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Hearing on Fair Reduction-in-Force (RIF) Practice Act of 1984 (H.R. 6080) before the U.S. House of Representatives Committee on Post Office and Civil Service Subcommittee on Human Resources: Testimony

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My name is Wayne Wendling. I am a Senior Economist with the W. E. Upjohn Institute for Employment Research in Kalamazoo, Michigan. The Upjohn Institute is an endowed, nonprofit organization that has been conducting research in the broad areas of employment and unemployment since 1945.

My comments on Reductions-in-Force (RIFs) and H.R. 6080 will be directed primarily to the role of collective bargaining. In so doing, I will rely on experiences and practices in the private sector. My discussion of private sector initiatives is based on my book, The Plant Closure Policy Dilemma: Labor, Law and Bargaining.[1]

I. AN OVERVIEW

The private sector equivalent of RIFs, plant closures or large scale permanent layoffs, is a very difficult problem for which to devise an acceptable solution. Perhaps the root of the difficulty is complex philosophical questions it raises.

* Should the rights of owners of physical capital automatically take precedence over the rights of owners of human capital?
* Although the mobility of workers and physical capital are both considered to enhance efficiency, is it equitable to place restrictions on the latter and not the former?
* Are companies and workers equally positioned to respond to economic change? If unequally positioned, should a greater social obligation be placed on the one best positioned to respond?
* If government policies and actions increase the probability of closing a plant, can or should government policy be neutral towards the effects of closures?

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*The statements of facts and the views expressed in this testimony are the sole responsibility of the author. The viewpoints do not necessarily represent positions of the W. E. Upjohn Institute for Employment Research.

The resolution of the plant closure policy dilemma would be relatively straightforward if we could agree on the answers to these philosophical questions. But such agreement is unlikely because although we value individual freedom, profit maximization and equity, we have not agreed on the terms of trade among these three.

The dilemma facing the United States House of Representatives and the Civil Service system as RIFs are considered also is difficult and raises several of the complex philosophical questions listed above. But RIFs in the federal government do not involve the serious complication present in the private sector. Specifically, the United States Government, as an employer, does not need to worry that its actions will place it at a competitive disadvantage.

Private firms may have the perception that implementing a positive program to mitigate the negative impacts of closure will increase their costs and place them at a serious competitive disadvantage. Attempts by states to adopt legislation also are stalled due to fears of becoming "notorious" -- of holding industry hostage -- and being pegged as having a negative business climate.

Therefore, search for a general solution in the private sector faces several serious and binding constraints. First, action by individual states simply will exacerbate the economic development war between the states. Some states have acted, but there are strong incentives not to do anything. Second, although individual companies have established exemplary programs to mitigate the problems associated with plant closure, general adoption of such programs are not likely. Plant closure frequently is the result of financial problems brought on by competitive pressures. Positive closure programs may not be financially possible and/or will put a firm at even more of a competitive disadvantage. Finally, solutions must be consistent with the "managerial, institutional and political factors that determine the effectiveness of policies in practice".[2] We are a nation that values individual freedom and profit maximization. Programs to mitigate the plant closure dilemma must attempt to keep these values in mind.

II. PRIVATE SECTOR EXEMPLARY PROGRAMS AND STATE INITIATIVES

Brown & Williamson's handling of its tobacco facility closure in Louisville, Kentucky is considered a model closure.[3] It should be noted that Brown & Williamson was required to provide 18 months advance notice by the terms of its collective bargaining contract and the resulting program was achieved through collective bargaining. The key facets were as follows:

* A graduated severance pay program for both hourly and salaried employees.
* An early retirement option for workers whose age and experience equalled or exceeded 70.
* Continued life and medical insurance coverage for up to six months after leaving the company.
* Retraining programs for those remaining in the Louisville area.
* Group counseling for those displaced.
* A job placement program run by Brown & Williamson through which contracts were made with other employees.

Other exemplary programs in the private sector have been developed by the Dana Corporation, Empire-Detroit Steel, Ford Motor Company, Goodyear's Lee Tire Division and International Silver.[4] These programs tended to have the following common features:

* Consultation regarding the closure
* Advance notice
* Counseling and motivation sessions
* Retraining
* Employer involvement in finding new employment
* Extension of health insurance benefits

The states have attempted two major types of plant closure policy initiatives. The first has been to prescribe the behavior of firms intending to close. Advance notice, continued wage payments, and severance payments to workers and communities are elements of this type of initiative. In some respects, the purpose of these requirements has been to make closure so onerous that firms would not carry through the threat. The second type has been to develop assistance programs for those workers displaced including job clubs, retraining, job search skills and relocation assistance. This approach has been adopted more frequently by individual states since the more prescriptive types of governmental action may place a state at a competitive disadvantage vis-a-vis other states.

An interesting example of this move away from prescription is the change in the Wisconsin state law.[5] In 1975 the Wisconsin legislature adopted a 60-day advance notice requirement in cases of plant closure. That requirement has since been repealed and replaced by voluntary guidelines combined with incentives in the form of positive adjustment assistance.

Massachusetts, 1984 legislation is a blend of the two types of initiatives. It incorporates the following provisions:

* reemployment assistance
* supplemental unemployment benefits must be paid for 13 weeks when advance notice of severance pay are not provided.
* economic stabilization fund to offer reduced interest rate funds for plant modernization
* a social compact expecting 90 days advance notice to workers prior to shutdown.

III. THE COLLECTIVE BARGAINING STRATEGY

The policy question surrounding plant closure is: How can a policy be constructed that is minimally disruptive, yet it is effective at correcting the problem?

The plant closure problem must be placed in perspective. What is its magnitude? Since no governmental agency is charged with recording the closing of a plant or counting the number of workers directly affected, its exact magnitude is unknown. Two independent sources, a survey of Fortune 500 firms by Roger Schmenner and the Bureau of National Affairs, Inc. tabulations indicate that approximately one percent of the manufacturing establishments are closed each year.[6] In 1982, that meant 424 closures of manufacturing facilities putting 146,900 employees out of work.

Why collective bargaining as a tool to alleviate the problem of plant closure and dislocated workers? First, a significant proportion of closures takes place in unionized facilities. Whereas 52 percent of the facilities surveyed by Schmenner were unionized, 66 percent of the closings involved unionized facilities.[7] Second, the reasons cited for closure in surveys and in court cases tend to be amenable to resolution through collective bargaining. Schmenner's survey revealed that 21 percent of the respondents cited high labor rates, 17 percent listed price competition due to lower cost labor, and 10 percent indicated crippling union work rules. (Multiple responses were permitted.) Reasons cited in court cases have included low productivity, high wages, and inflexible work rules. Thus, the reasons cited for closing frequently are topics that have been and could be handled through the collective bargaining process.

Reich has argued that desired social goals could be achieved more efficiently through bargaining rather than regulation.[8] Collective bargaining can address the specific problems of the plant and may be able to tailor a solution that meets the needs of all parties. Legislation cannot possibly accommodate all of the varied circumstances in which closure is being considered. Sometimes, the best solution for all will be the end of production. In other circumstances, changes in wages, operating procedures and the division of responsibilities would result in profitable operations and continued employment. (A 1983 study documented one situation in which a 25 percent cut in wages and changes in work rules were necessary to make the employee owned company competitive).[9] Furthermore, if collective bargaining could lead to profitable operations and continued employment, some older workers would not be faced with the prospect of seeking new employment while possessing outdated skills, nor would the economic impact on the community be as severe.

The reasons listed above suggest that not only may the plant closure problem be amenable to mitigation through collective bargaining, but using collective bargaining may be more consistent with institutional and political considerations than direct regulation.

However, the problem in the private sector is that judicial interpretations of the National Labor Relations Act have not found the decision to close to be a mandatory topic of bargaining. Therfore, firms could unilaterally close a plant. Furthermore, unions either showed no interest or were not able to obtain plant closure protections into the collectively bargained contract. In 1974, only 14 percent of the major contracts covering manufacturing firms had advance notice provisions. Little changed by 1980 when 15 percent of the contracts contained advance notice provisions. (See Table 1).

Therefore, it is necessary to afford workers the opportunity to negotiate over the decision to close a plant and this would require amending the National Labor Relations Act's definition of mandatory topics of bargaining under "terms and other conditions of employment" to include bargaining over the decision to close. There are positive and negative aspects of this approach. The most obvious negative aspect is that the NLRA covers only those plants and workplaces where employees have elected a bargaining agent. A positive feature is that coverage is uniform throughout the United States, thereby not entering this issue into competition among the states.

TABLE 1

Percent of Contracts Containing Plant Closure Protections

PROVISION	1974 Percent	1980 Percent
Supplemental Unemployment Benefits	22	26
Severance Pay	39	38
Relocation Assistance	8	11
Transfer to New Plant	15	19
Hiring Rights at New Plant	5	7
Advance Notice of Closure	14	15
Advance Notice of Technological Change	10	11
Number of Contracts	631	676

Source: Computer runs by Wayne Wendling from Characteristics of Major Collective Bargaining Agreements.

The basic premise is that management and labor will want to obtain a bargain that leads to profitable operations and is the best alternative in the labor market. If the bargain necessary to maintain profitable operations requires wage cuts or changes in work rules greater than necessary as dictated by market alternatives, no agreement will or should be reached. If operations more profitable than the alternative can be achieved, management will and should stay at the existing plant. If no agreement is possible within the parameters, it would be inefficient for management and labor to continue at that location.

Neither management nor labor have perfect foresight. Formal negotiations every two or three years cannot accommodate all contingencies. Equity considerations suggest that workers be afforded the opportunity to minimize eaarnings and/or job loss. Recognizing that doing so also imposes costs on employers, it is necessary that bargaining over closure be flexible and expedited.

IV. COMMENTS ON H.R. 6080

I must preface my comments on H.R. 6080 with the statement that I am not a student of either the United States Civil Service or collective bargaining by federal employees. Therefore, I have only limited knowledge of the frequency and scope of bargained contracts by federal employees. My comments will be based on the assumption that certain lessons learned from the private sector are transferable.

Reductions-in-Force (RIFs) are likely to impact federal employees in the same way a plant closure affects its victims. The most observable impact is the earnings loss, which has several components. First, there is the direct and immediate earnings loss due to job separation. Second, initial reemployment earnings may be less because available employment opportunities simply do not pay as much as the previous position. Third, total earnings over

the entire career span may be less because the career has been disrupted. Other effects of plant closure such as a decline in health status, marital instability also seem to be transferable to RIFs.

The federal government must be prepared to respond to changes in the needs and priorities of its citizens. The role of one agency may be diminished whereas another's may be increased. Although the skills and training of employees may not be directly transferable across agencies, the private and social costs of unemployment suggest that alternate avenues should be investigated to insure that unemployment is the option of last resort.

As indicated in my discussion of the private sector, the reasons for closing a plant frequently are issues that have been or could be resolved through collective bargaining. RIFs could be viewed as one solution to a problem -- taxpayers are not willing to support the service an agency provides at the particular cost -- which might have another solution -- improving productivity and reducing the relative cost of providing the service. Both productivity enhancements and cost reductions are suitable topics of collective bargaining. Furthermore, recent experiences with labor-management cooperation initiatives have shown instances of significant cost savings and productivity improvements when workers and managers are pulling in the same direction.[10]

Protections are built in the collective bargaining approach. If managers attempt to extract excessive concessions, the employees will leave because more favorable alternatives are available in the market, and the most valued employees are likely to be the first to leave. Furthermore, the information that managers must supply should insure realistic parameters being established. If a solution cannot be achieved within the parameters of the market, that should be the signal that the service cannot be afforded. At that point our attention should turn to mitigating the impact on the employee.

As we look back at the key elements of the exemplary private sector initiatives, several points stand out.

* The employer was involved in helping the employee find new employment.
* There were opportunities for retraining.

H.R. 6080 has attempted to incorporate these points from exemplary private sector program, but with a twist. The federal government is a very significant employer in a number of labor markets, and the largest in some. H.R. 6080 proposes that the federal government help employees who might be RIFd find alternate employment in the federal service. In the private sector, firms may differ in wage schedules, employment practices and hiring procedures, but none of these potential stumbling blocks exist in the federal government. Thus, there should be even greater probability of success in placing RIFd employees within the federal service.

H.R. 6080 also incorporates a retraining provision similar to those in exemplary programs. This provision goes hand-in-hand with the one described above. The skills of those losing their jobs will not always match those needed in the available opportunities. The period of retraining is reasonable -- 180 days -- and similar to the period provided in other training programs. Recall that there also is a period of training associated with new hires. However, periods of retraining longer than 180 days may be counterproductive because they could impair the cost-effective delivery of service by the agency.

V. CONCLUSIONS

The plant closure problem in the private sector is not resolved. Insufficient effort has been directed to finding workable solutions to keeping plants open. Collective bargaining over the decision to close is an avenue that should be considered more seriously. But when closure is the only reasonable alternative, some private sector firms have established exemplary programs to assist those displaced workers' transition to reemployment.

However, the fundamental thrusts of H.R. 6080 are consistent with proposals and best practices in the private sector. First, the attempt to find an alternative to RIFs would rely heavily on negotiations and bargaining in the federal service. Second, the reemployment of RIFd federal employees would be aided by establishing a government wide placement system. Third, if the skills match is problematic, retraining for specific positions would be an option.

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September 8, 1984

Mr. John Fitzgerald, Counsel
Subcommittee on Human Resources
Committee on Post Office and Civil Service
U.S. House of Representatives
House Annex I, Room 511
Washington, D.C. 20515

Dear Mr. Fitzgerald:

Enclosed is the written testimony that will serve as the basis of my oral presentation before the Subcommittee on Human Resources on September 13, 1984. If you have any questions concerning points in the testimony, please do not hesitate to contact me.

Thank you for the opportunity to report on exemplary practices from the private sector and comment on H.R. 6080.

Sincerely,

Wayne R. Wendling

Wayne R. Wendling
Senior Economist

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Enclosure