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## From Smokestacks to High Tech: Retraining Workers for a Technological Age

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# FROM SMOKESTACKS TO HIGH TECH: RETRAINING WORKERS FOR A TECHNOLOGICAL AGE

Once I built a railroad, made it run,  
Made it race against time,  
Once I built a railroad, now it's done  
Brother, can you spare a dime?

Once I built a tower to the sun,  
Brick and rivet and lime,  
Once I built a tower, now it's done,  
Brother, can you spare a dime?<sup>1</sup>

## I. INTRODUCTION

The nation and the world are undergoing a period of technological change unprecedented in our history, which has made the lyrics of this Depression-era song as timely today as they were fifty years ago. Startling reductions in production jobs in the basic industries of steel, auto, chemical, and heavy manufacturing have caused massive layoffs, plant closures, and the highest unemployment levels since the Great Depression. At the same time, however, severe shortages of skilled personnel exist in high-tech industries, service occupations and other emerging sectors of the economy. Various strategies have been advanced to deal with this problem. Central to all strategies has been some kind of program for the training or retraining of displaced workers to provide them with the skills necessary to compete in the new technological age.

This comment will examine one such program, The Employment Training Panel (ETP), an innovative piece of job training legislation enacted in California in 1982. Designed with the dual purpose of economic development and job training and employment, the bill seeks to (1) foster job creation and put the unemployed back to work, (2) meet employer needs for skilled work-

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1. Harburg, *Brother Can You Spare A Dime?* LEGAL FAKE BOOK (Warner Bros. 1979).

ers, and (3) minimize employers' unemployment insurance costs. ETP does so by working closely with the State's Department of Economic and Business Development to entice new business to locate in California and to encourage existing business to expand their operations by offering to train whatever employees the company needs at virtually no cost to the employer. Workers who have lost jobs with companies which are closing down or laying off can thus be retrained for new jobs. By "recycling" employees back into the work force quickly, ETP can assist employers to reduce their unemployment insurance costs. Since more of the employers' contributions stay in the unemployment insurance fund, it may remain solvent, thus avoiding higher contribution rates.

## II. BACKGROUND

Microtechnology, with its vast information and communications potential, is bringing about a change in the workplace more profound than the effect of the steam engine which sparked the Industrial Revolution of the nineteenth century.<sup>2</sup> Today, the technological revolution is eroding the employment base in the very industries upon which the first Industrial Revolution was built, the so-called "basic industries" of steel, rubber, auto and other heavy manufacturing. In post-World War II America, manufacturing was the mainstay of the economy, with less than twenty percent of the workforce in nonproduction employment in 1950.<sup>3</sup> The number of manufacturing jobs continued to increase throughout the 1950's and '60's. However, by 1970, the economy began to shift dramatically, and the number of manufacturing jobs began to wane.<sup>4</sup> Even within manufacturing, it is the non-production service jobs that are expected to make up a larger proportion of the workforce as the number of production workers continues to decrease.<sup>5</sup>

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2. The Future of Work, A Report by the AFL-CIO Committee on the Evolution of Work, August 1983, at 6.

3. Mark, *Measuring the Effects of Technological Changes*, SILICON SATELLITES AND ROBOTS, THE IMPACTS OF TECHNOLOGICAL CHANGE ON THE WORKPLACE 18 (D. Chamot, J. Baggett, 1979).

4. Ginsberg, *Technology: Is it Good for American Workers?* SILICON SATELLITES AND ROBOTS, THE IMPACTS OF TECHNOLOGICAL CHANGE ON THE WORKPLACE 9 (D. Chamot, J. Baggett, 1979).

5. AFL-CIO, *supra* note 2, at 12.

Among the hardest hit by the decline in manufacturing have been the auto and steel industries. Auto industry employment was at an all-time high of 782,000 as recently as 1978.<sup>6</sup> By mid-1983 the number of auto workers had plummeted to 487,190, and the United Auto Workers Union predicts a further decline in the next few years to less than half of the 1978 figure.<sup>7</sup> In the steel industry, the picture is much the same. Today's figure of 683,000 steel workers is down from over one million just ten years ago,<sup>8</sup> and a recent study of the steel industry projected a further workforce reduction of fifty-three percent by the year 2000.<sup>9</sup> In the last six years alone over 1.5 million jobs have been lost in all heavy manufacturing industries.<sup>10</sup>

What does this mean for the nation's production workers, who are now losing their share of the labor market to service, technical and professional workers? All too often, these dramatic shifts in occupational patterns have resulted in massive layoffs and plant closings.

The problem of plant closures in recent years has become increasingly acute — both to individual workers and to our economy as a whole. Three and one quarter million jobs a year were lost in the early 1970's as a result of plant closings and migration.<sup>11</sup> For every ten large manufacturing plants open in 1969, three had closed by 1976.<sup>12</sup> In California, between 1980 and 1983, 1,185 businesses shut down and 126,700 workers lost their jobs.<sup>13</sup> Over half of the jobs lost were in large companies employing 250 or more workers.<sup>14</sup> Most of the businesses which closed were in the industrial sector, primarily in the basic industries of auto, steel, rubber, food processing, and other heavy

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6. Bernstein, *Industrial Policy Sought as Key to Nation's Future*, L.A. Times, June 27, 1983, at 1, col. 1.

7. *Id.*

8. *Id.*

9. McManus, *U.S. in 2nd Industrial Revolution*, L.A. Times, June 28, 1983, at 1, col. 1.

10. Bernstein, *supra* note 6, at 14, col. 1.

11. B. BLUESTONE AND B. HARRISON, *THE DEINDUSTRIALIZATION OF AMERICA* (1982), at 29-31.

12. *Id.*, at 32.

13. Closed Business in California, January 1980-January 1983, California Employment Development Department, Employment Data and Research Division, Labor Market Information Section (February 9, 1983).

14. *Id.*

manufacturing.<sup>15</sup> Many of the larger plants were unionized<sup>16</sup> and the workforce relatively well-paid.<sup>17</sup>

As record number of workers lost their jobs in these highly unionized, well-paid occupations, jobs openings arose in unorganized, low-salaried sectors of the new economy.<sup>18</sup> It is estimated today that over two-thirds of the American workforce is employed in service industries (transportation, finance, insurance, real estate, wholesale and retail trade, and services) and their numbers are expected to increase.<sup>19</sup> In the 1970's an overwhelming ninety percent of all new jobs added to the economy were in service occupations; by 1990 service workers will represent seventy-two percent of the labor force, about ninety million workers.<sup>20</sup> One of the occupational groupings accounting for the largest growth will be clerical workers, due in large part to the boom in information processing.<sup>21</sup> The dramatic reduction in cost per function for information processing over the last several decades, coupled with the exponential growth in the number of components that can be built into a single microprocessor chip,<sup>22</sup> has made the processing of information one of the significant developments of the technological revolution and has produced

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15. *Id.*

16. Planning Guidebook for Communities Facing a Plant Closure or Mass Layoff, State of California, Employment Development Department, Office of Planning and Policy Development (June 1982).

17. L. Gladstein, *Jobs in the Future: High Tech and Low Wages*, 97 LABOR CENTER REPORTER 1 (July 1983). In 1980 average earnings in manufacturing were 23% above the average income; services and retail trade were 19% and 25% below average income respectively; see also, *The Future of Work*, *supra* note 2, at 13. "In 1980 weekly earnings in manufacturing were \$331. By contrast, weekly earnings were \$245 in finance, insurance, and real estate, \$225 in personnel and business services, and \$198 in wholesale and retail trade." *Id.*

18. McManus, *supra* note 9 at 6.

19. Gladstein, *supra* note 17.

20. *The Future of Work*, *supra* note 2, at 13. Most of the growth in service occupations will be in low skill, low paying occupations. An estimated 501,000 openings are anticipated for janitors. The five occupations of secretary, nurse's aide, janitor, sales clerk, and cashier are expected to provide 3.7 million jobs by 1990. McManus, *supra* note 9.

21. Mark, *supra* note 3, at 18-19. Although clerical work was at first expected to decline with the introduction of the computer, employment has increased and growth is expected to continue. Rather than replacing clerical workers, the introduction of advanced technology has made possible work that was previously impractical because it would have taken too long and been too costly by pre-computer technology. *Id.*

22. *The Future of Work*, *supra* note 2, at 14.

an array of occupations showing consistently high growth.<sup>23</sup>

Aside from these relatively low-paid information processing jobs, high tech industries will not be major employers. According to the Bureau of Labor Statistics, the number of high tech jobs created over the next ten years will be less than half the two million jobs lost in manufacturing in the last three years.<sup>24</sup> High tech jobs show a large percentage growth because the percentage is computed on a small employment base. Other occupations that will contribute far more jobs, such as clerical workers, sales workers, janitors and food service employees, show a slower percentage increase due to their relatively large employment base.<sup>25</sup>

The problem of rising unemployment and displacement is further exacerbated by three factors: (1) jobs overall are declining at a much higher rate than new jobs are being created;<sup>26</sup> (2) the new jobs being created are predominantly non-union, and at significantly lower skill and pay levels;<sup>27</sup> and (3) these new jobs are highly mobile, precipitating large-scale job and technology transfer to other countries.<sup>28</sup>

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23. Gladstein, *supra* note 17, at 2.

<i>Occupation</i>	<i>Percentage Growth 1980-90</i>
paralegal personnel	118
title searchers	77
computer operator	75
computer systems analyst	71
computer programmer	52
secretary	51

24. *Id.*

25. *Id.* While computer occupations will increase by more than forty-five percent over the decade of the 1980's, this represents an increase of only 600,000 jobs — from 1.5 million in 1980 to 21 million in 1990 — still only 1.5 percent of the labor force in 1990. *The Future of Work*, *supra* note 2, at 7.

26. *The Future of Work*, *supra* note 2, at 7. A study conducted at Carnegie Mellon University asserts that the current generation of robots has the technical capability to perform nearly seven million existing factory jobs — one third of all manufacturing employment—and that sometime after 1990, it will become technically possible to replace all manufacturing operatives in the automotive, electrical-equipment, machinery, and fabricated-metals industries. Levitan and Johnson, *The Future of Work; Does It Belong to Us or the Robots?* MONTHLY LAB. REV., Sept. 1982, at 11.

27. Gladstein, *supra* note 17, at 2. See also Levitan and Johnson, *supra* note 26, at 13.

28. Levitan and Johnson, *supra* note 26, at 13. The United States can lose jobs, parts of industries, and entire industries due to our free trade stance in a world market of protectionism. Jager points out, for example, that Romanians are building computers, Mexcians are making aircraft parts, Venezuelans are producing steel, and South Korea is building ships — all with United States technology, all in competition with the United

The National AFL-CIO predicts a persisting shortage of jobs numbering from four to six million in the years ahead, which will create a "labor-surplus underclass"<sup>29</sup> of individuals without jobs or job prospects. For those able to find employment, the AFL-CIO sees the development of a two-tier labor force — a few executives, managers, engineers, and professional technical employees at the top and, at the bottom, many more persons employed in low-skilled, low-paying jobs with no job security or guarantee of full-time employment.<sup>30</sup>

### III. STRATEGIES TO EASE THE TRANSITION

A wide range of alternatives and strategies has been advanced to deal with the specific problems caused by the technological revolution. There have been two primary approaches to alleviate the impact of technological changes in the workplace: (1) the collective bargaining process (applicable, of course, only where workers are organized), and (2) legislation.

#### A. *Collective Bargaining Efforts*

Collective bargaining approaches have included a broad range of efforts, including those to secure provisions for: (1) advance notice of technological change,<sup>31</sup> plant closure or layoff, (2)

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States—but none of these is an open market to the United States as our market is to them. Jager, *Exporting Technology Means Exporting Jobs*, SILICON, SATELLITES AND ROBOTS, THE IMPACTS OF TECHNOLOGICAL CHANGE ON THE WORKPLACE 36 (Chamot and Baggett, 1979).

29. Levitan and Johnson, *supra* note 26, at 9, 10, 16.

30. *Id.* at 8. Within the high tech industry labor faces two problems. Many high tech companies are using their own products to replace labor in the production process. Not only will the division of labor into component tasks reduce the skills needed in each task, but robotics may either replace labor or further downgrade skill requirements. In addition, unskilled labor will face competition from lower-cost foreign labor. Gladstein, *supra* note 17.

31. A. Lawrence and P. Chown, *Plant Closings and Technological Change, A Guide for Union Negotiators* (Center For Labor Research And Education, Institute of Industrial Relations, University of California, Berkeley, undated), at 9. Some contract provisions provide for the establishment of joint labor-management committees on technological change, such as the following agreement between the Communication Workers of America and Bell Telephone:

The Company and the Union recognize that technological changes in equipment, organization, or methods of operations have a tendency to affect job security and the nature of the work to be performed. The parties, therefore, will attempt to

restrictions on management's right to close plants, relocate, or transfer work, (3) interplant transfer provisions and relocation allowances, (4) wage rate protection, and restrictions on management's right to lay off or downgrade workers displaced by technological change or lack of work, (5) severance pay, pension and early retirement provisions, extension of medical, dental and insurance benefits, supplemental unemployment and guaranteed income stream benefits, and (6) training, retraining, or in the event of closure, job market assistance in locating new employment.<sup>32</sup> However, despite the great breadth of bargaining subjects enumerated here, it should be noted that agreement on or inclusion of any or all of the provisions is totally at the discretion of individual employers and their employees' collective bargaining representatives.

In contrast to the practice in many European countries,<sup>33</sup>

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diminish or abolish the detrimental effects of any such technological change by creating a joint committee to be known as The Technological Change Committee to oversee problems in this area.

32. *Id.* at 42. One of the strongest retraining provisions was won by the Seafarers International Union in their agreement with the Pacific Maritime Association. It reads, in part, "the employer will defray the costs of a jointly approved training program for the purpose of promptly retraining union members to learn and utilize new skills that may be required by the introduction of new equipment." Such provisions allow current employees to maintain their employment and even upgrade their skill level. Employers are benefited by saving recruitment and job orientation costs for new employees and can phase equipment in as needed.

33. S. Early and M. Witt, *How European Unions Cope with New Technology*, MONTHLY LABOR REVIEW, 36 (Sept. 1982). Joint labor-management efforts have proven highly successful in European countries in which unions have utilized such provisions on a much broader scale. In an aircraft parts plant in Kongsberg, Norway, for example, metal workers had far more success in dealing with the introduction of computer-based machine tools than workers at a similar plant in Lynn, Massachusetts. At Kongsberg the union technology committee received complete information on the equipment before it was installed and was able to convince management that machine operators already on the job be trained to do the computer programming and repairs. As a result, the machinist's skills were broadened rather than narrowed by the technological change. In contrast, at Lynn, the equipment was installed without consultation with the union, which resulted in supervisors and other new employees performing the computer work, while the skilled machinists were reduced to machine tenders, performing less interesting work at lower pay, subject to work reduction or layoff. *Id.*, see also P. MARTIN, LABOR DISPLACEMENT AND PUBLIC POLICY, 89 (1982).

European workers who are dismissed usually have at least two-thirds of their after-tax earnings replaced, have their health coverage extended and their pension contributions continued, and often receive severance pay. Most European countries operate extensive retraining programs and many subsidize worker relocation. European job protections are more comprehensive than those available to the typical United States worker.



contract provisions concerning technological change or plant closure have been achieved only on a very limited basis by unions in this country, and usually at the cost of significant concessions in other portions of the contract.<sup>34</sup> Although a large proportion of collective bargaining agreements contain requirements to give advance notice of layoffs, most notice requirements are extremely short, normally less than one week, and sometimes as brief as twenty-four hours.<sup>35</sup> Unions were more successful in achieving provisions for retraining of affected workers, either through formal apprenticeship or other on-the-job training. Such provisions are found in over eighty percent of collective bargaining agreements.<sup>36</sup>

In the absence of specific contract clauses, however, employees' rights to continued employment are limited, even under the protections of the National Labor Relations Act.<sup>37</sup> Although an employer is required to bargain over "wages, hours, and other terms and conditions of employment" with the union representing his employees, this duty has been severely curtailed by recent Supreme Court holdings. In one of the most important labor law decisions in recent years, *First National Maintenance v. NLRB*, the Court held that an employer's decision to permanently close part of his business for economic reasons was not part of the terms and conditions over which Congress had mandated bargaining.<sup>38</sup>

In an earlier case, *Textile Workers v. Darlington Co.*, the Court emphatically stated, "an employer has the absolute right to terminate his entire business for any reason he pleases."<sup>39</sup> Although the issue in *Darlington* was not specifically one of employer duty to bargain, this case has been broadly interpreted to mean that there is no duty to bargain about the decision to close

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Tripartite economic planning, a commitment to full employment, active trade unions, plant-level workers' councils, and a history of exposure to the dislocations transmitted via international trade have made programs to assist displaced workers an integral part of European economic policies. P. MARTIN, *supra*, at 89.

34. *Labor Relations in an Economic Recession: Job Losses and Concession Bargaining*, 110 LABOR RELATIONS REPORTER (BNA Special Reporter) 5 (1982).

35. P. MARTIN, *supra* note 33, at 49.

36. *Basic Patterns in Union Contracts*, Bureau of National Affairs, Inc. (May 1979).

37. National Labor Relations Act, 29 U.S.C. §§ 151-69 (1935).

38. *First National Maintenance v. NLRB*, 452 U.S. 666 (1981).

39. *Textile Workers v. Darlington Co.*, 380 U.S. 263, 268 (1965).

down a business completely and permanently.<sup>40</sup>

More significantly, however, it should be noted that trade unions represent less than one-fourth of the labor force<sup>41</sup> in this country, therefore even the limited protections these trade unions have achieved through the collective bargaining process are not applicable to over three-fourths of the labor force. For the vast majority of the workforce, little has changed from the old "at will" employment doctrine expressed in *Payne v. Western & A.R.R.*, that employers "may dismiss their employees at will . . . for good cause, or even for cause morally wrong, without being guilty of legal wrong."<sup>42</sup> In recent years, this doctrine has been eroded, but thus far, no relief has been granted in situations involving the mass layoffs provoked by plant closure or relocation. Therefore, other mechanisms must be available to the majority non-unionized sector of the workforce to lessen the burden of technological change.

### B. Legislative Efforts

Federal legislative efforts aimed at alleviating the impact of technological change and employee displacement have been directed primarily toward income maintenance programs<sup>43</sup> and training or retraining programs, the most major of which is the Jobs Training Partnership Act (JTPA),<sup>44</sup> successor to the Comprehensive Employment and Training Act (CETA).<sup>45</sup> Like

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40. Irving, *Closing and Sales of Businesses: A Settled Area?* LABOR LAW JOURNAL 218 (1982); *NLRB v. Burns International Detective Agency*, 346 F. 2d 897 (8th Cir. 1965); *NLRB v. Royal Plating and Polishing*, 34 F. 2d 191 (3d Cir. 1965); *Brockway Motors Div. of Mack Trucks v. NLRB*, 582 F. 2d 720 (3d Cir. 1978).

41. Union members now constitute less than 21% of the American workforce. *Unions on the Run*, U.S. NEWS & WORLD REP., Sept. 14, 1981, at 61.

42. *Payne v. Western & A.R.R.*, 81 Tenn. 507, 519-20 (1884) (overruled on other grounds), quoted in *Blades, Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1405 (1967).

43. Income maintenance programs include legislation extending the period a worker may receive unemployment insurance benefits. The largest and most significant among these is Trade Readjustment Assistance (TRA), which extends unemployment insurance benefits for workers laid off due to foreign imports. 19 U.S.C. §§ 2271-98 (1982).

Trade Readjustment Assistance (TRA) or Trade Adjustment Assistance, as it used to be called, supplements UI and can subsidize the retraining and relocation of workers partially or totally displaced when increased imports are deemed to have contributed importantly to decreased production and lay-offs.

44. Job Training Partnership Act, 29 U.S.C. § 1501 (1982).

45. Comprehensive Employment and Training Act Amendments, 29 U.S.C. §§ 801-

CETA, JTPA continues to focus its resources on youth, welfare recipients, and the economically disadvantaged. However, JTPA is the first to recognize the need to provide special assistance to displaced workers.<sup>46</sup> Title III of the Act authorizes an entirely new program to assist experienced workers who have permanently lost their jobs due to technological displacement, foreign competition, and other structural changes in the economy.

However, the funds allocated to the displaced workers under Title III comprise proportionately a very small amount of total JTPA funds allocated for job training programs.<sup>47</sup> In California, for example, of the \$300,549,600 allocated to the state for JTPA in the '84-85 fiscal year, only six percent has been set aside for Title III. In contrast, over half of the state's entire JTPA allocation for the year is allocated to programs for youth.<sup>48</sup> The focus of federal job training and employment programs remains clearly on new entrants to the labor force.

To supplement federal efforts, a number of states have enacted job training and re-training programs of their own. A number of states also have endeavored to enact some form of plant closure legislation. Few of these efforts have been successful, due in large part to strong, organized employer opposition. Maine and Wisconsin have enacted specific plant closure bills requiring companies to give workers sixty days advance notice of the shut downs.<sup>49</sup> To date, however, none of these efforts have had a significant impact on reducing unemployment among displaced workers.

Two states, California and Arizona, have experimented with "work-sharing," an effort undertaken on a much larger scale in Canada, whereby workers voluntarily reduce the number of hours worked per week in order to avoid lay-offs in the workforce.<sup>50</sup> This approach has met with mixed reaction from

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999 (Supp. 1981).

46. Job Training Partnership Act, 29 U.S.C. §§ 1651-58 (1982).

47. Press Release, U.S. Dept. of Labor Office of Information, Employment and Training Administration (USDL-IX-SF-84-15-1) Jan. 9, 1984.

48. *Id.*

49. A Lawrence and P. Chown, *supra* note 31, at 2. See also, *State Won't Prosecute Plant Closing Violations*, RACINE LABOR (Sept. 3, 1982).

50. F. Reid, *UI-Assisted Worksharing as an Alternative to Layoffs: The Canadian Experience*, 35 INDUSTRIAL AND LABOR RELATIONS REVIEW (1982). See also, *Employment*

labor and management, and has also had a very limited effect in the United States on overall displacement of workers.<sup>51</sup>

#### IV. EMPLOYMENT TRAINING PANEL

##### A. *Background*

California, home of the "Silicon Valley," has experienced an earlier and more rapid technological change in its economy than most other states. This transformation of California's economy was noted by former California Governor Edmund G. Brown, Jr. early in his administration and was a keystone of his administration's programs throughout much of his tenure as governor. His 1982 State of the State message reflects this recognition of the impact he felt the new technology would have:

Nearly forty percent of our new jobs in this decade will depend directly or indirectly on high technology related industries; moreover, throughout the nation tens of millions of jobs will be rendered obsolete and those holding them will have to be retrained for work that will often require technical literacy. Our prosperity — even our survival — depends on our will to invest in people.<sup>52</sup>

The Governor proposed a "New Initiatives in Apprenticeship" program which greatly expanded formal apprenticeship programs throughout the state into high technology and other growth sectors of the economy.<sup>53</sup> During his administration, the Governor established an Office of Appropriate Technology and created a Commission on Industrial Innovation. In his 1979 State of the State message, the Governor proposed an innovative job training program, called the California Worksite Education and Training Act (CWETA), which was authored by State Sena-

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*Practices, Selected 1979 California Legislation*, 11 PACIFIC LAW JOURNAL 503-511 (1980). The idea of shared work programs is to provide for the preservation and creation of employment opportunities through the redistribution of already existing work. See also, P. MARTIN, *supra* note 33, at 104.

51. F. Reid, *supra* note 50; P. MARTIN, *supra* note 33, at 104.

52. State of the State Address, Edmund G. Brown, Jr., Sacramento, Cal., Jan. 7, 1982.

53. Department of Industrial Relations Annual Report (1981). Formal apprenticeship programs were created and expanded for emergency medical technicians, computer programmers, computer-assisted designers and drafters and numerous other high technology and growth occupations. *Id.* at 2-3.

tor Bill Greene and enacted into law September 29, 1979.<sup>54</sup>

The California Worksite Education and Training Act embodied new concepts in job training that represented a unique blending of old-style apprenticeship with retraining for new, often highly technical jobs. It was a marked departure from traditional job training programs which taught basic, entry-level job skills, then left participants to their own devices to find permanent employment. CWETA located employers with specific skill shortages, often in service and high technology sectors of the economy, then established on-site training programs to meet employer needs. Trainees were employer-paid while in training on the job and usually supplemented their worksite training with coordinated off-site classroom instruction on their own time. The program thus accomplished three goals: It met employers' needs for skilled personnel in demand and growth occupations, it provided training and employment for the unemployed, and it gave an opportunity to upgrade skills to those whose current skills were in danger of becoming obsolete.

The CWETA concept was endorsed and expansion of the program encouraged in the Report of the California Commission on Industrial Innovation.<sup>55</sup> This Commission had been charged with making recommendations to implement a long-range strategy for industrial revitalization and technological growth and innovation.<sup>56</sup> The Commission's fifty recommendations focused on two broad areas: (1) public policy support and economic incentives for technological growth and development, and (2) education and occupational training designed to provide workers and those entering the workforce with the knowledge and technical skills necessary to compete in the technological market.<sup>57</sup> Commissioner Don Vial, then Director of the California Department

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54. THE CALIFORNIA WORKSITE EDUCATION AND TRAINING ACT REPORT TO THE LEGISLATURE, January 1982, at 1. CAL. UNEMP. INS. CODE § 9900, Chapter 2.7 (West, 1980).

55. *Winning Technologists: A New Industrial Strategy for California and the Nation*, Executive Summary of Report of the California Commission on Industrial Innovation 50 (Sept. 1982).

56. The California Commission on Industrial Innovation was established by Governor Jerry Brown to "prepare a report to serve as a blueprint for industrial innovation policy in California . . ." *Id.* at 12. The study prepared fifty recommendations in three general policy areas: (1) investment for innovation, (2) education and job training for innovation, and (3) workplace and management productivity for innovation. *Id.* at 22-23.

57. *Id.* at 57-59.

of Industrial Relations, asserted in the Report: "The key to effective vocational training in the 1980's is for industry to define its needs. The mutual reinforcement of public and private capital is best served through employment-based training, as in apprenticeships and CWETA-type programs."<sup>58</sup> Other "CWETA-type programs" endorsed by the Commission included Assembly Bill 3461 authored by Assemblyman Patrick Johnson, and Assembly Bill 3154, which were later enacted and known as The Employment Training Panel and the Employment Training Fund, respectively.<sup>59</sup>

### *B. Employment Training Panel Summary*

Like its predecessor, CWETA, the Employment Training Panel (ETP) encouraged employment-based worksite training. The legislation established a seven-member Employment Training Panel to allocated the Employment Training Fund, a \$55 million per year appropriation derived from employer unemployment insurance contributions.<sup>60</sup> The Panel is charged with allocating funds by contracting with private sector employers, groups of employers or training agencies to conduct training for unemployed individuals linked to specific jobs with career potential and long-term job security.<sup>61</sup>

The Employment Training Panel has the dual purpose of economic development and job training and employment.<sup>62</sup> The state's economic development efforts are enhanced by offering technical assistance and financial incentives to employers needing skilled labor to supplement their workforce, while concurrently providing unemployment insurance claimants, recent ex-haustees of the system, and potentially displaced workers who

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58. *Id.* at 48. Several of the Commission's specific recommendations address the need for "employment-based job training." Employment-based job training was described as that which has employers participating in the design of the training and selection of participants, and has a commitment from employers either to hire and train workers on their own worksite, or to hire workers immediately upon completion of prescribed training. *Id.*

59. Status Report on the Recommendations of the California Commission on Industrial Innovation (Internal Memo, October 12, 1982). CAL. UNEMP. INS. CODE §§ 10200-10218, §§ 1610-1612. (Deering Supp. 1984).

60. *Id.* at § 10201.

61. *Id.* at § 10205.

62. *Id.* at § 10200.

would otherwise become unemployment insurance recipients with the job skills necessary to secure permanent employment in jobs with career potential and long-term job security.

### C. Analysis

Four primary goals are enumerated in the intent section of the legislation: to minimize employer's unemployment insurance costs, to foster job creation by encouraging employers to locate and expand facilities in the state, meet employer needs for skilled workers, and put unemployment recipients back to work.<sup>63</sup>

#### 1. Employer Unemployment Insurance Costs

Despite the fact that the Employment Training Fund established a new payroll tax equal to 0.1 percent of employee wages,<sup>64</sup> the enactment of Assembly Bill 3154 had the overall immediate impact of reducing employer unemployment insurance costs by requiring the use of the lower of two tax schedules by which employers contribute to the unemployment insurance fund.<sup>65</sup> This represented a savings to California employers in 1983 of \$552 million.<sup>66</sup>

References to minimizing employer unemployment insurance costs in the Employment Training Panel legislation, however, refers not to the initial establishment of the Fund, authorized by separate legislation, but to an ongoing effort to reduce the number of unemployed in the state. This would reduce the drain on unemployment insurance funds and maintain the lower schedule for employer contributions to the fund.<sup>67</sup>

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63. *Id.*

64. *Id.* at § 976.6.

65. Analysis of Assembly Bill No. 3154 (McAllister) as amended in Assembly April 20, 1982 and as further amended by LCR No. 009400, 1981-82 Session, at 2.

66. Bill Analysis of AB 3154, Employment Development Department, Health and Welfare Agency, May 21, 1982, at 7.

67. There are two schedules for the experience-rated Unemployment Insurance (UI) tax: the "high" schedule ranged from 0.4 percent to 3.9 percent of taxable wages, and a "low" schedule ranged from zero to 3.3 percent. When the year-end Unemployment Fund balance was greater than 2.5 percent of the total wages earned by California workers, the low schedule was in effect and when the fund balance was lower than 2.5 percent of wages, the high schedule took effect. Enactment of AB 3154 triggers the high schedule

Unemployment insurance costs are minimized when layoffs can be averted through retraining programs authorized by the Employment Training Panel and when employees who have been laid off can be retrained immediately for new employment. This reduces the time that the individual is drawing unemployment insurance benefits in an undirected, random search for employment. Additionally, language in the Employment Training Panel legislation actually provides a mechanism for a participating employer to reduce his unemployment insurance tax liability by crediting his account in the amount he has expended to train new employees who are drawn from the ranks of unemployment insurance claimants and recent exhaustees of the system.

After one year of operation, the Employment Training Panel has approved training for 9,052 unemployed and potentially unemployed persons.<sup>68</sup> This is a significant number of persons, considering the legislation was in its first year of operation and lacked field staff to implement the program until mid-way through the year. However, it is clearly too early to judge the impact that these numbers have on reducing California employers' unemployment insurance costs.

Much more significant, and perhaps the most unique aspect of the legislation, is its source of funding. Traditionally, all state or federal funds for employment and training programs have come from the "general fund," that is, the non-specific collection of general taxes. By contrast, California's Employment Training Panel's \$55 million a year allocation comes from the Employment Training Fund, which is derived exclusively from employer contributions to the State's unemployment insurance fund, at the rate of 0.1 percent.<sup>69</sup> The funding is, therefore, "dedicated funding," set aside each year exclusively for allocation by the Employment Training Panel. Not only is this a marked departure from the way in which employment and training funds are traditionally generated, it is the only time in the nearly fifty-

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when the fund balance is less than 1.7 percent of wages, and triggers the low schedule when the fund balance equals or exceeds 1.9 percent. *Id.* at 3.

68. Summary: Previously Approved Projects, at 6 (ETP 108), Employment Training Panel Meeting packet prepared for Panel meeting November 15, 1983, Sacramento, California. "Potential unemployed" persons are those who are expected to be laid off in the immediate future were it not for retraining provided by ETP.

69. CAL. UNEMP. INS. CODE § 976.6 (Deering Supp. 1984).



year history of the Federal Unemployment Tax Act that these employer-generated funds have been used for anything but pure income-maintenance payments for displaced workers.

It is worth questioning, at this juncture, if the mere weekly dispensing of funds to unemployed individuals for specified periods of time based on previous earnings is the most advantageous or cost-effective use of these funds. Is there, as California's new legislation suggests, a more cost-effective way to utilize at least a small fraction of the funds generated yearly? To be sure, workers who lose their employment need some financial assistance to compensate for their lost wages. The institution of the Unemployment Insurance System remains one of the most significant contributions of the New Deal era. However, in today's highly competitive and technologically altered marketplace, the payment of limited funds for limited periods of time does little to ameliorate the real problem. As one group of unemployed workers exhaust their benefits, another group comes on. Nothing in the traditional methods of expending unemployment insurance tax funds does anything to encourage, facilitate or assist the unemployed to locate, prepare for, or secure new employment.

Against the backdrop of drastically reduced state and federal funding for employment and training programs and continuing levels of high unemployment, it is appropriate to look for new sources of funds to conduct programs which can get displaced workers back to work. California's Employment Training Panel is at least one example of such "creative financing." ETP utilizes, for the first time, a very small proportion of generated unemployment insurance funds to take affirmative steps to put displaced workers back to work, meet employers' needs for skilled workers, and reduce employers' unemployment insurance costs.

## 2. Economic Development

Economic development goals are evidenced in the legislation by its stated intent of "encouraging employers to locate and expand facilities in this state" by the creation of "an employment training program which shall foster job creation, minimize employer's unemployment insurance costs, and meet employer's

needs for skilled workers."<sup>70</sup> The bill requires that the Department of Economic and Business Development provide necessary technical assistance in the marketing of the Employment Training Fund to new or expanding businesses in the state,<sup>71</sup> and that the Department identify those business establishing enterprises in areas targeted for economic development.<sup>72</sup> The bill gives priority to job training programs for those employers, and those training workers for jobs in industries with critical skills shortages;<sup>73</sup> and required that the processing of contracts for such businesses be expedited.<sup>74</sup> The incorporation of economic development goals with employment and training goals sets this legislation apart from other job training legislation and, by so doing, offers greater potential that the jobs trained for are those in demand with the potential for long-term permanent employment. The Employment Training Panel has begun to implement this goal by entering into a contract with California's Economic and Business Development Department to acquaint employers considering locating or expanding business in California with the Employment Training Panel's services.<sup>75</sup>

Meeting employers' needs for skilled labor is another important facet of economic development, but employers must first have a legitimate need to hire regular permanent, full-time employees. Therefore, in order to assure direct placement of all participants as well as insuring employer satisfaction with successful graduates, the bill strongly encourages employer involvement in the design of all programs and the direct selection of program participants at the onset of training. According to business spokespersons, availability of labor is a major factor in a company's decision where to locate.<sup>76</sup> The Employment Training Panel's ability to reimburse employers for the costs of training a skilled workforce should provide a powerful incentive to businesses to expand or locate in California, although it is too early to fully measure the impact.

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70. *Id.* at § 10200.

71. *Id.* at § 10213.5.

72. *Id.* at § 10205(b).

73. *Id.*

74. *Id.* at § 10205(g).

75. Minutes of the Employment Training Panel of California, in San Mateo, Cal. (August 29, 1983).

76. Testimony of Steve Duscha, Executive Director, Employment Training Panel, before the Assembly Select Committee on Job Development (Nov. 7, 1983).

### 3. Putting the Unemployed Back to Work

The Employment Training Panel articulates two clear policy goals which represent a shift away from traditional job training legislation. The first is the movement away from limiting participant eligibility to the so-called "structurally unemployed" such as the economically disadvantaged, youth, and others with little or no employment history. The goal is a more inclusive policy which can address the needs of previously excluded groups including workers with relatively extensive work histories who lose their jobs due to the decline or export of their jobs, or to rapid technological change which radically alters the nature or even the existence of their work.

The Employment Training Panel sets no income limits on those eligible to participate. Eligibility is based exclusively on the individuals' unemployment insurance status. Eligible participants are defined in the bill as those who are unemployed and currently receiving unemployment insurance benefits, those who have exhausted their unemployment insurance benefits and remain unemployed, and persons who are employed, but are "determined by the panel to be likely to be displaced and therefore claiming unemployment insurance benefits."<sup>77</sup>

Because of the source of ETP's funds (i.e., employer unemployment insurance tax contributions), it is this last category of eligible participant which is the most sensitive and potentially controversial. On one hand, it causes the least disruption, loss of productivity, and loss of income to both employer and employee to provide for retraining of employees who would otherwise be laid off. However, ETP has chosen not to establish specific, written criteria to clarify how ETP will determine who is "likely to be displaced." The narrowest construction of those "likely to be displaced" would be those persons who have actually received formal notices of impending layoff. Such definitive notices are seldom given more than few weeks in advance, or, as in the recent plant closure of the Atari Company in California, on the same day that they were effective. By the time any retraining program could get underway, under this interpretation, those who had received notices would already be out of work and eligi-

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77. CAL. UNEMP. INS. CODE § 10201(b) (Deering Supp. 1984).

ble as regular unemployment insurance claimants. It seems, therefore, that this criteria must be interpreted somewhat more broadly, which is what ETP has done. Nonetheless, projections of unemployment must be real enough so that funds are properly allocated to those who would truly become unemployment insurance recipients.

Despite the relatively open criteria for participant eligibility, other provisions in the legislation have a strong bearing on who can participate. For instance, funds may be allocated by ETP only for "actual training costs,"<sup>78</sup> which ETP has interpreted as excluding any kind of supportive services to participants. This includes transportation allowances, child care, and most importantly, any kind of training allowance or stipend while in training. This policy decision has several ramifications.

Although the bill provides for the participation of recent exhaustees of unemployment insurance, unless that person is participating in an on-the-job-training program authorized under the bill and receiving a wage from that employer, the participant must be totally self-supporting during the entire course of his training. This economic reality must serve as a kind of "natural selection" process which will discourage the participation of these seemingly eligible clients unless such clients can participate in employer-paid on-the-job training. Moreover, contractors responsible for the successful completion of all participants in their training programs must also take into account in their selection process the trainees' ability to sustain themselves throughout the course of training, if that training is not employer-paid. Although the bill permits either classroom or on-the-job training for up to eighteen months, the same economic factors effectively serve to limit greatly the amount of classroom (non-remunerated) training advisable. By the same token, apprenticeship, and other on-the-job training is encouraged, as well as specifically given priority in the bill. It is interesting to note that use of unemployment insurance eligibility as the criterion for participation in ETP programs serves to limit, if not entirely exclude, the participation of youth who have yet to build an employment record. This phenomenon serves to reaffirm the bill's limited, rather than omnibus intent, to focus on

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78. *Id.* at § 10206(a).

those displaced workers largely excluded from federal job training programs.

In practice then, the population best served by the Employment Training Panel are those currently receiving unemployment insurance benefits, particularly those just beginning their eligibility period, since ETP trainees remain eligible to receive their unemployment insurance benefits while attending ETP-approved training. For those workers not engaged in employer-paid on-the-job training unemployment insurance benefits may represent their only source of support throughout the course of their training. Consequently, ETP's emphasis on the development of employer-based, employer-paid worksite training becomes of paramount importance.

## V. CONCLUSION

America's employment and training policy needs to be significantly revamped. The unemployed are not only "structurally unemployed" persons lacking education and job skills for whom the training and employment programs of the '60's and '70's were designed. Today's unemployed are often skilled and semi-skilled workers with extensive work histories. Although the composition and needs of those unemployed has changed, our employment and training policies have not.

California's Employment and Training Panel legislation begins to address the needs of the "new unemployed" of the '80's. It recognizes that training programs cannot exist in a vacuum; that there must be specific jobs waiting at the end of the training, jobs clearly in demand in the labor market with career potential and long term job stability. It recognizes the vital role a skilled labor force can play in economic development programs, and the mutual advantage and leverage that can be achieved by linking job training and economic development.

This kind of training program offers workers, unions, employers, and society as a whole great positive potential. For workers whose job skills have not kept pace with technological change, the Employment Training Panel offers opportunities to learn new skills in demand. Mandated employer involvement in the program means that the worker is learning skills which lead

directly to employment in jobs with a future. For unions the effect is less clear. Often, the training is for skills and jobs in new industries which, for the most part, are unorganized. However, the bill also provides for the establishment of jointly administered training programs wherever a collectively bargaining agreement exists.<sup>79</sup> For employers the benefits are many. Employers can design programs to meet their individual needs, participate in the selection of participants, and, by conducting training at the worksite, get employees who are familiar with that employer's equipment and methods of operation. Actual training costs, including supervision and administrative costs, are paid for out of the fund, or the costs can be credited to the employer's unemployment insurance account.

Since ETP effects a match between growing industries needing a source of skilled personnel and those workers needing employment, unemployment taxes become more than mere income maintenance mechanisms to be drained dry while individuals search aimlessly for new jobs to fit their old skills. The Employment Training Panel puts these funds to work in directed skills training for the jobs that do exist. Unemployment insurance taxes should be reduced to the extent that retraining reduces the incidence and duration of unemployment as retrained workers re-enter the labor force as taxpayers with good jobs, and the skills they need to effectively meet the labor market demands of the new technological age.

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79. *Id.* at § 10205(c).

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