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The Trade Bill's Approach to Helping Dislocated Workers: Will it Work?

I. INTRODUCTION

During this decade, job losses in a number of basic and secondary U.S. industries have resulted in large-scale layoffs (especially in the petroleum and primary metals industries), bankruptcies, and a decline in agriculture and related industries.¹ These job losses have occurred for a number of reasons including technological change, world competition, and worldwide supply/demand imbalances. The layoffs resulting from the job losses have left literally millions of people without work.²

In recent years, the United States government has created numerous programs to help unemployed workers find jobs.³ Congress created many of these programs upon the premise that there were enough jobs in the marketplace; the only problem was to match unemployed workers with the available jobs. The most recent attempt by Congress to help unemployed workers is again based upon this premise, and is codified in Title III of the 1988 Trade Bill,⁴ entitled "Employment and Training Assistance for Dislocated Workers." This 1988 act is a revision of the 1982 Job Training and Partnership Act (JTPA).⁵ Like the JTPA, Ti-

1. WORKER DISLOCATION: CASE STUDIES OF CAUSE AND CURES 3 (R. Cook ed. 1987) [hereinafter WORKER DISLOCATION].

2. Using Bureau of Labor Statistics data, the General Accounting Office (GAO) has estimated that 2.3 million workers have become dislocated annually since 1984. *See id.* at 1.

3. For a comprehensive discussion of the efforts made by the government during the past fifty years to help unemployed workers, see E. GINZBERG, GOOD JOBS, BAD JOBS, NO JOBS 158-69 (1979); R. HAVEMAN & J. PALMER, JOBS FOR DISADVANTAGED WORKERS: THE ECONOMICS OF EMPLOYMENT SUBSIDIES 259-60 (1982); R. PLANT, INDUSTRIES IN TROUBLE 158-60 (1981).

4. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1524.

5. *See supra* note 3. The most recent attempt by the government, before the Trade Bill, to help unemployed workers was the Job Training and Partnership Act (JTPA) 29 U.S.C. §§ 1501-1781, enacted in 1982. Of particular importance was Title III (Employment and Training Assistance for Dislocated Workers) of this program, which dealt with the problem of helping dislocated workers find new employment. 29 U.S.C. § 1651 (1982).

Title III of the 1982 JTPA included provisions which enabled states to create their own employment programs to aid dislocated workers.

tle III of the Trade Bill is directed toward solving the problem of worker dislocation. Title III of the Trade Bill, however, like the JTPA, fails to address several key issues which weaken its effectiveness.

It might seem unusual for Congress to include provisions regarding employment in a trade bill,⁶ but there are reasons which may justify including the provisions. One reason is that Congress makes a connection between foreign trade (and foreign competition) and unemployment. This theory is supported by Robert F. Cook, of Westat, Inc.,⁷ who stated, in reference to the purpose of Title III of the JTPA, "Title III is designed to assist experienced workers who have lost their jobs or are at risk of losing their jobs because of plant closings and layoff due to technological change and world competition."⁸ This statement suggests that Congress feels that foreign competition is at least partly responsible for the loss of American jobs and consequently for the displacement of workers in the United States. This should come as no surprise to Americans; as trade unions and other lobbyists have claimed for years that unfair foreign competition is responsible for the loss of many American jobs.

Another possible explanation for the inclusion of unemployment provisions in trade acts is that the acts have become so all-encompassing, Congress may see them as the easiest and most logical place to include such provisions.

This comment gives a general description of Title III, followed by a brief comparison between the 1988 version of Title III and the 1982 JTPA version. This comment will show that the fundamental weakness of the 1982 JTPA program remain in the Trade Bill version. Because of the Congress's failure to address these problems, this comment concludes that Title III will do little to improve the U.S. economy or eliminate unemployment.

6. In two other trade acts, Congress included provisions regarding unemployment. The 1962 Trade Expansion Act, 19 U.S.C. 1323 (1982), provided assistance to workers who could show, among other things, that they had been hurt by increased imports. See R. PLANT, *supra* note 3, at 159. Assistance was also available to the unemployed under the 1974 Trade Act, 19 U.S.C. § 2101 (1974), again, if workers could show that increased imports were at least partly responsible for job loss. R. PLANT, *supra* note 3, at 160.

7. Westat, Inc. helped conduct a nationwide case study for the Department of Labor on the effectiveness of Title III of JPTA.

8. WORKER DISLOCATION, *supra* note 1, at 3.

II. HOW TITLE III IS INTENDED TO WORK

A. *Title III Objectives*

The purpose of Title III is to give dislocated workers temporary, yet valuable, assistance by training them for new work and helping them find employment. It is also intended to provide relocation assistance (moving costs) to help workers move themselves and their families to new work locations.⁹ A third goal is to help blue-collar workers conduct more effective job searches.¹⁰ Congress felt that the majority of the people needing help under the Act would be blue-collar workers because they tend to have a more difficult time finding work than white-collar workers.¹¹ Case studies show that where advance notice is given of impending closings, white-collar workers are much more likely to conduct job searches before the plant actually closes than are blue-collar workers.¹² In fact, most white-collar workers in these plants leave before the actual closing of the plants because they obtain good job offers elsewhere.¹³ Conversely, blue-collar workers are, for whatever reason, much less likely to search for a job before the plants actually closed.¹⁴

Regardless of whether advance notice is given of a substantial layoff or plant closure, blue-collar workers tend to take the first job offered them and are less logical in their job searches, often knocking on doors at random instead of sending resumes or utilizing other impersonal job search methods used more by white-collar workers.¹⁵

B. *Organization of Title III Programs*

Title III is designed to give states the ability to organize, develop, and oversee their own federally funded programs, sub-

9. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 6301, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1532.

10. *Id.*

11. J. GORDUS, P. JARLEY & L. FERMAN, *PLANT CLOSINGS AND ECONOMIC DISLOCATION* 69 (1981).

12. *Id.*

13. *Id.*

14. Even when advance notice of a plant closing or a substantial lay off was given, most blue-collar workers listed the reason for their remaining on the job until the plant closed as a desire to qualify for severance pay. This leads one to believe that severance benefits may have a negative effect on blue-collar job search. "The lure of severance pay may prevent the realization that early job search is necessary." *Id.* at 69-71.

15. *Id.* at 79.

ject only to certain federal policing regulations. While special emphasis is placed on helping those persons who have exhausted their unemployment insurance benefits, governors are given more latitude to decide how and where the money is to be spent than they were ever given in any previous employment acts.¹⁶ Nevertheless, Title III requires states to submit a biennial plan to the Secretary of Labor, describing in detail the programs and activities to be undertaken by the states in accordance with the Act.¹⁷ Additionally, states are required to create dislocated worker offices which can respond to permanent closures and substantial layoffs.¹⁸ These offices are supposed to work with employers and labor organizations to promote labor-management cooperation and to disseminate information on the availability of unemployment services throughout each state.¹⁹

To help the state more efficiently administer the services under Title III, the governor of each state designates substate areas (specific geographical or economic districts). Each substate area is to have a population of 200,000 or more.²⁰ The governor is also required to name a person or entity, called a "substate grantee," to be responsible for providing Title III services in the substate areas. Persons or entities named as substate grantees are required to submit a plan to the governor describing the manner in which activities are to be conducted within the substate area. Among other things, these plans are to include: a statement of the means of delivering services; the means to be used to identify, select, and verify the eligibility of program participants and performance goals; and a description of training services to be provided.²¹ If the governor approves the substate grantee's plan, funds may be allocated to that substate area.

Thus, Title III is intended to give governors enough flexibility in the organization and operation of the programs in their state so that each substate grantee can meet the specific demands of the dislocated workers in substate areas. Guidelines are given for the creation of state programs through the appropriate substate grantees. These guidelines require that each pro-

16. *Id.* at 6.

17. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 6301, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1527-28.

18. *Id.* at 1528.

19. *Id.* at 1528.

20. *Id.* at 1529-32.

21. *Id.* at 1528.

gram must provide rapid response assistance, basic readjustment and retraining services, and needs-related payments.²²

1. *Rapid response assistance*

Rapid response assistance is intended to help employees by providing them with unemployment and job-seeking information, financial aid, technical advice, and by educating them about government-provided economic development agencies and other organizations which assist in efforts to avert worker dislocations. All of this assistance is intended to be available to employees within a short time period (preferably 48 hours or less) after the state agency becomes aware of a current or projected permanent closure or substantial layoff.²³

2. *Basic readjustment services*

Basic readjustment services are intended to follow the rapid response assistance, and are to provide dislocated workers with the readjustment services they may need until they either find new work in their previous field or are trained to work in new labor markets. These services may include, among others: job or career counseling, testing, orientation, assessment (including evaluation of educational attainment and participant interests and aptitudes), job placement assistance, labor market information, supportive services (including child care, commuting assistance, and financial and personal counseling), and relocation assistance.²⁴

3. *Retraining services*

Funds allotted under this provision are to be used to provide training services to eligible dislocated workers. Such services may include, but are not limited to: classroom training, occupational skill training, on-the-job training, out-of-area job search, relocation, entrepreneurial training, and literacy and English classes for non-English speakers.²⁵

22. *Id.* at 1532.

23. *Id.*

24. *Id.* at 1533.

25. *Id.* at 1534.

4. *Needs-related payments*

Needs-related payments are to be used to provide help to eligible dislocated workers who do not qualify, or have ceased to qualify, for unemployment compensation. The assistance is intended to enable such workers to participate in training and education programs provided under Title III. The level of needs-related payments is to be equal to the higher of the applicable levels of unemployment compensation, or to the poverty level determined by the Director of the Office of Management and Budget.²⁶

C. *Eligibility*

Title III uses the phrase "eligible dislocated worker" to describe persons who qualify for assistance under the program.²⁷ Eligible dislocated workers are persons who have been:

(A) terminated or laid off or who have received a notice of termination or layoff from employment, or who are entitled or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation; or

(B) terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise; or

(C) long-term unemployed and have limited opportunities for employment or re-employment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age; or

(D) self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters, subject to regulations prescribed by the Secretary of Labor.²⁸

D. *Funds*

For fiscal year 1989, \$980,000,000 has been appropriated to carry out the provisions of Title III.²⁹ The 1989 budget is based

26. *Id.* at 1534.

27. *Id.* at 1524.

28. *Id.* at 1524.

29. *Id.* at 1538.

on an estimate of what it would cost per person, per year to retrain workers. The amount to be allocated in future years has not yet been determined but will likely be based on similar estimates. Section 6303 of Title III states that "sums, as may be necessary," will be appropriated to carry out Title III.³⁰

Though there seems to be almost no limit placed on the amount of money that can be appropriated by Congress to carry out the provisions of Title III, a substantial number of limitations on how the money can be spent have been included in the 1988 revision of the Act. First, not less than fifty percent of all the funds to be expended under this title are to be spent for retraining services. Second, not more than twenty-five percent of the funds may be used to provide needs-related payments and other supportive services. Third, not more than fifteen percent of the funds may be used to cover the administrative costs of the programs.³¹

Eighty percent of the allocated funds is to be given to the states to run the state programs,³² and twenty percent is to be used by the Federal Government. The twenty percent allotted to the Federal Government is to:

Provide funds to exemplary and demonstration programs on plant closings and worker dislocation; allocate discretionary funds to projects serving workers affected by multi-state or industry-wide dislocations; monitor performance and expenditures and annually certify compliance with standards prescribed by the secretary; conduct research and serve as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and provide technical assistance and staff training services to States, communities, businesses, and unions.³³

30. *Id.*

31. *Id.* at 1525-26.

32. One-third of the 80% (27%) is to be allotted among the states on the basis of the relative number of unemployed individuals who reside in each state as compared to the total number of unemployed individuals in all the states.

The second third of the 80% is to be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each state as compared to the total excess number of unemployed individuals in all the states. "Excess Number" means the number which represents unemployed individuals in excess of 4.5% of the civilian labor force in the state.

The final third of the 80% is to be allotted among the states on the basis of the relative number of individuals who have been unemployed for 15 weeks or more and who reside in each state as compared to the total number of such individuals in all the states. *Id.* at 1526.

33. *Id.*

III. BRIEF COMPARISON OF THE 1982 JOB TRAINING AND PARTNERSHIP ACT AND TITLE III OF THE TRADE BILL

The provisions which define "dislocated worker" have significantly expanded the 1982 definition of who qualifies for assistance under Title III. Under section 301, paragraph (B) of the 1988 Act, it is now possible for persons to qualify for assistance even if they have only been laid off. The 1982 Act required a complete termination of employment as a result of a permanent closure at a plant, facility or enterprise.³⁴ Paragraph (D) of section 301 of the 1988 Act is a completely new provision which allows self-employed persons (including farmers and ranchers) to qualify as dislocated workers if the economic conditions in their community are sufficiently debilitating.³⁵

In addition to the eligibility provisions just mentioned, the 1988 revision of Title III includes other notable changes from the 1982 version. The 1988 revision contains definitions of pertinent words and terms that previously had to be searched for in other titles or subchapters in the United States Code.³⁶ The new version of Title III also goes into much greater detail in defining what is and is not permissible action by states under the Act.³⁷ Also included are in-depth guidelines to help states set-up programs of their own to utilize the funds available to them. Perhaps most importantly, the 1988 version of Title III expands the scope of services that can be provided.³⁸ Title III is now so broad that almost any expense even remotely related to helping dislocated workers find new employment can be funded with money allocated by Congress for the Act.

Despite these changes, the majority of the 1982 JTPA program has been retained. Title III of the 1988 Trade Bill has been enacted with the same purpose as the 1982 JTPA program. That purpose is to help dislocated workers who have lost employment as a result of a substantial layoff or plant closing.³⁹ As a result, studies of the effectiveness of the 1982 JTPA are very useful in

34. The Job Training and Partnership Act (JTPA) 29 U.S.C. §§ 1501, 1652 (1982).

35. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 6301, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1527.

36. Definitions of words used in the JTPA are found at 29 U.S.C. § 1503 (1982), whereas subchapter III-Employment and Training Assistance for Dislocated Workers is found at 29 U.S.C. § 1651 (1982).

37. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 6301, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1527-36.

38. *Id.*

39. *Id.* at 1524.

evaluating the likely successes and failures of the 1988 revision of the Act. It is unfortunate that Congress did not pay more attention to the weaknesses of the JTPA in order to improve the amended version.

IV. PROBLEMS WITH THE ACT

A. *Participant satisfaction*

Case studies done on the effectiveness of the JTPA program show how effective the program has been. One study done for the U.S. Department of Labor by the W. E. Upjohn Institute for Employment Research is of particular interest.⁴⁰ As part of this research, twelve case studies were made of state-implemented JTPA programs across the United States. These studies were conducted in twelve different states to determine the effectiveness of programs set up in those states in single substate areas. Thus, the overall effectiveness of each state's plan was not studied, but rather the effectiveness of state plans in specific problem areas.

The participants in the programs had many of the same complaints. Not surprisingly, many participants were unhappy about having to relocate, preferring jobs near their homes.⁴¹ Yet, until someone finds a way to move industries and jobs to the workers, relocation will continue to be an unwanted and undesirable requisite of any successful government program designed to help the unemployed.

Another general complaint of participants was the lack of on-the-job training. This type of training was highly favored over classroom training, yet some projects emphasized relatively long classroom training programs through community colleges and vocational schools.⁴²

B. *Targeting*

The JTPA also suffered from other problems that affected its overall success. These problems related generally to targeting or making sure that the persons who were intended to be beneficiaries under the act were indeed beneficiaries. More specifically, these faults included failure to communicate with industries on

40. See generally WORKER DISLOCATION, *supra* note 1.

41. *Id.* at 8.

42. *Id.*

whether relocation services were needed, untimely rendering of services, and failure to require advance notice of plant closings.

1. Lack of required communication with industry

One of the twelve JTPA case studies which is particularly useful in identifying problems with targeting was conducted on the Metropolitan Pontiac Retraining and Employment Program (PREP) in Michigan.⁴³ This study was a joint project involving the union and management (GM-UAW). This project was designed to provide assessment, job search assistance, and training for 13,000 dislocated United Auto Worker members in Pontiac, Michigan. The PREP program in Detroit was overseen by Michigan's Office for Job Training (GOJT). GOJT was created upon the direction of the Governor of Michigan as part of that state's JTPA program.

Under the PREP program, laid-off GM workers in the Detroit area were first contacted (not an easy task since many of the persons had been laid off for almost five years) and questioned to see who wanted to be retrained to work in a new GM plant. Participants were then screened to see how many would qualify as "dislocated workers" under the requirements of the Act.⁴⁴ After their initial selection, participants were again interviewed and eventually assigned to a three-week orientation course. Following the orientation course, participants were sent to their eventual places of employment for on-the-job training.

The program was highly successful in many ways. A large percentage of the persons that applied for the program found new employment, and the overall cost of the program was relatively low. The major weakness of the program was that the workers probably would have been recalled by GM even without the aid of the JTPA program or funds.⁴⁵

This study shows that better targeting of programs by the states is needed to avoid spending money on people who will eventually return to their previous employer. One way to improve targeting is to require substate grantees to at least consult with industry leaders to inquire whether a relocation program is needed. Though industries may not be willing to give advance

43. *Id.* at 31.

44. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 6301, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, 1524.

45. See WORKER DISLOCATION, *supra* note 1, at 32.

notice of plant openings, they may at least be willing to admit when major relocation programs are not necessary, such as when a sufficient number of workers already live in the area. By requiring this consultation, many costly and unnecessary JTPA programs could be avoided. As noted in the Pontiac case, "it is possible that the potential participants had a better idea of the probability of being recalled than did the employment and training professionals."⁴⁶ To remedy this problem, training professionals must become better informed because extended unemployment benefits or income maintenance may be more appropriate than training.

2. Requiring advance notice of plant closings and substantial lay-offs

One of the targeting problems of the JTPA was that the persons who were supposed to receive the aid from the 1982 JTPA did not receive it. This was due to the inability of government agencies to predict plant closings or substantial layoffs when the owners of the plant or industry refused to give advance notice. Knowledge of a plant closing or a layoff is essential to helping government agencies prepare programs to benefit of dislocated workers from these plant closings or layoffs.

There are good public policy reasons for requiring advance notice of plant closings. Individuals and community groups support requiring advance notice on the grounds that their joint interests (e.g. rapid reemployment, retraining, relocation, employee-community attempts to purchase the plant) can be handled more expeditiously.⁴⁷ Management, on the other hand, may object to providing any substantial period of advance notice on the grounds that productivity might drop before closing or damage might be done to the physical plant and equipment.⁴⁸ So far, advance notice of plant closings has not been required and is not required under Title III of the 1988 Trade Bill.

The principal reason that advance notice has not been required is that industry management argues that giving advance notice may create undesirable public pressure if the community, unions, and individuals perceive advance notice as indicating

46. *Id.* at 196.

47. See J. GORDUS, P. JARLEY & L. FERMAN, *supra* note 9, at 14.

48. *Id.*

that the closing decision can somehow yet be reversed.⁴⁹ In addition, management often feels that both the decision and the timing of its announcement are "rights inherent in ownership."⁵⁰

Regardless of the pros and cons of requiring advance notice of plant closings or layoffs, doing so would certainly help government agencies more effectively provide for the needs of persons who will lose their work as a result of layoffs or plant closings. If Congress requires advance notice of plant closings, then the money can be allocated to the persons intended to receive it.

3. *Timely presentation of services*

Timely presentation of JTPA services is extremely important. The Cummins Engine Company Dislocated Worker Project in Columbus, Indiana (another of the twelve case studies done by the Upjohn Company), demonstrates the importance of timely presentation of JTPA services. In this JTPA project, many eligible people dislocated by the closing of the Cummins Engine Company plant never utilized the JTPA services available to them because the plant had closed two and one half years before beginning the program. Consequently, most of those workers had to find other employment without the services provided by JPTA. Statistics from the study of the program indicates that although the closing of the Cummins Engine Company plant was the source of the largest number of layoffs in a three-county area, only seventeen percent of the participants in the JTPA project had been employed by the Cummins Engine Company.⁵¹ This supports a contention that the project was really designed to serve the entire community, but it also underscores the fact that many of the workers from a particular plant either wait for recall, retire, or find other opportunities without the aid of a project due to the time lapse between the closing of the plant and the implementation of the program.

Like the 1982 version of JTPA, the 1988 revision of the JTPA makes no requirements that the program be implemented within reasonable period of time. The failure to include timeliness requirements could, in some instances, defeat the purpose of the Act of providing temporary, but immediate help to persons who have become unemployed as a result of a plant closing

49. *Id.*

50. *Id.* at 15.

51. See Worker Dislocation, *supra* note 1, at 197.

or lay-off. This failure, however, may be somewhat offset by the general social benefits of helping to employ those who do not qualify as "eligible dislocated workers."

4. *Minority targeting*

The 1982 JTPA program had other shortcomings that have not been remedied in the 1988 revision. The JTPA did not contain any provisions to help minorities, women, or the elderly. Case studies have shown that older dislocated workers have an especially difficult time finding work and are unlikely to use federal programs to help them find new work.⁵² In the twelve case studies previously mentioned, "older workers who had supplementary benefits or the ability to 'hang on' until retirement never participated in the projects."⁵³ In addition, men under forty-five were more than twice as likely to relocate some distance from the plant where they were previously employed, than were men over forty-five.⁵⁴

Older men are not the only ones who encounter difficulties in finding work. In studies also funded by the Upjohn Institute for Employment Research, several professors from the University of Michigan noted that men are more geographically mobile than women and generally have an easier time finding new employment than do women.⁵⁵ Race also plays a big factor in the ability to gain new jobs after a plant closing. Whites are almost twice as likely to find a job within four months of lay-off as are non-whites.⁵⁶ These statistics perhaps point out some of the failures of both the 1982 and 1988 versions of the JTPA.

V. CONCLUSION

The 1988 version of Title III is a significant improvement over the 1982 version. However, there are problems with the 1982 JTPA which were left unremedied in Title III of the 1988 Act. First, before creating any relocation assistance programs, substate grantees should be required to consult with industry leaders to see if worker relocation will be necessary. If workers can be found in the general vicinity of the plant to be opened,

52. *Id.*

53. *Id.*

54. See J. GORDUS, P. JARLEY & L. FERMAN, *supra* note 9, at 72-74.

55. *Id.* at 72.

56. *Id.* at 88.

there is no need to provide relocation assistance. This may avoid creating job training programs for people who would have been hired without any government assistance. Second, requiring advance notice of substantial lay-offs or plant closings has not been required. This could mean that the original aim of the Act of getting workers to begin job searches even before they get laid off or the plant closes will fail. Third, timely implementation of the programs under the Act has not been required. As a result many of the participants in the program will not be those originally intended to be benefited. Fourth, better targeting of minorities is required for the program's ultimate success.

Due to the significant targeting problems carried over from the JTPA, Title III will not help those who Congress intended to help when it created the JTPA in 1982. If Congress truly desires to help relocate needy workers, it needs to specifically address these problems.

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