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STATEMENT OF

DIANE M. ORLOWSKI
J.F.D Tube and Coil Products, Inc.
P.O. Box 6309 - 7 Hamden Park Drive
Hamden, CT 06517

Subject: Small Business and the Work Place

Before: Commission on the Future of Worker/Management Relations,
Department of Labor

Date: December 15, 1993

Thank you for the opportunity to present testimony today. My name is Diane Orłowski and I am co-owner of JFD Tube and Coil Products, Inc., a small manufacturer of heat transfer equipment. We employ 20 people and all except one are full time.

I am here today to discuss the topic of the future of employer-employee relationships. I hate to use the term worker/management as it implies that only half of the equation is productive, and we all know that is a false assumption. I'd also like to present recommendations that will enhance employer/employee relationships and thus improve our global competitiveness.

First, I'd like to tell you a little about my business, a business of which I am very proud. Ten years ago September, my husband Joe, our friend Frank and I started out in a two car garage with a couple thousand dollars, a few second hand machines and some used office equipment. The money we used came from our own savings. We soon began hiring skilled workers. For the first few years, we as owners took minimal salaries, living on what would normally be considered poverty level income and that was for a 70-80 hour work week. Our workers earned substantially more than we did, putting in about half the amount of time. But this was our business and we did what was required to make it a success.

We continued to grow and expand and in 1986 we built a 13,600 square foot facility in Hamden, where we currently are located. As we became more profitable, we began adding benefits. Today we provide full company paid medical insurance to our employees and their dependents; life insurance; a profit-sharing and 401(k) pension plan; seven paid and two floating holidays; and 10 paid vacation days (increasing to 15 after ten years of service). As an aside,

our first employee just celebrated ten years of service with us. We provide unpaid leaves of absence with continuation of medical benefits; flexible work schedules; and in a pinch, allow employees to bring their children into work. When we are profitable, we give out year end bonuses which we will be able to do again this year.

However, it is becoming more and more difficult to continue to provide these benefits. For instance, the 401(k) program has become an administrative nightmare because of IRS regulations. As it stands right now, it costs me about \$1,500.00 to administer, plus the myriad of different "tests" the plan has to pass. Last year we "failed" a test which cost me over \$11,500.00. And each year as the plan's assets grow, it will be more expensive if the plan fails. My question is what if we had not had this money? We want to continue the program, but too much government bureaucracy makes it even more difficult.

My partners and I are currently discussing the possibility of freezing the plan. What began as a benefit to all who work at JFD has become too much of an administrative and economic burden. There are conflicting and confusing requirements. There is the "top-heavy" test where only a certain percentage of the plan's assets can go to "key people" within the organization. If this test "fails" by even 1/100th of a percentage point, then the company must contribute 3 percent of the plan's assets to "non-key" personnel. This is the test JFD failed last year (costing us \$11,689.00) as well as the year before (costing us about \$8,800.00) Keep in mind that these percentages are based on the prior year's individual account balances as a percentage of assets.

Then there's the married person's rule, stating that the combination of the married couples' combined contributions can be no more than 5% of the total contributions of all employees. (Even Social Security mandates over 13% contribution of each partner's gross salary, and the return on that investment is not nearly what I and my employees will be getting through the private plan.) JFD failed the marriage test in 1990, so we changed our contribution rate only to discover we were top-heavy the following year. Now this is not to mention the maximum dollar amounts set by law, or a third test which I've yet to figure out, and thankfully, have not failed yet. Even the pension specialists are confused by the rules. I know because I have talked to several of them and have even changed pension companies in an effort to find someone who knows the answers. Problems such as these, created by government regulators to supposedly protect the workers, end up doing more harm than good.

This is just the tip of the iceberg. Because of the myriad of rules and regulations, I am expected to be a "Jack of all Trades." As in the case of the pension plan regulations, I need to be an expert on pensions, having to file form 5500, which is longer than a corporate tax return; make sure our plan is in compliance with federal laws; get the Letter of Determinations from the Labor Department; and I haven't even started to service my employees yet. These forms and the monitoring which needs to be done throughout the year so JFD won't fail anything takes approximately two to three full-time work weeks.

Added to this, I am expected to be a tax lawyer and an accountant. There are both the Federal and the State Corporate Income Tax returns (taking dozens of hours -- about 3-4 days per month to maintain). If we plan on making a profit, we need to prepay estimated taxes. We

haven't even realized the profit yet and we have to pay tax on it! Then there are the Federal Unemployment Compensation Taxes and the State Unemployment Compensation Taxes, both of which operate under different contribution rates and wage bases. Therefore, two sets of computations must be done to complete these taxes each quarter and at the year end. I've trained my secretary to do these tasks, so instead of me spending the 6-8 hours each quarter updating customer files to increase business, she does this.

On top of all these, we have the Federal Withholding Taxes, Federal Social Security Taxes (which is broken out into Social Security and Medicare - adding two more steps to the tax paying cycle, since the company has to match both of these items) and the State of Connecticut Withholding Taxes. And Heaven help JFD if we are late in sending to the government the hard earned money of our people because then we'll get hit with even more penalties. These forms take a couple of hours every week, assuming one doesn't make a mistake. If the wrong bubble is filled in on the Federal Deposit Form, it could take six months or more to get the money properly credited and that's only if the error is caught. Two years ago, when I filled in the wrong bubble, the money was "floating" (for lack of a better term) in the IRS system for three months before I realized it and another six months before it was properly credited. I keep wondering what happens to all the "floating" money from undetected errors. There is also the Connecticut State Sales Tax Form, again taking almost one full day per month to complete; local property taxes which include separate forms for property taxes, machinery and equipment taxes, taxes on office supplies (everything from company brochures to toilet paper), taxes on date processing equipment and taxes on factory supplies. All of these items, which need to be accounted for separately, take about two weeks each year.

Other areas of required expertise include safety and environmental engineering. While we supply safety gear to our employees, label our machinery, keep our fire detectors up to date, place informative posters around the shop, and talk with our employees concerning lifting, operating machines, helping each other rather than doing something alone and possibly getting hurt, regulators want more. There's the lockout/tagout requirement that needs a manual to basically say if a machine is not functioning properly, turn it off, pull the plug and make sure nobody else uses it until it's fixed. Of course, in a small shop like ours, with few machines, everyone knows when a machine is broken, and the machine is fixed immediately or we can't produce. There is the MSDS, which is a listing of various types of hazardous materials which must be kept track of. Yet, after some searching, I am still unable to find someone knowledgeable on these substances and where they are found exactly. These are just a couple of examples.

Now I'll put on my immigration enforcement officer's hat. When I hire a new employee, which we did in May, before that person can start working, I need to see either one form of identification from Column A or two forms of identification, one from column B and one from column C. It reads something like a Chinese food menu. But I can't tell the employees which forms I want to see, or I'll be breaking some discrimination law. These forms are quite specific and it took me several hours and several hundred dollars (for a lawyer to explain) to figure it out. Needless to say that after 45 minutes trying to explain this all to my new employee, he looked at me and said, "What do you want me to bring in?" I said, "I can't tell you that." He was quite dismayed, so I simply suggested a couple of different forms, leaving the decision up to him.

Then I have to be a human resource specialist. Now, my partners and I like people and try to be fair, yet now we must contend with rules that could get us into trouble if we, for example, fire an admitted "recovering" drug addict who claims he is not on drugs (the ADA). But if that same admitted drug addict hurt himself or another worker on the job, JFD would be liable for those injuries. I'm stuck between a rock and a hard place. What would you do? Then there are the discrimination rules and the sexual harassment rules and COBRA and ERISA and Connecticut's Continuation of Benefits rules, just to name a few. When will I be able to do what I originally set out to do? That is, manufacture and sell heat exchangers and pipe and tube coils and bends.

While these regulations start out with good intentions, the end result is that many become confusing and too onerous for a small business owner like myself to deal with effectively. As a result, the employees also suffer. The money we spend simply trying to comply with these rules could be better spent on the growth of our business, creating more jobs and benefitting our current employees.

Contrary to what certain special interests may claim, small business owners do give to their workers when they can. But again, government regulations and laws are making it just too expensive a proposition. For every \$100.00 in wages I pay, I need to add another 7.65% for Social Security and Medicare. Now I'm paying \$107.65, but my employee is still getting only \$100.00. Add to that another 10% which I pay for workers' compensation insurance. Then add federal unemployment compensation taxes, and state unemployment compensation taxes. Now I'm paying 20% over my employee's wages and he's not getting one cent more. And I haven't

even figured in the hidden costs of compliance and the opportunity costs, and the multitude of other taxes. It's easy to see that there is not much left for any one who is actually producing.

In listing the litany of regulations and taxes that were instituted for "good" purposes, I am trying to show the commission why small business is different from big business and why everything the government does takes away from the wages and benefits of our current employees and inhibits our ability to create new jobs and more tax revenue for truly worthwhile programs. Doing away with all federal requirements is obviously not the answer, but government should facilitate a better working environment and better wages and benefits by removing impediments to small business operations instead of increasing the number of hoops through which we have to jump.

We watch the rest of the world as they try to become more like the United States and we watch the Europeans as they see that their interventionism has led to higher structural unemployment and generally lower growth rates and yet we still continue to move in the direction that has brought economic malaise and failure to these countries.

Instead of doing this, now the Federal Labor Department wants to require the establishment and the regular certification of small business health and safety committees. While I believe health and safety are important, I do not want another regulatory burden placed upon me. And I believe I speak for most small business owners. We keep putting more and more burdens on that segment of our economy that has done the most for this country, especially over the last few years. Between 1989 and 1990, businesses employing fewer than twenty people --

businesses such as mine -- created all of the net new employment generated in this country. And small businesses created more than two-thirds of all net new jobs between 1970 and 1990. We take the risks, we invest our own capital, we bring jobs where there weren't jobs before. This benefits all of us: employers, labor, government and the community. We ask simply that you let us do this as unfettered as possible.

Some time ago, I was at a business association meeting and the government compliance specialist was explaining which regulations needed to be posted. For a small business, there was a minimum of seven. When asked if there were any questions, the issue of what if the business does not have enough wall space for all these required posters, was brought up. Although it was asked tongue-in-cheek and there were a few chuckles, the point was not lost. The average small business has less than five employees, is cramped for space and many owners spend their time producing.

While we try to comply with all the regulations, compliance becomes a full time job. A friend of mine is a general contractor and he employs one person. He said to me, "I'm trying to do everything above board. But you know what? I'd either have to lay off my assistant or I can't make a living for my family." And he doesn't want to lay off his assistant. They are more than simply employer/employee, they are friends. Like the relationships developed in many small businesses, they socialize together - they are like family. They are not unusual.

We at JFD just went to the wedding of one of our workers. We develop much closer relationships than one would find in large businesses and in large labor organizations. We joke

and we argue and we tolerate each others' idiosyncracies. We discuss problems and ideas on a much more personal and informal level than either big business or big labor. All this is done in a non-adversarial way and as the need arises, both on the part of the employee and the owner.

For example, several of our workers wanted dental benefits so my partners and I said fine, but we could only afford half the cost. The employees said to let them know what it would cost. So I put together three different plans, one very basic yet inexpensive plan and two others with varying degrees of coverage. We all agreed to go with the majority rule. The least expensive plan would have cost each employee about \$20.00 per month or \$240.00 per year. With the exception of one yes vote, all three dental plans were voted down.

Another example was our factory workers concern about the spray from hand-held grinding torches. One of our welders requested pipe, rollers and a special sheathing material. He proceeded to design and fabricate four moveable shields. Needless to say, he was rewarded for his ingenuity. In order to permit our employees to have direct input into workplace decisions and in order to reward innovation and hard work, we need flexibility and less outside intrusion.

As in many small businesses, we all try to be flexible in our work responsibilities and we try to help out where needed. Sometimes we have engineers making deliveries, the coiler answering phones, welders doing maintenance or assembly work or the vice president of the company (my husband) fixing the men's room toilet. In 1989, we lost half of our building to a tornado. Since they were paying, the insurance company told us to hire a clean-up crew. We would have had to lay off our workers since there was no electricity and hire the crew. Instead,

we told the insurance company no and paid our regular employees to clean up the business. As a result, we didn't have to lay off anyone (preventing a lot of hardship for our workers) and we saved the insurance company approximately \$12,000.

Just this past winter, JFD was in a major work slump. We were discussing the possibility of a four-day work week. We didn't want to lay off anyone because we have a diligent, hard-working crew, so nearly half the staff, including production workers, assisted with marketing to increase our sales. The workers also agreed to postpone January reviews until times got better. By mid-February, sales started increasing and our workers averaged over a 5% raise.

Small businesses need to remain flexible to grow and prosper. We can not afford to hire a single individual for each different job that needs to be done. As in the example above, it would not have been beneficial for the employees if we had to adhere to our normal January review schedule. Raises would have been much smaller and, in all likelihood, there would have been two or three layoffs.

These types of flexible relationships are what this Commission can be advocating. We cannot, nor should we mandate relationships. Just as none of us would want our marriage partner chosen for us, government should not require and micro-manage our work relationships. At the last hearing AFL-CIO President Lane Kirkland stated, "In a democratic society...all citizens are entitled...to participate in decisions which critically affect any significant aspect of their lives..." This administration should encourage, not restrict, employee participation programs. Restrictions that determine who can discuss work problems destroys the democratic values on which this country was founded.

This commission could do more to help the people of this country by educating employees and employers about safety and health issues, by providing technical and capital support, and by training safety inspectors to be less adversarial in their approach.

The teaching of entrepreneurship and cooperation in the workplace should begin at the grade school level. So many simply don't understand the working of small business. Last year, I did a small business project with the fourth grade class as my children's school. Even though many of the children's parents were small business owners, the children didn't realize the amount of cooperation and coordination involved, nor did the teachers. Operating a small business is an undertaking which needs to be understood by our educators, our legislators and the community in general. We should support and encourage this type of learning. I'm wearing this button (I CREATE JOBS) because I'm proud of what I do. My business provides a livelihood for my family and for eighteen other families.

In his first inaugural address, Thomas Jefferson (also a small business owner) said, "A wise and frugal government which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread that it has earned. This is a sum of good government..." The strength of our economy lies in small business. Please do not make it any more difficult for me to continue by adding more mandates, more red tape and more restrictions on what I can and cannot say to my employees. Instead, reduce the regulatory strangle-hold on small business. Help create an environment that will promote job growth, from which we will all benefit.