Protection of Existing Workers and the Implementation of "Workfare"

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I. INTRODUCTION

Welfare reform is a hot political topic.¹ This is evidenced by reforms made at both the federal and state level.² In fact, President Clinton campaigned on the promise to “end welfare as we know it.”³ A large part of the welfare reform movement includes trying to put welfare recipients to work. This is workfare.⁴ The idea behind workfare is that no one should get a free ride.⁵ Advocates of workfare programs say the work experience will teach those on welfare job skills which they can use to move into the real job market.⁶ This concept has been in existence for years.⁷ While many issues arise from the implementation of these programs, this note will address two, where the welfare recipients will work and what effect it will have on the low-wage workforce.

Critics of workfare requirements fear a “large number of subsidized welfare recipients flooding into the low wage labor market and the enormous potential for the displacement of existing workers.”⁸ The problem arises when paid workers are being laid off and jobs are being eliminated because of budget constraints. At the

2. See id.
5. See Beth J. Harpaz, Workfare Programs Gain Favor with Cities—But Critics See Forced Work as ‘Slave Labor’, Seattle Times, Dec. 25, 1995, at Cl. New York City’s Parks Commissioner, Henry Stern was quoted as saying, “[i]f anything, people are exploiting the system by receiving funds without working.” Id.
7. See Handler, supra note 1, at 3.
same time, welfare workers may be used to replace those who were laid off so that taxpayers do not feel a loss in services that a reduction in government employees could cause. In effect, the welfare workers perform duties that full-time workers had performed previously, a concept called displacement. The New York welfare-to-work statute includes provisions that prevent the displacement of workers.9

New York State passed legislation for putting home relief recipients to work in 1942.10 New York City is currently implementing one of the most ambitious work experience programs in the nation.11 This note analyzes New York State law and its “Work Experience Program” (“WEP”). It explores the state of the current law and its ability to protect workers from displacement.

II. History

New York Social Services Law section 164 provides for work relief.12 It was first enacted in 1942.13 It was established to provide support allowances for those in need and unable to find employment.14 This is a New York State program for needy adults without children.15 It is different than the federally funded Aid to Families with Dependent Children (“AFDC”), which provides support to families with children.16 Those receiving home relief are required to perform work assigned to them by the Social Services Administration.17

9. See N.Y. Soc. Serv. Law § 164(2)(b) (McKinney Supp. 1997). The Act provides that no home relief recipients be used to “replace, or to perform any work ordinarily and actually performed by, regular employees . . . .” Id.
10. See 1942 N.Y. Laws ch. 926. Section 164 was added to cover home relief. See id.
12. See N.Y. Soc. Serv. Law. § 164. Section 164 states, in pertinent part that “[a]s hereinafter provided, employable persons receiving home relief shall be required to perform such work as shall be assigned to them by the social services official furnishing such home relief or by the state industrial commissioner as hereinafter provided.” Id.
14. See id.
The 1942 law was enacted following a report released by the Board of Social Welfare which documented the effect defense activity had on the home relief roles. The increase in defense jobs created a marked decrease in the number of home relief recipients. Not only did participation in the State's Work Project Administration drop by 41%, the number of people receiving home relief dropped 25.1%. The report went on to discuss some of the reasons for the remaining home relief recipients in such a demanding job market. The report found that many of the remaining home relief recipients were considered "unemployable." Some recipients were receiving assistance as supplements because their earnings did not cover family needs. It was found that employment discrimination based on race and national origin prevented people from obtaining jobs. The report dispelled the myth that there were enormous numbers of welfare recipients cheating the system, finding that while there were some, they "account[ed] for a very minor percentage of the total number."

The report traced the need for welfare to two factors. The first factor was the change from an agricultural society to an industrial one, where wages were earned as opposed to home manufactured products. The second factor was a change in social consciousness, which for the first time, looked at the poor as possessing all the attributes of humanity and not as sub-humans. It is interesting to note that the same dialogues are still going on today.

18. See State of New York, Board of Social Welfare, Annual Report for the Year 1941, 117-28, 165th. Legis. Sess. 18 (1942) [hereinafter Annual Welfare Report]. The report noted that in districts where defense activity was great, the reduction in home welfare recipients was greatest. In cities where the manufacture of consumer goods was largest, the reduction of home welfare recipients was still a major concern. See id.

19. See id.

20. See id.

21. See id. at 19.

22. See id. at 20. The "unemployable" included women who could not leave their families to work, persons with physical handicaps and youth or elderly age restrictions. See id.

23. See id. at 20.

24. See id. at 21.

25. Id. at 22.

26. See id. at 23.

27. See id.

28. See id.

29. See Joel F. Handler, "Ending Welfare as We Know It"—Wrong for Welfare, Wrong for Poverty, 2 Geo. J. Fighting Poverty 3 (1994) (analyzing the public's perception of welfare and the realities); Mary Janigan, Wading into the Welfare Mess: As Social Assistance...
The State acknowledged its obligation to the poor and took that responsibility while insuring "protection to the state, to the local welfare officer, to the taxpayer, and to the relief recipient." The 1942 law contained protections for "regular" public employees. Section 164(6)(d) disallowed public works projects that used work relief employees to "replace regular employees of any public department or agency of a county, city or town."

The law was amended in 1950. Section 164(2)(a) provided that when authorized by the legislative body responsible for home relief, the heads of public departments or units may make requests to the public welfare office for workers to be assigned to their units. Section 164(2)(b), provided that the public welfare official assigning the persons should determine that the recipient not be used to "replace, or to perform any work ordinarily performed by, regular employees of any department or other unit of such county, city or town." The language for protecting existing public employees was further strengthened by not only preventing home relief recipients from replacing existing workers, but also from performing any duties ordinarily performed by regular employees.

In 1956, the law was again amended to strengthen the protection of existing workers. This is evidenced by the legislative declaration in section 1 that states "it is not the intent or purpose of the legislature, by such enactment, to authorize or permit the utilization of such persons to replace, or perform any work ordinarily done by, regular employees of any public agency, or workers in any trade or

Costs Mount, the Provinces Move to Put Welfare Recipients to Work, MACLEAN'S, Dec. 4, 1995, at 34 (discussing the arguments for and against Canada's developing workfare system).

30. ANNUAL WELFARE REPORT, supra note 18, at 24.
32. Id. § 164(6)(d).
34. See id. § 164(2)(a). The relevant text of this provision is as follows:

When the legislative body of a county, city or town which is responsible for providing home relief shall determine and direct that employable persons in receipt of home relief shall be assigned to perform work for such county, city or town, the head of any department, bureau, division or other unit thereof may request that such persons be assigned to his unit. The request shall be addressed to the public welfare official and shall indicate the number of persons who can be used and the character of the work to be performed.

36. See id.
37. See 1956 N.Y. Laws ch. 695, § 164.
craft in private employment.” Social Services Law section 164(2)(b) was amended to include protection of work “performed by, craft or trade in private employment.” It is clear that protecting existing jobs and workers was a concern of the legislature.

The 1956 amendment was temporary. In 1959, the temporary provisions of the 1956 amendment were removed and enacted with the employee protections in place. In 1962, section 164(2)(a) was amended to allow relief workers to be assigned to state agencies. In 1971, the law changed section 1 from “employable persons receiving home relief may be required to perform . . . work” to “employable persons receiving home relief shall be required to perform . . . work.” In addition to changing “public welfare” to “social services,” it required the social service officials to “provide for the establishment of public work projects” as opposed to only “determin[ing] and direct[ing] employable persons . . . to perform work.” The trend indicated by the 1962 and 1971 amendments not only makes it mandatory for home relief recipients to be assigned to work, but increases the places where they could be placed.

New York City suspended their public works program from 1973 to 1976 and replaced it with a work relief program. The difference was that instead of receiving a social services relief check for the work, the recipient received a paycheck from the department for which he/she was working, in order to make the situation as similar to a work-like atmosphere as possible. There was a direct correlation between the check amount and the amount of time the recipient worked. The Human Resources Administration then transferred funds to the employers to cover these payments from a

38. Id. § 164(1).
39. Id. § 164(2)(b).
40. See 1959 N.Y. Laws ch. 714, § 164.
44. See 1962 N.Y. Laws ch. 673, § 164. The legislature then extended placements to the state. See id. In 1971, the legislature mandated the establishments of placements by the social services official and strengthened the language of the work requirement. See 1971 N.Y. Laws ch. 101, § 164(2)(a).
46. See id. at 8.
47. See id.
relief fund. The payments did not come from the employers' budgets. The participants also received fringe benefits such as Workmen's Compensation, sick leave and annual leave, but were also required to pay income taxes. The participants were also permitted to join unions. In May 1976, the enabling legislation for the Work Relief Employment Program expired. In 1976, the original Public Works Program was instituted by the City.

The current work relief statutes contain protections for regular employees. Section 164(2)(b) states that home relief recipients shall not replace or perform work of private craft or trade employees, displace regular employees in agencies or institutions where they are assigned or perform work ordinarily performed by regular employees. This language makes clear that some protection was meant to be given to the existing workforce. However, the courts interpretation of this section offers little if any protection in reality.

48. See id.
49. See id.
50. See id.
51. See id. at 9.
52. See id.
53. See id.
54. See N.Y. SOC. SERV. LAW § 164(2)(b) (McKinney Supp. 1997). Section 164(2)(b) currently reads:

The social services official or the state industrial commissioner shall thereupon assign such persons in receipt of home relief who, in his judgment, are able to perform the work indicated, provided he is satisfied that such persons will not be used to replace, or to perform any work ordinarily and actually performed by, regular employees of any department or other unit of such county, city or town, or to replace, or to perform any work which would ordinarily be performed by, craft or trade in private employment. In assigning persons to public work projects operated by a nonprofit agency or institution, the social services official or the state industrial commissioner shall be satisfied that such assignment will not result in the displacement of regular employees of the agency or institution or in the performance of work that is being performed which would ordinarily be performed by such regular employees.

55. See id.
III. JUDICIAL INTERPRETATION OF SOCIAL SERVICES LAW
SECTION 164(2)(b)

It must be noted that under the current law, the social services official or state industrial commissioner is given the authority to determine whether employees are being replaced by the home relief recipients. Therefore, the first objection to the placement of workfare participants must be made to these officials. If a petitioner is dissatisfied with the commissioner’s determination, he or she can bring an Article 78 action in court. The petitioner contesting the placement of workfare participants must show that the Social Services Administration acted in an arbitrary and capricious manner when determining that there was no replacement of existing workers. This is a difficult standard to prove.

Ballentine v. Sugarman was an Article 78 proceeding wherein the petitioners were seeking to enjoin the Department of Social Services from placing home relief recipients in Civil Service jobs at a lower wage than regular Civil Service employees. The court combined two cases, one where the petitioners were Civil Service employees and their union and one where the petitioners were home relief recipients. The petitioners alleged that the home relief participants were being assigned the jobs of regular employees at a lower wage and in non-compliance with the Civil Service requirements of competition which are provided for in the State Constitution Article 5, section 6. The Ballentine petitioners alleged that they were entitled to all the rights of the regular Civil

58. See id. § 164(2)(b).
59. See id.
60. See N.Y. C.P.L.R. § 7801 (McKinney 1994). This provision provides for judicial review of final state agency decisions. See id. It has been established that the standard for judicial review is arbitrary and capricious. See Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984).
62. See id. at 42.
63. See id. at 41.
64. See id.
65. See id. at 42-43. The N.Y. Constitution states that: “Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive . . . .” N.Y. Const. art. V, § 6 (McKinney 1995).
Service employees, including sick time and regular wages. Otherwise, they said the situation violated the Thirteenth Amendment and constituted peonage.

The court held that the placement of the home relief recipients did not constitute appointments and promotions in the civil service as required by the New York Constitution and therefore did not violate the State Constitution provisions for Civil Service. The court held that just because the work the home relief recipient does is similar to a regular Civil Service employee, it is not in fact a Civil Service job because he is receiving his benefit check as compensation and not a regular wage. The court also allowed relief recipients to supplement the work of regular employees by doing the same kind of work. The court held that relief recipients could supplement manpower shortages due to budgetary restrictions. They justified this by a 1971 amendment to section 164 that changed the phrase “ordinarily performed by regular employees” to “ordinarily and actually performed by regular employees.” The court interpreted this to mean that Social Services can only violate section 164(2)(b) of the statute by actually eliminating a regular employee with the intention to replace them with a home relief recipient. This is an extremely narrow interpretation.

The court also dismissed the complaint by the home relief recipients as without merit. Much of the Court's analysis in Ballentine was based on Social Investigator Eligibles Ass'n v. Taylor. In Taylor, the plaintiffs sought an order of mandamus against the Comptroller of the City of New York and Commissioner of Public Welfare to discontinue placing people as social investigators...

67. U.S. CONST. amend. XIII.
68. For a discussion of workfare, the Thirteenth Amendment and peonage, see Cynthia A. Bailey, Workfare and Involuntary Servitude—What You Wanted to Know But Were Afraid to Ask, 15 B.C. THIRD WORLD L.J. 285 (1995).
69. Ballentine, 344 N.Y.S.2d at 43.
70. See id.
71. See id.
72. See id. at 44.
73. See id.
76. See id.
77. See id. at 45.
78. 197 N.E. 262 (N.Y. 1935).
who were not appointed pursuant to the Civil Service Law and rules. The petitioner was an organization comprised of 250 eligible persons for appointment to the position of "Social Investigator." They contested the appointment of persons to these positions under the Emergency Relief Act. The Act excused the applicants from the civil service examination. The petitioners challenged the constitutionality of this under Article V section 6 of the New York Constitution.

The court held that placing persons in civil service jobs who were exempt from the necessary requirements of Civil Service did not violate the New York Constitution. It held that the State had an interest in helping the unemployed. This is evident in the New York Constitution, Article 8 section 10, which gives the state some responsibility in fighting unemployment. Based on the rule that "[t]he fundamental law is to be read as a whole, ... as to give effect to every other provision," the court held that the Emergency Relief Act served the purpose of fighting unemployment and it did not violate the purpose of the Civil Service Law, which is meant to fight a "spoils system of office holding." The petitioners were never employed by the City and the compensation for the work recipients was coming from the Emergency Relief Fund and not the civil service appropriations. Thus, the petitioners were contesting their nonplacement in civil service jobs that did not actually exist.

The court agreed that there must be some limit to the appointment of workers, but did not see that limit in the present facts.

In Danker v. Department of Health of City of New York, the Appellate Court granted a writ of alternative mandamus against the

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79. See id.
80. See id. at 262-63.
81. See id.
82. See id. at 263.
83. See id.
84. See id.
85. See id.
86. See N.Y. Const. art. 8, § 10.
88. Id.
89. See id.
90. See id.
91. See id.
92. 194 N.E. 857 (N.Y. 1935).
Department of Health. Cecilia Danker was an employed civil service nurses' assistant for twelve years. Her position was abolished by the City and she was discharged. Afterwards, three emergency relief workers were allegedly performing her duties. The court held that if Ms. Danker could prove these allegations and show that there were appropriations for her position, then she would be entitled to relief. Ms. Danker "could not be reinstated without showing that the position exists and that there is an appropriation to cover it." Thus, if the State legitimately cuts the budget for a public department and then uses relief workers to help the department perform its functions, it is not violating the law. This case coincides with the Ballentine decision in requiring that the government must intentionally dismiss workers for the reason of replacing them with relief workers.

In a 1983 case, AFSCME New York Council, 66, v. County of Niagara the Court dismissed an Article 78 proceeding alleging violation of Social Services Law section 164(2)(b). It held that Marguerite A. Blakely, a lab assistant who was dismissed, was not a temporary employee and as such was not entitled to the protection under section 164 of the Social Services Law. The court also held that "[t]he mere fact that public assistance recipients may perform work that is similar to the work done by the bargaining unit employees herein, or by any other civil service employees, is insufficient to invoke the prohibitions of Section 164." Citing Ballentine, the court held that in order to violate section 164 "there must be a showing that some such employee has been dismissed to make room for the public assistance recipient."

In AFSCME, New York District, 66 v. City of Lackawanna, the court dismissed the Article 78 petition brought by the union to chal-

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93. See id.
94. See id. at 858.
95. See id.
96. See id.
97. See id. at 858-59.
98. Id. at 859.
99. See discussion supra notes 60-76 and accompanying text.
101. See id. at 4.
102. See id. at 2.
103. Id. at 3.
104. Id.
lenge the City’s action in laying off union workers and then replacing them with workfare participants.\textsuperscript{106} The court held that budgetary restrictions were the cause of the layoffs and there was no intention to lay off regular employees in order to replace them.\textsuperscript{107} “There has been no showing that the city intentionally took steps to displace the union employees with ‘Workfare’ people. The contrary is true. The record is clear that budgetary considerations were foremost in causing those decisions to be reached.”\textsuperscript{108} The court held that the petitioners did not show that the City of Lackawanna laid off employees to “make room for Workfare employees” as required by Ballentine.\textsuperscript{109}

An example of the difficulty in proving displacement is the fact that one of the employees in the Lackawanna case who was laid off, was subsequently unable to get a job.\textsuperscript{110} He went on welfare and was assigned to perform the tasks he had performed as a city worker for three years before he was laid off.\textsuperscript{111}

It is clear by this decision that intent to replace employees with “workfare” recipients is required to show a violation of Social Services Law section 164(2)(b).

New York judgments offer little protection to regular employees. If the City eliminates jobs because of budgetary constraints, it has the option to have the job performed by a welfare recipient for a fraction of the cost. If this policy is upheld, in a time of government budget deficits, a city or state would almost always be justified in eliminating jobs and having them performed by welfare recipients.

\section*{IV. Study of the Current Situation in New York}

Seventeen thousand union jobs were eliminated in New York City since Mayor Giuliani took office.\textsuperscript{112} The entire elimination was done through severance packages.\textsuperscript{113} In New York City the Work

\textsuperscript{106} See id. at 2.
\textsuperscript{107} See id. at 4.
\textsuperscript{108} Id.
\textsuperscript{109} Id. at 5.
\textsuperscript{111} See id.
\textsuperscript{113} See id.
Experience Program continues to grow. As a result of the program, Mayor Giuliani has put about 20,000 welfare recipients to work. The goal for fiscal year 1996 is to place 10,000 additional workfare participants to work while continuing to cut the workforce. This ambitious workfare program is the result of New York City Work, Accountability, You ("NYC WAY"). NYC WAY is the welfare reform initiative started by Income Support ("IS"), the Office of Employment Services ("OES") and the Office of Revenue Investigations ("ORI"). It uses eligibility verification strategies, job search activities and job assignments in an effort to reduce the welfare roles. All able-bodied home relief recipients are required to work. According to the Mayor's Management Report, the work requirements and rigorous screening process has resulted in a decline in home relief cases by 32,828 for Fiscal Year 1995.

The Work Experience Program participants are placed in many of the City's agencies. Four hundred and sixty six WEP participants were placed in the Department of Transportation for Fiscal Year 1995. The projected number of placements for the 1996 Fiscal Year is 550. The participants perform clerical duties, telephone answering and office maintenance.

The Department of Sanitation began using WEP participants in July 1995. The workers are used to clean City streets and clean

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115. See id.
116. See id.
117. See id.
118. See id. at 166.
119. See id.
120. See id. at 167.
121. See id. The report does not show whether the reduction is the result of catching fraudulent claims and putting people to work or from restrictions that eliminate part of the needy population.
122. WEP workers have been placed in the Department of Transportation, Sanitation and Parks and Recreation, to name a few. See id. at 42, 92, 99.
123. See id. at 49.
124. See id.
125. See Telephone Interview with Anna Budd, Director of Work Experience Program at the New York City Department of Transportation (Feb. 5, 1996).
the perimeters of vacant lots.127 "The City's streets were rated 74.6 percent acceptably clean in fiscal year 1995."128 This was a three percent increase from fiscal year 1994.129 The Department of Sanitation "cleaned 16,440 vacant lots during Fiscal 1995, compared with 15,061 during Fiscal 1994."130 These numbers provided by the Mayor's office explicitly show that the Sanitation Department has been more productive in 1995, after the reduction of the sanitation workforce. According to Peter Scarlatos, President of The Uniformed Sanitationmens Association, the union that represents sanitation workers in New York City, since the Mayor has been in office, the number of his union's employees has been reduced from 10,000 to 6,500.131 All of these jobs were eliminated by attrition.132 According to the Department of Sanitation, "[a]pproximately 1,800 WEP workers are cleaning Sanitation facilities, areas around vacant lots, and streets, as well as performing clerical tasks and delivering departmental mail."133 Both the City and the Union deny that the WEP participants are performing any jobs that are normally done by union members.134 Sanitation's Assistant Commissioner for Operations Planning, Evaluation and Control pointed at the advantages to the Sanitation union members. "[T]he refuse the WEP workers collect ultimately must be carted away by full-time employees and a number of sanitation workers [union members] have been promoted to supervisory positions to help administer the WEP workers."135 When Peter Scarlatos was pressed further about the

127. See id. at 93.
128. Id. at 92.
129. See id.
130. Id. at 93.
131. See Telephone interview with Peter Scarlatos, President, Uniformed Sanitationmens Association (Dec. 27, 1995) [hereinafter Scarlatos Interview].
132. See id.
134. See id. Steven W. Lawitts, Sanitation's Assistant Commissioner for Operations Planning, Evaluation and Control said that the WEP workers are performing jobs that have not been done in the past. See id. They are doing work the full-time sanitation workers have not performed in five years, See id. Peter Scarlatos said, the [WEP] workers are "sweeping sidewalks," things union members do not do. Id. He attributed the improved work performance of the Sanitation Department to his workers working harder. See Scarlatos Interview, supra note 131.
135. Benjaminson, supra note 133, at 1.
effects of WEP workers on union jobs, he refused to respond because of ongoing negotiations with the City of New York.156

The Department of Parks and Recreation employs the most WEP workers.137 "The Department’s WEP enrollment has grown steadily over the last year, from 836 in October 1994 to 4,300 in August 1995."138 Like the Sanitation Department, the Parks Department’s performance has gone up despite the fact that the full-time workforce has been reduced by one-half.139 The cleanliness rating, which examines the amount of broken glass, graffiti and weeds in the parks as well as the conditions of the lawns, has increased eleven percent.140 The New York City taxpayer is experiencing a cleaner city and better parks, for a bargain price.

South Brooklyn Legal Services and Legal Services of New York are preparing to sue for illegally replacing existing workers with workfare recipients.141 The City has answered these allegations by noting that it downsized the City’s workforce before formulating welfare plans.142 The City maintains that none of the 20,000 WEP workers replaced any of the 17,000 workers eliminated.143 What is obvious is that while union jobs are being eliminated through attrition, some city services have improved.144

The problem presented to New York City’s workforce is that it is unable to meet the standard set out in Ballentine.145 Seventeen thousand workers have been eliminated in the past two years.146 Many departments have seen an improvement in performance rates while there has been a huge increase in WEP workers. Ballentine

136. See Scarlatos Interview, supra note 131.
138. Id.
140. See CITY OF NEW YORK, THE MAYOR’S MANAGEMENT REPORT, FISCAL 1995 Vol. I 98 (Sept. 14, 1995). “Highlights include 50 percent, 35 percent and 31 percent drops in the number of sites with unacceptable levels of glass, litter and weeds, respectively.” Id.
142. See id.
145. See discussion supra notes 60-76 and accompanying text.
146. See Pretto, supra note 142, at 5.
held that budgetary restraints were a legitimate reason for eliminating city jobs. When was any municipal government not under fiscal restraints? We live in a time of government deficits. These deficits could be used to show fiscal restraints for most governments. If this is the case, when would a government not be justified in eliminating jobs and having relief workers perform the duties that were previously performed by full time workers? To show a violation of Social Services Law section 164(2)(b) employees must prove that they were eliminated specifically to be replaced by work relief recipients. An intent to replace the employee with a workfare worker is needed. This is an impossible burden to meet when the government can show a budget deficit.

V. THE PROBLEM WITH REPLACING FULL WAGE WORKERS WITH WORKFORCE WORKERS

The effects of an influx of welfare workers to the wages of the workers of the low paying job market have been documented. The problem is that many welfare recipients are not qualified for anything but low paying, unskilled jobs. "Welfare recipients generally have lower levels of formal education, less on-the-job experience, and fewer job skills than the general population." The current workfare programs place welfare recipients in clerical and maintenance positions. The emphasis is on job placement, not job training. The Economic Policy Institute’s Report, Cutting Wages By Cutting Welfare ("Report"), analyzes the effect wide scale federal welfare-to-work policies will have on the wages of the working poor. Using conservative estimates, the number of wel-

148. See id.
151. See id. at 3-4.
152. Id. at 3.
156. See id. at 3.
fare recipients required to enter the job force will be approximately 928,000 by the year 2000.157 Because of the skill levels they possess, many welfare recipients will be "competing with the least-paid segment of the current workforce."158 The low-wage workforce is defined as those workers earning $7.19 per hour or less.159 The Report, in assuming that no jobs were lost by the current low-wage work force and that the required number of welfare recipients do in fact find jobs, finds that in New York 88,549 welfare recipients will be placed.160 This, in turn, will cause a decrease of $1.03 per hour in the wages of existing workers who already get paid less than $7.19 per hour.161 This puts the burden of welfare reform on the working poor, the least resilient of our population.

Current trends indicate a decline in the real earnings of the less skilled and educated workers.162 There has been a 50% increase in the poverty rate of full-time workers in the last thirteen years.163 "In 1991, 18% of full-time workers earned less than the poverty line for a family of four."164 The unemployment rate has doubled for both high school graduates and dropouts from 1970 to 1989.165 Adding to the problems is the shift of full-time work to contingent work. Contingent jobs account for over 25% of the entire workforce.166 "Manpower Inc. [whose business is to provide employers with temporary employees] is the single largest employer in the U.S. today."167 Part-time work tends to pay less than full-time work and does not provide health care coverage or other benefits.168 By eliminating full-time city jobs and replacing them with WEP recipients, who work an average of twenty two hours per week, the city is contributing to this trend.

157. See id.
158. Id. at 3-4.
159. See id. at 4.
160. See id. at 7.
161. See id.
162. See Joel F. Handler, "Ending Welfare as We Know It"—Wrong for Welfare, Wrong for Poverty, 2 GEO. J. FIGHTING POVERTY 3, 10 (1994).
163. See id.
164. Id.
165. See id. at 11.
167. Id.
168. See Joel F. Handler, "Ending Welfare as We Know It"—Wrong for Welfare, Wrong for Poverty, 2 GEO. J. FIGHTING POVERTY 3, 12 (1994).
Welfare-to-work advocates often cite the need for welfare recipients to learn a work ethic. A study conducted in Chicago in 1988 and 1990 found that most welfare mothers work to supplement their welfare grant. Of the fifty families studied, almost all of them received additional income from either work or friends and relatives to cover rent and utilities because the average welfare grant is not enough. "Almost half of the additional money that the AFDC families needed to live on was earned but not reported." The results in Chicago have been replicated in Cambridge, Massachusetts, Charleston, South Carolina and San Antonio, Texas. The authors of the study concluded that "single mothers do not turn to welfare because they are pathologically dependent on handouts or unusually reluctant to work; they do so because they cannot get jobs that pay better than welfare." This is further evidenced by the proportion of welfare recipients who leave welfare for work only to return. This evidence debunks the myth that people are on welfare because they do not want to work. The reality is than many welfare recipients cannot find jobs that will support them. The effects of a large influx of low paid workers in the job market caused by programs like New York City's WEP program, will further diminish the jobs that pay a living wage and will arguably lead to more welfare recipients overall.

Another way the working poor will pay the costs of workfare programs is through child care. "Presently, there are long waiting lists for subsidized child care." Common sense dictates that many of those on the waiting lists are those who cannot afford private day care. Many in this group would qualify as the working poor. In order to send mothers to work, child care must be provided. Are welfare recipients going to be given the much coveted subsidized child care spots? Will they be placed on the list and only required to work when their name comes up? It would be unfair to give subsi-

169. See id. at 15.
170. See id.
171. See id.
172. Id.
173. See id. at 16.
174. Id.
175. See id. More than two thirds of new welfare recipients leave within two years. Id. "As high as two thirds . . . of welfare exits . . . occur when the mother finds a job or works continuously until she leaves welfare." Id.
176. Id. at 29.
dized daycare to workfare recipients ahead of, or instead of, low-wage workers. In addition, this could cause more low-wage workers to lose their jobs because of their inability to find adequate child care, which may ultimately cause them to become welfare recipients themselves. How ironic it would be for someone to lose a job that pays $6.00 an hour because they could not afford adequate daycare, only to be given daycare so they could pick up garbage in return for their welfare check.

Advocates for the poor demand that real welfare reform be a comprehensive program which provides support and creates real jobs. The jobs created must have decent wages, child care and health benefits to insure the success of welfare recipients. Many welfare recipients live in communities with very high unemployment rates. Nanine Meiklejohn of the American Federation of State County and Municipal Employees gives numerous reasons for the return to welfare of many recipients. These reasons include; "low educational and skill levels; declining wages at the bottom of the economic ladder; a shift from higher paying, more stable manufacturing jobs to lower paying, less stable service sector jobs; a lack of job opportunities in areas of chronically high unemployment; and, more recently, the transfer of government functions to private contractors who pay their workers minimum wages and no benefits." The downsizing private companies can be added to this list. "During December [1994 U.S. employers] eliminated an average of 20,000 jobs per week."  

177. See Nanine Meiklejohn, Prepared Statement on Proposals to Reform Welfare Before the House Ways and Means Subcommittee on Human Resources (Feb. 2, 1995), in Fed. News Serv. Wash. Package (Feb 2, 1995) at 2 [hereinafter Meiklejohn]. New York State Department of Social Service's interim commissioner and workfare proponent noted, "long waiting lists for child-care slots already are rampant throughout New York State for AFDC mothers who have found real jobs. Should we take away slots from them to push other AFDC mothers into make-work positions?" Mark Dunlea, Workfare as a Panacea Just Doesn't Work, BUFFALO NEWS, June 12, 1995, at 2C.  
178. See Meiklejohn, supra note 177, at 2.  
179. See id. at 3.  
180. Id. at 3.  
181. See Barbara Reynolds, Workers Get Crushed in Downsizing Rush, USA TODAY, Jan. 26, 1996, at 13A. "Since 1991, nearly 2.5 million workers have fallen victim to corporate restructuring, a carnage without precedent for a U.S. economy in the midst of recovery, some economists have noted." Id.  
The less stable job situation causes workers to go in and out of the workforce. Many welfare recipients use AFDC in lieu of unemployment insurance because they are ineligible for unemployment insurance due to their intermittent work histories. The job outlook for New York City looks poor, with the City losing 500,000 jobs between 1987 and 1992. "The number of people looking for jobs in New York City exceeds the number of jobs available by 7 to 1." These numbers do not even take into consideration the 17,000 jobs eliminated by the city.

VI. WELFARE REFORM

Workfare has not been proven to be successful or cost effective in the long run. "New York City's best estimates show that just 4 percent of workfare participants find real jobs." The Hunger Action Network of New York State advocates welfare reform through "job creation, an increased minimum wage and earned-income tax credit, expanded transitional child care and Medicaid, and increased opportunities for welfare recipients to earn money without being penalized."

The American Federation Of State, County and Municipal Employees, AFL-CIO recommends the following for welfare reform: expand coverage of unemployment insurance; insure a living wage to all workers; training and parenting activities should be given respect in determining work requirements; working welfare recipients should receive the same compensation as other workers; unions should be included in organizing workfare programs; states should be able to develop programs that make work more rewarding than welfare; welfare offices should change their emphasis from providing benefits to finding work and an emphasis should be placed on case management.

183. See Meiklejohn, supra note 177, at 3.
184. See id. at 4.
185. Id. at 4 (citing Philip Harvey, Newsday, Dec. 11, 1994, at A7.).
186. See Mark Dunlea, Workfare As a Panacea Just Doesn't Work, Buffalo News, June 12, 1995, at 2C.
187. Id. (citing a report by Manpower Demonstration Research Corporation in Sept. 1993).
188. Id.
189. See Meiklejohn, supra note 177, at 6-7.
Gerald M. Shea of the AFL-CIO advocates the participation of unions in job placement administrations. He asserts that the way to reform welfare is to create jobs that earn a living wage and not to implement subsidized welfare jobs to the detriment of low-wage workers. He further recommends that there be subsidized child care for low-wage earners and welfare recipients.

Currently, in New York City, there is a movement to organize the City's workfare participants. Stanley Hill, the executive director of District Council 37, a local of the national union the American Federation of State, County and Municipal Employees, declared he has planned a meeting "with a community group that has gotten more than 4,000 city workfare laborers to sign authorization cards pledging their support for a union." Currently, the workfare workers are not classified as employees under the law. This means "the city is not required to recognize or bargain with such workers, even if a majority backs a union . . . ." Workfare workers see unionization as a way to protect their rights, help get them permanent jobs "and most importantly[ly] . . . make them treat us with respect."

VII. CONCLUSION

Overall the motives behind the current workfare programs must be analyzed. Who is the government helping and who are they hurting? There is no indication that making people work in return for their welfare checks benefits the recipients. There is an indication, as shown above, that an influx of workers who are compensated by their welfare checks could diminish and weaken the low wage job base. Included in the New York Statute are protections for the existing job base, but as we have seen, they do little, if anything, in reality. Assuming the phrase "end welfare as we know it" didn't
mean make it worse, the exploitation of our country’s poorest constituents is no solution.

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