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# NOTES AND COMMENTS

## Plant Closure Legislation in the United States: Insights from Great Britain

### I. INTRODUCTION

In a letter to a Congressional Joint Hearing in 1980 on the topic of plant closures,<sup>1</sup> Mr. William Silveira illustrated the harsh realities an individual employee faces when his or her workplace is permanently shut down:

To whom it may concern:

I'm just writing this letter to let you know that the General Electric Plant at 1034 66th Ave. in Oakland is planning to shut down for good. I have been there 22 years going on 23 years. If they close this plant down it will be tough for me to find a job at my age. I am 52 years old and in my health and condition, I am under a doctor's care for high blood pressure. All my medical insurance is with General Electric. If this plant closes I will have to pay all my medical bill [sic] on my own. If I'm lucky to find a job and jobs are hard to find and the way medical costs are nowadays [sic] that will be very hard for me to do. My life insurance and my pension are also with General Electric. And I will lose that also. I have a wife to support and a home to pay for not to mention taxes and everything else that goes with buying a home. This plant employs mostly low income and a lot of minority people so I'm not the only one that it will hurt. It will put a lot of people out of work that really need it. Its [sic] just not for me but for my fellow employees who I work with. All most [sic] half my life has been with GE. I would appreciate any help you can give us to convince the General Electric Company to keep this plant open and keep me and my employer at this plant instead of on the street looking for work that ain't there. One more thing their [sic] not losing [sic] money. They sponsored the Johnny Carson Show and other T.V. shows. They spend enough on these shows to keep the Oakland plant open

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1. Plant closings/closures will be defined in this Comment as including partial and total plant shutdowns and/or relocations, as well as any economic dislocations that affect workers, local economies, local and federal governments, and local communities. See Millspaugh, *The Campaign for Plant Closing Laws in the United States: An Assessment*, 5 CORP. L. REV. 291 (1982).

for 3 more years or longer. Thank you for reading my letter. It means a lot to me.

Sign.

William Silveira<sup>2</sup>

Since the early 1970's, the number of plant shutdowns and employee dismissals in the United States has risen at an alarming rate.<sup>3</sup> The devastating effects these closures have on workers, their families, and their communities are well documented.<sup>4</sup> In order to best show how to alleviate plant closure problems, this Comment will compare the general policy approaches taken in both the United States and Great Britain. It will also address specific features of proposed and enacted legislation concerning plant closures and their effects in the two countries. Finally, this Comment will show that if legislation addressing the problems of plant closure is to be enacted, it must provide a balanced and effective solution which integrates government, business, and labor.

#### A. *The Economic and Social Cost of Plant Closures*<sup>5</sup>

When workers become unemployed as a result of a plant shut-

2. *National Employment Priorities Act, 1979: Hearings on H.R. 5040 Before the Subcomm. on Labor-Management Relations and the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor, 96th Cong., 2d Sess. 137-38 (1981) (Letter of William Silveira) (Hearing held in Martinez, California) [hereinafter cited as *Hearings-Martinez*].*

3. For example, from 1969-1976, studies have revealed that more than 6500 plants with 100 or more workers have shut down. Moreover, one of every three American firms that employed between 100 and 500 workers in 1969, and one of every four firms that employed over 500 workers, were no longer in existence in 1976. Kay & Griffin, *Plant Closures: Assessing the Victims' Remedies*, 19 WILLAMETTE L.J. 199, 201 (1983) (citing D. BIRCH, *THE JOB GENERATION PROCESS* 12 (1979)). See B. BLUESTONE & B. HARRISON, *CAPITAL AND COMMUNITIES: THE CAUSES AND CONSEQUENCES OF PRIVATE DISINVESTMENT* (1980). See also R. MCKENZIE, *PLANT CLOSINGS: PUBLIC OR PRIVATE CHOICES?* (1982).

4. An analysis of the problems that create plant closures would be an enormous task, practically untreatable in a discussion such as this one. Therefore, this Comment focuses on the problems created by plant closures and the possible legislative solutions to those problems, rather than discussing in any detail the possible causes of plant closures.

5. As stated in one legislative report on plant closures, less skilled, older, long term "blue collar" employees tend to suffer the most adverse effects because these workers' skills "tend to be more job specific than white collar employees' skills." As a consequence, employees that share some or all of these characteristics often have less success finding subsequent employment because they frequently are less adaptable and less marketable due to the specific and often limited nature of their skills. Legislative Research Council of the Commonwealth of Massachusetts, *Report Relative to Plant Closings* 29 (1983) [hereinafter cited as *Massachusetts Report*]; moreover, blacks, latinos, Asians, and women tend to be hit hardest when a plant shuts down because minorities frequently are "the last hired, first fired."

down, they suffer not only an immediate and abrupt loss in earnings, but also a loss of medical and retirement benefits.<sup>6</sup> Those workers who, up until they were laid-off, were the sole or primary breadwinners for their families, may also suffer psychological problems due to the frustration and helplessness they feel because they can no longer fulfill the needs of their families.<sup>7</sup> Communities also suffer when a significant number of the population rely on one employer and that employer closes its plant.<sup>8</sup> For example, in such communities, the intake of tax revenues declines dramatically, and the unemployed workers now need governmental assistance.<sup>9</sup> Other businesses that rely on a solvent community for their revenues also suffer when a significant number of people become unemployed.<sup>10</sup> Thus, a plant

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Zimmerman, *International Runaway Shop: Why U.S. Companies Are Moving Their Plants Abroad*, UNITED FRONT PRESS, Dec. 1972, at 49.

6. Massachusetts Report, *supra* note 5.

7. As shown by one legislative study:

Loss of work network removes an important source of human support. As a result, psychosomatic illnesses, anxiety, worry, tension, impaired interpersonal relations and an increased sense of powerlessness arise. As self esteem decreases, problems of alcoholism, child and spouse abuse and aggression increase . . . . Other devastating consequences are the severe physical problems many displaced workers experience. Among the medical problems that have been found to be associated with plant shut-downs are sleeplessness, hypertension, ulcers, increased uric acid, and high cholesterol levels.

Massachusetts Report, *supra* note 5, at 30. The same report, citing another study, pointed out that suicide rates among displaced employees can reach as high as thirty times the average rate. *Id.* (citing Strange, *Job Loss: A Psychosocial Study of Worker Reactions to a Plant Closing in a Company Town in Southern Appalachia*, NATIONAL TECHNICAL INFORMATION SERVICE 38 (1977)).

8. Massachusetts Report, *supra* note 5, at 31.

9. The higher the percentage of the community that becomes unemployed as a result of a shutdown, the lower the community's tax revenues. Yet, the more unemployed there are, the higher the tax revenues must be to pay increased unemployment insurance and other social welfare payments. Thus, at the same time the need and demand for unemployment benefits and welfare payments are increasing, tax revenues are declining. Lower tax revenue also contributes to a deterioration in the local services received by everyone in the community. These problems are aggravated where unemployment in the community continues for a long period of time. Massachusetts Report, *supra* note 5, at 31.

10. For example, in California, in 1981, 1982, and the first quarter of 1983, 1,484 plants were closed resulting in the direct loss of 165,843 jobs. However, for every direct job lost, 1.6 jobs were indirectly lost, making the total direct and indirect job loss for plant closures roughly 430,000. *National Employment Priorities Act, 1983: Hearings on H.R. 2847 Before the Subcomm. on Employment Opportunities and the Subcomm. on Labor-Management Relations of the House Comm. on Education and Labor*, 98th Cong., 1st Sess. 81 (1983) (Hearing held in Los Angeles, California) (statement of Jim Quillan, President, California Conference of Machinists) [hereinafter cited as *Hearings-Los Angeles*]. Mr. Quillan cited research done by the University of California, Berkeley Department of Planning and Public Research as the source for his statistical information. Nationwide, in the automobile industry, it has been found that for every job directly lost, 2.4 to 3.0 jobs are indirectly lost. Massachusetts Report, *supra* note

closing can adversely affect not only the individual worker, his or her family, and the local community, but also the economic livelihood of subsidiary and ancillary businesses and their employees.

### B. Causation and Possible Solutions of Plant Closures

These problems faced by unemployed workers are often not the result of the plant closure itself, but rather due to the abruptness of that closure. For instance, when a worker is given only two weeks notice, she or he does not have time to find or train for another job. Thus, when the closure occurs, there is an immediate stop in income. In such a situation, the only remedy may be for the employer to give notice much sooner in order to allow time for employees to adjust.<sup>11</sup> However, therein lies the real problem. In the United States today, there is no way to compel an employer to structure a concededly necessary plant closure so as to minimize the injury to the employees.<sup>12</sup> When a company wants or needs to shut a plant or factory, it may do so at its discretion without consulting any of those people who will be hurt by its decision.<sup>13</sup>

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5, at 32 (citing MacLennan & O'Donnell, *The Effects of the Automotive Transition on Employment, A Plant and Community Study*, U.S. Dep't of Transp. (1980)).

11. Although, according to Rep. William D. Ford, advance notice does not solve or even attempt to solve all of the serious problems caused by a plant closure,

[i]t will provide time for individual employees and their families to begin searching for new employment or training, to begin adjusting their budgets for the income loss they will sustain, and for government agencies to begin planning the delivery of adjustment services. It is not just humane; it is economically efficient for society to require some minimal amount of advance notice before employers terminate large groups of employees.

Ford, *Coping with Plant Closings*, 36 LAB. L.J. 323-24 (1985).

12. As illustrated by Professor Bennett Harrison:

In sharp contrast to the European situation, only about one in five workers in the United States is covered by collective bargaining agreements. Moreover, of those workers who do belong to unions, only a small proportion have contracts containing language providing more than token advance notification of shutdowns. Of all collective bargaining agreements in force in 1980 and covering more than 1,000 employees, only 15 percent contained language requiring either advance notice of a closure or relocation, or explicitly authorizing union participation in the procedure. Of the contracts containing such language, 3 of 4 were in manufacturing, so service workers (the fastest growing segment of the economy) were especially poorly protected. And of those agreements reporting (to the Bureau of Labor Statistics) on length of the pre-notification period, more than half provided less than 3 months' notice, while only 14 percent called for pre-notification of 6 months or more.

Harrison, *Plant closures: efforts to cushion the blow*, MONTHLY LAB. REV., June, 1984, at 41 (U.S. Dep't of Labor publication).

13. According to a United States Supreme Court decision in June 1981, the Court held that an employer could close a plant without bargaining at all with an affected union, provided that the shutdown is a partial one (i.e., one of several plants in a multi-unit company) made for

The plight of workers, who have no control over the future of their employment, is the result of their lack of economic power relative to their employers.<sup>14</sup> Labor unions are one way of shifting this balance of power, but the vast majority of employees are not members of unions.<sup>15</sup> Another way of giving some of this power to employees is through legislation. Legislation, however, requires the support of politicians, who have among their constituents employers as well as employees.<sup>16</sup> These politicians are lobbied hard by both labor and management groups; a middle ground often does not exist. Because of the traditional antagonism between labor and management, the two sides seldom appear willing to handle mutual problems through compromise.<sup>17</sup>

Congress has recently contemplated adopting a comprehensive industrial policy which would provide guidelines for cooperation among business, government, and labor to deal effectively with such issues as industrial innovation, economic growth, international competitiveness, and research and development.<sup>18</sup> More importantly, a framework for cooperation between government, business, and labor,

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economic reasons—as opposed to anti-union motivations. *Id.* (citing *First National Maintenance Corp. v. N.L.R.B.*, 452 U.S. 666 (1981)).

14. *See supra* note 12.

15. *See supra* note 12.

16. Therefore, as a result, public policies have tended to fall principally into two categories: “misguided business incentives and supports enacted by state and local governments in a frantic effort to attract or hold capital; and a few inadequate welfare-type policies for dislocated workers.” B. BLUESTONE, B. HARRISON & BAKER, *CORPORATE FLIGHT: THE CAUSES AND CONSEQUENCES OF ECONOMIC DISLOCATION* 65 (1981).

17. Rep. William Clay, Chairman of the Subcommittee on Labor-Management Relations, stated that in the area of plant closures:

It is frustrating to say the least, that while the problem has intensified since our last hearing here in 1980, progress toward a solution has not gotten very far. Workers continue to be displaced at an increasing and alarming rate. Local communities continue to compete with each other to attract new industry and then stand by helplessly when a corporation decides to leave after milking the local economy, leaving those who remain devastated.

*Hearings-Los Angeles, supra* note 10, at 64.

18. Schacht, *Industrial Innovation: The Debate over Government Policy* 4 (1984) (Congressional Research Service Issue Brief No. IB 89004 available from the Library of Congress). According to a *Harvard Business Review* report:

The success of collaborative business-government relations in places such as Japan has led to even stronger proposals for direct intervention by government in business affairs—that is, for an American industrial policy that would create new institutional arrangements between companies and government and new policies to rehabilitate American economic performance.

*Public Policy and Private Enterprise*, HARV. BUS. REV. v-vi (1983) (quoting from preface to the volume) [hereinafter cited as *Public Policy*].

whether labeled a "social contract"<sup>19</sup> or a comprehensive "industrial policy," could provide guidelines for designing and implementing specific solutions to the problems created by plant closures.<sup>20</sup>

The proposed federal solutions to date have been soundly criticized by some observers who think that they disproportionately favor employees.<sup>21</sup> These observers, most of whom have interests in business as employers, argue that this imbalance is the result of too little input from those representing their interests during the proposals' drafting stages.<sup>22</sup> Thus, if any comprehensive legislation concerning plant closures is to be implemented and supported by all sectors of industry and government, compromises must be made by each side.

### C. *Lessons from Great Britain*

In developing any kind of comprehensive legislative policy to deal with the problems of plant closures, it is helpful to look at other countries which have already tried a similar approach. One such country is Great Britain. Due to the substantial similarity between the British and American legal systems, an examination of the British

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19. As described in *Business Week*, a "social contract" is broadly defined as "creating a new sense of teamwork," not necessarily something put on paper, but an unwritten understanding and/or agreement between sectors of society which underlies societal relationships. Specifically, as asserted in the magazine:

The most urgent piece of business facing the nation is to reverse the economic and social attitudes that have generated its industrial decline. It is a task that must involve all elements of society: business, labor, government, minorities, and public-interest groups. It requires nothing less than a new social consensus . . . . Stated plainly, all social groups in the U.S. today must come to understand that their common interest in returning the country to a path of strong economic growth overrides other conflicting interests. The adversary relationships of the past were tolerable because they centered mostly on how to distribute an expanding output of goods and services. Taking growth for granted is no longer possible. If the country tries to pretend otherwise, further economic decline and social disruption are inevitable as various groups struggle for more and more of less and less.

*Revitalizing the U.S. Economy*, BUS. WK., June 30, 1980, at 86.

20. Simply put, it is this author's contention that a new sense of teamwork, rather than confrontation, must be utilized when addressing causes and effects of plant closures.

21. Millspaugh, *supra* note 1, at 304-05.

22. *Id.* Interestingly enough, some would argue that the lack of enough employer input might be the result of a purposeful lack of participation by the business sector. For example, according to Representative Augustus F. Hawkins, Chairman of the House Subcommittee on Employment Opportunities, in his opening remarks at a hearing on plant closure legislation, the business sector may opt not to participate at all: "We had hoped to receive testimony today from the business community as well. They were invited to testify. Unfortunately, we were not successful in our attempts to include them today." *National Employment Priorities Act, 1984: Hearings on H.R. 2847 Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor, 98th Cong., 2d Sess. 1 (1984) [hereinafter cited as N.E.P.A. 1984].*

legal response to plant closures provides an excellent opportunity to evaluate the possible effects of such a response if it were to be applied in the United States.<sup>23</sup> An examination of the British laws, proposed and enacted, relating to plant closing problems may also reveal possible models or approaches that can be used in the United States.

## II. THE BRITISH APPROACH

### A. Enacted Legislation

Although the British government has been directly involved in many areas of the nation's economy following World War II,<sup>24</sup> a traditional British attitude of non-intervention in the employer-employee relationship persisted into the early 1960's.<sup>25</sup> In 1963, however, the English Parliament passed the Contracts of Employment Act,<sup>26</sup> which was a major break with the principle of *laissez-faire*.<sup>27</sup> For the first time a legal obligation was imposed upon employers to give advance notice to workers who would be dismissed.<sup>28</sup>

Following the Contracts of Employment Act, Parliament became

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23. Ognibene, *Plant Closings and the Duty to Consult Under Britain's Employment Protection Act of 1975: Lessons for the United States*, 5 B.C. INT'L & COMP. L. REV. 195 (1982). Mr. Ognibene's article focuses primarily upon the 1975 Employment Protection Act, analyzing specific provisions pertaining to plant closures. This Comment, on the other hand, attempts to compare British legislation such as the 1975 Employment Protection Act with proposed American legislation addressing plant shutdowns, as well as both countries' general approaches to this problem.

24. For example, the nationalization of industries such as British Leyland Automotives, the British Steel Corporation, the National Coal Board, and the Central Electricity Generating Board. See generally R. CAVES & L. KRAUSE, *BRITAIN'S ECONOMIC PERFORMANCE* (1980); P. DAVIES & M. FREEDLAND, *LABOUR LAW* (1979); G. DORFMAN, *GOVERNMENT VERSUS TRADE UNIONISM IN BRITISH POLITICS SINCE 1968* (1979).

25. A. SHONFIELD, *MODERN CAPITALISM: THE CHANGING BALANCE OF PUBLIC AND PRIVATE POWER* 112 (1965). Writing in 1965, Economist Andrew Shonfield described the prevalent attitude in Britain at the time:

The line taken by the British courts is that the relationship between employer and employee is on exactly the same footing as that between a willing buyer and a willing seller of any other service. No one, for instance, can tell an employer that he has dismissed a worker without just cause and must reinstate him or at least pay him damages. The most that a British worker can obtain if he is summarily dismissed is the amount of pay which he would have earned if he had been given the full period of notice agreed for the job on which he was engaged.

*Id.*

26. Contract of Employment Act, 1963.

27. A. SHONFIELD, *supra* note 25, at 113.

28. *Id.* As stated by Shonfield: "Thus for the first time the British law recognized the existence of a special right generated by doing a job over a certain period . . ." *Id.*



even more involved with the problem of "redundancies,"<sup>29</sup> the British term for layoffs or terminations of employment, particularly with the passage of the Redundancy Payments Act of 1965<sup>30</sup> (1965 Act), and the Employment Protection Act of 1975<sup>31</sup> (1975 Act). This trend of increased legislative intervention in employer-employee relationships is perhaps reflective of the general British public sentiment concerning an employer's social responsibilities and an employee's right to work.<sup>32</sup> The British public tends to believe that a person's right to work should be nearly equal to the right to own property.<sup>33</sup> British courts have often protected the right to work and have gone so far as to hold that employers have a legal duty to provide an employee with work.<sup>34</sup> In accordance with the judiciary, the 1965 and 1975 Acts recognize that an employee's right to work is extremely important not only to the employee, but to the economy as well.<sup>35</sup>

The main features of both the 1965 and 1975 Acts can be divided into two categories: procedural and substantive rights to the employee.<sup>36</sup> By granting certain procedural rights to employees, Parliament sought to promote consultation between employers and unions to determine whether there might be any possible alternatives to

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29. According to the Employment Protection Act of 1975, the term redundancy, in relation to an employee, refers to:

- (a) the fact that the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee is or was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee is or was so employed, or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he is or was so employed, have ceased or diminished or are expected to cease or diminish.

Employment Protection Act, 1975, ch. 71, § 126(6).

30. Redundancy Payments Act, 1965.

31. Employment Protection Act, 1975, ch. 71.

32. Ognibene, *supra* note 23, at 203.

33. *Id.* at 203-04.

34. *Id.* (citing *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329).

35. Ognibene, *supra* note 23, at 204. It should be noted that the 1965 Act and particularly 1975 Act were designed not only to provide some specific protections for workers, but also were components of a broader Labour Party policy to attack Britain's economic woes. For example, during the parliamentary debate concerning the 1975 Act, the Minister introducing the bill stated that the Act was "the clearest possible evidence of the Government's commitment to the social contract, which in our view remains the only realistic policy for containing inflation." Thomson, *The British Labor Government's Industrial Relations Program*, 9 CORNELL INT'L L.J. 159, 176 (1976) (quoting statement of M.P. Hansard (Parliamentary Debates) Apr. 28, 1975, at cols. 46-47).

36. See *supra* notes 29-30 and accompanying text.

either dismissing employees or shutting down a plant.<sup>37</sup> These procedures require the employer, who is considering a layoff, to report the reasons for any possible employee dismissals to the Department of Employment and to the trade unions.<sup>38</sup> This procedural requirement is meant to facilitate a comprehensive search for all possible alternatives to a complete closure.<sup>39</sup>

Under Section 99 of the 1975 Act, employers are required to give thirty days notice to their employees' unions if ten to ninety-nine workers are to be dismissed, and ninety days notice if a hundred or more employees are to be dismissed.<sup>40</sup> During the waiting period after notice and before dismissal, workers are given paid time off to look for work elsewhere, including relocation benefits such as travel and housing.<sup>41</sup> Additionally, during this time, the Department of Employment can set up a variety of retraining programs to assist workers in finding new jobs.<sup>42</sup>

If proper notice is not given, the union of those workers who may lose their jobs is entitled to bring the employer before an industrial rights tribunal to obtain a protective award for lost benefits and pay.<sup>43</sup> Moreover, if the company fails to provide the proper notification, stiff fines and penalties may be imposed.<sup>44</sup>

In cases where special circumstances are present (e.g., bankruptcy), which make pre-dismissal notification impractical, section 99(8) of the 1975 Act provides an "escape clause" which modifies the requirements stated above.<sup>45</sup> Even in these cases where special circumstances exist, however, the government pays the displaced workers their wages for the lost period of notice, an amount which is

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37. Ognibene, *supra* note 23, at 211 (citing 891 PARL. DEB., H.C. (5th ser.) 36 (1975)). The Acts, particularly the 1975 Act, achieve their primary purpose when consultations between the parties occur. *Id.* at 212.

38. Massachusetts Report, *supra* note 5, at 95.

39. *Id.*

40. Employment Protection Act, 1975, ch. 71, § 99(3) (a)-(b).

41. *Id.* § 61.

42. *Id.* § 101(1).

43. Joint Report of Labor Union Study Tour Participants, *Economic Dislocation: Plant Closings, Plant Relocations and Plant Conversion* 28 (1979) (construing the Employment Protection Act, 1975, ch. 71, § 99) [hereinafter cited as Joint Report].

44. *Id.* For example, rebates on severance pay which employers normally receive from a government administered, employer funded redundancy fund may be withheld. *Id.*

45. Employment Protection Act, 1975, ch. 71, § 99(8). Specifically, section 99(8) states: "If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of subsections (3), (5), or (7) above, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable at the time." *Id.*

ultimately recouped from the company if at all possible.<sup>46</sup>

The employee's substantive rights entitle him or her to certain benefits including compensation, regardless of any external factors such as a bankruptcy.<sup>47</sup> If the business cannot make the payments (e.g., severance pay, relocation costs, and retraining expenses), the government guarantees payments from a redundancy fund,<sup>48</sup> often to be reimbursed whenever possible by the failing company.<sup>49</sup> Thus, as stated by one writer, "while these rights do not solely address the problem of shutdown, they do benefit the employee who is subject to dismissal."<sup>50</sup>

Every worker who has worked for two or more years is eligible for a lump-sum severance compensation.<sup>51</sup> The employer pays the severance directly to the employee, and it is in addition to other unemployment payments available for displaced workers.<sup>52</sup> The purpose of the severance compensation, called the redundancy pay program, is to provide funds to permanently laid-off employees.<sup>53</sup>

An American Labor Union study on plant closings stated that the British program represents recognition that businesses must sometimes shut down inefficient plants.<sup>54</sup> As described by the study, the British program

reflects the recognition that workers who sustain permanent job loss were not adequately assisted by the unemployment compensation system. That system is oriented toward tiding people over

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46. Joint Report, *supra* note 43, at 28.

47. Employment Protection Act, 1975, ch. 71, § 63.

48. The Redundancy Fund is supported by employer payments. Redundancy Payments Act, 1965, ch. 62.

49. Joint Report, *supra* note 43, at 28.

50. Ognibene, *supra* note 23, at 206.

51. Employment Protection Act, 1975, ch. 71, §§ 22-28. For every year of employment between the ages of eighteen and twenty-one, an employee gets one-half week's pay, for every year between twenty-one and sixty-four, one and one-half week's pay. *Id.*

52. Joint Report, *supra* note 43, at 27. Although the employer directly pays the severance pay to the employee, up to forty-one percent of the amount paid typically can be recovered by the company from a national insurance fund administered by the Ministry of Labor. *Id.*

53. *Id.*

54. *Id.* This report resulted from a tour of three countries—Sweden, West Germany and the United Kingdom—by a delegation of North American trade unionists from the United Automobile Workers, the United Steelworkers of America, and the International Association of Machinists. The delegation studied the three countries' politics and practices regarding economic dislocations, with the purpose of finding "out how these policies and programs actually operate and to assess their applicability to the United States." Joint Report, *supra* note 43, at 5.

temporary layoffs due to cyclical market conditions, not readjustment to plant shutdown or other permanent employment cutbacks.<sup>55</sup>

### B. *The Path Since 1975*

The significance of Britain's economic problems has been documented and debated for many years.<sup>56</sup> An important factor in both Britain's economic performance and the success of its two primary political parties is the relationship between the trade unions and the government.<sup>57</sup> In 1974, the Labour Party defeated the incumbent Conservative Party primarily because the Labour Party and the trade unions "negotiated a Social Contract designed to bolster union powers in return for zero levels of union disruption of the British economy."<sup>58</sup> In fact, Labour won the 1974 election particularly because it claimed to be better equipped to obtain the cooperation of the trade unions.<sup>59</sup>

Despite its legislative output relating to the conditions of employment, the Labour Party's credibility was shattered by the 1978-79 "Winter of Discontent," one of the worst strike periods in recent British history.<sup>60</sup> As a result, campaigning on a platform of economic reform (especially in the area of industrial relations), the Conservative

55. Joint Report, *supra* note 43, at 27.

56. G. DORFMAN, *supra* note 24, at 1-2. Succinctly described by Mr. Dorfman:

The problem at its simplest is that Britain suffers from being a very populous nation with a relatively high standard of living which consumes more foreign goods than it can afford. Lack of domestic raw materials, an antiquated industrial base, the rise of more modern, aggressive foreign competitors all contribute to the problem.

*Id.*

57. *Id.* at 2.

58. INSTITUTE OF ECONOMIC AFFAIRS, TRADE UNIONS: PUBLIC GOODS OR PUBLIC 'BADS'? 92 (1978).

59. Crewe, *Why the Conservatives Won*, in *BRITAIN AT THE POLLS, 1979* 266 (R. Penniman ed. 1981). According to Crewe, the Labour Party's claim that it could cooperate with the trade unions seemed quite legitimate until late 1978. As illustrated by Crewe:

[i]ndustrial relations under Edward Heath's Conservative Government of 1970-74 had deteriorated badly, culminating in the miners' strike and February 1974 election itself, whereas between July 1975 and October 1978 the Labour Government's "social contract" with the trade unions had secured a considerable reduction in industrial stoppages . . . [B]ut the winters' strikes destroyed the Labour Party's slowly accumulated credibility as the only party to handle industrial relations.

*Id.* at 266-67.

60. King, *Politics, Economics, and the Trade Unions, 1974-1979*, in *BRITAIN AT THE POLLS, 1979* 82 (R. Penniman ed. 1981). Demanding wage increases—while the Labour Government sought to restrain such increases—one group of workers struck after another, not only paralyzing the entire nation, but also completely undermining any credibility in the Labour Party's claim that they could cooperate with the unions. *Id.* Significantly, the wave of

Party led by Margaret Thatcher defeated the Labour Party in the 1979 election.<sup>61</sup>

While the Thatcher Administration did not come into power with a single coherent policy of relations with British unions, the government has passed two legislative measures—the Employment Acts of 1980 and 1982—intended as industrial relations reform.<sup>62</sup> Although directed against the unions, the two acts were “politically cosmetic rather than fundamentally damaging to trade union interests.”<sup>63</sup> Importantly, however, the 1975 Employment Protection Act (sections 99-107) remains the sole source of compulsory consultations over redundancies, thus far untouched by the Thatcher government.<sup>64</sup>

Although statistical data concerning the effects of the redundancy provisions of the 1975 Act appears to be scanty, one study of British employers indicated that the majority of those surveyed felt that the provisions had little or no effect upon their behavior other than requiring them to notify and consult with the affected unions about a possible closure.<sup>65</sup> Although this study suggests that employers do oppose certain substantive rights granted to workers, they do not seem overly distraught about the obligatory pre-dismissal notification and consultation requirements.<sup>66</sup>

Finally, employers have benefitted by the “escape clause”<sup>67</sup> in the 1975 Act, particularly during the 1979 to 1981 economic recession which caused countless companies to go out of business.<sup>68</sup> Although there is no comprehensive Parliamentary plan relating to plant clo-

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industrial unrest was seen night after night by the public on television, a major contributing factor to the 1979 Conservative electoral triumph. *Id.*

61. See generally BRITAIN AT THE POLLS, 1979 (R. Penniman ed. 1981).

62. Soskice, *Industrial Relations and the British Economy, 1979-1983*, 23 *INDUST. REL.* 306, 313 (1984). The 1980 Act provided for secret ballots on strike and election votes (rather than the previous “show of hands” practice), limited picketing to six people, and mandated that new closed shops must have eighty percent support of the workers involved. *Id.* at 313-14. The 1982 Act made unions liable for illegal acts performed by union representatives, made commercial contracts requiring the use of union labor illegal, and extended compensation to employees dismissed due to closed shops. *Id.*

63. *Id.* at 313.

64. Bowers, *Handling Redundancies: The Employer's Defense*, 5 *COMPANY LAW* 137 (1984).

65. Bosworth & Dawkins, *Female Patterns of Work and Associated Remuneration Facilities & Opportunities*, in RESEARCH REPORT TO THE EEOC-SSRE JOINT PANEL 221 (1979).

66. *Id.*

67. See *supra* note 45.

68. Interview with Angus MacKay, Public Affairs Officer with the British Consulate-General, in Los Angeles (Apr. 18, 1985). Unfortunately, precise statistical data was unavailable at this time.

tures, it appears that both employers and employees have utilized the statutory framework established to deal with redundancies. Moreover, the impact of this legislation upon the economy as a whole seems to be minute, since the British economic decline has resulted mainly from historical and economic factors much larger in scope than the issues and rights addressed in this Comment.<sup>69</sup>

### III. THE UNITED STATES APPROACH

Before the early to mid-1970's, the issue of plant closures was not prominent.<sup>70</sup> The public grew more aware of the issue as the American economy declined and as adversely affected constituencies voiced their concerns.<sup>71</sup> This economic decline manifested itself most clearly in the heightened number of actual plant shutdowns and employee layoffs, and as a result, the question of what to do about plant closings has become a significant area of debate. Through increased public awareness and the efforts of organized labor, a number of federal legislative measures have been offered to deal with the problem.<sup>72</sup> However, none of the proposed bills has been passed into law.

The American approach to the economy as a whole, and to declining industries and plant closures in particular, has been one of ad hoc plans and proposals rather than the comprehensive, coordinated, and consolidated effort seen in other industrialized countries.<sup>73</sup> In the specific area of plant closings, one could say that the United States has taken the most "hands-off" approach toward a problem that all west-

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69. See *supra* note 56.

70. Millspaugh, *supra* note 1, at 291. In the United States, various elements of organized labor began to get actively involved in the plant closure issue during the early 1970's. *Id.* "Since then, with labor in the lead, an alliance of interested constituencies has been organized to undertake a major effort to translate concern with the dislocation effects on plant closings into national policy through the law." *Id.* at 291-92.

71. *Id.*

72. See generally Millspaugh, *supra* note 1. Professor Millspaugh provides a descriptive analysis of various plant closure proposals at the state and federal levels.

73. For example, one author described the differences in approach this way:

U.S. business is by now familiar with the dominant European and Japanese approach—a partnership, or at least close cooperation between business and government. These partnerships often include, besides business and government, representatives of labor and special interest groups who work to resolve problems and to build a consensus . . . . In the United States, the situation is far different. Most U.S. corporations . . . limit their approval to legislation that will liberalize depreciation or otherwise provide a tax or other near-term financial advantage for a corporation.

*Public Policy*, *supra* note 18, at 57 (article written by J. Ronald Fox).

ern industrialized nations are experiencing.<sup>74</sup>

Currently, the only significant federal law that applies to plant closure situations is the National Labor Relations Act (N.L.R.A.), enacted in 1935.<sup>75</sup> In enacting the N.L.R.A., however, Congress did not intend to deal with displaced workers. Rather, the purpose of the N.L.R.A. was to require collective bargaining in order to promote industrial peace and protect the free flow of interstate commerce.<sup>76</sup> Thus, under the N.L.R.A., an employer may not refuse to bargain collectively with employees concerning wages, hours, and other terms and conditions of employment.<sup>77</sup> Even though workers have the right to bargain over those terms and conditions, management still makes the final decision.<sup>78</sup> Therefore, "[t]he duty to bargain imposes not a duty to agree, but only to negotiate in good faith before implementing a shutdown."<sup>79</sup>

The first comprehensive federal proposal was the 1974 National Employment Priorities Act (H.R. 13541).<sup>80</sup> The measure focused on

74. Ognibene, *supra* note 23, at 195. This author analyzed the American approach as compared to that of Great Britain:

Unlike other modern industrial nations, the United States takes a passive approach which allows employers alone to decide if, when, and how to shut down plants. Those who are most affected by the shutdown, the employees, frequently have no input in the shutdown decision. Great Britain, on the other hand, takes a more active approach by requiring employers to consult their employees before dismissing them and by giving employees significant rights upon dismissal.

*Id.* It should be noted that those who oppose plant closure legislation find the American approach thus far to be exemplary; particular economic problems are dealt with adequately by the marketplace and the current, albeit limited, government infrastructure. Winch, *Industrial Policy: An Overview 3* (Dec. 4, 1980) (Congressional Research Service Report No. 80-221E. Available from the Library of Congress).

75. 29 U.S.C. §§ 151-169 (1982).

76. *Id.* The Congressional intent was explicitly stated in the N.L.R.A.'s opening declaration:

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

29 U.S.C. § 151.

77. 29 U.S.C. § 158(a)(3).

78. Massachusetts Report, *supra* note 5, at 68-69.

79. *Id.* The National Labor Relations Board (N.L.R.B.) is the administrative body set up by the N.L.R.A. to decide on labor management disputes, with the federal courts having jurisdiction to review the N.L.R.B.'s decision. 29 U.S.C. §§ 153-156.

80. H.R. 13541, 93d Cong., 2d Sess. (1974). The bill was introduced in the House of Representatives by William D. Ford of Michigan.

“arbitrary and unnecessary closings and transfers . . . [which] cause irreparable social and economic harm to employees, local communities and the nation.”<sup>81</sup> The specific features included:

- (1) creation of the National Employment Relocation Administration to investigate and make a finding on whether a particular closing was justified or not;<sup>82</sup>
- (2) penalties if the closing is unjustifiable in the form of loss of various federal tax benefits available to employers;<sup>83</sup>
- (3) a comprehensive program of federal financial aid to employees;<sup>84</sup>
- (4) federal financial aid to communities affected by plant closings;<sup>85</sup>
- (5) a two-year notification requirement when plants are slated for closings.<sup>86</sup>

In 1979, two bills were introduced, one in the Senate (S. 1608)<sup>87</sup> and one in the House of Representatives (H.R. 5040).<sup>88</sup> The latter is a revised version of the unsuccessful 1974 bill. Labeled the National Employment Priorities Act of 1979, the bill required employer financing of the benefits to displaced workers program rather than federal financing as in the 1974 bill. It also limited these funds to fifty-two weeks except where older workers chose to retire.<sup>89</sup> The 1979 Act (referred to as the Ford-Riegle bill) would have only applied to businesses earning \$250,000 or more a year.<sup>90</sup> If a firm employed 500 or more workers, a two year pre-dismissal notification of closing would have been required; if 100 to 499 workers were employed, eighteen months notice was required; if less than 100 workers, six months notice.<sup>91</sup> Workers would have been entitled to severance pay of eighty-five percent of their annual wages, and communities would receive eighty-five percent of lost tax revenues from businesses.<sup>92</sup> Also, like the 1974 bill, an administrative body to investigate potential shut-

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81. H.R. 13541, 93d Cong., 2d Sess. (1974).

82. *Id.* § 2201.

83. *Id.* § 2701.

84. *Id.* § 2401.

85. *Id.* § 2502.

86. *Id.* § 2301.

87. S. 1608, 96th Cong., 1st Sess. (1979).

88. H.R. 5040, 96th Cong., 1st Sess. (1979).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*



downs would have been established.<sup>93</sup> In the same year, the Employee Protection and Community Stabilization Act of 1979 (S. 1609) was introduced into the Senate.<sup>94</sup> This bill sought to protect communities by helping to facilitate economic adjustments within the community if necessary.<sup>95</sup> Specifically, the bill provided for relocation expenses for workers to be paid by employers, federal funds to aid troubled businesses, and the continuation of employee health and welfare benefit plans beyond their scheduled limits.<sup>96</sup> Furthermore, if an employer had fifty workers or more, one year notice of an impending closure would have been required.<sup>97</sup>

The Employment Maintenance Act of 1980 (S. 2400) was a less sweeping measure than the 1974 or 1979 bills. For example, only corporations with assets of \$100 million or more would be subject to the bill's provisions.<sup>98</sup> Two years notice would have been required if an employer planned on making a change that would cause fifteen percent of the company's labor force to lose their jobs.<sup>99</sup> Moreover, only businesses with assets over \$250 million would have to provide any severance payments to displaced workers.<sup>100</sup>

In 1984, legislation concerning plant closures was again introduced under a familiar name—The National Employment Priorities Act (H.R. 2847).<sup>101</sup> The main features of the bill include: prevention of plant shutdowns through federal financial assistance to businesses, communities and workers; federal assistance to displaced workers subsequent to a closure (e.g., relocation costs); notification require-

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93. *Id.* The administrative body would have been under the auspices of the Department of Labor.

94. S. 1609, 96th Cong., 1st Sess. (1979).

95. *Id.* The bill contained provisions concerning pre-dismissal notification as well as financial assistance to employees who are or will be displaced as a result of a shutdown. *Id.*

96. Massachusetts Report, *supra* note 5, at 88.

97. *Id.*

98. S. 2400, 96th Cong., 2d Sess. (1980).

99. Massachusetts Report, *supra* note 5, at 89.

100. *Id.*

101. Essentially, the bill contains the same provisions, with some modifications, as many of the earlier bills. As stated in the N.E.P.A. 1984's declarations: "It is the purpose of this Act to prevent or minimize the harmful economic and social effects of unemployment on employees and on local governments caused when business concerns undertake changes of operations." H.R. 2847, 98th Cong., 2d Sess. (1984). As of this writing, this bill has not passed through Congress. However, according to Rep. Augustus Hawkins, in the absence of any federal legislation such as H.R. 2847, the problem of plant closures should increase: "It seems to me that if we continue to adhere to the President's economic policies, we will insure the continuation of record numbers of business failures, plant closings, and massive layoffs." *N.E.P.A. 1984*, *supra* note 22, at 1.

ments before closing and before major layoffs (i.e., ranging from six months to a year); and mandatory retraining provisions for all dislocated workers.<sup>102</sup>

#### IV. UNITED STATES - GREAT BRITAIN COMPARISON

##### A. *Difference in Legislative Output*

Two important distinctions help explain England's more active response in dealing with the problems of plant closures. One, the British Labour Party takes a more active role in solving labor problems than the American Democratic Party. Two, there is a more cooperative government-business relationship in Britain in contrast to the more adversarial nature of government-business relations in the United States.

British labor unions enjoy a close and symbiotic relationship with the political Labour Party. The Labour Party, formed in 1906 from an alliance of numerous unions and socialist organizations, relies tremendously upon the union movement for its financial support.<sup>103</sup> It has even been suggested that the British unions have their own political party.<sup>104</sup> The Trades Union Congress (TUC), the British equivalent of the American AFL-CIO,<sup>105</sup> represents ninety-three percent of all unionized workers in England.<sup>106</sup> The Labour Party depends largely on TUC financial contributions, and the TUC frequently sponsors Labour Party candidates for Parliament.<sup>107</sup> As a result of this reliance upon the union movement for support, British

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102. *Hearings-Los Angeles*, *supra* note 10, at 2. Although there is no guarantee of a job for a laid-off worker, many feel the job retraining provision may be the most important component of any plant closing legislation. For example, as stated by Rep. Hawkins, the retraining requirement is quite "important because many thousands of jobs in certain industries have been eliminated and the workers who performed these tasks must be transitioned into other industries." *Id.*

103. Lowry, Bartlett & Heinsz, *Legal Intervention in Industrial Relations in the United States and Britain—A Comparative Analysis*, 63 MARQ. L. REV. 1, 22 (1979) [hereinafter cited as Lowry].

104. *Id.*

105. *Id.*

106. COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS 143 (R. Blanpain ed. 1982). According to statistics listed in this book, approximately fifty-five percent of all employees in England are union members. *Id.*

107. *Id.* In fact, the TUC designed and developed the idea of the "social contract," a policy promoting cooperation between trade unions and government to overcome economic problems. The Labour Party, particularly during the early to mid-1970's, adopted the TUC "social contract" approach and, when in government, adopted legislation incorporating this cooperative formula (e.g., Employment Protection Act, 1975). G. DORFMAN, *supra* note 24, at 106-16.

unions have the ability to impose direct pressure on the Labour Party. This pressure is particularly effective when the Labour Party is in power.<sup>108</sup>

Unions in the United States, on the other hand, do not have a party they can call their own.<sup>109</sup> Although historically the Democratic Party has represented labor unions, that Party's power base consists of a coalition of interest groups.<sup>110</sup> The Democratic Party, therefore, has its attention and loyalty split between many different groups and is unable to concentrate on the interests of any one group. Hence, it is not surprising that in Britain where one political party has labor as its primary constituency there has been more legislation enacted to protect the interests of labor in the event of plant closures.

The second distinction, which helps explain the difference in legislative production, is the nature of government-business relations in each country. While a traditional British governmental policy of non-intervention in employer-employee relationships persisted into the 1960's, government and industry had cooperated with one another to some degree. For example, before World War I, the British Board of Trade encouraged government participation in an enterprise which later became British Petroleum;<sup>111</sup> and, following World War I, the British government sponsored a giant merger that became Imperial Chemical Industries.<sup>112</sup>

In the United States, however, "[f]or more than 100 years, companies and government agencies have repeatedly confronted each other as adversaries, not as working partners."<sup>113</sup> During the 1970's, the highly adversarial interface between industry and government intensified showing "how deeply institutionalized the barriers to collaboration have become."<sup>114</sup> Unfortunately, numerous business leaders believe that the future of this relationship will more than likely mimic the past, with little expectation of dramatic changes.<sup>115</sup>

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108. Lowry, *supra* note 103, at 22.

109. *Id.*

110. *Id.*

111. *Public Policy, supra* note 18, at 9.

112. *Id.*

113. *Id.* at iv. Historian Alfred Chandler gave one explanation for the adversarial nature of American business-government relations: "In the United States, business hierarchies appeared before public ones. In Europe, the reverse was true." *Id.* at 9. Therefore, when the governmental agencies accumulated power and began regulating businesses, a natural conflict arose between the two entities. *Id.* at iv.

114. *Id.* at iv-v.

115. *Id.* at v.

*B. Enacted British Laws vs. Proposed United States Laws*<sup>116</sup>

With slight variations, all American Federal proposals concerning plant closures have included provisions similar to those in the British 1975 Act, such as pre-dismissal notification requirements, severance payments, relocation expenses and job retraining opportunities. Nevertheless, not one of the bills has successfully passed through Congress, principally because of strong opposition by American businesses.<sup>117</sup>

The arguments usually articulated by critics of federal plant closing laws can be stated as three propositions. First, capital mobility is the key to economic liberty, a central part of a free-market economy and a free society. Thus, allowing businesses to determine when, where, and why they should relocate prevents the concentration of economic power in government.<sup>118</sup> Second, restrictive legislation is necessarily detrimental to the entire nation because economic conditions in a growing, adaptable economy are always changing. Businesses must be flexible enough to meet different economic conditions or the economy as a whole will suffer in the long run.<sup>119</sup> Third, frequently it is not until the last minute that businesses know that they must close. And, even if marginally profitable businesses are experiencing tight economic situations, they might have reasons for concealing their intentions to shutdown.<sup>120</sup>

Proponents of plant closing laws counter by claiming that the various legislative proposals do not intend to strip away the power to decide to close a plant down. Rather, the measures seek to make the relationship between management, labor and government more equitable and coordinated.<sup>121</sup> One scholar argues that "the fundamental issue is not how to stop capital mobility but rather how to ensure that

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116. Because the United States has not yet passed any plant closing laws, a comparison between each country's legislative approach to employee dislocation must necessarily be a contrast between enacted laws in Britain and proposed laws in the United States.

117. One scholar described business' opposition to the various federal proposals: "To the extent the alternatives delimit or co-opt management's traditionally exclusive right to shutdown when economic circumstances so dictate, they will be unacceptable to large segments of the business community." Millspaugh, *Plant Closings and the Prospects for a Judicial Response*, 8 J. CORP. L. 483, 485 (1983).

118. R. MCKENZIE, *supra* note 3, at 137.

119. *Id.* at 5.

120. Massachusetts Report, *supra* note 5, at 63. Reasons to conceal plant closure plans include preventing the stoppage of orders from customers, preventing a decline in stock value, and preventing banks and others from ceasing to supply credit. *Id.*

121. Kay & Griffin, *supra* note 3, at 210-11.

the transfer of capital from one location to another will not ride roughshod over the needs of the people and community involved."<sup>122</sup> The same author concedes, however, that an important and difficult policy question arises because "the danger in attempting to save jobs is that it may be more inefficient for the economy. Yet, there are many situations in which profitable branch plants are closed, especially by large conglomerates."<sup>123</sup> When a conflict between the rights of a corporation and the rights of workers arises (e.g., concerning management's right to relocate capital at will and the employee's right not to be abruptly terminated), a compromise or modification of each side's position would seem to be in the best interests of society, particularly where a *profitable* plant might be closed.

In the United States, employers alone make the decision to shut down plants, in effect washing their hands of any social responsibility by externalizing a business cost and forcing the public sector to pay.<sup>124</sup> The 1975 British Act, however, passed and implemented in a legal system similar to the American legal system, established mandatory governmental guidelines for notification of plant closures and for obligatory consultations between management, government and the affected labor force. Whereas a business in the United States can close a plant for any reason without any non-management input, the 1975 British Act compels consultations to explore any and all feasible alternatives.<sup>125</sup>

In order for the solutions to the problems of plant closings to reflect not only employee interests, but also to preserve the important interests of management and business, both sides of this traditionally adversarial duo must begin to cooperate.<sup>126</sup> It is unlikely that this cooperation will occur without the support of the government. In

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122. MacNeil, *Plant Closings and Workers' Rights*, 14 OTTAWA L. REV. 1, 2 (1982) (citing B. BLUESTONE & B. HARRISON, *supra* note 3, at ii).

123. MacNeil, *supra* note 122, at 3 (citing Bluestone & Harrison, 7 WORKING PAPERS FOR A NEW SOCIETY 15 (No. 3, 1980)).

124. Kay & Griffin, *supra* note 3, at 209. An example of externalizing a business cost would be where a company might use machinery at a job site, then abandon the machinery at the site after completing the particular task, thereby forcing the local government to shoulder the costs of removing the machinery. By analogy, employers utilize the services of their employees, then leave them to the community after a plant closure, often necessitating public assistance to help the displaced workers.

125. If the labor union cannot come up with a practical alternative, or if the plant is going bankrupt in a hurried fashion, the Employment Protection Act of 1975 allows the employer to carry through with the plant shutdown. Employment Protection Act, 1975, ch. 71, § 99(8).

126. Although mandatory consultations concerning impending plant closures would most likely be greeted with antagonism, one should recall that the business world was not overjoyed

fact, initially, the government should enact legislation that will require the parties to sit down and discuss various options before a plant closure takes place.<sup>127</sup>

Yet, because of the lack of any United States legislation in the area of plant closures,<sup>128</sup> the process must be gradual and well thought out. Interestingly enough, according to a May 1980, *Forbes* magazine survey of more than one hundred *Fortune* 500 companies, three out of five executives responded that a three month pre-dismissal notification period was quite feasible, with one-third considering a six month to one year notice period ideal.<sup>129</sup>

Therefore, as a starting point, procedural rights such as pre-dismissal notification and mandatory consultation should be seriously considered and enacted as federal law. In fact, the most recently proposed federal legislation on plant closures in the United States provided such an approach.<sup>130</sup> The Labor-Management Notification and Consultation Act of 1985 (H.R. 1616), although also eventually defeated, had a more modest objective than prior federal proposals.<sup>131</sup>

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when forced to collectively bargain with unions. The use of force was required because, as here, management had all the power.

127. Such a cooperative approach has proven effective in Alabama, where a General Motors plant scheduled to be shut down was kept open due to the collaborative efforts by the GM management, the U.A.W., and the University of Alabama. According to a written statement of the International Union, U.A.W.:

Rather than accept the closure of action as the only course of action, the local union immediately began working on ways to save the plant. Faced with the loss of jobs, the community and the University of Alabama . . . also got involved. The net result was an innovative 3-year tripartite agreement reached in early 1983 between GM, the U.A.W. and the University of Alabama in which all parties were committed to save the Tuscaloosa plant from closing.

*N.E.P.A. 1984, supra* note 22, at 128-29.

128. It should be noted that although no federal bills concerning plant closures have passed into law, several states have enacted such statutes; the states are Maine, Massachusetts, South Carolina, and Wisconsin. See ME. REV. STAT. ANN. tit. 26, § 625-B(6-A) (West Supp. 1984-1985); MASS. ANN. LAWS ch. 149, § 182 (Michie/Law. Co-op. 1984-1985); S.C. CODE ANN. § 41-1-40 (Law. Co-op. 1977); WIS. STAT. ANN. § 109.07 (West Supp. 1984-1985).

129. Harrison, *The International Movement for Pre-Notification of Plant Closures*, 23 INDUS. REL. 387, 403 (1984).

130. H.R. 1616, 99th Cong., 1st Sess. (1985). It should be noted that this bill was not enacted. It was defeated in the House of Representatives on November 21, 1985.

131. According to Rep. William D. Ford, author of H.R.1616:

For many years, I have introduced legislation to enable the federal government to help prevent plant closings and avoid mass layoffs and to assist businesses, communities, and workers in the event that such dislocations could not be prevented. . . . Because they were comprehensive in approach and sought to regulate extensively how businesses conduct closures . . . those bills generated tremendous opposition in the business community and never received support from Republican Members of Congress. . . . In light of this history, it has become clear that a new, more politically viable approach must be taken if any assistance is to be provided to the millions

Rather than providing numerous substantive rights such as severance pay, job retraining and relocation expenses, this bill sought "[t]o require employers to notify and consult with employees before ordering a plant closing or permanent layoff."<sup>132</sup>

Specifically, H.R. 1616 would have required employers with fifty or more employees to notify their workers ninety days in advance of any plant closing or permanent layoff of fifty or more employees.<sup>133</sup> In addition, the bill would have imposed upon employers the duty to consult with their employees concerning alternatives to a closure or layoff during the ninety day notice period.<sup>134</sup> Lastly, and most importantly in terms of a more balanced approach, the notice requirement could have been reduced or eliminated entirely if an employer was unable to provide the notification due to "unavoidable business circumstances."<sup>135</sup>

Thus, a balanced legislative solution to the problem of plant closures *can* be designed to accommodate not only the interests of both employers and employees, but also the interests of society as a whole.

## V. CONCLUSION

The business ethos in American society is known to be extremely hostile to any government intervention in the private economy.<sup>136</sup> In contrast, while

[f]aced with the immediate consequences of various kinds of natural disasters—floods, fires, earthquakes, tornadoes, and the like—private citizens in this country, as well as the federal and state governments, are capable of prodigies of organization and cooperation to provide relief for the victims. Unhappily, no comparable efforts on a similar scale are forthcoming to relieve individuals and communities whose lives are seriously disrupted, even destroyed, by sudden plant closings or removals.<sup>137</sup>

Most societal problems, whether natural or artificial, can be attacked in a constructive and cooperative manner. In Great Britain,

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of American workers who lose their jobs in mass layoffs and plant closings every year.

Ford, *supra* note 11, at 323.

132. H.R. 1616, 99th Cong., 1st Sess. (1985).

133. *Id.* § 3(a).

134. *Id.* § 4.

135. *Id.* § 3(b).

136. Aaron, *Plant Closings: American and Comparative Perspectives*, 59 CHI.-KENT L. REV. 941, 963 (1983).

137. *Id.*

government, business, and labor have tended to work together to not only pass legislation protecting against abrupt dismissals of workers, but also to establish a mandatory arena in which the parties must negotiate and consult with one another. In the United States, however, an employer like General Electric can unilaterally decide on its own to shut down even a profitable plant (often to make more profits elsewhere) at any time, thereby depriving employees and their families of their livelihoods. Capital mobility should not be so sacrosanct that the health of individuals, communities, local governments, and other businesses are but an afterthought in the decision to close down a plant, especially if the plant turns a profit.

Plant closure legislation enacted in other countries, such as Great Britain, provide excellent models and suggest several approaches applicable in the United States. One scholar said: “[w]hat we can learn is to view our own problems from a new and different perspective, to ask ourselves what might happen if we were to abandon our basic premise that any social measures that impede the mobility of capital are necessarily bad and must, therefore, be rejected.”<sup>138</sup>

Considering the free-market, hands-off approach of the current Reagan Administration in the United States, plus the apparent American economic recovery during the early to mid-1980's, federal legislative protective measures for workers threatened by plant closures is not currently a major issue. Nevertheless, the need for such laws will once again come to the political forefront as the demand for jobs grows and future technological advances limit employment opportunities. At that time, *only* through the cooperative efforts of government, business and labor can effective legislative remedies be designed and, more importantly, be enacted by Congress.

*Mitchell J. Popham*

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138. *Id.* at 964.



