

VOLUNTARY PLANT CLOSINGS AND WORKFORCE REDUCTIONS: AN INTERNATIONAL PERSPECTIVE

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The mood of the times in which our industrialized systems evolve is clearly illustrated by comments made by the United States Secretary of Commerce, Mr. Baldrige, who at an OECD meeting in Venice in April of this year made a blistering attack on European industrial relations policies. He said that one of the reasons that European companies lag behind their counterparts in the United States was the existence of powerful barriers to reducing or even to moving the workforce. American companies, he said, are more willing to hire workers because they can dismiss them if things go wrong. This statement, I think, illustrates the mood of the times.

Fifteen years ago when a company closed in Belgium, almost everyone protested because closing down was almost unheard of. How could one close down? But five years ago we were merely raising our eyebrows. Now reorganizations, including plant closings, are considered normal. Moreover, a company which is neither reorganizing nor reshuffling is considered to have incompetent management. These days management is supposed to do things — to reorganize, to restructure, and so on. The exercise is called “positive adjustment.” Those who “positively adjust” are considered to be winners; those who do not are losers and, so the saying goes, Europe is losing because in Europe powerful barriers hinder readjusting, reducing, and moving the workforce.

I will deal with the international labor law scenery as it relates to the ILO and the OECD, and I too will go a bit beyond 1982.¹ Mr. Yemin does not discuss the international scenery at any depth or any length in his book. I am not, however, going to discuss the European Communities since eminent representatives of European Communities are present here.

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¹ See INTERNATIONAL ENCYCLOPEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS: COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS, 129-48 (2d ed. 1985).

As far as the International Labour Organization is concerned, developments are in a sense, given the mood of the times, rather amazing. The ILO adopted an important convention on termination of the employment contract; part 3 of that convention is particularly important. In a sense, it is amazing that this convention was accepted in 1982. I will also refer to the ILO Tripartite Declaration of 1977² and the OECD Guidelines of 1976³, both concerning multinational enterprises. It is essential to emphasize that both international instruments, which are addressed to multinational enterprises, apply to national companies as well. This means that in countries such as the United States which lack legislation comparable to what exists in many European countries, for example concerning closures or collective dismissals, American trade-unions and workers could very fruitfully refer to those instruments when no notice of closure or dismissals is given, or when no consultations have taken place, and consequently engage in follow up procedures.

I will discuss first the restriction of the managerial rights, second relations with worker representatives, and third, relations with public authorities. Regarding restrictions on managerial rights, I can be rather short. The international instruments contain a declaration of intent regarding job security. Employers should, the international instruments indicate, if possible, provide stable employment; parties should seek to avoid or minimize dismissals as much as possible. There is evidently no restriction, though, of the right to close down or to effectuate workforce reductions. The issue of the right of management to close down was, however, discussed at the occasion of a Dutch case, which was introduced by the Dutch Government in the OECD's International Investment and Multinational Enterprises committee (IME). Batco-Amsterdam was alleged to be a local profitmaking unit and when Batco wanted to close down the Amsterdam plant the question arose whether it was acceptable under the OECD Guidelines to close a profit-making unit of an enterprise. The IMC committee was of the opinion that the potential for profit-making is difficult to assess and clarified that the OECD Guidelines do not intend to freeze certain given situations. According to the committee, multinational enterprise can close a subsidiary, even a profitable one, but

² International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, adopted Nov. 16, 1977, *reprinted in* 17 I.L.M. 422 (1978).

³ Organisation for Economic Cooperation and Development, Guidelines for Multinational Enterprises, *annexed to* Declaration of 21 June, 1976 by Governments of OECD Member Countries on International Investment and Multinational Enterprises.

should in doing so consider national objectives. For instance, if the enterprise had promised to create jobs, then it should consider whether it should live up to its promise.

Second, I should discuss relations with workers and worker representatives. Worker representatives are entitled to information and consultation — for example, information on reason for closure or dismissals, on numbers, when termination will take place, and so on. The most important question is obviously, when. Workers are not so much interested in the history of the enterprise, but rather want to influence coming decisions as the ILO says, “in good time,” or as the ILO recommendation says, “as early as possible.” The OECD Guidelines recommend giving reasonable notice. The OECD’s IME committee clarified in the Badger case that “as early as possible.” means before a decision is made, except when this would be impossible for imperative reasons of business confidentiality. But consult on what? Well, rarely on the decision itself, but mostly on the consequences. The consultation should address ways to avoid dismissals, if possible, and otherwise on ways to mitigate their adverse effects. The conclusion is clear: the international instruments do not restrict managerial rights, but there is a duty to inform worker representatives in advance and a general rule to consult on the effects.

A related problem concerns the access of employees to representatives of management who are entitled to make decisions. The OECD discussed this in connection with the Viggo case. Viggo is a subsidiary of a British multinational based in London. Viggo wanted to reorganize. The local employer started to negotiate, but the union insisted on bargaining with top management. Real decisions, they said, were made in London; therefore the unions wanted to negotiate at that level. The OECD clarified the relevant OECD Guideline by saying that there are various methods by which employees can have access to decisionmakers under paragraph 9 of the Employment chapter of the OECD Guidelines. The OECD said basically this: management can do three things, it can delegate authority to the local manager who then becomes a decisionmaker, it can send someone from the top to join the local bargaining team, it can have direct relations between headquarters and local employees. In the Ford Motor case — closure of Ford Amsterdam — the question was raised whether employees are entitled to consult with representatives of management who have authority to make decisions on ways to avert or mitigate adverse effects of closures. The IME committee said that employees are entitled to consult with decisionmakers as well.

Another problem is one of the greatest importance. In the Badger case (Badger-Antwerp-Belgium) a subsidiary went bankrupt because it did not have enough money to pay for the compensation legally due employees in case of closure. The OECD's clarification given in connection with that case implies that if the relevant decisions are made at the top, that is if there is centralized management so that the local unit is not really autonomous, top management should take responsibility for the consequences at the local level, and in this case pay the compensation for dismissed employees.

The OECD has also discussed "languages." In that case, a leading multinational bank allegedly refused to negotiate in Danish in Denmark. The OECD suggested that employees should be informed, consulted, and be entitled to negotiate in a language they effectively understand. Otherwise, interpretation should be provided.

If I may summarize, managerial freedom remains full, provided information is given beforehand and consultation on the consequences takes place in good time, and provided there is access to decision-makers, with possible co-responsibility of the parent for the debts of the subsidiary.