VOLUNTARY PLANT CLOSINGS AND WORKFORCE REDUCTIONS IN BELGIUM

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My task this morning is to present to you the situation that exists in Belgium. I shall do this with reference to the concepts used by Edward Yemin. It will, however, be difficult for me to base my comments only on the developments since 1982 in Belgium. I suppose this parameter was imposed because Yemin's study was published in 1982; however, the book does not contain a description of the Belgian situation. And secondly, the developments since 1982 in Belgium quite often concern situations and norms that existed before 1982. As a result, discussion without reference to these situations and norms would be understandably confusing. For example, to discuss the condemnation of Belgium by the Court of Luxemburg in 1985 because of the Collective Agreement of 1983 concerning redundancies and to discuss the Royal Decree of 1984, one must refer to the Collective Agreement of 1975 and the Royal Decree of 1976. These important texts are two of the basic legal norms concerning redundancies and consultation with workers' representatives.

Furthermore, Yemin's comments on the historical evolution of workforce reductions in undertakings encourage me to do so. He begins by saying that "[i]n many countries throughout the world workforce reductions in undertakings are recognized as one of the major issues of social policy,"[1] and continues by referring to a change of attitude of those concerned, relating this change to a number of factors: "[i]n the industrialized market economies, a decade of growth and relative full employment in the 1960's was followed by a decade in which recurrent recessions . . . threw large numbers of persons out of work."[2] This assertion, however, cannot be accepted without important corrections in relation to the Belgian situation. In Belgium, the origin of the first legislative intervention in this field can be traced

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[1] INTERNATIONAL LABOUR ORGANIZATION, WORKFORCE REDUCTION IN UNDERTAKINGS 3 (E. Yemin ed. 1982).

back to the end of the 1950's. In that period a series of coal mines were scheduled to be closed. They were eventually closed, but not until after an important miners' strike in the beginning of 1959. Two laws concerning plant closings were proposed in the Chamber of Deputees, a communist proposal (Moulin-Dejace) and a socialist one (Van Acker). These proposals were discussed by the National Labour Council. Subsequently, the Christian-liberal government (Eyskens-Lilar) proposed a bill. This bill became the first law on the subject, the law of the 27th of June, 1960. Although the law was temporary, it contained some important points. First, it required that information be given to workers through industry-wide parity commissions. Second, it granted the worker a right to receive an allowance. Third, as is still the case with present day legislation, it defined the undertaking as the "technical exploitation unit," just like the law of 1948 concerning the works committees. This definition permitted allowances to be paid to workers when a division or a seat of the undertaking was closed.

A new law, the law of the 28th of June 1966, replaced the first one and addressed compensation for workers whose contracts were terminated as a result of the closing of an undertaking. This law is still in force today, after having undergone many modifications. It also provided for information, not only of the workers, but also of public authorities. Compensation of 1000 Belgian francs per seniority year was also provided, with a ceiling of 20.000 Belgian francs, but with an escalator clause. In addition, the new law retained the same definition of the undertaking as the old law. It also created a special fund for worker compensation.

As I said, the law of 1966 has been modified many times. The last modification was introduced by the law of the 22nd of January 1985, concerning economic redress and containing social provisions. This modification makes it possible to assimilate to a plant closure the displacement of an exploitation seat, the merger or the sale of the enterprise, and in some cases, a restructuring of the undertaking. The law of 1966, as amended, applies to undertakings with a workforce of more than twenty workers. Technically, a plant closure occurs when the workforce is reduced to one-fourth of its previous size.

Most importantly, the Royal Decree of the 20th of September 1967 implemented the law. It defines, in case the parity committee fails to do so, the methods of information available. The Royal Decree of the 5th of December 1969 followed and concerned the declaration of redundancies. But the chapter of the 1969 Decree concerning the declaration has been abrogated by a new Decree in 1976. Furthermore,

a nationwide collective agreement (n° 10) of 1973, that included a new definition of redundancy, provided for new compensation methods and for information and advice. It is still in force, except for information and advice, where new agreements resulting from EEC harmonization are in force.

Taken as a whole, the history of the law on redundancies and plant closures can roughly be divided into three periods: the early beginnings (1960-66), the establishment of the basis of the existing system (1966-74), and the present period. The present period has been marked by the negotiation of very important collective agreements on a nationwide scale: Collective Agreement Number 17 of 1974 concerning early retirement; Collective Agreement 24 of 1975, implementing the EEC Directive; Collective Agreement Number 24bis of 1983, modifying the previous one; and Collective Agreement Number 39 of 1983, concerning the social consequences of the introduction of new technologies.

In discussing the concepts of workforce reductions, we again use Yemin's contribution as a basis because he clarifies brilliantly many concepts that are often used without precision. The Belgian concept of workforce reduction or redundancy has changed over time. In Belgium, presently: (1) the redundancy must not be inherent to the worker as a person, and (2) it must affect during a period of sixty days at least ten workers in undertakings occupying more than twenty and less than 100 workers, at least ten percent of the workforce in undertakings between 100 and 299 workers, and at least thirty workers in larger undertakings. This results from the nationwide Collective Agreement Number 24bis of 1983 and from a Royal Decree of March 26, 1984. Both normally apply to undertakings with more than twenty workers,[3] and apply more favorably than EEC Directive 75/129/EEC of February 17, 1975, unlike prior norms.[4] On the other hand, a plant closure is a concept which also applies to undertakings with twenty workers or more, but the workforce must diminish to below twenty-five percent of the median workforce.

In addition, during a long period there were no restrictions at all on management's right to lay off workers. In short, this right was considered a managerial prerogative. Collective Agreement Number

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[3] This was already the case with the Royal Decree of December 5, 1969, relating to the declaration of redundancies and the notification of vacant jobs.

[4] Collective Agreement Number 10, Collective Agreement Number 24, and Royal Decree of May 24, 1976.

24bis of 1983 and the Royal Decree of 24 May 1976, modified by the Royal Decree of 26 March 1984, did not alter this right.

A change intervened, however, with Collective Agreement Number 39 of December 1983, concerning information and concertation on the social consequences of the introduction of new technologies. As a result, the employer who does not respect his obligations cannot accomplish any legal act tending to terminate a contract of employment, except for reasons foreign to the introduction of the new technology. During a certain period, the burden of proof of the motive rests on the shoulders of the employer. If, despite this prohibition, the employer terminates a contract under these circumstances, he will have to pay a compensation of three-months' gross wages. The 1983 Collective Agreement has been extended *erga omnes*[5] by a Royal Decree of 25 January 1984.

Mere restrictions on the right to lay off, such as provided for by the French and the Dutch legislation, however, are unknown in Belgium. The Belgian system, actually, is closer to the German one. Under the Royal Decree of May 24, 1976, the employer may only carry out dismissals after the elapse of thirty days following notification of the redundancy to the director of the regional employment office.

With respect to the relations between employers and worker representatives, the Law of the 28th of June 1966, concerning plant closures, imposed on employers a duty to transmit preliminary information to the workers. The Royal Decree of Application of this Act, dated September 9, 1967 and in force for those sectors where parity committees have made no decisions, defines methods to inform the concerned workers and the works committee, or the trade union delegates if there is no works committee. One has to bear in mind that under the Act of 20 September 1948, the works committee has the right to examine the general criteria to follow in case of termination of contracts of employment. Thus, this applies to individual terminations and redundancies. Under the nationwide Collective Agreement Number 24bis of 1983, employers must consult worker representatives, that is, the works committee members, and if there is no such committee, the trade union delegation. Consultation must relate to the possibilities for avoiding or reducing the redundancy or its consequences.[6] The employer's duties under the agreement are

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[5] I.e., to all employees.

[6] This formula is borrowed from the EEC Directive of 1976.

more precise than those defined under the legislation of 1966-67.

Under the Collective Agreement Number 39 of 1983 concerning new technologies, written information must be given to worker representatives and a concertation must take place with them about the social consequences of the new technology concerned. This concertation must embrace the following points:

1. perspectives for employment, structure of employment, and social measures;
2. work organization and labor conditions;
3. health and security;
4. skills, vocational training, and retraining.

Collective Agreement Number 9 of 1972 concerns the general aspects of the undertaking's destiny and imposes a duty on employers to inform the works councils about employment prospectives by means of yearly informations, quarterly informations, and occasional informations on redundancies.

In all these norms the employer's partner is the workers' representation in the works committee or in the trade union delegation. Collective Agreement Number 24bis also mentions resort to personnel or their representatives, in the absence of a works council or trade union delegation.

During the beginning of the "second period," that is 1966-67, trade unions and left-wing members of Parliament demanded that trade union intervention result in some kind of worker control in cases of redundancies and plant closures, with a system of available sanctions. The employers were in favor of a system of concertation, but their point of view was withheld. In the end, Parliament refused to interfere with managerial prerogatives.

As a result, the present-day system is a system of information, consultation, and concertation. The aim is to obtain observations and suggestions of the workers and to achieve consensus. It depends, of course, on the union's strength — whether it can oppose, either partially or totally, the employer's decision.

Regarding relations between employers and public authorities, the law of 1966 and the Royal Decree of 1967 on plant closures requires that the Ministry of Employment and Labour, the Ministry of Economic Affairs, the National Employment Agency, the Fund of Workers' Compensation, and the Chairman of the Parity Committee be notified of closures. Under a Royal Decree of the 5th of December 1969, the employer must also notify the employment agency of job vacancies.

Under the Royal Decree of 1976 concerning redundancies, the employer must transmit a copy of the information he has given to the workers and notify the director of the regional office of the National Employment Agency of the desired redundancy project. The Decree corresponds to the EEC Council Directive of 1975. There are, however, no specific conciliation mechanisms provided by the special norms and agreements concerning closures and redundancies. The Royal Decree of November 6, 1969, concerning the functioning of the parity committees, provides for creation of a conciliation bureau to prevent or resolve disputes between employers and workers.

There are also public schemes to assist struggling undertakings in avoiding dimissals. Public assistance is widely used in Belgium and includes all the measures of assistance described by Yemin, and many others also. For example, The Law of Labour of the 3rd of July 1978 provides that, on proposal of the parity committee or National Labour Council, the King may determine conditions in which the lack of work resulting from economic causes permits suspension of the execution of the labor contract or permits resorting to a regime of short-time work for manual workers. There is also a legal system of early retirement.

The role of collective bargaining is extremely important in Belgium, which Gerard Lyon-Caen called the most outstanding country of paritarianism. I shall mention especially Collective Agreement Number 17 of December 19, 1974, concerning early retirement of workers who are sixty years or older. The aim of this Agreement is to promote the retention of younger workers in their jobs. Under this Agreement, employers pay dismissed workers compensation equal to the difference between a reference wage and the unemployment benefit. The Agreement implements a resolution of the National Employment Conference of 1973, in which the public authorities participated. Several other collective agreements concluded at a lower level are more favorable to the workers.

I shall conclude by addressing European norms and their impact in Belgium. In particular, let me refer to the recent condemnation of Belgium by the Court of Justice of the European Communities. I am referring of course to case 215/83, of March 28, 1985. As I have said, the procedures of consultation and notification existing in Belgium were, from the beginning, in line with the EEC Directive of 1975. Belgium, however, was not in order with the definition of a redundancy, neither with the qualitative aspect of it (a reason not linked with the person of the worker), nor with the quantative aspect of it (the number of workers involved in a defined period of

time), nor was it in order with the list of workers who might be excluded from the scope of the Directive.

The Commission went to court on the 27th of September 1983. Belgium's social partners changed the collective agreement and Belgium's government changed the Royal Decree. These two aspects of the definition of redundancy were designed to conform with the Directive, but two problems remained. First, the adopted norms still excluded manual workers such as harbor workers, ship repairers, and construction workers. This is not allowed by the Directive. Second, the authorities do not apply the redundancy norms in practice when there is a plant closure. Instead, they apply the 1966-67 legislation on plant closures. This is also not allowed by the Directive. The Belgian Government argued that most plant closures were the result of judicial decisions and that the Directive did not apply in this case. These arguments were rejected by the Court, so Belgium must change its law in this respect.