

LABOR FLEXIBILITY AND WORKERS' REPRESENTATION IN THE PHILIPPINES¹

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INTRODUCTION

A. Problem and Objectives

This paper describes the experience of the Philippines on workers engaged in flexible employment, otherwise known as non-regular workers, and how their interests are represented within and outside firms.³ It also inquires into the effects of policy and environmental changes on non-regular workers, especially policy actions toward opening up what had been perceived as a rigid industrial relations system.⁴

Part I of the paper describes the extent of non-regular work, the categories and industries in which it is found, and the comparative conditions of regular and non-regular workers. Part II covers access of these workers, in law and practice, to representation channels. Part III covers policy and strategic options that might be considered toward improving their working conditions and access to representation.

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³ This study forms part of a 3-paper series on labor flexibility and its implications on workers' security. The two other papers look into labor flexibility and workers' protection and labor flexibility and employment. This 3-paper series builds upon the Institute for Labor Studies' pioneering survey on labor flexibility in the Philippines in 1990, the results of which were presented in a paper by Torres (1993). Some of Torres' conclusions include: 1) Non-regular work is related to regional locations; 2) Non-regular employment is greater in export-oriented firms; and 3) Firms facing technological and related structural shifts are more inclined to employ non-regular workers.

⁴ These policy actions implemented the multi-sectoral commitments made during the 1995 Employment Summit. Department Order No. 10, series of 1997, issued by the Department of Labor and Employment (DOLE) amended the rules implementing Arts. 106-109 of the Labor Code, which deals with subcontracting or contracting out of work. Section 1 © of the order provided that "flexibility for the purpose of increasing efficiency and streamlining operations is essential for every business to grow in an atmosphere of free competition; however, any form of flexibility intended to circumvent or evade workers' rights shall in no case be countenanced." The order included an enumeration of permissible activities which may be subject of subcontracting. DOLE later issued an amendatory order, Department Order No. 18, series of 2002, deleting any reference to flexibility as well as the list of permissible activities. On the other hand, Department Order No. 9, Series of 1997 sought to expand the organizing choices of workers, specifically by providing the institutional framework to encourage organizing beyond employee-employer

B. Methodology, Scope and Limitations

The paper is both descriptive and normative. It relies on statistical data to probe into questions usually answered with anecdotal evidence, using as primary sources the Philippine Labor Force Flexibility Survey (PLFS)⁵ and the Current Labor and Employment Statistics. For the normative part, the principles embodied in the Labor Code and the challenges in applying them to non-regular workers are highlighted. Secondary authorities consisting of books, articles and other relevant materials are also used.

The categories of flexible employment⁶ covered in this paper are those that involve part-time, contractual, casual and agency-hired workers. The paper covers five industry groups: manufacturing; construction; wholesale, trade and retail; transport, storage and communication; and financial and business services.

Conventionally, workers' representation is directly linked with voice regulation, defined as the management of labor relations, changes and practices through bargaining between labor and employers (Standing 1999). In this sense, the quality of workers' representation is measured by the extent to which workers' voice can serve as an effective mechanism in improving conditions of work. In this paper, workers' representation is used more loosely as a derivative of the right of workers to participate in decision-making processes directly affecting their welfare, including collective bargaining, labor-management cooperation, tripartism, and political action.⁷ It includes any channel of voice, institutionalized or informal, in which workers' interests are articulated.

relationships. After these two policy actions came the Asian financial crisis, which accelerated the restructuring of many firms toward flexible specialization.

⁵ The survey was jointly undertaken in 2000 by BLES and ILS. It covered the period 1998-2000 and used the 1998 National Statistics Office (NSO) Updated List of Establishments as sampling frame. The sample size covered 1,300 establishments stratified by industry, by regional location (six regions were included, National Capital Region, Central Luzon, Southern Tagalog, Central Visayas, and Northern and Southern Mindanao), and by employment size (micro, with less than 10 workers; small, with 10-49 workers; medium, with 50-99 workers; and large, with 100 workers or more).

I. EXTENT AND NATURE OF NON-REGULAR WORK⁸

A. Concept of Non-Regular Work

The concept of non-regular work in the Philippines is the same as flexible employment defined in the current international literature, i.e., any form of employment that is not full-time employment for an indefinite duration (Ozaki 1999: 6).⁹ It includes part-time, temporary, contractual, outsourced, subcontracted, home-based, and self-employment, and is interchangeably used for non-regular or atypical work (Felstead and Jewson 1999). The common feature of such arrangements is their divergence from full-time and permanent careers, which has been taken as the standard of regular employment.

Under the Philippine Labor Code, there is regular employment when the employee has been engaged to perform activities usually necessary or desirable in the usual business or trade of the employer.¹⁰ All other forms of employment specified in the Code, such as casual employment, employment for a fixed period, and employment under a subcontracting arrangement, are non-regular. The employer is not permitted to stipulate in the employment contract that work is non-regular when it is actually “necessary or desirable to the usual business” of the employer.¹¹ Nevertheless, firms tend to make their own classification, regardless of the legal rule, because non-regular work arrangements afford them greater flexibility in controlling labor costs and in fixing the duration of work, and are perceived to pose less legal obstacles and costs in employment termination.

⁶ Other known forms of flexible employment practices in the Philippines include multi-skilling and multi-tasking, commission paid work, tele-working, shift-based work, and subcontracting.

⁷ Art. XIII, Sec. 3, Philippine Constitution.

⁸ Non-regular work, non-regular employment and flexible employment shall be used interchangeably in this paper.

⁹ Esguerra (1997) describes labor flexibility as the reorganization of labor processes in response to changes in the economic environment.

¹⁰ Article 280, Labor Code.

¹¹ See Articles 279-281, Labor Code.

Of the non-regular workers covered in this paper, part-time workers are those who work for less than the working time normal to the establishment.¹² Casual workers are those engaged to fill up vacancies or new positions created by the absence of prospective employees or qualified employees for the job, or workers who perform work not usually necessary in the usual trade or business of the employer.¹³ The law treats casual workers as regular workers if they have been rendering services to the same employer for one year, whether these services are intermittent or broken.¹⁴ Contractual workers are those whose employment has been fixed for a specific project or undertaking the completion or termination of which had been determined at the time of engagement.¹⁵ Agency-hired workers are those who are deployed by an employer to another employer in order to provide the latter, for a certain period, with specific services.¹⁶ In more precise legal terms, agency hiring is a specific form of contracting, and is a legally recognized arrangement provided it does not constitute labor-only contracting.¹⁷ From these distinctions, regular work and non-regular work, conceptually and legally, are mutually exclusive.

Although flexible employment is often classified as either of the high road or low road variety, the social policy discourse in the Philippines tends to be more concerned with low road flexibility. Thus, flexible employment tends to be associated with precarious or vulnerable employment which “offer low pay, unsocial hours, poor

¹² This may not be the same as the statutory normal working time, which is not more than eight hours a day and 48 hours a week (Art. 83, Labor Code).

¹³ This is the definition used in the PLFS survey. The scope of the definition is broader than the Labor Code's definition of casual work, which simply refers to casual work as any work that is not regular or contractual (Art. 280, para. 2, Labor Code). In some jurisprudence, intermittency has been used as the test for determining casuality.

¹⁴ Art. 280, Labor Code.

¹⁵ *Idem*.

¹⁶ This is the definition used in the PLFS.

¹⁷ Art. 106 of the Labor Code provides that “Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code. X x x. There is “labor-only” contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.”

working conditions, poor promotion prospects and minimal job training” (Felstead and Jewson [1999:7]).

B. Where the Non-Regular Workers Are

At the end of the period covered by the PLFS, the Philippines had a labor force of 31.5 million. Of the 27.2 million employed, 13.9 million are in wage employment. Over six million of those employed are in non-regular work in the broadest sense.¹⁸ The number of establishments employing non-regular workers increased from 65.5% in 1998 to 86.4% in 2000 (Table 1). Except for the construction industry, the incidence of non-regular work across industry groups and among categories of non-regular work ranges from 10% to 35% of the firm’s total workforce (Table 2).

**TABLE 1. Number of Establishments Employing Non-Regular Workers
By Type of Workers: 1998 and 2000**

Type of Workers	1998		2000	
	No.	% to Total	No.	% to Total
Total	1,208	100.0	1,208	100.0
Part-time Workers	74	6.1	109	9.0
Casual Workers	283	23.4	366	30.3
Contractual Workers	262	21.7	333	27.6
Agency-Hired Workers	173	14.3	236	19.5

**TABLE 2. Number of Establishments Employing Non-Regular Workers
By Type of Workers and Industry: 2000**

	Manufacturing		Construction		Wholesale & Retail Trade		Transportation, Storage & Communication		Financial & Business Services	
	No.	%	No.	%	No.	%	No.	%	No.	%
Total	544	100.0	112	100.0	287	100.0	103	100.0	162	100.0
Part-time Workers	58	10.7	9	8.0	23	8.0	5	4.9	14	8.6
Casual Workers	195	35.8	25	22.3	84	29.3	32	31.1	30	18.5
Contractual Workers	146	26.8	74	66.1	53	18.5	26	25.2	34	21.0
Agency-Hired Workers	115	21.1	9	8.0	60	20.9	20	19.4	32	19.8

Excepting construction, casual work appears to be slightly preferred than other categories. Part-time work is the least preferred, possibly because an employer's legal obligations with part-time workers are similar to regular workers except only as to the duration of working hours. Across categories, casual work has been increasing the fastest in service-oriented occupations — i.e., wholesale and retail, transportation, storage and communication, and financial and business services — and now accounts for over 64%. Noteworthy is the high incidence of casual work in manufacturing (35.8%) in spite of the courts' relatively straightforward application of regular and non-regular work differentiations in this group.¹⁹

Between groups, the highest incidence of contractual work is in construction (66.1%). The industry is unique because employment in direct construction works is project-based and therefore co-terminus with the completion of the project or phase of the project. For this reason, construction is the only group covered by explicit, industry-specific guidelines. The guidelines assume the temporary nature rather than the regularity of construction work. Built on the philosophy of fixed term employment as defined in the Labor Code, the guidelines have effectively limited the application of legal obligations associated with regular employment to the construction industry.

B. Why firms employ non-regular workers

The types of labor market flexibility include numerical flexibility, functional flexibility and cost flexibility.²⁰ The PLFS used four major factors in determining why firms employ non-regular workers - external market conditions; perceived capacities of non-regular workers; wage and non-wage benefits; employment security; and

¹⁹ Traditionally, the courts have applied the rule that regular and non-regular work are mutually exclusive more strictly in the manufacturing sector. Generally, any work that is an integral part of the manufacturing process is regular work.

²⁰ According to Esguerra (1997), labor cost flexibility is the relaxation or removal of restraints that prevent the price of labor from adjusting. Functional flexibility takes place when firms reorganize their workers to perform multiple tasks required by the production process. Numerical flexibility concerns the adjustment of working hours or the size of the workforce in response to output demand fluctuations.

choice of workers (Table 3). External market conditions relate most closely to numerical flexibility. About 21% of firms employ non-regular workers under conditions of “fluctuating demand and market uncertainty.”

TABLE 3. Factors that Encourage the Employment of Non-Regular Workers, July 1998 to June 2000

Factors	Percent to total establishments employing Non-regular workers			
	Part-time	Casual	Contractual	Agency-Hired
Total	100.0	100.0	100.0	100.0
External market conditions				
Fluctuating demand/market uncertainty	17.4	28.7	26.1	10.8
Labor Shortage	15.2	22.9	19.0	5.4
Capacities of non-regular workers				
Specialized skills/ for special/new jobs	23.5	12.0	21.2	32.4
Higher productivity/quality of work	3.0	8.2	7.6	5.1
Wage and Non-wage Benefits				
Less labor cost (wage, benefits, mgmt)	21.2	21.3	16.7	43.2
Employment Security				
For regularization/to provide job experience	1.5	1.1	0.3	-
Choice of workers	17.4	4.5	7.3	-

Of the firms surveyed, 45.5% adopted new technologies, particularly computerization and new machinery and equipment (Tables 4 and 5). Thirty percent reported an increase in the range of tasks, creating potentials for functional flexibility for the existing workforce. But the PLFS also suggests the hiring of new workers with skills specific to the technology introduced, indicating that the capacity for functional flexibility among workers in the internal labor supply of firms is not always adequate.

	No.	% to total
Total establishments with new technologies	550	100.0
<i>Range of tasks</i>		
Increased	165	30.0
Decreased	182	33.1
No change	203	36.9

	No./%
Computerization	322/58.5
Line automation	21/3.8
New machinery/equipment	204/37.1
Fiber optics	1/0.2
New formula for production	2/0.4
Total	550/100

On the other hand, the potential effects of new technology cannot be ignored. Over 33% of the firms reported a decrease in range of tasks as a result of new technology. This can create downward pressure on the wages of affected workers, or eventually make them redundant.

The data do not establish a correlation between specialized skills and higher productivity or quality. On the contrary, only a very small share of firms associates non-regular workers with higher productivity and quality. Accordingly, the data do not validate the common argument that labor flexibility through hiring of non-regular workers increases productivity.

Cost flexibility is indicated from the survey results relating to wage and non-wage benefits. Forty-three percent of firms find agency hiring to be less costly. Less costs is also a major reason why firms resort to part-time and casual employment.

C. What Non-Regular Workers Get

In a preponderance of firms, non-regular workers are paid lower wages than regular workers although they perform the same or similar work. Only 2-5% of firms pay higher. Lower pay is especially noticeable for casual, part-time and contractual workers. As to benefits other than direct wages, non-regular workers typically received lower than regular workers. Only 60% of firms pay their non-regular workers 13th month pay, compared to 92.8% for regular workers, although this benefit is statutory. If at all, non-regular workers also receive lower medical benefits, employment accident and disease benefits, maternity, paternity leave, transport allowance or assistance, and meal allowance or assistance.

TABLE 6. Comparative Rate of Pay Received By Non-Regular Workers and Regular Workers Doing Similar Work for the Period July 1998 to June 2000

Type of Worker	Rates of Pay of Non-Regular to Regular (% to Total Establishments with Non-Regular Workers)			
	Higher	Lower	Same	Not Applicable
Part-time workers	5.3	43.5	24.4	26.7
Casual workers	2.4	54.1	31.3	12.2
Contractual workers	4.6	41.3	33.4	21.8
Agency-Hired workers	3.0	23.6	23.0	50.3

TABLE 7. Comparative Entitlements of Benefits Between Regular and Non-Regular Workers: 2000

Benefits	Regular		Non-Regular	
	No. of Establishments	% to Total Establishments	No. of Establishments	% to Total Establishments
Total	1,208	100.0	757	100.0
Medical benefits	935	77.4	266	35.1
Employment accident and disease benefits	822	68.0	299	39.5
Paid leave	934	77.3	81	10.7
Sick leave	1,009	83.5	124	16.4
Maternity leave	968	80.1	205	27.1
Paternity leave	750	62.1	183	24.2
Pension	278	23.0	18	2.4
Retrenchment benefits	544	45.0	93	12.3
Loan facilities	758	62.7	126	16.6
Transport allowance or assistance	652	54.0	194	25.6
Accommodation allowance or assistance	403	33.4	122	16.1
Meals or meal allowances	643	53.2	214	28.3
13 th month pay	1,121	92.8	456	60.2
Rice subsidy	252	20.9	40	5.3

Non-regular workers have limited employment security and prospects for career growth within the employing establishment. Once their term of employment expires, they are likely to retain their non-regular status or get their services terminated. Only 11% of firms absorbed their non-regular workers for regular, permanent or full-time work. About 36% did not rehire their non-regular workers after expiration of their contracts. Less than one percent employs non-regular workers with the intention of elevating them to regular positions. Close to a quarter reported

TABLE 8. Tenure of Temporary Workers, 2000

Form of temporary work arrangement	No.	%
Short-term, for specific period, with written contract	303	65
Short-term, for specific period, with oral contract	95	20.4
Continuing/casual	51	10.9
No contract	5	0.9
Project-based	4	1.1
Performance-based	3	0.6
Days only	5	1.1
Total	466	100

employing temporary workers either only with oral contract or without any contract at all.

TABLE 9. Change in Status of Non-Regular Workers, 2000

Establishments	Part-time Workers		Temporary Workers		Contractual Workers		Agency-hired Workers	
	No.	%	No.	%	No.	%	No.	%
With new contract for same employment status*	77	58.8	184	39.5	214	54.2	180	60.8
With new contract as regular/Permanent/full-time workers	8	6.1	103	22.1	47	11.9	14	4.7
Without new contract	46	35.1	179	38.4	134	33.9	102	34.5
Total	131	100.0	466	100.0	395	100.0	296	100.0

*as part-time worker, temporary workers, contractual worker or agency-hired worker

D. Core-Periphery Model Appears To Be A Trend

The data suggest that numerical and cost flexibility are the dominant factors that motivate firms to adopt flexible work arrangements. In a significant percentage of cases, non-regular workers perform work which are comparable to, if not the same as, work being performed by regular workers. What emerges is a core of regular workers whose terms and conditions of employment are more secure, and a

peripheral group who do not enjoy the same status or protection although they may be performing the same or comparable work. And this has evolved in spite of the legal rule, derived from the definition of regular employment, that the functions performed by regular and non-regular workers ought to be mutually exclusive.

The trend toward numerical flexibility re-emphasizes the principle that the demand for labor is a derived demand. Product markets, as well as firm-level decisions in the use of other factor inputs, determine the demand for labor. Under the core-periphery model that has emerged, resort to non-regular workers is used to buffer the firm from fluctuations in the product markets, regardless of whether or not such workers perform the same tasks as regular workers. A degree of flexibility in matching labor requirements to product market requirements as well as to other factor prices is desirable. Without this flexibility, firms tend to slow down hiring decisions and to substitute labor for capital. Lack of flexibility also increases the costs of employment termination as the only way out of an employment relationship would then be termination based on authorized cause, under which the employee whose services are terminated will have to be paid separation pay.²¹ As it is, using flexible work arrangements may effectively operate as a less expensive proxy to the authorized causes for termination.

The data also suggests that cost flexibility remains a strong motivation of firms in hiring non-regular workers. Following the core-periphery model, firms resorting to non-regular work generally save on costs by creaming off wage-related and social security benefits from the total compensation of non-regular workers, even if these benefits are statutory entitlements. Non-compliance with statutory entitlements, whether it involves regular and non-regular workers, indicates a strategy of cost

²¹ Article 283, Labor Code.

evasion and is an outright violation of labor standards.²² The data also show that this often leads to low road flexibility where non-regular workers are placed in a more vulnerable situation than regular workers. They generally get lower pay in comparable jobs, they are very likely to be cut first during periods of market volatility and fluctuation, and the temporary nature of their employment restricts their ability to provide for themselves viable means of social protection. It is in this aspect that flexible employment arrangements pose the greatest problem to labor law administration and the greatest threat to industrial and social peace.

II. REPRESENTATION OF NON-REGULAR WORKERS

A. Policy Framework of Representation

The institutional forms of representation are labor-management councils and collective bargaining at the firm level. Outside the firm are tripartism²³ and political participation in its various forms.²⁴ As a matter of State policy, the preferred instrument of representation is unionism.²⁵ Employees have the right to form or join any union of their choice²⁶ on the first day of their employment.²⁷ Bargaining is decentralized. Policy aspires for a united labor movement,²⁸ but in reality the organizing philosophy is pluralistic unionism. Ramos (1989) describes Philippine unionism as dualistic. Representation at the plant level is aimed at directly improving economic benefits, while at the political level it is aimed at improving statutory

²² That firms use flexible employment to evade statutory costs is implied in "Labor Market Flexibilization and Workers' Welfare and Security" (ILS, 1999).

²³ Art. 275, Labor Code. The Philippines also ratified ILO Convention 144 (Tripartite Consultation).

²⁴ The Constitution allows for party-list representation in the House of Representatives. The party can be a labor-based party.

²⁵ Arts. 3 & 211, Labor Code.

²⁶ Art. 243, Labor Code

²⁷ Art. 277 ©, Labor Code.

²⁸ Art. 211, Labor Code.

minimum labor standards or expanding union influence on labor and employment policy.

B. Union Trends

Total employment level rose from 27.888 million in 1997 to 31.553 million as of end of 2003.²⁹ Based on union claims, total union membership in 1997 was 3.789 million, increasing to 3.974 million as of end of 2003.³⁰ On the other hand, actual records show a much lesser number, with total membership at 1.47 million in 2002, 1.517 in 2003, and 1.540 as of June 2004.³¹ The number of workers covered by collective bargaining agreements (CBAs) gives a more accurate insight on union strength (Bitonio 1999) as only members covered by CBAs are obliged to pay union dues, which in turn is the only source of funds to sustain union activities. There were 2,700 registered CBAs with 529,000 covered workers in 2002; 2,842 with 556,000 covered workers in 2003; and 2,874 with 563,000 covered workers as of June 2004.³² However one looks at it, union membership has not kept pace with growth in employment.

C. Membership of non-regular workers in unions

Twenty-two percent of the firms surveyed had unions. Although 78.5% of these unions had non-regular workers as members with ten unions made up entirely of non-regular workers, union membership of non-regular workers is still relatively thin. Only 84 or 27.5% of firms indicated that their unions

²⁹ Current Labor and Employment Statistics, 2nd Q, 2004.

³⁰ Philippine Statistical Yearbook 2004, 11-34. Unions are required to report their total membership with the DOLE's Bureau of Labor Relations. However, studies suggest that unions are prone to double counting (i.e., in the case of affiliate unions) and some tend to bloat their numbers for political purposes, i.e., to create impressions of dominance (Bitonio 2000).

³¹ Current Labor and Employment Statistics, 2nd Q, 2004.

have at least 1-9% non-regular workers in their membership. The survey also shows that among the establishments with unions, the order of preference is agency hiring (39.8%), casual work (26.5%), contractual work (18.3%) and part-time work (16.5%).

TABLE 10. Representation of Non-Regular Workers in Unions: 2000

Indicator	Year 2000
Total Establishments	1,208
Establishments with Unions % to Total Establishments	275 22.8%
Total Number of Unions	317
Unions with Non-Regular Workers as Members % to Total Unions	249 78.5%

TABLE 11. Representation of Non-Regular Workers in Unions by Average Percentage of Union Membership : 2000

Average Percentage of Non-Regular Workers Membership	Number of Unions	% to Total Number of Unions
Total	317	100.0
None	170	53.6
1-25 %	98	30.9
26-50 %	17	5.4
51-75 %	8	2.5
76-100%	13	4.1
Not stated	11	3.5

TABLE 12. Non-regular Workers in Union Membership, 2000 (%)

Percentage of Non-Regular Workers in Union Membership	Unions	
	No.	%
0	170	55.5
1-9	84	27.5
10-19	11	3.6
20-29	3	1.0
30-39	11	3.6
40-49	3	1.0
50-59	4	1.3
60-69	4	1.3
70-79	3	1.0
80-89	2	0.7
90-99	1	0.3
100	10 ¹	3.3
Total	306*	100.0

Where non-regular workers are union members, they generally constitute a minority of the membership. The incidence of non-regular work in unionized firms, of itself, raises interesting questions. First, the collective bargaining tradition historically excludes non-regular workers from union membership or membership in the

³² Idem.

bargaining unit.³³ The presence of non-regular workers in unions, as well as the fact that there are unions comprised entirely of non-regular workers, is an interesting departure from this tradition. Second, further inquiry may be made on non-regular and regular workers in the same bargaining unit. The presumption is that they have mutuality of interests, even if non-regular workers may not enjoy the same degree of tenurial security. Could the firm's decision to employ non-regular workers been made independent of the union? Or could this be the union's way of assimilating rather than opposing the employment of non-regular workers?

TABLE 13. Unionization in Establishments Employing Non-regular Workers, 2000

Establishments	All	With unions	
		No.	% to All
Employing part-time workers	109	18	16.5
Employing casual workers	366	97	26.5
Employing contractual workers	333	61	18.3
Employing agency-hired workers	236	94	39.8

Source: 2000 Philippine Labor Flexibility Survey

D. CBA and Statutory Provisions: Applicability to Non-Regular Workers

The survey includes 261 establishments with CBAs. Generally, only regular workers are covered by CBAs. But from a legal standpoint, non-regular workers who are members of the collective bargaining union, or those who are not members but are included in the bargaining unit, should also be covered by CBAs.³⁴ Such workers have a statutory claim to the same benefits enjoyed by union members as well as to be represented by the union.³⁵ That non-regular workers generally receive lower levels of benefits than regular workers suggests that they are extended some but not

³³ In the Philippines, membership in the bargaining unit is based on mutuality of interests, i.e., the members must be performing the same or similar functions in the same line of work.

³⁴ Article 248 (e) of the Philippine Labor Code states that "employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept benefits under the collective agreement." The fee is called agency fee and is a solution to the free rider problem.

³⁵ This is part of the union's duty to bargain collectively in good faith as the sole and exclusive collective bargaining representative of all the employees in the bargaining unit (see Arts. 242 (b), 249 (b), and (c), and 252, Labor Code).

all or are absolutely excluded from such benefits. A non-regular worker who is excluded from the bargaining unit cannot assert, through formal representation channels such as the grievance machinery, a claim for representation and CBA benefits. He or she can only assert a claim on non-discrimination³⁶ by showing that he or she is performing the same or comparable functions as any member of the bargaining unit. But this can only be done by the worker individually, not through union representation.

The most common CBA provisions are identified in Table 15. Wages remain the predominant concern. A majority of the CBAs have dismissal procedures.³⁷ Unionized firms have a lower rate of dismissed non-regular workers (6.5%) than non-unionized firms (8.7%). With respect to retrenchment, non-unionized firms have a lower rate of retrenched non-regular workers at 3.2% as against unionized firms at 5.1% (Table 16). The intuition is that since non-regular workers have short-term contracts, employers will simply wait for the contract to expire rather than initiate

Table 15. Common CBA Provisions, 2000

CBA provisions	Unions Covered	
	No.	% to total
Total	261	100.0
Wage rates	245	93.9
Grievance machinery	160	61.3
Disciplinary actions	153	58.6
Dismissal procedure	137	52.5
Working time	137	52.5
Promotion procedures	102	39.1
Task assignments	84	32.2
Transfer of workers	84	32.2
Benefits	16	6.2
Welfare plan	1	0.4

³⁶ *Idem*. It is unlawful for an employer to discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization.

³⁷ Procedures for dismissal are also covered by statutory standards.

retrenchment proceedings, which may entail more costs and legal risks.³⁸ Noteworthy also is the virtual absence of a welfare plan in the CBAs. For non-regular workers who are more vulnerable to the vagaries of the market and who have less tenurial protection than regular workers, a welfare plan would be most desirable.

TABLE 16. Retrenchment and Dismissal of Non-Regular Workers In Establishments With and Without Unions, 2000

Establishments	With Union		Without Union	
	No.	% to all	No.	% to all
All	275	100.0	933	100.0
With retrenched non-regular workers	14	5.1	30	3.2
With dismissed non-regular workers	18	6.5	81	8.7

The CBAs surveyed also have provisions on working time, task assignments and transfer of workers. The survey does not indicate the nature of union participation in actually implementing these provisions, particularly in the scheduling of work shifts and assigning tasks, although these may be matters that can be taken up through the grievance machinery or through LMCs where these exist. However, there are statutory provisions which can be used by both regular and non-regular workers to protect their interests regarding dismissals, working time, assignments and transfer. For example, it is unlawful for any employer to discriminate against a woman employee solely on account of her sex,³⁹ or to contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization.⁴⁰ It is also unlawful for a labor organization to cause or to attempt to cause an employer to discriminate

³⁸ Art. 283 of the Labor Code provides for the authorized causes of termination of employment. Authorized causes are economic causes, including retrenchment. In case of retrenchment, the employer must provide at least one month prior notice and pay separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher.

³⁹ Art. 135, Labor Code.

⁴⁰ Art. 248 ©, Labor Code. This is classified as an unfair labor practice.

against an employee with respect to whom membership in such organization has been denied, or to terminate an employee's union membership on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members.⁴¹

E. Voice channels other than collective bargaining

Labor-management cooperation schemes (LMCs). Aside from unions, there are mechanisms whereby workers can be represented in line with the overall policy to promote workers' participation.⁴² LMCs encourage a state of relations where labor and management work jointly to accomplish certain goals through mutually acceptable means of information sharing, discussions, consultation, and negotiations.⁴³ LMCs are present in only 20% of the surveyed firms and come under various nomenclatures. Majority of these are found in large firms, 38 in medium-sized firms, and 64 in small and micro enterprises.⁴⁴ Across industry groups, the highest concentration of establishments with LMCs is in manufacturing.

TABLE 17. Types of LMCs in Establishments, 2000

Type of LMC	No.	%
Labor-management discussion group	198	82.20
Quality Circle	38	15.80
Productivity and employee welfare program	2	1.00
Cooperative	2	1.00
Grievance committee	1	0.04
Total	241	100.4

TABLE 18. Establishments with LMCs By Industry, 2000

Industry	All Establishments	With LMC	
		No.	% to all
Manufacturing	544	141	25.9
Construction	112	13	11.6
Wholesale, retail & trade	287	40	13.9
Transport, storage & communications	103	22	21.4
Financial and business services	16	25	15.4

While LMCs exist in organized and unorganized firms, in unionized firms they are traditionally seen to complement collective bargaining, not to reallocate power or

⁴¹ Art. 249 (b), Labor Code. This is also classified as an unfair labor practice.

⁴² Art. XIII, Sec. 3, Philippine Constitution.

⁴³ NCMB Primer, n.d.

⁴⁴ Based on employment size of the surveyed establishments.

redistribute gains. Their primary function is to improve the work process, leading to improvements in productivity, occupational safety and health, quality of work life, and product quality. However, there are instances where the subject matter of CBAs and LMCs may overlap (Table 19). Some unions consider the overlapping as a threat to unionism, and LMCs in general as an instrument of union avoidance. Nothing in the survey, however, constitutes proof that there is a negative correlation between CBAs and LMCs. In some cases, LMCs may lead to the formation of a union; on the other hand, some firms may have both a CBA and an LMC.

TABLE 19. Issues Covered by LMCs in Establishments Employing Non-Regular Workers

Issues Covered by LMCs	Employing Part-time Workers		Employing Temporary Workers		Employing Contractual Workers		Employing Agency-hired Workers	
	No.	%	No.	%	No.	%	No.	%
Wages	4	23.5	20	22.0	17	23.0	7	20.5
Benefits	5	29.4	11	12.1	8	10.8	11	13.3
Productivity	5	29.4	30	33.0	28	37.8	26	31.3
Work organization	1	5.9	8	8.8	6	8.1	6	7.2
Welfare	2	11.8	20	22.0	15	20.3	20	24.1
All issues	0	0.0	2	2.2	0	0.0	3	3.6
Total	17	100.0	91	100.0	74	100.0	73	100.0

Workers' Associations. Under the Labor Code, ambulant, intermittent, rural and self-employed workers may form workers' associations for mutual aid and protection or for any purpose other than collective bargaining. The definition is broad such that a workers' association may include union or non-union organizations. This form of organization may also cater to those workers under flexible employment arrangements or whose type of employment is not firm-based and whose interests may vary with those hired as regular workers. Workers' associations may also accept members who are not currently employed. Conversely, loss of employment does not necessarily lead to loss of membership.

Firm-based workers' associations are present only in 18.3% of all the firms surveyed. They operate mostly in the transport, storage and communications sector (24.3%). Manufacturing has 20.2%, financial and business services 18.5%, construction 14.3%, and wholesale, retail and trade 13.9%. The types of workers' associations are varied and may include a cooperative, employee's association, socio-cultural organization, sports club, LMC, employee-employers' association, health and safety committee, counsel officer's group.

TABLE 20. Types of Workers' Associations in Establishments, 2000

Type of Workers' Association	No.	%
Cooperative	140	63.30
Employees' association	43	19.50
Socio-cultural organizations	12	5.40
Sports club	12	5.40
LMC	6	2.70
Other committees	2	1.00
Employee-employers' association	2	1.00
Health and safety committee	1	0.05
Counsel officers' group	1	0.05
No answer	2	1.00
Total	221	100.0

Non-Regular Workers' Interests in LMCs and Workers' Associations. There is a very thin presence of LMCs and workers' associations in firms with non-regular workers. In firms where these exist, there is no indication on the extent of participation of non-regular workers.

TABLE 21. Establishments Employing Non-Regular Workers with Unions, LMCs and Workers' Associations, 2000

Establishments	All	With unions		With LMC		With Workers' Association	
		No.	% to all	No.	% to all	No.	% to all
Employing part-time workers	109	18	16.5	17	15.6	17	15.6
Employing casual workers	366	97	26.5	79	21.6	91	24.9
Employing contractual workers	333	61	18.3	77	23.1	74	22.2
Employing agency-hired workers	236	94	39.8	66	28.0	83	35.2

F. Gender dimension of representation

The labor force participation rate has been increasing starting from 59.6% in 1980 to a peak of 67.4% in 2002. A significant reason is the increased participation rate of women, from 41.6% in 1980 as compared to 77.9% for men, to a peak of 52.8% in 2002 as compared to 82% for men.⁴⁵ The PLFS shows an increase in the number of firms employing female non-regular workers from 1998 to 2000, most notably casual and part-time workers.

TABLE 22. Number of Establishments Employing Female Non-Regular Workers By Type of Workers: 1998 and 2000

Type of Workers	1998		2000	
	No.	% to Total	No.	% to Total
Total (With Female Workers)	1,106	100.0	1,173	100.0
Part-time Workers	46	4.2	60	5.1
Casual Workers	178	16.1	244	20.8
Contractual Workers	147	13.3	189	16.1
Agency-Hired Workers	74	6.7	110	9.4

By employment categories, the gender differential is widest in firms employing agency-hired workers (49.6%). Among contractual workers, the differential is at 33%. Firms employing casual workers have the narrowest differential at 17.2%. By industry groups, there is an apparently wide gender differential in construction firms employing contractual workers where only three women for every ten men are employed (Table 23).

While there are still more firms employing male non-regular workers than female workers, further inquiry is needed to determine whether there exists gender discrimination that is directly attributable to the employment of non-regular workers.

⁴⁵ 2003 Yearbook of Employment Statistics.

It appears that the differentials mirror the overall gender differentials in the labor force participation rate.⁴⁶ Such differentials may be due more to embedded structural causes than the use of flexible employment practices. Further, the wide differentials among contractual workers in construction is mainly due to the inherent physical requirements of jobs like carpentry and masonry, which favor employing men over women.

TABLE 23. Percentage of Establishments Employing Non-Regular Workers, By Type of Worker, By Sex, By Industry, 2000

Industry	Female Part-time Workers	Male Part-time Workers	Gap	Female Casual Workers	Male Casual Workers	Gap	Female Contractual Workers	Male Contractual Workers	Gap	Female Agency-hired Workers	Male Agency-hired Workers	Gap
	% to Total	% to Total		% to Total	% to Total		% to Total	% to Total		% to Total	% to Total	
Manufacturing	53.4	77.6	24.2	68.7	86.7	18.0	72.6	86.3	13.7	47.8	94.8	47.0
Construction	55.6	77.8	22.2	36	80.0	44.0	31.1	100.0	68.9	55.6	100.0	44.4
Wholesale, retail & trade	52.2	78.3	52.2	73.8	79.8	6.0	50.9	84.9	34.0	55.0	96.7	41.7
Transport, storage & communications	40.0	80.0	40.0	59.4	84.4	25.0	42.3	96.2	53.9	30.0	95.0	65.0
Financial, business & services	71.4	92.9	21.5	66.7	80.0	13.3	64	85.3	21.3	34.4	100.0	65.6

Compared to the gender differentials in labor force participation rate, women have a disproportionately small presence in unions, accounting for only 18% of the total union membership.⁴⁷ About 21.8% of unions have no female members. Close to 40% do not have female officials. Only 11.4% have female union presidents and only 16.6% have female union vice-presidents. It is notable, though, that in 24% of unions with non-regular workers, women constitute a majority of the membership. A

⁴⁶ The labor force participation rate for women was 49.1% in 1998, 50.1% in 1999, and 48.5% in 2000 (2003 Yearbook of Employment Statistics).

⁴⁷ Bureau of Labor and Employment Statistics, n.d.

very low proportion of CBAs have family-friendly and gender equality provisions. In addition, only one out of 261 CBAs has a provision against sexual harassment.

**TABLE 14. Representation of Female Workers in Unions
by Average Percentage of Female Membership : 2000**

Average Percentage of Female Workers Membership	Number of Unions	% to Total Number of Unions
Total	317	100.0
None	68	21.5
1-25 %	110	34.7
26-50 %	57	18.0
51-75 %	38	12.0
76-100%	39	12.3
Not stated	5	1.6

Note: No available data on the representation of non-regular female workers in unions.

TABLE 24. CBA Provision on Women Issues, 2000

CBA provisions	Unions Covered	
	No.	% to total
Total	261.0	100.0
Family-friendly provisions	65.0	24.9
Gender equality	46.0	17.6
Sexual harassment	1.0	0.4

III. CONCLUSIONS AND POLICY OPTIONS

A. General Conclusions

The general conclusions that can be drawn from the data, statistics and legal norms are the following:

First, policy adjustments in 1997 assumed that more flexibility could generate more jobs. The experience shows that resort to non-regular work increased but this

had no correlative impact, positively or negatively, on net employment growth. A similar conclusion can be drawn between flexibility and productivity.

Second, numerical and cost flexibility are the primary drivers in the adoption of flexibility measures. As a result, the core-periphery model appears to be a dominant characteristic of flexible employment practices in the Philippines.

Third, a negative correlation is suggested between flexible employment and security and quality of employment. The survey does not affirm the view that flexible employment can be a way forward to more regular forms of employment. Likewise, no inference can be made that non-regular workers have the opportunity to expand their skills sets from their experience in non-regular work.

Fourth, given declining union membership and CBA coverage, regular and non-regular workers alike have a low level of representation security.⁴⁸ Policy and law does not discriminate the representation rights between regular and non-regular workers⁴⁹ but a negative correlation is also suggested between flexible employment and workers' representation. While there are unions consisting partially or wholly of non-regular workers, the prevailing situation is still that non-regular workers have less effective representation rights than regular workers.

Fifth, whereas it has been claimed that flexible work is synonymous with the "feminization of labor" (Rubery and Fagan 1994:140), firms still hire more male than female non-regular workers. Male and female workers are similarly exposed to less secure jobs.

B. Opportunities and Policy Options

⁴⁸ Standing argues that representation is especially effective if it represents the interests of workers in vulnerable positions, and if the parties in collective bargaining have mutual strength. Voice regulation results in representation security if it is distributive and representative.

⁴⁹ Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered an employee for purposes of membership in any labor union (*Idem*).

Employment creation with a view toward ensuring fair labor standards and effective workers' representation remain to be legitimate policy objectives. How to square these objectives with flexible work is the policy question. Should the State liberalize or restrict non-regular work? What form of representation can be effective, especially given the perceived weakening of unions and collective bargaining?

Current labor policy is ambivalent on flexible employment. DOLE Department Order No. 10, series of 1997 expressly recognized flexibility because of its employment generating potentials. But Department Order No. 18, series of 2002, superseded it, deleting any reference to flexibility. The new Medium Term Philippine Development Plan (MTPDP 2004-2010) again generally recognizes the need for some flexibility. It frames the issue thus: "To support the efforts in job creation, the government shall issue administrative guidelines and propose legislative amendments to the Labor Code to recognize flexible work arrangements (e.g., subcontracting, flexi-work, flexi-wage especially in business process outsourcing and cooperatives). However, this shall take into consideration the promotion of decent work and respect for core labor standards."⁵⁰

With flexibility again clearly a part of the policy agenda, debates on how to strike a balance between flexibility and protection cannot miss re-examining two foundational principles of employment relations in the Philippines. One is security of tenure as protected by the provisions on regular employment, classification of employment, and rules on employment termination. The other is industrial democracy, in which workers' participation is supposed to be exercised most effectively through plant-level unionism and collective bargaining premised on the existence of an employee-employer relationship.

⁵⁰ Medium Term Philippine Development Plan 2004-2010, Chapter 9, pp 114.

With respect to security of tenure, the key themes of social policy debates can be as follows:

First is the possibility of selectively assimilating the core-periphery model into the legal system. The mutual exclusivity between regular and non-regular work under the Labor Code makes it legally impossible to have regulars and non-regulars performing the same functions, even if the signals from product markets clearly make this a necessity. The dilemma here is how to assimilate without raising issues of unequal treatment or creating prohibited acts of discrimination.

Second, promoting voluntary arrangements between employers and workers should be a linchpin of a flexible employment policy. Voluntary arrangements can focus on working time and pay flexibility⁵¹ in order to free up rigidities associated with a system which measures working time by the day and not by the hours, and which contains across-the-board prohibitions against non-diminution of benefits⁵² (i.e., the issue of stickiness of wages) and offsetting undertime with overtime.⁵³

Third, the frequent work-to-work transitions and corresponding unemployment spells under flexible arrangements create a host of problems that need to be addressed. For instance, a key challenge is how to smooth out consumption and the costs of transition during unemployment spells. Likewise, disruptions in a worker's income flow tend to undermine the design of the welfare and social protection system. As it is, financing the costs of welfare and social protection are currently internalized into the wage system, i.e., provisions on mandatory deductions and regular remittances. If remittances are not made or are irregular, as what has been

⁵¹ A positive step in this direction is DOLE Advisory on Compressed Work Week, December 2, 2004. Under this issuance, employers and workers can agree on working time and pay flexibility provided safety and health concerns are not compromised.

⁵² Art. 100, Labor Code.

⁵³ Art. 88, Labor Code.

indicated in non-regular work arrangements, the worker's access to welfare and social protection programs will be constrained.

Fourth, flexible employments arrangements can be a human resource development strategy. Non-regular workers are assumed to acquire or improve their skills in every employment but there is currently no way by which this can be accounted for, except by the employment certification from employers. What is needed is a system of skills testing or certification that will objectively measure whether or not a worker has gained incremental skills.

With respect to workers' representation, public policy should try to break out of conventional arguments that flexible employment and increasing informalization of labor are the key deterrents to organizing.⁵⁴ To the extent that these assume union institutions and structures to remain the same, they can lead to policy paralysis and will only hinder unions from developing their transformative capacity.

In recent years, channels of representation other than collective bargaining have emerged, both within and outside the workplace. Policy action in 1997 also gave legal recognition to a new form of organizing, i. e., workers' association. While unions still claim to be the leading voice in these channels, multi-sectoral coalitions, pressure groups founded on tactical alliances, and civil society groups have increasingly taken on workers' issues as well.

As a result, two important trends are emerging. One is replacement. There is evidence that unions are being crowded out as the voice of workers, and that the efficacy of enterprise collective bargaining as a vehicle for social change is becoming increasingly limited. The other is that overlaps between channels of representation obviously exist. There are still many organizations, unions included, which limit

themselves to representation of their own members. But there are also organizations which claim to represent workers at large, most often operating through networks and are thus able to reach a wider and deeper social base. Two streams of representation have thus evolved. One is membership-based direct representation and the other is indirect representation whereby organizations take on social issues that are sought to be resolved outside the firm, resulting in proxy or constructive representation even for non-members.⁵⁵

These multiple forms and channels of representation should be seen as mutually reinforcing. Policy giving workers a wide berth in organizing and maintaining membership, especially outside the paradigm of an employee-employer relationship, could be beneficial to non-regular workers. Equally important is the development of institutions supportive of social dialogue and capable of intermediating social tensions and differences that are rooted in the employment relationship, but whose effects tend to spill over to society in general.

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⁵⁴ It has been argued that the growing population of non-regular labor entrants with intermittent and mobile work arrangements deters union organizing (Standing 1999). In addition, more than half of the total employed in the labor market is found in the informal sector, estimated to reach five million Filipinos, mostly women (Ofreneo 2002).

⁵⁵ A typical example of this second type of representation is minimum wage-fixing. Union representatives form part of the regional tripartite wage boards; the wage orders issued by the boards are applicable to all workers within the region, whether regular or non-regular and regardless of union membership.

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