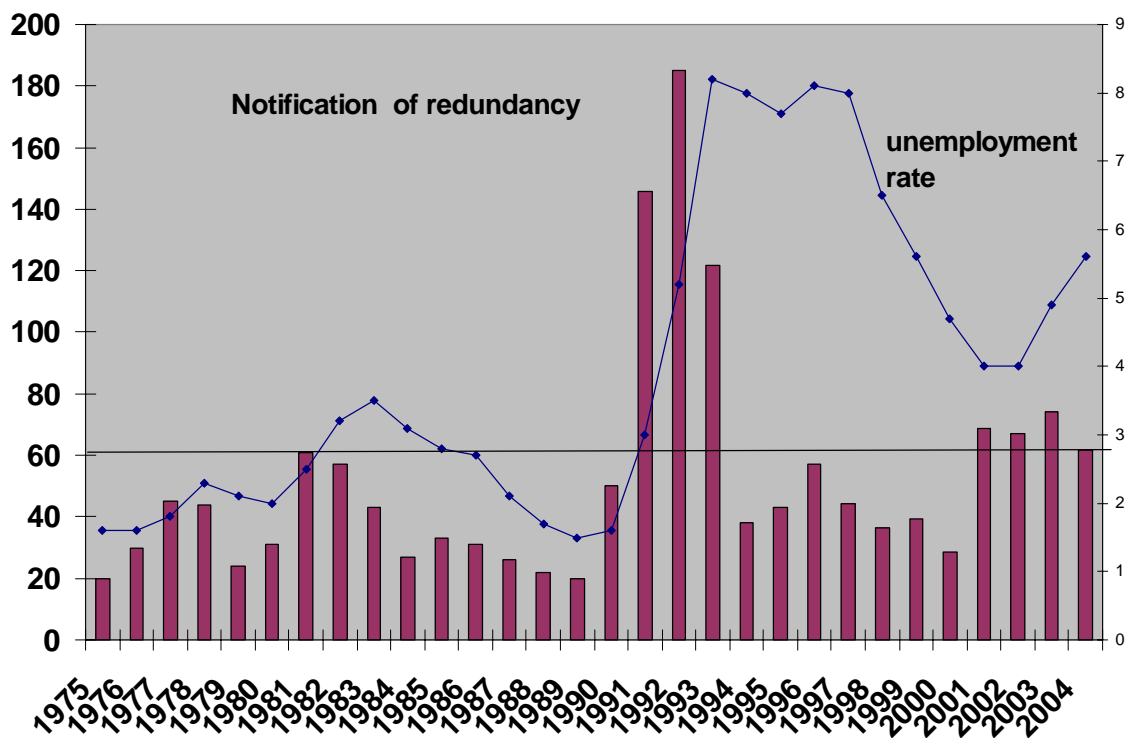


RESTRUCTURING IN SWEDEN

Importance of redundancies and dismissals

In recent years restructuring has been an important feature of the Swedish labour market. Over the period of 30 years there is unquestionably a higher level of notification of redundancies in the 15 years after 1990 than the 15 years before. This is mainly due to the unparalleled level of job loss in the early 1990s. Perhaps one should not focus too much on the early 1990:s as they may well have been exceptional years and not provide the basis for conclusions on long-term trends. The horizontal line drawn at the level of the pre-1990s peak of job loss in 1982 illustrates that the recent spate of redundancies since 2000 are somewhat higher than the recessions of the late seventies and early 1980s. This gives some indication that the level of job loss may be somewhat higher today than previously was the case.



Source: Donald Storrie, 2005.

The critical issue is however, whether the notification data is consistent over time. There is no indication of significant changes over time as regards definitions and the internal treatment of these statistics in the National Labour Market Board. However there is some scattered evidence that the time series may actually *underestimate* job loss since the mid 1990s. Our impression is that this may also be a trend in other countries. These recent developments only further underline the suitability of identifying job loss at restructuring by using establishment level employment levels.

Employment regulation and actors

Legislation

Swedish employers and the country's trade unions have a long tradition of regulation through collective agreements. During the first decade of the 20th century there were several attempts to draw up legislation on the contract of employment, including regulation of dismissals, but none of these attempts were successful. Instead, restrictions of dismissals were laid down in collective agreements.

An important step towards stronger employment protection was taken in 1964 when the basic agreement of SAF and LO was amended. From then on, the employer needed a reasonable ground (saklig grund) for dismissal. From hereon dismissal conflicts could be submitted to the Labour Market Board for arbitration, and fines on employers violating the rules could be imposed. Furthermore, rules were introduced for the terms of notice and for the order of priority in case of redundancy.

In the beginning of the 1970s these rules were formalised in the Employment Protection Act (Lagen om anställningsskydd, LAS), which came into force in 1974. LAS is built on two principles: (1) employment for an indefinite period of time is the normal type of employment and (2) dismissals must be based on a just cause.

The question of what is a just cause is treated differently in two types of situations. In the Swedish employment protection, a sharp distinction is made between redundancy ('arbetsbrist', literally: lack of labour) and personal grounds (personliga skäl). In case of redundancy, the judgement of the employer is basically decisive. It is up to him to decide how many workers he wants to employ. As can be concluded from case law, it is very difficult to combat redundancies with arguments derived from the just-cause requirement. Redundancies are too closely related to the managerial prerogative to allow for a strict judicial test. If the employer succeeds in convincing the court that dismissal was necessary, his case will usually be accepted, unless he has neglected his duty to transfer, i.e. to seek other employment for the worker within his enterprise. In rare cases, redundancies are not accepted by the Labour Court.

Also, the employer has the obligation to try to prevent redundancies and he must account for the reasons for his economic decisions resulting in redundancies. The Labour Court task is to assess objectively whether valid reasons do in fact exist. Dismissals for personal reasons are subjected to closer judicial scrutiny.

The Act also contains provisions on notification periods, priority rules in case of redundancy, and judicial remedies. This legislation marked a turning point in the history of the Swedish labour law. First, it introduced fundamental restrictions on the employers' freedom to dismiss. Second, it constituted a deviation from the tradition of regulating labour relations through collective agreements.

Another important legislative arrangement established in the early 1970s was the Co-determination Act, which obliges employers bound by collective agreements to consult the unions on all important changes in their enterprises or in the labour relations of their workers. The employer is required to present, in writing, the following information, as soon as the employer has called for consultation, i.e. at an early stage;

- The reason for the proposed dismissals,
- The number of employees who will be affected and their employment category
- The number of employees who are normally employed and the employment categories to which they belong,
- The planned duration of the dismissal process
- The method of calculating any compensation to be paid in conjunction with dismissals in addition to that which is required pursuant to applicable collective bargaining agreement.

In general Works councils do not exist in Sweden. However, in companies with European operations European Works Councils are beginning to emerge.

Trade unions

Trade union membership is high in Sweden. In 2000 almost 80 percent of the labour force were members of a trade union. The most important trade unions are LO (Lands Organisationen), TCO and SACO, (The Swedish Confederation of Professional Associations) and SIF, (the Swedish Union of Clerical and Technical Employees in Industry).

The role of the union representatives in restructuring processes can take a variety of shapes depending on the differences in union tradition at the different workplaces, the various interests of the union members and the personal interests and ambitions of the elected union representatives. The active role which the unions are expected to play in order to facilitate a successful restructuring process is stipulated by the co-determination act. Trade union representatives are often involved from the very beginning as part of the organisations executive and play an influential part in the choice of restructuring strategy.

Public actors

The public employment service has historically had an important role in Swedish active labour market policy. It was not only initiated as a way to mitigate the negative consequences of restructuring of the economy, it was also given a role to support such processes.

Today however, the role of the public employment services (PES) in restructuring processes is rather limited. When an organization decides to reduce their workforce they are required to notify the county labour board (Länsarbetsnämnden) at least 30 days in advance. This obligation applies to collective redundancies involving roughly ten percent of the workforce. The county labour board has the task to collect statistics on notices and thereby has some early warning concerning what goes on in the labour market. The notification must, according to the Employment Promotion Act (1974) include relevant information regarding the number of redundant workers, the cause of redundancy, and at a later stage also the names of those to be dismissed and the consultations entered into. This act has been amended by January 1995 to meet the requirements of the EC directive.

Most often the local public employment service cannot do anything particular. Redundant workers are not the target group of the activities of public employment services. The activities are primarily designed to care for particularly vulnerable groups who are already unemployed or suffer long-term unemployment. Neither can the redundant worker ask for particular activities from the PES. But when the county labour board receives a notice of a large-scale dismissal it can set up an employment exchange office at the affected workplace. The role of the public employment service is merely to provide information services to the redundant workers, most often through a internet based information system.

Job Security councils

A peculiar feature of the Swedish labour market is the so-called Job Security Councils. The background of the establishment of job security councils was the massive job loss of white-collar workers in the 1970s. The public employment service was not regarded as providing sufficient support for white-collar workers to find new jobs. Therefore social partners agreed upon establishing a particular organization that would provide services to this group of workers. Over time such organizations have been established in most segments of the labour market. Historically, the blue-collar workers trade union (LO) has regarded the public employment services as providing sufficient support for their members, but since 2004 even blue-collar workers are covered by a job security agreement. In all about two million employed persons in Sweden are included under such agreements (50 agreements altogether).

The restructuring agreements are formulated in a general manner and give the actors a high degree of freedom in the translation of the agreements in practice. The *Job Security Councils* that administer and facilitate the support are each constituted by a number of boards that in more or less precise terms decide the scope and content of the support that is granted. The boards are made up by representatives from the different partners involved in the agreement. Half of the seats are allocated to employer representatives and the other half to partners representing the employees.

Job Security Agreements are collective agreements that are intended to give employees who have lost their job due to work shortages support in their efforts to find new employment. They do so by being actively involved in the work with restructuring, which can be initiated either when the notice of dismissal is given, or in some cases even prior to that. Under certain circumstances the agreement even makes provision for a financial compensation as complement to the general unemployment benefits exceeding the so-called *A-kassataket* (the maximum amount of unemployment benefits a person is entitled to).

Should a person find new, though lower-pay employment, the Job Security Agreement makes provisions for the payment of the difference over a limited period. These activities are financed through fees from the companies concerned that are calculated and expressed as a percentage of the sum of salaries and wage (0,03% of the wage bill).

Institutions and procedures

The virtual omnipresence of collective agreements on the Swedish labour market means that this is an obligation for nearly all employers. In LAS (article 29), a reference is made to this general obligation to consult in case of redundancy. This obligation holds irrespective of the number of workers to be dismissed. Consultations must be held even if only one worker is made redundant. The consultations are intended to facilitate the search for alternative solutions to dismissals, as well as to discuss the ranking order in relation to priority rules. The duty to consult the unions in case of collective redundancies and transfer of operations has been extended in order to comply with EC requirements. This means that in those cases the employer also must consult the unions with which he has no collective agreement.

While the previous agreements were formalised in law, the development since the early 1990s has been characterised by a resurrection of collective agreements as the means for regulating labour relations. An important condition for this development is the semi-dispositivity of the Swedish employment protection legislation. It means that there are several provisions in LAS that are only half mandatory allowing for deviation by means of collective agreement.

Traditionally, such deviations have been negotiated or approved at so-called 'central' level by the unions and employers' organisations covering a whole branch of industry. Often, the central unions have delegated the power to negotiate certain deviations from LAS to the local union representatives. In 1996 the legislation was amended. The amendment implied that certain deviations from LAS still required the consent of the 'central' organizations. These concerned the notification periods, the requirement to notify a worker about the termination of a fixed-term contract at least one month in advance and the duty of the employer to negotiate about priority of hiring in cases where the rules for the 'right to return' of formerly-dismissed workers apply. In certain other cases, deviation can be agreed locally, but only under the condition that the employer is bound by a 'central' collective agreement. Thus, the legislator hoped to promote the conclusion of collective agreements especially for small firms, where this was not yet common practice. Such local deviations are allowed with regard to the LAS provisions on fixed-term contracts, trial periods, priority rules for redundancies and priority rules for the right to return.

The changing conditions allowing for deviations from the employment protection legislation have had an important impact on the practice of restructuring. There has been an increase in variation of methods and procedures for restructuring adapted to local conditions and the whole structure of labour relations has changed. The job security councils have expanded and new actors entered the labour market.

Critical issues

First, there are several examples of innovative restructuring practices providing generous conditions for workers where employers take on more responsibility (than required by law) for supporting dismissed workers to find new jobs. An important development is the so-called "early interventions", where dismissed workers are actively involved in job-search-programs at an early stage of the restructuring process. The structure of these programs is generally negotiated between social partners.

The employer offers re-employment programs and/or severance payments and in exchange trade unions offer opportunities to deviate from the provisions in the labour law. The outcome of such negotiations varies from case to case and is primarily affected by the bargaining positions of the social partners. Looking at the Swedish context it becomes especially interesting to examine the length and intensity of the different restructuring programs. There is also a great variation on the content of the activation packages (severance payments, early retirement, training or activation measures), most often dependent on the local labour market conditions, and considerations of the chances for workers to find new jobs.

There has been an increased variation of actors providing services to employers complementing and sometimes competing with traditional actors. There has been an expansion and growth of Job Security Councils, which are based on central collective agreements between social partners.

Private multinational and national outplacement companies have entered the previously nationally regulated Swedish temporary placement, recruitment and outplacement market and Swedish public actors have to a larger and larger extent entered the private deregulated market through the backdoor so to speak, by means of wholly-owned subsidiaries. This has also implied a reduced role of the public employment service in the immediate practice of restructuring.

Thus, the development in recent years has resulted in the establishment of a relatively tight network of public and private actors working together to provide a buffer for employees exposed to redundancy and a large variety of practices and principles have emerged to deal with restructuring problems on the Swedish labour market.

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