

Developing alternatives

The failure of current labour laws to protect workers against retrenchments from plant closure, outsourcing, and the like, is well known and well documented. Five years after the introduction of the new LRA, a common trade union complaint is that section 189 does not allow workers to defend themselves against job loss from restructuring.

Further, the battleground for fighting the retrenchments is the Labour Court. The problem is that the Labour Court does not question the economic rationale behind the employer's motives in making its judgments. Instead it is mainly concerned that workers' rights as laid out in the LRA are not transgressed in the process.

Legal options

Often trade unionists find themselves in a situation where two clear options remain open in fighting retrenchments, using section 189 of the LRA. In brief, these are:

- ❑ ensuring that management follows the correct consultation procedure outlined in the LRA;
- ❑ putting forward viable alternatives to management proposals and forcing management to adopt them instead of their own retrenchment proposals.

While neither option is a powerful tool for fighting retrenchments, trade unions have used the first one to some success. A good

Gary Phillips and David Jarvis explore how research may assist unions' attempts to stop or minimise retrenchments.

example of this is the high-profile case where NUMSA forced Toyota in KwaZulu-Natal to reinstate hundreds of retrenched workers because the company did not follow the correct retrenchment procedures.

The second option, however, has proved to be less useful to trade unions as they have struggled to put forward workable alternatives that will prevent retrenchments.

TURP's experience

The Trade Union Research Project (TURP) has assisted a number of trade unions in responding to restructuring. It has also attempted to develop alternatives to retrenchment. The issues are complex and potentially interventions can be constrained by:

- ❑ costs involved investigating alternatives, which cannot be covered by unions;
- ❑ the need for industrial and production engineering analysis, which are in short supply to labour-friendly organisations;
- ❑ the need for specialised accounting and costing knowledge, which are also in short supply;

- limited access to information on the company and industry, which is often required at very short notice and cannot be found to the necessary detail in existing research.

The key learning experience for TURP, however, has been that alternative restructuring proposals that are put forward cannot work on their own. Any proposal needs to be coupled with worker power and union organisation. The union strength to negotiate time and resources from the company is perhaps the most important element in the process of developing alternatives, together with the strength of the union to make the company consider the alternatives. Many times, employers do not take the proposals seriously and, as the procedures take their course, frustration with the law mounts.

Good combination

In one case in March 2000, a good combination of strong alternatives and union strength proved that trade unions can influence restructuring that leads to retrenchment processes.

The company in question was a food processing plant in Durban's harbour area, owned by a transnational corporation. The company claimed it was experiencing problems and had set up a committee to investigate ways to improve the situation. The shopstewards did not participate in the committee. They felt that 'this was a formality and the company would eventually come with closure', which is what happened.

The company had then informed the trade union that it intended to close the Durban plant in a few months time and consolidate its operations at its Gauteng-based sister plant. A few hundred workers stood to lose their jobs. The reasons the company gave were common to many

rationalisation exercises:

- an oversupplied market;
- increased low cost imports allowed through rapid tariff reduction;
- dumping of low cost, low quality products by foreign competitors;
- changing market taste, which decreased market demand;
- global restructuring and rationalisation by the parent company;
- expensive locally sourced raw materials;
- poor technology;
- unstable African export markets.

The result was that the company could not compete on a rand per ton basis with growing low cost imports and a low international price for raw materials. The company claimed it had no choice but to:

- cut down its production volumes;
- discontinue the production of some products;
- sell off some of its assets;
- close its Durban plant.

This rationalisation, the company claimed, would lower its costs and give it a better rand per ton figure.

'As far back as 1996, the company had been preparing for restructuring,' the senior shopsteward said, 'so we were not surprised that they proposed closing the plant'.

The union managed to negotiate that the company allow the union to conduct its own research and develop its own proposals. It also negotiated that it could have access to all necessary information that would allow it to do the research and develop alternatives. The union secured eight-and-a-half days for TURP to conduct research for the union, at the company's expense, in order to develop an independent assessment of the plant's state and the validity of the company's proposals. Thereafter, negotiations around the closure of the plant were to start.

Information

As a part of the agreement between the union and the company, TURP had access to:

- the annual costings of the different departments and sections of the company for 1999 and 2000;
- interviews with management and workers to gather information on the company;
- the production floor;
- the company's strategic restructuring plan.

TURP staff conducted research into the company's strategy globally and the state of its industry and products' markets in South Africa and the world.

Reference group

At the outset, TURP formed a reference group made up of the shopstewards at the plant and their organiser to which TURP would report. It submitted an investigation plan to the reference group and after discussion the reference group approved the plan. The reference group was set up to ensure that the shopstewards provided political control and direction to TURP's intervention and to provide opportunities for capacity building. The organiser provided key direction and facilitated TURP's input.

Mid-way through the investigation, TURP reported some findings and proposed initial alternatives to the reference group. They discussed the proposals and the reference group gave further direction to the researchers. Finally, TURP presented its findings and alternatives to the plant's shopstewards'



Proposals to retrenchment need to be coupled with worker power and union organisation.

council, which was preparing for negotiations the following day.

Alternatives

The ability of the union to negotiate the access that it had, greatly assisted TURP in gathering sufficient information to challenge some of the company's claims and develop alternatives to the plant closure proposals. TURP's investigation revealed the following:

- the drop in international prices was temporary and as a result of shocks to the market rather than a sustained long-term decline;
- the company's domestic market was not in decline;

- exporting had not been sufficiently explored by the company;
- rand per ton costs were being raised by a deliberate company decision to lower volumes;
- however, during 1999/2000 the company appeared to be reaching the rand per ton target prior to any substantial restructuring;
- the improvement in the company's margins from closing the Durban plant would be insignificant;
- it would be less expensive to upgrade the Durban plant and introduce 'best practices' than to close the plant;
- the company was not fighting for their markets, but rather appeared to be letting certain markets slip;
- it appeared that, for a number of years, the East Rand plant had been groomed while the Durban plant was neglected suggesting that the proposal to close the Durban plant was more related to a company growth strategy than to correcting current performance;
- a number of expensive investment errors by management contributed to problems at the Durban plant;
- the market conditions that existed when the company wrote its restructuring plan had changed, but in spite of the plan's conclusions being outdated, the company was still pursuing them;
- there were a number of benefits to the company in retaining two plants, particularly one situated in Durban's harbour area.

Management could increase certain profitability ratios/measurements through reducing assets. But this would only be a short-term gain since it would show increased profits only for the year it calculates the net profit.

TURP argued, instead, that the company should focus on improving the efficiency

of the assets to improve the profit margins.

At the core of TURP's counter-proposals was that there was more than one way to improve productivity and reach the required rand per ton target. Therefore, we argued that not all alternatives to retrenchment had been considered.

Too often, companies improve their productivity through 'asset reduction' (reducing inputs to production) rather than looking for ways to improve 'asset efficiency' (finding better ways to use the assets to increase outputs without reducing inputs). A focus on asset reduction, although a quick fix, not only has negative social consequences but also reduces the productive capacity of the economy and is a form of disinvestment.

At the closure of TURP's final presentation to the shopstewards' council, the union organiser commented that it would not be information that won the day, but the strength of workers. Tough negotiations followed and the senior shopsteward felt that the union fought well.

The proposal for the closure of the plant was delayed by 12 months and the company was obliged to consider the development of a detailed social plan should retrenchments be unavoidable at that time - something not done by the initial proposal for plant closure.

At the time of writing, the company planned to close the plant in 2001. The union had managed to negotiate that retrenchments would be avoided through:

- offering early retirement to employees over 50, together with a few years pay;
- redeploying employees from the affected plant to other plants and subsidiaries owned by the company;
- forcing the company to fund the re-training of affected employees to start

their own businesses (social plan measures);

- getting 20 employees involved in the Department of Labour programme for re-training of workers for the hospitality industry.

Role of research

A big question for TURP at the intervention was, to what extent did the process of developing alternatives strengthen the hand of the shopstewards, particularly since the plant closure was not stopped?

The senior shopsteward felt 'the research proved to us what we had already believed: that closing the plant had nothing to do with profits or performance but was a result of restructuring plans. The company could have been turned around. Two other Durban factories had embarked on measures to improve productivity, but not our plant. It showed that the management knew what they were doing all along.

The research helped us to look at all scenarios and other measures that could be used. It will help us to act quicker in the future when confronted with a low international price.'

A problem identified by the senior shopsteward was that the committee set up by management was 'left to its own devices'. He felt it was good to know that organisations like TURP were available in the future to participate with the union in such committees to give a labour perspective on restructuring issues.

Developing capacity

The campaign to amend the LRA to provide greater protection for workers against retrenchments is an important one with which unions should press forward. However, until then, and perhaps even with a stronger section 189, the

development of alternatives to management proposals is essential and is a major weakness in trade union ability to respond to restructuring.

The process of putting forward alternatives is a difficult one and needs to be carefully worked out. One of TURP's fears is that we are brought in at the last minute, not provided with much information and expected to assist unions in producing viable alternatives. There is a danger that some employers might claim that consultation obligations have been fulfilled while the process has produced little for workers. This makes conditions of access to information and worker leadership of utmost importance.

Labour and its service organisations, including TURP, desperately need to improve their capacity in the area of offering alternatives to avoid situations where interventions are too little, too late. There is a need to break into fields of knowledge often perceived of as 'management disciplines' such as industrial and production engineering, accounting and process technologies. Too often, advice and interventions are pitched at a macro, generic or political level and alone are woefully inadequate to assist shopstewards in their deliberations at the workplace.

Not only can we strengthen labour's ability to defend its members against job loss from restructuring but can also develop our capacity to find ways to restructure South African workplaces for job creation and transformation. ★

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