

# **TRADE UNION RESPONSES TO THE CASUALISATION OF LABOUR IN THE EASTERN CAPE**

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**KHOLOSA SIPHE LONI**

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## **ABSTRACT**

This thesis focuses on trade union responses to casualisation of labour in the Eastern Cape. In the context of increased globalization, some employers have attempted to achieve high production outputs while saving on operational costs. The ‘flexible firm’ model is used as but one theory to explain increased flexibility in the workplace. In an effort to achieve increasingly flexible firms that may swiftly respond to subsequent challenges such as increased international competition, employers have been seen incorporating more non-standard workers in the form of casual, temporary, part-time, and seasonal workers. This has been a matter of concern for the unions for numerous reasons: some non-standard workers are subjected to sub-standard working conditions, irregular working hours and little or no benefits; casual work is arranged in such a way that it is virtually impossible for these workers to join a union – a predicament which bears a high possibility of a decline in the typically standard worker-based membership of trade unions; and non-standard workers are often faced with the representation gap predicament which entails that they are not adequately protected by labour legislation. The thesis explores the responses of trade unions to these challenges, and the proposals that they have made in this regard, by focusing on the sectoral dynamics of non-standard labour in the province. It further discusses the regulation of non-standard labour, as poor representation of some non-standard workers bears consequences for the regulation of the practice of non-standard work. The research adopted qualitative research techniques in the form of semi-structured interviews, and used purposive and snowball sampling in accessing relevant data for analysis purposes.

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# LIST OF ACRONYMS

ACTU	Australian Council of Trade Unions
ANC	African National Congress
AIRC	Australian Industrial Relations Commission
AMWU	Amalgamated Manufacturing Workers' Union
ASLEF	Associated Society of Locomotive Engineers and Firemen
BEE	Black Economic Empowerment
CEPPWAWU	Chemical, Energy, Paper, Printing, Wood and Allied Workers Union
CWU	Communication Worker's Union
COSATU	Congress of South African Trade Unions
FAWU	Food and Allied Workers' Union
FCWU	Food and Canning Workers Union
FOSATU	Federation of South African Trade Unions
GEAR	Growth, Employment and Redistribution
GPA	Gewerkschaft der Privatangestellten (Austrian Union of Salaried Employees)
ICU	Industrial and Commercial Union
IT	Information Technology
LRA	Labour Relations Act
NEDLAC	National Economic Development and Labour Council
NUM	National Union of Mineworkers
NUMSA	National Union of Metalworkers of South Africa
OECD	Organisation for Economic Co-operation and Development
RBTU	Australian Rail, Tram and Bus Union
RMT	National Union of Rail, Maritime and Transport Workers
SACCAWU	South African Commercial, Catering and Allied Workers Union
SACP	South African Communist Party

SACTU	South African Congress of Trade Unions
SACTWU	South African Clothing and Textile Workers Union
SATAWU	South African Transport and Allied Workers Union
TER	Triangular Employment Relationship
TES	Temporary Employment Services
TSSA	Transport Salaried Staff's Association
TUC	Trade Union Congress
UK	United Kingdom
USA	United States of America
VAT	Value Added Tax

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# 1

## INTRODUCTION

The shift in the nature of work towards ‘flexibility’ is a widely recognised feature of the labour market. Employers implement flexibility in the workplace as a means to improve efficiency and meet fluctuating market demands while trying to reduce the running costs of their establishments. There are various forms of flexibility - however; the focus of this thesis is on the flexibility of labour. Flexibility in the labour market presents favourable conditions for the casualisation of labour. Casualisation of labour in the context of flexible labour markets and workplaces refers to the ability of the employer to adjust the size of the workforce in order to meet market demands and remain profitable. Labour flexibility is a broad term that includes employment forms such as casual, temporary, seasonal and part-time work. These employment forms, their inherent differences, and their impact on trade unions are introduced and discussed in Chapter 2.

Casualisation of labour is largely fuelled by flexible labour markets and flexible employment practices. These flexible markets and practices are influenced by global market conditions, the economic environment and competitive pressures. Globalisation and increased competition have stimulated changes in organisations such as increased privatisation, mergers, restructuring, the flexible organisation of work, outsourcing and downsizing in an attempt to reduce costs, improve efficiency, and to remain competitive. Employers have had to respond to these factors, and are compelled to change their workforces accordingly. In this regard, firms have actively casualised their workforces and pursued high levels of flexibility in the workplace. By casualising their workforce, employers also gain a significant increase in control over the workforce. The rise in the incorporation of flexible employment practices and, by extension the casualisation of labour, has sparked concerns about employment security and conditions of work for those who engaged in flexible employment contracts. This is because these forms of work are largely insecure and are often unprotected. The research focuses on these forms of work because casualisation and the associated shift from standard employment contracts towards unprotected non-standard employment contracts allow for the ‘super-exploitation’ of these workers and threatens to undermine the conditions of standard employees. In addition to the lack of job-security and protection, these workers are often not entitled to any benefits and are usually not represented by any trade union.

The major concern of this research is to explore trade union responses to the casualisation of labour in the Eastern Cape. This is important because casualised labour represents forms of exploitation that labour movements have historically opposed. Casual workers are often not afforded the same protective measures as permanent employees even though they often work under the same or similar conditions as their permanent counterparts. A further challenge that they face is that they are often not members of any union, and thus do not have any means of representation in the workplace or the labour market. The problem with the lack of protection for these workers stems from the crisis of representation that they are faced with. Furthermore, some non-standard workers are not defined as employees in labour legislation, and thus fall between the cracks and are not granted the rights and privileges that are afforded to those who are deemed to be employees. Secondly, the notion that labour legislation does not effectively regulate casualised labour is considered to be at the root of the growth in casualisation. Employers turn to flexible employment practices in an effort to evade the statutory responsibilities that employers are required to fulfil towards standard employees.

In an attempt to explore trade union responses to the casualisation of labour in the Eastern Cape, this thesis aims to address a number of underlying goals. Firstly, the dimensions of casualisation in the province are examined. This is to establish the nature and extent of casualisation in the province. Secondly, the working conditions of non-standard workers are examined so as to get an indication of the differences between standard and non-standard workers in terms of the remuneration and employment benefits that they are entitled to, as well as the level of job security that they experience. The thesis also aims to determine the effect that the casualisation of labour has had on organised labour by looking at fluctuations in union membership that may be ascribed to the proliferation of non-standard labour and the levels of union recognition in the workplace. This is because employers can be considered to prefer a non-unionised workforce. Because most non-standard workers cannot be organised by the unions in the respective workplaces, employers benefit in that they have workers who are less inclined to questioning the actions and processes of the employers through unions. The inability of unions to organise these workers further entails that employers need not concern themselves about union recognition in the workplace- this presents the employers with the ideal workforce that is able to meet stipulated deadlines without the possibility of resistance influence from unions. Finally, the research aims to look at how labour legislation affords recourse to flexible labour practice by analysing the provisions that govern non-standard work.

The research is located within the Marxist or critical theoretical framework, which focuses on the lived experience and the social relations that structure these experiences. Harvey (1990:48) writes that for Marx, social structures were inherently oppressive, and his main concern was class oppression and economic exploitation. In a capitalist world, where for capital to reproduce itself, the working class is exploited, the worker is rendered powerless, as poverty forces the poor to enter into any job that will generate an income, as can be seen in some cases of people who enter into non-standard work contracts. This is echoed by the unions, who have presented a view that suggests that the relationship between employer and employee is inherently adversarial. The thesis aims to determine and analyse the responses of trade unions within this conceptual framework.

Chapter 2 begins by providing an overview of the literature that relates to casualisation of labour and the increase use of non-standard employment contracts. The chapter outlines the flexible firm model as a basis for understanding flexibility in the workplace. It discusses the Temporary Employment Services industry as employment agencies and labour brokers are considered to play an important role in the supply of casual workers. The casualisation of labour is not unique to South Africa, and this is demonstrated in the discussion on selected examples of the global experience. Non-standard work forms that are found in South Africa are then discussed, followed by a discussion of the regulation of non-standard work in the context of limited protection for non-standard workers.

Chapter 3 outlines the methodology and research design that was used to conduct the research. The chapter discusses the research sites, respondents and the main objectives of the thesis. The qualitative research that was undertaken consisted of in-depth one-on-one interviews that were semi-structured. These allowed for follow-up questions to be asked and a great detail of information about the unions surfaced in the process. The union Provincial Secretaries and Provincial Organisers that participated are also listed in the chapter.

Chapter 4 focuses on the flexible workplace and its effects on the labour movement. It discusses the flexible firm as a prime example of the flexibility in the workplace. It further draws the distinction between functional and numerical flexibility, which is the focus of this thesis. The chapter goes on to discuss the effect of flexibility on trade union membership. In an attempt to establish trade union responses to casualisation of labour, this discussion unfolds in the context of the erosion of union membership as a result of the changes that take place in the process of attaining higher levels of flexibility in the workplace.

Chapter 5 discusses the Temporary Employment Services industry as a major role-player in the provision of non-standard workers. The growth of the industry as well as the Triangular Employment Relationship governing the industry is observed. The aim of the chapter is to demonstrate how trade unions have responded to the exponential growth of the TES industry. Furthermore, common practices that are found in TES agency and labour brokers are considered. This is to explore the effect these practices have had on the unions and the responses thereof. The chapter therefore aims to argue that the growth of the TES industry and labour broking has had an adverse effect on those non-standard workers in TES agencies. However, these workers are seldom protected by unions due to the challenges that exist in terms of non-standard workers joining unions.

Chapter 6 discusses the casualisation of labour in the Eastern Cape and non-standard labour in different sectors across the province. It gives an indication of the extent of the use of non-standard labour by looking at non-standard forms of work in the various industrial sectors, the skill levels of the non-standard workers and the gender and age dimensions of these workers. In addition, the chapter looks at trade union responses to the casualisation of labour that is prevalent in the sectors in which they organise.

Chapter 7 addresses the issue of the regulation of non-standard labour in the province. The chapter begins by looking at the representation gap, which can be seen as the root of the problems underlying the protection of non-standard workers. This is because if workers are not adequately protected by labour legislation, they may be open to exploitation, as some employers may find loopholes that enable them to evade the statutory regulations that are stipulated by the various legislative provisions. The forms of regulation of the employment relationship and non-standard labour are explored. Finally, possible improvements to the regulation of the (flexible) labour market, and COSATU's proposed banning of labour brokers are explored.

Chapter 8 concludes by confirming the framework and findings of the research, which are raised in Chapter 2 and substantiated in Chapters 4 to 7.

# 2

## **A NEW WORKPLACE REGIME: THE EROSION OF STANDARD WORK CONTRACTS AND A THREAT TO TRADE UNION POWER**

### **2.1 INTRODUCTION**

It has been noted that there has been a dramatic change in the nature of the workforce, resulting mostly from global market competition, recession and soaring unemployment (Fredman, 1997:337). This has can be seen in the escalation of non-standard employment contracts, which, according to Standing (1999:101), reflect the ability of employers to appoint and dismiss workers easily. This growing trend has negatively affected the power and density of trade unions globally. This is because trade unions have historically thrived and garnered support among workers employed on standard employment contracts and mobilised workers around issues, such as rights and entitlements, which speak to the needs of permanent employees (Campbell, 2005:1).

Given that the thesis is aimed at exploring trade union responses to the casualisation of labour, it is important to explore the current organisation of trade unions. This is because the responses of trade unions are determined by the structure and identity that unions have adopted. Because industries and workplaces have experienced drastic changes towards non-standard employment, it can be argued that trade unions have not been able to respond effectively to the challenges posed by the new order in workplaces. This is because unions face a tension between their opposition to casual work, and their need to represent workers. It is from this premise that the thesis will explore the responses of trade unions towards the casualisation of labour in the Eastern Cape.

The chapter begins by discussing the notion of flexibility in the workplace, as casualisation is the result of the shift towards highly flexible methods of production, flexible firms, and flexible labour markets. The flexible firm, as an example of flexibility in the workplace, will be discussed as well as the advantages and disadvantages of adopting this model. Given the context of flexibility in the workplace and the conditions that are inherent in such arrangements, the effects of flexibility in relation to workers' securities will be looked at. The chapter will then discuss the consequences that

flexibility has for trade unions, given that workers who are employed on flexible employment contracts are invariably insecure and unprotected. Practical examples of the casualisation of labour will be presented, making use of selected examples from Australia, the United Kingdom and the United States of America.

The chapter cannot be concluded without mentioning the temporary employment services industry or labour broking, as the industry has been found to be the most commonly practiced form of flexibility. In this regard, the triangular employment relationship, which characterises the temporary employment services industry, will be discussed. This section will be followed by an outline of the dimensions of non-standard labour in South Africa, where the extent of casualisation will be discussed at sectoral level. Trade union responses will be discussed, given the relationship between union organisation and the capacity to respond to casualisation highlighted earlier.

The chapter will conclude with a focus on the legislative protections afforded to non-standard workers given the upsurge in the casualisation of labour and the consequent extensive use of non-standard workers. It proceeds by addressing the representation gap that is experienced by non-standard workers, who fall between the cracks of legislative definitions and protections attached to those definitions. Regulation of non-standard work is discussed in light of the fact that regulation rather than banning the use of non-standard labour seems to be the most viable solution.

## **2.2 THE CASUALISATION OF LABOUR**

The casualisation of labour is described by Boyer (1988:212) as being anything ranging from effecting a more rapid adjustment of employment (such as the ability to hire and fire easily), increasing part-time work, fixed-term contracts and temporary jobs. Non-standard employment contracts are characteristic of casualisation of labour, and are described as those that signal the decline of permanent, career long employment and its replacement by contingent and contract work (Heery and Salmon, 2000:3). In non-standard employment contracts, the centralised employment regulatory regime that is based on industry awards such as benefits, the protection and exercise of employees' rights is dismantled, resulting in a non-standard employment relationship with inferior terms and conditions of work (Klerck, 2002:104; Burgess and Strachan, 1999:121; Purcell et al, 2004:706). In contrast, standard employment contracts offer employees full-time, permanent and secure jobs (Felstead and Jewson, 1999:1) as well as additional staff benefits such as sick pay, leave, regulated working hours and pay, and holiday entitlements. This is seen by Mitlacher (2007:587) as one of the reasons why employers may opt to enter into non-standard contracts with

their employees, as they are able to reduce the costs of labour.

Non-standard employment contracts are characteristic of the process of making labour markets more flexible in order to meet market demands and to retain as much profit as possible. Because responding to market demands may entail the ability of a firm to rapidly change its staff component in accordance with production demands, non-standard employment contracts further reflect the fact that some workers have jobs that can be easily terminated and may therefore be highly vulnerable to unemployment (Felstead and Jewson, 1999:1). In this context, some workers may find themselves caught in the cycle of being employed at intermittent intervals as the nature of their employment under non-standard employment contracts is at times likely to be uncertain. An example of this can be made of seasonal workers whose jobs depend on seasonal crops. These workers may not necessarily be involved in other work during 'off-season', and are thus unemployed.

### **2.2.1 Subcontracting**

Subcontracting has been defined as the replacement of the employment contract with a commercial contract (Kenny and Bezuidenhout, 1999:39). This means that the company does not employ workers directly; instead, the company pays someone else to do a certain task (Kenny and Bezuidenhout, 1999:39). Companies are said to use this strategy in order to avoid paying the full costs of an employment contract.

Job contracting occurs when a user firm contracts with a sub-contractor (individual or firm) for the supply of goods or services. The subcontractor firm or individual undertakes to carry out this work at its own risk, using its own resources. The user firm pays the sub-contractor on the basis of work performed or service provided, and its sole concern is the finished product or service provided (Mills, 2004:1213). There has been an increase in the replacement of the employment contract with independent sub-contracting contracts, often in situations where the employee is unskilled, where the nature of the relationship between the parties essentially remains that of employer and employee.

### **2.2.2 Casual Work**

Casual labour differs from sub-contracted labour in the sense that it falls under direct employment by the concerned firm. It is defined by Kenny and Webster (1998:229) as working three or less days a week for eight hours per day. It emerged as a form of extra labour to assist during extended or

busy hours, especially in the retail industry. This poses a challenge to trade union organisation in that the union cannot organise workers who work three or less days a week on average. In the worst-case scenario, if a casual worker works for three days at one establishment and moves to another for three days, that employee is rarely in a job long enough to develop any loyalty to the workplace and the union. The employee will literally have to join a new union every time they are placed at a different job.

### **2.2.5 Temporary Work**

Temporary workers are employed for a specific period on a fixed-term contract. They are normally used to meet a short-term need, such as an urgent order or the temporary absence of a permanent employee (Mills, 2003:1218). The duration, terms and conditions of employment of these workers can therefore vary significantly, based on the employer's motivation to make use of temporary workers.

### **2.2.6 Part-Time Work**

This refers to work that an employee does voluntarily at times, which involves shorter hours than the prevailing standard (Horwitz and Erskine, 1995:32). Part-time work is sometimes entered into involuntarily by job seekers who, because of unemployment and poverty, are pushed into accepting part-time jobs. Part-time workers are employed on a continuous basis, on indefinite contracts, although not on a full-time basis (Mills, 2003:1218). Potential part-time workers include but are not limited to older, retired people who have accumulated expert knowledge in their fields (Horwitz and Erskine, 1995:32), or women who prefer to work mornings only due to other commitments such as household tasks. Part-time work incurs less overhead costs compared with full-time, permanent employment (Horwitz and Erskine, 1995:32).

### **2.2.7 Seasonal Work**

These workers are employed for a limited period, usually for a specific season of the year on fixed-term contracts (Mills, 2003:1218). This may, for instance, include the harvesting or the fishing season. In these cases, it may be argued that the employees have an expectation of renewal of the contract each year, as they mostly return to the same employer for many years.

The table below contains the latest figures of employment trends in South Africa. These figures

show that standard employment is still the norm; however, significant numbers of non-standard workers have been employed.

Table 1 *Number of employees by type of employment contract and industry, 2005*

<b>Industry</b>	<b>Permanent</b>	<b>Fixed-Term</b>	<b>Temporary</b>	<b>Casual</b>	<b>Seasonal</b>	<b>Total</b>
Agriculture, forestry and fishing	455000	27000	99000	63000	69 000	<b>715000</b>
Mining and quarrying	383000	25000	10000	---	---	<b>423000</b>
Manufacturing	1150000	64000	126000	81000	---	<b>1434000</b>
Electricity, gas and water supply	86000	22000	12000	---	---	<b>123000</b>
Construction	270000	91000	182000	112000	---	<b>662000</b>
Wholesale and retail trade	1141000	55000	207000	176000	---	<b>1585000</b>
Transport, storage and communication	371000	22000	75000	29000	---	<b>498000</b>
Financial, insurance, real estate and business services	790000	87000	60000	24000	---	<b>965000</b>
Private households	535000	19000	317000	188000	---	<b>1230000</b>
Community, social and personal services	1757000	89000	136000	67000	---	<b>2055000</b>

(Source: Statistics South Africa, 2005:35).

### **2.3 LABOUR MARKET AND EMPLOYMENT FLEXIBILITY**

As argued by Pollert (in Callaghan, 1997:5), flexibility is rooted in a pro-market ideology. This entails the lack of control of market forces by nation states, which may predispose the relinquishing of policies of control in an effort to emphasise the primacy of ‘markets’ thus raising economic flexibility. This statement suggests that in order for flexibility to be achieved, countries and their governments have to relinquish their policies of trade control, thus creating fertile grounds for the ‘free’ market to thrive. In a thriving free market, more profits are made, and imports and exports move freely between countries with minimum costs incurred. This works best for economies with capitalistic goals and targets. It is this flexibility of the labour market that allows casualisation to expand, as employers contend with international competition and free markets. In order to get a clear understanding of this notion of flexibility, it is important to discuss the types of flexibility that can be adopted.

When talking of labour market flexibility, the distinction between numerical and functional

flexibility needs to be made. Numerical flexibility refers to adjusting labour inputs to meet changes in the employers' needs by making use of part-time, temporary and casual workers, or, in extreme cases, contracting work out by the employer (Fredman, 1997:338). This leads to high incidences of job-hopping, and employers are able to adjust workforce levels to the volatility of, among other things, economic cycles (Auer and Cazes, 2003:5). In addition, employers are able to increase or decrease the size of the workforce in order to meet production demands (Mills, 2004:1208).

### **2.3.1 Numerical flexibility**

It is important to distinguish between the forms of flexible employment that are located within the ambit of numerical flexibility. 'Casual' workers are workers who are employed on an intermittent basis as and when employers need them; 'temporary' workers are those who are hired for short periods of time (like peak times in the retail sector); and 'contract' workers are those who are employed through an agency or middle person (Sela, 2001:33). This distinction is important in that it points to the notion that workers engaged in non-standard employment contracts are unlikely to be represented by trade unions. This is because of the irregular nature of some of their non-standard employment contracts.

Fredman (1997:339) asserts that the advantages of this kind of flexibility to the employer are that the use of temporary, casual and part-time workers allows employers to match staffing levels to peaks in demand (as one can hire and fire workers in accordance with fluctuations in demand), and non-wage costs such as workplace benefits are low or non-existent (since part-time, casual and temporary workers are usually not entitled to any of the benefits that are granted to permanent, full-time employees). In agreement, Sela (2001:35) states that employers respond to unpredictable fluctuations in production without having to bear the costs of employing a large, permanent workforce; and in an attempt to avoid non-wage benefits, managers easily escape bearing the costs of pension and provident fund as well as medical aid schemes. In addition, the hiring and firing of these employees is not as difficult as the hiring and firing of standard, permanent workers.

The advantages of utilising numerical flexibility for managers are, in turn, disadvantages for employees. Furthermore, to make a profit from the fees they charge, temporary employment agencies need to offer lucrative contracts to their clients, and in most cases, they do this by lowering the hourly rates of pay to workers (Purcell et al, 2004:706). Benefit levels are reduced, and consequently, the normal attractions of employment such as reasonable pay, benefits and relative job security, often do not apply to agency workers, especially those with minimal skills and work

experience (Purcell et al, 2004:706).

### **2.3.2 Functional Flexibility**

Functional flexibility refers to the changes in employees' tasks and the ability of the employer to require employees to adjust their skills to match the demands of changes in the workload, production methods and technology (Fredman, 1997:338). An example of this is employers who require employees to adjust their machine operating skills in a workshop to meet the changes in production of and demand for goods. In other words, functional flexibility refers to a situation where the traditional lines of occupational demarcation are removed and are replaced by a group of 'core' workers who are multi-skilled and can multi-task. These workers are highly likely to be in full-time employment (Callaghan, 1997:3-4). This points to the desire of employers to achieve a balance between the changing skill needs of an organisation and the skills possessed by an organisation's workforce since finding a match between work demands and the skills of the standard workforce may be difficult if the workforce is not encouraged to adjust its skills to meet these demands (Gallagher, 2008:476).

In defining functional flexibility, it is also imperative to note that workers may have their skills enhanced through horizontal or vertical job enlargement – that is, the levels of functional flexibility. Horizontal job enlargement seeks to broaden the number of tasks performed by employees at an equivalent skill level. In other words, this entails a sideways expansion of a job, where extra tasks are added in order to contribute to the development of a multi-skilled employee (Sela, 2001:18). Vertical job enlargement, on the other hand, entails either increasing the skill and competence of workers or involves a skilled worker taking on semi-skilled operative functions (Sela, 2001:18). Therefore, the idea of functional flexibility necessitates people accepting more responsibilities, thus improving the quality of output.

Some advantages of functional flexibility are that employers develop a system of production best suited to commercial success as employees are encouraged to modify their skills in line with the changes in production demand; and workers enjoy more employment prospects in the company, as they move between jobs, are routinely trained and become multi-skilled (Sela, 2001:19).

Practical examples of functional and numerical flexibility can be seen playing themselves out in the flexible firm model, where jobs that require high and unique skills are managed internally, thus constituting the 'core' staff (Purcell et al, 2004:707). In contrast, jobs that require little need to learn

the internal operations or to invest in training are more likely to be managed through a non-standard employment relationship. This segment of the workforce is often referred to as the 'periphery' (Purcell et al, 2004:708). The tasks of peripheral workers are designed to be learned quickly, and their strategic importance is low compared to the tasks of the core staff (Purcell et al, 2004:708).

### **2.3.3 The Flexible Firm Model**

One widely cited example of flexibility in the workplace is the flexible firm model. This model has elements of both functional and numerical flexibility in that workers are divided into a 'core' and 'peripheral' workforce (Storey, 1997:158). The peripheral workforce consists of workers whose skills are widely available on the labour market. The employment terms and conditions of these workers are structured in such a way as to emphasise the precariousness of their employment (Tailby, 2003:498). Their contracts will most likely not provide any protection or benefits because due to the ready availability of the skills associated with the peripheral workforce, employers can literally replace them on a daily basis. Non-standard employees are considered a part of the peripheral workforce and are most likely to be excluded from a firm's premium employment terms and conditions in order to protect the employment security of the core workforce (Tailby, 2003:507). Core workers are those workers with firm-specific skills that are not as readily available on the labour market as those of the peripheral workforce (Tailby, 2003:498). In contrast to the peripheral workforce, core workers are usually full-time employees who work on a permanent basis; they are trained and are rewarded to supply functional flexibility (Van Der Merwe, 2009:17). These workers are expected to have a wide variety of skills, and they are required to acquire new competencies when any changes occur in the workplace.

### **2.3.4 Advantages of the Flexible Firm Model**

The flexible firm can be considered to be an ideal arrangement for employers in that they do not have to employ workers who perform tasks that do not necessarily require advanced skills. They therefore are not burdened with the responsibility of keeping these employees on a permanent basis, thereby saving on employment costs such as fixed remuneration and other employment benefits. In times of low demand, employers can simply release peripheral employees and not have the costs of retaining employees, who are not needed, added to running costs. Peripheral workers are also cheaper because, as suggested by Tailby (2003), these workers are excluded from the normal employment terms. In addition to these workers not being entitled to benefits, the employer usually determines the remuneration rate of the workers unilaterally. Employers may therefore structure the

pay of these workers in such a way that it leaves them with huge savings in terms of costs.

### **2.3.5 Disadvantages of the Flexible Firm Model**

In as much as the model allows the firm to benefit by enabling it to structure the workforce according to market demand, the problem with it is that it puts workers at a great disadvantage. Peripheral workers are shifted in and out of work as and when they are needed- this opens them up to possibilities of being dismissed at any time that the employer has no use for them. Furthermore, some of these non-standard employees are not afforded the benefits and protections that come with permanent employment. Because these peripheral workers are at times not protected, it may be easier for employers to engage in unfair labour practices where these workers are concerned, as they know that not much can be done by non-standard peripheral workers to oppose them.

Several criticisms have been levelled against the flexible firm model. Firstly, it has been criticised for the challenges that arise in the identification of 'core' and 'peripheral' workers. Core workers are considered to have secure employment, and therefore any evidence of security may indicate membership of these workers to the 'core'. If core workers are defined by employment status and tasks, a problem may arise: some groups of non-standard workers may have relatively secure employment, but are not part of the core workforce. While these non-standard workers may be central to the functioning and profitability of a firm, they may be regarded as peripheral because of the way in which the flexible firm model defines the 'core' and 'peripheral' workforce (Tailby, 2003:499). Furthermore, the different types of employment that fall within the category of 'peripheral' ought not to be viewed as one homogenous category. It is suggested by Walsh (1991:114) that they perform specific roles and functions, and are by no means peripheral.

There are two different spectrums of flexibility. On the one side, there are desperate workers who have little or no skills and on the other side, there are workers with high skill levels, who enjoy having flexible hours. The demarcations set by the flexible firm model are problematic in that some workers who are brought into the workplace are highly skilled, and cannot be regarded as peripheral workers. The flexible firm model seems to invoke a static differentiation between the 'core' and 'peripheral' workforce. It does not consider the highly skilled component of non-standard workers who can be considered to form part of the 'core' workforce. Furthermore, the core-periphery distinction implies that the core workforce experiences better working conditions and higher income than the periphery workforce (Van Der Merwe, 2009:21). This is not entirely the case, as some highly skilled, well-paying positions are on a fixed-term contract basis. An example of this

can be made of occupations such as Municipal Managers and consultants.

Tailby (2003:498-499) also suggests that the model places too much emphasis on the neo-liberal preoccupation with labour market flexibility as the source of industry competitiveness. The model has further been criticised on the grounds that there is little evidence to show that there has been a strategic commitment to implement it (Hyman, 1991:259). Given these criticisms, the model serves as an analytical tool rather than a depiction of a firm.

### **2.3.6 Demand- and Supply-Side Factors**

The reasons for employers and employees entering into non-standard employment contracts and making use of the flexible firm model can be categorised into demand- and supply-side factors. Demand-side factors are those that encourage employers to utilise non-standard employment. These factors include cost aspects, risk-sharing, the evasion of labour regulations, flexibility in the utilisation of labour (Barker, 2007:133; Mitlacher, 2007:586-587) as well as the desire to compete in international markets by keeping up with global market trends (Klerck, 2002:107; Standing, 1999:101; Callaghan, 1997:1). Supply-side factors are those that encourage or compel workers to engage in precarious employment. In an attempt to establish trade union responses to casualisation of labour, it is important that they understand the causes or enablers of casualisation: the supply- and demand- side factors.

#### **2.3.6.1 Demand-side factors**

With regards to the cost reduction aspect, Mitlacher (2007:587) maintains that a reduction of labour expenditures can be achieved by the lower than average wages that are offered to some workers in non-standard employment. Moreover, the utilisation of non-standard employment contracts reduces hiring costs in the sense that temporary work agencies are assumed to be more efficient at screening and matching employees. This is seen as increasing the probability that workers will fit into the client company; and client firms may evaluate the performance of temporary agency workers without being under the obligation to offer them permanent employment contracts (Mitlacher, 2007:587).

Moreover, Gallagher (2008:476) asserts that the demand for non-standard workers is associated with three major factors: cyclical fluctuations in output (as production demands change), increased foreign competition (which prompts employers to compete in global markets), and the magnitude of

non-wage labour costs like sick pay and holiday entitlements (Mitlacher, 2007:587). In this regard, Mills (2004:1208) cites economic difficulties and the endeavour to avoid labour laws and collective bargaining restraints, as some factors that encourage employers to make use of non-standard employment at times. In short, demand-side factors push employers to engage in and offer non-standard contracts because, according to Thompson (2003:1795), the most attractive business is one that consists primarily of a brand name, a capacity to design and innovate, and an ability to bring its goods to the market - all of which is more effectively achieved with a workforce that is flexible enough to alter its skills and to produce outputs around the clock in an effort to meet market demands.

It follows that for employers, the advantages of engaging in non-standard forms of work are that they facilitate the increasing or decreasing of the size of the workforce to meet the demands of production. In addition, semi-fixed costs usually associated with employment, such as hiring and training, may be reduced; the external labour market may offer cheaper labour than the firm's internal labour market; and the nature of the relationship between employer and non-standard employee may, arguably, permit more stringent controls over performance by employers (Mills, 2004:1208). These advantages are to the detriment of employees in non-standard employment contracts. Non-standard work often provides little opportunity for unionisation, thus resulting in employees not belonging to structures that have been set up to safeguard employees' interests on issues such as health and safety and terms and conditions of employment.

### **2.3.6.2 Supply-side factors**

Supply-side factors are those that induce employees to enter into non-standard contracts. Mills (2004:1207) cites relevant factors to include high unemployment rates as well as the demographic changes in the composition of the workforce, with more people seeking flexible participation in the labour market. In this regard, Gallagher (2008:478) asserts that some portion of the contingent work phenomenon has been fuelled by people who are actively seeking work outside the traditional employment relationship.

Those who engage in this voluntary supply-side choice seek to adopt a more personally flexible work schedule, thus allowing them the opportunity to tend to other things such as family life. This choice is said to be prevalent among more educated and skilled professionals than among marginally skilled workers (Gallagher, 2008:478). On the other hand, non-standard employment is seen by less skilled workers as a strategy to enter the workforce or to negotiate for permanent

employment (Gallagher, 2008:478).

For the purposes of this research, supply side factors are an important consideration. This is because those who involuntarily enter into non-standard work contracts are likely to be subjected to sub-standard conditions of employment (as will be seen in chapter 7) and high unemployment and relatively low education rates place some employees at a comparative disadvantage. Non-standard workers at times have to deal with job insecurity as well, as some of them are at risk of being dismissed at any time. Furthermore, the way in which trade unions are organised shape the ways in which employees interact with the unions as representative bodies. This is important because when unions seem to be unable to adapt and organise those who enter into non-standard employment contracts. This has the potential to lead to a significant reduction in the strength of organised labour in the workplace, and a reversal of the recognition that unions have, as they may not be in a position to absorb the influx of non-standard workers in the face of a dwindling standard workforce.

### **2.3.7 Worker Protection and Job Insecurities**

Given the nature of terms and conditions often associated with non-standard employment, it follows that casualisation does not have as many benefits for workers as it has for employers. In outsourcing contracts, for example, the employers who outsource generally remove themselves from any employee-related liabilities, particularly concerning health and safety matters (Thompson, 2003:1796). This has led to a concern noted by Rosenberg and Lapidus (1999:62), that workers are feeling more insecure about their jobs since, in addition to providing fewer benefits, flexible jobs come with lower wages than those of typical, full-time positions.

In the case of casual work for instance, the insecurity among workers stems (in part) from the fact that at times, the income flowing from such work is uncertain, which, in turn, means that no long-term budgeting can be done. Secondly, the availability of work itself may be uncertain to the extent that employees at times suffer unpredictability in the sense that they may not know when their next job will come (Thompson, 2003:1802). Furthermore, it is suggested that casual jobs are generally found in the low-paying occupations. This has implications for social equality, as the poor conditions, low wages and insecurity will most likely be perpetually experienced by the low-earning component of the labour market. In this context, less is invested in the training of casuals as compared to permanent employees. This means that the overall employability and career options of casual workers is impaired, resulting in a cluster of low paid and poorly trained workers at one extreme, and professional occupations with above-average remunerations and high levels of human

capital and commitment to training and skills development at the other (Thompson, 2003:1802; Mitlacher, 2007:589). The broader implications of this polarisation in the labour market are that unions have to be able to manage the tensions between the two groups of workers. The polarisation within the working class may coincide with a division between union members and non-union members, since the non-standard workers are not likely to be union members and the standardised workers tend to be unionised. This entails problems for the establishment and maintenance of working class solidarity.

Over and above the increased levels of job insecurity, Theron (2003:1271) notes that another consequence of casualisation is the number of workers protected by labour legislation has decreased. This leaves those outside the ambit of legislation (atypical workers) unable effectively to exercise the rights available to employees covered by legislation. This, according to Smit and Fourie (2009:516), is the case due to the restrictive interpretation of who qualifies as an “employee” in terms of labour legislation.

This problem is aggravated by the contention that thresholds set by labour legislation distribute rights among employees in a manner that benefits those in standard employment relationships, and discriminates against those in non-standard job forms. As a result, many non-standard workers are excluded from a core of employment rights because they do not meet the stipulated qualification requirements (Klerck, 2002:102). For example, Sels and Van Hootegem (2001:329) state that a right of dismissal, which entails extended periods of notice for the dismissal of workers and high levels of compensation, represents potential costs for employers. This is said to lessen their demand for labour and accelerate the substitution of standard employment by capital. In this case, a non-standard employment contract is more attractive as notice periods and compensation levels are virtually non-existent (Mitlacher, 2007:584, Gallagher, 2008:478).

### **2.3.8 Consequences for Trade Unions**

Trade unions are crucial stakeholders in collective bargaining processes and job insecurity confronts them with threats and challenges. For example, unions seek to promote the interests of workers and to protect them from ill-treatment in the workplace (De Witte, 2005:3). Since non-standard work (and therefore insecurity) negatively affects workers' health and well-being among other things, opposing flexibility and attempting to reduce insecurity and its negative consequences becomes an important task for unions. Unionised employees also expect the union to represent their interests and to protect their job security by virtue of them paying their union dues. However, according to

Hellgren et al (2005:121), because unions are crucial social partners and are perceived to wield significant influence in the workplace, members who are affected by changes in the organisation towards a flexible firm may blame the union for the transformations taking place. This negatively affects the relationship between the union and members, who may lose faith in the union and not participate or renew their memberships.

Crucially, it is suggested that if employees are becoming more insecure, they may be less likely to join a union, since most unions are perceived as only protecting full-time, permanent workers (Heery and Abbot, 2000:155). An increasing heterogeneity of employment conditions across sectors and hence a fragmentation of interests means that there is less solidarity among different groups of potential union members (Pernicka, 2005:214). This fragmentation of the workforce is brought about by increased labour market flexibility as different workers perceive themselves to have different interests (Bezuidenhout et al, 2004:26) and the workers engaged in non-standard employment lack the cohesion for collective organisation (Klerck, 2002:106). Moreover, this disintegration of the standard employment contract, as well as industrial restructuring, have threatened trade unions with the loss of existing members, and thus part of their political and economic power in relation to employers and the state (Pernicka, 2005:211).

Because industrial action is the primary means by which unions seek to sway managers to an alternative viewpoint, their power to engage in such action is diminished by an increasingly casualised labour market. This, according to Sela (2001:44), is because casualisation creates two layers of workers – namely, the permanent, relatively well paid and secure; and the temporary, low paid and insecure. This scenario gives managers an opportunity to divide the workforce, which makes united action less likely and a sizeable proportion of the workforce is thus kept non-unionised, as it may perceive itself to have different interests to those of the permanent portion of the workforce. Unions find it increasingly difficult to establish relations with and to organise such workers (Sela, 2001:44). In addition, due to the flexibility of the workers' contracts, which entails that they may be prone to 'dismissal' at any point in time, their insecurity and dependence on demand and economic factors tends to render them passive (Sela, 2001:45). It therefore becomes difficult to build a sense of solidarity or collective identity with permanent workers, who regard them as a threat to their employment. This fragmentation of the workforce contributes to the challenges of organising non-standard workers.

## **2.4 THE TEMPORARY EMPLOYMENT SERVICES INDUSTRY**

The Temporary Employment Services (TES) industry plays a substantial role in terms of the implementation of labour market flexibility. According to Theron (2003:1254), one of the objectives of this industry is to give the core business the power to vary the number of workers deployed in order to achieve numerical flexibility. The TES industry is widely known as labour broking, and has attracted considerable attention due to the exploitation and unethical practices that workers routinely experience at the hands of labour brokers. The industry contributes to the increase in casualisation by offering a significant number of non-standard employees to employers looking for low-cost and malleable labour.

Theron et al (2005:3) assert that the TES industry contributes to the creation of an underclass of workers that are employed and working under “an amended set of rules that provide a far more truncated form of protection than is available to workers in permanent employment”. This situation leads to the forced creation of a sub-category within the working class, where non-standard workers are subjected to inferior conditions compared to those experienced by members of the regular working class.

### **2.4.1 The Triangular Employment Relationship**

The defining characteristic of the TES industry is the use of a triangular employment relationship (TER) between the temporary employment agency (or the labour broker), the client firm and the non-standard worker. The use of a TES agency or labour broker, according to Bezuidenhout et al (2004:31), is often a means to evade employing workers directly and thus having to take on the responsibilities associated with a contract of employment. An important element of the TER is that the agency assumes all the risks that are associated with being an employer (Theron, 2003:1254), as the TES is considered by the LRA to be the employer. Even though the employee will perform work on the premises of the client firm, the client is not regarded as the employer.

Given this scenario, complications in terms of the discipline and supervision of workers on site may arise. Even though the agency is deemed to be the employer of the worker, problems may develop when workers are under the control and direction of the client. This means the workers often have to abide by two sets of rules: those of the TES agency and those of the client (Van Der Merwe, 2009: 34). It is unclear which set of rules the workers need to adhere to, but the most important procedures to adhere to would obviously be those of the client (Theron et al, 2005:32). The TER is

thus inherently complex and creates confusion as to the distribution of rights and responsibilities. It clearly departs from the standard employment relationship where there is a clear demarcation between employer and employee.

#### **2.4.2 Growth of the TES Industry**

The TES industry has experienced an exponential growth worldwide. According to Bezuidenhout et al (2004:21), the industry was first recognised in South Africa in 1983. This is a concept that dates back to the migrant labour system on the mines in the nineteenth century, where contracting of miners was done through agencies (Theron et al, 2005:4). South Africa has followed international trend as far as the expansion of the TES industry is concerned.

Theron et al (2005:5) assert that labour broking increased during the period of political and economic turmoil from 1983 to the early 1990s, when labour brokers often provided scab labour during some strikes. What is interesting to note is that the expansion in labour broking coincided with the rise of a labour union movement, which is opposed to the practice (Van Der Merwe, 2009:32). This research aims to establish, among others, how the unions have dealt with this contradiction.

#### **2.4.3 Trade Union Approaches to non-standard labour**

Trade union recruitment strategies have made little impact, especially where non-standard workers are not seen to be in direct competition with full-time, permanent workers Klerck (2002:114). Several formidable barriers impede the recruitment and retention of non-standard employees. The factors that contribute to making non-standard employees difficult, expensive and unattractive to organise include:

- their varied, unsocial and limited hours of employment;
- the distinctive, often unfamiliar problems associated with non-standard employment;
- the extensive demands on the time of organisers make it is almost inevitable that collective issues will gain precedence over individual complaints;
- the reluctance by some non-standard employees to become union members for fears of victimisation by employers;
- the divergence in the needs and interests of standard and non-standard employees;
- an ambivalence towards trade unionism due to their perceived reluctance to cater for the

needs of non-standard workers;

- union dues are often viewed as an excessive deduction from meagre wages; and
- high labour turn-over undermines the continuity of union structures in the workplace (Klerck, 2002:114-115).

The effective organisation and representation of non-standard employees raise a number of significant wider concerns:

- the difficulties associated with the proper inspection of non-standard employment;
- the creation of a second-class workforce undermines the foundations of collective industrial relations and dilutes the social values and legitimacy of labour law;
- unfair competition from non-standard employment threatens formal employment;
- the individualised forms of conflict associated with non-standard labour are not readily amenable to established dispute-resolution procedures;
- traditional forms of employee representation are often inadequate to meet the distinctive needs of non-standard workers;
- the established mechanisms for employee participation are usually unsuited to non-standard employment;
- the social security systems designed to cover the risks inherent in regular, full-time employment are ill-suited to precarious and intermittent forms of employment; and
- complications often arise in determining which employer is liable for the health and safety and other statutory entitlements of non-standard workers in cases involving a triangular employment relationship (Klerck, 2002).

A practical expression of trade union opposition to casualised employment might include:

- research and advocacy – give voice to workers' experiences of non-standard labour through a serious research programme;
- alternative conceptions of efficiency – challenge productivity measures that are defined purely by technical and market imperatives by reasserting the social purpose of work;
- occupational health and safety – unions can reinforce their identity as collectives by highlighting the health and safety problems faced by non-standard employees;
- career structures – mobilise union members to oppose the fragmentation of work and to develop strategies to ensure that workers are able to acquire training and experience and have career options;

- staffing levels – since every job shed in the name of ‘flexibility’ is another source of division, unions need to redevelop their role as defenders of jobs through policies aimed at redistributing work, combating unemployment, and strengthening the social regulation of the labour market;
- industrial democracy – union campaigns against outsourcing, for example, would test the extent to which management’s prerogative was genuinely open to joint regulation; and
- union education and vocational training – through their own education work for members and through their involvement in training programmes unions need to campaign for a wider definition of knowledge that extends beyond narrow technical requirement to include a critical reflection on the nature of work in a capitalist society (Klerck, 2002).

There is clearly a need to move beyond the neat dichotomy of ‘traditional’ versus ‘new’ in accounting for the variety of trade union responses to the casualisation of work. Common to much of the literature on non-standard employment is the claim that unions can adopt one of four approaches towards non-standard workers: (a) ignore them; (b) exclude and oppose them; (c) limit their numbers and regulate them; and (d) recruit and integrate them. This customary classification of union responses fails to account for the interaction between different approaches and cannot explain why a trade union adopts a particular strategic orientation. The implication that unions simply ‘choose’ a particular orientation or approach ignores the structural determination of viable options and downplays the contradictions that may arise between structure and strategy.

The ‘traditional’ trade union approach towards non-standard employment has been centred on the defence of full-time employment and hostility towards all non-standard forms of employment. This is because unions seek, among other things, to increase job quality and to protect the job security of their members (Olsen and Kalleberg, 2004:328). Since most, if not all, unions consist of members who are in standard employment contracts; this suggests that the unions seek to resist the use of non-standard workers, who are seen as a threat to unionised workers (Olsen and Kalleberg, 2004:328). This can be attributed to the view that unions see the growth of flexible employment as a barrier to their efforts to improve the conditions of standard employees, and the rights and benefits that have been inherited by unions from struggles in the past are seen to be compromised (Campbell, 2005:1). This poses a threat to the quality of working life in the workplace.

Furthermore, Klerck (2002:110) notes that since union membership experienced a decline with the expansion of a flexible labour market, the use of non-standard labour is seen as a symptom of employer greed, a threat to the numbers and conditions of permanent employment, and as an

attempt at undermining the unions. Therefore, all non-standard employment is in the first instance rejected, irrespective of its employment conditions, whether it is voluntary or not, and whether it is structured in terms of permanent or casual status (Klerck, 2002:110). This logic creates negative associations between unionisation and the use of flexi-workers, because non-standard workers may not feel represented by unions who reject flexible employment, and they will be discouraged from joining such unions. This has contributed to the decline in trade union membership across several labour markets globally (Campbell, 2005:2).

Generally, the way in which trade unions respond to non-standard employment can be categorised into the typologies of unions' strategic choices. These strategies are diverse and include such options as exclusion, where the union seeks to exclude non-standard workers from employment in organisations and workplaces where unions have representational rights (Gallagher, 2008:485). This strategy would not be a new phenomenon since unions have historically opposed the growth of such employment forms. Furthermore, the exclusion strategy shows the presence of a fundamental union belief that non-standard work presents a threat to traditional jobs (Gallagher, 2008:485). This can be seen in the social distance that tends to exist between standard and non-standard workers (Heery and Abbot, 2000:158). The defining feature of this social distance is the identification of opposing interests between standard and non-standard workers, and a determination to protect the jobs and pay levels of the standard workers. However, exclusion as a strategy may have the effect of weakening the unions. This is because as employers are increasingly leaning towards more non-standard workers, the protected standard workforce is dwindling, and is being replaced by unprotected non-standard workers.

Unions may also adopt a strategy of recognising the representational needs of non-standard workers and may assist in providing collective access to benefits and assistance to non-standard workers. This is what Heery and Abbot (2000:159) refer to as the servicing approach. Attempts of this kind, which are aimed at drawing non-standard workers into trade unionism through the provision of individual services may, however, present some difficulties. This is because collective representation may be difficult to achieve for non-standard workers due to the varied nature of their employment contracts, and the differences in the non-standard employment that is practiced in different sectors.

A third approach to non-standard employment and the insecurities that it presents is that of the formation of partnerships between unions and management. This is entered into in an attempt to provide existing union members with guarantees of future employment through 'labour-

management partnerships' (Heery and Abbot, 2000:160). The degree of employment security afforded through partnerships is said to vary, and cited examples of such agreements include doing away with the practice of laying off employees during downturns, and guarantees that workforce reduction will not be achieved by compulsory redundancies (Heery and Abbot, 2000:160).

Unions may also engage in attempts to influence government policy and secure changes in employment law in order to conserve the jobs of existing union members, and reduce the insecurities experienced by non-standard workers (Heery and Abbot, 2000:161). In this regard, it is stated that unions may try, through political parties and government, to secure changes in employment law- such changes are aimed at promoting worker security. The primary objective of this exercise is to extend employment rights enjoyed by standard workers, to non-standard workers.

Lastly, unions may adopt the approach of assuming the characteristics of a social movement. Heery and Abbot (2000:163) maintain that a defining feature of social movements is that they seek to mobilise members and supporters in pursuit of a moral demand for justice. In this regard, a fifth response has been to mobilise union members, other employees and wider public opinion against injustice at work. Social movement unionism is described as having two connected aspects: on the one hand there are attempts to re-create trade unions as social movements, while on the other hand there are attempts to submerge trade unions in a broader social movement. The first aspect of social unionism can be seen in attempts to extend trade unionism to the non-standard workers through aggressive organising campaigns. The second aspect is the development of labour community alliances which seek both to draw upon the resources of the community in the pursuit of union goals, while simultaneously developing a broader notion of union purpose that embraces community and environmental objectives alongside improvements in the world of work (Heery and Abbot, 2000:164-165).

Regardless of the strategy that unions may seek to adopt, the way in which they are structured and organised plays a significant role in determining whether they will be able to cope with the dramatic changes in the labour market. The structure of the union refers to the representation basis on which the union is premised (Fiorito and Jarley, 2008:190). This refers to the identification of unions as craft, industrial, or social unions. The organisation of unions refers to the institutions and processes that form a union's internal administrative, representative and authority systems (Klerck, 2008:123; Fiorito and Jarley, 2008: 193). Representation refers to the extent that union members control their union directly or through representative government such as union structures, and administration refers to how efficient and effective unions are in achieving their goals (Fiorito and Jarley,

2008:193). In terms of the representation debate, most trade unions are said to have a strong democratic tradition, and members are able to influence the decisions taken from workplace or shopfloor level, which are filtered through to the highest decision-making bodies. Given this scenario, one may assume that members should be able to lobby for the organisation of non-standard workers and their representation by the union. However, given the tensions between standard (and unionised) workers, and non-standard (and un-unionised) workers, it may be difficult for the unions to reach a decision to organise non-standard workers. Because of the unions' vehement opposition to non-standard employment, a decision to organise these workers may be seen as an admission and acceptance of non-standard forms of work.

In terms of the administration aspect of internal structure, trade unions can be considered to have two goals: to represent the interests of their members (rationality of representation) and to develop an administrative system that is capable of carrying out their functions effectively (rationality of administration) (Klerck, 2008:111). Rationality of administration is geared towards safeguarding the control and authority of the leadership and emphasises downward communication; while rationality of representation is geared towards safeguarding the control and authority of the membership and emphasises upward communication of instructions (Klerck, 2008:111). What has been noted is that as unions grow numerically and ideologically, the administrative system tends to become more formalised and bureaucratic, while the representative system tends to face difficulties in ensuring that the views of the different groups of workers are represented in the decision-making processes (Klerck, 2008:111). The idea of a privileged elite of working class leaders who use the unions to further their own sectional interests is reflected in Michels' notion of the 'iron law of oligarchy', which means that the leadership acquires dominance over the membership through their control of administration, monopoly of technical expertise and charismatic authority (Klerck, 2008:112). This can lead to a situation where the union bureaucracy has developed interests separate from those of the membership, leading to conflict over what the goals and methods of the union should be (Klerck, 2008:112). In such clashes, it is argued that the demands of administrative efficiency may override the requirements of democratic representation (Klerck, 2008:112). In such a situation, the rigid organisational model associated with the rationality of administration will always be an impediment to union change in the face of a rapidly evolving labour market. This has the potential of posing a challenge to unions operating in workplaces where there is a concerted effort to engage in non-standard work because, as the numbers of workers on standard employment contracts decrease, so does union membership. This notion of the iron law of oligarchy has been criticised as portraying an image of undemocratic, militant and politically motivated union leadership that forces ordinary members to accept radical policies that they do not really support (Klerck, 2008:112).

Furthermore, an uncritical acceptance of the iron law or oligarchy theory entails a disregard of the importance of the democracy that unions seek to maintain through organisational structures.

## **2.5 TRADE UNION RESPONSES TO THE CASUALISATION OF LABOUR: SELECTED EXAMPLES FROM THE GLOBAL EXPERIENCE**

Globally, the processes of casualisation are not homogenous in nature, but there are some patterns in the ways in which trade unions have responded to this growing phenomenon. This section will provide a brief outline of the casualisation of labour in Western Europe, Australia and South Africa, the impact of casualisation on the labour market, and trade union responses to casualisation.

### **2.5.1 The Casualisation of Labour in Western Europe**

Since the 1990s, European countries have recorded a marked increase in the proportion of non-standard work, mainly temporary employment (Cazes and Nesporova, 2003:44). In a survey conducted by O'Kelly (1999), the highest recorded increase in part-time work between 1993 and 1996 was in the trade sector (35 per cent), followed by the public sector (29 per cent), and the industrial sector (18 per cent). In workplaces where there was no representation (of workers or employers), the increase in part-time work was recorded at 28 per cent, while in those where there were only works council forms of representation, part-time work increased by 29 per cent, and in those workplaces with union representation, the increase in part-time work was recorded at 21 per cent. Furthermore, among the unionised workplaces, those with a union density of between 70 and 100 per cent recorded a 16 per cent increase in part-time work, as opposed to those with 30 to 69 per cent union density, whose increase in part-time work was 19 per cent (O'Kelly, 1999:66).

In terms of temporary work contracts, the industrial sector recorded the highest increases in this period, with a 44 per cent increase. In workplaces where representation is in the form of unions and works councils, the recorded increase was 9 per cent in the three-year period, and those with the highest union density (70-100 per cent) recorded a 19 per cent increase compared to those with no unions (25 per cent) (O'Kelly, 1999:68). There was a 13 per cent increase in the sub-contracting of work, and the biggest number of outsourced workers was found in the industrial sector, which recorded a 44 per cent increase (O'Kelly, 1999:69). As with part-time work and temporary work contracts, the lower the union density, the more sub-contracting was used: in workplaces with less than 30 per cent union density, a 36 per cent increase in the use of subcontracting was recorded, whereas those with a union density of between 70 and 100 per cent recorded a 22 per cent increase

(O'Kelly, 1999:70).

Flexibility has also been realized through civil and other non-employment contracts: these contracts are used as a substitute for regular employment contracts, as employers find them administratively and financially more convenient (Casez and Nesporova, 2003:44). This is so because, unlike regular employment contracts, employers are not obliged to provide non-standard workers with safety equipment as, in principle, they are not responsible for any occupational accident or disease in the workplace (Casez and Nesporova, 2003:46). It is said that termination of these contracts is simple and without any obligation for either of the two parties; workers are not entitled to any seniority pay based on length of service; and the total remuneration for these workers is low, as are the total labour costs for the employers (Casez and Nesporova, 2003:46 and Purcell et al, 2004:706).

This new order entails that the different measures developed to establish flexible production systems are making it harder for unions to fulfil their function of representing workers. This is because the power of trade unions has declined due to changes in the composition of the workforce (Cervino, 2000:3). Given that union membership is more heavily concentrated amongst permanent workers, the expansion of flexibility in the labour market through non-standard employment contracts threatens to undermine union density and to sap union strength (Campbell, 2005:2). This is because the organisation of non-standard employees is rare, and the assumption is that unions may not be particularly interested in recruiting such workers, and “embedded hostilities” towards employers’ use of such workers to undercut terms and conditions of standard employees (MacKenzie, 2009:543). The steady erosion of the standard employment contract associated with permanent employees in the wake of the rise in non-standard employment has contributed to the weakening of the union movement.

European trade unions have tried to restrict the spread of non-standard employment in line with the notion that these jobs undermine standard, full-time and permanent conditions. This, according to MacKenzie (2009:543), is because contingent workers are seen as an obstacle to the protection of standard employees, which provide little incentives for unions to recruit them into their structures. Moreover, their volatility due to the increased likelihood of job losses at any point in time makes these workers less attractive to recruit compared to workers in standard employment contracts (MacKenzie, 2009:543).

In the UK, for example, it has been stated that the use of subcontracted labour has long been a tradition in many industries and that employment in the manufacturing companies was cut from just

under 200 000 to about 120 000 employees in industries such as the aerospace industry (Danford et al, 2007:303). Rather than carry out the complete spectrum of tasks in-house, aerospace employers are said increasingly to seek to locate the less specialized design and production processes to areas outside the UK, where pools of lower skilled labour are available (Danford et al, 2007:303). In the study conducted by Danford et al (2007:313), it was found that in late-2000, the management of one of the UK's aerospace production companies tried to persuade local shop stewards to accept the outsourcing of some of the core work packages in an attempt to increase flexibility in the workplace. When external engineers were brought in to audit the equipment, over 200 engine workers walked off the job and barricaded the entrance to the plant because shop stewards had not given a response to the matter (Danford et al, 2007:313).

The British Rail industry experienced hastened privatization from the mid-1990s onwards, and one of the principal features was the transfer of ownership of the infrastructure and maintenance of the railway from the train operating companies, based on abstract models of privatization rather than a realistic sense of how the railway worked in practice (Cumbers et al, 2010:132). This was deemed to represent an attack on one of the last vestiges of organised labour in the British economy. The three main unions are the Associated Society of Locomotive Engineers and Firemen (ASLEF, representing train drivers), the National Union of Rail, Maritime and Transport Workers (RMT, representing guards, station staff and maintenance workers), and the Transport Salaried Staff's Association (TSSA, representing clerical and management staff). The unions have actively resisted attempts to undermine their power, as union membership declined drastically between 1996 and 2001 due to major cutbacks in the workforce (Cumbers et al, 2010:133). For example, through actions such as addressing rising patronage and reductions in working hours, ASLEF has managed to recruit members and maintain an active presence in the workplace, with a recorded density of 98 per cent among drivers since 2001 (Cumbers et al, 2010:134).

In the healthcare sector, the casualisation of labour at the Homerton Hospital and at Queen Mary Hospital at the University of London are telling examples. At the Homerton Hospital, casualisation took the form of sub-contracting of catering, domestic and portering staff to a private company, ISS Mediclean in 1996 (Wills, 2009:442). In addition to the inferior terms that the employees were employed on, they were not offered the National Health Service, pensions, or entitlements by ISS Mediclean (Wills, 2009:442). Workers at this hospital were members of the public sector union, UNISON, and had vehemently resisted privatization before it took place. However, union density started to decline with the influx of new workers after contracting out, and long-serving union members bemoaned the declining power that the union experienced (Wills, 2009:452). At Queen

Mary, staff were reported to have had no channel to report grievances pertaining to the sub-contractors they had worked under; as they had effectively been divorced from the people who really employed them (Wills, 2009:452). Local and regional UNISON officials declined to get involved since they were more interested in defending their existing organisation and members (Wills, 2009:453).

In the food manufacturing industry, Foodcorp in Sweden experienced organisational changes at the workplace level after 1999. According to Bergstrom and Styhre (2010:480), the production capacity of abattoirs was dependent on the constant supply of well-trained butchers, of which there was a limited supply. Management then considered the possibility of hiring butchers through temporary work agencies from Germany and Ireland – a move that would benefit the German butchers as they faced unemployment due to competition from low-wage Polish butchers; and the Irish butchers who were contending with unemployment due to BSE/Mad cow Disease (Bergstrom and Styhre, 2010:480). The introduction of agency butchers in the abattoirs was met with much resistance from the trade unions, as they argued that this threatened the bonus systems and teamwork organisation that they had pushed for to improve working conditions for butchers (Bergstrom and Styhre, 2010:483). This was the case to the point that in early 2000, there were no collective agreements between the unions and temporary work agencies in the Swedish meat production sector because, according to Bergstrom and Styhre, (2010:487), the general union policy was to avoid talking about it, as this would 'legitimize' temporary agency work.

The responses to casualisation by trade unions have not been homogenous, and can generally be placed on a continuum ranging from exclusion to inclusion (Kriings, 2009:50). For example, throughout much of the 1990s, the Communications Workers Union in Ireland fought against the use of sub-contractors, but from the late 1990s onwards, it shifted from a policy of complete exclusion to one of engagement (MacKenzie, 2010:154). This strategic re-orientation came with a number of new challenges for a union that was used to dealing with a homogenous core group of members and a single bargaining partner (MacKenzie, 2010:154). Unions are increasingly compelled to establish policies that will be of relevance to all members, and this entails moving away from the approach of serving the interests of particular groups with pre-defined interests. This, according to MacKenzie (2010:155), suggests a need for unions to do more to include the interests of contingent workers within mainstream bargaining.

It is in this context that the concept of union renewal comes into play. Given the expansion in the casualisation of labour and the associated increase in the number of contingent and mostly non-

union members of the labour market, unions have had to re-examine their recruitment and representation strategies in order to appeal to the new cohort in the market. One solution that has been put forward has been the inclusion of atypical employees in unions' representational domain (Pernicka, 2005:205). In Austria, for example, according to the constitution of the Austrian Trade Union Federation, 'dependent self-employed' persons could be given union membership status as early as 1991 after the Austrian Union of Salaried Employees (GPA), the largest union of the federation, went back on its formal refusal to include atypical workers into its representational domain (Pernicka, 2005:219). In 1999, the first framework agreement for this category of workers was signed - the Union for Arts, Media, Sports and Freelancers and the Voluntary Association of Austrian Newspapers (the respective employers association) agreed on joint regulation for print media self-employed journalists. The changes put in place by the GPA included the establishment of interest groupings that were designed to organise and react flexibly to the needs of special groups of union members whose interests cut across branches and geographical divisions (Pernicka, 2005:219-220).

Before 1980 in the UK, the annual report of the Trade Union Congress (TUC) made little reference to the issue of part-time workers (Heery and Conley, 2007:6). However, after a motion from the Banking, Insurance and Finance Union to address the interests of part-time workers, the TUC launched a number of initiatives, which included pressing for changes in public policy at domestic and European levels. According to Heery and Conley (2007:6), the TUC became a major proponent of the National Minimum Wage, which was set in part to benefit part-time workers. Changes have also been noted in individual unions. For example, the Union of Shop, Distributive and Allied Workers has organised large numbers of low-paid, part-time workers in food manufacturing and retail after having neglected part-time work until there was a call for policy changes in the 1980s in order to improve the regulation of part-time work (Heery and Conley, 2007:6).

### **2.5.2 The Casualisation of Labour in Australia**

The Australian government was one of the world's leading proponents of the casualisation of labour in the form of privatization (Fairbrother et al, 2007:40). In 2002, the component of permanent full-time employees stood at 61 per cent, as opposed to 74 per cent in 1984; casual and part-time employees constituted 27 per cent and 24 per cent respectively, compared to 16 per cent and 18 per cent (Thompson, 2003:1799). The industries reported to have the highest casualisation rates in 2003 were retail (at 45 per cent of the industry), property and business services (28 per cent of the industry), hospitality (56 per cent of the industry), and health and community services (23 per cent

of the industry) (Thompson, 2003: 1802).

Historically, trade unions responded to casualisation by regarding non-standard employment as a threat to standard employment, and strategies that ignored, excluded or limited the number of non-standard jobs were pursued (Burgess and Strachan, 1999:131). As a result, the essence of traditional trade union policy was the defence of a core group of full-time permanent employees (Campbell, 2005:13). However, these strategies proved unsuccessful, as increasing numbers of non-standard workers forced the unions to move towards recruiting them (Burgess and Strachan, 1999:131).

In the railway industry, the state absolved itself from control of the labour market and involvement with labour-management relations. After 1992, budget reductions and the corporatization process were accompanied by new work arrangements and the loss of about 9 000 jobs in the industry; and in 1999, the government awarded 15-year franchises to a French company as well as a British company to run different sections of the rail system (Fairbrother et al, 2007:40). This resulted in job losses on a large scale. Members and officials of the Australian Rail, Tram and Bus Union (RBTU) were opposed to the changes that resulted in major cuts in the labour force, and employed tactics such as contractual agreements to force the owners of the companies to comply with their demands (Fairbrother et al, 2007:41). These included making use of clauses on punctuality (such as making the trains late, which results in revenue losses), as it was generally accepted that the owners would lose money if the employees undertook industrial action. This resulted in the British owners relinquishing their franchise (Fairbrother et al, 2007:41-42).

In the food manufacturing industry, employers tried to deal with volatility in product demand by developing a flexible form of labour utilization (Wright and Lund, 2003:143). As a result, the extent of casual employment has increased in areas such as food and vegetable processing, dairy manufacturing and cereal food manufacturing, where food manufacturers have also casualised employment by outsourcing the workforce to third party firms (Wright and Lund, 2003:143). Trade unions in the sector have engaged in a range of defensive actions - ranging from combined union campaigns against the use of labour hire agencies as well as community boycotts organised by unions protesting against plant closures and job losses - in order to maintain wages and working conditions against the backdrop of threatened plant closures, declining employment security and increasing casualisation (Wright and Lund, 2003:146).

In the engineering sector, the Metals, Engineering and Associated Industries Award was brought before the Australian Industrial Relations Commission (AIRC) by the Amalgamated Manufacturing

Workers' Union (AMWU). According to Campbell (2005:17), the AMWU had been considering regulation of this award, which affirmed the validity of the use of casual employees by employers and opened casual workers up to various forms of exploitation, such as being employed on a casual basis for prolonged periods without any right to be employed on a permanent basis. This resulted in the Commission acknowledging the fact that 'permanent casual' employment in the metals and engineering industry was growing; that it was based on an entrenched erosion of workers' rights; and ruled that action was needed in order to reduce the practice (Campbell, 2005:17). This award thus gave casual employees enhanced rights to become permanent employees, if they so wish, after having served as casual employees for a certain period (Campbell, 2005:18).

However, the magnitude of the numbers in non-standard employment has forced unions to move increasingly towards recruiting these workers, even though this may be opposed by existing union members (Burgess and Strachan, 1999:131). In 1999, the Australian Council of Trade Unions (ACTU) argued that unions had to modernize, integrate information technology solutions, and allocate resources for training organizers in order to reverse the sharp decline in union membership brought about by the changes in the labour market (Baines, 2010:487). The Australian experience demonstrates that extensive regulation, a powerful trade union movement, and a sympathetic (labour) government were not sufficient to undermine the trends towards an increase in non-standard jobs, a decline in the security of employment, and a strengthening of the position of employers in the labour process.

### **2.5.3 The Casualisation of Labour in the United States of America**

The growth of non-standard employment in the form of part-time work, temporary employment agencies and casual work has transformed work in the USA in profound ways (Valenzuela, 2003:307). This has been a prominent feature of employment relations, as employers are striving to achieve numerical flexibility and otherwise reduce costs by using workers who are not their regular, full-time employees. This, as in other examples, has affected the job security, pay and fringe benefits of workers across the USA (Olsen and Kalleberg, 2004:322). A contributing factor to the situation is that labour markets in the USA are relatively unregulated, thus leaving employers with more choices regarding the type of employment contracts they wish to use (Olsen and Kalleberg, 2004:323). For example, strict regulations on termination of contracts and dismissal of employees may create exit costs, which employers may seek to circumvent. This has been found to be the case in the USA. As in an OECD study of 26 countries that was conducted, the USA was ranked as having the fewest laws protecting employees against dismissals (Olsen and Kalleberg, 2004:325).

An example of this is how, in Chicago, the vast majority of non-standard workers are paid the federal or sectoral minimum wage, but do not receive fringe benefits and are subject to being dismissed without pay once the assignment they were contracted for is concluded - a date which is often not known (Theodore, 2003:1812). Furthermore, organised labour in the USA has been found to be relatively weak; individual work contracts tend to dominate, and employers more often than not use dualist tendencies that offer good jobs to some workers and not others (Olsen and Kalleberg, 2004:323).

Minimal regulation and the weakness of organised labour lay the foundation for the exploitation of non-standard workers and reduce the chances of establishing industry-wide bargaining structures. It has also been suggested that, in some cases, firms and employers make use of non-standard workers in a deliberate attempt to dilute or undermine union power in the workplace (Olsen and Kalleberg, 2004:328). The reasoning behind this is that non-standard workers are less likely to be unionised because they either fear victimisation and dismissal for joining unions or union action and organisation primarily revolve around the protection of permanent employees with standard contracts of employment. Employers have used this to their advantage in an attempt to minimise union activity within the workplace and they may make as much use of non-standard labour as possible, without fear of union opposition. A further tactic that has been used by employers has been that of the “run away shop”. This is explained by Wasserman, 1987:500-501) as the action where employers physically relocate to geographical areas where local laws are less favourable to labour. This allows employers to adopt casualisation initiatives, knowing that there will be little resistance from unions, and even less protection for workers.

The USA is renowned for the extensive use of “day labour”. According to Valenzuela (2003:308), informal day labour is characterised by men and women, who congregate in open-air markets (such as parking areas and street corners), to get temporary work just for that day. Most day labourers are male, foreign-born, new to the country, have low levels of education, and have a poor command of English (Valenzuela, 2003:308). The day labour market primarily offers jobs with durations of between one and three days in the construction industry and workers are taken in to perform home refurbishment, landscaping, roofing and painting. In addition, formal day labour markets offer temporary employment in light industrial, factory work, loading and unloading, and warehouse work (Valenzuela, 2003:308). This labour is unstable, provides no benefits or workplace protections, and is characterised by abuses such as non-payment, inadequate breaks, and hazardous work (Valenzuela, 2003:308).

Casualisation is also common in the public sector. One explanation for this phenomenon could be that US public sector organisations are likely to be subject to severe budget constraints and resource limitations, and so could be under immense pressure to economise and save costs wherever possible (Olsen and Kalleberg, 2004:326-327). These organisations are likely to turn to part-time and casual workers, as well as workers sourced from employment agencies, who generally do not receive any benefits and protection.

The manufacturing sector is characterised by extensive reorganisation of work and employment. An example of this can be seen in the firms in the Chicago area that have adopted high-performance models of production, with the aim of increasing outputs and competitiveness (Theodore, 2003:1214). This has led to cities like Chicago being home to many large establishments that have opted for the low road by emphasising labour cost control and running their firms like sweatshops (Theodore, 2003:1214). During the 1980s, plant closures and mass lay-offs brought far-reaching changes to the city's landscape. More than 15 per cent of the American employed population lost their jobs, which were primarily standard in nature (Theodore, 2003:1214). In manufacturing, Rubery (1978:26) argues that the fragmentation of the production process in favour of the Fordist method of production was brought about by the need to increase output. This resulted in the reduction of workers' control over the production process as well as a reduction in the workers' skills. On this view, mechanisation, combined with the introduction of scientific management techniques, has undermined the workers' ability to make decision or control the rate of production, its quality, and even worse, the worker's career within the organisation. Casualisation has been considered as a viable option from as early as the 1970s by leaders in the industry. By 1974, according to Kalleberg (2001:489), employers and managers at prominent manufacturing firms such as Manpower Inc. were calling for a labour market that was organised in such a way that the workforce comprised of 75 percent permanent fulltime employees, 15 percent temporary and 10 percent permanent part-time workers.

Casualisation in the form of temporary employment agency work stood at 2.6 percent of total employment by 2007, and the number of workers sourced from these employment agencies had risen from one million in 1992 to 2.9 million in 2005 (Mitlacher, 2007:582). A large number of these employees are placed in various organisations within the service sector. Within the services occupations, the highest rates of non-standard work were found in jobs such as waitressing and bartending (Rosenburg and Lapidus, 1999:72). A further negative aspect of this feature is the report that the average tenure for temporary employees was only 12.5 weeks, and these workers experienced a negative pay differential in relation to their standard, permanent counterparts

(Mitlacher, 207:588). Non-standard workers are also likely to be found in clerical work, most of whom tend to be females (Rosenburg and Lapidus, 1999:70). In this regard, an estimate of 20 per cent of the workers in the USA was administrative support personnel.

Unions in the USA are generally opposed to non-standard work arrangements and believe that standard work should continue being the dominant work arrangement (Olsen and Kalleberg 2004:327). Furthermore, given the fact that among the core activities of unions are increasing job quality and protecting the job security of members, the most obvious conclusion is that unions will actively seek to resist the use of non-standard workers who are seen as competing with unionised workers (Olsen and Kalleberg, 2004:328). For instance, in the steel manufacturing sector, the militant union branch at Corus Teesside mill was described as a staunch defender of traditional working practices (Bacon and Blyton, 2004:762). The union was determined to keep standard work agreements as the norm and to extract maximum payment for workers and members with the most minimal changes possible (Bacon and Blyton, 2004:762).

In the face of the upsurge in the casualisation of labour, trade unions have experienced a definite decline in membership and density in the workplace. This has posed a threat to union survival and US trade unions have thus searched for strategies, which will guarantee their survival. The aim of this exercise is to unionise workers through recruitment, but over and above that, it is to establish long-term, self-sustaining workplace union structures through organisation (Oxenbridge, 2000:4). However, in the process of recruiting more workers, there are those who have typically been excluded either by law or in practice from the privileges that are granted to standard US workers (Wasserman, 1987:500). Because non-standard workers have different interests and needs as compared to their standard counterparts and because traditional union organisation has been centred on the protection of formal, standard employment contracts, it is difficult for the unions to recruit non-standard workers. This predicament ultimately entails that in order for unions to maintain their presence in the workplace and to expand their membership base, a process of renewal needs to take place. This will ensure that non-standard workers can identify with the union and see it as representing their needs rather than being perceived as only protecting permanent workers in standard employment contracts.

## **2.6 THE CASUALISATION OF LABOUR IN SOUTH AFRICA**

In February 1996, according to Kenny and Webster (1998:217), organised business released a document that advocated for the adoption of neo-liberal economic policies, which claimed that the

most realistic strategy for improving production costs was to reduce wage costs. The solution for economic growth was envisaged to lie in the introduction of a two-tier labour market. This labour market would operate with two sets of rules: a high-wage, capital-incentive low employment sector and a free-entry labour-intensive sector. The second tier would differ from the first in that workers could be retrenched without severance pay or any procedure, workers would not have any entitlements to non-wage benefits, and employers would be exempt from all minimum standards legislation (Kenny and Webster, 1998:218).

In the context of neo-liberal restructuring of the country's economy, there has been a vast spread in employers' use of non-standard labour. According to Rees (1997:30), employers use non-standard workers - the majority of whom are blacks and women - in order to cut costs, increase flexibility and avoid unions. Moreover, non-standard labour is expected to increase as sectors such as construction and retail restructure to meet the challenges of global competitiveness. More and more permanent workers are under pressure to become casual or contract workers and for the many unemployed people, non-standard jobs may be the only option available (Rees, 1997:30).

Many non-standard workers are subjected to appalling conditions of work. According to Rees (1997:31), casual, temporary and contract workers receive lower wages and benefits than full-time workers; they may be required to work longer hours on shorter notice; and often work under dangerous and dirty conditions. Furthermore, non-standard employees are often at a disadvantage because they may not be in a position to afford medical schemes. According to Van der Merwe (2009:44), participation levels for medical schemes is lower because some employees, especially those who earn low wages, choose not to be enrolled in medical schemes due to the high cost and considered low benefit. It is also reported that temporary workers are often not registered for the Unemployment Insurance Fund, in spite of it being compulsory for employers to do so ([www.sars.gov.za](http://www.sars.gov.za)).

The income flowing from insecure non-standard jobs is uncertain, which, in turn, means that households relying on this income invariably experience financial problems (Thompson, 2003:1801-1802). Moreover, Thompson (2003:1802) notes that the availability of flexible work in some instances may be uncertain, so that the employees concerned suffer unpredictability, which impacts negatively on organizing their lives, and because employers generally invest less in the training of casuals relative to permanent employees, the overall employability of casuals may be impaired.

Examples of this instability can be seen in the retail sector, for example, where casual workers are often expected to work at night and over weekends, and in some cases, they are not provided with safe transport home (Rees, 1997:32). It was found that in the construction, petroleum and mining sectors, there has been a strong connection between accidents and the use of casual labour, as casual labourers are employed to do the most dangerous and dirty work and subcontractors seldom provide protective clothing (Rees, 1997:32). Flexible work effectively creates what Van der Merwe (2009:36) refers to as an “underclass of workers”, which lacks the entitlement and associated security of a standard employment relationship even though they may work for longer hours under worse conditions than permanent workers. Furthermore, flexible work is insecure because the contract of employment can be terminated at any stage (Van der Merwe, 2009:36).

In addition to these unfavourable conditions, non-standard workers at times do not get any support from permanent workers. Sela (2001:40) writes that permanent workers often view temporary and casual workers as scabs who wish to take their jobs. Furthermore, some union officials and shop stewards are reported not to take the problems and grievances of flexible workers seriously. They have, for example, been found in some cases to regard flexible workers as second-class workers, who are not worthy of the protection that belonging to a trade union would afford them (Sela, 2001:40).

### **2.6.1 The structure of South African Trade Unions**

It is important to outline the nature of the labour movement in the country because the way in which unions are organised has a significant bearing on the way in which they are likely to respond to casualisation. The identity of the unions also determines whether the unions are able to absorb the influx of the new workers who are at times not adequately protected by labour legislation. As stated by Klerck (2008:139), the notion of trade union identity refers to the differences between unions concerning their objectives, policies, and activities; and it is the identity of a union that summarises its character in general terms.

This section aims to introduce the unions that are the focus of the substantive chapters. The way in which the unions are organised will be mentioned in an effort to identify a typology of union structures and strategies. This typology will be helpful in explaining how the unions have, and continue to respond to the casualisation of labour.

Trade unions are faced with the challenge of making a choice between focussing primarily on the

workplace and prioritising the defence of their existing members, or becoming more inclusive in the interests that they represent. Klerck (2008:140) asserts that the primary contrast in this regard is between approaches to employee representation that are based on exclusive or inclusive definitions of employee interests. Workers possess a wide range of diverse and often competing interests- thus interest representation often involves an intricate process of aggregation and selection of priorities. According to Klerck (2008:140), unions can therefore choose to be more or less inclusive in defining their constituency, more or less restrictive in the issues that they pursue, and can adopt strategies of representation based on member mobilisation or passivity.

According to Klerck (2008:140), Hyman's typology of trade union identities outlines a number of different forms of union representation, which derive from a particular conception of employee interests. These identities are:

- guild- where the constituency is narrowly defined in terms of an elite occupation and the focus is on preserving the relatively privileged position of a craft or profession;
- friendly society unions which seek to provide mutual insurance, representational and consumer services to individual employees;
- company unions which develop a productivity coalition with management and seeks, through cooperation to enhance company performance and the terms and conditions of members within a particular enterprise;
- social partner, which defines broadly both its constituency and workers' interests and seeks to promote social welfare and economic growth through interaction with government; and
- social movement unionism, which is orientated towards a broad definition of its constituency and worker interests, but seeks to pursue these through mobilisation and campaigning.

Drawing on Hyman's typology of union identities, the history of South African trade unions can be analysed in terms of the shifts from guild or craft unionism, to populist unionism, to political unionism to rank-and-file unionism, to social movement unionism.

The earliest form of trade unionism in South Africa was the craft unions formed by skilled immigrant workers in the mines from the 1890s onwards (Klerck, 2008:141). The skilled labour elite formed close links with government, which resulted in legislation that protected the privileges of the white craft workers- a situation wherein occupational divisions were translated into racial divisions (Klerck, 2008:141).

This led to the formation of the Industrial and Commercial Union (ICU) during the mid-1920s, and its identity was derived from the view of the common identity of all members as workers, as well the incorporation of African workers (Klerck, 2008:141). This period of populist unionism led to the practice of populist strategies by leaders such as Clements Kadalie. These strategies contributed to valuable gains in the context of developments in the country at that time. However, this notion of one large union prevented industrial organisation and the lack of organisational consolidation meant that there was no leadership to take over from the original leadership (Klerck, 2008:141).

The formation of the South African Congress of Trade Unions (SACTU) in 1956 signalled the rise of political unionism. SACTU was established on the principles of equality and unity of all workers in the struggle against class oppression and national oppression (Klerck, 2008:141). From its formation, SACTU adopted a political stance, and became an active participant in the Defiance Campaign. In this regard, it rejected the attempts by the employers and the state to divide the working class along racial lines (Klerck, 2008:142). From its inception, SACTU raised demands that went beyond the workplace, and allied itself with the struggle for national liberation led by the African National Congress (ANC). However, this relationship with the national liberation movement proved to be a source of weakness for SACTU, as it was seen to have surrendered its priorities to the nationalists to the detriment of workplace organisation (Klerck, 2008:142).

Rank-and-file unionism came about after the banning of almost all political oppositional forces from the early 1960s to early 1970s (Klerck, 2008:143). This stage of union organisation was mindful of the fate of SACTU, and the new trade union leaders prioritised the establishment of a strong workplace presence (Klerck, 2008:143). This desire culminated in the formation of the Federation of South African Trade Unions (FOSATU) in 1979, whose concern was to establish democratic structures based on worker control (Klerck, 2008:143). The formation of FOSATU pioneered the principle of direct worker control in the country, with worker delegates constituting a majority in all structures of the federation (Baskin, 1991:143). According to Klerck (2008:144), the most notable legacies of the FOSATU era are a jealously guarded independence among South African trade unions, direct union involvement in politics, and a commitment to internal democracy and shopfloor organisation.

The formation of the Congress of South African Trade Unions (COSATU) marked the shift towards social movement unionism. Klerck (2008:145) asserts that FOSATU faced some tensions: the federation was increasingly drawn into both community-based and workplace-based struggles. COSATU is said to have overcome the disputes about the relative importance of workplace and

community issues by shifting towards social movement unionism. Trade unions are likely to assume the role of social movement when the union leadership consciously seeks to expand their area of operations beyond conventional trade union activities and to forge alliances with political groupings and community organisations (Klerck, 2008:145). The government's exclusion of black people from the centres of power led to its failure to incorporate the trade unions politically. As Von Holdt (2002:284-285) notes, social movement unionism is a highly mobilised form of unionism which emerges in opposition to authoritarian regimes and repressive workplaces in newly industrialising countries. Furthermore, social movement unionism is embedded in a network of community and political alliances, and demonstrates a commitment both to internal democratic practices as well as to the broader democratic and socialist transformation of authoritarian societies. The commitment to internal democracy compelled the leadership to be sensitive to the needs of their members, and according to Klerck (2008:145), it is distinguishable from orthodox unionism (which focuses on workplace issues at the expense of politics), and populist unionism (which focuses on wider political struggles at the expense of workplace issues). Social movement unionism is comprised of both an economic and political dimension.

COSATU exemplifies social movement unionism in that when it was formed in 1985, the federation immediately aligned itself to the struggle against apartheid (Klerck, 2008:131). This was in addition to its core principles that prioritise international worker solidarity; non-racialism and non-sexism; one industry, one union; and worker control (Klerck, 2008:131). This can be seen through the way in which COSATU collaborated with community-based groups and held campaigns such as the VAT general strike of 1991, the rolling mass action of 1992, the strike to protest the assassination of Chris Hani in 1993, and its opposition to GEAR and its policies (Buhlungu 2010:73-74).

#### **2.6.2.1 South African Commercial, Catering and Allied Workers Union**

SACCAWU is an industrial union, which has a membership of 147 000 ([www.saccawu.org.za](http://www.saccawu.org.za)). The union organises in the commercial (wholesale, distributive and retail), catering, tourism, hospitality and finance (banks, assurance and insurance) sectors, with a majority of its membership in the wholesale and retail trades ([www.saccawu.org.za](http://www.saccawu.org.za)). SACCAWU sells the idea of unionism by stating the union's commitment to fighting for the improvement of working rights ([www.saccawu.org.za](http://www.saccawu.org.za)).

The union's commitment to social movement unionism can be seen in its focus on fighting to improve workers' rights, become part of the working class struggle, and its desire for its members to defend and protect themselves and fight for a decent standard of living ([www.saccawu.org.za](http://www.saccawu.org.za)). In

this regard, the union subscribes to social emancipation as well as a society free of all forms of discrimination, oppression and exploitation ([www.saccawu.org.za](http://www.saccawu.org.za)). As a COSATU affiliate, SACCAWU has been involved in struggles for change both at the shopfloor and political level. An example of such political struggles can be made of the union's constant engagement in gender emancipation and equality struggles ([www.saccawu.org.za](http://www.saccawu.org.za)).

The growth of the industries where the union organises has seen a proliferation of the use of non-standard labour. The union has been involved in initiatives aimed at organising these workers in order to improve the working conditions of some non-standard workers ([www.saccawu.org.za](http://www.saccawu.org.za)). In this regard, SACCAWU has managed to negotiate on sectoral determinations that have replaced old determinations ([www.saccawu.org.za](http://www.saccawu.org.za)). This is said to have dramatically increased the membership of the union ([www.saccawu.org.za](http://www.saccawu.org.za)).

#### **2.6.2.2 National Union of Mineworkers**

Formed on 4 December 1982, NUM is the largest recognised collective bargaining agent representing workers in the mining, construction and electrical energy sectors ([www.num.org.za](http://www.num.org.za)). In addition to the desire to organise all workers in these sectors, NUM has as one of its goals, the vision to protect, promote and advance the interests of its members ([www.num.org.za](http://www.num.org.za)).

In keeping with the social movement unionism identity, the aims and objectives of the union are to improve the wages, salaries and terms and conditions of employment of members through collective bargaining and other lawful means and to protect the job security of members ([www.num.org.za](http://www.num.org.za)). Furthermore, the union aims to establish contacts and relationships with other trade unions, trade union federations, as well as national and international labour organisations for the benefit of the members; and to improve the political, social, economic interests, as well as the welfare of former, current, and future members of the union, workers, and labour organisations in general ([www.num.org.za](http://www.num.org.za)). This is in keeping with the orientation of the social movement unionism that was adopted at the inception of COSATU. As a result, NUM has been on the forefront of the call for the banning of labour brokers that has been made by COSATU.

#### **2.6.2.3 Chemical, Energy, Paper, Printing, Wood and Allied Workers Union**

The union has an estimated membership 68 000, and has a staff component of 106, which includes administrators, organisers, researchers and educators. The first objective of the union is to “recruit

and unite workers to share their economic and social welfare” ([www.ceppwawu.org](http://www.ceppwawu.org)). Secondly, the union aims to “protect the job security of members, to advance their employment prospects, and to serve their individual and collective interests” ([www.ceppwawu.org](http://www.ceppwawu.org)). Furthermore, CEPPWAWU offers you the benefits and protection of a large union that is organised across many related sectors ([www.ceppwawu.org](http://www.ceppwawu.org)).

The union’s commitment to social movement unionism is evident in its explicit objective to formulate working class relations with other worker organisations nationally and internationally in order to build a better life for the working class and advocate for a country that is free from unemployment, poverty and racial and economic oppression or exclusion; whilst trying to protect the individual and collective interests of workers in the workplace ([www.ceppwawu.org.za](http://www.ceppwawu.org.za)). This can be seen in the stance presented in the unions 2011 Secretariat Report, which suggests that the union’s ideological and political imperatives to organise those non-standard workers who are vulnerable, should be balanced with the resources of the organisation ([www.ceppwawu.org.za](http://www.ceppwawu.org.za)). This entails that the union is to target workers engaging in non-standard employment terms, as it holds the belief that casualisation of labour has led to fragmentation and divisions between workers- a situation which has undermined the social base of the union ([www.ceppwawu.org.za](http://www.ceppwawu.org.za)). It is in the union’s best interest to organise and represent those non-standard workers who are exploited in order to improve their wages and conditions of employment, and to minimise the divisions that non-standard employment creates among workers.

#### **2.6.2.4 The Communication Worker’s Union (CWU)**

The union organises workers in the telecommunications, broadcasting, media, postal, courier services, information technology (IT) and call-centre services ([www.cwu.org.za](http://www.cwu.org.za)). It was formed in 1996, and has an estimated membership of 44 000 ([www.cwu.org.za](http://www.cwu.org.za)). The union holds the view that workers should become members to, among other things, be protected against all forms of unfair labour practices, and to be protected from labour brokers ([www.cwu.org.za](http://www.cwu.org.za)).

The CWU places emphasis on striving towards a “united, non-racial South Africa that is free of oppression and economic exploitation” ([www.cwu.org.za](http://www.cwu.org.za)). In this regard, union sees its role as that of fighting for the rights of workers in the workplace, and acting in the name of the union to advocate for the social, economic and political development of communities and society at large ([www.cwu.org.za](http://www.cwu.org.za)). Having adopted this social-movement identity, CWU is inclined to respond to casualisation of labour, since the negative conditions and consequences that befall some non-

standard workers affect the social and economic well-being of those who are employed on such contracts.

#### **2.6.2.5 The National Union of Metalworkers of South Africa**

NUMSA is the biggest trade union in the country's metal industry, and boasts a membership of more than 260 000 ([www.numsa.org.za](http://www.numsa.org.za)). The union was formed in 1987, and organises in the engineering, motor, auto/tyre and electronics sectors ([www.numsa.org.za](http://www.numsa.org.za)). Its functioning is rooted in its workplace, economic and political policies. The union's workplace policies include the commitment to advocating for the closing of the apartheid wage gap, the provision of training for the development of workers' skills, eradication of all forms of discrimination, and protection of workers from dangerous and unsanitary conditions ([www.numsa.org.za](http://www.numsa.org.za)). Its economic policies are geared at advocating for access to economic opportunities in order to expand the economy and providing jobs ([www.numsa.org.za](http://www.numsa.org.za)). The union's political policy states its affiliation to COSATU, which, together with the African National Congress (ANC) and the South African Communist Party (SACP), forms the tripartite alliance. NUMSA aims to make use of its alliance to these political parties in an effort to improve the lives of workers ([www.numsa.org.za](http://www.numsa.org.za)).

The union is of the view that the introduction of labour flexibility and restructuring has resulted in the loss of jobs for workers and is stripping them of their hard won benefits (i.e. retirement fund, sick pay, medical aid, housing allowance, etc.), and that it is imperative that it find a solution to eradicate this scourge ([www.numsa.org.za](http://www.numsa.org.za)).

#### **2.6.2.6 The South African Clothing and Textile Workers Union**

SACTWU organises workers in the clothing, textile, leather, footwear, distribution and allied industries ([www.sactwu.org.za](http://www.sactwu.org.za)). The union emphasizes its recruitment campaign, which includes month-long recruitment blitzes in February, July and October each year, and recruitment in strategic factories and sectors ([www.sactwu.org.za](http://www.sactwu.org.za)). SACTWU entices members to join the union by showcasing member benefits, which include bursaries for higher education for members and dependants; worker Health Programme Service that provides confidential counselling and testing for members and their dependants, and a home-based care programme for those who are ill ([www.sactwu.org.za](http://www.sactwu.org.za)).

As an affiliate of a trade union federation that is rooted in social movement unionism, SACTWU can be seen as sharing the sentiments of COSATU on the issue of casualisation of labour. This is because the unpleasant working conditions and poor pay that is attached to some non-standard work does not only affect workers in the workplace- in some cases, these employees who at times experience periods of intermittent employment have families that are economically dependent on them. In addition to the workplace battles that the union is involved in, the economic and social effects of the workplace may find expression in its agenda.

#### **2.6.2.7 The South African Transport and Allied Workers Union**

SATAWU is an industrial union that organises in the railways, harbours, parastatals, aviation, passenger transport (buses and taxis) freight (trucking), contract, cleaning and security ([www.satawu.org.za](http://www.satawu.org.za)). To this end, one of the main objectives of the union is to recruit and unite workers in order to pursue their economic and social interest and welfare ([www.satawu.org.za](http://www.satawu.org.za)).

In an attempt to effectively pursue these objectives, the SATAWU has been encouraged to, as social movement union, form alliances with civil society organisations as part of the union's responsibility towards garnering maximum support to the working class ([www.satawu.org.za](http://www.satawu.org.za)). This is of interest to the union because the casualisation of labour in these sectors has a negative effect for some workers who are employed on non-standard contracts. If they have no job security, for instance, they may be unable to take part in the economy for fear of losing their jobs at any time.

#### **2.6.2.8 The Democratic Nursing Organisation of South Africa**

DENOSA is a national union that organises in the healthcare sector – namely, nurses ([www.denosa.org.za](http://www.denosa.org.za)). In order to retain its current membership, DENOSA is increasingly focusing its attention on the provisions of services to members. These services include representation at salary negotiations, legal representation in workplace matters, bursaries and funeral schemes ([www.denosa.org.za](http://www.denosa.org.za)). In light of dwindling membership numbers, the union has resolved actively to engage in marketing the DENOSA Professional Institute as a nurse development and empowering tool ([www.denosa.org.za](http://www.denosa.org.za)).

The union's leadership structures engage and lobby politicians and management on issues such as policy development, effective policy implementation, and represent its membership on socio-economic issues ([www.denosa.org.za](http://www.denosa.org.za)). DENOSA also works with communities in health-related

issues for the benefit of community members and their families ([www.denosa.org.za](http://www.denosa.org.za)). As a COSATU affiliate, DENOSA is said to actively take part in all initiatives that reflect on the federation's programme of action ([www.denosa.org.za](http://www.denosa.org.za)). In this regard, the union echoes COSATU's call for casualisation of labour to be banned.

## **2.7 SOUTH AFRICAN LABOUR LEGISLATION AND NON-STANDARD WORKERS**

It may seem trite to say that employees engaged in precarious forms of work should be protected by labour laws. However, according to Mills (2004:1203-1204), one characteristic of some forms of work organisation is that labour and employment legislation is premised on the traditional paradigm of full-time, permanent employment. Consequently, labour laws often do not adequately cover some non-standard workers. According to Bezuidenhout et al (2004:85), casualisation is recognized in a limited way by South African labour legislation. This is seen as a product of the state's attempts to balance labour market restructuring with an emphasis on flexibility (to enhance competitiveness in the context of assimilation into the global market economy) and security (to ensure adequate protection for employees in line with the provisions of the Constitution). This has led to the adoption of regulated flexibility which can be seen as a legislative regime that seeks to combine collective bargaining with a flexible floor of rights approach (Mills, 2004:1206). This section aims to look at existing forms of regulation, and it will discuss regulated flexibility. In light of COSATU's call for a total ban on non-standard employment in the form of labour broking, it is important to look at ways in which the labour market is regulated as a point of departure. In order to have a clearer understanding of the federation's call for a ban rather than regulation of non-standard labour, it is important to discuss the way in which the labour market is regulated to establish the loopholes that the unions see as a threat to their prosperity.

### **2.7.1 Regulated Flexibility**

The adoption of a legislative regime that seeks to combine collective bargaining with a flexible floor of rights approach (Mills, 2004:1206) can be argued to be an attempt at closing the representation gap and protecting workers in non-standard forms of work. Regulated flexibility is a system of cooperation between government, trade unions and employers' organisations that seeks to establish a balance between economic flexibility and social security. This system of 'regulated flexibility' is the framework within which such a balance is struck. It involves both limits and mechanisms: the limits (such as core rights) constitute the boundaries within which the mechanisms (such as collective bargaining and ministerial determinations) determine the balance. According to

Klerck (2008:222), the government's approach to the labour market is therefore best summed up as one that attempts to extend the coverage of labour market institutions while simultaneously ensuring their ability to adapt to current global and domestic realities. The attainment of this balance will be reflected in the simultaneous creation of sustainable employment opportunities and the maintenance of acceptable working standards and rates of remuneration. The challenge is to make flexibility in the labour market compatible with increased social equality (Klerck, 2008:222).

Regulated flexibility has two main aspects: the protection and enforcement of new basic employment standards; and the establishment of rules and procedures for the variation of these standards (Klerck, 2008:222). The proponents of this approach disagree with those who favour deregulation of the labour market and those who advocate for a comprehensive regulation of the labour market. On the one hand, it is felt that the advocates of unqualified labour market flexibility underestimate the nature of inherited rigidities and inequalities in the labour market, and are not sensitive to the poor conditions of work in many sectors in which disadvantaged employees work (Klerck, 2008:221). On the other hand, it is necessary to be aware of the costs to the economy and the government of attempting to over-regulate the economy in a manner proposed by those in favour of all-inclusive regulation. These costs would entail increases in the costs of production; the discouragement of foreign investment; increased administrative costs to government; the loss of jobs; and the triggering of a wage/price inflation spiral (Klerck, 2008:221-222). Regulated flexibility steers a middle route between these two extreme views. The aim of the reforms in labour legislation undertaken by the government is therefore to balance the requirements of flexibility and the need for security.

The notion of 'regulated flexibility' entails that some institutional features that were inherited from the apartheid workplace regime are being gradually stripped of their former functions and context (Standing et al, 1996:16). In this regard, the perceived protective features of the labour market that tend to give some labour security are preserved, while there is a concerted effort to promote economic development and restructuring (Standing et al, 1996:16). An example of this is the 2002 amendments to the LRA, which are aimed at expanding the definition of an 'employee' to afford protection to some non-standard workers.

### **2.7.2 Forms of Regulation**

Since the employment relationship under capitalism involves a contested exchange between effort and wages, control and autonomy, it is inherently antagonistic. It is thus necessary for the parties to

exercise control over their relationship (Klerck, 2008:5). This control is problematic and necessitates the development of a complex network of regulatory processes through which employers and employees seek to exercise their strategic choices and achieve their goals (Klerck, 2008:5). This section looks the forms of regulation as a way of establishing how the employment relationship can be regulated. It discusses the advantages and disadvantages of the different forms of regulation in trying to find a way in which the employment relationship can be regulated to protect non-standard workers.

Statutory regulation is often regarded as the prime source of rules in the employment relationship. Standing (1999:41) lists a number of potential advantages of statutory regulation. First, it is in principle predictable, transparent and equitable. Transparency assists in the structuring of the wage-effort bargain since those entering an employment relationship have reasonable information on the basis of the bargain. Second, it provides clear monitoring mechanisms that are justified as a corrective for market failure, especially due to a lack of information among workers. Third, it may discourage short-term profit maximisation, but encourages longer-term dynamic efficiency. Such trade-offs in forms of efficiency can often be secured only by statutory means. Fourth, it may prevent forms of discrimination that would not otherwise disappear. The potential disadvantages of statutory regulation, according to Standing (1999:41), include the following: (a) an inherent tendency towards rigidity, in that no law or regulation can cover every contingency; (b) a tendency to excessive legalism that may intensify the disadvantages of those incapable of operating in that sphere; (c) a tendency to increasing complexity because of the numerous situations that have to be covered in any regulatory framework; (d) the bureaucracy which comes from having to operate any such system – i.e. the efficacy of legal regulation presupposes an administrative apparatus with the capacity to manage and enforce it efficiently and equitably; and (e) it may encourage an instrumental compliance. A system of labour regulation that relies mainly on statutory regulation will tend to generate opportunism, particularly if the labour market is highly segmented, thereby undermining its legitimacy and encouraging avoidance, evasion or tacit compliance.

Social regulation refers primarily to the management of the employment relationship through a process of (explicit or implicit) bargaining between the representatives of business and labour. Such collective forms of regulation are favoured as a means of legitimising and institutionalising the conflicting interests of the parties to the employment relationship. To be effective, collective regulation requires some modicum of parity in the bargaining power of the parties that is sustainable over the longer-term and produces shared gains and losses. Collective regulation reduces the extent of unilateral managerial control; encourages dynamic efficiency; achieves some

measure of distributive justice by limiting the scope for cost competitiveness; encourages investment in skills development; makes it harder for management to ignore or sideline the grievances of employees; introduces an element of reciprocity into the employment relationship; and generates a more legitimate and hence sustainable balance between efficiency and equity. Significantly, collective regulation has the potential to reduce both the excesses of market regulation and the rigidities of statutory regulation. The disadvantages of collective regulation include: (a) it is time-consuming and prone to power plays; (b) it has a tendency for coordination failure such as an unequal distribution of information leading to a breakdown in negotiations; and (c) it intensifies labour market inequalities and insecurity when the institutions of collective regulation exclude, as they inevitably do, the interests of more vulnerable and disadvantaged groups. In the current climate of increased levels of global competition, collective regulation is increasingly hard pressed to balance representativeness with responsiveness.

Market regulation occurs where legislation and other regulatory mechanisms are geared towards maximum reliance on market forces. Market regulation increases market dependency, while statutory regulation decreases market dependency by reducing the insecurity associated with participation in the labour market. Market regulation encourages and rewards risk-taking, involves less costly administration than statutory regulation, and lowers the transaction costs of most economic activities. However, it also encourages short-termism since there is no compulsion to be locked into a stable employment relationship; allows decision-makers to absolve themselves from responsibility for environmental degradation, the oppression of women, rising unemployment and so on; encourages opportunism as a result of the modest monitoring capacity; and increases social inequalities. Crucially, the socially corrosive effects of marketisation involve, not the disappearance of social relations, but a shift to a different kind of social relationship which is selective and transient. The notion of 'the market' in the singular, "fits better with the perspective of the buyer or investor, having money and able to spend it on anything, than the seller who is stuck in a particular market with the particular commodities he or she has to sell (Sayer, 1995:105). The neo-liberal tendency to see markets everywhere encourages the view that individual 'choice', rather than production or social regulation, is the organising principle of economic behaviour. This rationalist methodology of neo-liberalism contrasts strongly with the view, associated above all with Polanyi (1957), that markets are social constructions whose creation and evolution are problematic and require considerable regulation by the state and other institutions. Far from being an unnecessary 'intervention' or 'distortion', the latter are a normal feature of real markets and a precondition of their existence.

### **2.7.3 Collective bargaining**

Collective bargaining is a mechanism that is used to regulate the employment relationship and the South African labour market. According to Klerck (2008:232), collective bargaining constitutes the core of industrial relations, and is essentially a rule-making and distributive process as a primary method of regulating the employment relationship. It is thus a method of determining the terms and conditions of employment, which uses the process of negotiation and agreement between representatives of management and employees. Inasmuch as all stakeholders in the employment relationship are encouraged to take part in the bargaining process, there is no legal compulsion to bargain. This is because employers may be unlikely to take collective bargaining seriously if they enter into negotiations purely because they are compelled to do so (Klerck, 2008:236). Furthermore, for meaningful negotiations to take place, a trade union must at least possess the collective strength to persuade the employer to enter into a bargaining relationship (Klerck, 2008:236).

In a labour market that is committed to increasing flexibility in the workplace, it is important for bargaining agents (trade unions and employers) positively to engage in collective bargaining in good faith. This is because over and above the need for employers and employees to negotiate the terms and conditions of employment, it is imperative that the parties discuss the issue of the non-standard workers who are increasingly replacing standard, permanent workers. This is against the backdrop of the notion that these non-standard workers do not enjoy the rights and benefits that standard, permanent employees are entitled to.

Bargaining agents negotiate around issues pertinent to the regulation of the employment contract in, among others, bargaining councils. Bargaining councils exist in order to conclude and enforce collective agreements; to prevent and resolve labour disputes; to promote and establish training and education programmes; and to establish pension, provident fund, medical aid and other such benefits. These councils are important institutions as they have the capacity to regulate the relationship between employers, unions and employees (Van Der Merwe, 2009:133).

The LRA guarantees organisational rights to sufficiently representative unions (Klerck, 2008:237), such as the right to collective bargaining, which depend on recognition of the union by the employer in the workplace (Mills, 2004:1224). Ministerial and sectoral determinations and bargaining council agreements provide some protection for atypical workers. According to Bezuidenhout et al (2004:86), such protection usually means a schedule of minimum wages, certain additional protections, and some improvements in the conditions prescribed by the BCEA.

However, an employer may withdraw organisational rights, if it alleges that the union is no longer representative on application to the commission (Mills, 2004:1224). The increase in the employment of non-standard workers has resulted in growing proportions of the workforce being unorganised. Unions are thus dealing with an eroding membership base, and if they are unable to organise atypical workers, they face the possibility of losing their recognition rights (Mills, 2004:1224), and workers may, in the end, find inadequate representation through unions.

However, as is well known, trade unions have a tendency to represent the sectional interests of their members, and the members in standard employment may well regard unorganised workers in non-standard employment as a threat (Theron, 2011:2). To discourage such tendencies, unions would have to be particularly vigilant about demands in respect of non-standard work, which the workers most affected have no part in formulating. According to Theron (2011:2), the object should thus always be to include the workers most affected. The workers employed by temporary employment agencies, or labour brokers, are a case in point. Therefore, the object ought to be to gauge from the substantive provisions of collective agreements the extent to which specific forms of non-standard work have benefited. In an effort to improve regulation of the labour market as it relates to non-standard workers, Theron (2011:2) advises that it may also be appropriate to look at attempts to extend the concept of collective bargaining, and to create new and more inclusive forums where bargaining could take place. Secondly, on the theme of the procedural as opposed to the substantive provisions of collective agreements, he advises that it would be useful to consider the procedural rights that need to be established if the organisation of workers in triangular employment relationships is to succeed.

## **2.8 CONCLUSION**

Casualisation of labour and flexibility in the workplace can thus be argued to allow employers in a capitalistic economy to alter their workforce in an effort to meet market and production demands that may arise in an increasingly globalising world with increased international competition. The flexible firm model is used to establish whether employers are consciously adopting a core-periphery model of the workplace in an effort to achieve high levels of flexibility in the workplace. Given the flaws that have been highlighted with this model, it can be concluded that this model may not be an ideal explanation of increased levels of flexibility in the workplace. This is because it is important to consider other factors that may contribute to the employment of non-standard workers, such as the replacement of an ill employee, which may then be the duration of a few days.

Selected global examples of casualisation of labour were explored, namely the UK, Australia and the USA. This section was aimed at showing the dynamics of labour market flexibility in other parts of the world. The focus of the chapter then shifted to South Africa, where trade unions have not formulated a comprehensive response to the casualisation of labour. In this regard, issues such as the representation gap was discussed. In order for unions to adequately represent non-standard workers, they need to overcome the tensions that are likely to arise between standard and non-standard workers in the workplace. Furthermore, they need to meaningfully engage with the notion that unions are focused on the representation of the interests of the standard, permanent workforce if they are to gain the confidence of non-standard workers. Above all, unions need to overcome the tension that exists between opposing non-standard work and engaging with it. This is because of the idea that if unions engage with non-standard work, they are in a sense accepting its existence. However, in order to be able to effectively represent non-standard workers, unions need to deal with this form of employment, as well as the factors (supply- and demand-side), which contribute to its expansion.

Regulated flexibility in the form of social regulation was introduced as a possible solution to the comprehensive representation and protection of non-standard workers in new work regimes. However, the unions' call for a ban on labour broking points more towards the direction of statutory regulation of the practice, rather than social regulation. This could be due to the possibly declining power that unions are exerting on the bargaining table that regulates the employment relationship because of dwindling union membership numbers. As a movement that can be identified as a social movement union, COSATU and its unions has been seen responding on the casualisation of labour and the negative consequences that it presents to some workers by attempting to involve the state, and pressurising for the banning of labour broking in the country.

# 3

## RESEARCH DESIGN AND METHODOLOGY

### 3.1 INTRODUCTION

This chapter details the research methods that were utilized during the study. Social research has been described by Neuman (2003:2) as a process where the researcher is involved in learning and acquiring information about the social world. The methodology that is used within social science refers to how the research is done, and manifests in the research design, which, according to Durrheim (1999:29), is a strategic framework for action that connects the research questions and the implementation of the research.

The chapter will begin by discussing the research objectives of which trade union responses to casualisation of labour in the Eastern Cape is central.

### 3.2 RESEARCH OBJECTIVES

The central objective of the research is to determine the responses of trade unions to the casualisation of labour in the Eastern Cape Province. The thesis will address the following objectives:

1. To examine the extent of casualisation in the province
2. To examine the working conditions of workers engaged in non-standard employment. The research will focus on the following unions and the sectors in which they organise:
  - Congress of South African Trade Unions (COSATU)
  - Chemical, Engineering, Printing, Paper, Wood and Allied Workers Union (CEPPWAWU)
  - Communication Workers Union (CWU)
  - Democratic Nursing Organisation of South Africa (DENOSA)
  - Food and Allied Workers Union (FAWU)
  - National Union of Mineworkers (NUM)
  - National Union of Metalworkers of South Africa (NUMSA)
  - South African Commercial and Catering Workers Union (SACCAWU)

- South African Clothing and Textile Workers Union (SACTWU)
  - South African Transport and Allied Workers Union (SATAWU)
3. Examine the extent to which labour legislation affords protection to non-standard workers.
  4. Determine the effect that casualisation has had on the labour movement by looking at union membership fluctuations since the noted upsurge of non-standard labour, the levels of union recognition in the workplace, and the policies and responses of trade unions towards the casualisation of labour.

### **3.3 METHODOLOGICAL APPROACH**

A qualitative approach is the most appropriate to research the topic because it allows the researcher the opportunity to gather information in person with respondents, as opposed to gathering statistical information in the quantitative paradigm. Making use of qualitative research also affords the researcher the opportunity to gain information-rich texts from the personal interviews that are conducted. This is advantageous in that there is a generous amount of data to decode in the analysis process. The type of information that is needed to address the central research question warrants the use of qualitative research methods such as in-depth interviews which will allow the researcher an opportunity to, for example, ask follow-up questions in determining trade union responses to casualisation of labour. Furthermore, the type of information needed delves into the lived experiences of the respondents. It is therefore important to utilise qualitative research methods such as in-depth interviews in order to debunk the responses of the interviewees and find meaning.

When conducting research, the researcher may choose from an array of approaches to science, where, according to Neuman (2003:68), each approach has its own set of philosophical assumptions and principles with its own assumptions on how to do research. This research is located within the critical research framework. Research using critical theory aims at promoting critical consciousness and breaking down institutional structures and arrangements that reproduce oppressive ideologies and social inequalities (Henning et al, 2004:23). Because the employment relationship has the potential to be prone to power plays between employers and employees, the location of the research within the critical theoretical framework is in line with critical theory's representation of a broad school of thought that involves uncovering the nature of power relationships (Gall et al, 1999:361). One of the central assumptions of critical theory is that certain groups in any society are more privileged than others, and that the members of the privileged group have more power than the members of other groups (Gall et al, 1999:361). This inequality can be argued to have surfaced in

the employment relationship which, due to the manner in which it is regulated, is likely to be prone to power plays between employer and employee. Secondly, critical theory strives to highlight the sense of frustration and powerlessness that the unprivileged groups feel with respect to their opportunities to realise their potential. Indeed the frustration of those non-standard workers has been highlighted by the COSATU unions which have declared their opposition to non-standard labour, especially in the form of labour broking. Lived experiences and the social relations that structure these experiences are thus the focus of critical research (Henning et al, 2003:23). Researchers engaging in critical research are most likely to be interested in socio-political issues and research ways in which forms of activism might impact on experience and social relations, and the emphasis is on the collaboration between researcher and subject (Henning et al, 2003:23-24).

### **3.4. RESEARCH DESIGN**

The research design situates the researcher in the empirical world (Denzin and Lincoln, 1994:199-200). It is literally the plan for how the study will be conducted, and is a matter of thinking about, imagining, and visualizing how the research study will be undertaken (Berg, 2001:28). The methodological approach that has been adopted is qualitative in nature. In as much as qualitative research has been criticized for being 'soft' and not as 'accurate' as quantitative research, it is empirical because it involves documenting real events, recording what people say, observing specific behaviours and studying written documents (Neuman, 2003:146).

Qualitative research takes the insider perspective on social action as its departure point (Babbie and Mouton, 2001:270). This approach is used in research that is aimed at generating in-depth or thick description and understanding of social phenomena and social action, and is opposed to positivist or quantitative hypothesis testing. Social action needs to be understood in its own context - in this instance, the historical, economic and social context of trade unions in the Eastern Cape, labour market flexibility and how trade unions respond to casualisation.

In this regard, an interactive design, such as the one suggested by Maxwell (2005:3), is envisaged. This design entails moving back and forth between the different components of the design, assessing the implications of goals, theories, research questions, methods and validity threats. The research design did not follow a linear sequence, but was a constant interaction between theory, field data and history. The research itself was about further exploring a phenomenon, rather than hypothesis testing, and thus required the researcher to keep moving between the components of the design in order to explore the responses of trade unions towards casualisation of labour in the

Eastern Cape.

### **3.5 THE RESEARCH SITE**

As Morse (1994:222) writes, the possible setting in which the study will be conducted must be identified, and the access thereto considered. The research question is generally regarded as the primary guide to the appropriate site or setting selection (Berg, 2001:29). In many cases, the decision to use a particular research site is tied closely to obtaining access to the subjects, as poor site selection or poor sample decisions may weaken or ruin eventual findings (Berg, 2001:29). The person-to-person data collection will take place in the offices of the trade union representatives, or alternatively, a location identified by the respondents themselves in order to create maximum comfort for them.

East London and Port Elizabeth were selected as the research sites. The reasoning behind this is that the provincial offices of the trade unions are situated there. The offices visited in East London were COSATU, CEPPWAWU, FAWU, NUM and SATAWU. Offices visited in Port Elizabeth were DENOSA, CWU, SACTWU, and SACCAWU. The NUMSA interview took place in King William's Town.

### **3.6 SAMPLING**

The logic of using a sample of subjects is to make inferences about some larger population from a smaller one. In this regard, the research makes use of purposive sampling, which aims to select typical or representative subjects. According to Berg (2001:32), this category of sampling is sometimes called judgmental sampling. This form of sampling is used to select unique cases in a specialized population, where the researcher wants to identify cases for an in-depth investigation (Neuman, 2003:63). By making use of purposive sampling, the research is able to focus specifically on a case because it illustrates some feature or process in which the researcher is interested (Silverman, 2010:141).

The purpose of this research was to acquire information about the responses of trade unions to the increasing levels of casualisation of labour in the Eastern Cape. It made sense, therefore, that with this specific purpose in mind, only trade union officials within the province were sampled in the quest for such information.

Snowball sampling was also utilized. Berg (2001:33) writes that this is sometimes the best way to locate subjects with certain attributes or characteristics necessary to a study. The basic strategy of snowballing involves first identifying several people with relevant characteristics and interviewing them. These subjects are then asked for the names of other people who possess the same attributes as they do (Berg, 2001:33). It is literally identifying or selecting the cases in a network through a snowball effect (Neuman, 2003:214). In this regard, the trade union representatives were asked, where possible, to provide some links to other key people as well as written and/or audio documents detailing their response to the casualisation of labour in the province. The COSATU Provincial Organiser was very helpful in this regard, as he provided a comprehensive list of Provincial trade union representatives, and spoke to some of them in order for the researcher to gain access to their offices and interview them.

### **3.7 DATA COLLECTION**

The methods of data collection employed in the project were interviews and content analysis. It is maintained that interviews generate useful information about lived experiences and their meanings (Denzin and Lincoln, 2000:633). Interviewing is one of the most common and powerful ways in which we try to understand people. The most common form of interviewing involves individual, face-to-face verbal interchange (Fontana and Frey, 2000:645).

The semi-standardised interview form was used. This is because it is located between the extremes of completely standardized and completely unstandardised interviewing. It involves the implementation of a number of predetermined questions and/or special topics; these questions are typically asked of the interviewees in a consistent order, but interviewers are allowed freedom to digress and probe beyond the answers to their prepared and standardized questions (Berg, 2001:70). This type of interviewing allowed the researcher to probe deeper in trying to find meaning to the responses of the union representatives. Essentially, more information is gathered when difficult questions are answered, as this creates an opportunity for further investigation, which ultimately results in a greater understanding of the subject.

The semi-standard interview was beneficial in that the researcher was afforded the opportunity to ask follow-up questions in an effort to get a response from the union representatives. Secondly, the researcher was able to rephrase some questions that were not understood by the respondents - at times, this involved translating the questions in order for the union representatives to be able to respond to the best of their ability.

The following trade union officials were interviewed:

COSATU Provincial Organiser: 01/06/2011

CEPPWAWU Provincial Secretary: 04/06/2011

NUM Provincial Secretary: 15/06/2011

FAWU Provincial Secretary: 17/06/2011

SACCAWU Provincial Organiser: 29/06/2011

DENOSA Provincial Secretary: 29/06/2011

SACTWU Provincial Secretary: 30/06/2011

SATAWU Provincial Secretary: 01/07/2011

NUMSA Provincial Secretary: 07/07/2011

### **3.8 TRADE UNION REPRESENTATIVES INTERVIEW SCHEDULE**

1. Please give an overview of the industry in which your union organizes.
2. What categories do the members you organize belong to?
3. How many members do you have in good standing (paid up), and what changes/fluctuations have you experienced since 1996? (Introduction of new economic dispensation- GEAR)
4. What are the sentiments within the union about the fluctuations in membership numbers?
5. How is the union adapting to the changes in membership numbers?
6. How are the firms/workplaces responding to the challenges of increased international competition?
7. Are employers making demands for increased flexibility of employment?
8. Do the employees know about the challenges that the firms/workplaces face, and the solutions in this regard?
9. Please provide information pertaining to the extent of or changes in:
  - a. Retrenchments
  - b. Working hours
  - c. Union recognition
10. What is the union's approach towards non-standard workers?

11. What strategies has the union employed to deal with non-standard workers?
12. Has there been a change in the extent of non-standard labour since 1996?
13. To what extent does the union have a say in the acquisition and allocation of labour process?  
(Is the union involved in such HR practices and decisions that are taken in the workplace?  
Does the union have a say as to whether new employees will be employed on a casual/permanent basis)
14. Are the wages and other benefits of non-standard workers lower than those of standard employees?
15. What differences exist in the skills, promotion prospects, pay rises and benefits between standard and non-standard workers?
16. In your view, does a core and peripheral workforce exist in the workplaces where you organise? (in terms of skills, wages and job security)?
17. Does management have clear policies and goals that determine the use of non-standard labour?
18. What are the union's views on these?
19. Is there an increased or decreased level of job security?
20. What types of jobs are mostly casualised by employers?
21. What component of the workforce is temporary, part-time and subcontracted employees?  
(percentage, gender and age dimensions, jobs that they perform and whether there has been an increase or decrease in the past ten years)
22. How do you organize non-standard workers?
23. How different is this organization to the organization of standard workers?
24. In your view, do government policies and labour laws facilitate or obstruct the process of casualisation of labour?
25. What is your response to the argument that increased productivity depends on a move away from uniform, standardised pay structures negotiated at a central level to more varied and individualised systems based on performance?

### **3.9 DATA ANALYSIS**

The most salient form of analysis was grounded theory, which relies on the production of theoretical perspectives deriving from data ([www.lancs.ac.uk](http://www.lancs.ac.uk)). In this respect, the researcher focuses on the ground – the data - and inductively generates more abstract concepts. To accomplish this, the researcher needs to be flexible and open to helpful criticism, whilst portraying appropriateness, authenticity, credibility, intuitiveness, receptivity, reciprocity, and

sensitivity ([www.lancs.co.uk](http://www.lancs.co.uk)). By way of interpreting the data, the researcher started with a set of data, such as a transcribed interview (Henning, 2004:104). Subsequent to a first reading of the transcriptions, the texts were read again and units of meaning were identified. In formulating themes of analysis, the texts were then organised into codes, and then related codes were grouped together and categorized. These codes or groupings of information were then organised in accordance with the themes raised in the literature review and conceptual framework. This is so that the substantive chapters respond to the questions raised in the literature review and the conceptual framework that the thesis adopted.

### **3.10 ETHICS**

For Taylor and Bogdan (1998:36), ethical decisions in research involve many responsibilities, moral alternatives, and the researcher's personal sense of what is right. It is believed that there are no set rules in terms of ethics; instead, the researcher has to engage in a fair amount of soul searching during the research process (Taylor and Bogdan, 1998:37). There are, however, according to McNeill and Chapman (2005:12-14), six broad ethical guidelines that researchers are urged to follow. Firstly, all respondents have the right to know what the research is about- informed consent. Secondly, researchers should not be deceptive or lie about the purpose of their research. Thirdly, the interviewee's privacy should be safeguarded. Fourthly, confidentiality and anonymity are important and should be upheld. Fifthly, researchers should ensure that the respondents are protected from any physical or emotional harm. Lastly, researchers should, at all times, avoid being drawn into situations that may involve crime or deviant acts.

In keeping with these guidelines, the University's code of ethics was adhered to. This code is fully compliant with the principles laid out in the research code of the Human Sciences Research Council ([www.ru.ac.za](http://www.ru.ac.za)). Information regarding the project was given to the respondents: the researcher identified herself and her association as a student with the University. The nature of the research, its purpose and usefulness were disclosed. Secondly, all the respondents consented to being part of the project and were not coerced into being interviewed. Thirdly, the privacy of the subjects was discussed, and since they are prominent figures of the trade unions, they did not wish to remain anonymous, as they maintained that the viewpoint of the unions is widely known.

### **3.11 CONCLUSION**

The main research methods that were used during the study have been identified and the steps taken

towards these goals have been outlined. Negotiating access to the union representatives was not a problem since snowball sampling was achieved with great assistance from the union federations' Provincial Organiser, who became an asset in the process of setting up the interviews. One problem that was encountered was that some union representatives seemed to have a limited understanding of the questions. One attempt at overcoming this challenge was the translation of some of the questions into a language that the respondents were more comfortable with. The research process was conducted with as much reference to the University's code of ethics as possible. This was done to comply with the ethics applicable to research involving human beings, and since the subject matter involves personal encounters, it was of utmost importance that the ethical code be upheld.

# 4

## THE FLEXIBLE FIRM AND ITS IMPACT ON THE LABOUR MOVEMENT

### 4.1 INTRODUCTION

This chapter focuses on flexibility in the workplace. This is an important concept, as the casualisation of labour is encouraged where there is a flexible labour market. As the thesis aims to explore the responses of trade unions to the casualisation of labour, a discussion of the features of flexible labour markets and their effects is essential. This is because casualisation thrives in flexible labour markets. In flexible workplaces, the tendency is for firms to incorporate non-standard workers in the form of temporary, part-time and casual workers as a means of adapting to market demands. Market demands range from increased international competition requiring firms to produce more efficiently, pressures to reduce operational costs in the form of salaries and benefits for permanent workers, the general desire of employers to generate as much profit as possible, and rapid changes in the demand for particular goods or services.

Flexibility in the workplace is deemed to have a negative effect on trade union membership numbers. This is primarily because the non-standard workers that are incorporated into the workplace are often not members of any union. Unions are often unable to organise casual workers because they are opposed to casualisation, and casual work is designed precisely to make organisation difficult. The result is that with the dwindling numbers of permanent, unionised workers, comes the dwindling of union numbers because the unions are unable to absorb the non-standard workers.

The decision of employers to implement labour flexibility has a bearing on the ways in which the labour market has changed over the years. The sharp escalation in the use of non-standard workers can be said to have introduced an “underclass” of workers (Van Der Merwe, 2009:73). Indeed, as stated in Chapter 2, some non-standard workers are deprived of the security that permanent workers enjoy. This is due to the contractual nature of their employment relationship and the fact that they are easily disposed of because they are not adequately protected by legislation. Those who fall under the TES industry and are supplied through agencies and labour brokers face the same

predicament, as it seems that the TES industry is poorly regulated and the workers are subjected to intense exploitation. Furthermore, joining a union proves to be a difficult task for these workers as they are either not in a job long enough to be able to join one or they face the repercussions of joining from the client company to which they are deployed. They thus fall outside of the trade union safety net. The workplaces that adopt flexibility and make use of non-standard workers therefore maintain and reproduce this underclass. In addition, they tend to absolve themselves from responsibility for the non-standard workers, hence the use of TES agencies to staff their companies.

The purpose of the chapter is to provide supporting evidence for the notion that employers are making use of non-standard workers and the Temporary Employment Services (TES) industry to implement labour flexibility. They do this in order to save on the costs of employing permanent workers and to make the firm more adaptable to external market conditions. To this end, the chapter begins by discussing flexibility in the workplace, which is epitomised by the flexible firm model. The attitudes of the unions towards the flexible firm model will be discussed, as the way in which the model is perceived impacts on how the unions will respond to it. The chapter will then discuss the extent to which employers implement the flexible-firm model in an effort to achieve flexibility in the workplace- that is, functional flexibility among the ‘core’ workforce and numerical flexibility among the ‘peripheral’ workforce. Thirdly, the disadvantages of adopting the flexible firm model will be discussed because they render the workers vulnerable to practices that are common in flexible work contracts. Fourthly, the effect of the demand for flexibility on trade union membership will be discussed, pointing out the adverse effect that the implementation of flexibility has on the unions. The unions’ opposition to flexibility is explored, as they do not show an interest in engaging with the model. However, the unions are yet to develop a coherent programme of action that seeks to address the issue of flexibility and casualisation.

## **4.2 FLEXIBILITY IN THE WORKPLACE**

The discussion in Chapter 2 suggests that flexibility is rooted in a pro-market ideology. This entails the loosening of control of market forces, which may predispose the relinquishing of policies of control towards an emphasis on the primacy of ‘markets’ thus raising economic flexibility. In order for flexibility to be achieved, countries and their governments are to relinquish their policies of trade control, thus creating fertile ground for the ‘free’ market to thrive. In a context of free markets, more profits are made, and imports and exports move freely between countries with minimum costs incurred.

However, it is important to note that in reality, the trade-off between regulation and markets is more complex. The concept of deregulation is not precise, and cannot account for the multi-faceted changes unfolding in the labour market. There is no simple or direct relationship between the nature of labour market regulation and the incidence of non-standard employment. Very rarely can changes in a regulatory regime be adequately understood as simply an extension or a restriction of the role of statutory or social regulation to the benefit or detriment of market mechanisms. Hence, it is wrong to anticipate a simple trade-off between markets (flexibility) and institutions (regulation). The different forms of non-standard employment are subject to greater or lesser levels of formal control and generate variable patterns of flexibility. Finding a balance between employment, wage and work process flexibility requires changes in labour regulation that involve “the mechanisms and the levels of regulation and which may require the imposition of ‘beneficial constraints’ on economic actors, thus giving rise to a different type of regulation, rather than just less of it” (Regini, 2000:21). Labour market flexibility in the 1980s and 1990s was generally pursued through a process of “regulation” (Deakin and Muckenberger, 1992:144) or a “regulated deregulation” (Hyman, 1994:18) involving the replacement of direct and uniform substantive legal regulation by alternative regulatory regimes under procedures that still rest ultimately on legal sanction. That is, the real world of regulatory reform is “one overwhelmingly dominated by partial and piecemeal flexibilization” (Esping-Anderson and Regini, 2000:2). In some cases, a reform intended as a flexibility measure actually results in its opposite. Mackenzie’s (2002:599) research into subcontracting arrangements shows that, far from dismantling hierarchical employment structures and leading to greater exposure to market imperatives, the movement towards an increased reliance on external sources of labour reflect “the reconfiguration of the bureaucratic organisation of production”.

#### **4.2.1 The Flexible Firm Model**

The flexible firm model, as alluded to in Chapter 2, suggests that the workforce is or should be divided into two segments: the core and the periphery. This is viewed as an ideal type of firm that should be adopted in order to maximise profits and to casualise labour. The perception that employers are following the flexible firm model is not new - it is apparent in some firms and production sites, where employers rely heavily on non-standard employment to meet fluctuating market demands. The core workforce, which is constituted of permanent employees, performs semi-skilled or skilled work; the peripheral workforce is in most cases employed through employment agencies and labour brokers. They are mostly employed on a short-term basis, and are brought in to increase productivity; once that job is completed, and they are no longer needed in the firm, their

contracts may be terminated.

The flexible firm model is a highly contested concept by the trade unions. They hold the view that it reflects the employers' desire to adjust the workforce according to fluctuations in labour demand; and that it points to the fact that employers want to get maximum profits while incurring minimum costs where employees are concerned.

As pointed out in Chapter 2, the flexible firm model is aimed at finding ways to improve the production output of a business from the employer's perspective. Given the criticisms that have been levelled against the model, it is seen as an attempt by employers to adopt workplace policies that undermine the role of the union. The flexible firm model is therefore not recognised by the unions. As can be seen in CEPPWAWU's response:

The core and non-core is a concept that was brought about by the Growth Economic and Redistribution [GEAR] initiative, which came into being in 1996. Remember that before GEAR, we did not have that (CEPPWAWU Provincial Secretary, 04/06/2011).

Some unions reject the flexible firm model, since they see no difference in terms of the work that is done by the standard (core) and non-standard (peripheral) employees. Furthermore, the root cause of the rejection of the core-periphery model is the perception that because some of the functions are deemed to be non-core, they are most likely to be outsourced. This situation leads to massive job losses for permanent workers as the employers bring non-standard workers into the firm. Secondly, the non-standard workers who occupy positions considered to be 'peripheral' are often subjected to poor working conditions, as employers do not take any responsibility for them. This is a view that is embraced by FAWU's Provincial Secretary, who expressed that

It [flexible firm model] does exist, even though we do not believe in it. As a result of that segregation of duties, there has been a decline of meaningful employment. Because you find that the core business is constituted of fewer people compared to the ancillary duties that are supplementing the core (17/06/2011).

At this juncture, it is important to point out that unions such as CEPPWAWU and CWU acknowledge that this concept exists as a means of organising firms in a way that seeks to ensure that they adapt rapidly to changes in consumer demand; and that workplaces are increasingly being organised in this manner. However, unions have shown reluctance towards engaging with the

model, and have rejected it as a way means of structuring a firm on order to achieve high levels of flexibility. This could be due to the sentiment that

... The concept of non-core business is what has resulted in the establishment of labour brokers because people are taken from the streets and they do the work. So, those who have been working will be told that they are retrenched and be told that their sections are outsourced because the sections are non-core, and labour brokers do not have benefits (CEPPWAWU Provincial Secretary, 04/06/2011).

Furthermore, the flexible firm is believed by FAWU Provincial Secretary (17/06/2011) to have led to a decline in the notion of meaningful employment. This could be attributed to the fact that non-standard workers, especially the casual workers who are deployed by TES agencies, often change jobs frequently. To this end, these workers cannot identify themselves as occupying a certain job or having a certain skill. Furthermore, because these employees do not have stable jobs and are have little job security, they are in constant fear of losing their jobs.

The concept of the flexible firm can also be considered to have been rejected by the unions based on the view that it is a ploy by management to drive a wedge between the workers. This would work to the advantage of the employers in that a divided workforce means that there are less chances of unionisation, and therefore more opportunities for employers to make changes to wages, working times and working conditions with minimal resistance because there is no organised representative body to challenge them. The response of NUMSA reflects an awareness of the divisive aspects of these strategies:

We do not subscribe to that. It is just a trick of management to divide workers and underpay some (NUMSA Provincial Secretary, 07/07/2011).

The flexible firm model is viewed as drawing out the inherent inequality between the core and peripheral workforce. It is perceived to encourage a division between the two groups of employees, and even though these employees may work at the same workplace, they are treated differently. The two groups of workers are considered to be unequal because some non-standard workers (e.g. agency workers) may times have different employers, while part-time and temporary workers may be employed directly by the same employer as the standard workers.

It becomes apparent that the non-standard, 'peripheral' staff is subjected to inferior conditions, and

these workers are not granted the same benefits as permanent employees. This shows that, from the onset, these employees are at a disadvantage compared to the core workers.

During the research process, the unions acknowledged that the flexible firm seems to exist. They have however not shown any interest in engaging with the model. As mentioned in Chapter 2, the flexible firm model and labour market flexibility are on the rise. Employers are desperately seeking ways to increase output while maintaining as much profit as possible. In this regard, the route most likely to be taken by employers is the entrenchment of flexibility in the workplace. However, if unions, as the custodians of worker's rights do not actively engage with such processes, they are likely to experience a sharp decline in membership as more non-standard workers are favoured over standard, permanent workers. They may not be able to handle the influx of non-standard workers, while their numbers continue to decline as employers favour non-standard workers.

#### **4.2.2 Numerical Flexibility**

Numerical flexibility entails the use of temporary, casual and part-time workers in the workplace. The advantage of this practice to employers is that that they are able to match staffing levels to peaks in demand (as one can hire and fire workers in accordance with fluctuations in demand). As discussed in Chapter 2, part-time, casual and temporary workers are usually not entitled to any non-wage benefits that are granted to permanent, full-time employees. Furthermore, employers are able to respond to unpredictable fluctuations in production without having to bear the costs of employing a large, permanent workforce; and in an attempt to avoid non-wage benefits, managers easily escape bearing the costs of pension and provident fund as well as medical aid schemes.

The expansion of numerical flexibility in the form of incorporation of non-standard employees can be attributed to three factors: firstly, these workers are cheaper to employ; secondly, they have been found to exert themselves in performing their tasks, and they are easily obtainable as 'scab' labour during strikes.

Unions have found that employers tend to make use of non-standard workers because they are often cheaper than standard, permanent workers. There is a belief among the unions that this is because the remuneration of non-standard workers is determined by the employer - especially in a TES agency - and is thus likely to be structured in a way that ensures maximum profits for the employer. According to DENOSA's Provincial Secretary, the situation is worse for workers who are deployed by labour brokers because

It is being determined by the employers themselves how much they are going to get paid, whereas for other workers, there are bargaining chambers that tell the employer to pay the employee a certain amount (29/06/2011).

Secondly, non-standard workers have been found to be cheaper because they do not feature as the employer's fixed costs: casual workers can, for example, be called upon to assist with loading or off-loading boxes from delivery trucks at a warehouse. This is convenient for the employer in that they will be called upon as and when they are needed. FAWU Provincial Secretary argues this to be beneficial for employers because

The employer will then put an amount and explain it in the notes, where it will be explained that it is the cost of casual labour as and when it is needed. The employers do not want their balance sheets to be "spoiled" by putting in casual labour. So, the advantage is that when they go to the bank, the employer will not disclose them as fixed costs because it depends on when the employer will call them, exploit them and send them away (FAWU Provincial Secretary, 17/06/2011).

This means that these workers are much cheaper because they tend not to be a daily cost. Furthermore, because they are called as and when they are needed, the employer benefits in that there is no fixed monthly or weekly remuneration that has to be paid to them. This has been noted as the reason why employers in the mining sector are increasingly making use of non-standard workers in an effort to achieve numerical flexibility. It is said that in this sector, employers often complain to standard employees and union officials and say that they are "expensive" (NUM Provincial Secretary, 15/06/2011).

As argued in Chapter 2, the conditions associated with numerical flexibility are such that benefit levels are reduced, and consequently the normal attractions of employment such as reasonable pay, benefits and relative job security, often do not apply to agency workers, especially those with minimal skills and work experience (Purcell et al, 2004:706). In light of this, it is the view of the unions that non-standard workers are cheaper to employ because this is the reality that they face when engaging in such work. It is the view of FAWU's Provincial Secretary that non-standard workers seldom get benefits because the employer has to pay for these benefits. For example, the BCEA stipulates that an employee should be granted leave with full remuneration. By using casual workers, who are not granted such benefits, the employer attempts to avoid paying for employees

that are not at work, thereby securing as much profit as possible

When the employer quantifies the workforce, they say: “I have ten workers, and every worker is entitled to 21 days leave in terms of the BCEA”. When this is quantified, that worker will still be getting paid. That is a cost to the employer (FAWU Provincial Secretary, 17/06/2011).

Most union representatives have flagged this as an issue, as in most instances, they have found that some non-standard workers will exert themselves, even in sub-standard conditions, so that they may be employed on a permanent basis. Even when non-standard workers are poorly paid and do not receive any benefits, NUMSA Provincial Secretary maintains that

They will work like slaves. And this is not to say that the permanent workers are not working - they are also putting in as much effort as they can. But the non-permanent workers will work more to impress the employer (07/07/2011).

This is an unpleasant situation because these workers often remain casuals for extended periods of time. This has a bearing on their livelihoods because these workers have low levels of job security. Because at times they do not know when they will be dismissed, they may not be able to secure their social and economic livelihoods. This has been illustrated by CEPPWAWU’s Provincial Secretary (04/06/2011), who maintains that these workers may even be discouraged or prevented from buying necessary goods like furniture on credit.

Furthermore, there is no doubt that some non-standard workers have little, if any, job security. According to FAWU’s Provincial Secretary, non-standard workers, especially those who have been deployed by TES agencies are at a disadvantage in this regard, because if the client decides to terminate their contract with the agency, they will be removed from the site of work, and the process of finding a suitable placement will have to resume:

their employment is dependent of the contract that the client has with the TES. This is because if the client terminates their contract with the TES, these workers will be disadvantaged as the TES will remove them from the client’s firm (FAWU Provincial Secretary, 17/06/2011).

These employees are at a great disadvantage: without job security, workers may be reluctant to join

unions and become actively involved for fear of dismissal. They have also been found to exert themselves in order to be viewed favourably by the employers. This is done as a means of attempting to prolong the contract for as long as possible. However, this is to the detriment of the health and wellness of the employees because they may agree to work long hours with minimal breaks so as to seem productive.

It is important to note that not all non-standard workers face the same disadvantages. On the issue of job security, for instance, agency temporary employees may have no job security with the client firm, but some of them have a considerable degree of security within the agency itself.

#### **4.3 DISADVANTAGES OF ADOPTING FLEXIBILITY IN THE WORKPLACE FOR NON-STANDARD WORKERS**

One of the biggest issues with the adoption of flexible work arrangements in line with the flexible firm model is that there is less job security for some non-standard workers. This has plagued unions across all sectors, and it has been discovered that at times, employers have had no choice but to employ workers on a fixed-term contract. An example of this can be found in seasonal farming, where the employees' contracts end as the season ends:

The consequence of the fixed-term contract is that ... at the end of the contract or the end of the season, as in the food production sectors, the workers do not get the protection from being dismissed because their contracts are not ending because they are dismissed for wrongdoing. It's just that the time came for the contract to end (FAWU Provincial Secretary, 17/06/2011).

This is one of the negative consequences of seasonal work - employers may not be in a position to offer employment that goes beyond seasonal peaks for some jobs.

Another disadvantage with the adoption of flexibility is that the issue of dismissals has been argued to be problematic, especially where the employment of workers has been facilitated by TES Agencies. FAWU Provincial Secretary reports that sometimes the labour broker or agency may be requested, for whatever reason, to withdraw a particular employee from a certain company. The employee faces a dilemma because they are without a place of work, but they are not necessarily dismissed by the agency:

Take this example: the employer will say to the employee 'because I am employing you, as I am the TES employer, to go and work at Shop A'. The employer is in this instance a section 198 employer. Now the employer will say: 'Shop A has approached me and said that you are no longer needed to work in the shop. However, I have not dismissed you, but I am merely withdrawing you from Shop A. I am yet to see where I will place you because, as you know, as a TES employer, I don't have a job for you. I only have this office, which I am using to hire you out. For me to have you placed elsewhere, I must get another client. I am hoping for another client. I have not dismissed you' (FAWU Provincial Secretary, 17/06/2011).

In this instance, the life of the employee is uncertain because even if he or she tackles the matter legally on the grounds of an unfair labour practice or an unfair dismissal, the employee may have some difficulty in that he or she will not be able to produce a letter of dismissal because it does not exist. It is for such reasons that firms, which rely on the flexible firm model, face increasing opposition from the unions, as the unions engage in activities and campaigns that seek to publicize their opposition to the practice. This can be seen in the demand for the banning of labour brokers that COSATU and its unions have made on many occasions.

The non-standard employment of nurses in the healthcare sector presents a different picture. DENOSA's Provincial Secretary (29/06/2011) alludes to the notion that the non-standard workers in the sector are skilled. This is in contrast to some non-standard workers in other sectors who may be unskilled and are taken from the streets to perform unskilled work. Furthermore, non-standard employment in this sector is not always involuntary and driven by unemployment and/or imposed flexibility. For example, there is a growing tendency among nurses to use their days off to work at other healthcare institutions. This is because there is a need for nurses to supplement the earnings. Hence, in as much as the union is against this practice, the workers in the sector are drawn into a revolving door syndrome, where nurses consciously and willingly engage in this kind of work. As the DENOSA representative indicated:

Permanent nurses register with brokers or agents so that they get opportunities to do extra work. Basically, people want to earn a double salary. It is the employees that are enabling the process of casualisation by making themselves available and registering with the agents (DENOSA Provincial Secretary, 29/06/2011).

There is no uniform act of resistance from the workers themselves because firstly, they voluntarily perform non-standard work in addition to their standard work and secondly, they gain additional

income from the extra work that they perform.

Another challenge that has been noted within the nursing fraternity is that sometimes nurses prefer not to be employed on a permanent basis because “they are not subjected to deductions such as retirement funds and the like” (DENOSA Provincial Secretary, 29/06/2011). This is a problem because the nurses are not registered with any pension or similar schemes, and they become an added responsibility to their families.

At this point it is important to distinguish between voluntary and involuntary non-standard employment. An example of voluntary non-standard employment can be made of a housewife who, because of other commitments, may choose to work only on certain days of the week, or for a few hours a day. It refers to those workers who engage in non-standard employment on a voluntary basis. Involuntary non-standard employment, on the other hand, can be considered to be entered into because of factors such as unemployment. In this instance, because workers are desperate to earn a living, they enter into non-standard employment. The two examples cited by DENOSA show that it may be difficult for the union to prevent voluntary non-standard work from taking place. The union’s response to this voluntary non-standard employment is opposition. However, the question to ask is whether unions can oppose and act against voluntary non-standard employment which might not present the same challenges as other non-standard work forms. It is therefore important for unions to distinguish between voluntary and involuntary non-standard employment.

Flexibility has advantages as well as disadvantages. However, the advantages for employers far outweigh the advantages for employees. This research, however, focuses on the disadvantages as it aims to show that employees are sometimes at a disadvantage when flexibility is implemented in the workplace. Non-standard work that is attached to sub-standard work conditions entails increased job insecurity and imposes a burden on society. For instance, in the absence of medical aid, non-standard workers are unable to access private healthcare facilities. Likewise, in the absence of private pensions, these workers will have to rely on state pensions after retirement. Furthermore, the casualisation of the labour force can be viewed as a feature that has the potential to limit the stability and prosperity of a society. Non-standard workers who get hired and fired on a whim continue to endure poor working conditions, limited benefits and less pay than standard workers. This has a spill-over effect on their living conditions. There is the risk of conflict between standard, permanent workers and non-standard, temporary workers because in the pursuit of a flexible workforce that is able effectively to respond to market demands, it is the permanent workers who are released in favour of the non-standard workers who will work for less remuneration and fewer

benefits.

#### **4.4 THE EFFECTS OF FLEXIBILITY ON UNION MEMBERSHIP**

Unions are facing a challenge as far as increasing their membership is concerned. Presently, COSATU has around 1.8 million paid up members - a decline of almost 200 000 members since 2000 ([www.cosatu.org.za](http://www.cosatu.org.za)). The federation has experienced many fluctuations in membership. These fluctuations are attributed to the fact that on a daily basis, employers are in a constant endeavour to make their firms as flexible as possible, in order to cut costs and to effectively respond to production and market demands. These changes are detrimental to the permanent workforce because employers constantly desire to retain as much profit as possible. Permanent workers are sometimes more expensive to maintain as their benefits have cost implications. As stated in Chapter 2, the fact that the permanent component of the labour force is dwindling is noteworthy because the unions have largely recruited permanent workers as their members. It is difficult to organise non-standard workers into the unions because at times they are on fixed-term contracts, which have a limited (and usually short) lifespan. It is therefore important to explore the effect that issues such as transferring some functions to external companies and the nature of work have on union membership because these are some of the challenges that unions have to deal with in the face of increased flexibility and casualisation in the workplace.

##### **4.4.1 Outsourcing**

In an effort to achieve increased levels of casualisation in the workplace, some firms have outsourced their so-called 'non-core' functions to external companies. Union membership has been eroded by these outsourcing initiatives that have been put in place by employers. For example, CEPPWAWU has suffered major set-backs due to the transfer of some functions of companies in which they organise. In Port Elizabeth, the glass company, Shatterproof, performed all of its functions in-house. However, a decision was made to outsource the warehousing functions to a warehousing company. All that remains in the province is the depots:

Shatterproof in Port Elizabeth performed almost all its functions in-house, which after this period, transferred its warehousing functions to a warehousing company (CEPPWAWU Provincial Secretary, 04/06/2011).

This has dealt the union a major blow, as those workers who were employed to perform the

warehousing functions were left without jobs. As permanent employees, they formed part of a large concentration of the union's membership in that company.

The distinction between the so-called 'core' and 'non-core' functions of firms has had further negative consequences for the unions. This is because it is believed that in most sectors, such as communications, it is this distinction that has led to the outsourcing of some functions, resulting in massive retrenchments:

Telkom used to have people that were putting in cables - that function has since been outsourced. Telkom used to have its own fleet to perform maintenance of its network. That function has since been outsourced, and the workshops that used to maintain those cars were also outsourced (CWU Provincial Secretary, 30/06/2011).

In a situation where the employees who were performing these functions were permanent, they are replaced by non-standard employees from outsourced companies. This leads to a decline in the union membership in the workplace, as the permanent workers- the generic union members, are gradually replaced by non-standard workers who may have different needs and goals to the standard workers.

These retrenchments due to outsourcing have been flagged as a recurring negative impact in the retail industry as well. This is because, according to SACCAWU Provincial Secretary (29/06/2011), with increased levels of outsourcing, some of the workers are transferred to the companies that their functions have been outsourced to. However, not all of these workers are absorbed, and they become unemployed. In this instance, the union loses members because the permanent workers that they organise become non-standard and therefore more difficult to organise.

In addition to the challenge of dwindling membership numbers due to a reduction in the numbers of typical union members, unions have to deal with a group of non-standard workers who may have differing needs to those of standard, permanent workers. However, unions are vehemently opposed to casualisation and refuse to engage with the concept. This is because engagement with casualisation and non-standard work forms is linked to an acceptance of the existence of casualisation. In formulating a response to casualisation, trade unions need to overcome this tension.

#### **4.4.2 Nature of Work**

The way in which non-standard employment such as seasonal work has been organised is such that it makes it difficult for unions to organise workers. In workplaces that strive to achieve high levels of flexibility, seasonal work as a form of casualisation of labour is used in an effort to save on the operational costs of the firm. This form of non-standard work can be found in sectors such as the food and beverage. Because of the seasonal nature of some of the foods, farmers take in workers to harvest and process the products. It is in the interest of the employer to employ such workers on a seasonal basis as opposed to employing them on a permanent basis. Some of these workers have an interest in the union, and in some cases, they do join the union. However, as pointed out by the FAWU Provincial Secretary: “when it is off-season for some products, these workers cannot be counted or considered to be members of the union” (17/06/2011). An example is the citrus farming industry in Patensie, where the union had some members, but because of some threats that the farmers were facing, as well as the seasonality of the crop, workers were without jobs for certain periods, and can therefore not be considered to be members of the union when they are not at work. The union has not indicated any specific programmes or campaigns in place that are geared towards organising seasonal workers.

#### **4.4.3 CONCLUSION**

The aim of this chapter is to provide supporting evidence for the notion that employers are making use of non-standard workers and the Temporary Employment Services (TES) industry to implement labour flexibility. They do this in order to save on the costs of employing permanent workers. In this regard, the chapter discussed flexibility in the workplace, which is epitomised by the flexible firm model. The attitudes of the unions towards the flexible firm model were explored, as these attitudes determine how the union will respond or engage with non-standard labour. The chapter outlined the ways in which employers attempt to achieve flexibility - numerical flexibility among the ‘peripheral’ workforce. Thirdly, the disadvantages of adopting the flexible firm model were discussed, as it is the disadvantages that the flexible firm model holds that are of interest to this research. This is because the disadvantages render the workers vulnerable to practices that are common in flexible work contracts. Fourthly, the effect of the demand for flexibility and the flexible firm model on trade union membership was discussed, pointing out the adverse effect that the incorporation of flexibility has on the unions. The unions’ opposition to flexibility has been explored, as they do not show an interest in engaging with the flexible firm model. However, we are yet to see a coherent programme of action that seeks to address the issue of flexibility and

casualisation. Furthermore, unions need to develop a mechanism of dealing with voluntary non-standard labour in the workplace as well, as a blanket approach towards all non-standard employment may be misguided.

# 5

## **THE TRIANGULAR EMPLOYMENT RELATIONSHIP, THE TEMPORARY EMPLOYMENT SERVICES INDUSTRY AND LABOUR BROKERS**

### **5.1 INTRODUCTION**

This chapter focuses on the Temporary Employment Services (TES) industry, which plays a key role in the casualisation of labour. In addition to the fact that there is little known about it, the TES industry was a recurring theme in the responses that were given by the trade union representatives. On the one hand, the TES industry, often called labour brokering by trade unions, is considered neither productive nor progressive, and very exploitative. This view is held by the unions, and is emphasized through their opposition and campaigns against the practice - the COSATU unions, in particular, are vehemently opposed to labour brokering to the extent that they have proposed an outright ban on the practice. On the other hand, those in favour of the TES industry defend it by claiming that it allows firms and workplaces to bring in labour as and when it is required without the added costs of maintaining a permanent workforce - as highlighted in the discussion of numerical flexibility in Chapter 2. The thesis focuses on the former view, as it is the incorporation of flexibility in the form of TES agencies that has plagued the unions.

The TES industry involves three parties: the client, the labour broker/agency and the employee. This structure shows that employment in the temporary employment relationship is externalised in that the responsibility of finding the suitable candidate for a job is given to a third party. This chapter will discuss the conditions commonly found in casualised workplaces and the TES industry, as well as the nature of interaction between the agencies, the clients, and the employees in a temporary employment relationship. The responses that were given suggest that there is little regulation of the practice, and the workers are often exploited.

The existence of the TES industry grants greater leeway for employers and firms to pursue numerically flexible employment. This is because, among other reasons, the existence of agencies absolves employers of responsibility for the non-standard workers. If there were no agencies, firms

would have to perform the task of acquiring the non-standard workers themselves. By utilising the services of agencies, the employers are able to cut down on recruitment and selection costs, and save time, thus allowing them to focus on the core aspects of the business. Furthermore, non-standard workers are normally not granted any benefits as these tend to involve cost implications for the employer. It is for this reason that employers opt to make use of these workers as they are regarded as cheaper than the standard permanent workforce.

It is expected that the TES industry, like any other, should involve and adhere to regulations governing employment relationships. However, the findings of this research suggest that workers are more often than not exploited, as the industry is poorly regulated. This chapter therefore aims to reveal the complex structure of the TES industry, and begins by outlining the Triangular Employment Relationship (TER) that is characteristic of the TES industry. Secondly, the growth of the TES industry is discussed. This discussion takes place under the premise that employers are increasingly engaging in numerical flexibility in the form of labour brokers as a cost-cutting mechanism. It is important to note this issue and the responses of trade unions, especially in the context where unions are opposed to casualisation of labour. COSATU and its affiliates have expressed disinterest in engaging with casualisation and non-standard work forms. However, if the unions are to formulate an effective strategy to deal with casualisation, trade unions need to actively engage with the phenomenon so that they fully understand it. The third part of the chapter focuses on common workplace practices under non-standard employment. These are explored in an attempt to substantiate the argument that some non-standard workers are subjected to conditions inferior to their working-class counterparts – namely, the standard workers.

## **5.2 THE TRIANGULAR EMPLOYMENT RELATIONSHIP**

The TER is used in the thesis to give content to the way in which the TES industry is organised. It is marked by complexities, which are in stark contrast to the standard employment relationship. In a standard employment relationship, two parties are involved – namely, the employer and employee. The employee is reliant on the employer to provide remuneration and work. In a TER, however, there is a third party - the intermediary, who provides and creates the employment relationship. The employee will work at the site of the client, and the TES agency, not the client, is deemed to be the employer. As a result, the client is able to escape the responsibilities associated with being an employer. The presumption is that within the TER, an employment relationship exists between the TES agency and the worker. In practice, this is the case, as the agency is the employer; however, there is more interaction between the non-standard worker and the client, as the worker is deployed

to work on the premises or firm of the client.

The TER is a noteworthy feature of casualisation. Employers have found it easier to engage in it because the responsibilities that are inherent in the role of an employer are transferred to the TES agency. The client simply pays the TES agency at the agreed upon rate, and leaves the agency to deal with the payment of the employee. Furthermore, the client firm does not have to concern itself with dismissing the workers at any point - this is left to the agency. Engaging the services of the TES industry is advantageous to the client firm for such reasons. However, the focus of this thesis is on the disadvantages that such employment holds for those workers who engage in such labour.

One of the negative consequences of the TER is that the relationship has the potential to confuse employees, as it may seem that they have two employers - the agency and the client. According to Van Der Merwe (2009:100), TES agencies normally maintain that as long as an agency states clearly in the employment contract that the employee works for them, there should be no reason for employees to be confused. However, in reality, the confusion still exists. This problem has surfaced in instances where an employee has a grievance and is given contradictory messages as to who to approach regarding the grievance. In the communication sector, the CWU Provincial Secretary recalls an incident where non-standard workers were dismissed. These were non-standard workers who were deployed by a labour broker to work at the Post Office:

We took the matter to the CCMA, and we were told by the CCMA that we cannot bring the post office as the respondent - we were told to bring the labour broker (CWU Provincial Secretary, 30/06/2011).

Inasmuch as the law is clear on whom the employer is in a TER, there is some confusion that lingers among some workers. The confusion stems from the fact that the employees get instructions from and are provided with work by the client. However, it is the TES agency, which does not give workers any instructions on site, which is considered to be the employer. These confusions can cost the workers dearly, as by the time that the cases are resolved and the intricacies of who is the employer are solved, there is a likelihood that the employee would have been dismissed and out of work. The above-mentioned situation refers to an even greater problem within the union: union leaders at times are unsure of the appropriate corrective measure that is to be enacted.

Further disorder may be sowed by the fact that even though the employment agency is deemed to be the employer, the dominant party in the TER is the client. This is because the employees of the TES

agency spend most of their working hours at the site of the client where the work is performed. Secondly, because the workers are placed at the client's site, they receive instructions about the work that is to be done from the client. There is thus minimal interaction between the TES agency and the workers after placement. Some unions, such as CWU, are of the view that the disorder is exacerbated by the fact that some labour brokers, who supply workers in the communication and ICT sectors, are reported to have no offices at all:

the employment agencies themselves are a problem because firstly, they do not have stable offices, some of them. They travel with laptops that have the databases of the employees (CWU Provincial Secretary, 30/06/2011).

The client dominates the TER because the worker is employed to work on the site of the client, and works based on the instructions given to him or her by the client. Furthermore, interaction between the labour broker and worker is less frequent than interaction between the worker and the client. It is for these reasons that the client can be considered to be the dominant stakeholder in the TER.

The rapid growth of the TES industry is seen by the union representatives as something that is almost impossible to avoid, regardless of the confusion that it may invoke amongst some workers. With the ushering in of the new economic dispensation that brought about neo-liberal economic policies such as GEAR, the country has experienced greater involvement of non-permanent workers in the labour market. What has resulted is the situation illustrated by the CEPPWAWU respondent:

You must understand that labour brokering is legal, and you won't get a job unless you register with a labour broker, and you must understand that labour brokering and employment agencies are said to be supposed to be different things, but they do the same thing. If you cannot make your application for a post at home, in order for you to get a job you must be registered with an agency, they submit your CV and you end up being employed by them to work for their clients (CEPPWAWU Provincial Secretary, 04/06/2011).

This practice is seen as creating an enabling environment for employers "to do whatever they like for maximization of profits" (CWU Provincial Secretary, 30/06/2011). The new economic order is viewed as being more favourable to capitalists, who wish to maximize profits at the expense of the workers. In addition to not having benefits, the remuneration of these workers is decided by the client, in that the money received by the agency, which dictates how much each worker will get,

depends on how much the client is willing to pay:

these poor workers that are under the labour brokers are not enjoying the benefits that other workers are enjoying. For example, they do not have any medical aid because people are suffering from a fear of taking responsibility - nobody wants to take responsibility for the poor workers, neither the labour broker, nor the client on whose premises the work is being done (COSATU Provincial Organiser, 01/06/2011).

There has therefore been an increase in the extent of non-standard labour, and as it seems, the employment of workers through labour brokers is the current trend. Furthermore, there is an element of employers wanting to absolve themselves of any responsibilities that they may incur if they employ permanent workers, as “most of those people in cleaning, security and catering functions, are drawn from the labour brokers because people are running away from responsibility” (COSATU Provincial Organiser, 01/06/2011).

This mushrooming of the TES industry and labour brokering in particular has had a negative impact on organised labour in the country. For instance, it is seen by NUMSA as an attack on labour itself. The union representative maintains that

Before 1994 for instance, we had not known about labour brokers, and we did not have the levels of non-permanent workers that we had today - this is an attack on labour (NUMSA Provincial Secretary, 07/07/2011).

The assertion that casualisation is an attack on labour is not far from the truth. This is because workplaces are experiencing a reduction in the numbers of permanently employed workers. These workers are replaced by an influx of non-standard workers who are not adequately covered or protected by labour law. Furthermore, the unions seem to be unable to organize them and speak on their behalf because any engagement with casualisation would be seen as an acceptance of the phenomenon – a view which contradicts the stance that COSATU – led organised labour has embraced.

### **5.3 GROWTH OF THE TEMPORARY EMPLOYMENT SERVICES INDUSTRY**

The fact that the TES industry has grown immensely is indisputable. It is said that TES agencies have become a very common feature in the labour market on an international scale. What needs to

be determined is the extent to which the TES industry has grown in South Africa and the Eastern Cape in particular. Furthermore, the factors that have contributed to its growth need to be discussed. The dominant view from the respondents is that the TES industry is experiencing significant growth since the enactment of the LRA of 1995:

There has been a change in that particularly after the 1995 LRA, we have seen a greater extent of non-standard labour. The reason I say this is that when you look at outsourcing, particularly what is referred to as “non-core” business, most of those are drawn from the labour brokers (COSATU Provincial Organiser, 01/06/2011).

The situation is seen by the trade union representatives as having been aggravated by the provisions of section 198 of the LRA, which makes the practice legal. This legitimizes the establishment of TES agencies. The fact that the establishment of TES agencies has been legitimized by labour legislation further entrenches the practice in the workplace. The consequence that can be expected is the rapid growth of the industry, both numerically - in terms of the numbers of employees that are provided by TES agencies - and in terms of the scope of services that are provided. This situation can be argued to put organised labour at a greater disadvantage because the unions will have to deal with a growing segment of unorganised workers, who are often subjected to working conditions that render them highly vulnerable to being exploited. This is problematic because, on the one hand, unions do not wish to engage with the issue of labour broking, as they are vehemently opposed to it and, on the other hand, they are compelled by circumstances actively to engage with the plight of these workers. This is because as numerical flexibility expands in the form of non-standard work, which is inclusive of the TES industry, the unions have to adapt to organise non-standard workers. This is because the membership base of unions - permanent workers on standard employment contracts - is gradually being replaced by non-standard workers. Unions thus have to adapt or face a situation where their membership dwindles to the point where they become insignificant.

In this regard, the unionists firmly believe that the unprecedented growth in non-standard employment has led to an undoing of the gains that the labour movement attained in the period of transition to a post-apartheid South Africa. This conclusion is drawn from the accounts of the respondents regarding the claim that the TES industry does not afford its employees the benefits and rights enshrined in labour legislation. As expressed by the NUM Provincial Secretary:

We fought for many things in the period before 1994, such as the abolishment of contract work, which affected mostly people from the former homelands (such as the Ciskei and

Transkei). We won those battles and people engaged in permanent employment. But, after this, we saw most of the gains we fought for being reversed, and they literally faded in the wake of the new economic dispensation with programmes such as GEAR. This sought to be foreign investment friendly and international competition friendly. Casual labour seems to be at a greater level than during the apartheid era, because what we saw was the return of contract employment, which we fought against, which became common practice (NUM Provincial Secretary, 15/06/2011).

It is the unions' view that TES agencies are subjecting their employees to conditions worse than those that were the norm under the apartheid era, and that it the product of provisions in the LRA (such as section 198) that are taking the unions back to conditions that are hostile to the establishment and development of a strong labour movement. As social movement unions that are opposed to repressive conditions in the workplace and society in general, the COSATU affiliates are bound to have a response to the conditions that some workers endure at the hands of these employment agencies. Widespread marches aimed at bringing the country to a stand-still if labour brokers are not banned, are evidence of the response of the COSATU – led unions.

#### **5.4 WORKPLACE CONDITIONS COMMON TO TER ARRANGEMENTS**

The unions' vehement opposition to the TES industry is based on the view that workers in the agencies are subjected to poor and unjust working conditions. It is thus imperative to explore these views in terms of the workplace practices that are commonly associated with flexible workplaces - especially those that enlist the services of TES agencies. Furthermore, this discussion aims to provide some insight into the extent to which non-standard workers are treated unfairly and subjected to poor working conditions. Secondly, this section aims to explore, through the discussion of these conditions, the extent to which unions are included in workplace processes such as recruitment. It will further discuss the disadvantage that non-standard workers experience in terms of benefits and skills development initiatives that tend to be attached to standard employment relationships. This is to give context to the unions' opposition to flexibility and the increasing presence of TES agency employees in the workplace.

##### **5.4.1 Remuneration of non-standard workers**

One of the concerns that surfaced was that, in most instances, there are differences in remuneration between standard and non-standard workers. There is a view that non-standard workers are

generally paid less and are exploited - a view that is common among many union representatives. Exploiting cheap labour is considered one of the main reasons why firms and employers choose to employ non-standard workers.

Throughout the interview process, many trade union representatives spoke about how easy it is for these employees to be exploited in terms of remuneration and their health and safety. One disturbing account was that

Profits are more important than even the health of workers at times. Workers are not supplied with protective clothing, and this is at the expense of their health and their lives at times - that's the highest price that workers have to pay, while others are smiling all the way to the bank (COSATU Provincial Educator, 01/06/2011).

This predicament has befallen non-standard workers because of the view that standard workers tend to be liabilities because standard employment comes with certain rights and expectations, which must be fulfilled by the employer. With non-standard workers, a different reality exists. This is because, as stated by the SACCAWU Provincial Educator (04/06/2011), the standard workers get more benefits solely because they have been there for longer, and the union has negotiated on their behalf. These benefits include the issue of working hours: standard workers know that they will work 45 hours a week and anything beyond that is overtime. This is not the case with non-standard workers, as they want to work as many hours as possible because they do not have any guarantee of a 45-hour week. This goes to show the extent to which non-standard workers are exploited. Generally, non-standard workers are offered poor remuneration and benefits for performing the same and sometimes greater amount of work when compared to their standard counterparts:

They say there's much value attached to cheaper workers because they enjoy what they are getting and there's no prospect of them complaining when they are non-standard workers. Chances of them complaining are very slim, compared to the worker who has power, because the more organized workers become, the better the power they have. Non-standard workers are not organized - they come as individuals (COSATU Provincial Educator, 01/06/2011).

This renders non-standard workers vulnerable to practices such as poor remuneration. The remuneration of workers employed by TES agencies is dependent on the agreement with the client.

This is because the client pays the TES an amount that is intended to cover the running costs and profit of the TES as well as the remuneration of the workers (COSATU Provincial Secretary, 02/02/2011).

This pattern of poor remuneration is reproduced by employers to the extent that in some sectors, they would rather train non-standard workers and continue paying them the little that they do instead of training and employing standard workers. This is the case in the chemicals, plastics, wood and petroleum manufacturing sectors. The CEPPWAWU Provincial Secretary (04/06/2011) maintains that because non-standard workers are not unionized and the union does not have solid programmes aimed at fighting non-standard labour in the workplace, employers will continuously find ways and means of exploiting these disposable employees. Because they are not on standard, permanent employment terms, the employer is likely to deny them benefits and remuneration to match their skills. They do the work of the skilled, permanent workers and are paid the salary of a non-standard worker (CEPPWAWU Provincial Secretary, 04/06/2011).

Because non-standard employees are at times coerced into performing the work of skilled permanent workers, one would expect that even though they are poorly paid, they receive a pay rise from time to time. However, reality has proved that these workers are far less likely to receive a pay rise, regardless of the work they do. As illustrated by the CWU Provincial Secretary:

I can recall last year, I was at the post office in East London. The workers were saying that in the past three years, they had not received any pay rise, whereas the permanent workers in the very same post office did receive the increment (CWU Provincial Secretary, 30/06/2011).

This depicts the extent to which these workers are exploited and poorly remunerated. Furthermore, there is a high likelihood that these workers are not organised into a union. They are often left without any representation when issues of remuneration and pay rises are discussed.

#### **5.4.2 Involvement of unions in workplace industrial relations**

The research has discovered that trade unions play a minimal role in processes that take place in the workplace. Such processes include the recruitment and placement of new employees; changes in production patterns; and strategizing around problems that may face the firms. There is a view that such processes are largely within the managerial prerogative (CWU Provincial Secretary,

30/06/2011) and unions are not afforded an opportunity to participate. This may be attributed to the challenges that unions face in terms of dwindling numbers due to increased flexibility and to decreased levels of recognition of the unions as representative bodies of workers in the workplaces.

A common occurrence that has been noted by CEPPWAWU Provincial Secretary (04/06/2011) is that, in some instances where the union is involved in recruitment processes, its representatives are there only as observers, and they do not actively take part in the short-listing and interviewing process:

the union does not have much of a say as to who must be employed and who must not be employed (CEPPWAWU Provincial Secretary, 04/06/2011).

The union therefore does not have much influence over the employment patterns or the nature of the employment contracts of new workers. This is but one more blow to the trade union movement and its struggle to establish itself as a force to be reckoned with in the workplace.

Given that there does not seem to be much effort made by employers to involve unions in issues that may have a bearing on the employment relationship, the unions have registered a concern that many changes that are enacted in the workplace are part of a “union-bashing agenda” (CWU Provincial Secretary, 30/06/2011). In this regard,

employers will, without engaging the union, retrench workers and employ workers from labour brokers to replace those workers. If we had a say in this regard, we would have never allowed this situation of high levels of non-permanent workers to happen (CWU Provincial Secretary, 30/06/2011).

The sentiments of the union around the issue are that employers bash unions and try to weaken the union base, and there is no attempt to engage with unions when there are changes to be made. This could be portrayed as a desire of employers to minimise the risk of vehement opposition to issues such as the increased casualisation of labour in the workplace, thus ensuring that employers will employ whomever they wish with minimal resistance.

The fact that the unions are overlooked or undermined in processes such as recruitment is attributed to the limited awareness that trade union representatives tend to have at times (FAWU Provincial Secretary, 17/06/2011). When the union decides to dispute some employment decisions, it engages

in a largely futile exercise because the employment policy of a company is rarely open to negotiation. In this regard, it is easy for employers to say

that they have followed company policy, and the policy says that it is correct for them to employ in that way (FAWU Provincial Secretary 17/06/2011).

In order for the union meaningfully to engage in such processes, it may be fruitful for it to negotiate for involvement at employment policy-making level of the workplace, as it is this policy that will govern the procedures relating to employment.

Taking part in the policy-making processes of the workplace where unions organise effectively means that the unions will be taking part in determining the direction and vision of the organisation as a whole as partners in the workplace. However, this desire is not always met favourably by the employer. In the motor, metal and manufacturing sectors, NUMSA has experienced that the union and workers are generally kept in the dark about the key direction and strategies of the organisations that they work for:

it is always a fight, and as NUMSA we always argue that we must be included in consultations and determining the direction of the organization, including where the profits must go because productivity has been very high in South African companies, but the spinoff or distribution of the productivity of the work never comes the way of the workers (NUMSA Provincial Secretary, 07/07/2011).

Therefore, the employers are perceived to have taken the approach of keeping the workers in the dark. NUMSA considers itself as having a way forward around the issue of the recruitment process:

if people are to be employed, there needs to be discussions around who is going to be employed, why, what the requirements are going to be and where they are going to be placed within the company (NUMSA Provincial Secretary, 07/07/2011).

However, the involvement of the union on these engagements is not guaranteed, as there is no law that stipulates that it is compulsory for union representatives to take part in employment decisions. Involvement is thus dependent on a negotiated process between the employer and the union. It is in such negotiation processes that the balance of power between the employer and union will be tested. Where unions are unsuccessful in convincing employers, the frustration of learning about issues

when they have already been resolved is a consequence that they have to bear:

you will then hear about those challenges and how they are going to be resolved, when management has already decided that, for example, they are going to cut the costs, and this is what will have to happen (SACCAWU Provincial Organizer 29/06/2011).

In the face of the purging of the unions from decision-making processes, some unions, such as the NUM, have taken a decision rather to guard the adherence to the recruitment policies that exist in the workplace. This alludes to the view that the union exists to “ensure that the processes were free and fair, and that they ran smoothly” (NUM Provincial Secretary, 15/06/2011). When probed further about the union’s decision to distance itself from such important processes in the running of organisations, the representative attributed the decision to the view that the union is not an employer – rather, it is there to protect the rights of workers (NUM Provincial Secretary, 15/06/2011). Secondly, the representative maintains that the union does not wish to be involved in processes of dismissing workers, as it holds the perception that once one is involved in recruitment, one will have to be involved in the dismissal of employees (NUM Provincial Secretary, 15/06/2011). The union thus elects to adopt an observer status in these processes.

### **5.4.3 Dismissals**

The subject of dismissals is a thorny issue for the trade union representatives. When looking at fixed-term employment, non-standard workers that are dispatched by labour brokers to clients are at a disadvantage in that there is no job security. If the client decides to terminate their contract with the agency or broker, the worker will, as a result, be dismissed. In this case, the worker is not dismissed because of any wrong-doing, but because the term of the contract between the agency and the client came to an end. These workers are automatically disadvantaged when they enter into these contracts:

The consequence of the fixed-term contract is that if you are on this contract, at the end of the contract, or the end of the season as in the food industry, the workers do not get the protection from being dismissed because their contracts are not ending because they are dismissed for wrong-doing - it’s just that the time came for the contract to end. As a result, the union cannot really take the matter up (FAWU Provincial Secretary, 17/06/2011).

Dismissals in this sense are fair. This is because fixed-term contract workers are not dismissed; their

contracts simply expire. This can thus not be considered an unfair dismissal- it is in fact not even a dismissal. Employers have made the tenure of workers on fixed-term contracts even more precarious by not recognizing or acknowledging the possibility of an expectation of contract renewal or permanent work for these employees. In catering and commercial services, employment contracts of non-standard workers are framed in such a way that “under no circumstances should the employees have an expectation that they will be made permanent” (SACCAWU Provincial Organiser, 29/06/2011). This puts less pressure on employers to renew non-standard employees’ contracts or to make them permanent staff members after certain periods of service. The result is that casual workers, for example, may exert themselves working long hours and carrying out every duty that they are allocated, with the hope of one day being made permanent in the workplace. However, when employers do not renew a fixed-term contract, workers who cannot establish a legitimate expectation of contract renewal, will lose their employment.

The respondents also revealed that employers unfairly dismiss non-standard workers because of minor infringements or unintentional accidents that are bound to happen in the workplace. For example, in the mining industry, employers and clients may employ fewer workers to do more work in an effort to reduce costs. They may request non-standard workers to, for example, perform driving activities in addition to the duties that they were employed to perform. However, should a mishap such as a driving accident happen while the employee is on duty, the employee is invariably charged and summarily dismissed (NUM Provincial Secretary, 15/06/2011). These non-standard workers are in a precarious position because “when the employee refuses to perform tasks that are outside of their job demarcation or jurisdiction, they are likely to be disciplined or dismissed” (NUM Provincial Secretary, 15/06/2011).

Thus because non-standard workers are at risk of being dismissed at any time, they perform any job given to them. This is not the case for standard, permanent workers - they can refuse to perform certain tasks for health and safety reasons, for instance. This is because permanent workers have rights that are granted and protected by labour legislation, and they are more likely to be union members as compared to non-standard workers. They are therefore not as easy to dismiss as non-standard workers.

The situation is worse for some non-standard employees in sectors such as security and transport. The Provincial Secretary of SATAWU reports that if, for example, an employee is contracted as a cleaner at a certain establishment, that employee is forced to perform tasks that may not have been stipulated in their contracts. For example,

If their supervisor at the company tells them to go and fetch their mail from the post office during work hours, for example, if the contract worker refuses, they will be dismissed or transferred to a different place (SATAWU Provincial Secretary 01/07/2011).

In other sectors such as automobile manufacturing and engineering, non-standard workers, especially those who are placed by labour brokers and employment agencies, are at a greater disadvantage in terms of unfair dismissals. They are reported to be vulnerable to being dismissed at a whim by the client, without even being informed of the reasons for the dismissal. According to the NUMSA Provincial Secretary

The employers just tell the labour broker that they do not like a certain employee, and that employee loses their job just like that. So, it is so cruel. No due processes are followed. You are just told that you cannot walk into the plant, and that you must go to the labour broker (NUMSA Provincial Secretary, 07/07/2011).

Furthermore, the dismissed employees may find themselves in a situation where their livelihoods are uncertain because

the employee will not have a place to work for some time. The labour broker withdraws the worker from the workplace, but does not dismiss them. They will tell the worker that they are yet to find another client for them. All this time, the employee is not working and not making an income (FAWU Provincial Secretary, 17/06/2011).

Employers also tend to dismiss workers for engaging in any trade union activity. When an employee is not a standard worker, employers can easily dismiss them when they join a union, and these workers are not protected by the trade unions, as they rarely join because of the fear of dismissal (NUMSA 07/07/2011). This is the vicious cycle that these employees get into when they engage in non-standard employment.

It would seem that although unions are opposed to this kind of employment, their hands are tied as they watch employers getting away with murder where non-standard employment is concerned. One can conclude that the labour movement is gradually losing its influence in the workplace where non-standard employment is concerned. This is due to the influx of non-standard workers, who the unions are not adequately equipped to organise.

#### 5.4.4 Benefits

Standard and non-standard workers differ in terms of the benefits that they receive. Many employers and agencies are reported to have denied non-standard employees benefits such as medical aid, pension funds and leave days. One possible reason for this could be that employers and employment agencies are trying to avoid responsibility for these workers to save on labour costs (COSATU Provincial Secretary, 01/06/2011).

They do not have a pension fund, no medical aid. They only have UIF, which itself is not a benefit; it is a legal requirement. In terms of other benefits, these employees do not enjoy these benefits at all (CWU Provincial Secretary, 30/06/2011).

The issue of not receiving any benefits is a reality for non-standard workers in all industries, as reported by the respondents. Furthermore, it is much cheaper for employers not to grant non-standard employees any benefits:

When you look at the balance sheet in terms of labour costs, when the employer quantifies the workforce, they say: "I have 10 workers, and every worker is entitled to 21 days leave in terms of the BCEA, for example". When this is quantified, that worker will still be getting paid their full remuneration for the days that they are on leave (FAWU Provincial Secretary, 17/06/2011).

This is an additional cost to the employer because the workers are paid for the days that they are on leave. When the employer has to pay a non-standard worker for a day when the worker has not had any output, the purpose of employing these workers is defeated in the sense that the savings that the employer has made by utilising less costly labour will be reduced.

Employers make it easier to avoid granting non-standard workers benefits by not disclosing the number of non-standard employees that are employed in their companies. It is reported that

The employer needs to pay for benefits such as provident fund, and the employer does not pay for such with non-standard workers, especially if there is no disclosure. Secondly, non-standard workers will not affect the employer's balance sheet because they do not reflect as costs. The only costs that are put there are the fixed costs. Since they are not fixed costs, they will appear as "miscellaneous" costs. The employer will then put an amount and

explain it in the notes, where it will be explained that it is the cost of casual labour as and when it is needed (FAWU Provincial Secretary, 17/06/2011).

Because there is no disclosure on the part of the employer, it becomes difficult to track the use of non-standard labour. It is an even greater challenge, as there are no records to keep track of how many non-standard workers are being employed, as well as the frequency of this type of employment. Employers seemingly get away with these practices because non-disclosure makes it easier for them to deny benefits to the workers, as there are no written records of these recruitment and employment transactions.

#### **5.4.5 Training and Skills Development**

It is reported that employers and employment agencies involve themselves in skills development initiatives by training some non-standard workers for the work that they are required to perform. In this regard, employers and agencies can belong to various Skills and Education Training Authorities (SETAs) (Van Der Merwe, 2009:155). However, the notion that employers and agencies develop the skills of non-standard workers through various training programmes can be argued to be a fallacy. With casual workers, for example, training is at times an impossible task because

They are at work on one day, but they do not know where they'll be on the next day. They rely on someone who is going to call them and say: "go to another place today, and tomorrow go to another" (COSATU Provincial Organiser, 01/06/2011).

Some employers commit acts such as omitting some information when it comes to reporting on employment trends, as well as training initiatives that have been embarked on:

That has got to do with the reports that are being submitted by the companies to the Department of Labour in terms of employment equity and training programmes. They are hiding this element to the state and the Department of Labour when it comes to reporting and disclosing. They do not want to be seen to be employing this many non-permanent workers. Because if they take them along to the programmes that are offered by the SETAs, they have to declare the numbers of non-standard employees that they have. So, they avoid the declaration that they have to make (CWU Provincial Secretary, 30/06/2011).

This disadvantages the non-standard workers who find themselves engaged in jobs because they are at risk of losing out on training and developmental initiatives due to their employers' quest to increase profits by not declaring the numbers of non-standard workers employed. On the other hand, some employers have been found to obtain money unlawfully by sending their employees on training initiatives. For example, in the mining industry, employers send employees to training but, on completion of these training courses, the employers allegedly withhold the employees' certificates, and their skills are not recognized by the employers. Likewise, in the construction industry,

non-standard workers are taken to training courses, as per development requirements by the SETAs. However, when the workers complete their training, the employers withhold their certificates, and do not promote them, and say that they will seek better avenues elsewhere. This shows us that they are just sending people for training so that they can claim from the SETAs (NUM Provincial Secretary, 15/06/2011).

These loopholes and sub-standard working conditions, especially where non-standard workers are concerned, are a compelling reason to advocate for effective regulation of the labour market in this regard.

## **5.5 CONCLUSION**

Generally, the TES agency industry has grown significantly as employers strive to meet fluctuating market demands with the most minimal financial repercussions possible. The rapid expansion of the TES industry is an issue that has troubled organised labour as the union representatives have reported on the poor working conditions and low remuneration rates of such non-standard employees. Furthermore, the nature of the TER has been discussed. This is relevant in that it is a departure from the standard employment relationship. The sentiments of the union to such changes are the essence of the thesis. In this regard, the unions have expressed that in addition to bringing about poor working conditions and low remuneration, the TER brings about a sense of confusion for the workers, as it is assumed that the relationship exists between the agency and the employee. However, in reality there is more interaction between the client and the worker, rather than the worker and TES agent.

In light of the growth of the TES industry, the unions identified some common workplace practices that are considered a further setback to the labour movement. These include ineffective union

participation in processes such as recruitment and hiring of staff, poor remuneration of non-standard workers, few benefits, and limited skills development opportunities.

In this climate of the expansion of the TES industry, the unions did not show any consolidated programme of action that is aimed at dealing with labour brokers, besides a call to ban them. They advocate for this solution because they are of the view that this industry is poorly regulated and, ultimately, it is the poor and vulnerable workers who suffer. However, the union representatives have not alluded to the existence of a policy or union constitutional amendment, which is aimed at dealing decisively with labour brokers or with the surplus of vulnerable workers that this system brings about.

# 6

## **THE CASUALISATION OF LABOUR IN THE EASTERN CAPE: SECTORAL CASE STUDIES**

### **6.1 INTRODUCTION**

In an ever-changing market with fluctuating demands, a casualised workforce is seen to be ideal by employers. The expansion of flexibility in the workplace, which provides fertile ground for casualisation to thrive, can be considered a contributing factor to the intensification of casualisation in the Eastern Cape. Employers are following trends such as adopting aspects of the flexible firm model in order to save on costs and relieve themselves from some responsibilities inherent in standard employment contracts. Moreover, employers have taken advantage of the mushrooming of the TES industry, which presents a surplus of cheap labour. This shows their commitment to ensuring numerical flexibility in the workplace in an effort to retain as much profit and control as possible. Flexibility can therefore be said to happen on the employer's terms, and as stated by Klerck (2004:230), it is the employer's needs rather than the employee's preferences that determine the extent of the usage of flexible working patterns.

As discussed in Chapter 2, non-standard employment is precarious, insecure and unprotected. It is multifaceted and is inclusive of types such as temporary, part time, casual and seasonal workers. It is important to note the inherent differences in the use of non-standard employment, as they provide insights into the non-standard workers that the different industries are most likely to adopt based on sectoral dynamics. For example, in the construction sector, non-standard employment, in the form of contract workers, is used because the nature of the industry is inherently contract-based. Similarly, in the citrus farming sector, most of the workers used are seasonal workers because the crops that are farmed and harvested are naturally seasonal. These sectoral dimensions are important because they imply that a blanket approach to non-standard work may not be beneficial for unions if they are to effectively respond to casualisation. A more sector-specific approach can be argued to work best, as it would speak to the challenges and possible solutions that could be adopted and work well in the different contexts.

This chapter aims to discuss the sectoral dimensions of non-standard work. These dimensions are based on the responses given by trade union representatives, and have proved to be an obstacle in their recruiting and organizing activities. It is important to note the identity of the labour movement in the country, as this determines how the unions respond to challenges such as increased casualisation of labour. As discussed in Chapter 2, COSATU and its affiliates can be considered to exemplify social movement unionism, which opposes repressive workplace and political regimes. Because workers are essentially members of the community, it can be expected that COSATU unions will have a view that rebukes the injustices that some non-standard workers experience. These sentiments can be seen in the numerous calls for the banning of labour brokers by COSATU and its affiliates.

Unions are dealt a further blow by the fact that on one hand, non-standard labour is inherently organised in such a way that makes it difficult for non-standard workers to become members of a union. On the other hand, unions are reluctant to engage with casualisation because of a belief that an engagement with the phenomenon implies an acceptance of casualisation on the part of the unions. With the vacuum left by inadequate protection of the non-standard workers, the chapter aims to show that employers consciously take advantage of the situation, and selectively adopt aspects of the flexible firm model. They do this by incorporating numerical flexibility initiatives such as the employment of non-standard workers into the workplace. It also aims to show how, in the absence of a strong union opposition and clear policy and programme of action, employers are able to take advantage of the situation by consistently applying numerical flexibility initiatives.

## **6.2 SECTORAL DIMENSIONS OF NON-STANDARD LABOUR**

Industrial restructuring is characterised not only by its highly uneven nature, but also by its sectorally specific dynamics. In some industries significant changes have occurred, while in others, changes are relatively minor modifications to a pre existing system of production. Flexibility theorists were quick to generalise their findings across a number of industries, thereby ignoring “the limits created by general trends and particular forms of mechanisation” (Blackburn et al, 1985:99). The sectoral dimensions of restructuring, as Meulders and Wilkin (1987:16) note, are very rarely seriously considered in the flexibility debate. The balance between security and vulnerability, flexibility and rigidity tends to vary with the technological and organisational structures of production in different economic sectors (Tailby and Whitston, 1989; Storper and Scott, 1990; Horrel and Rubery, 1991; Burgess, 1997). This implies that changes in the workplace are not entirely random or arbitrary. Although the nature, extent and direction of change depend on a

multiplicity of factors, they are patterned by the internal structures and dynamics of an industry.

In contrast to the emphasis on determinant managerial strategies by flexibility theories, a focus on the limits and possibilities generated by the material characteristics of different productive technologies and factory regimes presupposes a more complex, contested and sectorally specific process of industrial and labour market development. Although many employers face similar pressures to reduce costs and increase productivity, research shows that “the modalities and tempo of restructuring varied across and within occupations, industrial sectors and by gender” (Gottfried, 2000:235). As Storper and Walker (1989:158) argue, labour demand is differentiated because

[T]he nature of the product, the structure of the markets, the possibilities for production technology, and production organisation feed on each other to propel an industry along a particular development path; they engender divergent sectoral development, based on sequences of positive feedback between technical possibilities, cost structures, and market structures.

Social relations in the workplace, as Storper and Walker (1989:166) point out, “have qualities peculiar to every industry or group of industries, whatever the levelling effect of labour market legislation and large unions”. For instance, a basic contrast can be drawn between capital- and labour-intensive systems of production. Significant sectoral variation in capital –labour ratios generates distinct pressures to restructure workplace relations and encourages different competitive strategies. The predictability, frequency, intensity and duration of demand fluctuations will tend to vary depending on the nature of the product or service as well as the organisational and technical features of the production process. There is no ‘one best way’ in which a firm must respond to fluctuations in demand and the associated regulatory dilemmas that confront it. The precise manner in which the opportunities and constraints imposed by broader structural conditions (such as the nature of product markets) are experienced is contingent on the manner in which the opportunities and constraints imposed by broader structural conditions (such as the nature of product markets) are experienced is contingent on the manner in which the labour process is organised (Edwards, 1986). This implies considerable variation in both the way that enterprises may choose to compete and the methods they may deploy to raise productivity.

Instead of seeking a general explanation for the use of non-standard employment, a more fruitful approach is to focus attention on the reasons why certain industries are more inclined to resort to casualisation or outsourcing. This calls for a study of the factors peculiar to a sector- its product market, technologies, industrial relations and so on- that encourage or facilitate the recourse to non-

standard employment. There is strong evidence that the frequency with which employment flexibility was pursued by employers varies strongly by industry group. Given the complex distribution of non-standard employment across and within economic sectors, however, there can be no simple or functional relationship between the type of production process or market conditions and the use of non-standard employment. To be sure, sector-specific conditions do not “set up a determinate labour demand so much as they set the bounds for a political relationship between employers and workers which serves as an ongoing basis for employers’ definitions of labour demand” (Storper and Walker, 1989:166). Despite the lack of a simple or direct correspondence between the type of firm and the use of non-standard labour, case studies have revealed some correlation between the nature of the production process and the type of flexibility needed. For example, where volatility in a firm’s workload is an important determinant of levels of outsourcing and casualisation, it suggests that employers place a premium on the ability to offer stable employment to their regular workforce.

There are not only distinct differences in the propensity of various industries to casualise or outsource a part of their workforce, but also marked variations in the particular types of non-standard employment found in different sectors. Industries characterised by large firms tend to use a greater variety of non-standard employees than those dominated by small firms since the former are better equipped to manage diversified employment forms (Shah and Ward, 2003). The co existence of different forms of employment in the workplace, attracting varying degrees of statutory and institutional regulation, also generates a number of sectorally specific advantages for employers. Large manufacturing plants, for instance, cut costs by hiring temporary or part-time workers in elementary occupations and expand their services by outsourcing specialised skills. The various types of non-standard labour are therefore employed for a variety of different and interacting reasons, in different market circumstances and positions in the occupational hierarchy, and as a ‘solution’ to different regulatory dilemmas. The use of non-standard employment is not solely determined by the volatility or unpredictability of product markets as implied by the flexible-firm model; equally important are the functional divisions of a firm, the skill requirements of various stages of production, degrees of specialisation, levels of job protection, and labour-supply factors. In other words, the relationship between industrial sector and the levels, forms and functions of non-standard employment is multi-faceted and contingent on a whole host of factors.

This section discusses the sectoral differences in employment practices, as well as the sectoral dynamics of the provincial economy. The sectoral dimensions are important to note because in formulating an effective response, these differences in the extent and reasons for utilising non-

standard labour need to be taken into account. A blanket approach may be misguided and not consider some sector-specific issues of importance.

### **6.2.1 Chemical, Energy, Paper and Wood Sectors**

The South African chemical industry is of substantial economic significance to the country, contributing around 5 per cent to GDP and approximately 25 per cent of its manufacturing sales. The industry is the largest of its kind in Africa ([www. mbendi.com/indy/chem/af/sa/p0005.htm](http://www.mbendi.com/indy/chem/af/sa/p0005.htm)). Since South Africa's re-admission to the global economy after 1994, South African chemical companies focused on the need to be internationally competitive and the industry is reshaping itself to meet market trends and demands, thus the utilization of non-standard labour ([www.mbendi.com](http://www.mbendi.com)).

In terms of wood processing and paper manufacturing in the Eastern Cape, it is reported that about 770 500 cubic metres of timber is processed in the province annually, producing some 328 700 cubic metres of sawn board, mostly for the construction sector, and that there are 47 sawmills in the province, as well as 11 pole-treatment plants, a chipboard operation and a veneer plant. There are also seven small manufacturing plants producing charcoal from gum and wattle ([www.easterncapebusiness.co.za/pls/cms/ti\\_secout.secout\\_prov?p\\_sid=27&p\\_site\\_id=135](http://www.easterncapebusiness.co.za/pls/cms/ti_secout.secout_prov?p_sid=27&p_site_id=135)). The timber generated from these sources also feeds into the local furniture-manufacturing firms. The biggest paper mill in the province is Sappi Fine Paper's Adamas Mill in Port Elizabeth, and has a producing capacity of 40 000 tons per annum. The mill specializes in uncoated, wood-free graphic paper and produces branded printing paper and board ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)).

The incorporation of numerical flexibility initiatives as a cost-saving mechanism has had some detrimental consequences for workers as well as the union in these sectors. The first challenge that CEPPWAWU's Provincial Secretary noted is that since 1996, there has been a sharp decline in the membership of the union. Some of the consequences of economic restructuring include an increase in privatisation and outsourcing of some functions from Port Elizabeth to companies in bigger cities such as Durban and Cape Town. For example, the outsourcing of some of the glass manufacturing functions of Shatterproof Glass Company has led to a significant reduction in the glass-manufacturing sector of the union membership:

in Port Elizabeth, there was a company, Shatterproof, which performed almost all its functions in-house, which after this period, transferred its warehousing functions to a warehousing company. Because this other warehousing company was involved in

transportation, some members transferred to SATAWU (CEPPWAWU Provincial Secretary, 04/06/2011).

Even though some of these employees are said to have joined another union because of the nature of the company that they were transferred to, this still translates to a loss for CEPPWAWU. Secondly, this initiative depicts the desire of employers to reduce costs as much as possible by transferring some functions to third parties. This shows employers' commitment to rendering their workplaces numerically flexible.

Employers' attempts to reduce costs have culminated in the increased use of non-standard workers in the form of temporary workers. These workers are estimated to constitute around 10 per cent of the workforce (CEPPWAWU Provincial Secretary, 04/06/2011). These workers are employed as general workers in firms such as the sawmills, glass manufacturing firms, wood-processing and furniture-manufacturing firms (CEPPAWU Provincial Secretary, 04/06/2011). The temporary workers are sourced from the TES industry and employment agencies. Moreover, these workers are not highly skilled:

The non-standard workers are obviously less skilled than standard workers because these people are taken off the streets. They will be less skilled, but the employer will make means of skilling them so that they may do the work of the skilled, permanent workers and get a lower payment rate (CEPPWAWU Provincial Secretary, 04/06/2011).

The skilling initiative of the unskilled non-standard workers poses a threat to the standard workers, as the possibility of being retrenched in favour of a cheaper, non-standard worker becomes a reality. This sows divisions between the standard and non-standard workers in the workplaces. As discussed in Chapter 2, the increased use of non-standard workers has negative consequences such as the division of the workers. Furthermore, the tensions between standard and non-standard workers are but one reason why non-standard workers are sometimes opposed to unions- they see the unions as only being concerned with the needs and interests of permanent workers.

With regard to gender and age, it is mostly young females who are found in such jobs. This has been attributed to the notion that women are endowed with family responsibilities by virtue of being females:

females can work hard because they are thinking about their children and so on. To a

woman, work means a lot because of these commitments (CEPPWAWU Provincial Secretary, 04/06/2011).

What has also surfaced is that because of the high unemployment rate, it is young people who are most likely to be employed as temporary workers. These workers are often semi-skilled, and are preferred by the employer because they will be trained, but will not be entitled to promotion as they are not part of the permanent workforce:

The employers are seen to prefer these workers because they are, in some cases, fresh out of school or institutions of higher learning, and they are easily trainable, and can get the skills needed to do the job as compared to older people (CEPPWAWU Provincial Secretary, 04/06/2011).

Furthermore, it may be easier and cost-effective to train such workers instead of training the existing standard, permanent workers as the expectations of promotion may be invoked by such an exercise.

In response to the job losses that were caused by increased flexibility in the workplace, the union resolved to hold a Jobs Summit ([www.ceppwawu.org.za](http://www.ceppwawu.org.za)). This summit was intended to assess the crisis, and to look at ways in which the union could support the sectors that were vulnerable to job losses. However, the 8<sup>th</sup> secretarial report reveals that the union was not able to convene the Job Summit due to the internal problems of the organization ([www.ceppwawu.org.za](http://www.ceppwawu.org.za)). The negative effect of this was that the union was unable to overcome these problems and come together in realising the common goal of strategizing around the retention of jobs.

### **6.2.2 Food and Beverage Production and Processing**

The industry in the province has given rise to some of the country's well-established brands such as Ouma rusks and Mrs HS Balls' Chutney. To date, it is only the manufacturing of Ouma rusks that has remained in the province. The production firm, which employs around 87 people, is said to produce an average of 37 million rusks per annum, which makes the manufacturer a significant player in the economy of the small town of Molteno ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)). There are several large enterprises that are located in Port Elizabeth, namely Cadbury Chocolates, Coca-Cola, Sabco and SAB Limited's Ibhayi Brewery. Recently, Clover built a new UHT and fresh milk

factory in the city as well. This is a significant development, as it is reported that the Eastern Cape produces 21.8 per cent of South Africa's milk ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)).

Some challenges that the sector has faced has been closures of big national companies such as National Foods, as well as staff reduction initiatives that took place in workplaces such as the South Africa Breweries' Butterworth plant (FAWU Provincial Secretary, 17/06/2011). As suggested by FAWU's Provincial Secretary, some changes in production have been due to the notion that it is more cost-effective to produce goods elsewhere:

If you look at Cadbury, for instance, chocolate manufacturing has taken a shift because it is easier to produce chocolate elsewhere, and then import it, as opposed to manufacturing it in-house. As a result, that shrink manifests in the reduction of work (FAWU Provincial Secretary, 17/06/2011).

This reduction of work manifests itself in the reduction in the number of workers employed to do the work, as well as the scope of the work that is done at the workplace. Furthermore, with the admission of South Africa to the global village came certain concessions that have had an effect on the industry. One such concession is the reduction of tariffs and duties pertaining to trading between countries. In this regard, manufacturers such as Nestle have found it easier and more cost-effective to import chocolate from elsewhere than to produce it in the country (FAWU Provincial Secretary, 17/06/2011). This has been noted as a tendency in the dairy processing sector as well, where companies such as Parmalat and Clover have reduced the number of staff employed as a result of the discontinuation of the manufacturing of powdered milk, which is now being imported as a finished product (FAWU Provincial Secretary, 17/06/2011). The negative consequences of such decisions are felt by the employees, as the removal of chocolate production entails closures of parts or whole manufacturing centres, thus leaving them unemployed and destitute.

The concerted effort of employers to casualise the workforce compelled the researcher to ask which jobs are unlikely to be casualised in order to get a clear picture of the situation:

it is only the specialized jobs that are not likely to be casualised. For example, if you are in the beverage sector and you are a microbiologist, microbiologists are not easy to find, so you are not at risk of losing your job to a casual worker. As for the general work and general tasks, most of the tasks are done by casuals (FAWU Provincial Secretary, 17/06/2011).

FAWU Provincial Secretary estimates non-standard workers to constitute around 65 per cent of the staff-component - a figure that incorporates temporary, part-time, casual and sub-contracted workers. Temporary workers are mostly females and young people, and it is reported that this is so to the extent that there are some employers who employ people, who by law, should not be on the labour market:

In terms of the Child Act, the age of majority is 18 years. Now, you find people who are under that age working because particularly on the farms, they are working because they are supplementing the salary of the parents, because the parents are not earning enough to support them (FAWU Provincial Secretary, 17/06/2011).

The unfortunate reality is that at times, families who work and live on farms are poorly paid to the extent that it becomes incumbent on the children to work on the farms in order to assist the family in making ends meet. This situation poses a challenge because families have financial demands that need to be met, and in order for them to take steps towards meeting these demands, they have to agree to arrangements that are in conflict with the law.

The union perceives the main reason for employers to make use of temporary workers as the desire to accumulate profit, and to deny workers the right to protection against unfair dismissal:

In terms of section 185 of the LRA, the workers have got the right not to be unfairly dismissed. Now, if you are employed as a temp worker, then you are dismissed at any time, either at the end of the term of the contract, or the employer will find any other reason to dismiss you (FAWU Provincial Secretary, 17/06/2011).

When employers employ workers on such terms, it is understood that the workers' rights and benefits are limited, if they are granted any to begin with. As discussed in Chapter 2, these circumstances hold more benefits for the employer than the employee. Therefore, when employees are not afforded some rights or benefits, less responsibility and financial liability accrue to the employer.

According to FAWU's Provincial Secretary (17/06/2011), part-time workers form part of the 65 per cent component of non-standard workers in the food and beverage processing sectors. Most of these workers are females and are usually found in clerical and office work. The increase in the employment of part-time workers has been attributed to the notion that workplaces are increasingly

being occupied by young people, who are not necessarily seeking permanent employment (FAWU 17/06/2011).

The part-time employment arrangement is more beneficial for the employers, as they remunerate workers strictly based on the work done or hours worked, as opposed to providing a fixed salary. A practical example of this can be made of two workers (permanent and part-time), who put in an hour's work. Because the permanent worker has clocked or signed-in in the morning, he or she will be paid for a full day's work, as opposed to the part-time worker who will be only paid for that hour's work (FAWU Provincial Secretary, 17/06/2011).

Sub-contracted workers are also part of the estimated 65 per cent component of non-standard workers within the industry (FAWU Provincial Secretary, 17/06/2011). According to FAWU Provincial Secretary (17/06/2011), this category of workers is inclusive of males and females, as well as the occasional foreign national. This group is all-encompassing because these workers "are not skilled - they are the group that is willing to do any general work" (FAWU 17/06/2011). They are thus readily available and can be dismissed as easily as they are employed. Sub-contracted labour in the industry has grown steadily in the last ten years - a development that can be attributed to three reasons. Firstly, the issue of the "new worker concept" (FAWU Provincial Secretary, 17/06/2011), which entails a worker who is able to adapt and be part of the flexible firm. This is a worker, who subscribes to and epitomises the notion of flexibility, but most importantly, is not interested in a long-term or permanent employment contract, and takes no interest in structures such as unions. Secondly, the rate of unemployment and the job losses due to the economic recession has rendered many people so desperate for work that they will resort to taking any job that is offered to them (FAWU Provincial Secretary, 17/06/2011). The influx of foreign nationals can also be considered to be a contributing factor (FAWU 17/06/2011). This is because people who come from neighbouring countries are invariably destitute and seeking employment in order to support themselves and their families. This situation renders them vulnerable to employers who want to utilise cheap labour. They then fall into the cycle of getting involved in sub-contracted labour with no benefits, insufficient protection by labour legislation, and poor remuneration. These sub-contracted workers perform tasks ranging from general work to semi-skilled work, and this assists employers in their endeavour to generate as much profit as possible and to produce in a cheaper way (FAWU Provincial Secretary 17/06/2011).

At the national level, the union has responded by embracing COSATU's call for the banning of labour brokers. However, at provincial level, the FAWU representative emphasises legislative

amendments as a tool that will assist the union in terms of dealing with the increased casualisation of labour in the workplace. For example, the union's Provincial Secretary maintains that the union is "relying on section 77 amendments to the LRA as a means of responding to casualisation as organised labour" (FAWU Provincial Secretary, 17/06/2011). This section deals with protest action to promote or defend socio-economic interests of the workers. The union seeks to utilise this provision to organise workers to engage in protest action against labour brokers as a socio-economic issue. The union, however, feels that amendments will not achieve the goal of banning labour brokers. Nevertheless, the provincial secretary did not allude to any specific programmes geared towards realising the union's stance on the issue. This is problematic in that the union does not have a specific, coordinated response and programme of action that seeks to deal with casualisation.

### **6.2.3 Clothing and Textile Manufacturing Sector**

The unions in this sector are reported to be organizing under very difficult circumstances. SACTWU's Provincial Secretary reports that in 1996, the union enjoyed a membership of around 16 000 in the province. Massive job losses have affected the union to the point where union membership currently stands at 5500 members (SACTWU Provincial Secretary, 30/06/2011). In an attempt to rise to the challenges that confront the industry, SACTWU Provincial Secretary reports that the union has taken an active interest in trying to ensure improved working conditions for non-standard workers in the industry. For example, it is reported that one of the critical demands made by the union at the annual collective bargaining negotiations was the guarantee of job security in order to alleviate the effects of casualisation (SACTWU Provincial Secretary, 30/06/2011). This proved to be a fruitful step on the part of the union:

we managed to reach an agreement with the employers, that after six months of employment, contract workers shall be made permanent, and their conditions of employment shall accordingly be adjusted to match those of permanent employees. Furthermore, we also agreed that at no stage would contract workers exceed 10 per cent of the total workforce. It is in our collective agreements (SACTWU Provincial Secretary, 30/06/2011).

This was a critical victory for the union, and the employees in general - especially those whose jobs are likely to be casualised. It further entails that casualisation of work and its effects on the industry are automatically minimized.

Temporary workers form part of the 10 per cent of non-standard workers in the sector, and given the fact that this is a predominantly female-dominated sector, the majority of these employees will be female and black, and according to SACTWU Provincial Secretary (30/06/2011), most of the machinery is operated by the females – that is, the machinists making jerseys, tracksuits and T-shirts. Males are more likely to be found in the mechanically-related occupations. (SACTWU Provincial Secretary, 30/06/2011). The skill levels of these employees are rather limited, as most of the workers in the industry are only trained to operate sewing machines (SACTWU Provincial Secretary, 30/06/2011).

Seasonal workers, who are employed for a specific task only, are also found in the industry. These workers typically work for a period of about three months and then leave the firm (SACTWU Provincial Secretary, 30/06/2011). Seasonal workers are mostly black, and there are no gender imbalances - there is an equal representation of men and women in this category of employment. As with temporary workers, these workers are not skilled, especially since it is the employers who maintain that these workers need not be skilled because “they [employers] can get someone from the gate and tell them to do something, and they will do it as they are told” (SACTWU Provincial Secretary, 30/06/2011). An example of the kinds of work performed by seasonal workers is packing bags in warehouses - a menial task that requires little skill or education.

#### **6.2.4 Retail and Commercial Services Sectors**

The effects of large-scale restructuring have led to downsizing by retailers in order to lower wage bills and an increase in the use of non-standard labour, particularly in the form of casual and sub-contracted labour (Kenny, 2003:203). The consequences of these changes are obviously the loss of permanent and stable work. For SACCAWU, a major concern is that when permanent workers’ terms of employment are transformed such that they become non-standard workers, their salaries are reduced, and the benefits that were secured for employees become limited or even revoked:

You get a person that earns that R1 200 per month with UIF - no provident fund, no medical aid, no housing allowance - nothing that we had negotiated for (SACCAWU Provincial Secretary, 29/06/2011).

A further challenge that has been noted is the perceived belief among employers that in order to get the most output from workers, they must not feel that they have job security, and must thus work to

impress the employer daily (SACCAWU Provincial Secretary, 29/06/2011). The result has been that

At Sun International, for example, when they started employing casuals, a person would not know if they would come to work the following day, and there were uncertainties pertaining to how many hours they would work per month (SACCAWU Provincial Secretary, 29/06/2011).

The result would be that workers worked themselves to the bone, putting in as much extra work as they can, disregarding any health hazards and any other potential dangers in the workplace (SACCAWU Provincial Secretary, 29/06/2011). This, however, is in no way beneficial to the worker because in an instance when the worker gets ill or is injured, it will be a difficult task to get the employer to accept responsibility. It is this avoidance of liability and financial responsibility, which, among other things, has encouraged employers to employ workers on a casual or sub-contractual basis. It is for this reason that the union managed to pass a system of scheduled employees, which guarantees a minimum duration of work per month for non-standard workers (80 hours). They also have the benefits that are afforded to other workers by virtue of working 80 hours a month (SACCAWU provincial Secretary, 29/06/2011).

There is an extensive use of non-standard labour in the sector. As asserted by the SACCAWU Provincial Secretary, “non-standard work in the sector accounts for almost 60 per cent to 70 per cent of employment” (29/06/2011). This estimation is expected to escalate, as the rising poverty and unemployment rates continue to ravage communities in the Eastern Cape. People who are the victims of these processes are highly vulnerable to being exploited:

For example, if a person is not employed, and you give them a job, all that that person is interested in is a salary. That person will be as flexible as possible because they don't want that job to come to an end. So you can make this person work for 12 hours, pay them for eight, and then give them four hours “off” tomorrow (SACCAWU Provincial Secretary, 29/06/2011).

According to the union's Provincial Secretary, this can easily go unnoticed, or unopposed, as most of the time, the employees are just happy to have a job, regardless of whether they are permanent or not, or whether they have benefits or not. In other parts of the sector, the percentage is higher - for example, where independent retailers are concerned (such as the retailers with one owner) - the prevalence of non-standard work can reach 90 per cent (SACCAWU Provincial Secretary,

29/06/2011). In this instance, it is expected that there may be less strikes in these sub-sectors because there are limited staff numbers and a strike by such few workers who are most probably not organised into a union, will not make any difference. Because the striking workers are unlikely to hold a relatively big strike that is supported by the union, the employer may not feel the impact of the industrial action.

Almost 60 per cent of non-standard employment takes the form of temporary work in this industry (SACCAWU Provincial Secretary, 29/06/2011). Temporary work is mostly performed by females rather than males, and the racial composition is such that the majority of temporary workers are black, followed by coloureds. According to SACCAWU Provincial Secretary (29/06/2011), the job categories that are most likely to be occupied by temporary workers are waitressing in the case of restaurants, room attendants in the hotels, and merchandisers or, as explained by Kenny (2003:204), “shelf-packers” in retail shops such as Shoprite, Checkers and Pick ‘n Pay. The easily exploitable nature of these workers, as well as their flexibility and extremely low remuneration rates, are factors that can be considered to influence the increased usage of temporary workers by employers in the industry.

The research conducted by Kenny (2003) on South Africa’s retail sector indicates that non-standard workers tend to be younger, in their mid-twenties and sub-contracted workers tend to be in their late twenties (Kenny, 2003:207). Indeed, when looking at the provincial sectoral dynamics given by SACCAWU, it is apparent that the majority of the non-standard component of the workforce in the industry is comprised mostly the younger workers (SACCAWU Provincial Secretary, 29/06/2011). The union is of the opinion that the youth of today is more educated than that of yesteryear: they are more likely to be skilled compared to the existing permanent employees who tend to be much older. Furthermore, the union has observed that it is these young workers who are easily trained on the more sophisticated aspects of performing work, such as the use of cutting-edge machinery and technology (SACCAWU Provincial Secretary, 29/06/2011). This makes it much more desirable for employers to replace permanent workers with younger, more trainable, more educated and skilled workers who, because of a desperate need for employment, will settle for any kind of job that they are offered.

It is SACCAWU’s view that the act of being employed should be a life-changing experience for workers. The union’s Provincial Secretary maintains that it is the duty of the unions to ensure that the lives of people are drastically improved (SACCAWU Provincial Secretary, 29/06/2011). It is for this reason that the union argues for quality and decent jobs, and thus advocates for the banning of

labour brokers. In responding to the problems at workplace levels in the province, the union representative highlighted the challenge that the union is facing pertaining to organising non-standard workers as one possible issue that the union can strategise around:

the union is going to shrink because we cannot organize those whose lifespan in the organization does not extend beyond three months contracts (SACCAWU Provincial Secretary, 29/06/2011).

Due to the often limited lifespan of these non-standard employees, they tend to have little experience of organised collective resistance, while on the other hand; permanent employees that have been on the labour market for a considerable period of time often have longer histories of activism and membership in unions (Kenny, 2003:207). The union thus needs to find ways to encompass non-standard workers in order to adequately represent them.

### **6.2.5 Automobile, Engineering and Manufacturing Sectors**

The Eastern Cape is said to be the hub of the country's motor manufacturing industry, with the metropolitan economies of Port Elizabeth and East London as the hosts of the industry ([www.southafrica.info/about/geography/eastern-cape.htm](http://www.southafrica.info/about/geography/eastern-cape.htm)). Currently, the automobile manufacturing industry is estimated to provide 30 per cent of the jobs in the manufacturing sector, and accounts for 32 per cent per cent of gross added value. Furthermore, half of South Africa's passenger vehicles are made in the Eastern Cape, and 51 per cent per cent of the country's exports originate here ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)). Volkswagen South Africa, General Motors and Ford have plants in Port Elizabeth, while Mercedes Benz has a plant in East London.

NUMSA Provincial Secretary (07/07/2011) reports that the functions that are most likely to be casualised in the sector are cleaning, catering and security services. However, more often than not, it is becoming a common occurrence to find non-standard workers in the production functions, such as occupations that can be considered to form part of the core functions of the establishment (NUMSA Provincial Secretary, 07/07/2011).

Employers make use of temporary or fixed-term contract workers, but it is reported that these workers do not form a large or significant portion of the workforce (NUMSA Provincial Secretary, 07/07/2011). Temporary workers are most likely to be found at the component manufacturers who supply the large automobile manufacturers. The workers are said to be mainly black and coloured,

especially in Port Elizabeth (VW and General Motors), and at Daimler Chrysler in East London, the majority of these workers are black, reflecting the racial demographics of the province (NUMSA Provincial Secretary, 07/07/2011).

Fixed-term contract workers can also be found in the garages, and the biggest challenge that is facing the union is the fact that at times, these employees are employed on fixed-term contracts for prolonged periods of time, and the employers do not register them with the bargaining council, and they do not pay provident fund contributions for them (NUMSA Provincial Secretary, 07/07/2011). The majority of these workers are unskilled, as their function is to pump petrol at the stations, for example. This workforce is in most cases constituted by youngsters, who are recently out of school and cannot find other jobs or study further because of a lack of funding (NUMSA Provincial Secretary, 07/07/2011).

Fixed-term contract workers are also found in the sector. These workers are normally called upon to replace people who have gone on maternity or sick leave for example, or workers who will not be at work for some time. Secondly, employers opt for temporary or fixed-term workers with the aim of reducing the running costs of their establishments (NUMSA Provincial Secretary, 07/07/2011). As has been alluded to, these workers have limited benefits, if any, and they come at a much cheaper going rate than permanent workers. Moreover, temporary workers work harder because the fear of their contracts being terminated is always utmost on their minds (NUMSA Provincial Secretary, 07/07/2011). They will therefore exert themselves to work harder than other employees, hoping that their contracts will be renewed or, ideally, made permanent.

Employers in the automobile manufacturing sectors tend to make use of subcontracted or casual workers as well, and it is these workers that constitute the highest component of non-standard workers (NUMSA Provincial Secretary, 07/07/2011). Most of these workers are black and coloured, and although this component was historically male-dominated, more women are being employed as casual workers in these sectors (NUMSA Provincial Secretary, 07/07/2011). The sub-contracted workers and casual workers are more attractive than permanent workers to the employers because over and above saving on running costs and being burdened with less responsibility, the employers are not bound by any rules when it comes to dismissing these workers. As argued by the union representative, the employer simply contacts the labour broker and requests a different worker for the next day and these workers become unemployed once again (NUMSA Provincial Secretary, 07/07/2011).

Non-standard workers in auto manufacturing are usually unskilled, as they are in most cases required to perform menial tasks (NUMSA Provincial Secretary, 07/07/2011). Standard, permanent workers, on the other hand, are most likely to be skilled, as they have invariably accumulated years of experience on the job. Moreover, in the more specialised jobs, which are usually unlikely to be casualised, the workers are required to be skilled and, at times, educated (NUMSA Provincial Secretary, 07/07/2011).

The union is in the process of tackling the forms and effects of the casualisation of labour. At provincial level, the union's Provincial Secretary reported that the union is in the process of meeting with the National Economic Development and Labour Council (NEDLAC) in an effort to utilise section 77 of the LRA. This provision, as noted above, provides for protest action for matters relating to socio-economic issues:

As NUMSA, we will be calling on COSATU to declare a Section 77 dispute in NEDLAC so that workers in the country can take strike action to ban labour brokers nation-wide ([www.numsa.org.za](http://www.numsa.org.za)).

This is envisaged to garner support for a total ban of labour brokers, which NUMSA is calling for, as the union believes that “there is too much flexibility - that is why there are so many labour brokers” (NUMSA Provincial Secretary, 07/07/2011).

## **6.2.6 Information and Communication Technology Sector**

Increased labour market flexibility has affected this sector by way of the incorporation of more ‘permanent part-time’ workers as well as temporary workers (CWU Provincial Secretary, 30/06/2011). Furthermore, the union has noted challenges of major job losses and a focus on the employment of temporary employees that came with the privatization of Telkom (CWU Provincial Secretary, 30/06/2011). This is evidence of the employers’ focus on increasing flexibility in the workplace, especially in sectors where keeping up with international competition is an important determinant of the success.

Labour market flexibility is found in the form of temporary workers, as well as part-time workers. The union's Provincial Secretary estimates that temporary workers constitute roughly “65 per cent of the workforce”, and this has been flagged as a major challenge for the union in terms of the decreased number of potential members. These workers are contracted mostly from labour brokers,

and the situation at the post offices is such that

At every depot where there will be nine postmen for example, you will find that only two are permanent. The rest are temporary (CWU Provincial Secretary, 30/06/2011).

In terms of the gender, age and racial group composition, these workers are mainly young, black workers of both sexes. This is because the youth that is fresh from school is believed to be less likely to question the actions of the employer and is

apolitical, not willing to join the union, and generally sceptical. That is why employers focus on them, because of the nature of their understanding of the labour market environment (CWU Provincial Secretary, 30/06/2011).

This works to the advantage of the employer because these employees are most likely not from a political background. They may therefore not be interested in joining a union or to question the authority and decisions of the employer. This employee is also less likely to complain about remuneration and lack of benefits, as they have no prior knowledge of a workplace environment.

In terms of skill levels, some of the temporary employees are said to be highly skilled and educated. It is unfortunate that they have to engage in non-standard work due to unemployment. It is reported that

most of them are highly qualified, but they are being used for unskilled work. In the post office, we found an industrial engineer sorting mail. We fought with the employer for that person - she is now a senior manager in mail operations (CWU Provincial Secretary, 30/06/2011).

Clearly, the high unemployment rate forces people to take up any job that is available to them at the time, even if it is unskilled and poorly paid work. This can be considered to be the culmination of the social and economic pressures that are put on people in their communities to provide for themselves and their families by becoming economically active.

The jobs that the temporary workers perform include sorting and delivering of mail in the mailrooms in the post-office sector. They can also be found in the retail component of the post office - where they operate at the front desk as cashiers. In other sectors such as

telecommunications, they work as call-centre operators for network providers such as Vodacom and MTN (CWU Provincial Secretary, 30/06/2011).

The second category of non-standard workers in the industry is what the CWU representative refers to as “permanent-part-time workers”, and again, is mostly found in the post office sector. It is reported that

Those employees work almost four hours a day. They are permanently employed but only for a few hours in a day, hence why they are called permanent part-time workers. Their benefits are not equal to the benefits that are afforded to the permanent workers in real terms. For instance, if the permanent workers are getting paid R200 for a day’s work, they are getting paid R100 for a day’s work (CWU Provincial Secretary, 30/06/2011).

These workers are mostly young black females. They are educated to a certain extent: “70 per cent of those postmen have a matric certificate, and a few have a varsity diploma” (CWU 30/06/2011). These workers will perform the general mailroom functions such as mail delivery and sorting of mail. Because these employees are not permanent, there has been a problem of dumping of mail, as they do not feel any obligation towards the tasks they are given:

They see themselves as being exploited, and so they just dump the letters when they feel tired because they walk long distances (CWU Provincial Secretary, 30/06/2011).

This has been pointed out as a serious issue by the union representative, who has expressed that there is a need for these workers to be employed on a permanent basis to be granted the benefits and security that is inherent in permanent employment. Employees who are not loyal to the service end up dumping mail, which results in important documents and items either being delivered to incorrect addresses, or not being delivered at all. The spill over effect of this is a negative corporate image for the Post Office, as people may lose faith in the service as a safe and efficient means of delivering goods.

CWU holds the view that casualisation, especially in the form of labour broking, should be banned. The union has taken this stance at national level. However, the CWU Provincial Secretary (30/06/2011) reports that it is clear that the proposed amendments lean towards regulating labour broking as opposed to banning the practise.

### **6.2.7 Mining, Energy and Construction Sectors**

Where the National Union of Mineworkers (NUM) organises, members are recruited from mining (in the quarries), construction and energy-processing sites. The construction industry has been flagged as one of the most difficult to organise in, as construction work is normally project-based, and lasts for a duration of a few months in most cases. Despite this challenge, the construction industry continues to grow in leaps and bounds in the province. The Construction Industry Development Board (CIDB) is to fund a Centre of Excellence in the Nelson Mandela Metropolitan University (NMMU); a regional mall is planned for Queenstown, and will take the form of a planned government and municipal office complex, as well as a housing development project; and the national government is said to have allocated nearly R1billion for the purpose of constructing houses in the province ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)).

The mining sector faces the challenge of a dwindling market (NUM, 2010:19). The industry is moving towards fewer jobs and overall, labour costs are being cut, and there is a fear of the potential of union gains being reduced (NUM, 2010:19). Furthermore, safety standards are dropping as corners are being cut to meet targets; and the environmental impacts of mining are receiving little attention (NUM, 2010:19). These challenges are most hard-hitting to the poor and vulnerable employees as these cost-cutting mechanisms entail job losses and employment of non-standard workers on terms and conditions inferior to those attached to permanent employment.

A high concentration of temporary workers is most likely to be found in the energy sector, and they are mostly found in the customer care and technical service jobs. In the customer service occupations, the majority of temporary workers are female, while in the technical services jobs, one is most likely to find a higher concentration of males rather than females (NUM Provincial Secretary, 15/06/2011). Temporary employment is on the rise, as it is seen as a major cost-cutting mechanism for the employers because temporary workers do not have the benefits that permanent workers are entitled to. Furthermore, when the tasks that need to be performed by employers are project-based, the argument made by employers is that there is no need for workers to be employed on long-term contracts or on a permanent basis (NUM Provincial Secretary, 15/06/2011).

Part-time workers are rare and the union seems to have very few, if any, members who are part-time workers. Employers are said to make use of part-time workers, who are mostly men, to perform tasks such as cleaning at the sites. Some employers utilise part-time workers as consultants for those jobs that require skilled personnel, but rarely for the unskilled tasks (NUM Provincial

Secretary, 15/06/2011). In the face of the economic recession and unstable economic conditions, employers have reduced the working hours of permanent employees in an effort to save on costs – hence, the need for part-time workers.

Most non-standard workers fall within the category of sub-contracted or casual labour. These employees are employed to do anything and everything, especially those tasks that do not require a skilled workforce. These jobs are the menial tasks, which are potentially dangerous and over time could have an effect on the health and well-being of those who perform them:

Think, for example, about the people who wave the red flags on the road when there is construction work being done (NUM Provincial Secretary, 15/06/2011).

Because unskilled and desperate workers are readily available, sub-contracted employment is rife, and it is on the rise. Furthermore, because work done is project-based, as in the construction industry for example, employers will employ casual and sub-contracted workers. NUM's Provincial Secretary reports that these workers are subject to exploitation by the employers, and in some cases, there is no transparency on the part of employers in terms of informing the workers about the terms and duration of their jobs:

For example, when there is a project that is envisaged to take six months, the employers try to cover as much as possible in record time, say three months. They do this in order to save costs. At the end of the day, it is the workers who suffer, as the project time will be cut shorter. So, the company saves, while the workers leave with nothing, literally (NUM Provincial Secretary, 15/06/2011).

In such a situation, it is obvious that some, if not most, regulations may be flouted. By reducing the duration of the project, workers will be required to work longer hours, resulting in more pressure and stress being put on them. Furthermore, the safety of these workers could potentially be compromised, as they work long hours in dangerous conditions while suffering from stress and fatigue.

In giving the union's response to increased casualisation in the workplace, NUM's Provincial Secretary alluded to the fact that the union is opposed to the use of non-standard workers, especially those who are deployed by labour brokers. Moreover, the union representative reports that

In the Energy sector, we have managed to come up with a strategy that takes all non-permanent workers with a Grade ten as well as drivers' licenses, and makes them permanent. We have managed to fight for that. For example, at Eskom, there were no casual employees by April 2011 (NUM Provincial Secretary, 15/06/2011).

This points to some initiatives employed by the union to deal with non-standard employment at collective bargaining level. It is hoped that these agreements will be upheld, and these successes will be achieved in other sectors where the union organises.

### **6.2.8 Transport, Security and Cleaning Services**

The transport, security and cleaning sectors are organized by SATAWU, and have experienced similar challenges brought about by the shift towards greater flexibility in employment and the labour market. State expenditure on the transport sector, for example, was 60 per cent higher in March 2011 than in March 2010; and the province has garnered positive spinoffs from initiatives such as the 2010 FIFA World Cup, with a R100 million investment towards the improvement of the public transport system in the Nelson Mandela Bay Municipality ([www.easterncapebusiness.co.za](http://www.easterncapebusiness.co.za)).

Despite these positive developments in the transport sector, the issue of labour-brokers has been a constant concern for workers and the union. Regardless of the fact that there was an agreement between SATAWU and the bargaining council to advocate for the banning of labour brokers, and that workers who are currently deployed by labour brokers should not exceed 30 per cent of the total workforce, enforcing this agreement has proved to be a difficult task for the union. This is because

You find that there are agencies like the inspectors from the road freight industry who do not ensure that the employers are in compliance to what is in the bargaining agreement. You will find that, in order to escape the 30-70 clause, the employers will reduce the standard hours that should be worked because in the bargaining council, it is stipulated that no permanent worker should work less than 45 hours a week. However, you will find that they are trying to streamline the working hours of the permanent employees, and replace them with employees from labour brokers, who work extended hours with the understanding that they are being paid less (SATAWU Provincial Secretary, 01/07/2011).

Employers therefore reduce the working hours of permanent employees, and make up for the lost

working time by making use of workers from labour brokers. According to the SATAWU Provincial Secretary, labour inspectors from the Department of Labour do not ensure that the employers are in compliance. Because of this, employers are able to engage in such cost-cutting mechanisms and reduce the number of hours that permanent employees work. This has an effect on the livelihoods of these workers as less working hours means less remuneration. The non-standard workers that are used to cover the hours that are meant to be worked by the permanent employees are in no better position either: they work extended hours with the understanding that they will receive less remuneration.

The security and cleaning sectors have had challenges for which there seems to be no solutions yet. Firstly, SATAWU's Provincial Secretary states that these sectors are highly vulnerable as there is no bargaining council regulating the processes and the way in which the sectors are to develop. The situation is more grave in security because

The major problem is that most of the employers within the security industry are these BEE companies, and you find that issues are dealt with through monopoly and friendship. If a person in a government position knows that we were in a state of emergency together in a certain year, they are my "friend", and they get these tenders, without even verifying or asking to see even the offices of the employer, or to check on the price that the person is offering, or if they will be able to pay the workers (SATAWU Provincial Secretary, 01/07/2011).

It is even more difficult for the lawmakers to keep tabs and deal with punishable offences in a fair manner because of the ties that employers and business owners share with them. The effects of this lack of will power are most detrimental to the employees, as nothing seems to be done in an effort to improve their working conditions and terms of employment.

In terms of temporary or fixed contract employment, there are many employees working as cleaners as well as security guards. These workers are estimated to constitute "around 45 per cent of the workforce" (SATAWU Provincial Secretary, 01/07/2011), and are brought in when cleaning and/or security guard tenders have been awarded. According to SATAWU's Provincial Secretary, these workers are mostly women who perform cleaning duties. There has been an increase in the number of female security guards as well. This increase can be attributed to the high unemployment rate in the province. Furthermore,

We have qualified teachers who are cleaners because of the pressures of unemployment. In security as well, there are some skilled people who have resorted to being security guards because of unemployment (SATAWU 01/07/2011).

The racial dynamics of temporary employment are such that security guards and cleaners are blacks and coloureds, while the supervisors and manager are mostly white. This situation has been noted as a contradiction because in some cases, there are qualified black employees working as security guards and cleaners, while their white supervisors and managers have only studied as far as Grade four (SATAWU Provincial Secretary 01/07/2011).

In terms of the sub-contracted or casual workers, the union has noted that there are many such employees, but they do not exceed the temporary workers. According to SATAWU's Provincial Secretary (01/07/2011), employers are beginning to infiltrate other sectors with casual workers, in addition to the traditional temporary employment arrangements. This can be viewed as a further attempt at reducing the running costs of their businesses:

For example, you will find that in railway, they will not only take cleaners in the form of contract workers; they will also take them from labour brokers to clean the railway stations (SATAWU Provincial Secretary, 01/07/2011).

Most of the casual workers are deployed by labour brokers, and are mostly blacks and women. Unemployment has played a big role in the large number of workers who register with labour brokers. These people are so desperate to make money that they get involved with labour brokers, and would rather be employed under poor working conditions:

Some [workers] are skilled, but based on the scarcity of jobs, they have no choice but to register with labour brokers and be employed under such conditions (SATAWU Provincial Secretary, 01/07/2011).

The reasons for utilizing workers from labour brokers and casual labourers are many and varied, and all point to one major advantage for the employer – namely, ease of exploitation. In order for employers to make profits and reduce their spending on employees, the workers must be exploited: low pay rates, minimal benefits, and low levels of job security. Furthermore, the union has noted that employers tend to maintain that they cannot guarantee long-term jobs for employees. This therefore means that it would be advantageous for them to employ workers on a need basis at any

given time. This, however, has negative consequences for job security, and the employees work in constant fear of losing their jobs. Thirdly, the scourge of unemployment has taken its toll on society:

When there is no employment, people will go into these jobs, with the “half a loaf is better than no loaf” mentality (SATAWU Provincial Secretary, 01/07/2011).

This is the reason why educated and skilled professionals seek employment through labour brokers and knowingly subject themselves to conditions and pay that is below par in terms of labour standards.

SATAWU’s Provincial Secretary maintains that the union has taken a stance to support COSATU’s call for the banning of labour brokers. The union is said to “highly empathise with these workers, as they are exploited, and tries to fight for their rights in the workplace” (SATAWU Provincial Secretary, 01/07/2011). The union has a negative view of the practice of non-standard workers; hence, it is calling for the banning of labour brokers. While engaging in talks geared at banning labour broking, the union has also adopted a strategy to fight for non-standard workers to be made permanent in the workplace. In this regard, it is reported that

Recently we have done that at SAA [South African Airways]. You will see upon further investigation that SAA decided to outsource most of its departments, and we fought that all those people must be made permanent. We were victorious in that those workers are now permanent workers (SATAWU Provincial Secretary, 01/07/2011).

However, the union representative did not refer to such strategies and victories in the province. This could be attributed to the fact that the union is structured in such a way that strategies are consolidated at a national level, and are communicated through union structures to shop-floor level.

### **6.3 CONCLUSION**

The demand for flexible labour markets has been felt across all major industries in South Africa. For the Eastern Cape, the effects were more hard-hitting, as the province is marred by high unemployment rates, and many unemployed people - young and old - are pushed into non-standard work in a desperate effort to secure a livelihood.

In this chapter, non-standard employment in the key industries and sectors in the province was

explored. The findings suggest that there is an imbalance where race is concerned: non-standard workers tend to be mostly blacks coming from poor communities. In some cases, workers employed on a non-standard basis tended to be young people, as they are most likely to be fresh out of school or varsity, and may not have enough funds to further their studies, or they may not have the necessary skills and experience in order to enter the job market as professionals.

What is important is not so much the actual number of non-standard employees, but the significant changes brought on by casualisation at the bottom end of the labour market. Non-standard employment poses significant challenges to labour law and industrial relations insofar as it breaks the mould of standard full-time employment of indefinite duration. While only a relatively small portion of all workers are employed on non-standard contracts, there is evidence that non-standard employment exerts a pervasive influence on the employment prospects, family life and social security of workers in certain industries and occupations. That is, the quantitative aspects of non-standard work must be viewed in the light of its qualitative impact on particular categories of workers. The question is thus how non-standard employment has grown and not just the rate of growth. Gallie and White (1994) conclude that, given the difficulties associated with explaining employment systems by reference to product-market variables, there are potential advantages to studying changes in employment practices rather than levels. In other words, the significance of non-standard employment cannot be reduced to “an arithmetic calculation of the number of positions that have been ‘temped’, but instead relates to that much wider field of employment relations where temping is a viable option and where it therefore exerts an influence over the strategic choices and constraints of employers and workers” (Peck and Theodore, 2002:156). The use of non-standard forms of employment is also a significant factor in the development of more flexible and intensive working arrangements for permanent employees- i.e: the “levelling down” of the differences between standard and non-standard employment (Rubery, 1998:150). The spread of non-standard employment can therefore potentially reshape regulatory norms in the labour market as a whole.

Most non-standard employment agreements are exploitative in nature and favour the economic progress of the employer and establishment rather than the well-being and job security of the employees. Employers make use of non-standard workers to limit and further reduce costs of running their companies. Moreover, because they do not wish to bind themselves to offering long-term work for employees, those employers whose work tends to be project-based, mostly opt for the utilisation of non-standard labour.

Trade union responses have been found lacking where a workplace and provincial-specific response is concerned. Most unions expressed their response as aligned to that of COSATU's call for the banning of labour brokers. However, some did not have any other programmes that are aimed at dealing or engaging with non-standard work in the province.

# 7

## LABOUR MARKET REGULATION AND THE CASUALISATION OF LABOUR

### 7.1 INTRODUCTION

This chapter aims to discuss the way in which the labour market is regulated as far as the casualisation of labour is concerned. One burning issue that surfaced in the research is the perceived lack of adequate regulation - a situation that gives employers and TES agencies leeway to avoid certain rules, regulations and statutory obligations. As discussed in Chapter 2, this weak regulation has led to the creation of a vulnerable and precarious group of workers or an “underclass” (Van Der Merwe, 2009:132). This group of workers slips through the cracks and are easily exploitable because they are not adequately represented and protected by labour legislation. This is due to the fact that labour laws are premised on the idea of a standard employment relationship. Because of the gaps that tend to plague the definition of “employee” in relation to non-standard workers, this precarious group of workers may not be adequately covered by laws that govern collective bargaining processes.

Trade unions’ seeming inability to actively organise and represent non-standard workers proves to be a further challenge. This is noteworthy because without adequate protection from the legal framework and representation from organised labour, non-standard workers are left to fend for themselves. Furthermore, chances of exploitation by employers are extremely high because of the fact that these workers have nowhere to turn.

This chapter aims to discuss the notion of regulation by firstly looking at social regulation of the employment contract. The mechanisms of this form of regulation and collective bargaining, namely bargaining chambers and labour unions will be discussed in an effort to establish the unions’ response to the effect that these mechanisms have on the bargaining processes. This will give an indication of the influence that the unions have in terms of bargaining for non-standard workers on such forums. Expansion of regulation of the employment contract, especially where non-standard employment is concerned will be discussed as well. In this section, the provisions set out by the LRA regarding labour broking as a form of non-standard labour will be discussed, as well as the

unions' responses to such in the form of a proposed banning of the practice.

## **7.2 SOCIAL REGULATION: COLLECTIVE BARGAINING AND LABOUR UNIONS**

The various forms of regulation were discussed in Chapter 2. Social regulation was discussed as the most fitting way in which the current regulation of the employment relationship can be described. This form of regulation can be achieved by utilising institutions such as collective bargaining, which is concluded by bargaining agents in the respective councils. When questioned about the regulation of non-standard work, most of the respondents indicated that they rely mainly on the LRA and bargaining councils to perform this function. Bargaining councils are in place to monitor compliance and to conduct bargaining on matters of mutual interest at a sectoral level. Those non-standard employees who work in sectors that are not covered by a bargaining council are at a greater disadvantage and are more likely to be exploited. Most of the respondents expressed the view that apart from union initiatives such as advocating for the banning of labour brokers and offering non-standard workers full-time permanent employment, the government should establish a monitoring body, which will actively monitor and enforce fair employment practices to the benefit of these workers. This section will discuss unions' responses to collective bargaining and bargaining councils as a tool with which social regulation of the employment relationship is achieved. Labour unions, as a mechanism that facilitates regulation, will be discussed. This is envisaged to provide the context within which unions are advocating for a total ban on non-standard employment in the form of labour brokers, rather than regulation of the practice.

### **7.2.1 Bargaining Councils**

Bargaining councils exist in order to conclude and enforce collective agreements; to prevent and resolve labour disputes; to promote and establish training and education programmes; and to establish pension, provident fund, medical aid and other such benefits. These councils are important institutions as they have the capacity to regulate the relationship between employers, unions and employees. There is no mechanism to coerce employers and TES agencies to take part in the bargaining councils as stakeholders in the labour market. Those establishments not covered by the councils, by virtue of not playing an active role in the process, could prove to be problematic and use and exploit non-standard workers as they please unless the agreements made by the council are extended to bind those who are not part of the council. This unfortunate predicament has befallen non-standard employees in the mining industry:

In the mining sector, there are those mines that are not under the Chamber of Mines, which serves as the bargaining council in the mining industry - the smaller mines, which are not under the ambit of the Chamber of Mines. These mines more often than not make extensive use of casual labour and subject their employees to bad working conditions (NUM Provincial Secretary, 15/06/2011).

The unions have expressed a concern that some policies that govern the extent and use of non-standard employment may not be adhered to by some employers who are not part of the councils. Furthermore, some employers are reported to have left councils, citing that regulation seems to be stricter for some parties than others:

There are policies and agreements, but some employers don't comply. This is why some companies leave collective bargaining structures such as the South African Federation of Civil Engineering Contractors (SAFCEC), because some contractors are saying that the black-owned companies are not as strictly regulated as white-owned companies (NUM Provincial Secretary, 15/06/2011).

The onus lies on the union to be sufficiently representative to pressurise the employer actively to take part with the goal of bargaining in good faith. However, with the widespread use of casualisation, which has crippled union density and membership in the workplace, this can be argued to be a task that requires unions to go to the drawing board and strategize around organizing the unorganised. This will give the unions more influence in compelling the employers to negotiate and take the unions seriously as negotiating partners.

The unions face a further challenge in that because social regulation is prone to power plays, the potentially adverse relationship that exists between employer and employee could hamper the unions' influence in the bargaining processes. The employment relationship under capitalism is inherently an unequal power relationship (Klerck, 204:63). It is thus important for unions to maintain their positions in bargaining processes, as their mandate is to negotiate on behalf of standard and non-standard workers and not be in a position where they are weak in contrast to employers on the negotiating table.

### **7.2.2 Labour movements**

Trade unions are the main mechanism of representation for workers and the vanguard of workers'

rights. They therefore play an important role in regulating the employment relationship. The focus of trade union activity is to advocate for fair and equal treatment of all workers, and the negotiation of working conditions that are acceptable to workers. The data gathered in the research process depict a negative attitude towards non-standard employment, especially that which is facilitated by employment agencies, by the trade unions. The argument put forward by the unions in this regard is that employment agencies and labour brokers exploit the non-standard workers that they deploy:

These poor workers that are under the labour brokers are not enjoying the benefits that other workers are enjoying. For example, they do not have any medical aid because people are suffering from a fear of taking responsibility. Nobody wants to take responsibility for the poor workers; neither the labour broker nor the employer on whose premises the work is being done. When it comes to benefits such as pension and provident fund, they don't belong to any when they are not covered by any agreement. So, it means that by the time that these workers have served their purpose, they have nothing to lean on, and that's a serious challenge (COSATU Provincial Educator, 01/06/2011).

This opposition can be seen in official statements, press releases, news reports, and strike demands that are presented by the union members. COSATU and its affiliates are vehemently opposed to the practice of labour brokering, to the extent that it is reported by the Provincial Educator that the federation is currently in talks at NEDLAC around their call for labour brokers to be banned.

Organizing and bargaining for workers that are deployed by labour brokers has been a very difficult task for the unions. The LRA stipulates that every worker has the right to be represented by a trade union. However, because of the mainly non-permanent nature of their employment, organizing these workers proves to be a problem. Some unions have attempted to incorporate non-standard workers. However, they have found that employers engage in tactics, which include dismissal of casual workers in an effort to minimize or keep union activity at bay:

Not all employers are happy with their workforce being unionized. Those who are on contract, for argument's sake, are organized by CEPPWAWU. But the resistance of the employer instills fear in these people, because when you join a union whilst being on a fixed-contract, you may find yourself in a situation where your contract is not renewed. This is experienced by unions across the board, and this minimizes the union membership base, and employers capitalise on that by renewing the employees' contracts on a monthly basis in order to keep them un-unionised (CEPPWAWU Provincial Secretary 04/06/2011).

This situation is not unique to the CEPPWAWU. It is a scourge that has befallen many unions, including CWU, where

In the Post Office, the non-standard workers joined the union, and consequently they were dismissed. We took the matter to the CCMA, and we were told by the CCMA that we cannot bring the Post Office as the respondent. We were told to bring the labour broker ... So, it is difficult to recruit them because they are at the mercy of the employers. Once they become organized, the employers retaliate by replacing them, especially when the workers are doing unskilled work, as they are easily replaceable. This leads to a situation where the employees are reluctant to join the union (CWU Provincial Secretary, 30/06/2011).

This has led to feelings of despondency among the non-standard workers on the issue of joining a union. What makes the exercise more tiresome is the fact that there is no trade union that is geared towards representing non-standard workers specifically, and many casual workers simply have to join a different union every time they are allocated a job by the labour broker, or every time they get a new job on their own. In time, the workers might grow tired of changing their union membership regularly, and may eventually stop associating themselves with any union activity.

On the other hand, the unions have expressed a further challenge that relates to fluctuations in membership numbers. In the construction sector for example, the project-based nature of the work performed often necessitates casual or fixed term employment and a small permanent staff component. This entails that whenever these non-standard workers join the union, the membership numbers will constantly fluctuate as and when building contracts start and end. The Provincial Secretary of NUM accounts that this has the potential to bear negative consequences for the union in terms of taking part in collective bargaining processes:

We have agreements that when we recruit we have to take the stop orders to the companies, which will in turn check the membership numbers that we have, to see if we reach 50% plus 1 representation. If we reach the threshold, our unions are recognized without a doubt. We however have a problem in the construction sector. This is because of the fluctuation in the employee numbers, and hence fluctuations in union membership numbers. There we do not have a bargaining structure. We are still fighting for it. Now what happens is that we are not allowed to take part in the collective bargaining. We have the numbers required to be recognized as a union in the workplace, we even show the employers. But what they do is

that once they see that we have reached the threshold, they reduce the numbers of permanent employees, and replace them with casual workers, so that our membership numbers are decreased (NUM Provincial Secretary, 15/06/2011).

This is a challenge for the unions because the replacement of standard workers by non-standard workers does little to increase union membership numbers. This can be attributed to the aforementioned view held by some non-standard workers that the unions' primary focus is on the protection and representation of standard, permanent workers. These despondent workers are less likely to join a union, and if the union is unable to recruit these non-standard workers and increase their membership numbers in order to be recognised by the employer, taking part in collective bargaining processes in the workplace or site may prove to be a challenge.

The LRA guarantees the right of every worker to join and actively take part in the functions of trade unions. However, if non-standard workers are at such a disadvantage where they are unable to join, or live in fear of dismissal if they join a trade union, they are fundamentally denied those rights, and therefore become an underclass – that is, workers who are considered to be of a 'class' distinct from their fellow co-workers who are employed on standard employment contracts. The fact that non-standard employees, especially those sourced from employment agencies and labour brokers, are subjected to poorer working conditions and few, if any, benefits, has been discussed in earlier chapters.

### **7.3 EXPANDED REGULATION OF NON-STANDARD WORK**

One would expect that as long as there is a presumption of employment, all forms of employment should be treated the same, whether the nature of the employment is permanent or non-permanent (Van Der Merwe, 2009:158). This, however, can be easily disputed based on the poor protection of those working as atypical workers with non-standard employment contracts. The current South African labour legislation can be argued to be extensively regulative of the standard employment relationship, as most, if not all, labour legislation is structured around a 'normal', standard employment contract where there are clear definitions of employer, employee and place of work. Non-standard employment is problematic because this form of employment is mainly insecure. Depending on the amount of time that the employees work and the stipulations in their contracts, many non-standard employees may be excluded from the protections provided by the law. It is in this context that the trade unions have advocated for amendments to the labour laws that protect all workers.

The predicament which precarious workers find themselves in can be seen as the result of many employers' desire to dodge labour legislation and the obligations associated with employing workers on a standard employment contract. Furthermore, entering into non-standard employment contracts with employees is beneficial for employers because casual workers are much cheaper to employ. This results in a saving in costs for the employer, which is more reason for the employer to make use of atypical workers.

Given the fact that there have been calls by trade unions for a review of the legislation and the introduction of amendments, the question is whether employers will use non-standard workers to the extent that they do currently if these calls are answered. One could argue that if non-standard employment is more extensively regulated and non-standard workers are granted the same benefits and protections as standard employees, employers' interest in non-standard labour would decrease. This is because there could be fewer loopholes for employers to exploit non-standard workers. This is not, however, meant to overlook the fact that at times, employers do not use non-standard workers solely to save on costs. The reasons for using non-standard workers and their duration are, as discussed in Chapter 2, key issues. For example, it is important to consider whether an employer should be prevented from using casual workers to fill in for a permanent employee who is sick or on leave. This section will discuss organised labour's sentiments towards the regulation of non-standard labour in the form of section 198 of the LRA, which provided for the establishment of labour brokers. It will then discuss the issue of the proposed banning of labour broking by the unions as a response to the enactment of section 198 and as a proposed improvement to regulating non-standard labour. This is because the unions are of the view that regulation of labour broking in terms of the LRA is not sufficient to protect non-standard workers.

### **7.3.1 Labour Broking and the Law: Section 198 of the LRA**

Labour issues tend to be extensive and sometimes tedious, and many employers prefer to evade their responsibilities and obligations as employers. For instance, according to DENOSA's Provincial Secretary:

Employers are running away from the sectoral determinations, which govern the wages and working hours of the employees (DENOSA Provincial Secretary, 29/06/2011).

The TES industry is defined by section 198 of the LRA as meaning any person who, for reward

“procures for or provides to a client other persons- who render services to, or perform work for, the client; and who are remunerated by the temporary employment service”.

This entails that a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.

Because the TES industry is provided for in the LRA (section 198), many unions are of the view that the South African labour law framework assists employers in evading their responsibilities and facilitates the casualisation of labour, and therefore the resulting exploitation of non-standard workers:

Currently, the LRA recognizes and legalises temporary employment agencies. It is only now that there are amendments to the LRA, which in fact I don't think are to the advantage of working people because they still refer to regulation in terms of employment agencies. So, in our view, legislation has created the situation and made it easier. Look at section 200 of the LRA. Employers are therefore given the right to exploit workers, whether consciously or unconsciously (CWU Provincial Secretary 30/06/2011).

Furthermore, the unions feel that it is the duty of government to monitor non-standard labour. As expressed by the DENOSA representative:

The government is very lax on these labour brokers, especially the Department of Labour because they are not conducting monitoring and evaluation of these companies that are making use of these casuals. So, it is being enabled by the loose policies. We feel as a union that government should do something by having more policies that restrict these people (DENOSA Provincial Secretary, 29/06/2011).

This could be attributed to the potential challenges that can be attributed to social regulation of the employment relationship. The unions may feel in a position of disadvantage in comparison to the employer. Furthermore, in a bid to represent all workers in bargaining processes, unions have to reconcile the tensions between standard and non-standard workers. They cannot do this until they engage with casualisation of labour which, inevitably, will entail an engagement with labour broking- a practice which they are vehemently opposed to and show no signs of engaging with. If

unions are not willing to engage with casualisation of labour and non-standard work, they may not entirely understand the causes and the dynamics of the supply of non-standard labour; if these issues are not adequately dealt with, then unions may not be able to have sufficient influence in terms of bargaining for non-standard workers. Because they may not be able to exert adequate pressure in such forums, they may resort to calling on government to introduce more policies to regulate and/or restrict labour broking.

In addition to union sentiments that the current labour laws enable the casualisation of labour, there are views that this situation opens up employees to further exploitation by the employers:

There is nothing that stops an employer from making an employee work as a casual for 20 years. I will always quote the company that I once worked for. I worked for Pick 'n Pay from 1990 to 1996. When I got there, there were people who were casuals from 1980, and they only got to be full-time employees in 1994. There are other employers that are doing this as well. This is because the laws do not prohibit them from doing such things (SACCAWU Provincial Organiser, 29/06/2011).

Furthermore, in the catering and commercial services, it is reported that the sectoral determination that governs the remuneration of workers stipulates that employees, who work for more than a certain period, are entitled to certain benefits. This determination does not, however, stipulate that they are entitled to being made permanent (SACCAWU Provincial Organiser 29/06/2011). This is but one loophole that is used by employers to keep workers in casual employment for long periods of time in an attempt to evade the responsibilities that come with having permanent employees.

It is for this reason that the unions rely on government to facilitate the process of regulating non-standard labour because, as expressed by SATAWU, "Government is more respectable to business people, and it must use its muscle to curb this practice" (SATAWU Provincial Secretary, 01/07/2011). It is hoped that the amendments that are proposed by organized labour will find expression in the processes of legislative reform, and government is expected to wield its muscle in influencing the processes and ensuring that protective labour legislation is enforced. Even though South African labour legislation makes provision for non-standard labour in the form of the TES industry specifically, it has failed to regulate it effectively. The provisions in the laws are not sufficient to ensure the protection of non-standard workers, and loopholes are being exploited by employers and TES agencies.

### **7.3.2 COSATU unions' call for the banning of labour brokers**

COSATU Provincial Organiser (01/06/2011) maintains that it is the view of the federation that non-standard work and labour brokers should be banned, as opposed to regulating it through legislation:

If Namibia can be able to abolish labour brokers, what stops us from doing the same? There is a myth that they create jobs for us, and it is because of their prevalence that they count the numbers of the people that are employed via the labour brokers, because from COSATU's point of view, for the work to be performed, it is the employer that looks for an employee, it is also an employee that looks for an employer. So, then the middle role that they play in facilitating that should not make a person a slave for that labour broker, because whilst you are working, someone else is earning while they have not done anything beyond facilitating that you get a job. If people are to get a fee for that facilitation, that fee should not be offset by what is received by an employee - both the employer and employee should incur the cost of coming together through the agent (COSATU Provincial Organiser 01/06/2011).

Moreover, the COSATU unions have noted that when the amendments to the LRA are looked at closely, there is an attempt to regulate non-standard labour rather than banning it. This is viewed as being of no benefit to the unions:

The amendments do not seem to be of much help, because they do not ban precarious employment. Now that they do not outright ban this form of employment, the problem is that it is still in existence. You may change its form, but the fact is that precarious employment still exists. Quite frankly, the labour brokers will still be there (FAWU Provincial Secretary, 17/06/2011).

This effectively means that the problem of non-standard employment, particularly the exploitative practice of labour broking, is likely to remain a burden on the unions and people who, because of unemployment, are compelled to enter into non-standard employment contracts. The unions are united in their view that amendments to the labour laws in favour of the banning of casualisation of labour, especially in the form of labour brokers are necessary:

We as the unions are currently planning on going to the streets, because most employers are getting away with murder, literally, in South Africa. They argue that our labour dispensation is not flexible. But, if you take a look at the magnitude of the [non-standard] employees that

are employed in all sectors of the economy, you see that there is much more flexibility than other countries. If you look into the current conditions of employment that are prevalent, they are characterized by low salaries, and there are gross inequalities (CWU Provincial Secretary, 30/06/2011).

The view taken by the unions can be considered to have been influenced by the fact that the notion of collective bargaining is seen by Theron (2005:629) as far-fetched. This entails that a lot more needs to be done in the battle for the representation of and granting of equal rights to non-standard workers. For unions to be able to organise and therefore represent non-standard workers, they have to firstly overcome the tensions that tend to exist between standard and non-standard workers. These tensions are brought about by the sub-standard conditions that some non-standard workers are subjected to in the workplace in contrast to their standard, permanent counterparts. The second problem that unions need to overcome is the perceived notion that the unions cater only for the needs of standard workers. Indeed, this view may come to being because the membership base of the unions is largely the standard workforce. The fact of the matter is that unions tend to refuse to engage with the issue of non-standard labour. However, if they are to meaningfully deal with casualisation, they need to engage with non-standard work and other issues that contribute to the supply of non-standard labour. By doing so, they may be able to advocate for meaningful regulation of the employment relationship where non-standard work is concerned.

The effect of strike action as an expression of disagreement with the statutory provisions on non-standard employment is questionable. It seems as if the only plan of action that the unions have adopted is marching. Union demands for the banning of labour brokers and casual labour have featured in industrial actions by workers and unions across the province and the country. This, however, has proven to have a minimal effect, if any at all. Employers have been seen replacing striking workers with scab labour, and some workers have been dismissed for going on strikes. Furthermore, non-standard workers have shown little or no interest in joining the unions or taking part in industrial action industrial action for fear of being victimized or dismissed.

The call made by COSATU and its unions depicts the fact that organised labour is leaning towards the enactment of statutory regulation of the employment contract rather than social regulation. This can be attributed to the view that, as expressed by Theron (2011:8), labour broking has to a certain extent contributed to the undermining of labour regulation. This banning, and thus stringent regulation of labour broking would have to specify precisely what it was that it proposed to ban, and how it proposed to enforce the ban. It is therefore not helpful that the public debate about

labour broking has been framed as a question of a “ban versus regulation”. It ought rather to be framed as a question as to what kind of regulation is appropriate, with a ban representing a resort to what might be described as “repressive law” (Theron, 2011:11).

In some instances, a resort to repressive law may be justified. An example can be made of certain cases where some non-standard workers are subjected to unjust working conditions, poor remuneration and limited benefits. However, the question that arises here is whether a resort to repressive law is realistic or appropriate, in the case of labour broking. In this regard it must be noted that repressive law is a form of regulation from above or statutory regulation, that requires a state with the capacity and political will to enforce it. The state’s capacity to enforce stringent laws on labour broking has been highlighted by the unions, who have noted that the lines between political leadership and those who own and/or manage TES agencies tend to be blurred

When we looked at some labour broking agencies, they were owned by either MECs, their wives/husbands, or their children. This is a problem because as I’ve mentioned, the people who make the laws are the same people who break them (NUM Provincial Secretary, 15/02/2011).

Secondly, the potential challenge to the banning of labour broking may surface in the difficulty that exists in differentiating labour broking from other services. According to Theron (2011:15), the TES agencies that provide non-standard workers provide a range of personnel, administrative and other related services to clients or corporations. The person who is the labour broker is thus more likely to bear the brunt of the banning of TES agencies, rather than the client or corporation on whose site the exploitation of non-standard workers tends to take place.

#### **7.4 CONCLUSION**

This chapter discussed the regulation of the labour market insofar as non-standard work is concerned. Social regulation was highlighted as the most fitting form of regulating the employment relationship in terms of governing how the casualisation of labour is taking place. However, because social regulation tends to depend on power plays, the unions can be argued not to wield the power to overcome the adverse relationship that tends to exist in capitalist production systems. Secondly, unions can be argued to have been weakened by the fact that they are yet to overcome the tensions that potentially arise between standard and non-standard workers. These tensions can be seen as coming about because of the so-called underclass of workers that is brought about by non-

standard labour that bears unjust working conditions. Unions are seen by non-standard workers as only protecting the rights of the standard, permanent workforce. Organised labour can thus be seen as having been weakened by the divisions that casualisation has brought about in the workplace. The unions have expressed the facilitation the process of regulation and proper implementation of the regulatory framework of the South African labour legislation should be the responsibility of government rather than a process of negotiation between employers and employee representatives. They foresee this culminating in the banning of labour brokers. Furthermore, unions are expecting government to take action as it is blamed for the current situation of 'lawlessness' where the regulation of non-standard labour is concerned, as they are of the view that government has been too lax in terms of stringently regulating labour broking and non-standard labour.

Inasmuch as amendments aimed at expanding protection to non-standard workers have been introduced, the unions still feel that some non-standard workers are not afforded adequate protections against unjust employment practices, poor remuneration and limited benefits. Those non-standard workers who fall outside the bounds of a bargaining council are at an even greater disadvantage as they are completely unprotected by any form of labour regulation. Trade unions have thus responded by advocating for a total ban on non-standard labour, especially that which is facilitated by labour brokers or the TES industry. This could be attributed to the fact that endeavours to re-regulate by extending the scope of coverage of labour regulation to non-standard employees (such as the 2002 amendment creating a presumption as to who is an employee) are flawed in that they presuppose that what is good for a worker in standard employment is necessarily good for a worker in non-standard employment (Theron, 2011:18). Therefore, the relevant laws need to be amended in such a way that they provide real protections for non-standard workers.

Given that COSATU unions are backing the federation's call for labour brokers to be banned, it was important to critically discuss this demand. Suggesting a ban on the practice is tantamount to an introduction of its regulation by repressive law. Over and above the possibility of a lack of political will and ability for the state to exercise such regulation, the banning of labour broking is most likely to affect the labour broker more than it will affect the client companies. This may not be beneficial, as most of the injustices suffered by some non-standard workers who are deployed by labour brokers happen on the site of the client where they have been deployed. The effects of the ban are thus not likely to be felt at the site of the struggle which is the workplace where the casual workers have been placed.

# 8

## CONCLUSION

The central objective of this research was to explore trade union responses to the casualisation of labour in the Eastern Cape. The discussion started in Chapter 2 by addressing the shifts in the organisation of work towards flexible employment patterns. This discussion noted the changes in the attitudes of employers towards the nature of work - employers are increasingly leaning towards flexible workplace practices in an effort to meet market demands and to increase productivity and efficiency. The flexible firm, which entails the incorporation of numerical flexibility in the form of non-standard workers as part of a peripheral workforce, was discussed as a possible depiction of the increasing flexibility in the workplace in the context of a globalised economy. The model distinguishes between the core (usually standard and permanent) workforce, and the peripheral (usually non-standard) workforce. These non-standard workers include casual, temporary, seasonal and part-time workers, and are often cheaper than permanent, standard employees since they are seldom entitled to any benefits and they are usually poorly remunerated. This chapter provided an introduction to the major themes that the research explored, and provided some insight into the nature of casualisation of labour in other parts of the world. The chapter introduced the trade unions that were the focus of the research. The unions focused on are affiliated to COSATU – a social movement union federation. Because these unions commit themselves to being involved in workplace issues and matters that concern the communities and society in general, they are bound to respond to the increased levels of casualisation of labour. This is because some non-standard workers are subjected to sub-standard working conditions, poor remuneration and limited benefits. Moreover, in most cases, they have little or no job security. These workplace issues often have an effect on the social and economic lives of these workers.

Chapter 3 outlined the methodological approach and the research design that the research adopted. Generally, access to the trade union representatives was easy to obtain and the COSATU Provincial Organiser was instrumental in this. The process of snowball sampling was utilised: the initial interview was held with the COSATU Provincial Organiser, who assisted in negotiating access to the union representatives. The qualitative nature of the research, which entailed semi-structured interviews with the respondents, was instrumental as it allowed for follow-up questions to be asked where necessary. This was vital in getting a clear picture of the lived experiences of the employees,

as well as the responses of the unions to casualisation. The research was located in the critical theoretical framework, which was fitting since the employment relationship in the capitalist economy is marred by power-plays which render one group powerful over the other. This can be seen in the adverse relationship that sometimes exists between employer and employee, especially when the employee is a non-standard worker who may not be entitled to any benefits and could lose their job at any time. The interviews were conducted at three sites: Port Elizabeth, East London and King Williamstown. The data was transcribed, and the text was analysed using the grounded theory method. This involved generating themes from the data, and using these themes to analyse the expansion of casualisation of labour, the conditions associated with it, and trade unions' responses to it.

Chapter 4 discussed the flexible firm and its impact on the labour movement. The purpose of the chapter was to provide supporting evidence to show that employers are increasingly implementing flexibility in the workplace; a practice which has been seen as sometimes resulting in the creation of an "underclass" of workers. The impact that increased flexibility has on the labour movement was also discussed. This is because increased flexibility entails the incorporation of non-standard workers who are often employed for short or uncertain periods of time. Because of the precarious nature of their employment, most non-standard workers are not able to join a union. This poses a challenge to the unions in that with the increase in the number of non-standard workers, the unions may not be able to redeem their membership numbers as their membership base is largely constituted by standard, permanent workers who have job security and may not be prone to being dismissed for joining a union.

Chapter 5 dealt with the triangular employment relationship and the TES industry, or labour broking. This is because trade unions' responses to casualisation have largely been focused on labour broking and the conditions that workers who are deployed by labour brokers experience. Labour broking is viewed as exploitative by the trade unions, and their opposition to the practice can be seen in COSATU's call for an outright ban of labour broking. Some workplace practices that disadvantage non-standard workers in triangular employment relationships were also discussed. However, in light of the expansion of the TES industry, the unions seemed not to have any other means to express and engage with their opposition to the practice, besides the call to ban labour broking.

Chapter 6 discussed sectoral case studies of casualisation of labour in the Eastern Cape. The chapter showed that there was an increase in the extent of non-standard labour in the form of casual,

temporary, and part-time work. It further showed that those employed to perform non-standard work are most likely to be young people, as they are easily trained and can be easily swapped between jobs. Moreover, they are most likely to be out of school and in desperate need of a job in order for them to make a living and contribute to the economic lives of their families and dependants. What was of major concern to the union representatives was that these workers are unlikely to join because they are hardly in a job long enough to develop confidence in any union. Secondly, they are less likely to join a union because of fear of dismissal if they do. What is important to note in the chapter is the changes that casualisation of labour has brought to the bottom end of the labour market, and the challenges that it poses to industrial relations, as it breaks the pattern of standard employment with indefinite duration.

Chapter 7 discussed labour market regulation in relation to non-standard employment. This is because one burning issue that surfaced was that the perceived lack of adequate regulation. It is this weak regulation that has led to the creation of a class of workers who are subjected to sub-standard working conditions. Social regulation of the employment relationship was discussed, and collective bargaining and labour unions as mechanisms with which this form of regulation is realised were dealt with. Expanded regulation of the employment relationship was briefly outlined, and COSATU's proposal for a total ban on labour broking as organised labours' response to the challenges that non-standard labour poses were discussed. The criticisms of this response were tabled in an effort to consider the consequences of such a proposal.

Generally, trade union respondents presented their respective union's responses which depicted negative sentiments towards the casualisation of labour. However, for unions to be able effectively to respond to this phenomenon, they need to shift from refusing to engage with casualisation. This is because in order to effectively deal with casualisation, the supply- and demand- factors that further enable the expansion of casualisation need to be engaged. Secondly, a distinction between voluntary and involuntary casual work needs to be made. For example, a ban on labour broking would have an effect on those who voluntarily enter into non-standard employment. An example of this can be made of a busy housewife who elects to work on mornings or afternoons only. Thirdly, the proposal to ban labour brokers may have negative consequences. Inasmuch as a total ban can be argued to deal with injustices that some workers experience at the hands of labour brokers, a ban of the practice could potentially push it underground, thus creating more problems as those who are desperate for work may continue consulting labour brokers for employment opportunities.

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