Collective Bargaining Consultation: Case Study
(Workforce restructuring and restoration of management rights)

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I. Introduction

In August of 2023, I was asked to provide labor consulting for a small manufacturing company in Ulsan with 150 employees (hereafter referred to as "the Company"). The Company wanted to reduce its two-shift production line to a single-shift line. They needed help with restructuring the surplus workforce and revising the collective agreement that seriously restricted their management rights.

This task was quite challenging and could potentially escalate conflict, causing significant damage to the relationship between labor and management. Notably, in the company's 74-year history, the production workforce had never been restructured. The employees on the production line were members of a union with a union shop. Typically, workers hired by the Company worked until retirement age if there were no major issues that cropped up.

The clauses in the collective agreement that restricted management rights had been conceded by the Company over more than 20 years. Because of these clauses, the Company couldn't employ temporary workers for more than three months. Any new or revised company regulations required prior agreement with the union. Even temporary reassignment of workers during peak production times required prior consultation with the union. These constraints were gradually eroding the Company's competitiveness.

Despite these challenges, I was able to successfully guide the Company through the restructuring and restoration of its management rights as desired. The restructuring was completed through voluntary retirements, offering severance packages to all affected employees without forced layoffs. Additionally, we recovered the management rights through persistent negotiations with the union, ultimately convincing them to agree to the needed changes.

In this article, I will explain the process of this restructuring and the recovery of management rights in detail.

II. Consulting on Restructuring

1. Need for Restructuring

The Company was facing a crisis due to hostile changes in both internal and external environments. Externally, the domestic distribution of low-cost Chinese products, rising raw material prices, and the economic downturn caused by COVID-19 led to a continuous buildup of the Company's inventory. Internally, the average age of workers was high, resulting in higher labor costs than for the Company's competitors. The market demand for products from the Company's main AA line had decreased significantly. Without immediate restructuring to reduce labor costs, the Company was at risk. The proposed solution was to convert the two-shift production line to a single-shift system and let go of the excess workforce.

2. Restructuring Process

I was authorized by the Company to engage in collective bargaining with the labor union. During the first round of negotiations that began on September 7, 2023, the Company suggested finding a mutually agreeable way to deal with the product line in deficit before discussing specific terms. Since January 2023, the Company had not hired any new personnel, had offered voluntary retirement packages to 17 office workers, and adjusted personnel outsourcing. The Company notified the union of its plans to reorganize the two-shift system into a day shift and offer voluntary retirement packages to the surplus workers.

The Company faced a major challenge in determining an appropriate amount for the voluntary retirement package. Office workers, who were also part of the restructuring, received a three-month severance package upon retirement. Therefore, the Company proposed starting negotiations with the labor union on voluntary retirement packages of six months' pay for the excess production workers. However, this labor attorney advised that modifying the severance amount midway would be difficult and considering that the average service period of the current production workers was 20 years, a minimum of one year's pay should be offered as the voluntary retirement package. Following this suggestion, the Company adjusted the severance package to ten months' pay.

On September 11, 2023, the Company posted a notice inviting applications for the voluntary retirement packages. However, the union opposed this unilateral action and, after a month, no one had applied. The Company then explained to the union the necessity of restructuring and sought their input on selecting layoff candidates. The union maintained that the Company's overall sales were not in deficit, only specific production lines were, and thus rejected the restructuring. However, the Company argued that the widening deficit due to its continued production of non-competitive products posed a significant threat to the Company's sustainability.

On October 5, the Company announced a restructuring plan under Article 24 of the *Labor Standards Act* and sought the union's input on selecting layoff candidates. The criteria for selecting 25 candidates were based on ten years of data, including positive factors like disability status, veteran status, number of dependents, model employee status, contribution to duties, performance evaluations, and essential skills. Negative factors included annual income, unauthorized absences, disciplinary records, performance evaluations, safety incidents, sabotage, and relevant work processes. The union opposed the unilateral announcement and requested immediate suspension of the restructuring plan, asking that the number of layoffs be reduced from 25 to 15 and to remove "contribution to duties" from the criteria. The Company agreed to reduce the number to 20 and exclude the contribution to duties criterion. The Company and the union jointly decided on the layoff criteria and number.

The Company then informed the selected employees of the criteria and asked them to apply for voluntary retirement. Faced with the possibility of being laid off without compensation by December 10, the employees opted to accept the severance package and resign. Fortunately, all 20 targeted employees accepted voluntary retirement, allowing the restructuring to be completed without forced layoffs.

III. Collective Bargaining towards Recovering HR Management Rights

1. The Need to Recover HR Management Rights

The Company faced significant operational difficulties due to numerous clauses in the collective agreement that infringed on its management rights. In the harsh realities of the manufacturing industry, small and medium-sized enterprises must maintain international competitiveness or risk being overtaken by newer competitors. The Company's products, particularly those supplied to shipyards, were increasingly being replaced by cheaper Chinese and Southeast Asian alternatives. Although the Company still maintained a quality edge due to its advanced technology, this advantage was shrinking. Infringement on management rights through the collective agreement posed a critical threat to the Company’s survival.

2. Process of Recovery

The restructuring was completed through collective bargaining between September 7 and October 31, 2023. On November 9, 2023, after restructuring had been agreed upon, the union delegated its collective bargaining authority to the Metal Workers' Federation of the Korean Confederation of Trade Unions (KMWF), whose officials participated in the negotiations. Between November 9 and 30, 2023, the Company held four meetings requesting amendment of the clauses infringing on its management rights, but the union rejected these requests, citing their hard-earned rights over the past 20 years. Realizing that normal negotiations would not restore its management rights, the Company announced that the collective agreement would be terminated on November 23, 2023. According to Article 32, Paragraph 3 of the *Trade Union and Labor Relations Adjustment Act*, if collective bargaining for a new agreement is ongoing after the previous agreement's expiration, either party can terminate the old agreement with six months’ notice.

The union, supported by the KMWF, organized two large-scale demonstrations at the Company's headquarters in Seoul, requesting a meeting with the Company head and withdrawal of the termination notice. The Company refused, stating that negotiations were handled by their labor attorney and clarifying that the termination notice aimed to restore its management rights, not to undermine the union.

During this process, the union applied for mediation three times with the Labor Commission to obtain the right to strike but did not proceed with a strike. From November 20 to December 21, 2023, during the mediation, the union indicated that it might accept some restoration of management rights if the collective agreement included a clause ensuring job security. The Company accepted this, agreeing to the following job security clause: “The Company cannot terminate employees without their consent without a legitimate reason.” This concession led the union to adopt a more flexible stance and propose a compromise on management rights. However, the final agreement on specific clauses, including Article 27 (Transfer, Subcontracting, and Conversion to Outsourcing) and Article 30 (Establishment and Amendment of Regulations), was not reached through mediation.

On April 12, 2024, the senior union officials applied for another round of mediation, aiming to finalize the collective agreement. The Company participated in this round of mediation, informing the union that the collective agreement would be terminated on April 23, 2024, and urging the union to cooperate. The union president decided to exclude senior union officials and finalize the collective agreement directly with the Company.

Through this collective bargaining process, the Company successfully recovered its management rights through negotiations with the union. At the same time, the union maintained the existing working conditions and achieved some improvements.

3. Details of Restored Management Rights and Improved Working Conditions for the Union

(1) Restored management rights

Restoration of the Company's management rights involved reclaiming its inherent managerial rights that had been conceded to the union over the past 20 years. This was essential for the Company to remain competitive. Here are the specific changes:

	Current	New Agreement
1) Probation Period and Temporary Employees	The Company's 3-month probation period for new hires could not be extended, and temporary employees automatically became regular employees after 3 months.	The Company can set a probation period of up to 3 months for new hires and extend it by another 3 months based on work attitude and performance.
2) HR Principles	The Company had the authority over employee HR decisions, but had to consult with the union before changing employee positions, transferring or promoting employees, or increasing salary.	The Company retains authority over employee HR decisions and will notify the union of any changes in employee position and prior to transferring or promoting employees or increasing salary.
	The Company must consult with the union before temporarily reassigning employees due to short-term vacancies or production plans.	The Company can reassign employees due to short-term vacancies or production plans without prior consultation.
3) **Disciplinary**	Disciplinary actions and	<u>Disciplinary action</u>: For any

Action/Dismissal	dismissals were only possible for listed infractions.	violation of employment rules or comparable misconduct. Dismissal: For reasons making it socially unacceptable to continue the employment relationship.
4) Downsizing	③When restructuring, foreign workers were first to be laid off.	Clause ③deleted.
5) Transfer, Outsourcing, and Subcontracting	The Company had to consult with the union before transferring the whole or part of the business, or converting any department to outsourcing or subcontracting, to ensure job and livelihood security.	If the Company intends to transfer all or part of the business to another party, outsource part of a department, or convert it to subcontracting, it must notify the labor union in advance and provide a sufficient explanation regarding the maintenance of related employees' livelihoods. If necessary, the labor union may request additional explanations from the Company regarding this plan.
6) Establishing and Amending Regulations	The Company had to obtain agreement from the union before any regulations related to union members could be established or amended.	The Company must listen to the opinions of the majority of employees before establishing or amending any regulations related to union members and must obtain majority consent if the changes are disadvantageous to employees.

(2) Improved Working Conditions for the Union

Despite not gaining a wage increase due to the restructuring, the union managed to maintain existing working conditions and improve certain benefits.

	Current	New Agreement
1) Salary	-	Wage increase frozen. One-time settlement payment of KRW

		1.5 million. Performance bonus: 80% payout.
2) **Bonus**	Summer vacation allowance: KRW 900,000	Summer vacation allowance: KRW 1 million
3) **Welfare Facilities**	Annual welfare card: KRW 900,000 -	(Increase) Annual welfare card: KRW 1 million (New) Birthday gift card: KRW 100,000
4) **Tuition**	Existing full tuition support. -	Existing full tuition support maintained. (New) Enrollment bonus: Elementary (KRW 200,000), Middle school (KRW 300,000), High school (KRW 500,000)

IV. Evaluation of Collective Bargaining Consultation

1. Implementation of Restructuring

The Company restructured a specific uncompetitive production line, converting the two-shift system to a single-shift system. Restructuring the production workforce was particularly challenging and met significant resistance. The following four factors were crucial to the Company's ultimate success through voluntary retirement: First, there was a shared recognition of the ongoing deficit caused by non-competitive products, which led to the initial restructuring of office staff. Second, despite the financial deficit, the Company offered a generous 10-month severance package for voluntary retirement and provided support through a related outplacement program, including unemployment benefits and tailored career planning. Third, during the selection process for restructuring candidates, the Company considered the union's feedback, reducing the number of targeted employees and adjusting the selection criteria, thereby ensuring mutual agreement on the list of candidates. Fourth, the Company transparently communicated the need for managerial layoffs to all employees and took necessary actions, leading the affected employees to accept voluntary retirement as the best option.

2. Recovery of Management Rights

The union was firmly opposed to relinquishing the management rights it had secured over many years. Despite this, the Company was able to recover its rights due to the following three factors: First, by notifying the union that the collective agreement would be terminated, the Company created a sense of urgency. If no agreement were reached within the six-month period after termination, not only would the management rights be restored, but the union's rights would also be at risk. Second, during the process of letting go of the 20 employees, the union members prioritized job security over improving working conditions or protecting their existing rights through strike action. Third, the Company demonstrated its sincerity by participating diligently in collective bargaining and freezing wages but improving other working conditions, thereby gaining the union’s trust.

V. Conclusion

This incident of restructuring and recovering a company’s management rights through collective bargaining highlights the essential role of union cooperation in overcoming crisis within a business. The key to successful resolution of this consultation was the long-standing trust and mutual respect between labor and management. This trust was built over many years of collaborative effort and mutual understanding. It is hoped that, moving forward, this Company will continue to thrive in the global market through enhanced labor-management cooperation and will successfully navigate any future challenges.