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

GERARD J. SCHMELZER,	)	
Appellant,	)	
	)	
v.	)	**Case No. 96-HS-14 (WN)**
	)	
OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, U.S. House of Representatives	)	
Appellee.	)	
AND		
AVIS QUICK,	)	**Case No. 96-HS-04 (WN)**
DEBORAH MACK,	)	**Case No. 96-HS-05 (WN)**
NATHALINE SMITH,	)	**Case No. 96-HS-06 (WN)**
CLARA ZELL WARD,	)	**Case No. 96-HS-09 (WN)**
DOROTHY COWARD,	)	**Case No. 96-HS-16 (WN)**
BETTY G. JUMPER,	)	**Case No. 96-HS-18 (WN)**
BRIDGETTE M. GILLESPIE,	)	**Case No. 96-HS-20 (WN)**
LEE DORA JOHNSON,	)	**Case No. 96-HS-26 (WN)**
Appellants,	)	**(Consolidated)**
v.	)	
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

These cases, consolidated on appeal, arise out of the privatization of the internal postal operations of the House of Representatives. Appellants are nine former employees of the House of Representatives, who served in House Postal Operations (the "HPO") under the Chief Administrative Officer (the "CAO") of the House. Appellants lost their jobs as a result of the

privatization of the House's internal mail functions. They subsequently filed claims with the Office of Compliance alleging that the notice of the privatization that they received did not satisfy the requirements of 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.

Pursuant to section 405 of the CAA, 2 U.S.C. § 1405, a Hearing Officer was appointed who heard all nine cases. Eight of the cases, in which the parties were represented by the same counsel, were consolidated for one hearing; the case of appellant Schmelzer, which raised the same issues, was heard in a separate hearing by the same Hearing Officer. In separate decisions issued the same day, the Hearing Officer determined, among other things, that the CAO had given legally sufficient notice to all appellants and, finding no violation of the Act, ordered entry of judgment in favor of the CAO in each case. Decision of the Hearing Officer in *Gerald J. Schmelzer v. Office of the Chief Administrative Officer, U.S. House of Representatives* (the "*Schmelzer* Decision") at 58-60. Decision of the Hearing Officer in *Avis Quick et al. v. Office of the Chief Administrative Officer, U.S. House of Representatives* (the "*Quick* Decision") at 59-61. (All citations hereinafter to the Hearing Officer's Decision or Findings of Fact shall be to *Schmelzer*, unless otherwise stated.)

The Hearing Officer found that a memorandum that the Office of the CAO distributed to HPO employees on December 13, 1995 (the "December 13, 1995 memorandum")[1] constituted written notice which substantially complied with the CAA's notice requirements, even though it was technically deficient, principally because it did not state the specific date on which appellants' employment would terminate, as required by the Board's regulations. The Hearing Officer concluded, however, that in the particular circumstances of this case, the technical defects of the memorandum were not fatal because the memorandum provided a general indication of the termination date and because that date had been communicated in meetings attended by all appellants, was widely publicized, was generally well-known, and was readily ascertainable by HPO employees. Decision at 58. These appeals followed.

I.

The Hearing Officer determined that the December 13, 1995 memorandum "needs to be read in context" in order to decide whether the omission of the specific closing date of the HPO compelled a finding of violation, Decision at 53, and, to that end, he considered the long and public process leading up to the privatization, including a series of updating memoranda and employee meetings which predated the terminations occasioned by the privatization of the HPO by sixty days or more. He found the following facts to be relevant.

The CAO's first plan to privatize HPO functions was submitted to the Committee on House Oversight of the House of Representatives (the "Committee") on February 28, 1995, and,

[1] The December 13, 1995 memorandum is reproduced as Appendix A to this opinion.

at the Committee's request, the CAO twice submitted revised plans over the next several months. *See* Decision at 5. The Hearing Officer found that, during this period, the possible privatization of HPO operations was "a subject of discussion and interest" among HPO employees. *Id.*

On June 14, 1995, the Committee directed the CAO to issue a request for proposals ("RFP") to contract out House mail functions, and, on that same day, CAO managers distributed a memorandum to HPO staff informing them of the Committee's action and assuring them that any selected vendor would be required to interview all interested current employees for future employment with the vendor. House Comm. on House Oversight, 104th Cong., 1st Sess., Resolution, "Postal Operations." The Hearing Officer found that, at this point, the "level of interest" of HPO employees in the possibility of privatization "increased." Decision at 5. An RFP was published in Commerce Business Daily during August, and, on September 8, 1995, the Office of the CAO distributed another memorandum to HPO employees. *See id*. at 6.

The memorandum of September 8, 1995 stated that it was written in response to employee inquiries: "many of you have requested an update on the status of the [RFP] to outsource Postal Operations."[2] *Id.* The memorandum reiterated that the winning bidder would "interview all interested Postal Operations employees for possible employment." *Id.* The memorandum also gave employees a schedule for the transition to the private contractor, stating that final bids were due in by September 15, 1995 and that review and recommendation on award of the contract was due to the Committee at the beginning of November. *See id*. The September 8 memorandum concluded by telling employees when the privatization was due to take place: "[t]he new facilities management company is scheduled to begin operations in mid-December." *Id.* The memorandum also offered to answer any "additional questions" that employees might have. *Id.*

On December 13, 1995, the Committee adopted a resolution directing that "all functions of House Postal Operations shall be terminated as of the close of business on Tuesday, February 13, 1996" and authorizing the CAO to contract with Pitney Bowes Management Services, Inc. ("PBMS" or "Pitney Bowes") to provide those internal mail services for the House. House Comm. on House Oversight, 104th Cong., 1st Sess., Resolution, "House Postal Contract."[3] The Committee resolution also instructed the CAO "to immediately provide sixty days notice to existing House employees affected [by the privatization]." *Id.* One of the appellants attended the Committee meeting, and the resolution of the Committee was posted for several days on the bulletin board at the main HPO facility. *See* Findings of Fact at 3;*Quick* Findings of Fact at 4.

On that same day, soon after the Committee meeting, in response to the Committee's action, CAO management asked all HPO employees who were present at work to attend either of

---

[2] The September 8, 1995 memorandum is reproduced as Appendix B to this opinion.

[3] The December 13, 1995 Committee Resolution is reproduced as Appendix C to this opinion.

two meetings. It was at these meetings that CAO officials distributed the December 13, 1995 memorandum, which announced to employees the award of the contract to Pitney Bowes and explained that the contractor would distribute applications for employment the next day and would make its hiring decisions in January, 1996. *See* Decision at 7. The memorandum also promised that support, resources, and employee assistance programs would be provided "[t]o make the transition from employment with the U.S. House of Representatives as smooth as possible . . . ." *Id.* at 48. CAO managers also explained at the December 13 meeting that February 14, 1996, Valentine's Day, was the target date for Pitney Bowes to begin operations. *See id*. at 57.

Appellant Schmelzer acknowledged having received a copy of the December 13, 1995 memorandum at one of the meetings, as did one of the other appellants. *See id*. at 46; *Quick* Decision at 48. All of the other appellants likewise attended one of the meetings. *See Quick Decision* at 47-48.

On the next day, December 14, 1995, further meetings were convened, at which Pitney Bowes met with the employees and distributed job applications. Several representatives of the CAO and of Pitney Bowes spoke, and it was stated at several points that Pitney Bowes would begin serving as the House's mail delivery contractor on Valentine's Day, February 14, 1996. *See* Findings of Fact at 4; *Quick* Findings of Fact at 5. All appellants attended one of these meetings, and all submitted job applications to Pitney Bowes. *See* Findings of Fact at 4; *Quick* Findings of Fact at 5.

On January 22, 1996, individual letters were hand-delivered to all HPO employees present at work. Each letter stated that Pitney Bowes would assume mail delivery functions on February 14, 1996, and that the recipient's employment with the House would terminate at close-of-business on February 13, 1996. All but two of the appellants were at work on January 22 and received the letter on that day. The two other appellants received their letters on January 23 and January 29, when each returned to work. *See* Findings of Fact at 5; *Quick* Findings of Fact at 6-7. The legal sufficiency of the notice provided by these letters is undisputed.

Both before and after the Committee's December 13, 1995 decision to terminate all functions of the HPO, the CAO offered an array of support services to HPO employees. *See* Decision at 8-9; *Quick* Decision at 9-10. These included establishing an outplacement service office, which assisted employees with resume writing and preparing job applications, as well as offering coaching on how to interview. *See* Transcript in *Quick* at 179-184. A job bank listing sources both inside the Congress and outside, as well as a bank of computers and telephones for employee use, were also provided. *See id*. Staff of the outplacement service also furnished information on "Ramspeck" rights, health insurance, and other employee benefits, as well as other transition advice. *See id*.; Transcript in *Schmelzer* at 114. In addition to the services provided in-house, the CAO had arranged for the District of Columbia Employment Services to present two workshops for postal employees on October 20, 1995, entitled, "Job Hunting in Today's Tight Job Market," which, among other things, explained the training opportunities under the Economic

Dislocation and Worker Assistance Act. *See* Transcript in *Quick* at 182-83. Appellant Schmelzer, among others, made use of the outplacement and other services provided by the CAO for HPO employees. *See* Findings of Fact at 5.

Appellants' employment with the House of Representatives ended when HPO functions ceased at close of business on February 13, 1996. Overall, of the 113 employees affected by the privatization, three remained employed by the House of Representatives under the CAO, and Pitney Bowes extended offers of employment to 90 of the HPO employees, of whom about two-thirds accepted and began working for Pitney Bowes directly from their House employment, when Pitney Bowes took over the internal House postal operations on February 14, 1996. *See* Decision at 9. All appellants interviewed for employment with Pitney Bowes; two were not given offers of employment; the rest declined the offers tendered. *See id*. at 8-9; *Quick* Decision at 8-9.

II. a.

Appellants petitioned the Board to review and reverse the Hearing Officer's decisions. They argue that the Hearing Officer misconstrued the applicable law in concluding that the December 13, 1995 memorandum substantially complied with the notice requirements of the WARN Act, as applied by the CAA. Appellants in *Quick* also argue on appeal that the Hearing Officer erred in concluding that the distribution of the December 13, 1995 memorandum constituted a reasonable method of delivery. Appellant Schmelzer does not join in this contention, having acknowledged his receipt of the December 13, 1995 memorandum. *See* Findings of Fact at 4; *see also* Appellant's Brief at 7.

Appellee CAO seeks affirmance on a number of grounds. Appellee argues that the Hearing Officer's conclusion that the notice provided by the CAO substantially complied with section 205 of the CAA and the pertinent regulations is based on the correct application of law and is supported by substantial evidence in the record. Alternatively, appellee argues that, as a matter of law, section 205 of the CAA did not apply to the closing of the HPO because the decision to close the HPO was made and notice to employees of the closing was delivered before the effective date of section 205 of the CAA. Appellee also contends that fewer than fifty employees actually suffered an employment loss when the number of employees who were offered employment with Pitney Bowes is calculated under the sale of business/privatization exclusion of section 2(b)(1) of the WARN Act, 29 U.S.C. § 2101(b)(1), as applied by section 225(f)(1) of the CAA, 2 U.S.C. § 1361(f)(1), and section 639.4(c) of the Board's regulations. In addition, appellee argues that, even if the CAO were to be found liable for a technical violation of the notice requirements, the Hearing Officer's findings of fact support granting the CAO a good faith reduction or elimination of damages, as provided by section 5(a)(4) of the WARN Act, 29 U.S.C. § 2104(a)(4), as applied by section 205(b) of the CAA, 2 U.S.C. § 1315(b).

Because the Board agrees with the Hearing Officer's conclusion that, in the totality of the circumstances here, the notice provided by the December 13, 1995 memorandum substantially complied with the notice requirements of the Act and the applicable regulations, we do not reach

the alternative grounds for affirmance urged by the CAO. We therefore turn to the notice requirements of the Act and the Board's WARN Act regulations.[4]

II. b.

Section 205(a) of the CAA provides "Worker Adjustment and Retraining Notification Rights" to covered employees, as follows:

> No employing office shall be closed or a mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2102) until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees.

While the statute does not explicitly state what the notice must contain, the regulations have mandated that certain information be provided in order to effectuate the purpose of the WARN Act to provide workers with adequate advance notification of an employment loss. As explained in the Department of Labor's regulations and in section 639.1(a) of the Board's Interim Regulations, WARN Act notice "provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market." Notice of Adoption of Regulation and Submission for Approval and Issuance of Interim Regulations, 142 CONG. REC. S271-72 (daily ed. Jan. 22, 1996) (All citations are to the "Interim Regulations," which were in effect at the time of the privatization of the HPO). See also the Department of Labor's response to comments on its regulatory notice requirements: "While the Act does not enumerate specific elements which should be included in the advance written notice, . . . [t]he content of notice to each party [required by the regulations] is designed to provide information necessary for each of them to take responsible action." 54 Fed. Reg. 16042, 16059 (April 20, 1989) (Response to Comments, section 639.7(d) WARN Notice).

To effectuate the notification purposes of the WARN Act, section 639.7(d) of the Board's Interim Regulations, like the Department of Labor's WARN Act regulations, requires that notice to individual employees contain the following four elements:

---

[4] The CAO has raised the question whether the Board's WARN Act regulations can fairly be applied to the December 13, 1995 notice since these regulations did not go into effect until January 23, 1996. In light of our disposition of the case, the Board need not decide this issue which, in the unique circumstances of this case, is without precedential value. We note, however, that the Board's regulations are, as required by section 205(c)(2) of the CAA, substantively the same as the Department of Labor WARN Act regulations. *See also* section 411 of the CAA (stating that the Department of Labor's WARN Act regulations apply "to the extent necessary and appropriate" where the Board has not issued a regulation required by the CAA to implement a statutory provision).

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(2) The expected date when the office closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of an employing office official to contact for further information.

142 CONG. REC. S270, S274 (daily ed. Jan. 22, 1996).

Courts construing these notice requirements have, in light of the notice purposes of the WARN Act, distinguished between the situation in which an employer has failed to provide any written notice, and the situation in which written notice was provided, but the contents of the notice failed to meet the technical requirements of the regulations. *See, e.g., Carpenters Dist. Council v. Dillard Dep't Stores*, 15 F.3d 1275, 1287 n.19 (5th Cir. 1994), *cert. denied*, 115 S.Ct. 933 (1995); *accord Saxion v. Titan-C-Mfg. Inc.,* 86 F.3d 553, 561 (6th Cir. 1996); *Marques v. Telles Ranch*, 867 F. Supp. 1438, 1445-46 (N.D. Cal. 1994); *United Automobile Aerospace & Agricultural Implement of America Local 1077 v. Shadyside Stamping Corp.*, 1991 WL 340191 (S.D. Ohio) (dictum), *aff'd without published opinion*, 947 F.2d 946 (6th Cir.1991). The Hearing Officer appropriately was guided by these cases, which we also find to be persuasive.[5]

In *Dillard*, the court, considering the adequacy of notices that gave inaccurate termination dates, noted that "neither the regulations nor the Act itself addresses how courts are to treat notices that are determined to be defective or inadequate. As such, neither the Act nor the regulations suggest that defective notice is automatically to be treated as though no notice had been provided at all." 15 F.3d at 1287 n.19 (citation omitted). Similarly, the *Saxion* court, quoting *Dillard* with approval in a case in which the notice failed to give a termination date, among its other technical deficiencies, concluded: "We are not persuaded that the technical deficiencies in the March 13 letter required the district court to proceed as if there had been no notice at all." 86 F.3d at 561. Likewise, in *Marques*, the court again quoted *Dillard* with approval, and construed the Department of Labor regulations as providing that "technical deficiencies or omissions in notice do not invalidate notice or result in WARN liability." 867 F. Supp. at 1445. In that case, the court found adequate a WARN notice provided to seasonal workers during their seasonal lay-off, despite its lack of date, because the court concluded that, in context, the notice could only be read as referring to a permanent layoff beginning in the upcoming harvest season. *Id*. at 1446. Finally, in *Shadyside Stamping Corp.*, the court, analyzing whether notices that, among other things, failed to provide precise termination dates, were

[5] Section 405(h) of the CAA provides that "[a] hearing officer who conducts a hearing . . . shall be guided by judicial decisions under the laws made applicable by section 102 [of the CAA] . . . . " 2 U.S.C. § 1405(h).

nonetheless adequate, found relevant whether "all the information required to be provided by the employer was produced or at least well known." 1991 WL 34091 at star page 7 (emphasis added). Thus, all four cases stand for the proposition that omitting termination dates or providing inaccurate termination dates does not necessarily render written WARN notices fatally deficient.

The Department of Labor's interpretative comments to the enforcement provisions of its WARN Act regulations also distinguish between the failure to give notice and the provision of technically defective notice. The Department of Labor's commentary on its WARN Act regulations provides guidance that "technical violations of the notice requirements not intended to evade the purposes of WARN ought to be treated differently than either the failure to give notice or the giving of notice intended to evade the purposes of the Act." 54 Fed. Reg. 16042, 16043 (April 20, 1989) (Response to Comments, section 639.1(d) WARN Enforcement). Some "technical violations" are best characterized as "minor, inadvertent errors," which the Department of Labor states "are not intended to be violations of the regulations." *Id.* "Other kinds of violations, i.e., the failure to provide information required in these regulations, *may* constitute a violation of WARN." *Id.* (emphasis added). Thus, the Department of Labor indicates that such errors "may," but do not necessarily, violate the Act. We agree.

When faced with technically deficient WARN notices, courts have, consistent with the Department of Labor's view, asked whether, in the circumstances of the case, the employees nonetheless received notice that satisfies the purposes of the Act. *See, e.g. Dillard,* 15 F.3d. at 1286; *Marques*, 867 F. Supp. at 1445. In making that determination, courts have consistently looked at all the communications provided by employers to determine whether, when viewed in context, one or more written communications qualified as notice under the WARN Act and applicable regulations. *See Kalwaytis v. Preferred Meal Systems, Inc.*, 78 F.3d 117, 121-22 (3d. Cir.), *cert. denied,* 117 S. Ct. 73 (1996); *Dillard,* 15 F.3d. at 1286-87; *Saxion*, 86 F.3d at 561; *Marques*, 867 F. Supp. at 1445-46. *Cf. also Oil, Chemical and Atomic Workers Int'l Union v. American Home Products Corp.,* 790 F. Supp. 1441 (N.D. Ind. 1992) (employer who failed timely to update written notice provided one year in advance of closing which contained inaccurate termination date and who provided only seven days written notice of actual termination date was entitled to summary judgment based upon statutory good faith defense because the requirements of the regulations were unclear); *Shadyside Stamping Corp.*, 1991 WL 340191 at star pages 8-10 (employer who provided five months written notice and a written reminder notice, but failed to meet the technical requirements of the regulations, was entitled to summary judgment based upon statutory good faith defense).

In *Kalwaytis*, the employer wrote a letter to employees laid off by the outsourcing of its school meal preparation services informing them that it was ceasing food service operations at its plant and contracting out that function. The initial letter stated that the new employer has "an immediate offer of employment to make to you." *Id.* at 119. A later letter made clear that an offer of employment was in the contractor's discretion. *Id.* The court concluded that adequate notice had been provided: "Giving a reasonably pragmatic interpretation of the two letters, we conclude that, read together, they do meet the statutory requirements of notice." *Id*. at 122.

Similarly, the *Dillard* court, construing a series of three written notices, the last two of which gave estimated termination dates that did not provide the full sixty days required by the WARN Act, found that employees who actually worked for at least sixty days after receipt of the notices were not entitled to back pay damages because they had, in fact, received the notice that they were entitled to under the Act. 15 F.3d. at 1286-87. The court concluded that any other interpretation was "inconsistent with both the language and the purpose of the Act" which requires only that an employer provide sixty days notice of termination. *Id.* at 1286.

Likewise, in *Saxion*, 86 F.3d at 561, the court found that appellant should not have been found in violation of the WARN Act for the full sixty-day period where, ten days before the plant shut down, appellant gave a written notice stating that the plant was going to close and giving the name and phone number of a company official to contact with further questions. The court reduced the violation period to fifty days, despite the omission of the date of the plant's shut down, concluding: "[t]hat the notice was deficient in other respects does not change the fact that ten days before the plant was closed, the affected employees clearly knew that it was going to be closed." *Id*.

Finally, in *Marques*, 867 F. Supp. at 1445, the court analyzed the notice in light of whether the purpose of the notice provision was served and determined that, because none of the omissions in the notice caused harm to the employees, the technical deficiencies did not give rise to liability. The court found that, despite the lack of a specific separation date, the time frame could be determined from the notice and surrounding circumstances. *Id.* The omission of bumping rights was immaterial since employees did not enjoy such rights. *Id.* Further, "although there was no name and number of a company official to contact for further information, Plaintiffs clearly knew and understood how to contact Defendants because Plaintiffs had done so every season to determine the date harvesting operations were to resume." *Id.* Thus, the deficiencies in the written notice did not undermine the notice purposes of the Act because employees either already knew the missing information from other contexts or could infer it from the notice and surrounding circumstances, or because it was irrelevant to their situation.

In sum, courts have approached the notice requirements with an eye to practicalities: "Fairly read, the regulations require a practical and realistic appraisal of the information given to affected employees." *Kalwaytis*, 78 F.3d at 121-22. Evaluating the notices received by employees from that practical perspective, the courts in *Marques*, *Saxion*, and *Dillard* found that the omissions in the written notices did not undermine the purpose of the statute where the pertinent information that the written notice should have conveyed was actually known by, or was readily available to, the employees. Thus, under the applicable case law, the Hearing Officer was correct in concluding that: "[u]nder prevailing WARN case law, neither the inclusion of inaccurate termination dates, nor the omission of termination dates altogether, necessarily renders a WARN notice defective, particularly if employees can easily ascertain the date from surrounding circumstances or readily available sources of information." Decision at 56.

II. c.

We also conclude that the substantial compliance standard adopted by the Hearing Officer is an appropriate standard to be used in determining if a violation has occurred. Indeed, all cases construing a written WARN notice that is technically defective because of the omission or inaccurate statement of a termination date use the substantial compliance standard, either explicitly, *Marques*, F. Supp. at 1446, and *Shadyside Stamping Corp.*, 1991 WL 340191 at star pages 7-9, or implicitly, *Saxion*, 86 F.3d at 561, and *Dillard*, 15 F.3d at 1286-87 & n.19.[6]

This standard is particularly appropriate here because the instant cases arose during the early days of implementation of section 205 of the CAA. It was over a month before the January 23, 1996 effective date of section 205 of the CAA and of the Board's Interim Regulations that the Committee on House Oversight adopted the resolution instructing the CAO "to immediately provide sixty days notice to existing House employees affected by the issuance of the contract." The memorandum from the CAO explaining the situation to employees was issued on the same date as the resolution. This was a period that the Board described as one of "regulatory uncertainty." Notice of Issuance of Interim Regulations, 142 CONG. REC. S270, S271 (daily ed. Jan. 22, 1996). As the Board there noted: "[i]n the absence of the issuance of such interim regulations, covered employees, employing offices, and the Office of Compliance staff itself would be forced to operate in regulatory uncertainty. . . . [E]mploying offices and the Office of Compliance staff might not know what regulation, if any, would be found applicable in particular circumstances absent the procedures suggested here." *Id*.

In comparable circumstances, the Department of Labor concluded that " . . . in the early days of WARN implementation substantial compliance with regulatory requirements should be sufficient to comply with WARN." 53 Fed. Reg. 48884 - 85 (1988) (notice adopting interim interpretative rules of Dec 2, 1988). Courts construing WARN notices issued during the transition period adopted the substantial compliance standard. *See, e.g. Shadyside Stamping*

---

[6] We note that courts have held that substantial compliance is sufficient to meet the notice requirements of a number of other employment-related regulatory schemes. For example, under ERISA, if a plan administrator denies a claim without providing notice that meets applicable regulatory requirements, several circuits have applied a "substantial compliance" standard in evaluating whether the defects in notice invalidate the plan administrator's decision. *See Brogan v. Holland,* 105 F.3d 158, 164-65 (4th Cir. 1997); *Donato v. Metropolitan Life Ins. Co.,*19 F.3d 375, 382-83 (7th Cir. 1994); *see also Kent v. United of Omaha Life Ins. Co*., 96 F.3d 803, 807 (6th Cir. 1996). A substantial compliance standard has also been applied to notice that unions must provide to employees regarding service fees, *see Laramie v. County of Santa Clara*, 784 F. Supp. 1492 (N.D. Cal. 1992), *see also Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 307 n.18 (1986); notice procedure for discharging school teachers, *see Roberts v. Van Buren Public Schools*, 773 F.2d 949, 959 (8th Cir. 1985); and notice expressing intent to terminate a collective bargaining agreement*, see Purex Corp. v. Automotive, Petroleum and Allied Indus. Employees Union, Local 618*, 543 F. Supp. 1011, 1015-1016 (E.D. Mo. 1982), *aff'd* 705 F.2d 274 (8th Cir. 1983).

Corp., 1991 WL 340191, at star pages 7-9 (noting that the substantial compliance standard may be satisfied if the information missing from the notice was otherwise provided by the employer or was readily available to employees).

III.

With these principles in mind, we turn to the notice provided to employees in this case. The Board agrees with the Hearing Officer that the December 13, 1995 memorandum can fairly be read to supply two of the four elements required by section 639.7(d) of the Board's regulations, that is, a statement to the effect that House Postal Operations is to be permanently closed and the name and telephone number of an official to contact for further information. *See* sections 639.7(d)(1), (4).

Looking at the actual language of the memorandum, the Board agrees with the Hearing Officer's conclusion that today's government employees, especially those of the 104th Congress in which privatization had been a topic of debate, would reasonably understand that the issuance of a request for proposals "to privatize the current House postal delivery operations" meant that the House was seeking to contract with a private contractor to perform the jobs of the current incumbents. The only logical inference from the announcement of "Pitney Bowes Management Services being selected as the House vendor for postal delivery operations" is that this private contractor has now been hired to take over the functions of the HPO.

The memorandum also makes clear that jobs with the new contractor are not automatic. Employees must apply, go through an interview process, and await the contractor's independent hiring decisions. The memorandum states that "the vendor has agreed to interview all current Postal Operations employees interested in employment with their organization" (emphasis added). This confirms that the current House jobs in Postal Operations are going to be privatized and that future jobs in postal operations will be with the private contractor who is now conducting interviews for that employment. Moreover, the memorandum also states that hiring decisions will be made by PBMS: "The vendor will inform you directly if you are selected for a position in their organization." Finally, the memorandum describes the services that will be made available to make the employees' "transition from employment with the U.S. House of Representatives as smooth as possible" (emphasis added). The plain meaning of "transition from House employment" is that the employees' current jobs will be terminated when PBMS takes over on February 14, 1996, a date that has been identified for the HPO employees. Thus, this notice is like the second notice in *Kalwaytis*, 78 F.3d at 122, which made clear that laid-off employees would have to apply for employment directly with the new employer. Therefore, the Board agrees with the Hearing Officer that the December 13, 1995 memorandum substantially complies with the requirement of section 639.7(d)(1) of the Board's Interim Regulations.

The memorandum gives employees several points of contact for further information, in satisfaction of section 639.7(d)(4). It provides the address and telephone numbers of "[t]he Human Resources' Office of Training" and the "Outplacement Resources Center," as well as

stating the full name and title of the memorandum's author, the Associate Administrator for Human Resources in the Office of the CAO. Clearly, employees knew how to get in touch with someone on the CAO's staff who could answer their questions. Moreover, the omission of the telephone number of the Associate Administrator for Human Resources was of no consequence; she spoke at the orientation meeting introducing Pitney Bowes Management Services, attended by all appellants, the day after the memorandum was distributed.

The memorandum fails, however, to inform employees whether bumping rights exist, as required by section 639.7(d)(3). However, there was no testimony during the Hearing regarding this omission, nor any complaint on appeal. Moreover, bumping rights have no relevance, where, as here, the entire operation is closed. *See Marques*, 867 F. Supp. at 1446. The Board therefore agrees with the Hearing Officer's conclusion that, in these circumstances, the omission of this information is a minor, inadvertent error, within the meaning of section 639.7(a)(4) of the Board's regulations.

The December 13, 1995 memorandum also fail to state explicitly the expected date of the office closing and the expected date when employees will be separated from employment, as required by section 639.7(d)(2). However, as the Hearing Officer concluded, "[g]iven that the December 13, 1995 memorandum provides some indication of the privatization date (i.e., reasonably soon after completion of the interview process in January 1996), given that the date was fixed and certain and widely publicized in a variety of oral and written ways, and given that employees had a wealth of readily available means to ascertain the date, . . . [the failure to provide this date] does not compel a finding of violation." Decision at 58. While the December 13, 1995 memorandum was technically deficient in its failure to provide the date required by section 639.7(d)(2) of the Board's WARN Act regulations, the information missing from the notice was otherwise provided to employees by the CAO and also was readily available to them from a number of sources, at least sixty days in advance of the employees' termination, such that the purposes of the WARN Act were satisfied. *See Marques*, 867 F. Supp. at 1445-46; *see also Saxion,* 86 F.3d at 561; *see also Shadyside Stamping Corp.*, 1991 WL 340191 at star pages 7-8.

Examining the record, moreover, the Board does not find that the omission of the termination date from the CAO's otherwise timely and adequate written notice defeated the purposes of the statute. Judged in the totality of the circumstances, the CAO took appropriate steps under the WARN Act, as applied by the CAA, to provide adequate notice for employees to make the transition to new employment. In the spirit of the purposes of the WARN Act, *see* section 639.1(a) of the Board's regulations, the CAO voluntarily gave employees early notice that the Committee on House Oversight was contemplating the privatization of the HPO. The CAO's June memorandum was updated by notice in September in a memorandum that provided an actual schedule for the privatization process, based on the best information then available. It is in this

context that the December 13, 1995 memorandum must be read to determine whether the omission of the date deprived employees of legally sufficient notice of their date of termination.[7]

The December 13 memorandum states that the "review/selection process" for employment with PBMS "will be completed in January, 1996." From that information, employees could expect that the contractor would begin operations shortly thereafter as, in fact, PBMS did. That conclusion is supported by the fact that the earlier memorandum of September 8, 1995 had notified employees that the contractor was "scheduled to begin operations in mid-December," so that employees were already on written notice that the contractor would take over shortly. While it was clear by December 13, 1995, that the earlier deadline had slipped, the fact remains that, through the September 8, 1995 memorandum, employees had received written notice of a likely termination date, and were given updated information about the contractor's plans on December 13, 1995, over sixty days before their actual termination.

Looking at the September 8, 1995 memorandum together with the December 13, 1995 memorandum, the Board finds this to be a situation in which employees received multiple notices whose technical deficiencies do not merit a finding of liability. *See, e.g.*, *Kalwaytis*, 78 F.3d at 121-22; *Dillard*, 15 F.3d at 1286-87 & n.19; *cf. American Home Products,* 790 F. Supp. at 1444-45, 1450-53; *Shadyside Stamping Corp.*, 1991 WL 340191 at star pages 1-3, 8-11. Reading the letters together, and making "a practical and realistic appraisal of the information given to affected employees," *Kalwaytis,* 78 F.3d at 121-22, the Board concludes that, over sixty days before their termination, appellants were provided with adequate information to determine that they were going to lose their government jobs on February 13, 1996, when the contractor took over House Postal Operations.

Thus, because appellants received over sixty days written notice from the mid-December estimated take-over by the contractor, they were like those employees in *Dillard* who worked past the estimated termination dates given in their notices such that they actually received over sixty days notice, *see* 15 F.3d at 1286-87 & n.19. As the *Dillard* court held, sixty days notice satisfies "both the language and the purpose of the Act." *Id*. at 1286. Such actual notice of termination is what is essentially required by the notice requirements of the Act to give employees adequate notice to plan for the loss of their jobs. In such circumstances, the inaccuracy in the termination date is not fatal. *See id.*

Moreover, as the Hearing Officer found, the date was well known and widely disseminated. Decision at 56-58. Appellant Schmelzer, for example, conceded that he was well aware of the termination date; he wrote it on his application for employment with PBMS. *See id*. at 57. Another appellant attended part of the Committee meeting in which the resolution was

---

[7] We note that the December 13, 1995 memorandum was part of the CAO's response to the Committee's direction to "immediately provide sixty days notice to existing House employees affected" by the Committee resolution of December 13, 1995 authorizing the contract to privatize the HPO.

passed that effected the February 13, 1996 closure of the HPO. *See Quick* Findings of Fact at 4. And the Committee's resolution was posted on the HPO bulletin board. *See* Decision at 56-57. Further, testimony credited by the Hearing Officer made clear that the date of Valentine's Day, February 14, 1996, was stated repeatedly at the December 14, 1995 meeting attended by all appellants. *See id*. at 57; *Quick* Decision at 58. In addition, the Hearing Officer noted seven ways by which any employee, still in doubt, could have ascertained the information. Decision at 57. Notable among his findings was the simple expedient of asking the question at either the December 13 or the December 14 meetings, attended by all appellants, during which the Office of the CAO not only provided question-and-answer periods, but also announced the February 14, 1996 date for PBMS to take over the HPO operations. *Id.* Or employees could have called any of the three official CAO management sources provided on the December 13, 1995 memorandum. *Id.*

The Board therefore concludes that there is substantial evidence in the record supporting the Hearing Officer's conclusion that, at least sixty days before the closing of the HPO, 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 sixty 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. *See Marques*, 867 F. Supp. at 1445-46, *see also Saxion*, 86 F.3d at 561; *Dillard*, 15 F.3d at 1287 & n.19.

The only case cited by appellants as compelling a different result, *American Home Products*, does not. In that case, employees were provided with only seven days actual notice of the date of their layoff and they had no other source of information from which they could learn the date. However, that situation is markedly different from the case here, where the employees were provided with multiple written notices and where the final written notice, coupled with the information readily available to the employees, reasonably assured sixty days actual notice of the employees' termination date. Thus, we affirm the Hearing Officer's conclusion that, in the totality of the circumstances, the employees were provided with adequate notice under the requirements of the CAA and the applicable regulations.

Appellants in *Quick* also argue on appeal that the Hearing Officer erred in concluding that the distribution of the December 13, 1995 memorandum constituted a reasonable method of delivery, and they contrast the handout of that memorandum with the individualized delivery of the January 22, 1996 termination notice, with signed receipt. This contention is without merit. 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.

This is not a case in which the employer failed to provide notice or provided notice intended to evade the purposes of the notice requirements of the CAA. *See* Department of Labor

Preamble to the WARN Act Regulations, 54 Fed. Reg. 16042, 16043 (April 20, 1989) (Response to Comments, section 639.1(d) WARN Enforcement). To the contrary. Four separate written notices were provided to employees. Four meetings informing employees of the privatization were held in the space of two days. The Committee itself was cognizant of the need to provide timely notice to the employees. Its resolution of December 13, 1995 directed the CAO to provide sixty days notice to the employees "immediately."

Indeed, the House tried in many additional ways, in the spirit of the underlying purposes of the WARN Act, to ease the transition to new employment. The Committee required, as a condition of the contract, that the contractor interview all current House employees for the jobs that were privatized. The Office of the CAO went beyond the suggestions in section 639.7(d) of the Board's regulations for providing transition "information useful to the employees." An array of transition and support services were offered, including a job bank, help with job applications, and resume writing, computer training courses, stress management training, and making arrangements for outplacement seminars for the employees. These efforts further belie any suggestion that the CAO was attempting to evade the purposes of the Act.

In sum, the record is clear that the privatization of the HPO was not the type of stealth plant closing which leaves employees adrift and which the Act, and its inclusion in the CAA, were meant to prevent. There was a public debate and a public decision regarding the privatization of House Postal Operations, and employees were advised of these developments as they occurred. In addition to the multiple written notices provided, public employee meetings were held sixty days in advance of any terminations. At these meetings, the process and specific effective date of the privatization were repeatedly announced. In these circumstances, it would elevate form over substance to find that the CAO's written notices of the privatization of the HPO violated the WARN Act, as applied by the CAA. The Board therefore affirms the decisions of the Hearing Officer.

It is so ordered.

Issued, Washington, D.C., July 29, 1997

APPENDIX A

Scot M. Faulkner
Chief Administrative Officer

Human Resources

Office of the
Chief Administrative Officer
U.S. House of Representatives
Washington, DC 2O5l5-6860

MEMORANDUM

TO: Office of Postal Operations Staff

FROM: Kay E. Ford
Associate Administrator Human Resources

SUBJECT: Status of Operations

DATE: December 13, 1995

As you have been previously informed, on Wednesday, June 14, 1995 the Committee on House Oversight authorized the preparation and issuance of requests for proposals (RFP's) to privatize the current House postal delivery operations.

The review of the proposals submitted resulted in Pitney Bowes Management Services being selected as the House vendor for postal delivery operations. The selection of Pitney Bowes Management Services has subsequently been approved by the Committee on House Oversight. As a condition of the selection process, the vendor has agreed to interview all current Postal Operations employees interested in employment with their organization.

To facilitate this process the vendor will distribute applications for employment on Thursday, December 14, 1995. We have been assured that their review/selection process will be completed in January, 1996. The vendor will inform you directly if you are selected for a position in their organization.

The Human Resources' Office of Training, extension 60526, room 219, FHOB, and the Outplacement Resources Center, extension 64068, rooms 170-171, FHOB, are prepared to offer advice and assist with the preparation of applications on an appointment basis.

To make the transition from employment with the U.S. House of Representatives as smooth as possible, an array of support, resources and information will be made available to you. This will include employee assistance programs designed to address the personal, professional and family

concerns associated with the transition process as well as employee benefits consultations and briefings.

Throughout this process we encourage each of you to continue to provide the high degree of quality service for which you are known. We are committed to do all we can to assist and work with you throughout this process and will provide additional information to you as it is available.

APPENDIX B

Scot M. Faulkner
Chief Administrative Officer

Publications and Distributions

Office of the
Chief Administrative Officer
U.S. House of Representatives
Washington, DC 2O5l5-9998

MEMORANDUM

TO: Postal Operations Employees

FROM: Ben Lusby, Associate Administrator
Publications and Distribution

DATE: September 8, 1995

RE: Status Update

Many of you have requested an update on the status of the Request For Proposal to outsource Postal Operations. As you know the Committee on House Oversight on June 14, 1995 approved the issuance of a request for proposal. This RFP was publicly advertised on August 7, 1995 and a bidders conference to answer bidder's questions was held on August 27, 1995. Final bids are due to the Office of Procurement and Purchasing by close of business September 15, 1995.

There has been a great deal of interest shown by facilities management companies and we expect some very competitive bids. However, we have structured the requirements of the RFP to ensure that the winning bidder runs the “world class” operation that the House desires and deserves. As announced on June 14, 1995, the winning bidder will interview all interested Postal Operations employees for possible employment.

The bids will be analyzed and a final recommendation will be submitted to the Committee on House Oversight by the beginning of November. The new facilities management company is scheduled to begin operations in mid-December. Please let me know if vou have additional questions.

APPENDIX C

COMMITTEE ON HOUSE OVERSIGHT

RESOLUTION

HOUSE POSTAL CONTRACT

Adopted December 13, 1995

Resolved, that all functions of House Postal Operations shall be terminated as of the close of business on Tuesday, February 13, 1996. The Chief administrative Officer is hereby authorized to execute the contract with Pitney Bowes Management Services (hereinafter "Contractor") as submitted to the Committee on November 7, 1995 as a result of CAO Solicitation 95-R-003 issued in accordance with the Committee Resolution entitled, "Postal Operations" adopted on June 14, 1995 by the Committee on House Oversight.

Resolved further, that the Committee on House Oversight directs the Chief Administrative Officer to fully cooperate with the Contractor to implement the mandates of the June 14 Resolution by facilitating an orderly transition of operations between the House and the Contractor, and by ensuring that all existing house employees affected by the issuance of the contract shall be given an opportunity to apply for, be interviewed for, and be considered for employment with respect to the contract arising from CAO Solicitation 95-R-003.

Resolved further, that the Committee directs the CAO to immediately provide

sixty days notice to existing House employees affected by the issuance of the contract arising from CAO Solicitation 95-R.003 and further directs the CAO to fully implement the provisions of the Committee Resolution adopted on June 14, 1995 entitled "Employee Assistance with respect to existing House employees affected by the issuance of the contract arising from CAO Solicitation 95-R-003.

Resolved further, that the Chief Administrative Officer shall report to the Committee, no later than the tenth day of each month, beginning in January, 1996 on the status of implementation of the House Postal Contract.

Member Seitz, with whom Chairman Nager joins, concurring in the judgment:[8]

I agree with the majority opinion's conclusion that the Hearing Officer's decision should be affirmed because appellants received notices which, in combination, substantially complied with WARN Act requirements. The path I followed to this conclusion diverges somewhat from that of the majority, and so I briefly describe my reasoning.

The doctrine of substantial compliance considers whether a defendant in technical noncompliance with a statutory requirement has taken action sufficient to meet the purposes of the statutory requirement at issue. *See*, *e.g.*, *Hickel v. Oil Shale Corp.*, 400 U.S. 48 (1970) (annual work assessment requirements of federal mining laws); *Kent v. United Omaha Life Ins. Co.*, 96 F.3d 803, 807 (6th Cir. 1996) (notice requirements in regulations under the Employee Retirement Income Security Act); *Donato v. Metropolitan Life Ins. Co.*, 19 F.3d 375, 382-83 (7th Cir. 1994) (same); *Straub v. A.P. Green*, 38 F.3d 448, 452-53 (9th Cir. 1994) (service of process requirements under Foreign Service Immunities Act). If federal law has been "followed sufficiently so as to carry out the intent for which [the law] was adopted," a defendant is said to have substantially complied. *Videotronics v. Bend Electronics*, 586 F. Supp. 478, 484 (D. Nev. 1984).

The substantial compliance doctrine is closely related to the *de minimis* doctrine which refers to a legal violation or harm, "often but not always trivial, for which the courts do not think

---

[8] Member Hunter also joins in those parts of the concurrence discussing substantial compliance, with the exception of footnote 3.

a legal remedy should be provided." *Hessel v. O'Hearn*, 977 F.2d 299, 304 (7th Cir. 1992) (citations omitted). *See id.* (describing substantial performance and *de minimis* as "closely related . . . meliorative doctrines"). As is true of the substantial compliance doctrine, "[w]hether a particular activity is a *de minimis* deviation from a prescribed standard must, of course, be determined with reference to the purpose of the standard." *Wisconsin Dept. of Revenue v. Wrigley*, 506 U.S. 214, 232 (1992).

Whether the substantial compliance doctrine applies in a particular context is an ordinary question of statutory and regulatory interpretation. In some contexts, courts have concluded that there was no room for application of the doctrine. *See*, *e.g.*, *United States v. Locke*, 471 U.S. 84, 100-102 (1985) (filing requirements of Federal Land Policy and Management Act); *Bennett v. Kentucky Dept. of Educ.*, 470 U.S. 656, 663-64 (1985) (repayment requirements of Elementary and Secondary Education Act). In other contexts, where the purpose of a federal enactment may be achieved with substantial compliance, courts have permitted the doctrine's application. *See*, *e.g., Hickel v. Oil Shale Corp.*, 400 U.S. at 100-02; *Kent v. United Omaha Life Ins. Co.*, 96 F.3d at 807; *Donato v. Metropolitan Life Ins. Co.*, 19 F.3d at 382-83; *Straub v. A.P. Green*, 38 F.3d at, 452-53. Unlike the substantial compliance doctrine, the *de minimis* doctrine is generally presumed to apply to violations of federal statutes, absent some contrary indication from Congress. *See*, *e.g.*, *Wisconsin Dept. of Revenue v. Wrigley*, 506 U.S. at 231.

The first question to consider in this case is whether either the substantial compliance doctrine or the *de minimis* doctrine applies to the WARN Act requirements incorporated by reference in the CAA, specifically the written notice requirements of section 205(a) of the CAA and section 639.7(d) of the Board's Interim WARN Act regulations. I conclude that the WARN

Act's written notice requirements are best interpreted to allow application of the substantial compliance and *de minimis* doctrines in cases in which technically deficient written notice has been provided.

As explained in the majority opinion, the purpose of the WARN Act is "to provide workers with adequate advance notification of an employment loss." *Supra* at 6. A WARN Act notice "provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market." Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations, 142 Cong. Rec. S271-72 (daily ed. Jan. 22, 1996). The regulations require that an employing office provide employees with written notice of several pieces of information, most importantly the date on which that employee will no longer have a job. The superiority of a fully compliant written notice delivered individually is that a writing is best calculated both to convey the information that must be conveyed and to demonstrate beyond question (and litigation) that the required notice has been provided. But there are circumstances in which an omission from the writing will not defeat the purpose of the WARN Act's legal requirements. That purpose is to provide employees with actual notice that they are going to lose their job and when that job loss will take place. Because the purpose of the written notice requirement can be fulfilled when employing offices actually provide affected employees with timely notice of impending job loss, I conclude that both the substantial compliance and the *de minimis* doctrines are applicable to the WARN Act requirements at issue.[9]

[9] Federal courts to have considered the question have implicitly agreed with this conclusion. *See supra* at 10 (citing and describing cases).

That brings me to the difficult question of whether the employing office here, the Office of the CAO of the House of Representatives, substantially complied with section 205(a) of the CAA, and section 639.7(d) of the Board's implementing regulations (or, put differently, whether its violation of the legal requirements was *de minimis*). When a plant or office closing is to occur, the most important questions for employees and their families are whether they are going to lose their jobs and, if so, when. And, although the CAO provided employees with a timely written notice on December 13, 1995, it failed to put the most critical information -- the date of certain job loss -- in that notice. There is no apparent reason for the omission, and the CAO has provided no explanation that makes sense in light of its admitted knowledge of the relevant date. Indeed, the Committee on House Oversight of the House of Representatives appears to have instructed the CAO immediately to provide employees with the required notice of all relevant information, including the date. *See supra* at 3.[10]

The Hearing Officer concluded, however, that the CAO had substantially complied with the notice requirements and that the omissions were "minor" -- *i.e.*, *de minimis*. He first determined that the CAO had provided a written notice, that the written notice contained two of the four items as to which notice is required, and that, as to a third item (bumping rights), the requirement was inapplicable and no notice was required. With respect to the fourth item -- notice of the date of job loss -- the Hearing Officer determined that the written notice failed to provide that vital date.

---

[10] Had the CAO done as the Committee instructed, the CAO would likely have avoided this extended litigation. But I disagree with the majority opinion's suggestion that the actions of the Committee or certain other actions of the CAO on behalf of employees are relevant to the question of the CAO's substantial compliance. The latter actions, i.e., the employee assistance proffered by the CAO, might have been relevant to the CAO's defense of good faith.

The Hearing Officer nonetheless determined that the CAO substantially complied with the written notice requirement or, put differently, that any violation was minor or *de minimis*. He found that: (a) The CAO provided, on September 8, 1995, a written notice indicating that employees would lose their jobs due to privatization and stating that privatization was likely to occur by mid-December 1995; (b) The CAO provided on December 13, 1995, a written notice again indicating that employees would lose their jobs due to privatization and that such job loss would occur some time after January 1996; and (c) The CAO convened meetings on December 13, and 14, 1996, at least one of which each employee attended, where the CAO stated repeatedly that February 14, 1996 was the date on which the private contractor would take over House Post Office operations. As to appellant Schmelzer, the Hearing Officer expressly found actual notice of the date of job loss. And as to the appellants in *Quick*, the Hearing Officer determined that actual notice of the date of job loss was repeatedly given at meetings on December 14, 1996 and that each appellant was present at one of those meetings. The fairest reading of these findings is that the CAO actually provided the *Quick* appellants with notice of the date of job loss. These factual findings are fully supported on the record.

Based on these factual determinations, the Hearing Officer concluded that the CAO substantially complied with the WARN Act's legal requirements, and that, in these unique circumstances, the omissions from the written notice were *de minimis*. I believe that his legal conclusion, based on the facts, is correct. I therefore concur in the judgment affirming his decision and order.