Negotiating Security

Trade union bargaining strategies against precarious work

industri all
global union

STOP
PRECARIOUS WORK

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'First they outsourced the janitorial and catering work and we didn't speak out because we weren't representing cleaning workers.

Then they outsourced the security jobs, and we didn't speak out because we weren't representing the security services.

Then they outsourced the transport and maintenance services, and we didn't speak out because we weren't representing workers in transportation and maintenance.

Then they outsourced our work, and there was no one left to speak for us.'

Foreword

The continuing expansion of precarious work is one of the biggest threats that unions face, not only to workers' job security, pay and working conditions but to their capacity to organise workers to fight collectively for their rights. For IndustriALL, the fight against precarious work is a key strategic goal which is integrated into all its work at global, industrial and regional level.

Each year on October 7, the World Day for Decent Work, IndustriALL affiliates mobilise globally in a show of strength against the forces that are promoting precarious work as a means of weakening worker power.

IndustriALL supports its affiliates in their struggles to limit precarious work through legislation and collective bargaining. We also act globally to pressure the institutions of global governance to amend policies which encourage precarious work. In particular, the ILO must do more to ensure that precarious workers' fundamental rights to join a trade union and bargain collectively are protected.

Precarious workers who are employed through third party agencies and labour contractors are routinely denied these rights because of the triangular employment relationship that is created. IndustriALL has previously exposed how this particular form of precarious work undermines worker rights in its publication 'The Triangular Trap: unions take action against agency labour'.

Collective bargaining plays a crucial role in limiting precarious work and improving conditions for precarious workers and IndustriALL affiliates have amassed a wealth of experience in using collective bargaining strategies to confront precarious work and fight back against its expansion. The examples you will find in this publication are only a sample of the many, many creative and progressive agreements unions are pursuing to protect workers. More examples can be found on our website and new ones are being added all the time.

We hope that through these examples, unions will be inspired by the work of others and will find ways to adapt the strategies outlined here to their own national circumstances.

Don't hesitate to contact us if you want more information on a particular strategy or want to get in touch directly with the union involved.

Together we can STOP Precarious Work

Jyrki Raina
General Secretary

STOP
PRECARIOUS WORK

The global spread of precarious work
A corporate attack on collective bargaining

Every day, more and more workers all over the world are forced into precarious employment. The figures are appalling. Secure employment with good pay and conditions is under attack all over the globe.

Global economic integration and changes in production, business organization and technology are undermining permanent full-time jobs with good social benefits and protection against dismissal.

As demands for flexible labour markets increase, companies are resorting to outsourcing and subcontracting, with precarious work exploding far beyond any legitimate needs. The global economic crisis of 2008 further accelerated this decline of secure employment.

Besides insecurity, precarious workers experience lower wages, limited training opportunities; lower occupational safety and health protection; fluctuations in hours of work and/or volume of work; lower social security and social protection coverage; limited mobility toward better-quality jobs or positions; low or no trade union representation or collective bargaining coverage; and low or no labour law coverage or enforcement.

Source: IG Metall Website

Collective Bargaining and Precarious Work

Collective bargaining is one of the most important tools trade unions have for regulating precarious work and the working conditions of precarious workers. But the explosion of precarious work itself substantially threatens workers' collective bargaining rights.

Precarious work is often deliberately used as a way to undermine union organizing and collective bargaining as trade unions universally face difficulties to organize and represent precarious workers, whose association with a single workplace may be weak and short. Due to the insecure nature of their employment, precarious workers are often afraid to join or form a trade union.

In several countries, agency and outsourced jobs are reclassified in a way that legally prevents these workers from being eligible for membership in the union where they work. Unions are as such prevented by law from representing and bargaining for outsourced or agency workers in their industrial sector or enterprise.

For workers in triangular employment relationships, bargaining is nigh on impossible. The user company where they work controls their working conditions, yet the agency or sub-contractor is their legally recognized employer, even though it has no actual control over their work.

Temporary agencies contracted by companies are often illegal actors, with which it is difficult to bargain. In **Niger**, according to a study carried out in 2010, sixty private firms and employment agencies existed, while only around twenty were legally operating and recognized.

Sub-contracting and outsourcing: how companies escape their responsibilities

OIL INDUSTRY IN NIGERIA:

In Nigeria, multinationals and oil service companies outsource a very large proportion of their workforce to unlicensed labour contractors, notwithstanding that the jobs are continuous, routine and permanent in nature. The user companies supervise the workers and determine their salaries. They only transfer payments to the labour contractors.

SHIPBUILDING IN GERMANY:

"Companies tend to hand over their responsibilities and do not bother monitoring what their subcontractors are getting up to. Moreover, the subcontractor they have signed the agreement with will then pass the work on to sub-sub-subcontractors. In the end, companies no longer have the slightest idea of who is working on their premises. […] The subcontractors make a tidy profit for themselves at the expense of the workers"

Meinhard Geiken in charge of IG Metall's Coastal District.

MINING IN MADAGASCAR:

In July 2013, QMM (Qit Madagascar Minerals-Rio Tinto) ended its contract with the security company OMEGA Risk Solutions in favour of two cheaper companies. This resulted in the collective dismissal of 300 workers, terminated with only one month's notice. IndustriALL affiliate FISEMA tried to negotiate severance benefits with QMM Rio Tinto but the company refused to take responsibility for the workers, on the basis that it was not the employer.

Collective bargaining has an important role to play in limiting the expansion of precarious work and better protecting precarious workers. But these are uphill battles.

Overcoming the obstacles to collective bargaining
trade union strategies

Bargaining arrangements used by unions vary from country to country, within a country or an industrial sector. Several factors influence the way bargaining is conducted, including the national legal framework, existing models of collective bargaining, union strength and bargaining power and the prevalence of precarious work in the country or sector.

Organizing and representing precarious workers in collective bargaining

> ***"Union strength is dependent on membership. We have to organize contract workers, unionize them, fight for them and increase our strength"***
>
> ***B.K. Das, General Secretary INMF***

IndustriALL encourages its affiliates to organize and represent precarious workers, and bargain on their behalf, rather than pushing for the creation of separate unions for them. Outsourcing generates a real risk of fragmentation of the bargaining power of trade unions, with single companies contracting multiple numbers of subcontracting firms or temporary agencies. In the world's largest open-pit set of coal mines, Carbones del Cerrejón in **Colombia**, out of 11'900 workers, 6'500 are outsourced and employed by more than 300 different subcontractors.

Organizing precarious workers in an existing union better protects precarious workers and builds stronger unions, in turn protecting permanent workers by preventing division of the workforce into separate, isolated bargaining units. Once the union can show that it is able to bargain collectively on behalf of precarious workers, precariously employed workers will be more likely to join the union when they see that it can do something for them.

If needed, unions can change their rules and statutes to remove barriers to precarious workers joining. In **Germany**, the major unions established specific bargaining associations for temporary agency workers in order to recruit these workers and to enforce equal treatment arrangements in collective agreements. Through a strong focus on improving conditions for agency workers, in 2012 IG-Metall gained 38'000 new members among temporary staff.

Indonesian unions FSPMI and Lomenik have successfully organized contract and outsourced employees on Batam, an island that is itself an export processing zone (EPZ). According to FSPMI, around 98% of all workers in the Batam EPZ are hired through labour agencies, the majority of whom are women. In addressing the needs of EPZ workers, FSPMI and Lomenik devised strategies to change the status of contract workers to permanent, negotiating collective agreements that decrease the number of contract workers.

Throughout its campaign to organize outsourced workers in **Indian** coal mines, the INMF has also followed the principle of organizing contract workers into the same unions rather than dividing the workforce through the creation of separate unions. However, necessary amendments to union statutes were taking too long in a few cases, so the unions supported the creation of a number of separate unions for contract workers, including the Mahanadi Coal Fields Contractual Transport Workers Union (10'000 members). Collective bargaining with the transport employers' association has resulted in regular payment of wages through the bank, deduction of provident fund contributions, access to medical facilities in the company hospitals and annual bonuses.

Several factors contributed to the success of this strategy: the continued support of the federation INMF to the precarious workers' trade union; parallel negotiations by the INMF with the user company and, above all, the solidarity of permanent workers who supported the precarious workers' strike.

Sectoral bargaining

Sectoral bargaining takes place nationally or at the regional and/or municipal level. Coverage of sector agreements is often high as a result of the number and size of the companies bound by agreements. Extension requirements under the law may further extend the reach of the agreement. If agreements cover "all workers" or all persons "engaged in an industry", as opposed to "employees", coverage can be expanded to include workers in precarious employment relationships.

Bargaining at industrial sector level can play an important role in regulating the use of precarious work, notably outsourcing and temporary agency work, as well as the working conditions of precarious workers. Fragmentation is to be avoided, especially where sub-contractors supply labour to more than one company.

In **Denmark**, in the industrial production and construction sectors, unions have negotiated sectoral agreements which include protocols on agency work. These protocols state that agency workers must be employed in accordance with the sector-specific agreement, covering all aspects of pay, working time and other important terms and conditions of employment. In **Belgium**, the *Commissions Paritaires* (Joint Committees), comprising workers' and employers' organizations, have included restrictions on the use of agency workers in collective agreements. A specific commission was established to regulate temporary agency labour through agreements applicable for different industrial sectors. These agreements protect workers' rights to pensions, health and safety and training. IG-Metall in **Germany** reached an agreement in 2012 with the metal and electrical industries' employers for the right of works councils to object to the use of agency labour.

In **Argentina**, the oil and gas federation FASPyGP succeeded in negotiating a clause in the gas industry collective agreement which stipulates that all provisions of the agreement apply equally to subcontracting firms.

> *Art 2: Exclusivity*

> *[…] b) Subcontractors: Companies with activities under this collective agreement shall be jointly liable for the obligations going on between subcontractors and their employees and enshrined in the Labour standards and Social Security [...] Companies and FASPyGP use all means available to enforce the provisions of this collective agreement and legislation.*

> ***FASPyGP- Collective Bargaining agreement for gas sectors (2010-2013).***

In **South Africa**, NUMSA has reached several agreements in different sectors (automobile, tyre, metal) that aim at phasing out labour brokers and improving the working conditions of precarious workers.

Enterprise bargaining

Collective bargaining at enterprise/plant level is more likely to exclude precarious workers, such as agency and outsourced workers, as they are not direct employees of the user company. Union strength and bargaining power at enterprise, and even more so at plant level is eroded by outsourcing. But many unions are left with no choice other than to bargain at the level of an individual company when they are restricted by the industrial relations system. Where sectoral bargaining is not possible, bargaining directly with the user enterprise on behalf of both permanent and outsourced/agency workers is the best way to consolidate union strength and fight for equal conditions.

Despite the limitations, some affiliates have been able to mobilize and negotiate effective collective agreements. In 2012, in **Canada**, after a six month lockout at Rio Tinto in Alma, the United Steel Workers (USW) succeeded in negotiating a collective agreement limiting the use of outsourced workers to 10% of the worked hours. In the **USA**, USW also concluded an agreement with the tyre company Bridgestone that restricted the use of outsourced workers for maintenance. This clause has enabled the USW to maintain at 5% the rate of outsourced workers in Bridgestone operations. Bridgestone must also consult workplace union representatives on the necessity for, and scope of outsourcing.

Negotiating with agencies and contractors

Trade unions have also negotiated agreements with the temporary work agencies or subcontracting firms that are recognized as the legal employers.

There are clear limitations to what can be achieved for workers by bargaining with labour contractors rather than user companies. A large company may use many small and medium-sized contractors, fracturing bargaining units and requiring multiple negotiations. Contractors may also have limited control over the working conditions that are the subject of negotiations.

In **Nigeria**, the Shell Petroleum Development Company (SPDC) admitted to IndustriALL affiliate NUPENG that it has over 30'000 precarious workers in its system. NUPENG is demanding oil multinationals to facilitate the establishment of a Contractors Forum as an umbrella body for the contractors to negotiate with the union on behalf of the contract workers. The union also calls for a negotiation of a collective bargaining agreement for all the contract workers in Shell operations. While contractors' forums have already been formed at Chevron, Total and Agip to negotiate with the union on conditions of service for their contract staff, the management of Shell and Mobil have so far refused to do the same.

In the Chevron-Uni Thai plant that assembles offshore oil and gas platforms in Laem Chabang, **Thailand**, two groups of agency workers supplied by two different agencies managed to reach agreement with both agencies: The workers had never before been covered by a collective agreement and the new CBA brought them rights and benefits for the first time.

> *1.) Annual leave:*
>
> - *6 days for workers who have been in service between 1-2 years*
> - *8 days for workers who have been in service for more than 2 years*
>
> *3.) 13th month salary: 30% of the worker's monthly salary will be paid out in December*
>
> *2013 agreement between CUEL Subcontract Workers Union and Megatech Industrial Consultant (Thailand)*

A better alternative to negotiating with individual agencies or contractors is to conclude sectoral agreements covering the entire temporary staffing industry in a particular sector.

In Europe, in several countries including the **Netherlands, Sweden, Belgium, Spain, Switzerland** and **France**, unions have concluded national agreements that cover temporary agency staff in all industrial sectors. The agreements regulate working conditions and cover a large proportion, if not all, of the temporary agency workforce. In some countries, different agreements are struck for blue-collar and white-collar workers (e.g. **Denmark, Sweden, Austria**).

In **Germany**, IG Metall has concluded sector-specific collective labour agreements with two of the most important temporary work organizations (BAP and iGZ). These agreements, which have been concluded in the metal, electrical, textile and clothing sectors, as well as by IGBCE in the chemical, plastic and rubber sectors, provide additional sector-specific bonuses for agency temporary staff that will gradually equalize wage differences between agency workers and permanent staff.

While negotiating with agencies at national or sectoral level has delivered some important outcomes for agency workers, this has largely been restricted to unions in Western Europe. Such agreements are only possible where there is significant union strength among agency workers, where collective bargaining is well protected by the law and is well institutionalized. It cannot be a model for most agency work situations in the world. Furthermore, it is not possible for agreements with agencies to set limits on the use of agency workers, which is why successful agreements with agencies are made in conjunction with industry agreements. In the example above, the German unions negotiated agreements with user companies in each sector at the same time as they were negotiating with temporary work agencies.

Global bargaining

Global Framework Agreements (GFAs) provide an opportunity to set agreed limits on precarious employment through global level negotiations with companies, covering what is a necessary level of temporary employment for the particular demands faced. Language reflecting the commitment of an MNC to reduce precarious employment throughout its global operations and those of its suppliers can be very useful. It can be used to address situations where temporary, agency, outsourced or other forms of precarious employment have replaced permanent employment, as well as to support reinstatement of permanent, direct employment and (re)establish unionization. The GFA between IndustriALL and GDF Suez holds great potential for limiting precarious work:

> *"[the company] recognizes the importance of secure employment for both the individual and for society through a preference for permanent, open-ended and direct employment. GDF SUEZ and all sub-contractors shall take full responsibility for all work being performed under the appropriate legal framework and, in particular, shall not seek to avoid obligations of the employer to dependent workers by disguising what would otherwise be an employment relationship or through the excessive use of temporary or agency labour."*

IndustriALL Global Union's global framework agreement (GFA) with Spanish-based Inditex, the world's largest garment retailer, aims to ensure the sustainable and long-term observance of international labour standards throughout the Inditex supply chain. Inditex uses 1'300 suppliers, and 5'000 'manufacturers' in 40 countries, employing around 700'000 workers. The GFA is the first of its kind to cover a retail supply chain and it provides workers with mechanisms to monitor and enforce their rights at work. In 2012, the agreement was reinforced through an addendum defining union involvement in implementation and monitoring. The addendum guarantees IndustriALL and its affiliated unions access to all Inditex information on its suppliers.

The terms of the agreement apply equally to direct suppliers, contractors and sub-contractors, including homeworkers. Inditex forbids all subcontracting without its prior written consent and suppliers allowed to subcontract are held responsible for subcontractor compliance.

The GFA has enabled several labour conflicts with suppliers to be settled in Peru, Cambodia, India, Turkey, Brazil and Portugal. Workers fired because of their involvement in trade unions have been reinstated and trade unions have been recognized as formal interlocutors.

Activities to enforce the GFA have included:

- Trade union visits to supplier companies (Morocco, Turkey, Portugal, China, Bangladesh, Brazil, Cambodia) and mapping of the situation, notably in terms of organizing and freedom of association.
- Meetings between suppliers' management, representatives of Inditex and local trade unions.
- A pilot project in Turkey to train worker and management representatives from supplier factories on the proper implementation of the GFA and the protocol on involvement of local unions. This training will be extended to major Inditex suppliers in Brazil, Morocco, Portugal and Cambodia.

Despite the involvement of Inditex management, the task is not easy due to the fragmentation of production and the high number of subcontractors, who themselves subcontract production.

Key success factors

• Union strength and capacity to mobilize members

In **South Africa**, NUMSA was able to conclude its agreement with the automobile industry sector only after a very strong mobilisation - 4 months of negotiations and a 2 week nationwide strike.

In **Germany**, in the weeks before concluding the agreements on precarious work, 800,000 IG Metall members took part in powerful warning strikes in all collective bargaining regions.

In **India**, OCMS negotiated wage increases for drivers, mechanics and helpers after a 3-day strike that paralysed the transportation of coal in the Talcher coalfields.

• Solidarity between permanent and precarious workers

Trade unions must be able to mobilize not only precarious workers but also permanent workers to put maximum pressure on employers. This is easier when precarious and permanent workers are organized in the same union. The solidarity of permanent workers can prove crucial. In **Argentina**, when SUTNA, the tyre trade union, was organizing precarious workers and bargaining for their regularisation, permanent workers agreed to use collective bargaining to settle the outsourcing issue rather than pursuing improvements to conditions for themselves.

Similarly, in **Guinea** mining affiliate CNTG succeeded in convincing permanent workers to agree to forego wage increases in order to negotiate for the regularisation of precarious workers.

• International mobilisation

The USW in Canada was able to mobilize national and international solidarity in support of workers at Rio Tinto Alcan in Alma, Quebec, who refused management efforts for retiring employees to be replaced by non-union contract workers earning half the wages with no pensions or benefits. USW representatives travelled the globe to build support for the Alma workers and develop a dynamic international campaign. On March 31 2012, 8,000 union members from Canada, the U.S., Europe, Africa and Australia attended a rally in Alma. Under the resulting agreement, contracting out is strictly managed and limited.

> ***'The key to victory was the enormous solidarity shown by our members in Quebec who inspired trade unions across the globe to support them'***
>
> ***Daniel Roy, USW Quebec Director.***

Bargaining Outcomes

Limiting precarious work

Central to the IndustriALL campaign 'STOP Precarious Work' is the call to affiliates to conclude agreements that keep employment direct and permanent. Such agreements discourage the use of outsourcing and encourage regular employment, prevent the replacement of regular employees with temporary or short-term employees, and ensure that these work arrangements are only used to meet legitimate needs. Setting limits on precarious work is crucial, since the more precarious work takes over, the smaller and weaker the bargaining unit becomes, making such agreements impossible in the future.

Prohibiting precarious work in certain industrial sectors or occupations

Some unions, including NUMSA in **South Africa**, are succeeding in concluding agreements that forbid or phase out the use of labour brokers in entire sectors.

> *Article 5. Labour brokers*

The parties agree that the use of Labour brokers will be discontinued with effect from 1 January 2011 in respect of the bargaining unit, with the sole exception of the pre-existing labour brokers contracts which will be allowed to run their course.

Consolidated Heads of Agreement between AMEO and NUMSA

Where blanket bans have not been achievable, agreements put barriers by prohibiting the use of temporary workers, particularly outsourced or agency workers, in certain occupations:

> *The Company agrees that, daily tasks dealing with maintenance directly affecting the production, and currently performed by its own and directly hired staff, will only be performed by its own staff, and that, in the tyre storage and dispatch the company will not use workers hired through a sub-contracting company.*

SUTNA, Argentina, Collective Bargaining for the Tyre Industry, Annex 1- Bridgestone

> *Clause 46*

In carrying out of the services linked to its main productive activities, the COMPANY can only use workers hired by it.

Collective bargaining agreement 2010-2012, between Bridgestone Brazil and the Rubber, Tyre and Related Industries Workers Union of the Sao Paulo Region

Consultation on use of precarious work

Other agreements stipulate that unions will be consulted prior to changes that could affect the employment status of employees, and include tools and rights to monitor outsourcing processes.

Clauses stipulate that unions must be provided with all relevant facts related to the use of precarious workers: reasons for using precarious workers; details of the planned restructuring; number of people outsourced; full comparison of costs between using directly employed workers with the cost of working with subcontracted or agency labour. This gives unions an opportunity to question the company on the effectiveness and the legitimacy of the outsourcing.

In **Canada**, the agreement that settled the dispute at Rio Tinto Alma establishes a committee on outsourcing, comprising equal numbers of union and management representatives, that examines and makes recommendations on outsourcing proposals.

> *2.2 SECURITY OF EMPLOYMENT*

[…] The intent of the parties is to minimise the use of supplementary labour hire personnel. The parties recognise that from time to time there will be a requirement for supplementary labour hire employment. When the need arises for larger volumes of labour hire personnel the Company will consult with the consultative committee / senior shop steward:

- *The business requirements for such personnel;*
- *The expected duration of the assignment;*
- *The estimated number of persons;*
- *Whether having the work done in-house will enhance or diminish job security for employees engaged under the Agreement;*
- *Alterations in the working conditions for employees covered by this Agreement caused by the proposed use of contractors or labour hire companies.*

Futuris Automotive Interiors Parts and Accessories (South Australia) Workplace Agreement 2011

Limiting the number of precarious workers and the length of assignments

In **Brazil**, tyre union Sindicato da Borracha da São Paulo signed agreements with tyre companies (Bridgestone, Pirelli, Goodyear) operating in their region which regulate the working conditions of direct fixed term workers. The agreements stipulate that temporary workers should not represent more than 5% of the workforce involved in production. In **Canada**, Rio Tinto Alma workers achieved cap of 10-15% on the total hours worked by outsourced workers.

Prevailing conditions do not always allow such low proportions to be negotiated immediately. In **Thailand**, the Thai Electronic, Electrical Appliances, Auto and Metal Workers' Union (TEAM) has been able to set limits on outsourcing and use of agency labour of between 30% and 50%. This is a first step towards limiting the expansion of precarious work in sectors and countries where it is threatening to overtake permanent work.

A number of agreements provide for a maximum duration of temporary worker assignments and a maximum number of contract extensions. In 2011, NUMSA agreed with the Steel and Engineering Federation of **South Africa**, the main metal employer's federation, that workers cannot be employed through labour brokers for longer than 4 months. After that, a worker must become permanent, if retained.

> *2 º) The worker, even if the contractual arrangement allowed it legally, cannot remain under a temporary contract over two years, so this time limit reached will acquire the status of permanent members of staff.*

Collective Bargaining Bridgestone España and Spanish Trade Unions

> *4.5.1 Fixed Term Employment (Non-Trade employees)*

[…] Fixed term employees shall be engaged for as long as the particular requirement exists but for not more than 12 months, inclusive of an initial three month probationary period. Except if a fixed term non trades employee is extended in accordance with this clause, after 12 months of continuous employment or after employment for a cumulative period of 12 months provided that the break in employment is no longer than three months, a fixed term non trades employee will be converted to permanent.

Holden (Australia) Enterprise Agreement 2011

> *Article II – B*

Probationary and Temporary or Casual Employment Section 1.

b) A 'temporary or casual employee' is any person hired to perform a specific and/or temporary job not connected with the regular operation, covering a very limited duration of time. However, any temporary or casual employee performing the job of a regular employee and has worked for 156 days in any 12 months period shall be deemed a regular employee.

Indo Phil Textile Mills, INC. (Bulacan-Philippines) Collective Bargaining Agreement, 2010 2015

Unions have also negotiated for shorter probation periods that are often used by employers as a form of precarious work. At a Bridgestone plant in **Thailand**, direct fixed-term 'Project workers' are 'assistants' to permanent workers in the production line. The union achieved an agreement under which these project workers become permanent after nine months instead of two years.

Preference for permanent work and rules for the use of precarious work

Statements in agreements on preference for permanent and direct employment can be a useful tool for preventing the use of precarious work beyond the legitimate needs of a company. The AMWU has negotiated a number of such clauses in **Australia**:

> *11.1 The parties to the Agreement recognise the benefit of a stable workforce and commit to implement employment practices to support this.*
>
> *11.2 It is not the intention of the Company to utilise the services of contractors or subcontractors to the detriment of the employment security of direct Employees.*
>
> ***Als Industrial Division (Victoria) AMWU Enterprise Agreement 2012***

> *21.2 If Griffin does engage contractors, Griffin will not retrench, make redundant or otherwise terminate the employment of any employee covered by this Agreement in order to replace that position with a contractor or an employee of a contractor or labour hire company.*
>
> ***Griffin Coal (Maintenance) Collective Agreement 2012***

Many unions have been able to define in agreements the limited circumstances and reasons for reverting to temporary labour.

> *Section 10:*
>
> *[…] The company will perform regular continuing maintenance work with employees of its mechanical departments except when lack of skills or equipment, nature of the work of time considerations make it impractical.*
>
> *Installation work, fabrication work, machine shop work or repair work on existing equipment may be performed for a plant by its mechanical departments, depending upon the availability of skills, time considerations, nature of the work, reasonably competitive cost, performance guarantees, installation cost included in purchase price, as well as whether the work can be handled by offering the appropriate mechanical department employees […] overtime hours […] If any of the aforementioned conditioned are not met, the company shall have the option of placing the work with an outsider company.*
>
> *The company will notify the union when an outside contractor is to work within the plant. Such notification shall specify the location, type scope, duration, need for and timetable of the work to be performed.*
>
> *[…] Should the union believe a discussion is necessary, it shall request for a meeting. […] At such meetings the parties will review the plans for the work to be performed and the reason for contracting out such work. The Company will give good faith consideration to any suggestions by the Union, subject to the limitations in paragraph (b) above, and to any alternate plan proposed by the union for the possible performance of the work by bargaining unit personnel.*
>
> ***USW master agreement with Bridgestone***

> *Art. 55. USE of CONTRACTORS*
>
> *BOC may on occasions require using contractors where practical business considerations preclude the use of the permanent domestic labour force in whole or in part, or the employment of additional permanent or temporary staff (clause 10) is not a viable option.*
>
> *Such circumstances may include:*
>
> *a) Special maintenance periods; i.e. shut downs*
>
> *b) Concentrated workload of limited duration*
>
> *c) The supply and installation of new plant or machinery*
>
> *d) Where specialized work or skills are required*
>
> *e) And other one off activities*
>
> *This will not extend to normal maintenance regularly carried out by permanent staff*
>
> *When such circumstances arise, BOC will:*
>
> *a) Consult with the appropriate union site delegate*
>
> *b) Not actively engage in activities to disadvantage the permanent domestic workforce*
>
> *c) Ensure that all work undertaken by contractors conforms to the safety standards as required*
>
> ***BOC/Linde Engineering Employees Collective Employment Agreement 2012-2014 (Signed by New Zealand EPMU)***

> *4.3.3 Use of Casual/Temporary Employees at HSPO (Non-Salaried)*
>
> *(a) In conjunction with clause 4.3.1, Holden may engage casual employees at HSPO when:*
>
> *(i) more than 16% of a workgroup is on planned leave (being annual leave/RDOs/long service leave) […]*
>
> *(ii) on any shift where there are more than 3 or more unplanned absences Holden may engage one casual employee to replace each absent employee at or above this threshold;*
>
> ***Holden (Australia) Enterprise Agreement 2011***

Reversing course on outsourcing

Affiliates have managed to challenge outsourcing by showing that quality reduced significantly after regular workers became irregular. In **Brazil**, the Union of Chemical, Pharma, Ink and Varnish workers of ABC managed to reconvert outsourced workers to permanent at Soplast when it pointed out that quality had reduced. Similarly, at Kimberly Clark-Sao Paulo, cargo handling was originally outsourced but from 2010, all the workers were again permanent and direct because of problems with the work performed.

CBK mine in Guinea. Photo: IndustriALL

Setting global limits in a company

In 2012, IndustriALL signed a global agreement limiting temporary work. The ground breaking 'Temporary Work Charter for the Volkswagen Group' sets principles for use of temporary work in the entire Volkswagen Group worldwide (Volkswagen, Audi, Seat, Skoda, Rolls-Royce Bentley, Lamborghini, Auto-Europa). In September 2013, the Volkswagen Group operated 105 production plants in 19 European countries and a further eight countries in the Americas, Asia and Africa with 570'000 employees worldwide.

The agreement states that temporary work should not exceed 5% and allows the European and global works councils, as well as the employee representatives in the different plants, to monitor the proportion of temporary agency workers.

> *a) Limiting the number of temporary workers*

The number of temporary external employees in the Volkswagen Group has to be in an appropriate relationship with permanent employees. As a benchmark for this, temporary external personnel make up 5% of the workforce per plant. Company and employee representation can amicably agree on a different portion at each plant. […] The Volkswagen European Group Works Council and the Volkswagen Group Global Works Council have the right to have the Group Board of Management inform them over the level of temporary external personnel at work in the company or the individual sites as well as their percentage of the total workforce. The employee representatives have the same rights at their respective level as do the Volkswagen European Group Works Council and the Volkswagen Group Global Works Council for the entire company.

c) Limiting the length of an individual's assignment

The protection of a temporary external employee should not exceed the respective assignment length at the Volkswagen Group, a total of 3 contract extensions or a period of 36 months collectively. If the temporary external employee has reached the maximum employment limit, his or her adoption into the permanent workforce will be reviewed individually by the responsible department.

Temporary Work Charter for the Volkswagen Group

Converting precarious work to regular employment

Unions have been able to use collective bargaining to move precarious workers to direct and permanent employment.

Affiliates have launched several campaigns to regularize workers. In **Guinea**, after a long struggle, mining federations succeeded in 2012 in transforming 300 temporary positions into permanent ones in mining company CBK. In **Senegal**, SUTIDS bargained the regularization of 450 temporary workers, after negotiations with employers in six chemical and pharmaceutical companies: SATREC, SIPS, SIVOP, SPN, SYBEL and NDIAMBOURS.

In **Thailand**, trade unions have also concluded agreements with user companies to regularise fixed term and agency/outsourced workers.

> *Fixed term (two years contract) workers who have been in service with EGAT for six years shall be converted to regular employees of EGAT. The workers shall have obtained at least a vocational school certificate equivalent to the level of senior high school.*

EGAT Labour Union CBA on Precarious Work signed with the Electricity Generating Authority of Thailand (EGAT)

As a result of this agreement, 1'200 contract workers have been converted to regular employees of EGAT.

Moving agency workers into direct and permanent employment is not always possible. Therefore unions try to convert agency work into direct temporary work as a first step. This often already allows the agency workers to join the unions and be covered by the collective agreement. In **Malaysia**, trade unions in the manufacturing sector had applied to represent outsourced and agency workers, but the ministry of human resources rejected the application, arguing that the union was not competent to represent service workers. In response, the Paper Manufacturing Employees Union bargained the regularization of outsourced and temporary workers at Kimberly Clark Malaysia to direct fixed-term employment, so that these workers became entitled to the terms and conditions of the collective agreement.

Giving priority of employment to temporary workers when a vacancy occurs is another means of facilitating the regularization of precarious workers into permanent workers.

> *The recruitment policy of the Company will be governed by the principle of promoting stability in employment, so it should take into account the following criteria:*

1. […] if during the term of the temporary contract a vacancy occurred, the employee will have a preferential right to move to fill the vacancy compared to job seekers at the time unrelated to the company.

Collective Bargaining Bridgestone España and Spanish Trade Unions

> *This charter is based on the principle that the temporary employment should provide the individual with the chance to be taken on in the permanent workforce, if the necessary qualifications have been gained and the appropriate opportunity exists within the company. It sets the preference to take temporary workers if there is a need to hire permanent personnel. Furthermore in this sense, the charter provides vocational training to temporary workers.*

When human resources planning determine that temporary external personnel can be employed in a long term basis, they will be taken on preferentially as permanent employees according to the take-on criteria agreed on between the company and the employee representation at the site. After 18 months, a take-over is considered if appropriate training, personal attributes and sustained need for personnel exist. Thus, temporary work at Volkswagen becomes an opportunity for permanent employment and, in addition to apprenticeships, trainee programmes and direct recruitment of externals, a third way of entering the company. All brands and companies ensure that temporary external employees are preferentially treated during hiring when permanent personnel are needed. They further pledge to offer their technically-related training programme to the temporary workforce, just like the permanent workforce of the respective sites.

Temporary Work Charter for the Volkswagen Group

Improving precarious workers working conditions and protecting their rights

Measures aimed at controlling and limiting the use of precarious work must be well designed so that measures intended to benefit precarious workers do not result in them becoming more insecure. In the **Netherlands**, FNV Bondgenoten campaigns for the adoption by employers of a '9 by 12' rule: where any given job is being performed by an agency worker for 9 months out of 12, that job needs to be become permanent, and so does the worker. The union now also focuses on obtaining better wages, pension rights and training opportunities for agency workers, as they have found that putting the right to a permanent job after a shorter period into a collective labour agreement can have the opposite effect, with employers firing agency workers earlier in order to avoid such provisions.

Some unions have been able to negotiate access to information about the contracting company (its legal status, its record of labour practices, its technical expertise) and to make sure that bidders for the contract are asked, as part of their bid, to provide a statement on how they will deal with such issues as freedom of association, child labour, equality, health and safety, training, employment relationships, salary and working hours, pension rights and redundancy. This provides a good tool for trade unions to protect temporary workers rights and to check that precarious workers benefit from decent working conditions.

> *Leasing manpower from manpower agencies (temporary help agencies)*

1.4.2 Employees in manpower or temporary help agencies shall have the same wages and working conditions that apply in the enterprise leasing manpower for the duration of the leasing period […]

1.4.3 The lessee enterprise is obligated to disclose the necessary information to the manpower or

temporary help agency, so that the condition of equal treatment pursuant to 1.3.2 can be satisfied, and to subject the manpower or temporary help agency to this condition.

At the request of the shop stewards, the enterprise shall document the wages and working conditions that apply at the manpower or temporary help agency when leased employees are to work under the scope of this agreement.

1.4.4 […] Leased employees shall be presented to the shop stewards at the lessee enterprise. When discussing the leasing of manpower, the local parties shall also discuss the resources for shop steward work […].

Industry Agreement 2012-2014, between Norwegian employer federations NHO and Norsk Industri and trade unions LO and Fellesforbundet

Equal treatment

Bargaining for equal pay and conditions between precarious and permanent workers has the dual benefit of eliminating discrimination and combatting social dumping. In many cases, affiliates have been able to bargain equal pay for equal jobs. The extension of the terms of a collective agreement in a particular sector or industry to all workers can also have a significant levelling effect.

> *Contract Employees*

The employer will not contract out the work except where the contract provides that any Contractor or LHC will employ and continue to employ during the term of the contract its employees (contract employees) on terms and conditions that are no less favourable than those in this agreement.

Altius Construction and Engineering AMWU On-Site Construction Collective Agreement for New South Wales 2013-2015

> *Contractors*

The Company shall consult and ensure the wages and conditions, where applicable, of contractors' and labour hire companies' employees engaged to do work covered by this Agreement, are no less favourable than the wages and conditions provided for in this Agreement for equivalent or similar work.

Visy Packaging Cartons AFMEPKIU/ETU Collective Agreement 2013

> *Short term contracts:*

Having due regards for the need for flexibility, in respect of hourly labour, the parties agree that short term contract employees shall be:

a. Paid at the entry rate of the appropriate skill level

b. Entitled to participated in the multi-skilling programme

c. Entitled to participation in company specific arrangements for retirement, death and disabilities benefits

d. Entitled to participate in established company medical aid arrangements; or, if impractical, maybe given the cash equivalent to company's medical aid contribution to fund an alternative medical aid

arrangements; or if this is not possible, then a cash equivalent will be payable, and;

e. Entitled to receive a separation allowance on termination of services […]

Heads of Agreement 2010 (consolidated in 11 September 2013) between AMEO and NUMSA

In **Germany**, nine collective agreements with two of the main temporary employers' organizations (BAP and iGZ) provide a sector-based supplement to wages of temporary workers, thus closing the gap between regular and temporary agency workers. For each industry, the relevant agreement stipulates that after an initial job assignment of four to six weeks, staggered supplements are to be paid according to the length of the job assignment at a user company. After nine months, temporary agency workers earn a supplement of up to 50%, which enables them to achieve equality of pay with permanent staff.

In **Mauritius**, at least 15 collective agreements have been signed which include a common level playing field for contractual and permanent workers:

> *Contractual Worker*

No contractual worker shall be paid less than an employee employed on a permanent basis for any job of the same value.

Marine Biotechnology Products Ltd

> *That all employees performing work of same value should be equally remunerated, even for casual and contractual workers with Contract of Employment with determinate duration.*

Total (Mauritius) Ltd.

Besides basic wages, pay includes allowances, seniority and other bonuses to which precarious workers may not have access. Equal treatment goes beyond pay to include access to social benefits, holidays, working hours, health and safety and training.

> *[…] During their activity with Volkswagen, temporary external employees are given the same working conditions as the permanent employees in the workplace. The equal treatment of temporary external personnel includes, for example, the access to general company information as well as health and safety in the workplace, the access to collective communal facilities and services as well as social standards […].*

Charter on Temporary Work for the Volkswagen Group

> ***"Before my job was outsourced, I regularly participated in training…since then I've had one short training course, in seven years"***

Testimony of an agency worker in manufacturing

In **India**, the INMF has launched a campaign to improve the conditions of precarious workers and has signed several agreements aiming at reducing the gap between permanent and precarious workers in the public mines.

> *i) Where the existing rate of wages of any employee based on contract or agreement or otherwise are higher than the rates, the higher rates shall be protected and treated as the Minimum rates of wages for contactor workers.*

Wage agreement for contractor workers engaged in mining operations (November 2012), between Coal India Ltd, the INMF and Others

Where equal pay provisions apply only to minimum wage rates, precarious workers may still receive lower pay in practice. Precarious workers may also be placed on lower pay rates because their precarious status means they have less experience or less seniority. Seniority is a critical issue as it is linked also to promotion and pensions. Unions have tried to address the seniority of precarious workers through collective bargaining.

> *Appendix 17: Protocol - Temporary agencies*

1. Any job for the temporary agency which is covered by the Industrial Agreement shall accumulate seniority in accordance with the rules described in the Industrial Agreement.[…]

[…] The seniority shall apply to all rights under this Agreement which are conditional on seniority.

Industrial Agreement 2012-2014 between CO-Industri and Dansk Industri

> *Work contracts*

Art. 16. - The social partners in the chemical industry agree that if a worker, at the end of successive fixed-term contracts, is hired as a permanent direct worker for the same function, and with no interruption of more than four weeks, no new probationary period will be asked and seniority previously acquired under the fixed term contracts is maintained.

Belgium Joint Committee for Chemical Industry, Collective Bargaining Agreement 2007-08

In **Belgium**, many collective agreements for temporary agency work include improvements to pension benefits for agency workers in several industrial sectors, complementing the existing statutory pension system.

> *Art. 2. Pursuant to Article 2 of the CBA of 3 October 2011 on the pension premium for temporary workers, temporary employment agencies undertake to pay a pension premium to agency workers made available to a user undertaking.*

Collective Bargaining Agreement (10 January 2012), Pensions premium for temporary agency workers in oil industry, Belgium

Protecting health and safety of precarious workers

Studies since the 1990's have shown that fixed-term workers, as well as outsourced and agency workers, are much more vulnerable and experience greater health and safety risks than standard, permanent and direct workers.

Sectoral or company agreements that cover all workers, including precarious workers, enable the precarious worker to benefit from the same protection as the direct and permanent employees of the user company. In **Brazil**, an agreement with Bayer Brazil stipulates that all rules applicable to Bayer regarding health and safety must be respected by all contractors.

Agreements that give trade unions in the user company access to the commercial contracts between the user company and the subcontracting company enable them to monitor the working conditions of outsourced and agency workers. This allows the trade unions to denounce any violations of precarious workers' rights and to ensure a better protection of their health and safety at work.

Following the deaths of two contract workers from Romania in a fire that completely gutted the house provided by their employers, IG Metall was able to sign a collective agreement in 2013 with the **German** Meyer Werft shipyard that extends co-determination to contract workers. The two victims were employed as contract workers by SDS, a recruitment agency for the shipyard that provided workers with deplorable living and working conditions. The agreement stipulates that worker accommodation must comply with the relevant standards and allows the Meyer Werft works council to closely monitor the company's subcontractors by giving them more information on contracts with sub-contractors. A 'subcontractor agreement working group', comprising equal numbers of management and worker representatives, was established to monitor compliance. Non-compliance is subject to penalties, including termination of the subcontractor agreement.

Collective agreements can also ensure access to health and safety training and information for precarious workers.

> *Chapter 11 Occupational training*

Article 49: Occupational training

1. In order to comply with the general obligation to provide to the outsourced workers necessary and appropriate training on the characteristics of the job, temporary work companies will allocate annual 1 percent of payroll to cover the training needs of workers hired to be assigned to user undertakings.

> *Chapter 12: Occupational health and safety:*
>
> *Article 50. Prevention of occupational hazards.*
>
> *2. And as it refers specifically to workers made available to user undertakings, both parties [temporary agency and the user undertaking] shall in particular ensure compliance with the provisions of the [appropriate applicable law] […]*
>
> *3. In accordance with [the applicable law] […], the user company will instruct the worker made available to its disposal on the risks for their health and safety, both general risks in the company, and the specifics ones related to the job and tasks to be performed by this worker, and the corresponding prevention and protection measures and activities, especially with regard to the potential emergencies.*
>
> ***Fifth National Collective Bargaining Agreement for Temporary Agency Workers, Spain***

Where there is a triangular employment relationship involved, collective agreements can prevent each employer from using this relationship to avoid their responsibilities.

> *Art. 26 - Safety / special work / hazardous*
>
> *[…] The service provider should instruct the personnel advisors and employees about safety at work and confirm it in the work contract. […]*
>
> *User undertakings, according to the ordinance on the prevention of accidents, are responsible for the provision of basic safety equipment, safeguards measures and additional instructions, appropriate protective clothing, compliance with the requirements for protection […] and the announcement as well as compensation to service provider companies.*
>
> ***Collective Labour Agreement, Service provision, Switzerland (December 2011)***

In **Mauritius**, precarious workers represent the majority of the victims of work accidents in the manufacturing sectors. In 2011, the CMCTEU secured an agreement with several employers stipulating that workers with 12 months or less of service should not be exposed to very hazardous work, unless trained by a competent person. In **Niger**, the SYSTEX union achieved through collective bargaining that SOMINA would provide precarious workers with personal protective equipment (PPE).

Protecting women precarious workers

Women workers are disproportionally affected by precarious work. Where employment rights are linked to length of service, precarious women workers may fail to qualify for maternity leave since they are likely to have shorter lengths of service. Sectoral agreements extended to temporary workers can enable women to access maternity leave rights.

In **Senegal**, SUTIDS has already achieved the regularisation of hundreds of precarious workers, the majority of them men. The union is now bargaining for the regularisation of women workers, facing the reluctance of the employers who argue that women will be too expensive because of maternity leave. SUTIDS is also fighting to obtain maternity leave for women temporary workers who have no access to this right.

The protection of women precarious workers from gender-based violence (GBV) at work can also be covered.

> *Article 40. Protection of working women victims of gender-based violence (GBV).*
>
> *1. The Worker victim of GBV who is obliged to leave the job in the town where she came to provide services, in order to make effective her protection and her right to comprehensive social assistance, shall be entitled to a preferential right to take another job in the same professional group or equivalent category, if the company has any vacancy in their workplaces.*
>
> *In such case, the company is obliged to inform the worker of the existing vacancies at that time or that may occur in the future. Moving or changing workplace will have an initial duration of six months, during which the company is obliged to reserve the job that was previously occupied by the worker.*
>
> *At the end of this period, the employee may choose to return to her previous post work or continue in the new one. In the latter case, it will terminate the said reserve requirement.*
>
> ***Fifth National Collective Bargaining Agreement for Temporary Agency Workers, Spain***

The struggle continues

Collective bargaining plays a vital role in limiting precarious work and protecting precarious workers' rights and working conditions. However, the victories gained by unions continue to be challenged by employers.

Once agreements have been negotiated, they are not always respected and unions must continue to actively enforce them:

In July 2013, NUPENG in **Nigeria** was forced to take strike action to enforce an agreement that had previously been reached to address casualization in the oil and gas sector **(http://www.industriall-union.org/nupeng-strike-demands-met)**.

Enforcement of clauses to monitor compliance by subcontractors is a particular challenge due to the number and dispersion of subcontractors.

When agreements close off access to precarious work in one area, employers find new ways to avoid secure employment:

In **Thailand**, once the trade union had managed to improve the conditions of fixed-term contract workers and regularise their situation, companies began to hire agency workers.

And when agreements come up for renegotiation, unions have to fight again to keep the gains they have already won:

In **Colombia**, Sintracarbon had to once again take strike action in 2013 to get Carbones del Cerrejon to accept the inclusion of an article on subcontractors, having already taken action in 2011 to secure the clause in the first place.

To be most effective, collective bargaining must be combined with other strategies to fight precarious work. This includes organizing precarious workers, building unity between precarious and other workers, raising awareness among workers and the general public of the dangers of precarious work, international action and, critically, pushing for legislation that puts effective controls on the use of precarious work by employers.

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