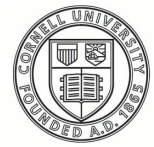

Cornell University
ILR School

Labor Research Review

Volume 1 | Number 19
Saving Manufacturing: Charting a New Course for our Unions and Communities

Article 1

1992

WARN and EDWAA: Use 'em or Lose 'em: An Interview with Greg LeRoy, Research Director, MCLR

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Abstract

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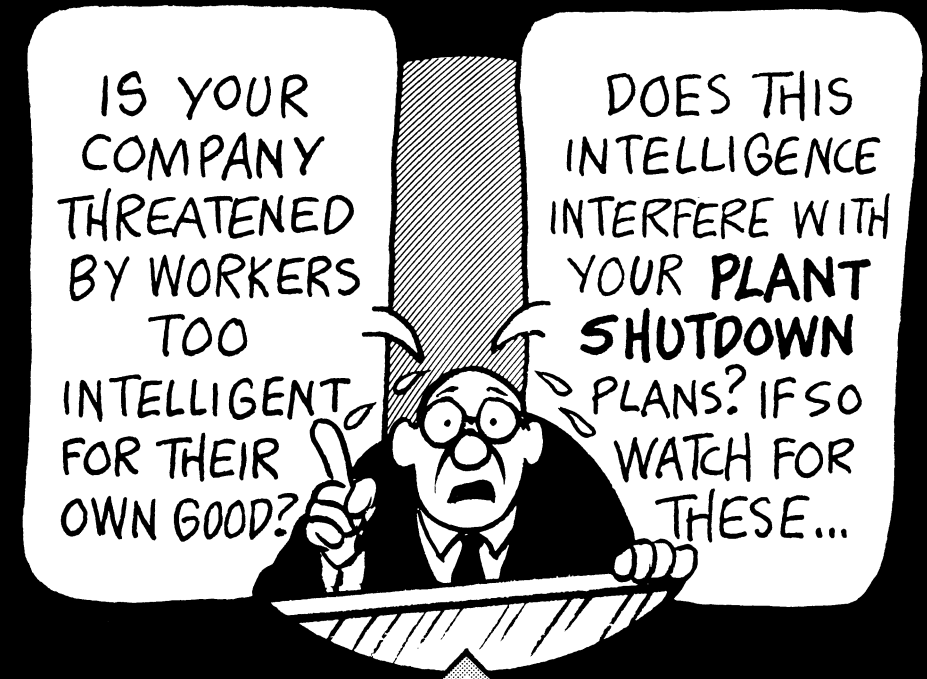
The Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act is basically what used to be Title III of the Jobs Training Partnership Act (JTPA); it is the federal funding source for direct assistance to dislocated workers. EDWAA, which took effect in July 1989, is not just a funding pool; it includes significant but virtually unknown regulations that unions can use for job retention.

WARN and EDWAA overlap. When a company gives a WARN notice, EDWAA requires the states to respond rapidly to start the delivery of "adjustment" services to affected workers.

For the inside skivvy on the two laws, LRR Contributing Editor Greg LeRoy interviewed MCLR Research Director Greg LeRoy, who has been hawking the two laws (and their predecessors) for eight years.

Keywords

Worker Adjustment and Retraining Notification Act, WARN, Economic Dislocation and Worker Adjustment Assistance Act, EDWAA, Greg LeRoy



EARLY WARNING SIGNS FOR BOSSES

WARN and EDWAA Use 'em or Lose 'em

An Interview with Greg LeRoy, Research Director, MCLR

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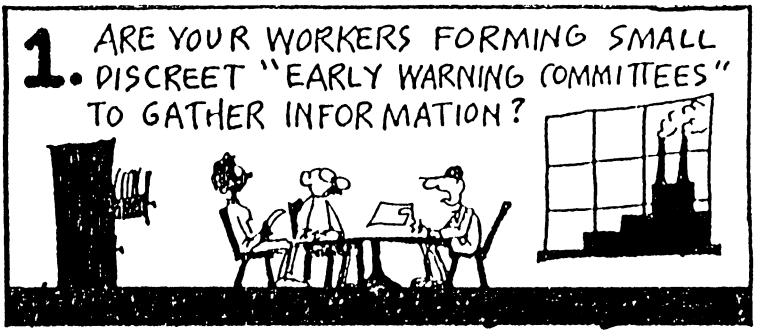
LRR: On the first anniversary of the WARN Act, you called WARN a "rousing success." Yet on the second and third birthdays of the act, you released "Plant Closing Dirty Dozens" with many WARN horror stories. What gives?



LeRoy: OK, OK, let's get the big picture straight: the United States *is* by far the most primitive industrial democracy when it comes to preventing shutdowns and helping dislocated workers. We require less notice, we allow more loopholes, we don't require any severance or company-paid retraining programs or other corporate costs to discourage shutdowns. More broadly, we don't impede capital flight or have any coherent industrial policy. And we have a very spotty social safety net for dislocated workers. All right?

But we do have WARN and EDWAA, and you've got to start somewhere. WARN, taken on its own skimpy terms—as a dislocated worker notice bill and nothing more—*is* a rousing success for two reasons. It has given millions of workers advance notice who otherwise would not have gotten it. And it has enabled state dislocated worker programs to assist many more people than they ever reached before.

You've got to remember: before WARN, the average notice for a blue-collar worker was only seven days. Less than 10% of U.S. workers had a union contract clause providing advance notice. As a result, the feds were spending hundreds of millions on JTPA, but the states only could reach and serve about 4% of the dislocated workers, because they had no lead time to get to people. All of those numbers have improved dramatically because of WARN. You just can't sneeze at that.

LRR: But what about all the loopholes?

LeRoy: Well, we've been bird-dogging them right along. And so has the Sugar Center of the National Lawyers Guild. Businesses that encounter "unforeseen circumstances" can dodge the law. The way "mass layoffs" are defined makes it possible for a company to just *gradually* lay off people and never have to give notice. There are big enforcement problems. With no state or federal administrative remedies, workers have to sue in federal district

court—and then wait behind two years of drug cases—and then only get paid for the days they didn't get notice. Very few lawyers understand the law. Many states won't even disclose their WARN notices, making the law useless for economic analysis.

I could go on, but the main point is that we believe most companies are complying with WARN, but many are not. Since most violations are not getting prosecuted, there's no way to estimate non-compliance. We still need to educate and litigate; that's why we do the Dirty Dozen, and that's why the Sugar Center's work is so critical.

LRR: Has WARN saved any jobs?

LeRoy: In a few, isolated cases, it has saved a small number. But I think this is the key area where many critics of the law miss the point. WARN, as passed by Congress, was never intended to save any jobs. It's a bare-bones notice law, and nothing else, period.

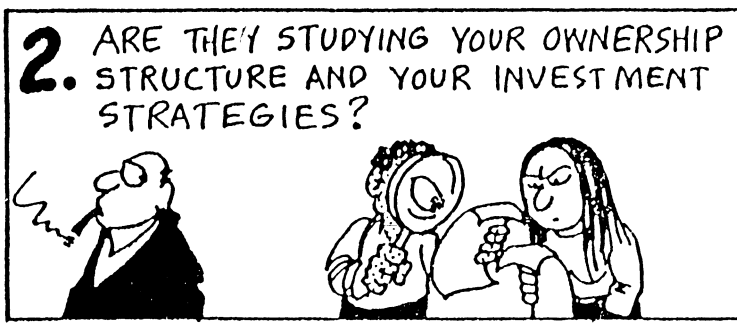
If you want to talk about savings jobs, you have to talk about EDWAA. *That's* where the action is. Let's talk about EDWAA!

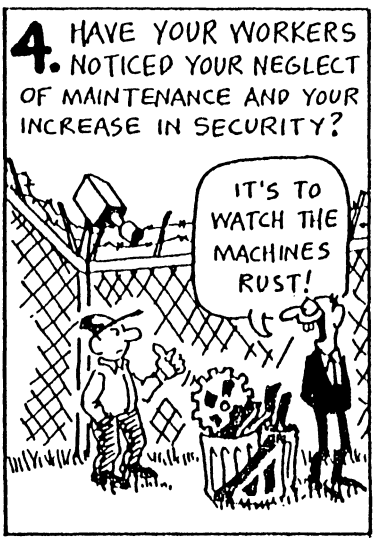
LRR: Well, you said America has a spotty social safety net.

LeRoy: All right, let me make my disclaimer up front once again. EDWAA has a lot of problems. Conflict of interest is not unusual at the Private Industry Council level, where 60% or more of the money goes. The quality of services provided with EDWAA monies is often erratic. The quality of state and local staffing is uneven. And many states still make very poor use of their 40% (of EDWAA monies), especially when it comes to being proactive.

But, it's a darn sight better than JTPA Title III was before, and if more people really knew EDWAA the way we know it. . . well, let's just say this law has incredible potential.

LRR: What do you mean?





LeRoy: If you read the fine print of EDWAA regs and policy papers, you find three landmarks: Early Warning, employee ownership, and joint adjustment.

First, Early Warning: the law requires the state's Dislocated Worker Unit (DWU) to "monitor for potential economic dislocation." In other words, the states must perform what we call Early Warning to either prevent shutdowns or to reach dislocated workers prior to the 60-day notice. This is an important breakthrough; for example, a DWU must monitor collective bargaining. Basically, this regulation enables a union, if it sees Early Warning signs, to demand a state investigation of potential job loss and to demand action against job loss if the union's suspicions are verified.

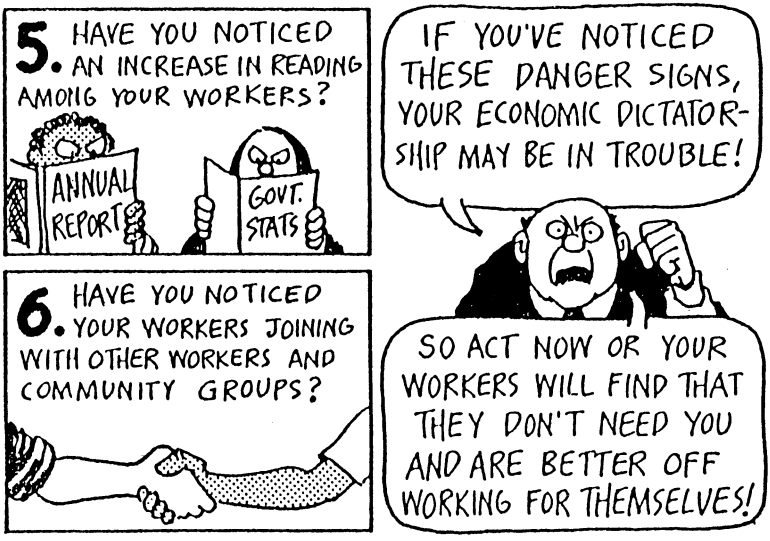
Second, employee ownership: EDWAA authorizes the DWU to fund a pre-feasibility study (usually up to $10,000) on a company if it is determined that an alternative form of ownership could save the jobs. This is big news for two reasons. First, it's very hard to raise "soft" money to initiate worker buyouts. And second, this is the first time federal dislocated worker money has been authorized for a so-called "hard" economic development function. Now, it's true that only a few states have funded any pre-feasibility studies with EDWAA dollars, but that's because unions haven't known they could *demand* that help. Now they know!

Third, joint adjustment committees. EDWAA says when a company gives WARN notice, the state must encourage the company to agree to form a Canadian-style Labor Management Adjustment Committee. These committees have been shown to be extremely effective in America for helping dislocated workers. Starting back in 1986, the DOL and the National Governors Association ran a demonstration project in several states, and the results were outstanding.

LRR: Hold on a minute. How do these things work?

LeRoy: When the company gives notice, a joint committee is set up, with equal numbers of labor and management, plus a neutral, outside chair. The only purpose of the committee is to be sure that the dislocated workers get the best possible service. The committee surveys the people to see what they need and want. It hires and fires the providers of the services, and actively monitors their performance. The committee follows up with folks to see how they do out in the job market. It keeps records and holds everyone accountable. The results have been excellent. You see shorter periods of unemployment, better wages on the new jobs, and fewer family traumas.

I just want to make one other point here about union self-interest. Like it or not, the truth is that some unions today still



do a sub-par job of serving their members during dislocation. Now, don't get me wrong, many unions are good at it and some state labor federations are also very successful, but let's be frank, some others are still negligent. At the same time, you've got companies blaming the unions for the shutdowns. So how do you think those workers feel when they get re-hired at a nonunion shop and then an organizer comes and hands them an A-card? Unions—*all* unions—have *got* to assert their full rights to jointly oversee the adjustment process so that workers can see—right up 'til the end—that organized labor is looking out for them.

LRR: So where do these two laws, WARN and EDWAA, stand today?

LeRoy: Just as this issue of *LRR* goes to press, the General Accounting Office will issue a big study on WARN. I suspect it will be quite critical of the law and that it will document many of the criticisms we have been making in great detail. Congress will consider that report and decide whether to go back and tighten up some loopholes or add some administrative remedies so people don't have to always sue for justice.

EDWAA is more problematic. In fact, I am quite worried about the future of EDWAA. The Bush administration has announced it will eliminate the Bureau of Labor-Management Relations and Cooperative Programs by October 1991. That is the agency within the DOL which has advocated for best practice on dislocated worker issues and helped network good ideas among states, unions and companies.

Worse yet, there are indications that DOL may seek to restrict eligibility for EDWAA assistance in ways that would exclude many dislocated union members. And the whole thrust of the Early Warning regs is being ignored in some areas.

So my advice about WARN and EDWAA is simple: know your rights and exercise them vigorously. Like any new reform, these laws are still being shaped and negotiated. Use 'em or lose 'em.■

RESOURCES

Jane and Maurice Sugar Law Center/National Lawyers Guild Project, 2915 Cadillac Tower, Detroit, MI 48226 (313) 962-6540. The nation's leading clearinghouse on WARN litigation.

Early Warning Manual Against Plant Closings, $16.75 postpaid from MCLR, 3411 W. Diversey #10, Chicago, IL 60647 (312) 278-5418. The definitive research and training guide for identifying plants at risk.

Your Right to be WARNed, excellent booklet on WARN from the United Auto Workers publications department, 8000 East Jefferson Avenue, Detroit, MI 48214. (313) 926-5291.

State and Local Initiatives on Development Subsidies and Plant Closings, a comprehensive look at state and local legislation to deter or cushion the effect of plant closings, including accountability for development subsidies. $10 for photocopy from FIRR, 3411 West Diversey #10, Chicago, IL 60647.