

## VOLUNTARY PLANT CLOSINGS AND WORKFORCE REDUCTIONS IN THE NETHERLANDS

*Professor Antoine Jacobs\**

The situation in Holland might be just the opposite of the situation as sketched by our American colleagues because Holland has seen, in the last 10 years, a great number of developments that have produced more and more law in the field of labor relations and have brought several cases of managerial decisions before judges. This situation started near the end of 1960 and was caused by the general mood of democratization and participation that went through Western Europe, for example, in May of 1968 in France. This affected in the first place the works council legislation; the Act on Works Councils of 1950 was tightened up very strongly in 1971<sup>1</sup> and again in 1979.<sup>2</sup> It now obliges all enterprises of medium and large size to have a works council and to consult that works council for all economic and social decisions, such as investments, pensions, and dismissals. In 1979, an article<sup>3</sup> was added to this Act which gave works councils the right to object before the Court of Amsterdam when management fails to follow the advice of the works council. This Court, however, will control managerial decisions only on a very limited basis. It will only quash a decision when it is utterly "unreasonable," so it reserves for management a large scope of decisionmaking. But there are already some cases in which the Court of Amsterdam has annulled a decision of management. In addition, the works council may ask the advice of experts even on the costs of management. So, if management wants to introduce computers or the like and the works council questions the wisdom of that decision, the works council can request a report by experts. The report may be very convincing and cause the Court to reject management's decision.

It is important to note that if management does not take into account this Works Council Act with all its obligations, the works

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\* Professor of Law, University of Tilburg, Netherlands.

<sup>1</sup> Works Council Act of January 28, 1971, DUTCH O.J. No. 54 (1971).

<sup>2</sup> Works Council (Amendment) Act of July 5, 1979, DUTCH O.J. No. 448 (1979).

<sup>3</sup> Works Council Act of January 28, 1971, *supra* note 1, art. 26.

council can seek redress before any judge in Holland and simply try to stop the managerial decision. If the Act is actually neglected the judge will not hesitate to grant an injunction.

This illustrates that in Holland we now have very severe controls over the rules of the game. Certainly, judges cannot change the course of the market; if a company is no longer viable, the judge cannot keep it in business. But there are now rules requiring "decent managerial behavior" and if management is not playing according to these rules, the judges will not uphold managerial decisions. We have had already ten or twenty famous cases in recent years which have shown this.<sup>4</sup> So this is the first major development — the Works Councils Act.

The second major development is the right to inquiry. In 1971, the trade unions were given the right to initiate judicial inquiry into managerial decisionmaking.<sup>5</sup> If managerial decisions qualify as "mismanagement," then the Court of Amsterdam can intervene and even fire the directors of the company and nominate new directors for an instant period, according to this right to inquiry.

The trade unions have used this right to go to the Court of Amsterdam a few times. One of the famous cases arose when Ford Motor Company, in 1981, wanted to close down its plant in Amsterdam.<sup>6</sup> The trade unions indeed went to the judges in Amsterdam and asked for an inquiry. Was it really necessary for Ford to close down its Amsterdam plant? Although Ford was not very cooperative, it nonetheless furnished some information indicating that it could not continue losing money in Amsterdam. There were also counter-statements. For example, expert reports requested by the works council and trade unions stated that it was Ford's policy to lose money in Amsterdam. The question was rather difficult for the judges to decide and they were lucky that the trade unions made arrangements with Ford before they reached a decision. In the end the trade unions accepted closure of the plant in exchange for payment of a certain amount of money to the workers. This result occurred because Ford exerted heavy pressure on the trade unions, stating it would simply

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<sup>4</sup> Decision of July 17, 1980, NEDERLANDSE JURISPRUDENTIE No. 261 (1981) (decision of President's Magistrate Court of Amelo involving Texas Instruments - Holland).

<sup>5</sup> Act of September 10, 1970 Amending the Dutch Commercial Code, *codified at* New Dutch Civil Code arts. 344-359 (Book II).

<sup>6</sup> Decision of July 7, 1981, NEDERLANDSE JURISPRUDENTIE No. 220 (1978) (President's Magistrate Court of Amsterdam).

stop pouring money in Ford Amsterdam, which would lead to bankruptcy. Not a bankruptcy of Ford America, of course, but only bankruptcy of Ford Amsterdam. And then the workers would have no money at all. So Ford told the trade unions: accept money and collective dismissal or there will be bankruptcy; ultimately, the trade unions accepted the former. When, one month later, the court had to make its judgment in the inquiry as to whether Ford Amsterdam had shown "mismanagement," the decision had become meaningless because the question had already been solved by the hard facts. So the most famous case has not come to a very conclusive end from a legal point of view, but it underlines my earlier statement that you can have judges controlling the rules of the game but not judges keeping open a factory when market forces demand closure.

*Professor Blanpain:*

What about the Batco case?

*Professor Jacobs:*

Indeed, we also had the Batco case three years earlier, in which the trade unions were more successful. The British-American Tobacco Company intended to cease production in Amsterdam and concentrate all Benelux production in Brussels. Again the trade unions used their power to go to the judges and they succeeded; the judge temporarily enjoined Batco Amsterdam from closing until the inquiry was completed.<sup>7</sup> It was not an unlimited order but an order for, at most, one year. Batco had to accept the order and later, in consultation with the unions, agreed to keep its Amsterdam plant open and not to centralize production in Brussels. They thus revised their original decision, which in the meantime was indeed qualified as "mismanagement" by the Court of Amsterdam.<sup>8</sup> So you see, there is a certain influence the judge can have. But three years later in the Ford case

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<sup>7</sup> Decision of March 9, 1978, NEDERLANDSE JURISPRUDENTIE No. 220 (1978) (President's Magistrate Court of Amsterdam), *on appeal* NEDERLANDSE JURISPRUDENTIE No. 70 (1980) (filed October 26, 1978 before the Court of Amsterdam).

<sup>8</sup> Decision of June 21, 1979, NEDERLANDSE JURISPRUDENTIE No. 71 (1980) (Court of Amsterdam).

we saw a multinational company not prepared to make any concessions. Could they not have conceded the fact that they had sometime later opened a new plant in Bordeaux? Has it not been possible to give preference to Amsterdam instead of Bordeaux? But in the case of Ford, management was not really prepared to change minds and make concessions. The Batco case is a good example that the judge can have influence and, if management cooperates, it comes to a happy end. The Ford case is the example of the opposite; if the management does not want to cooperate, no lasting success is possible.

I do not want to take too much of your time but I must give two or three other examples of legislation in this field just to show you how much the law has penetrated here. The Dutch law on dismissals and redundancies in general is quite different from that in the United States and most European countries because we are the only country in the Common Market where permission from the employment office is needed for every dismissal. That is true in the case of individual dismissals as well as collective redundancies. So you cannot legally dismiss a worker in Holland without a permit and if you do so without a permit, you have to pay his salary for perhaps years and years because the judge will not recognize the dismissal as legally valid. But I must again immediately emphasize that the state employment office policy takes into account market forces. If a company wants to fire its men because of the economic situation, it is obliged to inform and consult the unions and works council, but if it has played according to these rules and there is a reasonable cause for the redundancy, the state employment office will issue a permit. It will only refuse the permit if the decision is unreasonable or if the company has neglected the procedural rules. Thus, the general law on dismissals and redundancies in Holland plays an important role in ensuring that companies follow the rules.

Finally, there is a so-called code on mergers and take-overs.<sup>9</sup> It is not an act, but is a code like the code on multinational enterprises of the Organization for Economic Cooperation and Development (OECD). It is not legally binding but consists of a set of moral rules which should be applied. If management wants to merge with or take over another company, it must inform the trade unions and the works councils in time and bargain with them about the consequences.

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<sup>9</sup> See Mededelingenblad SER No. 43, December 9, 1975.

If management fails to do that, there is no penalty but there is a public rebuke. But how detrimental is public rebuke in the Dutch newspaper, say for McDonald's, in the United States? McDonald's presumably will not be very impressed.

All I have sketched might make you understand that there are a lot of "legal entries" which workers, works councils, and trade unions can use to challenge any managerial decision nowadays, including those of foreign companies. I conclude by repeating that workers can only expect that judges can give them breathing space, so that managerial decisions might be revised. They can force management to play according to the rules of the game but cannot expect that, in the end, the company will remain open when there is no economic justification.

