

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 1, No. 3-4 October-December 2012



ADAPT
www.adapt.it
UNIVERSITY PRESS

Non-standard Workers: Good Practices of Social Dialogue and Collective Bargaining

Minawa Ebisui *

1. Introduction

The globalization process has intensified competition and the need for enterprise flexibility, bringing about changes in the production system, with much emphasis placed on supply chain and multi-tier contracting. Technological changes and new work processes made it possible for companies to externalize services and parts of production operations, and this state of affairs has made the world of work more diverse, giving rise to an increasing variety of non-standard work arrangements and practices. The significant recourse to existing and new forms of non-standard work on the part of employers brought changes to labour market regulation, while fiercer global competition has driven many countries towards labour market deregulation that allows for more flexible and non-standard work arrangements. On one hand, these structural changes in work organization created greater choice, freedom and opportunities to work, with both workers and employers benefiting from a variety of forms of non-standard work, some of which have facilitated flexibility agreed upon by both parties. On the other hand, however, the increasing use of non-standard work arrangements has heightened uncertainty and precariousness among the growing number of workers who involuntarily

* Minawa Ebisui is Social Dialogue Technical Officer at the International Labour Office, Geneva, Switzerland. This paper is based on M.Ebisui, *Non-standard Workers: Good Practices of Social Dialogue and Collective Bargaining (DIALOGUE Working Paper No. 36)*, ILO, Geneva, 2012. The author's acknowledgements in that working paper also extend to this paper. The views expressed in this paper are the responsibility of the author and do not necessarily represent those of the ILO.

engage in them. The global financial crisis of 2008 further worsened the work and life prospects of precarious groups in most countries, in particular workers in small and medium-sized enterprises (SMEs), contract and temporary workers, migrant workers, women, young workers and the poor¹. The crisis is widely thought to have had a particularly severe impact on workers engaged in non-standard work.

One major challenge posed by many of these non-standard work arrangements to industrial relations systems and practices is that they do not fit within the traditional model of “standard” employment associated with full-time, open-ended, direct employment, on which legal regulation as well as industrial and employment relations institutions and practices have long focused. Its increasing use has thus questioned the enforcement of regulatory regimes and the effective functioning of industrial relations system. Such structural and technological changes in turn pose challenges to the traditional methods of representation and negotiation for both workers and employers².

Drawing on these considerations, the present paper provides a comparative overview of how collective bargaining and national social dialogue have been implemented to improve the terms and conditions of work as well as the status of non-standard workers. The starting point of this investigation is a number of national studies, which were conducted by the Industrial and Employment Relations Department (DIALOGUE) of the ILO³, and secondary sources. The paper first sets the scope of the research by defining the key terms used, including “non-standard work”, “social dialogue” and “collective bargaining”. It then examines the factors which have resulted in a limited capacity to exercise collective bargaining in addressing the needs and interests of non-standard workers, followed by an analysis of different approaches and strategies whereby collective bargaining has been addressing those needs and interests, and improving

¹ ILO, *World of Work Report 2011: from One Crisis to the Next?* ILO, Geneva, 2011.

² ILO, *Freedom of Association in Practice: Lessons Learned*, Report of the Director-General, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights and Work, ILO, Geneva, 2008.

³ The practices highlighted are mainly drawn from the national studies which were carried out as a pilot project by the ILO and are far from exhaustive in terms of coverage and scope. The author is grateful to Juan Manuel Martínez Chas (Argentina); Andrés Fernando DaCosta Herrera (Colombia); Márk Attila Edelényi (Hungary); K.R. Shyam Sundar (India); Ratih Pratiwi Anwar and Agustinus Supriyanto (Indonesia); Keiichiro Hamaguchi and Noboru Ogino (Japan); and Jan Theron (South Africa) who undertook the national studies. The national studies on India, Japan and South Africa are available as working papers: www.ilo.org (Last accessed 15 July 2012).

non-standard workers' terms and conditions of work and their status. The paper also briefly looks at how tripartite social dialogue deals with issues regarding non-standard work as well as its attempts to advance more inclusive and equitable social dialogue.

2. The Scope of the Analysis

2.1. *Non-standard Work*

The scope of the analysis is broadly set, and defines non-standard work arrangements as those associated with formal employment relationships – part-time work, temporary agency work, fixed-term work, and so forth – and outside such relationships – informal work, commercial contract work or economically dependent self-employment – including where relationships are either disguised or unclear. In other words, the term “non-standard” is used to distinguish such non-standard work arrangements from the regular or standard model of full-time, permanent and direct employment, with the latter that is no longer being seen as “standard” in many countries and in some cases including those in need of more appropriate protection.

There is no single and universally accepted terminology describing such existing and emerging forms of work and, depending on the country, region and political or socio-economic background or labour market, a variety of terms have been used. The term “non-standard” work is also referred to as “atypical”, “non-regular” or “contingent” work⁴. However,

⁴ There are many variations in the ways standard work and non-standard work are conceptualized and defined in the literature. For example, Tucker discussed how the concept of non-standard worker and non-standard work varied between countries, institutions and labour experts. Some countries define non-standard work based on its defining features (e.g. full-time and permanent work, standard working hours, employers' premises) while other countries refer to the consequences of the defining features (e.g. benefits, social security, promotion, training). Referring to the definitions of standard employment in previous literature, Tucker argues that non-standard work includes all jobs that fall outside the definition of standard employment, if they are in any of the following categories: part-time; casual; irregular hours or on-call work; seasonal, temporary or fixed-term contracts; self-employment; undertaken as “homework”; undertaken in the “black” economy; and any combination of the above. See D. Tucker, *“Precarious” Non-standard Employment: a Review of the Literature*, Labour Market Policy Group of Department of Labour, New Zealand, 2002, www.libertysecurity.org (Last accessed 15 July 2012).

the purpose of the present analysis is not to identify key elements of a possible definition on the basis of which universally accepted terminology could be established. Rather, by setting a wider scope of investigation – it is to capture a wide variety of strategies and approaches that have been taken by the social partners to improve terms and conditions of work for and status of non-standard workers and narrow the gap between standard workers and those in non-standard work arrangements⁵.

A combination of a number of elements stemming from the nature of the contract as well as the characteristics of non-standard work arrangements, alongside the preference of those who engage in non-standard work, determines precariousness and vulnerability. As compared with standard workers, non-standard workers are thought to face the following conditions which make them more insecure, vulnerable and precarious⁶:

- Low employment security and poor employment protection: non-standard jobs can be terminated more easily or with little or no notice by the employer.
- Lower quality of work than standard work (lower wages, irregular or uncertain income, limited occupational safety and health protection, fluctuations in hours of work or workload).
- Little or no access to “standard” non-wage welfare benefits.
- Limited social security and social protection coverage.
- Limited mobility toward better-quality jobs (e.g. regular/permanent job).
- Limited opportunities for promotion.
- Limited access to training opportunities.
- Low or no trade union representation or collective bargaining coverage.
- Low bargaining power.
- Reluctance/unwillingness to engage in non-standard work.

⁵ Some of these initiatives were exhibited at the ILO’s High-level Tripartite Meeting on Collective Bargaining, Geneva, 19-20 November 2009. See the ILO web site: www.ilo.org (Last accessed 15 July 2012).

⁶ The concept of “precarious work” is closely interrelated with that of non-standard work. For example, Fudge and Owens identify “precarious work” as “work that departs from the normative model of the standard employment relationship (which is a full-time and year-round employment relationship for an indefinite duration with a single employer) and is poorly paid and incapable of sustaining a household”. See J. Fudge; R. Owens (eds.), *Precarious Work, Women and the New Economy*, Hart, Oxford, 2006. The ILO notes that “the definitions of ‘precarious’ and ‘atypical’ overlap, but are not synonymous” and that “‘precarious work refers to ‘atypical’ work that is involuntary – the temporary worker without any employment security, the part-time worker without any employment security, the part-time worker without any pro-rated benefits of a full-time job, etc.”. See ILO, *Employment Policies for Social Justice and a Fair Globalization*, Report VI, International Labour Conference, 99th Session, ILO, Geneva, 2010.

- Lack of labour market alternatives.
- Low labour law coverage, in particular for those who hold commercial contracts.

In the 2011 International Workers' Symposium on Policies and Regulations to Combat Precarious Employment, two categories of contractual arrangements were indeed identified as encompassing the majority of the workers most adversely affected by such precarious conditions. The first group comprises those associated with limited duration of contract – fixed-term, short-term, temporary, seasonal, day-labour and casual labour – and the second is related to the nature of the employment relationship (triangular and disguised employment relationships, pseudo self-employment, subcontracting and agency contracts)⁷.

2.2. Social Dialogue and Collective Bargaining

The term “collective bargaining” used in this paper complies with the ILO definition, which extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on one hand, and one or more workers' organizations, on the other, for:

- (a) determining working conditions and terms of employment;
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organizations and a workers' organization or workers' organizations (ILO Convention No. 154).

Social dialogue in the ILO definition includes all types of negotiation, consultation or simply exchange of information either among the social partners, or by tripartite partners at the national level, on issues of common interest relating to economic and social policy⁸. Collective bargaining is an important form of social dialogue. Among diverse forms of social dialogue, this paper focuses on the roles that collective bargaining and national tripartite social dialogue play in addressing issues concerning non-standard workers. The paper also limits its scope to

⁷ ILO, *Policies and Regulations to Combat Precarious Employment*, background paper presented at the International Workers' Symposium on Policies and Regulations to Combat Precarious Employment, ILO, Geneva, 2011.

⁸ ILO, *Tripartite Consultation at the National Level on Economic and Social Policy*, Report VI, ILC, 83rd Session, Geneva, 1996.

country-level social dialogue and collective bargaining developments and practices⁹.

3. Obstacles to Effective Social Dialogue and Collective Bargaining for non-standard Workers

Freedom of association and collective bargaining are fundamental to the ILO, which has been acknowledged as a means for improving and regulating terms and conditions of work and advancing social justice since its foundation in 1919¹⁰. The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), are recognized as fundamental rights and principles in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The 1998 Declaration recalls that all Member States, from the very fact of their membership in the Organization, have an obligation to respect, promote and realize the principles concerning fundamental rights, whether or not they have ratified the relevant Conventions. The realization of freedom of association is an essential precondition for effective realization of the right to collective bargaining. The ILO Declaration on Social Justice for a Fair Globalization (2008) also underscores the significance of fundamental principles of freedom of association and the right to collective bargaining as both rights and enabling conditions for attaining the ILO's strategic objectives – employment, social protection, social dialogue and rights at work. These fundamental rights apply to all workers – at least at a theoretical level – with the exception of members of the armed forces and the police, and public servants engaged in the administration of the State, irrespective of their work arrangements or employment status¹¹. Growing

⁹ The examination of global responses including the roles of social dialogue at the international level (e.g. International Framework Agreements) or of workplace participation such as enterprise-level information, consultation or co-determination is left for a future research agenda.

¹⁰ ILO, Part XIII of the Treaty of Versailles, Declaration of Philadelphia, and Constitution of the International Labour Organization.

¹¹ The ILO supervisory bodies have affirmed that these fundamental rights apply to all workers. For more details, see C. Rubiano, *Precarious Workers and Access to Collective Bargaining: are There Legal Obstacles?*, Paper circulated at the International Workers' Symposium on Policies and Regulations to Combat Precarious Employment, Geneva, October 2011.

non-standard forms of work, however, pose a number of challenges to their application and practices.

A major hindrance to advancing collective bargaining for non-standard workers is their limited attachment to single workplaces/employers as compared with standard workers¹². When workers are directly employed by a single employer for a long period, their interests are easier to be represented collectively. However, non-standard workers are either:

(a) directly employed, but with non-stable and temporary employment, and thereby association with the single employer is limited (e.g. part-time, fixed-term workers); or

(b) not directly employed by the “principal” or “real” employer (e.g. user enterprises) for which or where they actually work (e.g. temp agency workers, contract workers). In countries where enterprise bargaining is predominant, such limited attachment to workplaces poses a serious challenge to exercising collective bargaining. Even in countries where bargaining at a more centralized level is dominant, in cases where workers move beyond sectors from one job to another, representation at sectoral level and solidarity become difficult¹³.

Moreover, a growing number of workers nowadays engage in work not as employees but through individual commercial services contracts, including independent contractors and freelance workers. In developing countries, the magnitude of the informal economy is such that workers often work without any formal contractual relationships (e.g. street vendors).

Such erosion of the direct employment relationship has also resulted in a decline in trade union membership as well as the fragmentation of collective bargaining¹⁴. Some categories of these workers are not protected by existing labour law or collective bargaining arrangements, because they are not “employees” covered by the law, while the rights of others – who *are* covered by labour law – to organize and bargain collectively are guaranteed in theory, yet it is difficult for them to effectively exercise those rights. The latter group is often excluded from trade unions or the bargaining unit of standard workers – who are characterized by a strong

¹² J. Wills, *Subcontracted Employment and its Challenge to Labour*, *Labour Studies Journal* 34, No. 4, 2009, 443-444.

¹³ G. Bosh, *Low-wage Work in Five European Countries and the United States*, *International Labour Review* 148, No. 4, 2010, 337-356; B. Nissen (ed.), *Unions in a Globalized Environment: Changing Borders, Organizational Boundaries and Social Roles*, M.E. Sharpe, New York, 2001, 172.

¹⁴ ILO, *Promoting Collective Bargaining Convention No. 154*, *op. cit.*

attachment to single employers – creating difficulties in forming a likewise effective bargaining unit¹⁵.

Non-standard workers themselves can also be reluctant to exercise rights to organize and bargain collectively because of fear of job losses, even when they can do so in practice or in theory¹⁶. Moreover, a fragmented workforce implies that there are different groups of workers in the same workplaces with diverse interests and different contractual status, which can trigger and intensify conflicts among the workers themselves instead of labour-management conflict, thereby hindering solidarity among workers. Trade union members in standard employment may regard unorganized workers in non-standard employment as a threat¹⁷.

There are also cases where actual contractual employers are not necessarily the appropriate and influential negotiating parties with the ultimate decision-making power in negotiating terms and conditions of work¹⁸. For example, contracting/sub-contracting firms or temporary work agencies are often small and medium-sized enterprises facing fierce competition and coming under pressure from those with the real power over the contracting process. In such cases, negotiating better terms and conditions of work with contractual employers might end up in job losses due to loss of competition with other SMEs. Meaningful collective bargaining, which brings about tangible outcomes, may not take place unless negotiation involves “principal” employers in power.

Finally, non-standard work arrangements often challenge the traditional parameters for the organization of work, giving rise to uncertainty about workers’ employment status. This happens when such arrangements expose ambiguities and uncertainties in legal frameworks that are intended to offer certain protections to those who are in a legally constituted employment relationship. In other cases, workers in non-standard arrangements are simply beyond the scope of application of labour laws. Thus, legal frameworks are often unable to provide an effective enabling environment for these workers to exercise collective rights¹⁹.

¹⁵ *Ibid.*

¹⁶ R. P. Anwar; A. Supriyanto, *National Study on Indonesia: Non-standard Work, Social Dialogue and Collective Bargaining*, ILO, Geneva, forthcoming.

¹⁷ J. Theron, *Non-standard Workers, Collective Bargaining and Social Dialogue: the case of South Africa*, ILO, Geneva, 2011.

¹⁸ J. Wills, *op.cit.*, 441.

¹⁹ G. Casale, *The Employment Relationship: a Comparative Overview*, ILO/Hart, Geneva, 2011, 1-33; ILO, *The Employment Relationship, Report V(1)*, International Labour Conference, 95th Session, ILO, Geneva, 2006. A particular problem which commonly arises is that the legal structure of the working arrangement does not clearly correspond with the legal

4. Good Practices of Collective Bargaining for Non-standard Workers

Promoting collective bargaining for non-standard workers requires action on a number of fronts. Comparative experience demonstrates that the social partners have indeed explored various ways to overcome obstacles to exercising collective bargaining, and to address a variety of issues in the face of the growth of non-standard work, although limited in terms of the numbers of workers covered and the impact achieved. Such attempts can be categorized largely into approaches that frame the collective bargaining structure to strengthen its functioning for non-standard workers, and regulatory strategies that are used in negotiating terms and conditions of work and employment and work status for non-standard workers. In what follows, this paper first examines commonly adopted collective bargaining approaches in this regard: (a) collective bargaining outside workplaces; (b) enhancing multi-employer bargaining; and (c) extending outcomes negotiated for trade union members to non-unionized workers; and second, regulatory strategies used in bargaining: (a) attaining regularization and employment security; (b) providing equal pay for work of equal value; (c) limiting the period of temporary contracts; (d) addressing specific interests and needs of non-standard workers; and (e) dealing with economically dependent self-employment.

4.1. Collective Bargaining Approaches and Frameworks

4.1.1. Collective Bargaining beyond Workplaces

Promoting collective bargaining outside workplaces is one common approach that can be adopted, where bargaining takes place mainly at workplace level in such a way that some categories of non-standard workers are often excluded. Evidence shows that high trade union density and bargaining coverage, and the centralization and coordination of wage

definition of an employment relationship. In some cases, however, the difficulties stem from deliberate manipulation of the legal structure of the work arrangement, or from the employer treating an individual as other than an employee, in a way that hides the latter's true legal status as an employee. In this sense, particular problems arise from efforts to disguise employment relationships.

bargaining, tend to go hand in hand with lower wage inequality²⁰. Decentralization of bargaining on the other hand might cause a decline in collective bargaining coverage, and has tended to benefit and favour those with bargaining power, while offering little to those who are poorly organized, such as non-standard workers. Moreover, for those whose association with a single workplace is weak, negotiations at workplace level do not often offer favourable, convenient or equitable outcomes²¹. In the Republic of Korea, for example, in response to a dramatic increase in the number of non-standard workers, there have been attempts, albeit very limited in their effect, to promote strengthened sectoral organization, with a view to boosting solidarity among workers by restructuring and centralizing the trade union movement from predominantly enterprise level to sectoral level²².

However, sectoral-level representation also poses a challenge when non-standard workers move from one sector to another. In such cases, local- or community-level, or occupation-based representation are used to conduct negotiation, as sources for organizing workers, by which they can exercise collective rights across multiple employers²³. For instance, in Argentina, different organizations have recently been established for the representation of semi-dependent or independent workers: the Construction Workers' Union of the Argentine Republic (*UOCRA*); the Union of Support Staff at Private Homes (*UPACP*); the Trade Union of Newspapers and Magazines Sales Staff of the Federal District of Buenos Aires (*SIVENDIA*); the Argentine Single Trade Union of Freighters (*SIUNFLETRA*); the Argentine Street Vendors Trade Union (*SIVARA*); the Federation of Taxi Drivers of the Argentine Republic; the Trade Union of Home Garment Workers (*STTAD*); the Argentine Union of Rural Contract Workers of Vineyards and Fruits; the Trade Union of Garden and Park Workers, the Argentine Federation of Press Workers (*FATPREN*); the Trade Union of Workers for Hairdressing (*SUTPEABA*); the Association of Fashion and Image Workers in Advertising (*AMA*); the Single Trade Union of Public Entertainment

²⁰ OECD, *Employment Outlook: Boosting Jobs and Income*, OECD, Paris, 2006.

²¹ E. Heery; B. Abbott, *Trade Unions and the Insecure Workforce* in E. Heery; J. Salmon (eds.), *The Insecure Workforce*, Routledge, London, 2010, 167-168.

²² S. Choi, *Kankoku ni okeru roudoukuniai, jugyoin daihyo seido no sintenkai*, *Japanese Journal of Labour Studies*, No. 555, 2006, 66-77.

²³ A. L. Kalleberg, *Precarious Work, Insecure Workers: Employment Relations in Transition*, in *American Sociological Review* 74, No. 1, 2009, 1-22; A. D. Damarin, *Rethinking Occupational structure: the Case of Website Production Work*, *Work and Occupations* 33, No. 4, 2006, 429-463.

Workers (*SUTEP*); and the Single Trade Union of Watchmakers, Jewellers and Related Workers (*SURJA*). Some of them are successful in conducting collective bargaining and improving working conditions, both by incorporating workers into the social security schemes and by securing compliance with the basic regulations provided by the Argentine legislation²⁴.

In Japan, community-based unions²⁵ located in a specific region, organize any individual workers regardless of where/how they work and what forms of work they engage in, including those who work in non-unionized SMEs, independent contractors, dispatched (agency) workers, migrants and unemployed workers. As Japan's enterprise unionism normally confines their membership to regular workers in practice, and large numbers of non-regular workers tend to be excluded from enterprise-level representation, these community unions are successful in organizing different categories of non-regular workers as their members²⁶. Their central role has recently been to provide labour consultation and advisory services, and negotiate and solve disputes through negotiating directly with individual enterprises on behalf of their members. Japan's Trade Union Law provides for an employer's duty to bargain collectively, and an employer's refusal to do so without proper reasons is an unfair labour practice. The rate at which disputes are resolved voluntarily by community unions through negotiation stood at 67.9 percent in 2008, though there remains intensive debate about the way an agreement concluded between an employer and the community union after such negotiation on behalf of a single worker can be interpreted in terms of collective bargaining/representing processes. There has been a growing

²⁴ J. M. Martínez-Chas, *National study on Argentina: Non-standard work, social dialogue and collective bargaining*, unpublished national study commissioned by the ILO, 2011.

²⁵ Although Japanese general unionism has a long history, it is only since the late 1980s – when so-called “community unions” appeared – that workers' organizations have begun operating as unions that are established outside individual enterprises. In addition to traditional general unions of the National Union of General Workers National Council (*Zenkoku-Ippan*), the Japanese Trade Union Confederation (*RENGO*) established regional unions in 1996 and the National Confederation of Trade Unions (*Zenroren*) established local unions in 2002, all of which resulted in strengthening community-based general unionism.

²⁶ H. Oh, *Go-do ro-so no genjou to sonzai igi*, *Japanese Journal of Labour Studies* No. 604, 2010, 47-65.

need addressed in Japan to establish legal institutions to respond to such negotiation processes²⁷.

4.1.2. Multi-employer Bargaining: Involving “Principal Employers” with Bargaining Power

Involving multiple employers that hold real power in negotiating and determining terms and conditions of work is another key approach to promote collective bargaining for non-standard workers with tangible outcomes. This type of bargaining arrangement is useful to mitigate the effects of private contractors competing on lower terms and conditions of work as well as to provide broader coverage for those who engage in similar jobs in different sectors. Multi-employer involvement is also useful in triangular employment relationships when actual contractual employers are not influential negotiating parties. Unless non-standard workers’ direct employers have the ultimate decision-making power in negotiating terms and conditions of work, meaningful bargaining becomes difficult even when these workers are able to exert the right to collective bargaining in theory. Multi-employer bargaining is particularly useful in dealing with non-standard workers who work at subcontractor firms or SMEs, and those who are not directly employed by the “principal” or “real” employer in power (e.g. user enterprises) for which they actually work.

In the United States, the Service Employees International Union (*SEIU*) developed the “Justice for Janitors” campaigns and enabled the union to win recognition in several major cities, including Miami, Los Angeles, Boston and Houston²⁸. These campaigns are mainly targeted at low-paid precarious workers who are predominantly female. They use public attention, community pressure and political lobbying as strategies to pressure employers. The Houston victory in 2006 was won after janitors at five major cleaning contractors participated in a one-month strike including local, national and international demonstrations²⁹. As a result, the cleaning contractors entered into a collective bargaining agreement with the union, covering about 5,300 janitors, mostly women of Latin American origin. The agreement raised wages from an average of \$5.30

²⁷ T. Michiyuki, Kakekomi, *Uttae Jiken no Shori Sikaku*, *Business Labour Trend*, 11 March 2012.

²⁸ M. Osborn, *Houston Justice for Janitors Campaign Wins!*, 2006, (Last accessed 15 July 2012).

²⁹ *Ibid.*

per hour to \$7.75 per hour as of 1 January 2009 and offered individual and family health insurance cover starting in 2009 for \$20 and \$175 per month, respectively. In addition, the shifts of the janitors were extended to six hours by 2009 as a result of the agreement³⁰. Because the agreement covers the five major building service contractors in the region, employers cannot simply change contractors in order to avoid the costs of improved working conditions for contracted workers. The agreement was renegotiated in 2010 and includes a wage increase from \$7.75 per hour to \$8.35 per hour in 2012 and a 32 percent increase in contributions from employers towards maintaining workers' individual health care coverage³¹. In India, multiple-employer bargaining takes a variety of forms. First, an ad-hoc representative body of contract workers arising out of a spontaneous action negotiates either with the principal employer or the contractors (e.g. Hero Honda). Second, a contract workers' or regular workers' trade union negotiates with the principal employer and reaches a collective agreement or memorandum of understanding, or draws up a letter of exchange to be implemented by the contractors (e.g. public sector units such as Neyveli Lignite Corporation and private sector units such as Sandvik, Reliance Energy or Madras Atomic Power Station in Kalpakkam, Tamil Nadu). It might be the case that a regular workers' union negotiates on behalf of contract workers with the principal employer, and the understanding is legalized in an agreement by the contract workers' representatives and the contractors (e.g. Glaxo in Nabha, Thermax in Pune). There are also cases in which the contract workers' union or the regular workers' union negotiates directly with the contractors and reaches an agreement with the contractors' association (*TNPL* in Tamil Nadu). The contract workers themselves sometimes form a co-operative service society, which supplies contract labourers to the principal employer and negotiates or plays an important role in determining the conditions of service (e.g. *NLC*, Kalpakkam Atomic Energy and others, especially in Tamil Nadu)³².

In Indonesia, the Freedom of Association (*FOA*) Protocol was signed in 2011 by five trade unions (Federation Garteks *KSBSI*, *NES*, *KASBI*, *SPTSK* and *GSBI*), sportswear companies of brand holders and suppliers from the sports apparel industry. To date, Adidas, Nike, Puma, New

³⁰ D. Russakoff, *Houston Janitors Strike Ends with Agreement*, *Washington Post*, 21 November 2006.

³¹ SEIU website: www.seiu1.org (Last accessed 15 July 2012).

³² S.K.R. Sundar, *Non-regular Workers in India: Social dialogue and Innovative Practices*, ILO, Geneva, 2011.

Balance, Pentland, and Asics, as well as a number of their Indonesian suppliers have committed to abide by the agreement. This agreement legally binds the signing parties, but its provisions include the following: (a) all holders of the company brand and/or services in the sports apparel industry supply chain in Indonesia must respect and implement the right to freedom of association; (b) suppliers are required to disseminate the contents of this protocol and encourage its implementation by their subcontractors. The FOA Protocol is implemented in all of the signing companies regardless of whether they already have a collective agreement or not. The FOA Protocol does not set wages and working conditions, but it requires companies to conduct collective bargaining within six months after the enterprise union is established³³.

4.1.3. Extending Negotiated Outcomes to Non-negotiating Parties

One of the traditional approaches to reaching out to non-union members is the extension of all or part of collective agreements concluded between single employers or their representative organizations and the representative organizations of workers, such as trade unions, to workers and employers that are not represented by the social partners signing the agreement. In this way, the negotiated outcomes can be applicable to certain categories of non-standard workers who are not organized.

How negotiated outcomes are extended varies in terms of, for example, whether there are legal mechanisms for extension or that can be implemented by the signatories on a voluntary basis; or whether it requires the demand of one or both negotiating parties, depending on the country. Legal procedures for extending collective agreements exist – for example, in EU Member States – excluding Cyprus, Denmark, Italy, Malta, Sweden and the United Kingdom – South Africa, Japan, Mauritius and Namibia, though the degree and manner of extension differs in terms of whether an extension procedure is initiated only on the demand of one or both of the social partners that signed the collective agreement; or it can be done automatically by the competent government institution, whether there are minimum requirements, and how frequently they are implemented³⁴. The scope of non-standard workers to be covered in extended collective agreements also is dependent upon the nature of the

³³ R. P. Anwar, A. Supriyanto, *op. cit.*

³⁴ Eurofound, *Extension of Collective Bargaining Agreements in the EU*, Background paper, Eurofound, Dublin, 2011.

extension mechanism or whether their right to bargain collectively is legally guaranteed³⁵. If the extension has the effect that its terms cover “all workers” or all persons “engaged in an industry”, it certainly functions as a powerful tool to increase collective bargaining coverage for non-standard workers. However, if terms such as “employees” are used, it rules out non-standard workers who are not in employment relationships. Previous experience of collective agreement extension shows that it is common practice to target “employees”, with some cases including certain categories of non-standard “employees” (e.g. fixed-term or part-time employees) associated with direct employment relationships, or other cases excluding them explicitly³⁶.

Apart from such legal possibilities to extend collective agreements, there are also cases where agreements or provisions thereof are extended (*de facto* extension) by “soft factors” such as informal agreement, habits, customs or other voluntary practices³⁷. In Japan, for instance, a collective agreement applies only to workers who are members of the trade union that is party to the collective agreement, as a general rule³⁸. However, some enterprise unions, which organize both regular and non-regular workers, negotiate better working conditions for them, and extend part of the negotiated outcomes to unorganized non-standard workers. By way of example, in the 2008 *shunto* (annual wage negotiation), in the middle of the economic recession, a trade union at Japan Post Holdings Co. Ltd. (JP), which was privatized in October 2007, decided to defer its demands for pay increases for regular workers and to prioritize the needs of non-regular employees. After long negotiations, the union obtained a 2,000

³⁵ EIROOnline, *Collective Bargaining Coverage and Extension Procedures*, 2002, <http://www.eurofound.europa.eu/eiro/2002/12/study/tn0212102s.htm> (Last accessed 15 July 2012).

³⁶ EIROOnline, *Collective Bargaining Coverage and Extension Procedures*.

³⁷ *Ibid.*

³⁸ The Trade Union Law (TUL) provides for two exceptions to this principle, with coverage of the collective agreement which has been extended at plant (Article 17) and regional level (Article 18), under the majority rule. The TUL provides that “when three-fourths or more of the workers of the same kind regularly employed in a particular factory or other workplace come under application of a particular collective agreement, such agreement shall be regarded as also applying to the remaining workers of the same kind employed in the same factory or workplace”. This provision and its interpretation have led to controversy in terms of a number of aspects. With regard to its applicability to non-standard workers, it is limited to “the remaining workers of the same kind employed” and rules out certain categories of non-regular workers. See Trade Union Law:

www.japaneselawtranslation.go.jp (Last accessed 15 July 2012).

Yen monthly wage increase for fixed-term employees working under a monthly salary system (there are also fixed-term employees under an hourly wage system). In the 2010 *shunto*, the union obtained a 2,000 Yen increase in the basic monthly wages of fixed-term contract employees working under a monthly salary system and the commitment of the JP to regularize 2,000 fixed-term employees. The negotiated outcomes were *de facto* extended to non-unionized fixed-term contract workers under the monthly salary system, as a result of autonomous governance based on mutual trust among labour and management³⁹.

A survey of collective agreements in Japan found that of the 2,597 company-level unions that responded, 91.4% had collective agreements in 2011, of which those saying that the agreements either fully or partially applied to part-time workers or fixed-term workers were 41.9% and 45% respectively. The proportion jumps where such workers were union members (68.4% and 69.2% respectively). The survey reveals that the proportion of company-level unions whose agreements are applicable to these two categories of workers rose from the previous survey in 2006 (33.5% and 42.7% respectively)⁴⁰.

4.2. Regulatory Strategies Through Collective Bargaining

4.2.1. Regularization and Employment Security

Regularizing non-standard workers (shifting to direct and permanent employment) is seen as one of the best examples of “inclusion”. There have been a number of cases, in which regularization was achieved under certain conditions.

In Japan, Aeon, one of the major merchandising companies in the country, concluded an agreement with its trade union to unify the qualification system for regular employees and part-timers in 2004. There were 79,000 part-timers at Aeon, accounting for 80 percent of the entire workforce. The wage system was also changed to be linked to workers’ qualifications, with the pay of highly-competent part-timers approaching that of regular employees, in order to narrow the wage gap between them.

³⁹ K. Hamaguchi, N. Ogino, *Non-regular Workers: Legal Policy, Social Dialogue and Collective Bargaining: the Study of Japan*, ILO, Geneva, 2011.

⁴⁰ The survey targeted 4,086 such trade unions. Ministry of Health, Labour and Welfare: *2011 Collective Agreement Survey*, www.mhlw.go.jp (Last accessed 15 July 2012).

Under the new system, part-timers wishing to advance their positions are evaluated considering the same appointment tests and promotion screenings used for regular employees, and are entitled to the same training opportunities previously limited to standard workers. As a result, a large number of part-timers were appointed to managerial positions at their respective stores, and about 150 of these part-timers were regularized⁴¹. In India, trade union demand for regularization can be justified on four grounds:

(a) workers perform the tasks of regular workers and hence the core activity of the enterprise concerned;

(b) contract workers are working under the supervision and direct control of the “principal employer” and doing work of a permanent nature;

(c) the contract labour system is a sham and in fact contract workers are employees of the “principal employer”; and

(d) long years of service in the same enterprise. India’s public sector employs a large number of contract workers. For example, in the Tamil Nadu Electricity Board, which employs 21,600 contract workers, negotiations started in May 2005 in order to convert their status to permanent employees. An agreement was reached in 2007 to immediately regularize 6,000 workers and the remaining contract workers during 2009⁴². In South Africa, the South African Transport and Allied Workers Union (SATAWU) succeeded in negotiating with Metrorail – a semi-state company – to have workers on fixed-term contracts employed on a permanent basis in 2006. After several talks, in 2009, 1,063 fixed-term workers were employed with a permanent contract. Some of these workers had been employed on a fixed-term basis for as long as ten years⁴³.

However, regularization of non-standard/non-regular workers is not an easy task as it depends on the business circumstances of the company. Where regularization is not possible, social partners have been exploring other ways of securing more stability of employment for non-standard workers. One way is to convert indirect or triangular employment relationships to direct employment relationships. For example, in Colombia, an important agreement was signed between the cement factory Argos and the trade unions Sutimac, Sintrargos and Sintraceargos. In the process of merger of the management of all its cement factories based in Colombia, negotiations among the trade unions and Argos’s

⁴¹ K. Hamaguchi, N. Ogino, *op. cit.*

⁴² S.K.R. Sundar, *op. cit.*

⁴³ J. Theron, *op. cit.*

management proceeded for a long time. Academic experts as well as members of the National School of Trade Unions (*Escuela Nacional Sindical*) were invited to participate. In the end, in exchange for their consent to the merger process, the unions obtained the direct employment of a significant number of workers that were previously employed through temporary agencies. Both the management of the company and the signatory trade unions later presented the Argos example as a successful case of bipartite negotiations⁴⁴.

Another way is to ensure continuity of employment. In India, unions have been pragmatic enough to modify their position and demand “continuity of employment” of contract workers even when the contractors change, by obtaining an assurance from the “principal employers” or sometimes from the contractors themselves. The grounds that unions used in such demands are the same as for regularization⁴⁵.

In Indonesia, the Federation of Indonesian Metal Workers’ Union (FSPMI) and Lomenik (Federation of Metal, Machine and Electronics) have also been successful in organizing contract and outsourced workers in the Export Processing Zones in Batam in Kepulauan Riau Province. According to FSPMI estimates, around 98 percent of all workers in Batam’s EPZs are hired through labour agencies. FSPMI and Lomenik have set out strategies and are making efforts to change the temporary status of contract workers to permanent, as well as negotiate collective agreements that contribute to a decrease in the number of contracted workers⁴⁶.

Some employers in Japan are also adopting innovative ways of providing more job security for non-standard workers through labour-management consultation⁴⁷, when full regularization is unrealistic given the surrounding business situation. They have created new categories of regular employees with restricted tasks or duties, or with specified geographical areas of work without transfer involving relocation (hereafter “restricted regular employees”), as compared with regular employees. Recent research

⁴⁴ A. DaCosta-Herrera, *National study on Colombia: Non-standard work, social dialogue and collective bargaining*, unpublished national study commissioned by the ILO, 2011.

⁴⁵ S.K.R. Sundar, *op. cit.*

⁴⁶ R. P. Anwar, A. Supriyanto, *op. cit.*

⁴⁷ Labour-management consultation in Japan is an informal process in which an employer and a trade union can discuss any issues in a cooperative way, and thus functions to complement the formal collective bargaining process. When the parties reach an agreement through consultation, they do not generally proceed to collective bargaining.

targeting 1,387 establishments reveals that 312 of these had “restricted regular employees” with restricted jobs/duties; 163 had such employees with specified geographical areas of work; and 74 had both categories of “restricted regular employees”.⁴⁸ The research also shows that regular employees with restricted jobs/duties are more frequently used in construction, medical and welfare services, education and educational services or other services, while area-restricted regular employees are more commonly utilized in construction, finance and insurance services, real estate and lease services.⁴⁹ Such schemes seem to be introduced largely through labour-management consultation and agreements⁵⁰, with lower terms and conditions of work than those of regular employees given the relevant “restrictions”, but contribute to provide better employment security.

4.2.2. Providing Equal Pay for Equal Value of Work and Equal Treatment: the Adoption of Non-discriminatory Principles

Advancement of equal pay for equal value of work, or non-discriminatory principles, is a common strategy that has been used to narrow the gap between terms and conditions of work for standard and non-standard workers. In a number of countries, it is addressed in collective bargaining and broader social dialogue, and the developments in collective bargaining in this regard are often associated with legal developments in non-discriminatory principles and equal treatment. Progress has been made particularly in terms of improving the situations facing non-standard workers where comparable standard workers are easily identifiable in prevailing wage-determining machinery and practices.

The European Union (EU) has been advanced in influencing non-standard work regulations in its Member States, adopting the principle of non-discrimination, based on a comparison with a comparable standard, full-time worker who engages in the same or similar work in the same

⁴⁸ K, Takahashi, *Gentei seishain kubun to hiseiki koyo mondai*, JILPT Discussion paper 12-03, Tokyo, 2012.

⁴⁹ *Ibid.*

⁵⁰ K, Takahashi; J, Nishimura, *“Tayo na seishain” no jinji kanri: Hearing survey*, JILPT, Tokyo 2012.

establishment. EU Directives on part-time and fixed-term work⁵¹ ensure the appropriate protection of these categories of workers through application of the principle of equal treatment relating to basic working and employment conditions. In the absence of a clear comparable benchmark, “comparison shall be made by reference to the applicable collective agreement”. If there is no applicable collective agreement, comparison is made according to national laws, collective agreements or practices. The Directive on temporary agency work, adopted in 2008, also ensures that temporary agency workers should be entitled to “equal treatment” with regard to “basic working and employment conditions”, although it also allows for the possibility of derogation by collective agreements concluded by the social partners, while respecting the overall protection of temporary agency workers⁵². The Directives, together with collective agreements, thus form an important means of regulating non-standard workers in many countries in the EU.

In France, on 6 July 2007 the temporary agency work employers’ confederation (*PRISME*) and the five main trade unions signed a diversity and non-discriminatory agreement (*Accord pour la non-discrimination, l’égalité et la diversité dans le cadre des activités de mise à l’emploi des entreprises de travail temporaire*). The agreement set forth guidelines that aim to provide equal treatment against every type of discrimination and apply to both the agency and the user company. Among the most important provisions, the agreement specifies that the user company should set clear and non-discriminatory recruitment standards and favour the diversity of its staff; that the temporary work agency is responsible for treating its employees in the user company equally; and that both the agency and the user companies should promote equal training as a means for equality of opportunities⁵³.

In Germany, the IG Metall trade union reached a new collective agreement for the steel industry in 2010, ensuring that temporary agency workers in the industry are paid the same as direct employees of the

⁵¹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by ETUC, UNICE and CEEP.

⁵² Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

⁵³ Accord du 6 Juillet 2007 pour la non-discrimination, l’égalité et la diversité dans le cadre des activités de mise à l’emploi des entreprises de travail temporaire, prisme.eu accessed 15 July 2012).

industry⁵⁴. IG Metall also signed a new collective agreement with the two temporary employers' organizations (*BAP* and *iGZ*) for temporary workers in the metal and electrical engineering industries in 2012, which will contribute to closing the pay gap between permanent and temporary workers. Depending on the length of temporary workers' deployment in the company, they will be entitled to a sector-related supplement amounting to between 15 and 50 percent of their wages. The supplement must also be paid in the case of deployment in a company within those industries which is not covered by a collective agreement. The agreement comes into force on 1 November 2012 and will expire on 31 December 2017⁵⁵.

As occurs in some European countries, when wage levels are objectively determined by job/occupation classification, equal pay for work of equal value could be easier to implement by comparing pay levels between comparable standard and non-standard workers. However, where wage disparity is attributed to contractual status involving the clear distinction between human resources management practices applied to those with non-standard and standard employment, indicators for non-discrimination principles are not easily identified.

In Japan, for example, wages for regular employees are determined in the internal labour market, while non-regular workers are outside its scope, and terms and conditions of their work are determined on the basis of external labour market conditions. Since overarching human resources management practices and the way terms and conditions are determined are so different between regular employees with long-term employment security in the internal labour market and non-regular employees in the external labour market, it has been unrealistic to articulate common indicators in determining what is equal treatment. In order to remove this barrier and tackle such persistent wage disparity associated with labour market dualism, the social partners at sectoral and national levels have been seeking ways to identify wage levels by jobs/occupations. The Japanese Electrical, Electronic and Information Union, an affiliate of the IMF-JC, introduced an occupation-based wage demand formula in the 2007 *shunto* bargaining round in order to achieve equal pay for work of equal value in each occupation, while in the 2010 *shunto* the Japanese Trade Union Federation (RENGO) for the first time released wage data

⁵⁴ EIRO, *New Package of Wage Agreements for Steel Industry*, 2010, (Last accessed 17 July 2012).

⁵⁵ IG Metall, *New Collective Agreement in the Metal and Electrical Industries and Agreement for Temporary Agency Workers about Sector-related Supplements*, 2012, (Last accessed 17 July 2012).

concerning a list of major representative jobs/occupations that the sectoral unions had submitted. RENGO intends to enhance this data in order to equalize pay levels for equal jobs/occupations, utilize the data as indicators for equal and balanced treatment among regular and non-regular workers, and ultimately pave the way to achieving equal pay for work of equal value⁵⁶.

In contrast, in Australia, where under the standard job classifications and wage levels set in the awards, a certain level of parity is maintained in enterprise agreements, Fair Work Australia (FWA) – the national workplace relations tribunal – is in charge of making and varying awards in the national workplace relations system. An award is an enforceable document containing minimum terms and conditions of employment in addition to any legislated minimum terms. In general, an award applies to employees in a particular industry or occupation, and is used as the benchmark for assessing enterprise collective agreements before approval. Awards cover a whole industry or occupation, and provide a safety net of minimum pay rates and employment conditions. Although enterprise agreements can be tailored to meet the needs of particular enterprises, they are not allowed to derogate from the dispositions established by the relevant sectoral awards. Each sectoral award presents a wage scale developed according to 14 job classifications, exclusively determined by the employees' skills and training. Minimum wages and wage differentials among job levels differ across industries. Fair Work Australia annually updates wage levels according to productivity increases and inflation rates. The wage scale – i.e. the ratio between wages of different classes of workers – is, however, fixed and cannot be negotiated on a regular basis⁵⁷.

4.2.3. Negotiating Limits on the Period during which a Worker may be Temporarily Employed

The Termination of Employment Convention, 1982 (No. 158), calls for adequate safeguards against recourse to contracts of employment for a specified period of time (Article 2)⁵⁸. The accompanying Recommendation (No. 166) provides that such recourse should be limited to cases in which, due either to the nature of the work to be performed or to the interests of the worker, the employment relationship cannot be of

⁵⁶ JILPT, *2010 Shunto Report, Monthly Business Labour Trends* 5, 2010, 44-48.

⁵⁷ Fair Work Australia website: www.fwa.gov.au (Last accessed 15 July 2012).

⁵⁸ ILO website: www.ilo.org (Last accessed 15 July 2012).

an indeterminate duration (Article 3)⁵⁹. The ILO has also pointed out that where contracts are concluded for a fixed term or for a specific task and then repeatedly renewed, the worker may not acquire certain rights, and may therefore not obtain the benefits provided for employees by labour legislation, or by collective bargaining⁶⁰.

In countries where there is no limit in the legislation on the period during which a worker may be employed under fixed-term or temporary agency arrangements, collective bargaining often regulates a maximum limit so as to prevent the abuse of such arrangements (e.g. repetitive renewal of short-term contracts for the purpose of avoiding regularization of fixed-term workers or abrupt termination of such contracts). Even when legislation does set a limit on the use of fixed-term employment, collective agreements are often used to amend it⁶¹. Such a limit is often discussed with a view to facilitate shifting temporary employment to permanent status, but the measures aimed at controlling and limiting the use of non-standard employment do not always benefit such workers, and require well-balanced design to avoid situations in which they end up taking more insecure work, or are pushed into unemployment or the informal economy⁶².

In South Africa, for instance, where no limit is set in the legislation on the period during which a worker may be temporarily employed, the Road Freight Bargaining Council's agreement, adopted in 2006 and extended to non-parties in 2007, provided that a worker who was supplied "to one or more clients on a continuous basis for a period in excess of two months shall be deemed to be an ordinary employee"⁶³. In Sweden, regulations for fixed-term employment in the 1982 Employment Protection Act may be derogated from by collective agreements, which are common, thereby confirming the wide scope for regulation by the social partners. Some collective agreements shorten the maximum period allowed for fixed-term employment set forth in the Act, while others specify it more generously,

⁵⁹ ILO website: www.ilo.org (Last accessed 15 July 2012).

⁶⁰ ILO, *The Employment Relationship, Report V(1)*, *op. cit.*, par. 48.

⁶¹ M. Rönmar, *Labour Policy on Fixed-term Employment Contracts in Sweden*, Paper presented at the JILPT Comparative Labour Law Seminar on Fixed-term Employment Contracts, Tokyo, Japan, March 2010, www.jil.go.jp (Last accessed: 15 July 2012); B. Nyström, *Sweden*, in R. Blanpain; C. Grant (eds.), *Fixed-term Employment Contracts: a Comparative Study*, Vanden Broele Publishers, Brugge, 2009, 395.

⁶² R. Gumbrell-McCormick, *European Trade Unions and "Atypical" Workers*, *Industrial Relations Journal* 42, No. 3, 2011, 193-310.

⁶³ J. Theron, *op. cit.*

and sometimes also more restrictively⁶⁴. In Belgium, in the collective agreements for the chemical industry in 2007 and the hairdressing and beauty care sector in the same year, the social partners agreed that if, after successive fixed-term employment contracts, a worker is finally employed under an open-ended contract, in the same position and with an interruption of less than four weeks, there is no need for a new trial period and the seniority already acquired under the fixed-term contract is maintained⁶⁵.

4.2.4. Addressing Specific Interests and Needs of Non-standard Workers: Tailored Bargaining

Social partners also attempt to represent the specific and different needs of non-standard workers, requiring varied treatment and tailored agreements responding to the specific needs of specific categories of non-standard workers. Employers are sometimes loath to invest in human resources development and training or social welfare for non-standard workers, whose attachment to a single employer is weak. Yet such workers need both skills upgrading to remain competitive in the external labour markets, and appropriate social protection and social security provision, which is not offered in the internal labour markets by their employer or workplace. A diversified workforce also means there are conflicting and different interests among workers. For example, some prioritize balancing work and family, while others opt for income security, housing, skills upgrading, and so forth. Such bargaining models are seen as typical of the “occupational” unionism in which the rules specific to internal labour markets, such as seniority, are rejected, but benefits portable in external labour markets are sought⁶⁶. There are good practices for such tailored bargaining.

In Belgium, collective agreements for temporary agency work are concluded through the joint committee structure. In 2007, collective agreements concluded by the joint committee involved improvements to pension benefits for agency workers in several sectors; training; end-of-year bonus; benefits in the case of accident or illness; other allowances;

⁶⁴ B. Nyström, *op. cit.*; M. Rönmar, *op. cit.*

⁶⁵ EIRO, *Belgium: Flexibility and Industrial Relations*, European Industrial Relations Observatory, Dublin, 2009.

⁶⁶ G. P. Cella, *The Representation of Non-standard Workers – Theory and Culture of Collective Bargaining*, *Transfer* 18, No. 2, 2012, 177.

and the creation of a safety fund.⁶⁷ In Denmark, the Danish Business (DE) concluded an agreement in 2007 with the Union of Commercial and Clerical Workers in Denmark (HK) which reduced the qualifying periods for agency workers to be eligible for employment benefits such as maternity entitlements⁶⁸. In France, temporary agency workers are covered by a specific vocational training policy, which is governed by national collective agreements that require compulsory contributions from agencies⁶⁹.

In Italy, an agreement was reached in 2007 between the main journalist employer confederations (FIEG) and the two main trade unions (FNMI and INPGI) under the supervision of the Italian Ministry of Labour, in order to guarantee fair treatment of freelance journalists in quasi-salaried employment⁷⁰. The agreement contained provisions responding to external labour market needs, viz.:

- (a) those on employers' pension contributions, which should have gradually increased within four years to reduce the gap in social protection between standard workers and those in quasi-salaried employment; and
- (b) those for scaling back the use of this form of employment, by means of incentives committed by the Government for the transformation of contracts in quasi-salaried employment into fixed-term salaried employment with a minimum duration of 24 months⁷¹.

In Indonesia, KSPSI (*Konfederasi Serikat Pekerja Seluruh Indonesia*) formed the Building and Public Works Union (*SPBPU*) in the construction sector and the Indonesian Transport Workers Union (*SPTI*) in the transport sector, most of whose members are informal workers. The members of *SPBPU* automatically become members of *SPBPU*'s cooperative and professional associations. As members of the cooperative, informal workers are granted economic protection, while as members of the professional association they can receive occupational protection, such as

⁶⁷ European Foundation for the Improvement of Living and Working Conditions (Eurofound), *Temporary Agency Work and Collective Bargaining in the EU*, 2009, www.eurofound.europa.eu (Last accessed: 15 July 2012).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Collaborazioni coordinate e continuative (co.co.co)* and *Contratti di collaborazione per programma (co.co.pro)* are employment contracts covering so-called employer-coordinated freelance workers (a form of quasi-salaried employment). In legal terms, they are considered autonomous employees but they usually operate within the production cycle of a firm and are subordinated to the needs of the employer.

⁷¹ *Giornalisti – Siglato accordo fra Min. Lavoro e Inpgi, Fiege e Fnsi per stabilizzazione co.co.co.*, 2007, (Last accessed 16 July 2012).

vocational training for the purposes of certification. Currently, *KSPSI* is cooperating with the Public Works Department of Indonesia in the certification programmes for 1 million construction workers. In order to grant them economic protection, *SPBPU*'s cooperative acts as a subcontractor to negotiate tariffs with the employers. By becoming a member of the cooperative, informal workers can get jobs directly from it and accordingly earn higher incomes than when they obtain jobs through supervisors on construction sites⁷².

4.2.5. Regulating Economically Dependent Self-employment

As described in section 3, non-standard work arrangements can expose ambiguity or uncertainty in the application of national laws and regulations that are intended to offer certain protections to those who are in a legally constituted employment relationship. In other cases, non-standard workers simply fall outside their scope of application. Without a defined and clear employment relationship being established, it becomes difficult for workers to engage in collective bargaining.

The ILO Employment Relationship Recommendation, 2006 (No. 198), provides that national policy on the employment relationship should at least include measures to provide guidance to the parties on the establishment and identification of employment relationships, measures to combat disguised employment, and the general application of protective standards that make clear which party is responsible for labour protection obligations⁷³. The Recommendation also provides that ILO Member States should apply a national policy to review, and where necessary to clarify and adapt the scope of, relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship⁷⁴. As part of national policy, the Recommendation provides that Member States should promote the role of collective bargaining and social dialogue as a means, among other things, of finding solutions to questions related to the scope of the employment relationship at the national level⁷⁵. Unless an employment relationship has been established, it is often difficult for self-employed workers with commercial contracts to engage in collective bargaining,

⁷² R. P. Anwar, A. Supriyanto, *op. cit.*

⁷³ Recommendation No. 198, Art. 4.

⁷⁴ Recommendation No. 198, Art. 1.

⁷⁵ Recommendation No. 198, Art. 18. For more details, see G. Casale, *op. cit.*, 1-33.

because of competition law which considers agreements on prices or tariffs as anti-competitive practice. There are examples of collective bargaining contributing to clarifying the scope of the employment relationship for certain categories of self-employed workers, or where their terms and conditions of work were negotiated upon clarification of the scope of the employment relationship by the relevant law.

In Argentina, the Argentine Street Vendors Trade Union (*SIVARA*, 17,000 members) represents street vending workers of various kinds, in both the public and private sectors, including street sale of services and health care plans, delivery sale, and direct sales of products. *SIVARA* has developed a strategy to pressure employers (dealers) to recognize these workers' dependent relationship with them and win enterprise collective agreements. So far, 25 agreements have been concluded for vendors who sell food on the streets, on trains and in parks⁷⁶.

In Japan, there have been increasing numbers of cases in which community unions (see Section 3.1.) bargain on behalf of an independent contractor but the employers refuse to bargain collectively on the grounds that these are not “workers” in terms of Article 3 of the Trade Union Act. Since determining criteria are non-existent, there has been a discrepancy between the orders of Labour Relations Commissions and lower court decisions, thereby creating issues in terms of legal stability and predictability. The Ministry of Health, Labour and Welfare therefore set up a Study Group and released a report proposing criteria for determining the “worker relationship”. Administrative notice was given to the Central and Local Labour Relations Commissions concerning the use of the report as a reference, in order to give it wider publicity⁷⁷.

In Germany, self-employed freelance journalists, who are considered “similar to employees” by law if they are economically dependent and either usually work exclusively for one client or more than 50 percent (30 percent in the media sector) of their income is paid by one client, are exempt from the antitrust regulation forbidding the conclusion of agreements on common fees and prices. A number of company-level agreements exist between trade unions and public broadcasting companies which contain agreed rates of pay. In 2009, the national Federation of German Newspaper Publishers (*BDZV*), several regional publisher associations and the two main trade unions of the sector (*DJV* and *ver.di*) signed a collective agreement covering self-employed journalists, who are

⁷⁶ J. M. Martínez-Chas, *op. cit.*

⁷⁷ Ministry of Health, Labour and Welfare (MHLW), 2011, www.mhlw.go.jp (Last access 13 July, 2012).

deemed to be similar to the employees at daily newspapers in western Germany. It includes collectively agreed fees in detail for articles and pictures/images provided by self-employed freelance workers, in order to set common rules “towards legal certainty and transparency”. Self-employed freelance workers are required to demonstrate that their main occupation is journalism, so as to ensure that only economically dependent self-employed workers are covered by the agreements⁷⁸.

5. Good Practices of National Tripartite Social Dialogue for Non-standard Work

The ways in which national tripartite social dialogue deals with issues regarding non-standard work are diverse. It has a critical role to play in advancing more inclusive and equitable social dialogue as well as democratic labour market governance, through designing and agreeing on policies or legislative changes based on mutual consensus. The Committee of Experts on the Application of Conventions and Recommendations of the ILO indeed highlighted the importance of examining in all Member States, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights⁷⁹. The outcomes of tripartite social dialogue can also take other forms, such as non-binding declarations, guidelines or agreements. This paper does not seek to analyse the wide range of legal or policy changes made through tripartite consensus which are related to various non-standard work arrangements as well as those aiming at promoting equal access to freedom of association and collective bargaining. Rather, it highlights some voluntary tripartite agreements or initiatives which contain tripartite action that has been taken to address issues regarding non-standard work.

In Argentina, the National Agreement for the Promotion of Social Dialogue in the Construction Industry was signed in December 2010 between the Construction Workers' Union of the Argentine Republic (UOCRA), the Argentine Construction Chamber (CAC) and the Ministry

⁷⁸ Eurofound, *Germany: Self-employed Workers*, 2009, www.eurofound.europa.eu (Last accessed: 16 July 2012). See also, *Joint Remuneration Rules for Professional Freelance Journalist Working for Daily Newspapers*, 2009, europe.ifj.org (Last accessed 16 July 2012).

⁷⁹ ILO, *General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILO, Geneva, 2012.

of Federal Planning, with the participation of other employers' organizations in the value chain of the industry. Among others, the purposes of the agreement were: to mutually commit to social peace, to reach an outline of the consensus concerning prices and wages, to foster registered and decent employment, to set clear and predictable rules in regulations compliance and investment and to promote the widespread construction of social housing for low and middle-income groups⁸⁰. In the agricultural sector, the National Agricultural Work Committee (*CNTA*) was created in 1980 as a tripartite social dialogue institution with the participation of the Inter-cooperative Rural Confederation (*Coninagro*), the Argentine Agrarian Federation (*FAA*), the Argentine Rural Society (*SRA*), the Argentine Rural Confederations (*CRA*) and the Argentine Association of Rural Workers and Dockers (*UATRE*). In 2004, another tripartite institution (*RENATRE*) was created with the aim of promoting social dialogue in the Argentine agricultural sector. This forum deals with informal workers and employers, encouraging their legalization and incorporation into social security schemes. One core element is the granting of benefits through the Comprehensive Unemployment Benefits System. To this end, a pocket job record book is issued to register every change of employer in the case of temporary workers so that they may become eligible for the unemployment protection system⁸¹.

In Singapore, tripartite partnership is used as a way to address issues affecting the increasing number of contract and casual workers, largely related to the expansion in outsourcing services. In 2008, the Tripartite Advisory on Responsible Outsourcing Practices⁸² was issued to encourage end-user companies awarding outsourcing contracts to demand that their service suppliers or contractors help raise employment terms and benefits as well as the Central Provident Fund (*CPF*) status of low-wage contract workers, as required by the law. More specifically, companies are encouraged to consider the following: (a) making compliance with Singapore's employment laws a condition in service contracts with their suppliers; (b) encouraging written employment contracts between service suppliers and their contract workers; (c) monitoring the financial standing of service suppliers; (d) awarding performance-based contracts to service suppliers; (e) retaining experienced workers; and (f) helping workers

⁸⁰ J. M. Martínez-Chas, *op.cit.*

⁸¹ *Ibid.*

⁸² The full text is available at the SNEF website, www.sgemployers.com (Last accessed 16 July 2012).

qualify for employment benefits under the Employment Act. According to a survey in 2010, more than 50 percent of companies that outsourced cleaning, security and landscaping services adopted three or more of the six responsible outsourcing practices listed in the 2008 Advisory⁸³. Taking into account feedback obtained from industry stakeholders, trade unions, workers and the public, the Advisory was updated in 2012 and renamed the Tripartite Advisory on Best Sourcing Practices⁸⁴ to further encourage service buyers to outsource responsibly and adopt best practices. This provides greater clarity on the ways that workers, service buyers and providers can benefit from best sourcing. It encourages service buyers to consider the following: (a) safeguarding the best employment rights of workers in accordance with Singapore's employment laws, such as the Employment Act, Central Provident Fund Act, Employment of Foreign Manpower Act, Workplace Safety and Health Act and Work Injury Compensation Act; (b) specifying service contracts on the basis of service-level requirements rather than headcount; (c) recognizing factors that contribute to service quality (e.g. provision of written employment contracts to workers, grading and accreditation level of the service providers, investment in the training of workers, recognition of experienced workers, and provision of appropriate tools and equipment); (d) checking that service providers are financially sound; and (e) seeking to establish a long-term collaborative partnership with service providers. The tripartite partners have also developed a step-by-step guidebook for service buyers that illustrates the best sourcing cases and gives detailed practical guidance on implementation. It includes examples of clauses that can be used for tender requirements, scoring templates for evaluating proposals from potential service providers and examples of key performance indicators for managing the service provider⁸⁵.

Attempts have also been made in various countries to overcome the lack of representation of the non-standard workforce in national tripartite social dialogue by introducing changes to its structure. For example, in the Netherlands, self-employed workers (9 percent of the total workforce) gained representation in the Social and Economic Council, the Government's national permanent social dialogue advisory body, in

⁸³ Information gathered from the Ministry of Manpower (11 October 2011).

⁸⁴ Ministry of Manpower website, www.mom.gov.sg (Last accessed 16 July 2012). For full text, see www.mom.gov.sg (Last accessed 16 July 2012).

⁸⁵ Ministry of Manpower; National Trades Union Congress; Singapore National Employers Federation, *Best Sourcing: Step by Step Guidebook for Service Buyers*, www.mom.gov.sg (Last accessed 16 July 2012).

March 2010. They are represented by the Chair of the Platform for Self-employed Workers, the largest Netherlands organization of self-employed workers, with more than 20,000 affiliates. In September 2010 the Social and Economic Council issued its first recommendations on self-employment. The main objective was to reduce the gap in labour market legislation between self-employed and dependent employees. The Social and Economic Council proposed that an agreement should be reached on minimum rates for self-employed workers. In principle, self-employed workers conduct their business at their own expense. The proposal aims at avoiding excessive risks for such workers, given that their economic position is substantially different from that of employees. In particular, one of the provisions aims at relaxing the annual working hours regulation with which self-employed workers must comply for tax benefits. At present, they must work at least 1,225 hours per year in order to be eligible for tax breaks. However, especially because of the economic downturn, many self-employed workers are unable to reach this benchmark. The recommendation of the Social and Economic Council is for the tax authorities to adopt a more lenient approach, for instance by counting also the number of hours spent on canvassing customers⁸⁶.

6. Concluding Remarks

Promoting more inclusive social dialogue and collective bargaining is a key means of ensuring equal voice for all workers and advancing a fairer and more equitable society. This paper has attempted to map a wide variety of collective bargaining and national social dialogue practices. Albeit limited in terms of numbers of workers covered and the impact achieved, it shows that multi-faceted strategies and approaches have been adopted to overcome particular challenges to social dialogue and collective bargaining for non-standard workers. Depending on each country's industrial relations institutions and practices, labour market portfolio, or forms of non-standard work, effective approaches and strategies greatly differ. Nevertheless, some specific implications can be drawn from a review of a variety of collective bargaining and national social dialogue practices demonstrated in the paper.

⁸⁶ EIRO, *Self-employed Workers Join Social and Economic Council*, 2010, www.eurofound.europa.eu (Last accessed 16 July 2012).

Some good practices appear to involve attempts to overcome constraints in prevailing collective bargaining settings or practices and give more voice to non-standard workers. In countries where bargaining happens mainly at the enterprise level with a tendency to exclude non-standard workers, as well as in cases where workers' attachment to single workplaces/employers is limited, trade union representation and bargaining which are not bound to workplaces appear to be useful in representing the interests of non-standard workers. Such examples include not only bargaining at higher levels (e.g. sectoral or national level) but negotiation between an employer and a trade union/unions which is/are established at regional, local, or community level, or on an occupational basis. This approach has the potential to contribute to an increase in the proportion of the workforce with access to representation and negotiation, by effectively representing the voices and interests of those whose trade union representation tends to be either low or absent.

However, the growing need for such representation outside workplaces also implies a serious challenge in some countries to realizing equal and inclusive access to collective bargaining at workplace level, as well as workplace democracy. Trade unions in the past followed exclusive policies, and are still doing so in some countries where non-standard workers are often excluded from unions' organizing and bargaining practices. Heery⁸⁷ categorizes trade union responses to non-standard workers in four stages: (i) exclusion; (ii) acceptance but in a subordinate position; (iii) inclusion on the basis of equal treatment with standard workers; and (iv) engagement, characterized by union attempts to represent the specific and differentiated needs of non-standard workers. Such movements in trade union policy away from exclusion, through subordination to inclusion and engagement have also been observed. Examples demonstrate that there are enterprise-level trade unions which seek to organize non-standard workers, include their agenda in bargaining or voluntarily extend the negotiated outcomes to non-standard workers.

In this regard, a complementary role that a variety of workers' participation schemes at enterprise level can play in supporting collective bargaining and promoting more inclusive social dialogue, which is beyond the scope of the present paper, remains a subject of future research.

Those who engage in work associated with supply chains and multi-tier contracting also face difficulty in exercising meaningful bargaining, since

⁸⁷ E. Heery, *Trade Unions and Contingent Labour: Scale and Method*, in *Cambridge Journal of Regions, Economy and Society* 2, No. 3, 2009, 429-442.

their employers are often SMEs, the decision-making power of which in negotiations can be weak. In these cases, multi-employer bargaining seems to be an effective tool for improving bargaining positions for these workers by involving in the negotiations the “principal employer” that has the real power. Multiple-employer agreements also benefit big brand companies, end-user companies and their suppliers, with a view to better supply-chain management and corporate social responsibility (CSR). Singapore’s Tripartite Advisory on Best Sourcing Practices, adopted through tripartite consensus, also shows that engagement of multiple employers is a key to improving terms and conditions of work in outsourcing services.

Extension of collective agreements can be used as an approach to reach out to unorganized non-standard workers, in countries where there is legal machinery for such arrangements. But its applicability to non-standard workers appears to be quite limited and the extent to which it is used to cover non-standard workers requires further examination from both legal and practical perspectives. Examples demonstrate that some categories of non-standard “employees” in direct employment relationships are included in extended agreements, but evidence shows these workers may be explicitly excluded. In contrast, an example in Japan of a collective agreement whose outcomes become applicable and *de facto* extended to non-bargaining parties as a result of mutual consensus between negotiating parties suggests a step toward more solidarity and more inclusive dialogue that has the potential to encourage trade union membership.

Collective bargaining developments in regulating non-standard work are highly linked to labour law and policy developments in relevant areas: different contractual arrangements, termination of employment, equal treatment, social security and social protection, employment relationships and, also, overarching industrial relations laws and regulations which govern social dialogue and collective bargaining. Issues that are the subject of bargaining to address non-standard work vary between countries, depending on the different interests and needs of non-standard workers, or the legal settings dealing with different types of non-standard contracts. But the main issues covered are regularization and employment security; equal pay for equal value of work; limits on the duration of temporary contracts; social protection and social security; skills developments; and clarification of the possibility of exercising collective bargaining for economically dependent self-employed workers.

Regularizing non-standard workers seems to be achieved using different criteria, including years of service, selection through appointment tests or

promotion screenings, and tasks and responsibilities. When full regularization is not possible, social partners are exploring other ways of narrowing the gap between non-standard and standard workers. Attempts to pursue equal pay for equal value of work or limits on the duration of temporary contracts are used as a bridge to facilitate a shift to regularization. In order to provide better employment security, new categories of standard workers also emerge with lower terms and conditions of work than standard workers in return for limited duties and responsibilities.

Legal and collective bargaining developments complement each other in advancing equal pay for work of equal value. The way collective bargaining pursues this principle differs significantly depending on prevailing industrial relations and labour-management practices, as well as wage determination systems and practices. Generally, it appears that it can be easier to achieve where wage levels are objectively determined by job/occupation classification. Where such clear classification does not exist, the social partners are attempting to establish objective indicators. The definitions and indicators that are used to meet this goal, as well as their impact, deserve further comparative analysis.

Collective bargaining can be tailored to respond to the diversified needs of different categories of non-standard workers. Some good examples show that benefits which are portable in external labour markets are favoured for non-standard workers, since their access to benefits available in internal labour markets tends to be limited, due to these workers' limited attachment to a single workplace. Tailored agreements can also facilitate mutually agreed ways of working flexibly to enhance the labour market positions of non-standard workers.

In Europe, more and more collective agreements address issues regarding temporary agency workers (notably since Directive 2008/104/EC on temporary agency work)⁸⁸ or economically dependent self-employed workers. In developing economies, a number of good examples are related to issues concerning people engaged in contract labour or informal work, but their impacts on actual terms or conditions of work do not appear to be as clear as those in developed economies. Generally, regulatory progress through collective bargaining appears more advanced for directly employed non-standard workers (part-time workers and fixed-term workers).

⁸⁸ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

Though some good practices exist, collective bargaining is generally still underdeveloped in addressing economically dependent self-employment or work associated with commercial contracts. In most countries, regulating such forms of work outside employment relationships seems to be left largely to national legal and judicial developments in clarifying the scope of the employment relationship. This suggests that deepened analysis is necessary in order to review how collective bargaining interacts with legal and judicial developments in respect of the ILO Employment Relationship Recommendation, 2006 (No. 198).

Many good practices involve attempts by the social partners, in both overcoming existing obstacles to exercising collective bargaining and negotiating issues facing non-standard workers, to re-examine jobs/occupations, qualifications, tasks and responsibilities, as well as the nature of employment and the work relationship, rather than actual contractual status or degree of attachment to a single employer, which often create different “layers” of workers in terms of access to collective bargaining.

It is of the utmost importance to examine the impact of various non-standard forms of work on the exercise of collective bargaining rights, through a tripartite framework, taking into account each national context. The strength of tripartite social dialogue is to enable inclusion of the use of public institutions, such as social security or social protection schemes, in agreements for finding solutions to issues regarding non-standard workers, with commitment by the social partners for implementation. Good practices also exist in modifying the structure of national social dialogue by providing certain categories of unrepresented groups with representative positions in the existing structure.

Freedom of association is an essential precondition for the effective realization of the right to collective bargaining. The impact of collective bargaining is large where trade union density is high. Organizing non-standard workers therefore serves as a prerequisite for strengthening collective bargaining for non-standard workers. Various trade union strategies have been adopted to this end (e.g. organizing efforts, political lobbying, and coalition and network building with other social movements), which require further analysis⁸⁹. Equally, what businesses do as part of their CSR or supply-chain management initiatives, particularly

⁸⁹ Some such trade union strategies are demonstrated in M. Ebisui, *Non-standard Workers: Good Practices of Social Dialogue and Collective Bargaining*, ILO, Geneva, 2012.

those with real bargaining power, to promote more inclusive and equitable social dialogue and collective bargaining is also worth examining.

In sum, the effectiveness of various collective bargaining and social dialogue approaches or strategies in improving the situation of non-standard workers is linked to various other factors, such as relevant labour laws and other regulations, judicial developments, prevalent industrial institutions and practices, as well as economic and labour market conditions. There is no single solution, but there is a growing need for improved coordination between multi-faceted initiatives by the different actors, so that they interact and reinforce each other to move towards a more inclusive and equitable world of work based on solidarity, rather than one that is split into different, often unequal segments.

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Marco Biagi Centre for International and Comparative Studies, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

For further information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.