THE FOREIGN EXPERIENCE WITH ADVANCE NOTICE

Experience with advance notice in the United States is based almost entirely on notice offered voluntarily by employers or provided under agreements with unions. Five States do have advance notice laws on the books, but these laws are either voluntary, seldom enforced, or too recent in origin for evaluation data to be available. Thus it is instructive to look at the experience with advance notice requirements in other countries. A comprehensive look at this question is beyond the scope of this report; according to a 1980 International Labour Office (ILO) report, at least 38 countries have laws requiring employers to provide some form of advance notice of work force reductions or collective dismissals of workers.82 Some of these programs are briefly discussed in appendix B; they differ greatly in scope and coverage. Countries that have advance notice laws also vary greatly; they include several developing countries of the Third World as well as many highly industrialized nations.

Of the different approaches used in various countries, the laws in Canada and Western Europe probably are most relevant to the U.S. debate about advance notice. Most Western European countries require notice so that adjustment services for workers can be planned, and also require consultation on alternatives for limiting or avoiding the dismissals. In Canada, several Provinces and the federal labor code (covering certain classes of workers) require advance notice, generally with fewer additional obligations than many Western European countries. However, some jurisdictions in Canada can require employers to cooperate in developing a program to eliminate the need for dismissals or to minimize the impact of dismissals on the workers.

[82]International Labour office, Termination *Of Employment at the Initiative of the Employer,* International Labour Conference, 67th sess., 1981, Report VIII(1) (Geneva: 1980). In the discussion below, OTA has used ILO's terms wherever possible to avoid confusion. "Work force reduction" refers to the dismissal or long-term layoff of workers because of economic, technological, or structural changes affecting an enterprise. The term "collective dismissal" is used to refer to special procedures governing the dismissal of more than one worker. Some countries also have special procedures governing the dismissal of individual workers.

Advance Notice and Rapid Response in Canada

In Canada, six Provinces and one territory have laws requiring advance notice of collective dismissals, and a notice requirement in the federal labor code covers about 6 percent of the Canadian work force. Elsewhere, notice is voluntary.83 Altogether, about three-quarters of Canada's work force is covered by advance notice requirements for collective dismissals,

The advance notice requirements vary by jurisdiction. Employers covered by the federal code must notify the Minister of Labour 16 weeks before dismissing 50 or more employees who have worked 3 consecutive months or more. Temporary layoffs are not covered by the notice law.84 Several Provinces with notice requirements—Manitoba, Newfoundland, Nova Scotia, Ontario, and Quebec—require at least 8 weeks' notice when 50 workers are to be dismissed, and 16 weeks when dismissals will affect 500 or more workers. Some of these Provinces require more than this; Quebec and Nova Scotia, for example, require 8 weeks' notice when as few as 10 workers are dismissed. The Yukon Territory requires 4 weeks' notice when 25 to 49 employees would be dismissed. A more limited notice requirement for group dismissals, applying only to workers under collective agreements, is in effect in New Brunswick.

In several Provinces, employers have the option of providing workers with payment in lieu of notice. These payments are separate from the mandatory severance pay required in some jurisdictions.

Both the Ontario law and the federal labor code require employers to provide severance pay to some workers losing their job in group

[83]Individual notice requirements are also in effect in most Provinces and for workers covered by the federal labor code.

[84]Several kinds of layoffs are exempted. For example, notice is not required for layoffs of 3 months or less; for layoffs of more than 3 months if the employees are notified that they will be recalled within 6 months; for layoffs of 3 months or more if an employer continues payments on a pension or insurance plan, or if the employee receives supplementary unemployment benefits.

dismissals. The Ontario law entitles workers employed by the firm for 5 or more years to 1 week's pay for each year of service, up to a maximum of 26 weeks' pay. The federal labor code entitles workers employed for at least 12 consecutive months to 2 days' severance pay for each year of service, but not less than 5 days' pay.

Advance notice in Canada is usually combined with rapid provision of services to workers affected by plant closings or mass layoffs. When government agencies receive notice of a closing or mass layoff, the Industrial Adjustment Service **(IAS),** a small federal agency, immediately steps in with its offer to help workers find new jobs. providing technical and modest financial assistance, IAS helps to establish labor-management adjustment committees that try to place workers in new jobs as quickly as possible. IAS services are available throughout Canada, and usually begin well in advance of the layoffs or closings. In provinces that do not require notice, employers may volunteer information about impending layoffs or closings, or IAS may learn of them through news accounts or word of mouth.

The period of advance notice is sometimes used to look for ways to avoid dismissals or mitigate their effects. Employers under the jurisdiction of the federal labor code must set up joint planning committees, comprised of management and worker representatives, when they give notice of group dismissals. The committees are charged with devising an adjustment program to eliminate the need for the dismissals, or to minimize their impact on the workers and help them find other jobs. Once the adjustment program is developed, it is to be implemented by the employer in cooperation with the union or the redundant employees. In Manitoba, Ontario, and Quebec, employers can be required to undertake or cooperate in adjustment programs at the discretion of the Provincial labor minister.

Advance Notice and Consultation Laws in Western Europe

Notice laws in many Western European countries closely resemble each other. Most members of the European Community (EC) have complied with a 1975 directive from the EC governing council that called on member states to "approximate in law" some common requirements for notice and consultation with workers when undertaking collective dismissals.as Some non-EC members in Western Europe (such as Sweden) have more stringent advance notice requirements than is called for by the EC directive.

The threshold triggering notice requirements is quite low in most EC countries. For example, Denmark requires firms that employ 20 to 99 workers to give advance notice before dismissing 10 or more workers in a 30-day period. Danish firms employing 100 to 299 workers must comply if they plan to dismiss at least 10 percent of their workers over a 30-day period; firms with 300 or more workers must comply when at least 30 dismissals are proposed, The Danish approach is one of two options stated in the EC directive. The other requires notice when at least 20 workers would be dismissed over a period of 90 days, whatever the size of the firm's work force.

The EC model also requires employers to consult with the workers' representative "with a view to reaching an agreement" on the proposed dismissals. The directive specifies that the consultations are to cover ways to avoid the dismissals or reduce the number of workers affected by them, and ameliorate the consequences of the dismissals. The employer must supply "all relevant information, " and give a written account of the reasons for the proposed dismissals, the number of workers to be dismissed, the number of workers ordinarily employed at the establishment, and the time period for the dismissals. In some countries, the period of formal notice to a government agency can be short. The EC directive requires only 30 days'

[85] "Council Directive of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies, " in the ***Official Journal of the European Communities,*** 75/129/EC No. L 48/29-30, Feb. 22, 1975. All 10 countries that were full members of the EC at the end of 1985 had responded to the Council Directive with legislation; however, the European Commission found the responses of three of these countries unsatisfactory. Two additional countries, Spain and Portugal, became full members of the EC in 1986.

formal notice.[86] However, the consultation process usually precedes the formal notice and it can be protracted. Some countries require far more notice than 30 days. In Sweden, for example, the notice period is 6 months for layoffs of more than 100 workers, and if there is disagreement between workers and managers, layoffs can be delayed until a Labour Court rules on how they are to take place. France is unusual in that the government can actually deny permission for the dismissals.

Many Western European countries also require extensive consultation with worker representatives on business plans that might affect the work force. For example, in West Germany, an employer must disclose to the works council any proposed plans for changes in the organization that could lead to redundancies or otherwise disadvantage the work force. Also, West German employers must notify the regional employment agency of foreseeable changes over the next year that might lead to the dismissal of workers or downgrading of personnel. The opinion of the works council on the change is appended to the notice. The purpose of the notice, says one analyst, is to facilitate "long-range observation of labour market developments and to permit all parties concerned to take preparatory steps that would smooth the transition to new employmerit."87

Labor Market Flexibility and Collective Dismissal Laws in Western Europe

In most Western European countries, the laws calling for advance notice do not stand alone, but are part of more comprehensive programs governing the dismissal of workers. Other obligations placed on the employer may include consultation on alternatives to the collective dismissals or ways to minimize the impact of the dismissals, severance pay for those who do lose jobs in collective dismissals, and additional requirements applying to the dismissal of individual workers.

These legal requirements on individual and collective dismissals, as well as collective bargining agreements and social understandings, make it more difficult for Western European employers to dismiss workers than for employers in this country. In essence, the European approach emphasizes protection of employed workers when firms seek to change operations or to redefine or eliminate jobs. The European approach gives employed workers more employment stability than most American workers get; however, the requirements may also, in the long run, contribute to reduced labor mobility and thus hinder job creation, For example, employers may be more reluctant to hire new workers if they anticipate high costs in letting workers go later on. The lack of geographic mobility of labor in Europe, due to national boundaries and cultural values, also may be a factor.[88]

While it is plausible that the European policies on dismissals make employers more reluctant to hire, it is difficult to reach any overall conclusions about what this means in terms of the national employment trends of various countries. It is true, for example, that the United States has outperformed Western European countries in both aggregate job creation and the rate of job creation for over a decade; however, many different factors have contributed to this, including the demographic fact that the United States had the fastest growing work force. Until recently, unemployment in most of Europe was lower than in the United States; the West German and French unemployment rates were lower than the U.S. rate until 1984; until 1980 the unemployment rate was lower in the United Kingdom. In the past few years, the situation has reversed and unemployment rates are higher in most West European countries than in the United States.89

The difference between the Western European and American experience with job crea-

[86] The government authority may be empowered to reduce or extend the notice period.

[87] Werner Sengenberger, "Federal Republic of Germany, " ***Work Force Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries,*** Edward Yemin (cd.) (Geneva: International Labour Office, 1982), pp. 91-92.

[88] For a more detailed discussion of possible effects of both Occupational and geographical mobility on job creation, see U.S. Congress, Office of Technology Assessment, op. cit., pp. 152-153.

[89] Employment trends in the United States and in Western European countries are discussed in Ibid., pp. 144-160.

tion probably has many causes, including differences related to the structures of the various economies, industrial competitiveness, trade laws and agreements, and capital flows. While labor immobilities resulting from European labor laws probably hinder job creation in Europe, it is not clear how important a factor they are. Moreover, the relative importance of advance notice for collective dismissals, separate from other European labor laws and practices, is even less clear.

Business representatives at the OTA-GAO workshop characterized the Western European laws governing collective dismissals as onerous and as a factor contributing to unemployment in the region. One business representative said that his company had closed facilities in Europe, had found it a very expensive proposition, and was reluctant to make additional investments there. Another business representative said that companies make investment decisions on the basis of many factors; their investment in countries with plant closing requirements does not imply that the requirements impose no burden.

Labor representatives countered that Europe had prospered for a long time under the programs governing collective dismissals, that the current economic difficulties in Europe were of recent origin, and that they reflect macroeconomic policies unrelated to advance notice requirements. Heavy U.S. investment in Europe and Canada continues despite the plant closing rules. One labor representative said that workers in the United States can in effect feel the backlash from plant closing costs in Europe. One multinational firm decided to close a plant in the United States, he said, because it would be less costly than shutting down its operations in Italy or Holland, which have plant closing requirements.

Some U.S. employers may view advance notice legislation proposed in this country as the first step toward a Western European-style plant closing program, one workshop participant told OTA staff after the session. Employers are concerned about losing the flexibility to make management decisions efficiently. The possibility that sooner or later other requirements (such as for consultation, severance pay, or payment of health benefits) could be added to notice requirements maybe a principal reason for opposing any notice requirement.

According to a recent report from the International Organisation of Employers (IOE), many European employers apparently view the requirements governing dismissals of workers (both collective dismissals and individual dismissals) as burdensome. In a survey of European employer federations on the functioning of the labor market, IOE asked respondents to characterize obstacles to freedom to terminate employment in their countries. Responses to the IOE survey were received from 18 European members and from Canada and New Zealand. Six of the twenty respondents called obstacles to termination of employment "fundamental"; eight (including Canada) termed them "serious"; five found them minor or insignificant; one did not respond.

According to the employer federations, the chief obstacles to the freedom to terminate employment were "rigid legislation, " "long and complex administrative formalities, " certain privileges (such as seniority), union positions that were unsympathetic to the problems of the enterprises, and restrictive legal interpretations. Some countries also found serious obstacles in the need for administrative clearance before terminating employment, very high redundancy payments, "lack of flexibility to adapt size of staff in small enterprises, " and "excessive formalities (such as excessive advance notice in certain cases of individual dismissals)."go

The question of whether the Western European countries have gone too far, or the United States not far enough, in protecting workers against the impacts of collective dismissals is part of a broader debate about labor market flex-

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'Jose-Maria Lacasa Aso, "Obstacles to Freedom To Terminate Employ merit," paper reproduced in ***Adapting the Labour Market: Restoring Enterprise Competitiveness in Europe, Responding to New Employee Expectations,*** a debate among IOE European member federations on freedom of action of enterprises and freedom of choice of employees in today's and tomorrow's labor market (Oslo: International Organisation of Employers, September 1985),

ibility. A recent report to the Secretary General of the Organization for Economic Cooperation and Development put the matter this way:

> This then is the issue: both security and flexibility are desirable. When it comes to conditions of employment, the two are probably in conflict, though the evidence is not clear. For these reasons of value and of fact, it would be wrong to come down firmly on one side or the other. The practical question is how one can strike a balance between desirable job security and necessary labour market flexibility. The answer may well be different in different historical and institutional context, though a rising tide of economic development leading to increasing levels of employment would help in generating confidence that flexibility is a desirable feature of any labour market policy.[91]

U.S.-Based Companies in Canada: The Forest Products Industry

Canada's laws on group dismissals generally put fewer obligations on employers than the laws of Western European countries, but more than those of the United States. Mainly, the obligation consists of advance notice, with the addition of severance pay under the Ontario and federal laws. Also, as noted above, the federal law and a few Provincial laws contain provisions for planning to avoid or mitigate work force reductions. No one has surveyed any large number of U, S.-based companies operating in Canada to see if the advance notice requirements are considered onerous, or if they figure in decisions to invest or locate in Canada, However, the little evidence that is available suggests that advance notice is not an issue for these U.S.-based firms,

An OTA case study of three U.S. forest products companies with branches in Canada found that the Canadian subsidiaries seem to accept quite readily the laws and customs of the country relating to group dismissals.92 One, operating in Ontario, complies with the Provincial advance notice law with no mention of difficulties; in British Columbia, where advance notice is not legally required but appears to be customary for larger companies, the other two provide it. All three Canadian companies offer considerably more than the law requires in benefits to displaced workers. They seem to share common assumptions about what they owe workers displaced by structural or technological change.

In the United States, the parent companies differ markedly, both from their Canadian subsidiaries and from each other. All three strongly oppose any legal requirement for advance notice, and two of the three do not favor it as voluntary company policy; the other has a company policy of providing advance notice. Benefits vary a great deal from one company to the next. One is quite generous to salaried workers but gives hourly (union) workers only what local union contracts require, which is often very little. Another treats salaried and hourly workers much the same, providing benefits to both that are at least the equal of those offered in Canada. The third occupies a middle position. Whatever severance benefits and advance notice these companies provide generally go beyond legal requirements, since few such requirements exist in the United States.

[91] *Labour Market Flexibility: Report by a High-Level Group of Experts to the Secretary-General* (Paris: Organisation for Economic Co-operation and Development, 1986), p. 11.

[92] In the spring of 1986, OTA staff members interviewed Officials of three U.S. forest products companies, at corporate headquarters of the companies in the United States, and at offices or plants of subsidiaries of the same firms in Canada, All the firms had experienced plant closings or permanent reductions in work force in the past 3 years, in both U.S. and Canadian facilities. Company officials were asked about their firms' policy and practice in plant closures and permanent layoffs, and in particular about advance notice and company-provided services and benefits to the displaced workers. They were also asked about government services to displaced workers—what was offered and how worthwhile it proved to be. The companies that cooperated with OTA in this project were Boise Cascade Corp., at its corporate headquarters in Boise, ID, and at the Kenora, Ontario pulp and paper mill operated by Boise Cascade's Canadian subsidiary; the Champion International Corp., at corporate headquarters in Stamford, CT, and at the Vancouver, B.C. office of Weldwood, a Champion subsidiary; and the Weyerhaeuser Co., at corporate headquarters in Tacoma, WA, and at the Vancouver, B.C. office of its subsidiary, Weyerhaeuser Canada, Officials interviewed included corporate vice-presidents; corporate and division human resource managers; and the manager and human resource director and staff of a plant.

Advance Notice

In Canada, advance notice of plant closings and mass layoffs seems to be taken as a matter of course. According to a regional official of the federal Industrial Adjustment Service in British Columbia (where advance notice is not legally required), there are sometimes unannounced "Friday night closings" of sawmills. But when this happens, it usually involves a smaller firm operating in only one location; companies with other plants that are still in business "have to be more aware of the good will factor. "

All three Canadian subsidiaries of the U.S. forest products firms included in the OTA case study give 2 to 6 months' advance notice. None has had difficulties with workers as a result of advance notice, and one company noted that productivity and safety both improved after notice of a permanent layoff. None of the firms lost credit or customers after giving advance notice of a closing. One company spokesman mentioned, however, that makers of specialty products might lose customers after giving notice (his own firm is a producer of standard commodities such as plywood), and that smaller firms might find their lines of credit from suppliers restricted.

Spokesmen at one Canadian company said that notice was useful in bringing home the reality of a work force reduction; this company planned for layoffs and gave notice, but has been able to avoid dismissing anyone involuntarily during the reduction. At another company, an official said that notice was probably most helpful to individual workers in making financial decisions, but less so in helping workers get new jobs (this was in Vancouver, however, where unemployment was at 12 percent). This official said that laws requiring advance notice or adjustment services to displaced workers are not what makes the effort succeed. What counts, he said, is the company's commitment—''the willingness to accept that we owe these people something. " The spokesman at a third Canadian company saw advance notice as an asset in employee relations. Any company that tries to treat its employees well, he said, will earn better regard from its workers. "Also," he said, "we have our own set of values" for fair treatment of employees.

At U.S. corporate headquarters of this third firm, officials said that a companywide policy for advance notice is "impossible" because every plant is different and closings cannot always be anticipated. The U.S. company does have a policy of giving at least 1 month's advance notice to salaried workers, and usually gives 2 months, during which employees are free to hunt for jobs. For unionized hourly workers, advance notice and severance benefits are provided only as required by collective bargaining contracts, plant-by-plant. Some of the local contracts require severance pay, but none require advance notice. This company considers advance notice an economic issue, to be bargained for like wages, work rules, and severance benefits. According to the spokesmen, the company shares information with hourly workers on the competitive and profit situation of each plant—for example, that a plant down the road is paying wages of $6 per hour. Communication, said the spokesmen, serves the same purpose as advance notice, which is to spare workers surprise. "It should not be a surprise in any mill we shut down in the west that we're losing money," said one official.

At the U.S. headquarters of another company, officials said that advance notice makes no economic sense, for two reasons: 1) the company often waits for year-end financial information to make decisions about closing, and once the information is in, there is no point in delay; and 2) when you give advance notice, you accelerate the conditions that led to the decision (e. g., loss of customers). The company has no policy prohibiting advance notice, but in about 80 percent of the cases does not give it. This firm looks at severance pay and advance notice as interchangeable, and favors severance pay.

The third U.S. company, facing several plant closings in the West, adopted a corporate guideline of 90 days' advance notice; there is some deviation, but this is the recommended minimum. Despite some apprehension that workers who were still needed might leave before

the closing, this turned out not to be a major problem. Nor did the company have any difficulty with lowered morale, or with loss of credit or customers. A spokesman for this firm had mixed feelings about the usefulness of advance notice. Clearly, he said, companies should provide a reasonable amount—''Friday night closings are obviously horrendous. " However, there seemed to him little difference between 6 weeks' and 6 months' notice, so far as providing reemployment services to workers was concerned. Where the plant was the sole economic support of the community, no amount of notice seemed to help. This man, like all the company spokesmen at U.S. corporate headquarters, opposed plant closing legislation. "I'm philosophically opposed to this kind of law, " he said. "Ethical values cannot be legislated.''"

Benefits and Services to Workers

Like advance notice, severance benefits and adjustment services for displaced workers are seen as a company obligation by the U.S.-based firms in Canada, All three offer early retirement and generous severance pay in addition to notice to workers slated for layoff. Two of the three have saved slots in other plants for their laid-off workers. All have staved off displacement by using workers who are either laid off or on notice of layoff as vacation relief workers; in some cases, attrition opens up permanent jobs for these workers. However, turnover in the forest products industry in western Canada is now near zero, and productivity is rising, so that attrition may be very slow.

Two of the Canadian companies expressed pride in their own records with displaced workers compared with that of other companies. One man contrasted his firm's practice of saving jobs at its other plants for displaced workers with companies which, he said, simply start over and hire the highest caliber worker they can find, Another said: "Our company has spent twice as much on our displaced workers as others in the Province. Some companies just say goodbye. "

The third company made a formal agreement with the Canadian Government to relocate, retrain, voluntarily retire, and otherwise ease the impacts on workers facing displacement as a result of plant modernization. No worker has been laid off involuntarily at this plant in the 2 years since modernization began, and it is hoped that none will be. So far, about 200 of 870 jobs in the plant have been eliminated, but early retirement, attrition, and the use of surplus workers as vacation replacements have all helped to avert forced layoffs.

In the United States, the practices of the three companies varied widely. The company that distinguishes between salaried and hourly employees offers its displaced salaried workers severance pay, extended health benefits, early retirement, and placement assistance, in addition to advance notice. Severance benefits for hourly displaced workers are restricted to what local union contracts require. Some call for severance pay, many do not. In a few cases, this company has voluntarily offered job search workshops to hourly employees.

A second U.S. company has negotiated substantial severance payments for most employees displaced in plant closings, and considers this a substitute for advance notice. The company has also offered some of its displaced workers transfers to jobs in other plants, and on occasion has worked with public agencies to provide job search assistance. An early retirement plan is available only to salaried employees.

The third company, applying what it calls a "corporate philosophy of fair and thoughtful treatment" for all its employees, salaried and hourly, offers a broader range of benefits and services. Besides giving advance notice, this company has provided generous severance payments (up to 1 year's pay), an early retirement option, hiring preference for jobs at other plants, financial and personal counseling, and an energetic job search assistance program, including newspaper ads soliciting jobs for its "good em-

[93] See the section entitled "Costs and Benefits of Advance Notice" for further discussion of these issues from the point of view of companies, displaced workers, and service providers.

ployees" and a labor exchange with a free long-distance number.

Government Assistance to Displaced Workers

Government assistance was a consistent, if sometimes inconspicuous, feature of the Canadian companies' plant closing and layoff experience. The companies tended to give only mediocre marks to "government help" as such; yet detailed discussion revealed that they set a high value on some aspects of the work done by the Industrial Adjustment Service (without always fully realizing the role the government had played). For example, one company, after downplaying the government role, praised the independent chairman of the labor-management adjustment committee formed under IAS auspices, and remarked that workers could trust that their interests were being looked after, since a neutral chairman was in charge. Also, the labor management adjustment committee in one of this company's plant closings discovered a large number of job openings at a new plant in the Province.

In the United States, at least at corporate headquarters, there was little awareness of the services that JTPA Title III programs could offer. One corporate human resources manager had never heard of JTPA Title III, but did know of a plant closing in which the plant manager had enlisted help from the State (probably a Title III agency). At another corporate headquarters, there was little more awareness of this federally authorized and funded program. Officials knew of one plant in which a manager had arranged to get worker adjustment services from the State.[95]

In many ways, U.S. forest products companies and their Canadian subsidiaries face the same economic situation, problems, and opportunities, but there are differences. Both are pressed by oversupply in wood products and increasing international competition in pulp and paper. Both are benefiting from the strong revival of construction in the United States. The U.S. firms, however, have had to contend with the strong U.S. dollar vis-a-vis the Canadian. These companies have closed more plants in the United States in the past few years, with greater loss of jobs, than in Canada.

Overall, the differences in company outlook and practice regarding plant closings in the two countries are uneven, but large. Canadian subsidiaries of the U.S. firms seem to live easily with Canadian laws and customs that favor advance notice of plant closings. Their policies for services and benefits to displaced workers reflect the attitude that "we owe these people something. " Among the same companies in the United States, advance notice as a company policy is considered impossible by one, potentially harmful by another, and ethical and fair by the third. All are against a legal requirement. On employer-provided benefits, one regards services to unionized displaced workers as economic issues subject to bargaining; another substitutes severance pay for advance notice; the third tempers economic considerations with "fair treatment" and "ethical values."

'See the section entitled "Responses to Advance Notice" for further discussion of employer-provided benefits and services.

[95]For further discussion of government responses to plant closings, see the section entitled "Responses to Advance Notice".