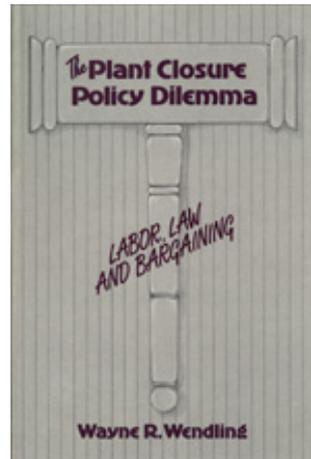


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Introduction

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Chapter 1

Introduction

I am fully aware that in this era of automation and onrushing technological change, no problems in the domestic economy are of greater concern than those involving job security and employment stability.

(Statement by Justice Potter Stewart in *Fibreboard Paper Products Corporation v. National Labor Relations Board* (85 S. Ct. 398, 411 (1964))).

The scope of public policy relating to plant closure and to those workers who are displaced is still unresolved. Should something more be done for the employees or required of the employer after a facility closes? Before it closes? Are the effects of closure mainly short term and corrected by the market? Are there long term consequences? Could collective bargaining play a greater role in solving this problem?

There are three ways in which collective bargaining may mitigate the problems associated with plant closure. First, judicial interpretations of the National Labor Relations Act have held that the employer must negotiate with the union over the effects of a decision to close a plant (“effects bargaining”). Second, although the decision by the United States Supreme Court in *First National Maintenance Corporation v. National Labor Relations Board* (101 S. Ct. 2573 (1981)) held that a firm need not bargain with the union over the decision to close one plant of a multiple plant operation (“decision bargaining”), this avenue has not been closed completely due to limitations in the opinion. For example, relocating one operation of a firm may require decision bargaining. Third, a union and employer may use the formal collective bargaining process to negotiate contract provisions

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covering plant closure. Advance notice, severance pay and transfer rights are examples of these types of provisions.

The objective of this monograph is to answer the following questions. First, what is the potential for bargaining to alter the decision to close when continued operation is a reasonable alternative? Second, can bargaining over the effects of closure provide a reasonable opportunity for workers to mitigate some of the consequences? Third, have management and labor used formal contract negotiations to obtain protections and to develop solutions for workers and firms "at risk of closure?"

Plant closure is of significant legislative interest. The States of Maine and Wisconsin and the City of Philadelphia have enacted legislation that prescribes necessary action by firms to close a plant, and 17 other states had legislation on this issue formally introduced in their legislative sessions between 1979 and 1981 (McKenzie and Yandle 1982). California and Illinois adopted programs in 1982 to assist workers affected by plant closure and Rhode Island has established a special commission to study the problems caused by plant closure (Nelson 1983). In 1983, the States of Alabama, Connecticut and New York also acted to assist workers displaced by shutdowns or relocations (Nelson 1984). In addition, at least four proposals have been introduced in the United States Congress in previous sessions and the National Employment Priorities Act (H.R. 2847) was introduced in the 1983 session. Finally, employee stock ownership plans to purchase establishments have been facilitated by legislation and have been used to avert closure (Stern, Wood and Hammer 1979). In fact, Wintner (1983) reports that of approximately 60 employee buyouts, only 2 have failed, and approximately 50,000 jobs have been preserved through this process.

Aside from the legislative interest in plant closure, the topic is of policy interest because it raises several complex

philosophical questions about the course and control of economic activity. First, there is the question of whether the rights of owners of physical capital should take precedence over the rights of owners of human capital. Are firms and workers equally positioned to respond to economic change? Second, there is the conflict between equity and efficiency. Is it necessary that individuals suffer earnings losses so that corporations can maximize profits? Conversely, the mobility of workers and capital are both considered to enhance efficiency, but should restrictions be placed on the latter and not the former? Finally, there is the role of government policy. If government policies and actions increase the probability of closing a plant, can or should government policy be neutral towards the effects of closure?¹

One such philosophical question arises when examining the unequal ability of firms and workers to respond to economic change (Martin 1983). For instance, a firm may make a capital investment in an industry. Due to changing market conditions, however, the firm recognizes that its future financial health is at stake unless it diversifies or changes markets. The firm redirects its resources and invests in a new activity, all of which may be done while it is still engaged in the original enterprise. In addition, the firm's new investment may be eligible for favorable tax treatment.

The situation facing the worker is quite different. The worker also invests in the firm through the accumulation of firm-specific skills. Assuming the worker recognizes that continued investment in the firm does *not* prevent displacement, he/she faces considerable difficulties in repositioning and diversifying his/her human capital. Time is required to develop new human capital before it can be sold in new markets, whereas the old human capital cannot be sold as scrap in a secondary market. Furthermore, investments to broaden one's human capital are not given special tax treatment, whereas investments to deepen it—such as investing

more in one's current obsolete skill—are considered tax deductible. Since diversification may be necessary to minimize the impact of displacement, firms and workers are unequally positioned to respond to economic change.

However, it is necessary to place the plant closure issue in perspective. What is the magnitude of the plant closure problem? Since no governmental agency is charged with recording the closing of a plant or counting the number of workers directly affected, the exact magnitude of the plant closure problem is unknown. Consequently, several researchers have used auxiliary data to infer the extent of closure or have attempted to count the number of closures and workers impacted.

Bluestone and Harrison (1982) and Birch (1979) have used the Dun & Bradstreet data, which are actually collected to develop credit profiles of firms, to estimate the incidence of closures, start-ups and relocations. The Bureau of National Affairs (1983) has begun to tabulate the number of closings, but uses a combination of newspaper clippings, union reports and informed sources to develop their count of closures and affected workers. Schmenner (1982) has assembled data on the number of plant closures in the 1970s by surveying Fortune 500 firms.

Bluestone and Harrison's analysis of the Dun & Bradstreet data indicated that of every 10 manufacturing plants employing more than 100 workers open in 1969, 3 had closed by 1976. They also showed that the incidence of closure across the four major regions of the United States was quite similar during this time period (see table 1.1). In fact, the North Central region, which stretches from Ohio to North Dakota, had the lowest incidence of closure (25 percent) and the South, which ranges from Maryland to Oklahoma, had the highest incidence of closure (34 percent).

Table 1.1
Incidence of Closure by Region
Among Manufacturing Plants Employing More Than 100 Employees
From 1969 and 1976

Region	Number of states	Number of plants in 1969 sample	Number in sample closed by 1976	Incidence of closure of 1969 plants by 1976
Northeast	9	4,576	1,437	.31
North Central	12	3,617	904	.25
South	16	3,101	1,042	.34
West	13	1,155	344	.30
TOTAL	50	12,449	3,727	.30

SOURCE: Barry Bluestone and Bennett Harrison, *The Deindustrialization of America* (New York: Basic Books, Inc., 1982, Table 2.2).

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Birch (1979) provided closure information on service establishments, which is presented in table 1.2. Although plant closure research has tended to emphasize manufacturing facilities, the service sector has grown in importance to the economy over the past two decades. Also, the impact of closure on individuals is not likely to vary significantly just because it is a service establishment and not a manufacturing facility. Furthermore, two of the three key U.S. Supreme Court decisions pertaining to the "duty to bargain over the decision to close a plant" have involved service operations.

The data shown in table 1.2 indicate a relatively high rate of closure among large service establishments, and a rate that is quite uniform across regions. Thus, the implication from these two tables is that the closure of firms is not simply a regional phenomena, but is prevalent throughout the United States.

Another approach to counting the number of displaced workers is to consider the population at risk. Risk can be evaluated along several dimensions; industry, occupation, age, region or tenure on the job are valid criteria. Alternatively, severity of unemployment can indicate a "risk group." For example, it most likely is a reasonable assumption that job losers who are associated with a declining industry are at risk of never getting back their positions and therefore of being displaced. Individuals who have been separated from their jobs for more than 26 weeks also have a diminishing probability of returning to their jobs.

The Congressional Budget Office (1982) has provided an estimate of the number of workers in January 1983 who are at risk of being displaced. Job losers were categorized along the dimensions listed above, with those meeting the criteria considered to be at risk. The results are provided in table 1.3.

The Bureau of National Affairs (1983) reported that there were 619 closures directly affecting 215,525 workers in 1982;

Table 1.2
Incidence of Closure by Region
Among Service Establishments Employing More Than 100 Employees
From 1969 and 1976

Region	Number of states	Number of establishments in 1969 sample	Number in sample closed by 1976	Incidence of closure of 1969 establishments by 1976
Northeast	9	633	237	.37
North Central	12	433	172	.40
South	16	476	182	.38
West	13	284	117	.41
TOTAL	50	1,826	708	.39

SOURCE: David Birch, *The Job Generation Process* (Cambridge, MA: M.I.T. Program on Neighborhood and Regional Change, 1979, Appendix D).

424 closures were manufacturing facilities and resulted in putting 146,900 employees out of work.² There were over 300,000 manufacturing establishments employing 18.8 million workers in 1982. Thus, slightly more than 1 percent of the manufacturing facilities and slightly less than 1 percent of the manufacturing workforce were affected.

Table 1.3
Estimates of Jobless Workers
at Risk of Displacement in January 1983
Under Alternative Eligibility Standards

Eligibility criteria	Number of workers (000s)
Declining industry	880
Declining occupation	1,150
More than 45 years of age	890
Declining industry and 45 or more years of age	205
Declining industry and other unemployed in declining area, and 45 or more years of age	395
Declining occupation and 45 or more years of age	280
More than 26 weeks of unemployment	560

SOURCE: Congressional Budget Office, *Dislocated Workers: Issues and Federal Options*, Washington, DC: U.S. Government Printing Office, 1982. This estimate, which is based on tabulations from the March 1980 Current Population Survey, also assumes that the number of displaced workers would not change between December 1981 and January 1983. Thus, these figures are conservative estimates of the actual figures.

Additional evidence on the incidence of plant closure is provided by Schmenner (1982) who collected closure data for the 1970s from Fortune 500 firms. During the 1970s, these firms closed approximately 8 percent of the plants that had been in existence at the start of the decade.³ Although averages can be misleading, less than 1 percent of the existing plants of Fortune 500 firms were closed per year, a rate which is consistent with the BNA findings for 1982. The in-

vidence of plant closure by industry as tabulated by Schmenner is reported in table 1.4.

Table 1.4
Percentage of Plants Closed in Manufacturing Industries
in the 1970s by Fortune 500 Firms

Industry	Number of plants	Number closed	Percentage closed
Food & Kindred Products (20)	2,174	222	10.2
Tobacco Manufacturers (21)	32	1	3.1
Textile Mill Products (22)	383	36	9.4
Apparel (23)	267	24	9.0
Lumber & Wood Products (24)	401	30	7.5
Furniture & Fixtures (25)	183	23	12.6
Paper & Allied Products	907	60	6.6
Printing & Publishing (27)	258	15	5.8
Chemicals & Allied Products (28)	1,739	119	6.8
Petroleum Refining (29)	397	12	3.0
Rubber Products (30)	494	38	7.7
Leather & Leather Products (31)	80	16	20.0
Stone, Clay, Glass & Concrete Products (32)	648	44	6.8
Primary Metals Industries (33)	603	49	8.1
Fabricated Metal Products (34)	947	89	9.5
Machinery, Except Electrical (35)	1,056	75	7.1
Electrical Machinery (36)	965	85	8.8
Transportation Equipment (37)	607	37	6.1
Scientific Instruments (38)	326	23	7.1
Miscellaneous Manufacturing (39)	212	23	10.8
Totals	12,679	1,021	

SOURCE: Calculations based on computer printout provided by Roger Schmenner, August 16, 1983.

NOTE: Two digit SIC code in parentheses.

It is obvious that there are significant differences in the estimates of the magnitude of the problem. The analysis based on the Dun & Bradstreet data clearly signals a much higher rate of closure—over 4 percent of the plants closed each year—than do the Bureau of National Affairs and the Schmenner calculations, which indicate approximately 1 percent of the manufacturing plants are closed each year.

The relative accuracy of the estimates is more than an academic question because the magnitude of the problem conditions the potential policy responses. Although Schmenner and the Bureau of National Affairs are derived from independent sources, they appear to be consistent; consequently, these estimates will be accepted. Therefore, the analysis of this study will be based on the assumption that the closure of a manufacturing facility is a relatively infrequent event.

As the United States economy moves out of the recessionary conditions that have plagued it since late 1979, there may be a tendency to forget about plant closures and the dislocated workers. The number of closures and the ranks of the dislocated always swell during recessions, and the assumption may be that the economic recovery will solve the problem.

This viewpoint does not recognize that closure and dislocated workers are chronic problems. Some plants are going to be shut down even while the economy is in a period of sustained growth, and consequently, workers are always going to be dislocated. Incentives that operate to concentrate the impact of closure on the older worker, or the immobile, will continue during recovery as well as recession. Consumer demands also change through time. Some industries will be growing and others will be declining. Since the most efficient locations for producing the new products may not be the same as for the old products, and since the skills required may not be identical, this process of change usually will generate some dislocation.

A more concrete example of this process is offered by the research findings of Schmenner (1983). He determined that for major firms in the 1970s, the average age of a plant at closing was 19.3 years and the median age of closed plants was 15 years. Fully one-third of the plants that were closed were only six years old or less, and two-thirds of the plants were modern single-story structures. Thus, the existence of a

new plant in a community is not a guarantee that the workforce will *not* be displaced by a plant shutdown in the near future. Furthermore, although the average size of all plants in his study was approximately 490 employees, the average employment size of plants opening in the 1970s was approximately 240 employees.

The question may be raised: Why the interest in 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 (Schmenner 1982). 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, there are a significant number of instances in which the reasons cited for closing are topics that have been and could be handled through the collective bargaining process.

Reich (1981) has argued that desired social goals could be achieved more efficiently through bargaining rather than regulation. 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 would 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. (Wintner's (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.) 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.⁴

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. Bacow (1980) has written that we need to be concerned with more than economic efficiency as we seek solutions to problems.

If we are to develop a useful theory for matching tools to problems, then the criteria used for evaluating the match must reflect not only efficiency considerations, but also the managerial, institutional and political factors that determine the effectiveness of policies in practice (p. 132).

The other area of concern of this monograph relates to the labor market. Research on plant closure has paid little attention to the actual functioning of the labor market and whether the proposed policies are designed to correct market imperfections. Instead, it has tended to concentrate on one theme, the reemployment experience of dislocated workers. The method of analysis usually has been the case study. Based on this research, policies for alleviating the observed hardships associated with closure have been proposed.

Issues that have not been addressed or have been discussed only casually include the relationship between compensation schedules and estimates of earnings loss. Compensation schedules also could affect the structure of severance pay. An additional issue is the dichotomy between large local labor markets and small local labor markets. Another

unresolved issue is whether compensating wage differentials exist for the positive probability of a plant closure.

The outline of this monograph is as follows. Chapter 2 addresses the functioning of the labor market in the presence of plant closure. Specific topics include: compensation schedules, estimates of earnings loss and the structure of severance pay; small and large local labor markets; and compensating wage differentials for the probability of plant closure. One other labor market issue, the impact of closure on older workers, is treated separately in Appendix A.

Chapter 3 is a discussion of the judicial interpretation of the duty to bargain over the decision to close and effects of closure. Also analyzed are the related issues of plant relocation and transfer of work. Chapter 4 discusses guidelines, rules and tests that have been proposed to facilitate the determination of a duty to bargain over the decision to close. An alternate proposal also is presented in this chapter. The empirical examination of the extent of bargaining over this issue is presented in chapter 5. The synthesis of the several aspects of this study and the conclusions are presented in the final chapter.

NOTES

1. Bluestone and Harrison (1980) asserted that the provisions of the tax code have provided indirect incentives to construct new facilities rather than rebuilding or renovating older facilities. These incentives include: (a) not treating land as a depreciable asset; (b) differential treatment of new and used facilities for purposes of accelerated depreciation; (c) tax credits that encourage the purchase of a newer vintage of tools and machinery; (d) tax deductibility of plant closure costs; (e) the special treatment of industrial development bonds; and (f) tax deductibility of many of the costs of homeownership.

2. Note that using the BNA calculation, the average number of employees in the manufacturing facilities that closed was 348. The average number of employees in the typical manufacturing facility in the United States

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was 63. Given that the BNA data set basically was collected by means of newspaper clippings, there may be a bias to their figures that understates the number of closures and overstates the average size of the closed facility. The closure of a smaller facility simply may not be reported.

The data on closure may be confused at times with business failures. For example, approximately 17,000 businesses failed in 1981. Business failures are defined as “concerns discontinued following assignment, voluntary or involuntary petition in bankruptcy, attachment, execution, foreclosure, etc.; voluntary withdrawals from business with known loss to creditors; also enterprises involved in court action, such as receivership and reorganization or arrangement which may or may not lead to discontinuance; and businesses making voluntary compromises with creditors out of court.” (*United States, Statistical Abstract, 1982-1983.*) Thus, the definition of business failures is broader than that of plant closure which is the closing of a plant, establishment or company.

3. This calculation was based on information contained in a computer printout provided by Roger Schmenner to the author.

4. The role of collective bargaining in alleviating the plant closure problem was examined in more detail in late 1950s and early 1960s. Examples include the research of Killingsworth (1962) and Shultz and Weber (1966). At that time it was felt that “collective bargaining by itself cannot fully solve these problems.” (Killingsworth, p. 210). Shultz and Weber wrote, “It has been asserted that collective bargaining cannot change the economic climate, that it can only ration the sunshine—or the rain as the case may be. . . . It should not be concluded, however, that collective bargaining has or will play only a minor role in adjustments to technological and economic change.” (p. 46).