Testimony of Richard L. Trumka
Secretary-Treasurer,
American Federation of Labor and Congress of Industrial Organizations

Before the Senate Committee on Health, Education, Labor and Pensions
Hearing on Plant Closings, Workers' Rights, and the WARN Act's 20th Anniversary

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Thank you, Senator Brown and members of the Committee, for inviting me to testify this morning on "Plant Closings, Workers' Rights, and the 20th Anniversary of the Worker Adjustment and Retraining Notification (WARN) Act of 1988."

On behalf of the 10 million working men and women of the AFL-CIO, I also want to thank you personally, Senator Brown, for your deep commitment to this and many other issues important to America's working families.

A little more than two months from now—on August 4, 2008—we will celebrate the 20th anniversary of the WARN Act. This is an appropriate time to reflect on our successes and failures in dealing with the human tragedy of plant closures and mass layoffs, and specifically the issue of advance notification for workers.

The WARN Act was born out of the cataclysmic loss of manufacturing jobs in the 1980s. Since then, the wave of plant closings and off-shoring buffeting our economy has not subsided, but has only gotten worse. Since 1998, America has lost 3.6 million manufacturing jobs, and since 2000 more than 40,000 manufacturing establishments have closed their doors. Now the plague of mass layoffs has spread to the service sector as well.

Mass layoffs continue at a pace of a million-and-a-half impacted workers every year, and almost half a million workers have been idled by mass layoffs already in the first three months of 2008. Long-term unemployment is far higher today than at the beginning of previous recessions, and has persisted at high levels throughout the most recent economic recovery. And we know that displaced workers suffer an average income loss of about 16 percent when they find a new job.

Unless you have lived through one of these experiences, you really cannot understand how traumatic—and often life-changing—they can be for working families and their communities. As I have testified previously, the AFL-CIO believes a fundamental rethinking of our economic policies is essential to create an environment where fewer plant closures and mass layoffs occur.

With regard to the WARN Act, there is no question that it has resulted in more workers getting advance notice before losing their jobs. In addition, I think we can all agree that WARN has not had the dire consequences predicted by its opponents in 1988, and has not resulted in a flood of litigation.

But by any fair assessment, WARN has not lived up to its promise. It has certainly not lived up to the hopes of those of us in the labor movement who, beginning in the 1970s, fought to develop a more comprehensive and coherent strategy for dealing with plant closings and mass layoffs.

The compromise legislation passed by Congress in 1988 was by no means a comprehensive strategy. It was a relatively modest measure requiring certain employers to give only two months' notice before plant closings and mass layoffs. Many of the WARN Act's flaws were readily apparent on the day of its enactment, since they were the result of concessions necessary to secure its enactment.

Those flaws were recognized in reports issued by the General Accounting Office (GAO) in 1993 and 2003, and they were detailed by the AFL-CIO in testimony to Congress in March 2003. The shortcomings of WARN boil down to this: the Act requires too few employers to give too little notice to too few workers, and it allows too many employers to flout the law with impunity.

In its first appraisal of the new law in 1993, GAO concluded that workers were more likely to get advance notice of plant closings and mass layoffs thanks to passage of the WARN Act. About half of all covered businesses that shut down plants or had mass layoffs were not required to give WARN notices, however, and only about half of those required to give notice actually did so.

On March 5, 1993, the AFL-CIO took note of GAO's findings in a statement submitted to the Senate Labor Subcommittee. The AFL-CIO proposed lengthening the WARN Act's advance notification period; subjecting more mass layoffs to WARN Act notice requirements; subjecting more employers to notice requirements; strengthening penalties to discourage employer non-compliance; giving the Department of Labor (DOL) an enforcement role similar to its authority under the Fair Labor Standards Act; and closing various loopholes.

In 2003, GAO issued a second report further documenting the shortcomings of WARN. GAO found that only about a quarter of plant closures and layoffs were subject to WARN Act notice requirements in 2001, leaving over a million laid-off workers unprotected by the statute, and employers gave notice for only about a third of the plant closures and mass layoffs subject to WARN.

Then in July 2007, the Toledo Blade newspaper published a four-part investigation into the WARN Act, and concluded:

> A federal law that requires companies to give notice to workers losing their jobs is so full of loopholes and flaws that employers repeatedly skirt it with little or no penalty, a Blade investigation has found.

The Blade reviewed all of the lawsuits filed under the WARN Act since 1989, and concluded:

> A Blade analysis of 226 lawsuits filed in federal courts across the country since 1989 revealed that judges threw out more than half the cases. In the majority of those decisions, judges cited loopholes in the law, ranging from companies that said they tried their best to give notice to employees to firms that claimed they could not predict bad financial times. In 108 cases, WARN Act lawsuits resulted in settlements or with the courts siding with the displaced workers. But in dozens of those cases, workers received only pennies on the dollar of what they felt they were owed.

While the WARN Act has not been substantively amended in 20 years, several bills have been introduced in this Congress to correct some of its most widely recognized defects. One of those bills is the FOREWARN Act (S. 1792), introduced last July by Senators Brown, Obama, and Clinton. Another is the "Early Warning and Health Care for Workers Affected by Globalization Act" (H.R. 3796), introduced last October by Rep. George Miller and approved by the House of Representatives on October 31, 2007. The AFL-CIO strongly supports both bills.

The Brown and Miller bills would both do the following: (1) require businesses to provide three months' advance notice instead of two; (2) subject more businesses to WARN Act notice requirements; (3) subject more mass layoffs to WARN Act notice requirements; (4) subject more plant closings to the notice requirements; (5) increase penalties to deter employer non-compliance with the notice requirements; (6) authorize the Labor Department to bring enforcement suits on behalf of workers; and (7) close various loopholes that allow employers to avoid giving advance notice.

While both these bills represent tremendous progress, we believe they could be improved by requiring six months of advance notice instead of three. At minimum, a six-month notice period should be required for plant closures and mass layoffs that affect larger numbers of workers.

The AFL-CIO has long believed that a longer notice period would better serve the purposes of the Act. One of the principal purposes of early warning is to give state and local governments time to prepare effective services for displaced workers and develop strategies for responding to the sudden loss of jobs and tax revenue. The earlier that notice is given, the more effective assistance programs can be in getting workers back to work more quickly at better wages.

Another purpose of early warning is to give workers time to prepare themselves financially, to pursue education and retraining opportunities, and to search for other employment. Dislocated workers who receive advance notice and early adjustment assistance are more likely to be successfully retrained, and they get new jobs sooner and earn more than they would have without early intervention. And early warning increases

the likelihood that employees can find work prior to being laid off, thus avoiding unemployment spells.

The legislative compromise that resulted in only two months' advance notice detracted from the purposes of early warning. Two months is generally not enough time to ensure that government assistance and resources are available to workers before they lose their jobs. Two months is often not enough time for workers to make the preparations necessary to be successfully retrained, or find good jobs quickly and avoid unemployment. And two months is definitely not enough time to serve the third purpose of early warning: to give workers and local governments an opportunity to avoid job losses in situations where they can be avoided.

We should remember that early plant closure legislation prescribed more comprehensive strategies that gave workers and communities an opportunity to avoid job loss in the first place. These early proposals required employers to consult in advance with local governments and employee representatives. They required employers to provide relevant financial information (such as financial statements and relocation plans) to local governments and employee representatives seeking alternatives to plant closures and layoffs. They provided for technical and financial assistance to troubled firms and affected communities. And they required six months' (or more) advance notice so that these efforts would have time to bear fruit.

While extending the WARN Act's notice requirement to six months would allow the necessary time for early intervention and job loss avoidance initiatives, reform of the WARN Act should also be accompanied by a greater commitment at the state and federal level to taking advantage of the advance notice period to organize these initiatives.

Several states have already implemented effective early warning and early intervention programs that have saved thousands of jobs and helped maintain employment at manufacturing firms. In Pennsylvania, for example, the Strategic Early Warning Network of the Steel Valley Authority has worked with more than 450 companies to save millions of dollars in wages and taxes that otherwise would have been lost to plant closings.

Leadership by the federal government is desperately needed to support early warning and early intervention programs. The dire fiscal situation of many states precludes adequate funding on the necessary scale at the state level. We believe the federal government could play a critical role in coordinating and encouraging these programs.

Advance notice and early intervention are ultimately about maintaining the living standards of the American middle class. Dumping large numbers of laid-off workers into flooded job markets without any warning is a recipe for declining living standards, as desperate workers compete to secure bad-paying jobs that may actually harm their long-term earnings potential.

Advance notice, on the other hand, can allow governments to put in place effective assistance programs that make it more likely that workers will find relatively good-paying jobs more quickly without suffering unemployment. And in some instances, advance notice may allow enough time for workers and their communities to develop strategies to avoid the loss of good jobs in the first place.

Obviously, good jobs cannot be saved in every instance. But in those instances where they can be saved, it can hardly be argued that the federal government is doing everything it can to save them.

We see advance notice and early intervention programs as complementary parts of a much-needed comprehensive strategy to save good jobs and maintain the living standards of the American middle class. I thank you for your attention, and I look forward to your questions.

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