APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the Seventh Circuit (September 26, 2019) . . . . App. 1

Appendix B Memorandum and Order in the United States District Court for the Southern District of Illinois (December 17, 2018) . . . . App. 14

Appendix C Judgment in a Civil Action in the United States District Court for the Southern District of Illinois (December 17, 2018) . . . . App. 36

Appendix D Order Denying Petition for Rehearing and for Rehearing En Banc in the United States Court of Appeals for the Seventh Circuit (October 25, 2019). . . . . App. 38

Appendix E 29 U.S.C. § 2101 . . . . App. 40

29 U.S.C. § 2102 . . . . App. 42

20 C.F.R. § 639.1. . . . . App. 43

20 C.F.R. § 639.3. . . . . App. 44

Appendix F Hamilton County Coal, LLC February 5, 2016 Letter to Carl Leeper . . . . App. 45

Appendix G Hamilton County Coal Frequently Asked Questions Concerning the Temporary Layoffs . . . . App. 47

Appendix H Alliance Coal, LLC August 1, 2015 Letter to Carl Leeper . . . . App. 57

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 19-1109

[Filed September 26, 2019]

CARL LEEPER, individually and on behalf of all others similarly situated,
Plaintiff-Appellant,

v.

HAMILTON COUNTY COAL, LLC, and ALLIANCE RESOURCE PARTNERS, L.P.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Illinois.
No. 16-CV-250 — **Nancy J. Rosenstengel**,
Chief Judge.

ARGUED MAY 17, 2019 —
DECIDED SEPTEMBER 26, 2019

Before RIPPLE, MANION, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. A group of workers at an Illinois coal mine received some unwelcome news on February 5, 2016. Their employer, Hamilton County Coal, LLC, announced a "temporary layoff" with an expected end date of August 1, 2016. Carl Leeper, a full-time maintenance worker at the mine, responded with this class action under the Worker Adjustment and Retraining Notification Act (the "WARN Act" or "the Act"), which requires employers to give affected employees 60 days' notice before imposing a "mass layoff." 29 U.S.C. § 2102(a)(1). The Act defines a mass layoff as an event in which at least 33% of a site's full-time workforce suffers an "employment loss." *Id.* § 2101(a)(3)(B). The district court entered summary judgment for Hamilton because the work site did not experience a "mass layoff" as defined in the Act.

We affirm. The record contains no evidence of a mass layoff. The term "employment loss" is defined as a permanent termination, a layoff exceeding six months, or an extended reduction of work hours. None of those events occurred here. Instead, Hamilton initiated a temporary layoff of under six months.

I. Background

Hamilton operates a coal mine near Dahlgren, Illinois.[1] On February 5, 2016, Leeper and 157 other full-time employees received a hand-delivered "Temporary Layoff Notice" on Hamilton letterhead. The notice announced that "due to operational

---

[1] In 2015 Hamilton became a subsidiary of Alliance Resource Partners, L.P. Alliance is a codefendant but played no role in these events, so we mention it no further.

considerations," Hamilton was placing the workers "on temporary layoff for the period commencing on February 6, 2016 and ending on August 1, 2016." The notice invited them to return on that end date: "On August 1, 2016, you may return to your at-will employment with Hamilton County Coal." In the meantime, however, the laid-off workers would "not be employed by Hamilton County Coal" and were "free to pursue other endeavors."

The employees also received a document entitled "Frequently Asked Questions Concerning the Temporary Layoffs," which explained that "[a] temporary layoff is treated as a termination of employment for purposes of wages and benefits." It also provided information about health insurance, retirement accounts, and other benefits. Not long after Leeper and his coworkers received the notice, some mine workers began returning to work. Of the 158 notice recipients, 56 resumed their employment with full pay within six months.

About a month after receiving the notice, Leeper filed this class-action suit alleging that Hamilton violated the WARN Act by failing to provide 60 days' notice before imposing a "mass layoff." § 2102(a)(1). The Act defines a "mass layoff" as "a reduction in force" that "results in an employment loss at the single site of employment during any 30-day period for … at least 33 percent of the [full-time] employees … ; and at least 50 employees." § 2101(a)(3)(B). The Act lists three categories of "employment loss": "(A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff

exceeding 6 months, or (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period." 29 U.S.C. § 2101(a)(6).

Leeper alleged two forms of employment loss. He first asserted that more than 33% of the mine's full-time workers suffered an "employment termination" within the meaning of § 2101(a)(6)(A). He later added an allegation that Hamilton reduced the "hours of work [by] more than 50 percent during each month of any 6-month period." § 2101(a)(6)(C).

Ruling on cross-motions for summary judgment, the district judge rejected Leeper's first theory that the mine workers experienced an employment termination within the meaning of the Act. Relying on regulatory guidance distinguishing an employment termination from a layoff, the judge placed this work stoppage in the latter category. And because the layoff did not exceed six months and 56 workers returned to full-time employment within that time, the workers hadn't suffered an employment loss and the WARN Act's 33% threshold was not met. *See* § 2101(a)(6)(B) (categorizing "a layoff *exceeding* 6 months" as an "employment loss") (emphasis added).

Turning to Leeper's second argument, the judge framed the issue as whether a "layoff" under the Act "can simultaneously be considered a 'reduction in hours of work of more than 50 percent in each month of any 6-month period.'" If so, § 2101(a)(6)(B) would be superfluous because every layoff exceeding six months would already constitute a "reduction in hours" under § 2101(a)(6)(C). The judge concluded that subsections (B) and (C) describe distinct categories of work

stoppages. This case involved a layoff, she held, and because it did not exceed six months, it was not covered by the Act. The judge entered final judgment for Hamilton. This appeal followed.

II. Discussion

We review a summary judgment de novo, reading the record in the light most favorable to Leeper and drawing all reasonable inferences in his favor. *Tolliver v. City of Chicago*, 820 F.3d 237, 241 (7th Cir. 2016).

The sole question is whether the evidence establishes that a mass layoff occurred. Leeper maintains that more than 33% of the mine's full-time workforce experienced an employment termination within the meaning of § 2101(a)(6)(A). Alternatively, he argues that a sufficient number of workers suffered a "reduction in hours of work of more than 50 percent during each month of any 6-month period" under § 2101(a)(6)(C).

A. Employment Termination

We begin by distinguishing an "employment termination" from a "layoff." Department of Labor guidance explains that "for the purposes of defining 'employment loss,' the term 'termination' means the permanent cessation of the employment relationship and the term 'layoff' means the temporary cessation of that relationship." Worker Adjustment and Retraining Notification, 54 Fed. Reg. 16,042, 16,047 (Apr. 20, 1989). Other circuits have embraced this distinction. *See, e.g.*, *Morton v. Vanderbilt Univ.*, 809 F.3d 294, 296 (6th Cir. 2016); *Long v. Dunlop Sports Grp. Americas, Inc.*, 506 F.3d 299, 302 (4th Cir. 2007). The presence of

temporal language in § 2101(a)(6)(B)—"exceeding 6 months"—and its absence from § 2101(a)(6)(A) supports the Department's interpretation.

This distinction raises a follow-up question: How do we evaluate whether a cessation of the employment relationship is permanent or temporary? It's always *possible* for a worker to be rehired in the future, so one can never know for sure whether a termination is permanent. Do we evaluate permanence from the ex-ante perspective of a worker who just received a dismissal notice, from the ex-post perspective of a court presented with evidence that workers were rehired, or something in between?

Consider this hypothetical: On January 1 Steve's employer informs him, quite unequivocally, that he is fired. Five months later the employer calls Steve and offers to rehire him. He accepts. For WARN Act purposes, what happened to Steve? With the benefit of hindsight, it might seem obvious that Steve experienced a "temporary cessation" of his employment—that is, a layoff. And because the layoff did not exceed six months, Steve didn't suffer an "employment loss" under § 2101(a)(6)(B). So he doesn't count toward the Act's 33% threshold. The judge here basically took that approach, reasoning that the 56 workers who "were fully restored to pre-layoff wages within six months" did not experience a *permanent* termination of employment. Hamilton of course prefers this analysis.

Leeper urges us to reject this hindsight-based reasoning. Instead he proposes a test based on an employee's objective *expectation* of recall. If a

reasonable employee would interpret the firing as permanent, then Leeper would say that a § 2101(a)(6)(A) employment termination occurred. So in the example above, Steve suffered an employment termination on January 1. His eventual rehiring is irrelevant to that categorization.

Leeper has the better argument. Congress specified three separate and distinct categories of employment action in § 2101(a)(6). We must respect the choice embodied by that statutory structure. To that end, we avoid giving a provision "an interpretation that causes it to duplicate another." *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012)). The judge's retrospective analysis makes § 2101(a)(6)(A) duplicative. If a period of unemployment must exceed six months to constitute an employment termination, then that category is functionally indistinguishable from § 2101(a)(6)(B).

That reading condemns prospective WARN Act plaintiffs to statutory limbo. An aggrieved worker might think that evidence of an unambiguous firing clearly satisfies § 2101(a)(6)(A). But under Hamilton's reasoning, this wouldbe plaintiff cannot know whether an employment termination occurred until the event *also* qualifies as a "layoff exceeding six months." That disregards our decision in *Phason v. Meridian Rail Corp.*, 479 F.3d 527 (7th Cir. 2007). There we explained that "[a]n 'employment loss' occurs when *any one* of the subsections applies." *Id.* at 529. Hamilton's proposed interpretation effectively appends a six-month waiting

period to § 2101(a)(6)(A) that appears nowhere in the text.

The better reading of the statute is that § 2101(a)(6)(A) and (B) require an initial categorization of the dismissal imposed on the employee. Was the worker permanently terminated or temporarily laid off? Answering that threshold question requires an objective analysis of the employee's dismissal notice, not a hindsight-informed count of how many employees returned within a six-month period.

After this initial categorization, later events may become relevant to the Act's mass-layoff inquiry. For instance, the statute tells us:

> A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less, shall be treated as an employment loss under this chapter unless—
>
>> (1) the extension beyond 6 months is caused by business circumstances … not reasonably foreseeable at the time of the initial layoff; and
>>
>> (2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

29 U.S.C. § 2102(c). This language only confirms the necessity of an up-front determination. To apply § 2102(c), we must first determine whether the relevant action was "announced to be a layoff." Once we've categorized the dismissal as a layoff, we can evaluate its duration. Conversely, the statute doesn't

impose a duration requirement on "employment termination," which evokes an *event* rather than a *period*.

The judge relied in part on *Rifkin v. McDonnell Douglas Corp.*, where the employer gave employees a "layoff notice" explaining that the layoff was "expected to be permanent." 78 F.3d 1277, 1282 (8th Cir. 1996). Some recipients of the notice were rehired within six months. *Id.* at 1279. The Eighth Circuit reasoned:

> A common sense reading of the statute indicates it is the *actuality of a termination* which controls and not the expectations of the employees. An employee cannot be defined as "terminated" if he or she is, in fact, rehired in the same position. Further, the fact that the layoff was merely "expected to be permanent" as opposed to a termination left open the possibility of a rehire and thus weighs against classifying this situation as an employment termination.

Id. at 1282 (emphasis added).

The Eighth Circuit's holding rested in part on the court's view of the WARN Act's purpose: "to ensure adequate opportunities (by way of notice of imminent employment loss) for retraining and/or reemployment." *Id.* (quotation marks omitted). Because the rehired workers had "no need for retraining or alternative jobs," they did not suffer an "employment loss" under the Act. *Id.*

But the WARN Act doesn't define "employment loss" as an event requiring retraining or an alternative job. And "[d]eciding what competing values will or will not

be sacrificed to the achievement of a particular objective is the very essence of legislative choice," so we cannot simply "assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam). As we've explained, the Act delineates distinct categories in its definition of "employment loss." *See Phason*, 479 F.3d at 529. A retrospective analysis that blurs the distinctions between the categories is inconsistent with the Act's text and structure. Accordingly, if an objective observer would conclude that an employee suffered a permanent cessation of his employment relationship, a § 2101(a)(6)(A) "employment termination" occurred. The employer's subsequent decision to offer the employee his old job cannot retroactively transform that once-permanent firing into a temporary layoff.

We now return to February 2016, when Hamilton furnished 158 full-time workers with the layoff notice and Frequently Asked Questions documents. What did Hamilton communicate to Leeper and his coworkers: a temporary suspension or permanent end to their employment?

Even construed in Leeper's favor, the record reveals that Hamilton announced a temporary cessation of his employment. The notice referred to the employment action as a "temporary layoff" and defined a precise "layoff period." And it instructed the workers to *return*—not *reapply* to return—once that period ended: "On August 1, 2016, you may return to your at-will employment with Hamilton County Coal." Nothing in

the notice suggests a "permanent cessation of the employment relationship." 54 Fed. Reg. at 16,047.

Leeper cites other statements in the documents, arguing that Hamilton "invok[ed] policies applicable to employment terminations," not layoffs. And while the notice called the event a layoff, the Frequently Asked Questions packet explained that "[a] temporary layoff is treated as a termination of employment for purposes of wages and benefits." It also said that workers were eligible for unemployment benefits and referred to the "employment termination date." Finally, Leeper observes that Hamilton withheld advances, provided separation benefits, and paid out unused vacation days in the paycheck for the last pay period prior to the layoff.

In short, Leeper offers evidence that his employment was terminated. That's necessary but insufficient. The relevant distinction between a layoff and an employment termination is whether that termination was expected to be temporary or permanent. Leeper hasn't generated a material factual dispute on that point. Hamilton clearly announced a temporary layoff lasting under six months, and no language in either the notice or the Frequently Asked Questions shows that Leeper and his coworkers were permanently fired. Moreover, Leeper never argues that the layoff extended beyond six months, implicating §§ 2101(a)(6)(B) and 2102(c). Accordingly, the mine workers did not experience an employment termination under § 2101(a)(6)(A).

B. Hours Reduction

Alternatively, Leeper argues that more than 33% of the mine workforce suffered "a reduction in hours of work of more than 50 percent during each month of any 6-month period." § 2101(a)(6)(C). His logic is simple: When an employer terminates an employee, it reduces his hours to zero—by definition, more than a 50% cut.

Leeper's interpretation merges subsections (B) and (C) of § 2101(a)(6). Under his reasoning, every "layoff exceeding 6 months" would also constitute a six-month "reduction in hours of work." So once again there is a surplusage problem. And his reading contradicts the plain meaning of subsection (B). A "reduction in hours of work"—unlike the other two events—is not a cessation of the worker's employment relationship. It occurs when an employer retains an employee but assigns him less work, effectively cutting his pay. That's a difference in kind, not degree. Leeper's interpretation also contradicts the duration requirement in subsection (B). If a temporary layoff is also a "reduction in hours of work," then it becomes an "employment loss" after five and a half months, not six. That odd construction poses problems for § 2102(c), which provides that some layoffs in *excess* of six months do not constitute an employment loss.

Leeper cites *Graphic Communications International Union, Local 31-N v. Quebecor Printing (USA) Corp.*, 252 F.3d 296 (4th Cir. 2001), but that case considered whether a worker can experience *successive* employment losses—for instance, when a permanent termination follows a layoff. The Fourth Circuit concluded that the WARN Act envisions successive

employment losses necessitating separate warnings. *Id.* at 299. But that doesn't support Leeper's contention that the same employment action can satisfy both the "layoff" and "reduction in hours" categories.

Hamilton initiated a layoff lasting under six months. Under Department of Labor guidance, that temporary cessation of the employment relationship wasn't an employment termination under § 2101(a)(6)(A). And because Hamilton laid off the affected employees rather than reducing their work hours, § 2101(a)(6)(C) is irrelevant. Leeper cannot show that more than 33% of the mine's full-time workforce experienced an employment loss. Because this was not a mass layoff under the Act, Hamilton wasn't obligated to give the workers 60 days' notice.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

Case No. 16-CV-250-NJR-DGW

[Filed December 17, 2018]

CARL LEEPER, individually and on behalf of all others similarly situated,
Plaintiff,

vs.

ALLIANCE RESOURCE PARTNERS, L.P., and HAMILTON COUNTY COAL, LLC,
Defendants.

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Pending before the Court is a Motion for Summary Judgment filed by Defendants (Doc. 71), a Motion to Oppose Plaintiff's Proposed Class Certification or to Stay Class Certification Pending Resolution of Defendants' Motion for Summary Judgment filed by Defendants (Doc. 72), a Motion to Certify Class filed by Plaintiff Carl Leeper ("Leeper") (Doc. 82), a second Motion for Summary Judgment filed by Defendants (Doc. 136), a Motion for Summary Judgment filed by

Leeper (Doc. 138), and a Motion to Amend/Correct Motion to Certify Class filed by Leeper (Doc. 157).

FACTUAL & PROCEDURAL BACKGROUND

Leeper brings this putative class action against Defendants Alliance Resource Partners, L.P. ("Alliance") and Hamilton County Coal, LLC ("Hamilton"), alleging violations of the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. § 2101 *et seq*. Specifically, Leeper alleges that Defendants violated his rights and a class of similarly situated persons' rights under the WARN Act by failing to provide timely notice to workers who suffered an employment loss.

Leeper was a full-time employee of Hamilton (Doc. 136-3, p. 27).[1] Hamilton is a subsidiary of Alliance (Doc. 153, p. 24; Doc. 153-2, p. 5-6). Leeper specifically worked at the Hamilton County Coal Mine #1, which is an underground mining complex located near the city of Dahlgren in Hamilton County, Illinois (Doc. 37, p. 3; Doc. 136-3, p. 2).

During a meeting held on February 5, 2016, Hamilton delivered written notice to 158 full-time employees stating that "due to operational considerations," the employees would be placed on a "temporary layoff for the period commencing on February 6, 2016 and ending on August 1, 2016 ("Layoff Period")." (Doc. 71-2, p. 7). Hamilton explained

---

[1] The parties dispute whether Leeper was also an employee of Alliance for purposes of the WARN Act (Doc. 138, p. 23-26; Doc. 153, p. 23-26).

that "[o]n August 1, 2016, [the employees] may return to [their] at-will employment with Hamilton County Coal." (*Id*.). The written notice further advised that "[d]uring the Layoff Period, and beginning effective February 6, 2016, [the employees] will not be employed by Hamilton County Coal" and "are free to pursue other endeavors . . . [the employees] will receive additional information related to any separation benefits to which [they] may be entitled." (*Id*.).

Along with this notice, employees received a document entitled "Frequently Asked Questions Concerning the Temporary Layoffs" ("FAQs") (Doc. 71-2, p. 9). This document stated that "[a] temporary layoff is treated as a termination of employment for purposes of wages and benefits." (*Id*.). It explained, among other things, that the employees' health care coverage would end, an advance would be withheld from their final paycheck (if they elected to receive a pay advance), disability benefits would end, life insurance would end, and accrued and unused vacation days would be paid out in a lump sum (Doc. 71-2).

The employees were also given a pamphlet setting forth their rights regarding unemployment benefits (Doc. 153-1, p. 14-17) and a contact form to fill out so Hamilton could reach the employees for return to work purposes (Doc. 71-2, p. 19; Doc. 71-2, p. 3; Doc. 71-4, p. 3).

Less than six months later, by August 1, 2016, 61 full-time employees had returned to work at Hamilton.[2]

---

[2] Some employees started returning to work as early as February 10, 2016 (Doc. 75, p. 93).

Of those employees, 56 employees returned to their prior wages, and 5 employees returned to work at reduced wages.[3] These employees were not required to submit applications for employment, nor where they required to interview for their positions (Doc. 71-2, p. 3).[4] Sixteen full-time employees voluntarily declined the opportunity to return to work, and one employee was discharged for cause because he tested positive during a drug screen. Out of all 158 full-time employees that received the notice, 80 employees did not receive offers to return to work within six months.

On March 8, 2016, Leeper filed this lawsuit on behalf of himself and a class of similarly situated individuals alleging that Defendants failed to provide a "60-day advanced notice of a 'mass layoff' of nearly

---

[3] The numbers have changed over the course of the briefing, which has caused the Court some confusion. At the hearing on August 13, 2018, the undersigned explicitly confirmed with the attorneys on both sides that the above-mentioned statements regarding the total amount of full-time employees, the amount of full-time employees who received the written notice, the amount of full-time employees that returned to work (at full wages and reduced wages), the amount of full-time employees that voluntarily declined the opportunity to return to work, and the amount of full-time employees that were discharged for cause are accurate.

[4] Specifically, these workers were called by Hamilton representatives regarding the opportunity to return to work (Doc. 121-6, p. 6). If the employee said "yes," then he was told to report to work on a certain date and that he would be required to undergo the necessary retraining and to submit to return-to-work screening (Doc. 121-7, p. 2). Employees also were required to fill out paperwork with human resources, such as an employee authorization form, which indicated that they were a "rehire," the hourly wage offered, and the start date (Doc. 124).

200 employees that occurred at its Hamilton County Coal Mine #1 on February 5, 2016" in violation of the WARN Act (Doc. 1). Leeper alleges that Defendants instead provided less than twenty-four hours' notice that they were terminating their employment and that all benefits would cease as of the date of termination (*Id.*). On January 4, 2017, Leeper filed an Amended Complaint, alleging an alternative theory that Defendants' actions on February 6, 2016 constituted a mass layoff because the employees experienced a reduction in hours of work of more than 50% during each month between February 6, 2016 and August 6, 2016 (Doc. 37).

Leeper's First Amended Class Action Complaint brings claims pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(3), and 23(c)(4), and the WARN ACT, 29 U.S.C. § 2104(a)(5). On March 21, 2018, Defendants filed a Motion for Summary Judgment (Doc. 71) and a preemptive Motion to Oppose Plaintiff's Proposed Class Certification or to Stay Class Certification Pending Resolution of Defendants' Motion for Summary Judgment (Doc. 72). On March 27, 2018, Leeper filed a Motion to Certify Class (Doc. 82) seeking to certify the following classes and subclasses:

> **<u>Class 1</u>**:
>
> All persons: (a) to whom Hamilton delivered the form letter attached hereto as Exhibit 14; or (b) whose employment at the Complex was terminated without cause within 90 days of February 6, 2016, without 60-days' advance written notice.

Subclass 1:

> All persons: (a) in Class 1(a) who: (i) did not work at the Complex between February 6, 2016 and August 6, 2016; or (ii) were rehired at the Complex between February 6, 2016, and August 6, 2016, at a salary or regular hourly wage less than the person's salary or regular hourly wage at the Complex as of February 5, 2016; or (iii) were rehired at the Complex between February 6, 2016, and August 6, 2016, but worked fewer hours per week than the person's hours per week worked at the Complex as of February 5, 2016; or (b) in Class 1(b).

Class 2:

> All persons who: (a) are in Subclass 1; or (b) experienced a reduction in hours of work at the Hamilton County Coal Mine #1 Complex of more than 50 percent during each month of the 6-month period between February 6 and August 6, 2016.

(Doc. 82, p. 33-34).

On June 22, 2018, Defendants filed another Motion for Summary Judgment (Doc. 136). On that same date, Leeper also filed a Motion for Summary Judgment (Doc. 138). On August 7, 2018, Leeper filed a Motion to Amend Proposed Class Definitions (Doc. 157), seeking to amend the class definitions as follows:

Class 1 (the "Termination Class"):

The 182 persons identified on the list attached hereto as Exhibit __, to whom Defendant Hamilton delivered the RIF Notice on February 5, 2016.

Class 2 (the "Reduction in Hours and Termination Class"):

The 165 persons identified on the list attached hereto as Exhibit __, to whom Defendant Hamilton delivered the RIF Notice on February 5, 2016, and:

(A) who were not on leave for disability or workers' compensation as of February 5, 2016 and were offered reemployment starting August 1, 2016;

or

(B) to whom Defendant issued form letters dated July 26, 2016 stating that they were not going to be rehired beginning August 1, 2016, or whom Defendants rehired between February 5 and July 31, 2016, at a lower wage than as of February 5, 2016.

(Doc. 157).

Leeper asserts that Defendants' actions with respect to Leeper and the Class 1 Members constituted a "mass layoff" because 182 full-time employees experienced an employment loss by way of a termination under 29 U.S.C. § 2101(a)(6)(A). Leeper

alternatively argues that Defendants' actions constituted a "mass layoff" with respect to Leeper and the Class 2 Members because 165 employees experienced a termination or reduction in hours of work of more than 50 percent during each month of the six-month period between February 6 and August 6, 2016.

On August 13, 2018, the Court held a hearing on the motions (Doc. 160) and took the motions under advisement.

PRELIMINARY MATTER

The Court must first address the order in which to resolve the various motions. Generally, the Federal Rules of Civil Procedure require courts to rule on the issue of class certification "at an early practicable time," which is usually before deciding any merits questions. FED. R. CIV. P. 23(c). The Seventh Circuit has acknowledged, however, that there are situations where it might be appropriate to rule on summary judgment prior to addressing class certification. *Cowen v. Bank United*, 70 F.3d 937, 941 (7th Cir. 1995) (Rule 23(c) "requires certification as soon as practicable, which will usually be before the case is ripe for summary judgment. But 'usually' is not 'always,' and 'practicable' allows for wiggle room.").

At the hearing, defense counsel asked the Court to take up the motions for summary judgment prior to the motion for class certification. "In moving for summary judgment before the motion for class certification has been resolved, the defendant loses the advantage of a judgment that has preclusive effect against all putative

suitors but saves the heavy expense of defending against a class action." *McCarter v. Ret. Plan for Dist. Managers of Am. Family Ins. Grp.*, No. 3:07-CV-00206-BBC, 2007 WL 4333979, at *5 (W.D. Wis. Nov. 16, 2007), *aff'd as modified*, 540 F.3d 649 (7th Cir. 2008).

One instance in which it may be appropriate for a Court to rule on summary judgment prior to class certification is "when there is sufficient doubt regarding the likelihood of success on the merits of a plaintiff's claims." *Hakim v. Accenture U.S. Pension Plan*, 735 F. Supp. 2d 939, 956 (N.D. Ill. 2010). Another instance is when "'as soon as practicable' occurs after a case is already 'ripe for summary judgment'" *Chavez v. Illinois State Police,* 251 F.3d 612, 629, 630 (7th Cir. 2001).

In light of the likelihood of success on the merits of Leeper's claims and the current posture of this case, the Court finds it to be in the interest of judicial economy to decide the motions for summary judgment prior to addressing class certification.

LEGAL STANDARD

Summary judgment is only appropriate if the movant "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014) (*quoting* FED. R. CIV. P. 56(a)). Once the moving party has set forth the basis for summary judgment, the burden then shifts to the nonmoving party who must go beyond mere allegations and offer specific facts showing that there is a genuine issue of fact for trial. FED. R. CIV.

P. 56(e); *see Celotex Corp. v. Catrett*, 477 U.S. 317,232-24 (1986). The nonmoving party must offer more than "[c]onclusory allegations, unsupported by specific facts," to establish a genuine issue of material fact. *Payne v. Pauley*, 337 F.3d 767, 773 (7th Cir. 2003) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)).

In determining whether a genuine issue of fact exists, the Court must view the evidence and draw all reasonable inferences in favor of the party opposing the motion. *Bennington v. Caterpillar Inc.*, 275 F.3d 654, 658 (7th Cir. 2001); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A "court may not assess the credibility of witnesses, choose between competing inferences or balance the relative weight of conflicting evidence . . . ." *Reid v. Neighborhood Assistance Corp. of America*, 749 F.3d 581, 586 (7th Cir. 2014) (*quoting Abdullahi v. City of Madison*, 423 F.3d 763, 769 (7th Cir. 2005)).

"The ordinary standards for summary judgment remain unchanged on cross-motions for summary judgment: we construe all facts and inferences arising from them in favor of the party against whom the motion under consideration is made." *Blow v. Bijora, Inc.*, 855 F.3d 793, 797 (7th Cir. 2017).

ANALYSIS

The Court begins its analysis by noting that it has federal question jurisdiction over this case pursuant to 29 U.S.C. § 2104(a)(5) and 28 U.S.C. § 1331.

The WARN Act requires employers to provide employees with written notice of impending "plant

closings" or "mass layoffs" at least sixty days prior to the closing or layoffs. 29 U.S.C. § 2102. Congress passed the WARN Act with the purpose of providing "workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining . . . ." 20 C.F.R. § 639.1(a); *Roquet v. Arthur Andersen LLP*, 398 F.3d 585, 586 (7th Cir. 2005) ("[I]ts purpose is to soften the economic blow suffered by workers who unexpectedly face plant closings or mass layoffs.").

The notice requirements of the WARN Act are triggered if there is a "mass layoff." 29 U.S.C. § 2102(a). Courts apply the WARN Act only to "mass layoffs" that meet certain employment thresholds. 20 C.F.R. § 639.2. The WARN Act defines a "mass layoff" as a reduction of force which results in employment loss for "at least 33 percent of the employees" and "at least 50 employees." 29 U.S.C. § 2101(a)(3).[5] An "employment loss" is defined as: (a) an employment termination, other than a discharge for cause,

---

[5] Specifically, 29 U.S.C. § 2101(a)(3) provides as follows:

> (3) the term "mass layoff" means a reduction in force which –
> (A) is not the result of a plant closing; and
> (B) results in an employment loss at the single site of employment during any 30-day period for –
> (i)(I) at least 33 percent of the employees (excluding any part-time employees); and
> (II) at least 50 employees (excluding any part-time employees); or
> (ii) at least 500 employees (excluding any part-time employees).

voluntary departure, or retirement, (b) a layoff exceeding 6 months, or (c) a reduction in hours of work of more than 50 percent during each month of any 6-month period. 29 U.S.C. § 2101(a)(6).

Leeper argues that Defendants failed to provide the necessary 60 days' notice to himself and the proposed class when at least 33 percent and more than 50 of Hamilton's employees experienced an employment loss on February 6, 2016. Specifically, Leeper argues that the employment loss he and the proposed class suffered was a *termination* as set forth in 29 U.S.C. § 2101(a)(6)(A). Leeper alternatively argues[6] that the employment loss was a "reduction in hours of work of more than 50 percent in each month of any 6-month period," as set forth in 29 U.S.C. § 2101(a)(6).

Under Leeper's first theory, he argues that 158 full-time employees were terminated out of a total of 315 full-time employees, which constitutes more than 33 percent of the Hamilton workforce. Defendants respond that the employment loss was actually a *layoff*. They argue that, since the layoff did not exceed six months as required under 29 U.S.C. § 2101(a)(6)(B), there was no employment loss under the WARN Act.

Thus, the Court must first address whether the employees suffered a termination or a layoff. If the Court finds that the undisputed facts show that the

---

[6] While Leeper previously referred to this argument as his alternative argument in his Motion for Partial Summary Judgment, he now refers to the termination argument as the "alternative argument" (Doc. 138, p. 21). Regardless, the Court will address the arguments in the above sequence.

employment loss was a termination, then the termination was effective as of February 6, 2016, it affected all 158 full-time employees, and the subsequently rehired employees do not change that conclusion. If the Court finds that the undisputed facts show that the employment loss suffered was a layoff then, as Defendants argue, the layoff did not exceed six months, because 61 full-time employees returned to work within the six-month period (56 were fully restored to pre-layoff wages and 5 returned to work at reduced wages). Under this line of reasoning, there would have been no "employment loss" under 29 U.S.C. § 2101(a)(6)(B) because the layoff did not exceed six months as to 33 percent of full-time employees.

The guidelines from the Department of Labor explain that, for purposes of defining "employment loss," "termination" means the "permanent cessation of the employment relationship" and "layoff" means the "temporary cessation of that relationship."[7] Worker

[7] A district court in the Northern District of Illinois similarly looked to this Department of Labor regulation in order to interpret the term "employment termination." *See Acevedo v. Heinemann's Bakeries, Inc.*, 619 F. Supp. 2d 529, 534 (N.D. Ill. 2008) ("Although the WARN Act itself does not define 'employment termination," a Department of Labor regulation states . . . 'employment termination' means the 'permanent cessation of the employment relationship.'"). The Fourth, Sixth, and Eighth Circuits also have looked to Department of Labor comments for guidance. *See Graphic Communications Intern. Union, Local 31-N v. Quebecor Printing (USA) Corp.,* 252 F.3d 296, 299 (4th Cir. 2001) (quoting the Department of Labor Comments defining a termination as a "permanent cessation of the employment relationship."); *see also Morton v. Vanderbilt University*, 809 F.3d 294, 295-96 (6th Cir. 2016) ("The term 'termination is not defined in the WARN Act, but

Adjustment and Retraining Notification, 54 FR 16042-01 (1989). Further, "it is actuality and not expectations or terminology which control whether an employment loss has occurred." *See Rifkin v. McDonnell Douglas Corp.*, 78 F.3d 1277, 1282 (8th Cir. 1996).

The parties make much to-do about the terminology used in the written notice and supporting documentation given to the employees. The notice calls it a "temporary layoff," but the FAQs explain that a "temporary layoff" is treated as a "termination of employment for purposes of wages and benefits." Regardless of the terminology used by the employer, it is the actuality of the event that controls. Thus, the Court must look to whether it was a termination involving the "permanent cessation of the employment relationship" or a temporary layoff involving the "temporary cessation of that relationship." Of the 158 employees that received the written notice, 56 were fully restored to pre-layoff wages within six months.[8] Thus, there was no permanent cessation of the employment relationship as to these 56 employees. *See Rifkin*, 78 F.3d 1277 (1996) ("An employee cannot be

---

the Department of Labor has explained that it is 'to have [its] common sense meaning' as 'the permanent cessation of the employment relationship.'"); *see also Rifkin v. McDonnell Douglas Corp.*, 78 F.3d 1277, 1282 (1996) (quoting the Department of Labor comments).

[8] These employees received years-of-service credit for purposes of their 401(k) benefits as if they had no break in service during the temporary layoff period and did not lose vesting by virtue of having been placed on a temporary layoff (Doc. 136-6, p. 3; Doc. 153-11, p. 3).

defined as 'terminated' if he or she is, in fact, rehired in the same position.").

Because 56 of the 158 full-time employees who received the written notice returned to work within six months, Leeper cannot establish that more than 33 percent of the 315 full-time employees experienced an employment termination. Instead, these workers suffered a layoff (or a "temporary cessation" of the employment relationship) because they returned to work at pre-layoff wages. While the Court is certainly empathetic to the employees' situation, the Warn Act "draws a lot of bright lines" and "[b]right lines must be enforced consistently or they won't work." *Phason v. Meridian Rail Corp.*, 479 F.3d 527, 530 (7th Cir. 2007); *see also Ellis v. DHL Exp. Inc. (USA)*, 633 F.3d 522, 526 (7th Cir. 2011) ("Despite the lack of practical distinction between eliminating 49 or 50 full-time jobs, or between laying off 32% or 33% of a workforce in a thirty-day period, the numerical thresholds in the WARN Act are immutable.").

Leeper alternatively argues that Defendants' actions constituted a "reduction in hours of work of more than 50 percent in each month of any 6-month period," as set forth in 29 U.S.C. § 2101(a)(6). Specifically, Leeper argues that at least 141 (44%) of Hamilton Coal's 315 full-time workers suffered a reduction in hours of work of more than fifty percent during the six-month period of February 6, 2016 through August 6, 2016. The Court has already found that the employment loss suffered by the employees was a layoff (that did not exceed 6 months for more than 33% of the full-time workforce). The issue then

becomes whether a layoff can simultaneously be considered a "reduction in hours of work of more than 50 percent in each month of any 6-month period."

The relevant section of the WARN Act reads as follows: "the term 'employment loss' means (A) an employment termination, other than a discharge for cause, voluntary departure, retirement, (B) a layoff exceeding 6 months, ***or*** (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period." 29 U.S.C. § 2101(a)(6) (emphasis added).

Leeper argues that, under the plain language of the statute, an employment loss occurs when *any* one of the subsections apply, and the WARN Act clearly contemplates that an employee may suffer *multiple* employment losses, necessitating separate notices. Defendants respond by pointing out that the plain language of the statute distinguishes between the terms "layoff" and "reduction in hours" and argue that adopting Leeper's interpretation would render section subsection (B) meaningless.

Under the rules of statutory interpretation, courts "must first look to the language of the statute and assume that its plain meaning accurately expresses the legislative purpose." *U.S. v. Miscellaneous Firearms, Explosives, Destructive Devices and Ammunition*, 376 F.3d 709, 712 (7th Cir. 2004) (citing *Grzan v. Charter Hosp. of Northwest Ind.*, 104 F.3d 116, 122 (7th Cir. 1997)). "In determining whether the meaning of statutory language is plain or ambiguous, we look to the specific language at issue, the context in which the language is used, and the broader context of the statute

as a whole." *Id.* (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Courts should not "construe a statute in a way that makes words or phrases meaningless, redundant, or superfluous." *Id.* (citing *Welsh v. Boy Scouts of America*, 993 F.2d 1267, 1272 (7th Cir. 1993)).

The WARN Act's definition of "employment loss" separately and alternately delineates "termination," "layoff," and "reduction in hours," thereby indicating that such terms encompass distinct actions by the employer.[9] Of course, an employee who experiences a layoff that exceeds six months also experiences a one-hundred percent reduction of work during each month of that six-month period. But if a subsection (C) "reduction in hours" also covers the situation in which an employer implements a layoff, there would be no purpose for subsection (B) because every layoff exceeding six months would already be addressed by subsection (C). This would render subsection (B) meaningless, redundant, and superfluous.[10]

---

[9] As Defendants aptly point out, there are logical and practical reasons for distinguishing a "layoff" from a "reduction in hours." For example, where as in this case the employer implements a temporary layoff, the employee is free to obtain other employment during the layoff period. This differs from a situation in which employers could string workers along by continuing to regularly occupy their time while significantly reducing their work hours on an indefinite basis.

[10] Subsection (C) also would encompass a layoff exceeding 5½ months, but falling short of 6 months, which many of the employees experienced in this case. That is because the moment the layoff exceeds 5½ months, the employee would have experienced a reduction in work hours of more than fifty percent

Leeper has not cited to any controlling authority indicating that the Court should read the statute in the way that he suggests. Leeper cites to *Phason v. Meridian Rail Corp.*, 479 F.3d 527, 527 (7th Cir. 2007), but this case does not hold that a temporary layoff may be simultaneously treated as a reduction in hours under subsection (C).

Phason involved a plant closing, which 29 U.S.C. § 2101(a)(2) defines as "any permanent or temporary" shutdown that "results in an employment loss at the single site of employment during any 30-day period for 50 or more employees." Workers who lost their jobs with their employer, Meridian Rail Corporation ("Meridian"), were invited to apply for jobs with NAE Nortrak, Inc. ("Nortrak"), the company that agreed to buy Meridian's assets. *Id*. at 528. Although the agreement was in place when the employees were let go by Meridian, the transaction did not close until one week after Meridian had severed all ties to the former workers. *Id*. The district court granted summary judgment for Meridian on the basis that the WARN Act did not apply because Nortrak eventually hired many of the workers back, and thus 50 or more employees did not suffer an employment loss. *Id*. at 529. On appeal,

---

in each month of a six-month period. Thus, if the Court construes the statute as Leeper suggests, employers would be told under subsection (B) that they need to give advanced notice under the WARN Act of a layoff expected to exceed six months, and they would have to read between the lines to learn under subsection (C) that they *also* need to give advanced notice under the WARN Act for a layoff expected to exceed 5½ months. The Court does not believe that Congress intended the WARN Act to operate in such a manner.

the plaintiffs argued that all employees that Meridian let go suffered a termination on December 31, 2003, regardless of whether they were hired by Nortrak one week later. *Id.*

The Seventh Circuit Court of Appeals agreed with the plaintiffs, holding that Meridian terminated the employees within the meaning of subsection (A) when it closed its operations and "severed all ties" to the workers on December 31, 2003. *Id.* The Court of Appeals reasoned that, even though Nortrak hired many of these employees, the sale did not close until January 8, 2004, so Section 2101(b)(1)[11] could not be used to avoid the classification of the event as an "employment loss." *Id.* at 529-530.

The Court of Appeals briefly addressed Meridian's argument that subsection (C) did not apply. *Id.* at 529. Specifically, the Court of Appeals dismissed this argument as irrelevant, stating "[b]ut what of that? An 'employment loss' occurs when *any one* of the subsections applies." *Id.* (emphasis in original). Because the Court of Appeals had already found the employment loss to be a termination under subsection (A), it did not matter whether subsection (C) was not satisfied. *Id.* This case does not shed any light on whether employees who experienced a temporary layoff but returned to work prior to six months may

---

[11] Section 2101(b)(1) provides: Notwithstanding any other provision of this Act, any person who is an employee of the seller (other than a part-time employee) as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

nevertheless prove a "reduction in hours" employment loss under subsection (C).

Leeper also cites to *Graphic Communs. Int'l Union, Local 31-N v. Quebecor Printing Corp.*, 252 F.3d 296, 299 (4th Cir. 2011), to argue that an employee can suffer an employment loss for "any or all" of a termination, layoff, or reduction in hours. In *Quebecor*, the Court of Appeals for the Fourth Circuit explained that employees may experience separate and successive employment losses necessitating separate notices, for example, where an employee who experienced a reduction in hours is subsequently laid off or terminated. *Id*. This case does not hold, however, that a single event can constitute an employment loss under two different provisions of the statute.

The only case that appears to have considered this issue so far (perhaps because it is a relatively novel theory) is *United Steel v. Ainsworth Engineered (USA), LLC*, Civil No. 07-4731 ADM/RLE, 2008 WL 4857905, at *5 (D. Minn. Nov. 10, 2008). There, the Court decided that a temporary layoff could not be simultaneously treated as a reduction in hours under subsection (C). *Id*. The Court reasoned that "if the Court were to read § 2101(a)(6) so as to permit the application of [subsection] (C) to an event expressly contemplated by [subsection] (B), there simply would be no need for [subsection] (B) since every layoff that exceeds six months also results in a reduction in work hours of more than fifty percent in each month of a six-month period." *Id*. at *5. The Court determined that, because the employment loss suffered was a layoff, subsection (C) was inapplicable. *Id*. at *6. The Court

agrees with this conclusion. Unless or until the Seventh Circuit Court of Appeals says otherwise, the Court will not construe the Warn Act in a way that makes subsection (B) meaningless, redundant, and superfluous.

Overall, the Court concludes that the employees did not suffer an employment loss as that term is defined in § 2101(a)(6). Thus, any failure by Hamilton to provide 60 days' advanced notice before instituting the layoff did not constitute a violation of the WARN Act. In light of this finding, the Court need not address the argument that Alliance was not an employer under the WARN Act.

CONCLUSION

For the reasons explained above, the Court **GRANTS**[12] the Motion for Summary Judgment filed by Defendants (Doc. 71), **GRANTS** the Motion for Summary Judgment filed by Defendants (Doc. 136), **DENIES** the Motion for Partial Summary Judgment filed by Leeper (Doc. 138), **DENIES as moot** the Motion to Oppose Plaintiff's Proposed Class Certification or to Stay Class Certification Pending Resolution of Defendants' Motion for Summary Judgment filed by Defendants (Doc. 72), **DENIES as moot** the Motion to Certify Class filed by Leeper (Doc. 82), and **DENIES as moot** the Motion to Amend/Correct Motion to Certify Class filed by Leeper (Doc. 157). The Court also unrefers and **DENIES as**

[12] The Court grants this motion only to the extent it relies upon the revised and corrected numbers as argued by counsel and agreed to by both sides at the hearing on August 13, 2018.

moot the Motion for Extension of Discovery Deadline for Purposes of Hulett Guill's Deposition and Related Discovery (Doc. 129). The case is **CLOSED**, and judgment will be entered accordingly.

IT IS SO ORDERED.

DATED: December 17, 2018

s/ Nancy J. Rosenstengel
NANCY J. ROSENSTENGEL
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

Case No. 16-CV-250-NJR-DGW

[Filed December 17, 2018]

CARL LEEPER, individually and on)
behalf of all others similarly situated,)
Plaintiff,)
)
vs.)
)
ALLIANCE RESOURCE PARTNERS, L.P.)
and HAMILTON COUNTY COAL, LLC.,)
Defendants.)
)

JUDGMENT IN A CIVIL ACTION

DECISION BY THE COURT.

This matter having come before the Court, and the Court having rendered a decision,

IT IS ORDERED AND ADJUDGED that, pursuant to the Order dated December 17, 2018 (Doc. 166), judgment is entered in favor of Defendants Alliance Resources Partners, L.P. and Hamilton County Coal, LLC, and against Plaintiff Carl Leeper. Leeper shall recover nothing, and this action is **DISMISSED in its entirety**.

DATED: December 17, 2018

MARGARET M. ROBERTIE,
Clerk of Court

By: s/ Deana Brinkley
Deputy Clerk

APPROVED: s/ Nancy J. Rosenstengel
NANCY J. ROSENSTENGEL
United States District Judge

APPENDIX D

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

No. 19-1109

[Filed October 25, 2019]

CARL LEEPER, individually and on behalf of all others similarly situated,	)
Plaintiff-Appellant,	)
	)
v.	)
	)
HAMILTON COUNTY COAL, LLC, and ALLIANCE RESOURCE PARTNERS, L.P.,	)
Defendants Appellees.	)

Before

KENNETH F. RIPPLE, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

Appeal from the
United States District Court
for the Southern District of Illinois.

No. 16-cv-250

Nancy J. Rosenstengel,
Chief Judge.

O R D E R

On consideration of the petition for rehearing and for rehearing en banc, no judge in active service has requested a vote on the petition for rehearing en banc,[1] and all of the judges on the original panel have voted to deny rehearing. It is therefore ordered that the petition for rehearing and for rehearing en banc is DENIED.

---

[1] Circuit Judge Ilana Diamond Rovner did not participate in the consideration of the petition for rehearing.

APPENDIX E

29 U.S.C. § 2101

(a) Definitions. As used in this chapter—

* * *

(3) the term "mass layoff" means a reduction in force which—

(A) is not the result of a plant closing; and

(B) results in an employment loss at the single site of employment during any 30-day period for—

(i)(I) at least 33 percent of the employees (excluding any part-time employees); and

(II) at least 50 employees (excluding any part-time employees); or

(ii) at least 500 employees (excluding any part-time employees);

* * *

(5) the term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer;

* * *

(6) subject to subsection (b), the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff exceeding 6 months, or (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period;

* * *

(8) the term "part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

29 U.S.C. § 2102

(a) Notice to employees, State dislocated worker units, and local governments

An employer shall not order a plant closing or mass layoff until the end of a 60-day period after the employer serves written notice of such an order—

(1) to each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and

(2) to the State or entity designated by the State to carry out rapid response activities under section 3174(a)(2)(A) of this title, and the chief elected official of the unit of local government within which such closing or layoff is to occur.

* * *

(c) Extension of layoff period

A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less, shall be treated as an employment loss under this chapter unless—

(1) the extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and

(2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

20 C.F.R. § 639.1

(a) *Purpose of WARN*. The Worker Adjustment and Retraining Notification Act (WARN or the Act) provides protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. WARN also provides for notice to State dislocated worker units so that dislocated worker assistance can be promptly provided.

20 C.F.R. § 639.3

§ 639.3 Definitions.

(a) *Employer*. (1) The term "employer" means any business enterprise that employs -

(i) 100 or more employees, excluding part-time employees; or

(ii) 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of hours of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through industry practice, that his/her employment with the employer has been temporarily interrupted and that he/she will be recalled to the same or to a similar job. The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, local and federally recognized Indian tribal governments are not covered. However, the term "employer" includes public and quasi-public entities which engage in business (i.e., take part in a commercial or industrial enterprise, supply a service or good on a mercantile basis, or provide independent management of public assets, raising revenue and making desired investments), and which are separately organized from the regular government, which have their own governing bodies and which have independent authority to manage their personnel and assets.

* * *

APPENDIX F

HAMILTON COUNTY COAL, LLC

February 5, 2016

VIA HAND DELIVERY

Carl Leeper

Re: Temporary Layoff Notice

Dear Carl,

I regret to inform you that, due to operational considerations, Hamilton County Coal, LLC ("Hamilton County Coal") is placing you on temporary layoff for the period commencing on February 6, 2016 and ending on August 1, 2016 ("Layoff Period"). On August 1, 2016, you may return to your at-will employment with Hamilton County Coal.

During the Layoff Period, and beginning effective February 6, 2016, you will not be employed by Hamilton County Coal and you are free to pursue other endeavors. Bumping rights do not exist with respect to the temporary layoff and the Layoff Period.

You will receive additional information related to any separation benefits to which you may be entitled.

Again, I regret to have to provide this information to you. If you have any questions, please contact the

Human Resource Department for Hamilton County Coal, LLC at (618) 643-5500.

Sincerely,

/s/ Ezra French
Ezra French
General Manager
Hamilton County Coal, LLC

APPENDIX G

Hamilton County Coal
Frequently Asked Questions Concerning the Temporary Layoffs

PART I: WAGES

1. If I am temporarily laid off, what is my employment status?

A temporary layoff is treated as a termination of employment for purposes of wages and benefits.

2. Am I eligible for unemployment insurance?

You are eligible for unemployment insurance if you meet the applicable state law requirements. Your employer will not contest your application for unemployment insurance benefits.

3. Do I have to repay the pay advance I received on August 14, 2015?

Yes. If you elected to receive a pay advance, then, per your agreement, the amount of the advance will be withheld from your final pay.

PART II: ALLIANCE HEALTH PLAN

4. What happens to my health care coverage?

Company-paid health care coverage, including medical, dental, vision and prescription drug, will end as of your employment termination date. You will be eligible for

COBRA continuation coverage if you elect COBRA and pay the "premium" amount.

5. What is the "premium cost" for COBRA coverage?

The premium cost is determined annually. Currently, the amount is $795.20 per month for individual coverage and $2,067.50 per month for family coverage.

6. How can I get more information about COBRA?

For more information on COBRA continuation coverage and how to make an election, see the Summary Plan Description ("SPD") for the Alliance Health Plan, which you can access at www.coalbenefits.com under the Health Care tab. Your user name is hamilton and your password is longwall. A COBRA package will be mailed to you at your address on file within 1-2 weeks after your termination of employment.

7. Do I have other options for health care coverage?

Yes. In considering whether to elect COBRA continuation coverage, you should take into account your other options.

You may be able to enroll in another group health plan for which you are otherwise eligible such as a plan sponsored by your spouse's employer. If you have the option available, there generally is a special enrollment period, which allows you to enroll within 30 days after your Alliance health coverage ends because of a termination of employment.

You also have the option to purchase health coverage through the Health Insurance Marketplace during the 60-day "special enrollment period" that begins after your employment termination date.

These options may cost less than COBRA continuation coverage under the Alliance Health Plan.

8. What is the Health Insurance Marketplace?

The Health Insurance Marketplace refers to the federal and state health exchanges that were established as part of the Affordable Care Act. The Marketplace offers "one-stop shopping" to find and compare private health insurance options.

If you purchase Marketplace health insurance, you could be eligible for a premium tax credit for lower income individuals, which can significantly reduce how much you pay for Marketplace health care. You also may qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov to compare prices and subsidies.

9. When can I enroll in Marketplace coverage?

You have 60 days from the time you terminate employment to enroll in the Marketplace. After 60 days your special enrollment period will end and you may not be able to enroll for coverage until the open enrollment period for calendar year 2017.

10. Can I continue to submit eligible medical claims for reimbursement under my Health Care FSA?

If you signed up to participate in the Health Care FSA and are making contributions through payroll deduction, your participation will end on the day your employment is terminated. However, you may continue to file claims for any eligible expenses incurred between January 1 - and your termination date (up to the maximum amount of $2,550, plus any carryover amount you may have from 2015, less the amount of any reimbursements you have already received). Claims must be submitted by March 31, 2017.

Under COBRA, you may elect to continue participation in the Health Care FSA but your contributions will lose the tax advantages for contributions after you terminate employment. See the SPD for the Health Care FSA for more details on when you might want to elect COBRA continuation coverage for the Health Care FSA. You can access the Health Care FSA SPD at wvvw.coalbenefits.com under the Health Care tab.

11. Can I continue to use the Wells, PSC on-site clinic after my termination of employment?

No. The Wells, PSC on-site clinic is part of the Alliance Health Plan. Only those terminated employees who elect and pay for COBRA continuation coverage may use the on-site clinic.

PART III: ALLIANCE 401(k) PLAN

12. Can I take a distribution from my account in the Alliance 401(k) Plan?

Yes. You can take a distribution of all or a portion of your vested account balance in the Alliance 401(k) Plan.

13. Do I have to take a distribution from my 401(k) account?

No. You can leave the money in the 401(k) Plan and take it out at any later time.

14. What if I need only some of the money in my 401(k) account?

You do not have to either take it all now or leave it all in the 401(k) Plan. You may request periodic lump sum distributions from your 401(k) account to match your financial needs.

15. What are the tax consequences of taking a distribution?

The amount of the distribution you receive is taxable to you when you receive it. Also, you may be subject to an additional 10% early distribution penalty tax if you are not yet age 55 or disabled.

16. What happens if I have a loan from the 401(k) Plan?

You may continue to pay off your loan with after-tax dollars. If you do not make your monthly payments, your loan will be in default 90 days after the date of your first missed payment. If your loan is in default, it

will be treated as a deemed distribution from the 401(k) Plan in 2016, and your account balance will be reduced by the amount of the deemed distribution. Your deemed distribution will be taxable to you, and you may be subject to an additional 10% early distribution penalty tax if you are not yet age 55 or disabled.

17. What happens if I take a distribution of my full 401(k) account and I have a loan outstanding?

Any unpaid, outstanding and defaulted loan, plus the amount distributed to you will be taxable to you. You also may be subject to an additional 10% early distribution penalty tax if you are not yet age 55 or disabled.

18. Where can I get more information about distributions and other features of the Alliance 401(k) Plan?

The SPD for the Alliance 401(k) Plan is available online at www.coalbenefits.com under the Retirement tab (Profit Sharing and Savings Plan). Your user name is hamilton and your password is longwall.

PART IV: DISABILITY BENEFITS

19. What happens to my participation in the disability benefit programs?

Your coverage under the Alliance short-term disability long-term disability benefit programs ends on your termination of employment date.

20. If I am currently receiving short-term disability benefits, will I continue to receive them for the remainder of the 26-week period?

No. Under the terms of the short-term disability program, payments cease on termination of employment.

21. If I am currently receiving short-term disability benefits, can I still apply for long-term disability benefits after I have completed my 26-week short-term disability period?

No. To be eligible for long-term disability benefits, you must meet all of the eligibility conditions before you terminate employment.

PART V: LIFE INSURANCE AND AD&D

22. Will I still have life insurance after my termination of employment date?

Your Company-paid basic life insurance (2 x base pay) ends on your employment termination date. You have the option to convert the insurance to an individual policy. If you want to convert to an individual policy, you must contact MetLife within 31 days of your employment termination date. You can contact MetLife at 877-275-6387. They will ask you for the contract number, which is 154622-1-G.

23. If I purchased additional life insurance or spouse or dependent life insurance, what happens?

Any additional life insurance that you purchased ends on your termination of employment date. You have the option to convert the insurance to an individual policy. If you want to convert to an individual policy, you must notify MetLife within 31 days of your employment termination date. To obtain an application, contact MetLife at 877-275-6387. They will ask you for the contract number, which is 154622-1-G.

24. What happens to my AD&D benefit?

Your participation in the Accidental Death and Dismemberment Benefits Program ends on your termination from employment date.

PART VI: OTHER BENEFITS

25. Do I lose my accrued and unused vacation days?

No. Your accrued and unused vacation days will be paid out to you in a lump sum.

26. My child has applied for the scholarship program. Will she still be considered a candidate?

Yes. If you, as the parent, meet the Program's eligibility requirement, your child's application will be considered.

27. I am currently on FMLA leave, will I continue to receive wages and benefits during the remainder of the FMLA period even though I have received notice that I am temporarily laid off.

No. The Family Medical Leave Act requirements do not apply after termination of employment.

You can get detailed information about your benefits from the following sources:

Explanation of Benefits: the SPDs for each benefit can be found on line. If there is are any discrepancies between these FAQs and the SPDs, the SPDs will take precedence.	www.coalbenefits.com. User name: hamilton Password: longwall
Alliance Coal Benefit Plan Administration Department	877-262-5471
Medical/Dental/Vision Claims	WEB-TPA 1-888-769-2432
Prescription Drug	Envision Rx 1-800-361-4542
COBRA Administration	WEB-TPA 800-758-2525

Alliance 401(k) Plan	NestEgg 866-412-9026 or access your account at www.benefitwebaccess.net/mynestegg/
Medical FSA	Frost 1-800-860-8251

APPENDIX H

ALLIANCE COAL, LLC

August 1, 2015

Carl Leeper
[redacted]

Re: Transition advance payment/ change in pay frequency

Dear Carl:

First and foremost we would like to welcome you to the Alliance organization and want to do all we can to make this transition as smooth as possible for you. Due to the difference in pay frequency of White Oak Resources, LLC (biweekly paid) and Alliance WOR Processing, LLC (weekly paid), the transition from biweekly to weekly will result in you not receiving your expected "normal" pay amount on Friday August 14, 2015. To avoid causing you any inconvenience Alliance would like to offer you an advance to be paid on August 14, 2015 in the amount of either a.) hourly paid employees [redacted] hours of pay at your regular hourly rate or b.) salary paid employees [redacted] week of pay at your current rate of pay. This advance will not be recovered until your employment ends with Alliance by either retirement or termination of employment (voluntary or involuntary). Taxes are required to be withheld on this advance and the recovery is pretax to ensure there is no double taxation.

Please make your desired selection below, sign and return this letter to the White Oak payroll department.

_X_ a) I elect to receive an advance on 8/14/2015 and agree to have this advance withheld from the final wages paid to me by Alliance WOR Processing, LLC (or its successor) upon the end of employment at some future date.

__ b) I elect not to receive an advance payment on 8/14/2015.

Please contact the payroll or HR/benefits department should you have further questions.

Sincerely,

Alliance WOR Processing, LLC

Employee Signature:
/s/ Carl Leeper
Date: 8-3-15

73102 Leeper, Carl