Many plant closings have a tragic impact on the lives of former employees and members of the local communities. These hardships can be substantially lessened by assigning legal obligations to companies, on behalf of their former employees and the local communities, in the form of prenotification and assistance to dislocated workers. Legal obligations can be established through political legislation or judicial decision. To date, the primary strategy has been through political legislation, culminating in the recently passed federal plant closing legislation. This strategy, though necessary, is insufficient. The federal bill settles a preemption issue, but its strength has been significantly diluted through political compromises within provisions of the bill that determine legal exemption claims. An alternative strategy based on competing rights and judicial ruling may be the most promising method for fully establishing a legal obligation.

This article examines attempts to establish legal obligations assigned to companies and relevant judicial decisions. The scope of the plant closing problems and the arguments for and against establishing a legal obligation are summarized, and attempts at establishing a legal obligation through the legislative process are examined. Two court cases contesting the political legislation are analyzed: Smaller Manufacturers Council v. Council of the City of Pittsburgh and Fort Halifax Packing Company v. Coyne. Arguments for establishing legal obligations through the judicial process are then developed and examined in light of Local 1330 v. U.S. Steel.

Large numbers of workers are affected yearly by plant closings. From 1969 to 1976, twenty-two million jobs were lost due to plant closings and company out-migrations. From 1976 to 1982, sixteen million jobs were lost due to the closings of large firms. The Bureau of Labor Statistics reports that from January 1981 to January 1986, almost eleven million American workers were put out of work due to plant closings or permanent lay-

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* The author would like to thank Dr. Kurt Baier, Department of Philosophy, University of Pittsburgh, and Joseph S. Hornback, The Steel Valley Authority, for their helpful comments.


2 104 LC ¶ 55,600 (Me. Sup. Judicial Ct., 1986); 106 LC ¶ 55,729 (S Ct, 1987).

3 90 LC ¶ 12,445 (DC-Ohio, 1980), 492 F Supp; 89 LC ¶ 12,220 (CA-6, 1980), 631 F2d 1264.


offs. A U.S. General Accounting Office study of business closures and permanent layoffs between January 1983 and December 1984 found that the median length of prenotification was seven days. Thirty-three percent of the establishments provided no prenotification, less than twenty percent provided more than thirty-days advance notice, and only one in seven employers offered dislocated workers a comprehensive assistance package (income maintenance, continued health insurance coverage, counseling, and job search assistance), while less than half offered only one particular aspect of the package. In a separate study, the Bureau of Labor Statistics found that approximately two-thirds of those laid-off did not receive advanced general notice.

A typical plant closing experience is exemplified by that of Herbick & Held Printing Company. On Thursday, March 31, 1988, the owners decided to close their Pittsburgh facility. The 179 plant employees were notified on Friday, and the plant was closed on Saturday. The only legal obligation the owners had with the employees or local community was a provision for severance pay.

The abrupt termination of employment has a negative impact on the local community. For every 100 jobs lost, the local community suffers 205 to 300 job losses as the result of a rippling effect. When Bethlehem Steel abandoned much of its operations at its Lackawanna, New York, facility in October, 1983, 7,300 well-paying jobs were terminated in a municipality with a population of 21,700. The layoffs resulted in a loss of $4.1 million a year in real estate taxes for Lackawanna, and layoffs in the community's public works, police, and fire departments. City taxes increased by 29 percent, and the school tax increased by 40 percent at a time when the locality was losing residents. On a county level, there was a surge in public assistance cases and a $75 million budget shortfall. Of the 7,300 dislocated workers, only 1,100 qualified for pensions. Other adverse effects associated with plant closings and permanent layoffs include deterioration of the psychological and physiological health of dislocated workers and of family relations as well.

### Intervention Methods

Various intervention methods have been pursued to lessen the hardships of dislocated workers and local communities. The three policies most often mentioned are prenotification, outplacement counseling, and retraining programs. A model case study on the possibilities of a favorable corporate policy for plant closings is that of the Stroh Brewery Company. The closure of its Detroit plant entailed terminating 1,159 jobs in a city already in poor financial condition. A four-month prenotification warning was given to all employees and a liberal severance pay and benefits package was offered to all employees, not just management personnel. A consultant was employed to organize an outplacement program that consisted of two transition centers where the workers could meet, individual job and personal counseling sessions, use of reference material and

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*February, 1989 Labor Law Journal*
telephones, and postings for job openings in the area. Letters sent by Stroh’s CEO and the transition staff generated 1,400 job offers for the laid-off employees. Within 13 months all the salaried employees and ninety-eight percent of the hourly employees who utilized the outplacement service had obtained new jobs. The program cost Stroh’s $1.5 million and the government $600,000, a cost of approximately $2,000 per laid-off worker. Such a case, however, is the exception, not the rule.

The business community has fought against all attempts to legally obligate companies to follow Stroh’s example. In vetoing a trade bill that contained plant closing regulation, President Reagan argued that “there are many circumstances under which mandatory notification would actually force a faltering business to close—by driving away creditors, suppliers, customers—and in the process, destroy jobs.” In testimony before a House subcommittee examining plant closing legislation, F.M. Lunnie of the National Association of Manufacturers noted that though plant closing legislation “may be appealing and politically expedient,” it focuses on the “symptoms of the problem” and “ignores the underlying causes of plant closings.” According to Lunnie, if companies do have an obligation on behalf of employees and local communities, it is a moral obligation and should not be made into a legal obligation.

He concluded: “The difficult decision to close a facility or implement a reduction in force belongs to management alone. Only the employer can effectively evaluate the factual data which must be considered prior to reaching such a decision. However, along with this responsibility comes a corresponding duty to mitigate, to the best of their ability, the effects of that decision. But those effects are different in each situation. Federal legislation is not the answer. It will only hamper creative, effective programs and impose a straitjacket on management which will add to costs and current unemployment. The proper role of the government is in solving the fundamental economic problems which have led to plant closings while at the same time stifling economic growth and job creation.”

Many opponents of a legal obligation argue that it would harm the national economy as well as individual businesses. In reference to the national economy, prenotification is predicted to cause an inefficient allocation of resources and to encourage companies to leave the country. In reference to individual businesses, prenotification is expected to cause: (1) a decline in worker productivity, (2) cancellations of orders for the employer’s goods, (3) an intrusion upon management’s right to close shop, (4) an inability to obtain credit, (5) a drop in the company’s stock price, (6) an increase in worker-management disputes, (7) an increase in union wage and benefit demands, (8) an inability to sell the plant, and (9) conflicts with SEC regulations.

Legislative Obligations

The primary strategy for establishing a legal obligation has been through political legislation. This strategy, however, has achieved mixed results.

At the state level, the first plant closing and employee layoff legislation was

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passed in Maine in 1971.\textsuperscript{18} Two years later, pressure from the business community resulted in an amendment eliminating the prenotification provision, though the severance provision was maintained. In 1975, Wisconsin passed a law requiring sixty-days prenotification for plant closings and major layoffs. In all, some form of plant closing legislation has been debated in thirty-three state assemblies. In addition to Maine and Wisconsin, the only other states to have passed such legislation are Connecticut in 1983 and Massachusetts in 1984.\textsuperscript{19}

Two court cases challenging plant closing legislation shed some light on how the judiciary interprets it on the local and state level. In \textit{Smaller Manufacturers Council v. Council of the City of Pittsburgh} the judge voided plant closing legislation passed by the city council.\textsuperscript{20} In \textit{Fort Halifax Packing Company v. Coyne} the United States Supreme Court upheld the Maine plant closing legislation.\textsuperscript{21} Both court cases were initiated by opponents of the plant closing legislation.

On July 5, 1983, the Pittsburgh City Council passed Ordinance No. 21 mandating 90- to 270-days prenotification (depending upon the number of employees) over the mayor's veto.\textsuperscript{22} The ordinance was a stronger version of an ordinance passed by the Philadelphia City Council in 1982. Claiming that the legislation was not only bad for business, but also illegal, the mayor of Pittsburgh filed suit.\textsuperscript{23} The case was heard in the Court of Common Pleas of Allegheny County, Pennsylvania. A Brief of Amicus Curiae filed by the Tristate Industrial Association argued that the ordinance was invalid because pursuant to the Supremacy Clause of Article VI of the U.S. Constitution, federal labor law (under the jurisdiction of the National Labor Relations Board) preempts such regulation by states and municipalities.\textsuperscript{24} Briefs filed by the Smaller Manufacturers Council and the Greater Pittsburgh Chamber of Commerce argued that the ordinance violated the State of Pennsylvania's Home Rule Act, which prohibits duties, responsibilities, or requirements placed upon businesses, occupation, and employers . . . except as expressly provided by the acts of the General Assembly.\textsuperscript{25}

In his argument to the court, the plaintiff's lawyer presented five hypothetical situations, each demonstrating one of two points: (1) in some situations it was impossible for companies to give adequate notification and (2) in some situations the problem fell under the jurisdiction of the NLRB.\textsuperscript{26} Based upon these arguments, the two judges hearing the case ruled that the ordinance was invalid on three counts: (1) It was enacted in violation of the state's Home Rule Act. (2) Assessing a misdemeanor of the third degree for violation of the ordinance was in violation of the Home Rule Act. (3) The ordinance was preempted by the primary jurisdiction of the NLRB.\textsuperscript{27} There was no men-


\textsuperscript{20} Smaller Manufacturers, cited at note 1.

\textsuperscript{21} \textit{Fort Halifax}, cited at note 2.


\textsuperscript{24} Tristate Industrial Association, "Brief of Amicus Curiae in the matter of Smaller Manufacturers Council v. Council of the City of Pittsburgh," 1983, personal copy [available from author upon request].


\textsuperscript{26} Smaller Manufacturers, cited at note 1.
tion of the Philadelphia ordinance in the judge’s court opinion.

Fort Halifax Packing

In *Fort Halifax Packing Company v. Coyne*, lawyers representing the company unsuccessfully argued before the U.S. Supreme Court that the Maine plant closing legislation was preempted by federal regulation. As noted earlier, Maine was the first state to pass plant closing legislation requiring both prenotification and a one-time severance payment to employees not covered by a contract providing for severance pay. In 1973, the Maine legislation eliminated the prenotification requirement due to pressure from the business community. In 1981, the Fort Halifax Packing Company laid off most of its employees and ignored the one-time severance payment provision. The Director of Maine’s Bureau of Labor Standards, P. Daniel Coyne, filed suit. The state superior court and state supreme court both ruled in favor of Coyne. Lawyers for the company then appealed to the U.S. Supreme Court, maintaining that the Maine law was preempted by both the Employee Retirement Income Security Act of 1974, which broadly regulates employee benefit plans including severance pay plans, and the National Labor Relations Act.

In a 5 to 4 decision, the U.S. Supreme Court ruled in favor of the state of Maine. In the majority opinion held by Justices Brennan, Marshall, Blackmun, Powell, and Stevens, written by Justice Brennan, the first claim was dismissed based on a technical reading of the term “employee benefits plan.” Brennan maintained that the congressional intent for passing ERISA was to regulate employee benefit plans. Since the Maine law pertained to a one-time severance payment that did not require an “administrative scheme”—thus distinguishing between an “employee benefit” and an “employee benefit plan”—the state law was not preempted by ERISA. In reference to the second claim, Brennan, invoking *Metropolitan Life Insurance Company v. Massachusetts*, ruled that “Maine’s severance payment law is ‘a valid and unexceptional exercise of the (state’s) police power.’”

In the dissenting opinion filed by Justices White, Rehnquist, O’Connor, and Scalia, written by Justice White, it was argued that the Maine law did indeed establish a plan. White claimed that “the majority ignores the obvious: when a Maine employer is called upon to discharge its legislatively mandated duty under the severance pay statute, the funds from which it pays the benefits do not materialize out of thin air.” He further argued that because “an employer’s liability is contingent upon an event that may never happen (it) does not make the plan that the legislature has imposed upon employers any less of a plan.”

These two judicial decisions send mixed messages about the status of plant closing legislation on the local and state level. In *Smaller Manufacturers Council v. City of Pittsburgh*, the Common Pleas judges ruled that the city ordinance requiring prenotification violated state law and pertained to a policy area that is under federal jurisdiction. Nonetheless, the city council of Philadelphia, also located in Pennsylvania, has a similar ordinance. The mayor of Philadelphia is on record as saying he would not enforce the ordinance.
in *Fort Halifax Packing Company v. Coyne* was a close decision that rested upon the interpretation of the phrase "employee benefit plan." Labor lawyers were reticent as to the implication of the ruling for other states. These judicial rulings highlight the need to establish plant closing legislation on the federal level to clarify the preemption issue.

At the federal level, legislation has been debated on a regular basis since 1973. The National Employment Priorities Act of 1974 was introduced in both Houses of Congress but was never voted out of committee. The National Economic Efficiency Act of 1977 was introduced but failed to pass. The National Employment Priorities Act of 1979 suffered a similar fate. A pyrrhic victory was achieved when both the Senate and the House of Representatives passed trade legislation in April, 1988, that included a provision requiring companies to provide prenotification of 60 days for plant closings and major layoffs.

To obtain Republican support for the measure, however, sponsors of the provision accepted the insertion of loopholes that would allow companies to claim exemption from the legal obligation under three important circumstances: (1) if prenotification will harm the company's ability to raise capital or attract new business, (2) if the company employs less than 100 full-time workers at the work site, or (3) if the company plans to lay off less than 500 employees or one-third of the plant's workforce. Even with these modifications, President Reagan vetoed the trade bill legislation because of the inclusion of the watered-down plant closing provision. The provision then was taken out of the trade bill and made into a separate bill that passed both the House and the Senate with enough votes to override a presidential veto. After severely criticizing the new bill, President Reagan allowed it to become law without his signature due to political pressure in the election year.

Based on the experience at the state level, the passage of federal plant closing legislation is essential to clarify the preemption problem. However, also based on the experience at the state level, the presence of federal plant closing law does not guarantee that companies will abide by it, that government officials will enforce it, or that the legislation will not be rescinded. In Maine, only seven of thirty plants that have closed gave prenotification and only nine paid severance. The 1975 Wisconsin law has not been enforced. The prenotification provision was rescinded in Maine in 1975 and in Wisconsin in 1983.

**Judicial Approaches**

A legal obligation requiring companies to provide prenotification and assistance to dislocated workers could be established, independent of political legislation, through the judicial process. What sorts of cases could be made by lawyers representing dislocated workers and local communities?

Recent lawsuits, and threatened lawsuits, by the governors of Ohio, West Virginia, and Wisconsin provide some guidance. In 1987, the town of Norwood, Ohio, filed a $318.3 million lawsuit against General Motors Corporation for a "breach of contract" to prevent a plant closing. President Reagan vetoed the trade bill legislation because of the inclusion of the watered-down plant closing provision. The provision then was taken out of the trade bill and made into a separate bill that passed both the House and the Senate with enough votes to override a presidential veto. After severely criticizing the new bill, President Reagan allowed it to become law without his signature due to political pressure in the election year.

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The Norwood plant employed 4,200 workers and accounted for forty percent of the town's tax revenue. The town also had invested $750,000 in the construction of a railroad underpass to the plant. Though GM had agreed to provide dislocated workers $100 million in benefits payments, community officials wanted the company to be held accountable for the expected tax revenue shortages that could, in turn, cause the town to declare bankruptcy. The lawsuit sought compensatory and punitive damages to cover costs incurred by the town in the expectation that GM would fulfill an earlier promise of expansion. The city's lawyer maintained that the 64-year relationship between Norwood and GM was analogous to a marriage; since GM wanted a divorce, the city was entitled to alimony.

In West Virginia, Governor Arch A. Moore Jr. filed a $614.6 million breach of contract lawsuit when Newell executives announced that they intended to eliminate 942 jobs by closing their plant in Clarksburgh, West Virginia. In an out of court settlement, Newell agreed to provide a $1 million to aid dislocated workers and other reparations to the state. When Chrysler announced that it would lay off 5,500 employees from its plant in Kenosha, Wisconsin, Governor Tommy Thompson threatened to file a lawsuit on the basis that the state had given Chrysler $10 million in pollution waivers. Responding to political pressure, Lee Iacocca agreed to establish a housing and education fund for dislocated workers for an amount equal to all profits earned by Chrysler in Wisconsin for 1988.

These lawsuits establish two patterns for formulating a legal obligation against companies that fail to provide prenotification or assistance to dislocated workers, a backward-looking argument and a forward-looking argument. Both arguments are matters of recognizing already existing legal rights that dislocated workers and local communities may have, which are competing against the company's legal right to close the plant.

A backward-looking argument refers to a legal right that was established based on some past event. In the instance of plant closings, these arguments may take the form of: (1) breach of an implied contract, (2) unjust enrichment, and (3) breach of the covenant of good faith and fair dealing. First, when employees agree to provide wage concessions or are induced by management to work harder to prevent the plant from closing, or when local officials provide companies with tax abatements or use of tax revenues in a manner beneficial to the company, then an implied contract may have been formed between the employees and/or community officials and the company. A company that abandons a plant without proper notification or restitution may be charged with violating the implied contract and held legally accountable for its actions. Second, even if it is shown by the company that an implied contract had not been technically formed, the same circumstances may have enabled the company to benefit through unjust enrichment. Third, employees not represented by a collective bargaining agreement can claim that they were wrongfully discharged based on a breach of the covenant of good faith and fair dealings. The second and third legal obligation claims, which do not rely upon an implied contract, can give rise to punitive damages.

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A forward-looking argument refers to a legal right that is established based on some foreseeable future event. By closing plants without prenotification and/or assistance to dislocated workers, company executives will be generating foreseeable damages to the workers and community. This line of argumentation serves two purposes: (1) it provides justification for compensation on the grounds that the backward-looking arguments are confirmed, and (2) it provides justification for invoking the doctrine of eminent domain. Eminent domain would require that a government body take the company’s private property, provide just compensation to the company, and then use the property for a public purpose. The general formats of the backward-looking and forward-looking arguments are as follows.

**Backward-Looking Argument**
- Employees provide many years of service to a company.
- In financial hard times, employees give companies wage concessions and are induced to work harder.
- Local communities provide special benefits, such as tax abatements and road improvements, for companies.
- Therefore, through these transactions, employees and local communities have established legal rights against the company.

**Forward-Looking Argument**
- One has a legal right not to be foreseeably harmed.
- If harms are inevitable, then one has a legal right to be justly compensated for the foreseeable harm.
- Plant closings foreseeably cause extensive harm to employees and local communities.
- Therefore, the legal rights of both employees and local communities have been violated and they are entitled to just compensation.

Likewise, company executives have well entrenched backward-looking and forward-looking arguments as to why companies should not be legally obligated to provide prenotification and assistance to dislocated workers. Even if the judicial system recognized any of the above mentioned arguments as establishing a legal right against the company, the executives would maintain that in a matter of competing rights they have a stronger legal claim. Their backward-looking arguments are based on the basic tenets of capitalism that have been developed over time: (1) employment-at-will doctrine, (2) collective bargaining contracts, and (3) property rights. First, the employment-at-will doctrine allows company executives to dismiss any employee at any time for any or no reason in the absence of a collective bargaining agreement. Second, when there is a collective bargaining agreement, a company’s legal obligations to its employees are limited to those stated in the agreement. Third, since the company owns its assets, restraints on relocating these assets are limited only by already existing laws.

The company executives' forward-looking argument is based on the expected damages that the company will incur if it did provide prenotification and assistance to dislocated workers. In this sense, these policies establish an undue burden on management. The general formats of the company's backward-looking and forward-looking arguments are as follows.

**Backward-Looking Argument**
- One should only be legally obligated to already existing rules of the game.

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42 Rhine, cited at note 40.
The United States economy is governed by the rules of capitalism—employment-at-will doctrine, collective bargaining contracts, etc.

Therefore, companies do not have a legal obligation to provide prenotification and assistance to dislocated workers on behalf of their employees and local communities.

Forward-Looking Argument

- One should not have a legal obligation that places undue burden on oneself.
- Companies typically close a plant because the plant is either no longer operating at a profit or the facility and/or product is obsolete.
- Providing prenotification would inform a company’s employees, competitors, creditors, and potential clients of its financial problems.

EMPLOYEES AND COMMUNITY

BACKWARD-LOOKING

(1) Implied Contract
(2) Property Right
(3) Unjust Enrichment
(4) Wrongful Discharge

FORWARD-LOOKING

(1) Foreseeable Damages
(2) (Eminent Domain)

Local 1330 v. U.S. Steel

There has been one court decision, Local 1330 v. U.S. Steel, in which a form of these arguments was presented before both a district court judge and three federal appeals court judges. In December, 1979, Union Local 1330 and Local 1307 of the United States Steel Workers of America, the leading plaintiffs, along with a Congressman from the district and the Attorney General of Ohio, filed a lawsuit against U.S. Steel in an attempt to keep two plants employing 3,500 workers from closing. These two plants had been a dominant presence in Youngstown, Ohio, since the 1920s. The union lawyers argued that an alleged contract had been formed based on promises from company officials that if the employees improved productivity and made the plant profitable, then the plant would remain in operation. Company lawyers countered that the Youngstown plants were not profitable and that the company had an absolute right to abandon them and dismiss its former employees at will.

The case was initially heard before Judge Thomas Lambros, Judge of the United States District Court for the Northern District of Ohio. In response to pretrial motions by lawyers for U.S. Steel to dismiss the case, Judge Lambros provided the following extensive justification as to why the unique case was worthy of judicial consideration.

- The financially troubled company would be contributing to further problems as employees would quit, competitors would take unfair advantage of the company’s plight, and potential clients would enter into agreements with other companies.

- The financially troubled company is unable to allocate funds to aid dislocated workers.

- Therefore, companies should not have a legal obligation to provide prenotification and assistance to dislocated workers because it places an undue burden on the company.

The competing legal rights claims of the two disputing parties are as follows:

COMPANY

(1) Employment-At-Will
(2) Collective Bargaining Contract
(3) Property Right
(4) (Eminent Domain)

(1) Undue Burden on Management

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\(^4\) Local 1330, cited at note 3.
“I have reviewed the pleadings and the motions that are pending and, upon review of the file, sitting back and reflecting on this case, there is no question that more is at stake than the rights of the parties in this courtroom. In part, we are dealing with and deciding in this case the economic fate and survival of a large segment of this state, a large segment of our civilization. . . .

‘[Youngstown was] built around this industry. . . . And to accommodate that industry, lives and destinies of the inhabitants of that community were based and planned on the basis of that institution: Steel. . . .

‘It would seem to me that when we take a look at the whole body of American law and the principles we attempt to come out with—and although a legislature has not pronounced any laws with respect to such a property right, that is not to suggest that there will not be a need for such a law in the future dealing with similar situations—it seems to me that a property right has arisen from this lengthy, long-established relationship between United States Steel, the steel industry as an institution, the community in Youngstown, the people in Mahoning County and the Mahoning Valley in having given and devoted their lives to this industry. Perhaps not a property right to the extent that can be remedied by compelling U.S. Steel to remain in Youngstown. I think the law could not possibly recognize that type of an obligation. But I think the law can recognize the property right to the extent that U.S. Steel cannot leave Mahoning Valley and the Youngstown area in a state of waste, that it cannot completely abandon its obligation to the community, because certain vested rights have arisen out of this long relationship and institution.” 44

During the trial, lawyers for the union local documented the formation of the alleged contract on the basis that the company made several promises that the plant would remain open if employee efforts made the plant profitable. They argued that due to these promises by company officials, improved worker efforts made the plant profitable.45 Lawyers for U.S. Steel presented witnesses who argued that the plants were not operating at a profit. They also maintained that there were no existing laws, on the state or federal level, supporting legal or equitable remedy for the plaintiffs.

In his final ruling, Judge Lambros dismissed both the contract and property rights claims. The alleged contract claim was dismissed on the ground that: (1) it remained contentious as to whether U.S. Steel actually promised to keep the plants open if they were profitable, (2) the company official who did make the promise lacked the authority to do so, and (3) even if the company official had the authority to make the promise, the evidence indicated that the plants were not profitable when they were closed.

In dismissing the property rights claim, Judge Lambros noted that: “Unfortunately, the mechanism to reach this ideal settlement [from the plaintiff’s perspective], to recognize this new property right, is not now in existence in the code of laws of our nation . . . this court is not a legislative body and cannot make laws where none exist—only those remedies prescribed in the statute or by virtue of precedent of prior case law can be given cognizance. In these terms this court can determine no legal basis for the finding of a property right.” 46

The plaintiffs then filed an appeal with the Sixth Circuit Court of the United States Court of Appeals, and the case was heard before Chief Judge Edwards, Circuit Judge Merritt, and Senior Circuit Judge Peck. The plaintiffs provided four arguments for keeping the plant open: (1)
there was an alleged contract arising from proposals by the company that it would not close the plants if employee efforts rendered them profitable, (2) the doctrine of promissory estoppel was violated on the grounds that work was induced from workers under the promise that the plant would remain open, (3) there was an alleged community interest in keeping the plants open, and (4) the company violated anti-trust laws by not seriously considering the workers' offer to purchase the plant.

Company lawyers argued that the contract the court should uphold was not the alleged contract proposed by the union lawyers, but the collective bargaining contract signed by both parties on August 1, 1977. The relevant sections read as follows.

(1) The right to close the plant: "The company retains the exclusive rights to manage the business and plants and to direct the working forces. . . . The rights to manage the business and plants and to direct the working forces include the right to hire, suspend, or discharge for proper cause, or transfer and the right to relieve employees from duty because of lack of work or other legitimate reasons."

(2) Severance pay: "When, in the sole judgment of the company, it decides to close permanently a plant or discontinue permanently a department of a plant or substantial portion thereof and terminate the employment of individuals, an employee whose employment is terminated either directly or indirectly as a result thereof . . . shall be entitled to a severance allowance in accordance with and subject to the following provisions."

<table>
<thead>
<tr>
<th>Continuous Company Service</th>
<th>Weeks of Severance Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 years but less than 5 years</td>
<td>4</td>
</tr>
<tr>
<td>5 years but less than 7 years</td>
<td>6</td>
</tr>
<tr>
<td>7 years but less than 10 years</td>
<td>7</td>
</tr>
<tr>
<td>10 years or more</td>
<td>8</td>
</tr>
</tbody>
</table>

The union lawyers did not contest the terms of the collective bargaining contract. Instead, they argued that subsequent to the collective bargaining contract another contract was formed, one based upon the promises of company officials. The union lawyers argued that the court should uphold a contract based on the equitable doctrine of promissory estoppel.

According to the doctrine: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of promise."

The union lawyers presented an extensive account of oral statements and newspaper releases, beginning in 1977, showing that company officials promised that if worker productivity improved and the plant was made profitable, then the plant would remain open. Based on these promises, employees worked harder and increased their productivity. In the expectation that company executives would uphold these promises, the union lawyers argued, several employees refrained from

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47 Local 1330, cited at note 3. The antitrust dispute will not be explored because it refers to the selling of the plant to the employees, not prenotification or assistance to laid off workers. In this instance, U.S. Steel said they would not seriously consider an offer from the workers to buy the plant because the workers would be relying upon a government subsidy to pay for the plant. The judge ruled that this reasoning by U.S. Steel lacked precedent and questioned whether U.S. Steel would refuse to do business with Chrysler because Chrysler had received financial aid from the government.
seeking and accepting employment elsewhere.

Judge Edwards recognized these circumstances, noting that: "It is beyond argument that the local management of U.S. Steel's Youngstown plants engaged in a major campaign to enlist employee participation in an all-out effort to make these two plants profitable in order to prevent their being closed. It is equally obvious that the employees responded wholeheartedly."

The appeals court judges then upheld the earlier decision of District Court Judge Lambros on the grounds that there was nothing "clearly erroneous," as claimed by the union lawyers, about Judge Lambros' rejection of the promissory contract theory. According to the judges: (1) the oral statements and newspaper releases did not constitute a definite promise, (2) the statements were made by public relations officers, not company officers, and (3) the plants were not profitable. Judge Edwards then provided an extensive analysis of the third point, claiming that the union lawyers were relying upon "gross profit margin," while the defendants were reasonably taking into consideration other expenses in determining that the two plants were not profitable. Since the "condition precedent" on which the alleged contract and promise depended upon for court action was never fulfilled, an appeal of the previous judicial decision based on the promissory estoppel claim was denied.

The second argument considered by the appeals court was the property rights claim. The union lawyers argued that "a property right had arisen based on the long-established relation between the community of the 19th Congressional District and plaintiffs, on the one hand, and the defendant on the other hand, which this court can enforce." Based on this property right, they argued, U.S. Steel should help the local community preserve the steel industry in Youngstown, sell the plant to those interested in keeping the facility open, and include the costs of assisting dislocated workers and the local community in its plant closing calculations.

According to Judge Edwards, there was no precedent for a property rights claim based on the length of a person's employment or the length of time a company operated in a community. The appeals court judges considered rulings in Charland v. Norge Division, Borg-Warner Corp., Textile Workers Union of America v. Darlington Manufacturing Co., and Zdanok v. Glidden Co. They concluded that there has not been any precedent for granting a property rights claim on these conditions.

The judges then gave serious consideration to a judicial decision regarding the role of courts in settling conflicts involving community and corporate behavior, Munn v. Illinois. In this case, the U.S. Supreme Court had ruled that "a corporation affected by the public interest, which seeks to take action injurious to that interest, may be restrained from doing so by the equitable powers of a court of law." The judges dismissed the weight of this ruling for the present case because the ruling pertained to a public utility, not a private corporation. They then invoked Nebbia v. New York to justify not taking any action in this matter. They concluded that the matter of plant closings was a public policy issue, thus it fell under the jurisdiction of state and federal legislatures.

The Local 1330 v. U.S. Steel decision provides insight into three of the five arguments attempting to establish prenotification and assistance to dislocated workers as legal obligations. First, the district court judge and the three appeals court judges dismissed the implied contract argument on the basis that the condition precedent had not been fulfilled. The judges did not formally rule on the existence of an implied contract, though they hinted that this claim was contentious because promissory statements were issued by a public relations official. The
judges' ruling implies that an implied contract may have been generated if these promises had been made by the appropriate corporate executives. Second, the union's property rights argument was dismissed due to a lack of precedence. Third, the foreseeable damages argument was the compelling reason for the district court judge's acceptance of the case in the first place. Though no mention of eminent domain appears in either court's opinions, the plaintiffs invoked Munn v. Illinois as justification to keep the plant in operation in the appeals court case. The judges dismissed this argument on the grounds that Munn v. Illinois pertained to a public utility ruling.

Since this 1980 case, three judicial decisions, City of Oakland v. Oakland Raiders, Poletown Neighborhood Council v. City of Detroit, and Hawaii Housing Authority v. Midkiff, have expanded the interpretation of eminent domain. In City of Oakland v. Oakland Raiders, the California Supreme Court overturned a trial court decision that had dismissed the City of Oakland's attempts to gain property rights over the Oakland Raider football team. In Poletown Neighborhood Council v. City of Detroit, the Michigan Supreme Court ruled that eminent domain justified the City of Detroit's taking of private property, with due compensation to the property owners, and transferring it to General Motors in order to construct an assembly plant. It was argued successfully that adding jobs and taxes to the economic base of the municipality and state was a "public use."

The judges noted that: "The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is primarily to be benefited. Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is being advanced. Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature. We hold this project is warranted on the basis that its significance for the people of Detroit and the state has been demonstrated."

In Hawaii Housing Authority v. Midkiff, the U.S. Supreme Court ruled that it was permissible for the State of Hawaii to take private property and transfer it to other private citizens in order to reduce the concentration of ownership. Justice O'Connor, who wrote the majority decision, argued that: "The mere fact that property taken outright by eminent domain is transferred in the first instance to private beneficiaries does not condemn that taking as having only a private purpose. The Court long ago rejected any literal requirement that condemned property be put into use for the general public."

Thus, in each case there was bold and contestable action by the state in the benefit of the community that was supported by judicial ruling. In each case the circumstances were different, yet the common thread was the use of eminent domain by a public body, the government, to take a property out of private hands and use it for a variety of purposes, all defended by the public good.

Other Strategies

This article has focused primarily on strategies for establishing prenotification and assistance to dislocated workers as legal obligations through the judicial process. Even if a legal obligation could be established, the obligation would represent a competing rights claim and would not guarantee prenotification or assistance, though it would encourage such behavior. Staughton Lynd, who was a motivating force in the Local 1330 v.

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U.S. Steel lawsuit, has expressed some regrets for relying too heavily upon the legal process in the Youngstown case. The laid-off steelworkers exhibited significant respect for the justice system, put a hold on their organizing efforts once they knew the judge would hear the case, and then lost hope when the decision came out against them. There remain alternative strategies, other than judicial rulings, such as collective bargaining and community action.

Two other strategies worth noting include: (1) the formation of contractual exchange between the local community and companies, and (2) the threat of eminent domain. First, in Vacaville, California, any company that accepts financial incentives from local resources to relocate to Vacaville, also accepts plant closing obligations. In Massachusetts, companies that sign a voluntary pact with its employees and make a good faith effort to provide prenotification before closing (ideally 90 days) are eligible to receive assistance from any of five state financing programs for industrial development. If notice is not given, then the company must continue health-care benefits for employees for 90 days. Second, though eminent domain has been discussed in this article as a legal strategy, it is primarily a political strategy. Judges evaluate eminent domain cases based on considerations of just compensation and public use, which are arguments of principle. Arguments of policy are considered to be a legislative concern, not a judicial concern. The threat of invoking eminent domain could encourage companies to accept obligations of prenotification and assistance to dislocated employees. This assistance could take the form of transferring ownership of the plant from the corporation to its employees.

Task Force Obstructed Standards

The President's Task Force on Regulatory Relief eliminated or obstructed 20 safety and health standards according to "Risking America's Health and Safety: George Bush and the Task Force on Regulatory Relief," a report issued by Public Citizen, a public advocacy group. Public Citizen charged that the release of Task Force documents has been blocked by the Office of Management and Budget. Shortly after the Task Force was formed, requests were sent to various industries soliciting comments on regulations believed to be unnecessary. Such comments should be released under the Freedom of Information Act, Public Citizen maintains. As a result of the Task Force's interference, promulgation of a hazard communication standard for manufacturing was delayed two and one-half years, and promulgation of such a standard for the nonmanufacturing sector was delayed over seven years, Public Citizen charges. The report claims that OMB has blocked the National Institute of Safety and Health from conducting a study of the radiation effects of video display terminals. In releasing the report, U.S. Senators Edward Kennedy and Albert Gore criticized OMB's use of a "back channel" with industry to influence proposed regulations and noted that the handful of standards issued by OSHA in eight years were almost all issued under court order.

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50 Craft, cited at note 31.
51 Aboud & Schram, cited at note 19.
53 See Dworkin, cited at note 39, pp. 82-88.
54 Smith, Hornack & Lynd, cited at note 41.