

**LABOUR LAW AND NON-STANDARD EMPLOYMENT:
CASE STUDIES OF SELECTED WORKPLACES IN MAKHANDA**

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ABSTRACT

While precarious and poorly-regulated forms of employment are on the increase worldwide, the patterns vary significantly over time and space. This study sought to understand employees' perceptions of non-standard employment (NSE), the reasons why employers resort to NSE and why they use particular types of NSE. In addition, the research explored how labour law protections for NSE are applied in particular workplaces. Drawing on the regulation approach, which provides a conceptual framework to explain changes in production and employment relationships under specific spatio-temporal conditions, this study focused on three companies in Makhanda. Furthermore, this study employed a qualitative research method to explore the employees' perceptions on non-standard work. This was done by using an interpretive approach to explore how workers experience NSE and how Eastern Cape citizens in Makhanda navigate the scourge of unemployment and exploitation in the labour market. Moreover, the research investigated how employees experience the efficacy of their employment rights in the workplace. The employment rights observed in the study include (among others) leave, contract of employment and collective bargaining; all of which are provisions in the Labour Relations Act.

The findings in the study do validate the use of NSE as a 'tool' to curb high unemployment. However, the study finds that the positive result of job creation does not signify job security for non-standard workers, instead beneath the rhetoric of job creation and investment, lies hidden the exploitation of vulnerable groups of citizens and extension of precarious forms of employment. This is because businesses engage in economic competition locally and globally. Therefore, in order to successfully compete against other, employer's cut on labour expenses by adopting a "race to the bottom," the effect of which is paying employees below the minimum wage. Moreover, this study opposes the argument that NSE is a stepping stone to permanent employment. The conditions which prevail in NSE are distinctly different from those in the Standard Employment Relationship (SER), making it difficult for employees to transition to a new labour market. The latter is more aligned with the heterodox approach than it is to the orthodox approach to labour market.

Key terms: Non-standard employment, employment flexibility, labour market, labour law, temporary service employment, work/life balance, collective bargaining.

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LIST OF ACRYNOMS

BCEA	Basic Conditions of Employment Act 75 of 1997
BPI	Buying Power Index
CCMA	Commission for Conciliation Mediation and Arbitration
EEA	Employment Equity Act 55 of 1998
GDP	Gross Domestic Product
ILO	International Labour Organisation
LRA	Labour Relations Act 66 of 1995
NSE	Non-standard Employment
NMWA	National Minimum Wage Act 9 of 2018
OHSA	Occupational Health and Safety Act 85 of 1993
PSIRA	Private Security Industry Regulatory Authority
TES	Temporary Employment Service
SER	Standard Employment Relationship
SMME	Small Medium and Micro Enterprise
UIF	Unemployment Insurance Fund

CHAPTER ONE:

LABOUR LAW AND NON-STANDARD EMPLOYMENT

1.1 INTRODUCTION

There is an extensive literature on the effects of non-standard employment. This literature explains (among others) non-standard employment in terms of its impact on the youth, elderly and the employees who undertake the different forms of non-standard employment. Furthermore, the literature has shown how non-standard employment (NSE) contributes to economic advancement locally and globally. For instance, NSE contributes to job creation, in turn this reduces unemployment and stimulates economic growth. This is because businesses hire additional employees where citizens can have buying power thereby increasing aggregate demand (Du Plesis, Smit and Sturzenegger, 2008: 776). As a result, citizens can escape poverty as the standards of living grow overtime (Ocran, 2011: 610).

In the process of investigating the impact of NSE in different contexts, I found that majority of the workers in non-standard employment are less educated and are more subject to employment flexibility than permanent full-time workers (Fourie, 2008: 144). Employment flexibility, is an employment strategy/criterion that employers use to regulate the employment relationship in terms and conditions that can affect the workers differently in the workplace. For instance, employment flexibility emphasizes the ability for employers to change how and when employees complete their tasks (Kenny and Webster, 1999: 217). Examples of employment flexibility include “flextime, shift swapping, and annualized hours. The use of employment flexibility helps employer’s maximize workers’ capabilities (Thompson, Payne and Taylor, 2015: 729). Consequently, as seen in the analysis in chapter four, the use of employment flexibility can affect the ability of the workers to balance the demands from the workplace and personal life.

Historically, employers used NSE to circumvent statutory obligations and “justify differential treatment of non-standard employees” (Tatchell, 2020: page). For instance, non-standard employees were not on an equal footing with employees in a standard employment relationship since they (among others) did not get training opportunities and had no job security because their contract was easily terminated. This differential treatment has characterized non-standard

employees as vulnerable or precarious. In recent years, the legislature has acknowledged the abusive practices faced by non-standard employees in their respective employment and, instead of banning non-standard employment, it has tried to protect these employees through increased regulation.

The protection of non-standard employees has been addressed in the following way (among others): by extending the definition of employee to include workers who are not in a standard employment relationship. According to section 213 of the Labour Relations Act 66 of 1995 (LRA), an individual will be identified as an employee if they work for another person for remuneration, or assist another person in any manner to conduct or carry on that person's business. Second, the legislature introduced a rebuttable presumption in section 200A of the LRA and section 83 of the Basic Conditions of Employment Act 75 of 1997 (BCEA). The presumption lays the onus on the employer "to prove why the person who falls within the ambit of one or more of the presumptions mentioned in the statutory provisions is not an employee" (Fourie, 2008: 122). In addition, non-standard workers can also rely on the Constitution of the Republic of South Africa (1996) for protection.

The objectives of this study were to explore employees' perceptions of non-standard employment, to understand why employers resort to NSE and why they use specific types of NSE. In addition, it explores the ways in which the law provides rights and enforcement agencies protect the rights and interests of non-standard employees.

The broad theoretical framework adopted in this study is the regulation theory, especially as it pertains to workplace restructuring. Every era in economic history has its own system of operation or industrial paradigm: for example, mass production and mass consumption under Fordism. The industrial paradigm does not operate in isolation but exists in connection with the political, cultural and social systems that make the economy function. Regulation theory was suitable for this study because it highlighted the interconnections between economy and society. Furthermore, the regulation approach offers a compelling explanation of the transitions from one 'mode of regulation' and 'regime of accumulation' to another as economic crises become organic or structural, and how these transitions affect the employment relationships at specific places and times.

South Africa is transitioning from Racial-Fordism to some variant of post-Fordism. Post-Fordism has had an impact on the kinds of employment relations: non-standard and standard

employment. For instance, employers have undertaken corporate restructuring in the workplace, by outsourcing workers, this in turn has resulted in fewer workers being employed permanently in the company; leaving some workers to work in jobs without job security (Thompson *et al.* 2015: 730). The employees' perceptions of non-standard employment in the current system were explored to reveal contrasting patterns of statutory exclusion and protection in the different forms of non-standard employment.

1.2 DISSERTATION OUTLINE

The next chapter, contains the literature review and contextual discussion, where I present the theoretical approach used in the study. The chapter starts by explaining the theoretical framework used in the study, which is the regulation approach. The section explains the value and contribution that the regulation approach brings in explaining how post-Fordism, the employment relationship has changed. Moreover, the section goes on to outline key contextual factors namely: corporate restructuring, employment flexibility, triangulation in the employment relationship by giving examples of how these factors operate in the companies selected in the study. In addition, it explains the labour market theory, which forms part of the argument's in the study.

The next chapter also explains the differences between NSE and the SER. After discussing the proliferation of NSE and the labour law concerned with the provision of employment rights, and the enforcement of those rights, the chapter discusses the types of NSE. The types of NSE discussed are further explained by the case studies that follow, which have also been explored in the analysis in chapter four. It was important to explore each sector of economic activity, namely construction, retail and security to capture the range of perspectives which have enabled me to gain a multi-faceted understanding of NSE and the efficacy of labour law in the workplace.

Chapter three outlines the data collection methods used in the research, and the complications confronted in the study and how they were resolved. In addition, it sets out the biometric table of the respondents involved in the study. Chapter three outlines the data collection method used by explaining the use of qualitative research method used in the study.

The use of a qualitative research method was used to explore the perceptions of NSE from non-standard employees in the selected companies namely, the outsourcing security agency, a

retail store and a local construction company. These sectors were explored to ensure the study had a wide range of information in the types of NSE. Thereby exploring the different conditions in each sector. This was important because each sector has its own rules, regulations, and ‘vulnerabilities’ therefore, the study was aimed to expose the conditions of non-standard employees as they are relevant to each sector. Moreover, non-standard employment is inter-differentiated. This means the experiences of non-standard workers are different not only by the type of NSE but also by the position (by level in so far as hierarchy in the workplace is concerned, wages or the tasks undertaken by the worker) an employee occupies within the kind of employment, as a result the exploration of each sector ensured credibility in the overall findings found in the analysis of each sector in chapter four.

Chapter four is the data analysis. It provides an analysis of the respondents’ experiences in each sector in order to address the primary objective of the study; that is, the workers’ perceptions of the type of non-standard employment (NSE) in which they work. Furthermore, it seeks to provide an explanation for why non-standard workers resort to NSE. Chapter four also addresses the secondary objectives of explaining why employers use NSE and the efficacy of labour laws in protecting non-standard workers.

Chapter five concludes the study. It summarises the key findings and arguments from the analysis and offers some recommendations. The conclusion stresses the main highlights gathered from the analysis; it drives home the fact NSE creates job opportunities. Though that is the case, the jobs created do not necessarily mean non-standard employees have job security, nor does it mean the employees realise the full extension of their employment rights as provided by statutory provision. In conclusion, I further stress that the conditions which prevail in NSE are distinctly different from those in the SER. Thereby making it difficult for non-standard workers to enter permanent full-time employment.

CHAPTER TWO:

THEORY AND LITERATURE REVIEW

2.1 INTRODUCTION

While precarious and poorly-regulated forms of employment are on the increase worldwide, the patterns vary significantly over time and space. The central research question sought to understand employees' perceptions of non-standard employment (NSE), the reasons why employers resort to NSE and why they use particular types of NSE. In addition, the research explored how labour law protections for NSE translate into practice in particular workplaces. There was a need to disaggregate the various types of NSE in order to reveal contrasting patterns of statutory exclusion and protection.

The literature review explains the theoretical approach adopted, how it fits as a framework to understand the changes in the transition from Fordism to post-Fordism and how the transition to post-Fordism has impacted the employment relationship. The literature review explains the differences between NSE and the standard employment relationship (SER). Furthermore, the literature review explains the forms of NSE necessary to achieve the central research question and how the law has responded locally and internationally to each form of NSE. Furthermore, it explains what causes the proliferation of NSE, and how labour law regulations are implemented in NSE. Moreover, explains the position of collective bargaining in NSE. Thereafter, discusses the most relevant case studies of industries using the forms of NSE.

2.2 THEORETICAL FRAMEWORK

The broad theoretical framework that was adopted is regulation theory. It provides the theoretical apparatus that distinguishes between five structural forms according to the field of economic activities that they cover (Petit, 2006: 226). These are: the state apparatus, money as an institution, international relations, forms of competition and wage labour relations (Boyer, 1990: 8). These structural forms play different, interrelated roles (Petit, 2006: 226). The state corresponds to historical institutions associated with central power in the times of absolute monarchies, such as police, army, justice. Closely related to this is money, which is

“the independent link between people in a nation and between generations and citizens (Petit, 2006: 226). The forms of competitions speak to organisation of traders, and all institutions creating economic transactions. Lastly, wage and labour relations which concern the labour market and the organisation of work, deals with labour issues and employment issues (Petit, 2006: 226). As we will see, these structural forms are telling of the historical process that Nation states undergo and that regulation theory uses as analytical tool to investigate the functioning of a growth regime (Petit, 2006: 221) to which South Africa is not an exception.

A central concept in the regulation approach is ‘Fordism’, which represents a system of mass production and mass consumption (Klerck, 2001: 112). Fordism, in its various national guises, underpinned a period of sustained economic growth from the 1950s to the mid-1970s, when this growth model went into a sustained crisis (Antunes, 2011: 151). The protective employment and social policies associated with Fordism, it is argued, curbed competition in the labour market and created numerous ‘rigidities’ that stifled market imperatives. As a result, employers found it increasingly difficult to adjust the quantity and the quality of labour supply to increasingly rapid and unpredictable changes in demand.

The regulation approach seeks to explain (among others) the links between labour market segmentation and industrial structure, which are seldom made explicit (Klerck, 2001: 97). This approach is pertinent to this research since it provides a conceptual framework to explain changes in production and employment relationships under specific spatiotemporal conditions (Klerck, 2001: 97). Regulation theorists attempt to periodise capitalism in terms of the serial interchange of integrated phases of capital accumulation with disorganised transitional phases; it is a way to look at how capitalism has evolved over the years and going forward. It looks at the production apparatus in a particular place, income distribution, and social norms of consumption (Jessop, 2014: 450). The regulation approach involves specifying the institutional forms and modes of struggle within a given stage of capitalist development (Boyer, 1990: 7). Each accumulation regime has its own mode of regulation, “a mode of self-balance,” in other words the regulation approach helps to analyse how a system can reproduce itself during a crisis overtime, in a situation of economic boom (Boyer, 1990: 7). To this end, regulationists have attempted to give a determinate social content to the general tendencies of capital accumulation that can explain its particular dynamics and directionalities.

‘Post-Fordism’ is a broad rubric that aims to capture the ways in which national states have sought a way out of the crisis of Fordism (Klerck, 2001: 426). The labour market increasingly

differentiated between ‘core’ and ‘peripheral’ workers. This is widely associated with the decline of the Fordist system of production and the rise of some form of post-Fordist production regime. Core workers are those whose work relates to the core business of the enterprise (Gash, 2003: 378). They are usually in permanent and full-time employment and often multi-skilled (Chambel & Castanheira, 2007: 944). Peripheral workers’ employment relationship deviates from the standard employment contract – for example, fixed-term, part-time or temporary work (Gash, 2003: 378) and are generally less skilled and subject to various disadvantages in the labour market.

The implementation of post-Fordism involves a restructuring of work and the workforce with the objective of achieving three forms of ‘flexibility’: functional, numerical and wage flexibility (Klerck, 2001: 425). Functional flexibility involves managers upskilling and delegating more tasks to core workers, thereby enabling them to rotate jobs as and when required (Kenny and Webster, 1999: 218). Numerical flexibility entails using non-standard employees and short-time or overtime to match supply and demand and to keep labour costs down (Conley, 2006: 34). Wage flexibility refers to the extent to which wages and salaries can rise or fall due to rising or falling profits (Klerck, 2001: 425). Essentially, NSE is used by employers to supplement standard employees in times of high business activity, particularly in retail (Bodibe, 2006: 4). Flexibility as part of economic policy, advocated by international organisations such as the World Bank and the Organisation for Economic Co-operative Development (OECD), increases precarious labour (Cremers, 2010: 1).

The bifurcation of the workforce between core and periphery is when managers use periphery workers as when needed and use the core workers to focus on the core business (Conley, 2006: 34). Managers use functional flexibility to retain core workers who will perform work in different functions or can be deployed in different roles and responsibilities (Botes, 2015: 101) and use numerical flexibility to ease the burden on management by, for example, outsourcing some workers. Though amendments to the LRA have made it difficult for management to retrench workers, managers continue to retrench workers whose jobs are not part of the core business, (Theron, 2003: 1253). This suggests non-standard employees are easily disposable, replaceable and likely engage in NSE involuntarily.

Employment flexibility fosters labour market segmentation (Loveridge and Mok, 1979).

Labour market segmentation refers to the notion that the labour market is divided into “at least two segments”: the primary and secondary segments (Loveridge and Mok, 1979). The primary

segment is characterised by high earnings, good working conditions, job security, training opportunities and high career prospects. In contrast, the secondary segment is characterised by a “low crossover capability” because the jobs in this segment “tend to be self-terminating or to be so unattractive providing little incentive to stay” (Loveridge and Mok, 1979: 45). The distinction between these two segments lies in mobility (Callaghan, 2018: 16). This means how easy or difficult it is for workers in the secondary segment to move in the primary segment. Workers in the secondary segments tend to find it difficult to move up to the primary segment because of different factors (Callaghan, 2018: 18). These (amongst others) are education level, demographics (Callaghan, 2018: 19).

zeytin (2008: 111) found that, in South Africa, the majority of non-standard workers “are those previously disadvantaged from the apartheid era, which comprise black women, unskilled black workers and likely have low level education.” Consequently, non-standard employees are likely to be in the primary segment of the labour market. Again, Fourie’s finding tells us that labour flexibility is not a post-apartheid phenomenon, it was already implemented during apartheid as part of racial capitalism (Ashman, 2022: 32). Simply put, racial capitalism’s core mechanisms of segregation during apartheid existed primarily to enable a specific form of cheap labour (Ashman, 2022: 30). The latter is not simply a statement of the general Marxist claim that capitalism causes racism; that in itself would not be “racial capitalism” although it might show capitalism has racist effects, rather it was a specific analysis of South Africa as having a specific variant of capitalism. Regardless of whether racial capitalism is a class/race debate, we cannot ignore the effects it has on black labour post-apartheid. As we will see in chapter 4, the majority of workers in non-standard employment are black, have low level education, with the highest qualification being matric and work in precarious conditions.

The following part will deal with the differences between NSE and the SER.

2.3 DIFFERENCES BETWEEN NON-STANDARD EMPLOYMENT AND THE STANDARD EMPLOYMENT RELATIONSHIP

Employment forms may be divided into NSE and the SER. These forms of employment are differentiated based on certain characteristics, which include the following: (a) the existence of a contractual (employment) agreement or not; (b) the terms and conditions of the agreement, for example the hours of work, (c) the terms on which work is performed, for example, whether

the contract is a permanent or fixed-term contract of employment; (d) the place of work; (e) the method of payment; (f) the type of work performed; (g) the method and extent of training involved, and (h) the extent to which the conditions of employment are regulated by law (Crous, 2013: 4).

The SER is permanent employment of indefinite duration where the employee works on the premises of the employer under their supervision (Fudge, 1999: 137). The employee has the benefits of growth in their job environment through education, training and fostering good relationships (Cooke, 2014: 56). The employee performs duties and obligations in exchange for a salary (Cooke, 2014: 56). They benefit from job security and a stable monthly income (Crous, 2013: 4). However, employers can manipulate this employment relationship based on “structural, economic and technological circumstances of the company” (Mills, 2002: 1217). For instance, there exists a dialectical relationship between the employers aim of accumulating wealth and profits and the rights of employees (Gaines and Domagalski, 1996: 184). It is because employers have managerial control that they can strategically restructure the workforce (to cheapen production processes), assign a myriad of tasks to employees gained through training, so that employees continually job rotate in the workplace, as a result contribute more value than what they receive in wages – enough more, in fact, “to maintain the capitalist(s) and expand the organisation in which they work” (Gaines and Domagalski, 1996: 180). Furthermore, employers retain the hegemonic position in the employment relationship based on the fact that they are able to establish the criteria for recruitment and selection, the training and development options, promotion criteria or wage and benefit determinations that reinforce the economic dependency of workers (Gaines and Domagalski, 1996: 186). The latter shows the inequality between workers and employers and the examples of how workers are kept subordinate.

A SER comes from the legal regulation or “contractualisation” of the employment relationship, which began to emerge in the United Kingdom and other countries in the latter half of the nineteenth century (International Labour Organisation, 2016: 10). Shaping the legal distinction between employment and self-employment, the legal regulation of the employment relationship came about not only because of economic needs, nor demands by workers or employers but also, emerged and evolved along with economic changes (International Labour Organisation, 2016: 11). It was only gradually, as a result of the growing influence of collective bargaining and social legislation and with the spread of largescale enterprises and of

bureaucratic forms of organization, that old distinctions like masters and servants lost their force, and that the term “employee” began to be applied to all wage or salary earners (International Labour Organisation, 2016: 13).

NSE deviates from the standard employment contract. It is a form of employment developed in a situation where there was an increase in labour costs and lower levels of productivity. As a result, employers use NSE to cut labour costs and to increase profits (Cooke, 2014: 58). In a growing economy, standard employment leads to an increase in wages, which in turn decreases profits (Crous, 2013: 4). The use of NSE allows employers to cut labour costs, which promotes better competition in the market (Crous, 2013:4).

Employers expose non-standard employees to unfavourable environments to achieve not only profits, but higher productivity and greater output (Cooke, 2014: 56). NSE also decreases unemployment and allows employees who want flexible working arrangement to be part of the working class (Crous, 2013: 5). However, the working arrangements are always structured to benefit the employer. This has the consequence of negatively affecting the workers’ conditions of employment as well as employees’ personal lives (for instance, work life balance concept).

Internationally, although casual employment is seen by government as a way to solve unemployment, in Australia casual employment is seen as “dead-end” jobs, since they do not have prospects of developing individuals (Watson, 2013: 11). In America, casual workers are protected by minimum wage, compensation, and health and safety laws, but the temporary nature of this employment results in these laws offering limited protection to the employees.

For instance, the availability of the benefit packages is linked to the employee’s length of service, the employees are in a situation where the employers can dismiss employees just before they are short of entitlement of the benefits (Brustein, 2005: 698). The fact that the American workforce receives benefit packages payable by the employer can give way to abuse of employee rights. For example, New York Times forces its employees to take mandatory vacation without pay just before they are entitled to claim benefits (Brustein, 2005: 710). Compared with South Africa, employees are entitled to benefit from the minimum wage and health and safety laws even if they are employed for a short time. Other countries face the same or worse problems relating to casual employment, which raises the need for labour protection.

Ultimately, the SER is characterised by continuity and certainty whereas NSE comprises of arrangements that create less certainty for employees than employees in SER (Huysamen, 2019: 2). There are different types of NSE.

2.4 TYPES OF NSE

NSE is internally differentiated. This means there is no uniform experience of the employees in the workplace. NSE offers shorter hours compared to the SER which gives workers flexibility to include work with other activities. However, some workers, such as casual and on-call workers, have limited control over when and how often they work, resulting in income insecurity and poor work-life balance (Crous, 2013: 18). Moreover, some nonstandard workers face greater risk of injury in the workplace because of poor training, supervision or induction. Employees in NSE are predominantly black African workers, women, retrenched, young and unemployed workers. Non-standard employees are not necessarily poor, uneducated or receive low wages (Crous, 2013: 5); they range from unskilled and semi-skilled to skilled labour (Crous, 2013: 3).

NSE comprises of “casual, fixed-term, part-time, temporary employees along with and outsourcing and subcontracting” (Zeytinoglu, 2008: 2), which are under temporary employment services (TES). These types of non-standard work are deemed to be the most popular and are increasing in South Africa and internationally (Crous, 2013: 6). These forms of non-standard work will give an in-depth understanding of NSE, and the perceptions of employees who work in non-standard work and why employers resort to them.

2.4.1 Casual Work

Casual employment is premised on unstructured, unpredictable and limited protection (Brustein, 2005: 697). The employment contract is short-lived, and employees start work when the employer requires them to work and only for a fixed and (often) short time (Crous, 2013: 16). The Basic Conditions of Employment (BCEA) of 1983 referred to casual labourers as those who worked for three days or less per week. They did not enjoy the same protection as other employees. However, since the introduction of the BCEA of 1997, the concept of “casual labour” in this sense has fallen away. Anybody who is employed for 24 or more hours per month is entitled to the protections regarding working time, leave, which are provided by the BCEA of 1997 (as amplified or varied by Sectoral Determinations or Bargaining Council agreements in certain industry sectors). Someone who works for less than

24 hours per month can perhaps still be referred to as a “casual” worker in a loose sense, they remain fully fledged employees for purposes of the protections of the LRA and EEA.

In his analysis of the Southern Africa region (South Africa, Lesotho, Swaziland, Zambia and Zimbabwe) concerning the extent and effects of casual labour, Bodibe, found that the conditions of employment are terrible: casual workers are forced to work long hours, for low wages and have heavy workloads (2006: 11). Moreover, their jobs are characterised by insecurity, some workers have difficulties with transportation, inadequate resting breaks, no benefits and are subject to excessive control by the employer (Mills, 2002: 1213). Furthermore, because of their precarious position, casual workers lack trade union representation because trade unions struggle to organise and fight for the rights of casual workers (Bodibe, 2006: 2). This means that they have weak social protection. The impact of working long hours with repetitive strain without rest is muscular pain, exhaustion, which affects employees’ life expectancy (Bodibe, 2006: 11). Furthermore, employers refuse to provide protective clothing and uniforms to save costs (Bodibe, 2006: 12). Employees either share protective wear or work without them. This poses a risk to their health and safety and violates labour laws. The employers do not implement the laws because law inspectors rarely appear on sight (Bodibe, 2006: 10). Moreover, employees fear to report these abuses because they do not want to lose their jobs (Bodibe, 2006: 11).

Since casual employment is precarious in nature, it affects the experience of work; how workers make political decisions and how they relate to the broader labour market (Bodibe, 2006: 14). According to Bodibe’s study, casual workers do not get benefits (2006: 12). This means employers do not contribute to Compensation Fund. Furthermore, “in a case where the employee would die or be involved in an accident, dependents would be left destitute because they cannot claim for injury on duty or workplace acquired diseases (2006: 13). This is made worse because the employees cannot afford private insurance because they earn low wages (Bodibe, 2006: 13). In South Africa, the Occupational Health and Safety Act 85 of 1993 (here in after “the Safety Act”), was created because of public outcry against rising injury and death rates on the job (Bodibe, 2006: 17). The Safety Act aims to reduce injuries, illness and deaths in the workplace (Bodibe, 2006: 14). Furthermore, section 8 stipulates (among others) that “every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.”

The differentiation in households as a result of flexibilisation leads to disparity among households. Kenny (2007: 467) argues that there is a qualitative difference in households which have access to a 'good' job – a formal sector, secure job – and households which do not, such as those of casual workers because poorer households have fewer resources to assist in other non-wage means of provisioning (Bodibe, 2006: 15). These employees are likely to be found in domestic and agricultural sectors (Crous, 2013: 16). Casual employees include, among others, farmworkers, seasonal workers, and domestic workers (Crous, 2013: 16).

Sections 6(c), 19(1), 28(1) and 36 of the Basic Conditions of Employment Act (3 of 1983) did not recognise casual workers as employees. The BCEA of 1983 did not protect employees who worked less than 24 hours per month. Whereas the BCEA of 1997 affords protection for employees and workers who have performed work for an employer. This means casual employees are entitled to the rights afforded to standard employees, for example, freedom of association and the right to not be unfairly dismissed.

Even though casual employees are regarded as employees, they still face struggles. One can be illustrated by the case *Seneke v Riptide Restaurant* 2011 11 BALR 1210 (CCMA), where the applicant, who worked as a permanent waitress, resigned. Upon her reinstatement, she undertook the work she previously worked. After the busy season, the employer instructed the manager to inform all casuals that their contracts will terminate later that month. However, as per conversation held between the employee and employer, she reasonably believed that she was a permanent employee because she was a permanent employee before resigning. In addition, the employer did not indicate to her whether she was employed on a casual basis. Regardless, the employer informed her that her services are not needed, and her position will be filled by someone else. The applicant then declared a dispute at the CCMA based on unfair dismissal. The CCMA held that the employee should be reinstated with back-pay.

2.4.2 Fixed-Term Contracts

Unlike permanent employment contracts, which usually run indefinitely with no prescribed time-limit, fixed term contracts are concluded to expire on a certain date or at the completion of a certain project or happening of a specific event (Smit, 2005: 30). In terms of common law, in the absence of any lawful reason for early termination, fixed-term contracts terminate automatically at the end of the agreed period (Gericke, 2011: 107). This means that under common law the employee cannot "aver that the employer's failure to renew the contract, or

renewing it on less favourable terms, constitutes unfair and actionable conduct” (Van der Bank, 2008: 158).

However, section 186(1)(b) of the LRA, has raised an exception to the common law position described above. Section 186(b) gives a provision for when a dismissal should be effected. Section 186(b) must be interpreted in light of section 23(1) of the constitution which provides everyone, who is in an indefinite or fixed-term employment contract the right to fair labour practices. Moreover, the definition of employee contained in section 213 of the LRA does not distinguish between fixed-term and permanent employees.

Fair labour practices as referred to in section 23(1) of the Constitution is also much broader than the limited meaning ascribed to unfair labour practices under the LRA. Therefore, the right to fair labour practices in terms of the Constitution includes protection against the unfair use, the abuse of fixed-term contracts. Consequently, fixed-term employees should receive the same legislative protection as that available to permanent employees.

In his study of fixed-term contracts as atypical employment in South Africa, Huysamen, found that though fixed-term employees “render” the same standard of work, they do not always enjoy the same level of employment protection, status, remuneration and benefits as employees in permanent full-time contracts (2019: 6). Furthermore, fixed-term employees lack trade union representation, are rarely covered by collective bargaining (Huysamen, 2019: 8). Moreover, training and promotion opportunities are often made available to permanent staff only (Gericke, 2011: 107).

Fixed term contracts are normally contracted into for a short duration (for a year) but can be renewed after the term ends depending on the requirement(s) (Huysamen, 2019: 8). Lawful reasons for early termination of the contract will include fair dismissal in terms of s186(1) of the LRA or termination through mutual agreement by the parties. There are cases in which a certain project will not be completed on the contracted date and the employer gives the employee the impression that they will continue work past the set date for dismissal. This gives the employee a reasonable expectation that the contract is renewed on similar terms.

The situation arises then when the employer wants to dismiss the employee after giving a reasonable expectation that the contract will continue. According to section 186 (b) of the LRA, dismissal is effected if “an employee reasonably expected the employer to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it

on less favourable terms or did not renew it.” In *Pik-it-up Johannesburg (Pty) Ltd v SA Local Government Bargaining Council* (2011) 32 ILJ 2728 (LC) the Labour Court held that the factors defining reasonable expectation are “equity and fairness, existence of substantive expectation that the fixed-term contract would be renewed, the employee subjectively expecting the contracting to be renewed or extended, objective factors that support the expectation.” This sets the test for a reasonable expectation to arise; otherwise, it could result in the dismissal being unfair. Only when the employee receives adequate notice from the employer, will the termination of the fixed-term contract be lawful as contemplated in section 198(b) of the LRA. Failure to give adequate notice will not only result in unfair dismissal of the employee but where the employees have been working for longer than three months, they will be deemed permanent employees by section 198(b) of the LRA. However, this provision does not apply to employers who employ less than 50 employees and have been in business for less than two years. This means that the employer has a means of avoiding certain provisions of employment protection legislation in that period. The protection is to protect small and start-up businesses.

Employees on fixed term contracts are not on the company’s payroll, once the term is expired, they are unemployed. Furthermore, employees on fixed-term contracts do not get provident fund, and other benefits compared to employees who are on the payroll of the company like permanent-full time employees.

Fixed-term employees may be subject to waiver clauses and rules on continuity of employment, which exclude them from employment protection (Burchell, Deakin & Honey, 1999: 20). However, if there is a reasonable expectation formed even though the contract expressly excludes such an expectation, the employer will be legally obligated to continue the contract with the employee (Crous, 2013: 32). The only exception to refuse renewal of the contract would be if the employer follows a fair procedure and dismissal is based on the employee’s conduct or capacity or the employer’s operational requirements, then the termination will be fair and enforced (Crous, 2013: 33).

I submit, fixed-term contracts should be more formalised, by providing grounds for the employer to dismiss the employee. Fixed-term contracts must include provisions customised for short to longer periods of employments. For example, where the parties agree to a three-year contract, the contract should include a provision stating that the employer can end the contract by fair procedure or substantive reasoning based on operational requirement, employee

conduct or capacity or what will happen when there is a material breach. This will make the employment contract more understandable for both parties because both are clear about their obligations.

Moreover, the employment contract will not be formulated to only benefit the employer. This is important because studies show there has been an increase in fixed-term employees, who face detrimental effects associated with the diverse working arrangements and get trapped in “a succession of short-term, low-quality jobs with inadequate social protection leaving them in a vulnerable position” (Cremers, 2010: 3).

The Council of the European Union enacted Council Directive No. 1999/70/EC, which is a framework agreement on fixed-term work concluded by the Trade Union Confederation of Europe and the Industrial and Employer’s Confederation of Europe. This was enacted to protect employees engaged in fixed-term contracts from discrimination, abuse and work that does not socially and financially upgrade the worker. The mandate is to find a balance between flexibility and security (Bell, 2012: 34). Clauses 5(2) (a) and (b) of the Framework Agreement state that “member states determine when a fixed-term contract will transition to an indefinite contract of employment.” The employer should inform the employees(s) of available positions in the company to secure permanent employment and also provide employees with training in order to develop their skills. South Africa should adopt this approach to provide certainty and protection for fixed-term contract employees.

2.4.3 Part-Time Work

Part time employees differ from full time fixed-term and permanent employees. Part time employees generally work less hours per week than full time fixed term and permanent employees (Booth and Van Ours, 2009: 178). For example, part time employees generally only work half days, twice or thrice a week or only on weekend (Booth and Van Ours, 2009: 178). In her study of experiences of part-time female employees in the workplace, Walsh found that part-time work is used by employers to attain numerical flexibility (2007: 155). Moreover, found that part-time work is expanding and contributes significantly to employment growth (Walsh, 2007: 155). In addition, she found that part-time work is characterised by low pay, service industries rather than manufacturing and is predominantly undertaken by women (Walsh, 2007: 155). Women are drawn to part-time work because it can be less demanding or

responsibilities and, importantly, they can participate in employment and commit to ‘their’ domestic activities and family life (Walsh, 2007: 156).

It has been argued that part-time work does not necessarily reduce the time pressures on employees (Walsh, 2007: 157). As Greenhaus and Beutell (1985: 78) stress, “temporal conflicts can stem from the number of hours worked per week, the amount and frequency of overtime, the presence of an irregularity of shift-work, and the inflexibility of the work schedule.” This means that the working hours posed by the employer may not always be favourable to women or the times they would prefer to work. This introduces what is referred to as ‘boundary control’, which refers to the tendency of lower-level workers surrendering control over when they work and what they do at work, “exchanging control for predictability in their work lives” (Perlow, 1998: 329). By contrast, higher-level employees experience greater control over their work activities. However, have less control between work and non-work commitments (Walsh, 2007: 158). This tells us that the ability to balance work and family commitments as well as the employees’ working-time experiences is dependent on the nature of the job that part-time employees do (Walsh, 2007: 163). In addition, the manner in which numerical flexibility is implemented within the organisation (Walsh, 2007: 159).

Furthermore, part-time work is perceived to be ‘bad’ jobs (Walsh, 2007: 156). A study shows that a significant proportion of female part-time workers would prefer to work more hours (Walsh, 2007: 175). Another study shows that part-time workers tend to have fewer promotion opportunities than regular full-time workers and the treatment of workers differ according to their employment status (Zeytinoglu, 2008: 7). Part-time work affects the experience of the workers within the organisation, as they may be stigmatised as “outsiders” because they spend less time at work (Walsh, 2007: 156). This affects their involvement and status in the workplace as compared to their full-time counterparts. They experience partial inclusion, rarely engage in organisational activities, and receive less employment benefits and training relative to full-time employees (Walsh, 2007: 157-8).

Part of NSE is that part-time workers may be treated differently by other organisational members thereby affecting the perceptions of their “relative inclusion within the organisation (Walsh, 2007: 159). Kenny (1999: 216), notes that permanent workers feel casual workers are threatening their jobs, and casual workers feel detached from their jobs and full-time employees are not sympathetic to their situation. The short-hours scheduled and implemented in part-time work affects the experience of part-time employees at work, as workers can find it difficult to

integrate in the workplace – not only to engage in organisational activities but also to form social relationships. Feeling detached in the workplace can weigh in the emotions of the workers in relation to other workers however, emotions of workers are also in relation to the employer. For instance, the retail sector provides public service jobs which are now “thoroughly organised and socially engineered from the top” where casual workers feel the need to manage their feelings (Hochschild, 1979: 196). The latter speaks to the concept of emotional labour.

Emotional labour involves “the management of feeling to create a publicly observable facial and bodily display” (Hochschild, 1979: 193). This is important for management because “emotional labour is sold for a wage and therefore has exchange value” (Hochschild, 1979: 195). Arlie Hochschild, presents emotions as being commodified in the labour process (1979: 193). For instance, in the course of physical and mental labour, workers are also doing something more, which she defines as emotional labour (Hochschild, 1979: 194). According to Hochschild, of all women working, one half have jobs that call for emotional labour. In addition, she pointed out that women more than men have had to put emotional labour on the market thus describes more of their experience (1979: 196).

2.4.4 Outsourcing and Labour Broking

The concept of labour broking was introduced in 1983 when the 1956 LRA was amended to make provision for agencies supplying skilled workers to the manufacturing sector (Budlender, 2013:8). The amendment “deemed the broker to be the employer of the workers rather than the client to whom the workers were provided” (Budlender, 2013: 9). Labour broking is when businesses provide clients with person(s) to perform work for the client for a fee (Botes, 2015 :101). Labour broking is more inclined towards temporary or casual employment (Bosch, 2001: 843). It illustrates the triangular employment relationship, where there is a commercial contract between the agency and client, and an employment contract between the agency and employee (Botes, 2015: 105). Once the assigned task is done, the contract ends. This triangular relationship shows the vulnerability of non-standard employees. There is no definite control over the contract because labour brokers might evade responsibility by including a resolutive clause in the employment contract (Botes, 2015: 105).

This clause states that an employment contract terminates automatically in a case where the client terminates the commercial contract or removes the employee from service before the commercial contract has ended (Botes, 2015: 105).

Furthermore, subcontracted and temporary workers find it difficult to raise their rights because they do not have a written contract, or trade union representation (Andrew & Jackson, 2011: 10). According to section 29(1) and 89(1)(b) of the BCEA, every employer must provide a written employment contract, with all the particulars of employment and every employee has a right to trade union representation, respectively. It is therefore unlawful for subcontracted workers not to have written employment contract or trade union representation.

The regulations that deal with TES govern labour broking (Botes, 2015: 111). The Private Employment Services Convention designates the labour broker as the employer (Theron, 2011: 13). When “the worker is taken on, they are an employee of the company they are working for” (BIS, 2009). Section 198(2) of the LRA provides that the TES is the employer and the person placed is the employee. This means that, while the client company may change the outsourced firm, the latter cannot simply fire the outsourced workers (Theron, Godfrey, Lewis and Pienaar, 2005: 15).

As protection for workers in TES, the commissioner in *Lupindo v Ferrero SA (Pty) Ltd and Adcorp Blu* (CCMA) (GAVL 3153-18, 22-10-2020), invalidated the use of zero-hour contracts. These contracts do not compel employers to state the minimum working hours of the employee and the employee is prohibited from accepting other jobs; they are only subject to the call from employer when needed (Adams, 2014:4). These contracts breach section 29(1) of BCEA because they create uncertainty and leave employees without pay for months.

Even though section 21(12) of the LRA provides labour brokers’ employees with rights to union representation, non-standard employees generally have weak trade union representation (Botes, 2015 106). Trade unions must represent collective group interests from an organisation to realise effective collective representation (Pernicka, 2005: 225), but because non-standard employees are difficult to organise, it causes insufficient representation within a client’s workplace and the unions are not entitled to organisational rights in the LRA (Botes, 2015:109). As a result, non-standard employees are left at the mercy of employers (Bopedi, 2006: 5).

Unlike labour broking, outsourcing creates fixed-term or permanent employment. It involves putting certain services out to tender (Bosch, 2001: 843). These services include gardening, security or cleaning service (Crous, 2013: 23). They are regarded as unrelated to the core business of the organisation. This suggests outsourced workers are easily disposable and

undertake this kind of work involuntarily. Even in this instance, employers cannot easily fire the workers. Section 198 of the LRA retains the statement that the labour broker is the employer. Therefore, the broker has to follow proper procedures in dismissing workers. This is important because workers in TES have low levels of employment security (Budlender, 2013: 35). Bhorat, Cassim and Yu (2014: 15) highlight the lower level of protection that TES have against dismissal and termination of employment. In such a way that workers are simply removed by the agency on the request of the client company. This results in the worker not having protection against “victimization and nor severance pay, remedies they would have in terms of labour law” (Bhorat *et al*, 2014: 15).

By outsourcing workers, the labour broker, instead of the employer (client company), is responsible for the sub-contracted employees’ employment terms and conditions (Theron, 2011: 2). However, the “transfer” of business, that is the trade or service as defined in the section 197(1) (a) of the LRA, once affected to the client, the employment contracts of the employees do not end, any right that an employee could enforce against the labour broker, can be enforced on the client, this includes any right contained in labour legislation, an arbitration award and a collective agreement (Theron, 2003: 1257).

Outsourced workers usually deal with the effect of first-generation outsourcing (Budlender, 2013: 40). The latter happens when the outsourcer notifies the employees about contemplating retrenching the employees (Bosch, 2001: 842). It is done when the posts employees occupy are declared redundant by the outsourcer. The employees are subsequently offered employment on less favourable terms than they had enjoyed at their previous employer (Bosch, 2001: 843). The offers could include transferring the employee into a fixed-term contract, or to a temporary employment service, or be contracted as an independent contractor. The employees accept the less beneficial conditions for the sake of securing employment. The amendments to the LRA prohibit these practices. According to section 197A(2)(d) of the LRA if a transfer of a business takes place, “the transfer must not interrupt an employee’s continuity of employment, and an employee’s contract of employment continues with the new employer as if with the old employer.” Second, section 197A(3)(a) upon transferring the employee(s), the new employer must not employ the employees on less favourable terms than those on which the employees were previously employed.

In Canada, when an outsourcing agreement is concluded between the client, original employer and supplier, the contractor, the affected employees remain in the employ of the client until

they get dismissed or offered employment by the supplier (Corley & Owens, 2006: 12). Canada has different labour principles that apply to a particular jurisdiction: “a dismissal will only be probable if the employer gives sufficient notice” (Corley & Owens, 2006: 13). In South Africa, these employees enjoy more protection since they will either get an employment offer or will be retrenched. When retrenchment procedures are initiated, these employees are entitled to be treated procedurally fair. In addition, the employer must investigate alternatives to retrenchments as well as to provide the employees with severance pay. Non-standard workers are continually exposed to some detrimental situation. It is important for labour inspectors to continually monitor the workplace.

Section 22 of the Constitution of the Republic of South Africa (1996) provides that every individual has a right to take up any activity which they believe themselves prepared to undertake as a profession and to make that activity the very basis of their life (Crous, 2013: 3). Citizens have the freedom to choose whether they want to engage in standard or nonstandard employment. The proliferation of NSE makes it difficult for individuals to realise that freedom.

2.5 THE PROLIFERATION OF NSE

The shift from Fordism to post-Fordism is not a universal transition (Klerck, 2004: 111). From the mid-1990s onwards, there has been a proliferation of NSE in South Africa (Kenny, 2016: 16). The proliferation of NSE is driven by technological advancement, globalisation, neoliberalism, “increasing demands for economic competitiveness locally and globally” and unemployment (Richbell, Brookes, Brewster and Wood, 2011: 6). As a result, businesses may outsource to access “low-cost labour” (Adams, 2015: 541). Furthermore, since firms do not control capital or intermediary costs, they tend to focus on cutting labour costs (Allen, 2000: 189).

The Fordist era was based on vertical integration, whereas post-Fordism is based on vertical disintegration (Kenny & Webster, 1999: 217-218). An example of vertical disintegration is corporate restructuring, where there is a shift from vertically-integrated firms “where cleaning and security were performed in-house to a range of contractual relations with contractors, and suppliers” (Fudge, 1999: 138). As corporate restructuring accelerated in the 1980s, the use of standard employment was curtailed with the increased use of NSE (Fudge, 1999: 137).

2.5.1 Technological advancement

Technological innovations have changed work processes and threaten some jobs in both developed and developing countries (Shank, 2016: 4). Results from the World Economic Forum survey (2016) showed that, if the Fourth Industrial Revolution became successful, “a net loss of more than five million jobs will occur globally (Shava & Hofisi, 2017: 203). This would be because the business sector will invest more in, among others, skills development for machine learning, robotics, nanotechnology, artificial intelligence, than hiring short-term labour force (Shava & Hofisi, 2017: 204).

Regarding skills, Coleman (2016) suggests that the introduction of artificial intelligence leads to skills shortage as there will be few specialists to implement the exponential technologies thereby creating opportunities for those who have the needed skills. However, Barra (2016) differs: he suggests that technological advancement is drastic; changes industrial production and puts jobs at risk. For instance, in the United States of America, the share of employment in the manufacturing industry has declined from 25% in the 1970s to about 10% (Shava & Hofisi, 2017: 206). This suggests that, with the rise of technological advancement, there may be an unprecedented displacement of workers.

Technological advances such as bar coding have contributed to “centralised stock control and management” (Bodibe, 2006: 6). This includes monitoring movement of goods and service and replacing stock on a ‘just-in-time’ basis (Bodibe, 2006:6). This shows the employer what the consumer trends are, their preferences at the point of sale and transmit this information to the supplier (Bodibe, 2006: 6). This results in the loss of jobs in the warehousing and logistics sector. Furthermore, with the introduction of electronic commerce, consumers can buy goods or be serviced without the need to go to the physical store, which impacts direct employment in the store. Four key technological advances are on the cart in the immediate future that will alter the economic and employment landscape. These are ultra-high-speed mobile internet, artificial intelligence, big data analytics and cloud computing (Ngepah & Mwiinga, 2020: 8). These will contribute to advancing economic expansion by changing employment patterns to the benefit of high and adaptive skills (Ngepah & Mwiinga, 2020:6).

In the South African retail sector, the biggest technological expansion that is displacing a number of jobs and contributing to casualisation is e-commerce (Ngepah & Mwiinga, 2020: 6), with its impact being low- and unskilled labour pushed to casualization, informality and

unemployment (Ngepah & Mwiinga, 2020: 6). The result of this is a disruption of household income (Shava & Hofisi, 2017: 205).

2.5.2 Neo-Liberalism

NSE is a global phenomenon driven by neo-liberal market restructuring (Bodibe, 2006: 2). This speaks to deregulating markets, including the labour market, to increase labour flexibility. Employers have “the freedom to determine employment levels quickly and cheaply, change wage level without restraint, change work processes, terms and conditions of employment” (Cheadle, 2006: 6). This is for employers to pay low wages and change workers and how and when work is conducted (Bodibe, 2006: 4). Neo-liberalism is a policy that encourages minimal state intervention and sees worker rights as creating an ‘inflexible’ labour market (Friedman, 2002: 40). Consequently, workers are in a predicament where competing corporations want high-quality production for the lowest prices; a race to the bottom to see who can “undercut the competition’s prices by sacrificing workers’ safety and quality standards” to reduce labour costs (Selwyn, 2013: 1311). The effects of neo-liberalism led to reduced social security for the employees (Selwyn, 2013: 1322).

2.5.3 Increasing Demands for Economic Competitiveness

Internationally, competitiveness is the driving force of NSE. In the past, companies focused on reducing their labour costs combined with strategies to improve their product to maintain market share (Bopedi, 2006: 4). A characteristic of international competition is trade liberalisation. Trade liberalization opened the local economy to competition from within the region and external competition (Bopedi, 2006: 4). Retrenchments, mergers, acquisitions and the pressure to maintain shareholder value drives management to keep labour costs down (Bopedi, 2006: 4). Foreign capital also strengthens flexibility of the labour market by demanding a lower wage bill and relaxation of regulation to increase profits (Bopedi, 2006: 4). Essentially, employers’ resort to flexible labour because it allows them to extend working hours and achieve easy deployment of labour (Bopedi, 2006: 4).

2.5.4 Unemployment

South Africa acknowledges the expanded definition of unemployment, which counts economically inactive people in the labour force still looking for work as well as discouraged work-seekers (Quarterly Labour Force Survey, 2022: 3). To be unemployed is to be without employment, a job or work (Walsh, 2007: 156). In South Africa, unemployment is rife. The

Quarterly Labour Force Survey (2022: 2) reports that, “compared to 2021, total employment decreased by 81 000 persons. The number of unemployed persons increased by 8,6% (620 000), while the number of persons who were not economically active increased by 0,2% (39 000).” In addition, employment has mostly decreased in the first quarters of each year since 2016, except for the increases observed in 2017, 2018 and 2022 (Quarterly Labour Force Survey, 2022: 3).

The unemployment rate is 63,9% for those aged 15-24 and 42,1% for those aged 25-34 years, the unemployment rate among young graduates (aged 15-24 years) declined from 40,3% to 32,6%, while it increased by 6,9 percentage points to 22,4% for those aged 25-34 years in the first quarter of 2022 (Quarterly Labour Force Survey, 2022: 4). Under the expanded definition of unemployment, the unemployment rate among women is 51%. Along racial lines, the unemployment rate among black women is 41%, compared to 29.1% among coloured women, 25.2% among Asian women and 9.9% among white women (Quarterly Labour Force Survey, 2022: 4). This could possibly be a reason for why we see more students and women, particularly black women in NSE. Because of the unavailability of job opportunities and widespread poverty in our country, job seekers accept any job for survival rather than dignity (Bodibe, 2006: 2).

The supporters of NSE presume that non-standard work addresses the unemployment problem in South Africa (Crous, 2013: 3). However, the question remains: are these forms of NSE classified as decent work and are employees adequately protected by our labour laws because research shows that simply having access to a job does not provide a ladder out of poverty. The poor wages paid to non-standard employees trap them in these jobs and only lift them marginally out of poverty.

2.6 LABOUR LAW AND THE PROLIFERATION OF NON-STANDARD EMPLOYMENT

The proliferation of NSE coincides with the increasing regulation of labour (Botes, 2015: 100). The Labour Relations Act (LRA) of 1995 was the first major legislation to be introduced after South Africa’s first democratic election (Theron and Godfrey, 2002: 22).

Along with the Basic Conditions of Employment Act of 1997, they promote social justice (Theron & Godfrey, 2002: 25). The LRA includes everyone who works for a wage as an employee, except independent contractors (Theron, 2008: 18). Independent contractors work

for pay but are self-employed and do not qualify for labour law protections as contemplated by section 213 of LRA and section 1 of the BCEA. However, employers use this to their advantage: they create a situation where they disguise the employment relationship of employer and employee as being one of the contractors (Collins, 1990: 355).

Section 39 of the Code of Good Practice (2006) gives clarity on who is an employee. A defining feature is in respect of control. An employee is subject to the employer's right of control and supervision while an independent contractor is "equal" with the employer. Section 41 of the Code coincides with what Collins (1990: 3: 369) writes as the "organisation" test, which asks whether the employee has been integrated into the organisation by being graded, paid by a job evaluation scheme, and required to confirm to the employer's disciplinary code."

Sections 200A of the LRA and 83A of the BCEA provide a rebuttable presumption in favour of a SER and in NSE. They set out factors where a person may be presumed to be an employee, regardless of the form of the employment contract (Theron, 2011:12). If one of the following factors is present, then the onus is on the employer to rebut the presumption on a balance of probabilities: the manner in which the person works is subject to the control or direction of another person, the person forms part of that organisation, has worked for that other person for an average of at least 40 hours per month over the last three months, is provided with tools of trade or work equipment by the other person (Fourie, 2008: 121). If the employer proves that employment was genuinely of a temporary nature, then the protection falls away (Fourie, 2008: 121).

The objective of these reforms is to protect as many workers as possible and ensure parity in treatment between all workers. For instance, section 6(1) read with section 11 of the Employment Equity Act 55 of 1998 provides employment status cannot be a ground to differentiate between employees. To increase protection, sections 198 of the LRA and 82 of the BCEA provide that the employment service and client are jointly and severally liable if any employment condition is breached (Fourie, 2008: 117). This means the client also has legal responsibility for persons employed at their premises.

The law provides rights that aim to improve the terms and conditions of employment for nonstandard employees. For instance, section 29(1) of the BCEA stipulates that the employee is entitled to not be "discriminated on grounds of sex, age, gender, disability or sexual orientation." Again, employees also have the right to receive a national minimum wage, be

protected under health and safety laws, have rest breaks and have a written contract, stating what position they hold, for how long, how much they will earn and the authority they work under (sections 7(b), 14(1), 29(a), (b), (c), (d) and (e) of the BCEA, respectively).

The International Labour Organisation (ILO) encourages member states to devise a policy “to address inadequate working conditions, support effective labour market transitions, promote equality and non-discrimination” (ILO, 2016: 14). This is important because employers are the gatekeepers to employment; their selection and retention strategies determine access to employment. Laws against the discrimination in employment and occupation, which constrain employers from discriminating on grounds such as race, colour, sex, religion, political opinion, national extraction, social origin, age or sexual orientation, ensure a more inclusive labour market. Furthermore, ILO member states must ensure adequate social security coverage for all, promote safe and healthy workplaces, ensure freedom of association and collective bargaining rights, improve labour inspection and “address highly insecure forms of employment that do not respect fundamental rights at work” (ILO, 2016: 4).

2.7 COLLECTIVE BARGAINING

According to Salamon (1998: 305), collective bargaining is “a method of determining terms and conditions of employment and regulating the employment relationship which utilises the process of negotiation and agreement between representatives of management and employees.” In examining good practices in which those in non-standard forms of work are organized, analysing the role that collective bargaining and other forms of social dialogue play in improving the terms and conditions, Theron (2011: 3) found that collective bargaining in South Africa is still confined to workers in standard forms of employment and the concerns of the organised workers about the increase in non-standard work. The concerns prominently feature labour broking and the regulation of externalisation. He suggests collective representation of non-standard employees.

However, we find that in some forms of non-standard work, like subcontracting and temporary work, workers find it difficult to raise their rights because they do not have trade union representation (Andrew & Jackson, 2011: 10). Even though section 21(12) of the LRA provides labour brokers’ employees with rights to union representation, non-standard employees generally have weak trade union representation (Botes, 2015: 106). Trade unions must represent collective group interests from an organisation to realise effective collective

representation (Pernicka, 2005: 225), but because non-standard employees are difficult to organise, it causes insufficient representation within a client's workplace and they are not entitled to organisational rights in the LRA (Botes, 2015:109).

Non-standard work is internally differentiated, for example, even though casualisation is described by having weak labour standards, there still exist a binary relationship (or direct employment) between employee and the employer and workers can organise themselves in the workplace, (Theron, 2011: 1) whereas workers whose work is externalised (indirect employment), in a triangular employment, do not have access to a "workplace" or facilities to hold a meeting. This makes it difficult to have effective collective bargaining (Theron, 2011: 4). Moreover, collective bargaining is seen as problematic in a triangular employment relationship, especially regarding wages and conditions of work, because they are determined by the client. The consequence of this is that the contract is not the contract of employment but a commercial one between the client and legal employer (Theron, 2011: 7). This demonstrates job insecurity and the difficulty of non-standard employees to bargain collectively and raise their interests, demands and dissatisfactions.

Since NSE is internally differentiated, not only are the experiences of the workers different but the strategies employed in dispute resolution will be different from the blanket approach that the traditional, binary standard form of employment takes. The dispute resolution in the traditional form of employment does not consider the new forms of non-standard work. Theron (2011: 8) points out that there needs to be a differentiation between demands put forward by one or other category of NSE on their behalf and those in standard employment. Furthermore, use other means for worker representation than trade unions, like cooperatives which would not only represent the interest of their members, but promote social dialogue (Theron, 2011: 2).

To address this in terms of regulation, Mückenberger (2006: 639), in his paper on the modernisation of the employment relationship, suggests (among others) that a modern and effective approach to conflict resolution should rely largely on dialogue and consultation, which create the conditions for mutual comprehension and recognition of interests, motives, standpoints and aims, and include actors and concerns hitherto outside the consultation process. However, his suggestion, as we will see from the employees' perceptions of non-standard work, only works where there is a strong labour movement which is all too often precisely missing because it is really difficult when there is a predominance of NSE workers. Furthermore, he

advises parties involved include a third party who will intervene in an advisory capacity to define areas of consensus and compromise (Mückenberger, 2006: 639). This is important because in situations of uncertainty or deadlock, there will be objective, fair and reasonable solutions to conflict. Again, his ideas are not feasible when one does not have secure employment.

To ensure decent work, the ILO (2016: 25) encourages the strengthening of collective bargaining. Unions need to be increased to organise and represent all workers in a sector or occupational category. It also encourages social protection.

2.8 CASE STUDIES

The nature of the industry has an influence on the type of non-standard work that is likely to be employed (Gash, 2003: 384). NSE offers employers options for how to organize their employees. Each industry has its own rules and regulations therefore, the conditions that flow from it will be unique to the worker who undertakes a type of industry. The discussions below are on the retail, security and construction sectors.

2.8.1 Retail Industry

The wholesale and retail are located in the services sector of the economy (Bodibe, 2006: 5). Research shows that the use of casuals in the South African retail sector started in the 1980s. The latter then means that in terms of the apartheid labour market, NSE had already been in use. Valodia (2000: 16) insists this resulted because of consumer demand, which pushed store hours to be extended. Studies of the retail sector in South Africa show that it has grown through casual and subcontracted employment. South Africa's retail sector is dominated by supermarkets like Woolworths, Shoprite and Pick n' Pay, which compete and "keep out smaller competitors" (Kenny, 2011: 49). In supermarkets, managers hire on an "on-demand basis" (Kenny, 2007:20). Peripheral workers are hired based on the "immediate needs of the employer" (Tshoose & Tsweledi, 2014: 340) and have limited job security (Kenny, 2007: 20). Examples are casual, freelance and part-time workers, though there are long-term, part-time workers (Allen, 2000: 189). Kenny (1999: 25) argues that the use of casual labour is a general trend in the retail in South Africa. This is beneficial to employers because they are legally exempted from providing benefits such as pension or medical aid to non-standard employees as they would full-time employees, whilst maintaining high productivity (Kenny, 2011:49).

Supermarkets expand and contract the workforce depending on the peaks and troughs in customers that enter the supermarket (Kenny, 2016: 12).

Employment has increased in retail, but its quality has deteriorated (Bodibe, 2006: 6). The companies' turnaround strategy is to extend trading hours (initially Saturday and then Sundays), which intensify the use of casual labour. The latter is a response to the relaxation of regulation for Sunday and Public Holiday work (Bodibe, 2006: 6). Big retailers increasingly hire casual labour including supervision over extended trading periods. Another way big retailers keep competing in for higher profits is by work intensification. Work intensification "is a notable job stressor, which has been hypothesised to result in various negative outcomes for employees" (Mauno, Herttala, Minkkinen, Feldt and Kubicek, 2022: 114). It involves reducing the porosity of the working day, such as when employers reduce the time when employees are not working (Mauno *et al.*, 2022: 114).

A job that has been outsourced largely is merchandising. Merchandising includes being responsible for a product from its delivery in the store to when a consumer picks it in the shop (Barra, 2016). The retailers streamline and design the packing and merchandising centrally and the job becomes routine with no skilled individuals required (Bodibe, 2006: 6). Not only does this take over the jobs of aisle attendants but there is deskilling in the process (Bodibe, 2006: 6). Cleaning and security are also outsourced in the retail industry. Regarding security, even though companies have saved by outsourcing, they compromise quality as the "subcontractor is not vigilant to prevent theft" (Bodibe, 2006: 6).

Job rotation is also used as a means of labour flexibility. However, employers do not pay employees for the extra work, nor are they upgraded to recognise increase workload (Bodibe, 2006: 6). This could potentially affect employees' occupational health and life expectancy. Large retail supermarkets have the tendency to expand their retail chain by having vertical ownership in the sector, like Shoprite-Checkers (Bodibe, 2006: 5). This tendency is common in the Southern African region as well as globally (Bodibe, 2006: 5). Similarly, in Lesotho the use of casual and subcontracted employment is rife in many retail, wholesale and hotels, examples are Shoprite and Cashbuild (Bodibe, 2006: 23). The backdrop of increasing precarious labour is economic policies like neo-liberalism and the government and big business valuing and encouraging local and global competition. Consequently, because big business plays a huge role in the economy, it influences government, as a result, has a ripple effect as it affects employment relations.

2.8.2 Security Sector

The property services sector comprises of cleaners, caretakers and security staff (Bibby, 2011: 14). The focus in this section is the security staff. Among others, the security staff “includes guarding workplaces and staff, armoured transport and alarm monitoring” (Bibby, 2011: 2).

Employers in this sector have a history of employing security guards as direct employees but also sometimes through other “more informal” arrangements (Bibby, 2011: 16). For example, caretakers would be provided with rent-free accommodation or have their rent deducted (Bibby, 2011: 16). Furthermore, other companies use independent workers or casual labour on a need basis (Bibby, 2011: 16).

There is a long tradition of outsourcing in the security sector, whereby workers are contractually employed to do a particular task for a particular client company who they are not directly employed (Gichanga, 2019: 4). These contractors range from single-site to large national companies (Bibby, 2011: 17).

According to the ILO’s report on property services sector, employers tend to perceive little benefit from the security industry unless there is improvement in the quality of work or corporate social responsibility or a similar criterion. The security sector is seen as a “cost centre” (Bibby, 2011: 4). In order to cut costs, employers lower costs of the service so that other competitors of the client may not be able to undercut them (Bibby, 2011: 5). As a result, the security sector is pressured towards a race to the bottom (Bibby, 2011: 6). The effect of lowest price competition “weakens the performance system, which includes staff training, supervision and quality management” (Bibby, 2011: 5). To further cut cost, employers employ cheap labour, which affects staff motivation and turnover rates (Bibby, 2011: 9).

Although labour laws are to protect all workers, some security guards face poor working conditions. Nkgadima, (2017), conducted a study of the working conditions of security guards. She found that several security guards at a local shopping centre in Durban had had their wages deducted over a period of 12 months by the company for ammunition and body armour. Furthermore, that they were paid lower than the national minimum wage. Unlike employees in the SER who work the maximum normal working hours of 45 hours weekly. Other security guards work 84 hours weekly. A day, some security guards work a 12-hour day shift from 6:00 – 6pm, and a night shift from 18:00 one day to 06:00 the next day. In light of the extension of

their working hours, some security guards do not get fully compensated. Nkgadima (2017), found that several employees were paid R2000 whilst the national minimum wage was R3500 at the time. In addition, the security guards “had no access to ablution facilities and no shelter for when it rains or to offer shade in extreme heat” (Nkgadima, 2017). The role of minimum wage legislation is to protect workers from unduly pay.

According to the Union Network website, 283 000 registered security guards in SA work for 4 200 registered businesses in a R14-billion-a-year industry (Mafela, 2006: 29). The security guards have been active players in the outsourcing industry. These workers have played an important role in modernizing the industry. For example, the two-day strike in six provinces was called by 13 unions, representing almost a third of the 280 000 registered security guards in South Africa which at the end was successful. The violent strike ended with the workers having their 11% increment, and an additional 4.0% increase for the lowest paid workers (Mafela, 2006: 6).

In South Africa, the security industry is regulated by the Basic Conditions of Employment Act, No. 75 of 1997, particularly sectoral determination 6. Section 16(1) of the sectoral determination 6 stipulates that “an employer shall free of charge provide any weapon, ammunition, tool, whistle or other equipment in the performance of the employee’s duties needs or requires to use for self-defence or apprehension.” Furthermore, section 16(3) states that no employer shall deduct any wages unless it is by a fair procedure to have been lost or damaged by an employee (excluding damage that arises from the employee performing the work). It is therefore unlawful to charge workers for their work gear. Second, the National Minimum Wage Act, No.9 of 2018 (herein after the “NMWA”) applies to all employees and their employers. As provided in section 2 of the NMWA, the purposed of the Act is to improve the wages of the lowest paid, to protect workers from unreasonably low wages. Under section 5(a) read with 4(a) & (c) of the sectoral determination 6 stipulates that employees “shall receive their allowance in respect of each hour in a day or night shift worked. The fact that some employers pay their workers less than the lawfully prescribed amount is unlawful, it goes against the fundamental objectives of the NMWA and undermines the value of the national minimum wage.

In her study of labour flexibility in the private security sector Gichanga (2019:11), found that the sector has decreased in trade union membership. Security officers usually join trade unions

to have employers meet their demands (Gichanga, 2019: 15). Once the employee's demands are met, and the situation at work is resolved, employees question the need for union representation and become reluctant to pay the union fee (Gichanga, 2019:15). Furthermore, trade union membership decreases because some workers rely on legislation to demand their writes, when there was no legislation and employees were exploited, employees joined trade unions (Gichanga, 2019: 16). Other security guards for instance in Nkgadima's study (2017), do not have trade union representation, as a result continue to have their working conditions compromised; being under paid, not having proper facilities to perform work well and subject to unfair termination of employment contract.

On the perceptions of the employers, employers which do commit to providing decent work run the risk of losing market shares and profits (Bibby, 2011: 21). the structured antagonism of interest,

Employees in NSE are not passive, they are also active actors in the labour market. On 23 March 2006, security guards embarked on a national wage strike. They were striking over higher wages and better working conditions, "including the right to have lunch breaks and to use toilets without being charged for deserting a position while on duty" (Mafela, 2006: 26). The unions succeeded in receiving their demanded 11.0% and additional 4.0% increase for the lowest paid worker. In this case, it is clear how unionisation are legitimate and necessary vehicles for protecting the interest of employees.

2.8.3 Construction Sector

In the southern African region, the construction industry has experienced a boom since 2001, realizing substantial increases in output and employment, which was driven by construction of residential property for the rich (Bodibe, 2006: 61). The quality of employment has rapidly declined. Employment in construction is driven by exponential growth in casual employment (Bodibe, 2006: 61). This industry has contributed significantly to the South Africa economy (Dlamini & Cumberlege, 2021). In 2012, the construction industry contributed R59,422m to the GDP at 2005 price levels, an amount of R112,631m at current prices. This figure was translated into 3.5% of the South African GDP (Stats SA, 2013: 8). In September 2012, the construction industry employed an estimated 433,000 employees, roughly 5.1% of the South African workforce (Stats SA, 2012: 11). The South African government has declared the industry a strategic national asset and it was convinced that the construction industry could be

used to achieve economic growth and improve the quality of life of the population (Haupt, 2016). It was, therefore, important that the industry was growing and attracting new entrants.

Incomes from this industry are spent in the rest of the economy and therefore construction employment contributes to aggregate demand (Bodibe, 2006: 9). Aggregate demand is “a measurement of the total amount of demand for all finished goods and services produced in an economy” (Dutt, 2006: 329). It is important because it influences production and economic growth; the more demand, the more supply, which means firms can hire more staff and citizens buy more. It also influences employment. For instance, with casual work, if workers were permanently employed, they would be able to make long-term decisions, buy durable goods, take out debt because they have a fixed salary. Casual workers do not have that privilege because they earn low wages and, therefore, do not have access to socioeconomic resources (Theron and Godfrey, 2002: 28), and once the seasonal work is done, aggregate demand goes down or fluctuates. There is political and economic instability in South Africa, which encourages employers’ unwillingness to hire permanent staff. In turn, employers tend to use casual workers because of the risks involved.

The profits earned in construction can be reinvested in the sector or in other sectors contributing to capital formation in the economy. Despite the industry’s importance, the ILO, (2001: 1) has noted that the construction industry is suffering from a poor image. In South Africa, the construction industry has the third highest fatality rate, after the fishing and transportation sectors. CIDB reported (2019) on average, 20 people per 100 000 die on construction sites in South Africa each year. Construction workers experience poor working conditions; a majority of them do not have written contracts, paid leave or medical aid benefits (Bodibe, 2006: 62). This is partly because the union density has decreased from 22% to 14%. As a result, the workers are at the mercy of the employers and the precarious and unstable nature of the jobs intensifies workers’ vulnerability and susceptibility to employer power (Bodibe, 2006: 62). In addition, many spectacular accidents involving loss of life, limb and property have occurred on construction sites in South Africa (Haupt, 2016: 80).

According to Windapo and Catell, (2013: 67) the construction industry employs a large number of workers who have no education nor experience. Many companies hire workers with no experience for smaller jobs.

2.9 Conclusion

The problem of NSE is rampant and takes many forms internationally. Casual labour, disguised employment in the form of independent contractors are subject to abuse, where employees have unclear terms of employment (Bodibe, 2006: 36). We must not downplay the experiences of workers in NSE. It was important then to find out the workers' experiences from their own self-assessment and answer how non-standard workers integrate work and family.

This research serves to contribute to our understanding of the day-to-day problems experienced by NSE and the obstacles and opportunities they encounter in their workplaces. The common trend has been weak collective bargaining and unionisation, low wages and weak regulatory reach, with skill-bias technical progress that come with adopting new technologies of production and prevailing economic policies.

The problems which arise in NSE are because of a number of factors: in the highly competitive world economy, neo-liberal policies advocated by international financial institutions force businesses in their endeavour for survival. That is to see a reduction in labour costs by whatever means as their first move in maintaining competitiveness. The South African government has adopted neo-liberal policies, and investment promotion activities, which can conflict with labour laws. This makes it difficult for the government to enforce labour laws to ensure workers enjoy the protections afforded in those laws. Hence, the research has also sought whether the labour law rights are complied with by employers. The legislation is sound -but that, as workers' evidence will be adduced, there is a yawning gap

The following chapter outlines the research design.

CHAPTER THREE: RESEARCH DESIGN

3.1 RESEARCH METHODS AND PROCEDURES

Research design refers to “the steps that researchers follow to complete their study from start to finish. These include asking a research question based on a theoretically orientated selection of research respondents, data collection and data analysis reporting the result” (Marvasti, 2004: 9). This research required deep engagement and interaction with employees and employers to explore their perceptions of non-standard employment (NSE). The central research question sought to understand not only employee perception of NSE, but also the reasons why employers resort to NSE and why they use particular types of NSE. In addition, the research explored how labour law protections for NSE translate into practice in particular workplaces. Therefore, a qualitative approach was used because it “provides a detailed description and analysis of the quality, or the substance, of the human experience” (Marvasti, 2004: 7).

3.1.1 Research Questions

3.1.1.1 Primary research questions: What are the perceptions of NSE and how is labour law implemented to protect non-standard employees?

3.1.1.3 Secondary research questions: Why do employees’ resort to NSE, why do employers use NSE and why do employers use a specific type of NSE?

3.1.2 Data Collection

Qualitative research methods help us understand human behaviour from “informant’s perspective” (Marvasti, 2004: 21). It is rooted in interpretivism. Interpretivism holds the belief that reality and knowledge are socially constructed by human beings (Creswell, 2009: 175). In finding out the workers and employer’s perceptions, I relied on the interpretations that were formed by the informant’s shared meanings, and reality from their experiences in the workplace.

The key examples of qualitative methods are participant observation, focus groups and most useful to the proposed research, in-depth interviews. In-depth interviews are flexible because they allow more fluid interaction between the researcher and the respondent (Marvasti, 2004:

20). This data collection procedure was advantageous because the interviewees or participants could elaborate on their statements and connect them with other matters of relevance (Marvasti, 2004: 20). The interviews were structured, albeit with scope for follow-up questions (Marvasti, 2004: 21). In-depth interviews delve into the subject's deeper self, which produces more valid data. The advantage of this was that the interviewer saw the world from the interviewees' point of view and gained an empathetic appreciation of their world (Marvasti, 2004: 21). It also helped the interviewer gain access into the hidden perceptions of their subjects (Marvasti, 2004: 20). This was advantageous because it would contribute to the extensive study around NSE. Furthermore, it does not limit the respondents to a fixed set of answers. This means the interviewer will potentially receive not only answers to questions set, but new information may come out.

Qualitative research is more concerned about theoretical considerations of what is affecting the people or what the people are experiencing (Marvasti, 2004: 9). Therefore, qualitative research was the most suitable method for the study because it examined the workers' lived experiences and practices, and the ways in which people interpret their work experiences and practices in a natural setting (Denzin & Lincoln, 2003: 3).

Interviews are on a spectrum: they can be structured, semi-structured or unstructured. The strategy of inquiry which was used was structured interviews, albeit with the scope of follow-up questions to reveal the interviewees' subjective work experiences. This allowed me to engage deeply with social and personal matters and also familiarise myself with the interviewee by way of conversation. The questions were set beforehand, to guide the discussion, but there were follow-up questions which enabled a free flow of conversation which developed an in-depth understanding of the context of workers' experiences. The advantages of qualitative research are that they encourage open-ended questions, and they can give rise to responses that are "meaningful and culturally salient to the participant, unanticipated by the researcher, rich and explanatory in nature" (Mack, 2005: 4). Furthermore, semi-structured interviews allowed for in-depth probing and follow-up questions (Denscombe, 2010: 161).

Fundamentally, the data collection of qualitative research was direct, in that it dealt with the person and did not generalise over a large population, and it was fluid, in that it allowed the interviewer room to ask questions, probe and examine the data collected (Creswell, 2009: 183). Its analysis was context-specific, as I addressed a specific issue (Creswell, 2009: 183).

In order to gain understanding of employee and employer's perceptions on NSE, I had to directly approach the employees and get the details from a particular sector. It is from this direct engagement, that my participants shared direct quotations about their feelings, opinions at work. This was useful as I was able to analyse the data and draw findings.

3.1.3 Sampling

A sample is a "small number of people that the researcher selects from a large population for research purposes" (Mohsin, 2016: 11). Sampling procedures in qualitative research include purposive or snowballing. Purposive sampling means that the theoretical purpose of the project, rather than a strict methodological mandate, determines the selection process (Marvasti, 2004: 9). I used purposive sampling to identify my participants. This technique helped me find the specified (see in following paragraph) non-standard employees who provided detailed information about their employment conditions.

The research investigated three organisations that use different forms of NSE. The organisations chosen were influenced by the type of NSE used by the employer. The sectors explored were casual workers in construction, permanent part-time workers in retail, and outsourced workers in the security sector. As noted in the literature review, the retail sector uses a myriad of internally-differentiated forms of NSE. There are part-time, regular parttime, permanent part-time employees, and even temporary services. By contrast, the construction sector employs casual workers. Each sector has its own rules and that varies the experiences of employees. The three sectors helped me find a deeper understanding of the perceptions of NSE.

I selected five non-standard employees per organisation (see in tables 3.1, 3.2 and 3.3 below). The selection of these varied non-standard employees provided clarity and insight into the employees daily working conditions. The nature of this qualitative study was to explore. The sample size enabled me to get a richer in-depth understanding of the participants' perceptions. Furthermore, I was not generalising over a large sample size, trying to understand and explain data required a lot of time, hence, getting information from a small sample size helped me focus on the participant's context-specific perceptions in the workplace in detail, which in turn, lead to accurate, reliable results, which have rich insight.

This research has been done by approaching the participants who work for the organisation directly in their place of work to agree on a time for an interview outside workhours. In the

event that I found it difficult to find or access participants, I used snowball sampling to recruit participants. Snowballing is where participants or informants with whom contact has already been made use their social networks to refer the researcher to other people who could potentially participate in or contribute to the study (Mack, 2005: 6). When approaching my participants, or when being referred to possible participants, I factored in the sex, age, race and occupation of the participants. This was done by approaching my participants by their sex, race, occupation and age and in the case of referral, asked that they feature one of those traits. This helped me get a wide range of interviewees.

3.1.3 Data Analysis

Data analysis is the process of reducing data to a story and interpreting it to derive insights (Bazeley, 2013: 7). This helped me reduce the large body of information I had gathered into smaller fragments to make it understandable. Data analysis comprises three processes: data organisation, summarising and categorising (helps in finding themes or patterns in the information to be easily identified and linked) and, lastly, data analysis (Bazeley, 2013: 75). I used thematic data analysis, which is the outcome of familiarising oneself with the data, coding, generating themes, reviewing the themes, categorisation and naming and defining the themes (Braun & Clarke, 2006: 89). This meant I had to familiarise myself with the gathered research by reading and writing it. I transcribed the data, coded it by identifying meaningful data, and then merged the codes into themes. By acquiring thematic codes and categories, I was able to start developing an analysis of this study's findings.

3.1.4 Ethical Considerations

Research ethics deals primarily with the interaction between researchers and the people they study (Mack, 2005: 8). Professional ethics deals with additional issues such as collaborative relationships among researchers, mentoring relationships, intellectual property, fabrication of data, and plagiarism, among others (Mack, 2005: 8). Rhodes University has given an ethics clearance certification, which the ethics committee has approved. The interviewees were told that the interview is voluntary and there is no compulsion to participate in the study. The interviewees were asked for their informed consent. Informed consent is “a mechanism for ensuring that people understand what it means to participate in a particular research study so

they can decide in a conscious, deliberate way whether they want to participate” (Mack, 2005:9).

In addition, they were free to not answer any questions if and when they felt uneasy with a question during the interview. Furthermore, they had a right to withdraw their consent to be interviewed at any point during the interview. This was communicated before the interview commenced.

The participants were not deceived, harmed or distressed as the interviews had been carried out in the comfort of their homes where there is privacy or outside the workplace. The latter speaks to the principle of *beneficence*, which requires “a commitment to minimizing the risks associated with research, including psychological and social risks, and maximizing the benefits that accrue to research participants” (Mack *et al.*, 2005: 9). I have interviewed women and men who are 18 years of age and older. Lastly, their identity was protected; by maintaining their anonymity where they desired it to be and their right to dignity kept respected.

3.2 PROCESS OF DATA COLLECTION AND LIMITATIONS OF THE STUDY

The process of data collection was not straightforward. In that, participants who had committed themselves to do interviews would either cancel on the day or not even communicate to cancel. This led me to search for other participants, which was time consuming. Even more time consuming when participants communicated to postpone to a date not made readily available. I was more dependent on my participant’s schedules. This means conducting interviews were contingent on the availability of the respondents.

The secondary objectives were to understand why employers use NSE and the form of NSE. Upon approaching managers and employers, I was redirected to a regional office. This was because as they said, they were not allowed to give interviews as per company rules. This limited my study in that I could not get the information first-hand. Instead, I have relied on the wide and extensive literature to answer the secondary objectives.

Lastly, language barrier posed as a limitation but was instead an opportunity to gather meaningful information. From the very first set of interviews, I had to familiarise myself with translating questions from English to isiXhosa. Furthermore, other respondents were not familiar with isiXhosa nor English, this forms part as a limitation because it was time consuming. Furthermore, words have different meanings in other languages, so it was bound that some of the questions I tried to explain in the respondents’ language were lost in

translation. As a solution, I became more descriptive, by giving examples to the respondent's, this helped as it gave the respondent clarity and understanding to what I was asking. Thereby allowing the respondents to share their experiences well.

LIST OF TABLES

The following tables present information of the respondents that were interviewed from the construction sector, retail sector and the outsourcing agency respectively.

Table 3.1: Demographic Information of Construction workers

Name	Age	Gender	Ethnicity/ Nationality	Occupation	Education Level	Marital Status	Kids
Tafadzwa	35	Male	Zimbabwean	Builder	Grade 12	Single	2
Zuko	27	Male	Xhosa	Manual labourer	Grade 8	Single	None
Vuyo	43	Male	Xhosa	Electrician and roofer	Grade 12	Married	4
Thulani	29	Male	Xhosa	Painter	Grade 10	Single	None
Sicelo	29	Male	Xhosa	Painter	Grade 8	Single	None

Table 3.2: Demographic Information of Retail Workers

Name	Age	Gender	Education Level	Ethnicity	Work	Marital Status	Kids
Sibulele	23	Male	Grade 12	Xhosa	Trolley Assistant	Single	none
Yamkela	27	Male	Grade 12	Xhosa	Trolley Assistant	Single	2
Alyssa	30	Female	Grade 11	Coloured	Cashier	Single	2
Moroesi	29	Female	Grade 12	Xhosa	Cashier	Married	2
Yondela	29	Female	Grade 12	Xhosa	Cashier	Married	1

Table 3.3: Demographic Information of Outsourced Workers

Name	Age	Gender	Ethnicity	Education Level	Workplace	Kids	Marital Status
Nwabisa	38	Female	Xhosa	Grade 12	Higher Education Institution	1	Single
Siya	33	Male	Xhosa	Grade 12	Higher Education Institution	1	Single
Tsori	33	Male	Xhosa	Grade 10	Local School	none	Single
Thembisa	49	Female	Xhosa	Grade 12	Local School	none	Single
Londa	42	Female	Xhosa	Grade 12	Local School	4	Married

CHAPTER FOUR:

DATA ANALYSIS

4.1 INTRODUCTION

As stated in the previous chapter, the focus of this research is the perceptions of NSE in three industries in Makhanda: namely, casual workers in construction, outsourced workers in the security sector and (permanent) part-time employees in the retail sector. This chapter comprises of two sections. It begins with an overview of Makhanda's employment statistics, and thereafter explains section one and two. The first section focuses on the perceptions held by employees. In each of the aforementioned forms of NSE, I address the following issues: the participants' basic demographic information and employment background in NSE relating to their employment experience(s). These categories were important because they helped me understand the employee's perceptions on non-standard work, based on the participants past experience(s) and trace how and/or why my participants work in NSE.

The second section focuses on the employees' understanding of labour laws. In addition, how labour law practically translates in the workplace; the law's adequacy or inadequacy in protecting employees in NSE. Section two discusses the participants' perception of regulation of working time, leave conditions, the particulars of employment and remuneration, employment contract, collective bargaining, work-life balance, termination of employment contracts and daily experiences at the workplace. The categories aim to show the patterns in workplace experience that non-standard employees may have and/or are experiencing in their respective industries. In addition, the categories are important because they give insight in how workplace restructuring and/or employment flexibility takes places in the workplace. In addition, explain how employees perceive labour laws and see how labour laws are observed in the workplace.

Looking at the role of labour law is important because labour laws generally protect workers. According to Tshoose and Tsweledi, non-standard employees are mostly unprotected employees who receive the lowest remuneration and suffer injustice (2014: 338). The relationship between an employer and employees is a power relation. The employer has authority over the workers; consequently, employees have less bargaining power in their

employment (Tshoose and Tsweledi, 2014: 340). Hence, the government has enacted the Labour Relations Act (LRA), Basic Conditions of employment Act, Employment Equity Act, which tackle those injustices in the workplace.

4.2 AN OVERVIEW OF EMPLOYMENT, INEQUALITY AND POVERTY IN MAKHANDA

The perceptions explored about the types of NSE are from employees based in Makhanda, formerly known as Grahamstown. Makhanda is a small city in the Eastern Cape Province of South Africa. It is the major urban centre of the Makana Local Municipality and falls within the Sarah Baartman District Municipality. The city is under threat because of a dysfunctional local government that has allowed the infrastructure of the city to deteriorate to the extent that basic services are not consistently supplied (Irvine, 2021). Among others, poor service delivery affects businesses, consequently the employment rate (Kruger, 2022). Local governments must strengthen service delivery (provide constant electricity supply, clean water supply, raw sewerage collection and disposal, refuse removal, accessible Municipal roads and stormwater drainage and to generate conducive environments) so that small medium and micro enterprises (SMME) can succeed (Kruger, 2022). When SMMEs succeed, they are likely to increase economic participation and decrease the high unemployment rate in South Africa (Kruger, 2022). This is not to say uplifting SMME's is the only way to curb high unemployment in the country.

According to Statistics South Africa, the Quarterly Labour Force Survey of 2022 reports the country's official unemployment rate as 34.5% (Q1: 2022). The youth aged 15-24 years and 25-34 years recorded the highest unemployment rates of 63,9% and 42,1% respectively (Q1: 2022). When compared to the national unemployment rate, Makana Municipality has a higher unemployment rate standing at 38.34% (Q1: 2022). Irrespective of gender, the Black African and Coloured population groups remain vulnerable in the labour market; with an expanded unemployment rate of 63% and 58% respectively (Q1,2022: 19). Black women are the most vulnerable, with an unemployment rate of 40,6% in Q1:2022 (Q1: 2022: 16). Like much of urban South Africa, Makhanda has high levels of unemployment, a lack of employment opportunities and stark economic inequalities. The overview provided in the 2021–2022 IDP for the municipality illustrates these issues (Makana Local Municipality, 2021). These contrasts

are manifested spatially and can be seen in the division between Makhanda East (former black township and coloured Group Area) and Makhanda West (former white Group Area) (Hoefnagels, Irvine, Memela, 2022: 14).

Unemployment rates increased within the broader local municipality from 25% in 2010 to 38,3% in 2020. Alongside this increase, poverty increased from 31,3% to 31,6% and the number of people living in poverty increased from 48,300 to 57,900 in the same period. The Index of Buying Power, a measure of the ability of the local population to purchase products relative to national purchasing power, similarly showed a decrease over the period. The Gini coefficient, measuring levels of inequality, paints a similar picture with an increase during this period as it rose from 0,61 to 0,628. When broken down, the figures show great inequality in both African and coloured population (Hoefnagels *et al.*, 2022: 16).

Essentially, Makhanda has a high unemployment rate. NSE has been argued to curb the rise of unemployment by providing employment opportunities (Fourie, 2008: 115). For instance, employers are encouraged by government to use NSE because they create jobs for working-age populations who are under-represented in the workforce; that is “women with children, older workers, younger workers and immigrants (Mokofe, 2018: 118). In addition, the Temporary Services Sector (herein after TES) in South Africa has been “a key node” of job creation, growing the employment at about 8.7% (Bhorat and Lilenstein, 2016: 5). In addition, the TES sector constitute about 9% of South Africa’s gross domestic product (GDP) (Bhorat and Lilenstein, 2016: 5). Moreover, the retail sector is the largest contributor to employment in South Africa (Theron, 2008: 2). Accounting for 15% towards employment and 20% to the country’s GDP (Toyana, 2021). Across the globe, the number of non-standard workers contributed immensely to the labour market. For example, “in China between 2008 and 2010 the number of urban workers who held temporary jobs doubled to more than 60 million, or one-fifth of the workforce” (George and Chattopadhyay, 2017: 7).

NSE has also been argued as a steppingstone to permanent or full-time employment (Zeytinoglu, 2008:7). For example, through being promoted by the employer. However, studies on non-standard workers and their prospects in entering standard work show that, non-standard workers are likely to stay in non-standard employment for a long time, in the same labour segment (Zeytinoglu, Lillevik, Seaton and Moruz, 2004: 536; Queisser and Whitehouse, 2021: 66). Moreover, the transition into a full-time role most likely comes through a promotion or an entirely new job (Venn and Wakefield, 2005: 13). Non-standard workers rarely get

promoted, whether as part-time, TES employees or on fixed-term contractual agreements (Zeytinoglu, 2008:9).

Job creation from different industries within NSE have shown to create jobs in the country and internationally. However, in South Africa there remains a high unemployment rate. The implications that arise from the high rates of unemployment and poverty compel jobseekers to take whatever jobs which are available, no matter how precarious. Moreover, high unemployment also allows employers to structure their employment profile in ways that rely on NSE.

4.3 CASE STUDIES

The following case studies analyse and discuss the following: casual workers in construction, (permanent) part-time workers in the retail sector and the discussion of outsourced workers from the security guard agency, respectively.

4.3.1 Casual Work in Construction

As mentioned in the literature review, the construction industry is one of the industries with the most precarious employment. This employment undercuts remuneration and the conditions of employment; it is characterised by some workers working for wages below the minimum wage and in poor working conditions (Ncwadi and Dangalazana, 2017: 4). It thrives where there is excessive unemployment and employees are desperate to find employment at all costs. The precarity of construction workers is illustrated by uncertainty, and the fear of being unemployed.

The following discussion discusses the perceptions of casual workers who work in the construction industry as shown in **Table 3.1: Demographic Information of Construction workers**.

Demographic information historical background

The number of men far exceeds that of women in the construction sector (Madikizela, 2008: 5). According to StatsSA (2020), of the 1,339 million people employed by the South African construction industry, only 11% were female. Moreover, since Makhanda is largely populated by Xhosa people, the available participants were male and mostly Xhosa people, with the exception of a Zimbabwean national. Moreover, one of five of the participants was married with children (minors). There was also one bachelor, with kids, and the rest single, with no

children. The decision to take on NSE is shaped by marital status and having children. In his study on the relationship between marital status and employment, Van Rensburg (2019: 9), found that women are least likely to be employed in full-time permanent work when they are married and with children, whereas the men are mostly likely to be employed because they are married. NSE becomes an available option for work. In addition, an option for parents who work so that they can commit to engagements outside the workplace (Burchell, Deakin and Honey, 2014: 75)

Another commonality between the participants was that they had not obtained a matric, with the exception of Vuyo and Tafadzwa, who managed to pass grade 12. The reasons stated for not finishing high school were as follows: financial constraints and the passing of guardians and parents, which left the children to fend for themselves. Vuyo, is married, and lives with his four minor children. He became the sole breadwinner after his parents passing. He did not continue schooling after passing matric because he had no funding. His siblings were enrolled in school at the time of his parents passing. To make sure they continue with school, he decided to seek work.

Relating to the passing of guardians and parents, Zuko and Sicelo lost their parents in primary school (grade 8). By the time they reached high school, Zuko's family were fighting over which family should maintain him (buying clothes and paying school fees). For Sicelo, he just got tired of school and said, ever since his parents passing, he has never been well.

Thulani's reason is similar to those of Zuko and Sicelo, only that, in addition to his father passing away, the eldest sister who took over as bread winner also passed on, leaving two of her children behind. Thulani failed grade 11, stating his sister's passing disturbed him. When his mother asked if he wants to go back to school, he said no and will instead go and look for work and wipe floors somewhere for money. He takes care of them now.

It was important to explore the historical background of the respondents because there is evidence that network-based intergenerational correlations in South Africa affect the children's societal mobility (Magruder, 2010: 62). Network-based intergenerational correlations refers to the parent's usefulness in their child's job search in succeeding to enter the job market (Magruder, 2010: 62). For example, parents can be seen as network members, and this role is important in high-unemployment settings, where job information and references represent scarce, valuable commodities and where low mobility may create poverty traps (Magruder, 2010: 62). Put in context, a family where there are no parents, children are less likely, if at all

able, to get job information to enter the labour markets or belong to networks. This is because the children are not connected in the labour market. Therefore, the employees' stay trapped in the cycle of poverty or in the labour segment which their parents were in (Magruder, 2010: 62). The latter will be demonstrated in the participants' employment background analysis below.

Magruder (2010: 69) found that, where workers do not have qualifications or connections in the labour market, they are most likely to continue work as non-standard workers in the labour market. This disproves the argument of orthodox theorists such as Adam Smith, who claim there is only one labour market (Cain, 1976: 7).

As stated in the literature review, workers cannot simply move from one segment to another in the labour market. Moving from part-time to full-time permanent work is not always easy. Many barriers stand in the way of some individuals as they climb through their careers. Due to various factors, first, some fields lack the jobs required for the number of people entering. Second, some individuals lack the skills they need for full-time employment. Lastly, others lack the minimum education level for the positions they seek (Venn and Wakefield, 2005: 15). Opportunities for full-time employment often come as new jobs (Venn and Wakefield, 2005: 9).

Full-time permanent employees are generally more educated and have more opportunities to be active in the labour market (Moses, 2011: 4). According to the development economist's perspective, education provides "non-pecuniary benefits such as improved health and the ability to function and integrate successfully into mainstream society" (Moses, 2011: 5).

Importantly, the opportunity to "escape poverty through improved employment and earning prospects" (Moses, 2011: 5). This means prospective employers are attracted to and employ people with higher level of education in full-time permanent work.

Most of the participants interviewed do not have higher levels of education; most of them did not complete high school. The low-level of education acquired by the workers minimises their chances into entering permanent full-time employment. This is because "employers attribute the number of years spent in education signalling ability and to be more productive in the workplace" (Moses, 2011: 6). As a result, non-standard workers who have low-levels of education are most likely to remain in the same labour market for a long time. Nonstandard work is more common among black workers and less-educated workers (Morsy and Rothstein, 2015: 4).

4.3.2 Employment Background

There is strong evidence which suggests that workers tend to enter the same labour market segment as their parents (Magruder, 2010: 66; Corak and Piraino, 2011: 22). Interestingly, the workers interviewed tended to enter the same form of NSE as their parents. Not overlooking the fact that they are most likely doing these jobs, not because their parents did so, but rather because they are the only jobs available and their parents may have had contacts with the employers to secure job placement for their children. In cases where the worker did move to a different form of NSE, they would have first started in one where the parent or guardian entered. For instance, before Vuyo entered construction work, he was a packer at a retail store while his father was a packer at a furniture store. Thulani's mother was a casual, working as a domestic worker. Her mother only worked when called in to work.

Thulani is also a casual worker, he only comes to work when called in by his employer. His job is dependent on the work that is on demand for completion of a certain project. Other than that, he spends most days on the roadside waiting for a particular employer to pick him up for work. He has been a casual worker for the past year. Previously, he worked at another construction site for three years. He left because the business was retrenching workers, which he described as "*ukulaliswa*" (meaning to be laid to rest). Put in context, it describes the situation he was in when he was retrenched. For him, it was a state of not being unable to leave the job because it was his only means of income. As a breadwinner, without a job he was as good as dead.

Even though three out of five participants are not in the same line of work as their parents or guardians, their parents were also performing non-standard work. For instance, Tafadzwa's parents were both vendors in Zimbabwe. When he arrived in South Africa, he undertook work as a gardener in the suburbs of Port Alfred.

Zuko and Sicelo were unemployed before taking up any work. Zuko stayed at home for some time before getting his first construction work. Sicelo, used to help out at a nearby farm by herding cattle. He did not regard this as work because by helping the farmer, he would go home with milk and butter, which would help the family.

4.3.3 Workers' Perceptions of Management in the Workplace

As envisaged in the literature review, construction workers have the responsibility of meeting construction projects according to the client's specifications, and management should understand that respect for people adds to the performance of projects and organisations (Emuze and Mollo, 2019: 113). Internationally, in her research of the biggest danger in construction work, Fleming (2021), reported that even though "workers face the dangers of falling, caught-ins, or struck-bys, more construction workers die from suicide each year than every other workplace-related fatality combined." The suicides are caused by mental health issues resulting from anxiety, not expressing their feelings and difficulties in the workplace (Flemming, 2021).

According to Mokefe (2018: 100), workers in fixed term, part-time or temporary work usually do not get decent work. It is usually difficult for employees to express their workplace grievances, exercise their rights to collective bargaining or join a trade union because they fear retaliation from employer (Mokefe, 2018: 109). As a result, non-standard workers in these categories are continually challenged; having to face job insecurity, restricted control over scheduling, fluctuation in wages and unfriendly working hours (Mokefe, 2018: 108). In their study of non-standard employees and mental illness, between the ages 20-64, Kim, Muntaner and Khang (2006), found that non-standard employees who worked in fixed-term arrangements, part-time, temporary and daily work were more likely to be mentally ill compared to standard employees. Furthermore, non-standard work status was associated with poor mental health (Kim *et al.*, 2006).

When asked about the management in his previous employment as an Electrician, Vuyo (01/11/2022), said: "it was up to shit." He further explains that there was nepotism, the manager promoted white people and that there were "race issues." In his current job, he does not have a relationship where he can talk with his manager, he describes the relationship as follows:

he does not appreciate the amount of time we put in. We tell him the amount of money we earn does not correlate with the time and work spent working. That is not only it, the manager has changed our pay day from fortnight to monthly, with some months not being paid (Vuyo, 01/11/2022).

Similarly, when Thulani worked at his previous site, the foreman at the building construction was racist and was a criminal; he fired people but would not keep the system updated

and money would go to the foreman when there were payouts. Also, he hires people from his ethnicity (hiring only Zimbabwean nationals because foreman is Zimbabwean), if I would be searched in the system you would not find me, I did not claim UIF. I just don't like trouble my sister; I don't want anything of his [employer] (Thulani, 05/11/2022).

For Tafadzwa, he left being a gardener to do construction work for better pay. He has found the managers in both working areas to be “okay.”

As stated in the employment background, Zuko and Sicelo were unemployed before undertaking any work. In his three years of working at the construction site, Sicelo has only seen the manager once. He regularly sees the foreman, who gives orders throughout the day. Sicelo, described his manager as a man who likes to shout, who should be listened to. Once he speaks, his word is final. Sicelo recalls,

On several occasions, our manager walks in and shouts “we need to speed things up or otherwise no one is leaving” (Sicelo, 01/11/2022).

The shouting makes Sicelo feel “disrespected.” In addition, he says, the manager is inconsiderate, he does not understand that when the weather is bad we will not be able to work at normal pace. We are expected to carry on painting even when it's too windy my sister (Sicelo, 01/11/2022).

Some of these experiences coincide with the anecdotal and empirical reports on the construction industry in Emuze and Mollo's study (2019). Emuze and Mollo's study researched the impact of working conditions on the notion of respect for people in construction work (2019: 113). For instance, they found that poor working conditions and lack of respect for the workers were contributory factors to accident causation on project sites (Emuze and Mollo, 2019: 115). One of their respondents stated, when working under a tight schedule or deadline to complete construction projects, they are rushed. In the process of rushed activities, they get into fatal accidents on site (Emuze and Mollo, 2019: 113). A second respondent contended that, there are projects where the workers are forced to work on scaffolds which are not properly erected due to their poor quality (Emuze and Mollo, 2019; 114). Furthermore, that “workers are forced to undertake construction activities inclement or rainy condition while their superiors are sitting and drinking coffee in the site offices” (Emuze and Mollo, 2019: 114).

In addition, besides some of the workers being disrespected by their managers and subject to poor working conditions. The respondents also faced a situation where the manager sets an enter-the-work-at-your-own-risk approach. One of the respondent's contended that "in light of the manager excusing themselves from any liability of any injury in the workplace, management failed to coordinate workers when a site was congested and chaotic, they were expected to go in and work" (Emuze and Mollo, 2019: 114).

Employers impose the non-liability clause upon the workers as a way to escape liability and is unlawful according to the Occupational Health and Safety Act 85 of 1993 (OHSA). Section 8(2) of OHSA stipulates that employers have the responsibility to "take steps as may be reasonably practicable to eliminate, mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment."

Moreover, when managers do not create a channel for workers to lodge or relay workplace grievances, the workers stress in silence. This in turn affects their mental wellbeing. For example, Thulani opted to keep quiet instead of addressing the "racial issues" and theft that was going on at his workplace, similarly Vuyo said,

I am in the process of applying for a new job. I am tired of being quiet and working in stress in that workplace. My head will be free from the drama at long last (Vuyo, 01/11/2022).

4.3.4 Experiences and Perceptions of Work

Construction work involves (among others) brick layering, painting, carpentry working with electricity and doing manual labour. Manual labour is performing physical tasks like grinding, digging trenches, preparing sites for construction, operating and tendering heavy equipment for construction. Zuko described his position in construction as a hard labourer. His working day involved clearing the sites for construction, digging trenches, sweeping tasks. The latter can be understood as manual labour. He described it as follows:

"I participate in everything at work. There is no choice. I do all kinds of work like cleaning, sweeping and mopping the floor. I do what I am instructed on the day" (Zuko, 03/11/2022).

Vuyo, an electrician and a roofer, engages in risky tasks like scaffolding, which means he works in building tall structures and works high above the ground. His work sometimes forces him to

walk up a ladder to access the roofs. He also works with electrical wiring from time to time and has experienced electrical shocks, but not to the point of needing medical attention. When I enquired about the risks involved and the measures put in place to minimize and/or prevent harm, he briefed me as follows:

When my employer hired me, he told me straight up that I am the one who wanted to do this job, and I should be prepared for whatever. I will have to work because he will not waste his money going to hospital (Vuyo, 01/11/2022).

Painters apply paint, stain, and coatings to walls and ceilings, buildings, large machinery and equipment, and bridges and other structures (Madikizela, 2008: 6). Painters work indoors and outdoors. Sicelo has been working as a painter for two years. He shares his experience,

Painting is exhausting because it requires a lot of bending, kneeling, and climbing. In these two years, I have painted buildings, bridges and I work at extreme heights. It is so uncomfortable, but I bear with the pain because I do not want to lose my wages (Sicelo, 01/11/2022).

Moreover, when I enquired about the measures that the employer takes to minimise the strain, Sicelo said: “My employer knows about our complaints; he just does not care, so I leave him” (Sicelo, 01/11/2022).

From the aforementioned experiences it can be understood that painters climb buildings and have to reach high places to complete their tasks. Section 8(1)(d) read with section 43(1)(b)(i) of OHS Act contemplates that employers should realise that all work; building, painting or renovating a structure, have to be performed in a safe and healthy manner. This is done by employers “taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees,” as contemplated in s8(1)(b) of OHS Act.

As discussed in the literature review the inadequate implementation of employees’ rights can affect the worker’s mental health. As evidence has shown, the construction industry has a characteristic of employees’ committing suicide as a result of disrespect against employees’ and employers not implementing safety measures in the workplace (Flemming, 2021). Based on the experiences of the workers, where the employer did not address the safety concerns that the employees’ raised, resulting in the employees feeling more strained at work. In addition,

the employer's failure to create channels where employees' can communicate workplace grievances results in a breach of the aforementioned sections in OHSA.

Moreover, it can be understood from the aforementioned experiences that construction work is internally differentiated in terms of risk.

4.3.5 Employee's Perceptions of the Enforcement of Labour Laws in the Workplace

In the past, workers in NSE had inadequate legal protection (McGregor, Dekker and Budeli-Nemakonde, 2017: 39). The amendments in the LRA has attempted to improve the legal position of workers in NSE. This section will analyse how the different labour laws; the LRA and BCEA ensure the protection of non-standard workers. The discussion comprises different chapters from the BCEA. The provisions are chapter 2, 3, 4,5, 9 and 11 of the BCEA. All of these chapters relate to the regulation of working time, leave, employment contract, particulars of employment and remuneration, termination of employment and daily working experiences, respectively. Furthermore, chapters 3 and 6 from the LRA relate to trade union and collective bargaining provisions respectively. Moreover, it will discuss how employers implement the labour laws in the workplace.

4.3.5.1 Regulation of working time

The workers in construction work explained the extent of the stressful conditions at work. As revealed by the interviewees, they work long, irregular hours in dangerous work environments, and have the added stress of job insecurity. According to the participants, two are expected to work weekdays from 8am to 5pm. Zuko, Thulani and Sicelo depend on the amount of work needed by the employer. For instance, Zuko is expected to work whenever work is available. However, because he does not have a phone, he has to go to town and wait by the popular spots where the employer will come and pick him up for a certain project. Depending on whether there is a job for him, he works from 9am-1pm/ 2pm, 8-11am, twice in a week. It may happen that a week or two weeks pass without any work. The situation is the same for Sicelo and Thulani.

The Basic Conditions of Employment Act (BCEA) 75 of 1997 stipulates in section 14 that an employer must give a meal interval of at least an hour where an employee works continuously for more than five hours. Zuko, Thulani and Sicelo sometimes fall outside this provision when they work less than five hours. Tafadzwa does get his hour lunch break and says it is enough.

However, Vuyo does not get his lunch break. Vuyo has asked about the time for lunchbreak but his manager did not say anything. He explained his break time as follows:

I eat whenever I see there is a gap to eat. The manager cannot shout at me. I have spoken to him about this. And when the manager walks in the site whilst I am eating, he can't even talk bad because I am eating ... Sometimes he says we are slow and we should get up and work, especially when the deadline is close (Vuyo, 01/11/2022).

In addition, Vuyo stressed the importance of having a set time for meal intervals so that he is not rushed to finish whenever the manager decides. One can infer that by not stipulating the meal duration to the workers, management wants to have flexibility in terms of dictating when workers should start and stop eating depending on the demands of work on that particular day for the completion of the specified project. It is important for employees to understand their working and mealtimes, so that they know what is expected from them. This is including overtime.

Section 10(2) of the BCEA stipulates that “an employer must pay an employee at least one and one-half times the employee’s wage for overtime worked.” Zuko had not been paid overtime. Vuyo said: “he was not paid overtime but did not mind because when he asks for a day off to settle his issues, his wages are not deducted.” The rest of the workers got paid overtime and were expected to work over the weekends, for R18/hr and were paid R12/hr during weekdays.

As seen from the experiences in the workplace shared by Vuyo and Thulani, there is a tendency of managers and employers not implementing the law as they should. To ensure implementation of the law and protect employees, a labour inspector may be appointed. A labour inspector’s role is to promote, monitor and advise employees and employers about employee and employers rights and responsibilities, as provisioned in section 64 of the BCEA. Tafadzwa is the only worker who has seen labour inspectors in the workplace. He points out that they checked the employees’ uniforms and equipment. The other workers had not met nor seen any labour inspectors. For instance, Vuyo noted:

I have not seen any [inspectors]. There is no care in Makhanda. It is difficult to deal with situations in the workplace. I am leaving this company (Vuyo, 01/11/2022).

When questioning Zuko about what he does about the bad conditions at work, he replied:

I don't care. As long as we are able to switch on the lights and warm food at home, that is enough (Zuko, 03/11/2022).

4.3.5.2 Leave

All of the workers were aware of their leave entitlements in the BCEA. Zuko, Thulani and Sicelo said they did not get paid leave. They were in a predicament whereby, if they do not come to work, they will not be paid. This coincides with Bobedi's (2006: 59) study of the conditions of casual workers in South Africa, where unpaid leave is prevalent. The study reported 63% of workers in the construction industries did not have access to paid leave (2006: 59). For Thulani, if he misses work for a week, that is on days when he is needed, he will lose his job.

Vuyo only gets sick leave. When he applies for family responsibility leave, his employer complains and only allows leave if he attends to his immediate family. Whereas Tafadzwa gets three weeks paid leave in December. He understands he could get his during the year, but he does not complain because he gets paid for the days he would have ordinarily paid.

There is seemingly a tendency of employees disregarding their rights so long as they get paid. For instance, Vuyo did not claim his UIF from his previous construction company because he does not want trouble, he continues appreciating what is below his minimum wage because it is enough for him to get by.

These workers risk agreements that go below the regulations of labour laws. Some of the workers do not agree to less than their legal entitlements because they want to. Instead, because they can use some of their rights to incentivise themselves from not getting what they are entitled to, they accept getting less rights or rather their rights being undermined. For example, Vuyo does not raise the issue of not getting leave during the year because he gets paid more during the year, yet his employer would be obligated to pay him more even on sick leave for the days he would have ordinarily been paid.

The unlawful handling of the employees fixed term contracts, coincide with Huysamen's study (2019). On her study on fixed-term contracts as a form of NSE, Huysamen, found that fixed term contracts are "generally regarded as providing less security to employees than permanent employment" (2019: 12). Furthermore, "fixed-term contracts are used by unscrupulous employers in an attempt to circumvent the provisions of the LRA" (Huysamen, 2019: 6). For example, such abuse is where opportunities and benefits are reserved for permanent employees

only, such as promotion and training opportunities and access to employer-supported pension funds (Huysamen, 2019: 13). The latter experiences depict the vulnerability of workers who work in this form of NSE.

4.3.5.3 Employment contract

Four of the five construction workers interviewed did not have a written employment contract. Hence, they could not say they understand any contractual terms between them and the employer besides what they are instructed and expected to do in the workplace. Vuyo, who has not had a contract for 24 years, said: “No contractual terms were explained to me. You are just expected to enter the workplace and do your job” (01/11/2022).

There was an overall expectation by the participants that they could lose their job at any time. This is because they are unsure of when their contract ends. For example, in a frustrated manner Zuko (03/11/2022) stressed: “I do not know when my job ends. I wait for my employer to tell me.” Furthermore, Thulani, and Sicelo shared the same sentiments that, they do not know when their contracts end. In addition, they could wake up any day and their boss could decide to fire them.

As a result, they are in a vulnerable position. As Cremers (2010:3) points out, not knowing the terms of a contract sets the employee(s) get trapped in “a succession of short-term, lowquality jobs with inadequate social protection leaving them in a vulnerable position.” In addition, employees could be delegated work that is not necessarily part of their job description. For example, Tafadzwa did not accept being a driver. He was given the task of driver in addition to being a builder. This responsibility requires him to pick up workers at a designated point and convey them to work. He carried out this responsibility without pay from the employer.

Tafadzwa hesitantly agreed to having an employment contract. In asking whether he has one and whether he understands the terms in the contract, he replied: “I signed, but not all. It looks like I signed some other one” (Tafadzwa, 02/11/2022). He then looked at the interview schedule. This may be telling of either a language barrier between the participant and myself or he simply is unsure of what is a written employment contract.

The interviewees said they are paid on the set day monthly or every fortnight. Lastly, everyone agreed that they are paid on the said day without fail.

4.3.5.4 Particulars of employment and remuneration

As stipulated in section two of the National Minimum Wage Act No. 9 of 2018, the purpose of the Act (among others) is to improve the wages of the lowest paid workers, protecting workers from unreasonably low wages, and preserving the value of the national wage. Furthermore, section three of the Act stipulates that this Act applies to all workers and their employers. Section one of schedule one states that “subject to item two of the Act, the national minimum wage is R23.19. The minimum wage increases yearly.

Three of the participants knew the national minimum wage for their work. Zuko knew what he should be paid and said he did not get paid in accordance with it. Instead, his employer paid him what he (the employer) wants. Vuyo gets paid R15/hr. whereas he is supposed to receive R23.19 for each ordinary hour worked for general unskilled labour. Sicelo and Thulani did not know the national minimum wage for their work, therefore, could not determine whether they are paid below or in accordance with the minimum wage. All of the participants work on public holidays and get paid for working on public holidays, except for Vuyo. Vuyo does not work on weekends, and does not get paid when working on public holidays.

Based on the findings, I submit that it is not enough that employees know about their entitlements. It is necessary to know what it is that they can do when their rights are not being met and how best to challenge their authority. This is because many of the employees go unchallenged because employees do not know the full scope of their right(s) or how best to “leverage” them, if they should at all.

4.3.5.5 Trade unions and collective bargaining

There were varying responses regarding social dialogue at the workplace. Social dialogue is negotiations between employers and employees to discuss work related issues.

Two participants said they were able to meet and have social dialogue. Vuyo said in a stern manner: “there was not a place to meet with other workers and managers to discuss workrelated issues.” Tafadzwa stated:

they were able to do so, only if one of them does not want to work on a Sunday, they meet to discuss and inform the employer that they all do not want to work on Sunday (Tafadzwa, 02/11/2022).

Zuko said they meet but not for work-related matters, it would be to “chat.”

None of the workers interviewed belonged to a trade union. Vuyo put forward that:

there are less than five who work in the company, so the company does not provide trade union representation, employees have to go directly to the employer. Secondly, there is tension between the workers at the moment, so we do not meet between workers either (Vuyo, 01/11/2022).

The reasons for the tensions are the unequal treatment they receive from the manager. The manager is said to have favourites and racist tendencies, which makes it difficult for the workers to communicate with each other. As Vuyo noted: “for instance, when we raise a problem in the workplace, he will dismiss me and give attention to the other worker.”

Tafadwa said he goes to the CCMA even though in his three years in the industry, he has not gone to the CCMA. For the other workers whom I interviewed, having a trade union was not a need nor of importance. For Sicelo, there is no point in having a trade union, as he elaborated, “I can go directly to the employer if I have any work-related issue” (Sicelo, 01/11/2022).

Three of the interviewees had engaged in industrial action. Vuyo went on a solo strike for a week, until his employer phoned him to return to work. He went on strike because the manager in bricklaying gave him more work than he was hired for. He had been assigned to do electrical work, when the manager just decided to use him for brick layering as well. Tafadzwa had once been involved in a strike at his workplace. This was to get overalls because the manager refused to replace them when they were torn. They succeeded in their demands. Similarly, Zuko once went on strike in his workplace. They wanted a union but was instead let go by the company.

4.3.5.6 Work-life balance

As gathered from the interviewees some of the workers did not get enough time for leisure or to commit to family responsibilities. Furthermore, on days where they were off work, they had been interrupted by call-ins from the employer to finish a project. Moreover, because of the strength they put in the work, they found it difficult to have quality time with their loved ones at home. They return home, prepare food to eat and sleep. As a result, the workers wanted to be full-time, permanent workers. For example, Tafadzwa cannot help his kids (minors) with homework during the week because he gets home tired. Although Thulani has no kids, he still takes care of his nieces and nephew. In a low tone he explains:

I sometimes find it difficult to play with the children because my hands are painful from the drilling and shovel work. I know my sister [late sister] would love me to play with the kids. But it's either work or play (Thulani, 03/11/2022).

However, Zuko, found a lot of time because he did not work long hours. Zuko could start work at 9am and leave by 1pm, or work from 11am to 3pm. There are many occasions where he leaves work before 3pm. Unlike like Thulani, Tafadzwa, Sicelo or Vuyo who sometimes work 8hrs. Therefore, Zuko can commit to family responsibilities.

By contrast, Vuyo has off days during the weekend. His weekends off work get interrupted when there is "limited time". The latter, as he puts it, is "when there is an emergency, and the manager phones him to come finish work." As a result, Vuyo stressed his aspirations of moving to full-time employment. He wanted a full-time permanent job. Furthermore, was in the process of applying for one in the week I interviewed him. Zuko wanted a job but has no qualifications nor a curriculum vitae to show his work experience. Even if he had one, he claimed finding another job especially as a permanent full-time worker would be difficult because "nepotism is a thing." Sicelo and Thulani also did not have any qualifications and could not secure a job as a permanent, full-time employee.

Tafadzwa wanted a permanent full-time job but could not because he does not have an option.

As he put it: "I like it here because where will I find another job? I am looking for one as a driver but not here in construction" (Tafadzwa, 02/11/2022). It is not that he is happy being a casual worker in construction, but he "likes" this job because it gives him better wages than his past employment as a gardener.

Ordinarily, since employers want a highly flexible workforce to increase productivity (Western, 2005: 2), workers are likely to have a poor work-family balance. Furthermore, because employers are more concerned with making a profit, they are likely to frustrate the worker's personal life. An example is where Tafadzwa was assigned more work by his employer with no guarantee of additional pay. Again, Vuyo had been phoned on his day off by his employer to go to work so as to meet the deadline for the construction project. These workplace experiences explain the vulnerability of casual workers in the workplace. In addition, expose how employers deviate from implementing employment rights which protect employees.

From the above experiences, I find that in as much as these workers do not experience the full scope of their rights, the treatment they get from employers is at times an inevitable

consequence of contractual obligations that employers are getting from contracted clients who pressure the employers. Ultimately, the nature of NSE gives way to the inadequate enforcement of labour laws. This is not to justify the marginalisation of worker rights but to highlight the fact that unlike the SER, workers' in NSE experience job insecurity or more volatility because there are other parties in the employment relationship as for example, will be seen in the outsourcing sector below.

4.3.5.7 Termination of employment contract

Most of the workers interviewed left their previous employment because the construction project was completed. Other workers were retrenched. Zuko claimed to have been unfairly dismissed at his previous job but did not want to go to the CCMA or Labour court. He explains why:

I did nothing wrong. The managers had fired me because they found my uncle drunk at the workplace. And because I was family, they also fired me. It will be a long process going to Labour because I do not know how to prove my case (Zuko, 03/11/2022).

4.3.5.8 Daily experiences at the workplace

Overall, workers stressed that to improve the situation, the employers must pay attention to them. This must be in terms of their health and safety, financially and to consider what they are not happy about in the workplace.

To conclude, the reasons behind the work that the participants undertook is the inability to continue school because they could not afford to pay school fees. As a result, construction work became a suitable option given that they have no qualification and cannot access fulltime employment. The inability to access education is because of their unique individual and family positions.

4.4 PART-TIME WORKERS IN THE RETAIL SECTOR

As mentioned in the previous chapter, the retail industry employs more part-time employees compared to any other field (Crous, 2013: 33). As stated in the introduction, unemployment in Makhanda is rife. The 24- to 35-year-olds are reported to be the most unemployed in the town. On the outlook, the retail sector is seen as a way that boosts economic activity and it has; in South Africa, it has been reported to be the largest employer, second to the government

(Teuteberg, 2021). This part of the chapter has aimed to explore in detail, the conditions of the workers in so far as they are comparable to full-time permanent staff.

The discussion in this section focuses on the perceptions of non-standard employees in the retail sector from (permanent) part-time workers as shown in **Table 3.2: Demographic Information of Retail Workers**.

Demographic information and historical background

In South Africa, the retail sector is dominated by black and female employees (Kenny, 2007: 482). Compared to the construction sector, employment in the retail sector is largely female. There were many similarities within this group of workers. They were all part-time permanent workers but worked in different departments. Sibulele and Yamkela worked in the trolley department of the retail store. They are based outside the store. Alyssa, Moroesi and Yondela worked as cashiers inside the store.

Most of the participants were single and had children who were minors. The participants were all from Makhanda, besides Sibulele who relocated from Port Elizabeth.

4.4.1 Employment Background and Perceptions of Work

Unlike the construction workers, the permanent part-time staff in retail have reached a higher level of education. All the participants completed grade 12, except for Alyssa. Alyssa dropped out of school because she was pregnant. She then had to find work to prepare for the arrival of her baby. Similarly, with Yamkela, he did not continue school after matric. This is because he had to make plans; which is find work for the multiple women he has since impregnated.

As discovered from my research, the majority of the participants' parents, who were in retail, their children followed suite. This could be because of the jobs made available to them at that time, or their parents had network and found a job for their children. For instance, Moroesi's mother was in retail. She used to work as a salesperson in a convenience store in her neighbourhood.

Retail work is any type of employment that involves interaction with customers and sales; this can include online businesses that sell directly to the public. Yamkela's father was working as a permanent part-time staff member at a furniture store in Gqeberha, formerly known as Port Elizabeth. Sibulele and Yondela have slightly diverted from what their parents did. Sibulele's father was a police officer and his mother worked as a hairdresser. Sibulele is the only one

among the participants who had both parents in employment. On the other hand, Yondela grew up in a single-headed household with her mother working as a cleaner at a University.

Sibulele chose to work in retail to get easy and quick money for himself. After matric he was unemployed for two years and because he did not want to continue studying, working in retail was a way to get money. He has been in retail for four years and he does not want to go back to school because he is already used to earning money.

Yamkela was unemployed for three years before getting a job in retail. This is his first-time job. When asked about the extent of control management has over the work, he said: “*Unamasimba. Ubane mini zakhe*” [he is shitty and moody some days] (Yamkela, 05/11/2022). Yamkela and Sibulele have the same employer, Sibulele’s (05/11/2022) response was that “he is extremely under our necks, especially when we have stock count. The work here is tiring.”

Even though Yamkela and Sibulele worked as trolley guards outside the store, they were also required to do stock count when merchandise arrived. The latter is an example of functional flexibility, which is a regulatory mechanism that helps employers save on labour costs. It is done by (sometimes) upskilling workers to perform different tasks in the workplace as demand dictates (Klerck, 2001: 425).

Yondela, who was a cashier at the time of the interview, worked at a local shoe shop as a casual for two months. She worked as a casual customer assistant, which entailed helping the customers find the kind of shoes they want and answering phone calls when other colleagues are occupied. As Yondela (12/11/2022) explained: “I just filled the gap wherever I saw someone could not be around to do their job.” She would only be called in during busy days, such as the 15th and 25th of the month, which are usually pay days. She left the shoe store because the supervisor used to shout at all workers and was rude to them. She could not raise the issue because she only saw the manager once and because of the supervisor having an attitude, “the supervisor was able to make people lose their jobs (Yondela, 12/11.2022).”

Yondela’s experience is accounted for by two issues raised in the scholarly literature (as seen in the literature review). First, employers use numerical flexibility to match supply and demand in the store. For example, Yondela was only called in for work on pay days when it was busy. This is so employers can cut labour costs by only paying workers when there is work to be done (Klerck, 2001: 425). Second, non-standard workers are unable to fight for their rights

because they not only lack trade union representation but also remain in a vulnerable position because they are scared of losing their job in a time of need (Cremers, 2010: 3).

Moroesi was unemployed for two years after grade 12. She managed to get a job in a local mini automobile workshop in the township. Her duties were to sort out the tires, and clean the car parts and make sure the place is kept clean:

The man who employed me did not need me, as the workers in the store cleaned the place at the end of business day, but because he felt sorry me, he found me something I could do for pay. I had already given birth to my first-born son at that time (Moroesi, 12/11/2022).

Alyssa was also unemployed before working as a cashier at a local retail store. She has been working for two years at the time of the interview. Her current employer was strict in wanting every worker to arrive on time. Her supervisor always walked around the store to monitor the tills.

Overall, given the worker's employment background and current work, there is evidence to suggest that non-standard workers are in a predicament where their job security is weak. This is because they are hired not on merit but because of need as we have learned from Moroesi and Yondela's past work experiences in NSE. Flowing from the latter, one can conclude that some retail workers – just like some construction workers – suffer from precarious labour.

Even though some of the workers do not have formal written contracts and acquire these jobs under the rule of their employer, and may be poorly paid, they are protected under various provisions labour law. For instance, all these workers fall under the protection of the LRA. They are entitled to section 186 of the LRA, which affords them a fair dismissal. In addition, to be paid at least the national minimum wage, as per the national minimum wage Act for their sector. Furthermore, under section 29 of the BCEA, have a written employment contract, of which stipulates (amongst others) “the job description, the hours the employee is expected to work, ordinary and overtime rates of payments, the date of payment.”

4.4.2 Trolley Department

Workers who are hired in the trolley department are required to guard the trolleys at the entrance and exit of the shopping mall. Since the customers can make use of the trolleys in

different shops within the mall, the workers must keep watch of the trolley users so that they do not go past a certain point when using a trolley.

The workers are sometimes expected to work from 8am - 3pm, or 2pm – 9pm. Sibulele and Yamkela both said knocking off at 9pm is one of the things they dislike about their job. Yamkela likes the responsibility of coming to work whilst Sibulele said there is nothing he likes about his job. The contrast between the two may be that their motivations for working are different. Sibulele does not have family responsibility like taking care of kids, he only has himself to support, whereas Yamkela was raising minors who are going to school.

These two perceptions of work raise the point that people do not necessarily enter NSE as a last resort. Instead, other people choose to enter this form of employment voluntarily even though they could further studies and enter permanent full-time work, as with Sibulele's case.

Non-standard employment arrangements are generally common in jobs with no career ladders and thus, persons with lower levels of education find it unlikely to get full-time permanent job prospects (Moses, 2011: 29). Where Sibulele could apply to study in a college or university, he would potentially acquire a qualification that enables him access to full-time permanent employment. This is because quality education and investment in education indicates to an employer the ability to understand and productively work in that particular field and contribute to the growth of their businesses (Moses, 2011: 11). When asking Sibulele about trying to apply to get in university or college, he explained:

My mistake was taking a gap year. The following year I did not want to go back to school because my mind was not used to schooling anymore. Going to school again would delay me. I want money. I am already used to my salary (Sibulele, 05/11/2022).

Compared to construction work, the retail industry is less dangerous and less life threatening. The workers collect, clean and stack the trollies when on duty. In addition, sit in their designated points around the mall and watch for anyone who might attempt to steal a trolley. There are cases where the workers realise the trollies are short after counting them at the end of their business day. In such cases, “the manager shouts at us and emphasizes that we take precaution” (Sibulele, 05/11/2022). The manager does not, however, deduct any wages when trollies get lost or stolen.

4.4.3 Cashiers

Cashiers are responsible for checking customers out at the point of sale, helping customers return or exchange items and answering telephone calls at the sales desk area. In the supermarkets, the cashiers are expected to work the cash register, which involves processing payments, issuing receipts, greeting the customers and helping them with any questions they may have. Yondela, Moroesi and Alyssa are expected to work during weekdays. The hours they work depend on the roster set by their employer.

Unlike construction workers, they face less risk of getting hurt physically. Their risk is financial. This is because they deal with money. In her two years working at the store, Alyssa has had several accounts of customers returning to the store and say they did not receive their cash back. Alyssa (13/11/2022) explains cash back as when “a customer requests an amount of money from a sender via the store.” The company has installed cameras to oversee the cash register. The installation has benefited her in that, at times, customers received their money from the cashier and must have lost it at some other place.

Yondela finds the work exhausting and said that the fact that the manager does not allow for an hour break is unfair. Furthermore, on some days, she experienced rude customers. She communicated this with the manager, but they had not yet tried to find a solution. As she put it:

Each day is different and comes with its own troubles. I deal with rude and impatient customers, who say I must hurry, and I am wasting their time. The manager says it comes with the job; there is nothing she can do (Yondela, 12/11/2022).

The trolley department is less stressful than working inside the store. This is because the workers in the trolley department deal with fewer people. A common feature between the trolley guards and cashiers is that the customers are sometimes rude to both the Cashiers and workers in the trolley department.

The common feature which the Cashiers' and the workers' in the trolley department experience, borders on Arlie Hochschild's notion of emotional labour. A feature of emotional labour which has been discussed in the literature review is one where employees need to suppress their feelings to appease the customers regardless of their disrespect to the workers. Hochschild's referred to this feature as one of the organisational rules employees need to display, one being “surface acting” (1976: 195). Surface acting is when employees express a disingenuous behaviour to

what they feel (1976: 195). To manage the feelings of the workers is part of management's way to make sure customers are happy or satisfied with the service at the store, sometimes at the expense of employee's emotion as seen with Yondela, Sibulele and Yamnkela case.

4.4.4 Regulation of Working Time

Permanent part-time workers are hired to work hours that are fewer in number than full-time employees (Fourie, 2008: 114). All the participants are expected to work seven hours daily. The seven hours of work varied each week: workers can work from 8am-3pm, 10am-7pm, 2pm-9pm and 11am-6 pm.

Unlike Moeresi, Yondela and Alyssa found it beneficial to work half days. Yondela is a first-time mother, her son is only five years old and recently entered pre-school:

working part-time helps me spend time with my son. I also help him with learning how to read and write (Yondela, 12/11/2022).

Yondela finds it more exhausting to work late hour than day shifts. When she left work late at 7pm or 9pm. She still had to get home, prepare lunch for everyone for the following day. Similarly, Yamkela and Sibulele disliked having to leave work in the evening because the transport hired by the company to take them home, dropped them a far distance from where they live.

The workers are also expected to work during weekends. The workers must have one day off a week. Normally, the employer makes them work two full weeks and have them have two days off on the third week. Moreover, the workers cannot choose when to work, they work according to the roster. When there is an emergency, according to Moroesi:

The employer does give a day or two off when an emergency occurs. But he will take days off from my leave days (Moroesi, 12/11/2022).

The workers do get rest breaks. The conditions are as follows, since they do not work an eight-hour (full day), shift a day, their employer says they are not entitled to have a 1-hour lunch break. They are allowed tea break for 30 minutes. However, there are times when teatime is not allowed or there is no time for it. Alyssa said,

When new merchandise arrives, we have to do stock count, we have to meet a target so during work, we know we will not get a break. Sometimes the time goes fast we forget about lunch (Alyssa, 13/11/2022).

Regardless of the time slot the worker is placed, lunch break starts after 11am. This is because before 11am, the store is busy, customers are rushing for work or preparing for their day.

Yamkela and Sibulele said they sometimes have 15minutes tea breaks if the stock count is a lot. When asked about their views on the rest breaks being cut, Sibulele (shrugging his shoulders) replied: “Well, what can I do? It’s my work” (05/11/2022).

The latter suggests that these workers are subject to work intensification, work intensification is when employers reduce the porosity of the working day; by cutting lunch breaks or tea time (Mauno *et al.*, 2022: 116). The latter is a similar account to the case of Sibulele and Yamkela, when the employer reduced their break time so as to do finish stock count and meet the retails deadlines.

Similar to some of the construction workers interviewed, the permanent part-time workers in retail who participated in this study did not realise the full extent of their rights in the workplace. The findings of my research show that non-standard workers, in retail and construction, have no access to collective bargaining with their employers. Furthermore, there were no trade unions to help in representing the employees in work-related issues. Hence, the workers are deprived of some of their employment rights. For instance, Alyssa and her colleagues wanted to have their hour lunch breaks even when it was busy with stock count. The manager refused.

In the past, the LRA did not regulate part-time employment (Tatchell, 2020:8). The amendments in the LRA provides section 198C to protect these employees. The protections are in relation to general treatment of part-time workers in relation to indefinitely employed workers in the workplace. In light of the latter, part-time workers are entitled to enjoy their employment rights. Section 14(1) of the BCEA provides that an employer must be given an employee who works for more than five hours a meal interval of at least an hour. In addition, section 14(3)(a) states that an employee must be paid for a meal interval which the employee is required to work. In asking Moroesi whether her employer pays her for being available during meal hours, she said: “no, my salary is the same whether we work during lunch time and teatime or do not.”

4.4.5 Leave

All the workers interviewed were aware of their rights in terms of leave. There was evidence among the retail workers that suggests their employers comply with the BCEA in so far as workers leave entitlements are concerned. For instance, workers get unpaid leave, family responsibility and get an additional paid leave for where a public holiday fell during leave, or in a day they would have worked.

The only difference raised by Yamkela between full-time and part-time workers is that the former worked longer hours: “the full-time staff work for an extra two hours (Yamkela, 05/11/2022).

4.4.6 Employment Contracts and Remuneration

All of the workers interviewed had written employment contracts. They understood the terms and conditions in their contracts. Furthermore, they all had ongoing employment contracts, which means they will continue work until they or their employer terminates the agreement.

Upon explaining the terms and conditions of the contract, the employees did not negotiate the terms of the contract. The workers do not work in times they find suitable. They work in terms of what the employer has set.

Unlike the causals in the construction sector who were interviewed, the workers in the retail sample knew their pay day and got paid on the agreed day. However, the workers were not content with the level of their wages. As Moroesi (12/11/2022) noted: “I dislike being paid low wages and working part-time because it is tiring.” Moroesi elaborated:

For example, on days when we have to do stock count, I get burnout with no energy to go to work. Sometimes, the employer calls me in for work when it is busy in the store. I cannot say no, I need the money (Moroesi, 12/11/2022).

There is a strong expression from the employees in the construction and retail sector of being unhappy about their low wages, which is something Theron and Godfrey (2002), found when describing the precarious nature of NSE. In addition, workers tolerate working longer than expected and sometimes without pay because some of them are the sole breadwinners at home.

4.4.7 Trade Union Representation and Collective Bargaining

The retail workers in this study had different knowledge of trade union representation. Yamkela noted he was part of a trade union, whereas Sibulele (05/11/2022) stressed:

“nothing like that exists here [the workplace]”. However, even though Yamkela is a member of a trade union, he has never been in a meeting with his representative. He does not know his representative. This suggests that trade union representatives do not make their employees aware of their labour law rights. Importantly, the trade union representatives have not presented themselves to the workers. Ultimately, there is a lack of service from trade unions.

The non-commitment by trade union members prejudices the workers. For instance, the workers are forced to speak to their employer directly. For workers like Yamkela, who did not want to deal with the employer’s moody behaviour, would rather keep grievances in the workplace to themselves. Consequently, workers will continue experience discontentment at work. This is because some workers find it difficult to approach the employer directly. Section 78 of the BCEA, the employee is entitled discuss his or her conditions of employment with his or her fellow employees, his or her employer. Where employers do not leave room for employees to discuss their working conditions, some workers tend to resent their work. For instance, Yondela wanted to raise the fact that it is not the cashier’s responsibilities to check whether the isles are clean or check if the items are in their places. Yondela continued:

You know it sounds like an easy job; it is. But it gets tiring after a while. Customers spill food on the floor, and I am expected to clean that mess. They [manager] must hire cleaners. I cannot approach the manager, she is difficult. I’ve heard from my colleagues if I raise an issue. She will find something to make me lose my job (Yondela, 12/11/2022).

From the experiences presented, we can deduce that the issues faced by workers in NSE, such as non-commitment of trade union involvement in the workplace and some employees feeling like they will soon lose their job (job insecurity) suggests that they are not mutually exclusive. Flowing from this analysis is that as workers have since proved to be active actors for the attainment of increased wages, it should be that more pronouncement either through industrial action or legal recourse should/can be made for improvement in the regulation of their working conditions and job security, notwithstanding the fact that employers and trade unions should be already making it a point that workers are realising the full extent of their rights.

Furthermore, the workers are deprived because they pay for membership on a monthly basis but do not get representation or advice at work. Trade unions negotiate and oversee the implementation of collective agreements in the workplace (Theron, 2008: 5). As Sibulele said:

“we only speak casually amongst ourselves, never about work-related issues (Sibulele, 05/11/2022)”

Most of the workers interviewed wanted their employers to provide them with raincoats, to not work on weekends and to have more days off. Two weeks can pass without them having their off days. For instance, Sibulele has been called from home to take over shifts on a weekend he was off duty. This meant, there are months where he did not get off days. This is not a problem for him because he gets paid for standing in for an absent worker.

However, because their trade union does not available themselves when needed, it is difficult for them to raise these demands. Even though the employer has provided the workers with the space to meet with the employer, they do not. This keeps the workers in a state of being dissatisfied with the conditions in the workplace and want to exit. With what has been discussed in the literature review, “the lack of employee representation and collective bargaining leads employees to either reserve knowledge on what could potentially be useful to the firm or employees communicate their dissatisfaction with the employment relationship by leaving the workplace (Belman and Block, 2019: 48). Similarly, as discovered from my research, majority of the workers interviewed want to leave or are planning to improve their level of education so they can have a chance to enter full-time permanent work.

4.4.8 Work-Life Balance

Moroesi raised the request of not working on weekends because she wants to spend more time with her kids. Yondela shared the same sentiments. She stressed the fact that, although she has one kid, she has an extended family to take care of. Working on weekends did not give her enough time to rest for the following week as she was busy washing laundry and cleaning the house. These experiences suggest some workers are prone to be overworked; their employer requires them to work during meal intervals. Moreover, the workers do not get paid for the extra work the manager requests they do, such as monitoring the aisles and checking if all the misplaced products are in the right place, which was assumed to be part of their job description.

In light of these conditions, Yamkela would love to be a permanent worker because it would pay more. Similarly, Alyssa and Moroesi would prefer to be permanent workers because they would get better pay. Sibulele does not want to be promoted because he sees promotion as having more responsibility. Yondela wants to continue with school, so she does not want to continue working in the retail sector.

There is a sense amongst non-standard workers of being exhausted and not getting paid enough. Non-standard employees work in a completely different labour market than permanent workers; with shorter hours, and less pay. NSE is normally seen as the last resort that people undertake; however, as in the case of Sibulele, it may be voluntary because workers choose to continue doing non-standard work.

There is seemingly a common feature of workers in the construction and retail sectors being unjustly treated. First, Moeresi's employer unjustly subtracts the worker's leave days when they need to attend emergency situations, though the worker had asked. Second, we find that worker's in the construction were paid below the minimum wage. This unjust treatment of these employers correlates to what Roemer, explained as exploitation. In his analysis of exploitation, Roemer explained exploitation as when the workers get less to what they produce and the manipulation of the labour process to extract surplus value (1985: 34), both these experiences fit the worker's experiences respectively.

4.5 OUTSOURCED WORKERS IN SECURITY GUARD AGENCY

In South Africa, as elsewhere, temporary employment agencies and/or labour brokers are used to provide workers, who are paid by the agency or broker, to work for a client (Mokofe, 2018: 49). The term 'client' refers to a person or enterprise that acquires workers from an employment agency to perform work for it (Mokofe, 2018: 49). This study focuses on outsourced workers from a security agency.

The discussion on outsourced workers in the security guard agency is from the respondents presented, as shown in **Table 3.3: Demographic Information of Outsourced Workers**

Demographic information & historical background

The outsourced workers were all employed by the same security company in Makhanda. They are deployed to different sites in the city. Nwabisa and Siya were located at a university in the city whilst Tsori, Thembisa and Londa were placed in a local school. In South Africa, the security industry is male dominated, with only 10-11% of women being employed in the sector (Oelofsen, 2021). However, the participants who availed themselves were mostly females. This was because the majority of male security guards were placed on night shift.

All the workers are from Makhanda and neighbouring cities: Peddie and Qonce. The workers travelled from these nearby places to find work in Makhanda. The common feature between

these workers is that their parents or guardians were in non-standard work as domestic workers, gardeners, general workers in manufacturing, mine workers and building railways. There is a general pattern from the participants, that they too were casual worker's casuals and have since transitioned to outsourcing. The employment relationship that exists between the employer and employee exists in a triangular form because the client is also involved. The employee answers to both the agency (employer) and the client.

Unlike the workers in construction and retail, outsourced workers in the security sector have completed high school despite being raised in single-headed households or only one of their parents being employed. All five participants completed matric. In addition, the respondents obtained training at various security services companies, which helped them get job placement as security guards under the Private Security Industry Regulatory Authority (PSIRA).

Three respondents gave no reason for stopping schooling after they matriculated. After his mother's passing, Siya wanted to earn money to go to initiation school. For Tsori, there was no money to continue school.

As stated in the literature review, Makhanda and its neighbouring cities are ravaged by high unemployment, poverty and inequality (Irvine, 2021), this results in job seekers who come from poverty stricken homes, to relocate for job placement; securing work which is readily available to them in other cities. It is because they have not obtained further qualification post matric that most of these workers have resorted to this form NSE.

4.5.1 The workers' employment background and experiences

All the respondents had been engaged in NSE. Thembisa worked for a Chinese-owned factory (sowing t-shirts) in Dimbaza for three years. Her employer was strict for workers to meet the set target for the day. They would have to re-sow a shirt at the end of the assembly line, if it was not perfect. After the factory closed, she then found a job where she cut grass in various homes in Peddie. She lived in Peddie for three years after matric. She started being a security guard in 2007. She has been working as an outsourced worker for 14 years.

Tsori has been working as a security guard since 2018. He used to be a petrol attendant at a fuel station in Port Elizabeth. The employer from the fuel station transferred him to another workplace, which was costly as he had to take a taxi to work. He then relocated to Makhanda

to work as a construction worker (a roofer). Tsori went into construction work for better pay. He left construction because of the dangers involved. As Tsori noted:

In the construction job, the pay was not enough. With my wages, I basically worked to get to work. I then decided to seek job elsewhere (Tsori, 29/10/2022).

Nwabisa was also a petrol attendant. The employment contract as a petrol attendant ended. She then worked as a cashier at the same fuel station, the contract also ended. Thereafter, moved to Grahamstown for work as a security guard. The respondent expressed that during her time as a petrol attendant and a cashier at the fuel station, none of the managers gave her problems in her previous jobs.

Siya was unemployed before taking this job. He used to work for a municipality project where they cleaned grave sites, clinics and schools. The contract was for six months. He then relocated to Port Alfred to work as a security guard.

Londa was a casual worker at a butchery in Port Elizabeth. Her term ended after six months and then she worked at a local security company. She relocated to Makhanda because she has family that she can live with instead of paying rent in Port Elizabeth. She expressed that her employer at the Butchery was mean; he used to shout, and the pay was “very little.”

A feature highlighted by these workers was the lack of jobs where they reside, low-paying jobs and the harsh treatment from some of their managers led them to migrate to other locations. Most of the respondents relocated from where they reside to find better work.

4.5.2 Conditions at and Experiences of Work

The concern stressed by the respondents was regarding safety. The respondents expressed the differences in treatment between in-house and outsourced security guards in the higher education institution. The education institution is close to the local township. Almost all the workers who are security guards live in the township. This means they are familiar faces in the township. Nwabisa raised several accounts of her life being threatened by thieves in the township. This was as a result of chasing away thieves from campus, only to bump into them in the township.

Just as with Vuyo in construction and Yamkela in retail, there is the “duty-bound” mindset that workers have towards their work. For example: there was an “I owe my work my life” (Vuyo,

01/11/2022) mentality. This mindset presented itself in Nwabisa's engagement as well. She emphasized the duty that she had to protect her client whether she was on duty or not. In her words:

the morale is that my client is the institution, any student from there is my client. This is regardless if I am on duty or not, I have to protect any student even outside the workplace (Nwabisa, 28/10/2022).

A similar case was experienced by Thembisa. When she was off duty, she noticed a student from the client company was going to get mugged, she quickly phoned the agency on the scene and had to intervene to protect the student. Thembisa has since been attending court trials to be a witness for varying cases like robbery and rape. In a teary voice, she noted that "this happens all the time" (29/10/2022). Their employer is aware of the dangers involved at work and the extent to which the employees go to protect their clients.

Another difference Siya highlighted between the permanent in-house guards and the outsourced security was the degree of risk involved in their work. Siya stressed:

We are the fence of this institution. The in-house guards are just for back up, opening the classes and locking them (28/10/2022).

To be the "fence of the institution" meant that, since the institution they work for does not have fencing, should any intruder attempt to pass [the guards] that is, enter the institution, the guards on duty need to confront and get rid of the intruder on the premises.

The workers also stressed they are understaffed. As a result, they are overworked. When on duty, the worker must patrol their designated site and check approximately nine points. At the same time, if an incident happens at point four whilst the worker is at point eight, they need to account why they were not present. Furthermore, being understaffed makes it easier for thieves to monitor the times which the guards are moving because they have a routine that requires them to be at a specific point at a specific time.

Nwabisa, Thembisa and Siya's experience speak to the dangers involved in this industry, that is, risking their lives to protect the client, to have the responsibility of protecting the client even when off duty. In addition, being understaffed not only means that the workers do more rotations which can be overly burdensome but that it becomes difficult for the workers to relieve themselves in the toilet because they are afraid the employer would deduct their salary

for moving away from their station. Similarly, apart from security guards striking for wage increase in 2006, the negotiations also included “the right to have lunch breaks and to use toilets without being charged for deserting a position while on duty” (Mafela, 2006: 6). The workers managed to get their intended increment however, it is not clear if improvements were made regarding the regulation of their working conditions; whether or not they are charged for going to use toilets.

The number of years the respondents have been working in this industry varied from one year and six months to 14 years. None of the workers wanted to be promoted. They shared a general experience that promotion comes with more stress because there is greater responsibility. The employer is harsher on promoted individuals. As a result, they do not consider being promoted. Moreover, when there is a mistake, the chances of losing a job is higher. Londa shared her experience of when she worked in the security office to manage camera controls:

The boss was on my shoulder every time. Asking me to check in every site all the time and record what was happening. The pressure to do things under scrutiny was weighing heavy on me. It was tiring. I stopped (Londa, 29/10/2022).

The control and monitoring from management are the problem in this instance.

4.5.3 Regulation of Working Time

All of the respondents were expected to work a night and day shift. A day shift starts from 6 am and finishes at 6 pm. Night shift was from 6 pm to 6 am the following morning. One of the exceptions to this scheduled routine, is a worker who has a new-born child. On her return to work after maternity leave, Londa was scheduled to only work day shifts. She found this stressful: she wanted to work night shifts because it paid more.

Furthermore, workers are expected to work five days a week. There is two days off for rest. The five days a week varies: one can work from, for example, Wednesday to Sunday or Friday to Tuesday. On those five days, one can work two-night shifts and three day shifts or vice versa.

For the guards at the local school, there is no scheduled lunch time. The workers eat whenever they see it is not busy, there is no duration set for when they can start and end lunch break. The security guards at the higher education institution had a lunch break for an hour. The workers were scheduled in the roster of what time between 9 am to 1 pm they must eat. During lunch

hour, the workers are allowed to leave the premises. Londa said that the lunch hour was not enough given that they spend 12 hours at work, she expressed her discontent by sharing:

I sometimes have lunch from 9 to 10am. By the time noon hits, I am already hungry. During mid-day, I am exhausted (Londa, 29/10/2022).

Londa went on to say that in-house, permanent security guards are allowed tea and lunch breaks, which the outsourced guards did not get.

Overtime work only attracted some workers. Siya and Tsori always availed themselves to work overtime whereas Thembisa, Londa and Nwabisa sternly rejected it. Nwabisa stressed that she is old, and her joints are painful. She does not care about overtime. By contrast, Thembisa and Londa said they want to rest and spend more time with their children.

Non-standard workers face many situations where their treatment is subject to the employers' discretion and not guided by the law. The experiences of outsourced workers are dependent on the particular client company. For instance, the guards at the local school are provided with heaters in winter, whereas the guards at the higher education institution were prohibited from using heaters.

4.5.4 Leave

There were common experiences of leave conditions among the guards at the local school. Their employer granted them leave. However, it was not an easy process. In applying for leave, the worker must have proved that they were in fact attending to family. For example, this means producing documents that show that they have the same surname. In the event where they do not share the same surname, the worker needs to write an affidavit proving a family relationship.

Siya faced this difficulty. In the process of applying for leave to attend his cousin's funeral, he was told to produce an affidavit. He said he could not because of time constraints, and the employer said: "Don't make your problems our problems" (Siya, 28/10/2022). He had to ask a colleague to swop duty.

The guards who worked in the higher education institution were forced to ask for their leave around the schedule set by their manager. For instance, in the nine years of working for the security agency, Londa spent the festive season working because the institution's assets must be protected at all times. She therefore had to take her 21 days leave in November.

All the workers got paid leave on condition that they did not exceed the leave days provided by labour legislation during the year.

4.5.5 Employment Contracts and Remuneration

Londa and Nwabisa claimed to know the minimum wage for their work. Tsori, Siya and Thembisa did not know the minimum wage and therefore could not tell whether they are paid below or not. When comparing salaries, Nwabisa stated the in-house security guards got more even though the outsourced workers do the dangerous jobs.

4.5.6 Dismissal and Termination of Employment Contract

All the respondents were on an ongoing contract with the security agency. The termination of employment depended on their resignation, retirement or if they were dismissed in a procedurally and substantively fair manner.

Even though a person may not be regarded by the law as an employee of the client but of the labour broker, the client still has a legal duty not to undermine an employee's right to fair labour practices unless the limitation is justified by national legislation. For instance, in the tripartite relationship, the client should contact the agency regarding any misconduct they allege was committed by the worker.

Two of the respondents dealt with cases of potential dismissal. This is because they were already given a warning by their employer twice. Nwabisa was called in for a disciplinary hearing by the client. Her side of the story was not heard. She was simply asked to apologize for not being on site. As Nwabisa (28/11/2022) explained:

That should not have happened, the client should not have been the one to call me. I must be reported to my employer [Client].

She says the hearing was not fair because after the hearing with the client company, she felt unheard. Furthermore, her employer did not stand up for her. After the client company called her for a hearing, she was then called to another hearing by her employer to raise her side of the story. She was unsuccessful in proving her case thus, given a warning. As it stands, she says she only has one warning before dismissal.

Siya faced a similar disposition at the workplace. Upon his return from leave, a decision was made that he had to pay R150 for a lost torch. He was not given the opportunity to raise his standpoint on the matter. The employer did not listen to him, and the money was deducted from

him, on the basis that he was one of the workers on duty when the torch was lost. He feels that the blanket “punishment” was unfair because there are other workers who worked day and night shift in the week where he was on duty.

Section 198 of the Labour Relations Act protects the labour rights of employees in temporary employment services. In both Siya and Nwabisa’s cases, there was seemingly no proper procedure followed in the disciplinary enquiry. In the “sit-downs” with the employer, there were allegedly no representative for the workers. If so, the workers’ rights were undermined.

In this sector, the client holds a strong influence over the security company. The security company is likely to be influenced by the client because there is a commercial contract between them; the agency gets money. As a result, the outsourced worker will always be weakest and vulnerable party in the tripartite relationship thus, need protection.

4.5.7 Trade Unions and Collective Bargaining

Section 14(4) of the LRA sets out the functions of trade union representatives. Among others, to represent at the request of an employee in the workplace, to assist and represent the employee in grievance and disciplinary proceedings. All the respondents had trade union representation. The respondents are members of two trade unions: one independently entered into with colleagues and the one provided by the company. Not one respondent gave positive feedback regarding the unions. The respondents could not recall their union’s name. Tsori, Nwabisa and Thembisa said the same thing: when the shop steward calls in their representative, the union sends a student; someone they have never seen nor met before. All the workers wanted to cancel their union subscription because no benefit accrued from it.

Another function of union representative is to monitor the employer’s compliance with the provisions of the labour law Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer. Nwabisa and Siya allegedly faced unfair treatment in terms of how their disciplinary cases were handled. The union failed in terms of representing the workers in the workplace.

Collective bargaining is regarded as one of the most important functions of a trade union on behalf of its members (Preiss, 2021). Collective bargaining is important in industrial relations because it is the mechanism through which ‘regulated flexibility’ will be achieved (Fergus and Godfrey, 2016: 2215). In other words, the ability of collective bargaining to set wages and conditions that balance employees’ needs with those of employers is critical for the ability of

the new labour relations system to balance the imperatives of equity and economic development. Furthermore, it provides a sensible means for expressing demands that originate in a natural impulse towards collective action, (Brassey, 2013: 826). Nwabisa mentioned that the workers did meet amongst themselves to discuss work-related issues. They even created WhatsApp groups during the Covid-19 pandemic as a way to continue discussions. However, no success has come from those engagements. As Nwabisa (28/10/2022) stated:

We communicated in the group that we would like to have the medical arrangement to include eye checks and full body check-ups. This is because some of us have worked for the company for more than 10 years and our bodies have grown weak. I have troubles walking long distances and I want to go for regular body check-ups. The employer has not gotten back to us.

Though the respondents were placed at different sites, they worked for the same agency. The respondents normally paid R30 every two weeks to use the transport provided by the employer to get to work. However, that arrangement stopped because the employer requested that employees pay R300 fortnightly. The employees were not given the option to negotiate, as some were willing to give R100. The workers are in a position where they either walk to and from work, in some instances in rainy weather, use taxis or bicycles. The workers complained of getting to work tired. In such instances, we see the need for a trade union representative to fight for the workers and reach agreements with the employer.

4.5.8 Daily Experiences at the Workplace

The overall perceptions of their job were that they are happy to have found work. The interviewees at the higher education institution expressed unfairness at work. This is because in-house security guards take the credit of something the outsourced workers have achieved. For example, as Nwabisa shared, the security guards had captured several thieves during the night and phoned the police. In the following weeks, she saw on the local newspaper, that credit was given to the in-house guards and no mention of the security company nor its workers.

In relation to unfair treatment at work, some workers complained about the employer addressing other workers' needs and disregarding theirs. As Tsori (29/10/2022) put it:

There's a lot of under the table handshakes. Many of the workers get favours from our supervisor because they buy him a bottle of wine or give him money.

Tsori complained about the low wages he received. He said some of the workers were unable to bribe supervisors because they did not have the money.

Furthermore, the respondents said they were overworked. They wanted the client to hire more staff because they are understaffed. In turn, this affected their work-life balance because they cannot rest well, nor commit to their family, friends and social gatherings.

Lastly, the workers found it difficult to complain about the unfair treatment by their employer because there are many casual workers who are in line to replace them. The workers interviewed said they are constantly reminded of this fact. Hence, one can deduce that managers find ways to covertly regulate these workers.

For example, the employer introduced that females were going to work in the dumping sites as well. Londa, relayed her discontent about working at the dumping site, especially during night shifts. Londa recalls her employer's response:

if you are not happy, remember, we have many casuals waiting for a job (Londa, 29/10/2022).

The use of passive threat that workers would lose their jobs is what made employees do what the employer directed. Regardless of the impact it would possibly have on the employees. For instance, Siya noted:

Whenever we have to rotate, the employer announces that many people are waiting in line for this job so we should not complain (Siya, 28/10/2022).

Overall, there is evidence the workers interviewed knew some of their rights. This makes them susceptible to abuse in the workplace. For instance, workers may not be allowed lunch breaks, and be unfairly dismissed. All of the workers are entitled by law to have written employment contracts, that have been explained to them and have access to their contracts.

The precarious nature of NSE was evident in the majority of the experiences shared by the workers' in NSE. The workers seem to have tolerated the hideous and dangerous working conditions, such as working in the dump-site at night, working in uncleared construction sites, having tolerated disrespect from the employers and in some instances from customers, because majority of the workers, are largely reliant on the wages they receive, however so little and dissatisfied they were with the wages. Regulated flexibility was a theme throughout, employers do not only use employees for job rotation but intensify the work of the employees in a manner

that is taxing in the worker's lunch or tea breaks to meet deadlines or make profit. I have learnt from the workers experience that work intensification affects their work/life balance. For instance, some workers found it difficult to have play time with their kids, do errands or attend to their personal commitments. In this case, there is no balance, it is just work.

For some women, the triple-burden shift of going to work, returning home to do house work and then navigate the emotions of the people in the home constituted as an issue in NSE as it is burdensome to women, but not unique to NSE. Some of the workers have made arrangements to enter full-time employment or be self-employed. However, I found that entering full-time employment is likely to be difficult for the majority of the workers because they have low-level education (not reaching matric and others not completing primary education) which has made them less attractive to employers in full-time employment. Underlying this difficulty is the widespread poverty in these families that is, not being able to pay for school fees for the child to go to school, and the responsibility of some to take care of their families, which leads them to quit school to find an available job to provide for the family, which suggests the involuntary nature of entering NSE.

An exception (outlier) from the analysis was that not all workers in NSE enter it involuntary or because it is their last resort, some may enter it because they want it, simply because it is a quick way to continue making money.

CHAPTER FIVE:

CONCLUSION AND RECOMMENDATIONS

It is evident from the research findings that non-standard employees operate in a different labour market compared to standard workers. Standard workers, as described by Theron (2014: 14), are distinguished by the bilateral, full-time employment relationship. In addition, as Edgell and Granter (2019: 167) point out, the characteristics features of full-time permanent workers are having “job security, expectations of rising living standards through high wages, workplace participation of workers, the presence of strong trade unions, free collective bargaining”. Non-standard workers are more inclined to depend on statutory protection enacted to ensure basic working conditions. For example, it is unlawful for organisations to make employees pay for their mandatory work uniform, except for when the worker(s) destroys the uniform, and yet some of the workers in the construction and security industry had a fee deducted from their salary to pay for their work uniform at the first distribution. The latter is a contravention of section 33A(1)(a) of the BCEA.

Furthermore, unlike workers who are in a SER, workers in NSE are “more often uncertain about the rules of the workplace” (Belman and Block, 2019: 48). As gathered from my research, most workers, across all fields, were at some point confused about their employment terms and conditions. This lack of clarity was because their employer never discussed their contractual terms and conditions with them (as with the construction workers) ever since their agreement was concluded five or ten years ago. Moreover, for not communicating changes (additions or subtractions) of the rules of employment at the time they were concluded with the employees. Consequently, this has led to some of the workers being unfairly subjected to disciplinary hearings.

Workers in a SER often have strong presence of trade unions and collective bargaining (Edgell and Granter, 2019: 167). The workers I interviewed tended to view trade union involvement in sorting out work related issues as weak and in some sectors such as the security and construction, difficult to reach. As stated, some could not recall their trade union representative though they were official members who paid a levy every month. Others opted to speak to their employer directly than organise a meeting with the trade union representative.

Although non-standard workers may enjoy equal legislative protection in theory, in practice, the circumstances of their work make it exceedingly difficult to enforce their rights. For instance, there is an intergenerational pattern that potentially drives non-standard workers to resort to NSE. However, it is not limited to that perspective. People who work in NSE so because those are the jobs available. The entrapment in this segment of the labour market is not only driven by family dispositions but also socioeconomic factors like the high unemployment rate and lack of employment opportunities in Makhanda.

For an organization to compete successfully with its commercial rivals' economic competitiveness locally and globally, the supermarkets tend to restructure their workforce to cut labour costs. As discovered from the research, employers use employment flexibility to restructure their workforce. As seen employers hire their work force based on their need to meet demand in the store. Hence, part-time workers are hired. For example, the retail store I sought my research participants, is one of the biggest retailers in South Africa and Africa. Moreover, it also has competition from other leading supermarkets which operate internationally as well. This means for it to thrive, it must match its competitors in the local and global level. At a myopic view, the workers are affected because the employers want cheap labour. NSE is used by employers to supplement standard employees in times of high business activity.

NSE has had varying impacts on the employees' experiences and perceptions in the workplace. In permanent part-time work, worker's voluntary engaged in this kind of employment because they could attend to their non-work commitments whilst earning a salary. However, the workers were also exposed to conditions which frustrated their work-life balance. For instance, the employer had to rotate duty shifts. At times rotations meant the workers who work night shifts arrive late at their homes. Flowing from that, parents could not spend times with their children because they are already in bed. This shows two things, firstly emotional labour and secondly, that employers use job rotation as a form of control over the workers.

The workers in construction were more prone to abuse than workers in the retail and security sector. This is because none of the workers I interviewed in construction work had an employment contract. Consequently, they lack job security because they are vulnerable; they could lose their jobs at an unspecified time. As revealed their employer(s) can decide to fire them at any time because they could not prove they are employees of the employer.

Furthermore, they are highly likely to stay in those dangerous working conditions. This is because majority of the workers still need to complete high school. The low levels of education only afford them whatever jobs, however precarious which are available in nonstandard work.

As discussed in the literature review, NSE can contribute to improved employment outcomes and to a better work–life balance, increase overall job performance and life satisfaction. The latter is with the exception that the employee chose that type of employment, and the job is of good quality (ILO). As discovered from the research, non-standard employees do not involuntary engage in NSE. Moreover, some people do not work in NSE as their only and last report. As discovered from the research, some choose to NSE because of the flexible times it guarantees in order form them to commit to other endeavours. In addition, others simply want to avoid the seemingly “more responsibilities” that come from being promoted and a fulltime permanent worker.

Across all three sectors explored, there is a tendency of employees lacking union representation and collective bargaining in the workplace. It was either some workers do not know their union representatives, the unions do not avail themselves to the point where the workers can rely on them or collective bargaining was weak. This lack of employee representation has led many employees to either upgrade their education level to find suitable permanent full-time employment.

Some scholars argue that NSE is a steppingstone into permanent employment. However, this is not entirely true because the conditions that prevail in NSE make it difficult for nonstandard workers to be promoted. In addition, some non-standard workers interviewed did not have a matric or post-school qualification; they were condemned to work in the precarious segment of the labour market. The latter perspective is more in line with the heterodox approach to labour markets than it is with the orthodox approach. It challenges the argument of orthodox theorists that there is only one labour market. Instead, the research findings tend to support the labour market segmentation approach, which draws on sociology. Labour market segmentation theorists argue there is not a single labour market; there are distinct segments with different rules that go beyond the ‘laws’ of demand and supply (Loveridge and Mok, 1979). For instance, the outsourced security guards did not operate in the same labour market as the permanent, in-house security guards. This means different labour markets apply different rules.

I found that it was difficult for some workers in NSE to crossover to the primary segment in the labour market. This is because they have low-levels of education. Research has shown that most of the jobs in the SER are characterised by the career ladder (Moses, 2011: 7) that is, the worker can work themselves up through promotion to a higher position. In retail for example, the Trolley department does not have a career ladder. Instead, the workers in the trolley department would be rotated to another position in the store, to be a backpacker or merchandise checker. This means to enter the primary segment they would have to acquire a higher level of education that would increase the probability of them entering the primary segment.

Formal jobs provide workers more than just social protection. They are a source of income and stability which allow workers to build assets and plan for the future. Formal jobs confer a range of labour protections that include a minimum level of earnings, limits on working hours, paid leave, redress in case of unjust dismissal, union membership, protection from discrimination, and a safe and healthy workplace (Preiss, 2021). These aspects of the employment relationship are sometimes overlooked in discussions about extending social protection (Peterson, 2011). Even though the SER suffers its own prejudices, majority of the employees have perceived SE to be better in providing better wages, job security, employment benefits and administration of labour law.

Amendments to the LRA have ensured the protection of workers in NSE. There is a myriad of ways for workers who experience unfair treatment at work to solve their work-related issues. Glaring issues in my research findings are the poor or inadequate implementation of labour laws and the corresponding need to improve implementation so that all workers in NSE can realise their rights just as workers in SER do.

The extensive literature on the use of NSE coincides with the explored research. Among others, the proliferation of NSE is caused by unemployment and poverty. The high unemployment in Makhanda leads people to take jobs which are available to them. These jobs boost economic activity but do not fully upgrade the lives of some individuals. NSE therefore improves the lives of some workers but not adequately as some employers tend to not comply with labour law.

In conclusion, the purpose of this study was to explore the conditions of non-standard workers in the selected industries in Makhanda. The study drew on the wide literature on non-standard employment, which gave insight on the working conditions of non-standard employees on the

different kinds of NSE. Furthermore, the information I received from the respondents which helped me understand the nature of NSE and why some employees have resorted to NSE. I conclude that NSE can be understood as a 'tool' to curb the high unemployment rate, poverty and uplift other people's lives in South Africa. Furthermore, that some employers need to apply labour laws more effectively in the workplace. This means enforcement of the worker's rights must be supported by an effected system of labour inspection. Lastly, the growth of NSE is a concern because these employment arrangements covered in the study are associated with greater insecurity for workers when compared with standard employment.

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APPENDIX A:

INTERVIEW SCHEDULE

SECTION A: RESPONDENT DETAILS

A.1	First name	
A.2	Surname	
A.3	Cell phone number	

SECTION B: BASIC DEMOGRAPHIC INFORMATION

B.1 What is your age?

B.2 What is your sex?

B.3 What population group do you belong to?

B.4 What is your nationality?

B.5 What is your ethnicity?

B.6 What is your current marital status? Do you have any children? If so, how many and what are their ages?

B.7 What is your highest level of education? (Why did you stop at this level?)

SECTION C: HISTORICAL & EMPLOYMENT BACKGROUND

C.1 Place of origin?

C.2 What is your former guardian/s' highest level of education? (why did they stop at this level?)

C.3 What is/was your former guardian/s employment?

C.4 In which industry do you work?

C.5 How long have you been in this form of employment?

- C.6 Have you been unemployed before undertaking this employment? If so, for how long?
- C.7 What job(s) did you work in before this one?
- C.8 How long did you work for in the job(s)?
- C.9 What were the reasons for leaving the job(s)?
- C.10 What extent of control did management have over you and your work?
- C.11 What extent of control does management have over your work currently?

SECTION D: REGULATION OF WORKING TIME

- D.1 How many hours do you work on average a day/week?
- D.2 Do you work overtime, how often and how many hours per day or week?
- D.3 Do you get paid overtime?
- D.4 Do you have breaks for mealtimes? (To get details about all breaks and their views on the length of these breaks) D.5 On what days are you expected to work?
- D.6 Can you decided when to do your work?

SECTION E: LEAVE

- E.1 Do you know what the Basic Conditions of Employment Act says about leave entitlements?
- E.2 Does your employer grant you leave? (To get details of all leave)
- E.3 Does your employer grant you an additional day of paid leave where a public holiday falls during you leave, on a day you would have worked?
- E.4 Does your employer grant you family responsibility leave? (Get details)
- E.5 Does your employer pay you when on sick leave for the days you would have ordinarily worked?
- E.6 Are there differences in leave for permanent and non-permanent staff?

SECTION F: PARTICULARS OF EMPLOYMENT AND REMUNERATION

F.1 Do you know the national minimum wage for your work?

F.2 Do you receive the national minimum wage for your work?

F.3 Is your wage different from the full-time employee doing the same or similar job?

F.4 Do you work on weekends and on public holidays? What is the pay rate on these days?

SECTION G: EMPLOYMENT CONTRACT

G.1 Do you have a written employment contract?

G.2 Do you understand the terms of your employment contract?

G.3 How long does your contract last?

G.4 Has your employer explained the terms in your employment contract?

G.5 Who do you regard as your employer?

G.6 Do you know your pay day?

G.7 Do you get paid on the pay day?

G.8 Did you negotiate the times for when you can work, with your employer that is suitable for you?

(May I see your contract of employment)

SECTION H: TERMINATION OF EMPLOYMENT CONTRACT

H.1 Have you ever been dismissed? If so, on what grounds were you dismissed?

H.2 If you were dismissed before, what procedures were followed?

SECTION I: COLLECTIVE BARGAINING

I.1 Is there social dialogue in the workplace? (Are you able to meet with other workers and managers to discuss work-related issues)?

I.2 Do you belong to a trade union (TU)? If so, why? If not, do you think a TU can help you?

I.3 How do you communicate your grievances in the workplace?

I.4 Is there collective bargaining in your workplace, if so who is involved?

I.5 Have you ever engaged in industrial action (go-slow, picketing, sit-ins etc.)? (to get details)

SECTION J: WORK/LIFE BALANCE

J.1 Do you participate in this form of employment voluntarily? Would you prefer to be in a permanent, full-time job?

J.2 Are you able to commit yourself fully to family responsibly and work?

J.3 Do you find time for leisure (Is your leisure time ever interrupted for a call to work?)

J.4 Is there anything you see can be done to improve the situation?

SECTION K: GENERAL

K.1 Have you been working in this job for more than three months?

K.2 Have you been ever promoted?

K.3 Do you want to be promoted?

K.4 Do you fear your boss?

K.5 Is the workplace uniform provided by the employer?

K.6 Do you have protective gear provided for the kind of work you do? If not, what do you do?

K.7 Who do you report to?

K.8 What employment benefits do you get?

SECTION L: DAILY EXPERIENCE AT WORK

L.1 What do you like and dislike about your job?

L.2 Can you speak freely with your boss?

L.3 What barriers are there that make it difficult for you to speak to your supervisor?

L.4 Do you participate in work events with full-time employees?

L.5 Do you associate yourself with full-time employees?

L.6 Do full-time employees judge you for working fewer hours?

L.7 Are you seen as an outsider at the workplace?

L.8 Do you see yourself as part of the workplace (Do you participate in organizational activities)?

L.9 What training do you receive and is it for all employees (full-time and non-full-time employees)

L.10 Are you clear about what you need to do and when?

L.11 Do labour inspectors come into the workplace?

APPENDIX B:
PARTICIPANT INFORMED CONSENT
DECLARATION

(To be signed by research participants)

Project Title:

**“LABOUR LAW AND NON-STANDARD EMPLOYMENT: CASE STUDIES OF
SELECTED WORKPLACES IN MAKHANDA”**

Sifanelwe Mini from the Department of Sociology, Rhodes University has requested my permission to participate in the above-mentioned research project.

The nature and the purpose of the research project and of this informed consent declaration have been explained to me in a language that I understand.

I am aware that:

1. The purpose of the research project is to understand the employee’s conditions of NSE, the reasons why employers resort to NSE and why they use particular types of NSE. In addition, the proposed research will explore how labour law protections for NSE translate into practice in the workplace.
2. Rhodes University has given ethical clearance to this research project (2022-58867226) and I have seen/may request to see the clearance certificate by contacting the Ethics Coordinator (ethics-committee@ru.ac.za)
3. By participating in this research project, I will be contributing towards giving an understanding of the form of employment I undertake and my experiences in my particular sector.

4. I will participate in the project by sharing my experiences on the following:
Employment conditions in the workplace in my industry, the experiences I have as a non-standard employee in relation to what the researcher asks.
5. My participation is entirely voluntary and should I at any stage wish to withdraw from participating further, I may do so without any negative consequences.
6. I will not be compensated for participating in the research, but my out-of-pocket expenses will be reimbursed.
7. The following risks are associated with my participation: The employer may find it uncomfortable that the interviews are conducted in the workplace. I will make sure the interviews are conducted outside of the workplace in the comfort of the participant's home or any place suggested by the participant that is suitable to conduct the interview.

Second, the employer and employee may not be comfortable in sharing their identity. I will use pseudo names to protect the employer and employee identities.

8. The Researcher intends to publish the research results in the form of an electronic academic paper. However, confidentiality and anonymity of records will be maintained and my name and identity will not be revealed to anyone who has not been involved in the conducting of the research, ***unless I indicate to the contrary/recognize that as a public figure my identity will inevitably be/become known, in which case I agree to accept the loss of anonymity.***

9. In terms of the Protection of Personal Information Act (No. 4 of 2013) it remains my right to request the Researcher to provide me with a detailed explanation of exactly how confidentiality and anonymity of the data I provide will be achieved. I may also request to know exactly how my personal information will be stored securely, for how long it will be stored.

10. If any data collected from me for this research project is to be used by the Researcher for any further study, I am to be informed in writing and my written consent requested again. I need not give consent for the new research if it is incompatible with the initial purpose of the present study (POPIA, s15(3)). Equally, I can simply reject the request. In such cases, a formal request needs to be made to me by the researcher via the Ethics Coordinator (ethics-committee@ru.ac.za).
11. In terms of the POPI Act, I possess the right to receive feedback about this research. This will take the form of electronic mail, telephonic, or any preferred channel of communication requested by the participant. Unless ***I elect not to receive this feedback.***
12. Any further questions that I might have regarding the nature of the research and/or my participation will be answered by Ms Sifanelwe Mini via email at:
g15m2749@campus.ru.ac.za.
13. By signing this informed consent declaration, I am not waiving any legal claims, rights, or remedies. A copy of this informed consent declaration will be given to me, and the original will be kept on record by the Researcher.
14. I ***agree/disagree*** (delete inapplicable) to the Researcher's request to take photographs, or videoing me as part of this research project, recognizing that agreement here is likely to raise the risk of compromising my anonymity and that steps will be taken to ensure this will not happen if my consent is given.
15. I ***agree/disagree*** (delete inapplicable) to the Researcher's use of voice recording of my comments and opinions during interviews, the purpose of which is to ensure the accurate recording of my views/responses. Furthermore, I have the right to request a copy of the interview transcriptions to confirm that my opinions are accurately recorded

I,, have read the above information / confirm that the above information has been explained to me in a language that I understand and I am aware of this document's contents. I have asked all questions that I wished to ask, and these have been answered to my satisfaction. I fully understand what is expected of me during the research.

I have not been pressurised in any way and I voluntarily agree to participate in the abovementioned project.

.....

Participant's signature

Witness

Date