OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, DC 20540-1999

JARVIS GRAY **Appellant,**	)	
v.	)	**Case No. 96-HS-41 (WN)**
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, U.S. House of Representatives **Appellee.**	)	

Before the Board of Directors: Glen D. Nager, Chair; James N. Adler; Jerry M. Hunter; Lawrence Z. Lorber; Virginia A. Seitz, Members

DECISION OF THE BOARD OF DIRECTORS

Appellant, Jarvis Gray, a former employee of the House of Representatives Postal Operations (the "HPO"), lost his employment when HPO internal mail functions were taken over by a private contractor, Pitney Bowes Management Services ("PBMS"). Appellant claims that the Office of the Chief Administrative Officer (the "CAO") of the House failed to provide him with adequate advance notice of his prospective termination, as required under the Worker Adjustment and Retraining Notification Act (the "WARN Act"), as applied by section 205 of the Congressional Accountability Act of 1995 (the "CAA"), 2 U.S.C. § 1315, and the Board's implementing regulations. In particular, appellant argues on appeal that the distribution of a December 13, 1995 memorandum advising of the prospective take-over at a meeting of employees on December 13, 1995 did not constitute a reasonable method of delivery, within the meaning of the Board's implementing regulations, and that the memorandum itself did not satisfy the requirements of the WARN Act, as applied by the CAA and the Board's regulations. For the reasons set forth below, the Board affirms the Hearing Officer's decision granting summary judgment against appellant.

In this case, the Hearing Officer concluded that, although the notice provided by the CAO omitted the expected date of the office closing and the expected date of the employees' separation from employment, as required by section 639.7(d)(2) of the Board's implementing regulations, the December 13, 1995 memorandum "substantially complied with the notice requirements of the WARN Act as incorporated in CAA § 205; any omissions of information normally required in such a notice were, under the circumstances here, minor, inadvertent errors which do not give rise

to a violation." Conclusion of Law No. 4 at 2. In *Gerard J. Schmelzer v. Office of the Chief Administrative Officer* (Case No. 96-HS-14 (WN), consolidated on appeal with Case Nos. 96-HS-05, 06, 09, 16, 18, 20, 26 (WN)) (hereinafter *"Schmelzer"),* the Board affirmed the Hearing Officer's legal conclusion, reasoning that the December 13, 1995 memorandum substantially complied with the statute and regulations because "all appellants either knew the dates on which their employment with the House would terminate and PBMS would take over the functions of the HPO or attended a meeting that took place at least 60 days before the closing of the HPO, at which these dates were discussed. Thus, the notification purpose of the statute was satisfied despite the technical deficiencies in the December 13, 1995 memorandum." *Schmelzer* at 14.

That holding in *Schmelzer* also governs the resolution of this case. It is undisputed that, in addition to the December 13, 1995 employee meeting, appellant attended a December 14, 1995 PBMS orientation session and that, at that time, he learned the date on which PBMS expected to take over HPO operations. Finding of Fact No. 12 at 4; Decision at 55. Accordingly, under *Schmelzer,* appellant received sufficient notice for purposes of section 205 and its implementing regulations.

The only facts that appellant points to that are different from those found in *Schmelzer* do not change that result. Appellant claims that he did not receive timely notice of his actual termination date because, as explained at the December 14, 1995 orientation session, PBMS's contract had a contingency clause which allowed it to cancel within two weeks of the take-over date. For that reason, appellant contends, he reasonably believed that the February 14, 1996 take-over date was only tentative. Appellant further argues that, although he read the December 13, 1995 memorandum posted on an employee bulletin board shortly after it was distributed, the CAO should be held liable because appellant did not receive a copy of the memorandum at the December 13, 1995 employee meeting. The Board finds these contentions to be without merit.

Section 639.7(b) of the Board's regulations defines "date" as the specific date or 14-day period at which "separations are expected to occur." Section 639.7(a)(4) also states that "[t]he information provided in the notice shall be based on the best information available to the employing office at the time the notice is served." Even taking the facts and the reasonable inferences to be derived from these facts in the light most favorable to appellant, it is nonetheless clear that appellant knew the "expected" date of the take-over, as legally required by the Board's regulations. As the Hearing Officer stated: "While complainant says that at this meeting there was mention that, under the contract, PBMS had a two-week period in which they could 'change their mind about taking over,' his declaration refers to February 14, 1996 as the 'expected' takeover date, which conforms precisely to the regulation's requirement that employees be informed of the 'expected' date of the office closing." Decision at 55.

Similarly, it does not matter whether the December 13, 1995 memorandum was distributed at the December 13, 1995 employee meeting by CAO staff or by HPO employees, as appellant contends. As the Board stated in *Schmelzer* at 14-15:

Section 639.8 of the Board's regulations allows the use of "[a]ny reasonable

> method of delivery" and terms signed receipts "optional." Under the circumstances here, we agree with the Hearing Officer's conclusion that distributing a memorandum at the meetings of the employees was a reasonable method of effecting delivery to these employees.

That appellant did not receive a copy of the memorandum at that meeting does not alter this conclusion. As the Hearing Officer concluded, appellant "was aware of all the information in the December 13, 1995 memorandum on or shortly after the date of its distribution, and thus his failure to receive a copy of that which was distributed generally in a reasonable manner is immaterial." Decision at 45. *See also Saxion v. Titan-C-Manufacturing, Inc.,* 86 F.3d 553, 555 (6th Cir. 1996); *cf. Wholesale and Retail Food Distribution Local 63 v. Sante Fe Terminal Services, Inc.,* 826 F. Supp. 326, 333 (C.D. Cal. 1993) (properly addressed letter placed in the care of the postal service is presumed to have arrived and employer is not liable under WARN when union leader fails to receive letter properly mailed).

The Board therefore affirms the decision of the Hearing Officer.

It is so ordered.

Issued, Washington, D.C., December 1, 1997.