

**PUBLIC HEARING**

before

**ASSEMBLY LABOR COMMITTEE**

on

**ASSEMBLY, No. 1221**

**(Establishes a Commission on Business and Employment Retention  
and an Office of Business Advocacy)**

**Held:**

February 22, 1984

Manville Municipal Building

Manville, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman Joseph D. Patero, Chairman  
Assemblywoman Jacqueline Walker, Vice Chairwoman

**ALSO PRESENT:**

Mora L. McLean, Research Assistant  
Office of Legislative Services  
Aide, Assembly Labor Committee

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**ASSEMBLYMAN JOSEPH D. PATERO (Chairman):** I would like to call the public hearing to order. The bill we are going to be discussing is my bill, Assembly Bill No. 1221. What the bill does is, it creates an Office of Business Advocacy within the Department of Commerce and Economic Development, it creates a Commission on Business Retention, and it provides for certain procedures in the event of plant closings.

What we are recommending in this bill is a six-month notification, but it could be more or less. We want to hear testimony at this hearing, and we are going to have a Labor Committee meeting tomorrow in Trenton. At that time we may release the bill, or we may hold up the bill, depending upon the testimony today.

The first speaker is Archer Cole from the Industrial Union Council. With him is Mr. Don Philippi. Mr. Cole?

**A R C H E R C O L E:** Assemblyman Patero, Assemblywoman Walker, and members of the community, I have testified many times regarding plant retention legislation. I feel now that we are getting closer to passage of this bill, and I am prepared today to make a different presentation. It will be in the form of a question and answer testimony regarding the salient issues of this legislation.

There is so much misinformation -- some of it deliberate -- to cloud the picture. I felt that presenting this in this format would help clear the air.

What is the purpose of the plant and job retention bill? It is to provide State government with the authority and wherewithal to help employers remain in New Jersey and to receive the help that will make their retention possible.

How would the bill accomplish this goal? It would require a year's prenotification during which time a Commission on Business and Employment Retention would be empowered to intervene and to investigate the reasons for such shutdown, and then offer tangible assistance which could make the difference between staying or leaving the State.

If this bill is designed to help employers remain in New Jersey, why has it been dubbed the "plant hostage" bill? Calling it the "plant hostage" bill is a propaganda ploy on the part of certain

business groups designed to discredit its true purpose and prevent a serious discussion of its provisions. The fact is that no employer can be forced to remain against its will, so "hostage" is obviously a scare word.

It is claimed that a year's notice will harm employers, in that creditors will crack down during that period, making it more difficult for the company to survive. Is this true? No, the fact is that when a company shuts down for economic reasons, creditors don't have to be told about it. They usually find that bills are not paid on time, sales fall off, their salesmen go away empty, and the rumor mill works overtime. Anyone who ever worked in a plant knows that the first time there is a ripple of a problem, it is exaggerated and built up, so you don't have to give formal notice in order for a creditor to know that things aren't so hot.

In the case of a company moving elsewhere, however, such employers are solvent. They will definitely stay in business elsewhere, and they don't have to worry about their creditors.

Won't the year's notice give employees the green light to quit and go elsewhere, leaving the employer in the lurch? We have done a study of recent plant closings, and the facts show that the overwhelming majority of employees remain on the job until the very last moment, knowing that with their seniority, wage rates, fringe benefits, pensions rights, and severance pay, it would serve no purpose to quit since they could not possibly do better on the outside. This has proven true at Ford, Westinghouse, Singer, Western Electric, General Electric, and a plant in Newark, which is presently closing. In every instance, the people stay until the bitter end. If you know the type of people who are being laid off when a plant closes, it is usually a result of years of phase-out. You have the senior people, people from forty-five years old to sixty-five years old, and they know they can't get a job on the outside. To say that these people will leave in droves, and they will leave the company in bad shape, has not been proven.

What notice must companies give now when they decide to move out? None whatsoever. At Kerr Glass in Keyport, management pulled out

over a weekend without even notifying their employess not to report for work. They also owed the government a million dollars in loans. They made no statement that they would repay; they just closed the doors and ran.

At Koppers in Cranford, the employees went out for two weeks' vacation, which started on July 4. On July 5, they got telegrams saying, "Don't bother to come back. We're closing the plant."

At this very moment, the GAF Company in Bound Brook is in the process of shutting down with less than a month's notice to its employees, leaving them in a lurch, and the community in a state of disarray.

Haven't certain employers like Western Electric, General Electric, and Westinghouse voluntarily given long-term notice of their intention to move out, demonstrating that this legislation is unnescessary? Prenotification is only one-half of the coin. The other half is the critical function of State intervention and assistance to get the employer to reconsider. Notice is fine, but if you are not going to do anything during that period of time because you have no one to step into the picture, that is fruitless.

That was proven at Western Electric, which gave sufficient notice, but they made it clear to Governor Kean that there was no purpose in discussing it any further. They did this, knowing that he had no statutory authority to intervene. This legislation makes it clear that a governor will not have to go hat in hand any longer, as Governor Kean did with Western Electric, and as Governor Byrne did with Otis Elevator, Westinghouse, etc. The Governor's Commission will have that authority, and they will use it effectively.

If the Plant and Job Retention Act had been in effect, what could have been done differently at Western Electric? As soon as the company gave notice, the Commission would have stepped into the picture, found out the reasons for the shutdown, and held hearings on the economic impact of the closing on the 5,000 employees, the community, and the State.

It would have then had the responsibility to put together a package of economic inducements, making it attractive for the company

to reconsider. Since the company is an integral part of AT&T, which needs all the public support it can get to maintain its preeminence in this post-divestiture period, official recommendations for saving the Kearny facility would garner wide community backing, and it would have an impact on the telephone giant to remain here.

If there had been a commission that held hearings, AT&T would have been very sensitive to public pressure, especially if we had put together a package that would have made it feasible for them to stay.

Are there any instances where the time provided by prenotification resulted in plant retention? Yes, there are. In fact, Peter Shapiro is here, and he will be testifying about the Pabst Blue Ribbon experience, where advance notice of the company's intention to shut down resulted in effective intervention by county, community, and State officials. That resulted in an agreement on the part of Pabst to remain open. The company agreed to bring in a new product and to make further investment in the facility. At the same time, city, county, and State governments rendered valuable assistance to management, with the unions doing their share in helping to save the plant and a thousand jobs with it. All of this took many months to put together, which demonstrated that time is of the essence.

Jim May and Doc Oakley are here from UAW, and they will be testifying about Hyatt Roller Bearing. At Hyatt Roller Bearing, they gave long-term notice of their intention to leave, which made it possible for the UAW to raise \$100,000 among the employees for a feasibility study, which by the way, this legislation would provide. The workers wouldn't have to chip in \$100,000. With this feasibility study, it would help to put together a package with the banks, the insurance company, General Motors, and unions.

As a result, over 1,200 jobs have been saved, thanks to the initiative of the union. Jim will tell you the way those employees have been working and how this employee takeover has done the job.

How severe has the exodus of industry been to require passage of this type of legislation? During the last dozen years, New Jersey has lost over a quarter of a million high-paying jobs in a score of industries due to plant closings and product line relocations. The

list of them sounds like a page out of Fortune Magazine's "Top 200." The list includes: Ford, Mahwah; North American Philips, Hightstown; North American Philips, Bloomfield, where a whole division is moving out; Westinghouse, Newark, which closed down the day before New Year's; Westinghouse, Jersey City; Westinghouse, Trenton; Westinghouse, Belleville; Singer Sewing Maching, Elizabeth; Curtiss-Wright, Caldwell; Walter Kidde, Belleville; Kerr Glass, Keyport; Otis Elevator, Harrison; Western Electric, Kearny; Owens-Illinois; General Electric, Newark, which is closing down next month; New Brunswick; Gulton Industries; Phelps Dodge, Jamesburg; Ward Baking Company; Wiss; Fedders; and dozens of other plants too numerous to mention here.

These are the good-paying jobs. When the Chamber of Commerce testifies today, they will be telling you about the jobs that are coming in. These are the \$3.35 per hour jobs. The women at General Electric who make \$9.00 an hour are being visited by officials to see if they can be placed. They tell me that they are being offered jobs under \$4.00 per hour. The Chamber of Commerce tells us that this is good for the economy. I don't believe it, and I don't think you do either.

Why are so many industries moving out or shutting down in New Jersey? In all the major instances, the moves out of New Jersey were corporate decisions made out-of-state by boards of directors owing no loyalty to New Jersey, no loyalty to their long-term employees, no obligation to the communities which helped them prosper, or to the State itself.

Whether they relocated in the Sunbelt, in rural areas, or overseas, the quest for greater profits has been the bottom line, plus the desire to shift to a union-free environment.

Auto companies make these decisions in Detroit, Westinghouse calls the shots in Pittsburgh, General Electric in Connecticut, AT&T in New York, Singer in Connecticut, etc. So, these people have no attachment. It is not like the good old days when the father built the business and he knew everyone in the community. These are absentee owners, and they couldn't care less what happens to us in New Jersey.

Why then are New Jersey business groups opposed to plant retention legislation, if plant closings obviously hurt the State? They have admitted to me privately that it even hurts them, because they are going to lose members. It is because they are wedded to the obviously counter-productive proposition that industry and industry alone should have the sole say-so as to whether a plant remains open or it shuts down, whether employees have jobs or are thrown into the street, whether communities will survive or become ghost towns, or whether the economy of a state is jeopardized or not.

What is the union's position? It is labor's position that a plant shutdown has effects far beyond profit aggrandizement. It hurts the worker and the family. It leads to social problems such as child and family abuse, suicides, alcoholism, increased crime, etc.

It affects other businesses such as vendors, suppliers, restaurants, bars, and bowling alleys. It affects small businesses, as well as business itself. It diminishes tax ratables and payroll taxes, leading to a curtailment of services such as police, fire, garbage removal, etc. It means depression and deterioration of whole communities, discouraging other industries from moving in. If you go to any major town, even Manville, you can see where industries have fled. Go to Elizabeth, Linden, or any other town, and you will see where stores have shut down. You'll see deterioration, and garbage disposal that isn't proper.

What happens to the property tax rate then? It goes up. When you lose a ratable, somebody has to try to make up the difference.

It leads to widespread unemployment and despair, especially among long-service workers whose age will bar them from decent paying jobs for the rest of their lives, and for young workers who used to look to Singer or Western Electric or General Electric for life-long careers.

Not everybody is going to go to college. Half of the graduating class does not go to college. They used to be able to turn to these industries to find employment. Today, they are being shut out. That is why the unemployment rate of cities in New Jersey is anywhere from twenty-five percent to fifty percent.

Opponents of this legislation claim that it will discourage new businesses from moving into New Jersey. Is this true? I say this is nonsense. A whole section in the bill -- and I wish some of the opponents would read it -- provides detailed assistance to any business interested in locating in this State, including help in finding suitable locations, arranging for the provision of local government services, arranging for job training of employees, arranging for financial assistance, and cutting through red tape in securing permits from the State or local authorities.

What is more, it tells a new company, as well as existing companies, that if after locating in New Jersey, help is needed to remain here, such help is forthcoming in the way of financial assistance, improved community services, job training, etc. It also assists companies -- and this is very important -- in locating a prospective buyer, or to assist employees in purchasing and operating the facility.

I had the good fortune to be in on the sale of the General Electric Company to Hamilton Electronics in Springfield, New Jersey. It took months. One buyer, before Hamilton Electronics, fizzled out. General Electric and Hamilton Electronics called us in as the intermediary because there were a whole lot of things that had to be done with the contract and the collective bargaining issues. We sat through those negotiations. They took a lot of time and effort and delicate handling. The bottom line is that this bill provides for new industries coming in. Those who claim it will shut them out haven't read the bill.

Finally, does the bill compel companies to stay? Is it a "hostage" bill? Definitely not. If, after notification and intervention, an employer still wants out, there is no compulsion to stay and no penalties for leaving. Such employers will be required to grant severance pay, and to continue health insurance for three months for the laid-off employees. In case of violations of this Act, they will be forced to pay a surcharge on moneys due to the Unemployment Insurance Fund. They are the only requirements. Everything else is a help to business.

Isn't this bill especially hard on small businesses? Not at all, because plants with fifty employees or less are exempt from this legislation.

I put these questions together because I am sick and tired of hearing attacks on the bill from people who have no interest in saving these plants. I don't know why; I am truly upset about that. As we pushed for this legislation for ten years, they told us, "Oh, you don't need it. The market will take care of it." The market is disappearing from under our feet.

I want to commend this Committee for their perseverance over the years in putting it before the public. I know that it will pass, and I think it will pass quickly this time. Thank you.

ASSEMBLYMAN PATERO: Very good testimony, Mr. Cole. We had invited the Mayor of South Bound Brook, but due to an emergency, he cannot be here. He notified me to let the Committee know that he will be sending a resolution supporting our bill.

Pabst Blue Ribbon is a fine example of communications, because there were no communications there until Peter Shapiro stepped in. Management and other officials in Newark were very happy that he did step in. Newark is the last place we need to lose jobs. Pabst Blue Ribbon is a fine example of what this bill can do.

MR. COLE: Don Philippi is here, and he wants to say a few words in support of this bill.

ASSEMBLYMAN PATERO: Before that, maybe Assemblywoman Walker has a few questions.

ASSEMBLYWOMAN WALKER: I just want to ask you one question, Mr. Cole. You made reference to a study that your union had conducted at a number of plants.

MR. COLE: That is right.

ASSEMBLYWOMAN WALKER: I don't want to put you on the spot, but off the top of your head, can you remember what percentage of employees stayed until the end? I think that was a good point that you made.

MR. COLE: I said about ninety-eight percent.

ASSEMBLYWOMAN WALKER: Was it that high?

MR. COLE: It was ninety-eight percent.

ASSEMBLYWOMAN WALKER: Thank you.

**D O N P H I L I P P I:** Good morning, Mr. Chairman, and members of the Committee. My name is Don Philippi. I represent 8,000 State workers, Local 195 of the Professional and Technical Engineers. We are affiliated with the Industrial Union Council.

We have passed a resolution among the public employee groups. Besides our union, there are thousands of other State workers who are supporting this legislation.

We are also concerned about jobs leaving New Jersey. I think we must remember -- and I think employers should be concerned -- that the good employers who stay and are working to keep New Jersey going are the ones who are eventually going to have to pay when we have fly-by-night companies come in and then leave the State. These are the companies who put people on unemployment. Who has to pick up that tab? They are the good companies that stay here and pay their way by keeping people working.

Time is necessary. This bill provides for six month's time. It would give agencies such as the Economic Development Authority the time to go down to meet with employers who might need new facilities, new roads, water, or energy. There has been recent legislation passed on enterprise zones to give employers special tax breaks. I think this bill would help employers to stay.

It gives the State, county, and municipal officials an opportunity to meet with the employers before they pack up and leave.

I want to thank the Committee for proposing this legislation and giving the public a chance to see what we can do to save more jobs in New Jersey. That is what labor is interested in -- saving jobs in New Jersey. We're not interested in seeing employers leave the State. There are people who are paid by the State to go out and meet with companies that are in trouble and to try to give them assistance.

As Archie mentioned, there are new job-training programs. If you look at the figures, New Jersey has some of the most skilled workers of any state in the United States. Those statistics came right from the United States Department of Labor. We have terrific skilled

workers in this State, and that is why we should try to keep these companies here. Thank you.

MR. COLE: Joe, I just want to express a small difference with my buddy here, even though he is bigger than I am. We are looking for a one year's notice. We discussed that. The more you look at the bill, the more you see where we have had success. It took time. It took eighteen months to put the General Motor's package together. I know that my own work with G. E. and Hamilton took months and months -- over a year -- to finally put the whole thing together. I would be very appreciative if we could make that change and amend the bill.

ASSEMBLYMAN PATERO: Okay, that will come up at the Labor Committee meeting tomorrow. Are there any questions?

ASSEMBLYWOMAN WALKER: No.

ASSEMBLYMAN PATERO: Okay, thank you very much for your testimony.

The next person I would like to call is Peter Shapiro, the Essex County Executive. He has experience in just what communications can do between management, the State, the county, and the City of Newark. It is good to see you again, Peter.

PETER SHAPIRO: It is good to see you, Joe, and it is nice to be here in your hometown of Manville. I see a picture of a guy who looks like a younger version of you up on the wall. Am I right about that?

ASSEMBLYMAN PATERO: Right.

MR. SHAPIRO: Let me say first of all, Mr. Chairman and members of the Committee, it is a pleasure to be here this morning. I am going to be saying some things which are somewhat similar to the things I said to the Committee before, but in recognition of the fact that there are new members, I think the story is worth telling. I figure it is worth going over again.

Let me say first of all that I am pleased to be here in support of Assembly Bill 1221, which would establish a method to prevent jobs and investment from fleeing from New Jersey. The concept of the legislation is highly beneficial to provide an early-warning system on industrial flight in enough time for attempts to be made to encourage businesses to remain.

While I was an Assemblyman, a year before becoming County Executive in Essex County, I met the local head of a large national firm which had decided to leave the area six months before. In looking back at what had been a very difficult and complex decision-making process, he told me that no one in State or local government had contacted him, had tried to persuade him to remain, or had even asked him what the problems were that caused the closing. The way he put it was, "We might have made a different decision if somebody had bothered to show that they cared." That was kind of a haunting thing to me when I heard that.

Based on that experience, I decided what was needed in Essex County was an early-warning system, a technique to find out ahead of time which businesses were in trouble and which ones were thinking of locating elsewhere.

Businessmen aren't going to come knocking on the doors of local government officials or State government officials when they are out there with problems. It is up to us to reach out to them.

Setting up a system to get that advanced information is our responsibility. Lacking any formal government mechanism for it, however, when I was elected, I set to work on a very informal personal system. This system consisted of setting up meetings with leaders of major businesses, sitting down for an hour or two with them, hearing what was on their minds, encouraging them to expand, to invest, to create new jobs, and to have a bigger stake in our area. Through this ongoing program, I have met and established a one-to-one relationship with top managers of many local firms.

This is a highly informal system that depends upon personal contact. It is very time-consuming, very laborious, and really quite imperfect. But sometimes, it works.

I would like to describe to you one case where it did work. That was the Pabst Brewery in Newark.

I first sat down with Ed Ness, the plant manager, and several other top managers, including the Chief Fiscal Officer, early in 1981. The initial meeting was prompted by the drought which, at that time, was a big issue. We talked about everything from water and sewage to

the overall economic situation. We were particularly concerned about water, because after all, that is a big issue for a brewery. Ed Ness told me that he had a strong commitment to Essex County, and he felt good about being here.

In September, financial pages began carrying bad news about Pabst's national picture. There was a decline in sales, a decrease in market share, and the company was running in the red. This was nationwide.

Shortly after that, word filtered back to me from some union members about a rumor that the plant was going to be shut down. Based upon my earlier meeting with Ed Ness, I felt comfortable in picking up the phone and calling him directly to check out the story. Although there was an embargo on public statements by many company representatives, he knew me well enough to be very forthright and to discuss the problem Pabst was facing.

Immediately after that conversation, I met with a group of union leaders involved, and I gained an insight into the emergency. I found out more from that session than months of research could ever have turned up. Initially, there was a great deal of skepticism among the union leaders that anything could be done to help because of the pattern they had witnessed in other plants including Reingold and many other breweries in Newark that have shut down where a phase-down was simply a prelude to a closing.

With strong cooperation from the unions and assistance from the plant manager, we were able to develop a strategy for keeping the plant open for the past three years and saving 800 jobs in the Newark urban area.

The key element in the Pabst story is the timing. Personal contacts in this case created a communications network that served as an early-warning system, letting me know about a troubled situation before it was too late -- before final decisions had been made.

There are other plants and other stories that are not as good, however, and Archie Cole has described those very well. Again and again, we have heard of the shutdown of plants after it is a fait accompli. At that point, government action, even at the highest level, almost never makes any difference.

I can think of no more compelling illustration of this than the sad case of Western Electric's Kearny Works which, although it is in Hudson County, included among its more than 5,000 employees, many Essex residents. When Western Electric announced last year that it was closing the plant, the decision was final. They announced it at a public press conference. It was a nationwide decision, and no one basically had any time for any input. It made no difference that Governor Kean, Senator Bradley and Senator Lautenberg, as well as numerous other officials, personally became involved and offered to have the government do cartwheels to keep the Kearny Works open. The lesson was clear. All of us were simply too late. Had this legislation, which you are discussing, been in effect, the story might have been different.

What New Jersey needs is a Business Retention Program. Other states with healthier economies than our own -- Massachusetts comes to mind -- have placed a heavy emphasis on their economic development efforts, on retaining existing businesses, and getting them to expand. New Jersey simply has failed to do this job.

Our State's economic development program has been aimed almost entirely at attracting new investment. It has been a complete failure in retaining business and preventing the tragedy of plant closings, which nobody could better describe than the work which Archie Cole put together.

The unintended result of a policy which sacrifices our existing economic base to the pursuit of new investment is particularly felt in our older developed areas. The new development areas -- the Route 1 Corridor and the Interstate 287 Belt -- have enjoyed an unparalleled boom as new corporate headquarters and office complexes have sprung up. However, the older towns -- places like Manville, Millville, Perth Amboy, Newark, and Camden -- have seen their economic bases wither away with no State program ready to step in.

Assembly Bill 1221 would establish such a program and provide New Jersey with the means to help improve the economic climate in several key ways:

First, by putting into place a formal mechanism for an early-warning system on plant closings, this bill ensures there will be some leeway before a closing becomes a reality. That valuable time can be used to try to prevent the closing. And, if it is unpreventable, it would help mitigate its impact on workers and the community where the plant is located.

Secondly, it will assist local government and local officials like myself in providing better services to enhance economic development. If police, fire, or sanitation services -- or the lack of them -- seem to be creating a pattern of problems serious enough to warrant closings, it seems logical that government action here is the key element in saving an industry.

No one argues that government has a role in attracting business by improving the infrastructure, helping transportation, or providing adequate sewage capacity. We set up employment training -- a great deal of it customized for specific areas. If such great effort goes into this first phase -- getting industry in operation -- we need to make it so that when there are problems with a plant or an office, we are given the time to get in there and work on that aspect as well.

Finally, contrary to what some people are saying, it adds to the arsenal of economic tools we have without putting an excessive burden on business. While some argue this legislation would deter industry from locating here in the first place because it would make it difficult for them to leave, I see it differently. Businesses open with dreams of success, not preparations for failure. An industry that opens or expands in New Jersey does so because it sees the likelihood for profit and the potential for making it big.

I think we should be mindful of the concerns of the business community, that this mechanism should not be cumbersome, nor should it be developed in that way, nor become a disincentive to new investment. I think this can be accomplished if we put our minds to it.

Thank you again for permitting me to testify today. I would be very happy to answer any questions you might have at this time -- or to talk about the Pabst experience, or any of the other local situations which we face.

ASSEMBLYMAN PATERO: I am very glad that you have firsthand experience with the problem that we are trying to solve here in New Jersey. I think you will agree that most of the time, when a company is leaving, the unions will give up concessions, the county tries to help, and the municipality tries to help. What is so terrible is that the decision has already been made. Like I said before, that is the reason for this bill -- to try to get a dialogue before that decision is made.

I have to commend you for what you have done for Pabst Blue Ribbon.

MR. SHAPIRO: Thanks a lot. I think that is extremely correct. Sometimes we find that there is a union which will be in such an antithetical relationship with management that the situation is unable to be resolved.

At one of our plants that has shut down, we found that to be the case -- that there was such a bad history. In fact, when I contacted the international office of the union, they said that this was a situation where they were unable to move their local in a way to be helpful.

It is not always the union concessions or high labor costs or inflexible work rules that create the problem. Often it is a situation that we tend to find again and again where there has been a pattern with a national corporation -- with many plants spread across the country -- and New Jersey's plants are among the oldest in the country, because we are one of the oldest industrialized areas. Our plants are, therefore, the least modern.

When an economic crunch comes on, as happens in frequent waves, like we witness in our national economy, the first place that a national concern will look to shut down -- not always, but it tends to be the case -- is the older plant. They are not going to shut down the brand new plant that they opened in North Carolina, Tennessee, or Texas. They are going to shut down first and foremost, as did Western Electric and General Electric, their older plants, typically in our area.

We have not spent enough time on the process of business retention. This is really a separate issue in some ways -- to make it so that we are keeping, in good times, an active modernization program for older plants. We are trying to do some of that locally.

Just yesterday, I was talking to our other big brewery, Anheuser-Busch. I was working with them on some plans for new investment in their plant. I feel that a new investment now -- when they are riding high on the barrel -- no pun intended -- is an insurance policy for us for the future. If they can say they put \$50 million or \$100 million into that plant in 1984, and there is a downturn in 1985, they are much less likely to look at shutting down that plant.

ASSEMBLYMAN PATERO: Also, what I am looking at in this bill is that sometimes the unions and management are so far apart that to save face, they need a third party to come in and try to get the two groups together, and say, "Look at the recommendation of the State, or whatever. We had better get our act together." Some unions have their backs up against the wall and say, "Look, we don't want to give up some concessions. We want to save face." Management probably says, "Look, I don't want to buckle down to the unions, etc."

If they have a third party involved, they can always blame the third party by saying, "Well, we're listening to the State." That saves face for both sides.

MR. SHAPIRO: Certainly, there are some good examples of that, both public and private. Chrysler, as an obvious example, has gotten a lot of publicity, where you had a very dedicated management and a very dedicated union, along with the additional prod that was given when Congress said, "We're not going to come in with the assistance that we could be coming in with, unless both of you make some movements."

If we look at the New York City fiscal crisis on the public-sector side, and the way that was worked out, it was a combination of efforts by the employee unions, the business community, and the banks -- all of them playing some role in resolving the problem.

ASSEMBLYMAN PATERO: With Chrysler, they said it couldn't be done, but it was done. The Federal government stepped in, and they were the third party.

MR. SHAPIRO: It is amazing that it worked out.

ASSEMBLYMAN PATERO: Jackie, do you have any questions?

ASSEMBLYWOMAN WALKER: I just want to make a comment. When I was first appointed to this Committee, and I knew this Plant Retention Bill would come up again, I read the original testimony from 1982. You had testified at that time.

Two points in your testimony struck me: One was the case you cited of a business that did close and moved out of your area. When you spoke to them and established a dialogue, you found out that all the time they were closing and making these plans, no one had stepped forward to talk about some other alternative that could be sought.

The other thing that impressed me was the Pabst Blue Ribbon experience -- the fact that by your intervention and getting there early enough, 800 jobs were saved. I think that speaks precisely to the bill.

MR. SHAPIRO: I hope they stay open. We're still worried about them because the beer business is a very competitive one. We still remain concerned. They haven't made a commitment to stay open forever, obviously, and we keep hearing rumbles that there may be some areas to be concerned about.

ASSEMBLYWOMAN WALKER: You're right on top of everything.

MR. SHAPIRO: I try to be.

ASSEMBLYWOMAN WALKER: That is obvious.

ASSEMBLYMAN PATERO: Thank you very much for your testimony.

MR. SHAPIRO: Thank you very much, Mr. Chairman.

ASSEMBLYMAN PATERO: Next we have Mr. James Morford from the New Jersey Chamber of Commerce.

**JAMES C. MORFORD:** Mr. Chairman, Assemblywoman Walker, and Assembly Labor Committee, I am James C. Morford, Vice President of Governmental Relations for the New Jersey State Chamber of Commerce.

Thank you for this opportunity to appear before you today to state the views of the State Chamber on the subject of Assembly Bill 1221, plant closing legislation.

Mr. Chairman, you have heard the position of the New Jersey State Chamber of Commerce on many previous occasions, both publicly and privately, with respect to this legislation. As you know, we feel such legislation will be detrimental to the best interests of the citizens of New Jersey.

We would like to commend Executive Shapiro for his fine work in the Pabst situation, which has been mentioned here several times this morning, and his expressions in favor of more efforts in the area of business retention. The Pabst Blue Ribbon experience demonstrates what effective cooperation among business, labor, and government can produce without legislation.

I am also pleased to inform Mr. Cole that I have read his bill. I have read it several times.

Because you have heard the views of the State Chamber as recently as your meeting of February 7 of this year, I would like today, with your permission, to share with you the views of Professor Richard B. McKenzie, Professor of Economics at Clemson University. These views, which are shared by the State Chamber, are expressed in a booklet entitled The Right to Close Down, published in 1982 by the International Institute for Economic Research.

Professor McKenzie is at least as knowledgeable on this subject as Professor Frank Askin of the Rutgers Newark Law School who wrote an article for The New York Times and who appeared before you on February 7. He is also at least as knowledgeable as the distinguished New Jersey labor leaders who have addressed this subject.

The key points made by Professor McKenzie in his discussion of plant closing legislation at both the Federal and State levels are:

One of the objectives of the proposed legislation is to revamp, by law, the perceived growing incompatibility between the mobility of "financial and physical capital" and the desire of people with "human capital" to stay put, retain their jobs, and develop their communities. It is clear that if enacted, this new form of legislation would restructure economic power in the country. Such laws can be expected to reduce the growth of worker wages and employment opportunities. This conclusion is particularly applicable to states

that "go it alone" and enact plant closing laws without regard to what other states do, such as New Jersey is presently contemplating.

On the surface, plant closing laws appear to be a relatively simple, straightforward solution to an otherwise complex and destructive social ill. They would, however, cut a government swath across the private economy that is both broad and deep, inextricably entangling state governments in the affairs of business in a way never before attempted or even imagined. State governments would, very likely, become the arbiters of literally tens of thousands of closings and changes in operations. Before restrictions on plant closings are adopted, State legislators would be well advised to look carefully behind the headlines and the emotional trauma that understandably accompany plant closings.

Plant closing restrictions would likely increase, not decrease, the number of business failures. This is because they raise the cost of doing business and staying in business. Indeed, closing restrictions can force closing decisions. Firms must continually evaluate their future prospects, asking whether they can make it through the next six months, year, or two years. Once they announce their decision to close, their coffins can be sealed. Their employees can be expected to jump ship, and their suppliers, buyers, and creditors can be expected to deal more cautiously with them. Because of the notification requirements, many firms will announce their intentions to close at a time when they would otherwise, in the absence of the notification requirement, try to ride out what might be temporary adverse market conditions. In this respect, plant closing laws become laws that close plants.

Restrictions on plant closings have hidden negative dimensions. There are restrictions also on plant openings. What firm would be interested in investing in a state that has in force the smorgasborg of restrictions contained in several of the proposed laws? The question is especially relevant to areas of states that are depressed, and therefore, especially risky. In New Jersey's case, it is virtually the whole State, because as Executive Shapiro pointed out, we have an older manufacturing base. Therefore, we are more vulnerable.

For any company inclined to close for economic, profit-and-loss reasons, the costs associated with the proposed closing restrictions are by no means trivial. They can portend bankruptcy and the closing down of the the entire firm, not just one or several plants. They can jeopardize the jobs of the workers in the plants that are not slated to close.

Proponents of restrictions point to all the job losses resulting from plant closings. One study stresses that 15 million U.S. jobs were lost to plant closings during the 1970s. Although no one can dispute the hardship that many people feel when their firm folds, the myopic focus on just job losses severely distorts the economic burden of closings and inevitably leads to faulty policy conclusions. Anyone who assesses the economic stability of the banking industry by looking solely at withdrawals will conclude that all banks will eventually fail. But, withdrawals do not cause banks to fail. Indeed, most are quite stable because of offsetting deposits. Similarly, any dynamic economy is driven inexorably by the creative processes of closings and openings -- the births and deaths of firms. During the 1970s, U.S. employment on balance grew by some 20 million jobs.

Admittedly, the competitive market process is, by its nature, destructive. The destruction is, however, "creative destruction," with some firms going under, releasing their resources to other more cost-effective firms that offer consumers more of what they want, at better prices. Many proponents of restrictions cry "foul," that such a process is "unfair" to the losers. On the other hand, the process offers opportunities to everyone to compete, survive, and win. The protection and security offered employees and communities by the system resides principally in the right of everyone to meet and beat the competition on equal legal terms. To survive the competitive struggle, all employees have to do is keep their wages and productivity in line with their market competition. All communities have to do is keep their taxes and the quality of their services in line with their local government competition. For those who wish to gain on their competitors, the effective motto of the free market system is "build a better mousetrap."

Many supporters of restrictions seem to believe that restrictions on the mobility of capital will secure employment for otherwise displaced workers. Such will not be the case, largely because the proposed legislation would serve simply to camouflage short-term, transitional problems of plant closings -- not to resolve the long-term problems of plants' economic viability. The proposed legislation would not be the expected panacea for persistent unemployment.

In addition, to the extent firms are driven out of business by unreasonable wage and tax demands, the closing laws will offer workers and communities one more chance to exploit the economic power position they possess. If closing restrictions are enacted, we can expect workers and communities, again, to push their employers to the wall of marginal survival. To the extent that competition from expanding sectors of the local economy forces plants to consider closing, plant closing laws will keep resources tied up in relatively unproductive uses and retard the community's economic development. A one-year notice, as has been advocated here, can be a very long time for a firm in a dynamic economy, driven by competitive forces intended to serve the interests of consumers.

We must look beyond the closing costs of an individual firm in our area, however. These costs may escalate to affect several or many local firms, or potential local firms. There are costs associated with tying up an entire economy for even short periods of time, and the public will bear those costs. Manville, New Jersey may reason that closing restrictions will keep its plants in place and that, therefore, the employment opportunities of Manville's residents will be improved. However, restrictions on plant closings unique to New Jersey will discourage firms from considering Manville as a productive location. Closing restrictions across the nation will tie up firms in other cities, keeping those firms from moving into Manville, denying Manville the opportunity to make use of its comparative advantages in production, and preventing Manville from establishing a strong, viable employment base for the future. Proponents of restrictions argue that "free marketeers" ignore the human costs of an unfettered market. Such

a stance requires that advocates of restrictions remember to take into account the human costs of a fettered economy.

In defending closing restrictions, medical researchers point to the high incidence of child beating by laid-off workers and suggest that government should have a role in protecting children from abuse. The children abused by these parents, because of plant closing restrictions, should be no less a concern of the State than the children abused because of plant closings.

Similarly, we might agree that plant closings lead to divorces, cases of hypertension, and suicide. However, to prove the moral superiority of their position, it would appear incumbent upon proponents of restrictions to show that their legislative proposal will, on balance, ameliorate marital and family problems. That has not been shown or typically addressed.

In 1980, The Wall Street Journal began a two-part series on plant closings with a heart-rending story of a worker who heard the news over his car radio of his plant's intended closing. He happened, at the time, to be on the way home from the bank, having just signed a \$56,000 mortgage on a new house. Clearly, there are many similar stories to be told by workers across the country. Plants do close down. Some give their workers several months' notice; others, however, give little notice. Sometimes firms lead their workers to believe operations will continue for the indefinite future, only to announce their closing a week or two later. And, we have noted some firms, especially those that intend to go out of business altogether, have an economic incentive to hide their intentions to terminate operations. Any announcement can cripple a firm's ability to keep its employees and continue production, and it can increase losses, and the erosion of whatever capital is left.

Must we deal with such problems by State government fiat? It would be comforting to be able to suggest that the solution to the controversy is simply one of finding a "compromise" -- a shorter prenotification requirement -- somewhere between no requirement and one or two years, or a smaller mandated severance pay, possibly one or two week's worth. The dilemma is, however, much more complex. There will

be costs attached to any requirement uniformly applied across industries, and those costs will be borne by real people. Most likely, workers will bear the lion's share of the burden, and the difficulty in the State's mandating severance pay, for example, lies in the fact that not all workers within a state will want to make the same trade-off between severance pay and wages or other fringe benefit programs.

Proponents should remember that all workers, especially unionized workers, can obtain the right to severance pay. All they have to do is negotiate it, meaning they must be prepared to make the attendant sacrifices.

If enacted, where will these plant closing laws leave the states that enact them, or are affected by them? State governments will become more than regulators of entrepreneurship -- more than just rule setters. They will become entrepreneurs of a sort themselves, for their actions to retard firm closings and relocations will necessarily affect the timing of disinvestment and investment decisions and the regional distribution of the states' and the nation's physical and human resources.

Today, whenever a community dams or diverts the flow of a stream, residents downstream fearing adverse effects, have the courtroom standing required to protest and seek legal redress. Similarly, when one state impedes a company from interregionally or intraregionally shifting its operations, other states are bound to protest, to counterattack with suits and legislation of their own, hotly played today by sovereign countries in the world of international trade. Plant closing laws are not likely to dampen the growth of regionalism and sectional economic warfare. Quite to the contrary, regional political competition is likely to be intensified by them.

Restrictions on plant closings are not restrictions simply on physical things like buildings and equipment; they are restrictions also on real people whose legitimately acquired rights will be usurped and managed by state governments. Such restrictions will affect not only the "greedy capitalist pigs," caricatured artistically by their proponents, but they will also affect workers -- some wealthy, some not

so wealthy -- who save and want to invest in efficiently-run companies, who wish to buy goods and services at the lowest prices possible, and who will be less able to find the type of productive jobs they seek. In their deliberations, legislators should remember that the retirement benefits of many unions, as well as non-union workers, are critically dependent upon the earnings of pension funds which are tied inextricably to the efficiency and profitability of many private companies.

The legislative debate cannot legitimately be characterized a "good-guy, bad-guy" contest, an ideological struggle between people who care and do not care about human beings and the lives they lead. Rather, the debate is as much a philosophical matter over the rights of individuals to do as they wish with both their physical and human capital as it is a question of the economic merits -- the social costs and benefits -- of plant closings. The closing of a plant by a workers' strike can be as devastating to a community as a closing-by-management decision. Hence, many of the arguments for notification and severance pay requirements are applicable equally to unions and key employees. Indeed, opponents of restrictions on management closings in Illinois and Pennsylvania have introduced a counter-proposal to the plant closing bills pending there. It requires unions to give a one-year notice of their intention to strike and to contribute to a community assistance fund for the economic impact that the strike has on the community, perhaps in the sense of balance. If this Committee is determined to release the Plant Closing Bill, it ought to release a "strike notification bill" to go along as a companion piece of legislation. The logical consistency, but restrictiveness, of such a proposal makes clear the affront plant closing laws are to individual freedom and decision-making.

Plant closing laws are only one of a number of options people have in a market economy. One obvious remedy every community has is to promote itself to prospective industry. Another solution, less obvious to some, is for the community and its workers to remain competitive in terms of wages and taxes. Cities and states can form "free enterprise zones" in which many of the government regulations that now hamstring

business and workers are eliminated. Such enterprise zones, having a competitive advantage over other areas, can be expected to prosper accordingly.

In order for people to retain economic freedom, they must be deemed tolerably responsible for their own actions, for their own implicit or explicit contracts. If people are considered too unintelligent or uninformed to negotiate their own contracts, then there is a possible case for government's protecting them. However, we must wonder if any government operating in a world of uninformed people can promote social welfare by fiat. Government also will be peopled with the "uninformed." It, however, will have one additional problem. It will know little of the individual circumstances of its individual constituents. To that extent, its intended protection may be no protection at all.

I respectfully ask that you consider Professor McKenzie's views in your further deliberations on this legislation before you choose to pass it on to the full Assembly. Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: First of all, Jim, firms would not be denied the right to move, according to our bill. Secondly, we have nothing by statute right now. We do have what the Department of Commerce says is a Retention Committee, but plants are still leaving. Lots of times we don't know why they are leaving.

You also brought up something interesting about strike notice -- a year's notice -- but, you have to remember that during the negotiation period of a contract, many times unions work without a contract, so you know there is a problem. When a plant closing or moving decision is made, it isn't just made overnight. It is made by a Board, and if someone is going to be moving to Georgia or Tennessee, you know that they have to get someone to go out there -- a consulting firm -- to find a location. So, it isn't just a one-year basis. Most of the time, it takes them two to three years before they find a location and decide to move.

The Federal government has a Federal Disaster Plan when there is a flood, a hurricane or whatever. They do get aid from the Federal government.

I wish the Mayor of South Bound Brook was here, because when you close a plant in a small community like South Bound Brook, that is almost like a disaster. If the Federal government has a disaster program, then I think the State should also consider this as a disaster.

Also, we have to remember that some of these people have worked, like Mr. Cole said, thirty to forty years in their plants. Even though we have discrimination laws, it is very difficult for someone forty-five years old to sixty years old to get a job. There is always some excuse -- "You are overqualified," or something like that.

What we are trying to do is to get some protection. There is the "unknown" to this. No other state has anything like this. Business is saying it is bad; labor is saying it is good. I look at it on the labor side -- that it is a good bill.

One of the examples we could cite is at the time the State set out to honor the bonds for the Meadowlands, there were opponents who said that it would not work. They said it was un-American, but yet, the Meadowlands is working. There is nothing to say that if this bill becomes law that in five years -- or even in two years -- if we find it is not working, that this bill could not be repealed. I think there is uncertainty here, and you are either for or against it. There is no experience from any other state as to how it is going to work.

MR. MORFORD: Mr. Chairman, your comments, particularly about the Department of Commerce-- I just want to suggest that much of what you are suggesting in your legislation is already being carried out very actively by our Department of Commerce. It appears to be unnecessary to legislate in that area.

The problems you described are valid concerns. They are concerns that are shared by the State Chamber of Commerce, and we think all of the responsible members of the business community share those concerns. It is your solution that we think is wrong.

ASSEMBLYMAN PATERO: Jackie?

ASSEMBLYWOMAN WALKER: Yes, I have a few comments to make. You made a statement that once plants assume their decision to close, employees jump ship. I'm just looking for some balance here. Archie

Cole said that his union had conducted a survey which said that ninety-eight percent of the employees stay. Did the Chamber do any similar types of studies?

MR. MORFORD: Assemblywoman, what has happened, in our view -- in our understandings and our discussions with the facilities that have experience in this -- is that, in many cases, it is true that many of the workers hold on until the bitter end. Human inertia is not an uncommon thing when bad news is coming at us. We hate to make a change and to make a move, particularly when those changes are painful.

We must remember also that what is affected when a facility makes a determination to close or to relocate are all of its employees, from top to bottom. Where there is an exodus, it has very often been probably by the most talented or the most easily resalable individuals who may be very significant to the operations of that company and its concerns to continue -- not that any worker is insignificant, because every worker is. The management people, the decision-makers, the middle-management people, the foremen, and those levels are the ones who are more readily reemployable and more likely to make a speedier exit.

ASSEMBLYWOMAN WALKER: But, I think that further supports Joe's point -- that the fifty-year old, the fifty-five year old worker is the one who is going to be caught in the bind. Let's leave that for a minute.

You spoke about plants deciding to close and that being their decision to make, but I think Pabst negates your argument here, because when Peter Shapiro intervened, Pabst obviously made a better decision. If it weren't a better decision, they would have left. But, something happened in that dialogue between the County Executive and the other people he brought in, and Pabst, which had made a decision to leave, said, "It is better to stay in New Jersey." What I am trying to get across is, what this bill is saying to business is, "Give New Jersey a chance before you make a final decision." Pabst is one instance where it worked.

I think we also have to look at another point. You talked about the natural order of things and the births and deaths of firms.

I think that is well and good, but you also have to think of the births and deaths of human elements in this whole thing. Losing a job to some people is like slowly dying. We heard about all the social implications of that.

I come from the Thirteenth District, and I have had the most bitter experience of all. That is the Kerr closing in Keyport -- the Glass Works. When people went home Friday and came back on Saturday, there was a sign on the door. That was it. So, we have to take a look at that.

MR. MORFORD: You've heard me address myself to that before. That is wrong, and we certainly do not condone or encourage that.

I don't want to interrupt you, but it is not our view, however, that a State mandated fiat is going to preclude the hardships that occur when plants close, because in fact, they still can close.

Kerr, I do not believe, was really in violation of this act in any way -- of this proposed legislation -- because they gave severance pay. So, we hold up Kerr and cite it as this vicious example, and I think what they did was wrong. Okay? They really wouldn't have been affected under this act.

ASSEMBLYWOMAN WALKER: They would have notified the community, so there wouldn't have been that awful shock.

MR. MORFORD: No, because in lieu of notification, under this act, they would pay two-weeks' severance pay. They did that.

ASSEMBLYWOMAN WALKER: The other point is, you had mentioned that the Department of Commerce already does a lot of these things -- that there are some informal procedures which are already set in place. What is wrong then with formalizing these procedures, if they are already being done anyway?

MR. MORFORD: I guess it is just a basic philosophical difference, Assemblywoman, that we have with respect to trying to write one piece of legislation that mandates and fiats all circumstances across the board, from top to bottom. We don't think that works.

A voluntary market, a voluntary system, where those who are good citizens and want to take advantage of that kind of system -- and those are the good citizens that I would hope we would want to keep in

this State -- are the ones who can take advantage of it. Once again, I go back to the Pabst situation. Executive Shapiro suggested that Pabst's decision may not have been a right one from the company's perspective, because it is still somewhat tenuous. But, what was right and what was good about it was that this was a responsible company which notified its employees, perhaps because of negotiations in a contract, and they notified the community of its intentions to cease operations. An aggressive County Executive by the name of Peter Shapiro was able to step in, bring the parties together, and work out something that kept the parties talking and kept the facility going -- at least for some period of time -- beyond the planned close-down date. This is a voluntary system that works, and it works well. The State should be seeking to encourage more of that, not just to throw laws at every perceived problem.

ASSEMBLYWOMAN WALKER: Thank you.

ASSEMBLYMAN PATERO: Jim, just to get one thing straight -- the people aren't always looking for money. At the Kerr Glass Company, sure, they got the two-week's severance pay and all that. The other thing is, they want the decency of being told that, "Look, soon you're not going to have a job." That is all.

MR. MORFORD: Joe, that is absolutely right. You've heard me on this before. I just don't for one moment want to be misunderstood on this. We deplore companies that are insensitive in giving notification to their employees of their intentions to terminate an operation. That is wrong.

I've said to you privately that if we have many more Kerr Glass situations or something of that nature, it is going to add fuel to what we think is an inappropriate solution to a very serious problem.

I still contend that good-faith representation from both business and labor can work together. Peter Shapiro has demonstrated this. They can work together to provide positive solutions. The danger is in trying to write a law that takes care of every case across the board, from top to bottom, from "A" to "Z." I just think it is impossible to do that, and its negative effects will be greater than its positive best-intended effects.

ASSEMBLYMAN PATERO: Thank you very much.

MR. MORFORD: Thank you very, very much.

ASSEMBLYMAN PATERO: We're going to take a ten-minute break, and when we come back, the first speaker will be Ted Kowalski, the President of the Association to Improve Benefits.

#### TEN-MINUTE RECESS

#### AFTER RECESS

ASSEMBLYMAN PATERO: I would like to continue this hearing, please? Our next speaker was to be Ted Kowalski, but he waived his time to Doc Oakley from the United Auto Workers. Mr. Oakley, please?

L O R E N Z O O A K L E Y: My name is Lorenzo Oakley. I am the International Representative for the UAW, and Political Action Director for the State of New Jersey. Jim May is President of Local 736, formerly the Hyatt Beridan Company from Clark, New Jersey. He will relate some of his experiences to you, experiences which resulted from the notification that his plant was going to close.

I am not going to go into great detail about why we support the job retention legislation. That has been done many times, and much testimony has been given as to the reason why we are supporting the legislation.

One of the things that really disturbs me is the Chamber of Commerce's continual reference to this as plant closing legislation, as though we are going to prevent companies from closing if they find it necessary to do so. It is plant retention legislation.

One of the things I have been involved in is negotiations with companies. With prior notification, one really has a chance to sit down and discuss things. I worked for a company in New Brunswick, years ago -- Mack Truck. They did something similar to what Kerr Glass did. And, about two years after that, when I was talking with one of the company representatives in Allentown, Pennsylvania, he said to me, "We made a big mistake. We should never have closed that plant." If they would have had conversation and dialogue with us, that plant would never have closed.

But, companies take a position of, "Well, we have the sole right to affect the lives of people and communities," and they care nothing about what happens to people.

If you go back over the years, the Chamber of Commerce opposed Social Security in the beginning. They opposed Unemployment Compensation. The doctors opposed Medicare and Medicaid, and they make more money than anybody. So, they have opposed everything that has ever come down the pike that has been of benefit to people.

It just amazes me that the Chamber of Commerce would try to make this legislation sound like something that is going to do us harm. It is going to help. It is going to help many companies, if they will just sit down and have a dialogue with the community leaders and with the unions. We do that with our major companies, Ford and General Motors.

Not too long ago, Ford notified the union that they were thinking very seriously about closing their Edison plant. We met with the company. They told us what their problems were, and the union sat down with the company and worked the problems out. The only way one can solve these problems is by talking about them.

Another example that nobody mentioned here is J&J in New Brunswick. J&J announced they were looking for a world headquarters. When they announced that, the State, the county, and the city got involved, and J&J said there were certain things they had to have in order to keep their facility in New Jersey, and in the New Brunswick area. Those things were worked out, because they were willing to sit down and talk about them. Unless we do that, we can accomplish nothing. It means thousands of jobs for that area. It means all kinds of good things for that area, really -- not only for New Brunswick, but also for the State, the county, and the whole area. It means a tremendous influx of money into that area.

I just can't understand -- and I never really could -- why the Chamber of Commerce is opposed to everything that will benefit people. They would have closed Chrysler if we had listened to them. They are always on the wrong side. Chrysler would have gone out of business and we would have lost thousands of jobs, hundreds of

thousands of jobs. I would say maybe two hundred thousand jobs would have been destroyed altogether as a result of their wishes, if those wishes were fulfilled.

So, the UAW strongly supports the plant retention legislation. We think it is good for the State. We think it is good for people. And, we ought to get it passed as soon as possible.

At this time, I would like you to hear from James May, President of Local 736, Hyatt.

ASSEMBLYMAN PATERO: Okay. Before Mr. May speaks, I would like to say that I think you are right. The reason that the bill was killed for the last two years was the media, with I guess coaxing from the business community, making it into the "hostage bill." No way can we stop a company. I think we all realize we cannot stop a company from moving. All we are asking for is six months' notice, and some dialogue.

MR. OAKLEY: We want a year, Joe. It takes a long time, really, to get some of these things worked out. Johnson and Johnson announced maybe two or three years ago that they were out there looking for a spot for their world headquarters. I heard they were going to move to Chicago. They were talking about moving all over the country. But, they at least gave the people of the State of New Jersey an opportunity to sit down and work out the problems they had.

Now, if they had waited and said, "We are not going to see anybody because we are going to leave; we are going to build a headquarters somewhere else," nothing would have been accomplished.

And, people really don't leave. I have been involved in the Mahwah situation. Jim has been involved in his situation at Hyatt. People stay until the bitter end, because there are no jobs out there to go to. Again, most of the people who are affected are people who have been working for that particular company for a number of years. So, people don't really leave.

In the Mahwah situation, I would say ninety-nine percent of the people stayed there until the bitter end, until they were laid off. They just didn't up and leave because the company announced they were going to close the plant.

ASSEMBLYMAN PATERO: Thank you. Mr. May?

**J A M E S M A Y:** Thank you. My name is James May. I am the President of Local 736 of the UAW. I am a member of the Board of Directors of Hyatt-Clark Industries.

The bill's purpose, I believe, should be to direct business, labor, and government to work collectively, not to just raise wages and benefits, but to include a more realistic and positive approach to local economic development.

In May of 1980, General Motors announced that they were closing our plant if they could not sell it. They brought in several potential buyers. They would not give us any information whatsoever. They wouldn't give us the price they were selling it for. They gave no information to the union. So, in order to get that information, we decided to announce ourselves as buyers. It was thought this would get us information. Under the law, they have to recognize any potential buyer, etc.

It took us approximately eighteen months to buy it from General Motors, and this was eighteen months with no help from any government agency, whether it was elected or appointed. There was no help from any government official, although some claim today that they helped us a great deal.

No employee left the plant. No employee left the corporation during the phase-down. In its hayday, the plant employed thirty-two hundred people. At the time it was announced that the plant was going to be closed, it employed sixteen hundred people.

When we opened the plant, under Hyatt-Clark Industries, November 1, 1981, we had eight hundred employees. Today, February, 1984, we have fifteen hundred employees. The average cost, just for our Blue Cross and Blue Shield coverage for these employees, is over two million dollars per year. That is just for Blue Cross and Blue Shield.

If I had an observation to make about the last eighteen-month period, I would say it was not nearly enough time to organize a buyer properly, and I say that from the experience of mature adults, in middle age, having no directin or assistance for the future.

The rise in medical claims, for mental disorders and heart complaints from stress, costs approximately sixty million dollars in the local community. There is a benign neglect of the social structure at all levels of government towards families facing these potential problems. In America you are different from the rest of the civilized world -- or at least the western world. You do not give your families any medical coverage -- the working people. When you lay people off, and when companies milk the community and then go for greener pastures, what does a man with a family do? Or, what does a woman with a family do for medical coverage?

It becomes more expensive when you are unemployed. You have to get whatever medical coverage you can afford. When I hear the Chamber of Commerce-- That man's opinion should be in the Smithsonian Institute. That is terrible. He said key management people would leave with notification. Well, we would have been fortunate if some of the key management people would have left, because workers are only working in a system designed by management. They are a tool of the system. If a company is unsuccessful, it is because it is mismanaged, not because of any poor workmanship, and not because of any great gains by unions during negotiations. Management gives unions what they ask for, or what they negotiate for. Companies may give away too much. That's mismanagement.

I can only say that corporate America is badly managed, and that is why they may be moving to Mexico and to the underdeveloped countries. Thank you.

ASSEMBLYMAN PATERO: Also, what people fail to realize is, this isn't just a labor bill we are concerned with; management is also involved, because they get laid off too. Also, the community is really involved in this because it is an economic shock to the community.

I agree with you. Six months is short notice. It is not enough time to do everything we would like to see done. The Committee is really going to take this into consideration at tomorrow's meeting, because we are going to have difficulty passing a six-months' notice bill. One year's notice -- I just don't want to lose any of the support we have right now. That is why the Committee is going to take a long look at this tomorrow.

MR. MAY: I testified in the Commonwealth of Pennsylvania over a year ago, and at that time I said there should be something in a bill where it does not completely finance feasibility studies of companies that are potentially moving. There has to be some commitment from the workers -- and I mean a financial commitment. If a feasibility study is going to be done, then the State should provide some form of financing, but certainly not the complete financing. The workers must want their jobs, and they should have to finance the feasibility study by fifty percent. That is what should be done. You have to have commitment on the part of both management and labor in order to be successful.

The great word in there is "consulting firms" and "entrepreneurship." They all forgot about the money. It takes money for both of these things.

ASSEMBLYMAN PATERO: Okay. It is very sad that after a plant decides to close, workers, once they hear about the closing, say: "Look, we are willing to sit down and make concessions." I think that is what we are trying to do if a company is in trouble. And, I think the work force is reasonable. They don't want to lose their jobs either. As long as a company makes a legitimate request, I think the workers will go along with it. But, at least let them both come in and sit down and talk, rather than just have management call the unions in and say: "We are calling this meeting now because we are telling you that we are closing down in a month." That's wrong.

MR. MAY: Then it is too late.

ASSEMBLYMAN PATERO: That's right.

Our next speaker will be Mr. Kowalski.

**T E D K O W A L S K I:** Thank you, Mr. Chairman. My name is Ted Kowalski, President of the Association to Improve Benefits for Retired, Disabled Workers and their Dependents.

I want to commend the Chairman for putting this bill in. It is a bill that has been long overdue. I also want to thank the Chairman for bringing a Committee meeting here to our town of Manville. It is a great honor to have this meeting here, and to have legislators come to Manville.

I don't know of any other place in this State that would be more appropriate than the Town of Manville to hold this hearing. I retired at the age of thirty eight -- not because I was laid off, but because I became disabled from my job. I, and thousand of others, have faced the same crisis. We will not turn our backs on our sisters and brothers. We are trying to preserve their jobs.

This bill is very important, and I believe at least a year's time should be part of this bill. I live in the town of Manville. I believe I came here in 1912. Since 1912, all this asbestos has been spread all over the town of Manville, and I am sure into the surrounding areas and the rivers, making thousands and thousands of people sick and disabled. They had to lose their jobs because they were made ill by industry. Their wives became ill. They never worked in the plant, but they were exposed to the work clothes, their husbands, and the environment. The children of the town were exposed and are ill with asbestos illnesses. It is a shame.

They have dumped garbage for years. I know that up until 1985-- Next year, I guess, they won't be able to dump anymore. I read an article in the Manville News, I guess it was in May of 1979, and they were complaining at that time that the dump was cutting off the flow of the river and flooding the Town.

We have a town filled with -- it was donated by Johns Manville -- asbestos transite pipe, which supplies the drinking water to the homes of the town. So, industry doesn't just have an obligation. They have a moral obligation. It is a humanitarian issue that is involved.

When I was President of the union in 1959 -- Local 800 -- we had approximately five thousand people -- salaried and hourly employees -- at that time. Industry started to phase out: the Rockwell Department and the Floor Tile Department. "I" Building moved their research center to Denver. This has just been going on for years, where they have been phasing out. I don't believe they have one thousand people at that plant at the present time. I don't know. A lot of my friends and neighbors have left because they were disabled and they lost their jobs. Some of them, with twenty-five years and twenty-eight years of employment, are on the streets.

Industry has an obligation. They have an obligation to the people who gave the best years of their lives, became ill, and now have no place to go, because if there was a job available, anyone who is suffering from the ills of asbestos will not get a job anywhere. Who is going to hire a person who is already dying, or who is half dead? No one.

Who is going to take care of the problems with the wires in the town? Asbestos found the thirty-seven wire system. This was just in the paper a couple of weeks ago. Does it go through the transite pipes? Some say yes. I am sure that every piece of material, whether it is roofing material or a part on your automobile, wears out. I am sure that because of the pressure through the asbestos transite pipes in the ground -- not only in Manville, but throughout the whole country; and some of you people are not even aware of this -- this material deteriorates.

An article was published several years ago -- a pamphlet was passed out -- that in the Bay Harbor vicinity doctors were recommending to the people: "Don't drink the water that is supplied through transite pipes."

So, industry has an obligation. What will happen? Are they going to phase out without giving notice to the town? Don't they have a moral obligation? If there is a hazard in this town, are they just going to leave that hazard, and not take care of the problems or the people who were devoted to them, people who gave their lives to the industry? What happens when the rivers continue to flow here and flood the towns because of their dump? Are they just going to leave, and say, "We are going to leave the problems behind?" It shouldn't be so.

How about the medical coverage? I am not just talking about Manville people, but I am talking about other people throughout the State. When plants shut down and industry leaves, what happens to the medical bills? Who pays for the illnesses?

Jersey City is a good example. We find toxic chemicals all over the State because someone was so negligent that industry was allowed to dump waste anywhere they could find a hole in the ground to dump the waste. Who is responsible for that? Are we going to allow

industry to pollute the cities and the towns in the State of New Jersey, and then allow them to move any time they want to, without giving any notification? Notification would at least let people know, "We have a year in which to do something. We can at least find someone to help us." They should not be allowed to put a sign on the door saying, "We are closed."

To close a plant is one thing, but to make someone ill and then say, "Go and look for a job." No one will hire you. Where does a person who is fifty, or forty, or thirty, or fifty-nine years old go? Who is going to pay him? No one will hire him. He will leave, sick, and he will have to pay for his own medical bills, because industry was at fault.

This is why I sit here supporting this piece of legislation. I don't even think a year is enough. But, I will go along with a year in which to notify the people before anyone moves out of this State. They should be forced to take care of whatever damage they have done to that town or to that community, whether it is the water, the sewer line, the drinking water, or whether it is asbestos, a dump, or the environment. I believe they should also be responsible for all of the illness. I thank you.

ASSEMBLYMAN PATERO: Thank you, Ted.

Lester Kurtz, from the New Jersey Business and Industry Association, please?

L E S T E R K U R T Z: Good morning. My name is Lester Kurtz. I am Assistant Vice President of the New Jersey Business and Industry Association. I am going to make a sincere effort to keep my remarks brief, and not repeat some of the things that have been said by the previous speakers.

I would like to bring to the attention of the Committee some facts that might stimulate their thinking on this issue. There was previous discussion about plant closing legislation tying up capital -- it would restrict capital from coming into the State, capital which would create jobs.

The Federal Reserve Bank of Boston made a study of this issue. Just to summarize, very briefly, what they said was: "Unencumbered capital mobility increases employment. Where you encumber capital mobility there is a decrease in employment." The study concluded that: "Radical economic thinking underlying plant closing legislation contravenes conventional economic thinking, and it would retard rather than encourage new capital formation."

Now, this is just an indication of where the money would flow if you intend to create jobs in New Jersey. It has been pointed out before that this is radical, or new, legislation in New Jersey. No other state has this legislation.

In the past ten years, a number of states have seriously considered this type of legislation. Every one of those states have soundly defeated it because of its impact on the growth and the retention of jobs.

The Federal government has studied this legislation, and though it comes back, there is no support for it in the Congress.

So, based on the facts of past history, every other state that has considered it -- and most of them have been industrial states -- has rejected it. Doesn't that tell us something? If we are the first to pass it, it will cause extreme economic problems for the State of New Jersey. I don't think we have any idea of what types of problems it will cause. If this bill passes, we can't envision at this point -- we hear stories, but I don't think we can envision -- the economic problems that this bill will present for the State of New Jersey.

But, I might point out that there are a number of good features in your bill, and business can support them. We have mentioned that to you in the past. We would strongly suggest that you eliminate section five and section eight. The balance of the bill can be supported by business. We support job retention. And, the provisions in your bill, and all the other sections, except five and eight, will create jobs and assist business retention in the State.

Just one final point. This type of legislation was enacted last year in a community in Pennsylvania, and it was challenged in the

courts. The court threw it out. I can only submit to this Committee that should this legislation pass, it will be challenged in the courts. And, there are strong indications that the bill will not be upheld by the courts.

I might point out that the United States Supreme Court has said that there are two basic categories of labor/management conduct which states and municipal authorities are preempted from regulating. One of them is conduct that is subject to the primary jurisdiction of the National Labor Relations Board, conduct that Congress intended to be governed only by the free play of economic courses.

Most of the retention provisions in this bill -- I refer to the penalty provisions of section five and section eight -- clearly contravene Federal law, and I am referring to the National Labor Relations Act. There is nothing presently preventing two parties from sitting down and negotiating severance pay allowance. There is nothing to prevent two parties from sitting down and negotiating a prenotification. That is the basis of our free economic society. But, when you attempt to regulate this, it will cause more problems than I think we could ever imagine.

There is also nothing to prevent, at the present time, the officials of any community -- be they the mayor, Freeholders, or even the legislators -- from opening up a dialogue with the industries in their area, to go and visit them and indicate to them that, "We stand ready to help you if you have any economic problems, or if you are considering moving out of the State." I think many industries would welcome that recognition, and they would support it and give prenotification. They would take advantage of the muscle that the legislators or the Freeholders have, and voluntarily discuss their economic plight, and attempt to get certain changes made, if it were at all possible.

But, prenotification does not take the marketplace into consideration. What is the sense of keeping a facility open if there is no market for the product they manufacture? For example, Western Electric -- one of the reasons they are closing down is, there are a dozen other companies entering the field. Why should a company with a

similar product be forced to remain in business and continue operations when there is no market for their product?

So, as I said, this bill will present more problems, should it ever be enacted, than it is attempting to solve. I would urge your Committee to think about this, and try to pass legislation where both business and labor will join together, as they have in other instances. Business and labor can join together in formalizing some of the thoughts that you have in the bill, excluding sections five and eight. And, I don't think we would have any problem with encouraging companies to voluntarily notify their employees in advance, and to notify the State, if they are having problems. But, the thought of forcing them and making them provide any type of notice presents problems for companies. Thank you.

ASSEMBLYMAN PATERO: First of all, if you eliminate section five and section eight, you wipe out the whole bill.

MR. KURTZ: No, you don't. You don't wipe out the portion that sets up your department -- the Office of Business Advocacy. You don't wipe out encouraging businesses to give notice, nor do you wipe out what the municipalities or the State can do. You don't wipe that out. There is nothing wrong with letting management, or companies, know that the State stands ready to help them if they are experiencing difficulties.

ASSEMBLYMAN PATERO: For example, in the State of Connecticut -- it is strange that in New Jersey the Democrats are pushing this bill -- the Republicans were pushing this type of legislation. The Governor vetoed the bill in Connecticut, based on the fact that one of the large corporations said, "If this bill passes, we are going to leave. If it doesn't pass we will expand. We will hire more people." Well, the Governor vetoed the bill, and what happened? The plant closed down and moved to another area. So, we do have problems.

It is not for us, the Legislature, to determine if a bill is constitutional or not. That is up to the courts. We don't know if the court looks at this they are going to say it is unconstitutional. That is not our responsibility.

MR. KURTZ: Well, I am suggesting that you look at what happened in another state. I might also point out -- this just came to me -- this bill was vigorously supported by labor in Ohio. The Teamsters Union came out in opposition to the bill and led the fight to defeat the bill. The gentleman who led the fight for the Teamsters is now President of the National Teamsters Union in Washington.

So, depending on how you look at the bill, there are problems with this bill, and it comes from both sides.

ASSEMBLYMAN PATERO: But, almost any bill you get will have problems. There is always going to be a "for" and an "against."

Are there any further questions?

ASSEMBLYWOMAN WALKER: Yes. I have a few comments. You stated a number of times that this bill will present more problems than it is attempting to solve. Can you be a little more specific? What do you actually envision happening as a result of this bill? What problems will it present?

MR. KURTZ: I think, in effect, should this bill become law, you would be erecting a sign at the borders of this State, "Capital Investment Not Wanted."

ASSEMBLYWOMAN WALKER: How do you see that happening?

MR. KURTZ: Business will not invest capital if they have to remain in a state and continue to lose money.

ASSEMBLYWOMAN WALKER: The bill doesn't say that industry has to remain in the state; it just gives a mechanism by which they would give notice if they were leaving.

MR. KURTZ: Yes, but it imposes a penalty for not giving that notice. You are putting a gun to their heads, "Either you remain here six months, or you pay the penalty." Now, I submit to you that business cannot operate under those circumstances. Business cannot be forced to remain in an operation and continue to lose money.

ASSEMBLYWOMAN WALKER: We are talking about different things now.

MR. KURTZ: Can a supermarket that employs over fifty people continue to operate if they are losing money -- when there is no business? Yet, this bill will require them to remain in operation for six months, continue to keep the store open, and lose money.

ASSEMBLYWOMAN WALKER: I don't know if we are talking about the same bill. It says that a business will know -- a supermarket, or a big department store -- that they are going to close up--

MR. KURTZ: (interrupting) That's correct.

ASSEMBLYWOMAN WALKER: (continuing) --a year or two years in advance.

MR. KURTZ: I doubt if they know that.

ASSEMBLYWOMAN WALKER: I have talked to a lot of business people about this, and I submit to you that they know quite a bit in advance. Six months' notice is a very minimal amount of time as far as I am concerned. I would like to see it one year.

MR. KURTZ: Well--

ASSEMBLYWOMAN WALKER: Okay. Another thing. You know, a lot of laws are passed, and they are not specifically passed for all the people who are doing the right thing. Laws are passed because of the people who are the exception. You stated in your testimony that nothing prevents local and county officials from establishing dialogue with business, and that is very true. I agree that nothing prevents them from doing that now.

The unfortunate part about this, and again this affects me directly because Keyport is part of my district, is that you have a situation like Kerr Glass and all of those people. You know, it was a devastation.

I will give you another example of a company in my district, Lilly Tulip Cup. That just closed down and left the county. You know, these are the situations that are happening. Kerr is the more blatant example, because no notification was given.

I just submit that to you in the context of what you said. It is not the ones that are going to abide by the informal mechanism that exists, it is the ones that will not abide by it that we are worried about. And, that is the purpose of this bill.

In terms of your legal argument, we had testimony on February 7 from a man who was a law professor at Rutgers, and I remember it because I am not a lawyer. But, it conflicted and that is very confusing, because you have presented one point of view, and the law

professor, who had published an article in the New York Times about this, presented a different point of view.

MR. KURTZ: I understand that. That's something you will have to weigh. I might also point out that ten years ago, two states enacted prenotification legislation, and that legislation has not saved one job, nor has it helped one company to remain in those states. There has been no evidence that the two states which enacted this legislation have increased their employment, retained jobs, or retained companies. The law has not been enforced in the states. It has not been challenged, because the states have decided not to enforce the law.

So, I just point these things out to you. There are many good points in the bill, but I think we are clouding up the issue by putting in other things, such as prenotification and a penalty in the bill. I think if we concentrated on getting the State involved in plant closings, or getting it involved with plants that are experiencing financial difficulties, without holding a gun over their heads, a lot more would be accomplished than will be accomplished by requiring notice and penalizing for failure to give notice.

If a voluntary procedure is established -- eliminating sections five and eight -- and if that fails to achieve its objective, you can come back in a year or two and impose penalties. But, I would strongly suggest that you give this voluntary method a chance. Let the companies out there in the State of New Jersey know that the State stands ready to help them, voluntarily, rather than force them to seek State help.

ASSEMBLYWOMAN WALKER: We have a voluntary program now.

MR. KURTZ: Yes, you do. You have it.

ASSEMBLYWOMAN WALKER: But, it didn't stop the glass company from just putting a sign in the window.

MR. KURTZ: Nothing could stop the glass company when there was no market for their product. You will never stop any company that manufactures a product they can't sell.

ASSEMBLYWOMAN WALKER: The point is, they knew; they didn't make the decision that day.

MR. KURTZ: They made a decision, and perhaps that decision was very similar to Western Electric's, who gave almost two years' notice. They had some dialogue and it didn't help the situation. Their product could not be sold in the open marketplace. There was a decreased demand for their product. So, you will have that no matter what.

ASSEMBLYWOMAN WALKER: Right. Nothing will stop the closing, you are absolutely right.

MR. KURTZ: Nothing will stop the closing.

ASSEMBLYWOMAN WALKER: All we are saying is "notify."

MR. KURTZ: I agree, notify. But, let it be done on a voluntary basis. I think you will get more compliance that way.

As I pointed out to Assemblyman Patero some time back, our Association, together with the State, would be willing to notify all our members. We would be willing to publish something, notifying all our members and encouraging them to give the proper notice, and encouraging them to seek assistance from the State. But, we can't do this if there is a penalty involved.

ASSEMBLYMAN PATERO: Also, we have a provision in here whereby if a company such as Kerr Glass says they can't sell their product, and so forth, they can go before this Commission and say, "This is the problem we are having."

MR. KURTZ: It isn't in your bill now.

ASSEMBLYMAN PATERO: It will be. For some reason it was left out. It is supposed to be a pre-filed bill. I don't know what happened. But, the Commission could waive the rule and say, "Look, they have a legitimate complaint." But, we don't want to have a company close here and then relocate in Pennsylvania without notice.

MR. KURTZ: I can see every company coming to the Commission and saying, "Look, we can't sell our product; waive the right of notice." Then it is up to a judgment of the Commission, and that judgment can be challenged. You will get involved in court procedures when the Commission makes a judgment contrary to what the company says. The company will then challenge the decision of the Commission.

ASSEMBLYMAN PATERO: Okay, Les. Thank you very much.

The next person we will hear from has been here since nine o'clock. Reverend Leslie Agent, from the New Jersey Council of Churches.

**REVEREND LESLIE AGENT:** My name is Leslie Agent. I am from the Council of Churches. I want to thank the Committee for the privilege of appearing before you. We also want to thank you for the courage you have shown in bringing this kind of proposed legislation to our State.

I am here, as many others are, because we are concerned about unemployed, based on plant moving -- sudden moving. Many of our people have been professionally involved with these plants. Some of them had business relationships with the plants. Some of them served clients who had relationships with these plants. This is to say nothing of the homemaker -- the housewife -- who is involved in whatever decisions are made, and whatever occurs from the decisions that are made.

We are here because we believe that the welfare of not only the individual employee is affected, but also because we believe that the welfare of our State is affected whenever an individual citizen's welfare is affected. We believe that the gentlemen's agreement is not always effective. It is not always in place. It is not always there. It would be fine if we could depend on the gentlemen's agreement.

By the same token, it is no comfort to any of us -- nor is it a blessing, particularly to those persons who take the responsibility of being self-supporting, contributing citizens to the welfare of our State and to the other necessities around us -- to suddenly find ourselves on public assistance, or to be receiving a temporary unemployment check. Many people do not have union support. They do not have a pension plan that has been built in by union negotiations.

So, when they lose jobs at a point when they cannot receive any other support, there is no place else for them to go but to go onto public assistance.

They add to, rather than diminish, the tax load that the State must place on others in order to carry all of the responsibility a State has to carry.

There is a quotation that comes to mind, which I learned when I was in grade school: "For want of a nail, a shoe was lost; and, for want of a shoe, a horse was lost; and, for want of a horse, a man was lost; and, for want of a man, a battle was lost; and, for the loss of that battle, a victory was lost." The growth, health, and future of this great State rests in its employed populous. I don't believe any single individual can be spared, if that single individual can be saved by the retention of firms, businesses, or factories in our State.

And so, we support this proposed bill. I would therefore add the encouragement of, and the voice of, the fifteen denominations of the Council of Churches to those who have written this proposed bill. I believe we are as interested as you are that there should be -- as has been indicated here by the Chamber of Commerce and by the Businessmens' Association -- an attractive climate developed and promoted in order to bring more and more industry and business into the State.

I believe this bill speaks to that. We should even seek to encourage our farmers to utilize their God-provided fertile land in order to produce more of the products that are essential to our people. This is also an industry which is needed.

I believe we ought to be concerned about seeking to encourage good relationships between labor and management. This has already been said, and I approve of it.

I am concerned. I believe that the crux of our hearing today is that there should be a time period required, whereby, some kind of indication would be given that a company, or a firm, planned to leave this State and abandon many of the employees who have given them long years of service. These closings affect the lives of the families of those employees, as well as the communities in which these people live, and in which these firms have been doing business.

We support this legislation. It is the concern of the Council of Churches in New Jersey that we help, not harm, the people. So, we ask you to pursue this as vigorously as you have been, and we pledge to you all the support we can give to you in order to support this bill. This is the purpose for which I have come. Thank you.

ASSEMBLYMAN PATERO: Thank you very much for your testimony. It is very nice to see that we are getting some support, because big industry is going to be putting out a lot of money. As you have seen, they control the media, and they came out with the phrase, "the hostage bill," which is a terrible title. It even scared the people we are trying to help. Once they saw that, they said, "Look, they are chasing industry out of the State."

I think we have to let it be known that this is a plant retention bill. I think we would get bigger support that way. We don't have the money; all we have are people such as you and your organization, and the other people who are here today. So, whatever support your organization can give us will be greatly appreciated, because they probably have a big campaign already planned. They have public relations firms, and so forth, which we don't have.

I really thank you for your testimony, Reverend.

REVEREND AGENT: Thank you, and we pledge you that support.

ASSEMBLYMAN PATERO: Thank you very much.

Our next speaker will be Frank Askin, from the Americans for Democratic Action. Mr. Askin is also a Professor at Rutgers Law School.

**F R A N K   A S K I N:** Mr. Chairman, members of the Committee, I appreciate this opportunity to appear here again to express the support of the North Jersey Chapter of ADA, of which I am President.

It is our view that the cessation of operations by a major employer creates significant economic, medical, and social problems for a community on a par with those -- as the Chairman noted before -- that are caused by natural disasters, such as floods, devastating hurricanes, and droughts in agricultural communities. And, despite the views of the Chamber of Commerce, the Legislature can no more ignore or refrain from attempts to prevent such man-made disasters than it can ignore the natural ones.

I suppose the Chamber would also oppose building a dam, or creating a flood plain.

I testified here two weeks ago, and some of my views were expressed in an article that appeared in The New York Times, which has

been mentioned. I have included an expanded version of the testimony I gave two weeks ago, plus an attachment of the Times article in the prepared statement I have presented to the Committee. I trust it can be made a full part of the record. I don't think it is necessary to read the full statement at this time.

Most of my statement is devoted to the legal issue -- the legal objections that have been raised to this bill. It does address those questions. Most of them I addressed weeks ago. There are a couple of additional items which I would just like to mention though. These were not included in my testimony two weeks ago.

By the way, if I might digress for a moment, I would like to respond to something that Mr. Kurtz said. He said such legislation has been presented on the national level, and it has been thoroughly rejected by Congress. I would like to mention that back in the 95th Congress, it so happens that I was counsel to the House Labor Management Subcommittee of the United States Congress. Very frankly, at that time we knew that such legislation was pending before the Congress, and we were quite convinced that the House of Representatives was ready to pass such legislation. The problem was, we were advised by our colleagues on the Senate side that it could not get passed the Senate filibuster, that they could not mobilize the sixty votes on the Senate side necessary to break a filibuster. That was the only reason why it was never pushed in the House, where it was believed such legislation could have been adopted.

Going back to the legal objections that have been raised, I will say again that I discussed most of them in my prepared statement. One issue was raised by Mr. Kurtz in his testimony. He referred to the recent decision of a city court in the City of Pittsburg, holding that a local prenotification ordinance in that City was preempted by the National Labor Relations Act, which makes plant relocations a subject of union/management collective bargaining.

I note, by the way, that as I understand that Pittsburg decision, their main reliance was on the fact that the City ordinance was preempted by State law, and that under the Pennsylvania

Constitution, the City didn't have the right to enact such a provision; it was up to the State. But, they did throw in a second ground for decision, as I understand it: It was preempted by the National Labor Relations Act.

That part of the decision, which is now on appeal, I believe is unconvincing. Federal Labor Law does not displace state legislative authority over every subject which is appropriate for collective bargaining. In 1978, the United States Supreme Court, in a case called *Malone vs. White Motor Corporation*, upheld a pre-ERISA state statute, which imposed a pension funding charge against an employer who ceased to operate a place of employment or a pension fund. And, such state legislation was upheld against a preemption challenge by the Supreme Court, even though pension plans are, of course, a mandatory subject of collective bargaining. The court viewed the state's regulatory function as appropriate in such an area.

I do not believe that the kind of legislation which this Committee is considering is the kind of regulation the Supreme Court had in mind when it articulated the Labor Preemption Doctrine, which extends, essentially, to two kinds of activities: One, activities which are either arguably protected or arguably prohibited by Federal Labor Law; or, two, the kinds of self-help economic activities which are to remain unregulated in the struggle between union and management.

For one thing, this bill is not especially directed at unionized facilities; it reaches unorganized facilities as well. And, while it is true that plant shutdowns may be motivated by a desire to frustrate union organization, this would be within the reach of the Federal Preemption Doctrine. Such cases would presumably account for a very small fraction of the situations which would be covered. And, even in such situations as those, there are exceptions to the preemption doctrine, as set forth last year by the United States Supreme Court, in a case called *Belknap vs. Hale*, which states the appropriate preemption test under the NLRA, even in relation to activities arguably prohibited by the NLRA. And, the Supreme Court said as follows:

"A state regulation or cause of action may, however, be sustained if the behavior is only a peripheral concern to federal law, or touches interests deeply rooted in local feeling and responsibility...and in such instances courts should not assume that Congress intended to preempt the application of state law."

So, as in the case of health and safety regulations, which are also a proper subject of bargaining under collective bargaining contracts, there is no implied preemption under Federal Labor Law of state regulations governing prenotification and severance pay. The mass unemployment, the community dislocation caused when major employers cease operations surely -- in the words of the Supreme Court -- "touch interests deeply rooted in local feeling and responsibility," as much as fire and safety laws do. There is no reason to assume that Congress intended, in adopting the NLRA, to regulate union-management relations, nor that it intended to strip states of the power to deal with such deep-rooted interests and concerns.

Now, I was asked also by your aide to comment on another recent decision of the United States Supreme Court, which some people have apparently called to the Committee's attention, dealing with the expressed preemption of certain kinds of state regulations, again by ERISA -- the Federal Employee Retirement Income and Security Act -- as recently interpreted by the Supreme Court in the case of Shaw vs. Delta Airlines.

Now, the fact is, ERISA does have an expressed preemption of certain kinds of state regulations which deal with employee benefit plans. But, I think the crucial distinction between what ERISA is about and what the Supreme Court said it was about in the Shaw case, is the fact that ERISA deals solely with plans, and not with any kind of state regulation which can be labeled as an employee benefit. To place, by state law, an obligation upon an employer to provide some advantage or benefit to its employees does not relate to benefit plans, it seems to me, within the intent of the Federal legislation. The emphasis of the Shaw opinion on defining benefit plans confirms this interpretation, which becomes more obvious when you look at the

Congressional findings, which are included as Section One of the ERISA statute, which is located in 29 U.S.C. Section 10001.

Just to read the introductory section of those findings: "The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans..." -- and that finding section concludes: "...and that it is therefore desirable, in the interest of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness."

It seems to me it would defy logic to transform legislation, clearly aimed at enforcing the promises and safeguarding the fiscal integrity of pension and other employee benefit plans, into a general prohibition against any and all state legislation imposing independent obligations on employers for the protection and benefit of their employees and the communities in which they live and work. Such an interpretation would not only be illogical, it would really be inconsistent with some of the most fundamental notions of our Federal system and the role of the states in the Federal union.

So, I think that while these objections do raise some interesting arguments, I think they should not deter the Committee from going ahead with the legislation, based on its perception of, what I agree would be the public policy needs of the State of New Jersey. I think there are sound constitutional grounds on which this legislation can be defended. I have no doubt there will be legal challenges. But, I think, as I said, there will be very firm grounds on which the Committee and the State of New Jersey can defend the enactment of such legislation, and I would not let the alleged legal objections stand in the Committee's way.

Again, my full statement has been provided to the members of the Committee. If there are any questions, I would be glad to respond to them.

ASSEMBLYMAN PATERO: Your statement will be put into the official record. Thank you again for your testimony.

As I said, it is not for us to determine whether this is constitutional or not. We know it will probably be contested, because the corporations have a lot of lawyers around.

MR. ASKIN: That's true.

ASSEMBLYMAN PATERO: It will give them something to do.

Do you have any questions, Assemblywoman?

ASSEMBLYWOMAN WALKER: I just appreciate your not repeating everything. Thank you.

ASSEMBLYMAN PATERO: Thank you very much, Mr. Askin.

Our next witness will be Mr. Ray Peterson from the New Jersey State Federation of Teachers.

**R A Y P E T E R S O N:** Good morning, Mr. Chairman, and members of the Committee. I am speaking not only for the New Jersey State Federation of Teachers, but also for the Middlesex County AFL/CIO Labor Council.

One might ask, however, what does this bill have to do with teachers? Well, I submit to you that it has a lot to do with teachers, butchers, bakers, interior decorators, and homemakers. It has to do with improving the economic climate. A healthy economic climate is important to everyone; it is everyone's business.

I was impressed, several years ago, by a statistic that was produced and promulgated by the United States Chamber of Commerce. It said that every new job created in the community had a positive effect on ten other jobs in that community. And, so this does affect teachers, as well as butchers, bakers, and homemakers.

Now, it is reasonable to assume that if every new job created in a community has a positive effect on the other members of the community, that the loss of a job in that community would have a negative effect on the other members of that community.

Just looking at it in the context of teachers, a poor economic community affects the attitude of the school board members who shape budgets, and who consider fringe benefits, salaries, and layoffs. It shapes the attitudes of those who vote on the school budgets, etc.

I don't mean to belabor the points I dealt with the last time I spoke, because I do have some new material with me today. Just as I was impressed with that Chamber of Commerce statistic several years ago -- I filed it in my memory -- I have been more impressed with some recent statistics and data that has been published by business.

I have with me today the October issue of INC. Magazine, which bills itself as the magazine for growing companies. And, in the October issue -- October of 1983 -- they published their annual rating of the business climates in the various states. They rate the business climate on five major factors. One is capital resources; one is labor; one is taxes; one is state support; and one is business activity. I am sure you will be pleased to know, if you didn't know already, that New Jersey is rated amongst the top ten in the nation by INC. Magazine, as a favorable place for new business.

I was also pleased to note, in last Sunday's issue of the Newark Star Ledger that New Jersey ranks sixth in the country, as far as the incorporation of new business is concerned.

I would also like to call your attention to the fact that South Carolina -- if I can dispell a myth -- is rated fiftieth in the nation, as far as climate for new business is concerned. It seems that low labor costs, and low taxes, are not the only consideration for businesses.

So, I would submit to you that New Jersey is doing an outstanding job of attracting new business, and it would be appropriate for New Jersey to do more than attract new business; New Jersey should try to take the lead in retaining the businesses it has.

Before I conclude, I would like to comment on the testimony of two previous speakers. We heard the comment and the quote of Professor McKenzie of Clemson University, which, incidentally, is located in South Carolina, indicating a theoretical idea about how this business climate should operate.

We also had the testimony of Peter Shapiro, who worked diligently to save business and industry in Essex County. He concluded that this legislation was necessary because he had tried the voluntary method and it didn't always work.

So, I want to thank you for this opportunity to present my new information, and add our voices to those who say that New Jersey ought to be doing everything it can, not only to create new jobs but to retain the ones we do have. Thank you.

ASSEMBLYMAN PATERO: If I may, I would like to comment that the business community, instead of going around and saying this is a hostage bill, should encourage new industry to come to New Jersey. They should say, "Hey, look. Come to New Jersey. If we do have a problem, the State is willing to help you financially and any other way it can."

MR. PETERSON: Sure.

ASSEMBLYMAN PATERO: So, at least if they come in here, they know we are willing to help.

MR. PETERSON: One of the factors they point out here is that State assistance is a major factor in the consideration of businesses.

ASSEMBLYMAN PATERO: That is the reason we separated the Department of Commerce from the Labor Department, to attract industry. And, I think they are doing a good job. But, what is happening is, by not having a statute, or by allowing voluntarily submission of information, we are not going to get cooperation from the business community.

ASSEMBLYWOMAN WALKER: Obviously, we don't have to encourage new business in New Jersey very much if it ranks sixth. I think that negates a lot of the argument about New Jersey's business climate. Thank you for bringing that forward.

MR. PETERSON: They are coming in. Our problem is to enhance our position by retaining the ones that do come in.

ASSEMBLYMAN PATERO: It is good that we are getting new jobs, but, unfortunately, these are the low-paying jobs. That is why it is important that we keep what we have now.

Thank you.

MR. PETERSON: Thank you.

ASSEMBLYMAN PATERO: We only have two speakers left. The next speaker will be George Ellis, from Local 2316, to be followed by John Atlas.

**G E O R G E E L L I S:** My name is George Ellis. I am with the Amalgamated Clothing and Textile Workers, Local 2316. I have been in the work force for thirty-three years, and I am facing my fifth plant closing. I have had from as much as two days' notice to one week's notice. One plant closed down on us. I went in to pick up my pay and they said, "Here is a week's severance pay." I said, "What's this for?" They said, "You are not coming back."

The position we are in now is one of again walking into the plant every day, not knowing whether we are going to have the job tomorrow -- or maybe not even that day.

A little over a year ago, we had over four hundred people at that plant; we are now down to thirty.

**ASSEMBLYMAN PATERO:** George, excuse me, where are you working?

**MR. ELLIS:** Everlon Fabrics in Cape May County, South Jersey. And, half of the people are only working two or three days a week. I heard a statement made here that if the worker hears they are going to close down, he or she runs away. That is a bunch of bull. We have people calling us every day, hoping that there is a turnaround in this plant, and that they will be coming back. A lot of them say they don't want to move.

They say, "Why six months' notice in the bill?" I know personally that if I had six months' notice, I could straighten out my bills if I had to get out of town. I wouldn't have these people hounding me anyhow.

So, we stand strongly for this bill. I know my Union does.

**ASSEMBLYMAN PATERO:** In other words, you would stop buying once you knew that in six months you would be losing your job?

**MR. ELLIS:** Definitely.

**ASSEMBLYWOMAN WALKER:** You wouldn't take out a fifty-six thousand dollar mortgage.

**MR. ELLIS:** Exactly.

**ASSEMBLYMAN PATERO:** Also -- not at this hearing as much as the last one -- they kept saying that vandalism would occur, and all

that. Some of these companies that did give notice that they were going to phase out within a year or within two years did not have this happen to them. So, that dispells that myth.

They try to make the working people look as though they just don't care. But, that is very untrue.

MR. ELLIS: Well, my brothers and sisters in our plant sent us in there to ask the company, "What can we give you? What do you need? Whatever you need, you know we are here." And, all they do is say, "Well, we are hanging in there," but that still leaves us hanging.

ASSEMBLYMAN PATERO: Okay. Thank you very much for your testimony.

Next is Mr. John Atlas from the New Jersey Citizen Action.

**J O H N A T L A S:** I am also the Vice President of the 80,000 New Jersey Tenants' Organizations. I am here as a member of the Executive Committee of the New Jersey Citizen Action, and I want to testify on their behalf.

I also happen to have just finished a documentary on the housing crisis in Essex County. So, what I want to do is to talk about the housing problem. Wait a second, you say, you are in the wrong Committee. You shouldn't be here; you want to be in that legislative committee that is considering emergency mortgage assistance for the unemployed. They are considering the Foreclosure Bill that would have the State lend 4,000 unemployed homeowners money to pay their mortgages until they find jobs.

No, I am in the right committee, and I am dealing with the right bill. What I want to talk about is drawing a relationship between jobs and the housing crisis. Now, we know we are talking about the Plant Retention Bill. We know what that is about. Also, maybe you are familiar with -- or, maybe you are not familiar with it -- the Home Foreclosure Law. You know, there is a legislative committee -- an Assembly Committee -- that is dealing with the Home Foreclosure Law.

My guess is that you are probably not familiar with it. Most people are not familiar with it. In fact, if you listen closely to the debate that is going on in this Committee, and if you listen to the debate that is going on in that other legislative committee, you would

think that home foreclosures had nothing to do with factories suddenly closing down and moving out of state or overseas, but they do.

The primary reason we have a housing problem around this foreclosure business is that that bill is designed to protect someone who is about to lose his home because of the financial hardship of a job loss, beyond his or her control. In other words, the whole Mortgage Foreclosure Bill that this other Assembly Committee is dealing is designed precisely to protect people who are thrown out of work because a factory decides to move out of New Jersey, or close down.

So, it turns out, interestingly enough, that the home foreclosure problem is less a housing problem than it is a jobs problem. If we want to do something to stop home foreclosures in the State, we had better do something about the loss of our basic manufacturing industries.

Now, you are all familiar with the fact -- you have heard so much testimony about it -- that manufacturing industries have traditionally been the basis of our prosperity. The auto plants, the assembly lines, consumer appliance industries, etc., have been the source of entry-level jobs in which workers gain skills, economic security, and advancement up the ladder of economic life. They then buy a home, and keep it because they have that kind of a job.

But, we know now that these basic industries are in trouble. I would like to just point out that part of the reason they are in trouble is, one by one, our manufacturing industries have been battered by competitors from Japan, Western Europe, and the Third World. Increasingly, these foreign countries, aided by their governments, have taken a larger and larger share of the United States' markets. That is where a plant closing bill comes in.

Japan, West Germany, Sweden, France, and even countries as far away as Canada, have industrial programs that go far beyond this kind of plant retention law, aimed at making their economies more efficient in the distribution of income and welfare.

We are light years behind these other countries in dealing with these kinds of problems.

Plant closing legislation is desirable. It will help stop one from not only losing a job, but also from losing a home. One important inequity, or limitation, to the Home Foreclosure Bill, that this other committee is considering, and that deals directly with this problem, is that it is not enough. It is only going to help 4,000 families. What if there is more than 4,000?

Secondly, what about tenants who are going to be evicted because they lose a job? This Home Foreclosure Bill doesn't deal with that.

Then, third, and most important is, what about the older, or the untrained workers who lose jobs and who may be permanently unemployed? They may only be able to find low-paying jobs, and they may have no reasonable prospect for resuming full mortgage payments.

Jobs in the growing service sector of high technology industries, such as microelectronics, which are being touted by Governor Kean, and others, as food replacement plants for those that are leaving Jersey, usually pay low wages to unskilled assemblers and service workers. In other words, the middle-class factory job, held by the middle-class homeowner, is being replaced by the low-income job -- as you mentioned before -- and the low-income family. And, these former middle-class New Jerseyans will not be able to pay their mortgage payments, Mortgage Foreclosure Bill or not. So, you can see there is a tight connection between the housing crisis and the jobs problem.

Although I think more is needed to support job retention, I think this is an important first step that New Jersey is taking to stop the American dream of owning a home from turning into a nightmare. Thank you.

ASSEMBLYMAN PATERO: Thank you very much. Again, as you stated, it is true, when a plant leaves, it doesn't just close down; it affects almost everyone in the community, the county, and the State.

As was mentioned before, we do have disaster aid from the Federal government, and maybe we should look into disaster aid when a plant closes in a local area.

Are there any questions? (no response)

Okay. Thank you very much, Mr. Atlas.

First of all, I would like to thank everyone for coming today. As we have noted before, people are saying, "Why should New Jersey be the only one who has a law like this?" Well, let me tell you that New Jersey was the leader of the industrial revolution when it first started. Most of the industries we have here are large industries and some of their buildings are over one hundred years old. They are the ones that need the help.

If someone just moves in here, they are not going to leave after only one or two years, because they are not going to leave a new building. The older industries need the help. As I stated before, rather than the business community going around saying we are against business, and that this is a plant hostage bill, I think they should go out and shout what is good about this bill, rather than talking about what is bad about the bill.

So, again, I would like to thank everyone for coming here today to testify. You have taken time from your busy schedules to come here. I think the testimony is going to be very important for the other legislators in the State. I just hope that with the effort of the Council of Churches, the labor unions, and now maybe the tenants also, we can get this bill passed this year.

Jackie, do you have anything to say?

ASSEMBLYWOMAN WALKER: No. Thank you all for coming.

ASSEMBLYMAN PATERO: Okay. This public hearing is closed.

(HEARING CONCLUDED)

TESTIMONY OF FRANK ASKIN,  
PROFESSOR OF LAW,  
RUTGERS LAW SCHOOL, NEWARK

TO

NEW JERSEY ASSEMBLY

LABOR COMMITTEE

February 22, 1984

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presented on behalf of  
North Jersey Chapter,  
Americans for Democratic Action (ADA)

I first wish to express my appreciation for this opportunity to testify on what I consider to be a most important piece of economic and social legislation. The reasons why I consider the proposed bill so important to the well being of the people of New Jersey are set forth in an article of mine which was printed on the New Jersey Opinion page of The New York Times of February 5, 1984. I believe the members of the Committee have already received copies of that article and I will not repeat what I said therein, but merely append a copy of that article to this statement.

The essence of that article is that the cessation of operations by a major employer creates significant economical, medical and social problems for a community on a par with those caused by natural disasters such as a flood, a devastating hurricane or a draught in an agricultural community. X And the Legislature can no more ignore, or refrain from attempts to prevent, such man-made disasters than it can ignore the natural ones. >

The economic, medical and social consequences of industrial shutdowns are well documented by now -- my article cites some of that documentation -- and I believe the Committee is familiar with those studies. I consider A.1221 a reasonable, and indeed moderate, proposal for attempting to prevent such man-made catastrophes, and, failing that, to at least mitigate some of the consequences. I would urge the Committee, however, to strengthen the bill to put more emphasis on the first of those objectives -- that is, prevention. If the major aim of this legislation is, as I believe it should be, to preserve jobs and not merely to mitigate the consequences of mass unemployment, then a pre-notification period of at least one year is required. Six months' notice is not likely to be time enough to permit the kind of public

intervention necessary to save an enterprise.

But mainly I would like to address myself today to some of the legal objections which seem to have been raised to this legislation by representatives of the business community. While most of those objections are vague and unspecific without citation of case authority, my examination of the record of testimony at earlier hearings on similar legislative proposals indicates there are three basic constitutional challenges which have been raised.

The first objection which seems to have been phrased in constitutional terms deals with the question of equal protection of the laws, an objection which focuses on the fact that this bill's application is limited to employers with 50 or more employees. That objection is surely the least substantial of all. It is well settled that when the Legislature attempts to deal with a social evil, it is not obligated to occupy the entire field -- but may strike at the evil where it is most felt. Certainly limiting the regulation to shutdowns affecting 50 or more employees is a logical and rational decision to deal with the evil where it is most felt.

Secondly, Mr. Orr, in his 1982 testimony on behalf of the New Jersey Business and Industry Association, suggested in very general terms as did Mr. Rooney of the Commerce and Industry Association of North Jersey, that such legislation would violate the Commerce Clause of the federal Constitution. That objection was not spelled out but suggested that legislation which would delay the interstate movement of capital by up to a year creates an "unnecessary encumbrance on free trade among the States" in violation of the superior command of federal statutes.

It is certainly true that Congress could preempt State plant-closing legislation by occupying the field with plant-closing legislation of its own. In the absence of such a federal enactment, however, I think New Jersey is not constitutionally disabled from attempting to deal with this serious social evil which threatens important state interests. The Commerce Clause has never been held an absolute bar to state action to protect the welfare of its citizens and its economy whenever the state action impacted upon interstate commerce.

In the absence of Congressional action, states have broad discretion to regulate commerce pursuant to legitimate local needs unless there is a substantial need for national uniformity; and such legislation will be upheld unless the burden imposed on commerce is clearly excessive in relation to the local benefit. I think it is hard to argue that a temporary encumbrance on the movement of capital is such a severe burden on interstate commerce that it is not justified by the immense social problem New Jersey is attempting to solve, given the data on the social and medical consequences of plant shutdowns, in addition to the economic.

If this were purely economic protectionism, it probably could not be justified against a Commerce Clause challenge. The Supreme Court has made it clear that it will not tolerate state legislation which attempts to favor its own economic interests against those of out-of-staters. But where, as here, the state can easily demonstrate the need for such legislation to protect the health and welfare of its citizens and its communities, I think it is on safe constitutional grounds.

This conclusion is supported by the decision of the Supreme Court of Maine in Shapiro Bros. Shoe Co. v. Lewiston-Auburn Shoeworker Assn., 320 A.2d 247 (1974), upholding that state's law imposing notice and severance ay requirements on corporations planning to shut down.

A similar issue, involving alleged federal preemption under the Supremacy Clause of the Federal Constitution, is invoked by the recent decision of a court in the city of Pittsburgh holding that a local pre-notification ordinance was pre-empted by the National Labor Relations Act, which makes plant relocations a subject of union-management collective bargaining. That decision, however, is unconvincing. Federal labor law does not displace state legislative authority over every subject which is appropriate for collective bargaining. For example, in Malone v. White Motor Corp., 435 U.S. 497 (1978), a pre-ERISA state statute which imposed a pension funding charge against an employer who ceased to operate a place of employment or a pension fund, was upheld against a preemption challenge, even though pension plans are, of course, a mandatory subject of bargaining. The Court viewed the state's regulatory function as appropriate in such an area.

The recent decision of the Supreme Court in Belknap v. Hale, 103 S. Ct. 3172 (1983), states the appropriate preemption test under the NLRA:

A state regulation or cause of action may, however, be sustained if the behavior is only a peripheral concern to federal law or touches interests deeply rooted in local feeling and responsibility.../And in such instances courts should not assume that Congress intended to preempt the application of state law.

103 S.C. 3177, 3182

As in the case of health and safety regulations, which are also a proper subject of bargaining under collective bargaining contracts, there is no implied preemption under federal labor law of state regulations governing pre-notification and severance pay. The mass unemployment and community dislocation caused when major employers cease operations surely "touch interests deeply rooted in local feeling and responsibility," as much as fire and safety laws do. There is no reason to assume Congress intended, in adopting the NLRA to regulate union-management relations, that it intended to strip states of the power to deal with such deep-rooted interests and concerns.

Nor are any of the provisions of the proposed bill expressly preempted by the Federal Employee Retirement Income Security Act (ERISA), as recently interpreted by the Supreme Court in *Shaw v. Delta Air Lines*, 103 S.Ct. 2890 (1983). ERISA deals solely with employee benefit plans, and not with anything which can be labeled as an employee benefit. To place, by state law, an obligation upon an employer to provide some advantage or benefit to its employees does not relate to benefit plans within the intent of the federal legislation. The emphasis of the Shaw opinion on defining benefit plans confirms this interpretation, which is obvious from an examination of the Congressional Findings in the ERISA statute. 29 U.S.C. Sec. 10001. The thrust of the statute is clear:

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans;.... and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States and to provide for the free flow of commerce, that minimum

standards be provided assuring the equitable character of such plans and their financial soundness. (emph. added)

it would defy logic to transform such legislation clearly aimed at enforcing the promises and safeguarding the fiscal integrity of pension and other employee benefit plans into a general prohibition against any and all state legislation imposing independent obligations on employers for the protection and benefit of their employees and the communities in which they live and work. Such an interpretation would not only be illogical, it would be inconsistent with some of the most fundamental notions of our federal system and the role of the states in the federal union.

The third constitutional argument raised by opponents, which involves the Contracts Clause of the federal Constitution, is their most substantial. It is substantial because of a ruling by the United States Supreme Court in 1978 in a case out of Minnesota, Allied Structural Steel vs. Spannaus, 98 S. Ct. 2716, in which five members of the Court -- over vigorous dissent by Justices Brennan, White and Marshall -- held that the Minnesota Private Pension Benefits Protection Act violated Art. I, Sec. 10 of the Constitution. I must concede that there is, superficially, some similarity between the proposed bill and the Minnesota act invalidated in that case -- especially in the provisions of A.1221 which would add to a departing employer's contractual severance pay and health-benefits obligations.

However, a closer reading of the Spannaus decision makes this proposal rather distinguishable from the Minnesota pension act. First of all, the Supreme Court carefully distinguished between "severe" and "minimal" alterations of contractual obligations, and emphasized that the impact of the Minnesota act was indeed "severe," substantially modifying "a basic term of the pension contract -- one on which the company had relied for 10 years." 98 S. Ct. at 2723. On the other hand, the type of severance pay obligations imposed on a departing employers by A.1221 would seem much closer to the "minimal" end of the scale even if those requirements turned out to be more demanding than those to which the employer may be contractually committed. When only "minimal" deviations from contractual undertakings are required, the Court said, the Contracts Clause does not come into the picture at all.

More significant, however, is the fact that even major expansions of contractual obligations may be required by state legislation which deals

with an "important general social problem." The Court in Spannaus emphasized that there was "no showing in the record that [the legislation under attack] was necessary to meet such an important general social problem." 98 S. Ct. at 2724. Indeed, the court emphasized that "the law was not even purportedly enacted to deal with a broad, generalized economic or social problem." 98 S. Ct. at 2725. In so stating, the court distinguished the Minnesota act from depression-era legislation enacted to deal with "the broad and desperate emergency economic conditions of the early 1930s" and upheld against Contracts Clause challenge. 98 S. Ct. at 2725.

The evil at which A.1221 is directed certainly does represent a broad, generalized economic and social problem confronting New Jersey. Indeed, for the communities directly involved, a major plant shutdown does indeed result in the kind of "desperate emergency economic conditions" which confronted many communities during the 1930s and which resulted in the kinds of New Deal legislation which were upheld against Contracts Clause challenges, such as those imposing a moratorium on mortgage foreclosures. See Home Building & Loan Assn v. Blaisdell, 290 U.S. 398.

What I would urge upon the Committee, however, in order to better insulate A.1221 from such legal challenges, would be to spell out in much greater detail in the preamble and findings section those severe social and medical problems being created in many of our communities by plant shutdowns. If the bill makes clear that it is directed not toward creating economic advantage for New Jerseyans at the expense of inhabitants of sister states, but at resolving serious social and medical as well as economic problems for our inhabitants and our communities,

then I think the bill will be in a stronger position to withstand not only Contracts Clause attack, but Commerce Clause challenge as well.

There is, of course, no way to foreclose legal challenge against whatever legislation may be enacted. And such challenge is surely in store for this important proposal, if enacted into law. But I would urge the Committee not to let the threat of such challenge dissuade it from its course. This legislation should be considered based on the public policy needs of New Jersey free from constitutional concerns. And if the Legislature does decide to enact such legislation, as I believe it should, I suggest that there are strong legal grounds upon which to defend it.

# Economic Chaos Can Be Averted

By FRANK ASKIN

**L**IKE many of its neighbors, New Jersey is haunted by the specter of abandoned factories and economically ravaged communities.

Curtiss-Wright in Wood-Ridge, Western Electric in Kearny, Singer Sewing Machine in Elizabeth, General Electric in Newark, Ford Motor in Edison and U.S. Steel in Trenton are just some of the more-recent and more-prominent additions to the expanding roll of the state's abandoned industrial facilities.

These plants were abandoned, along with their human resources, by corporate managers who decided it was in their own best interests to transfer production — or at least the recaptured capital — to new facilities in other parts of the country or the world where economic pastures appeared greener.

Some say that this process of deindustrialization will actually benefit New Jersey in the long run, that from the ashes of our once-vibrant smoke-stack industries will arise a more-viable economy based on high-tech and service establishments.

But even assuming this to be true, what about the short run? Is there nothing that our government leaders can do to prevent the human devastation that inevitably follows each of these economic dislocations?

We have enough experience now to know that when a major employer abandons a community, the human consequences far exceed the immediate economic hardship visited upon the displaced workers and their families.

As to the idled workers themselves, a study by the state's Economic Development Authority of the 1980 shutdown of the Ford Mahwah plant disclosed that 53.8 percent of the 4,700 workers who had lost their jobs were still unemployed a year later, and that for most of them there was no real prospect of ever finding new employment in the area.

The ripple effects of such economic dislocations are equally stark. A study prepared for the Federal Trade Commission noted the following aspects of a community's economy that are adversely affected by plant closings and cutbacks:

- ¶Per capita income.
- ¶Wage levels.
- ¶Retail sales for the area.
- ¶Employment in the retail sector.
- ¶Income-, sales- and property-tax collections.
- ¶Quality and quantity of local gov-

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ernment services.

¶Employment in intermediate industry.

¶Total property valuations.

¶Population levels.

Erosion of the tax base resulting from such shutdowns comes at just the time that extreme pressures are placed upon the social-service delivery system to mitigate the effects of mass unemployment.

The way these problems exacerbate each other is explored in a study done by the Illinois Advisory Committee of the United States Commission on Civil Rights:

"If services decline, local employers are provided additional incentive to relocate or expand in other localities, and outsiders have less motivation to move into a community. As more companies choose to leave, of course, the tax base and, eventually, city services decline even further.

"The social problems accompanying these economic trends increase. And declining revenues are further stretched to cover growing demand.

"The more-mobile and less economically disadvantaged workers may move with the company or take a position with another company outside the local community, thus draining the declining area of its more highly skilled workers. This further drains the tax base and makes the area even less attractive to other employers.

"The result is often a pocket of poverty containing the least employable segment of the population. Those who remain and find new jobs tend to receive a lower wage or salary. Those who cannot find new jobs, of course, are frequently added to the welfare rolls. One group of people which tends to be particularly hard hit by these trends is racial minorities."

Less obvious, but just as well documented as the immediate economic impact, are the deleterious medical and social consequences of the long-term unemployment precipitated by such mass layoffs in a time of continuingly high structural unemployment.

Studies disclose a far-reaching and debilitating impact on the physical and emotional well-being of those immediately affected by plant closings and, as a result, the host community. Researchers report an increased incidence of high blood pressure and higher cholesterol and blood-sugar levels among workers hit by plant shutdowns.

A study conducted by the Social Welfare Institute of Boston College disclosed that aerospace workers laid off during the early 1970's reported "an abnormally high incidence of headaches, stomach trouble, heavy drinking and loss of appetite."

Another study — it was conducted by Dr. Harvey Brenner of Johns Hop-

kins University for the Joint Economic Committee of Congress in 1978 — found a strong statistical link between unemployment and such indices of social trauma as cirrhosis of the liver, cardiovascular disease, suicide, mental-hospital and prison admissions and homicides.

There are also indications that stress occasioned by job loss triggers a significant increase in smoking, with its associated risk of cancer and respiratory disease.

The human cost of plant shutdowns is not confined to either economic deprivation or stress-related disease. Unemployment exacts an enormous psychic toll.

For most people, work provides the center around which their day and sense of self are structured. The sudden loss of identity as a worker can be intensely painful and disorienting, depriving a worker of a sense of control over his or her life and disrupting everyday supportive structures and relationships. Researchers have observed a decline in social and political participation as a result, and a gradual loss of confidence, motivation and a "working mentality" itself.

If a natural disaster — an earthquake, flood or hurricane — were to devastate a community the way the closing of a major factory does, we would expect a prompt government response to alleviate the suffering and restore the local economy. If such a natural disaster were preventable (say, by damming the river), we would expect such preventive measures to be taken. If we could legislate against earthquakes, we would do it in a minute.

So why do we not enact legislation to prevent these equally disastrous, man-made economic calamities?

The major reason, backed by the political clout of the business lobby, is a generally accepted notion that the discontinuance of a private business is a private decision to be made by the property owners, and that the rest of us have no right to tell corporate managers and their stockholders what to do with their property and financial resources.

Supporting that philosophical viewpoint is an economic assertion that, if New Jersey adopted regulations to restrict the withdrawal of capital from the state, new business enterprises would be deterred from locating here.

The latter claim is made without any empirical evidence to back it up and in the face of economic theory that would discount the cost of future relocation as a significant factor in business planning.

Canada and most of the countries in Western Europe have long regulated industrial shutdowns without any noticeable impact on the willingness of American concerns to invest and locate there.

The notion that a few private individuals ought to have exclusive control over a decision with such far-reaching social consequences ought to be discarded, just as we discarded more than a century ago the notion that the elective franchise should be restricted to property owners.

The system of unregulated decision-making benefits only the company making the shutdown or relocation decision and totally disregards the needs and desires of workers and communities. It is as socially unacceptable for a business to wipe out 500 jobs without public discussion or input as it would be to permit a community bus franchise to discontinue operations without consideration of the problem by a public commission.

Jobs are just as much a public resource in our monetary economy as transit facilities or electricity.

In the last decade, several states and cities have enacted mild legislation imposing a few minimal restrictions upon the shutdown decision. They generally require some pre-notification period before the action can be effected and provide for longevity-based severance pay for terminated workers.

Model legislation developed in a seminar that I conducted recently at Rutgers Law School in Newark would go further.

We decided that the objective of legislation should be not merely to cushion the blow, but also to attempt to prevent the loss of jobs altogether. Under our model bill, economic decisions that would cost more than 100 jobs in a single enterprise would require sufficient notice to permit a full-scale public investigation and hearing into the causes, and a public determination of the economic viability of the enterprise.

Among the objectives of such a proceeding would be the development of proposals to make the enterprise more profitable and to locate a purchaser and financing, including the exploration of the feasibility of worker and/or community buyouts.

Many of these ideas were incorporated in a bill introduced in the last session of the Legislature by Assemblyman Joseph D. Patero, Democrat of Manville, but never brought to a final vote.

The crucial concept underlying these proposals is the recognition that workers and a host community have an independent legally protectable interest (call it, if you will, a property interest that arises as a matter of law after long years of individual service and community nurturing) in the continued operation of an enterprise from which they obtain their economic sustenance and upon which they have become dependent.

It seems to me an idea whose time has come.