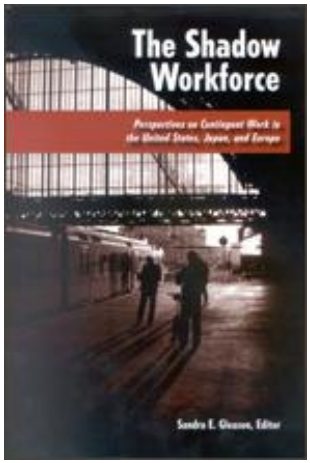
W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

Upjohn Institute Press

Union Responses to the Challenges of Contingent Work



M. Catherine Lundy
Michigan State University

Karen Roberts
Michigan State University

Douglas Becker
Visteon Corporation

Chapter 4 (pp. 99-134) in:
The Shadow Workforce: Perspectives on Contingent Work in the United States, Japan, and Europe
Sandra E. Gleason, ed.
Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2006
DOI: 10.17848/9781429454889.ch4

4
Union Responses to the Challenges of Contingent Work Arrangements

M. Catherine Lundy
Michigan State University

Karen Roberts
Michigan State University

Douglas Becker
Visteon Corporation

There are several terms for contingent work and the activities surrounding the use of contingent workers. Some of the most common terms are strategic staffing, market-mediated work, temporary help, and alternative work arrangement. Furthermore, contingent employment arrangements take many forms, including agency temporaries who are paid by temporary employment agencies, contract workers whose services are contracted out by their employer, per diem or on-call day workers, part-time employees, independent contractors, and the self-employed.

We use the term *contingent work* in this chapter because it best characterizes the challenge this shift in the employment relationship poses for unions. The term *contingent workers* was coined by Audrey Freedman in 1985 to refer to employees whose work is contingent on the variability of employers' need for them (Nollen and Axel 1996b). This description expresses the essential problem for unions: the use of alternative work arrangements is largely an employer-driven phenomenon that will result in employment and earnings instability for many employees working under these arrangements.

Several measures of contingent work are available. What they have in common are the characteristics of short-term work, variability in work schedule, absence of either an implicit or explicit contract, and

lack of worker attachment to a particular employer (Nollen and Axel 1996a).[1] Additional characteristics often are noted, such as the involuntary nature of such arrangements, inferior pay and benefits, absence of promotion opportunities, and lack of opportunity to build human capital (Barker and Christensen 1998, p. 223).

Why Use Contingent Workers?

There are a variety of reasons for employers to use contingent work arrangements. Contingent workers can fill temporary vacancies, work during peak periods, and provide specialized skills needed for brief periods (Roberts and Gleason 1999). However, from the perspective of workers the use of contingent workers allows employers to pass on to workers the economic insecurity associated with changing product markets, new technologies, and the business cycle (Tilly 1992, p. 23). This is clearly antithetical to union goals of protecting worker earnings and job security. Historically, this goal has meant negotiating for long-term, stable employment for full-time employees, with little attention paid to part-time or other work arrangements (Cobble and Vosko 2000).

The use of different kinds of contingent work arrangements represents two broad strategies by employers to gain greater flexibility in their production methods. One is the very short-term, often ad hoc strategy of using individuals to fill particular jobs or accomplish specific tasks. Often workers under these arrangements are working side by side with traditional full-time workers. Examples of these arrangements include using workers from temporary employment agencies, casual day workers, and perhaps part-time workers. The other strategic use of contingent work typically involves a relatively large-scale, long-term reorganization of how work is done and who does it, and frequently is associated with efforts to reduce labor costs. Usually this results in work being moved off site. Examples of these arrangements include subcontracting portions of work previously done internally, the use of leased workers, and privatization in the public sector. From a union perspective, both of these strategies represent a common threat: the removal of work from the bargaining unit. This creates two serious problems: the workers are no longer subject to contractual protections, and the union is weakened by reduced membership.

How Do Unions Respond to Contingent Employment Arrangements?

The analysis in this chapter is based on the review of standard contract language in the industrial and service sectors and the public and private sectors. The assumption underlying our methodology is that collective bargaining agreements represent the negotiated resolution at a point in time of the classic conflict between management desire for full discretion in the use of labor and the union goal of protecting the welfare of its members. Even when unions and management are working relatively cooperatively, a tension exists between management desire for unfettered authority over labor and the union objective to protect workers from management discretion (Sloane and Whitney 1994, p. 458). Consequently, the content of the agreements is the operational articulation of that tension.

Unions can respond to the use of contingent work by pursuing a strategy of exclusion or inclusion of contingent workers as reflected in the language of the contract. A strategy of exclusion entails deliberately excluding contingent work arrangements from the bargaining unit and attempting to limit the employer's use of workers outside the bargaining unit. The strategy of inclusion seeks ways to include contingent workers in the bargaining unit and attempts to negotiate good wages and working conditions for those workers while protecting traditional full-time union members, thus eliminating the cost advantage of nontraditional workers.

In this chapter, examples of each strategy are discussed for temporary employees, part-time employees, leased employees, and other categories of employees. We review union responses to employer efforts to remove significant numbers of workers from the bargaining unit through the use of subcontracting, outsourcing, privatization, and independent contractors. We present mechanisms for inclusion of contingent workers in the unit and the protection of their seniority rights and other benefits, and identify the issues that organized labor will face in the future. We conclude with a discussion of future research questions.

HOW CONTINGENT WORKERS GAIN UNION REPRESENTATION: THE DEFINITION OF THE BARGAINING UNIT

When unions decide to follow an inclusionary strategy, they can either include contingent workers in the bargaining unit, which is the most common approach, or negotiate separate contracts for traditional and contingent workers (Sloane and Whitney 1994, p. 21).

Selecting the Strategy of Exclusion or Inclusion

Our review of contract language suggests that the way in which a union responds to the threat of contingent work depends in part on whether the employer is a goods producer or a service producer. The language in the contracts of industrial or goods-producing employers is more likely to address subcontracting and the use of leased employees. These unions have pursued a strategy of exclusion which contractually excludes alternative work arrangements and attempts to limit management rights to subcontract bargaining unit work. Contract language in manufacturing, for example, tends to address the conditions under which work can be assigned outside the bargaining unit and when the employer can outsource. There is little language limiting the ad hoc use of individuals with the exception of fairly standard language about the number of days a temporary worker can work before becoming a permanent employee and a dues-paying member of the bargaining unit.

In contrast, service sector contract language is more likely to address issues regarding the ad hoc use of individual contingent workers. In general, service sector unions tend to agree to include some types of contingent workers in the bargaining unit. As a result, the contract language must address a variety of issues clarifying the rights and uses of traditional and contingent workers in the same bargaining unit. These issues include distinguishing between different types of employees included in the bargaining unit, the differential accumulation of seniority by employee category, and prorating benefits. One prominent exception to this service sector approach is privatization efforts by public sector employers. Over the last two decades, there has been an effort on the part of some state and local governments to privatize government

functions. Privatization is the public sector analogue to private sector outsourcing, since work is taken out of the bargaining unit and given to a separate organization. Depending on how the bargaining unit is defined, it is possible for privatization to effectively eliminate the unit (DuRivage, Carré, and Tilly 1998).

Deciding which approach to take is complicated by the fact that, in some instances, a contingent work arrangement meets the needs of union members (SEIU 1993). There are workers who prefer a flexible work schedule so they can manage family demands, return to school, or for some other reason. According to the American Staffing Association (2001), 28 percent of the temporary employees placed by their member agencies prefer temporary work to gain flexibility for nonwork interests, and 43 percent chose temporary work for family reasons. In its 2001 survey, the Bureau of Labor Statistics (BLS 2001) found that 39 percent of workers in contingent arrangements preferred these arrangements to traditional work. Furthermore, 14.9 percent of full-time and 6.8 percent of part-time workers are union members, suggesting that part-time workers are an important union constituency. These figures suggest that a union taking a doctrinaire approach advocating the elimination of contingent work would not serve all of its members.

Defining the Bargaining Unit

Organizing activities and the representation of contingent employees in the public and private sectors generally are governed by the National Labor Relations Act (NLRA). (Some exceptions occur in states with separate legislation for public employees and in the few states that offer no collective bargaining rights at all. See SEIU [1993]). For contingent workers to have the right to collectively bargain with their employer, there must be a union able to represent them. As is the case with traditional workers, union representation is obtained through a union organizing drive.

Unions build their memberships through organizing campaigns that are regulated by federal or state agencies. Only one union can represent a group of workers at a time. Unions may specialize in the workers they attempt to organize. For example, some unions operate only in the public or private sectors, while others are organized along industrial, service, or craft lines. In general, unions determine their preferences for

who should be included in the bargaining unit based on the membership most likely to be successfully organized. During an organizing drive the union will determine the preferred bargaining unit membership and file a petition with the National Labor Relations Board (NLRB) or the state agency governing public sector industrial relations in that state. The relevant agency will determine if these workers are an appropriate unit for the purposes of collective bargaining. The composition of the unit is extremely important to both the employer and the union because this will be the electorate that determines the outcome of the election. Typically, each group attempts to create the bargaining unit that will best support its objectives.

The NLRB refers to the "community-of-interest principle" when establishing the appropriate bargaining unit, which refers to what the employees within the potential bargaining unit have in common with regard to wages, working conditions, and regularity of hours (DuRivage, Carré, and Tilly 1998). The more homogeneous the employees are according to these criteria, the more likely it is that the board will find that they have a community of interest and are thus an appropriate unit for bargaining. Using the community of interest principle, the NLRB rulings have identified general principles or guidelines governing the inclusion of various types of workers within the bargaining unit (SEIU 1993).

If workers in contingent employment arrangements pass the community of interest test and other guidelines for inclusion, they may be included in a bargaining unit. Contract language suggests that unions address three types of contingent work arrangement: temporary employees, part-time workers, and leased workers. Other categories of employees also may be covered in some contracts such as student employees in university contracts. Unions must determine which aspects of the contract will apply to contingent workers.

Temporary Employees

According to the NLRB, *temporary employees* can be included in the bargaining unit when they are hired or employed for an indefinite period. The NLRB uses a "date to certain" test, meaning that a temporary employee should be included in the unit if no certain date has been set for termination of employment.[2] As discussed above, union

strategies vary in the handling of temporary employees. Our review suggests that, typically, although not always, service sector unions are more likely to use contract language that includes specific definitions of employee categories. However, some service sector unions use exclusionary language and limit the hours of work of temporary employees. Industrial unions generally bargain for exclusionary contract language.

Contracts with both Sparrow Hospital in Lansing, Michigan, and Mercy Hospital of Buffalo, New York, provide examples of inclusive language. The Sparrow contract specifically includes regular part-time and per diem employees in the professional bargaining unit.

> The Hospital recognizes the Union as the sole and exclusive representative of its full-time, regular part-time and per diem professional employees employed by the hospital for the purpose of collective bargaining with the respect to rates of pay, wages, hours of employment and other conditions of employment.[3]

Because it covers such a broad spectrum of workers, the Sparrow agreement includes long descriptions of each category of employment. These descriptions are necessary to define precisely the duties and rights of each job classification. This agreement includes explicit definitions for three types of temporary workers (External Temporary Employees, Union Temporary Employees, and Float Employees) as well as Full-Time and Regularly Scheduled Part-Time (Core) employees. Each of these descriptions details the number of hours available to be worked and is explicit about when an employee in each of these categories becomes a dues-paying regular employee.

In the agreement between Mercy Hospital of Buffalo and the Communications Workers of America (CWA) the categories of employment also are specified carefully. The categories as defined in Mercy and CWA provide an example of the explicit specification of employee types:

> Article 15, Purpose – A. Flexible employee is one who is hired for a specified number of hours per week . . . Flexible Employees respond to variations in workload created by increases or decreases in census and/or acuity. Flexible employees also provide general staffing relief for planned and unplanned absences (e.g. Paid Time Off).
>
> Article 16, Section 1 – A Per Diem Employee is one who works on a day to day as needed basis without a guarantee of set hours per week and without benefits.

> Article 17, Section 1 – A temporary employee is an employee designated as such, hired for a specific job of limited duration not exceeding six (6) months. This period may be extended for up to another six (6) months by mutual agreement of the Hospital and the Union.[4]

However, not all service unions take an inclusive approach. Some unions exclude temporary employees from their bargaining unit and then try to limit the encroachment of temporary workers through contract language. Kaiser Hospital in Portland, Oregon, is a good example of this. First, they exclude temporary workers from the bargaining unit.

> Temporary or irregularly scheduled employees shall be excluded from this agreement so long as they are not used to deprive regular employees of work time. All regular employees must be working before temporary or irregularly scheduled employees are used. It is further agreed that such employment will not result in any reduction in the number of persons employed in the bargaining unit or in the number of regular hours of employment of any employee in the bargaining unit.[5]

Second, a limit is placed on the period of time the services of temporary workers can be used.

> A temporary employee is one who is hired from outside the Bargaining Unit to work for a specific period of time not to exceed three (3) consecutive months, or to replace a permanent employee not to exceed (6) months or to replace an employee on Union-related leave not to exceed twelve (12) consecutive months. Specific exceptions to provide for an additional and limited time period in a temporary status may be made by mutual agreement in writing by the parties.[6]

This explicit limitation on the number of hours a temporary worker can work is seen relatively frequently in service agreements, suggesting that the use of short-term temporary workers is a strategy commonly used by service sector employers.

Most industrial contracts use the exclusionary approach. One tactic is defining normal hours of work to ensure that only full-time, regularly scheduled workers are used. A typical example is LTV Steel and the United Steelworkers of America agreement. The hours of work are defined as

> [t]he normal work day shall be any regularly scheduled consecutive twenty-four (24) hours of work comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest except for such rest periods as may be provided in accordance with practices heretofore prevailing in the Works of the Company. The normal work pattern shall be 5 consecutive workdays beginning on the first day of any 7-consecutive-day period.[7]

This language limits the use of nontraditional employees by restricting how hours of work will be assigned to employees.

Part-Time Employees

According to the NLRB, regular part-time employees can be included in a bargaining unit and are entitled to vote in an election. An employee is included in a unit if the employee works a sufficient number of hours on a regular basis to have a substantial interest in the wages, hours, and working conditions in the unit.[8] Thus, an employee who works only one day a week every week as a weekend relief can be included in the bargaining unit.

Unions pursuing a strategy of inclusion generally have used one of three tactics: including part-time workers in the bargaining unit as regular part-time employees, including language converting part-time jobs to full-time jobs, or negotiating separate contracts for full-time and part-time workers. For example, the language in the Sparrow Hospital and Michigan Nurses Association contract cited earlier includes part-time workers in the bargaining unit. Similarly, the language in the contract between Mercy Hospital of Buffalo and Communications Workers of America, Service, Technical, and Clerical Employees also includes these workers.

> Article 4, Categories of Employees; Section 2 – A regular part time employee is defined as one who is regularly scheduled to work less than thirty-four (34) hours per week but fifteen (15) hours or more per week.[9]

A third example is the contract between the United Food and Commercial Workers, Local 951, and Meijer, Inc.

> The Employer recognizes the Union as the collective bargaining agent for all full-time and regular part-time Grocery, Meat, Produce, General Merchandise, Warehouse and Property Services em-

> ployees at the covered units, excluding any employees of any lease operation, employees of any existing or future operations which are either not physically attached to a covered unit or are not operated within the same premises as a covered unit, Manger Trainees, Store Directors, Line Managers, Department Managers, Property Services Supervisors, Distribution Center Supervisors, Working Supervisors and the management to which such Managers report, Auditors, Registered Pharmacists, Pharmacy Technicians, Professional, Confidential, Office, Clerical, Systems Monitors, Managerial employees, Security employees and other Guards and Supervisors as defined in the Labor Management Relations Act as amended and all other employees.[10]

The tactic of converting part-time jobs to full-time jobs is illustrated by the 1997 and 2002 contracts between the United Parcel Service (UPS) and the Teamsters. The 1997 Teamsters strike against UPS was an example of an aggressive approach to limiting employer use of part-time workers. During this strike the Teamsters were able to generate public support in part because part-time work symbolizes reduced job security and benefits to much of the American public (Tilly 1998). The UPS-Teamsters contract clearly committed UPS to slowing the increase in the number of part-time jobs and beginning to convert part-time into full-time jobs.

The 1997 contract was emphatic that full-time and part-time workers would be included in a single bargaining unit:

> All employees, Unions and the Employer covered by this Master Agreement and the various Supplements, Riders and Addenda thereto, shall constitute one (1) bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements, Riders and/or Addenda in separate agreements is for convenience only and is not intended to create separate bargaining units.[11]

It was also clear that the purpose of including part-time workers in the bargaining unit was to facilitate their movement to full-time employment.

> The parties agree that providing part-time employees the opportunity to become full-time employees is a priority of this Agreement. Accordingly, the employer commits that during the life of this Agreement, it will offer part-time employees the opportunity

> to fill at least twenty thousand (20,000) permanent full-time job openings throughout its operations covered by this Agreement.

The result of contract renegotiation in 2002 was a UPS contract that has been described as "the richest contract in Teamster history" (LRA 2002). In this contract UPS agreed to bring in-house nearly 10,000 subcontracted, nonunion jobs to create a pool of union jobs that would go to current part-timers. Thus, the Teamster agreement helped to reduce the gap between full-time and part-time workers by reducing wage differentials and providing more job mobility, job security, and retirement security for both part-time and full-time workers.

A third tactic unions use is to negotiate separate contracts for full-time and part-time workers. Marriott Management Services and the United Catering, Restaurant, Bar, and Hotel Workers negotiated separate contracts for workers providing food service to the Ford Motor Company, thereby creating two separate bargaining units. The two contracts are virtually identical except for the provisions for hours of work and costs of benefits to employers.[12]

In the industrial sectors, the contract language is more likely to be exclusionary. One tactic to eliminate part-time workers from the bargaining unit is to define the hours for shift work so that part-time employment is prohibited. This strategy is illustrated by LTV Steel contract.

> The normal work day shall be any regularly scheduled consecutive twenty-four (24) hour period comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest except for such rest periods as may be provided in accordance with practices heretofore prevailing in the Works of the Company.[13]

Leased Employees

Leased employees are workers on the payroll of one employer (the leasing firm) who are supplied to another employer (the client employer) based on a contract negotiated between the two employers. Leased employees can be included in the bargaining unit of the client employer if the client employer and leasing company are deemed to be "joint employers." Joint employment occurs if the two employers share and codetermine matters governing the essential terms and conditions of employment. The essential terms and conditions of employment typically include hiring, firing, discipline, supervision, direction, and scheduling

of work. To establish joint employer status, one must show that both employers meaningfully affect some or all of these matters relating to the employment relationship.

The NLRB has found that two employers are joint employers where regular and leased employees have the same supervision, perform essentially the same tasks, have functionally integrated work, and receive the same wages (Jenero and Spognardi 1995). Joint employment provides limited protection to workers because the NLRA does not prohibit the client employer from failing to renew a subcontract, thus eliminating the leased workers from the bargaining unit (DuRivage, Carré, and Tilly 1998). However, leased employees included in the bargaining unit are eligible to vote in NLRB elections to determine whether they are represented by a union. Consequently, leased employees who traditionally receive fewer benefits than regular employers would have the right to unionize as a means of improving their terms and conditions of employment.

Other Employee Categories

Unions also may seek to include other categories of employees in collective bargaining contracts to manage contingent work. For example, students may be included in a bargaining unit depending upon their communities of interest. A student working after school on a regular schedule can be included in the unit as a regular part-time employee.

The inclusion of students in an agreement is illustrated by the contract between the Board of Regents Montana University System and the Montana Faculty Association. Since students are a major part of the university labor force, the union has included them as a tactic to control this form of employment.

> Any student who is employed as a "temporary" employee on a "full-time" basis for seven hundred (700) or more hours in any one fiscal year, and is doing work within the position description of a classified position within a bargaining unit, or doing work which is within the described scope of work of a bargaining unit, shall be required, as a condition of continued employment, to pay the equivalent of initiation fees and/or monthly dues, or a service fee in lieu of dues, to the union in accordance with Article 11, Section A of this agreement.

Furthermore, the contract includes language that specifies under what circumstances the university can use students as employees.

> In keeping with the federal and state policies of providing employment for students to provide economic opportunity to obtain further education, and in order to make available to students the benefits of state and federal work-study and financial aid programs, the employer shall continue to employ students.[14]

However, the contract makes certain that student workers will not encroach on protected union positions.

> Students shall not be hired into any position, which would result in the displacement of any employee.

In the LTV Steel and the United Steelworkers of America contract student employment also is addressed. In an appendix to the contract on student employment in the summer, language establishes limitations on the period of employment and protects core jobs from being filled by student workers.

> During the term of the labor agreement, the probationary provisions of the Labor Agreements shall be modified as follows for students hired for summer employment on or before May 1 provided those students terminate their employment on or before September 15 of the same year.[15]

Other types of nontraditional employees also may be included in the bargaining unit under specified circumstances. On-call employees may be included in a bargaining unit if the employee works regularly, such as those needed by a large employer that has regular absences to be filled. Seasonal workers, such as resort or agricultural workers, may be included in a bargaining unit of regular full-time employees if the seasonal workers have a reasonable expectation of returning each season. Retirees who work regularly may be included in the bargaining unit even if working a limited number of hours.

The NLRB uses a test to determine whether a *trainee* who might become a supervisor or fill a management position is eligible to vote. This eligibility is determined by: 1) the kind of work being done, 2) whether work is done under the same conditions and for the same pay as other employees, 3) whether special training is required, 4) whether there is an eventual guarantee of a top management job, and 5) the length of the training period (Schlossberg and Scott 1983, p. 250). In a re-

cent decision concerning a Massachusetts teaching hospital, the NLRB overruled a long-standing precedent about doctor trainees who are now considered employees under federal law. The NLRB found that doctor trainees were employees because they were involved in a master-servant relationship that provided services for the hospital, received compensation for working in the physician-training program, and received fringe benefits similar to other employees. This change in board opinion opens up a new area for union organizing (Ruskin Moscou Faltischek, P.C. 2003).

Probationary employees with a reasonable expectation of completing their probationary periods and being permanently hired also are included in a bargaining unit.

UNION EFFORTS TO LIMIT USE OF CONTINGENT WORK: RESPONSES TO SUBCONTRACTING, PRIVATIZATION, AND INDEPENDENT CONTRACTORS

The two major large-scale contingent work arrangements used by employers are subcontracting and privatization. Subcontracting, also called outsourcing, is the contracting out of a portion of the employer's work that was previously done in-house, such as janitorial services. It can occur in both the private and public sectors. Privatization is giving to private individuals or corporations the assets or functions that were previously performed by state or local government employees. It occurs only in the public sector (Bilik 1990). An example is contracting with a private company to run a correctional institution. In addition, employers in both the private and public sectors also use independent contractors. All of these contingent work arrangements are perceived by unions as eroding the strength of the bargaining unit and consequently reducing unions' ability to protect their members.

Subcontracting

One major goal of collective bargaining for industrial unions is to negotiate language that continues the work of the bargaining unit and limits the use of outside workers. Traditionally this has been done by

negotiating language that excludes contingent workers from the bargaining unit and blocks or limits the ability of management to subcontract work to outside companies and vendors. However, in recent years unions such as the United Automobile Workers (UAW) have recognized the importance of helping the employer remain competitive in a global market. As a consequence, unions have used different tactics, such as negotiating early involvement in outsourcing planning, to limit the impact of subcontracting on the job security of their members.

Under the NLRA, contractual limits on the employer's ability to use contingent workers are a mandatory subject of bargaining. This means that the union may bargain over these issues to the point of impasse and then, if necessary, strike to obtain an agreement from the employer. The NLRB has ruled that if the type of subcontracting clause sought by the union is lawful, an employer has an obligation to bargain with the union over the issue of subcontracting unit work when subcontracting will adversely affect the bargaining unit (Helper 1990).

The variations in the strength of the contract language indicate that some unions have been more successful than others in negotiating limitations on subcontracting. One example of strong language limiting the use of subcontracting is seen in American Axle and Manufacturing, Inc. and the UAW contract.

> In no event shall any seniority associate who customarily performs the work in question be laid off as a direct and immediate result of work being performed by any outside contractor on the plant premises.[16]

The agreement between the United Steelworkers of America (USWA) and LTV Steel is an example of weaker language that provides management the latitude to use subcontractors while generally acknowledging a spirit of limiting the use of subcontracting. Although the USWA contract states that the guiding principle should be to keep work in the bargaining unit, many areas are left to the discretion of management.

> The parties have existing rights and contractual understandings with respect to contracting out. These include the existing rights and obligations of the parties which arose before the parties included specific language in their collective bargaining agreements, the arbitration precedents which have been established before and since the parties included specific provisions addressing contract-

> ing out in their collective bargaining agreement, and the agreements resulting from the review of all contracting out work performed inside or outside the plant under the provisions of the Interim Progress Agreement dated January 31, 1986. In addition, the following provisions shall be applicable to all new contracting out issues arising on or after the effective date of this agreement.

The General Motors Corporation and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers AFL-CIO contract is another example where management retains considerable discretion in the use of subcontracting. The contract includes a general acknowledgment that management will not use outside workers unless necessary.

> The corporation states that it will make a reasonable effort to avoid contracting out work which adversely affects the job security of its employees and that it will utilize various training programs available to it, whenever practicable, to maintain employment opportunities for its employees consistent with the needs of the corporation.[17]

However, there is additional contract language that includes a provision requiring management to provide advance notice in writing of its intention to subcontract: "In all cases, except where time and circumstances prevent it, Local Management will hold advance discussion with and provide advance written notice to the Chairperson of the Shop Committee."[18]

A loophole remains for management in the words "where time and circumstances prevent it." Nevertheless, the inclusion of a written justification for subcontracting is a significant limitation on management.

More recently unions have used tactics to ensure their early involvement in planning for subcontracting to limit its impact and protect the job security of their members. For example, the 1996 contract language from the UAW and General Motors negotiations is very explicit about the tendency toward subcontracting while demonstrating the ability of the union to limit that trend. This language ensures income security protection for workers by involving the union in the process.

> During the life of the current Agreement, the Corporation will advise, in writing, the Union members of the Sourcing Committee of the Labor Policy Board meeting results relative to sourcing recommendations, including the number of potential jobs affected. Addi-

> tionally, data regarding incoming and outgoing work will be given to the International Union in a quarterly meeting. (The Corporation will provide inquiry access to the International Union through the use of a computer terminal.) In this manner, the parties can judge the success of mutual efforts toward improved job security. The Corporation agrees to incorporate the procedures and structure outlined herein when making sourcing determinations during the current Agreement.[19]

The language reflects not only union concerns about job security but also its respect for management concerns about productivity. This is an important shift in position for the UAW since it reflects the recognition of the need for the employer to be economically competitive. It also provides the union with the opportunity to demonstrate its support of improvements in productivity by creating a cooperative labor relations environment.

This contract also addresses the extent to which management can use outside vendors for equipment maintenance.

> Employees of any outside contractor will not be utilized in a plant covered by this Agreement to replace seniority employees on production assembly or manufacturing work, or fabrication of tools, dies, jigs and fixtures, normally and historically performed by them, when performance of such work involves the use of Corporation-owned machines, tools, or equipment maintained by Corporation employees.[20]

This language ensures protection for senior employees by limiting the duties open for subcontracted work. It also restricts contract workers from using GM equipment, thereby limiting the use of contract workers on the shop floor. But the next section of the agreement builds in flexibility for management to contract out repair work:

> The foregoing shall not affect the right of the Corporation to continue arrangements currently in effect; nor shall it limit the fulfillment of normal warranty obligations by vendors nor limit work which a vendor must perform to prove out equipment.[21]

This language provides a loophole for management to continue the use of outside vendors but also indicates that the union will attempt to place some conditions on management.

A separate UAW-GM contract provides another example of the recognition by the unions of the need to support productivity improvements.

The UAW has developed programs to provide income security and encourage union locals to form "productivity coalitions" to compete for work that management might otherwise outsource. One such program, referred to as the Job Opportunity Bank Security (JOBS) Program, has been negotiated between the UAW and the Big Three automakers. The General Motors Corporation and UAW contract language provides an example of increased job security through a JOBS Program, while not explicitly prohibiting the use of subcontractors. It "protects eligible employees against layoff for virtually any reason except volume-related market conditions."[22]

Unions have consistently argued that their membership can do most of subcontracted work if given the proper equipment. Language such as that for the JOBS program provides a formal mechanism for them to demonstrate their productivity.[23] Implied in this language is the guarantee that core employees will not be replaced due to subcontracting as long as they meet productivity standards.

The above examples of contract language range from strong statements prohibiting subcontracting to full management discretion over subcontracting decisions. In a few cases the union has been able to entirely prohibit the use of subcontractors. However, in general most contracts indicate that management retains this right to varying degrees. The effectiveness, therefore, of these provisions varies with the strength of the union local and the intransigence of management. The most promising resolution of this tension between the employer's need for flexibility and the union's need for job security appears in the UAW-GM JOBS Program. This program gives the union the opportunity to demonstrate the productivity of its workers and their ability to do jobs that would otherwise be subcontracted outside the company.

Privatization

Similar to private sector unions, public sector unions are facing a variety of actions on the part of employers to reduce their workforces. By reclassifying and relocating positions, public sector unions are moving work beyond the reach of bargaining agreements and personnel policies. While the term "subcontracting" is used in the private service and manufacturing sectors, "privatization" refers to the same actions in the public sector.

In the current antigovernment environment, where limiting the size and power of government is a popular bipartisan goal, the privatization of government services often is advocated as a way to provide these services more efficiently. However, privatization removes unionized employees from the public sector union. This erosion of public sector bargaining units is especially troublesome to unions in the United States because the public sector has been the only economic sector in which union membership has grown over the past quarter century. In 2001, 37.4 percent of government workers were members of unions, compared to 9.0 percent among private sector employers (BLS 2001).

Unions have two major concerns about privatization: 1) that privatization will undermine wage and benefit standards and reduce the number of full-time public sector jobs, and 2) that privatization will result in the deterioration of the quality of public services since these will be delivered by organizations motivated by profit and cost control rather than a service orientation.

A wide range of state services have been privatized, including mental health, parks and recreation, employment security, education, data processing, police, vehicle registration, corrections, and airport services (Bilik 1990). Mirroring their private sector counterparts seeking to control subcontracting, public unions have developed proactive strategies to counteract privatization, such as identifying the early signs of privatization efforts in order to bargain, strong contract language prohibiting or limiting privatization, and legislative solutions. In addition, many unions also are using legal remedies as an ongoing tactic. An example is seeking court injunctions to stop employer actions opposed by the union.[24]

One example of the use of legal solutions is seen in the actions of Michigan State Government Local UAW 6000 in its opposition to the privatization of the Michigan Department of Corrections Health Care Unit. The department concluded a bidding process aimed at examining the feasibility of subcontracting health care unit staffing at five facilities to a private sector company (Michigan Department of Corrections 1999). The union opposed this measure because it would put the Department of Corrections' health care system under the jurisdiction of a private company and remove the current health care providers from the bargaining unit. UAW Local 6000 representatives testified before the Michigan Senate Committee on Corrections Allocations stating that

> [t]he department wants to make physicians and PA's the gatekeepers of managed care systems. There seems to be a clear and direct conflict of interest, when the gatekeeper of a system is an employee of that same system. Local 6000 strongly urge you to stop the privatization of physicians and physicians' assistants. (Rivera 2000)

The union also contended that it is better to keep jobs within the system to ensure the quality of the service. It further argued that there is no conclusive research to document that privatization will result in cost savings (Rivera 2000). The Department of Corrections' action is currently being grieved before the State Civil Service Commission.

Independent Contractors

Another employer tactic is the conversion of current employees into independent contractors (Coalition for Fair Worker Classification 1994). Independent contractors are excluded from the definition of employee under Section 2(3) of the NLRA and therefore are considered part of the contingent workforce. Independent contractors are generally distinguished from employees based on the amount of control the employer exercises over how a person does the work. However, there is often confusion about who is truly an independent contractor. Consequently, misclassification has been a frequent problem, as discussed in more detail in Chapter 5.

The impact of misclassification on employees is illustrated by the experience of reporters and photographers working for the *Philadelphia Inquirer*. The 175 employees who covered the news in the city's suburban bureaus were assigned stories and deadlines by managing editors. However, for many years the *Inquirer* classified the city reporters and photographers as full-time employees, while classifying the suburban workers as "independent contractors." As a consequence the suburban workers did not qualify for health or pension benefits and were responsible for paying their own employment taxes. It was not until the suburban employees joined the Newspaper Guild/Communications Workers in 1997 that they were classified as *Inquirer* employees.

The AFL-CIO has responded at a national level by backing federal legislation making misclassification more difficult. Under current law, a 20-factor IRS formula is used to determine whether a worker

is classified as an employee or independent contractor. The Independent Contractor Classification Act of 2001 addresses the worker-classification issue by creating a new section 3511 of the Internal Revenue Code to simplify the criteria used to distinguish between employees and independent contractors. It requires employers to reclassify as full-time employees many workers currently considered independent contractors (AFL-CIO 2002). The act reduces the classification test to three criteria. Workers will be considered independent contractors if 1) their employers have no right to control them, 2) they can make their services available to others, and 3) they have the potential to generate profit and bear significant risk of loss.

BARGAINING ON WAGES, SENIORITY, AND BENEFITS FOR CONTINGENT WORKERS

Once employees in a workplace have voted to be represented by a union, an employer is required by law to bargain with the union as the sole representative of the workers. The duty to bargain imposed by the NLRA entails a requirement of the employer to bargain in good faith on hours, wages, and conditions of work, which generally includes seniority and nonwage benefits. The union, on the other hand, is obligated by the "Duty of Fair Representation" to represent the interests of all of its members (Feldacker 1990, p. 352).

During contract negotiations unions consider the advantages, disadvantages, and effects on the different groups in its membership of the various clauses being discussed for inclusion in the collective bargaining agreement. Typically the union will have to make some decisions that favor some bargaining unit employees over others. However, as long as the union does not act in an arbitrary, capricious, discriminatory, or perfunctory manner, its legal obligations are fulfilled. Because of the differing interests within the bargaining unit, some negotiated language may have an adverse effect on contingent workers. Important issues regularly negotiated that affect contingent workers are wages, seniority, and nonwage benefits, including medical care, disability coverage, and sick leave.

Wages

Unions use two strategies to raise wages for contingent workers. The first and most direct strategy is the inclusion of these workers in the bargaining unit so the discussion of their wages is included in negotiations. Examination of recognition clauses in collective bargaining agreements suggests that this approach is most often used for part-time workers. More rare is language covering wages for non–bargaining unit workers. The Teamster-UPS agreement settled in July 2002 (discussed earlier) was an example of a union using a strike to achieve considerable gains for part-time members.

> While full-time workers will receive wage increases of $5 per hour over the life of the six-year agreement, part-time workers will receive $6 per hour over the life of the agreement, achieving a long-term Teamster goal of reducing the gap between full-time and part-time wages. (LRA 2002)

In a 2002 settlement, the Service Employees International Union (SEIU) negotiated a contract for janitors in downtown Boston with wages equal to the hourly rate of full-time workers (Bureau of National Affairs 2002).

Another union strategy is to support public policy changes and living wage ordinances to improve wages for all contingent workers (Carré and Joshi 2000). The Association of Community Organizations for Reform Now (ACORN), the oldest and largest grassroots organization of low- and moderate-income people, is an example of this type of support. ACORN, which has 100,000 members in over 30 cities, argues that when public dollars are used to subsidize employers, these employers should not be permitted to pay their workers less than a living wage (ACORN 2003).

Seniority

Seniority is a defining principle of unionism. Employees with the longest period of service with the organization receive the greatest job security, improved working conditions, and frequently greater entitlement to employee benefits (Sloane and Whitney 1994). Under most collective bargaining agreements, seniority is the basis for determining pay, job opportunities and assignments, the right to paid time off, recalls

after layoffs, overtime options, and other nonmonetary aspects of work. An employee's relative seniority status in the company usually depends on three basic considerations: when seniority begins to accumulate, the effect of changes in work assignments on seniority, and the effect of interruptions in employment on seniority.

Determining whether and how seniority can be accumulated for contingent workers remains a challenge to unions. Due to the importance of seniority in determining the economic welfare of full-time workers, many unions are reluctant to grant seniority rights to temporary workers. However, when seniority rights have been successfully negotiated for contingent workers, these rights generally are accrued on a prorated basis. One common feature of contract language governing part-time workers is that they never accumulate more seniority than full-time workers. This approach is illustrated by the United Food and Commercial Workers, Local 951, and Meijer, Inc. contract.

> 7.3—Seniority shall be of two (2) types, full-time and part-time. Full-time seniority shall be convertible to part-time. Full-time seniority shall not accumulate during periods of part-time jobs, and part-time seniority shall not be convertible to full-time seniority if a part-time employee becomes full-time. Part-time seniority shall not be lost by transfer to full-time work. In no case will part-time employees accumulate seniority over full-time employees.[25]

In the American Red Cross and Service Employees International Union contract, per diem employees are allowed to accumulate seniority but at a slower rate than full-time workers.

> Per diem nurses shall be placed on the seniority list calculated on fifty percent (50%) of length of service with the Employer as a per diem nurse plus any seniority earned within any other classification covered by the Agreement.[26]

This language ensures that for the purposes of layoff and recall these employees are the last on the list to be returned to work.

Sparrow Hospital and the Michigan Nurses Association allow temporary workers to accumulate seniority if they convert to either full-time or part-time status. Their seniority date is the date they convert to permanent status, not the date on which they began as temporaries.

> Section 10.4—Employees hired for a limited period of time not to exceed a total of six (6) months shall be classified as temporary employees. Such temporary employment may be extended by the

> Human Resources Director or designee if such extension is necessary. A temporary shall be treated as a probationary employee under this agreement. In the event a temporary employee is reclassified to full time to part-time status, the date of hire in the new classification shall be the date of hire as a temporary employee.[27]

These examples indicate that unions clearly favor their full-time members with continuous service over those who work under contingent arrangements. It also suggests, however, that unions are trying to negotiate the protection that comes with seniority for contingent workers, although on a less preferential basis.

Benefits

When unions include contingent workers in their membership, there are two reasons to negotiate benefits for their contingent members. First, these benefits enhance worker welfare, which is a central union objective. Second, one important strategic response to the use by employers of contingent workers is to try to eliminate the cost advantage of contingent work arrangements. The closer the cost of noncore contingent workers to the cost of employing traditional core workers, the less attractive contingent work is to management. The types of benefits commonly included in contracts are health care and dental insurance, paid time off, including disability pay and sick leave, and holiday pay. Our review suggests that prorated health care benefits are offered to contingent workers more often than other types of benefits.

The Sparrow Hospital contract is among the most generous in its treatment of contingent workers to support the recruitment and retention of registered nurses. It provides benefits to both full- and part-time employees. As seen in the language below, the employer pays the full medical health care premium for all workers and only prorates dental benefits.

> Flexcare Plan
>
> Section 33.1—Purpose. To provide full-time, part-time, and per diem employees with tax-free reimbursement for health care and dependent care expenses incurred on behalf of Plan participants, spouses, and dependents, and to allow participants to provide for additional expenses on a pre-tax basis through voluntary wage/salary reductions.[28]

> Dental Insurance
>
> Section 32.1—All full and regular part-time employees (normally scheduled to work 32 or more hours per pay period) are eligible to enroll for dental insurance.
>
> Section 32.2—The Employer will pay 100% of the premium for single coverage and 90% of the premium for applicable dependent coverage for eligible full-time employees. The Employer will pay 100% of the premium for single coverage for part-time employees. Eligible part-time employees pay the full cost for dependent coverage.[29]

The agreement between 1199W/United Professionals for Quality Health Care and the State of Wisconsin is more typical in the health care coverage provided to part-time workers (referred to here as project workers).

> Article VI–Employee Benefits, Section 1, Health Insurance:
> The Employer agrees to pay 50% of the above listed contributions amounts for insured employees in permanent part time or project positions defined under 230.27, who are appointed to work at least 600 but less than 1,044 hours per year.[30]

Another example of a contract providing health care coverage is in the United Food and Commercial Workers, Local 951, and Meijer, Inc. contract. Benefits for part-time workers are not as extensive as those given to full-time employees, but the union did negotiate partial health care insurance for its part-time workforce.

> Article 11: Employee Benefits:
> Part-time employees are eligible for benefit coverage for the Comprehensive 200 Medical Plan (COMP200).
> Medical Plan (including prescription drug coverage), the Dental/Optical Plan, and the required weekly pre-tax contribution rates for health coverage are set forth in this subsection 11.1J.[31]

Although there is some variation in the generosity of the health benefits, these examples suggest that, when unions include contingent workers in the bargaining unit, they are able to negotiate at least partial medical benefits for them. To the extent that the contracts reviewed here are typical, they indicate that unionized contingent workers receive better health care coverage than nonunionized workers (BLS 2001).

Contracts also vary in how generously they provide for paid time off, including disability pay and sick leave, and holiday pay. The Uni-

versity of Michigan nurses contract with the University of Michigan allows part-time workers to receive long-term disability benefits.[32]

Sick leave benefits also are provided to part-time employees in the agreement between American Red Cross, Southeastern Blood Services Region, and the Michigan Council of Nurses and Health Care Professionals, Service Employees International Union, Local 79.

> Employees will earn sick leave benefits at the rate of one and two-thirds days per month of service. Employees may accrue up to ninety days of sick leave. Part-time employees shall receive the proportion of sick leave, which the average days worked per week bear to the full-time employees' five-day week.[33]

Unlike full-time employees, part-time union members generally are unable to receive time and a half or double time for working on holidays. This can be seen in the language from two contracts shown below. The agreement between Sparrow Hospital and the Michigan Nurses Association shows that contingent workers are only paid for holidays if they work and only then at straight-time hourly rates.

> Article 35, Holidays
> Section 15.2 B. Part-time and per diem employees receive the base rate of pay for each hour actually worked on each of the six holidays as they occur. Holiday pay is paid for hours worked in excess of a full shift (i.e. 8 hours, 10 hours, or 12 hours).[34]

In the Kroger and United Food and Commercial Workers, Local 951, Western Michigan Clerks agreement, contingent workers do receive some holiday pay if they have worked as scheduled both before and after the holiday. However, this limits their ability to take extended time off during holidays without losing pay.[35]

FUTURE CHALLENGES FOR UNIONS

The discussion in this chapter has highlighted the challenges unions face in their efforts to contain or manage the use of contingent work arrangements by employers. These approaches, particularly those used by industrial unions, still reflect a historical orientation toward traditional employment arrangements (Zalusky 1986). As a result, most unions remain structured to protect job and income security for full-time work-

ers, particularly male workers in blue-collar jobs such as manufacturing, mining, construction, and transportation, whose relative importance in the economy is declining.

If unions want to grow in membership numbers and relative importance in the labor force, they must find ways to meet the needs of a workforce that is about 50 percent female—three-quarters of which is working in the service sector. Furthermore, with a 76 percent labor force participation rate among women between the ages of 25 and 54 who worked in 1998 and 62 percent of women working with children under the age of six, flexibility and alternative scheduling arrangements must be addressed (Fullerton 1999; Hayghe 1997). Worker demands for family-friendly policies and flexible schedules combined with employers' desire for workforce flexibility are forcing unions to rethink their adherence to the traditional employment relationship as the sole mechanism for gaining economic security (Nussbaum and Meyer 1986). As discussed earlier, some unions in the service sector have already begun the process of adapting to the changing demographic characteristics of the labor force by including contingent workers in their bargaining and negotiating their wages and prorated benefits.

Unions will continue to be concerned about the negative impact of part-time and alternative employment arrangements on all aspects of economic welfare. However, unions must address these concerns in an environment in which some employers have legitimate needs for alternative arrangements and some workers prefer them. In facing these challenges, unions cannot afford to take an exclusionary approach that protects only the "haves" of the workforce.

DIRECTIONS FOR FUTURE RESEARCH

Using the lens of negotiated contract language, this chapter has reviewed strategies for inclusion and exclusion used by unions to cope with the challenges created by contingent work. What is clear from this review is that organized labor has not devised a consistent strategy for handling contingent work. Research can explore four important questions that will provide guidance to unions on appropriate future strategies for managing contingent work.

First, investigation has rarely focused on why union locals pursue an exclusionary or inclusionary strategy and the factors influencing this decision. It is necessary to analyze the impact of factors such as the demographic characteristics of the workforce and member preferences for nontraditional work schedules, as well as the internal politics of the union, in the decision to exclude or include part-time workers. For example, evidence indicates that women are more likely to work part time or in some form of alternative work arrangement to balance work and family responsibilities. The greater concentration of women in service occupations may partially explain the contract language negotiated by service sector unions.

The American Federation of Teachers (AFT) executive council has long been concerned about the use of part-time faculty employment. The AFT notes that the use of part-time faculty jeopardizes the quality of education and is used to threaten full-time faculty. The union argues that these part-time positions

> . . . provide the cheap, no-strings-attached labor which makes it unnecessary to declare regular positions open, enables an institution to staff classes even though faculty are denied tenure, reduces the proportion of a department entrusted with decision-making, and intensifies the burden of committee work and departmental governance for full-time faculty. (AFT Higher Education 2000)

A detailed case study can help unions understand why there have been so few examples of successful union activities on behalf of part-time faculty. It has been argued that success has been limited in part because neither universities and colleges nor their full-time faculties have been willing to make equity for part-time faculty a negotiating priority (Leatherman 2000). In July 2002, the UAW won the right to represent more than 4,000 part-time faculty members at New York University, creating the largest adjunct-only union in the nation at a private university (Smallwood 2002b). Adjunct faculty at the University of Massachusetts at Boston, assisted by the local chapter of the Chicago Coalition of Contingent Academic Labor (COCAL), pressured the local union to negotiate for higher pay and greater equity. With this success, COCAL would like to move beyond this campus to the other 58 colleges and universities that lie within a 10-mile radius of Boston (Leatherman 2001).

A second related research topic is determining the effectiveness of various forms of language in protecting bargaining unit work while meeting the needs of the membership for flexibility. It is sometimes argued that contingent work actually protects "good" jobs by insulating core workers from market variability (Mitchell 1986). However, a careful evaluation of this argument is needed.

A third area for investigation by researchers is the successes and failures in unionizing part-time and other contingent workers in other countries, which can provide guidance for future negotiating and organizing strategies in the United States. For example, Japanese unions are faced with the same dilemma as unions in the United States. In 2000 their membership fell by 2.8 percent, partially because they concentrated their attention on regular full-time employment and failed to adjust to the diversification of employment arrangements toward more part-time and other nonregular forms of employment (Euroline 2002a). The Canadian experience contrasts with that of Japan. Zeytinoğlu (1992) conducted a survey of 188 employers in Ontario, Canada, who had collective bargaining contracts covering both "full-time and part-time workers who are in the same occupation and who perform the same or substantially similar tasks." This survey found that the major reason employers included both groups in their contracts was the desire for flexibility in scheduling work that part-time workers make possible. Research on collective bargaining practices in other countries that identifies lessons learned will be useful to U.S. unions.

Finally, future research should explore how public policy can be integrated with collective bargaining to protect part-time workers as well as those in other alternative work arrangements. Experiences in other countries can provide useful insights and models for the United States. For example, in the European Union (EU), some legislation and collective bargaining agreements have been designed to regulate part-time work in a complementary fashion. The European Trade Union Confederation (ETUC) believes that part-time work should be made more attractive and acceptable for workers while also providing the assurance of "decent social protection" (Euroline 2002b). If unions want to rebuild their memberships, they must find ways to unionize part-time workers. The research outlined in this chapter should provide insights into the appropriate strategies for success.

Notes

The authors wish to express their sincere thanks to Danny Hoffman, specialist in the Michigan State University Labor Education Program, and Sharon A. Riviera, secretary/treasurer of UAW Local 6000, for their time and support; and appreciation to the participants in the Michigan State University and University of Illinois Labor Education Programs National Conference for Labor Representatives in the Health Care Industry, April 2–4, 2000, in Lake Buena Vista, Florida, for their comments about the current state of unions and contingent work.

1. The Bureau of Labor Statistics (BLS) biennially collects information on contingent employment and alternative work arrangements. The definitions used by the BLS are discussed in detail in Chapter 2.
2. The NLRB considers several factors in determining the existence of a community of interest, including whether the employees:
    - Perform similar types of work and have similar training and skills, such as craft work, clerical work, or production and maintenance work;
    - Work in the same location and/or interchange and have regular work contact with each other;
    - Perform integrated production or service functions;
    - Enjoy similar working conditions, such as working the same hours or shift schedules, using the same locker room and cafeteria facilities, or being subject to the same personnel policies or work rules;
    - Have similar wage and benefits schedules; and
    - Have common supervision or centralized control over personnel policies or day-to-day operations (Feldacker 1990, p. 46).
3. Sparrow Hospital and the Michigan Nurses Association, Collective Bargaining Agreement, 2004–2007, Article 1. Recognition, 2.
4. Mercy Hospital of Buffalo and Communications Workers of America, Service, Technical and Clerical Employees, Collective Bargaining Agreement, 2004–2008, Article 4, Categories of Employees, 14.
5. Kaiser Foundation Hospitals, Kaiser Foundation Health Plan of the Northwest, and Oregon Federation of Nurses and Health Care Professionals, Local 5017 AFT-FNHP-AFL/CIO, Collective Bargaining Agreement, 2005–2010, Article 7, Section D, p. 4.
6. Ibid., 12.
7. LTV Steel and the United Steelworkers of America, Collective Bargaining Agreement, 2004–2008, Section X, Coverage, p. 94.
8. At one time the board held that an employee had to work a certain percentage of the workweek to be classified as a regular part-time employee, but that rule is no longer followed. See Feldacker (1990, p. 52).

9. Mercy Hospital of Buffalo and Communications Workers of America, Service, Technical and Clerical Employees, Collective Bargaining Agreement, 2004–2008, p. 12.
10. United Food and Commercial Workers, Local 951, and Meijer, Inc., Collective Bargaining Agreement, 2003–2007, Article 2, Coverage, R-2.
11. United Parcel Service and International Brotherhood of Teamsters Collective Bargaining Agreement 2002–2008 and Michigan Supplemental Agreement, August 1, 2002.
12. Marriott Management Services and the United Catering, Restaurant, Bar and Hotel Workers Local Union 1064, R.W.D.S.U., AFL-CIO, Collective Bargaining Agreement, 1998–2001 (1998), p. 10.
13. See Note 7.
14. The Board of Regents Montana University System and the Montana Faculty Association, Collective Bargaining Agreement, 2003–2005, Article I Section B – Student Workers, p. 45.
15. LTV Steel and the United Steelworkers of America, Collective Bargaining Agreement, 2004–2008, Section X, Coverage, p. 117.
16. American Axle and Manufacturing, Inc. and UAW, Collective Bargaining Agreement, 2004–2008, (183)(e), p. 107.
17. General Motors Corporation and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers AFL-CIO, Collective Bargaining Agreement, 1996–1999, p. 201.
18. Ibid., Appendix B, 220.
19. Ibid., Appendix L, 233. In addition to this language the contract also has five letters of understanding about specific subcontracting issues.
20. Ibid., (183) (a), 134.
21. Ibid., (183) (b).
22. Ibid., 345.
23. Interview with D. Hoffman, Specialist, Michigan State University Labor Education Program, April 2000.
24. Interview with S.A. Rivera, Secretary/Treasurer for UAW Local 6000, April, 2000.
25. See Note 10.
26. American Red Cross, Southeastern Michigan Blood Services Region and Michigan Council of Nurses and Health Care Professionals, Service Employees International Union, Local 79, Collective Bargaining Agreement, 1993–1996, Article X, p. 21.
27. See Note 3.
28. Ibid.
29. Ibid.
30. 1199W/United Professionals for Quality Health Care and the State of Wisconsin, Collective Bargaining Agreement, 2002–2005, Article VI, Employee Benefits, 2002–2005, p. 22.
31. See Note 10.

32. The Regents of the University of Michigan and the Michigan Nurses Association, Collective Bargaining Agreement, 2001–2004, p. 118.
33. See Note 26.
34. See Note 3.
35. Kroger and United Food and Commercial Workers, Local 951, Western Michigan Clerks, Collective Bargaining Agreement, 1995–2000, p. 10.

References

AFL-CIO. 2002. *Curbing Corporate Greed: Winning Full-Time Rights for Part-Time Workers*. http://www.aflcio.org/corporateamerica (accessed August 28, 2002).

American Federation of Teachers (AFT) Higher Education. 2000. *Statement on Part-Time Faculty Employment*. http://www.aft.org/higher_ed/publications/statement.html (accessed February 13, 2000).

American Staffing Association. 2001. *Staffing Facts*. http://www.natss.org/aboutasa/staffingfacts.shtml (accessed June 6, 2001).

Association of Community Organizations for Reform Now (ACORN). 2003. *ACORN's Living Wage Web Site*. http://www.livingwagecampaign.org (accessed July 29, 2003).

Barker, K., and K. Christensen. 1998. "Controversy and Challenges Raised by Contingent Work Arrangements." In *Contingent Work: American Employment Relations in Transition*, K. Barker and K. Christensen, eds. Ithaca, NY: Industrial and Labor Relations Press, pp. 221–225.

Bilik, A. 1990. "Privatization: Selling America to the Lowest Bidder." *Labor Research Review* 15: 1–5.

Bureau of National Affairs. 2002. "Health Care for Some Part-Time Janitors Negotiated by SEIU Boston Cleaning Firms." *Collective Bargaining Bulletin* 7(23): 101.

Carré, F., and P. Joshi. 2000. "Looking for Leverage in a Fluid World: Innovative Responses to Temporary and Contracted Work." In *Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements*, F. Carré, M.A. Ferber, L. Golden, and S.A. Herzenberg, eds. Champaign, IL: Industrial Relations Research Association, pp. 313–339.

Coalition for Fair Worker Classification. 1994. *Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers*. http://www.dol.gov/oasam/programs/history/reich/reports/dunlop/section5.htm (accessed August 8, 2006).

Cobble, D.S., and L.F. Vosko. 2000. "Historical Perspectives on Representing Nonstandard Workers." In *Nonstandard Work: The Nature and Challenges*

of Changing Employment Arrangements, F. Carré, M.A. Ferber, L. Golden, and S.A. Herzenberg, eds. Champaign, IL: Industrial Relations Research Association, pp. 291–312.

duRivage, V., F. Carré, and Chris Tilly. 1998. "Making Labor Law Work for Part-Time and Contingent Workers." In *Contingent Work: American Employment Relations in Transition*, K. Barker and K. Christensen, eds. Ithaca, NY: ILR Press, pp. 263–280.

Euroline. 2002a. *2001 Industrial Relations in EU, Japan and USA*. Dublin. http://www.eiro/eurofoundie/print2002/12/feature/tn (accessed March 2, 2002).

———. 2002b. *Working Time Developments and the Quality of Work*. Dublin. http://www.eiro.eurofound.ie/2001/11/study/TN0111143S.html (accessed August 16, 2002).

Feldacker, B. 1990. *Labor Guide to Labor Law*. 3rd ed. Englewood Cliffs, NJ: Prentice Hall.

Fullerton, H., Jr. 1999. "Labor Force Projections to 2008: Steady Growth and Changing Composition." *Monthly Labor Review* 122(11): 19–32.

Hayghe, H. 1997. "Developments in Women's Labor Force Participation." *Monthly Labor Review* 120(9): 41–46.

Helper, Sue. 1990. "Subcontracting: Innovative Labor Strategies." *Labor Research Review* 9(1): 89–99.

Jenero, K.A., and M.A. Spognardi. 1995. "Temporary Employment Relationships: Review of the Joint Employer Doctrine under the NLRA." *Employee Relations Law Journal* 21(Autumn): 127–137.

Katz, H.C., and T.A. Kochan. 2000. *An Introduction to Collective Bargaining and Industrial Relations*. 2nd ed. Boston: McGraw-Hill.

Labor Research Association (LRA). 2002. "Highlights of the Teamsters-LPS Agreement." http://www.iraonline.org/print.php?id=212 (accessed August 23, 2002).

Leatherman, C. 2001. "Part-Time Faculty Members Try to Organize Nationally." *The Chronicle of Higher Education,* January 26, A:12–13.

Longmate, J., and F. Cosco. 2002. "Part-time Instructors Deserve Equal Pay for Equal Work." *The Chronicle of Higher Education,* May 3, B:14.

Michigan Department of Corrections. 1999. *Memorandum to All Bureau Health Care Service Staff on Information on Privatization of Health Care Services.* January 12. Lansing, MI: Michigan Department of Corrections.

Mitchell, D.B. 1986. "The New Contingent Employment: A Calm View." In *The Changing Workplace: New Directions in Staffing and Scheduling*, Bureau of National Affairs, ed. Washington, DC: Bureau of National Affairs, pp. 93–94.

Nollen, S., and H. Axel. 1996a. "Contingent and Alternative Work Arrange-

ments, Defined." *Monthly Labor Review* 119(10): 3–21.
———. l996b. *Managing Contingent Workers.* New York: AMACOM.
Nussbaum, K., and D. Meyer. 1986. "Marginal Work Means Trouble for Workers, Economy." *The Changing Workplace: New Directions in Staffing and Scheduling*. Bureau of National Affairs Special Report. Washington, DC: Bureau of National Affairs, p. 95.
Rivera, S.A. 2000. Testimony of UAW Local 6000 before the Michigan Senate Committee on Corrections Allocations, Lansing, MI. February 15.
Roberts, K., and S.E. Gleason. 1999. "Workforce Planning for Flexibility: Staffing with Temporary Employees." In *Managing Human Resources in the 21st Century*, E.E. Kossek and R.N. Block, eds. Cincinnati: South-Western College Publishing, Module 12.
Ruskin Moscou Faltischek, P.C. 2003. "NLRB Decision Permits Medical Interns, Residents and Fellows to Unionize." July 30. http://www.ruskinmoscou.com/article-nlrb.htm (accessed January 14, 2004).
Schlossberg, S.L., and J.A. Scott. 1983. *Organizing and the Law.* Washington, DC: Bureau of National Affairs.
Service Employees International Union (SEIU). 1993. *Part-Time, Temporary, and Contracted Work.* Washington, DC: SEIU Research Department.
Sloane, A., and F. Whitney. 1994. *Labor Relations*. Englewood Cliffs, NJ: Prentice Hall.
Smallwood, S. 2002a. "Faculty Union Standards for Treatment of Adjuncts." *The Chronicle of Higher Education,* August 2, A:12.
———. 2002b. "UAW Will Represent Part-Time Faculty Members at New York U." *The Chronicle of Higher Education*, July 19, A:10
Tilly, C. 1992. *Short Hours, Short Shrift: Causes and Consequences of Part-Time Work*. Washington, DC: Economic Policy Institute.
———. 1998. "Part-Time Work: A Mobilizing Issue." *New Politics* 6(Winter): 21–26.
U.S. Department of Labor, Bureau of Labor Statistics (BLS). 2001. *Contingent and Alternative Employment Arrangements*. http://stats.bls.gov/news.release/conemp.nws.htm (accessed December 21, 2001).
Zalusky, J.L. 1986. "Labor's Concerns with the New Directions in Staffing and Scheduling." In *The Changing Workplace: New Directions in Staffing and Scheduling*, Bureau of National Affairs, ed. Washington, DC: Bureau of National Affairs, p. 98.
Zeytinoğlu, I.U. 1992. "Reasons for Hiring Part-Time Workers." *Industrial Relations* 31(3): 489–499.

The Shadow Workforce

Perspectives on Contingent Work in the United States, Japan, and Europe

Sandra E. Gleason
Editor

2006

W.E. Upjohn Institute for Employment Research
Kalamazoo, Michigan

Library of Congress Cataloging-in-Publication Data

The shadow workforce : perspectives on contingent work in the United States, Japan, and Europe / Sandra E. Gleason, editor.
p. cm.
Includes bibligraphical references and index.
ISBN-13: 978-0-88099-288-6 (pbk. : alk. paper)
ISBN-10: 0-88099-288-3 (pbk. : alk. paper)
ISBN-13: 978-0-88099-289-3 (hardcover : alk. paper)
ISBN-10: 0-88099-289-1 (hardcover : alk. paper)
1. Temporary employment—United States. 2. Temporary employment—Japan. 3. Temporary employment—Europe. 4. Part-time employment—United States. 5. Part-time employment—Japan. 6. Part-time employment—Europe. 7. Contracting out—United States. 8. Contracting out—Japan. 9. Contracting out—Europe. I. Gleason, Sandra E.
HD5854.2.U6S53 2006
331.25'729—dc22

W.E. Upjohn Institute for Employment Research
300 S. Westnedge Avenue
Kalamazoo, Michigan 49007-4686

Cover design by Alcorn Publication Design.
Index prepared by Diane Worden.
Printed in the United States of America.
Printed on recycled paper.