

Unions and Temporary Help Agency Employment

Les syndicats et l'emploi temporaire via les agences de placement

Sindicatos y empleo de agencia de ayuda temporal

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Résumé de l'article

L'emploi temporaire via des agences de placement est une forme d'emploi singulière et souvent précaire qui est devenue de plus en plus répandue au Canada au cours des dernières décennies. Dans le but de faire progresser les écrits sur l'emploi précaire et le renouveau syndical, cet article étudie les effets de la croissance de cette forme unique d'emploi sur les syndicats et les réponses de ces derniers à ce phénomène.

L'étude a recours à une méthodologie exploratoire qualitative comprenant vingt-quatre entrevues avec des informateurs-clés en provenance de quatorze grands syndicats ainsi que deux fédérations syndicales et un centre de travailleurs basé à Toronto (Workers' Action Centre). Divers effets de la croissance du travail temporaire sur les syndicats sont identifiés et catégorisés selon qu'ils concernent les activités d'organisation syndicale ou les activités de représentation syndicale et un éventail de réponses syndicales au phénomène sont discutées.

Globalement, il est suggéré que la croissance du travail temporaire présente un potentiel réel pour contraindre les activités d'organisation et de représentation syndicales de multiples façons, bien que ses effets soient hautement médiatisés par d'autres facteurs contextuels. Aussi, à ce jour, la réponse des syndicats s'est largement limitée à des ajustements progressifs visant à renforcer les pratiques traditionnelles de représentation et de négociation collective.

Unions and Temporary Help Agency Employment

Timothy J. Bartkiw

Temporary help agency employment is a peculiar and often precarious employment form that has become increasingly salient in Canada in recent decades. This article examines the effects of the expansion of this employment form upon labour unions, as well as union responses to this phenomenon. Using a qualitative exploratory method, various effects upon union organizing and representation activities are outlined, as are a range of union responses to the phenomenon.

KEYWORDS: unions, temporary help agencies, temporary agency employment

Introduction

Temporary help agency employment (THAE) is a peculiar and often relatively precarious employment form that has become increasingly prevalent in recent decades (Vosko, 2000; Underhill, 2004). Although official data are quite limited, THAE growth is reflected in certain indicators. For example, temporary help industry revenues, a proxy for the market value of labour supplied by agency workers, grew from \$1.4 billion in 1993 to \$5.6 billion in 2005.¹ “Employment” in the temporary help industry has grown substantially in recent decades, despite procyclical fluctuations. The share of aggregate employment for the employment services industry, the closest proxy for the temporary help industry for which reliable time-series employment data are available,² grew from 0.38% in 1992 to its recent peak of 1.11% in 2006, declining slightly to 0.9% in 2009.³

THAE is a unique employment form in that it carries multiple concerns about precarity resulting from both its *temporary* nature on the one hand and its *triangular* structure on the other. Analysis of THAE’s intersection with gendered, racialized, and immigration-based inequality suggests certain significant, albeit non-uniform effects (Fuller and Vosko, 2008). THAE generally correlates with lower wages, and with the reduction of employment advantages otherwise associated with certain industries/sectors (Fuller and Vosko, 2008). Women are significantly more likely to be agency workers, raising concerns about THAE’s “gendered” nature and consequent effects (Vosko, 2000; Fuller and Vosko, 2008).

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THAE exists in many industries, and is disproportionately located in the private sector.⁴ Using 2004 Survey of Labour and Income Dynamics (SLID) employment data, Fuller and Vosko (2008) estimate THAE to be distributed primarily across industry categories of manufacturing (17.7%), management, admin and other support services (48.3%), and healthcare and social assistance (7.7%).⁵ Agency workers are also far less likely to be unionized than direct-hire, permanent employees, with recent estimates of union coverage rates amongst agency workers being as low as 3.4% (Fuller and Vosko, 2008).⁶ Further, some argue that the effects of THAE expansion radiate beyond its immediate locational circumstances, potentially carrying a broader deregulatory effect reconstituting employment relations in general, given increased potential for employment standards avoidance through THAE and the extension of such effects via market competition (Gonos, 1997; Peck and Theodore, 2002).

In this context, this paper explores the question of the effects of THAE growth on unions in Canada, and union responses to its increased salience. Previous literature has provided limited insights into the union-agency nexus, primarily through examination of the legal system. Some quantitative studies examining the correlates of employer use of THAE included variables like unionization (Houseman, 2001), or analogous legal factors (Autor, 2003; Mitlacher, 2007). Other studies largely focused on the legal regime's lack of support for broad-based bargaining structures to facilitate agency worker organizing, or on jurisprudential trends in selecting the "true employer," as between the agency or the client end-user (Vosko, 2000; Trudeau, 2000; Notebaert, 2006; Bartkiw, 2009).

The lack of prior direct empirical inquiry into the nexus between unionization and THAE growth is also apparent in literature examining union renewal, concerned *inter alia* with understanding union behaviour in the context of emerging patterns of precarious employment (Kumar and Schenk, 2006). For example, in a recent volume devoted to understanding union renewal in Canada, the editors cite the proliferation of non-standard work as a challenge facing unions (Kumar and Schenk, 2006: 53), but the only analysis provided of union responses to THAE concern the experience of Toronto Organizing for Fair Employment (TOFFE). TOFFE subsequently merged with the Workers' Information Centre (WIC) and became the Workers' Action Centre (WAC), an organization with capacities in both worker organizing and educational servicing (Cranford, DasGupta, Ladd and Vosko, 2006), and which has been active in organizing, assisting, representing, and lobbying on behalf of agency workers in Ontario. Although it has been called a community union (Cranford, Gellatly, Ladd, and Vosko, 2006), the WAC is more commonly understood as a workers' centre, and not part of traditional inter-union or labour movement structure. Thus, despite its recognition of THAE growth as part of the new contextual reality facing unions,

literature on union renewal contains little analysis of the effects of THAE on unions and/or their responses.⁷

Overall then, there has been almost no direct empirical analysis into the core research question of this paper: the effects of THAE growth on unions in Canada, and their strategic responses. Heery (2004) performed an analogous study in the UK, although one limited to union *responses*, and developed a typology of four categories: exclusion, replacement, engagement, and regulation. Under exclusion, unions adopt strategies intended to drive agencies from the labour market. Replacement means unions accept the existence of agency workers, but seek to have agencies replaced with more acceptable labour market intermediaries. Engagement involves an embrace of both agencies and agency workers, with an attempt to represent agency workers through a negotiated accommodation with agencies. Finally, under regulation, unions don't seek to represent agency workers directly, but rather strive to regulate their terms and conditions in some manner to prevent the undercutting of their core membership. While these categories were used to inform interview questioning and interpretation of results to some extent in this study, given the different national contexts, the lack of any Canadian contextual analysis, the somewhat different research questions, and certain limitations to Heery's typology,⁸ it was decided that the research design here ought not be driven by the purpose of verification, but rather should be a more open-ended inquiry.

As a result, a qualitative *exploratory* empirical approach was selected as the most appropriate method at this stage of understanding (Stebbins, 2008), with the hope of developing some insights and generalizations from this grounded theory method (Glaser and Strauss, 1967; Stebbins, 2008). The exploratory study involved twenty-four interviews with key informants from fourteen large labour unions, two union federations (the OFL and the CLC) and the Workers' Action Centre, from June 2008 to July 2010, as well as reviews of union documentation and records. The limited sample of unions was selected by the researcher based partly on an attempt to maximize coverage of potential informant knowledge across different industries/sectors. It was also based partly on convenience and resource limitations, and thus was limited to activities within Ontario. Semi-structured interviews lasting one to two hours, conducted in-person and/or by telephone with key informants sought to probe three main areas of understanding:

- the nature of THAE usage in the landscape occupied by the union, understood as industries in which they currently represent (or are seeking to organize) workers;
- the effects of THAE on the union;
- the union's strategic responses.

Informants were selected from within organizations based on their superior ability to speak to the above questions. Given diversity in organizational structure, multiple informants within a single organization were selected in some cases. Providing further global insights were informants from the OFL, CLC, and WAC, who were in each case senior/executive staff involved in strategic direction of their organization. Consistent with the constant comparative method (Glaser and Strauss, 1967), interviews were subsequently transcribed, and then coded using NVivo software. Loose numerical qualifiers were used at times in presenting the results of the analysis below. Given the non-representative sample, quantitative generalizations would be somewhat misleading; the goal was not to enumerate the phenomenon, but rather to seek to provide some insights into its nature, scope and character.

The next part of the paper provides some general observations on the use of THAE in union landscapes. The third part discusses the range of effects of THAE on unions. Revealed effects fell into two broad categories: effects relating to organizing activities, and effects on various other post-certification, representation activities, presented separately in this part. The fourth part discusses union responses, and the fifth provides some concluding comments.

Some General Observations on THAE within Union Landscapes

Not surprisingly, observations of THAE in union landscapes varied significantly across informants from unions operating in different industries. Some key informants have not observed any significant presence of THAE in their landscapes at all, suggesting it plays a very minor role in certain industries. Several key informants also suggested that they observe THAE being more concentrated in urban settings.

As well, informants cited some general trends in employer strategy around THAE. In particular, organizations that use THAE have been more commonly using it for lengthier, quasi-permanent arrangements to carry out *core* work activities. Several informants reported historically unprecedented observations of workforces where nearly 100% of workers in private sector firms were agency-supplied through either arms-length agencies, or one seemingly controlled by the end-user. Another general observation is that, with few exceptions, informants observe a wage/benefit gap between agency workers and regular employees.

Informants cited a range of explanations for these trends, including: genuine short-term flexibility needs; managerial ideology; corporate re-engineering and reduced HR capacities; and bureaucratic controls on regular employment spending and staffing processes (particularly in the public sector). There was no

across-the-board impression amongst informants that THAE growth has been driven by illegitimate purposes. Indeed, several informants felt that there are significant economic constraints limiting such strategies, including the agency markup fee, and various cost/operational constraints flowing from high turnover and inferior worker quality when using THAE on a large scale. Informants suggested that workers are generally less committed to agency work than traditional employment, and that employers report disproportionately greater problems with agency worker quality.

Effects on Unions

A few informants felt that THAE growth in their landscapes has not created any significant effect on the union, either because it is a relatively small phenomenon, or because they simply don't perceive any significant effect. Most informants, however, cited some (mostly negative) effects, to various degrees, relating to both *organizing* and *representation* activities.

Organizing Effects

The presence of agency workers within workplaces that unions target for organizing seems to have become highly regular in some industries. The organizing director for a large union active in organizing in manufacturing stated that in recent years, at least *some* portion of workforces in organizing targets are agency-supplied "approximately 9 times out of 10."

The presence of agency workers in organizing targets may create various challenges. In each campaign, a union must make a strategic decision to formally include or exclude agency workers from its proposed bargaining unit, and take a position as to whether the agency or the end-user/client is legally the "true" employer. Unions face uncertainty over whether the labour relations tribunal will approve of these positions *ex post* (Bartkiw, 2009). Both the inclusion and exclusion⁹ strategies entail risks for the union, and both may be challenged by the employer in the certification process. According to one organizing director:

the minute there is an agency involved in the organizing campaign, there's going to be a fight at the board... the minute we say "excluding temp workers," the employer jumps and says "oh no, they should be in" and deliberately attempts to screw up the numbers.

Agency worker inclusion in the bargaining unit may also increase union vulnerability to an employer challenge under section 8.1 of Ontario's *Labour Relations Act, 1995*, which enables employers to challenge the *ex ante* sufficiency of the union's membership evidence after a vote has already been held. To raise an

“8.1 challenge,” employers merely “check this off” in their certification response form. The difficulty is that if agency workers are less inclined to sign membership cards than regular employees, their inclusion makes it more challenging to meet these requirements. Indeed, most informants felt that agency workers are relatively *less* likely to support unionization, sometimes due to their relative lack of connection with the client organization.

Many organizer informants believe agency workers experience relatively greater *fear* in organizing. One union organizer explained that client firms may be able to exploit agency worker vulnerability by convincing them that if the union becomes certified, there will be no more agency work allowed and they will have to seek reassignment to another workplace by their agency. Agency workers may also serve as a tool for pressuring regular employees not to unionize, particularly where agency and regular workers have established social connections. One informant explained that her union obtained evidence in a recent campaign of agency workers being told that they will no longer be used if the union wins: “the temps began putting pressure on the permanent workers saying ‘if you do this, I’m going to lose my job’...that has real resonance.”

Even if the end user makes no overt threat, agency workers may nevertheless feel more vulnerable due to the ease in replacing them. As one organizer noted, agency workers regularly express fear of being replaced, even if they are simply absent or go on vacation, so that a greater fear of replacement would apply were an agency worker seen as a “trouble-maker” to support unionization at the client. The informant noted that agency workers have told him that they are *not allowed* to participate in organizing and that this response is so common amongst agency workers in his union’s landscape that this suggests that client firms and/or agencies are communicating this message to agency workers in advance. Among other things, responding to this problem requires attempting to explain the legal issue of the “true employer” to agency workers, and its consequences for their ability to unionize, which some unions have tried to incorporate into their organizing materials. One organizer opined that overall, getting support for unionization amongst the agency workers on assignment is a dismal task: “We can’t sign the agency people because they are too afraid... it is almost impossible.”

One union organizing director provided an alternative perspective that agency workers may often *help* his union’s organizing drives succeed, since the underlying *potential* is there for agency workers to be even more supportive of unionization than regular workers, since he feels they have “more to gain.” The challenge lies in effective union communication of this message: “we tell them ‘those jobs are yours’... it all depends on communication.” Some other

factors may make it possible to get support from agency workers. For example, as another informant stated, the longer the temporary placements, the better from the organizing perspective:

you can do it...especially if they have long term relationships...if they're working there for a couple of weeks it's really hard, they don't have an axe to grind. If they've been working there for a year or so (a) they feel more stable, and (b) they have more issues with their workplace.

At times, inclusion of agency workers in organizing attempts is unsustainable, if the union is unable to obtain sufficient support amongst them, and this threatens success overall. Here, unions may seek agency worker exclusion as a defensive strategy. UFCW informants confirmed that this was its rationale for seeking exclusion in its *Nike* campaign, a strategy thwarted by the OLRB's ruling that Nike was their "true" employer.¹⁰ Agency workers may also be excluded by an *ex post* ruling, if the employer challenges their inclusion. When seeking exclusion, unions hope that agency worker support will be unnecessary. The fear of being unable to exclude agency workers' ballots may weigh on the employees, and the employer may be able to exploit this. As one organizing director stated:

And then the voting, you do it in a private room, the officer is there, the company and you are there, and all the members see these guys – the temps – coming in and voting even though we told them their ballots are going to be kicked out or kept in, so they are nervous. ...so now when you go into the ballot box it's intimidating enough and depending on the situation with the employer [they may] get these guys in to vote first because they are under their control. They phone the agency and say "instead of sending your guys in at six tomorrow, we want them in at five-thirty" to make sure they vote...the members come in and see these guys voting and the employer is telling them in the background "once these guys vote, you don't have the numbers...they are going to vote our way because we are paying them over here through the agency..." so now there is a completely different dynamic when it comes to them casting their own ballot.

When organizing under the exclusion strategy, another concern that may arise is the anticipated effect of agency workers on the new bargaining unit's future strike power. As one organizing director put it, with agency workers already doing the same work as the proposed bargaining unit, "it intimidates some of the workers that there is someone that can take over their jobs immediately, so they're more scared of exercising their right to strike." As this same informant notes, this concern is up front in the organizing stage:

When you go in there organizing, the first concern of the employees is "are we going to lose our jobs?" [in] any organizing campaign. But you couple that with temp guys

who are in there [and workers ask], “well what about this guy and that guy, they don’t work for us, they are doing our jobs but they don’t work for us, how are you going to stop them?” You say “well, I gotta get certified in order to go in there to stop them, or attempt to stop them anyway.” So it hurts you there too.

There are various challenges presented by organizing at the *agency level*, towards bargaining units comprised only of agency workers supplied with the agency identified as the employer. Some of these challenges are already identified in the literature (Vosko, 2000; Notebaert, 2006) and were confirmed by informants. With workers assigned to various locations/clients, the union is often unable to determine the whereabouts of co-workers, and their community of interest is reduced by dispersion. Further, the future strike (and bargaining) power of such a group is tenuous, since clients retain the power to switch to competitor agencies, restricting unions’ ability to take wages out of competition in this market. Multi-employer, or industry-wide bargaining, which might ameliorate some of these conditions, is not supported by the legal regime. For these reasons, unionization at the agency level is almost non-existent in Canada (Notebaert, 2006).

In this context, the current research revealed two recent cases of organizing that *resembled* organizing at the agency level to varying degrees, illustrating similar constraints. In the first case, a large private sector union successfully organized a unit of approximately 50 workers at a logistics/distribution centre, all of whom were agency-supplied. In the certification process, the respondents claimed that the agency was the true employer. Rather than litigate, the union conceded this position and was certified. Representing this bargaining unit involved a litany of challenges. It was very difficult maintaining union support amongst the workers, given significant turnover. Perhaps because of this, bargaining was extensively delayed and lasted almost two years. Bargaining took place formally with the agency, but was constrained by the ultimate power of the client, which was not present in negotiations, but which the union believes was regularly consulted by the agency. After nearly two years, both parties agreed to interest arbitration. About one week prior to arbitration, the client announced that it was switching to a new agency, threatening to make the collective bargaining exercise moot. In response, the union wrote to the new agency and advised them that it would attempt to pursue successor rights that would bind it to the collective agreement, and suggested that it ought to attend the arbitration hearing. Although the union’s ability to enforce this threat was unclear, the client revoked the switch in agencies. A first collective agreement was then achieved by interest arbitration.

Although achieving a collective agreement with an agency here was an unprecedented victory of sorts, it was partly a pyrrhic one. Despite a collective

agreement, maintaining an effective union presence in the workplace was very difficult, as turnover continued and worker commitment required continual reinvention. By the time a collective agreement was reached, only two of the people that had originally supported the union in organizing remained. An informant candidly admitted that union personnel have discussed whether this bargaining unit is “more trouble than it is worth.” It is questionable whether this experience may constrain the union’s future willingness and/or capacity to pursue similar organizing efforts.

The second example involves personal support workers in the home health care industry. Here, firms operate under a structure similar to the classic temporary help agency in that firms (the nominal employer) assign workers to various clients, and firm profits are based on a markup on the worker’s wage. The structural similarity was pronounced enough that the Ontario government deemed it necessary to clarify, in its recent Bill 139 legislation aimed at improving employment standards in THAE, that this new law would *not* apply to home health care firms.¹¹ Similar to the classic temporary help agency model, these home care workers are dispersed to various client locations, are physically isolated from one another, lacking a central work location and common gathering place. Organizing is thus extremely difficult, particularly amongst the for-profit portion of the sector, which operates even more closely to the temporary help agency model. Although unions have been able to organize some of the non-profit firms, competition over time has shifted market share towards the for-profit (non-union) firms. Thus, the limitations to union organizing at the agency level, based on unions’ ability to take wages out of competition, operate similarly in this industry.

Given these various organizing challenges, an important question is whether the presence of THAE in a given workplace might deter unions from targeting it. Informants responsible for union organizing functions said that a significant presence of agency workers in a workplace would not on its own be a deterrent, and nor would the expected costs of dealing with THAE in the organizing campaign (e.g. longer campaign, expected litigation, legal fees etc.). In fact, as noted above, one organizing director actually thought that, to the contrary, agency workers may be helpful in organizing. Union calculus thus seems to focus more generally on the overall likelihood of certification and of achieving a worthwhile collective agreement. However, as one key informant expressed it, the presence of agency workers may *affect* this calculus:

in some cases when we look at shops, we have to actually walk away from potential organizing campaigns because the issue of temps is so complicated...sometimes the worst thing in the world to do is to have an organizing drive that fails.

Representation (Post-Certification) Effects

Three informants explained that they observe regular patterns in which firms that use agency workers pre-certification discontinue their use post-certification. Sometimes, this may be due to a legal ruling that they (the client) are the true employer and that the agency workers are included in the bargaining unit, obliging them to bargain employment conditions and apply the collective agreement to these workers, perhaps making the agency arrangement redundant. Discontinued use of agency workers may also be the product of the key union response to THAE, namely bargaining strategies aimed at restricting its use, discussed in the next part. Discontinued use of THAE after certification may even in some cases provide *prima facie* evidence of union avoidance as being the original motivation for using THAE in the first place. Whatever the reason, several informants witness this same pattern after certification: “We don’t hear of the agency any more, that’s it, it’s a done deal.” This pattern held in some cases where agency work was previously used at extremely high levels, and, at times, the agency workers subsequently remained with the now unionized firm, as regular employees.

However, employer use of THAE may sometimes continue or even *emerge* post-certification, various effects of which are discussed below.

Bargaining Power

The availability of agency workers during a strike makes it easier for a unionized employer to operate, reducing union bargaining power, and build-up of agency worker usage prior to a strike increases this threat.

THAE may also constrain union bargaining power through undercutting market pressure, depending on the cost premium associated with using agency workers. This premium depends on the size of any wage/benefit gap between regular and agency workers, the agency markup, and possibly differences in productivity. Most informants observe a wage/benefit gap in favour of regular employees to varying degrees. Often, agency workers will commonly receive a similar wage, but with fewer or no benefits.¹²

Undercutting pressure may also result from under-enforcement of labour standards of various sorts towards agency workers. For example, one informant noted that his union has repeatedly requested proof from employers that agency workers were insured properly under WSIB, to no avail.

Undercutting effects on union bargaining power may also be rooted in inter-firm competition. For example, one informant stated that for-profit home health care firms (analogous to temporary help agencies) maintain a wage/benefit cost advantage over their non-profit rivals, and take advantage of certain legal exemptions to employment standards (e.g. termination and severance pay)

which are available to them (as firms operating similar to classic temporary help agencies),¹³ and which are complied with voluntarily by non-profit firms. This has likely contributed to increased market share for these non-union firms, eroding union bargaining power in this industry.

Depending on the magnitude of THAE use by the unionized employer, erosion of the actual bargaining unit itself, and/or a significant loss (or lost opportunity for expansion) of bargaining unit work, may also become a significant concern. In some cases, such as the federal public service, THAE growth has occurred alongside bargaining unit (membership) growth, muting its salience thus far.

Servicing

THAE may create additional “servicing” challenges for unions. Where an existing collective agreement provides some form of coverage for agency workers, unions need to monitor their usage. Informants explained that it is often difficult to keep track of agency workers and maintain any connection with them. Representatives from one union spend a significant amount of time and resources enforcing job/work assignment provisions, and in dealing with related complaints from members. Issues arise for example as to whether an agency worker's position was supposed to be posted first, or whether the position is actually a vacancy. There is sometimes animosity between employees and agency workers due to the work re-organization needed in order to use lesser skilled agency workers. Further, where agency workers have seniority rights, enforcement is complicated by turnover and the employer's failure to terminate agency workers at the end of their assignments:

if they don't terminate anybody, at the end of five years they could have 500 people on the seniority list that don't work for them. It's those people who aren't getting their rights under the CA [which we are insisting upon] so the employer doesn't get sloppy with the rest of the real employees and their rights.

As well, these arrangements may affect overtime arrangements and erode overtime opportunities for regular employees.

Union Culture and Morale

Differences in compensation/treatment between employees and agency workers may affect union morale. Where agency workers are used on a larger scale, their inclusion presents a more general challenge to traditional union culture. The following quote from one informant captures this concern:

Probably one of the most interesting parts of the conversation is are we prepared to live with this ideologically as a *union*? Do we have the culture for these new type of employments that are opening up all over the place? Because historically, we were set to deal with large units of people that stayed there for life...maybe these aspects of our own culture are not necessarily serving our own members. Then around temp

agency the whole conversation is: is our culture – *our* culture, not even the employer – prepared to help us to deal with this situation we are describing, or [will] our culture tell us “[expletive], get it away because it is a pain in the neck, we cannot be the union.”

...We don't have a model, but we have a way of thinking of how things have to be done. It's not like we approve by constitution, by law, that this is the way that it has to be. No! It could be any way. But in our own heads, in the way that we are set up to serve locals and to do this and to do that...the expectation is that [on] the other side you have to have something of this particular shape. If it has *another* shape? We are not creative enough on tackling the new working relations that people are having.

Safety Issues

Informants reported a mix of observations regarding who tends to assume the risk of dangerous work, an issue identified in the literature (Storrie, 2002). Some informants have observed agency workers being pressured to work with insufficient training and/or safety measures, or without WSIB coverage, or are pressured not to report injury claims. At times, an opposite effect occurs, where work reorganization redirects more difficult/dangerous work to *regular* employees, in order to facilitate the use of agency workers. For example, during the SARS crisis in Toronto, it was a general pattern that regular (often unionized) nurses were required to work in the SARS restricted areas, while agency nurses worked in the non-SARS areas. Either of these effects may potentially generate internal conflict or effects upon union morale.

Economic Adjustment and “Action Centres”

Functioning at times with government¹⁴ and/or employer support, union action centres assist workers seeking reemployment and/or retraining. Through their recent increasing control over job vacancies in the labour market, temporary help agencies have significantly affected activities of these union-operated centres. For example, the coordinator for one of the largest regional union job action centres in Ontario stated that, at any point in time, while they may have hundreds of job descriptions posted on the walls of the union's action centre, if they removed THAE postings, there would be few jobs left.

Aside from internal union “job boards,” job searchers themselves are largely dependent upon websites such as “Job Bank,” operated by HRSDC, and one action centre coordinator has concluded that the vast majority of advertisements on these websites are from temporary help agencies. Agencies routinely send job descriptions to action centres, requesting large volumes of resumes for review, and action centre staff have found themselves carrying out time-consuming screening tasks on behalf of agencies, which one informant suggested often neglect to communicate the results of union member job search activity.

Union Responses

Organizing and Outreach

One generalization that stands out fairly clearly is that unions do not in general, or consciously, target agency workers *per se*, as a category of workers to organize. Rather, unions select target workplaces for various reasons, some of which may contain agency workers, and then respond to agency worker presence on an *ad hoc* basis. Aside from conscious efforts to organize analogous workers discussed in the previous part (e.g. home health care workers), informants were not aware of any organizing drives aimed specifically at agency workers in their status as such. That said, many unions are becoming increasingly aware of agency workers being dispersed across workplaces in their landscapes.

As noted in the discussion of effects on organizing activities in the previous part, agency worker presence in a targeted workplace creates a strategic decision for the union: whether to seek to include or exclude these workers from their organizing efforts, with particular challenges arising under either choice. Despite the common view that agency workers are relatively more difficult to organize, most informants advised that their union would generally prefer to include them in certification attempts. Some informants stated also that in decisions about organizing, their personnel will often operate under an assumption that the union will be forced to include agency workers in the bargaining unit. This is a prudent strategy wherever an *ex post* ruling that they be included seems feasible, arguably a greater concern since the recent OLRB decision in the *Nike* case including agency workers in the bargaining unit, against the union's request, resulting in the dismissal of the certification application.¹⁵ Several informants, aware of this decision, stated that they feel they must accordingly pursue agency worker support as much as possible, to reduce the risk of their support being watered down, once agency worker ballots are counted.

Two informants suggested that strong insiders are all the more essential in organizing scenarios involving agency workers, in order to engage with and keep track of agency workers, their contact information, and status. A few informants noted that their unions have engaged in a form of "salting" by having union representatives apply for work through agencies identified as the recruiter for specific companies, to increase their understanding of working conditions and of the agency/client relationship.

As well, three informants felt it important not to overstate the separate effects of agency worker presence, since in their view, every organizing campaign presents unique challenges, and each campaign is always tailored to the peculiarities of the target workforce, such that their practices in organizing agency workers are not "uniquely unique." For example, while organizing

campaign literature may be revised to address THAE, it may also be tailored to the specifics of every campaign.

A few unions have also undertaken some community outreach activities towards agency workers. This seems to have primarily involved offering information about workers' rights, with little development towards the creation of alternative organization models. A local president of a large public sector union noted that that union has been considering a proposal for a new organizational structure to which workers might affiliate, but that there has been insufficient support from the parent union to make this viable.

Collective Bargaining

For many unions, bargaining strategies are the main, or only, response to THAE. Bargaining responses may be limited in the public sector by legislative restrictions over staffing. Although agency worker inclusion/exclusion may have been determined during the certification process, it may also be possible to negotiate inclusion. Where agency workers are included, the union may negotiate various benefits for them, including improved job security, in the form of rights to post into permanent positions. Where excluded, unions seek restrictions on them performing bargaining unit work. For example, unions may seek to codify circumstances in which the employer is entitled to use agency workers, or seek preferential redeployment rights in favour of retired or laid-off workers.

Overall, most informants stated their union would prefer to include agency workers, but that they often lack either sufficient support in the organizing process, or lack bargaining power to successfully negotiate their inclusion. Inclusion may also sometimes be achieved through grievance arbitration (depending on the nature of the bargaining unit description, negotiated scope clause, and the degree to which the end-user has assumed *de facto* employer responsibility over the workers) where an arbitrator finds that the client is the true employer and must apply the collective agreement to agency workers.

Unions may also bargain informational entitlements concerning THAE. The existence of these sorts of disclosure obligations are not common, but exist primarily where unions have negotiated numerical restrictions on THAE,¹⁶ since disclosure is necessary for monitoring compliance.

Another bargaining response is to negotiate alternative forms of labour flexibility. For example, one union tries to maintain a pool of retirees, available through the union for short term placements. While this arrangement has been used sporadically, employers have been reluctant to use it as a significant substitute for agency workers, possibly out of a desire to limit union involvement in staffing and/or to preserve employer control.

Despite some discussion over the idea of “hiring halls” to displace THAE, unions have apparently not been highly enthusiastic about this concept. Such arrangements create difficult co-ordination problems that the union may not be able or willing to undertake. It is challenging to keep large numbers of workers sufficiently available for immediate temporary assignments, while also keeping them sufficiently employed over time to make it worthwhile for them to remain in the arrangement. The Ontario government previously operated such a program called GO Temps, an in-house pool of workers available for temporary placements throughout the public service. This program was phased out of existence by the PC government, which dramatically increased expenditures on temporary help services. Although there was some discussion about the Ontario Public Sectors Employees Union (OPSEU) assuming responsibility for the GO Temps program, this evaporated quickly. Subsequent discussions occurred over a similar program between OPSEU and the Liberal government in 2006, to no avail. One informant explained that that the government’s apparent expectation was to have OPSEU function as a sort of temporary help agency of first choice, but with little difference in the recruitment process or the extent of employer liability. The government was unwilling to assume any greater long term obligations towards temporarily assigned workers. OPSEU itself also found it difficult to conceive of a large structural alternative to THAE that would somehow increase job security of temporary workers within the context of existing (OPSEU) job security and career development schemes:

ultimately, it’s the easiest thing to call Kelly’s and put the Kelly person in as the boss’ secretary for six months as opposed to figuring out a “keep it in the family” solution that doesn’t cause more problems than it’s worth.

Information and Research

Unions commonly possess limited information about THAE within represented workplaces, although some have recently initiated information collection. One approach, referred to above, is to bargain for disclosure requirements. The Public Service Alliance of Canada (PSAC) also recently lobbied (unsuccessfully) the Public Service Commission (PSC) to revise its employee survey to help track the volume of THAE and agency worker feedback.

Unions may also gather information from their membership. The two largest unions in the federal public service have been trying this approach to some extent. PSAC created an internal “tempwatch” program, and the Professional Institute of the Public Service of Canada (PIPSC) surveyed its members about work being done by “contractors” broadly. Other unions, primarily in the public sector, have also assigned related research tasks to staff members or consultants.

Lobbying and Public Relations

Some unions have performed lobbying activities around THAE. One of the primary activities undertaken (by three unions and the Ontario Federation of Labour (OFL)) was to participate in recent legislative hearings over Bill 161 (which lapsed) and Bill 139.¹⁷ Both Bills focused on employment standards reform, such as removing certain exemptions available to agencies as employers.¹⁸ Bill 139 also imposed restrictions on hiring fees and other contractual barriers to the hiring of agency workers by clients. For the Canadian Union of Public Employees (CUPE) and the Service Employees International Union (SEIU), their focus was primarily on the Bill's specific exclusion of the vast majority of home health care workers from the new reforms.¹⁹ Some informants explained that to some extent, their union's role here was to support and "follow the lead" of the non-profit Workers' Action Centre in its lobbying efforts.

Some unions have engaged in other related lobbying. Some continued lobbying activities towards card-based certification (i.e. the removal of the mandatory vote requirement regardless of the level of initial membership support), which some informants suggested would be their union's preferred legislative response to THAE's effect on organizing. Some have lobbied directly, or through OFL efforts, for union access to employee lists and contact information, which might also ameliorate THAE's effects on organizing.

A few unions also engaged in limited public relations activities around THAE. Some public sector unions have sought to align concerns about THAE growth with broader concerns around value for money and/or quality public services, subsuming this as part of a larger strategy against contracting-out, and have attended public meetings and/or legislative committee meetings. Lastly, there are isolated examples of unions raising awareness of the plight of agency workers while speaking with the media.²⁰

Inter-Union and Union-Activist Relations

There has been little inter-union coordinated response to THAE growth. Neither the CLC nor the OFL has undertaken any specific campaign about THAE. References to THAE growth were included in some CLC resolutions adopted, and discussion of THAE has been included in some of its educational activities. A CLC official explained that labour movement reaction has been limited partly due to the fact that THAE growth has occurred primarily in the non-union sector, and that bargaining responses, undertaken by individual unions at already unionized workplaces, comprise the bulk of labour movement response to THAE.

OFL representatives stated that they locate the issue of THAE as merely part of a larger campaign on changing workplaces, law reform and union revitalization.

The OFL did not submit a brief to the Ministry of Labour's law reform consultation process on THAE in 2008, citing inadequate time to do so, but did make a presentation in the subsequent Bill 139 hearings. Concerns around THAE have recently entered OFL discourse primarily because of agency influence on union job action centres. One idea discussed was a protest event in which action centres would remove all THAE from their vacancy lists/boards for one day, but this never materialized. The Bill 139 hearings sparked some degree of inter-union dialogue and co-ordination of positions amongst the few interested unions, although even here there was apparently no clear common front of union priorities established.²¹

Some unions affiliate with larger international union associations (e.g. UNI, or the International Metalworkers' Federation) that perform educational and advocacy work on THAE. A few unions have also provided forms of support to the non-profit Workers' Action Centre (WAC). Although it has from the outset preserved its independence, WAC maintains a limited, evolving relationship with the OFL and certain individual unions. In practice, one member of the WAC's board of directors has been a representative from the OFL. While most of its budget (approx. \$450K annually) comes from private charitable foundations, the CAW Social Justice Fund has donated \$20K annually. The WAC also recently received a one-time donation of \$5K from UFCW and PSAC, and small donations from the Steelworkers Humanities Fund. The OFL itself has provided no financial support to the WAC. Some unions have provided in kind assistance, such as photocopying or printing services to support a WAC campaign, on an *ad hoc* basis.

Economic Adjustment and Action Centres

One of the largest union action centres in Ontario recently adopted a policy of not dealing directly with temp agencies, and counsels its members to avoid them as much as is feasible. Its new approach is one of employer outreach, where it seeks to build direct, and exclusive recruiter relationships with employers. This centre offers its services to employers for free, and thus doesn't face the same pressure as agencies to capture profits quickly from hastily created matches. It has had some early success with some employers expressing frustration over service quality provided by agencies. The new approach may transform the action centre's mandate from being dependent upon plant closures to being a more quasi-permanent organization, and it expects support for this approach from the Ministry of Training, Colleges and Universities (MTCU).

"Engagement"

There appears to have been very little union appetite for engagement with the temporary help industry. Most informants felt that engagement made little sense in their contexts, citing a lack of mutual interests. Some felt the temporary help

industry would not be receptive to any meaningful union proposals since they felt that there is little that unions could offer the industry. Some informants were generally skeptical of the notion that unions might be able to offer improved legitimacy of sorts to the industry, suggesting that the industry would likely prefer its own public relations activities instead. As well, some informants noted that the potential for engagement is limited by the large number of agencies, and by the perception that so many of them are “fly by night” operations.

Although no large scale engagement has taken place, a few sporadic moments may be noted. In the federal public service, PIPSC observes some potential common front between itself and an organization called CABiNet, a group of agencies that united to jointly lobby against federal government plans to initiate large scale bundling of computing services projects for outsourcing. Members of CABiNet feel that the awarding of such large scale projects to single contractors reduces their opportunities to supply workers for projects and/or their bargaining power in supplying workers to successful bidders. Engagement here has been primarily communication and information exchange. One union representing home health care workers has also considered trying to build upon some shared principles/interests between itself and an employers association of predominantly non-profit employers, but sees little rationale for engagement with the for-profit sector.

Conclusion

In the context of increasing academic attention to the prospects for union renewal, this study involved an initial exploratory analysis of the effects of THAE growth upon unions and their responses to this phenomenon. Although methodology²² here limited the ability to enumerate the phenomenon and generate quantitative generalizations, certain new insights may be developed from this study to increase our understanding of the nexus between unions and THAE growth, and assist in developing further research questions to explore this area in more detail.

Overall, the evidence clearly suggests that THAE growth carries the potential to constrain union organizing activities to varying degrees depending upon context, and in multiple ways. Mediated by the norms and rules of the labour law regime, THAE may exacerbate the complexity and cost of organizing activities, affect the likelihood of certification in a given organizing campaign, and potentially skew some organizing activities away from workplaces laden with THAE. Thus far, unions have largely maintained traditional organizing practices with *ad hoc* adjustments to the increased presence of THAE, where required. There is so far little evidence of union efforts to develop alternative organizational arrangements to address the peculiar needs of agency workers.

THAE growth may also potentially affect union representation activities through market-based effects on union bargaining power; bargaining unit erosion; additional resource and information demands in representation; and safety and morale effects. Where unionized employers seek to use THAE, some unions have responded with bargaining/arbitration strategies with mixed success. Information strategies may be somewhat of an enabling prerequisite to effective bargaining/servicing, particularly in large workforces. While bargaining strategies are somewhat consistent with Heery's exclusion strategy, the focus is less on excluding agencies from the market and more on preventing the erosion of collective bargaining. While some attention has been given to bargaining alternative forms of flexibility (akin to Heery's replacement strategy), given the burden that may fall upon unions themselves in such arrangements, there has been limited union interest in large scale arrangements.

Overall, despite the increased salience of THAE, union responses have been largely limited to incremental adjustments aimed at shoring up collective bargaining arrangements normalized by past practice, culture, and/or the legal regime. There has also been little concerted *collective* labour movement response to growth in THAE, in any of the four alternative directions cited by Heery (2004). Rather, within this relative vacuum of labour movement voice, the independent Workers' Action Centre has assumed a leadership and representational role in its lobbying activities (focused on a regulation strategy), to some extent acting on behalf of the labour movement, and with limited resources provided *ad hoc* by some unions. A potential cost in this implicit delegation here is that the effects of THAE growth upon unions may be insufficiently articulated by this non-union actor. As well, to an extent, labour may have collectively enabled THAE growth over time by acquiescing to the temporary help industry's increased control over job vacancies and placements in the labour market. It remains to be seen whether union responses – such as that of a particular union action centre seeking to substitute itself in place of agencies – will significantly alter the union-agency nexus in future.

Notes

- 1 See Statistics Canada Cansim tables 361-0001, 382-0001, 382-0006, and Hamdani (1997).
- 2 Statistics Canada publishes an annual *Service Bulletin: Employment Services* document providing certain descriptive statistics on the "Employment Services" industry, of which the temporary help (or "temporary staffing") industry is a subset. Recent bulletins reveal that proportion of total Employment Services industry revenue accounted for by temporary staffing services revenues has been declining somewhat over the last decade, but as of 2009 still accounted for 63.2% of total industry revenues. See Statistics Canada (2011).
- 3 Author's calculations based on Survey of Employment, Payroll and Hours ("SEPH") data in Cansim Table 281-0023.

- 4 In 2009, 85.9% of employment services revenues came from the “business sector.” See Statistics Canada (2011).
- 5 Using 2002 SLID data, Fang and Gunderson (2005) found the following distribution: management and admin support (56.1%), manufacturing (17.9%), information, culture and recreation (8.7%), trade (5.8%), construction (4.4%), and health and social services (4.3%).
- 6 Using 2002 data, Fang and Gunderson (2005) estimate the union coverage rate to be 6.5%. Data on distribution of agency worker union coverage broken down by industry is not available.
- 7 A small exception, Borowy (2006) provides some statistics on THAE growth in the Ontario Public Service in the 1990s and discusses certain union responses to this.
- 8 Of some concern, there may be significant room for overlap between Heery’s categories. For example, a regulation strategy may result in significant exclusion of agencies and their workers from the labour market (exclusion strategy), or in shifts in the character/practices of agency organizations supplying workers (replacement strategy). Further, care must be taken not to present different categorical responses as being equally available, or equally (un) constrained choices facing unions.
- 9 The words “inclusion” and “exclusion” from this point onwards refer to whether agency workers are included in newly organized bargaining units, or not, and thus have different meaning than when used in Heery’s typologies.
- 10 See *Nike Canada Ltd.*, 2006 CanLII 24724 (ON LRB). Bartkiw (2009) argues that this decision reinforces the uncertainty and risk to unions in organizing workplaces that include agency workers.
- 11 See s. 74.2 of *An Act to Amend the Employment Standards Act, 2000 in relation to temporary help agencies and certain other matters*, S.O. 2009, c. 9.
- 12 In extraordinary occurrences, agency workers may be paid *more* than unionized employees. For example, during the SARS crisis in Toronto, many agency nurses were receiving an hourly rate of about \$100, while ONA members received approximately \$35. As time passed, the traditional wage/benefit gap returned.
- 13 See in particular sections 2(1) (12) and 9(1) (9) exempting home health care workers from entitlements to both termination and severance pay, when their arrangement allows them to “elect to work.” Note also that these exemptions are scheduled to be revoked in Fall of 2012.
- 14 Governmental financial support for such activities is available from the Ontario Ministry of Training, Colleges and Universities and/or through the federal Employment Insurance program.
- 15 See *Nike Canada Ltd.*, 2006 CanLII 24724 (ON LRB) and analysis in Bartkiw (2009).
- 16 For example, ONA recently negotiated such terms in a number of Toronto hospital network collective agreements.
- 17 Bill 139 took effect in May 2009.
- 18 Bill 161 also included licensing scheme and a form of joint liability between agencies and clients that was not included in Bill 139.
- 19 *Supra*, note 11.

- 20 For example, the Toronto Star interviewed some union representatives, during its coverage of the hearings on Bill 139.
- 21 For example, while CUPE and SEIU were primarily concerned about the exclusion of home health care workers, UNITE-HERE was more concerned about the issue of joint liability.
- 22 These may include the non-representative sample, and the fact that (due to resource constraints) data on union behaviour were collected from union officials and representatives themselves, and not from a large number of workers.

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SUMMARY

Unions and Temporary Help Agency Employment

Temporary help agency employment (THAE) is a peculiar and often precarious employment form that has become increasingly salient in Canada in recent decades. Seeking to advance both the literatures on precarious work and union renewal, this article examines the effects of the expansion of this unique employment form upon labour unions, and union responses to this phenomenon.

The study employed a qualitative exploratory method, involving twenty-four interviews with key informants from fourteen large labour unions, two union federations, and the Toronto-based workers' centre known as the "Workers' Action Centre." Various effects of the expansion of THAE on unions were identified and categorized as relating to either union organizing or representation activities, and a range of union responses to the phenomenon are also discussed.

Overall, it is suggested that THAE growth carries the potential to constrain organizing and representation activities in multiple ways, although its effects are highly mediated by other contextual factors. Union responses have thus far been largely limited to incremental adjustments aimed at shoring up traditional organizing and collective bargaining practices.

KEYWORDS: unions, temporary help agencies, temporary agency employment

RÉSUMÉ

Les syndicats et l'emploi temporaire via les agences de placement

L'emploi temporaire via des agences de placement est une forme d'emploi singulière et souvent précaire qui est devenue de plus en plus répandue au Canada au cours des dernières décennies. Dans le but de faire progresser les écrits sur l'emploi précaire et le renouveau syndical, cet article étudie les effets de la croissance de cette forme unique d'emploi sur les syndicats et les réponses de ces derniers à ce phénomène.

L'étude a recours à une méthodologie exploratoire qualitative comprenant vingt-quatre entrevues avec des informateurs-clés en provenance de quatorze grands syndicats ainsi que deux fédérations syndicales et un centre de travailleurs basé à Toronto (Workers' Action Centre). Divers effets de la croissance du travail temporaire sur les syndicats sont identifiés et catégorisés selon qu'ils concernent les activités d'organisation syndicale ou les activités de représentation syndicale et un éventail de réponses syndicales au phénomène sont discutées.

Globalement, il est suggéré que la croissance du travail temporaire présente un potentiel réel pour contraindre les activités d'organisation et de représentation syndicales de multiples façons, bien que ses effets soient hautement médiatisés par d'autres facteurs contextuels. Aussi, à ce jour, la réponse des syndicats s'est largement limitée à des ajustements progressifs visant à renforcer les pratiques traditionnelles de représentation et de négociation collective.

MOTS-CLÉS : syndicats, agences de placement temporaire, travail intérimaire

RESUMEN

Sindicatos y empleo de agencia de ayuda temporal

El empleo de agencia de ayuda temporal (EAAT) es una forma de empleo peculiar y a menudo precario que se ha vuelto cada vez más importante en Canadá en las últimas décadas. Tratando de contribuir a los estudios sobre el trabajo precario y la renovación sindical, este artículo examina los efectos de la expansión de esta forma única de empleo sobre los sindicatos y sobre las respuestas sindicales a este fenómeno.

El estudio empleó un método cualitativo exploratorio, implicando veinticuatro entrevistas con informadores claves de catorce grandes sindicatos laborales, dos federaciones sindicales y del centro de trabajadores de Toronto conocido como el "Centro de acción de los trabajadores". Diversos efectos de la expansión del EAAT en los sindicatos fueron identificados y categorizados como vinculados a la organización sindical o a las actividades de representación; una gama de respuestas al fenómeno son también discutidas.

En general, se sugiere que el crecimiento del EAAT tiene el potencial de restringir las actividades de organización et de representación de múltiples maneras, aunque sus efectos son fuertemente mediados por otros factores contextuales. Las respuestas sindicales han estado hasta ahora limitadas a ajustes graduales orientadas a reforzar las prácticas tradicionales de organización y de negociación colectiva.

PALABRAS CLAVES: sindicatos, agencias de empleo temporal, empleo de agencia temporal