

COSTS AND BENEFITS OF ADVANCE NOTICE

advance notice of major employee displacement to the workers, the union, and the appropriate government and community agencies is a procedural prerequisite for constructive action.³¹

—George P. Shultz and Arnold R. Weber, 1966

Twenty years later, the Shultz and Weber prescription is still widely—though not universally—accepted. Early warning of plant closings and major layoffs gives companies, labor groups, and government agencies time to organize assistance for displaced workers, and it gives the workers time to think about their options and adjust their plans. Advance notice alone, however, is not enough; it needs to be tied to prompt effective action to help displaced workers find or train for adequate jobs. It is a “prerequisite for constructive action,” not the constructive action itself.

Despite broad agreement that advance notice is desirable, people strongly disagree on whether governments ought to require it. With very few exceptions, American businesses oppose any government requirements for advance notice, including ones that allow pay in lieu of notice or grant exceptions for unforeseeable business circumstances. The general objection to a legal requirement is that every case of a plant closing or major layoff is different, and a mandated minimum notice period would not take this diversity into account. Also, some argue that emphasis on advance notice is misplaced, because a company’s commitment to its displaced workers, and effective programs to help them, are more important. Labor union representatives argue, on the other hand, that while advance notice alone is not sufficient, it is necessary, and should be required. Many labor spokesmen favor broader obligations on employers, including consultation with workers on whether the layoffs might be avoided and, if the layoffs do take place, extension of benefits such as health insurance.

³¹George Shultz and Arnold R. Weber, *Strategies for the Displaced Worker* (Westport, CT: Greenwood Press, 1966), p. 190.

The discussion that follows considers the benefits of advance notice apart from the issue of *mandated* notice. The benefits to affected workers would be similar whether notice were provided as a result of legal requirements, government encouragement or incentives, collective bargaining with unions, or voluntary action by employers; and there is widespread agreement on the nature of the benefits. No inference should be drawn that the benefits described here depend on mandated notice, or that there is agreement on mandated notice.

It is more difficult conceptually to consider costs of advance notice apart from the issue of a legal requirement, since most of the costs fall on employers, and if employers voluntarily provide notice it may be presumed that they have found that the benefits to them outweigh their costs. Some costs can be examined in the context both of voluntary employer action and of a legal mandate, but much of the section on costs assumes that notice would be legally required. There is less agreement on the nature of the costs of advance notice than of the benefits; for the description of costs OTA has relied mostly on the arguments of business spokesmen and, insofar as information was available, on business experience. Also, the discussion focuses mainly on the costs of advance notice to business and the benefits to individual workers, even though other parties are sometimes affected too. For example, customers and creditors of a firm which is planning to close may benefit from advance warning of the closure while the firm itself might suffer.

OTA’S analysis of costs and benefits of advance notice is based as much as possible on experience, not hypothetical cases. It is drawn from the GAO survey of plant closings and major layoffs in establishments with more than 100 employees; the OTA-GAO workshop on plant closings and further discussion with participants; a report to OTA from, and discussions with, consultants who have helped a number of large companies plan and set up displaced

worker services; discussions with officials of Canada's Industrial Adjustment Service (IAS), which has more than 20 years experience in helping set up labor-management adjustment committees to serve workers displaced in plant closings and mass layoffs and OTA case studies of firms in the U.S. and Canadian forest products industries and of high-tech firms in California's Silicon Valley. Much of the material is anecdotal, and does not represent every kind of company in every kind of business situation. In particular, it proved difficult to collect first-hand information from small companies with experience in plant closings and large layoffs; one reason is that small companies which have had these experiences often go out of business. There is considerable variety in the cases studied, however; interviews were conducted in firms of various sizes and industries, in firms that do provide advance notice and firms that do not, and in firms that provide various kinds and levels of services to displaced workers.

Benefits, and Relation to Worker Adjustment Programs

The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible—although it does not guarantee it. Some of the advantages of early warning are: 1) it is easier to enroll workers in adjustment programs before they are laid off; 2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; 3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and 4) with enough lead time, it is sometimes possible to avoid layoffs altogether. Knowing in advance about a coming layoff is obviously of some value to individual workers too, even if they do not get help from an organized project. They have the opportunity to adjust financial plans and get a head

³²See U.S. Congress, Office of Technology Assessment, *op.cit.*, pp. 220-222 for a brief description of the Canadian IAS—how it works, what it costs, and what it achieves.

start on job hunting. In addition, many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company values of fair and ethical treatment of its employees.

Worker Participation

Displaced workers are more likely to take part in adjustment projects that begin before a plant closing or major layoff.³³ Not only is it far simpler to find and communicate with workers before they are out of work and out of touch; the period between the announcement and closing is also critical to gaining the workers' trust—to assuring that someone will be there to help after they are laid off, and that the services will be worthwhile. The most effective displaced worker projects offer a broad range of services, including job search instruction, job development and placement assistance, testing and assessment as needed, vocational and educational counseling, personal counseling (especially financial and consumer credit counseling), vocational skills training, on-the-job training, and remedial education.³⁴ In the period between announcement and layoff, workers can readily find out what the project will offer through orientation sessions, bulletin board announcements, union newsletters, and personal counseling.

³³The Downriver Community Conference, for example, found that if services are available before the plant closes, 50 percent of the workers take advantage of them; up to a year after closing, 35 percent sign up, and after 2 years, 17 percent participate. See Kathleen Alessandro and W. Robert Schneider, "Case Study—Retraining Workers Displaced From the Automotive Industry Into Robotic Technicians," paper presented to the Society of Manufacturing Engineers (Dearborn, MI: Society of Manufacturing Engineers, 1984). The Philadelphia Area Labor-Management Committee reports that when job search workshops are given before layoffs, 70 to 80 percent of the workers participate; afterwards, the participation rate drops off to less than 20 percent. See James Martin and Anthony Wigglesworth, "Labor-Management Cooperation at Kelsey-Hayes Leads to Help for Laid-Off Workers," a Labor-Management Cooperation Brief, U.S. Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs, May 1985.

³⁴For a description and analysis of displaced worker projects, see U.S. Congress, Office of Technology Assessment, *op.cit.*, ch. 6.

While displaced worker projects have been started more than a year after the plant closing, and have given valuable services to workers, participation in these circumstances is low. For example, a well-planned, high-quality project was created under a union-management agreement in Midland, Pennsylvania, nearly a year after 4,300 workers were displaced in a steel plant closing. With an energetic outreach campaign, which included knocking on doors to acquaint people with the program and making follow-up telephone calls to those who did not enroll, the project eventually served about 1,250 displaced workers over a period of nearly 3 years. Considering the late start, the Midland project's participation rate of 29 percent is unusually high; it reflects the extra efforts put into outreach and the general excellence of the project's services. By contrast, however, over 250 workers showed up at an orientation session held in a Vincennes, Indiana, battery plant after notice was given that the plant would be closed. At the time, 192 people were still working in the plant, and 146 former workers were also invited to take part. Of the 338 eligible displaced workers, 186 (55 percent) enrolled in the project; three-quarters were placed within a year, despite a local unemployment rate of 11.6 percent.

Officials of Canada's IAS also report difficulties with enrollment after the plant closes. "You have to get a copy of the payroll just to find the people," said one. "It's so much work, so hard to get people to come—they have to come at their own expense, maybe hire a baby sitter, and they're skeptical that they'll get anything out of the program." In a small community where everyone knows everyone else, it may be worth the effort to try to reach and enroll displaced workers, but in a big city the chances of success are usually slim.

The question may be asked whether people who do not enroll actually need services; do they simply find jobs on their own as time passes? Certainly, many do. But the evidence is that, on average, displaced workers who take part in adjustment projects get jobs sooner, stay employed more steadily, and earn more than

they would without such help.³⁵ People with long experience in providing services to displaced blue-collar workers estimate that about one-third of those laid off could probably fare quite well on their own.³⁶ The other two-thirds are likely to do a little worse to much worse without assistance than with it: some remain out of work for long periods; some take part-time or poorly paid work, or work intermittently; some depend on spouses; and some become deeply discouraged and abandon the labor force.

Labor-Management Involvement

Some of the best projects serving displaced workers are those based in plants that are closing or undergoing major layoffs, and are run by people who work at the plant on both the labor and management sides. Plant-based labor-management committees have a personal stake in the outcome and know the workers involved. They also know the local business community, and are often able to turn up job openings among their acquaintances. Many employers can contribute space in the plant for a reemployment and retraining center, and they can supply staff, from both the company and labor sides, to operate the project before and after the layoffs. A strong union role contributes to worker acceptance and trust. Moreover, company and union people, when qualified, are especially effective as staff. Where unions do not exist, employee representatives can also serve effectively. Canada's IAS, for example, has quite often helped to establish joint worker-management committees in non-union plants. Most of the plant-centered projects that have been created in this country, however, did result from company-union cooperation.

An especially valuable service employers can offer before a major layoff is to invite prospective employers into the plant, to let them get

³⁵U.S. Congress, Office of Technology Assessment, *Op. cit.* t pp. 231-233, 236-238.

³⁶Kevin Balfe and Ruth Fedrau, "Summary Report: Review and Analysis of Company/Union Sponsored Comprehensive Displaced Worker Assistance Centers Receiving JTPA Title III Support," report to the Office of Technology Assessment, April 1986.

acquainted with the workers while the plant is still operating. Managers in many kinds of firms have used this job-finding method successfully. A senior analyst in one business organization says:

Local employers don't always realize that some of the experience gained in large industrial plants (e.g., maintenance, shipping, etc.) is readily adaptable to their own needs. There may also be unfounded prejudice against the work force in a plant that is closing. ('They were overpaid and underworked. ') Visits to a functioning plant have, in many instances, dispelled these doubts, sT

The best time to enlist management and workers as active participants in displaced worker projects is before the plant closes or layoffs begin. Labor-management teams can be created afterwards—even as much as a year afterward, as happened in the case of the Midland, Pennsylvania, steel mill mentioned above. This team was formed, however, in rather special circumstances: a new owner, LTV Steel Co., bought the plant and restarted operations with a small work force of 300. Under its contract with the United Steelworkers of America, LTV agreed to mount a joint reemployment-retraining effort to serve the workers who had already been laid off. More often, however, the chance to form a labor-management adjustment committee is lost once the plant is closed. According to a report of The Conference Board:

Notice is . . . critical because a functioning plant is, perhaps, the program's single most important resource.³⁸

Preparation Time

The peak demand for help in finding new jobs or entering training usually comes in the days immediately following a plant closing. A second peak often comes about half a year later, when unemployment insurance is near exhaus-

tion (this pattern holds in Canada as well as in the United States). Both because many workers are eager to start job hunting or retraining as soon as possible after layoff, and because a good displaced worker project can encourage others to do so, service providers agree that the project should be ready the first workday after the plant closing, or earlier if possible. For workers who are interested in training courses to improve their skills, an early start is especially important, since unemployment insurance—the main source of income support for most displaced workers in training—is generally limited to 26 weeks.³⁹

How much time does it take to plan and set up a good project?⁴⁰ The ideal combination is several months' advance notice—clear, certain notice, with no wavering or ambiguity—and preparedness on the part of company, union (if there is one), and government agencies. With strong management and labor commitment, plus experienced public or private help, it is possible to set up a worthwhile project in less time, sometimes as little as a few weeks. With the shorter preparation time, however, services such as training courses and job development will not be ready when the project opens. Also, several extra weeks are useful to help workers come to terms with the job loss. There is some limited evidence that very long advance notice of more than a year may be less than ideal for worker adjustment projects. However, it may be that in the few cases where long notice appeared to inhibit effective adjustment services the real culprit was not length of notice but uncertainty—either about the layoff itself, or about which people would ultimately lose their jobs.

OTA'S information about worthwhile projects set up on very short notice in U.S. plant closings and layoffs comes from a few cases involving large companies (in the Fortune 500

³⁷Ronald E. Berenbeim, Senior Research Associate, Corporate Relations Research, The Conference Board, letter to Julie F. Gorte, Project Director, Office of Technology Assessment, July 10, 1986.

³⁸Ronald E. Berenbeim, *Company Programs To Ease the Impact of Shutdowns* (New York: The Conference Board, 1986), p. 7.

³⁹For discussions of income support for displaced workers during training, see U.S. Congress, Office of Technology Assessment, *op. cit.*, pp. 63-64, 256-258.

⁴⁰The material in this section on the time and other factors required to set up an effective plant-based displaced worker project is drawn mostly from Balfe and Fedrau, *op. cit.*

class) with a strong commitment to serving their displaced workers and the resources to provide startup funds for the project, the partnership of unions or worker representatives, expert private consultants, and an unusual degree of cooperation from the public agencies that controlled JTPA Title III funds.⁴¹ Preparedness for fast action on the company's part has included these elements:

- plans at the division or corporate level to provide help to displaced workers, including commitment of company resources—especially space and staff;
- assignment of decisionmaking authority to someone at the company or division level, and designation of someone in the plant to take charge of the company's part of the program;
- willingness to work with the union (if any) in planning and service delivery;
- announcement of a worker assistance program at the same time as the plant closing announcement;
- specific plans to do the necessary homework, such as collecting information about worker needs and characteristics and estimating costs of the program; and
- plans to find out what public funds and programs are available, and readiness to negotiate with State and local agencies to get them. In all the cases of projects starting up on very short notice that have come to OTA'S attention, the company has been willing and able to pay the costs of operating the worker assistance center for a time, while negotiating with public agencies for additional funds.

For unions, an important element in preparedness is experience with worker assistance projects and a conviction that the services the projects offer are helpful. Also, unions as well as companies can contribute knowledge of and access to JTPA Title III programs.

An essential element for setting up a good project quickly is expert technical assistance. This may be obtained from private consultants,

as is often the case in the United States, or from a government agency. The ability of JTPA Title III programs to respond promptly to plant closings with technical assistance, money, or both is discussed in another section below.

In Canada, about three-quarters of the work force is covered by Provincial and federal laws that require advance notice; the notice required varies from 8 to 16 weeks, depending on the numbers of displaced workers involved. In addition, many employers voluntarily give this much or more notice in Provinces that do not legally require it; or unions, local officials, or the news media may provide early warning. According to several Canadian IAS officials, it takes all of the 8 to 16 weeks to prepare effectively for the day after the closing or layoff, when demand for services is at a peak. The preparation involves counseling and assessment of workers, initial negotiation with government agencies for training and other services, and, most importantly, finding job openings in the hidden job market (i.e., openings that are never publicly announced) in the local and surrounding communities.

Having all the work of preparation done at the time of layoff is the ideal situation. However, some IAS officials report that they have given useful service even with the handicap of very little notice (which may occur in Provinces that do not require advance notice and in cases of business failure in Provinces that do). With its years of experience and well-developed ability to respond rapidly, the IAS can move into a plant in a matter of hours and, at the least, help to establish a labor-management adjustment committee with the promise of effective services to come. As one IAS official put it:

Notice is great, and the more we have the better we can prepare. But notice itself is not enough. The process that goes with it is important.

The process that goes with it is not always enough either. Also important, indeed critical, is the state of the local economy. If unemployment is high and the local labor market narrow, it is a forbidding task to turn up jobs, even with the advantages of advance notice, early

⁴¹Balfe and Fedrau, *op. cit.*

planning, and good operation of a displaced worker project. This reality is reflected in comments from company managers with experience in plant closings and permanent layoffs. In most companies that have tried giving advance notice, human resource directors are convinced of its value to displaced workers. A few, while favoring it as a decent way to treat employees, rate it as not very significant in helping the workers get a new job.⁴² The few who expressed this opinion had had experience with closing plants that were the sole source of economic life in the community—"the only game in town." Where there are no other jobs except those connected with the plant that is closing, advance notice may be of less value.

Avoiding Plant Closings and Layoffs

Some of the support for requirement of advance notice comes from the idea that, given enough warning, management decisions to close plants or lay off workers may perhaps be changed, or a new owner—possibly the employees themselves—be found. Another possibility is that, with enough time and advance planning, companies can avoid mass dismissals through a combination of tactics such as incentives for early retirement, severance pay that bridges to retirement, transfers to other company plants, and normal attrition.

In some cases, early warning that a firm is in trouble, combined with assistance from government agencies and communities, have helped to turn the company around and avoid closure. In others, the changes needed for survival are so great that closing down is the only reasonable option. Moreover, when large multibranch firms decide to close down a plant or product line for strategic reasons, these decisions are not often amenable to change. Several critical elements are important to the success of efforts to keep a threatened plant in business. Among the key questions are these: 1) Are there realistic prospects for profitability, for either the present owners or others? 2) Are both manage-

⁴²Two officials of forest products companies interviewed by OTA staff expressed this opinion. See the discussion in the section entitled "U.S.-Based Companies in Canada: The Forest Products Industry."

ment and labor willing to make sacrifices to create a more productive, efficient, profitable plant? 3) Is there enough time?Aa

The advance notice required under various laws and proposals in the United States and Canada is generally about 2 to 4 months—long enough to prepare displaced worker services but usually too short for rescue of a troubled firm. Although there are instances where even quite brief advance notice of a closing has triggered labor-management efforts or community assistance that helped the plant to survive, this seems to be an infrequent occurrence.⁴⁴ Possibly, attempts to avoid a plant closing might have the untoward effect of undercutting efforts to find new jobs for displaced workers, by adding an element of uncertainty. Workers who have put in 15 or 20 years at a plant, and often have gone through several temporary layoffs, usually find it hard to believe that a plant is really closing. To first give notice and then search for alternatives to a closing or layoff might fortify the doubts. For this reason, many managers think it is not a good idea to give notice until the company has made a firm decision to close the plant.

There may, however, be some less direct and more positive connections between advance notice and saving jobs. An example is in Massachusetts, where the Governor's Mature Industries Commission of 1984 developed a "social compact" that encourages companies to give displaced workers advance notice (90 days if possible) or pay in lieu of notice, extension of health benefits, and reemployment assistance.

⁴³For a brief discussion of conditions in which government or community assistance may help to save troubled plants, see U.S. Congress, Office of Technology Assessment, *op. cit.*, pp. 209-211.

⁴⁴The little quantitative evidence on the subject indicates that advance notice does not often directly prevent plant closures. See Anne Talcott Lawrence, "Organizations in Crisis: Labor Union Responses to Plant Closures in California Manufacturing 1979-83," unpublished doctoral dissertation, Department of Sociology, University of California, Berkeley, November 1985, pp. 167-169, 172-173. However, there are individual cases in which closing decisions have been altered after advance notice was given. An example was the reversal of a 1983 decision by the Kelsey-Hayes jet engine company to move out of Philadelphia. City officials helped the company find a new site, where the plant reopened and retained about half its original work force. See Martin and Wigglesworth, *op. cit.*

Companies that get financial assistance from certain quasi-public State agencies must, by law, abide by the social compact insofar as possible.⁴⁵ The State encourages others to do so. As part of the same program, Massachusetts also offers technical assistance and “high-risk financing” for firms that are in trouble but considered viable. By May 1986 the State’s Industrial Services Program had worked with 88 companies, with 73 still surviving. According to State officials, the connection between advance notice and the program of assistance to troubled firms is “nebulous” but does exist. Although plant closing decisions, once announced, are rarely reversed, the law has on the whole drawn attention to the possibilities of avoiding closings and layoffs. Also, the State sometimes helps to arrange a sale to a new owner after a plant has closed, and it provides funds to do evaluations of worker buyouts.

In firms that are not going out of business but are reducing their work force, advance planning can help to limit or avoid layoffs. Again, the connection with advance notice is not very clear. For example, a pulp and paper plant operated by a Canadian subsidiary of a U.S. firm (described in a later section) has eliminated about 200 of 870 positions in less than 2 years, in the course of modernizing the plant. So far, no one has been laid off involuntarily. The company has handled the job reduction by early retirement, large severance payments to senior workers who leave voluntarily, and the use of surplus workers for vacation replacements. Company managers are counting on attrition to open permanent jobs for these floating workers. The impetus for the company’s planning to avoid layoffs was an economic development grant it got from the federal and Provincial governments, on the condition that the impact on workers of the modernization be kept to a minimum. At one point, when it was not clear that layoffs could be averted, the company gave advance notice to 140 workers; this was useful in helping workers to face the reality of work

⁴⁵The law does not strictly require adherence to a single set of standards for advance notice or benefits to workers; its requirements are applied by State officials with regard to the circumstances of individual firms. See the later discussion in app. B.

force reduction, according to company officials. But advance notice was only one piece of the company’s program to avoid layoffs as much as possible.

As discussed in a later section, some countries require consultation with worker representatives before group layoffs can take place. The purpose is to require consideration of alternatives to the planned layoffs or plant closings that will avoid, or at least mitigate, job losses. Critics of mandatory consultation argue, however, that it interferes with managers’ freedom to make decisions and thus hinders flexibility and economic growth. Adding substantial costs to closing down a business makes it harder to start one up, they say.⁴⁶ Whenever a proposal to require consultation before mass layoffs has been made in the United States, it has generated heated controversy, with business people mostly in strong opposition and many labor spokesmen in favor. In voting on H.R. 1616 in November 1985, the House of Representatives rejected such a requirement.

At the workshop, one union official said:

At least we can talk. It’s a myth that companies should have absolutely no infringement on their unilateral decisions to close plants, decisions that affect thousands of people. What’s wrong with talking about it? After you talk about it then go ahead and make the decision.

Business spokesmen at the workshop, like employers generally, thought that any requirement for consultation before layoffs would be harmful to economic health. Some said, however, that they did not necessarily oppose voluntary consultation. When a closing or mass layoff is in prospect, voluntary consultation with workers may sometimes lead to bargaining for concessions on wages or work rules to help keep the plant going.

Although advance notice may only seldom prevent plant closures, it does seem to improve the chances of a union’s negotiating ad hoc severance benefits packages for workers caught

⁴⁶For an exposition of this argument see, for example, Lawrence B. Fine and Steven R. Wall, “Plant Closing Laws: More Harmful Than Helpful?” *Legal Times*, Oct. 28, 1985.

in the closing,⁴⁷ Under U.S. labor law, companies have no legal obligation to bargain with unions over the decision to close a plant, but employers are required to bargain in good faith on the effects of the closure on employees. Ad hoc plant closure agreements, negotiated after announcement of a closure, range from minimal requirements, such as for payouts of unused vacation time, to complex pacts covering severance payments, extended health benefits, rights of transfer to other plants, early retirement, and other benefits.

A study of labor union responses to plant closings in California in 1979 to 1983 found that “the single most important predictor of the union’s success in winning ad hoc severance benefits (whether or not it already has provisions in the contract) is the amount of advance notice it receives of the closure.”⁴⁸ The greater the advance notice, the greater the chance of getting an agreement, with the chances rising from 8 or 9 percent when 0 to 3 weeks’ notice is given, to 59 percent with 4 to 12 weeks’ notice, and to 80 percent with more than 12 weeks’ notice.

Benefits to Companies

Many companies have voluntarily adopted a policy of giving advance notice of permanent layoffs or plant closings to all employees whenever possible. Often, the foremost consideration is ethical; managers say: “We owe these people something,” or “we believe in fair treatment for our employees.” They also mention the advantages of earning loyalty and better regard from remaining workers, as a result of fair treatment for those they have to let go, and enhanced standing in the community. In addition, companies may benefit from lower unemployment insurance taxes in the future if they can help to shorten the period of unemployment for their laid-off workers. However, State systems vary. In many, the experience rating of employers is inadequate, so that UI tax rates do not accurately reflect the frequency or length of unemployment that a company’s employees experience.

⁴⁷Lawrence, *Op. cit.*, pp. 170-177.

⁴⁸*Ibid.*, p. 171.

Benefits to Individual Workers

Aside from what organized programs can do for displaced workers, people benefit from knowing if their jobs are about to vanish. They can avoid some financially disastrous decisions –buying a new car, for example, or deciding that the family can do without the extra money from a spouse’s job. Some workers will use the time to think about new jobs, or perhaps a change in occupation, and to come to terms with the loss of the old job. Despite the common observation that many workers do not believe that the plant will close until the day it happens (sometimes, not until a plant is torn down), some do begin to adapt when they receive notice, taking such practical steps as preparing resumes and making contacts with potential employers. Hardly anyone, on principle, disagrees with Stan Winvick, Vice President of Human Resources at the California semiconductor firm, Advanced Micro Devices, Inc.:

When a company is considering a step as drastic as pulling someone’s job out from under them, that person has a right to know what is going to happen to them and try to plan for it.⁴⁹

COSTS

Opponents of legal requirements for advance notice usually agree that notice is humane, decent, and helpful; many business people who oppose legal requirements report that their own firms give as much notice as possible. They also emphasize, however, that a good program of adjustment services far outweighs in importance the benefits of advance notice per se. Against mandated advance notice they argue the need for flexibility; they do not believe that they will get it from government, even if the law has escape clauses. Legal requirements, some say, inevitably imply red tape, audits, and government interference. Most employers prefer voluntary cooperation with public agencies on worker adjustment programs; they say that you cannot legislate corporate responsibility. In their view, the benefits of mandated notice are not worth the costs. A few think that volun-

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tary advance notice, as a company policy, is also too costly. The costs most often mentioned are possible losses of a firm's credit, customers, and key employees. The risks of these losses are seen as greater for smaller businesses.

As noted above, OTA relied as much as possible on experience and empirical data in analyzing costs and benefits of advance notice. Since notice is not required in most of the United States, companies that voluntarily give notice or include it in collective bargaining contracts have presumably found that the benefits, from their perspective, outweigh the costs. Those that do not give notice may have concluded that the costs are greater than the benefits—but empirical evidence of the costs is lacking in such cases, because notice was not given. Where possible, this section relies on the experience of firms that gave advance notice; however most of the section relies on the judgment and opinion of business representatives.⁵⁰

Every Case Is Different

It is argued that advance notice does not make sense in some cases. For example, a large multibranch company in many lines of business decides to sell off one of its lines—telephone handsets, say. Included in the sale is the company's order book (which lists its customers) as well as all its plants that manufacture handsets. Up to the last minute, the company tries to sell all of its plants, but only three of four are finally sold. It is useless to continue production in the fourth plant, because the product name and customer list have been sold along with the other three plants. In the real case on which this example is based, the company customarily gives advance notice of closings or layoffs. In this instance, it did not give notice. Workers who lost their jobs in the plant that remained unsold and had to be closed received

⁵⁰Evidence from Canada would be useful, since about three-quarters of the Canadian work force is covered by advance notice requirements. OTA is not aware of any systematic survey of Canadian firms to discover costs that maybe associated with advance notice in that country. Statements from the Canadian and Ontario Chambers of Commerce, information from Canadian Government ministries, a literature search, and OTA's case study of U.S.-based forest products companies in Canada all suggest that advance notice is not a controversial issue in Canada.

up to 4 weeks' extra pay in lieu of advance notice, in addition to regular severance pay. Pay in lieu of notice is an option that some legislative proposals (e.g., H.R. 1616) mandating notice have included. But, as noted above, companies prefer to avoid the regulation and audits that they see as tied to legal requirements. Also, some want to be free to negotiate with unions on other alternatives to advance notice—for example, extended health benefits.

Small Business

One aspect of the need for flexibility is that small businesses face unique problems, which need to be better understood. It is hard enough for the owner of a small business to keep up with his cash flow problems, said one businessman, much less with advance notice of layoffs. "You talk to a small businessman about 2 or 3 months' notice; he's worried about paying on his loan next week and whether his customers will pay on time." Andrew Johnson of the Electronics Association of California, which represents more than 600 smaller electronics firms in the State, said: "I can hear the CEOs now saying, 'I'm hemorrhaging here and you're telling me I can't lay people off for 90 days.'"⁵¹ Though supporting advance notice as a matter of national policy, Johnson thought that companies with fewer than 200 employees probably would not and could not comply. Large companies have staff and financial reserves; small ones may not even have a personnel manager.

Before Massachusetts passed its mature industries legislation, a Governor's commission studied the problem of plant closings for a year. One official who took part reported: "The small business issue came up a lot. The smaller companies were clearly terrified. They did not feel they had the lead time to comply with advance notice rules or guidelines." For this reason, the Massachusetts social compact applies only to companies with 50 or more workers. State laws in Wisconsin and Maine apply only to firms with 100 or more employees. Although establishments with 100 or more employees are only

⁵¹Sheridan, op. cit.

2 percent of U.S. business establishments, they account for 44 percent of the private work force, aside from the self-employed.⁵²

Losing Customers

This is not a problem for large companies that will continue to manufacture the same product in another plant, or for companies that are selling their customer lists with the sale of a plant. It is also not a problem when the product is a standard commodity such as plywood, easily replaceable from another source; but it could present a real difficulty with a specialty product or one in which the brand name is important, according to a forest products company official. Although it seems plausible that a firm might indeed lose customers when it gives notice of closing, no actual case of this kind came to OTA'S attention. This is perhaps not surprising since most of OTA'S first-hand informants were larger companies, some with multiple branches, and small companies may be most vulnerable to loss of customers.

Termination of a product may be at least roughly analogous to going out of business, so that IBM's experience with its small personal computer, the PC Jr, may shed some light on the question of customer loss. The PC Jr was never very successful, and in March 1985, 14 months after the first shipments, the company announced that the PC Jr would be discontinued. Sales declined significantly throughout the following year—despite escalating discounts and dealer rebates, and despite the fact that continued parts and service were guaranteed by one of the world's most stable companies. A smaller and less stable company would almost certainly have seen sales plummet even faster. According to one industry analyst, the "premature" announcement by the Osborne computer company that it had a new product ready to market was an important factor in Osborne's collapse. After the announcement, the older model computer could not be sold.

Losing Access to Credit

Another argument is that a company may find that loans from financial institutions dry up or that suppliers tighten their line of credit if there is evidence of financial trouble, such as notice of layoffs. For example, one company spokesman said:

We deal with a lot of people that have gone under. We have credit limits. If the companies we supply are in trouble or announce a shut-down, we might limit credit to such a degree that they could go under.

An official of the National Governors' Association has found in conversations with businessmen across the country that possible loss of credit is their principal concern with advance notice legislation.⁵³ Loss of credit may also be a special problem for smaller companies.

Losing Key Employees

Companies do report this problem first hand. One company said it had closed a forest products facility in a Southern State about 10 years ago, had given notice of the closure, and then did not have enough workers left to close the plant down in an orderly way throughout the notice period. Some companies do not give severance pay to workers who leave before the closing or layoff, although they make exceptions in individual cases. This may make it harder for some workers to find a new job without going through a period of unemployment; but it assures the company of an orderly shut-down. Other companies give severance pay to all workers regardless of whether they stay, but offer key employees stay-on bonuses—which amounts to an added cost of advance notice. According to The Conference Board study, executives and professionals are inclined to leave the company after receiving advance notice, whereas few assembly line workers look for another job or leave before the last day of work.

⁵²U.S. congress, General Accounting Office, *op. cit.* An establishment is a business carried on at one location; it may be independent or may be a branch of a multibranch firm.

⁵³Kris M, Balderston, Research Associate for Community Development, National Governors' Association, personal communication, July 23, 1986.

Unforeseen Events

When economic conditions outside the company's control are changing fast, businesses may not be able to anticipate layoffs. For example, an independent oil tool manufacturing company had nearly 1,800 employees in 1985, and in the spring of 1986 was down to about 300. In a 1982 layoff, this company gave 6 months' notice and allowed workers as much as 90 days for full-time job hunting while they were still on the payroll. By 1986, the company felt it was doing well to give 30 days' notice. Again, most existing and proposed advance notice laws make allowances for business exigencies, but company spokesmen say that marshaling proof that business conditions made it impossible to comply could be a heavy burden. When a firm's survival is at stake, it cannot afford to spend managers' time on compiling a record to show that it acted within the law.

It is worth noting that dire financial emergency seems to be an infrequent factor in plant closings and large layoffs. The GAO survey of mass layoffs in establishments with over 100 employees found that only 7 percent of the firms said they had undergone bankruptcy or financial reorganization before the layoff. By contrast, 70 percent of the firms cited reduced product demand and increased competition as factors influencing the decision to layoff workers or close a plant; more than half mentioned high labor costs,

Media Attention and Community Resistance

Almost inevitably, any large closing attracts public attention. Economic repercussions from the closing affect the community as well as the workers directly losing jobs. Said one businessman at the workshop:

If you notify in advance about a closing, you'll get unabated pressure . . . You get it from the church, the Governor, the laundryman. Lots of companies don't need that heat. They want to get out of town fast . . . Severance pay at the end can accomplish the same thing as advance notice.

This man's company does, in fact, provide advance notice under some circumstances, as

spelled out in its union contracts. Generally, the company's experience with advance notice has been good, but that experience, said the company official, is not necessarily a model for everybody. For some firms, the most economical course is to close quickly.

Trouble With Workers, Reduced Productivity

There seems to be general agreement that this is a myth.⁵⁴ One man, representing a company that over the past few years has sold or closed plants employing 25,000 workers, said:

In every plant I've ever closed, productivity goes up in the last two or three months.

At a sawmill in British Columbia, workers not only broke production records after the closing announcement, but improved safety so much that there were no accidents. The representative of a large U.S. company said:

There's been no sabotage, no destruction in our company after advance notice. Employees may want to make the plant more attractive to another owner. Also, there's a lot of pride. Basically, people are good people.

The Thin End of the Wedge

An objection that is not often stated but seems to be on the minds of many opponents of mandated notice is that a simple notice requirement might open the door to other more costly obligations related to plant closings. In Ontario, for example, Provincial law not only mandates 8 to 16 weeks' advance notice of group layoffs (50 or more), but also requires severance pay for employees dismissed in group layoffs (1 week's pay per year of service, up to 26 weeks, for workers with 5 years or more on the job). The version of H.R. 1616 which was narrowly defeated in the House of Representatives in November 1985 required advance notice only, with provision for pay in lieu of notice and for exceptions if unforeseeable business circumstances prevented the employer from completing the

⁵⁴All representatives of business at the workshop agreed that worker morale and productivity did not suffer with advance notice of layoffs or closings. Union spokesmen confirmed the observation. So did the company officials interviewed for case studies of the forest product and high-tech industries.

notice period. However, an earlier version of the bill, reported out of the House Education and Labor Committee, would have required employers to consult in good faith with the union or worker representatives on possible alternatives to, or modifications of, a proposed closing or layoff. The bill defined “good faith consultation” as including the obligation to provide employee representatives with relevant information to evaluate modifications or alternatives to the closing. Business representatives lined up against the consultation requirement, characterizing it as a “powerful weapon to block

plant closings” that would “tend to lock businesses into inefficient operations and unprofitable product lines.”⁵⁵(Business groups also continued to oppose H.R. 1616 after the consultation provision was removed.) Other legislative proposals over the years have gone far beyond the provisions in H.R. 1616, including such requirements as severance pay, extended health benefits, and training assistance.

⁵⁵Labor Policy Association, Inc., “Special Memorandum: XI 11-6 Re: Markup of Plant Closing Legislation by the House Education and Labor Committee,” July 18, 1985. The Labor Policy Association is located at 1015 15th St., Washington, DC 20005.