ISSUES IN THE DEBATE ABOUT ADVANCE NOTICE LEGISLATION

Whether the Federal Government should require employers to provide advance notice of plant closings and large layoffs has been a persistent and controversial issue in Congress. In the 13 years since legislation on the subject was first proposed, positions on the part of management and labor have remained highly polarized. (The benefits and costs of advance notice are discussed in detail in an earlier section of this report.)

Nothing said at the OTA-GAO workshop suggests any softening of these polarized positions. Industry spokesmen, including some from companies that give substantial notice when closing plants or laying off employees, were united in opposing Federal notice legislation; labor union representatives were just as solidly in favor.

Is there any common ground? Despite appearances, there may be. All sides did agree on the need to provide adjustment services to workers displaced in plant closings and layoffs more promptly and more effectively. Although the business representatives at the workshop opposed mandatory advance notice, most agreed that voluntary advance notice was generally desirable. They did think that the value of notice was overemphasized; more important was provision of high-quality adjustment services to the workers—something that notice could facilitate but not guarantee. Labor representatives, while insistent that notice should be required by national policy, also emphasized the importance of adjustment services.

The discussion below examines several issues in the debate about advance notice from the perspective of improving adjustment services to workers displaced by plant closings or permanent layoffs. Some of the options discussed would not necessarily have to be linked with a requirement for notice, while others clearly would.

Rapid Response and Prelayoff Assistance

Advance notice provides the opportunity to set up a project for serving displaced workers before the plant closes or the layoffs begin.[100] Such projects may be located at the plant site, and involve the active participation of both management and labor. Job Training Partnership Act Title 111 funds can be used for projects of this sort. Several States have rapid response teams that bring information services to the affected workers when warning is given of a plant closing. At present, however, it is unusual to find worker adjustment projects fully established in plants before layoffs begin.

Obviously, advance notice is a prerequisite for prelayoff assistance. However, many improvements could be made in rapid response delivery systems whether or not a *legislative* requirement for advance notice is in effect. Legislative options for encouraging rapid response could be pursued either in conjunction with, or independently of, the issue of mandatory notice.

Outreach

As discussed previously, many employers are not aware that the Title III program exists, much less that it can be used for in-plant prelayoff assistance to workers who have received a notice of termination or layoff. Greater effort by governments (local, State, and Federal) to get the word out to employers and workers about Title 111 assistance would help. With more aggressive outreach, more employers might be encouraged to provide advance notice and to participate in prelayoff assistance projects. Improved outreach would not necessarily require new legislative authority, and the direct costs would be modest. However, if the outreach succeeds—that is, attracts more people to JTPA Title 111 projects—then more funding would be required. At present, some States say they do not emphasize outreach because they do not have the funds to provide services if more people are attracted to Title III projects.

Active involvement of trade associations, business groups, unions, and others in the pri-

[100] See the section entitled "Benefits, and Relation to Worker Adjustment Programs" for a discussion of the advantages of such projects,

vate sector can be a key factor in making outreach succeed. For example, in Massachusetts, some business and trade associations are publicizing the State's "social compact" to their members, and urging them to adopt voluntary, internal corporate policies to provide advance notice and services to displaced workers, insofar as possible.

At the national level, business leaders established the National Center for Occupational Readjustment (NaCOR) in 1983. This nonprofit clearinghouse collects and disseminates information about ways to ease the effects of shutdowns. The Department of Labor helped provide initial support for NaCOR through a JTPA demonstration grant; NaCOR is now entirely supported by private sources.101 Other national business organizations, including the Business Roundtable and the National Association of Manufacturers, have issued reports or model guidelines for corporate practices on plant closings. The U.S. Department of Labor's Division of Cooperative Labor-Management Programs, a modestIy funded agency set up to encourage joint efforts by employers and employees, has been active in distributing information about the best practices to follow in plant closings. Some State officials of Title III programs say they would welcome additional advice and technical assistance from the U.S. Department of Labor on how best to manage rapid response to plant closings and layoffs.

Improving Rapid Response

Lack of information about prelayoff assistance is not the only impediment to rapid response. As discussed earlier, some efforts to establish displaced worker projects in plants before layoffs have encountered delays in funding, lack of technical assistance, and problems in coordinating assistance from multiple agencies.

Government agencies, employers, and worker representatives have all shown a strong interest in expediting the delivery of adjustment services to workers affected by plant closings and large layoffs. Rapid response teams, made up of several State government officials who visit plants to acquaint workers with available services, is an option that several States now use. Another option is for employers to bring private consultants into plants to advise them on how to set up and operate an in-plant project.

Another approach that is generating a great deal of interest in the United States is that used by the Canadian Industrial Adjustment Services (IAS) for over 20 years. As soon as it receives word that a plant may close or layoff workers, IAS offers to help establish a labor-management adjustment committee in the plant to direct prelayoff assistance. An IAS approach might encourage employers to provide more notice of layoffs and closings voluntarily, since they could be reasonably sure of getting effective help once notice was given. In Canada, IAS operates in Provinces that do not have advance notice requirements as well as those that do, and apparently elicits a good deal of cooperation from employers.

If the IAS approach were adopted in this country, it might be necessary to establish a small consultative agency—either at the Federal level or in the individual States—that specializes in helping to set up in-plant labor-management committees. How this approach could work in the United States may be more clearly understood in a year or so. The Department of Labor is planning to fund several State demonstration projects, using the IAS model. Six States are expected to receive small discretionary grants (about $20,000 per State), which each will use to fund two in-plant demonstration projects. The plan is to establish in-plant labor-management committees, each with an independent chairman and a State official as a staff consultant. Most of the projects probably will take place where companies have provided substantial advance notice. The National Governors' Association, which is helping to direct the pilot projects, is expected to make a report on them.

A particularly difficult problem for States that wish to emphasize rapid response is delays in

[101] Part of the Department of Labor grant was used by NaCOR to produce a detailed employer's guidebook on approaches for softening the impact of plant closings. See ***Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook,*** Richard P. Swigart (cd.) (Washington, DC: National Center on Occupational Readjustment, 1984).

funding projects and services under Title III of JTPA. Displaced worker projects often encounter delays of several months between the time JTPA agencies initially commit to projects and the time grants are executed.

There may be several ways to expedite funding for displaced worker projects. Other States might follow the example of the Massachusetts Industrial Services Program, which can immediately commit State-provided funds to startup plant-based projects. Possibly, the Federal Government could help States improve rapid response by providing small grants for such startup activities, or encouraging them to use their Title III formula grants for that purpose.

As discussed earlier, a complex funding situation has arisen because of budget cutbacks for Title III in fiscal year 1986. Three-fourths of the Title III grants go to States on the basis of a statutory formula; the other 25 percent is disbursed through the Secretary of Labor on a discretionary basis. Some States have substantial carryover funds from formula-based Title 111 grants from previous years; other States do not.

Rapid response capabilities might be increased if States were encouraged to earmark a portion of their Title III grant for this purpose; one option might be for the Secretary of Labor to reallocate some carryover funds among States for this purpose. Section 301(d) of JTPA gives the Secretary of Labor limited authority to reallot State funds, on determining that the State would not be able to obligate the funds within a year of receipt. However, it might be necessary for Congress to give the Secretary new authority specifically to reallocate funds for rapid response.

The States with little carryover funding can apply for discretionary grants from the Secretary of Labor. Yet, projects seeking Federal discretionary grants typically encounter even longer delays than in those funded by State-administered formula grants. Proposals for these Federal grants usually must clear local, State, and Federal approvals before the grant can be executed. States that depend more heavily on the discretionary fund may thus have the biggest problems in getting funds quickly. Ways to speed up the clearance process are clearly needed. This will become an especially urgent matter if, as the Reagan Administration has proposed for fiscal year 1987, all Title III funding is made through the Secretary's discretionary fund.

Legislative Questions About Advance Notice

Voluntary or Mandatory Notice

The fundamental question in the debate about advance notice is whether it should be voluntary or required by law. Business representatives, with few exceptions, have opposed any legal requirement for notice. At the OTA-GAO workshop, business spokesmen argued that each plant closing and layoff is unique, and that a mandated requirement for notice would be inflexible. For smaller businesses, one participant said, notice requirements might stifle the entrepreneurial spirit, making it unattractive to expand the firm by adding more employees.

Labor spokesmen strongly support mandatory advance notice. At the workshop, one argued that business had not done a good enough job with voluntary notice; while there might be exceptional cases when overriding reasons prevented giving notice, the exceptions should not dictate policy. Another participant said that agreements between companies and unions are not sufficient, since most employees are not covered by union agreements.

The options for Federal policy on advance notice lie along a continuum, ranging from no Federal action at all to a comprehensive national program such as those in Western Europe. Between these poles lie a variety of approaches, such as encouraging notice on a voluntary basis, or requiring notice by Federal law but imposing no requirements for consultation on alternatives to the layoffs, or requiring notice and consultation but no other obligations such as severance pay.

Incentives and Notice

Possibly, the Federal Government might offer incentives to firms to provide advance notice. Massachusetts is experimenting with this

approach at the State level, through its social compact concept. With properly selected Federal incentives, more companies might be encouraged to provide notice, either voluntarily or as a condition for receiving assistance.

One possibility would be to get firms receiving certain kinds of financial assistance to agree to provide notice if they found it necessary in the future to close or to lay off employees. Massachusetts takes this approach, Firms applying for financial aid from certain financing authorities agree **to** accept a voluntary standard for corporate behavior; they pledge **a** good faith effort to provide a combination of notice and income and health benefits, where possible, in future layoffs or closings. A similar approach might be adapted for Federal or federally supported financing.

Another possible incentive would be to give companies that provide notice more favorable tax treatment in meeting obligations to the government than they would get otherwise. However, tax breaks for notice may be viewed as inappropriate, in light of concerns about Federal budget deficits and may be inconsistent with tax reform objectives. Moreover, it is not clear that tax breaks would automatically encourage more firms to provide notice; they might simply benefit firms that would have provided notice anyway.

Another possibility, as noted above, is that a greater Federal effort to encourage rapid response might in itself be an incentive for some companies to give more notice, particularly if accompanied by a concerted effort on the part of government and business organizations to acquaint companies with displaced worker assistance programs. In fact, some State Title III program directors have told the National Governors' Association that more employers are providing advance notice voluntarily as the Title III program becomes better known.

Size of Firms and Size of Layoffs

It is generally contended that small businesses have a harder time giving advance notice than large firms, and are less likely to give it. From a policy standpoint, this poses a dilemma: the firms most likely to be burdened by advance notice requirements are also those firms that are least likely to give it. From an administrative standpoint, small firms are also harder to track in monitoring compliance.

Some legislative proposals for advance notice have exempted small firms from notice requirements, with the number of the firm's employees defining the threshold for notice requirements to apply. Other proposals refer to the number of employees of a firm at a single establishment, or site. There is little agreement about the size of an enterprise or establishment to exempt from notice, as is suggested by the modifications made in H.R. 1616, the advance notice legislation that was defeated in the House in 1985. In the version of the bill that was reported out of the House Education and Labor Committee, only firms with fewer than 50 employees were excluded from the bill's coverage. The version of the bill that came to a final vote on the House floor excluded business enterprises employing fewer than 50 full-time workers at a single site from the requirements of the bill. Before defeating the measure, the House rejected a proposal to require notice only of firms that employed at least 200 full-time employees at a single site.

The argument for the 200-worker" minimum was that large corporations with money, staff, and ability to plan ahead ought to give notice, but that a 50-worker minimum would burden small business. On the other side, it was argued that the 200-worker threshold would exclude the majority of closings or layoffs, so that much of the point of the legislation would be lost.

Another key question is how large a layoff or plant closing must be before triggering notice requirements. The committee-reported version of H.R. *1616* would have required employers to provide notice when dismissing or laying off *50* or more employees at a single site over a 30-day period. The version of the bill ultimately defeated by the House would have required notice of layoffs or closings affecting between *50* and *100* employees at a single site if 30 percent of the work force were involved, and notice for all closings or layoffs affecting more than *100* workers at a single site.

Threshold questions also arise in distinguishing between temporary, indefinite, and permanent layoffs. Temporary layoffs may occur for several reasons—closing down facilities while retooling, or while inventories are being reduced. Sometimes, however, unforeseen circumstances may turn a temporary layoff into a permanent one. Whether temporary or indefinite layoffs should be treated differently from permanent ones has become an issue. The committee-reported version of H.R. 1616 defined employment losses as an employment termination other than for cause, a layoff of indefinite duration, a layoff of more than 6 months, or a work reduction of more than 50 percent during any 6-month period. In the version of the bill finally voted on in the House, the last item (pertaining to 50-percent work reduction over a 6-month period) had been removed, but the other three items were kept. In Canada, the notice law that applies in the federal jurisdiction does not require employers to provide notice in layoffs lasting 3 months or less, or if employees are told they will be recalled within 6 months. Notice also is not required in layoffs of 3 months or more when the employer continues to make payments on a pension or insurance plan, or if the employee receives supplementary unemployment benefits.

How Much Notice?

Proposals have varied on the amount of notice to require, some calling for as much as 6 months' notice, and others for as little as 30 days, H.R. 1616 proposed 90 days' notice, except when unforeseeable business circumstances prevented completion of the notice period. Opponents of the 90-day notice period regard it as too inflexible, imposing a burdensome mandatory national standard on small and medium-size business. To some, a 60-day notice period —as required in Maine and Wisconsin—is more acceptable. Supporters of a 90-day notice requirement argue that the exception for unforeseeable business circumstances gives sufficient flexibility.

Both the purpose of notice and the institutional setting in which it occurs are relevant to the amount of notice that is desirable. Generally, 2 to 4 months is needed to put in place a comprehensive program of adjustment services for workers. The amount of notice needed depends in part on whether an effective institution (like IAS) is available. In exceptional circumstances, effective projects have been set up in just a few weeks; however, IAS generally finds that 2 to 4 months' notice, depending on the number of workers affected, is just about adequate to get a program of adjustment services launched.

Other Components of Plant Closing Legislation

Over the years, many legislative proposals on plant closings have included other components besides advance notice—for example, the consultation requirement that was in the initial version of H.R. 1616 (but deleted before the final vote on the bill in the House). Other proposals have called for mandatory severance pay for workers, continuing health insurance coverage at the company's expense, and transfer rights for workers to other facilities owned by the company. Like the narrower issue of advance notice, these additional components of plant closing bills have generally received support from labor representatives, but have been opposed by employers and business groups.

Information and Data Questions

The debate about advance notice legislation has been hampered by the absence of reliable national information on plant closings or large layoffs, and the amount of notice provided to workers. Nearly all estimates of plant closings have been based on anecdotes reported in the general or trade press, or on proxy business information that was not collected for the purpose of counting plant closings or layoffs and the number of workers involved. Even less information has been collected on the amount of advance notice given by U.S. firms. Depending on what sources are used, very different pictures emerge about the size of the plant closing problem.

The General Accounting Office's study of business closures and permanent layoffs among establishments with 100 or more employees

provides the first national estimates of plant closings and layoffs based on verified business data and using statistically valid methods. The GAO report is not scheduled for repetition.

In 1982, Congress called on the Department of Labor to develop and maintain national data on plant closings and permanent layoffs, and to publish the data as soon as practicable at the end of the calendar year.102 The Administration did not begin work on the project untiI Congress specifically appropriated funds for it and there have been delays in fund availability; a national report on this subject has not yet been issued. The project was not originally designed to collect data on advance notice, but this could be a valuable addition. States that collect data for the project contact firms to verify the unemployment insurance data that are used in estimating plant closings and layoffs; thus, adding questions on advance notice probably would not involve much extra spending.103

102 The plant closing and permanent layoff data is called for in Section 462(e) of the Job Training Partnership Act of 1982.

103 As this report was prepared for publication in August 1986, the Office of Management and Budget had just approved a request to query some of the firms contacted by the States in the plant closing data project about advance notice. This one-time special study was requested by a subcommittee of Secretary Brock's Task Force on Economic Adjustment and Worker Dislocation. The survey will cover about 300 to 35o firms in 7 States that had plant closings or layoffs in the last two quarters of 1985. The firms will be asked whether they provided workers with advance notice (either general or specific), and, if so, how much. They will also be asked whether they notified a union, State or local government, or the press of major layoffs. Firms will also be asked if they established a labor-management committee to help workers adjust to the layoff or closing, and what kinds of services were provided to the workers by the firm, It is expected that the special study will be provided to the subcommittee in late 1986. It is not scheduled for repetition. The costs of the study will be absorbed by the agencies so that no special funding will be involved. The Labor Department estimated that these costs will amount to approximately $62,850; this includes about $30,000 in absorbed costs by the Federal Government, $27,300 by the States, and $5,55o by private industry (assuming that each of the firms would need to expend 1 hour of staff time to answer the questions).