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Worker-Community Takeovers of Plants Otherwise Scheduled for Closing: Limitations & Possibilities

by

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Plant closings can create serious problems for communities. The attendant loss of jobs, purchasing power and tax revenues can threaten a community's social and economic viability. The effects, moreover, are particularly severe in periods of economic recession and in cases in which an area depends heavily on one plant for employment and tax revenues. To prevent such disruption, workers and others with interests in maintaining the community's continued viability have, in some cases, attempted to purchase and operate the plant by themselves.

To date, however, the large majority of successful employee and employee-community acquisitions have been accomplished with relatively small plants in minor industries. This is true largely due to the limited availability of capital for such projects. Government assistance has been made available for acquisitions of this type in direct form, with loans, grants and loan guarantees from federal and state development agencies, and indirectly via the tax subsidies inherent in employee stock ownership plans (ESOP's). However, with the new conservative trend in economic development programs prompted by the recent fiscal problems of state and federal governments, such public assistance has been severely limited in size for individual projects. Traditional private investors, wary of the new operations' feasibility, have been willing to participate in substantial amounts only with the guarantees of a parent or governmental

agency. Affected employees and community interests have contributed, but their limited capabilities, along with the modest commitments available from government and other private sources, have limited the possible size of such projects.

Recently, however, a few large acquisitions have been attempted in the steel and automobile industries. Workers and religious leaders in Youngstown, Ohio have tried, unsuccessfully, in the past five years to purchase major steel-making facilities scheduled for closing by Youngstown Sheet and Tube Company and United States Steel. In 1981, workers in Clark, New Jersey, were successful in their efforts to purchase a 1,600 employee roller-bearing plant that General Motors would otherwise have closed. Also, after National Steel Corporation announced, in March 1982, that it would no longer invest capital in its insufficiently profitable Weirton Steel Division, which under National's ownership had employed almost 12,000 workers, a group of Weirton employees have been attempting to acquire the facilities there. As of the date of this paper, a tentative agreement had been reached for the sale of the plant, but the necessary approval of the plans by the union workforce had not yet been received.

In this paper, I examine the specifics of the acquisition efforts in each of the above cases to determine the factors necessary for a successful purchase of a plant in the country's basic industries. General factors to be examined include the following: the willingness of the parent corporation to sell the plant; the composition, cohesion and technical,

financial and political resources of the acquiring group; the purchase price of the plant and the cost of any necessary modernizing investment; the foreseeability of an adequate market for the plant's output; the specific features of the new plan, including employee concessions, product lines, board of director composition, shareholder voting rights and management philosophy required to obtain financing; and the exercise of political pressure by the parties in interest.

The analysis of such factors and their interrelationships should shed light on the prospects of employee acquisition attempts in particular situations and perhaps also define their potential as a general model for industrial revitalization efforts.

Analytical Framework

Although many factors determine whether a given worker-community acquisition effort will succeed, I have chosen to analyze them in a framework, which consists of the following basic points (see Figure One)--(1) the willingness of the parent corporation to sell; (2) resources of the acquiring group sufficient to purchase the plant; and (3) the exercise of external political pressure as a facilitator or obstruction in regard to the former two points.[1]

Willingness of the Parent to Sell

The first factor would seem apparently uncomplicated, given the corporation's already expressed desire to dispose of the plant. However, financial, competitive and even ideological reasons may form the basis for a parent corporation's refusal to deal with a potential acquiring group. Given the virtually unassailable right in this country to dispose of private property solely in accordance with the private interests of the holders,[2] a flat refusal to deal can effectively block a deal.

In addition to the parent's willingness to sell, its cooperation on a more extensive basis during the purchase attempt and subsequent to the acquisition is also often critical. The parent can persuade nervous investors of the safety of their investments with an explicit guarantee of repayment or with a commitment to permit the new company's continued access to its historical customers. Furthermore, its cooperation with an acquiring group regarding information such as operating and

Figure One

Worker-Community Attempts to Acquire Plants Scheduled for Shutdown--Factors Required for Successful Acquisitions

1. Parent Willingness to Sell

2. Sufficient Resources for Purchase
   a. Entrepreneurial and Organizational Resources
      (1) Composition and cohesion of interested individuals and groups
      (2) Technical resources--organizational, promotional, legal, consulting and investment banking expertise
      (3) Financial resources
      (4) Political resources--union and elected political representatives and grass roots support
      (5) Other groups competing for the purchase
   b. Access to Financing
      (1) Sources
         (A) Government assistance
            (i) Direct--loans, grants and loan guarantees
            (ii) Indirect--ESOP tax subsidies
         (B) Private Assistance
      (2) Feasibility considerations
         (A) Managerial structure
            (i) Voting control of stock--allocated and unallocated
            (ii) Composition of board of directors
            (iii) Management philosophy--traditional or with worker participation
         (B) Market Prospects
            (i) Parent purchase commitments
            (ii) Government purchase commitments or procurement preferences
            (iii) Other customers--additional customers for current products and new product lines
         (C) Labor Costs
            (i) Employee concessions in wages, benefits, work rules and personnel levels
            (ii) Wage and ESOP incentives
         (D) Necessary Capital Investment
            (i) Modernization
            (ii) New Product Line
         (E) Managerial and employee resources

3. Political Environment as a Facilitator or Obstruction in 1 or 2 above

market data is useful for the preparation of operating plans and feasibility studies.

Resources of the Acquiring Group Sufficient to Complete the Purchase

The second point is the broadest and includes a large number of considerations. They can be divided, however, into two major, if interracting groups--(1) the entrepreneurial, organizational, political and financial resources of the acquiring group as a unit seeking to deal with the parent and (2) the acquiring group's access to the financing ultimately essential to complete the acquisition. Within the first group, an important factor is the composition and cohesion of the acquiring group--whether they represent a homogeneous group of employees or whether they include religious, community, union, non-union and managerial participants. A second factor involves the technical resources of the group, i.e., the organizational, legal and financial expertise of the group. Included here also is the relationship of these experts to the ultimate sources of capital--the presence or absence of established links to private and/or public sources of capital. A third consideration relates to the group's immediate political resources, such as grass roots participation and the support of political and union leaders. Fourth, the acquiring group needs sufficient financial resources to fund the activities of the acquisition effort itself for legal, promotional and consulting fees. Finally, the presence or absence of other groups competing for the purchase of the plant or possibly for the same source of capital can be a factor

which seriously limits the chances of an acquiring group.

Of course, the second group of considerations is most basic--access to the capital ultimately required to fund the purchase. Public and private capital is available for such purchases. Direct provision of federal and state loans, grants and loan guarantees has been made available in the past, primarily from two federal development agencies: the Economic Development Administration (EDA) of the Commerce Department and the Department of Housing and Urban Development (HUD). Other potential sources include the Small Business Administration, the Farmers Home Administration and the National Consumer Cooperative Bank, which, by statute, is permitted to invest up to 10% of its lending portfolio in producer cooperatives. The amounts of capital provided, to date, via such programs, however, have generally been inadequate for the size of the capital requirements of the large, capital-intensive plants under consideration here. Equally important, and as will be discussed further, particularly in the discussion of the Youngstown case below, applications for large amounts of capital assistance become the object of intense political lobbying, by seekers of the capital, by corporations potentially affected by the new or strengthened competition, and by government agencies themselves, seeking preeminence in federal development efforts.

Indirect financial assistance is also available and increasingly utilized via the tax subsidies inherent in employee stock ownership plans (ESOP's). Such plans, ordinarily established as employee benefit plans or as substitutes for pension

plans, are, in addition, uniquely attractive devices for raising large sums of private capital. In essence, a corporation can borrow money through an ESOP and then deduct from its taxable income in subsequent years both the interest and principal portions of its loan repayments.[3] With traditional forms of financing, only the interest payments are deductible.[4] In addition, as the loan in an ESOP is repaid, employee participants are allocated shares of stock in the new company.

Given the limited size of federal capital contributions to employee acquisition efforts, the bulk of such capital requirements must necessarily be raised in the private capital markets, most often through the tax advantageous ESOP. Thus, attempts have been made to raise private capital via community fund-raising efforts and small and large conventional investors.

The ability to gain access to large amounts of capital--both public and private--however, is primarily dependent on the feasibility of the acquiring group's plans as perceived by potential investors, or at a minimum, for the ultimate recovery of their contributions. As a result, the acquiring group needs to develop a specific plan of operations that addresses the reasons cited by the parent for the closing, as well as any additional problems which concern investors. Such a plan must often by unusually dramatic to persuade potential investors that the new unorthodox ownership can profitably operate a plant where a major corporation had been unsuccessful.

Apart from direct and obvious demonstrations of feasibility, investors are concerned with the management of

the new corporation. This concern naturally relates to a demonstration of sufficient managerial talent and labor resources organized in a workable management structure. It also extends, however, to the identity and orientation of those who will actually control the new corporation. Consequently, the issues of voting control of ESOP stock, the specific composition of the initial board of directors and plans for traditional or non-traditional forms of management are crucial to potential investors. Since the acquiring group is composed of workers and/or members of the community, restrictions are often carefully negotiated to limit their actual assumption of control during the initial period in which the financing is being repaid. Thus, voting rights on stock are limited, the orientation of boards of directors is carefully screened and innovative worker participation-managerial programs are implemented carefully and slowly, even when intended as a means of achieving cost efficiencies.

In terms of conventional feasibility considerations, an acquiring group must, therefore, demonstrate to potential investors that a sufficiently profitable market will exist for its product. This has been accomplished with commitments from the parent corporation for the continued purchase of the plant's output, attempts to secure preferential federal government procurement, and with plans for the attraction of new customers and the development of new product markets.

Certainly the most significant and dramatic source of cost savings pursued so far, however, has been in the area of

labor costs. Substantial wage and benefit concessions of 20-30% and reduced personnel levels have been standard features of acquisition plans. In return and as a means of achieving increases in productivity, quality and profit-sharing incentives have been established, in addition to the motivational incentives inherent in ESOP's.

Plans for new investment are also important either to transfer production from a declining to a growing product market, or, within the old market, as a means of achieving cost efficiencies. The size and timing of the associated capital requirements is also crucial, given the usual difficulty encountered merely in raising an amount sufficient for the purchase price. The need to raise large amounts of capital for basic modernization concurrently with the acquisition effort can pose an important obstacle to the acquisition.

Exercise of External Political Pressure

Finally, the external political environment is a factor that may be important in overcoming obstacles related to the items just described, or it may create such obstacles. The exercise of influence by local, state and federal political representatives, by the international organization of the locally affected unions, and by intra-industry corporate competitors are all potentially significant.

The balance of the paper will, in each of the Youngstown, Hyatt Clark and Weirton cases and after a brief overview

of the respective purchase efforts, evaluate them according to the framework just described, in an effort to determine (1) the primary factors necessary for success, (2) the factors dictating failure, (3) possible acquisition strategies and (4) the limits in goals which such efforts can accomplish in the short and long term.

Youngstown Sheet & Tube Co.'s Campbell Works

On September 19, 1977, Youngstown Sheet & Tube Co. announced its intention to close, by year's end, the vast majority of its operations at the Youngstown, Ohio based Campbell Works, citing the Works' unprofitability in recent years, capital requirements necessary to meet EPA pollution control standards, low-priced imports and government price restrictions.[1] The decision resulted in the loss of 4,100 jobs.[2] In the immediate aftermath, the affected parties reacted in several ways. The steel industry and the United Steelworkers of America (USW) appealed in traditional fashion to the federal government for assistance to make the steel industry, generally, more profitable, via limits on import competition, easing or delaying of environmental standards, tax relief, etc. Public concern was also expressed about unemployment benefits to take care of the immediate needs of the affected steelworkers, and some parties called for the examination of avenues which might lead to the eventual reopening or revitalization of the Works.

The most significant of the attempts to reopen the Campbell Works was the effort of the Ecumenical Coalition of the Mahoning Valley. The Coalition was formed by the leaders of the major religious denominations in the area in October and November of 1977 and proposed a worker-community purchase of the closed facilities. The Coalition estimated the cost of the purchase and required modernization of the mills to be in the area of $500 million and sought, as the keystone of its financing efforts, federal

loan guarantees. After a nine month period required to develop a feasible operating and financing plan for the new corporation, the Coalition formally requested, in September 1978, $300 million in loan guarantees from the Economic Development Administration (EDA). During a subsequent delay caused by the federal officials' request for more information, the Coalition further refined its plans and in March 1979 submitted a final application which requested a more modest amount for the short-term. On March 30, 1979, however, its request was denied.

Three major contextual events during the Coalition's 18 month purchase campaign significantly complicated the Coalition's efforts and frustrated its momentum. Although their full impact will be discussed fully below, brief mention is appropriate here.

First, in November 1977, two months after the shutdown announcement and just as the Coalition's efforts were getting underway, Lykes Corporation, the parent of Youngstown Sheet & Tube Co., and LTV Corporation, a conglomerate owning the Jones & Laughlin Steel Co. (J&L), announced their intention to merge. A consent decree entered into between the federal government and LTV at the time of LTV's notorious acquisition efforts in the late 1960's, however, required that any substantial LTV acquisitions in the future receive the approval of the Justice Department.[3] A lengthy and highly politicized federal review followed, in which the Coalition's purchase attempt became a political bargaining chip. Lykes, seeking approval of a merger between the seventh and eighth largest American steel companies--an action

with clear anticompetitive implications--was under pressure to demonstrate its social responsibility by dealing in good faith with the Coalition despite its inclination to do otherwise. The Justice Department, on the other hand, was under heavy pressure to prevent a clearly anticompetitive combination or if, as the companies argued, the antitrust considerations were outweighed by the likelihood that Youngstown Sheet & Tube would otherwise fail, to make the merged company's willingness to deal with the Coalition a condition of its approval. The tenor of the negotiations between the Coalition and the steel companies thus fluctuated directly with the status of the federal review.

In addition, if the merger was approved, the new merged Lykes-LTV company would likely be willing to sell to the Coalition only those parts of the Campbell Works for which it had no use and also unwilling to furnish a list of the Works' past customers, thereby seriously complicating the Coalition's plans for reopening the plant. Until a federal decision was reached, therefore, all Coalition plans for reopening the Works were necessarily tentative.

Two other political factors also frustrated the Coalition's efforts. During the course of the Coalition's campaign, the Carter administration was engaged in the process of formulating a new and basic approach to address the country's urban problems, and the various governmental agencies with potential authority were actively competing for preeminent administrative responsibility for any such new program. In this context, the commonality of the problems of Youngstown and those of the urban Northeast

and Midwest and the size of the Coalition's request for federal assistance made the Youngstown project a prize likely to assure such prominence. In addition, 1978 was the year of a Congressional election, and the size and nature of the requested assistance, while politically popular in the Youngstown area, met with substantial opposition from the steel industry. Further, as discussed below, the Coalition's efforts received little countervailing support from the international organization of the United Steelworkers of America and its potent lobbying arm.[4] As a result, there were serious political complications for the Carter administration, and a decision on the Coalition's request was further delayed until after the elections.

1. Parent Willingness to Sell

Despite Lykes' professed willingness to deal with any potential purchaser of the Campbell Works, it is clear that, during the relevant period, Lykes' and LTV's primary preoccupations were with gaining federal approval of their proposed merger. The steel operations of both LTV (J&L) and Lykes (Youngstown Sheet & Tube) had been financially troubled in recent years, and both parents were looking to a merger to consolidate the strengths and eliminate the weaknesses of the companies.[5] Thus, their willingness and receptivity to deal at any particular moment with parties interested in the Works was necessarily related to the perceived ramifications of such negotiations on the progress of the merger. In addition, since a merged Lykes-LTV would itself have use for some of the closed facilities at the Campbell Works and would be interested in serving the Works' former customers, the companies' ability to seriously negotiate the sale of specific portions of the Works was contingent on the decision reached by the Justice Department.

Federal approval of the merger proposal had to be carefully cultivated. The combination of the nation's seventh and eighth largest steelmakers into an operation ranking third or fourth carried significant antitrust implications. The companies sought the approval of the Justice Department's Antitrust Division, nevertheless, on the basis of the "failing company" doctrine--an antitrust concept whereby the otherwise unacceptable merger of two competitors is permitted if it represents the least anticom-

petitive alternative to the failure of one of the enterprises.[6]

The applicable legal standard, however, left open a sufficient degree of latitude to expose the decision to a variety of political considerations which Lykes and LTV had to carefully address. The substantiality of the antitrust implications and the likelihood of still further plant closings in the Youngstown area as a direct result of the merger made it politically desirable to cooperate with all potential purchasers, and, in particular, a worker-community group with religious leadership. In fact, many political leaders--including Senator Metzenbaum and local political leaders--as well as the leadership of the Ecumenical Coalition itself argued, in presentations to the Antitrust Division in April 1978, that any approval of the merger be conditioned upon the merged company's willingness to bargain in good faith with the Coalition on the sale of the plant.[7]

The large debt burdens of Lykes and LTV--acquired largely as the result of their diversification activities in the 1960's and early 1970's--also made a sale of the Campbell Works attractive.[8] It was to become particularly important in the months following the merger's ultimate approval by the Justice Department.[9] This financial factor was, however, clearly secondary to the overriding financial benefits perceived to be associated with the merger itself.

On the other hand, the companies were certainly hesitant to swiftly negotiate the terms of such a sale when their own short-term corporate structures were so uncertain. In addition, they probably shared the opposition, which was being publicly and

and vociferously expressed by other private steelmakers about the prospect of the federal subsidization of a "communistic" steel competitor while the rest of the steel industry was experiencing profitability problems.[10]

This ambivalence naturally translated into a superficial and tentative negotiating stance, clearly wanting to appear receptive to the Coalition's efforts but also intent on delaying any meaningful progress until the resolution of the merger issue. Beginning in November 1977, Lykes expressed its willingness to deal with anybody for the right price.[11] However, the Coalition was able only in April 1978 to get the companies to agree to a serious bargaining session--during the same period, significantly, in which the parties affected by the proposed merger were presenting their views on the issue to the Justice Department. During these sessions, the companies maintained a willingness to supply the new company with raw materials for a three year period and to supply pig iron for the Works' open hearths if Lykes and LTV wished to retain the Works' blast furnaces. They refused to commit themselves to a sale of the entire Works, and hoping to keep the most modern and efficient facilities for the use of the merged company, they were unable to specify, prior to the federal decision, which facilities were available to the Coalition. They also took a hard line on sales, regarding the Coalition as a competitor and refusing to promise the turnover of the Works' customer list.[12] In addition, the parties disagreed on the manner in which the sales price would be calculated (appraised value as an operating

plant versus its scrap value)[13] and Lykes refused to give the Coalition an option to purchase the plant.[14] The companies did agree to furnish to the Coalition consultants information required for their feasibility studies, but no substantial progress was made toward a deal at that time or prior to the merger's approval in June 1978.

After the approval, negotiations resumed in July and quickly broke down, due to the intransigence of both sides on the issue of a price, with the Coalition claiming that the plant should be sold for $1 to atone for the moral implications of the shutdown.[15] Finally, talks resumed in November 1978 and the Coalition was given a price and an option, but only after (1) Attorney General Bell sent a Justice Department lawyer to monitor the negotiations at the urging of Senator Metzenbaum, (2) Senator Metzenbaum urged Bell to withdraw his approval of the merger unless a price was given before the December 5 stockholders' vote on the merger, and (3) Senator Kennedy, as chairman-designate of the Judiciary Committee and its subcommittee on antitrust and monopoly, requested the Federal Trade Commission to intervene and independently review the legality of the merger.[16] Thus, again with pressure directed at the security of the merger, the companies became willing to deal with the Coalition.

2. Sufficient Resources for the Purchase

a. Entrepreneurial and Organizational Resources

(1) Composition and Cohesion of the Acquiring Group

The Ecumenical Coalition of the Mahoning Valley (until December 1977 calling itself the Youngstown Religious Coalition) was formally founded as the result of a Steel Crisis Conference held on October 28 and 29, 1977. The Coalition was composed of religious leaders, which were representative of the major denominations in the Youngstown area--Roman Catholic, Episcopal, United Methodist, United Church of Christ, Jewish, Baptist and Eastern Orthodox.[17]

Participation by non-clerical parties was limited. Members of the liberal research groups, the Institute for Policy Studies[18] and the National Center for Economic Alternatives (NCEA), were instrumental, from the beginning, in formulating the Coalition's substantive program, and the NCEA, as discussed below, coordinated a series of feasibility and planning studies regarding the proposed corporation. Staughton Lynd, a social activist widely known for his antiwar activities in the 1960's and, in 1977, a lawyer with a local labor law firm,[19] volunteered his services as the Coalition's general counsel and served on its steering committee.[20] Direct and active participation by the international and local USW organizations and by local political leaders, however, was minimal, partly due to their skepticism of the feasibility of the Coalition's proposals, partly due to the inherent challenge such plans posed to vested interests, and also because some leaders had alternative plans competing for the same facilities and funding sources.

Throughout most of the purchase effort, there was no evidence of serious dissension within the Coalition. An absence of harmony appeared only externally, as will be discussed fully below, among the groups competing for the facilities and funding and those politically opposed to the Coalition's program.

(2) Technical Resources

The Coalition retained technical talent both to organize and execute the acquisition effort and to develop and implement a specific plan of operations for the new company. Organizationally, an executive committee of clerical members met approximately every two weeks to set basic policy, while a steering committee with a full-time clerical Executive Director, managed the Coalition's day-to-day efforts.[21] Specific promotional responsibility was delegated to Reverend Richard Fernandez, who, with fifteen years of organizing experience and a former leader of Clergy and Laity Concerned About the Vietnam War,[22] set up and coordinated a staff of thirteen full-time organizers in six Ohio offices and one office in the financial heart of New York City.[23] Their purpose, discussed more fully below, was to raise funds and gain public support for the purchase attempt. Legal services were provided initially by the Coalition's general counsel, Staughton Lynd, who was joined later as co-counsel by Cleveland attorney Raymond Sawyer III.[24]

The rest of the financial, legal, technological and organizational talent was focused on the development of specific plans for the proposed corporation, and their efforts were channelled into the preparation of a series of feasibility studies. A Philadelphia consulting engineer, George Beetle, performed an initial and limited study in December 1977, which, based on a certain assumed level of sales, concluded that, with the installation of electric furnaces, the Campbell Works could in time be operated profitably. The National Center for Economic Alternatives,

headed by Gar Alperovitz, subsequently performed a series of more extensive studies, which involved the work of several other steel and financial consultants--Paul W. Marshall, a former finance professor at Harvard and, at the time, an expert on the steel industry working for the investment banking firm of Putnam, Hayes & Bartlett, Inc., and Robert Brandwein, of the consulting firm of Policy & Management Associates--and which made findings similar to those of the Beetle report. Also, as part of the NCEA coordinated project, lawyers Karl Friedan and Brad Dewan prepared a study on recommended corporate structures for the new corporation. Albert Calderon, the famous steel technologist from Cleveland, discussed with the Coalition his proposed but untested "super" basic oxygen furnace, which, although requiring larger amounts of capital investment than the electric furnace, was expected to yield greater savings in operating costs.[25] The Calderon proposal was later to become the Coalition's alternative operating strategy--second to the electric furnace plan. Also, for the special tasks of underwriting and marketing the potential guaranteed debt and for conducting the negotiations with Lykes and LTV, the Coalition obtained specialized investment banking and legal assistance.[26]

While the Coalition thus appears to have identified and addressed the relevant areas in need of technical assistance, the coordinators of the project lacked close relationships with private and public sources of capital. In fact, they were, at times, portrayed by opponents of the Coalition as having interests antithetical to those of private capital. In

addition to his previous antiwar activities, Staughton Lynd had collaborated with Gar Alperovitz in 1973 on Two Essays Towards a New American Socialism, a short book that advocated community corporations, particularly in major industries, as a step toward the development of a social economy.[27] Such history and the nature of the idea of worker-community ownership, widely perceived as "socialist," led many to suspect or charge that ideological objectives, rather than the interests of the workers were the primary concerns of the Coalition's leaders.[28] Steel industry representatives tried to discredit Alperovitz, Lynd and consultant Paul Marshall. Copies of the Lynd and Alperovitz book were widely circulated through the Youngstown area, and one industry representative told the press: "One thing's for certain, Marshall won't work for the AISI [American Iron and Steel Institute] again."[29]

An example of the value of established relationships to capital sources is available in the Youngstown case. Early in the Coalition's efforts in November 1977, William Sullivan, president of the Western Reserve Economic Development Agency (WREDA), a non-profit development organization financed by federal EDA and private (including the steel industry) contributions to channel federal money into selected local industrial activities, shared the interest of the Coalition in worker-community ownership of the Campbell Works and, through WREDA, contributed $12,500 in conjunction with the Coalition toward the Beetle study. Unlike the leadership of the Coalition and their selected consultants, however, Sullivan had access to powerful

members of the Carter administration. He was able to meet and discuss his ideas with Undersecretary of the Treasury Anthony Solomon, who was at the time heading a task force established to recommend solutions to the steel industry's problems. As a result of that meeting, the task force report, released in December 1977, contained an endorsement of the prospect of federal assistance to worker-community acquisitions.[30] Sullivan subsequently disassociated himself from the Coalition's efforts, however, and became a vocal critic of the Coalition's plans. His defection thus not only cost the Coalition a potential access figure to federal capital; it also provided another obstacle.

(3) Financial Resources

The Coalition's acquisition campaign was financed by contributions from local and national church organizations and by Urban Development Action Grants (UDAG's) from the Department of Housing and Urban Development (HUD). In its early organizational stages, the Coalition received a $25,000 donation from local churches.[31] One half of this money paid the Coalition's share of the Beetle study and the other one half paid for the initial services of the NCEA. During the balance of the campaign, local and national church groups provided additional sums of $275,000 for organizing work.[32]

In December 1978, the Coalition received a $335,000 UDAG grant to fund the comprehensive NCEA feasibility study. UDAG's are available to cities and urban counties experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery.[33] The large size of the grant was indicative of HUD's interest in the worker-community ownership concept as a model for addressing similar problems in other distressed urban areas. Also, in October 1978, when the Carter administration requested additional information from the Coalition about the impact of the Lykes-LTV merger on the anticipated market for their proposed corporation and about the Coalition's plans for preferential federal procurement assistance, HUD approved an additional $113 million in UDAG funding for the necessary studies.[34]

(4) Political Resources

Despite the Coalition's aggressive promotional campaign, discussed below, political support for its efforts, with a few exceptions, was generally sparse and superficial.

The national church organizations were exceptional. They used their power and prestige to lobby the Carter administration for support of the Coalition's plans. National church organizations, which held substantial shares of stock in corporations controlled by Lykes also put pressure on Lykes executives, particularly at stockholder meetings, to negotiate in good faith with the Coalition.[35]

Although political representatives worked hard to support public and private development projects generally in the Youngstown area, their specific support for the Coalition's plans was "begrudging" and "superficial."[36] They generally appeared intent on reaping the political benefits that would accrue from association with the plan, which eventually restored some of the jobs that had been lost at the Campbell Works. As a result, they were careful to support every such idea advanced, even if incompatible.

Mayor Richley of Youngstown was publicly supportive of at least four plans: the Coalition's plan, his own plan for the establishment of a National Steel Research Center, the Fetters' plan for privately funded electric furnace operations, and the proposal for an aircraft manufacturing operation (discussed elsewhere).[37] In addition, his desire to achieve "total" and "complete" diversification of the local economy coincided with the objectives of CASTLO, another local development group. Ohio

Governor Rhodes, too, was careful to become involved with a number of projects.[38]

On the federal level, 1978 was a congressional election year, and Democratic Congressman Charles Carney, while not vocally supportive of the Coalition's plans in particular, sought desperately to get federal funding for some project in his district. Through his efforts, the Mahoning Valley Economic Development Committee (MVEDC) was established in October 1977 to devise a development plan for the area and to serve as a screening agency for the channelling of federal EDA funds. He also established the Congressional Steel Caucus, with congressional members primarily from Ohio, Pennsylvania, Indiana, Illinois, Alabama and New York, to pressure Congress and the President into acting in the best interests of states heavily dependent on the steel industry.[39] In addition, in April 1978, he and Senator Metzenbaum expressed some support when they urged the Justice Department to condition any approval of the Lykes-LTV merger upon Lykes' willingness to bargain in good faith with the Coalition. The intensity of the steel industry's opposition to the Coalition's plans and the lack of widespread public support in favor, however, tempered any inclination to do much more.

Of elected representatives, most significant was the lobbying of Senator Metzenbaum after the Attorney General's approval of the merger and the subsequent breakdown of Lykes-Coalition negotiations in July 1978. His pressure on Attorney General Bell and the White House contributed to the resumption of negotiations under Justice Department supervision in November 1978 and to the

companies' willingness to name a specific price and grant an option to the Coalition.[40]

Such support, however, did not extend to an active advocacy of federal assistance for the Coalition's plans. In fact, when the Coalition's request for federal assistance was ultimately denied in March 1979, Senators Glenn and Metzenbaum and newly elected Congressman Lyle Williams (victorious over Congressman Carney in the 1979 election) all declined to fight to have the Administration reconsider its decision, and Glenn and Williams indicated that they had also personally shared the reservations expressed by the EDA.[41]

There was also a general absence of grass roots public support for the Coalition's plans, which, in light of the intensity of the steel industry's opposition, made the superficial support of the politicians a politically sufficient response. A sociologist at Youngstown State University remarked: "The Coalition is all leaders and no followers."[42] Coalition rallies and meetings were poorly attended. In particular, fewer than one hundred gathered for a September 19, 1978 rally commemorating the first anniversary of the 1977 shutdown announcement.[43] Further, given the apparent magnitude of the crisis and the extensive public relations campaign waged by the Coalition, the public's financial response to the Save Our Valley project had been disappointing, having raised only $4 million[44] compared to the $8 million originally expected by the Coalition.[45] Also, of that $4 million, $1 million came from national religious groups.[46]

Most critical, however, was the general lack of participation by the local and international organizational levels of the USW. The international abstained from political, financial or technical support until March 1979, when, possibly reacting to a last-minute showing of local rank and file support, James Smith, an aide to USW President Lloyd McBride, helped the Coalition devise a plan for the reduction of labor costs.[47] Finally, on March 29, 1979, one day before the EDA's rejection of the Coalition's request for federal assistance, the USW international announced its full support for the Coalition's plans, including the provisions calling for reductions in personnel levels and benefits.[48] Union officials explained in justification for their late support that, until that date, the Coalition's plans had not been sufficiently detailed to be "realistic."[49]

The lack of prior support by the international union can probably be traced to three major reasons. First, the USW international ranks among the most conservative of the industrial unions. It has not staged a formal strike in over twenty years[50] and until recently[51] limited the scope of its concerns to the traditional collective bargaining issues of wages, benefits and work rules, not job security. The USW President, Lloyd McBride, held a traditional union attitude that corporate decisions regarding general company operations, such as plant closings, were a management prerogative that the union should not usurp.[52] In addition, pressuring management to keep open unprofitable facilities would jeopardize the high wages and benefits already gained for the great majority of steelworkers with jobs elsewhere.[53]

Thus, when Youngstown Sheet & Tube announced its decision to close the Campbell Works in 1977, McBride did not criticize the

company. Instead, he agreed that "profitability is the name of the game,"[54] and urged the federal government to enact programs to provide relief to the steel industry generally.[55]

Related to the union's conservatism was its caution regarding the feasibility of the Coalition's plans and thus also the security of its members' pension benefits and the equity earned by them under ESOP's and incentive plans.[56] In a union memorandum dated May 3, 1978, James W. Smith, an aide to McBride, questioned the basic concept of worker-community ownership and the assumptions underlying the Coalition's plans for financing the acquisition.[57] He suggested that the worker-community ownership idea was a throwback to the producers' cooperatives promoted by the Knights of Labor in the period of 1870-1895. He noted that most of the ventures failed and that the participants in the successful ones eventually became capitalists and dropped out of the Knights. Thereafter, the labor movement adopted the current philosophy of collective bargaining. Smith suggested that the Coalition's leaders were aware of this history and that they were promoting the plan to discredit the union in the eyes of sympathetic workers.[58]

Smith also questioned the Coalition's ability to raise the necessary amounts of capital and, thereafter, the ability of the new corporation to handle the schedule of debt repayments. He doubted that $50 to $70 million in equity capital could be raised for a company, of which one third of its directors were elected by employees. He wrote: "I do not believe that the people who have or control that kind of money will gamble that much

in a company structured in such a way."[59] In addition, he questioned the federal government's willingness to make available loan guarantees in the large amounts requested by the Coalition.[60] Finally, such a financing package would yield a severely imbalanced ratio of debt to equity capital of 9 to 1 compared to an industry average of 2.3 to 1.[61] Thus, even given the availability of the capital, Smith doubted the new corporation's ability to handle the size of the corresponding fixed interest payments.[62]

A third reason for the lack of international support for the Coalition's efforts and, in general, for the apparent disinterest of the international in the plight of the affected Youngstown steelworkers may have been related to internal union politics.[63] In the 1977 union elections in which McBride was elected president of the USW, workers in the Youngstown area voted 5 to 1 for insurgent candidate Ed Sadlowski,[64] who supported rejection of the Experimental Negotiating Agreement forbidding strikes at the expiration of steel contracts, and pushed for bargaining over job security and investment decisions.[65] Furthermore, a movement of dissident steelworkers named RAFT (the "Rank and File Team")[66] and sharing the objectives of Sadlowski, still had strong supporters in the Youngstown area.

McBride's forces ultimately prevailed, however, in this internal struggle. After the subsequent shutdown in 1980 of Youngstown Sheet & Tube Company's Brier Hill Works, a bastion of RAFT support, the Youngstown district of the union was disbanded and its remaining members split up among three adjoining districts.[67] Its membership had declined from a high of 65,000

to 28,000 workers.[68]

Despite the large number of layoffs caused by the shutdown, support for the Coalition's plans which might have been expected from the affected union locals materialized only at the end. The leaders of the locals most deeply affected, like their international leaders, had traditional attitudes. Receiving no encouragement from the international regarding the Coalition's plans, they generally stayed uninvolved. Russell Baxter, senior president of the area locals and with close relations to the international organization, was even considered something of an opponent to the Coalition's efforts, according to one published account.[69] He was cynical of the efforts of his fellow local union leaders, of the disinterest of young workers in union activities and of the efforts of the Coalition, which he claimed was just raising false hopes.[70] However, symptomatic of his brand of unionism, he had no solutions to deal with a plant shutdown.[71]

A significant exception, however, was the leadership of Local 1462 of whose membership only about 200 were Campbell workers--the rest from Brier Hill. In October 1977, before the Coalition was organized, Gerald Dickey, recording secretary of Local 1462, organized several meetings of an ad hoc group of the active local Youngstown Sheet & Tube membership to discuss a common strategy in response to the shutdown. Since many workers held shares of stock in the company, primarily as a result of a company profit-sharing plan, the group had tentatively focused its efforts on a stockholders' suit.[72] USW District Director Frank Leseganich quickly intervened, however, telling the local

presidents to meet only with him at meetings with no other local union officers and with a lawyer other than Staughton Lynd.[73] The district then announced that it was considering legal action and took some initial steps which defused the momentum of the local leaders. No suit was ever filed, however.[74]

Thereafter, the local union organizations quickly deteriorated. Workers were distrustful of their leaders and suspicious that those few who were active in the Coalition campaign were misrepresenting the possibility of reopening just to stay in power.[75] Many shared a natural skepticism of the Coalition's plans, doubting that a group of religious leaders could profitably run a plant where the steel industry had failed. Unable or unwilling to risk their futures on the uncertain fate of the Coalition's plans, local workers swiftly attended to their immediate needs and sought employment elsewhere or chose early retirement. Only a "gray area" of workers too old to easily find another job and too young to take early retirement were really interested in the Coalition's ideas.[76]

This "gray area" ultimately provided the sole organized support of local union members for the Coalition's plans.[77] The Steelworkers United for Employment (SUE) was formed in the late days of the Coalition's campaign. The group was led by Len Balluck, a former grievance committeeman and John McNicol, a rank and file steelworker.[78] On March 12, 1979, the SUE enlisted the support of 350-400 steelworkers who approved a resolution adopting the Coalition's specific plans for worker concessions at the reopened Works.[79]

(5) Competing Projects

In the midst of the Coalition's efforts to reopen the Campbell Works, several other promoters developed alternative plans which competed for the purchase of the Campbell facilities and/or for the potential sources of federal and state funding for such a project.[80] As will become apparent, this multitude of competing programs and the failure of their proponents to resolve their differences and focus their unified support behind a single plan contributed to the lack of success of all the plans, and particularly that of the Coalition.[81]

One of the more prominent promoters in this period was William A. Sullivan, president of WREDA, discussed above, and a principal organizer of the Steel Communities Coalition (SCC), a group of thirty East and Mid-West leaders formed earlier that year to press for massive relief to the steel industry. In the days following the shutdown announcement, Sullivan urged the federal government, as part of the SCC's proposed general relief program,[82] to expand its existing business loan programs to make federal loan assistance available in amounts necessary for the large capital requirements associated with modernizing the steel industry.[83] As discussed earlier, Sullivan then initially expressed interest in the Coalition's ideas and contributed, on behalf of WREDA, one half of the $25,000 cost of the Beetle study. When the study was released, finding the reopening potentially profitable, Sullivan then announced plans for the formation of a privately financed and operated company, the Mahoning Steel Company, with himself as president.[84]

His plans for Mahoning Steel Company never came to fruition, but his interest never returned to the Coalition's plans. Instead, he joined with Father William Hogan (known as the "Steel Priest") of the Fordham University Industrial Economics Research Institute in proposing a number of other plans for the use of the Campbell Works and the federal funding, including, in June 1978, a $664 million iron-making facility.[85] That idea was later expanded to include a continuous caster, and on March 30, 1979, they proposed a multi-million ton coke plant and a major coal-fired direct reduction facility.[86] They also became vocal critics of the Coalition's plans.[87]

Another proposal which competed both for the purchase of the plant and the federal funding was the idea for a national steel research center, advanced by Youngstown Mayor Philip Richley through his leadership of the Mahoning Valley Economic Development Committee (MVEDC). The steel center's proposed purpose was to perform research and testing of new steel technology in a steel mill environment, and its cost, for which the MVEDC sought EDA funding, like that of the Coalition's plan, was approximately $500 million.[88] Unlike Sullivan and Hogan, however, Richley as a politician tried to downplay the incompatibility of his and the Coalition's plans and, in public, gave his support to both.

A third alternative was pursued by a group of mayors of the communities adjacent to Youngstown--Campbell, Struthers and Lowelville. The bulk of the affected workers lived in these small communities in which unemployment reached levels greater

than 30% compared to the 6.9% rate in Youngstown.[89] The three mayors, as members of MVEDC, grew concerned that their towns' interests were being overlooked by the Youngstown-dominated MVEDC and by the Coalition. They also shared the belief that the mills could not be profitable and that, therefore, the appropriate development strateby should concentrate its efforts on attracting industries to diversify the local economy and not waste resources in steel. Thus, in February 1978 they established CASTLO (an acronym for the names of the communities) and sought instead to convert portions of the abandoned mills into an industrial park.[90] They received $2 million in financial support from the state of Ohio, and Governor Rhodes appointed a former director of the Ohio Department of Economic and Community Development to work with the group on a full-time basis.[91]

A fourth strategy, supported by many local business interests, was developed by Dr. Karl Fetters, a retired engineer from Youngstown Sheet & Tube.[92] His idea called for the establishment of a skeletal private corporation to install, with LTV assistance, three electric furnaces at the Campbell Works.[93] The facilities would then be leased to LTV to conduct the actual operations with an eventual option to buy.

So great was the attraction of the promised federal assistance that a private promoter of a fifth plan, an aircraft manufacturing operation, came to Youngstown seeking federal assistance. Unsuccessful in his attempts to secure EDA financing for his project elsewhere, he was reportedly steered to Youngstown by the EDA.[94] The firm, to be called ICX Aviation, was headed

by a representative from a computer software development company, who sought $100 million in federal loan guarantees to combine with $50 million which he claimed to have already raised.[95]

The resulting competition among these groups and the Coalition had only negative effects on the Coalition's plans. In their efforts to gain support for their individual projects, the fiercest competitors inevitably attacked the infeasibility of all other plans, thus clearly identifying the weaknesses of each for the benefit of the federal reviewers. In addition, it reflected a lack of unity among the area's political leadership and an absence of widespread public support for any one plan, both of which were, as discussed below, important criteria in EDA's selection process. Also, given a politically sensitized federal decision-making apparatus seeking to gain maximum political mileage out of any assistance it was to award and hoping not to create substantial opposition with its decision, the local factionalism made a favorable federal decision unlikely.[96]

2. Sufficient Resources for Purchase (cont.)

b. Access to Financing

The keystone of the Coalition's plans was the anticipated assistance of the federal government. In the Final Report of the NCEA, issued in September 1979, the authors concluded that the reopening of the Campbell Works was feasible, but only with the special assistance of the federal government.[97] Such help was justified, according to the NCEA, as a "national showcase demonstration project" to deal not only with the problems of the steel industry, but also as a more generic response to the issue of urban decay facing many parts of the country in an era of slower economic growth."[98]

The Coalition's plans for the purchase and modernization of the Campbell Works presented in the September 1978 NCEA report, called for $525 million in capital requirements, of which the federal government was asked to supply $20 million in UDAG assistance and $300 million in EDA loan guarantees.[99] The Coalition's final revised plans submitted in March 1979 proposed a three-phased $435 million reopening of the Works--involving, initially, the purchase of the plant and operation of the rolling mill with outside steel supplies; secondly, within two years, the installation and operation of an electric furnace and a continuous caster; and finally, by 1984, the installation of additional finishing equipment to diversify the plant's output.[100] This revised plan called for $317 million in federal assistance--$17 million in UDAG money and $111 million in EDA loan guarantees for Phase One; and $220 million

in EDA loan guarantees for Phases Two and Three. In addition, both plans assumed $10-$20 million in assistance available from other federal programs. Finally, to support a market expected to yield losses in early years of the new company's operations, due in part to the elimination of an internal market to Lykes' Youngstown Sheet & Tube operations elsewhere (to be served presumably by J&L as a result of the federally approved Lykes-LTV merger), the Coalition also sought preferential procurement policies from the federal government.

Contributions from other sources were anticipated in comparatively smaller amounts. In both plans, the balance of the company's capital requirements was expected to come from private citizens in the Youngstown area, from a realignment of the investment portfolios of national church organizations and, to a lesser degree, from other private investors. The Coalition expected a steady and gradual increase in sales in proportion to the industry average. It also hoped for share expansion in the long-term with an aggressive marketing strategy and from firms impressed with the unique nature of the project.[101] In terms of reducing the company's operating costs in the short-term, in which the company was expected to suffer losses, the Coalition's plans relied primarily on productivity increases expected to result from the increased employee motivation associated with their new status as owners. The immediate exercise by employees of real ownership rights, via voting control of ESOP stock shares, their guaranteed representation in significant numbers on the board of directors and their special

influence on important corporate decisions in the new corporation were perceived by the Coalition as essential in this regard. In its final plans, however, the Coalition did recommend cuts in employee compensation and personnel levels, although the employees' wage rates, in line with the USW national contract, were left unaffected. A competitive reduction in operating costs, in the long-term, was to be realized from the installation of the more efficient modern electric furnaces and continuous caster. Finally, although the Coalition recognized the need to recruit experienced personnel as managers, and possibly directors, that work, as well as the retention of hourly workers, was only in its early stages by the time that the Coalition's final plans were presented to the government.

2. b. (1) Sources of Capital

(A) Direct Federal Assistance

Unlike the tax subsidies inherent in all ESOP's, the availability of loan guarantees and grants sought from the federal government was subject to political considerations. The EDA and HUD were locked in a battle for control of a long-anticipated urban development fund and the White House was intent on managing any federal assistance award to Youngstown to its maximum political benefit.

In March 1978, following one of the recommendations of the December 1977 Solomon task force report on recommended government policies to assist the ailing steel industry,[102] a $550 million loan guarantee program was set up within the EDA to provide assistance to ailing middle- and small-sized steelmakers.[103] Mr. Robert Hall, Assistant Secretary for Economic Development within the Commerce Department and thus head of the EDA, made clear, however, that the fund would only be used for meritorious projects--that its purpose was not merely to prop up ailing companies for a few years in an effort to temporarily save jobs.[104] In addition, the EDA and the Commerce Department had always been particularly sympathetic to the interests of the steel industry, in this case an opponent of the Coalition's plans.[105]

The Commerce Department's conservatism stood in sharp contrast to the philosophy of HUD. The HUD UDAG program, to which the Coalition repeatedly and successfully turned for assistance, was established by the Housing and Community Development Act of 1977 to promote economic development projects in cities and urban counties most distressed by excessive housing and

economic deterioration.[106] The UDAG program, moreover, had, as a specifically designated mission, the funding of special or unique development opportunities requiring large front-end investments.[107] Thus, HUD and specifically HUD Secretary Patricia Harris, who had assisted the Coalition's efforts from their beginning with the $335,000 UDAG, appeared as a source of federal support for the Coalition's plans.[108]

Moreover, the apparent imminence of a new federal urban development policy with massive funding authority,[109] prepared the scene for an intra-administration struggle in addition to the competition of alternative proposals underway in Youngstown. The general economic development authority conferred on HUD by the UDAG legislation constituted, from the perspective of the EDA, an aggressive and threatening intrusion into its own authority. William Sullivan, speaking in the Summer of 1978 in defense both of his contacts in the EDA and, thereby, in support of his own projects presumably favored therein, attacked not only the Coalition's plans but also the policies of the agency which had sponsored them:

> While the Treasury Department stretches its imagination to come up with the trigger price that will hold off threats of stronger import legislation, ... HUD (of all people, or perhaps predictably enough) commissions a study which recommends nationalizing the capital structure and socializing the management structure as a national model for use in preventing steel plant closings. Where HUD got its expertise in steel or in economics remains a well-guarded secret. Meanwhile, HUD's area of expertise, shoring a city's infrastructure, is addressed by little but silence.[110]

As early as December 1977, the White House had sought to deal with the emerging conflict between groups in Youngstown and

bureaucrats in Washington by setting up an interagency government task force.[111] Established by Jack H. Watson, Jr., assistant to the President on intergovernmental affairs, the Interagency Coordinating Council's initial purpose was to encourage local support for a single development plan and to define the proper role to be played by the federal government.[112] In a series of meetings in December 1977 between federal officials and the various proponents of development plans seeking federal assistance, it was agreed that the Coalition would be the "lead" organization for such purposes.[113] In the months that followed, however, the other leaders continued nevertheless to maintain their support for individual plans, and the interagency group became a forum for the screening and review of such projects.[114]

The Council was composed of Robert Hall of EDA, Robert Embry, Assistant Secretary of Community Planning at HUD, and Ray Marshall, Secretary of Labor.[115] Watson was to submit the Council's recommendations to the President for an ultimate decision to be made after consultation by the President with other political advisers Stuart Eizenstadt, Robert Strauss and Anne Wexler on the urban, political and commercial practicality of that recommendation.[116]

Three primary criteria guided the federal decisionmakers in a decision that would likely establish a national model for federal assistance to distressed urban areas.[117] First, given the magnitude of the funds at issue, a persuasive demonstration of the feasibility of each proposal was required.[118] Also, the plan had to be likely to deliver a large number of jobs and

relieve somewhat the structural unemployment among Youngstown's steelworkers.[119] Finally, the plan needed broad public support.[120] In particular, the Carter administration wanted to avoid offending the USW and the steel industry.[121] (cont. on p. 44)

The federal decisionmakers, however, differed on the relative significance to be accorded each criterion and in their evaluations of the Coalition's plans. The EDA expressed strong opposition to the Coalition's plans on grounds of unfeasibility and support for the activities of William Sullivan's Steel Communities Coalition. In a September 8, 1977 memorandum to a White House aide regarding the Coalition's attempts to secure a meeting with Vice President Mondale, Robert Hall wrote:

> The NCEA thing is so far out and unrealistic that I worry about involving the Vice President and giving further "credibility" to their effort. .... As I indicated to you on the phone, a "constructive" effort is now forming under the leadership of the Steel Communities Coalition (SCC). Very delicate negotiations are being undertaken by the SCC which would produce alternatives to reopening the Campbell Works which would be acceptable to ECMV [the Coalition] and its religious membership. However, the negotiations will not be completed until late September or early October.[122]

Hall again attacked the feasibility of the Coalition's plans in a briefing paper prepared for the September 27, 1978 Washington meeting of the Council, in which the Coalition, backed by the recently released final report of the NCEA, formally presented its plans. Hall's briefing paper criticized the plan as follows:

> One of NCEA's principals, Gar Alperovitz, has been extremely visible both nationally and internationally as he traveled widely in the last 6 months promoting the idea of religious groups' involvement in community ownership of basic manufacturing facilities. NCEA is less important than the other organizations (United Steelworkers of America, Western Reserve Economic Development Agency, Mahoning Valley Economic Development Committee) just mentioned. It will recommend the unfeasible solution of spending vast sums of Federal dollars to reopen a facility which will never regain its market share let alone be self-sustaining. Moreover, NCEA and its ideas are strongly opposed by the Steel Workers Union and by private industry.[123]

HUD, however, as evidenced by its award of UDAG's to finance the Coalition's feasibility studies, had virtually endorsed the Coalition's plans from the beginning.[124] In accordance with its new expanded authority over urban economic development, HUD was intent on developing in Youngstown a demonstration model for federal assistance to the nation's severely depressed industrial urban areas. HUD Undersecretary Jay Janis stated in early 1978:

> Simply put, the thing that we'd like to accomplish is that we'd like Youngstown to be a showcase. A showcase of self-help and a showcase of community involvement that somehow can be an example for the rest of the nation.[125]

Watson's function, however, was to manage the Youngstown situation in a manner that would foster the White House's political interests. That required a broader perspective and a more deliberate approach in his efforts to reconcile the positions of HUD and EDA. The political interests of the White House at the time included the reelection of Congressman Carney. Top administration officials, including Patricia Harris, Robert Strauss, Ray Marshall and Walter Mondale were thus sent to Youngstown in the months prior to the election to campaign for Carney and to hold out the prospect of federal assistance to some job-creating project in the area.[126]

In such a situation--with the steel industry and the USW reportedly opposing the Coalition's plans, the apparent support of national and local religious leadership for the plans, and the unpredictable popular electoral reaction to a rejection of assistance for such a plan immediately prior to the congressional election--Watson's political inclination was to

postpone a decision until after the election while, at the same time, publicly promising the availability of a significant amount of aid for a suitable project in the area. Thus, at the September 27, 1978 meeting, Watson committed the federal government to provide at least $100 million in EDA loan guarantees for economic development in the Youngstown area[127] and stated that, despite the $100 million EDA limit on such assistance for individual projects, the $300 million called for in the NCEA proposal was nevertheless within the capabilities of the government.[128] Watson said that he had "very little doubt that we can, between the public sector and the private sector, put something together that can work."[129] He also indicated that the Administration would have some work for the Coalition within three weeks.[130] On October 18, 1978, however, a letter from Watson stated that the administration needed more information before it could render a decision. He asked for a marketing study to determine whether the Lykes-LTV merger left an adequate market for the new corporation,[131] for a purchase price for the Campbell Works, and for answers to questions about the legality and practicality of government procurement on the scale proposed by the Coalition,[132] and he committed another sum of HUD money to finance the studies.[133]

As a result, movement toward a final decision resumed only after the elections. As discussed earlier, political pressure by Senators Metzenbaum and Kennedy on the federal government and the companies' management produced an option to purchase the Campbell Works for $16 million.[134] In January 1979, the Coalition,

formally applying for $16.8 million in UDAG money, prepared a revised plan that called for a phased reopening of the Campbell Works which brought the size of the loan guarantees required for the first phase close to the EDA's $100 million limit[135] per project, thereby apparently brightening the Coalition's prospects further.

On February 22, 1979, however, an analysis of the Coalition's plans prepared by Professor Richard S. Rosenbloom of the Harvard School of Business and commissioned by HUD, concluded that they were "not feasible in economic and financial terms."[136] Rosenbloom claimed that the amount of financing sought by the Coalition was insufficient to reopen the Campbell Works on the scale contemplated, that the NCEA studies had overestimated the likely market for the new company's output, and that the implementation of the new worker-community form of ownership would add strains to an already weak operation.[137]

Even prior to the publication of the Rosenbloom analysis, however, and perhaps with knowledge of its upcoming conclusions, Assistant Secretary Embry had written a memorandum to Jack Watson in which he virtually conceded the defeat of the Coalition's plans but sought, nevertheless, to maintain some momentum within government circles for the approval of another plan for Youngstown that might use some of the development strategies that had been a part of the Coalition's plans:

> I am concerned that we maintain momentum with respect to Youngstown. The original Coalition proposal has served to legitimately raise the level of public concern and debate. Clearly, the issues related to technological obsolescence and economic decline in older urban areas will not go away. I

> hope that we will continue to use the Youngstown area (and its problems) as a focus for specific economic development strategies: among them, targetted procurement, retraining and mobility options and private/public sector partnerships.[138]

Moreover, on February 26, 1979, Hall sent a memo to Watson in which he maintained his opposition on behalf of EDA to approval of the loan guarantees and warned Watson that the Coalition would nevertheless approach the White House directly for support. Hall wrote, "we do not think it should be given."[139]

Thus, while the Coalition revised and refined its plans to address the concerns expressed by Watson in October 1978 and the growing last-minute rank and file USW support encouraged McBride's ultimate approval of the Coalition's plans, it appeared that the federal decision had already been made. Nine days after a March 21, 1979 meeting between Coalition and EDA representatives on the specifics of the revised plan, the EDA, with the explicit concurrence of the White House,[140] rejected the Coalition's request for loan guarantees. The reasons expressed in the notification letter from Hall were that the Coalition's request exceeded the $100 million limits of the EDA guarantee program and that the EDA declined to seek congressional authorization for a higher level due to EDA's reservations about the projects's feasibility.[141]

Coalition leaders felt that the additional market studies performed in response to Watson's October directions and the USW international's support of the labor concessions contained in the revised plans had satisfactorily addressed all remaining feasibility considerations.[142] They also cited Watson's

earlier assurances regarding flexibility in the amounts of financial assistance potentially available and asked the Carter administration to reconsider the EDA decision.[143] On May 24, 1979, however, Jack Watson officially affirmed the rejection, but he repeated the administration's commitment to reserve $100 million in loan guarantees for a suitable economic development project in Youngstown.[144]

(B) Private Assistance

The Coalition also sought capital from private sources. However, since the large majority of the necessary financing--and thus the ability to successfully start operations with the new corporation--was dependent on federal sources, the Coalition planned to wait until that money was secured before formally issuing equity shares. In the meantime, however, as a demonstration to the federal officials both of the new corporation's ability to attract private capital and of the degree of community support in the Youngstown area for the Coalition's plans, the Coalition started a Save Our Valley (SOV) fund-raising campaign. The effort encouraged the opening of special "Save Our Valley" bank accounts, which, upon the eventual formation of the proposed company, were morally, but not legally, pledged to the purchase of stock.[145]

The SOV campaign, begun in February 1978 and directed by Reverend Richard Fernandez, utilized aggressive promotional techniques. The mass media were used extensively with press conferences and television and radio advertisements. A speakers' bureau was established to send supportive union members, religious leaders and city officials to explain the Coalition's plans to Rotary Clubs, high schools and church groups. SOV days were proclaimed in towns throughout the Youngstown region, and SOV buttons, balloons and bumper stickers were printed. A telephone fund-raising effort reached 50,000 households and involved 500 volunteers, two-thirds of which were students recruited from local high schools with their school principals' approval.

Mayor Richley, one day, sent letters to city employees urging them to open SOV accounts while banks sent tellers to city offices to facilitate the process. The campaign publicized the Coalition's efforts so well that it even attracted major news media attention.[146]

It was less successful, however, at attracting money. The Coalition had originally expected to raise $6-$12 million in 8,000 to 12,000 SOV accounts,[147] but indicative of its relatively small and narrow base of private support, it drew only $3.5 million by mid-July.[148] By November 1978, the campaign had raised a total of only $4 million in 4,138 SOV accounts. Moreover, most of these accounts were opened by large organizations,[143] and, of the $4 million, $1 million had come from national religious groups.[150]

2. b. (2) Feasibility Considerations

(A) Managerial Structure

(i) Voting Control of Stock

Tentative plans for the structure of the new corporation called for the issuance of two kinds of equity stock--voting common stock to be sold to an ESOP, to a non-profit community corporation and to local private investors up to certain maximum amounts, and non-voting preferred stock to be sold to individuals and organizations outside of the Youngstown area and to those local investors who wished to invest in amounts greater than the limits established for holdings of common stock.[151] The basic thrust of these plans was to maintain local control of the new corporation and, in particular, to safeguard workers' control over decisions which especially affected their interests. Such control was deemed important as a means of encouraging increased productivity, to prevent abusive manipulation of the operations by an investor with outside interests (in particular, to avoid a repeat of Lykes' policies with the Campbell Works), to maintain some degree of public accountability given the large amount of federal and state assistance anticipated, and to maximize local investment.[152]

The ESOP was to purchase shares of stock with the proceeds of the EDA guaranteed loans and HUD funds channelled to it from the community corporation and with a separate $10 million loan from an EDA program specially intended for the funding of ESOP's.[153] The Coalition's revised plans, as of March 1979, called for ownership of such stock by the ESOP trustee, who was presumably

to vote both allocated and unallocated shares according to the directions of the workers.[154] Additionally, special protections were afforded workers on several important issues, including any matter resulting, within a specified time period, in a reduction of more than 10% of the union work force, any amendment to the company's by-laws affecting stockholder voting rights and the composition of the company's board of directors, the voluntary dissolution of the company and the lease, sale or disposition of substantially all company assets.[155] Decisions on these issues required not only a favorable vote of the majority of all directors on the board, but also a majority of the votes of those directors elected by the holders of ESOP shares.[156]

A non-profit community corporation was permitted to control voting stock of the new company. The functions of this corporation, which was to be established either as a successor to the MVEDC or as a new and separate entity, were to include (1) the channelling of federal and state grant, loan and guaranteed loan funds and private contributions to the new company through the ESOP or the direct investment of its own funds with loans or the purchase of stock; (2) the use of earnings from such investments for the development and funding of other economic development projects in the Youngstown area; and (3) to maintain an element of public accountability for the new corporation.[157] The board of directors of the community corporation was to be composed of recognized community leaders, chosen by a broad-based group of community interests, and its equity participation was limited to somewhat less than 33%.[158]

Private equity contributions were expected from Mahoning Valley residents including the $4 million in SOV accounts, from employees participating in payroll deduction plans and from steel slab suppliers and factors.[159] By March 1979, in an effort to attract a maximum level of private capital, the Coalition had revised the NCEA's initial plans by increasing, at the expense of the community corporation, the proportional share of the company's total equity available to such private investors.[160]

(ii) Composition of the Board of Directors

The proposed articles of incorporation for the new company prescribed a specific composition of interests for representation on the fifteen-member board of directors. Six directors were to be chosen by the holder of the ESOP shares, three by the voters of the shares belonging to the community corporation and six by the private shareholders.[161] This plan, tentatively prepared as of March 8, 1979, represented a revision of the NCEA's initial recommendations, which had called for an eighteen member board with equal representation for the three groups of stockholders.[162] The change reflects a reduced role contemplated for the community corporation.

In terms of the initial membership of the board, however, the federal government's rejection of the necessary financial assistance came before the directors could be assembled.[163]

(iii) Managerial Philosophy

Although a specific managerial philosophy was never formally defined for the new company, it is likely that operations would have involved a greater degree of worker participation in managerial decisions in an effort to improve worker productivity.[164] This is especially probable given the significance of worker representation on the board of directors.

(B) Market Prospects

The new company would continue to produce the same product--hot and cold rolled finished and unfinished sheet steel--for sales to auto and appliance manufacturers, steel fabricators and steel service centers.[165] Paul Marshall's initial April 1978 sales forecast indicated an adequate market for the new corporation's output over the long-term,[166] but the Attorney General's approval of the Lykes-LTV merger effectively and substantially reduced that market and prompted a need for the Coalition to identify other potential customers.

Marshall's April 1978 forecast of 1.4 million tons in annual shipments included 200,000 tons, which, in the past, the Campbell Works had regularly supplied to other Lykes' subsidiaries.[167] With the merger, however, those requirements would likely be served by J&L's steelmaking facilities.[168] In addition, the merger's approval also eliminated the availability of the Works' customer list. The result, according to Marshall's model, was an unprofitable market, even in the long-term.[169]

After subsequent consultations with marketing representatives and experts, however, the NCEA nevertheless predicted that the new company could recapture at least 70%, and probably 90%, of the Campbell Works' former customers, largely through locational advantages.[170] In addition, the NCEA anticipated the potential, with the recruitment of a marketing staff and the adoption of an aggressive marketing strategy to attract a significant number of new customers. The NCEA noted that the new company might possess a "market advantage" due to the unique

self-help character of the project and its broad national religious support.[171] Also, new accounts were expected with major steel purchasers interested in maintaining a more competitive steel supply.[172]

Confidence in an adequate market, however, depended on the Coalition's request that the federal government adopt procurement policies for steel which would redirect purchases to the new company. As part of the NCEA study, the Northeast-Midwest Institute found several statutory bases for such assistance.[173] Defense Manpower Policy Number Four-A restricts bidding on certain government projects to firms located in high unemployment areas, and the Buy American Act permits the setting of explicit price differentials to enhance the possibility of a U.S. firm obtaining a government contract.[174] Also, the Federal Property and Administrative Services Act of 1949[175] authorizes heads of federal agencies to negotiate purchases without advertising under several selected conditions, one of which includes national emergencies.[176] Finally, the report also included, as an attachment, a memorandum from Patricia Harris of HUD to President Carter urging the use of the first and third means just noted to help the people of the Youngstown area.[177]

The NCEA justified its request by pointing to the action of the Attorney General which effectively reduced the new company's market possibilities and the Carter urban policy, announced on March 27, 1978, which proposed action to redirect federal procurement to areas suffering with high unemployment.[178] The NCEA assumed that 100,000 to 300,000 tons in increased

shipments, or 2% to 6% of federal-related purchases could result from such a policy.[179]

Professor Rosenbloom's analysis of the Coalition proposals criticized the group's sales forecasts as "crude" or "optimistic" and sometimes both and, in particular, doubted the new company's ability to recapture such a significant share of its old markets.[180] Marshall, however, with the proceeds of a second HUD grant, subsequently performed, in early 1979 after the release of Rosenbloom's comments, an additional study--a survey of 600 steel customers within a 200 mile radius of the plant--which showed a market sufficient to yield a profit within three years.[181]

(C) Labor Costs

The NCEA Final Report of September 1979 contained no reference to plans for explicit reductions in labor costs. Rather, the Report focused exclusively on the savings which could be achieved via productivity increases expected to result from the new status of employees as owners and their greater degree of input into managerial decisions.[182] Increases in productivity attributed to these factors were estimated at 2% for the first three years, 1.5% for each of the next two years and 1% for four final years.[183]

With the questionable sufficiency of the new company's short-term markets, however, the Coalition's September plans were revised by March 1979 to contain specific recommendations for cost reductions totalling 21% and decreasing the new company's projected operating costs per ton of steel from $55.75 to $43.80.[184] The reductions, which included cuts in compensation and personnel levels, were worked out in February and March of 1979 in consultation with James Smith of the USW international and approved by a group of 350-400 SUE steelworkers.[185] Furthermore, the consultative effort between the Coalition and the USW international culminated in the international's approval of the Coalition's plans in late March.[186]

No changes were planned in the general hourly rates contained in the last USW-industry Basic Steel Contract.[187] Rather, returning workers would forfeit all seniority benefits which had accrued to them while with Youngstown Sheet & Tube and take their incentive pay prescribed in the Basic Steel

Contract in the form of stock. The waiver of accumulated seniority yielded major reductions in costs for pension funding and for vacation benefits. The new company would be obligated for the same entry-level amount of vacation and pension costs for all employees, while the merged Lykes-LTV would be responsible for all past pension liabilities.[188]

Significant manpower reductions in both hourly and salaried positions were also anticipated, although no specific breakdown was projected.[189] Of the roughly 4,100 workers ultimately affected by the shutdown of the Works, only 1,600 would be rehired during Phase One in which only the rolling mills would be reopened.[190] Operations with the new electric furnace and continuous caster in Phase Two, within two years, were expected to add another 1,000 jobs, and in Phase Three 500 more positions were expected with the installation of additional finishing equipment.[191]

(D) Necessary Capital Investment

The Coalition's March 1979 revised plans[192] for a three-phased reopening of the Campbell Works called for approximately $358 million in new capital investment over the first five years of operations.[193] In Phase One, roughly $88 million was anticipated to upgrade the rolling mills and to ready the Works for operation, while a $270 million balance was earmarked for the capital projects in Phases Two and Three.[194]

In Phase One, the limited reopening of the Works entailed the operation of the plant's rolling mills, supplied with raw steel from outside suppliers. Within two years, however, the new company had planned to have installed and ready for operation a set of modern electric arc furnaces and a continuous caster to supply the mills' steel needs.[195] The capital costs for these two items were estimated at $220 million.[196] Electric furnaces, which make steel from scrap metal instead of the integrated process of first converting iron ore into pig iron and then into steel, were chosen due to the new company's lack of captive sources for iron ore and coke, the local availability of scrap steel and the lower energy costs of electric furnaces relative to open hearths and oxygen furnaces.[197]

In Phase Three, plans were for forward integration to broaden the company's steel finishing capability with the installation of facilities for galvanizing and making welded steel tubing.[198] Costs here were estimated at $50 million.[199] These plans, however, were more flexible than those in Phases One and Two. Here, some delay was possible depending on the

availability of markets and private sector financing.[200]

(E) Managerial and Employee Resources

As of March 1979, the Coalition was still in the early stages of assembling a pool of workers and managers for the new company. In terms of hourly workers, it was estimated that, as of March 29, 1979, about 1,500 of the 4,100 workers laid-off in 1977 had not found equivalent jobs elsewhere.[201] This may have been fine for the workers who had found jobs and even for those expecting to return to the new company, but it might have posed manpower problems for the new company, especially in skilled and managerial positions. Following the shutdown, there was intensive recruiting by other steel companies for skilled machinists, mechanics, maintenance workers and electricians. In addition, some workers transferred to Youngstown Sheet & Tube Co.'s Indiana Harbor Works, and others chose early retirement.[202] With the shutdown, too, came the deterioration of those union locals most heavily affected, thereby making difficult communication with and organization of those workers difficult.

In February and March of 1979, the Coalition actively sought the support and participation of the Campbell workers still on lay-off and encouraged the formation of Steelworkers United for Employment (SUE). They obtained the support of 350-400 workers for the labor cost reduction package formulated by the Coalition, and local union leaders assured the planners that a sufficient number of other laid-off Campbell workers were available for the plant's operation and likely to be supportive of the package.[203]

According to the Coalition's revised plans, it was assembling, in March 1979, an "experienced steel industry management team" to complete plans for the new company and to carry out the reopening.[204] Two former Youngstown Sheet & Tube Co. executives were working with the Coalition in this regard, but extensive recruiting was clearly contingent upon federal approval of the money needed to hire the necessary staff.[205] Indeed, one of Professor Rosenbloom's major criticisms of the Coalition's early plans related to its lack of an identified management team, which he called the "most important factor in the success of a major innovation."[206]

3. Political Environment as a Facilitator or Obstruction in 1 or 2 above

The political environment influenced the course of the Ecumenical Coalition's efforts in contradictory directions. First, in association with the contemporaneous federal review of the proposed Lykes-LTV merger, the Justice Department, elected political representatives and, indirectly, even the USW international, pressured a reluctant Lykes Corporation to deal with the Coalition. However, these same actors failed to actively support the provision of the federal financial assistance requested, and the delay and ultimate refusal of the Carter administration in that regard prevented the Coalition from gaining the capital resources necessary to proceed with meaningful negotiations and complete the purchase.

The federal government's cooperation with the Coalition's efforts throughout its planning stages encouraged the Coalition's efforts and virtually invited an innovative approach, like that of the Coalition, which relied substantially on government funds. From the federal government's earliest recognition of the potential value of such efforts in the December 1977 Solomon Report, the early meetings with Watson's Interagency Coordinating Council, the administration's proposals for a new and progressive urban policy, through the meetings, prior to the 1978 Congressional elections, in which Watson assured the Coalition's leaders that their request for $300 million in assistance was not outlandish, very few negative comments were made publicly by federal officials. HUD and Secretary Harris, in fact, were

particularly supportive of the large-scale self-help and local control concepts inherent in their plans.

Apparently, however, with the passage of the elections, the continued opposition of the steel industry and its conservative counterpart, the EDA, and the general disinterest of the USW international, the political interests in favor of the plan were overwhelmed by the strength of the opposition. Thus, the Coalition effort, lacking both a real parent willingness to sell and sufficient capital resources to acquire the plant, received support from the political environment on the former requirement but not on the latter.

Hyatt Clark Industries

On August 11, 1980, General Motors Corporation (GM) announced its plans to close the New Departure Hyatt Bearings plant in Clark, New Jersey unless a suitable buyer could be found. GM cited as reasons, the company's decreased demand for the tapered roller bearings manufactured there--GM was Hyatt's main customer--and the unprofitability of the plant in recent years.

After trying initially to obtain assurances from GM and potential buyers that the plant's workforce would be retained in any future operation, the local union, United Auto Workers (UAW) Local 736, attempted to organize a worker buyout of the plant. Its efforts failed, however, when, in December 1980, a proposed dues increase to fund a feasibility study was barely defeated in a union referendum vote.

In January 1981, however, local management employees expressed interest in the idea, and soon thereafter the Job Preservation Committee (JPC), with local union and management representatives, was formed to resume efforts in that direction. The JPC hired consulting and legal talent and proceeded with a feasibility study, negotiations with GM for the sale of the plant, and a search for the necessary capital. The negotiations, which were, at times, difficult, both between the JPC and GM and between local management and the local union, finally produced a sales agreement and a new corporation, Hyatt Clark Industries, in October 1981. The $53.2 million sales price was financed completely with private capital channeled

through an ESOP. GM's assistance was critical to the project. The automaker provided a three year purchase commitment to the new company for 85%-90% of its tapered roller bearing requirements and furnished substantial amounts of direct financial and technical assistance. For their part, workers made substantial concessions in wages, benefits, work rules and personnel levels.

1. Parent Willingness to Sell

From the beginning, GM's stated preference was to sell, rather than to close, the plant,[1] and, in the following months, it actively sought buyers.[2] This effort included cooperation with the initial union efforts and the subsequent JPC campaign.[3] Moreover, as negotiations progressed and GM recognized the extent to which its own interests benefitted from such a sale, its cooperation was transformed into active and crucial support.

GM ensured an adequate market for the new company's output by agreeing to purchase from Hyatt Clark 85%-90% of its requirements of tapered roller bearings for the following three years.[4] It also provided direct financial assistance with its purchase of $10 million of non-voting preferred stock and $13 million in notes. Moreover, to facilitate loans from other nervous lenders, Prudential Insurance Company and Chemical Bank, GM made guarantees of repayment on behalf of the new company. Also, since, as an integrated unit within the GM corporate system, the Clark plant lacked its own marketing, financial and product engineering staff, GM agreed to provide such services for a fee until the new company was able to perform them.

GM's cooperation was based on several interests. First, GM wanted to dispose of an unprofitable plant, and, since other potential buyers had already lost interest, a sale to the employees could save about $30 million in severance and liquidation costs.[5] A sale, rather than a shutdown, would also preserve a competitor in the already highly concentrated market for roller bearings, in which GM had to purchase its remaining, if declining,

requirements. Without the production from the Clark plant, GM would have been forced to buy from Timken, the major U.S. producer, or from Japanese manufacturers, on terms which might have been less favorable.[6]

Perhaps, however, of primary importance, was GM's effort to persuade, by example, UAW members elsewhere of the need to accept wage and benefit concessions and productivity-related changes in work rules in order to achieve competitive manufacturing operations and thus to avoid more layoffs and plant shutdowns.[7] An outside consultant involved in the Hyatt Clark effort observed of GM's strategy:

> I became convinced that the most important of all their reasons was that if this turned out to be a success, they would have a very important bargaining chip when they negotiated the national contract with the U.A.W. And they would say, "here's a case where in order to be competitive with the Japanese you have to cut back base pay and take incentive pay or profit sharing in its place. What's wrong with doing this on the national contract?"[8]

Finally, GM's public relations were helped by a sale to its employees. Rather than laying off the entire Clark workforce, GM could claim involvement in a "social experiment."[9] A local union leader compared GM's actions with those of Ford in the latter's recent closing of a nearby plant in Mauwau, New Jersey:

> G.M. did not want to be pictured like Ford Mauwau. You know, all of the workers losing their jobs and the unemployment lines and the welfare and people committing suicide. They wanted to maintain that G.M. is interested and wants to help their employees.[10]

2. Sufficient Resources for the Purchase

a. Entrepreneurial and Organizational Resources

(1) Composition and Cohesion of the Acquiring Group

The acquiring group in this case, the Hyatt Clark Job Preservation Committee (JPC) was composed of workers and management personnel affected by GM's decision to dispose of the plant. These two groups naturally shared the basic common goal of retaining their jobs in the new corporation at a decent rate of pay, but beyond such general terms, traditional sources of labor-management conflict posed a constant potential for internal dissension and distrust. In addition, among the local union membership, the pursuit of an uncertain course which, at best, would yield reduced wages and benefits caused division within the UAW local.

Nevertheless, within the JPC, the urgency and substantiality of the basic problem of devising a way to acquire and continue operations at the plant combined with a recent improvement in local labor-management relations to sufficiently suppress the divisiveness and accomplish the acquisition. Within the UAW local, internal dissension was handled by strong local leadership and by a transfer of the organizational locus for union support to the JPC, in which participation was voluntary, thereby eliminating an opportunity for union opposition to directly block the plan.

As noted earlier, the local UAW had, prior to the formation of the JPC, taken initial organizational and planning steps to acquire the plant without management support and

through the local union organization. In October 1980, the union notified GM of its interest as a buyer and hired Alan V. Lowenstein, a prominent New Jersey corporate lawyer, to conduct negotiations with the company. These early union efforts lacked the broad support of the membership, however, and, on December 5, 1980, the effort came to a halt when a proposed dues increase to fund a necessary feasibility study was narrowly defeated in a local referendum vote 794-778.[11]

In January 1980, however, a small group of local management, who had earlier taken a wait-and-see attitude regarding the union's efforts,[12] tried to revive the idea and passed out leaflets to workers offering to join with them to "explore both the depth of interest and the realistic economic feasibility of keeping this company alive."[13] At that time, 70% of the hourly and salaried workforce indicated an interest in the idea, and soon thereafter the local UAW leaders joined with the management representatives to form the JPC.

The JPC was composed of three union and five management representatives. Each side had one vote, and decisions required the mutual consent of both.[14] Again, Lowenstein was quickly retained for legal assistance. Reflective of a new voluntaristic approach, employees could become members of the JPC, and thus receive preference in hiring in the new corporation, with a $100 donation. The new fund, to be used to finance a feasibility study and legal expenses, received, by March, 1,235 contributions, including 121 from salaried workers.[15]

Although the transfer of the issue from the union

organization to that of the JPC prevented the prior UAW dissenters from directly blocking any deal from within the organization, the opponents' opposition continued to be a significant obstacle. Jack Breen, a UAW member and a vociferous opponent of the worker acquisition idea, who later formed, within the local union, a Concerned Workers Committee, challenged the local union leaders' efforts before the National Labor Relations Board (NLRB)[16] and when unsuccessful there tried to block the deal in the courts.[17]

More importantly, however, the local UAW leadership could not prevent the subversive potential posed by the opposition's continued association with supportive and border-line supporters of the plan at work and at local UAW meetings. Despite the formal isolation of the opposition as non-members of the JPC, the UAW leadership still relied on the local UAW organization as a vehicle to communicate with union members of the JPC. Thus, in the final months of the negotiations, in particular, when the JPC and GM were stalemated over crucial issues, and the success of the venture and the security of the workers' wages and benefits were drawn into doubt, the opposition intensified its pressure on the many nervous supporters and threatened worker support of the plan.[18]

Nevertheless, union leaders James Zarello and James May continued their support of the plan and effectively deflected the opposition's efforts to block it. The formation of a voluntary group whose sole purpose was the acquisition succeeded somewhat in circumventing the union opponents, and

in union meetings held to communicate with members on JPC issues, the local leadership consistently refused to allow a full membership vote on whether to proceed with the takeover plans.[19]

The local union leadership was very cognizant of the weakness of some of its support and carefully managed and limited the rank-and-file's participation in the effort. They were continually vague about the magnitude of the concessions necessary to the plan. Instead, they emphasized to the workers that their purposes were: (1) to keep the plant open and employ as many workers as possible at a decent rate of pay and (2) to protect the contractual rights and benefits of those who would not be continuing on with the new company.[20] On a compromise involving retirement benefits--the most difficult issue to arise in the JPC-GM negotiations--they deliberately withheld from their membership the nature of the concessions that the leadership made to secure an agreement on the issue.[22] A local union representative defended this policy of secrecy:

> There are certain things you do for the union where you need maximum participation. There are certain things that you do where it's not good to have a whole bunch of people. You're talking about very sensitive things. And I think that the way we did it was the best way to do it.[23]

A management representative agreed: "Put it this way. We did not run out and broadcast it. It was felt that it could have been an upset issue, especially at the time when feelings were running very, very high."[24]

Eventually, 875 of the 1,600 workforce filed the employ-

ment applications necessary to work for the new corporation.[25] When the final agreement between the JPC and GM was submitted for worker ratification, it was approved by a 3 to 1 margin of those eligible to vote--only JPC contributors.[26]

Within the JPC, tension between local management and the union became serious only in the final months of the negotiations.[27] From a low point in local management-union relations in 1977 when the local union struck for ten days, relations had been markedly improving.[28] Most significantly, in the months preceding GM's announcement to dispose of the plant, local management and union leadership had been actively working together in a joint task force to explore ways to raise productivity[29] and, given the declining demand of GM for the type of roller bearing produced at the Clark plant, investigating the possibility of manufacturing other products without the purchase of new machinery.[30] This early cooperation was certainly instrumental in fostering a level of trust necessary to the success of the JPC.

Several issues, however, arose, particularly in the final stages of the negotiations, which strained these relations. First, after the resolution of the dispute over retirement benefits, local management quickly drew up, without union participation, an organizational structure for managerial positions in the new corporation which included proposed salaries.[31] In addition, when local union representatives discovered management's plans, their efforts to become involved in the process were resisted. The issue became more serious when the union

leaders learned that some local management members were to receive substantial raises over their current salaries--in contrast to the cuts being forced on the union workers. Local management's position was that competitive salaries were necessary to retain competent managerial personnel. The situation was finally resolved with the intervention of Lowenstein, who forged a compromise, explaining to the local union generally the need for such salary levels, while, in extreme cases, negotiating salary reductions.

The most divisive issue, however, which was resolved only on the final day of negotiations, related to the manner in which shares of stock were to be allocated to employee accounts as loans were repaid through the ESOP. In most ESOP's stock is allocated in proportion to employee salaries, the method supported by local management and by Lowenstein. The local union, however, maintained that each employee should receive equal amounts with each loan repayment. They argued that an incentive sufficient to attract and retain competent management at Hyatt Clark existed in the salary differentials and that fairness required that all employee-owners accrue stock in the new company at the same rate. Both sides refused to budge on the issue until, again, Lowenstein finally worked out a compromise. Shares were to be allocated equally per employee, but the board of directors was authorized to offer, within its discretion, deferred compensation, in bonuses or stock, to qualified management.[32]

(2) Technical Resources

For technical assistance, the JPC relied primarily on attorney Alan V. Lowenstein, who was later to become chairman of the board of the new company, and the consulting firm of Arthur D. Little, Inc., whose work at the plant was managed by C.D. Howell, later to become the new company's first president. Clearly, however, Lowenstein's participation included more than legal assistance; he was, in fact, the central figure in the acquisition effort.

The following comments evidence his importance. A consultant remarked:

> Somebody looking at this from the outside could say, "really, he [Lowenstein] ran this thing like a dictatorship." On the other hand, what I'm telling you is there was a vacuum, and in the presence of a vacuum, there was no other choice.[33]

A union official agreed:

> It couldn't have been done without him or someone like him. He had alot of influence and alot of connections that he'd developed over the years. ... We depended on him lock, stock and barrel.[34]

Lowenstein, indeed, concurred in this assessment of his importance:

> I was the person who was planning all of the aspects because I was the only one who had that kind of experience. And then, educating and selling [to the committee] how this should be done. ... There's no question that I was the architect of the program until we got going.[35]

He was retained first in October 1980 to help with the local union's initial efforts and again in January 1981 after the formation of the JPC. His assistance was sought in

both cases largely because of his prominence in New Jersey as a corporate lawyer[36] and because of his work in 1976, when he engineered an employee takeover of the Okonite Company in Ramsey, New Jersey.[37] In this case, partly due to Lowenstein's experience and partly due to the primary concern of local management and union representatives with the retention of their jobs and, secondarily, with the terms by which that was accomplished, Lowenstein quickly assumed the central leadership position.

His responsibilities included the following: the recommendation of three consulting firms for the consideration of the JPC; the piecing together of a financial package with which to acquire the plant; the fixing of the composition of the board of directors to include a majority of independent outside members; the search for and recommendation of individuals to serve as outside directors; the conduct of the negotiations with GM; the drafting of the ESOP agreement; the recommendation of a local labor law firm to conduct negotiations with the local union on behalf of the JPC on a labor contract; and even the informal role, discussed above, of mediating conflicts between the local union and management representatives of the JPC.[38]

Lowenstein was a prominent figure in the New Jersey corporate and legal community and consequently possessed ties and influence which facilitated the pursuit of his functions. He had credibility with lending institutions; he had experience serving on numerous boards of directors of other corporations; and he was personally acquainted with individuals

whose presence on the board of the new company would likewise give it credibility with lenders and customers.[39]

Also, related to Lowenstein's credibility within the established business community was his awareness of the restrictions in the structure and operation of an employee-owned company necessary to receive the support of the financial community. First, with regard to the composition of the board of directors, Lowenstein convinced the JPC representatives that, while labor and management representation on the board was possible, a majority of the seats had to be allocated to independent outside directors, in whom lending institutions could have confidence. He also persuaded them, for the same reason, to waive the voting rights which would otherwise inhere to employees as shares of stock were allocated to their accounts pursuant to the terms of the ESOP. Instead, an investment committee selected by the board was assigned these rights for the ten year period required to repay the initial loans.[40]

Arthur D. Little, Inc. prepared the necessary feasibility study for the project. The widely respected firm was retained in March 1981 and completed its study in June of that year. Its report concluded that with reduced labor costs, productivity- and quality-related changes in work rules, a long-term GM purchase commitment, competent management, and efforts to expand the company's market by attracting new customers and producing a broader product line, the new firm could become viable.[41] These recommendations were later implemented as the main points of the JPC's plans.

(3) Financial Resources

The local union's initial acquisition efforts encountered mostly legal expenses, which were financed with union funds.[42] However, as mentioned earlier, when the union tried to raise money to fund a feasibility study, it was unsuccessful. The union leadership proposed a dues increase of $35 to be paid in installments of approximately one hour of pay per month for three months.[43] In a referendum vote held on December 5, 1980, the proposal was narrowly defeated 797-778.[44]

The JPC's fund-raising efforts, however, begun in January 1981, circumvented the opposition within the local union by seeking, outside of the union structure, voluntary $100 contributions, which would give participants preference in hiring in the new corporation.[45] By March 1981, 1,235 contributions had been received, including 121 from salaried workers.[46] These contributions, made with $10 weekly payroll deductions, were sufficient to cover the costs of the feasibility study and the attorney fees.

(4) Political Resources

Elected political representatives did not play a major role in the Hyatt Clark acquisition effort. Local political leaders supported the JPC's efforts, but generally lacked any significant authority to help. In an effort to pressure GM, however, the Clark Township Council and the Union County Board of Chosen Freeholders did participate, with the encouragement of the JPC, in the final weeks of the JPC-GM negotiations.[47] In addition, since the JPC's original plans anticipated the utilization of a HUD UDAG grant as part of the financial package for the acquisition, the Board of Freeholders agreed to apply for the funds on the JPC's behalf.[48] On the national level, the area's congressional delegation did not actively support the acquisition effort, although they did publicly support federal assistance for the project.[49]

The international organization of the UAW remained neutral. Calling the Clark efforts a "local matter," the UAW international provided no significant assistance to the local organization and rejected a request made in July 1981 for a $5 million loan which GM had offered to guarantee.[50] Although the international did support the UAW local in its refusal to waive its "mutuals" retirement benefits under the national contract,[51] its failure to do more made the local's efforts more difficult. A local union leader noted the potential political importance of the international organization:

> The U.A.W. wields tremendous political power. They could have helped us politically. They could

> have contacted people in high political office to influence other people in government to give us financial aid, to play it up, play up the importance of saving these jobs. They could have been a tremendous help to us.[52]

In addition, the international's support could have offset some of the opposition within the local union.[53]

The international UAW did not want to oppose the acquisition if it was the only alternative to a plant closing, but it was ambivalent, nevertheless, about the effort for several reasons. First, in addition to a perceived threat to the system of collective bargaining inherent in an employee-owned firm,[54] the international UAW correctly believed that GM's support for the project was aimed at breaking the national UAW contract and forcing wage and benefit concessions elsewhere. Thus, the international was weighing the rights of its 475,000 GM members against those of the 1,600 workers at Clark.[55] Also, they feared that their support might signal to GM their lack of resolve in fighting other plant closings.[56]

The international also was generally skeptical of the viability of employee-ownership efforts, since they usually involved failing plants, often with obsolete equipment. The international leadership did not want to support the unloading of a "lemon" onto their membership.[57] One UAW spokesman remarked about the Clark effort:

> As far as I'm concerned, the plant is going to be closed in three years, when GM's commitment runs out.[58]

A Detroit investment banker agreed:

> The plant is going to have a long-term contract to supply material to G.M. If I were a banker, I wouldn't lend them money under any circumstances, unless I could be assured this thing would continue to operate with a guaranteed market.[59]

A history of poor relations between the international and the traditionally "militant" local, may also have contributed to the international's hesitance to assist the efforts of the local. A spokesman for the UAW international agreed that the poor local-international relations colored the international's response to the local's acquisition efforts:

> They were always a dissident local, but not a very competent dissident local. I've never understood their reasons for rejecting contracts. They somehow were very militant, but not very effective. ... For us, it's a shame that this was the first local where this came up.[60]

The local union leaders, thus, interpreted the internationsl's "neutrality" as opposition:

> They didn't want to do anything. They wanted us to shut down, in my opinion. In my humble opinion. So that they could get rid of two people [local leaders James May and James Zarello] they considered to be thorns in their side. They wanted us out. The international union's wanted us out for a long time.[61]

In particular, they pointed to UAW President Douglas Fraser's handling of the local's request for a $5 million loan from the international. Fraser effectively rejected the request by never responding to it.[62]

(5) Competing Proposals

After the first few months following GM's decision to sell or close the Clark plant, the acquiring group faced no serious competition for the purchase of the plant. Rumors of potential purchasers, however, and their purported plans for the use or non-use of the plant's existing workforce may have affected the level of local union support for the purchase plan.

2. Sufficient Resources for the Purchase (cont.)

b. Access to Financing

The JPC financed the acquisition entirely with private capital, which was obtained only with the direct assistance of GM, with restrictions on the ownership rights of Hyatt Clark employees as stockholders and with significant concessions in labor costs. As will be discussed further below, GM itself directly provided capital totalling nearly one-half of the purchase price and, by effectively guaranteeing repayment on behalf of the new company, facilitated the provision of most of the balance of the acquisition capital. In addition, GM made a commitment to purchase 85%-90% of its tapered roller bearing requirements from Hyatt Clark for three years and agreed to provide essential marketing, financial and product engineering assistance until the new company could establish satisfactory staffing.

In return, Hyatt Clark employees agreed to waive all voting rights attached to their stock accounts for the first ten years of the new company's operation (the time in which most of the acquisition financing would be repaid). Also, while management and union employees were both granted representation on the new board of directors, they agreed to accept a majority of independent outside directors drawn from the established business community. Finally, union employees accepted an average 25% reduction in wages and benefits and a 50% reduction in personnel levels.

2. b. (1) Sources

(A) Direct and Indirect Federal Assistance

The JPC sought direct and indirect federal assistance for its acquisition plan. In terms of direct assistance, they tried to get $15 million of assistance from the federal EDA but were unsuccessful.[63] Budget cutbacks under the Reagan administration were targeted heavily at the EDA, essentially freezing all loan applications.[64]

In terms of indirect aid, the JPC did avail themselves of the inherent tax subsidies in ESOP's. The entire amount of JPC borrowings for the acquisition was channeled through an ESOP. As such, repayments of principal to lenders through the ESOT are largely tax deductible, in addition to the interest portion which are normally deductible.[65]

(B) Private Assistance

The purchase was financed entirely with private capital. GM purchased $10 million in non-voting preferred stock and accepted 20 and 10 year notes of $6.9 million and $6.1 million. Prudential Insurance Company approved a $15 million mortgage. Chemical Bank provided a $15 million bridge loan, and Fidelity Union Bank of Newark issued a $15 million revolving line of credit.[66]

GM's participation, however, was not limited to the substantial amounts just described. Lowenstein applied in May 1980 to the Social Responsibility Department of Prudential for the $15 million mortgage, equal to the book value of the plant's machinery, in which Prudential would have been granted a lien. In September, however, in the final days of the GM-JPC negotiations, Prudential responded that it would only approve a $7.5 million loan, since, in its opinion, that represented the liquidation value of the machinery upon a possible default.[67] Lowenstein relayed the problem to GM, who, in an effort to preserve the deal, agreed to guarantee[68] the mortgage--thus making available the entire $15 million.[69]

Lowenstein had also anticipated federal assistance for a portion of the acquisition price. When it became clear, however, that the assistance would not be available by the date of the purchase, he sought and obtained the $15 million bridge loan from Chemical Bank. Again, it required a guarantee from GM.[70]

In exchange, however, GM and the financial institutions demanded and received substantial concessions from the workers. The conditions implicitly required and recognized by Lowenstein as requisites for the attraction of lenders and customers--a "blue ribbon" board of directors with a majority of independent outside members drawn from the established business community, the waiver of employee voting rights for a ten year period and their exercise, instead, by a committee effectively controlled by the "blue ribbon" oriented board--have been mentioned above. Additional requirements, however, were made explicit in the Little study and by lenders themselves--reductions in union wages, benefits and personnel levels, elimination of restrictive UAW-negotiated work rules and practices (including perceived "featherbedding"), and a three year no-strike clause.[71] Also, as a holder of preferred stock, GM was given the right--common in most cumulative stock issues--to name a majority of the company's board of directors if the new corporation failed to pay dividends on such stock for six successive quarters.[72]

2. b. (2) Feasibility Considerations

(A) Managerial Structure

(i) Voting Control of ESOP Stock

When a plant is purchased through a leveraged ESOP (an ESOP financed with borrowings), the common stock of the new corporation is held initially in an employee stock ownership trust (ESOT), as described earlier.[73] As the corporation makes repayments on the initial borrowing through the ESOT, however, shares proportionate in value to the amount of each payment are allocated to accounts within the ESOT in the name of the corporation's employees. Unless otherwise specified, employees normally have voting rights in such allocated stock, and the ESOT trustee has voting authority for the ESOT stock not yet allocated.

In the case of Hyatt Clark, Lowenstein thought that private lenders would be unwilling to invest if employees, inexperienced in management, had extensive control of the corporation's affairs. As a result, the Hyatt Clark ESOP formally waived all employee voting rights otherwise accruing in allocated stock for the ten years in which the initial financing was to be repaid.[74] Instead, such rights, along with the voting rights attached to the ESOT's unallocated stock, were assigned to an investment committee, whose three members were, for the first ten years, chosen by the board of directors. The current members of the committee are, in fact, current members of the board.

After the expiration of the initial ten years, the investment committee still retains authority to vote the employees' shares of stock. The difference, however, is that the committee, at that time, will be composed of a representa-

tive chosen by the union employees, a representative selected by local managerial employees and a third representative chosen by the first two.[75] Thus, employees have authority to vote their shares of stock, at that time, but the authority only directs their respective delegates on the investment committee. There each delegate has equal voting power, thereby giving the relatively smaller number of managerial employees voting power equal to that of the local UAW members, although the latter group, by virtue of the per employee allocation formula, controls a larger number of shares.

(ii) Composition of the Board of Directors

The by-laws of the new corporation provide for a board of directors with a specific composition of interests. Seven seats, a majority, are reserved for independent outside directors, and three seats each are assigned to union and management representatives. At this time, the by-laws do not provide for a restructuring of this composition after the expiration of ten years, although they are subject to amendment.[76]

Directors are elected for staggered three-year terms, such that each year one-third of them come up for reelection.[77] During the first ten years, given the board's authority to appoint the members of the investment committee, which, in turn, elects directors, the board is, in effect, a self-perpetuating institution.

The initial set of outside directors was assembled by Lowenstein, in consultation with the participating lenders.[78] Lowenstein was the chairman of the board. Outside directors included prominent business executives in accounting, banking, securities and manufacturing and a New Jersey Commissioner of Commerce. The independent outside directors were, as of December 1982, Alan V. Lowenstein of the law firm Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan; Charles R. Bergmann, Chairman of the New Jersey Institute of Technology; Edward A. Jessor, Director of United Jersey Banks; Vincent B. Murphy, Jr., President of Merrill Lynch Capital Resources, Inc.; David P. Williams of the Budd Co.; and Robert J. Boutillier of Peat Marwick Mitchell & Co. Union members include James B. May, president of UAW

Local 736; James Zarello, Shop Committee Chairman of the UAW local; and Warner P. Woodworth, a Brigham Young University professor who is an expert in managerial systems involving worker participation. Management members included Howard D. Kurt, the company president; Peter Wallack, vice president of operations; and Robert J. Trongone, vice president of sales, engineering and reliability.[79]

(iii) Managerial Philosophy

Initially, the company chose to implement a traditional hierarchical management structure.[80] Major programs designed to substantially increase the extent of worker participation in management decisions--quality circles,[81] quality of work life programs,[82] etc.--have been delayed until the repayment of the initial acquisition financing and until the company achieves a more solid operating status.[83]

Thus, while local management and workers agree on the potential for increases in productivity to be gained from such programs and Warner Woodworth, an expert in the field, holds a union seat on the board of directors, early movements toward that goal, to date, have been made on a limited and ad hoc basis.[84]

(B) Market Prospects

In the short-term, the market for Hyatt Clark's output was virtually guaranteed. As part of the acquisition deal, GM agreed to purchase, for three years, 85% to 90% of its tapered roller bearing requirements from Hyatt Clark, the same proportion as it had prior to the sale.[85] Such amounts would constitute approximately $100 million in revenues in each of the next three years, 13% to 20% above the amount determined by the feasibility study as a breakeven point.

In the longer-term, GM's potential as a continuing customer was not as certain, but GM chairman Roger Smith said, "we're not going to drop this plant like a rock after that." [86] Lowenstein also shared that view.[87] In addition, the company is pursuing plans to expand its market both by seeking new customers and by producing a broader range of products. At the time of the sale, Hyatt Clark served thirteen outside accounts smaller than that of GM,[88] and it is making efforts to attract more business from other automakers and manufacturers of agricultural and construction equipment. [89] The other half of the strategy--the production of larger sized bearings--requires significant capital expenditures, however, and given the size of the acquisition financing and the consequently poor prospects for raising the necessary additional funds, these plans have been put on hold.[90]

(C) Labor Costs

The Little feasibility study recommended substantial reductions in labor costs to make the operations at Hyatt Clark competitive. Thus, as part of the acquisition plan, the local union agreed to accept a no-strike clause, substantial cuts in wages, benefits and personnel levels and changes in restrictive work rules.

For a period of three years, all otherwise irreconcilable union-management conflicts were to be submitted to arbitration.[91] Average union base pay declined by 25%, from $12 to $9 per hour,[92] but it still conformed with the UAW goal of staying above the area average.[93] Paid holidays were cut from 15 to 8; 9 personal days were completely eliminated; and both sick leave and life insurance benefits were reduced.[94] Work rules which had inhibited productivity were also modified. The number of machines that a given worker was permitted to operate was expanded,[95] and "lines of demarcation" between skilled trades were modified to allow skilled workers to perform a broader variety of tasks.[96] Also, reflective of outside perceptions of union "featherbedding," the work force, which had numbered roughly 1,600 hourly and 200 salaried workers, was reduced to employ 850 hourly and 120 salaried workers,[97] although plans for increased production anticipated the rehiring of 370 more workers within four months of the purchase.[98]

A program of incentives, which provided an opportunity to make up a portion of the lost wages, was established, but its primary purpose was to increase productivity by stimulating

the self-interested motivation of labor. The incentive plan encouraged both productivity and quality through monthly and semi-annual elements--the monthly program to provide immediate and frequent rewards directly tied to employee effort, and the semi-annual payments, to avoid any negative incentive otherwise arising in the slow months of the seasonal auto industry.[99] The monthly incentive was based on the ratio of the value of output shipped less the amount returned (the productivity and quality components) to actual earned wages for the month.[100] The semi-annual incentive was really a profit-sharing bonus determined on a semi-annual review of pretax net income.[101]

Another productivity-related incentive, not tied to employee wages, however, was the motivational impetus inherent in an ESOP. As an owner of shares of stock in the company, the worker has a direct financial interest in its profitability and thus has an expected tendency to work harder and more efficiently.[102]

(D) Necessary Capital Investment

Since the production facilities at Hyatt Clark were not generally obsolete, large amounts of capital expenditures were not immediately necessary, thereby making the company's initial capital requirements easier to manage. Instead, the source of Hyatt Clark's excessive production costs was perceived to be its labor costs, in which major reductions were planned.

The company's longer term sales strategy, however, anticipates the production of larger-sized bearings,[103] a strategy that would entail significant capital spending. For this reason and the fact that Hyatt Clark's short-term market is largely assured by the GM purchase commitments, the exact timing of the program is flexible and dependent upon the availability of the necessary capital. Private capital is presently unavailable, but the company does have efforts underway to secure the necessary funding with the assistance of the federal government.[104]

(E) Managerial and Hourly Employee Resources

A basic consideration necessary to the feasibility of a plant's operations is a sufficient pool of competent managerial and hourly employees. Thus, GM and lenders required a demonstration of such availability before they would close the deal.

Most of the management positions in the new company were filled with previous managerial personnel from the days of its previous ownership,[105] and 875 union members filled out applications for employment for slightly smaller number of jobs.[106] Since the plant had previously been a unit within the integrated GM system, it lacked its own marketing, finance and product engineering personnel.[107] However, GM agreed to provide these services for a fee until the necessary staffing could be recruited.[108]

3. The Political Environment

In the case of Hyatt Clark, the influence of the external political environment was minimal, thus permitting the great inequality of influence between the negotiating parties to work out a deal with terms to the local union reflective of the imbalance. As discussed in section one above, GM was initially willing, and later anxious, to sell the Hyatt Clark plant to its employees. Thus, the only opportunities for the exercise of an external influence in this first respect were to affect the pace of the negotiations or to pressure GM to agree to terms more or less favorable to the employees. Thus, the Clark Township Council and the Union County Board of Chosen Freeholders, whose actual influence may have been slight, participated in the final stages of the negotiations to pressure GM to concede to more of the JPC's demands.

With respect to the JPC's access to resources necessary to complete the acquisition, the employee group was lacking primarily in capital resources and in a technical staff for the new company. GM intervened here, however, and directly provided or facilitated the JPC's access to these requirements. Thus, direct federal assistance and aid from the UAW international were unnecessary in the short-term to accomplish the purchase. If available, however, as an alternative, the terms of the acquisition might have been more favorable to the JPC.

Weirton Steel Company

On March 2, 1982, Howard M. Love, chairman and president of National Steel Corporation, announced that National would no longer make capital investments in its Weirton Steel Division necessary to continue as a competitive integrated steel operation. As an alternative, however, to the inevitable downsizing of operations soon to follow there, Love offered to sell the plant to Weirton's 12,500 employees.[1]

In recent years, the Division had been only marginally profitable,[2] while National, under Love's leadership, had adopted a policy of allocating capital expenditures only to those operations which promised a maximum potential for returns.[3] Speaking of the capital requirements for pollution controls and modernizing investments required at Weirton, Love explained:

> It is not economically feasible for National Steel to commit such large amounts of capital at Weirton. ... Funds would have to be diverted from other projects throughout the corporation which have the potential for substantially higher returns than at Weirton.[4]

In the future, Love intended to divest or reduce any operations that were not cash generators or did not have good growth prospects. In particular, Love cited the "unacceptable" balance in its steel operations, where National had, since 1975, spent $1.3 billion while receiving returns of only $940 million.[5] The policy also included a capital expenditure program to diversify into the aluminum and savings and loan industries in an effort to stabilize somewhat the otherwise cyclical earnings patterns common in the steel industry.

Thus, although National was openly seeking returns of 15% on equity, Love felt that the Weirton Division's 1% return in the preceding year[6] (and low 7.1% average in the past five years[7]) might suffice for Weirton's employees, whose primary concern was jobs. He also stated that employee ownership offered the best potential for increasing that return through the favorable tax treatment accorded to ESOP's and the greater willingness likely of employees, who were also owners, to accept compensation reductions to make the plant viable.[8]

Immediately following the announcement, the Division's top management personnel joined with leaders of the Division's two unions, the Independent Steelworkers Union (ISU) and the Independent Guards Union (IGU), to explore the feasibility of Love's idea and to weigh the chances of its success against the costs and benefits alternatively associated with the plant's gradual downsizing under National. They formed the Joint Study Committee (JSC), which subsequently retained a broad array of legal, consulting and investment banking experience to help them in their effort.

After the completion of necessary feasibility and pension studies throughout the spring and summer of 1982, negotiations began between National and the JSC in November 1982. Four months later on March 12, 1983, an agreement in principle for the sale of the plant was approved. The agreement called for the employees' purchase of the plant plus inventories and raw materials for approximately $181 million, with National directly providing $106 million of the financing on favorable

terms of repayment.

Subsequently, in preparation for a ratification vote by the ISU membership, the JSC began drafting the necessary ESOP agreement and a new labor contract to implement the 32% cuts in labor compensation recommended by the JSC's feasibility study. It also sought to secure formal commitments from private investors and, in consultation with those lenders, to recruit individuals for membership on the new company's board of directors.

Before the JSC's work could be finalized, however, and the necessary union ratification obtained, lawsuits were filed by dissident employees before the National Labor Relations Board (NLRB) and in federal court to block further progress on the sale. The employees sought to gain more information about the terms of the proposed deal and to force renegotiation of certain unsatisfactory terms of the sales agreement. Thus, at the time of this paper, the purchase effort, which, prior to the current lawsuits, had appeared virtually certain of completion, is subject to delay, possible additional negotiations and the potential for a complete collapse.

1. Parent Willingness to Sell

Given National's desire to extricate itself from the operations at Weirton, a sale of the plant to its employees rather than a shutdown was directly in National's interests, despite the competition that continued production there might pose for National's other steel divisions. There was the obvious public relations benefit to be gained from cooperating with its employees to save jobs rather than coldly causing those job losses. More important, however, were the economic costs to National if it closed the plant. National owed a $102 million unfunded pension liability to the employees' pension fund on behalf of its Weirton workers, and, in the event of a plant closing, the unfunded liability would grow to $420 million, due to the entitlement thereby of additional eligible workers to immediate early retirement pension benefits.[9] The size of these unfunded pension liabilities, plus the plant's large projected capital investment needs and its marginal profitability, dampened the prospects for a sale to a conventional buyer. Therefore, for National, an employee buyout represented a last resort to avoid the possibility for an immediate and significant cash drain.[10]

Thus, as part of the purchase agreement, National agreed to certain terms designed both to facilitate the acquisition itself and to ensure the new company's viability. The purchase price of the Weirton facilities was set at $66 million, a 22% fraction of the plant's $322 million listed book value,[11] although a large part of that reduction was

traded for the new company's commitment to assume, after five years, National's responsibility for the early retirement benefits triggered by a plant closing. The employees bought the plant's inventories, raw materials and current assets for $115 million and assumed $100 million in current liabilities and $85 million in long-term debt obligations, the latter mostly in City of Weirton pollution bonds payable over a 28-year period.[12] Equally important, National agreed to sell all of the Weirton manufacturing facilities, thereby providing for the new company's use of a nearly fully-equipped steel operation.[13] In addition, National agreed to lease the nearby 200 worker Steubenville, Ohio facilities to the employees for two years and provided an option for their purchase on terms similar to the Weirton deal.[14]

Perhaps most important, National provided the bulk of the financing for the purchase and deferred the repayment of interest and principal to ease the new company's cash needs in its early years of operation. Of the $181 million owed to National under the terms of the acquisition, only $75 million had to be paid immediately in cash.[15] National accepted a note payable over 15 years at a 10% rate of interest for the full $66 million purchase price.[16] In addition, payments of principal were to begin only in the sixth year of operations,[17] and interest was not due until the new company had accumulated a net worth of greater than $100 million.[18] The $40 million still owed for raw materials and other current assets was payable over a five year period likewise beginning

in the sixth year of employee ownership.[19]

The plant, as purchased by the employees, would have working capital resources of approximately $200 million,[20] but an estimated $25-$75 million in additional financing was anticipated as necessary for this purpose, bringing the new company's immediate cash needs to $100-$150 million. To facilitate this borrowing, National further agreed to subordinate its debt to all others in case of the new company's default.[21]

To further ensure the new company's viability (and thereby also the prospect of transferring to the new company its unfunded pension liabilities), National also took steps to guarantee an adequate market for its output. National agreed to continue Weirton's supplier relationship with National's Midwest Division finishing facility for an unspecified period, but presumably until National's own steelmaking facilities could profitably be modified to serve those needs. In addition, the parent permitted continued access by Weirton to its traditional customers for a six-month period to allow the new company time to recruit a marketing staff.[22]

2. Sufficient Resources for the Purchase

a. Entrepreneurial and Organizational Resources

(1) Composition and Cohesion of the Acquiring Group

The Joint Study Committee (JSC) was formed shortly after the Love announcement in March 1982. The group's fourteen members consisted of five of the top management of the Weirton Division, including Division President John Redline, eight ISU representatives and one delegate from the 90-member IGU.[23] Throughout the course of its efforts, the JSC encountered little opposition from the managerial and union employees to the general concept of an employee buyout. However, membership groups organized within the ISU consistently challenged the JSC's leadership with an insistence that rank and file members be allowed greater input into the JSC's plans and that employees' pension benefits not be compromised. As of the date of this paper, moreover, several lawsuits brought by such groups appear likely to complicate, if not to block, the proposed deal.

To mobilize and maintain the support of each constituent group and to diffuse potential dissension, the JSC leadership utilized a two-pronged strategy. First, to forestall obstacles posed by membership opposition, issues related to the JSC's takeover plans were not always put to a vote of all of the affected employees. For example, the decision to pursue the idea of employee ownership was never put to a vote of the local management. Instead, local managerial personnel chose individually to contribute to the JSC's feasibility

studies.[24] Likewise, local management would be allowed to express their approval or disapproval of the final purchase plan only by staying on with the new company on the terms already fixed by the JSC.

Alternatively, though ISU and IGU membership both voted on the use of union funds to finance the JSC's feasibility study, laid-off workers belonging to the ISU were prohibited from voting on crucial questions regarding the takeover. These workers represented a likely source of opposition to any plan for renewed operations, which (as was in fact proposed) might permanently reduce the number of jobs at the Weirton facilities as a means of cutting the company's labor costs. Thus, in the ISU leadership elections held in the summer of 1982 which would determine the ISU's likely representatives on the JSC, laid-off workers were denied voting rights.[25] More importantly, however, the ISU leadership was, at the time of this paper, studying the legality of denying these same rights with respect to the final ISU vote on the ratification of the new company's labor contract--the key remaining obstacle to the acquisition (other than the lawsuits to be discussed below).

The second focus of the JSC's organizational strategy consisted of an extensive communications program to keep the constituent groups informed about the progress of the JSC's efforts and to persuade the employees and the community at large of the advantages and necessity of the plan. The JSC established a subcommittee on communications and conducted

informational meetings with interested employees to discuss their questions and concerns.[26] They also set up an ESOP Message Center to handle telephone inquiries and published a newsletter, the Journal, in an effort to dispel, in the words of a JSC member, the "mythical fog that presently seems to surround this effort."[27] Invariably, however, the idea of employee ownership, and implicitly the specific terms proposed by the JSC, were presented as the only alternative to the plant's closing and the devastation of the community.[27a]

Also, on a community-wide level, the JSC waged a massive public relations campaign that included speakers for meetings of local civic organizations, extensive collaboration with the local press and numerous billboards throughout the area. While intended primarily to gain the community's political and financial support, the campaign also had a double-kill effect, which effectively forestalled any potential large-scale employee opposition to the JSC's plans.[28]

Throughout most of the acquisition campaign, it appeared that the Weirton employees were generally supportive of the JSC's ideas for employee ownership. Both the ISU and IGU membership strongly backed the concept in their votes approving the use of union funds to finance the feasibility study.[29] In the 1982 ISU leadership elections, none of the candidates for any of the posts expressed opposition to the JSC's plans,[30] and, in January 1983, the IGU elected a new President who pledged to continue his predecessor's support of the idea.[31]

From the campaign's beginning, however, there was considerable suspicion among the membership about the exact intentions of the JSC and National. It was evident in April 1982, when the ISU first sought membership approval to use money from the ISU Strike Fund to finance the cost of the feasibility study. At that time, the ISU leadership attempted, however, to gain the membership's approval, in the same vote, of a second more controversial issue by placing them on a single ballot and permitting only a single vote to approve or reject both of them. The second question proposed that the monthly dues money currently allocated to the ISU Strike Fund be diverted instead, for a period of one year, to the union's general fund, from which all normal union operating expenses were paid. This was deemed necessary to cope with the increase in union expenses attributable to the ESOP campaign and the reduction in dues resulting from the mounting layoffs. In addition, the issues were really only explained to the membership at an informational meeting held on the night before the vote. The next day, in a low turnout, a resentful rank and file rejected the proposals. The ISU President at the time, Richard "Red" Arango, assessing the results, stated: "They felt we were trying to pull something over on them."[32] In May, however, when a second vote presented the issues for individual consideration, both were approved, although by a narrower margin on the diversion issue.[33]

Until the final days of the campaign when the group of lawsuits was filed, however, organized dissension within

the ISU was maintained only in the Rank and File Committee. Established shortly after the initial announcement of National's intentions in March 1982, the Committee sought, as noted earlier, not to expressly oppose the employee takeover campaign, but rather to ensure full disclosure of the JSC's plans and to gain rank and file input into the negotiating and planning process.[34] The Committee was assisted, at times, by Staughton Lynd, who, as discussed earlier in the paper, was active in the Ecumenical Coalition's efforts in Youngstown, Ohio.[35]

In June 1982, the Committee joined with John Gregory, a laid-off worker at Weirton, in a lawsuit which sought to compel the ISU to permit laid-off workers to vote in the union's leadership election.[36] The court, however, denied the parties' immediate requests for a temporary injunction, thereby preventing such voting.[37]

A second legal conflict began in the fall of 1982 when the JSC released to its members the main body of the McKinsey feasibility report but withheld, as confidential, an appendix containing cost information about the Weirton operations relative to its competitors. The JSC claimed that the release of the data would give Weirton's rivals a competitive edge, but the Rank and File Committee insisted that employees would otherwise be incapable of making an informed and independent analysis either of the project's viability or of the need for the substantial reductions in compensation recommended therein.[38] The court rejected the Committee's legal arguments on November 5, 1982, however, as premature, since the JSC had not yet

placed a final proposal before the employees for consideration.[39]

The lawsuits which posed the most serious threats to the JSC's plans, however, were filed by three other groups of employees in the closing days of the campaign as the JSC was preparing final proposals for ISU ratification. The groups, which included both salaried and hourly employees, charged essentially that federal law (the Employee Retirement Income Security Act of 1974 (ERISA)) prohibited the use of pension benefits as a bargaining chip in the sale of a plant.[40] They thus sought a court order which would delay the acquisition and permit the modification of the terms which transferred, after five years, the unfunded pension liabilities tied to a shutdown to the new company. One of these groups, the Concerned Steelworkers of Weirton Steel (which was headed by Richard "Red" Arango, the ISU president who was defeated in the 1982 union leadership elections), also claimed that the JSC, with its management representatives, lacked the authority to negotiate such a deal on behalf of the union employees.[41] In this latter regard, they also filed unfair labor practice charges against the ISU and National. At the time of this writing, however, the court had yet to act on these actions.

(2) Technical Resources

The JSC retained well-established legal, business consulting and investment banking expertise to perform the extensive preparatory work for the acquisition. Outside professional assistance was utilized for the design of the ESOP and corporate structure, for the performance of a feasibility study and a study of the share of National's unfunded pension liabilities owed on behalf of its Weirton employees, for a search for private capital to finance the purchase and initial capital investment requirements and for the handling of negotiations with National on the actual purchase.

Shortly after the formation of the JSC, the group retained John C. Curtis and Alan V. Lowenstein, two of the most prominent authorities on ESOP's and employee ownership. Lowenstein, who had engineered employee acquisitions at the Okonite Co. and Hyatt Clark Industries in New Jersey, was hired on April 30, 1982 to head negotiations with National and to seek financing for the purchase.[41a] Curtis, a San Francisco lawyer who handled ESOP's at Pan American Airlines and the Rath Meat Packing Co. in Waterloo, Iowa, was hired several days later in early May to devise an ESOP for the new corporation.[41b]

These two experts, however, apparently held different views on the extent of real employee control that would be acceptable to private investors considering involvement with the new company. Curtis, whose experience in actual buyouts involved relatively small plants with a high reliance on federal capital, apparently believed that employees could retain

a substantial amount of control locally over both the conduct of the negotiations and the operation of the plant subsequent to the purchase. Lowenstein's experience in projects with larger capital requirements raised in private capital markets, however, contributed to his view that private lenders and customers would be reluctant to deal with an acquisition effort and a subsequent company managed by employees who lacked previous managerial experience.[42]

The JSC had hoped that Curtis and Lowenstein could "knock heads" on these issues and thereby enable the JSC members to make better judgments about various proposals.[43] The disagreements, however, were apparently too profound, and Lowenstein quickly resigned three weeks after being hired, claiming that others had given the JSC a "rosier picture" of what was required for the effort in terms of a feasibility study, a need for outside directors and the pass-through of voting rights to employee-owners:[44] "I felt a new corporation should be organized with private businessmen capable of providing input to or with representatives of union and management."[45] The JSC, however, felt that Lowenstein was "moving too quickly in a complex situation" and also leaned toward the views of Curtis: "It had become obvious that the conceptual understanding of labor and management was diametrically opposed to the positions taken by Mr. Lowenstein as counsel.[46]

Lowenstein's role was promptly assigned to Willkie, Farr & Gallagher, a New York City law firm specializing in mergers and acquisitions. By late summer, moreover, the JSC

recognized also that with Lowenstein's departure, the attraction of the requisite amount of private capital would require specific investment banking expertise and, on September 3, 1982, selected the nationally prominent firm of Lazard Freres & Co.[47] Lazard Freres agreed to help evaluate a price for the Division's assets, to work with Willkie, Farr & Gallagher in the negotiations with National and to search for private sources of capital to finance the acquisition.[48] They also made final recommendations on the amount by which existing labor compensation levels would need to be reduced (in addition to the cuts recommended in the JSC's feasibility study) in light of the USW concessions of February 1981 and the responsibilities assumed by National in the tentative purchase agreement.

For the vitally important feasibility study, which would assess the viability of continued operations at the Division and significantly determine the conditions necessary to satisfy the concerns of investors, the JSC interviewed three widely respected consulting firms, Arthur D. Little & Co., Booz, Allen & Hamilton, Inc. and McKinsey & Co., before choosing McKinsey.[49] McKinsey was chosen for its marketing study experience in the steel and container industries.[50] The firm had worked with three major U.S. steel companies on issues of cost reduction, market expansion and planning and overall development of strategy, and, in the past three years, it had conducted more than 100 studies for steel companies and large steel fabricators.[51]

Finally, to audit the National Steel retirement program

and to determine the size of its unfunded pension liability with respect to the workers at Weirton, the JSC retained the firm of Towers, Perrin, Forster & Crosby, a large international firm specializing in consulting work on human resources and actuarial and general management services.[52]

(3) Financial Resources

The cost of the technical expertise retained by the JSC and for the JSC's other project-related expenses was estimated at $2 million.[53] To finance such an effort, the JSC actively sought and obtained assistance from the membership of the employee groups immediately affected (the local management, the ISU and the IGU), from federal, state and local government bodies, and from businesses, civic organizations and individual citizens in the community. The fundraising efforts proceeded in two stages. Initially, the JSC was faced with financing the McKinsey feasibility study, the first major expense of the campaign. Soon thereafter, as the extent of the additional required technical expertise became apparent, the JSC's fundraising efforts were expanded.

The Weirton Division management, the ISU and the IGU contributed the funding for the McKinsey study and the early expenses of the JSC. As discussed earlier, the ISU membership, in its second vote, approved the expenditure of $500,000 from its $1.6 million strike fund for the purpose.[54] Almost all of the Division's 1,500 non-union employees, including management, donated by individual choice $60 apiece as did the roughly 90 members of the IGU.[55] In addition, retired Weirton workers were ultimately asked to contribute $1 for each year of their service at the company.[56]

Financial support came, too, from federal, state and local government bodies. After several months of effort by the area's congressional leaders and by the governor's office in

West Virginia, the federal EDA, on September 13, 1982, approved a $100,000 grant to assist the JSC in the design of an ESOP, in seeking financing for the acquisition, and in meeting expenses associated with communicating with the Weirton workers.[57] West Virginia Governor Jay Rockefeller pledged $125,000 to assist in the JSC's expenses[58] and hinted that the state could do more.[59] Contributions came also from local municipalities, whose tax bases were vitally dependent on continued steel operations at Weirton. Hancock County contributed $25,000, Brooke County $10,000, and Weirton pledged an unspecified amount of assistance to be determined when it sees ultimately what the JSC needs.[60]

In addition, financial support came from the community. A "We Can Do It" campaign sponsored by the Weirton Chamber of Commerce immediately after the March 1982 announcement generated $1,800 in donations from area businessmen, local clubs and organizations for the feasibility study. Also, in November and December of 1982, as the increased magnitude of the JSC's financial needs became apparent, a new "Share Our New Beginnings" campaign was instituted to raise $1 million for the JSC's expenses.[61] The campaign, managed by a ten member committee of Weirton Division management, ISU, IGU and community leaders, this time, systematically approached local government units and businesses potentially affected by the plant's closing. Gold, Silver and Bronze Clubs were established for contributions in amounts of $500, $100 and $50.[62] The Weirton Chamber of Commerce and a citizens' group called

People United for Weirton Steel joined to support this more comprehensive campaign with a "Give Us Your Small Change for a Big Change in Weirton" project involving the distribution of donation cans throughout the area.[63] Also, a telethon using the donated facilities of local cable television stations and involving high school students and adults was held on February 20, 1983. It raised $147,000 for the expense fund.[64] As of March 17, this second effort had raised $360,000 toward the $1 million goal.[65]

(4) Political Resources

The JSC's efforts received the support of the area's federal, state and local political leaders and of the general public on a local grass roots level. Their support not only backed the JSC's requests for public financial assistance, it also sought to relieve the new corporation's immediate capital requirements by pressing the federal and state governments to extend existing compliance schedules for air and water environmental standards and to approve the use of less costly pollution control devices for the plant. In terms of support from a national union organization, the JSC received no assistance, because the ISU and IGU were strictly local organizations, based solely in Weirton.

National Steel's Weirton Division is the largest single taxpayer and the second largest private employer in West Virginia.[66] It was natural, therefore, for the state government, and particularly Governor Rockefeller, to play a prominent role in salvaging operations there. Immediately after National's March announcement, Rockefeller met both with National and the employees' representatives and pledged the $125,000 in state funds noted earlier to help with the expenses of the feasibility study. He also assigned a staff member from his Governor's Office of Economic and Community Development (GOECD) to work full-time with the employee group in its efforts to locate financing.[67] As a result of that commitment, Rockefeller applied to the federal EDA for the assistance also noted earlier, the $3 million initial request

for capital assistance, which was eventually reduced to $100,000 for expenses.[68] Miles Dean, the GOECD director, also worked closely with the JSC and the City of Weirton in preparing an application for $20 million in UDAG assistance to help fund the rebuilding of a company coke battery, upon the completion of the acquisition.[69] In addition, impressed by the McKinsey study's assessment of a new operation's chances for viability, Rockefeller hinted that the state might be able to come up with more money later to help the JSC's efforts.[70] This suggestion manifested itself in March 1983 when Governor Rockefeller's proposal to give preferred tax status, on the state level, to the Weirton ESOP was passed by the West Virginia legislature. The new law permitted the deductibility, from the new company's business and occupation tax liabilities, of up to 25% of the new company's debt repayments (or, strictly speaking, 25% of its contributions to the ESOP). The measure was expected to save the new company approximately $450,000 per year over a five year period.[71]

On the federal level, the area's congressional leaders, and in particular the state's most powerful representative, Senator Robert Byrd, used their influence to obtain federal support for the JSC's efforts. Their actions included lobbying efforts in the EDA and HUD for favorable action on the JSC's requests for financial assistance.[72] They also included legislative support for an amendment to the federal Clean Air Act, sponsored by Senator Byrd, to extend, for a substantial time period, the deadline for the steel industry's compliance

with federal air standards[73] and lobbied the Environmental Protection Agency (EPA) for the approval of two "bubble concept" pollution control plans, which would permit the company to satisfy certain air pollution control standards by intensifying its on-site dust cleanup efforts and thereby to avoid the need for major capital expenditures in new and expensive pollution control equipment.[74]

On the local level, government units contributed the financial assistance noted previously, and the City of Weirton made the formal application for UDAG funds on behalf of the JSC.[75] In addition, grass roots support manifested itself in fund-raising campaigns and in two parades supportive of the JSC's efforts. The Weirton Chamber of Commerce and People United for Weirton Steel helped to coordinate local fund-raising efforts, and the local banks pledged support to their legal lending limits.[76] A parade attracting an estimated 2,500 people was held on June 24, 1982 to demonstrate Weirton's need and support for legislation extending environmental compliance deadlines.[77] Ultimately, over three thousand letters in support of Byrd's amendment were sent to Congress.[78] In addition, the town's annual Fourth of July Parade was dedicated to the JSC effort with the theme: "We Can Do It With a New Beginning."[79] Roughly 10,000 people attended the parade in the rain, including past and present mayors, JSC officials, Senator Byrd, U.S. Representative Robert Mollohan and other state and local officials.[80]

The locally based independent unions could not rely on

a national organization for influence with the federal government or National Steel. The ISU and IGU were formed independently of national organizations, most notably the USW, and National purposefully maintained their independence by agreeing to wages and benefits which were consistently a notch higher than those in USW contracts. The extra compensation margins represented the company's insurance against strikes--neither the ISU nor the IGU have ever held a strike. No help could be expected from the USW international due to the ISU's independence, the threat posed to USW wages by the concessions at Weirton, and the USW's continued opposition generally to such takeovers. Indeed, Lloyd McBride's reaction to the Weirton plans was the following: "Our experience has only been bad" with such sale proposals. "We would not counsel our workers to get involved in such deals."[81]

(5) Competing Projects

No other private or public interests competed with the JSC's efforts to purchase the Weirton plant. There had been rumors, prior to National's March announcement, of the plant's possible sale to other private concerns, including Honda Motors, Inc. However, the size of the unfunded pension liability, the large capital requirements and the perceived difficulty of achieving the necessary reductions in labor costs presumably discouraged any interested buyers.[82]

2. Sufficient Resources for Purchase (cont.)

b. Access to Financing

While at the time of this paper, many details of the proposed purchase had yet to be finalized and the necessary union approval had not yet been sought, the likely terms of the ultimate deal had become apparent from the tentative agreement in principle reached between the JSC and National for the sale of the plant, from the recommendations of the McKinsey & Co. feasibility study and from the public statements of officials and consultants associated with the JSC.

The capital requirements for the project were large and posed a serious obstacle to the success of the acquisition. The McKinsey study estimated a purchase price of $100 million (compared to the $370 million book value of the plant originally sought by National) and $1 billion in capital investment requirements over the next ten years. To secure this funding, the JSC's investment banking consultant, Lazard Freres, largely avoided the reluctance of private investors and exploited, instead, the self-interest of National in avoiding the plant's closing. Lazard Freres and the JSC's law firm of Willkie, Farr & Gallagher negotiated an agreement with National whereby the parent agreed to accept notes for approximately $166 million of the $181 million purchase price. In addition, for a portion of the new company's investment requirements, the JSC approached the federal government for UDAG money to assist in the rebuilding of a coke battery and for legislation and EPA assistance to reduce somewhat the amounts of capital spending required to satisfy

environmental standards. The $75 million balance of the purchase price, however, and the large majority of the $1 billion capital investment program had to be sought in private markets, and, consequently, the JSC needed to develop operating plans that would inspire the confidence of this sector.

While the McKinsey feasibility study set out the basic terms which, in the consultants' opinion, were prerequisites to returning the plant to profitability, Lazard Freres, whose job it was to actually obtain the formal commitments of private lenders, had the strongest influence in fixing the ultimate conditions for the new operations--in effect, the terms which Lazard Freres believed were necessary to attract investors. McKinsey projected an adequate, but meager, market for the new company's production and thus recommended substantial cuts in operating costs to restore the company to profitability. Chief among those cuts was a 32% reduction in labor costs designed to ensure the company's short-term financial viability. For the longer-term, the installation of cost-efficient modernizing investment was planned to further reduce costs and to make possible the restoration of some of the wage cuts. In addition, improved productivity was also anticipated from the motivational incentives likely to exist for employees in their new dual status as workers and owners.

McKinsey's recommended wage cuts, however, were calculated relative to USW-industry rates, and McKinsey concluded that any intervening USW concessions would have to be matched by the workers at Weirton--in addition to the originally

prescribed 32% cuts. Moreover, the McKinsey consultants made no proposals for the new company's corporate structure, a question that was likely to be crucial for investors.

These unresolved questions were delegated to Lazard Freres, since in its investment banking role, it would be aware of the terms which private investors would require on these issues. At the time of this writing, it was uncertain whether the Weirton workers would be called to match the full 9% labor cost reductions accepted by the USW. To the contrary, it was reported that Lazard Freres was studying other cost-reducing devices not considered by the McKinsey consultants which could substitute for and reduce the size of the wage cuts recommended by McKinsey.[83] The emerging plans for a corporate structure, however, included a board of directors dominated by independent outside business interests selected by Lazard Freres in consultation with the new company's lenders. In addition, the anticipated rights of such directors to select their successors upon the expiration of their initial terms would effectively render irrelevant the question of employee voting rights in ESOP stock and ensure a conservative management orientation in the new company's operations.

2. b. (1) Sources of Capital

(A) Direct and Indirect Federal Assistance

The use of an ESOP to raise the funds required for the acquisition will, with the ESOP tax subsidy, effectively reduce the new company's capital costs. In addition, though the acquisition price was financed privately, the federal government provided some capital assistance and stood ready to supply more to aid necessary investment projects and to eliminate the need for others.

After months of application problems, the JSC, as of the date of this paper, was still pursuing a $20 million UDAG grant to be channelled by HUD through the City of Weirton. As the JSC members learned, the UDAG money could be used only for specific capital investment projects and not to finance the acquisition.[84] As a result, formal application could be made only after the actual transfer in ownership of the plant, so that approval was anticipated in June or July 1983. This capital was to be used as partial financing for the rebuilding of a coke battery estimated to cost $70 million.[85] The balance was to be raised privately, pursuant to UDAG matching fund requirements, which necessitated 2.5 dollars in private commitments for each dollar of UDAG money awarded.[86]

Substantial savings in capital requirements were also possible if a proposal for a revised Clean Air Act with extended environmental compliance deadlines was passed by the Congress. In addition, actual capital savings have, in fact, been made possible by the EPA's approval, in December 1982,

of "bubble concept" pollution control plans for several of the Division's facilities.[87] By addressing the level of total emissions from each of several Division plant locations rather than from individual equipment sources, the "bubble" plans enable the new company to limit pollution discharges from plant areas with extensive cleaning and treatment of roads and berms on plant property, thereby avoiding large capital expenditures otherwise necessary for pollution control equipment.[88] In this case, the total capital savings projected from the first plan thus far approved amounted to an estimated $30 million.[89]

Finally, a $3 million capital request sought by Governor Rockefeller from the EDA was reduced to an eventual award of $100,000 to help to defray the expenses of the acquisition effort.[90] EDA's response to Rockefeller's original request was a letter which invited an application for the lesser amount of $100,000 to assist in the cost of a feasibility study. According to the EDA, approval of the larger amount for capital assistance was premature, since the necessary feasibility had not yet been completed.[91]

(B) Private Capital Sources

Given the minimal amount of available public capital, the great majority of the funds required for the plant's purchase and modernization had to be raised privately. As of the date of this writing--a few weeks before the anticipated closing of the deal--the identities of potential private investors, if any, had not yet been made public, nor had the final conditions of the deal requisite to their commitments to invest been announced. From the terms of the agreement in principle reached in March, however, and from the recommendations of the McKinsey study, it was clear that the purchase price would be financed primarily by National Steel and that the new company's other short- and long-term investment requirements would be filled by conventional private lenders. The private investors were to be enticed by the success of the new company's operations and its accumulation of a risk-reducing equity base.

First, as has been noted earlier, of the $181 million purchase price, $106 million was directly financed by National.[92] Moreover, the terms of the lending, which included delayed repayments of principal and interest (the latter of which was tied to the buildup of a minimal equity base[93]) and the subordination of National's debt were intended to reduce the risk to which other private investors would be exposed. Another important factor in this regard was National's commitment to continue its purchases of steel from the Division, at least in the short-run.

These commitments by National were important to the

new company's ability to raise its short-term capital needs--$75 million for the balance of the price of inventories and raw materials and $25-$75 million for additional working capital--in the private markets.[94] For its larger and less immediate capital requirements, however, the new company needed to convincingly demonstrate the feasibility of its new operations.

To persuade potential investors in this latter regard, the new company's plans included the competitive reductions in labor costs and the cost-savings to be achieved with the modernizing capital expenditures. Particularly important in this regard was the temporary 12% portion of the 32% labor cost reduction recommended by McKinsey (discussed below in section (C)) as a means of building an equity base. This base could, in itself, be used to finance capital investment, if necessary, or, preferably, by reducing the riskiness of potential borrowings, it could attract other sources of private capital.[95]

2. b. (2) Feasibility Considerations

(A) Managerial Structure

(i) Voting Control of Stock

(ii) Composition of the Board of Directors

(iii) Managerial Philosophy

At the time of this writing, the JSC's plans regarding ESOP stock voting rights, composition of the new board of directors and managerial philosophy had not yet been formalized. Nevertheless, indications from Lazard Freres, whose advice was most influential in the JSC's final planning, pointed to a new company with a board of directors dominated by outside interests with a management philosophy suitable to the private investment community. If Lazard Freres' ideas are, in fact, adopted, the question of voting rights in ESOP stock will thus be rendered virtually irrelevant except in the long-term, and the managerial philosophy will likely be conservative.

The JSC acceptance of the plans recommended by Lazard Freres would represent the abandonment of the group's originally expressed aim of achieving local control over any new operations. The dispute between consultants Lowenstein and Curtis in the initial days of the acquisition effort included this issue, and Lowenstein's subsequent dismissal evidenced the JSC's attraction to Curtis' ideas advocating the possibility of local control. According to Curtis, speaking in July 1982, worker/shareholders in the new company could elect the board of directors in the same manner as in any other company.[96] Also speaking in July 1982, ISU attorney David Robertson

revealed the JSC's intentions to obtain such control:

> The Board of Directors can't exist as a popularity contest. ... We also want the very best management people, but the jury is still out on how many [directors] will be from here or outside of the area.[97]

With the progressively expanding roles of mainstream business consultants in the acquisition effort, however, first by McKinsey & Co. and later by Lazard Freres, the JSC's early goal gradually eroded. McKinsey's feasibility study concluded:

> An independent Weirton Board may have representation from both union and management, but it must also have the outside financial and management skills needed to guide the company through "start-up."[98]

Most importantly, Lazard Freres, whose investment banking expertise was based on its familiarity with the concerns of private investors, strongly recommended a board of directors dominated by a majority of outside members to be selected by its experts in consultation with private investors.[99] Lazard Freres proposed that the board would be composed of two representatives from local management, two union representatives and six outside directors.[100] In addition, after the expiration of their initial terms, the six outside directors would be allowed to choose their own successors.[101] According to Eugene J. Keilin of Lazard Freres, such a plan was necessary "to preserve an independent nucleus of the board that will provide experience and persuade lending institutions that there will be stability."[102]

In addition to its control by conservative financial interests, the projected composition of the board also effected

a substantial underrepresentation of ISU membership interests. First, although the ISU and IGU outnumbered local management in numbers of workers, an equal number of two seats was assigned to both groups. Second and most important, of the two union seats, the ISU and IGU each had one, despite the fact that the ISU had approximately 11,000 workers compared to the IGU's 90.

As a result, the proposed corporate structure effectively yielded control of the new company to the financial community's board representatives, whose primary concern would, presumably, be the protection of their investments. Thus, unless the corporate by-laws provided for employee vetoes over extraordinary corporate actions, including, as in Youngstown, corporate decisions that would entail the lay-off of substantial numbers of workers, the question of ESOP voting rights would be virtually irrelevant. Likewise, the new management would not be likely to institute innovative programs designed to increase the role of workers in managerial decisions, perhaps to increase productivity. A traditional and conservative hierarchical management structure was more probable.

(B) Market Prospects

Based on three months of interviews with Weirton's current customers and a comparison of Weirton's competitive position with those of its competitors, the McKinsey consultants forecast modest, but limited, growth prospects for the new company. Their study predicted that, over the next ten years, the new company could expect to ship an annual average of nearly two million tons, about equal to the Division's level of shipments in 1981.[103] This annual level of shipments, however, was not likely, in itself, to increase the company's profitability and thus eliminate a need for drastic reductions in labor costs.

The Division's current output is split approximately in half between tin mill products for the container industry and hot- and cold-rolled galvanized and electroplated sheet products used in the automobile, construction and pipe and tube markets.[104] Weirton's tin mill products are of a high quality held in special regard by its customers.[105] Thus, although Weirton's overall market for tin mill products is expected to decline by 2%-3% per year due to the intrusion of plastics and aluminim,[106] the study predicts that Weirton might nevertheless be able to increase its market share. Only a modest increase is forecast, however, in part due to a likely uncertainty of Weirton customers about the company's new status as an independent producer.

On the other hand, while the overall market for sheet products is expected to grow gradually, although contingent on a general economic recovery, Weirton's share in this market is

not expected to increase.[107] Unlike its position in the tin mill market, Weirton was evaluated here by the McKinsey consultants as a relatively minor producer in the midst of a number of strong competitors. Limitations in the product range at Weirton, entrenched customer patterns and a geographical competitive disadvantage associated with supplying a market that has moved west are primary reasons identified for the new company's vulnerability here.[108] Moreover, the study warned that without an aggressive marketing effort, a function previously performed for Weirton's products by National's parent organization, the new company's share in the sheet market could decline.[109]

Weirton's plans, indeed, call for such a marketing strategy. The new company intends to compete for customers in the Cleveland, Detroit and Buffalo markets, which had previously been served by National's other divisions and to seek the business of smaller customers which had been ignored by National.[110] Especially important in this regard was National's agreement, as part of the acquisition deal, to permit, without competitive interference, Weirton's continued service of historical customers for a six-month period to allow time for the recruitment of a marketing staff.[111] In addition, National agreed to continue its pattern of steel purchases from the new company for the requirements of its Midwest Division finishing mill. The commitment was for an unspecified period, to last presumably until National's other steel-making facilities could be converted to satisfy the mill's needs.[112]

(C) Labor Costs

Reductions in labor costs represented the keystone of the JSC's plans. Since future sales were not anticipated to increase in sufficient volume to meet the new company's cash needs and return it to profitability, cuts in operating costs were seen as the necessary focus of any plan to continue operations at Weirton. Further, as the McKinsey study emphasized, labor compensation is an attractive subject for such reductions because they represent the only category of operating expenditures large enough and controllable enough in the short-term to immediately improve the new company's profitability and hence its ability to raise capital for its anticipated investment programs.[113] Consequently, the study contained recommendations for drastic cuts in compensation and personnel levels, which affected both labor and local management.

The McKinsey study advised that both labor and management in the new company be required to accept 32% reductions in compensation, including a "permanent" 20% element and a 12% "deferral" for three years.[114] The 20% reduction was designed to make the new company's labor costs competitive with those of other steel makers.[115] The purpose of the temporary 12% cut was to provide a short-term and immediate increase in earnings, which by their retention within the new company as retained earnings, would generate an equity base of up to $200 million.[116] Such an amount, in Weirton's case, would yield a debt-to-equity ratio similar to that of the rest of the steel industry and thus provide a measure of

confidence for private investors necessary to facilitate the company's future borrowing requirements.[117] The size of the cuts, moreover, would make the Weirton plant the most cheaply run basic steel operation in the nation. One industry investment analyst from Oppenheimer & Co., impressed with the Weirton plans, remarked: "They're going to be just like a Japanese plant in the United States. They're going to have a good facility and good labor costs."[118]

The size of the necessary reductions, however, were originally calculated by McKinsey relative to the current USW labor costs of Weirton's competitors at that time. Thus, according to the McKinsey study, any intervening labor cost concessions reached between the USW and the rest of the steel industry would have to be matched by the workers at Weirton, in addition to the original 32%.[119] The JSC membership, however, indicated that they would resist the pressure of their investment bankers to make such matching cuts unless the USW reductions were made across-the-board in the steel industry--not only at high cost plants--and if they directly resulted in reduced steel prices.[120]

The USW did ultimately agree to contract concessions in February 1983 of roughly 9%, but Lazard Freres, apparently sensitive to the workers' potential resistance, actually recommended reductions smaller than those previously urged by McKinsey. Instead of 32% cuts and more to match the concessions of the USW, Lazard Freres recommended cuts of 18.8% for ISU hourly workers, 20.9% for ISU salaried workers, 17.9% for

IGU workers and 7.7% for local management.[121] The consultants explained that the smaller cuts were possible, because, in the purchase agreement, the selling price was less than McKinsey had anticipated and National had agreed to assume certain pension and health benefit costs.[122] The small 7% cut recommended for local management was justified, according to Lazard Freres, by management's acceptance of a 17% cut in compensation in the previous year.[123]

The modified recommendations, however, gave credence to the ISU's internal dissidents, who suspicious of the need for the magnitude of the cuts recommended by McKinsey, had earlier sued unsuccessfully to obtain the cost data upon which their recommendations were based. The changes proposed by Lazard Freres strengthened their suspicions about the McKinsey recommendations and the JSC negotiating efforts generally and intensified the dissidents' desire to obtain greater access and input into the negotiating process.

The McKinsey recommendations for reduced managerial and hourly personnel levels also engendered suspicion. The McKinsey study noted that the Weirton Division, under the direction of National Steel, employed roughly 400 more salaried workers than others in the steel industry of similar size.[124] It also projected the potential for a reduction of 1,000 other jobs over a ten year period with the introduction of modernizing and labor-saving investment. However, McKinsey's base figure for hourly jobs was 8,400 workers, a figure that implicitly assumed the permanent elimination of the nearly

3,000 workers on lay-off at the time.[125] According to officials of the Rank and File Committee, however, the JSC's attorneys stated, in the legal proceedings involving the McKinsey study appendix, that hourly employment under the new operations might slip to as little as 5,000.[126]

(D) Necessary Capital Investment

The manufacturing facilities at Weirton are generally modern. The Division has a continuous caster and a computerized tandem mill, which is the only one of its kind in the world.[127] Nevertheless, to remain competitive as an integrated steel prdducer, the McKinsey study estimated a need for $1.1 billion in capital expenditures over the next ten years.[128] For about half of these expenditures, however, the timing was flexible.

The first half of the capital requirements were needed to fund, in the McKinsey study's terms, "business continuity" projects--investment projects needed to maintain the current level of operations as a competitive integrated steel producer. Most immediate of such requirements were an estimated $100 million over the next five years in pollution control equipment to meet EPA standards.[129] Although the capital savings associated with the EPA's approval of the company's first proposed "bubble" plan were already included in this figure, further savings would be possible if EPA approved the second "bubble" plan and if Congress extended the deadlines for steel industry compliance with the standards of the Clean Air Act. Also necessary in the short-term were the rebuilding of one coke battery and the new construction of a second,[130] the performance of a major relining of two blast furnaces and the refurbishing of the company's sinter plant.[131]

A second group of investments, valued at $500 million, for which the timing was more flexible over the ten-year

period than those included in the first group, were referred to as "investment opportunity" projects--plans required to improve the company's overall cost position.[132] Since the Division's current costs of production are, for most of its key products, equal to or above the industry average, the second group of investments was required to match or overtake the cost improvements inevitably achieved in the same period by Weirton's competitors. These projects included the addition of a second continuous caster and a desulphurization unit to improve product quality.

(E) Managerial and Employee Resources

Due to the plant's continued operation by National during the negotiating period, an ample supply of managerial and hourly employees was available for the new company, and the JSC's plans naturally called for their retention. The local managerial personnel were expected to remain the same,[133] as, likewise, were the hourly personnel, except for the near certainty of substantial workforce reductions, discussed earlier.[134] However, because National's parent organization had in the past performed marketing and financial functions for the Division's operations, the new company needed to recruit complete staffs for these purposes.[135]

3. The Political Environment

The political environment was influential at Weirton, not to persuade the parent to cooperate with the acquiring group, but rather to help the JSC assemble the organizational and capital resources necessary to acquire and operate the plant. Still, even in the latter regard, its impact was not of major significance.

Perhaps most important was the political support at the local, state and federal levels that translated into funding for the JSC's legal and consulting expenses. As discussed earlier, the federal EDA, the state of West Virginia and local municipal governments contributed money for this purpose, but equally important was the local grass roots support, which itself, by March 1983, produced $360,000.

In terms of actual capital resources for the purchase and modernization, the limited resources of public development agencies restricted their assistance to a minor role, for example, the $20 million in UDAG funds sought by the JSC to help rebuild a coke battery. Capital savings in more substantial amounts were possible through relaxed environmental regulatory requirements, however, and the JSC's political supporters, even at the grass roots level, lobbied the EPA and Congress for relief. West Virginia's powerful Senator Robert Byrd was particularly important in this regard.

Political influence, however, was not aimed at National or at any potential lenders in any effort to purchase or borrowing terms more favorable to the JSC.

Comparative Analysis, Limitations and Possibilities

The three cases show that the parent corporation and potential investors largely control the factors crucial to the success of an acquisition effort and, thereby, also, to a large extent, the character of the newly-formed company. The parent's willingness to sell is, of course, critical to the employees' plans, as is its assistance in financing a portion of the purchase price and its cooperation in other respects (with purchase commitments, the sale of a complete and operational plant, access to prior customers, etc.) to assure the new company's feasibility. Private and public investors are likewise indispensable as sources of necessary capital both for the purchase and modernizing investment. This essential cooperation, however, appears to be contingent on the plans of the new company satisfying certain prescribed conditions, which may include more than the narrow notion of financial viability.

The acquisition group may or may not have the ability, or the willingness, to satisfy these conditions, but it does generally have within its control another essential factor--the marshalling of the organizational resources required to pursue the acquisition effort itself. Of the several elements involved here, the specific composition of the group's membership appears most important, since it may substantially facilitate the acquisition of the financial, technical and political resources necessary to the effort and foreclose somewhat the competition of other rival public or quasi-public efforts to buy the plant. In this regard, a joint union-local management

effort appears most workable, although such participation is itself dependent on the continued operation of the plant during the acquisition effort.

The external political environment can also be important in influencing the cooperation or lack thereof by the parent and investors, and it may facilitate the acquiring group's organizational efforts. The prevailing social ideology of free enterprise capitalism, however, generally sanctions the prerogative of private capital to locate where it wishes and limits substantially the magnitude and scope of legitimate pursuits for public capital. Thus, except for socially accepted antitrust considerations and the duty of elected representatives to protect their constituent regions, the external political environment lacks a real niche to assist with such efforts.

(1) Parent Cooperation

First, it is clear that the law generally protects the right of a parent to dispose of corporate property in accordance with its private interests. As a result, the parent's willingness to deal with the acquiring group, and the extent of its additional corporation, are contingent on the degree to which the acquisition furthers the parent's own corporate interests.

In each of the three cases, insufficient profitability had prompted a parent to seek to dispose of a plant, and, because no conventional buyers could be found, a decision was made to close a facility. However, a combination of corporate interests--liquidation costs, cash needs, including the need to

retire a burdensome debt load, the potential for forcing wage reductions at other plant locations, public relations, political considerations and the economic ramifications of creating a potential competitor in the parent's product markets--resulted in varying degrees of cooperation with the efforts of the employee groups.[1]

In the case of the Campbell Works, a sale of the plant to its employees would have significantly eased the efforts of Lykes and LTV to obtain federal approval of their proposed merger. In addition, it would have saved both substantial liquidation and pension costs, eased the companies' immediate cash-flow problems and made possible the retirement of some of their large debt burdens. On the other hand, a merged Lykes-LTV also had interests, first, in delaying any serious cooperation with the Coalition until the federal decision on the merger clarified the future shape of the companies' operations (and thereby also defined the companies' interests). Also, a merged company would have interests in utilizing for its own benefit the Campbell Works' former markets and its most efficient equipment.

With Hyatt Clark, GM recognized an important opportunity to gain reductions in the "uncompetitively high" UAW wage rates elsewhere, in addition to the attendant savings in liquidation costs and benefits in public relations. Moreover, its cooperation did not create or strengthen a potential competitor in GM's product markets. Instead, given Hyatt Clark's supplier relationship to GM's auto assembly divisions, its continued operation preserved a degree of competition in the highly

concentrated market in which GM purchased its bearings. Further, although GM reluctantly accepted an increased level of pension costs in "mutuals" retirement benefits as a result of the sale, periodic contributions from the new company over a twenty year period to cover a portion of such costs softened the burden.

In the case of the Weirton Division, National Steel Corporation saw better profit opportunities for its capital expenditures elsewhere. In addition, National was obligated to Weirton employees for $102 million in unfunded pension liabilities, which, in the case of a shutdown, would have increased to $420 million. This factor made a favorable deal with a conventional private buyer unlikely, particularly when the size of the liabilities was compared with the $370 million book value of the plant. A deal on better terms was more likely with its relatively powerless employees. Thus, with this in mind, in addition to the other economic and political benefits of a sale rather than a shutdown, National actually suggested the idea of an employee takeover to its workers, even though the new corporation would compete directly in the product markets of National's other steel operations.

(2) Capital Resources

An acquiring group's access to the large amounts of capital required to fund the purchase and any necessary capital expenditures is significantly dependent on the cooperation of the parent and investors. Of course, in this respect, the acquiring group needs to develop a financially feasible plan

of operations for the new company which addresses the profitability problems experienced by the parent. It must propose, therefore, new policies and strategies designed to significantly reduce the new company's operating costs and, at a minimum, to identify a segment of a largely mature market adequate for the company's survival. Such plans, developed with the advice of experts, ordinarily include the express reduction of labor costs, the installation of cost-efficient investment, the implementation of programs designed to increase productivity and new marketing strategies which may include a broader product line. However, in the short-term, the new company's viability invariably hinges on reductions in labor costs because of their large size in relation to total operating costs and because, of all costs, they are most controllable in the short-term.

The parent, moreover, usually has substantial control over many of the factors in such plans. If it was a former customer of the plant's output, its commitment to continue the relationship can be crucial to the new company's marketing plans. Likewise, the parent's willingness to sell enough of the plant's facilities to sustain production at an adequate level, to furnish the acquiring group with a customer list, and to provide, for an interim period, technical assistance in functions (finance, marketing and research and development) which had previously been performed by the parent outside the local plant may be important to the feasibility of the new company's plans.

In addition, given the usual wariness with which potential

investors are likely to perceive such plans, the parent's willingness to effectively finance the purchase with the acceptance of notes and preferred stock can ease the problem of obtaining a consequently smaller amount of capital requirements. Furthermore, if investors are still hesitant to invest, the parent may formally guarantee the new company's debt payments.

In addition to the perceived feasibility of the new company's plans, public and private investors have other unique criteria for providing capital assistance. Public capital sources require that the acquiring group's plans satisfy the development criteria of the respective lending programs. Also, when particularly large amounts are at stake, the degree of local political support, and thereby the political benefits likely to accrue to the administration, is a critical factor.

With the reduced size of federal assistance programs in recent years, however, private investors have become particularly powerful. Not only do their prescriptions for a renewed profitability invariably emphasize the necessity for reductions in labor costs, but they also dictate a conservative management orientation and the minimization of employees' exercise of their ownership rights as further elements to inspire confidence.

In Youngstown, the Coalition's original plans projected a modestly growing market, which included assumptions of a high recapture of the Works' prior customers, despite the likelihood of competition from its newly merged parent's operations in that regard. To compensate also for the likely loss of a

prior internal market to Lykes' subsidiaries, its September 1978 plans anticipated increased sales resulting from the new company's special status as an employee-community enterprise and from preferential federal procurement policies. Long-term

cost reductions were forecast from the installation of modernizing capital investment, but the short-term plans relied on anticipated increases in productivity and, finally, labor cost reductions. Likewise, the parent's refusal to sell the entire Works to the Coalition would have permitted only a limited reopening until the Coalition could complete the installation of the electric furnaces and the continuous caster.

Although the federal government may not have had so much difficulty with the Coalition's plans for local control, it apparently found its other more general operational plans unacceptable. Its decision was apparently reached on the plans as they stood prior to the important March 1979 decisions regarding reductions in labor costs. In addition, the necessary political benefits required of a commitment of such magnitude appeared more likely with a rejection of the request, given the fragmented political support for several development projects in Youngstown versus the intense opposition of the steel industry.

At Hyatt Clark, the acquiring group's plans included a slightly increased market, no substantial modernizing investment, a recognized potential for productivity increases from the ESOP and a program of wage incentives, a 25% reduction in wages, and concessions in benefits and work rules.

Here, however, the parent's cooperation was crucial. GM not only sold to the group the entire facility at a reasonable price, it also provided directly a large portion of the financing. It made a three-year purchase commitment, which virtually assured an adequate market for the new company and

also agreed to provide financial, marketing and product engineering assistance until the necessary staff could be recruited locally. Finally, it reportedly "assured" the repayment of the large bulk of the new company's remaining private debt.

In exchange, however, GM received the labor cost reductions, which it and the other private investors insisted upon, as well as a number of other economic and political benefits. Private investors also demanded and received a waiver of employee voting rights on ESOP stock for the ten-year period in which their original investments would be repaid and a board of directors dominated by a majority of independent outside elite drawn from the business community.

In Weirton, a modest increase in sales was forecast, a drastic 32% cut in labor compensation was expected (although, by the time the proposal was ready for membership ratification, the recommended cuts had been reduced to an average of 18%) and new cost-efficient capital investment was planned. In the short-term, the cuts in labor compensation were expected to reduce the new company's operating costs to a competitive level and to make possible the accumulation of an equity base. Longer-term cost reductions were anticipated from the installation of modernizing investment.

National's cooperation, however, appeared to be essential to the takeover, as it provided the large majority of financing for the sale, maintained a purchase commitment with the new company and provided short-term access to the plant's historical customers. In exchange, National received an

opportunity to relieve itself of the otherwise substantial costs of a shutdown. To inspire the confidence of private investors both for the balance of the purchase price and for the new company's investment plans, the JSC's proposals called for the reductions in operating costs just discussed and, presumably of equal importance, a board of directors dominated by a majority of outside members selected in consultation with the major lenders.

(3) Organizational Resources

Of all factors necessary to a takeover effort, organizational and entrepreneurial resources are most within the control of the acquiring group. Here, the composition of the group is particularly significant. It may provide inherent access to a captive membership group for financial and political support necessary to the acquisition effort and thus also make possible the retention of technical assistance. It might also make available already established organizational facilities for communication between leadership and membership. Furthermore, an acquiring group composed of the plant's workers and management is likely to provide a readily accessible pool of management and workers for any new operation and to foreclose other competing public

and quasi-public efforts to purchase the facilities.

Especially important in this regard is the continued operation of the plant by the parent during the negotiating period. If it is shutdown, the attendant deterioration of local union organizations and the employees' search for work elsewhere make the acquisition effort more difficult in all respects.

In the case of the Campbell Works, the acquiring group was composed of religious leaders who, through the mobilization of national and local church organizations, had access to significant amounts of financial resources for the funding of the group's acquisition efforts, and to a lesser degree, political support. Partially due to the shutdown of the Works, however, the leadership was unable to develop a continuing relationship with the local management and workers affected by the shutdown, either for financial and political support or as a potential pool of talent necessary for the new company's operations. This failure, along with the announced prospect of federal assistance for some project in the area, opened up an arena for the development and mutually debilitating competition of alternative acquisition proposals.

At Hyatt Clark, however, after an initially unsuccessful attempt based solely on union participation, an acquiring group was established which included both union and management representatives. Continued operation of the plant was especially significant in this regard. Financial resources for the effort were raised with voluntary contributions from union and management employees, and the continued viability of the union organiza-

tion provided an effective mode of communications between the JPC and the union membership. The participation of both local management and union workers in the effort also provided a visible demonstration of the availability of a sufficient base of managerial and worker resources for the new operations.

In this case, the need to maintain cohesion, the lack of which blocked the union's initial efforts, prompted the formation of a small, voluntary acquisition group which included only those union and managerial employees who were already predisposed to favor the acquisition and the negative terms presumably associated with it. By placing important decisions only to the consideration of this smaller group, the leaders effectively eliminated any formal opportunity for disaffected workers to block the effort. However, the support of even those employees participating in the JPC was deemed so tentative that the JPC leadership was still extremely selective in the information which it would dissemble to them.

In Weirton, too, the acquiring group was composed of local management and union representatives, with the encouragement of National Steel. A large portion of the financial resources necessary for the JSC's acquisition-related expenses were funded from union funds and voluntary contributions of local management. Here also, the plant's continued operation was important. It facilitated the collection of that funding and also maintained, as at Hyatt Clark, the organized assemblage of management and union workers for purposes of JSC communications and demonstrations of the ready availability of managerial

and worker talent for the Division's continued operations.

Unlike the acquiring group at Hyatt Clark, the Weirton JSC intended to put its final proposals to a vote of the union membership (although, at the time of this paper, the group had not yet decided whether to permit voting by laid-off workers). Despite several attempts by a group of rank and file membership to gain more input into the planning and negotiating process, the JSC, with the aid of its overwhelming public relations campaign, appeared to have the general support of the employees at Weirton throughout most of the study and negotiating period. As a final decision drew near, however, and workers, who were provided little solid information about the final terms of the deal, grew increasingly suspicious of the JSC, serious opposition developed within the ISU, and several lawsuits were filed to block a ratification vote until adequate information about the deal was made available and unsatisfactory terms renegotiated.

(4) External Political Environment

Finally, the influence of the external political environment, apart from the immediate parties (the acquiring group, the parent corporation and potential public and private investors), was of some, although varying, importance in each of the three cases. At times, it encouraged the cooperation of the parent and potential investors, and it even assisted the employee groups' efforts to mobilize organizational resources. As discussed earlier, however, the general ideological hesitance in the United States to allow government to affirmatively

dictate the terms of "private" economic deals, apart from anti-trust, national defense and parochial considerations, limits the opportunities for the exercise of public influence. The influence, however, of powerful private interests is often aggressively exerted.

The need to obtain federal approval of their proposed merger and the political pressure exerted by Senators Metzenbaum and Kennedy and the Carter administration in this regard were important influences on Lykes' and LTV's willingness to deal with the Youngstown Coalition. The steel industry's opposition to the plan, the lack of widespread popular and USW support, and the administration's ability to delay a decision on the Coalition's financial request past the 1978 Congressional election, however, had a negative impact on the Coalition's attempts to raise the necessary capital.

In the other cases, however, the actual exercise of external influence, while helpful in both cases, was not critical to the efforts' successes. At Hyatt Clark and in Weirton, both parent, for their own private reasons, were already willing to sell to the acquiring groups, and the majority of the capital in both cases was obtained privately and not as the result of any political pressure. The inability to mobilize and exert such influence, however, particularly in the case of the international UAW organization at Hyatt Clark, may have been partly responsible for the harshness of the terms ultimately contained in the deals.

Nevertheless, in Weirton, the political environment

did facilitate the viability of the JSC's plans and thereby helped to attract the necessary capital. In addition to the minimal funding provided for the acquisition effort's expenses, federal action resulted in the approval by the EPA of at least one "bubble" concept pollution control plan (at the time of this paper, a second plan was still awaiting approval), which would save substantial capital costs otherwise required for expensive technologies. In addition, as soon as the acquisition was completed, the JSC was ready to apply for $20 million in UDAG assistance to help finance the rebuilding of a coke battery. Likewise, the state of West Virginia provided direct financial assistance of $125,000 for expenses and modified its tax laws to give the Weirton ESOP tax subsidies similar to those of the Internal Revenue Code. In addition, grass roots community support provided substantial funding for the JSC's legal and consulting expenses and pressured Congress and the EPA for regulatory relief from environmental standards.

Limitations and Possibilities

It is common to hear, currently, of the economic benefits to be gained by the society as a whole from the movement of the American economy out of basic industries, such as cars and steel, and into information sciences and high technology industries. According to orthodox economics' laws of comparative advantage, high-labor-cost American manufacturers serve the broader social interest when they yield to their lower-cost foreign counterparts and move instead into more advanced industries in which the high wages of Americans can presumably be maintained or even improved. From this point of view, efforts to retain basic industrial sectors in the American economy in the face of these "natural" forces only operate to inhibit the most productive uses of American labor and capital and to stifle their interests in earning maximum returns.

These arguments appear simplistic, however, and often self-serving, since they are invariably used to legitimize the abandonment of a community by a corporation intent on seizing an opportunity for higher profits elsewhere. They fail to recognize the real-world limitations and inadequacies of traditional economic theory, in terms of external costs, imperfect mobility of resources, and the existence of non-quantitative values, which are inadequately measured in economics' utility- and profit-maximizing theories (or else merely assumed away).

These cracks and crevices in traditional economic theory, however, have given rise to efforts which use employee

takeovers generally as alternatives to the job losses and social disruption associated with large plant closings in basic industries. The substantial reductions in labor costs, which are invariably included in such plans and which are presumably compensated by non-quantitative returns, by avoided costs of relocation and retraining, and by capital returns, go a long way toward curing the uncompetitiveness of the company's production costs. Modernizing investments are also planned to replace the outdated and inefficient equipment currently in the plants as a result of the parent's prior neglect and to reduce operating costs further in the longer-term (and also, potentially, to recoup some of the forfeited wages). The new capital investment is facilitated both by the wage cuts, which, by making possible the accumulation of an equity base, attracts necessary private capital sources and by the reduced capital costs inherent in federally subsidized ESOP's. In addition, the new status of employees as owners, which on one hand makes the wage cuts more tenable, also provides a motivational incentive which generally yields significant increases in productivity. Perhaps most significant in this respect, is the potential, as yet only partially realized, for local control of the business by employees and/or community members, whereby such groups might protect themselves against an outside ownership whose pursuit of independent private interests could again endanger the plant's continued operation.

Given these advantages, one might inquire whether employee takeovers could have such wide applicability as to

constitute a viable model for the revitalization of the reportedly declining basic industrial sector of the country, thereby saving many otherwise unnecessarily lost jobs at still decent wages. At the same time, such efforts might improve the responsiveness of economic institutions to social needs, such that future decisions on the movement of capital, and hence also that of workers, may be guided by interests broader than private costs, benefits and profits. At a minimum, however, employee buyouts could function to ease the extent of a necessary transformation of the economy in a less sudden and disruptive manner, while maintaining an industrial capacity necessary in a political world subject to embargoes and trade wars.

The three cases just discussed, however, suggest that the current economic and political environment places definite limitations on the abilities of employee-community groups to accomplish acquisitions of large industrial plants and on the goals which such takeovers can realistically pursue. Acquisition groups are necessarily limited by the willingness of the parent to sell to the group and by the employees' needs for sufficient organizational and capital resources to effect the purchase. While, as discussed earlier, the group's ability to mobilize organizational resources is largely within the control of the group itself, it has far less influence in obtaining the parent's willingness to cooperate and the commitments of investors to provide capital. The conditions required to obtain such assistance, thus, limit the possibilities of the

takeovers.

First, the extent of the parent's cooperation is dependent on the coincidence of its interests with those of the acquiring group. Parent corporations are generally free to flatly refuse any cooperation, but, as the cases show, they will cooperate at great lengths if they perceive that the acquisition will further their private interests. If, as generally might seem true, such cooperation does not strongly benefit the parent, the departing company has a clear superiority in bargaining power in negotiations with an employee group, and it enables the parent to obtain terms which may substantially limit the goals which workers are seeking.

Partly responsible for this advantage is the parent's ability, in the contemporary economic system, to avoid a large share of the social costs which result from its relocation. These external costs include the full costs of welfare, part of the costs of unemployment compensation, the deterioration of a community's public services as it loses its tax base, psychological damage to residents, and the costs of retraining and relocating discarded workers. Instead, they are borne by the dislocated worker or by the government, which, since the Great Depression and the system-saving New Deal, has seen its functions and deficits expand.[2]

Similarly, the social returns accruing to the community from the plant's continued presence do not influence the company's policies. Such benefits may be significant, especially if the plant is a major employer and taxpayer in the community.

The purchasing power and tax revenues generated by its operations may largely support the community's economic viability and the existing level of public services.

If, alternatively, corporations were assigned responsibility for a more complete share of such costs by government policies that recognized the social interest furthered by the continued operation of such plants, parents' private self-interests might motivate them to either cooperate with a potential acquisition group or to reconsider the decision to move. Like union-negotiated shutdown benefits, such policies would encourage the cooperation of the parent and significantly elevate the employees' bargaining power in negotiations for the plant's purchase. Given the parent's control, too, over key factors which determine the feasibility of the employees' planned operations, its bargained-for cooperation, in terms of purchase commitments, financial guarantees, etc., would enhance significantly the group's ability to raise the necessary capital.

Second, private sources of capital (on which acquisition groups must largely rely, given the reduced capabilities of public sources) are generally reluctant to invest in employee buyouts of plants scheduled for closing. Investors are, of course, aware that a large and otherwise successful parent corporation has given up in its efforts to make the plant profitable. They are thus invariably skeptical of any plans proposed by employees that purport to solve those problems. In addition, investors are generally wary of the feasibility

of the employee ownership concept, especially in regard to the operation of a large and complex industrial plant, doubtful of the ability of employees, without management experience, to direct the plant's affairs.

The real core of their concern, however, is probably related to the goals, which, investors fear, such firms might pursue. As local owners who are more likely to bear the external costs and benefits attendant to the plant's activities than would a conventional outside investor, the decision-making calculus of the new corporation might be different from that which guides an ordinary profit-maximizing firm. Given their exposure to a large portion of the company's avoided external costs, local employee owners might choose to forego business opportunities, which, though promising high corporate returns, also impose high social costs. Employee owners might also perceive non-quantitative benefits, such as the desirability of continued operations in the same community, to be just as important as the traditional profit motivation of ordinary capitalists and might therefore be willing to accept a less-than-market rate of return on their equity.

Investors fear that, if given real ownership rights, employees, through their elected representatives on the board of directors, might force such improvident corporate policies on otherwise competent managers. Attempts could also be made too quickly to implement innovative worker participation/management programs, which, although commonly recognized as an effective means of boosting productivity, might, in their early

stages, add a strain to the already tenuous of the new operations.

Thus, while the pursuit of such goals might certainly satisfy the interests of the workers and their community, it does not, according to the perceptions of private capitalists, represent a management philosophy best capable of ensuring the repayment of investors' funds. These uncertainties, therefore, add to the perceived risk of the investment and lead capital sources to demand the stringent conditions, such as labor cost reductions and the waiver of immediate employee control, to assure the safety of their investments.

The goals and achievements possible for worker-community takeovers, therefore, are constrained both by the interests of the parent corporation and by the conditions which investors require as assurances of the plant's feasibility. Most unpredictable are the effects of the parent's interests. These range from the retention of efficient equipment and customer markets for their own use, to the desire to encourage labor cost reductions at the parent's other plant locations, to the purpose of forcing some of the costs of its divestiture onto the employees. Such interests can seriously limit the chances of a new company's viability, as occurred in Youngstown, or, as at Hyatt Clark, they can virtually assure the project's success.

The effects of the private capitalists' interests, however, are more certain. Labor costs are invariably reduced in substantial amounts both in compensation per worker and in reduced personnel levels as measures designed to ensure the

short-term viability of the new company. Equally important, investors require that control of the new corporation be exercised by independent business interests which presumably share the traditional profit-maximizing motivations familiar to private investors.

These limitations might be liberalized, however, making more goals possible in such takeovers, with the adoption of new favorable government policies and intensified worker-community organizational efforts. First, the government could implement policies, which, by forcing parents to bear a more complete portion of the social costs imposed by plant closings, would make it in the parent's interest both to sell to the acquiring group and to provide additional assistance likely to enhance the feasibility of the new company. Such policies would also elevate somewhat the otherwise limited bargaining power of the employees. This can be accomplished with the implementation of "notice laws" which require early warnings of a parent's intention to close or sell a plant and which force an increased share of the abandonment costs upon the parent.[3] In addition, the reinvigoration of prior federal capital sources for such projects, as well as the initiation of new development banks might provide an alternative source of capital for such efforts on terms more favorable to the employees' interests. Possible examples could include an expanded National Consumer Cooperative Bank, an agency similar to the new Reconstruction Finance Corporation advocated by the New York City investment banker Felix Rohatyn or a project

along the lines of the previously proposed National Development Bank of the Carter administration.[4]

Second, on a private level, the worker and community membership of the acquiring group needs to mobilize and coordinate its resources in a way that strengthens its relative power status. The support and assistance of a local union organization, the organizational resources available to religious leaders and the influence of elected political leaders are helpful in this regard, but far more important sources of potential support, which have not yet been exploited, are the international organizations of the affected unions. Their substantial financial and political power could be influential in specific cases in obtaining the cooperation of the parent and in assisting the planning of the new operations. Also, on a more general level, the public advocacy of the potential of employee takeovers as a development or job-saving tool by the international organizational bodies of major industrial unions could give such efforts a legitimate presence in national policy discussions on industrial revitalization.

Intensive organizational efforts in the affected communities to counter the superior bargaining power of parents and private capital sources is also of potential significance. The pressure brought by the Denominational Ministry Strategy on the large Pittsburgh banks to expand their investments in the local area represents an approach which could potentially enhance the availability and terms by which necessary capital could be channelled to an employee acquisition.[5]

Professor Rosenbloom criticized the Ecumenical Coalition's efforts in Youngstown for proceeding in a political rather than a business framework.[6] However, given the imbalance in bargaining power which exists between the acquisition groups, on the one hand, and the parent and private capitalists on the other, such an approach is necessary if an improvement in the presently available terms of such deals is desired.

In short, the success or failure of worker-community acquisition efforts depends importantly on the development of a feasible plan for continuing operations that includes significant reductions in operating costs, especially in the short-term. Equally important, however, are the presence of interests that motivate the parent to cooperate with such groups and the relative distribution of power between the parties in interest. These are the factors which ultimately determine the success or failure of particular efforts and the shape of the new enterprise, and it is there that any attempts to expand the possibilities of such efforts must begin.

If an employee group's sole interest is in saving jobs (albeit a reduced level of jobs), if it is willing to make significant sacrifices in compensation and in potential control to achieve that goal and if the parent is willing to cooperate with the group's efforts, employee takeovers are possible, and they can satisfy the membership's interests. If more is desired, however, in terms of compensation, numbers of jobs saved and control, new government policies and/or intensified worker and community organizing efforts are essential.

Notes

Introduction & Analytical Framework

[1]In "Buying Your Job: Factors Affecting the Success or Failure of Employee Acquisition Attempts," Human Relations, Vol. 31, No. 12, 1978 pp. 1101-17, Robert N. Stern and Tove Helland Hammer present an exploratory analysis of factors contributing to the success or failure of six worker acquisition efforts with relatively small plants in minor industries. Stern and Hammer discuss the following economic, political and social factors: (1) entrepreneurial and managerial leadership; (2) parent corporation response; (3) institutional support (direct and indirect government assistance); (4) environmental pressures (political and media support); (5) product market; (6) free professional help; (7) labor unions. Numbers (1) and (2) comprise the "purchaser-seller dyad" and the other five are factors which the acquiring group might utilize to facilitate the purchase.

[2]In a case not discussed fully in this paper, U.S. Steel did, indeed, refuse to deal with a group of workers who attempted to purchase two other Youngstown mills that U.S. Steel had also decided to close. Although the steel workers filed suit seeking to negotiate with the company for the sale of the plants, the federal courts dismissed their claims and upheld the rights of the company. The steelworkers had pressed four legal claims: (1) that U.S. Steel officials had broken an enforceable promise to keep the plants open as long as they were profitable; (2) that U.S. Steel's long-established relationship with the community had created a property right on behalf of the community, such that the company owed certain responsibilities before leaving; (3) that U.S. Steel's flat refusal to deal with a potentially government subsidized competitor violated the antitrust laws; and (4) that a preferential lease agreement between U.S. Steel and Toro Enterprises represented an unlawful conspiracy, violative of the antitrust laws, to deprive the worker group of an opportunity to acquire the plant. Although none of the claims was successful, District Judge Thomas Lambros made a lengthy statement at a pretrial hearing about an unprecedented community property right, which formed the basis for the second claim of the steel workers and carried important implications for communities affected by plant closings:

> Everything that has happened in the Mahoning Valley has been happening for many years because of steel. Schools have been built, roads have been built. Expansion that has taken place is because of steel. And to accomodate that industry, lives and destinies of the inhabitants of that community were based and planned on the basis of that institution: Steel.
>
> ...
>
> We are talking about an institution, a large corporate institution that is virtually the reason

> for the existence of that segment of this nation [Youngstown]. Without it, that segment of this nation perhaps suffers, instantly and severely. Whether it becomes a ghost town or not, I don't know.
>
> ...
>
> But what has happened over the years between U.S. Steel, Youngstown and the inhabitants? Hasn't something come out of that relationship, something that out of which--not reaching for a case on property law or a series of cases but looking at the law as a whole, the Constitution, the whole body of law, not only contract law, but tort, corporations, agency, negotiable instruments--taking a look at the whole body of American law and then sitting back and reflecting on what it seeks to do, and that is to adjust human relationships in keeping with the whole spirit and foundation of the American system of law, to preserve property rights.
>
> ...
>
> It would seem to me that when we take a look at the whole body of American law and the principles we attempt to come out with--and although a legislature has not pronounced any laws with respect to such a property right, that is not to suggest that there will not be a need for such a law in the future dealing with similar situations--<u>it seems to me that a property right has arisen from this lengthy, long-established relationship between United States Steel, the steel industry as an institution, the community in Youngstown, the people in Mahoning County and the Mahoning Valley in having given and devoted their lives to this industry</u>. Perhaps not a property right to the extent that can be remedied by compelling U.S. Steel to remain in Youngstown. <u>But I think the law can recognize the property right to the extent that U.S. Steel cannot leave that Mahoning Valley and the Youngstown area in a state of waste, that it cannot completely abandon its obligation to that community, because certain vested rights have arisen out of this long relationship and institution</u>.

(cited by the U.S. Court of Appeals in <u>Local 1330, United Steelworkers of America v. U.S. Steel Corporation</u>, 631 F.2d 1264, 1279-80 (6th Cir. 1980) (emphasis in original). In Judge Lambros' final ruling, however, he concluded that such a right is not recognized and thus not able to be enforced. <u>United Steel-Workers of America, Local No. 1330 v. U.S. Steel Corp.</u>, 492 F. Supp. 1, 10 (1980). The appellate court, above, agreed.

[3]When an ESOP is used as a device to facilitate the transfer of ownership of a plant to a new corporation, the acquiring group sets up a corporation, which, in turn, creates an ESOP. The ESOP establishes a trust--known as an Employee

Stock Ownership Trust (ESOT)--which obtains a loan and uses the proceeds to buy the plant from the selling corporation. The ESOT then exchanges with the new corporation the newly acquired plant in return for the new corporation's stock and the corporation's obligation to make periodic payments to the ESOT sufficient to repay the loan. As the new corporation repays the loan through the ESOT, stock held by the ESOT is allocated to accounts of the corporation's employees. See p. 8, The Role of the Federal Government and Employee Ownership of Business, U.S. Senate, Select Committee on Small Business, 96th Congress, First Session, January 29, 1979.

[4]ESOP's and their inherent preferred tax status have been statutorily sanctioned in the federal Employee Retirement Income Security Act (ERISA) and in subsequent federal legislation, all of which have been sponsored principally by Senator Russell Long of Louisiana.

Youngstown Sheet & Tube Co.'s Campbell Works

[1]John Lee Kosher, "Sheet & Tube to Lay Off 5,000," Youngstown Vindicator, September 20, 1977, p. 1; "Youngstown Mill Will Be Closed," Pittsburgh Post-Gazette, September 20, 1977, p. 1.

[2]"Youngstown Mill Will Be Closed," supra, note 1; Staughton Lynd, The Fight Against Shutdowns: Youngstown's Steel Mill Closings, (Singlejack Books, San Pedro 1982) p. 21.

[3]"LTV-Lykes Success Reliant on Steel Demand," New York Times, June 26, 1978, p. D1.

[4]The national USW organization is commonly referred to as the "international" because it also represents Canadian workers. Lynd, supra note 2 at 49.

[5]See Lynd, supra note 2 at 96-99 for a discussion of the background of the merger; for its economic rationale, see "Analysts: Merger 'Fit' for J&L, Youngstown," Pittsburgh Post-Gazette, November 8, 1977, p. 1.

[6]"U.S., Youngstown Eye Way to Reopen Mill," Pittsburgh Post-Gazette, April 10, 1978, p. 1.

[7]Lloyd McBride, president of the USW, said the USW would support the merger if it was necessary to save the companies and if the merged company would cooperate with any reasonable proposal to resume operations at the Campbell works under another business structure. Agis Salpukas, "Steel Union Offers a Lykes-LTV Merger Conditional Support," New York Times, April 11, 1978, p. 51; "Brief of United Steelworkers of America, AFL-CIO-CLC to the Department of Justice with regard to the Proposed Merger of LTV Corporation and Lykes Corporation," April 10, 1978, p. 31, Ecumenical Coalition of the Mahoning Valley, Inc. Collection, MSS793, Ohio Historical Society.

[8]"LTV-Lykes Success Reliant on Steel Demand," supra note 3 at D1; "Weep Not for the Lykes of Them," Youngstown Vindicator, December 10, 1978; Lynd, supra note 2 at 25.

[9]"Coalition Awaits S&T Mill Plan," Youngstown Vindicator, November 4, 1978, p. 1.

[10]See discussion infra at note 28 on comments made by steel industry executives about the Coalition's plans.

[11]"Plan Urged to Aid Steelmen Losing Jobs to Buy Plant," Pittsburgh Post-Gazette, November 12, 1977, p. 11; T.V. Petzinger, "Lykes Would Sell S&T Mill; EPA to Review River Rules," Youngstown Vindicator, December 13, 1977, p. 1.

[12]Ecumenical Coalition Steering Committee Minutes, April 26, 1978, Ecumenical Coalition of the Mahoning Valley, Inc. Col-

lection, MSS-793, Ohio Historical Society.

[13] John C. Boland, "Unholy Alliance: Church Groups, Legal Services Corp. Launch Attack on U.S. Steel," Barron's, June 2, 1980, p. 9.

[14]"Clergy Seeks Assurance S&T Can Be Purchased," Youngstown Vindicator, April 14, 1978, p. 1.

[15]Michael J. McManus, "Churches and Citizens are Working Together to Keep Youngstown Alive," Pittsburgh Post-Gazette, July 25, 1978, p. 4;"$23 Million Price is Set for 2 Sheet & Tube Mills," Youngstown Vindicator, November 18, 1978, p. 1.

[16]"$23 Million Price is Set for 2 Sheet & Tube Mills," supra note 14; Lynd, supra note 2 at 71.

[17]As a religious coalition, the group clearly focused its efforts in moral terms. In addition to regular weekly sermons attacking the moral irresponsibility of the Lykes Corporation, the Coalition members also prepared a "Pastoral Letter" signed by 185 religious leaders from the Youngstown area and released on Thanksgiving. The letter insisted that corporate activities are subject to moral standards, that those responsible for corporate activities are likewise morally responsible for the consequences and called on Lykes and the general community to respond generously to efforts to reopen the mill under worker or community ownership (Lynd, supra note 2 at 37-38):

> [There is] a way of doing business in this country that too often fails to take into account the human dimension of economic action; ...
>
> The purpose of economic life is to serve the common good and the needs of the people. ... Economic institutions, although they have their own purposes and methods, still must serve the common good and are subject to moral judgment. We are convinced, in short, that corporations have social and moral responsibilities; ...
>
> [I]ndustrial investment decisions ought to take into account the needs and desires of employees and the community at large. In its refusal to invest in new equipment or necessary maintenance, the Lykes Corporation failed to do this. Human beings and community life are higher values than corporate profits;...
>
> [E]conomic decisions ought not to be left to the judgment of a few persons with economic power, but should be shared with the larger community which is affected by the decisions. ...

The letter ended with the words of the prophet Isaiah:

> Look, you do business on your fastdays,
> you oppress all your workmen and strike
> the poor man with your fist,
> let the oppressed go free,
> and break every yoke,
> share your bread with the hungry
> and shelter the homeless poor,

clothe the man you see to be naked
and not turn from your kin?
Then will your light shine like the dawn
and your wound be quickly healed over. ...
If you do away with the yoke,
the clenched fist, the wicked word,
if you give your bread to the hungry,
and relief to the oppressed,
your light will rise in the darkness,
and your shadows become like noon.
You will rebuild the ancient ruins,
build up on the old foundations.
You will be called "Conciliator,"
"restorer of households."

(Isaiah 58, quoted from Lynd, supra note 2 at 36-38).

[18]In September 1977, Richard Barnet had been working closely with the Urban Bishops Coalition of the Episcopal Church, where he met Reverend John H. Burt, Bishop of the Episcopal Church of Ohio. When the shutdown announcement came, Bishop Burt contacted Barnet to provide the intellectual insights for the response that Burt and his fellow religious leaders were organizing. Barnet then steered them to Gar Alperovitz and the National Center for Economic Alternatives. See John C. Boland, supra note 13; Dale Peskin, "Dreams and Schemes," Ohio Magazine, November 1978, 47-48.

[19]In September 1978, Lynd joined Northeast Ohio Legal Services. John C. Boland, supra note 13.

[20]Lynd, supra note 2 at 39.

[21]Id.

[22]Id.

[23]Daniel Zwerdling, "Employee Ownership: How Well is it Working?" Working Papers for a New Society, May/June 1979, p. 17; "Still Crusading in Youngstown," Business Week, September 25, 1978, p. 52.

[24]Nick Kotz, "Youngstown Tragedies: A Legacy for Other Cities," Youngstown Vindicator, July 4, 1979, p. 10.

[25]T.V. Petzinger and Ernest Brown, Jr., "Will Ask U.S. Aid S&T Plan," Youngstown Vindicator, February 7, 1978, p. 1.

[26]Lynd, supra note 2 at 74. In addition, through the efforts of Senator Metzenbaum, an acquisition expert from ITT was made available to the Coalition. Id., at 70.

[27]Iver Peterson, "Public Money and Private Ambition Clash Over Future of Steel in Ohio's Mahoning Valley," New York Times, December 8, 1978, p. 18.

[28]Terry F. Buss and F. Stevens Redburn, "Shutdown: Public Policy for Mass Unemployment," March 1981, p. 2.18.

[29]Lynd, supra note 2 at 63. Edgar Speer, chairman of U.S. Steel at that time, denounced the Coalition's efforts in a speech before the McKeesport, Pennsylvania Chamber of Commerce on June 20, 1978 as "nothing short of a communist takeover." "The whole concept of community-owned facilities is the same as communism--particularly where the profit of a facility will go for the social benefit of the people. This is communism." McManus, supra note 14; Also, Richard S. Gray, Republic Steel Vice President for corporate development,described the Coalition's effort as a "socialistic adventure." "Republic Mill V.P. Blasts Mill Plan," Youngstown Vindicator, October 25, 1978, p. 1.

[30]Report to the President, A Comprehensive Program for the Steel Industry, Anthony Solomon, Chairman, Task Force, December 6, 1977, p. 31.

[31]"Dreams and Schemes," supra note 18 at 47.

[32]Zwerdling, supra note 23 at 17.

[33]42 U.S.C. §5318(a).

[34]Dale Peskin, "How Carter Signs Memo is Crucial to Valley Aid," Youngstown Vindicator, October 22, 1978, 1, 14; Agis Salpukas, "Steel Union Making Concessions, Backs Plant's Reopening in Ohio," New York Times, March 30, 1979, p. A10. The Coalition also applied for a $16.8 million UDAG grant to serve as a portion of the new company's equity base.

[35]Buss, supra note 28 at 2.16.

[36]Id.

[37]See "Dreams and Schemes," supra note 18 at 56. George R. Reiss, "New Steel Plant Under Proposed Local Capital Plan," Youngstown Vindicator, July 2, 1978, p. 1.

[38]See "Dreams and Schemes," supra note 18 at 56. Rhodes linked his name with the efforts of CASTLO (Buss, supra note 27 at Appendix B, B.2), the aircraft manufacturing operation ("Dreams and Schemes," supra note 17 at 56) and the Fetters' plan ("New Steel Plant Under Proposed Local Capital Plan," supra note 36).

[39]Buss, supra note 28 at B.3.

[40]"Coalition Awaits S&T Mill Plan," supra note 9; "$23 Million Price is Set for 2 Sheet & Tube Mills," supra note 15; Lynd, supra note 2 at 71; Ecumenical Coalition Executive Committee Minutes, Ecumenical Coalition of the Mahoning Valley Collection, MSS-793, Ohio Historical Society.

[41]Elizabeth Wiener, "U.S. Won't Finance Campbell Works Plan," Youngstown Vindicator, March 30, 1979, p. 1.

[42]Robert Howard, "Going Bust in Youngstown," Commonweal, May 25, 1979, p. 304.

[43]Buss, supra note 28 at 2.18.

[44]Lynd, supra note 2 at 40.

[45]Zwerdling, supra note 23 at 17.

[46]McManus, supra note 15.

[47]"Steel Union, Making Concessions, Backs Plant's Reopening in Ohio," supra note 34.

[48]Id.

[49]Howard, supra note 42 at 304.

[50]The Experimental Negotiating Agreement, negotiated in 1973 under the leadership of I.W. Abel, surrendered the union's right to strike at the expiration of a steel contract--in addition to the conventional surrender of such right during the duration of a contract--and stipulated that issues unresolved at that time be submitted to binding arbitration. Lynd, supra note 2 at 51-53.

[51]The international has, since the Youngstown situation, negotiated into its contracts a provision requiring a ninety day warning period before a company closes a plant. "Closing of a Steel Mill Hits Workers in U.S. With Little Warning," Wall Street Journal, September 23, 1980, p. 1, 20.

[52]Id.

[53]Buss, supra note 28 at 2.22.

[54]"Carter Will Meet Soon With Steel, Legislators," Youngstown Vindicator, September 22, 1977, p. 1.

[55]Id. McBride's recommended solutions were the same as those advocated by the steel industry. He favored a tariff on imported steel as the leading answer to the industry's problems. As a means of avoiding future shutdowns, he urged local and district union leaders to work more closely with management at individual plant sites to resolve problems that could potentially threaten local operations. Id.

[56]In April 1978, McBride announced to the Justice Department that the USW would support the Lykes-LTV merger, provided that it was necessary to save the companies and that the merged

company would cooperate with any "reasonable proposal" to resume operations at the Campbell Works under another business structure. See note 7 supra. McBride mentioned the Coalition's plans in his discussion, but he did not specifically endorse them.

[57]This memorandum, "National Center for Economic Alternatives Summary of Preliminary Findings," contains Smith's analysis of the NCEA's first detailed description of its plans released in March 1978 and is noted in Lynd, supra note 2 at 60.

[58]Lynd, supra note 2 at 61. The international's belief in this latter charge was evident when Coalition representatives subsequently learned of the memorandum and met with Smith to discuss it. Smith reportedly referred to the Lynd and Alperovitz book Two Essays Toward a New American Socialism, noted earlier, and criticized the socialist motivations of the authors. Lynd, supra note 2 at 61.

[59]quoted in Lynd, supra note 2 at 60.

[60]Id.

[61]See Robert Morris Associates, Annual Statement Studies, (1982) p. 125.

[62]Lynd, supra note 2 at 60.

[63]"Closing of a Steel Mill Hits Workers in U.S. With Little Warning," supra note 50. Despite the large number of union members affected by the shutdown, McBride did not even visit Youngstown, 75 miles from international headquarters in Pittsburgh, for more than 6 months. Lynd, supra note 2 at 50.

[64]Howard, supra note 42 at 303.

[65]Lynd, supra note 2 at 55.

[66]Howard, supra note 42 at 303.

[67]"Closing of a Steel Mill Hits Workers in U.S. With Little Warning," supra note 51.

[68]"District 26 Follows Steel Mills Into Extinction," Pete Sheehan, Youngstown Vindicator, August 3, 1980, p. A20.

[69]Howard, supra note 42 at 303.

[70]Id.

[71]Id. Baxter did, however, send letters to AFL-CIO union presidents in May 1978 asking them to open SOV accounts. Steering Committee Minutes, May 25, 1978, Ecumenical Coalition Collection, MSS-793, Ohio Historical Society.

[72]Lynd, supra note 2 at 57.

[73] Lynd, supra note 2 at 58.

[74] Id.

[75] Buss, supra note 28 at 2.22.

[76] Howard, supra note 42 at 302.

[77] Lynd, supra note 2 at 77.

[78] Id., at 75.

[79] "Steel Union, Making Concessions, Backs Plant's Reopening in Ohio," supra note 34; Lynd, supra note 2 at 75.

[80] The Carter Administration repeatedly affirmed that it had $100 million in loan guarantees reserved for a suitable project in Youngstown. Lynd, supra note 2 at 67; Dale Peskin, "No Decision Yet on Steel Plans," Youngstown Vindicator, October 15, 1978, p. 1; Roger Wilkins, "Carter Rejects a Plan to Reopen Steel Plant in Ohio," New York Times, March 31, 1979, p. 46.

[81] A HUD official on the Interagency Coordinating Council indicated clearly that no more than a single plan could be funded: "We'll be way out on a limb if any of the Youngstown programs go through. ... To expect that more than one would be funded is, well, unrealistic." Dale Peskin, "After Year, Firm Action is Brewing on Job Picture," Youngstown Vindicator, August 28, 1978, p. 1, 6.

[82] Sullivan, on behalf of the SCC, had asked the Commerce Department in September 1977 to push for new policies and federal assistance on a scale similar to that of the Marshall Plan, to revitalize the steel industry. Sullivan's recommended program consisted of the following: (1) low interest loan guarantees in amounts greater than those available in current government business loan programs; (2) investment tax credits to help modernize old steel plants; (3) rapid depreciation of antipollution equipment costs; (4) government commitment to stimulate the economy's durable goods sector, which requires large amounts of steel; (5) relief from environmental deadlines and especially from compliance schedules for water pollution standards; (6) creation of a task force led by Commerce Department representatives to study and recommend solutions to the steel industry's problems. "Milltowns to U.S.: Save Steel With 'Domestic Marshall Plan,'" Pittsburgh Post-Gazette, September 23, 1977, p. 1.

[83] Id.

[84] "New Company Formed to Buy, Run S&T Mill," Youngstown Vindicator, December 16, 1977.

[85]"Analyst Urges Joint Iron Plant," Youngstown Vindicator, July 25, 1978, p. 1.

[86]George R. Reiss, "Father Hogan Urges Big Coke Plant," Youngstown Vindicator, March 30, 1979.

[87]In September 1978, after the release of the final NCEA report on the Coalition's plans, Sullivan remarked: "What they are proposing stretches credulity." "Still Crusading in Youngstown," supra note 23. Later, in March 1979 during the administration's final deliberations on the subject, Father Hogan criticized the Coalition's efforts to keep obsolete mills alive: "We can't afford to let social desires interfere with economic reality." George R. Reiss, "'Steel Priest' Lambasts Efforts to Keep Obsolete Mills Alive," Youngstown Vindicator, March 27, 1979, p. 1.

[88]"After Year, Firm Action is Brewing on Job Picture," supra note 81.

[89]Peterson, supra note 27.

[90]Id.

[91]Buss, supra note 28 at B.2

[92]"New Steel Plant Under Proposed Local Capital Plan," supra note 37.

[93]Id.

[94]Buss, supra note 28 at B.2-3; "Dreams and Schemes," supra note 17 at 52.

[95]Buss, supra note 28 at B.3.

[96]Id., at 2.20-2.21.

[97]Youngstown Demonstration Planning Project, Final Report, (Summary) National Center for Economic Alternatives, September, 1978, p. 8.

[98]Id., at 6.

[99]Id., at 33.

[100]Raymond T. Sawyer, "Reopening the Campbell Works; Plan of Operations," (Draft) March 6, 1979, Ecumenical Coalition Collection, MSS-793, Ohio Historical Society.

[101]Final Report, supra note 97 at 37.

[102]Report to the President, supra note 30 at 31.

[103]Agis Salpukas, "U.S. to Back Up Steel Aid Loans of $550 Million," New York Times, March 23, 1978, p. D1.

[104]Id.

[105]"After Year, Firm Action is Brewing on Job Picture," supra note 80. In industry-labor confrontations, the steel industry's federal ally is the Commerce Department, while labor lobbies the Labor Department with success. Buss, supra note 28 at B.5.

[106]1977 U.S. Congressional and Administrative News 2884, 2891.

[107]Id.

[108]See note 177 infra and accompanying text for an example of Secretary Harris' continuing support.

[109]One idea, discussed by Vice President Mondale in July 1978, consisted of a proposed Urbank, with a funding capability of $2 billion in federal loans and grants which could generate as much as $16 billion in private investment for troubled communities. McManus, supra note 15.

[110]"After Year, Firm Action is Brewing on Job Picture," supra note 81.

[111]Id.

[112]Dale Peskin, "Marshall Says Task Force Will Study Valley Appeal," Youngstown Vindicator, September 23, 1978, p. 1.

[113]Ecumenical Coalition Executive Committee Minutes, January 3, 1978, Ecumenical Coalition Collection, MSS-793, Ohio Historical Society.

[114]Id.; "Coalition Plan Leading in Bid for Federal Aid," Youngstown Vindicator, September 29, 1978, p. 1.

[115]"How Carter Signs Memo is Crucial to Valley Aid," supra note 34.

[116]Id.

[117]Id.

[118]Buss, supra note 28 at 2.20; "After Year, Firm Action is Brewing on Job Picture," supra note 81.

[119]Id. The ratio of jobs saved per dollar of loan guarantees was significantly lower for the Coalition's plans--at most 4,500 jobs per an approximate $500,000 compared to the $1.5 billion per 100,000 workers affected at Chrysler. Buss, supra

note 28 at 2.18.

[120]Buss, supra note 28 at 2.20-2.21; "U.S. Hope: Save 5,000 Steel Jobs," Pittsburgh Post-Gazette, December 31, 1977, p. 5.

[121]Buss, supra note 28 at 2.21.

[122]The memorandum was obtained by reporter Dale Peskin through a Freedom of Information Act suit and made public in "Memo Suggests Carter Duped Coalition," Warren Tribune, September 19, 1980, quoted in Lynd, supra note 2 at 66.

[123]This memorandum was obtained in the same manner as that in note 122 and is quoted in Lynd, supra note 2 at 68.

[124]"After Year, Firm Action is Brewing on Job Picture," supra note 81.

[125]quoted in Lynd, supra note 2 at 79; see also "HUD Rushing Study to Revive an Ohio Steel Works," New York Times, December 31, 1977, p. 23.

[126]See Lynd, supra note 2 at 68 and 79; "Dreams and Schemes," supra note 18 at 54; "Marshall Says Task Force Will Study Valley Appeal," supra note 112.

[127]Lynd, supra note 2 at 67.

[128]Of the $500 million in EDA loan guarantee authority committed to the steel industry program, EDA guidelines limited the amount which could be allocated to a single project to $100 million. However, within its other more comprehensive guaranteeing authority, the EDA had the potential to guarantee the full amount of the Coalition's original $300 million request. A necessary three-stage process would have required (1) that the EDA request the release of guaranteeing funds from the U.S. Treasury, (2) that the relevant subcommittees of the House and Senate Appropriations commitees hold hearings, and (3) that the full committees, not the entire House and Senate bodies, approve the release. Final Report, supra note 97 at 22-23.

[129]"Marshall Says Task Force Will Study Valley Appeal," supra note 112. On a campaign trip to Youngstown in October 1978 on behalf of Congressman Carney, Vice President Mondale acknowledged that the Carter administration could increase its $100 million commitment: "We haven't closed the door on any eventuality." "No Decision Yet on Steel Plans," supra note 80.

[130]Lynd, supra note 2 at 9; "After Year, Firm Action is Brewing on Job Picture," supra note 81.

[131]"Steel Union, Making Concessions, Backs Plant's Reopening in Ohio," supra note 34.

[132]Lynd, supra note 2 at 68.

[133]"How Carter Signs Memo is Crucial to Valley Aid," supra note 34.

[134]$23 Million Price is Set for 2 Sheet & Tube Mills," supra note 15. The companies also offered to sell the Brier Hill Works, scheduled to be closed soon, to the Coalition for $7 million. Id.

[135]"U.S. Can't Fund Calderon Plan," Youngstown Vindicator, December 12, 1978, p. 1; Lynd, supra note 2 at 73.

[136]"Researcher's Report Hits Campbell Plant Reopening," Youngstown Vindicator, February 23, 1979, p. 1; Richard S. Rosenbloom, "Analysis and Evaluation of Youngstown Report," February 1979, Ecumenical Coalition Collection, MSS-793, Ohio Historical Society.

[137]Id.

[138]quoted in Lynd, supra note 2 at 80.

[139]Lynd, supra note 2 at 80.

[140]Wilkins, supra note 80.

[141]Wiener, supra note 41. White House representatives later added that it would have been poor public policy to commit to one project almost one half of the $500 million in EDA loan guarantees intended for the revitalization of the steel industry. Kotz, supra note 24.

[142]Wilkins, supra note 80.

[143]Id.

[144]"Youngstown Unit Ends Effort to Reopen Plant," Youngstown Vindicator, May 25, 1979, p. 4.

[145]Zwerdling, supra note 23 at p. 17.

[146]Id.; Stuart Brown, "Youngstown Struggle: How to Replace Jobs," Pittsburgh Post-Gazette, March 2, 1978, p. 1.

[147]T.V. Petzinger, Jr., "400 Hear Plans to Raise Funds for Mill Takeover," Youngstown Vindicator, February 17, 1978, p.1.

[148]Dale Peskin, "Propose 3-Way Control of Revamped S&T Mill," Youngstown Vindicator, July 24, 1978, p. 1.

[149]Buss, supra note 28 at 2.15.

[150] McManus, supra note 15; Lynd, supra note 2 at 40.

[151] Brad Dewan and Karl Frieden, "Preliminary Recommendations of Community/Worker Ownership Structure for Reopened Campbell Works," May 10, 1978, p. 3.

[152] Final Report, supra note 97 at 40.

[153] Sawyer, supra note 100 at p. 11.

[154] Articles of Incorporation of Community Steel, Inc., March 8, 1979 (Fifth Draft), Ecumenical Coalition Collection, MSS-793 Ohio Historical Society.

[155] Id.

[156] Id.

[157] Dewan and Frieden, supra note 151 at 3; Lynd, supra note 2 at 47.

[158] Final Report, supra note 97 at 45; see Lynd, supra note 2 at 45-46.

[159] Sawyer, supra note 100 at p. 11.

[160] Final Report, supra note 97 at 45.

[161] Articles of Incorporation, supra note 154.

[162] Final Report, supra note 97 at 42.

[163] It was reported, however, that the president of a "major U.S. steel company" had agreed to serve as chairman of the board. Howard, supra note 42 at 304.

[164] As part of the continuing refinement of the NCEA's preliminary report of April 1978, a July 27, 1978 meeting of eighty Campbell workers discussed opportunities for increased worker input in corporate operations as a means of achieving higher productivity and found significant opportunities for improvement. Final Report, supra note 97 at 45.

[165] Sawyer, supra note 100 at p. 7.

[166] Final Report, supra note 97 at 19.

[167] Final Report, supra note 97 at 19.

[168] Id., at 51, 55.

[169] "Still Crusading in Youngstown," supra note 23.

[170]Final Report, supra note 97 at 57.

[171]Id., at 37.

[172]Id., at 65 note.

[173]Laurence Zabar & Michael Sullivan, Northeast-Midwest Institute, The Use of Federal Procurements in Revitalizing the Economy of Youngstown, Ohio, April 3, 1978.

[174]Id., at 2-3.

[175]41 U.S.C. §252(c).

[176]Zabar & Sullivan, supra note 173 at 3.

[177]Id., Attachment. The Harris memo was, in part, responsive to an earlier presidential instruction to proceed on the administration's urban policy in an innovative manner. Secretary Harris received a January 25, 1978 memo from the President to that effect urging the establishment of programs which "encompass Federal, state, local governments, and private and neighborhood groups and volunteers." It continued: "I would like to place a major emphasis on [this] and try to do it in an inspirational and exciting way if possible." quoted from Final Report, supra note 97 at 66.

[178]Final Report, supra note 97 at 20.

[179]Id. Such an amount would represent .001 to .003 of annual U.S. steel sales.

[180]Rosenbloom, supra note 136.

[181]"Steel Union Making Concessions, Backs Plant's Reopening in Ohio," supra, note 34.

[182]Final Report, supra note 97 at 45.

[183]Id., at 23.

[184]Lynd, supra note 2 at 76; "Steel Union Making Concessions, Backs Plant's Reopening in Ohio," supra note 34.

[185]Lynd, supra note 2 at 75-75; "Steel Union Making Concessions, Backs Plant's Reopening in Ohio," supra note 34.

[186]"Comments on the Rosenbloom Analysis of the Youngstown Report, and The Revised Application for Urban Development Action Grant, City of Youngstown, for the Ecumenical Coalition of the Mahoning Valley," James W. Smith, Assistant to the

President, United Steelworkers of America, March 21, 1979, Ecumenical Coalition Collection, MSS-793, Ohio Historical Society.

[187] Sawyer, supra note 100 at 7; Lynd, supra note 2 at 75.

[188] Lynd, supra note 2 at 76; "Steel Union Making Concessions, Backs Plant's Reopening in Ohio," supra note 34; Smith, supra note 186 supra.

[189] According to Smith, the operations at Campbell, under the direction of Youngstown Sheet & Tube, employed 5%-10% more manpower operating similar equipment than its competitors. Lynd, supra note 2 at 76.

[190] Sawyer, supra note 100 at Appendix A.

[191] Id.

[192] In April 1978, the Coalition had also contemplated the use of the energy-saving Calderon Super Basic Oxygen Furnace as an alternative to the installation of electric furnaces. However, upon further study throughout the summer, its high $730 million cost and its untried and unproven technology eliminated it from consideration. Final Report, supra note 97 at 21, 29.

[193] Sawyer, supra note 100 at Appendix A.

[194] Id.

[195] Id., at 15.

[196] Id., at Appendix A.

[197] Id., at 15.

[198] Id., at 16.

[199] Id., at Appendix A.

[200] Id., at 16.

[201] "Steel Union Making Concessions, Backs Plant's Reopening in Ohio," supra note 34.

[202] George R. Reiss, "Able Managers Needed for Mill," Youngstown Vindicator, March 28, 1978, p. 1; "S&T Workers Urged to Seek Indiana Jobs," Youngstown Vindicator, June 19, 1978; "Youngstown's Jobless Find New Work," Pittsburgh Post-Gazette, March 6, 1978, p. 2.

[203] Lynd, supra note 2 at 75.

[204] Sawyer, supra note 100 at 3.

[205] Lynd, supra note 2 at 74.

[206] Rosenbloom, supra note 136.

Hyatt Clark Industries

[1]"G.M.'s Clark Plant on the Selling Block," The Daily Journal, (Elizabeth, N.J.) August 12, 1980, p. 1.

[2]R.R. Faszczewski, "Hyatt May Close in July if Purchaser is Not Found," Clark Patriot, April 9, 1981, p. 1.

[3]Lewis Beale, "When the Workers are in Charge," Today, The Inquirer Magazine, Philadelphia Inquirer, August 14, 1982, p. 30; Interview with Patrick Mazzeo, December 1982.

[4]Hyatt Clark Industries, Inc., HUD U.D.A.G. Application, June 14, 1982 (cover letter).

[5]Gail Lauren Sokoloff, "The Creation of an Employee Owned Firm: A Case Study of Hyatt Clark Industries," Honors Thesis, April 19, 1982, p. 71; Mazzeo Interview, supra note 3.

[6]Mazzeo Interview, supra note 3; "Go Forth and Compete!" Business Week, November 23, 1981, p. 41.

[7]"Revival at Dying GM Plant," New York Times, October 26, 1981, p. D1; Sokoloff, supra note 5 at 70.

[8]Sokoloff, note 5 at 70.

[9]Id., at 71.

[10]Id.

[11]"In Experiment in Jersey, Workers Buy a Factory," New York Times, April 27, 1981, p. 18.

[12]Beale, supra note 3 at 30.

[13]Id.

[14]Sokoloff, supra note 5 at 55; Mazzeo Interview, supra note 3.

[15]Mazzeo Interview, supra note 3.

[16]The complaint before the NLRB was dismissed in April 1981. The NLRB found no evidence of coercion by the local UAW leaders nor any evidence that they failed to adequately represent their membership, despite the earlier referendum which rejected a proposed dues increase for the acquisition. Mazzeo Interview, supra note 3.

[17]Sokoloff, note 5 at 114; John Koppisch, "Hyatt Plant Sold to its Employees for $55 Million," The Daily Journal (Elizabeth, N.J.) October 30, 1981, p. 1. U.S. District Judge

Herbert Stein denied the request for a temporary restraining order: "Frankly, it looks like a very laudatory effort to save jobs and you'll get no help from this court on a temporary restraining order. Koppisch, supra note 17.

[18]Toward the end of the negotiations, threats were made on the lives of the local UAW leaders, and, on the day before the purchase, sabotage at the plant required the plant's closing. Sokoloff, supra note 5 at 113. Breen pressured the UAW leaders for a full union vote on the acquisition attempt during UAW meetings held to discuss the crucial issue of retirement benefits. Joseph Rush, "Employees' Takeover of Hyatt Hits Snag After Vote," The Daily Journal, (Elizabeth, N.J.) July 15, 1981, p. 1. In addition, Breen's aggressive opposition efforts led to an altercation with James Zarello, chairman of the local shop floor committee, for which Zarello was convicted of assault and battery. "UAW Aide Guilty in Assault After Hyatt Meeting," The Daily Journal, (Elizabeth, N.J.) October 30, 1981, p. 11.

[19]Koppisch, supra note 17.

[20]Mazzeo Interview, supra note 3.

[21]The issue involved the "mutually satisfactory retirement benefits," more commonly known as the "mutuals," whereby GM was contractually responsible for immediate and full pension benefits, in the event of a plant closing, to all employees over the age of 55 with 10 years of seniority. Both sides initially refused to budge on this issue. GM wanted the workers and remaining management to waive their rights to the benefits for as long as they stayed at the plant. They felt such "double dipping," to cost an estimated $60 million, was unjustified, given the contributions that GM had already offered in purchase commitments, financial assistance and technical support. From the union's perspective, however, the rights were guaranteed by its national contract, and the union, at the time carefully cultivating the nervous support of its membership, felt unable to concede on such a major benefit. Management participants in the JPC, whose mutuals were provided only via GM personnel policies and not by contract, nevertheless, threatened to withdraw their participation unless they were likewise protected. After several weeks of tense negotiations, however, the JPC agreed to pay one-fourth of the $60 million liability in fixed sums over 20 years to GM in exchange for GM's payment of the mutuals in full to all eligible management and union employees. Sokoloff, supra note 5 at 82-89; R.R. Faszczewski, "General Motors Agrees to Abide by Pension Pact," Clark Patriot, August 20, 1981, p. 1.

[22]Sokoloff, supra note 5 at 116-117.

[23]Id., at 116.

[24] Id., at 116-117.

[25] R.R. Faszczewski, "Over 800 Sign For Jobs at New Hyatt," Clark Patriot, September 17, 1981, p. 1.

[26] Beale, supra note 3 at 32; Koppisch, supra note 17. The vote was 326 for and 123 against. "Employees Now Own GM Hyatt Facility," Clark Patriot, November 5, 1981, p. 1.

[27] A labor contract was negotiated with relative ease between the union leadership and a local labor law firm chosen by Lowenstein. The labor lawyers were assisted by a management representative from the JPC. The terms conformed essentially with the recommendations of the feasibility study. Sokoloff, supra note 5 at 98.

[28] Sokoloff, supra note 5 at 37.

[29] Id., at 42.

[30] Id., at 41.

[31] Id., at 92-93.

[32] Id., at 105.

[33] Id., at 150-151.

[34] Id., at 132.

[35] Id.

[36] In the late 1960's, Lowenstein chaired the New Jersey Corporation Law Revision Commission, which performed a comprehensive rewriting of the state's business corporation law.

[37] Beale, supra note 3 at 30; see also Joseph F. Sullivan, "Employees to Buy Factory," New York Times, February 29, 1976, XI, p. 6. Okonite had been a viable subsidiary of the conglomerate Omega-Alpha, which had filed a petition for reorganization under the federal bankruptcy laws. The employees at Okonite purchased the company through an ESOP as part of the plan of arrangement which resolved the bankruptcy proceeding. Robert Metz, "Ling Seeks Comeback via Okonite," New York Times, February 25, 1976, p. 54.

[38] Sokoloff, supra note 5 at 78, 98, 102, 132; Mazzeo Interview, supra note 3; "ESOP's a Solution to Plant Closings, Layoffs?" Industry Week, February 22, 1982, p. 36; "Revival at Dying GM Plant," supra note 7.

[39] Sokoloff, supra note 5 at 102; Mazzeo Interview, supra note 3; "ESOP's a Solution to Plant Closings, Layoffs?"

supra note 38.

[40]Sokoloff, supra note 5 at 102-103; Hyatt Clark Employee Stock Ownership Plan.

[41]Sokoloff, supra note 5 at 79; Mazzeo Interview, supra note 3; Arthur D. Little, Inc., "Summary, Conclusions and Recommendations," Hyatt Clark Feasibility Study, June 1981.

[42]Sokoloff, supra note 5 at 61.

[43]Id., at 50.

[44]Id., at 53.

[45]Koppisch, supra note 17.

[46]Mazzeo Interview, supra note 3.

[47]"Over 800 Sign For Jobs at New Hyatt," supra note 25.

[48]Id.

[49]Interview with Alan V. Lowenstein, January 27, 1983.

[50]Sokoloff, supra note 5 at 120.

[51]See note 21 supra for explanation of "mutuals."

[52]Sokoloff, supra note 5 at 134.

[53]Id., at 135.

[54]Beale, supra note 3 at 32.

[55]"In Experiment in Jersey, Workers Buy a Factory," supra note 11.

[56]Sokoloff, supra note 5 at 122.

[57]"In Experiment in Jersey, Workers Buy a Factory," supra note 11.

[58]Sokoloff, supra note 5 at 151-52.

[59]Id., at 151.

[60]Id., at 121. Illustrative of these poor relations was an incident in 1979, in which the local UAW organization campaigned successfully within the local for the rejection of a proposed national UAW-GM contract supported by the international. Following the vote, which nevertheless ratified the contract on

the national level, the international distributed a leaflet to the local membership at Clark reexplaining the terms of the contract and claiming, in effect, that the local leadership had misled its members. Sokoloff, supra note 5 at 119-20.

[61] Sokoloff, supra note 5 at 120.

[62] Id., at 120.

[63] "In Experiment in Jersey, Workers Buy a Factory," supra note 11.

[64] Sokoloff, supra note 5 at 106. Since the purchase, however, the company has received commitments from the federal EDA and the New Jersey Department of Commerce for $3 million and $1 million, respectively, in assistance. It has also qualified for $2 million to $9 million in UDAG grants. The UDAG assistance is contingent on Hyatt Clark's retention of other matching funds in the form of retained earnings or private borrowings. Lowenstein interview, supra note 49.

[65] For a discussion of ESOP's generally, see note 3, Introduction and Analytical Framework.

[66] Hyatt Clark Industries, "U.D.A.G. Application," dated June 14, 1982.

[67] Sokoloff, supra note 5 at 108.

[68] GM neither confirms nor denies that it formally guaranteed the Prudential and Chemical Bank loans on behalf of Hyatt Clark and says that it would not confirm it even if it did provide a guarantee. Accounts from other sources, however, which range from assertions of "assurances" to formal guarantees plus the lenders' reversals of earlier refusals suggest that a formal guarantee was given. At a minimum, however, it is clear that GM's actions did effectively guarantee the debts. Interview with Sheila Chamberlain, GM Public Relations, February 15, 1983; Sokoloff, supra note 5 at 108; Mazzeo Interview, supra note 3; Lowenstein Interview, supra note 49; "Go Forth and Compete!" supra note 6.

[69] Sokoloff, supra note 5 at 108. Lowenstein remarked:

> I was angry it was gonna be rejected. It should have been rejected back in May or June. But they had not wanted to because of all the favorable publicity we had been getting. I think the Pru was a little embarrassed to turn it down after that. They have a reputation for supporting the community.

Id.

[70]"Go Forth and Compete!" supra note 6; Lowenstein Interview, supra note 49.

[71]Sokoloff, supra note 5 at 133; "G.M. New Jersey Plant is Sold to Employees in $53 Million Transfer," Wall Street Journal, November 2, 1981, p. 37.

[72]Peter Pitegoff and Staughton Lynd, "Workers Can Be Choosers," New York Times, October 27, 1982; Lowenstein Interview, supra note 49.

[73]See note 3, Introduction and Analytical Framework.

[74]Lowenstein Interview, supra note 49. As required by ERISA and the Internal Revenue Code, the Hyatt Clark ESOP does entitle each participant to vote stock allocated to his account with respect to any issue which must be approved by more than a majority of votes cast pursuant to the laws of the state of New Jersey. According to Lowenstein, however, New Jersey, unlike some other states, does not require such voting on any corporate questions.

[75]If the union and management representatives cannot agree on a third member, the American Arbitration Association has been delegated the authority to choose a representative from two candidates nominated by the union representative and two candidates nominated by the management delegate. Hyatt Clark Employee Stock Ownership Plan, supra note 40.

[76]Lowenstein Interview, supra note 49.

[77]Id.

[78]"In Experiment in Jersey, Workers Buy a Factory," supra note 11. Lowenstein remarked as follows:

> I argued that only good could come from having outside directors who were eminent people who could use their influence in the business community, as well as their judgment on the board. They bought that.

Sokoloff, supra note 5 at 101.

[79]Mazzeo Interview, supra note 3.

[80]Sokoloff, supra note 5 at 96.

[81]"Go Forth and Compete!" supra note 6.

[82]Beale, supra note 3 at 32.

[83]Mazzeo Interview, supra note 3.

[84]To date, employee participation has been responsible for the re-design of packing and cartons, the addressing of some quality problems and the relocation of equipment on the shop floor in an efficiency move. Mazzeo Interview, supra note 3. Warner Woodworth, however, has plans for ecucational programs intended to enable workers to eventually realize the full meaning of employee ownership and to encourage them to take an active role in management decisions when possible. Beale, supra note 3 at 32.

[85]"U.D.A.G. Application," supra note 66.

[86]"Landmark Employee Deal as GM Sells Hyatt Plant," Daily Journal (Elizabeth, N.J.) October 31, 1981, p. 1.

[87]Lowenstein Interview, supra note 49.

[88]"Landmark Employee Deal as GM Sells Hyatt Plant," supra note 86.

[89]Id.; "Revival at Dying GM Plant," supra note 7.

[90]Mazzeo Interview, supra note 3. With a lack of interest from private investors, the company again sought federal assistance. Final steps are currently underway toward a package of assistance from HUD, EDA and the N.J. Commerce Department for a major $31.5 million capital project. See "U.D.A.G. Application," supra note 66; Lowenstein Interview, supra note 49. See also note 64 supra and note 108 infra.

[91]"Landmark Employee Deal as GM Sells Hyatt Plant," supra note 86.

[92]Beale, supra note 3 at 30. Wages for laborers were reduced on an hourly basis from $10.40 to $6.50; for skilled workers from $13.50 to $10.40; for setup personnel from $11.50 to $9.25. "Over 800 Sign For Jobs at New Hyatt," supra note 25.

[93]Sokoloff, supra note 5 at 100.

[94]Beale, supra note 3 at 30; Sokoloff, supra note 5 at 99.

[95]Id.

[96]Sokoloff, supra note 5 at 99. Skilled trade classifications, which limited the types of work which each trade group could perform, were reduced from 10 to 4. Beale, supra note 3 at 30.

[97]"In Experiment in Jersey, Workers Buy a Factory," supra note 11.

[98]"Landmark Employee Deal as GM Sells Hyatt Plant," supra note 86. A reduction in management staffing levels was

practically the only major concession affecting local management, although even here some of the reduction was voluntary. See textual discussion of intra-JPC dispute over proposed managerial salary levels in Composition and Cohesion of the Acquiring Group, supra. A consultant involved with the acquisition remarked in this regard:

> Unions have to learn something about what is the competitive market in the salaried field, which they're not used to. They're totally ignorant about it. They're used to negotiating for people whose top salaries aside from overtime is $20-22,000. And to find there are professional people making $35-50,000. You can never get away from the fact that there is a certain amount of resentment. Why is it? My people work hard. It can't be worth that much difference. And when you start talking about $60,000, then you're way out of line. So there's an educational process that has to go on.

Sokoloff, supra note 5 at 95.

Also, see Sokoloff, supra note 5 at 133 and 141, for discussion of private investors' insistence on cuts in union wages.

[99] Hyatt Clark Feasibility Study, supra note 41.

[100] Master Agreement Between Local 736, UAW and Hyatt Clark Industries. See also id.

[101] Master Agreement, supra note 100.

[102] Daniel Zwerdling, "Employee Ownership: How Well is it Working?" Working Papers for a New Society, May/June 1979, p. 21.

[103] Hyatt Clark Feasibility Study, supra note 41.

[104] See "U.D.A.G. Application," supra note 66 and notes 64 and 94.

[105] About half of the local management under GM stayed on with the new corporation. "In Experiment in Jersey, Workers Buy a Factory," supra note 11.

[106] "Landmark Employee Deal as GM Sells Hyatt Plant," supra note 86.

[107] Sokoloff, supra note 5 at 96.

[108] Id., at 69 and 130.

Weirton Steel Company

[1]Dotson Rader, "Can the Little Guys Win?" Parade Magazine, December 12, 1982.

[2]"Talks Open on Weirton Steel Sale," Pittsburgh Post-Gazette, November 9, 1982, p. 1.

[3]Love's policy, initially adopted in 1981, meant that capital investments would be allocated among National's major steel plants on the basis of their profitability: "They're going to compete for capital on a hard-nosed basis." Agis Salpukas, New York Times, May 25, 1981, p. D1.

[4]Jennifer Lin, "Workers May Buy Weirton Mill," Pittsburgh Post-Gazette, March 3, 1982, p. 1.

[5]"National Will Continue to Trim Steel Business," Iron Age, 225: MP3, April 5, 1982.

[6]"Talks Open on Weirton Steel Sale," supra note 2.

[7]Subrata N. Chakravarty, "Blast Furnace Banker," Forbes, October 26, 1981, p. 95.

[8]"National Will Continue to Trim Steel Business," supra note 5.

[9]An audit performed of the National Steel pension fund by a JSC consultant showed that, of Weirton's share, the fund contained assets of $350 million and liabilities of $452 million, as of January 1, 1982. "National Steel Unit Pension Fund Gap is Put at $102 Million," Wall Street Journal, August 18, 1982, p. 32.

[10]Indeed, prior to National's announced intent to sell the plant to its employees, rumors had circulated regarding the plant's possible sale to Honda Motor Co., to Chase Manhattan Bank and a partner, and to the local Division management. "Weirton Steel Denies Sale of its Facilities to Honda," Wheeling News Register, March 1, 1982. Those efforts were, of course, unsuccessful.

[11]William Serrin, "Employees to Buy Huge Steel Works in $66 Million Pact," New York Times, March 14, 1983, p. 1.

[12]Jennifer Lin, "Weirton Sees Labor Pact Ending Losses," Pittsburgh Post-Gazette, March 16, 1983 p. 12.

[13]In the summer of 1982, National closed both of Weirton's coke batteries rather than make the capital expenditures necessary to satisfy federal clean air standards, thus leaving the new company without a captive source of coke. The new

company's plans included the construction of coke facilities to replace them, but for the interim the company would have to rely on outside sources.

[14]Nicholas Knezevich, "Weirton Steel Buyers Face $266 Million Debt," Pittsburgh Press, March 15, 1983, p. 1; Nicholas Knezevich, "'We'll Go For It,' Weirton Worker Says," Pittsburgh Press, March 16, 1983, p. A-19.

[15]Serrin, supra note 11.

[16]Thomas F. O'Boyle, "National Steel's Workers Agree to a Price of $181 Million for Weirton Unit's Assets," Wall Street Journal, March 14, 1983, p. 3; "Weirton Sees Labor Pact Ending Losses," supra note 12; "'We'll Go For It,' Weirton Worker Says," supra note 14.

[17]The subsequent ten-year repayment period for principal may be accelerated, however, if certain profit levels are reached. O'Boyle, supra note 16.

[18]Serrin, supra note 11.

[19]O'Boyle, supra note 16; "Weirton Sees Labor Pact Ending Losses," supra note 12.

[20]O'Boyle, supra note 16.

[21]Id.

[22]Interview with Ralph Cox, National Steel Corporation, Public Relations, March 17, 1983.

[23]"Worker Purchase Seen Succeeding," Intelligencer, (Wheeling) March 4, 1982, p. 1; "Weirton Steel Hit by Layoffs," Intelligencer, (Wheeling) March 5, 1982; "Funds Pledged to Aid Weirton," Intelligencer, (Wheeling) March 6, 1982, p. 1.

[24]"Feasibility Study Starts Monday," Weirton Daily Times, April 9, 1982, p. 1.

[25]The elections were conducted in two stages--first, a vote within departmental divisions for shop stewards and, second, from the cast of elected stewards, a union-wide vote for the top officials. According to ISU lawyer David Robertson, laid-off workers were denied voting rights because their status prevented their classification in any operating department. Interview with David Robertson, March 17, 1983.

The Labor Department subsequently found the rule, which prohibited such voting, to be unfair and the elections, therefore, invalid. It, nevertheless, permitted the leadership thereby elected to remain in office to conduct a necessary re-run scheduled for January 1984. This late date was fixed by the Labor Department to avoid interference with the buyout campaign, but

it also thereby allowed the illegally elected leadership to conduct the acquisition negotiations. Interview with Rita Valdrini, Labor Management Services Administration, April 13, 1983.

[26]"JSC Issues a New Employee Newsletter," Weirton Daily Times, September 27, 1982, p. 1.

[27]"Communications Key for Moves in Buying Plant," Herald-Star, (Steubenville, Ohio), October 2, 1982, p. 1; "ESOP Message Center Shows Success at Answering Inquiries," Weirton Daily Times, July 2, 1982, p. 2.

[27a]Typical of the JSC's themes is the following comment regarding the delays posed by the lawsuits brought in the final days of the campaign. JSC member and Division President John Redline stated: "We have a deadline to meet. If it isn't, there isn't any tomorrow." "Steel Group Overstepped Authority, Arango Says," The Herald-Star, (Steubenville, Ohio) April 7, 1983, p. 1.

[28]Interviews with James McNamara (March 22, 1983) and Tony Gilliam (March 23, 1983) of the Rank and File Committee.

[29]"ISU Backs Study Funding by 5-1," Weirton Daily Times, May 22, 1982, p. 1; "IGU Voices its Support for Joint Study Group," Weirton Daily Times, March 26, 1981, p. 1. The final ISU vote on the subject carried by a 5 to 1 margin--3964 to 772.

[30]See "ISU Voting Said Strong This Morning," Weirton Daily Times, June 22, 1982, p. 1.

[31]"IGU Boss Pledges Support," Weirton Daily Times, January 15, 1983, p. 1.

[32]"ISU Snubs Funds Use," Intelligencer (Wheeling) April 21, 1982, p. 1; "ISU Options Few," Intelligencer (Wheeling) April 22, 1982, p. 1; "ISU Members to Cast 2 Votes," Intelligencer (Wheeling) April 29, 1982, p. 1.

[33]"ISU Backs Study Funding by 5-1," supra note 29.

[34]"4 Meets Scheduled on Steel Takeover," Intelligencer (Wheeling) March 17, 1982, p. 1.

[35]"Rank and File Seek Consultants," Weirton Daily Times, March 20, 1982, p. 1; "Group Gathering to Discuss ESOP Proposal," Weirton Daily Times, March 23, 1982, p. 1; "Reports Sought by Rank and File," The Herald-Star (Steubenville, Ohio) October 13, 1982, p. 1.

[36]"Laid Off Workers Will Not Vote in Election," Weirton Daily Times, June 17, 1982, p. 1.

[37]See note 25 supra.

[38]"Reports Sought by Rank and File," supra note 35; "Judge's Ruling Favors Union in Appendix Suit," The Herald-Star (Steubenville, Ohio) November 6, 1982, p. 1.

[39]"Judge's Ruling Favors Union in Appendix Suit," supra note 38.

[40]"Another Suit is Filed," Weirton Daily Times, April 9, 1983, p. 1; "Steelworkers' Group Files Lawsuit," Weirton Daily Times, April 8, 1983, p. 1.

[41]"2nd Suit Filed by Millworkers," The Herald-Star (Steubenville, Ohio) April 9, 1983, p. 1; "Steel Group Overstepped Authority, Arango Says," supra note 27a.

[41a]Michael Schroeder, "Veteran of Worker Takeovers Says Plan Could Succeed," Pittsburgh Post-Gazette, May 4, 1982, p. 9.

[41b]Id.

[42]Interview with Alan V. Lowenstein, December 1982.

[43]"Weirton Steel Adviser Quits," Pittsburgh Post-Gazette, May 25, 1982, p. 18.

[44]Interview with Alan V. Lowenstein, December 1982.

[45]"Weirton Steel Adviser Quits," supra note 43.

[46]Id.

[47]Others considered as advisers for the purchase were Mellon Bank, Shearson/American Express and Bear Stearns. Jennifer Lin, "Lazard Freres & Co. Named Adviser at Weirton," Pittsburgh Post-Gazette, September 3, 1982, p. 20.

[48]Id.

[49]"Weirton Group Meets at White House," Wheeling News-Register, March 11, 1982, p. 1.

[50]"Colliers Steel Talks Set," Intelligencer (Wheeling) April 3, 1982, p. 1.

[51]"Feasibility Study Starts Monday," supra note 24.

[52]"Pension Study Begins," Weirton Daily Times, June 19, 1982, p. 1.

[53]"Weirton Steel Retirees Asked for Donations," Weirton

Daily Times, December 17, 1982, p. 1; "Plant Plans Another Effort to Raise Funds," The Herald-Star (Steubenville, Ohio) November 30, 1982, p. 1.

[54]William Serrin, "Town Backs Workers in Plan to Buy Steel Mill," New York Times, June 8, 1982, p. A16; "ISU Backs Study Funding by 5-1," supra note 29.

[55]"Town Backs Workers in Plan to Buy Steel Mill," supra note 54; "Citizen Help Possible," Weirton Daily Times, April 27, 1982, p. 1; "Feasibility Study Starts Monday," supra note 24.

[56]"Weirton Steel Retirees Asked for Donations," supra note 53.

[57]"Grant is Approved," Wheeling News-Register, September 13, 1982, p. 11. The grant had originally been sought for $3 million, but the EDA quickly made it clear in June that it would commit only $100,000 to the project. "Weirton Action Grant Possible," Weirton Daily Times, June 16, 1982, p. 1. A subsequent application was the filed for the latter amount to help finance the feasibility, in progress at the time, but delays in the approval process and an EDA policy against awarding funds for projects that have already been completed (the feasibility study had been completed before a decision was ready on the Weirton request) required a modified application to cover the other expenses specified in the text. "Weirton Study May Lose Federal Grant," Wheeling News-Register, July 8, 1982, p. 1.

[58]"Funds Pledged to Aid Weirton," supra note 23; Thomas F. O'Boyle, "Planned Sale of Steel Plants Brings Hope to One Ohio River Town, Fear to Another," Wall Street Journal, April 6, 1982, p. 37.

[59]"State May Help in ESOP," Weirton Daily Times, July 30, 1982, p. 1.

[60]"Town Backs Workers in Plan to Buy Steel Mill," supra note 54; "Hancock Commission Gives ESOP Donation," Weirton Daily Times, January 18, 1983, p. 1; "Communities Asked to Aid ESOP," Intelligencer (Wheeling) December 27, 1982, p. 9.

[61]"'Share Our New Beginning,'" Weirton Daily Times, December 20, 1982, p. 1; "Plant Plans Another Effort to Raise Funds," supra note 53.

[62]"'Share Our New Beginning,'" supra note 61.

[63]"Fund-Raising Project Set for Weirton Steel," Weirton Daily Times, January 20, 1983, p. 1.

[64]Interview with Ralph Cox, supra note 22.

[65] Id.

[66] "Planned Sale of Steel Plants Brings Hope to One Ohio River Town, Fear to Another," supra note 58.

[67] "Takeover Would Halt Scaled Down Plant Operations," Wheeling News-Register, March 3, 1982; "Steel Workers See Takeover as Good Sign," Intelligencer (Wheeling) March 3, 1982, p. 1.

[68] "Jay Asks Weirton Grant," Intelligencer (Wheeling) April 15, 1982, p. 1; "Weirton Action Grant Possible," Weirton Daily Times, June 16, 1982, p. 1.

[69] "Delegation Heads for Washington to Push UDAG Application Effort," Weirton Daily Times, July 30, 1982, p. 1.

[70] "State May Help in ESOP," supra note 59.

[71] "Gov. Rockefeller Inks ESOP Bill," Weirton Daily Times, March 25, 1983, p. 1.

[72] "Byrd Encouraged by Meeting with WSX Officials," Weirton Daily Times, July 31, 1982, p. 1.

[73] "Selection Draws Near of WSX Actuarial Firm," Weirton Daily Times, June 12, 1982, p. 1. The timing of the amendment was unfortunately late, however, as the relevant House and Senate committees, already working on a comprehensive rewriting of the Act, had previously considered and reached a recommendation on the extension issue. The committees' recommendations, however, were not as permissive as those sought by Byrd. "Bill to Aid Weirton Steel Stalled," Weirton Daily Times, July 6, 1982, p. 1.

[74] "WSX Bubble Concept Approval Seen," Weirton Daily Times, August 28, 1982, p. 1; "Ruling Won't Affect WSX 'Bubble,'" Weirton Daily Times, August 19, 1982, p. 1. Byrd's influence was also instrumental in setting up a White House meeting on March 11, 1982 between the local JSC and political leaders and a Reagan staff member, although the original plans, which called for Reagan's attendance, were scrapped. "White House and Weirton," Pittsburgh Post-Gazette, March 10, 1982, p. 18. Finally, Senator Byrd's status led to the volunteered assistance of Jeff Gates, a legal advisor to the Senate Finance Committee, headed by ESOP advocate Senator Russell Long. "Fund Decision Confronts ISU," Intelligencer (Wheeling) April 7, 1982, p. 13.

[75] "Communities Asked to Aid ESOP," supra note 60; "Announced 'Rejection' Cause for Confusion," The Herald-Star, (Steubenville, Ohio) October 7, 1982, p. 1.

[76] "Worker Purchase Seen Succeeding," supra note 23.

[77]"Jobs Stressed During Weirton March," Intelligencer (Wheeling) June 25, 1982, p. 1.

[78]"Over 3,000 Letters Support Sen. Byrd's Bill," Weirton Daily Times, July 3, 1982, p. 1.

[79]"Wow, What a Parade!" Weirton Daily Times, July 6, 1982, p. 1.

[80]"July 4th, A Time for Rededication," Weirton Daily Times, July 10, 1982, p. 3.

[81]"Union Leader Scoffs at Selling Steel Mill," Weirton Daily Times, March 26, 1982, p. 1.

[82]"Weirton Steel Denies Sale of its Facilities to Honda," supra note 10; "National Steel Unit Pension Fund Gap is Put at $102 Million," supra note 9.

[83]"Weirton Group Tries to Hold Up Takeover," Pittsburgh Post-Gazette, April 9, 1983, p. 1; "Steelworkers Try to Halt Buyout," Pittsburgh Press, April 8, 1983, p. 1.

[84]"Weirton Steel Grant is Rejected," Wheeling News-Register, October 6, 1982; "Weirton Can Still Get UDAG Funds," The Herald-Star, (Steubenville, Ohio) October 7, 1982, p. 1.

[85]"Concessions Key to Mill Future," Intelligencer (Wheeling) July 27, 1982, p. 1.

[86]"Weirton Can Still Get UDAG Funds," supra note 84.

[87]"'Bubble' Clean-Air Ruling Delights Weirton Steel," Pittsburgh Press, December 5, 1982, p. 2.

[88]"Ruling Won't Affect WSX 'Bubble,'" Weirton Daily Times, August 19, 1982, p. 1; "WSX Bubble Concept Approval Seen," supra note 74; "Second 'Bubble' Eyed for WSX," Weirton Daily Times, September 30, 1982, p. 1.

[89]"'Bubble' Clean-Air Ruling Delights Weirton Steel," supra note 87.

[90]"Town Backs Workers in Plan to Buy Steel Mill," supra note 54; "Weirton Action Grant Possible," supra note 68; "EDA Grant Okayed," Weirton Daily Times, September 13, 1982, p. 1.

[91]"Weirton Action Grant Possible," supra note 68.

[92]Serrin, supra note 11.

[93]Id.

[94]"Weirton Sees Labor Pact Ending Losses," supra note 12.

[95]McKinsey & Co., "Assessing the Feasibility of an Independent Weirton Steel," July 26, 1982, Cover letter p. 6, 1-43 to 1-47.

[96]Jennifer Lin, "Consultant Says Outlook 'Reasonable' for Weirton Markets," Pittsburgh Post-Gazette, July 15, 1982, p. 8.

[97]"Steelworkers Get ESOP Update," Weirton Daily Times, July 15, 1982, p. 1.

[98]McKinsey, supra note 95 at Cover letter p. 2-3.

[99]Thomas F. O'Boyle, "National Steel and Employees Open Talks Aimed at Selling Weirton Unit to Workers," Wall Street Journal, November 9, 1982, p. 16; "The Next Step for Weirton's Workers," Business Week, March 28, 1983, p. 39; Interview with Ralph Cox, supra note 22.

[100]"National Steel and Employees Open Talks Aimed at Selling Weirton Unit to Workers," supra note 99; "The Next Step for Weirton's Workers," supra note 99; Jennifer Lin, "Givebacks Key to Weirton Steel," Pittsburgh Post-Gazette, March 14, 1983, p. 1.

[101]"The Next Step for Weirton's Workers," supra note 99.

[102]Id.

[103]"Consultant Says Outlook 'Reasonable' for Weirton Markets," supra note 96. In 1982, Weirton's shipments dropped to 1.4 million tons (down from the 1.9 million ton level of 1981) and yielded a loss of $100 million. "Weirton Sees Labor Pact Ending Losses," supra note 12. About half of this loss, however, was due to the write-off of certain obsolete equipment. "Tentative Pact Said Workable," Weirton Daily Times, March 16, 1983, p. 1.

[104]McKinsey, supra note 95 at Cover letter p. 5.

[105]"Consultant Says Outlook 'Reasonable' for Weirton Markets," supra note 96.

[106]McKinsey, supra note 95 at Cover letter p. 7, 1-12.

[107]McKinsey, supra note 95 at 1-16.

[108]Id., at 1-16.

[109]Id.

[110]"Weirton Sees Labor Pact Ending Losses," supra note 12; Interview with Ralph Cox, supra note 22.

[111]Interview with Ralph Cox, supra note 22.

[112]Id.

[113]McKinsey, supra note 95 at 1-38.

[114]JSC officials emphasized, however, that even with the cuts, Weirton workers still would remain the highest paid manufacturing workers in West Virginia. Jennifer Lin, "Weirton Workers Told 32% Pay Cut Needed," Pittsburgh Post-Gazette, July 27, 1982, p. 1.

[115]Id.; McKinsey, supra note 95 at Cover letter p. 5.

[116]McKinsey, supra note 95 at Cover letter p. 5; 1-43 to 1-47.

[117]Id., at 1-46 to 1-47.

[118]"Weirton Sees Labor Pact Ending Losses," supra note 12; "'We'll Go For It,' Weirton Worker Says," supra note 14.

[119]McKinsey, supra note 95 at Cover letter p. 5.

[120]"Weirton Steel Pact Possible in Two Weeks," Weirton Daily Times, February 3, 1980, p. 1.

[121]"Weirton Group Tries to Hold Up Takeover," supra note 83.

[122]Id.; "No Change Seen in ESOP Cuts," Weirton Daily Times, March 16, 1983, p. 1.

[123]"Weirton Group Tries to Hold Up Takeover," supra note 83.

[124]McKinsey, supra note 95 at 1-36.

[125]Id., at 1-38.

[126]Interview with Tony Gilliam, supra note 28.

[127]"Equipment is Takeover Key," Intelligencer (Wheeling) March 4, 1982, p. 1.

[128]McKinsey, supra note 95 at Cover letter p. 5; "Takeover of Steel Plant May Work," New York Times, July 27, 1982, IV p. 22

[129]McKinsey, supra note 95 at p. 1-4.

[130]National closed both of Weirton's two coke batteries in the summer of 1982. The terms of a 1981 consent decree with

the EPA required that the units be brought into compliance with clean air standards by September 1982 or be shut down. Given its unwillingness to expend the necessary capital requirements to upgrade the units, National chose the latter option. "Batteries Closing?" Intelligencer (Wheeling) June 15, 1982, p. 1; "Coke Plant Closing Set," Intelligencer (Wheeling) June 16, 1982, p. 1; "Coke Battery to Close; 275 Affected," Intelligencer (Wheeling) August 21, 1982, p. 7.

[131] McKinsey, supra note 95 at p. 1-4.

[132] Id., at p. 1-7.

[133] "Three Major Obstacles Lie Before ESOP Plan," The Herald-Star (Steubenville, Ohio) March 16, 1983, p. 1.

[134] McKinsey, supra note 95 at Cover letter p. 8.

[135] Interview with Ralph Cox, supra note 22; McKinsey, supra note 95 at p. 2-3 to 2-5.

Comparative Analysis, Limits and Possibilities

[1]In another case in Youngstown mentioned earlier in note 2 of Introduction & Analytical Framework, supra, involving U.S. Steel's refusal to deal with an employee group seeking the purchase of the company's Youngstown and Ohio Works, the parent clearly perceived that its interests, both ideological and economic (it claimed that an employee buyout would entail federal subsidization of a competitor) dictated the company's opposition to the effort.

[2]See James O'Connor, The Fiscal Crisis of the State, New York, St. Martin's Press, 1973.

[3]The City of Philadelphia has a municipal ordinance which requires a 30 day notice period for firms intending to close plants which employ substantial numbers of workers. Legislation had been introduced in the Pennsylvania General Assembly in 1981 (Senate Bill No. 727) with substantially similar provisions but with lengthier notice periods. Other provisions included severance payments for dislocated workers, offers of reemployment at other plants within the state, payment of employees' relocation expenses to such jobs and the payment, into a development fund, an amount equal to 15% of the plant's annual wages. A similar ordinance was proposed in Pittsburgh by the Save Our Neighborhoods Action Coalition (SNAC) and the Association of Community Organizations for Reform Now (ACORN) in March 1983, but, like the state legislation, no action has yet been taken on it.

[4]See George Richard Meadows and John Mitrisin, "A National Development Bank," New Tools for Economic Development, edited by George Sternlieb and David Listokin (1981, Center for Urban Policy Research, New Brunswick, N.J.).

[5]The Denominational Ministry Strategy was organized in the winter of 1982-83 by a group of religious leaders from the steelmaking communities near Pittsburgh. It has worked with USW locals and the community generally to collect, from local residents, "pledge cards" which indicate the signer's willingness to move his or her checking, savings, trust or IRA accounts to a bank that invests in businesses that produce jobs in the area, particularly in steel. No movement of money has occurred as of this date, but the size of the funds potentially at issue could represent leverage to gain the cooperation of major local banks, such as Mellon and Pittsburgh National Bank, in any proposals for an employee- or community-buyout.

[6]Rosenbloom, supra note 136 (Youngstown Sheet & Tube Co.'s Campbell Works, supra).