 52 workers per factory, and its well-documented poor treatment of garment workers is well known.[4]

For the above reasons, we applaud the initiative to drop the 100-employee threshold to 50-employees.[5] In response to arguments that one figure is just as 'arbitrary' as the other, I would direct this Committee's attention to the fact that in its current form WARN covers less than half of the American workforce. That lack of coverage conveys a distressing and contradictory message: if you work for a smaller business, you are not entitled to protection against unfair and sudden layoffs and plant closings, regardless of how hard you work; furthermore, even as the government touts the importance of smaller businesses to create jobs and to foster community values, the government protects only those people who work for large corporations, regardless of how vested you are in your work-community. The threshold ought to be changed not to replace one arbitrary figure with another, but to make more American businesses--large and small--more accountable to the communities that both sustain and are sustained by these businesses.

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[3] 29 U.S.C. § 2101(a).

[4] Summary and Explanation of Provisions, March 1994, proposed WARN Amendments prepared by Greg Watchman.

[5] In a report on plant closings and dislocated workers submitted in July, 1987, the GAO reported that nearly one-quarter of workers dislocated in 1983 and 1984 worked for establishments that employed 50-99 employees. Plant Closings: Limited Advance Notice and Assistance Provided Dislocated Workers (GAO/HRD-87-105, July 17, 1987).

Presently, the 100-employee threshold is often used to block WARN protection. For example, in Brunson v. Bronco Wine Co., __ F.Supp. __, 8 IER Cases 1033 (1993 U.S. Dist. LEXIS 2135) (N.D. Cal. 2/22/93), an employer laid off 73 employees at two separate facilities without the requisite WARN notice. Thirty-three layoffs occurred out of a 53-member workforce at one facility; the remaining 40 layoffs occurred at another larger facility which employed 253 workers. An employee, pro se, filed a WARN claim. Bronco-Wine filed a motion to dismiss, which the court granted. The court, agreeing with the employer, reasoned that WARN's minimum threshold requirements had not been met. As two separate sites, the court held that the smaller location did not meet the '100-employee' employer threshold, and that the larger facility failed the requirement that one-third of the workforce be laid off in order for a mass layoff to occur.

This hardly seems fair, at least not to the workers who had been laid off, particularly in light of the fact that approximately three-fifths of the workforce was laid off at the smaller facility. Under the amended WARN Act, the 50-employee minimum would have been met, and the 33 laid off workers--who had made up the bulk of the workforce at the 53-person facility--could have been given the opportunity to maximize their readjustment experience. Instead, all 73 of the workers were left with no remedy and the belief that a law purporting to protect and assist dislocated workers was of no help to them at all. Unfortunately, as it stands, this conclusion rings too true.

2. "Plant Closing" and "Mass Layoff" Thresholds: Drop Plant Closing Threshold from 50 to 24; Drop Layoff Threshold from 50/one-third of workforce, or 500, to a flat 25.

At this time, the WARN Act covers plant closings that affect 50 or more workers. Mass layoffs are covered where: 1) 50 or more workers are affected, and those affected workers make up one-third of the workforce at that site (part-time workers are discounted as members of the workforce--this huge loophole is discussed below); or 2) where 500 or more workers are affected.[8]

In a practical sense, these thresholds, especially the one-third rule, have proven to be overly complicated and unfairly and easily manipulated by employers seeking to escape WARN Act compliance. The 1993 GAO study on WARN and its impact reported that three-quarters of the thousands of uncovered mass layoffs were exempt due to the one-third rule.[9] Consequently, the one-third rule has been at the heart of a great deal of WARN litigation.

The one-third rule was again used to escape WARN compliance in Kildea v. Electro Wire Products, Inc., 775 F.Supp. 1014 (E.D. Mi 1991). This case is illustrative of the 'flood of litigation' tactics used by employers' counsel to achieve the successful manipulation of the one-third rule. Relatively speaking, such over-litigation has not been attributable to sue-happy workers, as original WARN opponents feared prior to its initial passage in

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[8] 29 U.S.C. § 2101(a)(2-3) and (8), and 2102(d); 20 C.F.R. § 639.3(i).

[9] See also, Summary and Explanation of Provisions, March 1994.

1988. Rather, the over-litigation is attributable to employers' efforts to exploit the Act's language to their advantage. In Kildea, for example, the district court originally determined that 53 out of 153 full time employees had been laid off, and that a WARN violation had occurred, since the one-third threshold (53 out of 153) had been met. However, upon further litigation prompted by the employers to reconsider the mass layoff issue, the court ultimately reversed itself, bumping the number of laid off workers down to 47. It did so as a result of another WARN technicality; the court ultimately discounted six previously laid off workers as "laid off" for WARN purposes. This catastrophe could have been avoided under the amended WARN Act. Using the flat 25 threshold, WARN would have served its purpose.

And in Oil, Chemical, and Atomic Workers, et al. v. RMI Titanium, Metals Reduction and Sodium Plants, CA #4:92 CV 1679 (N.D.E.D. Ohio), we are representing both union and salaried workers who worked at two plants involved in the production of titanium sponge for the defense industry. Although the company gave the union workers no notice at all, and even though the plant closing affected hundreds of workers and the entire community which was dependant on the plant's continued existence, we have had to litigate whether or not the threshold was met even though the company admits to laying off 32.3% of the workforce, at one of the plants.

For whom is this fair? Realizing that WARN was passed originally as a compromise/understanding between business and labor supporters, it seems that the one-third rule is simply too easy for employers to 'work' in their favor. If, as proposed, the one-third rule were done away with and a flat 25 threshold were established, employers would be provided with a hard and fast rule that they would not have to decipher[10] and that they could not bend. This 25 threshold would guarantee wider coverage, which would hopefully shrink the staggering percentages of workers who are left unprotected by the WARN Act in its current form.

2. Limit "Single Site" Requirement to Layoffs of Under 100.

Under existing WARN law, plant closings and mass layoffs are analyzed on a worksite by worksite basis. This method of analysis enables employers to layoff thousands of workers, as long as those workers are located at different worksites and less than 50 workers are laid off at each individual site. This method of avoiding WARN liability has been successfully used by large employers, leaving thousands of workers once again unprotected against sudden plant closings and mass layoffs. In order to close this gaping loophole and in order to maintain the spirit of compromise between businesses and workers that frames WARN, the single-site requirement ought to be limited only to those plant closings and layoffs where less than 100 people are affected. If this threshold is not changed, cases like Emery Worldwide Delivery--whose case analysis follows--may become a reoccurring worker nightmare.

In April of 1991, Emery Worldwide Delivery Company simultaneously terminated over 1000 employees nationwide at more than 20 terminals throughout the country. The company convened a Saturday morning meeting and announced that as of that moment, the gathered employees were no longer employed and that they had 20 minutes to clear out their personal belongings. The following Monday, the company continued business as usual, replacing the terminated employees with independent contractors.

But during the previous year, less than coincidentally it may be safe to assume, Emery had reduced its workforce in almost

[10] A common complaint about current WARN Act is its vagueness. Often, employers stated that they could not easily understand WARN's requirements and therefore could not tell when they were and were not complying with the Act. This indicates that clarity is key in maximizing WARN compliance. See GAO Report/HRD-93-18, February 23, 1993.

every one of the affected terminals to just below 50. Thus due to a combination of the 50/one-third threshold and the single-site rule, Emery was able to lay off almost 1000 workers with only a few minutes notice and no severance pay, and to completely avoid WARN liability. Emery did not stop there. Six months after terminating these 1000 employees, the company, using an identical method, laid off over 150 management level employees in Dayton, Ohio. Again, it gave no notice.

Emery is not the only company that uses these kinds of workforce shifting tactics to maneuver its way out of WARN liability. In United Mine Workers v. Jim Walters Resources, Inc., 6 F.3d 722 (11th Cir. 1993), a mining company laid off 650 employees at four different sites, despite the fact that each affected site used the same group of employees and same management, and despite the fact that the sites were geographically connected by underground tunnels. Jim Walters Resources, like Emery, laid off just short of one-third of the work force at each individual site, and was able to evade WARN liability.

It seems that the current single-site rule is no compromise at all. It is another soft limitation which is easily punctured by some simple shifting of work force populations by large employers who can afford to treat their workers like dispensable currency. Indeed, the problems caused by the resulting mass layoffs are precisely what WARN was designed to resolve, and what it currently is not resolving at all. A limitation of the single-site rule to layoffs affecting less than 100 employees is a truer and less penetrable compromise.

4. Clarify the "Ninety-Day Rule" to Allow Aggregation of Layoffs and Plant Closings Which Are Part of a Single Reduction In the Work Force.

WARN currently includes a provision, Section 3(d), that allows the aggregation of multiple layoffs within a 90-day period to reach the mass layoff threshold.[11] This provision was meant to prevent employers from using a rolling-layoff method to avoid notice responsibilities. However, the provision has not been able to function to its full capacity. For example, if two or more groups of workers are laid off at a single site of employment, and each individual group does not reach the 50/one-third threshold, then the separate groups can be added together to reach the requisite threshold, and all of the employees from each group are covered by WARN. But if the number of workers in one group does not meet the threshold and the number of workers in the other group surpasses it, then the workers in the latter group may not be added to the other groups, and the smaller group is left unprotected.

Employers have taken advantage of this 'hypertechnical' oversight. For example, in U.E. v. Maxim, 5 IER Cases 629 (D. Mass. 1990), a fire truck company in Massachusetts closed and put roughly 88 people out of work. The layoffs occurred on two separate dates within a 90 day period. Initially, 24 people were laid off, and 64 people were later laid off. Because the number of workers laid off at the later date surpassed the 50/one-third threshold, the district court excluded the first 24 dislocated workers from WARN protection.

In May of 1989, another company, Kayser-Roth Hosiery, Jones v. Kayser-Roth Hosiery, Inc., 748 F.Supp. 1276 (E.D. Tenn. 1990), laid off 159 workers (less than one-third of its workforce). More than one month later, it laid off 340 workers (more than one-third of its workforce). The Sixth Circuit held that only

[11] 29 U.S.C. § 2102(d); 20 C.F.R. § 639.5(a)(1)(ii).

the group of 340 was entitled to WARN notice, and the Court refused to apply the 90-day aggregation rule to protect the smaller group of 159. It is nothing less than unfair and illogical that only 340 of the total 499 laid off workers were entitled to WARN notice.

The amendment clarifying this section so that all layoffs within a 90-day period, whether above or below threshold levels, may be aggregated to establish a total number of layoffs above the applicable threshold is needed to fulfill that section's original purpose: to permit the aggregation of employment losses within a 90-day period "unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes . . ." 29 U.S.C. § 2102(d).

5. Cover Part-Time Workers.

One of the WARN Act's most glaring flaws is its complete exclusion of part-time workers from the Act's coverage, protection and notice entitlement.[12] It is essential that part-time workers enjoy the law's protection.

WARN's non-coverage of part-time employees has wiped out many possible WARN cases and rendered the unfair treatment of part-time workers acceptable. For example, in Solberg v. Inline, 740 F.Supp. 680 (D.Minn. 1990), the company hired over 300 workers after it had secured a major contract from Kodak. When Kodak canceled the contract, the company laid off all the newly hired employees, with only eight of the discharged workers having full-time status under WARN. In Shopmen's Local 620, Int'l. Ass'n Bridge, Structural and Ornamental Ironworks, AFL-CIO v. Lee C. Moore Corp., No. 89-C-575-C (N.D.Okla., July 11, 1990), the company laid off 124 workers in a series of eight layoffs, giving only 48 hours notice for each layoff. The employer successfully sidestepped WARN liability because 58 of the employees were deemed part-time and therefore uncovered under WARN. In another case,[13] Napco Alarm Clock closed down a plant because the employer planned to relocate to the Dominican Republic. The company gave no notice to its employees, and because only 43 of the employees were considered full-time under WARN, the workers had no recourse under WARN, a statute enacted supposedly for the benefit of workers. And in yet another case, Moore v. The Warehouse Club, Inc., 992 F.2d 27 (3d Cir. 1993), The Warehouse Club shut down one of its sites, putting 52 employees out of work and the employees were not notified of the closing until the day after the store closed. The district court magistrate threw out the case in part because two of the affected employees were found to be part-time within the meaning of WARN. The third circuit affirmed this decision.

Finally, not only are part-time employees not covered by WARN, but their exceptional status delivers a double blow to laid off workers. Part-time workers are also discounted in the determination of other WARN thresholds. For example, in In Re Old Electralloy Corp., 1993 Bankr. LEXIS 1922 (Bankr. W.D. Pa. 1993), the employer, a steel-manufacturing company, gave its workers eight hours notice of its impending closure. Although

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[12] 29 U.S.C. § 2101(a)(8); 20 C.F.R. § 639.3(h).

[13] The Law Center was contacted by affected workers about possible WARN claims due to the closing of the Napco Alarm Clock plant, but the case never made it to court.

the company employed over 100 employees at three separate facilities, the court found that the closing of the plant did not result in an employment loss to 50 or more employees because, of the 58 laid off workers, seven were categorized as part-time, and another five were discounted because they did not suffer employment loss as such loss is specified by WARN.

The abundance of WARN cases like the ones above translate into potential real-life tragedies for millions of American workers, for part-time workers often need advance notice even more than do full-time workers. In today's service sector economy, part-time workers number 22 million, and that figure is growing rapidly.[14] Part-time workers typically have neither the savings nor the assets to carry them through their period of unemployment. And finally, the government does not provide financial assistance to out-of-work part-time workers, as they are not entitled to unemployment benefits in most states. As the number of part-time workers grows, fewer people will be covered by WARN in its current form, and WARN, unless it is amended to cover part-time workers, will become less and less effective as a statute enacted for the purpose of assuring a fair game for American workers.

B. **ENFORCEMENT**

Currently, the only mechanism for WARN Act enforcement is the filing of private suits by affected workers against their employers.[15] This statutorily conferred right to a private cause of action is very important. However, filing a lawsuit may be inadequate as a sole and exclusive method of enforcement because the policy of liberal construction originally called for when WARN was passed in 1988 has not been followed by some in the judiciary.

Moreover, workers are often hesitant to assert their legal rights under WARN. First, it is difficult to find attorneys who are willing to take on WARN cases, because litigation has been scant and therefore untested, and because relief is so limited under WARN. Next, litigation is expensive, and in light of employers' counsels' vigorous and often time-consuming litigation tactics, expenses may shoot even higher than suit-filing employees' expectations. Regardless, the average American has neither the time nor the resources to spend on lengthy and complicated lawsuits, particularly when the plaintiff's travails ultimately amount to damages limited to 60 days' backpay.[16] Finally, WARN violations may take upwards of two years to litigate, which requires an extraordinary level of endurance which often does not pay off, again because of WARN's limited available relief.

We know now from the GAO Report released in February 1993 that over 10,000 of WARN notice violations have occurred since its enactment, but only about 100 WARN actions have been filed--this translates to a less than 1% enforcement rate, while over 99% of employers violate WARN without consequence![17] Yet, in light of all the frustrations employees must confront, can there be any question as to why workers do not use litigation more frequently and more rigorously to enforce WARN?

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[14] Bureau of Labor Statistics. See also Summary and Explanation of Provisions, March 1994.

[15] 29 U.S.C. § 2104.

[16] The 60 day limit on damages is further complicated by the controversy within the courts as to whether the 60 days should be measured on a calendar or a workday basis. Compare Carpenters District Council v. Dillard, 9 IER Cases 289, 1994 U.S. App LEXIS 3154 (5th Cir. 1994) with United Steelworkers v. North Star Steel, 5 F.3d 39 (3rd Cir. 1993), cert. denied, ___ U.S. ____ (1994).

[17] Summary and Explanation of Provisions, March 1994.

Without proper enforcement, another problem arises: both employees and employers are kept in the dark about the WARN Act in general.[18] As Julie Hurwitz testified in the WARN amendment hearings of 1993, the Department of Labor's lack of authority to enforce WARN "has substantially impeded the ability of former employees in many situations to even find out the necessary information to know whether or not they have a WARN Act claim." Furthermore, the GAO report submitted at those same hearings showed one-third of the participating employers reporting that they were unclear about or unaware of at least one relevant provision of WARN. This lack of knowledge provides the momentum that drives a circle of ineffectiveness: WARN is not enforced, and this results in weak enforcement of WARN.

We must remedy the problem of non-enforcement. In its primary recommendation to Congress, the GAO strongly suggested that enforcement authority over the WARN Act be given to the Department of Labor. The 1991 Massachusetts Conference Report on WARN also urged that the Department of Labor "should be given enforcement powers." And finally, when Professor John Portz of Northeastern University conducted a State Dislocated Worker Unit Survey[19] (hereinafter the Portz Survey) in 1992, he asked DWU officials how WARN's effectiveness might be improved. One of the two most frequent responses was to give the Department of Labor enforcement authority.

The proposed amendment to WARN concerning enforcement authorizes the Department of Labor to investigate WARN violation complaints, and to file lawsuits on behalf of workers. I would like to emphasize that such enforcement authority must not diminish the private right to a cause of action already provided for in WARN. Depending on an individual employee's situation, filing suit may often be the best option, thus that choice must not be taken away from the individual employee. Neither the filing of law suits or DOL enforcement should become the exclusively designated path to WARN enforcement, and the choice ultimately serves WARN's purpose to ensure a fair game for the American worker. Together with the private right to a cause of action, DOL enforcement will increase awareness of WARN's requirements among employers and employees, assist workers in determining whether or not their rights have been violated, and restore the rights of those workers unable to find or afford an attorney to bring a private action. Thus, we wholeheartedly support the amendment of WARN to provide the DOL with enforcement authority.

C. LIQUIDATED DAMAGES

As seen above, the limited relief[20] to dislocated workers under the current Act can be pinpointed as the source of much of the law's ineffectiveness. The 60-days backpay and benefits penalty is not a strong incentive for workers to file suit. Additionally, the remedy does not deter employers from failing to give notice, as the employer risks paying out the same wages and benefits it would had have to pay anyway, had it chosen to give notice.

We applaud the proposed liquidated damages addition to the already available remedy. Liquidated damages in an amount equal to the back pay award is consistent with other federal labor laws, such as the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Age Discrimination in Employment Act.[21] Finally, the liquidated damages amendment

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[18] GAO Report/HRD-93-18, February 23, 1993.

[19] Portz, John, "WARN and the States: Implementation of the Federal Plant Closing Law," April 1992. (Presented at the Annual Meeting of the Midwest Political Science Association, April 9-11, 1992).

[20] 29 U.S.C. § 2104(a)(1).

[21] Summary and Explanations of Provisions, March 1994.

will provide a stronger deterrent to employers considering violating WARN.

D. STATUTE OF LIMITATIONS

WARN does not currently include a statute of limitations that sets a time limit on the filing of employee-brought lawsuits. In our federal courts, the absence of a limitations statute has given rise to a great deal of litigation. In some cases, the absence of a statute of limitations has resulted in unjust dismissals of WARN actions, as courts have applied inconsistent statutes of limitations--ranging anywhere from six months to six years--because the Act in its current form provides no guidance in this area.

There has been one appellate court decision on the statute of limitations issue, United Paperworkers v. Specialty Paperboard, Inc., 999 F.2d 51 (2d. Cir. 1993), which was resolved in favor of a state six year statute of limitations on contract actions. Employers have argued, however, for a shorter period based upon the utilized pursuant to the National Labor Relations Act (NRLA). See DelCostello v. Teamsters, 462 U.S. 151, 103 S.Ct. 2281 (1983). Although there are many sound reasons for rejecting this argument, see United Paperworkers, several other courts have reached a contrary result. There are now 3 other cases pending in the Fifth Circuit, Third Circuit and Sixth Circuit. See Staudt v. Glastron, Inc., __ F.Supp. __ (W.D. Tex. 1993).; United Paperboard is Thomas v. North Star Co., No. 4:CV-92-1507 N.D. Pa. 1993); United Mine Workers of America v. Peabody Coal Co., No. 92-0073-0 (CS) (W.D. Ky. 1993).

These inconsistencies clearly illustrate why the proposed two-year statute of limitations is essential to effective WARN enforcement, and why it is essential that a period be specified. The two-year period is comparable to FLSA and FMLA statutes of limitations, and, most importantly, it will provide a much needed level of uniformity to the mechanism of WARN enforcement, and consistency in enforcement is surely something we should strive for, for the benefit or our workers and employers.

E. THE GOOD FAITH DEFENSE

Section 5(a)(4) of WARN provides that where an employer has violated the Act, a court may "reduce the amount of the liability" where the employer "had reasonable grounds for believing that [the violation] was not a violation of the Act . . ."[22] (emphasis added.) Despite WARN's clarity with respect to the possible reduction of liability, courts have interpreted the exception--not exemption--as a complete defense to liability. "Good faith," however, was simply never meant to mutate into a form of absolute immunity. As a result of this unchecked interpretation of the good faith defense, thousands of workers have been "lawfully" deprived of notice.

For example, in the case of UAW, Local 1077 v. Shadyside Stamping, 947 F.2d 946 (6th Cir. 1991), the Court of Appeals affirmed a district court decision to dismiss the UAW's WARN claims against Shadyside Stamping on good faith grounds, regardless of the fact that the lower court also found that the company had indeed violated the law. Also, in OCAW, et al. v. RMI Titanium, Metals Reduction and Sodium Plants, C.A. #4:92 CV 1679 (N.D.E.D. Ohio), another case in which the Guild Law Center represents the workers the company maintains that because it had alluded to future layoffs in previous notices, it had acted in good faith and thus should be entitled to complete immunity from WARN liability, even though the previous notices did not include future date specifications, and that the affected employees received their WARN notifications only two weeks before they lost their jobs.

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[22] 29 U.S.C. § 2104(a)(4).

The misinterpretation of the good faith exception has resulted in the uncompensated dislocation of too many workers, and has been of primary concern to us. Thus, we are thrilled to see that the amendments clarify that the good faith defense arises only after a liability determination, and only as a basis for reducing an award of liquidated damages.

IV. POST-AMENDMENT WARN: REMAINING PROBLEMS

A. DEFENSES

In its efforts to effectuate a true compromise between employee and employer interests, defenses were included in the current version of the WARN Act that often reduce or totally obviate WARN liability. The record shows that the federal courts have frequently upheld employers' overly broad interpretations. The result is another series of loopholes, carved out by the ambiguous standards set forth in the language of WARN. Although the amendments before us today do not address the "unforeseeable business circumstances" and "faltering company" exceptions, we feel compelled to address the problems which have resulted from their broad application.

1. The Unforeseeable Business Circumstances Defense

The unforeseeable business circumstances defense was written into WARN as follows:

> An employer may order a plant closing or mass layoff before the conclusion of the 60-day period if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that the notice would have been required.

(emphasis added.) 29 U.S.C. § 2102(b)(2)(a).

The purpose of this exception was to accommodate employers faced with unforeseeable events, but the provision still seriously considered the need to protect workers--who we must not forget are also affected by unforeseeable business circumstances--in the face of such situations. Thus, only sudden, dramatic, and unexpected developments outside of the employers' control and which are the cause of the shutdown or layoff were to be excepted under this defense. 20 C.F.R. § 639.9(b)(1). However, the courts' broad construction and application of the exception have proved antithetical to the proposed goals underlying provisional WARN defenses. Broad applications have in fact widened the gaps through which so many of our dislocated workers have fallen, and through which so many more will continue to fall.

The problem with the unforeseeable business circumstances defense is its lack of clarity in defining what is "reasonably foreseeable." Although this phraseology is commonly used in legislation as a call for objective application, it is also commonly and most subjectively abused, and it is being abused in exempting employers from WARN liability.

The case of International Ass'n of Machinists and Aerospace Workers, AFL-CIO and Aeronautical Industrial District Lodge 776 v. General Dynamics, 821 F.Supp. 1306 (E.D.Mo. 1993), is illustrative. In 1988, the U.S. Navy awarded a contract to General Dynamics for the full scale engineering development of the A-12 aircraft. It soon became apparent that the project would cost significantly more than expected or budgeted for. By October of 1990, the House and Senate indicated that certain criteria be met before the funds would be obligated for 1991. General Dynamics Board of Directors Chairperson Stanley Pace noted in August, September, and October, however, that termination of the A-12 was a possibility. On December 14, Secretary of Defense Cheney directed the Navy to "show cause" why the A-12 contract should not be terminated. By December 17, 1990, the Navy notified General Dynamics that the contract would be terminated by default on January 2, 1993, unless certain conditions were met by that time. On January 7, 1993, the contract was terminated.

Based on the "unique context of defense contracting," the district court determined that the unforeseen business circumstances exception applied to exempt the company from liability. The court held that even though General Dynamics officials knew in June 1990 that the A-12 program was irrevocably delayed and over budget, General Dynamics still exercised "reasonable business judgment" in concluding that subsequent termination of the contract by the Navy was unlikely. Nonetheless, the court, by refusing to impose an objective standard, enabled General Dynamics to avoid WARN liability.

And in Jurcev, et al. v. Central Community Hospital, 3 F.3d 618 (7th Cir. 1993)--whose complicated facts concern subventions made and cut off by a not-for-profit foundation to a hospital, which resulted ultimately in the hospital's shut down--the hospital's ability to evade WARN liability was rooted in how the court and the employers defined objectively and reasonably (un)foreseeable. In an industry where contracting instability is the norm, it might be reasonably unlikely that a contract would be canceled due to delays and rampant spending problems, but don't employees still deserve to know about even the mere possibility, unlikely or not, of events that may threaten their livelihoods? Trust is the parent of loyalty, and if employers do not trust their employees to maintain production and work rates in the face of economic difficulties, there is no good to be had in the long run for either the employer or the employee. It is time for us to start having faith in the American worker.

2. The Faltering Company Defense

Another exception being claimed by employers is the faltering company defense, which provides that:

> An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

29 U.S.C. § 2102(3)(b)(1). In addition to the elements contained in the above provision, the Department of Labor Regulators also requires that "the employer was in financial distress." 20 C.F.R. § 639.9.

The faltering company defense contains many of the same problems embodied in the unforeseeable business circumstances. In light of the fact that WARN mandates a narrow construction of the defense,[23] the vagueness in the language has resulted in a much broader construction. For example, what is "financial distress"? What does it mean to be "actively seeking capital or business"? What is a "realistic opportunity" to obtain financing? By whose standard do we measure "reasonably and in good faith"? For the purposes of litigation, this lack of clarity serves only to confuse, antagonize, and give rise to more litigation.

For example, in Wallace v. Detroit Coke Corp., et al., 92-CV72890-DT (E.D.Mich. 1993)--a case in which we are directly involved and which is not yet done with--the district court refused to grant Detroit Coke's motion for summary judgment on faltering company exception grounds. The case went to trial. The trial lasted for over two weeks, during which the jury had to absorb several days worth of very technical testimony, so that they could come to some consistent understanding of the faltering company exception's vague requirements. In the end, the jury accepted the faltering company defense, but only partially! Detroit Coke was held to reduced liability under WARN.

[23] 20 C.F.R. § 639.9(b).

The faltering business defense's greatest flaw, however, is its short-sightedness with respect to what we envision as the big picture of fair labor practices and a strong and fair economy. That is, the exception--along with the unforeseeable business circumstances exception--assumes and perpetuates a labor environment where workers know nothing about the companies for whom they work, and where they are treated as automatons rather than as the integral part of our businesses and economy that they are. If we are serious about maintaining our leadership position in the world economy, and if we truly want to halt the slippage that has already begun, we have to trust our employees and laborers to take active roles. They do not deserve to be kept in the dark about their livelihoods, and they do not deserve to be divested of any knowledge and control over their work product. If a company is about to go under, its employees should know about it and know why. The line that separates employees from employers needs to be obliterated so that communities can thrive and rely on our economy, and so that our businesses and employers can rely on our communities.

B. THE CENTRAL INFORMATION AGENCY

Workers and employees need to have resources that will allow them to be as informed as possible about their rights and status as American workers. For American employees and employers, the story does not end at the plant closing or the mass layoff in Willow Run or Youngstown or Ypsilanti. We are entitled to know--as citizens, employees, and working and learning people--where our companies are going.

Moreover, as a matter of public policy, it would be wise to enhance WARN's data-gathering capabilities and to establish a central federal repository that informs us of where American jobs are going and when American jobs are coming, the number of jobs to be lost at any given time, and some mechanism for analysis and compilation of WARN notices. Education, as we all know, is essential to our progress. And any real commitment to progress and long-term economic stability and strength would dictate the establishment of this central information agency.

V. CONCLUSION

Since it was enacted, WARN has provided relief to great number of working people. However, we must not delude ourselves about the Act's deep-reaching impact. WARN has noble intentions, but it is presently only a salve. For those who have been burned, WARN soothes the pain a bit, but it does not strike at the root of things; WARN does not move to extinguish damaging flames that have a way of spreading through the small and tiny cracks left open by the Act's ambiguity and vagueness.

The amendments discussed above are essential to WARN's effectiveness as a curative rather than a band-aid measure for the good not only of the American worker, but also for the good of the American employer. In a time when government leaders blame our social ills on the disintegration of family and community values, it seems clear that "our nation needs a new relationship of trust and cooperation between government and industry . . . But such effort must be national in scope and must be a real partnership with industry, not one in which industry simply views government as a part of its 'business climate' and another opportunity to increase profits."[24]

We took a great first step with the passage of WARN in 1988. But if WARN is to protect workers, we must be courageous. We must amend the Act to widen its coverage, close its loopholes, and hold corporations accountable for their impact -- both good and bad -- on our communities.

Thank you very much for the opportunity to submit this testimony to this Committee today.

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[24] Charter Township of Ypsilanti, et al. v. General Motors Corporation, Washt.Co.Cir.Ct. #92-43075-CK, (Opinion and Order, dated February 9, 1993), at 20.

STATEMENT OF THE INTERNATIONAL UNION, UAW ON THE SUBJECT OF THE REEMPLOYMENT ACT OF 1994–S. 1964

I. Introduction

Mr. Chairman, my name is Richard W. McHugh. I am Associate General Counsel of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW). This Statement represents the views of the International Union, UAW and its 1.4 million active and retired members and their families. We wish to thank the Subcommittee for this opportunity to express our views on the Reemployment Act of 1994, S. 1964.

Mr. Chairman, under your guidance, the Labor Subcommittee has provided important leadership in the area of dislocated worker training and adjustment assistance over the years, including the 1988 Worker Adjustment and Retraining Notification (WARN) Act and the Economic Dislocation and Worker Adjustment Assistance Act. In this and other legislation, the interests of dislocated workers were advanced, and for this, Mr. Chairman, you deserve wide recognition and our thanks. The UAW looks forward to working with your Subcommittee in the future to continue to improve and enhance the programs that assist dislocated and unemployed workers in our nation.

II. The Reemployment Act In Brief

We are encouraged that the Clinton Administration and the Congress are again examining the problems of dislocated workers. Currently, efforts to assist dislocated workers suffer from inadequate funding of training programs. The Clinton Administration has recognized this shortcoming and has proposed additional funding for dislocated worker programs in the 1995 budget. In addition, the Reemployment Act proposes strengthening the federal-state labor market information system and provides specific guidance to states as to the role of dislocated worker/rapid response units. These are important steps in bolstering our ability to assist dislocated workers.

We agree with the Clinton Administration that we can and should do more to assist dislocated workers and their families and to direct scarce resources more effectively in the adjustment assistance area. The stated purposes of the bill before this Committee today are goals that the UAW fully supports and which the past actions of this Committee have also supported. The UAW agrees that consolidation is a worthy goal. We support better coordination of dislocated worker services, earlier provision of services, more effective delivery methods, and higher quality and longer-term training.

The Reemployment Act properly calls for additional spending on dislocated worker programs. Most importantly, the bill recognizes that without income support workers cannot successfully complete meaningful, long-term retraining programs. We believe that the record is clear that short-term or make-work training does not assist dislocated workers or serve the nation's purposes well. If we are going to really help dislocated workers, we are going to have to provide some of them with income support to enable them to complete the kind of training which will move them into new careers with good wages.

In our testimony today, the UAW will focus on several of our concerns with regard to the proposed Reemployment Act, especially those which are pertinent to the Labor Subcommittee. Most importantly, the bill as introduced does not meet its overall goal of creating a comprehensive dislocated worker program. While the Administration has proposed additional funding, the level is still inadequate.

The bill also does not address a key element in rapid response; namely, improvements in WARN. The UAW believes that Reemployment Act must strengthen the existing WARN statute. The bill also calls for the elimination of Trade Adjustment Assistance, the one dislocated worker program that provides workers with an entitlement to retraining and income support. We are aware that TAA does not fall under the jurisdiction of this Committee. Until such time as a truly comprehensive dislocated worker program is in place, however, the UAW cannot support the elimination of TAA.

In addition, the bill as introduced adds new competitive procedures for selecting career center operators and permits for-profit providers to participate in the program. These measures would add duplicative costs and overhead and may present conflicts of interest, without a realistic promise of improving services to dislocated workers. We have been advised, however, that the Administration has excluded private for-profit companies from the list of eligible organizations to operate one-stop centers. This is a useful change, and we urge the Subcommittee to support it.

Along with many in Congress, the UAW is deeply concerned that the current emphasis on training and retraining is not addressing the underlying issue; namely, the lack of secure jobs offering good wages and benefits. The foundation of economic security is work, not training. Real wages have fallen for years and American families have not kept pace with price increases. We do not believe that the economy is overheating or likely to overheat in the near or mid-term future. In a consumer-based economy, it is difficult to accept the current conventional wisdom that increasing real wages would be a threat to the nation's economic health.

III. The Continuing Need for Dislocated Worker Adjustment Assistance

Mr. Chairman, the UAW's members have experienced nearly two decades of plant closings, permanent layoffs, and massive dislocations. For example, in the motor vehicle assembly and parts industry, production employment has fallen from its 1978 peak of 832,700 and, despite some recovery, has only reached 655,700. In the agricultural implement and construction equipment field, the decline has been even more dramatic, falling from 238,100 in 1979 to 104,300 today.

The economic dislocation seen in UAW industries in the 1980s has not ended. Continued downsizing is currently hitting the aerospace and defense industries. Increased numbers of managerial and professional employees are experiencing dislocation in the 1990s as well. While the economy is experiencing a modest recovery, we can expect international competition, increased productivity, and technological change to produce continuing economic dislocation at the same rate we have seen over the last decade and a half. This experience indicates we could face at least two million dislocated workers a year in the future.

We expect these workers and their families to experience serious financial hardship as a result of their dislocation. The 1992 Dislocated Worker Survey conducted by the Bureau of Labor Statistics found that between 1987 and January 1992, 15.3 million workers lost jobs due to plant closings, business failures, slack work, and related reasons. More than five million of these workers had over three years on the job prior to displacement, and only 2.7 million of these "tenured" workers had found work by the time of the survey. One third of the dislocated workers who had found jobs had suffered a pay cut of twenty percent or more. Thus, nearly two thirds of the "tenured" workers

remained unemployed or in jobs well below their previous earnings at the time of the 1992 survey.

Thus, there clearly will be a continuing need for dislocated worker assistance. Unfortunately our current dislocated worker services leave most unemployed workers without any meaningful long-term assistance and with only limited opportunities to gain retraining and reemployment in good jobs offering a chance to retain their family's previous standard of living. The UAW commends the Administration for recognizing the need to reform our dislocated worker assistance programs and for placing this issue high on our national agenda.

IV. Rapid Response and WARN Reform

While the bill enumerates specific tasks for rapid response in each state, and properly recognizes the key role of rapid response and early intervention in dislocated worker programs, it does not call for improvements in the WARN Act. WARN passed, in large measure, through your efforts, Mr. Chairman. Since it became law in 1988, WARN has resulted in increased advance notice of job loss to many workers. As a result of WARN and EDWAA, greater numbers of workers get involved in training earlier and have a better chance of avoiding the worst impact of economic dislocation.

Despite the important step taken with WARN's passage, most observers recognize that the statute has a number of loopholes and enforcement gaps needing correction. Mr. Chairman, the UAW commends you for introducing the Worker Adjustment and Retraining Notification Amendments Act, S.1969, which would remedy the gaps in WARN and provide more effective advance notice and rapid response to dislocated workers. The UAW strongly supports this measure. The UAW also strongly supports WARN reform as an integral part of dislocated worker programs. The Reemployment Act must include measures to reform WARN such as those contained in S. 1969.

While Title I of the Reemployment Act enumerates a number of specific responsibilities for state rapid response teams, the bill does not ensure adequate funding for these activities. Currently, rapid response is funded out of the forty percent of state funds reserved for state-level activities. In the bill, this state-level funding is reduced to thirty percent. We believe that the Subcommittee should address the potential conflict presented by the bill's reduction in state-level funding of dislocated worker activities and the need to strengthen the role of rapid response by mandating a minimum funding level for dislocated worker unit and rapid response activities.

In the proposed legislation there is little guarantee that the new entities involved in service delivery to dislocated workers will have the time or resources to guide workers through the maze of training options and competing providers. We believe increased reliance upon rapid response and labor-management committees would be a better approach. Congress should ensure that worker participation in the development of training plans is meaningful and that worker choice is not buried beneath the imperatives of placement quotas and funding limits.

The UAW has found that union and worker participation in early response, labor-management committees, and on-site dislocated worker centers are all good means to gain early worker participation in retraining activities. Currently, rapid response activities are carried out at the state level, and participation by local PICs and SDAs is spotty. Rather than turning to more controversial and untested methods of delivering services to dislocated workers, the UAW recommends that the Subcommittee provide a stronger role for labor-management committees in providing local rapid

response capabilities. We believe this would be a cost-effective and positive means of getting better and earlier participation in reemployment activities by newly dislocated workers.

V. Elimination of TAA/Consolidation of Programs

There is currently much support for consolidation of dislocated worker programs. As part of this consolidation, the Reemployment Act calls for the elimination of TAA and NAFTA TAA. The UAW is strongly opposed to the elimination of TAA.

The UAW would have no problem with elimination of TAA, if the Reemployment Act were offering a comprehensive dislocated worker program. It does not. The great majority of funding under the Reemployment Act is not mandatory, but discretionary. None of the reemployment services offered under the bill are funded as entitlements. In addition, the bill caps training cost at $4750 per year, which is too low in many cases. These budgetary limitations are in sharp contrast to TAA.

Simply put, trade-impacted workers are being told to give up a program that has been useful to many, for empty promise of better things. As a representative of many of those trade-impacted workers, the UAW simply cannot accept the easy assumption that these workers will get equivalent programs and income support under the Reemployment Act. This is simply not the case. For this reason, the UAW has opposed and will continue to oppose any and all efforts to eliminate Trade Adjustment Assistance at our present stage of development of dislocated worker programs. We urge the members of the Subcommittee to likewise oppose the elimination of TAA at this time.

VI. Governance and Service Delivery

The UAW has reservations about a number of proposed features of the bill pertaining to the local management of training programs and the methods suggested for delivery of services to dislocated workers. Overall, the bill does not provide for full participation by organized labor and community groups in the planning and implementation of local reemployment services. For its one-stop delivery model, the bill also proposes untested market models, while bypassing existing public agencies that should participate fully in assisting dislocated workers. Finally, the bill provides for overbroad waiver authority beyond that required for the development of one-stop career centers.

1. Participation by Labor and Community Groups

The UAW is troubled that the Reemployment Act does not take full advantage of organized labor's knowledge and experience in training, and in some cases, falls short of the improvements made in this area in the 1992 JTPA Amendments. We ask that the Subcommittee ensure that labor unions and community groups have full rights to participate in all aspects of dislocated worker programs.

Specifically, the planning process proposed in the bill is inadequate. At a minimum, annual state and local plans meeting the requirements of Sections 311 and 313 of JTPA Title III should be required. Public input and access to the state and local planning process should be assured for labor and community groups. Better still, organized labor and interested community

groups should have a mandated opportunity to review and comment on state and local plans.

Labor and community groups should have an enhanced role in local PICS and/or the proposed Workforce Investment Boards (WIB). Language ensuring involvement of equal representation of employers and labor has been suggested. An alternative approach would be a tri-partite board of employers, government and education, and labor and community groups. In the past, we have seen labor's voice ignored in the local PIC structure, and we believe this approach is out-moded. The Reemployment Act should serve as a vehicle for addressing this problem.

We also recommend that employers who have representatives on a PIC or WIB be required to list job openings with the Employment Service as a condition of participating in the governance of local retraining efforts and as a way of demonstrating their commitment to the employment security system.

2. **Career Centers and One-Stop Career Centers**

The Reemployment Act proposes to establish career centers to provide basic reemployment services to dislocated workers and offers incentives for states to adopt a one-stop career center model of service delivery. The states have already taken a number of initiatives in consolidating services to unemployed and dislocated workers. In many cases, states have used state funds to administer these initiatives. Many of these initiatives provide worthy models for other states. The Subcommittee should recognize the positive steps already taken by states in this area, and ensure that any federal steps taken in the area assist, rather than impede further state initiatives.

Any movement toward consolidation of service delivery should build positively on existing programs and institutions, drawing from strengths and working to eliminate weaknesses. In our view, the Reemployment Act does not provide sufficient time or funding for our service delivery system to adapt successfully. We support the consortia approach as a model of service delivery which offers states the ability to build on existing programs. We believe that additional funding for the Employment Service should also be a key part of an overall effort to improve service delivery to unemployed and dislocated workers. The Employment Service has been inadequately funded for years and its revitalization is essential to our long-term efforts in this area.

The UAW has concerns about the one-stop career center model proposed by the Reemployment Act. Among the most serious is the use of competition to select the career centers and the requirement that service delivery areas offer two career centers. We know of no training program in the United States or in other industrialized countries which uses competition in this fashion.

Competition, at least the type of competition provided for in the bill, moves us in the opposite direction, using risk as the primary motivation for innovation. In the private sector, the UAW has found that risk of wage reduction or job loss has not enhanced productivity and innovation. Instead, employer-employee cooperation and mutual respect have been superior motivators of employees. The Reemployment Act's competitive approach is not consistent with the best practices of the private or public sectors. We believe the competitive approach should be deleted from the bill.

In addition, using scarce resources to go through the motions of competitive bidding and the costs of operating duplicative centers in most substate areas is not wise. We recommend that the Subcommittee permit states to build on more traditional service delivery models, without the costs and duplication involved with the bidding process and the operation of two centers in most substate areas. We believe the consortia model offers a much more promising direction for consolidation of our dislocated worker service delivery models.

We strongly support making the Employment Service a presumptive element in all one-stop career center consortia. The Employment Service is a building block upon which other elements of our reemployment efforts should be added. We do not support the privatization of UI claims taking and want to preserve the integrity of the Unemployment Insurance system. We understand that the Administration is in agreement on claims taking. We urge the Subcommittee to adopt this position as well.

3. **Waivers**

The bill provides for broad waiver authority by the Secretary of Labor in order to facilitate the development of one-stop career centers. There has been a great deal of concern that federal law not stand in the way of innovation and consolidation, and the UAW finds much of that concern legitimate. However, we do not support the extensive waiver authority sought by the Secretary of Labor in the bill as introduced. Specifically, we oppose any waivers of the requirements of Title III of the Social Security Act requiring the use of merit systems for employment security personnel, the payment of benefits when due, and the provision of a fair hearing when UI benefit claims are denied. In other areas, the burden should be on the proponents of waivers to establish a bona fide need for waivers, rather than a presumption that waivers are necessarily a good policy. State labor federations should be provided with an advance copy of all waiver requests and an opportunity to comment.

4. **Labor Standards and Participant Rights**

In a number of important respects, the bill falls short of providing full protection for labor standards and participant rights.

In Section 161, the bill forbids funding of training or assessments in the case of relocated firms for only 120 days. This is totally inadequate. It contemplates the use of dislocated worker funds to cause dislocation. This ban on funding should be for at least two years, otherwise, funds under the Act will be used to compete with other states in business location contests. In addition, the bill should be amended to permit affected workers or their representatives to bring a private lawsuit to enjoin the improper use of funds. The UAW has not been satisfied with USDOL investigations in the area of relocations. A lawsuit with discovery and injunctive relief is a much superior means of preventing dislocated worker funds from creating dislocation in other states.

We believe that state workers compensation protection should be extended to all participants, and that this should not be left to the vagaries of state law.

With regard to short-time compensation plans, all existing state laws and previous federal models have provided for approval by any collective bargaining representative. S. 1964 does not include such a requirement. It must.

It should be clarified that any decision of a career center or provider which results in the reduction or denial of unemployment compensation benefits shall require a written determination, and that this determination shall be appealable under the applicable state unemployment compensation law, rather than the grievance procedure provided by Section 164. Since worker profiling will impact on the payment of regular unemployment compensation benefits and income support, we believe that good policy and the Constitution require a full and fair hearing before an impartial tribunal. We do not believe this is currently clear in the bill as introduced, and we strongly urge the Committee to clarify this matter.

In summary, we urge the Subcommittee to make substantial changes in the overall direction and the specific details of the bill regarding governance and service delivery. Labor deserves a role as full partner in the planning and provision of dislocated worker programs.

VII. Eligibility For Intensive Services and Income support

An unemployed worker must effectively meet three tests of eligibility for intensive reemployment services and income support under the proposed legislation and the worker profiling system currently being developed by USDOL. First, the dislocated worker must pass a 1-year tenure screen. Second, s/he must be eligible for unemployment insurance. Third, s/he must be identified by the worker profiling system and deemed "most likely to exhaust" benefits. There are substantial questions regarding the fairness and appropriateness of each of these three eligibility tests. We have strong concerns that the eligibility tests are budget-driven, rather than reasonably related to dislocated worker policy. To date, these concerns have not been addressed in the bill as proposed.

1. **Tenure Screen**

The Reemployment Act has a job tenure requirement of three years for dislocated worker eligibility for intensive reemployment services and income support. Dislocated workers, with certain narrow exceptions, must be permanently laid off from an employer with whom they had three years of continuous employment.

The tenure screen is a significant obstacle to eligibility for intensive reemployment services and income support. According to the 1993 Congressional Budget Office study of dislocated workers, one-half of dislocated workers were employed by their firms for less than 3 years at the time of their separation. This means that the three-year tenure screen will have a significant impact in terms of access to intensive reemployment services and income support. Certainly, the proposed tenure screen is a significant restriction over the test currently found in EDWAA.

The three-year screen is apparently adopted as a proxy for those dislocated workers who are most likely to exhaust UI benefits. USDOL's studies have identified both long and short job tenure as an indicator of likely exhaustion of UI benefits. The bill uses only long tenure as a criterion. Age is another reliable criterion for exhaustion of UI, since older dislocated workers face great difficulties finding work. Again, this is not a factor used in the bill.

We do not believe that likelihood of exhausting UI benefits should become the primary reason for providing quality training and income support to workers. The USDOL studies from which the tenure screen originated were examining so-called "reemployment bonus" programs. These programs promote "savings" in UI costs by paying claimants a cash bonus for finding work promptly. We question whether a criterion designed as a means of saving UI dollars should be adopted as the major means by which we select those eligible for training and income support. Since we are unlikely to provide income support and training to all deserving dislocated workers, it is critical that the criteria adopted to ration our scarce dislocated worker dollars be sensible.

We are not aware of any dislocated worker programs that have used three years of job tenure as a principal criterion of eligibility for training. For these reasons, we urge Congress to proceed with extreme caution before adopting the approach proposed in the Reemployment Act.

In summary, the UAW questions the use of the likelihood of exhausting UI as the basic means of identifying which dislocated workers should get intensive reemployment services and income support. This, in turn, leads us

to question the wisdom of the three-year tenure screen to select workers for eligibility for dislocated workers services.

2. **Unemployment Insurance Eligibility**

The Reemployment Act requires that a dislocated worker be eligible for unemployment insurance or potentially eligible for UI. This is based upon a widespread assumption that dislocated workers are presumptively eligible for unemployment insurance. Unfortunately, just about a third of unemployed workers nationally get UI benefits, and the figure is much lower in some states. In 1992, fewer than 25 percent of unemployed workers in seven states received benefits, and in no state did more than 50 percent of the unemployed get benefits.

Even among "job losers," the category of unemployed workers into which dislocated workers fall, low proportions of workers get UI benefits. The UAW Research Department, using published USDOL figures, has calculated that in 1992 the ratio of job losers to workers filing an insured UI claim nationally was only 61. This ratio gives the best possible measure of UI benefit eligibility of job losers. The figures for each state range from a low of 37 in New Hampshire to a high of 127 in Alaska.

In past years, the national ratio of job losers to insured claimants was above 100. In other words, not only were nearly all job losers getting UI, but so were other workers who quit for good cause or had other non-disqualifying separations. The adoption of a UI eligibility test for reemployment services and income support will undoubtedly prevent a significant number of dislocated workers from obtaining help from these programs.

3. **Worker Profiling**

The bill proposes to use worker profiling of unemployed workers to determine eligibility for intensive reemployment services and income support. Congress had already enacted claimant profiling as a means of financing the final extension of Emergency Unemployment Compensation benefits in the fall of 1993. Profiling is conceived as the gateway to dislocated worker services, including intensive reemployment services and income support. Again, the details of the implementation of worker profiling undercut the Reemployment Act's promise of comprehensive services to dislocated workers. Congress intended to have profiling identify claimants "likely to exhaust regular compensation and needing job search assistance to make a successful transition to new employment." Unfortunately, USDOL's implementation of worker profiling to date indicates that profiling will become a new hurdle to unemployed workers, rather than a tool to assist them. The UAW fears that the Reemployment Act's use of worker profiling for assessing eligibility for services under the Act will reinforce the punitive, rather than the helpful, elements of claimant profiling.

In part, this concern is based upon the fact that worker profiling was adopted as a cost savings feature, producing an estimated $750 million in reduced benefit payments over the five-year budget cycle. In addition, USDOL has taken a number of restrictive steps in implementing worker profiling and is leaving a number of key questions to the states, which has led to further concern over worker profiling on our part.

There have been a number of problematic steps taken by USDOL in implementing worker profiling to date. As currently conceived, worker profiling is essentially a federally mandated condition of eligibility for regular state UI benefits. Workers who fail or refuse to participate in profiling, or in activities to which they are directed as a result of profiling, will be rendered ineligible for regular state UI benefits, as well as for reemployment services and income support. Simply put, Congress has never interfered with the payment of regular state UI benefits to the extent proposed under the worker profiling system. We believe that the initial implementation of worker profiling by USDOL leads profiling in a direction in which it will be viewed as an obstacle to the payment of entitlements, rather than as an aid to workers.

Most significantly, the model of profiling currently under implementation by USDOL, and further reinforced by the eligibility provisions of the proposed Reemployment Act, is premised on the belief that workers must be statistically identified and then required to participate in reemployment activities. The UAW categorically rejects this view. In contrast, we believe that if we build a quality reemployment system, the workers will voluntarily participate in numbers well beyond those necessary to use expected levels of funding. Since we apparently have agreed we cannot afford to help all dislocated workers, we fail to understand why scarce resources should be expended on identifying the "most, most likely" to exhaust UI workers, from the "pretty likely to exhaust UI, but eager to participate in retraining" workers. For that reason, we strongly urge Congress to introduce willingness to participate in services as an element of profiling and selection for intensive reemployment services and income support.

We also urge Congress to provide additional guidance to USDOL in the implementation of worker profiling. Specifically, the Reemployment Act should spell out a standard for "justifiable cause" for failing or refusing to engage in profiling or activities to which the worker is directed as a result of profiling. Looking to UI voluntary leaving provisions and good cause requirements in other public benefit work programs, we believe that justifiable cause should include causes that would lead a reasonable, average person to fail or refuse to participate, including, but not limited to, temporary illness of the worker or a worker's dependent or household member, jury duty, inability to purchase or

unavailability of child care, death in the immediate household or family, other compelling family circumstances, or lack of available transportation.

VIII. Conclusion

Mr. Chairman, the UAW appreciates this opportunity to have our statement inserted into the hearing record on the proposed Reemployment Act of 1994 (S. 1964). We look forward to working with you and the other Members of the Subcommittee to strengthen this important initiative. Thank you.

STATEMENT OF THOMAS A. MAURO AND ANDREW J. GRAY ON BEHALF OF THE USAIR SHUTTLE FLEET SERVICE GROUP BEFORE THE SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES, UNITED STATES SENATE JULY 26, 1994

To the Honorable Howard M. Metzenbaum, Chair, and Honorable Members of the Subcommittee:

This Statement is submitted on behalf of the eighty eight men and women who were removed from their position as fleet service workers at the USAir Shuttle in 1993. We are attorneys for these men and women. In this Statement we shall refer to them collectively as the USAir Shuttle Fleet Service Group. We very much appreciate the opportunity of submitting this Statement on behalf of our Group and, in particular, to advise the Subcommittee of our experience to date with the Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §§ 2101, et seq. Generally, WARN requires employers who are curtailing or closing an operation to provide sixty days notice to those employees who will be laid off or whose hours will be substantially reduced. See Carpenters District Council of New Orleans & Vicinity v. Dillard Department Stores, Inc., 15 F.3d 1275, 1276 (5th Cir. 1994).

The USAir Shuttle Fleet Service Group were removed from their employment as fleet service personnel for the USAir Shuttle in the three most valuable and busiest city airports in the country: Washington National Airport, Washington, D.C., LaGuardia Airport, New York, New York, and Logan Airport, Boston, Massachusetts. Their operational unit, which consisted of approximately 310 employees in November 1993, was eliminated by USAir with no warning and no notice. The USAir Shuttle Fleet Service Group are ground crew workers, who handle luggage, service and clean aircraft between flights, de-ice aircraft when necessary, and guide aircraft to and from the passenger gates upon a flight's departure and arrival at the airport. Between April 10, 1992 and November 13, 1993, our Group constituted the great majority of the single operational unit within the USAir Shuttle known, variously, as "ramp workers," "fleet servicers," and "outside agents." Their work is now being performed under a single contract for all three airports by a single outside contractor.

Each USAir Shuttle Fleet Service Group member began his or her career with Eastern Airlines; several began their service as early as 1963. We attach as Exhibit 1 to this Statement a list of the members of The USAir Shuttle Fleet Service Group, the city and state in which each resides and the Eastern Airlines starting date for each. It will be apparent to the Subcommittee that the great majority of the Group had well over twenty years service

with The Shuttle and its predecessors -- several with almost thirty years.

After a lifetime of dedicated service to the creation and maintenance of the original Washington-New York-Boston Air Shuttle, the USAir Shuttle Fleet Service Group have reaped a bitter reward. The acts against them are especially reprehensible because their only wrongdoing was to begin their careers with Eastern Airlines and be instrumental in rebuilding both the Trump Shuttle and the USAir Shuttle from the remains of the Eastern Shuttle.

Briefly, this is what happened. On November 13, 1993, officers of the USAir Shuttle informed the roughly 100 men and women who then comprised the USAir Shuttle's "fleet service" operational unit that the owners and managers of the USAir Shuttle[1] had decided to remove them all from their work and replace them with younger and cheaper outside contract labor, effective immediately. These men and women, averaging 50 years of age in November 1993, had devoted their lives to the success of an airline "shuttle" between New York, Boston, and Washington, D.C. All of these men and women had worked for the USAir Shuttle on that Shuttle's first day of operations in April, 1992 and were vital to the successful transition of The Trump Shuttle to the USAir Shuttle. The USAir Shuttle has contracted with Hudson General Corporation to perform these same tasks so essential to the operation of an airline. Hudson General Corporation has hired workers who are younger, less-expensive, and less-experienced than their now-unemployed predecessors.

The removal of the USAir Shuttle Fleet Service Group from their jobs at the Shuttle is illegal for several reasons. Accordingly, on May 9, 1994 the Group brought suit, each in his or her individual capacity, in the United States District Court for the District of Columbia in an effort to remedy the damage inflicted by their unlawful terminations. This suit is about the self-serving actions and failures to act of the defendants that led to and allowed the owners and operators of the USAir Shuttle to terminate these men and women after a lifetime of service, in violation of their employment contracts, and of their federal and state labor law rights, in order to erase these older employees as liabilities upon their accounting ledgers. Our case, captioned JAMES MAY et al. v. SHUTTLE, INC. et al, Civil Action No. 94-1019 (SS), is now pending before the Honorable Stanley Sporkin, United States District Judge for the District of Columbia.

One of the technicalities now vigorously asserted by USAir and the other defendants in the case now pending before Judge Sporkin concerns the protection afforded the plaintiffs by the WARN Act. Although each of the plaintiffs is entitled, at the very least, to the opportunity for adjustment, retraining, and notification under WARN, defendants deny that the Act even applies to the Group. Although USAir removed approximately 100 persons from the single fleet service operating unit at The Shuttle in November 1993 and, we believe, over fifty (50) persons from their jobs in New York alone, it asserts that the protection of WARN does not apply because plaintiffs' employment levels at each of the three airports were each less than 50, the current threshold which triggers application of the Act. USAir argues, further, that the three locations at which the plaintiffs were employed cannot be considered together for purposes of the Act. Significantly, USAir has made its factual and legal assertions against our WARN Act claims at an extremely preliminary stage in

[1] The owners of the USAir Shuttle are a consortium of banks lead by Citicorp. The so-called "manager" of the Shuttle, which has almost all of the powers of an actual owner, is USAir, Inc.

the litigation and before we have had the opportunity to challenge them through discovery.[2]

We do not wish to embroil the Subcommittee in an analysis of the overreaching allegations as to the facts and law on which USAir bases its argument before the Court against our Group's valid WARN Act claims. We are confident that these requests for dismissal of our WARN Act claims will be denied by the Court. We wish merely to note that the Act provides large employers like USAir with an arguable loophole through which to avoid the requirements of the Act. Given the delay and cost of litigating such issues against well-financed adversaries, we are not surprised to see that the Act has not achieved the purposes for which it was passed.

We urge the Subcommittee, therefore, to consider whether amending the Act to remove the impediments to its valuable and very cogent goals is now necessary. Among the first lessons to be learned from our clients' predicament is that the threshold levels should be lowered so as to discourage the making of questionable factual or legal attacks on private WARN Act claims. Moreover, it seems clear that the threshold of fifty can be easily avoided even by very large companies through a narrow interpretation of the law and its regulations.

Second, while we as counsel have been privileged to represent The USAir Shuttle Fleet Service Group in this matter, organizing the Group after they were dispersed without warning by the defendants in November 1993 was a long, considerably difficult and expensive task. Other employee groups may not have the same opportunity to organize in order to assert their legitimate WARN Act claims through private counsel.

A still further adverse result from an employer's failure or refusal to comply with WARN is the ability of an employer to carry our what may be an otherwise illegal termination, as we believe is the case concerning the USAIr Shuttle Fleet Service workers, without prior interference. Such failure or refusal to follow WARN thus provides employers who are otherwise violating their employees' legal rights under such statutes as the Age Act and ERISA with a considerable tactical advantage making it, as a practical matter, impossible to reverse or block such violations of law. In our case, had our clients received the notice under WARN to which they were entitled, they would have been able to stop the layoff before it occurred by an appropriate action in Court rather than try to alter the status quo after it occurred.

In view of the above, therefore, we urge the Subcommittee to consider means for enforcing the Act through the Department of Labor or other Government agency and to add other provisions to the Act which will provide real incentives for employers to abide by the Act. For example, a provision could be added to the Act giving employees an automatic right to injunctive relief if it appears that the anticipated plant closing or operational unit shut-down violates other statutory rights of the affected employees.

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[2] We cannot avoid noting that the defendants' numbers are misleading and incorrect, however. For example, they have counted for the purpose of the Act only those plaintiffs who have filed suit even though the actual numbers of fleet servicers removed form their jobs at New York's LaGuardia Airport alone exceeded fifty on November 13, 1993. Yet there was no WARN Act notification in New York. The defendants have been able to make their very questionable factual assertions, however, because of the existance of the relatively high thresholds in the Act.

CONCLUSION

In conclusion, let us say it is quite appropriate at this time to supplement the valuable purposes of Congress in enacting WARN. We thank the Subcommittee for the opportunity to submit this Statement and hope that we have assisted the Subcommittee in its work on this matter. We remain available to discuss this important issue with you further, as does each of the members of the USAir Shuttle Fleet Service Group.

City of Lynn, Massachusetts

OFFICE OF THE MAYOR

Patrick J. McManus
Mayor

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September 2, 1994

Senator Howard M. Metzenbaum
140 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

This letter is in response to your request to answer the following questions pertaining to the Re-employment Act and WARN:

- How important is advance notice in helping dislocated workers make successful transitions to new jobs and new careers?

Advance notice is crucial to the adjustment of workers displaced because of plant closings or reductions in force. They need immediate support to overcome the initial trauma of facing an uncertain future. The rendering of on or near site re-employment services while on the job enables the displaced worker to have a transitional structure to the future. The provision of those services by a rapid response unit enables the Worker Assistance Centers (WACs) to expeditiously identify, enroll, and provide continued re-employment assistance to the dislocated worker. This seamless high support structure increases the likelihood of the displaced worker looking to and preparing for a new career or new job, rather than dwelling on the job loss.

- If the Lynn area companies; G.E., Babco-Textron, and Walbar had not complied with the WARN Act's 60 day notice requirement, what effect would this have had on the displaced workers and community?

If there were no advanced warning or Lack of Work, the entire process of transition would start after the actual layoff occurred. This process takes several weeks and uses up part of the UI benefits available to laid off workers. Without early face and WAC assistance prior to layoff, the worker is left to their own resources to find whatever is available in the community--valuable UI benefits are used up and sometimes the

time limit (15 weeks) for training opportunities runs out. If at the end of the UI benefits period, the worker hasn't found a job he/she may end up using any financial savings they have, end up on welfare, lose their homes to banks and mortgage companies and become a financial responsibility to the community. The worker may lose his/her desire to work and sense of self worth.

Without advance notice, the Worker Assistance Centers are burdened with the responsibility of finding laid off workers through DET reports--wasting precious time for the worker--pressure is put on Center staff to rush through necessary paperwork to meet UI deadlines, proper counseling and career development is lost--there is no time to assess and evaluate workers potential when they need a job because UI benefits will run out next week. Much time is wasted by Center staff helping workers fight for more UI benefits (Sec. 30 extension for training) because the workers didn't know of the WAC's or of the time limit of UI.

3. Is there more a burden on government assistance programs when workers lose their jobs without notice?

The lack of advance notice to workers affected by plant shutdowns or lay offs places an unjust burden on the worker, his family and the community. State and local government and community agencies must dedicate more man hours, increase direct and indirect expenditures and provide those services in a less cost effective and consumer sensitive manner because of a crisis oriented reaction.

I trust that these responses adequately address the issues that you raise. If I can be of further assistance, please contact me at your convenience.

Sincerely,

HONORABLE PATRICK J. MCMANUS
Mayor, City of Lynn

Senator METZENBAUM. This concludes the hearing.
[Whereupon, at 10:08 a.m., the subcommittee was adjourned.]

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