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RESEARCH ARTICLE

Between Representation and Regulation: Union Strategies on Non-Standard Employment in Selected Industries in the Philippines

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Abstract: As elsewhere, the incidence of non-standard employment is increasing in the Philippines amidst declining union density rates for the last 15 years. This twin phenomenon has posed challenges to trade unions' structures and their understanding of representation. Based on the author's survey of union strategies on non-standard employment adopted by 93 Metro Manila-based enterprise unions and 13 national federations in four industries—manufacturing, banking and finance, hotels and restaurants, and private education—the article identifies and examines the variety of ways trade unions, both at the enterprise and at the national level, attempt to represent non-standard workers and regulate employers' use of non-standard forms of employment, and the factors that influence both union actions. The analysis demonstrates the unions' preference of regulation over representation, and that this can be explained by the higher difficulties and constraints that unions face in pursuing the latter. Nevertheless, this article has established the emergence of a “bricolage of organizational forms” and a plurality of innovative union initiatives aimed at protecting non-standard workers and arresting the spread of precarious non-standard employment.

Keywords: Non-standard employment, non-standard workers, precarious work, trade unions, Philippines

Non-standard employment (NSE), which refers to work that is short-term and unprotected, has become a distinct feature of labor markets in many countries. In fact, as elsewhere, it is on the rise in the Philippines where NSE has become synonymous with “non-regular” employment, that is, employment that is of short- or fixed-term, not full-time, and not involving

a direct employment relationship. In 2012, a quarter of all rank-and-file workers in the Philippines were on various forms of non-standard employment. In 2014, the proportion went up to one-third.

The expansion of non-standard employment has posed serious challenges to trade unions' understanding of representation and, concomitantly, strategies aimed

at according protection to non-standard/non-regular workers. What has been the role of trade unions in addressing the challenges of non-standard employment in the Philippines? What drives unions to extend their mantle of protection to non-standard workers? Is there a unique structure of representation for non-standard workers? Which factors influence a union's adoption of a specific approach in extending protection to these workers? This article attempts to contribute to the growing literature on trade unions and non-standard employment by engaging with these questions.

Trade Unions and Non-Standard Employment

Non-standard employment encompasses work that is outside the realm of a "standard employment relationship" which is defined as work that is full time and indefinite, and which involves a subordinate and bilateral employment relationship (International Labour Organization [ILO], 2016). NSE includes temporary or fixed-term employment (i.e. project- or task-based contracts, seasonal work, casual work, and daily work), part-time and on-call work (including zero-hours contracts), multi-party employment arrangements (e.g. temporary agency work, subcontracted labor, labor hire, and dispatch work) and disguised employment/dependent self-employment. NSE is often associated with "precarious work." Many workers engaged in NSE (i.e. non-standard workers) are exposed to a number of risks and insecurities: they are more likely to transit between NSE and unemployment; they experience substantial wage penalties relative to comparable standard workers, which can reach as much as 30% for temporary employment; they experience erratic work hours, occupational safety and health risks, and gaps in social security coverage; they lack opportunities for training with negative repercussions on career development; and they lack access to representation and may not effectively exercise or enjoy their fundamental rights at work, including freedom of association and right to bargain collectively with their employers (ILO, 2016).

NSE also adversely impacts workers' subjective well-being through heightened job insecurity. An empirical study by Dawson, Veliziotis, and Hopkins

(2017) on employees with temporary contracts in Britain found that "individuals on temporary employment contracts, especially casuals, report lower well-being than their counterparts in permanent employment" (p. 93) mainly due to lower job satisfaction (satisfaction with pay, hours, or the work itself) as a result of job insecurity. In fact, when differences in satisfaction with security between contract types were controlled for, the same authors found that "fixed-term workers exhibit significantly higher levels of well-being and casuals no worse than those workers in permanent employment" (p. 93). In short, non-standard workers are more likely to suffer "well-being penalties" than their counterparts in permanent employment.

Trade unions are seen as an agency addressing the precarity associated with non-standard employment.

A study by Hoque, Earls, Conway, and Bacon (2017) found a strong positive relationship between the presence of an onsite representative (e.g. union) and employees' perceptions of job quality (measured in terms of job content, work-life balance, and job stress). They highlighted that union representation can engender higher job quality for non-standard workers. Unions and other worker organizations can also enhance enforcement of labor standards, including health and safety, in three ways: "detection of non-compliance through relationships with workers, outreach to workers in targeted industries, and collection of evidence to facilitate enforcement actions" (Fine, 2015, p. 22). Meanwhile, Flavin, Pacek, and Radcliff (2010) found that labor organizations have the strongest impact on the subjective well-being (via job satisfaction) of citizens with lower incomes, many of whom are workers engaged in non-standard employment.

Serrano and Xhafa (2016), meanwhile, pointed to the "positive transitioning effect" of trade unions—the facilitation of transition of workers from precarious non-standard and informal employment to protected employment (i.e. employment with higher wages, better working conditions, job security and more rights at work, including the right to organize and bargain collectively). Through 10 case studies from nine countries (six of which are developing countries), the authors show how various power resources—institutional, associational, structural, and societal

power—facilitate the transition of non-standard workers to more protected employment. Of particular interest are the three representation structures for non-standard workers identified by the authors: (a) existing trade unions organize non-standard workers and set up specific structures for these workers within the union organization, (b) non-standard workers organize themselves and then join an existing trade union, and (c) non-standard workers organized by trade unions into a separate union of their own (Serrano & Xhafa, 2016, p. 40).

Serrano and Xhafa's (2016) concept of positive transitioning effect of unions relates with Freeman and Medoff's (1984) "positive voice effects" hypothesis whereby workers' perceptions of job quality tend to be higher where an onsite representative (a union or an association) is present. This is because unions can voice their members' job quality concerns via either collective bargaining processes or informal communication channels, as Hoque et al. (2017) underscore in their study based on the findings of a members' survey in the finance sector done by the Unite trade union.

What motivates trade unions to organize and represent non-standard workers?

The union revitalization literature shows that unions try to expand their mantle of representation to non-standard workers as a way to reverse membership decline, avert their waning influence and legitimacy in the economic and political sphere, and energize their organization (Frege & Kelly, 2003; Haiven, 2006; Heery & Adler, 2004; Serrano, 2014; Wever, 1998). Heery (2003) suggested that when a union's organizing activity is focused on "expansion," the union attempts to build membership in hitherto unorganized sectors, including non-standard workers. This is similar to what Wever called "field enlarging strategies" (1998, p. 392) whereby unions attempt to prioritize the organization of women, minority, younger, contingent, and part-time workers. Benassi and Vlandas (2015) labeled as "inclusion" a union strategy that aims to achieve equal treatment for contingent workers (i.e. non-standard workers). They also identified several key factors that may facilitate union recruitment and/or organization of non-standard workers, which they labeled as the "Southern path": a working class union

ideology, having non-standard workers in union membership, and high union density and collective bargaining coverage.

The Regulatory Framework on NSE in the Philippines

The Philippines' official labor statistics system uses the term "non-regular employment" in referring to NSE in the formal sector. NSE may involve a direct and bilateral employment relationship and a trilateral or multiparty employment relationship. The first category includes contractual and project-based workers, probationary workers, casual workers, seasonal workers, and apprentices/learners, all of whom are directly employed by the enterprises where they actually do work. The second category is comprised of agency-hired workers and manpower cooperative-hired workers who are deployed by third-party manpower agencies and manpower cooperatives to a user enterprise to perform a service or work.

The Labor Code of the Philippines (1974, Articles 280 through 281) defines and regulates the term or duration of employment of various types of non-standard/non-regular workers. Under the law, a company is allowed to subject workers to six months of probation, beyond which he or she is entitled to regularization (i.e. conversion to a permanent status), if the job is "necessary and desirable," that is, a job or work that is directly related to the core business or operation of the enterprise. A company is also allowed to hire a casual worker; however, a year of accumulated service, even if intermittent, entitles a casual worker to regularization. The tenure of project employees is co-terminus with the project they are assigned to. As regards trainees, companies can hire them between six months and two years, and at a compensation rate that is 25% below the minimum wage.

Service or labor contracting is allowed in the Philippines, but only for activities that are not considered necessary or desirable or not directly related to the core business or operation of the principal. The Labor Code (1974, Articles 106 through 109) recognizes the legitimacy of "independent job contracting" which refers to an arrangement whereby a principal (i.e., user enterprise) farms out to a contractor

the performance or completion of a specific job or work within a specified period, and such job or work may be performed or completed either within or outside the premises of the principal. Department Order (DO) 174 issued by the Department of Labor and Employment (DOLE) in March 2017, which regulates contracting and subcontracting arrangements, however, prohibits “labor-only contracting” (LOC), defined as “a situation where the contracting agency has no substantial capital to back up its capacity to do the outsourced work, no equipment or tools to undertake the work, and no control over the manner and conduct of the work as performed by the recruited workers” (Ofreneo, 2013, p. 437).

DO 174 (DOLE, 2017) recognizes and clarifies the existence of a trilateral relationship and solidary liability in contracting arrangements. An employer-employee relationship exists between the contractor and the employees it engaged to perform the specific job, work, or service being contracted. In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there is solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code (1974) and other social legislation. The DO 174 also accords agency workers all the rights and privileges of workers (in an employment relationship) in the Labor Code, such as security of tenure; safe and healthy working conditions; labor standards (such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay); retirement benefits under the Social Security System or retirement plans of the contractor; social security and welfare benefits; and the right to self-organization, collective bargaining, and engagement in peaceful concerted activities.

DO 174 (DOLE, 2017) is an amended and purportedly stricter version of DO 18-A (DOLE, 2011), the regulation on contracting and subcontracting until March 2017. Its issuance is an outcome of the sustained and organized rallies and protest actions mounted by various union federations and confederations since 2016 to end contractualization in the Philippines. While the new administrative order does not totally prohibit contractualization as demanded by trade unions, it sets stricter guidelines

on contracting and subcontracting work, including those through manpower agencies. For example, to limit the number of unscrupulous manpower agencies, DO 174 increased the substantial capital requirement of manpower agencies from PhP 3 million to PhP 5 million pesos, reduced the validity of the certificate of registration of contractors from three to two years, and increased the registration fee of contractors from PhP 25,000 to PhP 100,000. The regulation reiterates most of the prohibited practices stipulated in DO 18-A, and adds other prohibited practices, including contracting out of job or work through an in-house cooperative that merely supplies workers to its principal. It also includes for routine inspection establishments engaged in contracting arrangements.

Non-Standard Employment and Unionism in the Philippines

NSE or non-regular employment is popularly known as contractualization or “endo,” the latter a colloquial term for persons whose short-term contract has ended or is ending soon. Contractualization or endo have come to mean the repeated hiring on short-term contracts of non-standard workers thereby preventing them from becoming regular or permanent workers. In this article, NSE and non-regular employment are used interchangeably.

Non-standard workers in the Philippines are often engaged in precarious work and therefore experience the same risks and uncertainties enumerated earlier. For example, data from the International Labour Office (2012, p. 52) indicate that between 2001 and 2010, the average real daily basic pay of workers on short-term contracts was on average 30% lower than the average real daily basic pay of all workers in the country. Many endo workers are often not paid overtime. They only receive minimum mandatory benefits, such as social security and basic healthcare coverage. It is also not unusual to find employers, particularly manpower agencies, who fail to remit to the Philippine’s Social Security System the social security contributions of their workers.

The rise in non-standard employment in the Philippines in the last 15 years is the main push for the recent union actions demanding an end to

contractualization in the country. According to PSA (2016), the number of non-standard workers across all establishments almost doubled from 3.9 million (28.3% of all workers) to 7 million (30% of all workers) between 2000 and 2015. Between 2012 and 2014, the share of these workers of total employment went up by 16% (PSA, 2016). The industry sector employed more non-standard workers than the services sector year-on-year from 2000 to 2015. In 2015, non-standard workers comprised 37.1% and 21.5% of all employees in the industry sector and services sector, respectively. In the private sector, over one in three workers (34%) comprised non-standard workers in 2015.

In 2014, half of all non-regular workers comprised contractual/project-based workers, 23.9% were probationary workers, 15.6% were casual workers, 7.6% comprised seasonal workers, and 2.6% were apprentices/learners (PSA, 2016). A PSA survey on agency-hired workers revealed that three in five establishments had agency-hired workers in 2014 (PSA, 2015a). The same survey also yielded several interesting findings: agency-hired workers comprised 12.2% of the total workers engaged by establishments; manufacturing hired the largest number of agency workers; and while two-fifths of all agency-hired workers were hired primarily for security and janitorial services, over one-fourth were hired to carry out activities related to production/assembly (PSA, 2015a). It is to be noted that agency-hired workers are excluded from an establishment's total employment as they are supposed to be the direct employees of the manpower agencies.

The increase in the proportion of non-standard workers has been accompanied by shrinking union density rates and collective bargaining coverage in the Philippines in the last 15 years. In 2014, there were 1.945 million union members from both the private and public sectors, an overwhelming decline of 105% from 3.788 million in 2000 (PSA, 2015b, p. 345). About 73% of the union members came from the private sector and about 27% from the public sector. They comprised 8.7% of all wage and salary workers in 2014. In the same year, only 207,811 private sector workers were covered by collective bargaining agreements (CBAs; PSA, 2015b). This was merely 14.6% of all union members in the private sector.

Between 2000 and 2014, both the union density and collective bargaining coverage rates were declining (Figure 1).

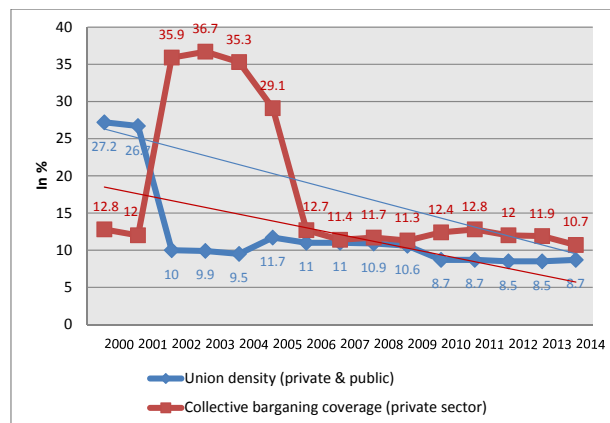


Figure 1. Union density and collective bargaining coverage in the Philippines. Graph constructed by the author using data from the Labor Force Survey of the PSA.

The precipitous decline in union membership has been attributed to a combination of factors, namely: employers' labor cost-cutting strategies to attain competitiveness; rapid pace of technological innovations that shed labor; shrinking of the manufacturing sector (the bulwark of unionism) and expansion of the services sector (where unionization is low) over the years; employers' increased hostility to unionization; rise of non-standard forms of employment; and failure of trade unions to adapt their organizing strategies to the challenges of a rapidly changing and globally-integrated economy (Aganon, Serrano, Mercado, & Certeza, 2008). It is to be noted that unionization and collective bargaining occur at the workplace or enterprise level in the Philippines, although the labor law does not prohibit unionization and bargaining at the industry level. Nearly all national unions (i.e. federations) are general unions, that is, their membership is drawn from various sectors.

For lack of available data, it is difficult to determine the number or proportion of non-standard workers who are union members in the Philippines. Official and available data on union membership in the Philippines are disaggregated only in terms of gender, sector/industry, type of ownership, and employment size of establishments. However, in cases where non-standard

workers are union members, their membership is at best marginal and temporary.

Trade unions in the Philippines view NSE as a serious threat to the rights of workers to security of tenure, labor standards, occupational safety and health, self-organization and collective bargaining, and social protection. Yet, trade union representation continues to privilege regular workers (Aganon et al., 2008), and if there are non-regular workers in the union membership, which is a rare occurrence, they merely comprise a negligible proportion of the union membership. Unions tend to recede from organizing non-standard workers due to a host of factors: the transient nature of employment of these workers; employers' strong opposition to unionization of these workers; unions' limited resources to organize these workers; and the general lack of interest of these workers to join unions (Aganon et al., 2008). These organizing challenges limit the potential of trade unions to effectively improve the job quality and well-being of non-standard workers.

The uptrend in the number and proportion of non-standard workers and the increasing use of various forms of non-standard employment across industries, in tandem with declining union density rates over the years, have pushed trade unions in the Philippines to re-think their representation purpose and strategies in order to address the challenges of non-standard employment and, at the same time, stem the decline in union membership. Thus, since the last decade, trade unions have noticeably started to experiment on organizing non-standard workers, albeit sporadic. These organizing initiatives nonetheless tend to reflect a particular union approach to representation of workers different from unions' traditional membership, what Regalia (2006) called "specialization of protection/reconfiguration of representation." This representation approach is characterized by a union's high awareness of the diversity of workers' interests and its willingness to innovate representation models.

Methods

The core data of my study were drawn from a small survey that I conducted between November 2015 and August 2016 involving two groups of union officers—one group from enterprise-based unions and

the other from national federations. The first group included key officers (i.e., president or vice president) of 93 enterprise-based (or local) unions in Metro Manila across four sectors—manufacturing, hotels and restaurants, banking and finance, and private education. These are the sectors where the largest number of non-standard workers can be found. The total number of local unions from where respondents were drawn represented 42% of all unionized enterprises in Metro Manila in the four sectors covered, based on a list I secured from the Bureau of Labor Relations in June 2015. In 2014, Metro Manila was home to 59.5% of all union members in the private sector in Philippines (PSA, 2015, p. 346). In this regard, the survey involving local unions achieves a fairly significant coverage.

The second group of union officers surveyed is comprised of 13 officers (president or general secretary) of 13 national federations that have memberships in the four sectors.

I prepared a questionnaire for each of the two groups of respondents. The questionnaires contained both structured and open-ended questions, albeit mostly of the former.

Information gathered through the surveys was encoded and processed using SPSS Statistics. Analysis of results is done through descriptive statistics, particularly frequencies and cross-tabulations.

My initial assumption was that unions attempt to accord protection to non-standard workers in two ways—representation and regulation. I define representation as the variety of organizational structures or forms used by unions to accord collective voice to non-standard workers. These structures or forms may include a union both of regular and non-regular workers, a distinct union only for non-standard workers, a distinct committee for these workers in the union organization, and a workers' association. Meanwhile, I define regulation as the various ways in which, without organizing or recruiting non-standard workers, trade unions attempt to accord protection to these workers and curb the use by employers of various forms of non-standard employment arrangements by adopting workplace-based regulations (e.g. extending collective agreement coverage to non-standard workers, special agreements involving these workers, etc.), and pushing for national or government-issued laws and regulations that restrict the use of NSE.

In this paper, I posit two hypotheses:

H1: Trade unions follow a dual strategy in addressing non-standard employment: extending representation (i.e. organizing) to non-standard workers and limiting non-standard work by tightening regulation on the use of non-standard employment at the workplace and national level.

H2: Due to several constraints on unions' choices, the strategy of limiting non-standard work by tightening regulation on the use of non-standard employment at the workplace and at the national level tends to dominate.

Results

Representation/Organization of Non-Standard Workers

The survey surfaced the most common categories of non-standard workers in the unionized establishments. These include agency-hired workers (as identified by 74% of respondents), probationary workers (as identified by 62% of respondents), and contractual/project workers (as claimed by 57% of respondents). About 31% and 20% of the local union officers cited the presence of casual workers and apprentices/learners, respectively. Seasonal workers were the least hired; only 17.6% of respondents noted their presence in their companies. That agency-hired workers are the most common category of non-regular workers found in the unionized enterprises suggests that most of the employers prefer indirect employment arrangements as a way to shift to other business entities—in this case to manpower agencies—the legal and contractual protections and costs associated with direct employment, a practice which Weil (2014) called the “fissuring” of the employment relationship.

As expected, 88% of local union respondents averred their unions neither organize nor recruit non-standard workers in their companies. This leaves only 12% of these respondents organizing these workers. In contrast, officers of 10 of the 13 federations surveyed reported they organize and/or recruit non-standard workers.

The survey surfaced a number of reasons why most

local unions do not organize and/or recruit non-standard workers. Unions fear that these workers risk losing their jobs if they join a union. Moreover, in a context where unionization is enterprise-based, the transient nature of employment of these workers discourages them from joining a union. This also makes an organizing drive tentative and costly. Many employers also restrict the unionization of these workers. Thus, and corollary of the two previous points, it is difficult to include these workers in a collective agreement.

The respondents from federations also echoed many of the reasons mentioned by local union respondents. Three-fourths of the federation respondents also pointed to their limited resources as a key factor that constrains the organization of these workers. Nonetheless, compared with local unions, federations are more likely to organize non-standard workers for several reasons. First, as federations are more encompassing in terms of territorial and sectoral reach, they can adopt an organizational model (e.g. union, workers' association, etc.) that fits the transient nature of non-standard workers. Secondly, they have more resources to organize these workers. Third, they have more access to government authorities and institutions (e.g. legislature) from which they could draw institutional support for their attempts to accord representation and protection to these workers. Fourth, and corollary of the previous point, they can mobilize their local union affiliates to provide flesh and muscle in pressuring government authorities. Fifth, federations can rally the support of national and international trade unions; labor-oriented support organizations; non-government organizations, including faith-based organizations; and the academe in their campaigns to organize and accord protection to precarious workers. Finally, federations have broader objectives and agenda and are more politically-oriented. This makes them more inclusive in terms of representation.

The few local unions that organize and/or recruit non-standard workers are more likely to organize or recruit agency-hired workers, the top category of non-standard workers in the four sectors surveyed, and probationary workers who are eligible for regularization after a given period. Seven of the 13 federations that have extended their representation to non-standard workers organize and/or recruit

probationary workers, contractual/project employees, and agency-hired workers. Three of the federations also organize and/or recruit casual workers and seasonal workers.

Union Motivations in Organizing Non-Standard Workers and Factors Influencing Organizing Decision

The few local unions that have extended their representation to non-standard workers identified several reasons for doing so: to increase union membership and bargaining power; to stem the growing number of non-standard workers in the enterprise; their union identity—that they represent all workers in the enterprise; and to fulfill the mandate of the local union's federation to organize these workers. The federations that organize these workers also cited the same reasons, three of which added one more—to fulfill the request of non-standard workers for union representation.

The survey also surfaced several factors that have influenced unions' decision to represent and accord protection to non-standard workers. Among the local unions, the presence of a legal framework that protects these workers and regulates the practice of contracting and subcontracting was found to be the

most common factor. The other top factors for local unions include having a more inclusive orientation towards non-regular workers, a high unionization rate in the establishment, and stricter enforcement by the government of labor laws and regulations (Table 1).

Among the federations, having a more inclusive union orientation towards non-regular workers and a local union's affiliation with a federation that is campaigning against precarious work are the top organizing influences. Other top factors include: having non-regular workers in the union membership, high unionization rate in the sectors covered by the federation, the presence of a legal framework that protects these workers and regulates the use of contracting and subcontracting, stricter enforcement by the government of labor laws and regulations, and the existence of linkages and coalitions with other unions, non-government organizations, church establishments, and other labor support establishments.

Organizing Strategies and Organizational Forms

Identification of grievances was found to be the most common organizing strategy used by nearly all the few local unions that organize and/or recruit non-standard workers. More than half of these unions averred they hold small group meetings of these workers after work hours and outside the workplace

Table 1.

Factors That Positively Influenced Unions' Decision to Represent and Accord Protection to Workers in NSE and Limit the Use of Employers of NSE

Factors	Local unions (%)	Federations (%)
A more inclusive union orientation towards non-regular workers	48	80
High unionization or membership in the company/establishment	42	60
Low union membership in the company/establishment	10	30
Union membership of non-regular workers	25	70
Increasing number of non-regular workers vis-à-vis decreasing number of regular workers	25	40
A legal framework that protects these workers and regulates the use of outsourcing/contracting/subcontracting	64	60
Stricter enforcement by the government of labor laws and regulations	40	60
Affiliation with a federation that is campaigning against precarious work	35	80
Existence of linkages and coalitions with other unions, NGOs, church establishments, and other labor support establishments	31	50

as part of their organizing strategy. Four of these unions claimed they work with other community-based organizations to facilitate organizing non-standard workers, particularly those who have shorter fixed-term contracts (e.g. casual workers and seasonal workers). These community-based organizations are found in the same community where non-standard workers live. Three of the local unions said they also do home visits.

How unions structure the representation of non-standard workers was also identified in the survey. Organizing these workers into a workers' association was found to be the most common representation structure adopted by federations. The other representation structures utilized by federations, albeit to a lesser extent, include establishing a separate union of this group of workers, recruiting them as regular members of the union, and establishing a distinct structure (e.g. committee) for these workers in the union organization. Two of the federations claimed non-standard workers are also represented in the union leadership (e.g. executive committee).

The few local unions that organize non-standard workers also listed two of the representation structures federations utilize for these workers: a workers' association and regular membership in the union, and added one more—representation in the union bargaining committee.

Regulating Non-Standard Employment and Providing "Specialized Protection" for Non-standard Workers

Although local unions are more unlikely to organize non-standard workers, they, however, undertake other ways to accord protection to these workers. About 68% of the local unions surveyed said they inform these workers about their rights under the labor law; 61% claimed they provide legal advice and legal support to these workers for any employment-related problem; 24% mentioned they dialogue with management on ways to improve the employment and working conditions of these workers; and 20% declared they participate in demonstrations and protest actions organized by national unions against contractualization

to pressure the government to either prohibit or tighten the regulation on the use of NSE. The federations echoed these measures as well. These union actions comprise the ways in which trade unions accord specialized protection to non-standard workers.

Local unions and federations also undertake a number of initiatives to regulate the use by employers of non-standard employment. Among the local unions, the majority identified the following: pressuring legislators and the government for the enactment of laws and regulations aimed at protecting the rights of these workers and limiting the use of NSE; making representation to the labor department for the strict enforcement of labor standards in their workplaces, including the standards that non-standard workers are entitled to; holding dialogue with management on the use of NSE (Table 2). A lesser proportion of local unions solicit international support and solidarity from international organizations and trade unions in other countries for their campaigns against contractualization and precarious work and coordinate with unions in other companies that are part of their supply chain on issues that pertain to precarious employment.

There are also enterprise-based initiatives of regulation undertaken by individual unions. For example, a union regularly monitors the duration of the employment contract of casual and project workers in their enterprise for possible legal bases for regularization. Another union dialogues with management for the regularization of non-standard workers who occupy job positions that have been classified as regular (or permanent) positions. One union takes the issues of non-regular workers in the labor management committee where possible improvements of these workers' working conditions are discussed.

A higher proportion of federations declared they provide the same forms of regulatory protection to non-standard workers. This is expected as the majority of federations surveyed organize non-standard workers. All or the big majority of federations undertake nearly all of the initiatives aimed at providing specialized protection to non-standard workers and regulating the use of NSE (Table 2).

Table 2.*Forms of Specialized Protection Provided by Unions to Workers in NSE and Union Actions to Regulate the Use of NSE*

Specialized protection and regulations	Local unions (%)	Federations (%)
Pushing for laws that further regulate the use of contracting and subcontracting	60	85
Participate in campaigns and mobilizations against contractualization	58	100
Make representation to the labor department in the enforcement of labor standards in our workplace	53	92
Dialogue with employers and their organizations regarding the use of non-standard forms of employment	44	100
Build linkages and coordinate with other unions in companies that are part of the supply chain on issues pertaining to precarious employment	29	77
Solicit support from NGOs and other labor support establishments in campaigning for the protection of non-regular workers	25	39
Solicit international support or solidarity on the issue of contractualization and precarious work	30	85
Use media in our campaign to support these workers and to put a stop on contractualization	26	69

*Collective Bargaining as a Means to Accord
Specialized Protection to Non-Standard Workers and
Regulate NSE*

Another way that trade unions try to regulate the use of non-standard employment and accord protection to non-standard workers is through collective bargaining, albeit at the enterprise level. Despite the fact that most local unions neither organize nor recruit non-standard workers, it is interesting to note that about one in four unions extend the coverage of their CBAs to these workers even if they are not union members, as revealed by the survey. Among the categories of non-standard workers, temporary and casual workers are more likely to be covered by a CBA. Nonetheless, 93% of local unions surveyed reported that they do not have provisions in their CBAs that provide protection specifically for non-standard workers.

The few local unions that said they have CBA provisions specific to these workers gave the following examples: a provision stipulating that these workers' wages should be above the minimum wage, a provision that extends sick leave and other leave benefits to these workers, a provision that reiterates the statutory regulation that these workers are also entitled to 13th month pay, and a provision emphasizing security of tenure of probationary workers. There is a higher

probability that these CBA provisions can be had when a union organizes and/or recruits non-standard workers.

Nonetheless, 83% of the local unions surveyed averred they do not have provisions in their CBAs that limit or restrict their company's use of NSE. Only 17% claimed otherwise and provided the following examples: (1) prohibition against contracting out to a labor contractor or an agency the performance of work or service that regular employees do; (2) prohibition against laying off currently employed workers in the company in view of outsourcing of work through agencies, even in cases where the agency-hired workers perform the same functions of the regular workers; (3) prohibition on outsourcing jobs that are within the scope of CBA; (4) a requirement that management consults first with the union any move by the former to "permanently" fill in regular positions with casual or agency-hired workers; (5) listing of core and non-core functions in an enterprise, wherein only the latter can be outsourced; (6) restricting specific positions (e.g. supervisor) only to regular and probationary workers; and (7) prioritizing non-regular workers, subject to qualification requirements, to fill any vacant position that may arise.

From the examples of CBA provisions, restrictions on the use of NSE based on the nature of jobs—what I

call “job-specific restrictions”—appear to be the most dominant CBA-based regulative measures adopted by local unions.

The survey also found one union that was working with a federation in establishing multi-employer bargaining with the various labor contractors or agencies in the enterprise. It is to be noted that, particularly for large enterprises, it is possible to have more than one manpower agency supplying workers in user enterprise. In addition, the survey surfaced another union initiative involving the conclusion of a separate agreement with management solely for non-regular workers. Although these findings are very marginal, they bring to light other ways local unions can reconfigure their bargaining structure to accommodate the specific conditions of non-standard workers and regulate the use of NSE at the enterprise level.

The survey identified a number of factors that the majority of local unions consider important in facilitating the inclusion of CBA provisions that protect non-standard workers and limit management’s use of NSE (Table 3). These include: having union leaders who are knowledgeable of the labor law and regulations on contracting and subcontracting, good bargaining skills of members of union bargaining team, and the presence of solidarity among regular and non-regular workers.

The other factors identified by a significant proportion of local unions are: management’s

cooperation and willingness to bargain with the union, existence of support (e.g. training on negotiation strategies, drafting of proposals, wage survey, etc.) from the federation with which the local union is affiliated; and existence of provisions in the company’s code of conduct that pertain to job security and protection for workers (Table 3).

Discussion

The results of the survey support the first hypothesis I posited—that trade unions follow a dual strategy of representation (i.e. organizing workers) of non-standard workers and regulation of the use by employers of non-standard employment. Moreover, “union inclusiveness” has been found as a key factor in the extension of union representation to non-standard workers, as suggested by Benassi and Vlandas (2015). Organizing these workers is also a way to arrest union decline as highlighted in the union renewal literature. From the survey findings, many trade unions in the Philippines have innovated representation models in order to effectively provide a collective voice to non-standard workers.

National federations engage much more robustly than local unions in organizing and recruiting non-standard workers. This is because federations are more encompassing in terms of territorial and sectoral reach, and this enables them to organize non-standard workers from different workplaces. Federations have

Table 3

Factors that Facilitate the Inclusion of CBA Provisions that Protect Non-Regular Workers and Limit Management’s Use of NSE

Factors	Percent
Union leaders’ knowledge of the labor law and regulations on contracting/subcontracting/outsourcing	63
Good bargaining skills of union bargaining/negotiation team	56
Solidarity among regular and non-regular workers	55
Management’s cooperation and willingness to bargain/negotiate	47
Support from federation (e.g. training on negotiation strategies, drafting proposals, wage survey, etc.)	43
Using company code of conduct provisions pertaining to job security and protection for workers	37
Soliciting support from NGOs and other labor support establishments	25
Soliciting international support or solidarity	25
Using media support	17

more resources as well to organize these workers. They have more access to government authorities and other organizations from which they could draw institutional support in their campaigns to organize and accord protection to precarious workers. In addition, as Aganon et al. (2008) pointed out, national federations in the Philippines mostly embrace a broader working class orientation, that is, they seek to represent the interests not only of union members but also all other workers, including non-standard workers, in the country.

A recent example of a successful unionization drive undertaken by the Associated Labor Unions (ALU), a national federation affiliated with the labor center Trade Union Congress of the Philippines (TUCP), was the unionization in 2014 of some 500 workers supplied by two manpower cooperatives to a Korean-owned manufacturing company located in the Freeport area of Bataan, a province north of Metro Manila (Serrano & Xhafa, 2014). It is to be noted that under Philippine laws, a manpower cooperative, which is engaged in labor or manpower supply, has to be registered first as a cooperative with the Cooperative Development Authority and then as a contractor or subcontractor with the Department of Labor and Employment. Manpower cooperatives are also covered by DO 174 (DOLE, 2017).

According to Serrano and Xhafa (2014), of the 1,300 workers in the Korean-owned company, only 59 were regular workers in 2014. The 500 or so cooperative-deployed workers who were later unionized were performing production activities, the core business of the company, thereby resulting in labor-only contracting which is prohibited under DO 174 (2017), as discussed earlier in this article. ALU's successful organizing campaign revolved around workers' grievances concerning job security and their apparent direct employment relationship with the manufacturing company, which was found to have engaged in labor-only contracting. ALU was also successful in previous years in organizing a union of regular workers in another company in the Freeport area.

Local unions, on the other hand, rarely organize non-standard workers mainly due to a host of mutually reinforcing factors: the transient nature of employment

of these workers, difficulty of including these workers in the collective agreement, employer's hostile attitude to the unionization of these workers, and the lack of interest of non-standard workers in joining a union (mainly for fear of losing their jobs). Local unions lack the institutional incentives enjoyed by federations as mentioned earlier so that the few that recruit and provide specialized protection to these workers are more likely unions that are facing a notable increase in the number of non-standard workers in their workplace, or have low union membership, or have been approached by non-standard workers to represent them. In fact, it appears that most local unions prefer to focus only on according specialized protection to these workers without organizing them and regulating employers' use of non-standard employment.

Overall, the survey results reveal that, owing to the difficulties faced by unions in organizing non-standard workers, the main union strategy adopted both by local unions and federations is regulation in terms of restricting the use of NSE by employers in order to limit if not stop employers' practice of subjecting workers to short-term and indirect or multi-party employment arrangements. This supports my second hypothesis—regulating the use of non-standard employment at the workplace and at the national level tends to be the dominant union strategy in according protection to non-standard workers and in limiting the spread of NSE.

Conclusion

This article makes a particular contribution by identifying specific union strategies in the representation of non-standard workers and the regulation of the use of NSE. It identified key factors that influence unions' representation actions and the nature and types of unions' regulative approaches toward non-standard employment. The survey results illustrate that unions can play a regulative role towards NSE, which may be both direct (via collective bargaining, dialogue with management, and concluding special agreements with management on the use of NSE) and indirect (via legislative initiatives and government-directed pressures to amend existing regulations or issue new ones). Moreover, union regulation of NSE can occur at the enterprise and national level. In fact, as Fine (2015)

pointed out, unions can partner with the government in the “co-production of enforcement” of regulations on the use of NSE. In May 2017, the Philippine Labor Secretary Silvestre Bello III issued Administrative Order No. 164 which aims to deputize members of labor groups, among other organizations, to participate in the labor law compliance assessment activities, after they have completed a mandatory training program (Philippine Information Agency, 2017). The training started in June 2017.

While the main discussions in this article on union approaches towards NSE largely reflect the views and experiences of trade unions in Metro Manila in the selected industries, they are nevertheless indicative of a general union dilemma among trade unions in the Philippines and elsewhere—whether to simultaneously organize non-standard workers and regulate the use of NSE, or prioritize one over the other. Nonetheless, as the survey results indicate, many trade unions have embarked on organizing non-standard workers and creatively experimenting on models of representation (e.g. direct union membership, distinct union for non-standard workers, workers’ association, a separate committee within the union) and schemes of specialized protection for these workers. As Fine (2015, p. 24) argued, the future of worker representation is a *bricolage* of organizational forms. This article has established the emergence of a plurality of innovative union initiatives to represent and protect non-standard workers and arrest the spread of precarious non-standard employment.

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