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# Unions and the Contingent Work Force

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# Unions and the Contingent Work Force

**Abstract**
[Excerpt] Unions seeking to organize the unorganized face increasing numbers of part-time, temporary and leased employees. These contingent workers now make up more than a quarter of the American work force. Of the new work force they are the least organized and perhaps the most difficult to organize. But they are also the group most in need of the protections, benefits and representation that a union can provide.

There have always been some service industries such as hotel, health care and retail, that have maintained a large contingent work force because of long hours and fluctuating demand. Also there have been many workers, especially women, students and elderly workers, who have preferred part-time and temporary employment because of family, health or educational priorities.

Recently, however, American corporations have been replacing permanent full-time workers with temporary, part-time and leased employees for the sole purpose of cutting wages and salaries, increasing management flexibility, and in many cases avoiding unionization. Thus the number of part-time and temporary workers is increasing in every industry and job classification, whether assembly line worker, registered nurse, or computer programmer.

**Keywords**
unions, part-time employees, temporary employees, labor movement, worker rights

**Comments**
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*The American labor force is a very dynamic one. Recent decades have seen great changes and an enormous shift, as a percentage of the total, from blue collar and agricultural jobs into white collar and service occupations. This has resulted in a large increase in the number of professional and technical workers employed in all areas throughout the economy.*

*Some recent developments give pause for concern, During the past decade, in particular, there has been a marked increase in the "contingent work force" — part-timers, temporaries, and leased employees — who now constitute a quarter of the total U.S. work force. In addition, there is an increasing movement towards home work, including professional and office jobs performed on computers or terminals.*

*This issue of INTERFACE contains two articles that discuss several aspects of these issues and their implications for unions around the world.*

# Unions and the contingent work force

**by Kate Bronfenbrenner**

"The number of part-time and temporary workers is increasing in every job classification and industry . . ."

Unions seeking to organize the unorganized face increasing numbers of part-time, temporary and leased employees. These contingent workers now make up more than a quarter of the American work force. Of the new work force they are the least organized and perhaps the most difficult to organize. But they are also the group most in need of the protections, benefits and representation that a union can provide.

**There have** always been some service industries such as hotel, health care and retail, that have maintained a large contingent work force because of long hours and fluctuating demand. Also there have been many workers, especially women, students and elderly workers, who have preferred part-time and temporary employment because of family, health or educational priorities.

**Recently, however,** American corporations have been replacing permanent full-time workers with temporary, part-time and leased employees for the sole purpose of cutting wages and salaries, increasing management flexibility, and in many cases avoiding unionization. Thus the number of part-time and temporary workers is increasing in every industry and job classification, whether assembly line worker, registered nurse, or computer programmer.

## Part-timers

**The numbers** are staggering. Part-timers, those who work less than 35 hours a week, now include over 19 million American workers. Of those, 5.1 million are considered involuntarily part time for economic reasons such as slack work or unavailability of full-time employment. The remaining 13.9 million are considered voluntarily part-time. However "voluntary" part-time includes those who must work part time because of a disability, the inability to find affordable child care, inadequate transportation, or other constraints on their options. The term voluntary masks the fact that those "choosing" to work part-time are not necessarily choosing to work in the low wage occupations where part-time work is concentrated.

**Indeed** the benefit coverage for part-time workers is dismal. Eighty percent of part-time empioyees are excluded from pensions, 70% have no health insurance coverage, and more than half of those who work less than 20 hours a week receive no benefits whatsoever. Even better paid part-timers in professional job classifications are unlikely to receive basic insurance, pensions or time off benefits.

## Temps

**Temporary workers** include all employees who lack an expressed or implied commitment to permanent employment. Although there is some overlap with the part-time work force, three-fifths of these temporary workers work full-time. Some switch jobs every couple of months, others have worked the same job for more than a decade, but are on a year-to-year contract with no guarantee of continued

*continued on next page*

# Unions and the contingent work force

continued

work. The only current data on the temporary workforce focuses on the approximately 700,000 workers employed in the temporary help industry, businesses which supply workers to other employers on a fee or contractual basis. (This does not include direct hire temporaries whose numbers are very large. The government alone employs 300,000.)

## Leased employees

**Although the majority** of the leased work force consists of office support personnel, more than 25% staff light manufacturing plants and close to 10% fill managerial, professional and technical job classifications. The businesses contracting with the leasing agencies avoid the need for payroll accounting, payment of employee benefits, workers' and unemployment compensation, and in many cases, unionization and discrimination matters. The large majority of leased employees receive no benefits at all. The 25% that do receive benefits do so only after accruing more than 1,500 hours of work.

**The direct hire** temporaries are even worse off. Moving from job to job they work without health insurance, are ineligible for promotions, and are completely outside our unemployment compensation system. They are the most invisible and most destitute segment of the contingent work force.

**The union response** to this increase in part-time and contingent workers has been mixed. Some service sector unions have always represented part-timers and have attempted in their contracts to extend the rights and benefits of full-time employees to part-time workers to the greatest extent possible. At the same time, they have struggled to limit the use of non-union temporary employees to do bargaining unit work. Other unions in more traditional industries put their efforts into restrictions on the hiring or retention of contingent workers, excluding them from contractual rights and benefits. This worked to prevent the employer from replacing the permanent workforce with part-time and temporary workers; however, it also worked to prevent women and other workers who voluntarily sought part-time employment from joining the unions and working in better paying union jobs.

**Today,** as the percentage of contingent workers dramatically increases, unions are looking to the experience of their brothers and sisters in the service sector for the most effective organizing and bargaining strategies for representing these workers. They have recognized that the best way to prevent the replacement of full-time permanent employees with an involuntary contingent workforce is to actively organize and negotiate for full bargaining unit status and privileges for part-time and temporary workers. In addition, many unions are looking at ways to increase the options for those who want or need part-time and temporary work, but do not want to lose job security, contract benefits or union status.

**As employers** more frequently turn to temporary, agency and part-time workers, the NLRB has had to define the bargaining unit status of these new types of workers. The Board has developed a fairly inclusive standard for part-timers, placing less emphasis on hours worked and more emphasis on regularity and continuity of employment, tenure of employment, similarity of wages, benefits and working conditions. This standard has allowed the inclusion of on-call nurses who work only one eight hour shift every two weeks, or part-time faculty who work 25% of the full time teaching load.

> "... the large majority of leased employees receive no benefits at all."

**Direct hire** temporaries have been included in bargaining units and permitted to vote in union certification elections if they were employed on the eligibility and election dates and had been given no "date certain" for termination of their employment. In practice this standard has included employees who have told the employer they "would only work until spring," or who have been hired as a replacement for an ill employee, or who are on year to year grant funding with no guarantee of refunding. In all of these cases the temporaries have been included because although they probably will leave or be terminated in the near future, there was no specific "date certain" for termination.

**Thus for unions** the most pressing question is not whether the Board or Courts will certify a unit including part-time or direct hire temporary employees, but whether the expensive and lengthy litigation necessary to get them included in the unit is worth the risks inherent in delaying the election for a few uncertain votes. However, the risks of excluding them from the unit may be even greater. For even if the union wins, the employer can legally erode bargaining unit positions by filling va-

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**INTERFACE Editor: Dick Moore**

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cancies with excluded contingent workers.

**For leased employees,** Board decisions have been more detrimental to unions. The NLRB has held that unions can organize workers employed by a temporary help agency as a separate bargaining unit. However, few unions have succeeded in this kind of organizing because of the transient nature of the workforce, the scattered and changing nature of work sites and the inability to effectively bargain for the workers when their wages and hours and working conditions are partially determined by the contracting business.

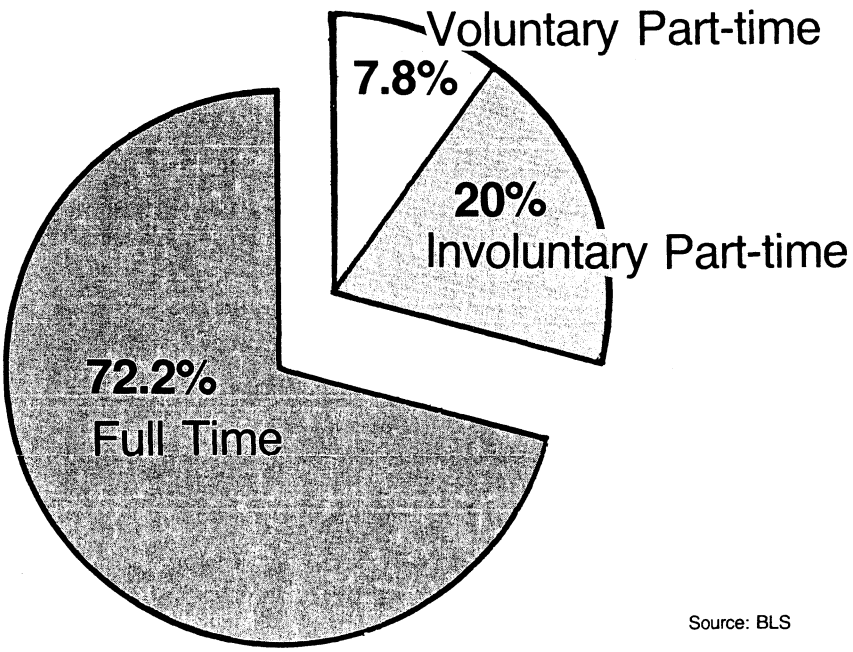
**Unions representing** leased employees make little headway in bargaining unless the business subcontracting the work is found to be a joint employer with the leasing agency. In the words of labor lawyer John Axelrod:

*"Absent joint employer status, the recipient can resubcontract the work, without having to bargain, whenever the employees assert themselves. Absent joint employer status, a union cannot bind the recipient to a collective bargaining agreement signed by the leasing organization; unless the recipient is bound, an arbitration awarding statement may be wholly illusory. Absent joint employer status, the recipient is not a party to negotiations and is immune to a union's economic strength"* ( The Labor Lawyer *853, 1987, p. 872).*

**However**, joint employer status is not easy to come by. The union must prove that both employers share or co-determine essential terms and conditions of employment. Although the standard seems reasonable, the facts are so open to manipulation and interpretation, that even in cases where the company has some responsibility for bargaining, hiring, record keeping and supervision the courts have found that the degree of control was not significant enough to merit a finding of joint employer status, thus permitting the business to cancel its leasing contract, and replace the workers without any bargaining with the union.

**The one area** where joint employer status inhibits unionization is in cases where public sector employers, exempt from the Act, have a leasing arrangement with a private sector agency. In these cases, if the public entity retained any significant control over the essential terms and conditions of employment of the private agency employees the Board has declined jurisdiction. Thus if the public employer contracts for private leased employees, whether a prison contracting out for counseling services or a public hospital contracting out for lab workers, the employees could be unprotected by either public or private sector labor law, trapped in a legal no-man's land.

## Composition of Job Growth, 1979 — 1985




Source: BLS

**As difficult as it is,** winning bargaining unit status for part-time temporary and leased employees is only the first step. Unions also must convince these workers that their interests will not be neglected and overshadowed by the interests of full-time employees. Employers are quick to publicize cases of neglect. Only if unions bargain for the most inclusive language possible, will contingent workers be convinced to vote yes in union elections and become active participants in their unions. This means unions must bargain for language including all employees, regardless of hours worked, under recognition, benefits, seniority, hours and schedules, overtime, promotions and wages. This may require pro-rating benefits and seniority for part-time employees based on hours worked. This also may require language severely limiting the number of weeks or months employees are considered temporary employees excluded from the contract. The achievement of such language will depend on aggressive support by permanent full-time workers.

**Organizing and representing** contingent workers is a formidable challenge for American unions. However, as the fastest growing segment of the work force and as the lowest paid and least protected, these are some of the workers most in need of unionization, both for their own sake and for the sake of those already organized. Our labor laws and the current economic climate make this task difficult, but not impossible. Unions have no choice but to meet this challenge as aggressively and creatively as possible.

"Organizing and representing contingent workers is a formidable challenge for American unions."