INDUSTRIAL RELATIONS RESEARCH ASSOCIATION SERIES

Nonstandard Work

The Nature and Challenges of Changing Employment Arrangements

Françoise Carré, Marianne A. Ferber, Lonnie Golden, and
Stephen A. Herzenberg, Editors

CHAPTER 10

Historical Perspectives on Representing Nonstandard Workers

DOROTHY SUE COBBLE
Rutgers University

LEAH F. VOSKO
McMaster University

"The reports of my death are greatly exaggerated," Mark Twain once quipped. So too are the reports of the rise of a new contingent workforce. Contingent work may be increasing if the standard of comparison is the work world of the decades following World War II. But a comparison with the pre–New Deal era reveals as much continuity as discontinuity. The majority of jobs before the New Deal exhibited many of the characteristics now associated with contingent and other nonstandard employment today: part-time and temporary work, lack of guaranteed income and benefits, and a loose and/or triangulated relationship between employer and employee. In short, contingent and other nonstandard work was as much the norm as the exception before the New Deal (Morse 1969).

Even if the historical perspective is short-term—that is, in relation to the golden or "wonder years"[1] after World War II—contingency is a *new* phenomenon primarily for white, middle-aged male workers. This group, whether unionized blue-collar workers or white-collar middle managers, now feels rising anxiety about job security. Further, although average U.S. job tenure (length of time with one employer) has changed little in the last few decades (falling slightly for men and actually *increasing* for women), unionized and white-collar male workers have experienced layoffs in ever-increasing numbers (Medoff 1993; Cappelli et al. 1997). In contrast, women and nonwhite men have always faced a labor market dominated by contingent jobs (Morse 1969; Kessler-Harris 1982).

The real change today is the greater job insecurity experienced by unionized blue-collar workers and white-collar middle managers, and the greater frequency with which these privileged segments of the labor

force experience other features of the nonstandard work arrangement (low wages, lack of benefits, part-time employment, agency and contract labor). Granted, those formerly in long-term, stable employment relationships are generally the elite of the nonstandard workforce, receiving the highest pay and best benefits, and women and nonwhite men continue to be disproportionately represented among nonstandard workers (Kalleberg et al. 1997). Nevertheless, this "feminization of employment relationships"—a phenomenon whereby a growing proportion of work arrangements carries wages, benefits, and terms and conditions of employment resembling those historically associated with women and other marginalized workers (Vosko 2000a)—is an important impetus for the new attention to nonstandard work.

Moreover, contingency and the poor working conditions generally associated with nonstandard employment have become increasing sources of public concern because the conventional gender division of labor has, at least to some extent, been disrupted. A growing misfit exists between so-called secondary workers and the secondary jobs that these workers occupy. Of course, most workers relegated to the low-wage, dead-end, and insecure world of peripheral employment never took these jobs by preference. Yet, particularly in the postwar decades, as white, married, middle-class women flooded the labor market, the slotting of secondary workers into secondary jobs was perceived and experienced as less of a social problem than it is today. Many (though not all) of the new middle-class, married, female workforce saw themselves as secondary wage earners, and many gained security, status, and fulfillment as much through family and community as through paid employment. Today, women are still the majority of nonstandard workers (Spalter-Roth and Hartmann 1998), but increasingly they resist placement in secondary jobs. Like men, most women seek jobs that offer career advancement, benefits, and an income that will allow them to support themselves and their families.

A historical perspective thus suggests that nonstandard work is not atypical or new. Including gender as a category in the analysis also helps explain the recent emergence of contingency as a research focus and a social problem. In this article, we rely on a historical perspective not only to better understand the ways in which work is changing and for whom but also to learn more about how workers organized to improve nonstandard jobs. Our assumption is that working conditions can be improved through state intervention and regulation but that workers through their own self-organization have done as much to advance their interests as has the regulatory apparatus of the state.

In the following sections, we first detail the changes in the work world that we see as particularly troubling because of their correlation with declining income, working conditions, and worker representation. Here our emphasis is not on job insecurity per se but on other aspects of nonstandard work arrangements: the increasing looseness or ambiguity of the employer–employee relationship, the unraveling of the very notion of *employee* and *employer,* and the heightened mobility of workers. We then turn to the past to explore how workers themselves addressed these problematic aspects of nonstandard work. First, we look at occupational unionism, the most common form of worker representation in the pre–New Deal era. How effective was it in representing nonstandard workers? How can we account for its decline over the course of the 20th century? Second, we explore how unions resolved the problem of representing those who were neither "employees" nor "employers." Here, the focus is on contract and subcontracted workers in manufacturing trades as well as the owner-operators in the transportation industry who formed the bulk of membership in the early International Brotherhood of Teamsters (IBT). We see these case studies as contributing to the creation of new and viable forms of collective representation for today's workforce, as well as helping to determine the proper mix of regulatory and voluntary solutions appropriate in today's economy.

Current Workforce Transformations

If recent employment trends continue, a large proportion of the 21st-century workforce will move from job site to job site, and their loyalties will be more to other members of their occupation or profession than to a single company or industry. These mobile workers will derive their compensation and security more from their access to multiple employment opportunities than from their prospects at a single firm. Although such a mobile workforce is not new and may not be growing as fast as many proclaim, it will be a critical component of the 21st-century work world and, as such, deserves more attention than it has received heretofore.

An even more fundamental challenge to current worker representational practices and employment policy is not mobility per se but the erosion of a clear demarcation between the categories of "employee" and "employer." Increasingly, the lines between employee and employer are blurred as less work is organized on older Taylorist[2] principles of a dichotomous divide between the functions of workers and managers. The growth of knowledge and interactive service work fuels this erosion,

because relational and mental labor are not and never were amenable to the Taylorist principles of microsupervision and centralized hierarchical command (Zuboff 1988; Benson 1986). Moreover, many manufacturing work systems have reorganized along post-Taylorist lines in the face of the imperatives of new flexible technology and the global marketplace (Piore and Sabel 1984; Appelbaum and Batt 1994).[3]

The decentralization of business and the breakdown of once dominant vertically integrated bureaucratic structures also are undermining the traditional roles of employee and employer (Chandler 1977; Cappelli 1995). Like the shift away from Taylorist work organization, decentralization means that workers take on more managerial responsibilities and develop a looser or more tenuous (even virtual) relationship to their employer. Many work in teams that are self-regulating and formed around particular projects or tasks (Jackson 1999; Rubenstein, Bennett, and Kochan 1993). Many, both professional and nonprofessional, are direct contract workers categorized as self-employed or independent contractors. They may also work for a temporary agency, a labor contractor, or a contracting firm, thus existing in a triangulated employment relationship rather than a dualistic one (Vosko 1997). Many arguably should nonetheless be classified as employees (Linder 1992; Dunlop 1994) rather than as independent contractors, managers, or self-employed. Others, however, are indeed no longer employees in the traditional sense of the word. They control their own work processes. They are paid a price for a labor service or product rather than a wage for their labor. They may own their own equipment or business. Some may hire and supervise others. The issue, then, is not simply ensuring that those who work as traditional employees are classified appropriately under the law. Rather, the current transformations open other more fundamental questions: Who should be considered an employee? Who should have state-guaranteed rights to organize collectively? How should the labor movement change to accommodate the new realities of nonstandard work? It is with these questions in mind that we turn to the past.

Occupational Unionism: Representing the Mobile Workforce

The majority of workers who organized successfully before the New Deal practiced a very different form of unionism than the one that became dominant with the rise of the Congress of Industrial Organizations (CIO). Virtually every trade that successfully organized workers before the Rooseveltian reforms relied on some elements of occupational unionism. Occupational unionism is not work site or firm based,

nor are wages, benefits, and job security dependent on organizing workers employed by an individual firm. Rather, these unionists organized the labor supply for an occupation (Cobble 1991a, 1994).

Classic craft unionists such as printers and construction workers, as well as other craft-identified workers such as waiters and waitresses, bartenders, teamsters, and garment workers, all recruited and gained recognition on an occupational basis. Even longshoremen, agricultural workers, and other casual laborers relied on aspects of occupational unionism. Benefits and union membership were portable, and in the rhetoric of human resource professionals, occupational unions offered employment or career security rather than job security. The issue was not fighting for tenure at an individual work site but increasing the overall supply of good, well-paying jobs and providing workers with the skills to perform those jobs (Cobble 1991a, 1994).

Occupational unions strove for control over hiring through closed shops, hiring halls, and worker-run employment bureaus; they also provided training—what would now be seen as professional development—and job placement (Cobble 1991a). The union took over the function of labor recruitment and deployment. In construction and agriculture, for example, the union-operated hiring hall was an alternative to the labor contractor system (Milkman and Wong 2000; Edid 1994). In maritime work, the hiring hall replaced the "shape-up" system of job procurement, in which foremen chose day laborers from among the unemployed gathered on the docks (Nelson 1988).

Occupational unions took over other management functions as well. Many embraced peer discipline or self-management instead of the industrial union norm common by the 1930s and 1940s, in which the employer disciplines and the union grieves. They preferred to write their own workplace rules and regulations rather than react to those created by management. Together, workers decided upon acceptable performance standards, how to divide up work time, and many other work organization and quality questions. What we now think of as management rights or personnel matters were subject to peer control; unions saw this approach as exercising their craft prerogatives—not unlike what persists today among some professional groups that determine and monitor the standards for their profession.

Occupational unionism flourished because it met the needs of workers and employers outside of mass-production settings. In local labor markets populated by numerous small employers, the unionization of construction workers, garment workers, restaurant employees, and teamsters brought

stability and predictability as well as inhibited cutthroat competition. Employers gained a steady supply of skilled, responsible labor: an outside agency (the union) ensured the competence and job performance of the workers who were its members. In many cases, the union took responsibility for expanding the customer base for unionized enterprises. Garment unions, for example, encouraged the purchase of goods made with the union label; the hotel and restaurant unions urged the patronage of retail establishments that displayed the union house card in their window (Fraser 1991; Cobble 1991a). Further, a floor for minimum wages and acceptable working conditions was established. Workers gained not long-term job tenure but the opportunity to invest in their own "human capital" through training and experience at a variety of work sites. As long as employers in the unionized sector remained competitive—a goal to which both labor and management were committed—unionized workers gained real employment security because the union helped make them more employable individually and helped ensure a supply of high-wage, "good" jobs. In contrast to industrial unionism, occupational unions never developed rigid seniority rules at individual work sites; they were committed to maintaining employee productivity, providing high-quality service and production, and ensuring the viability of unionized firms (Cobble 1991a, 1994).

With the increasing tendency in recent years for workers once again to identify primarily with their occupation rather than their employer, a unionism emphasizing cross-firm structures and occupational identity appears viable once again. A union that provides portable benefits and training, emphasizes occupational identity, and shoulders responsibility for upgrading and monitoring occupational standards would appeal to today's new workforce. Many nonprofessional as well as professional employees would welcome membership in an organization that would enhance their job security while also assisting them in improving the image of their occupation and in performing their work to the best of their abilities (Cobble 1991b).

Worker-run employment agencies could presumably offer important services to today's mobile workforce—high-quality benefits and higher wages than those offered by temporary agencies run for profit—and do so without penalizing workforce intermittence. Many workers desire mobility among employers, a variety of work experiences, and flexible scheduling. Well-run agencies could provide such job variety and flexibility. Finally, reviving hiring halls would help reverse the "re-casualization" of work that is occurring in such sectors as construction, agriculture, and maritime (Milkman and Wong 2000; Edid 1994).[4]

Yet few of the practices once common among occupational unionists can be easily achieved or sustained today. How can this be explained? Occupational unionism declined dramatically in the postwar era as unions embraced the industrial model, one designed to fit the realities of factory work and large bureaucratic workplaces. Occupational practices such as peer management or union control over training, benefits, and job referral fell into disfavor and were discarded.

Legislative and legal decisions also hampered the ability of occupational unionism to function effectively. Ironically, the industrial union paradigm in labor law spread in the postwar era, even as the number of workers for whom it was appropriate declined. Closed-shop, top-down organizing, secondary boycotts, the removal of members from the job for noncompliance with union bylaws and work rules, and union membership for supervisors and other managerial workers became illegal. Many of these practices were banned in 1947 when the Taft-Hartley Amendments to the National Labor Relations Act (NLRA) were passed over Truman's veto. Additional restrictions came into play in the 1950s as smaller establishments came under the interstate commerce provision of the NLRA and Congress passed the 1959 Landrum-Griffin Amendments. Unions lost their ability to organize new shops, to enforce current bargaining agreements, to maintain multi-employer bargaining structures, to set entrance requirements for the trade, to oversee job performance, and to punish recalcitrant members (Cobble 1991a, 1991b, 1994).

By the 1960s, occupational unionism was but a shadow of its former robust self. Only the building and construction trades (which obtained special legislative language exempting them from some of the new legal restrictions on unions) along with certain highly specialized professional crafts (such as the performing arts) retained a degree of power and influence (Mills 1980; Gray and Seeber 1996). And, in the 1970s and 1980s, even those few remaining occupational union outposts reeled under the continuing assault of the National Labor Relations Board (NLRB) and court rulings that appeared blind to the needs of workers outside the standard employment relationship (Grebelsky 1999).

A fuller account of the institutional and policy reforms that would allow occupational unionism once again to flourish is provided elsewhere (Cobble 1994, 1997). Suffice it to say here that a new legal framework—albeit one based on fundamentally different premises and norms than those derived from the standard employment arrangements typical of the post-WWII decades—is essential for the organization of a mobile workforce. Mobile workers, whether full- or part-time, do not

stay with one employer long enough to utilize the conventional election procedures associated with NLRB work-site-based organizing. Employees at small, individual work sites have minimal economic leverage against a multinational corporate employer or a chain-style enterprise. Decentralized, work-site-based bargaining also is simply too labor intensive: consider the thousands of small restaurants or retail establishments in even one metropolitan area. Therefore, marketwide, multi-employer bargaining needs to be encouraged (Fudge 1993; Cobble 1994).

Of equal importance, if a mobile workforce is to have effective representational rights, unions must once again have the ability to act as professional organizations do: to set performance standards and to enforce them by removing members from an individual work site or even from employment eligibility. Further, they must be able to exert many of the economic pressures on employers that were once legal. The millions of nonstandard workers who successfully organized before the 1950s relied on mass picketing, recognitional picketing, secondary boycotts, "hot cargo" agreements (assurances from employers that they will not handle or use the products of nonunion or substandard employers), and prehire agreements (contracts covering future as well as current employees)—all tactics now illegal under current labor law (Cobble 1991a, 1994; Gordon 1999).

Will the Real Worker Please Stand Up?

Today, close to one third of private-sector workers are no longer defined as employees under the NLRA, and the number of so-called nonemployees is growing every day (Cobble 1994, Table 20.1: 290). An old episode of the *Seinfeld* TV series makes the point well. Elaine is telling Jerry that she's just been made an associate at the publishing house where she works. At which point, the waitress serving them coffee pipes in with, "Oh. So have I." In the following section of this paper, we return to an earlier world in which associates were common. How did unions draw membership lines before the world of dichotomous, rigid demarcations between employees and employers more fully emerged? Also, what implications does this history have for a current reform agenda that would meet the needs of nonstandard workers?

First, we turn to the 19th-century manufacturing trades and look at the ways in which unions addressed the contract labor system that was so ubiquitous in the factory before the triumph of bureaucratic mass production in the early 20th century. Second, we move forward in time and follow the debate among the teamsters over where the boundaries

of union membership should be. What characteristics distinguished workers from entrepreneurs and employers? In an era devoid of extensive federal regulations delimiting who and how they could organize, workers themselves debated the meanings of these terms and drew their own lines of eligibility.

Unions and the Contracting System in Manufacturing

Nineteenth-century manufacturing was largely dependent on a nonbureaucratic, loosely coupled system of production that utilized skilled craft workers and their helpers (Montgomery 1979; Nelson 1995; Clawson 1980). Not only did a substantial number of workers contract for the production of a specific product rather than sell their labor by the hour or the day but many skilled craftspeople hired and supervised their own helpers and moved with their team from shop to shop. This system varied enormously depending on, among other factors, the nature of the industry, the degree of unionization, and management's competitive strategy. Montgomery (1979) offers a view of the highly unionized settings and emphasizes the control that craft workers gained through union work rules and economic action (strikes, picketing, and boycotts). Nelson (1995) focuses more on the unorganized sectors, detailing the rise of the contracting system inside manufacturing, the power of individual contractors in relation to their employees and to owners, and the replacement of the contract system by wage laborers and salaried managers. Scholars disagree over the inevitability of the rise and ultimate dominance of bureaucratic and Taylorist mass production by the early 20th century, but a general consensus exists about the widespread nature of nonbureaucratic work arrangements in 19th-century manufacturing.

How did unions view this contract system? What methods did they use to regulate it and prevent "sweating" (the deterioration of pay and the speedup of the work pace)? Probably the most famous example of a union's attempt to regulate the contract system in the 19th century involved the journeyman molders in the iron foundries. In its founding constitution in the late 1850s, the Iron Molders Union forbade any journeyman molder to hire and pay a "helper" or "berk," unless the helper was the journeyman's own son. Later, the molders limited the kinds of tasks a helper could perform and made it a union rule that any employer who insisted upon journeymen's hiring and paying their own helpers (the berkshire system) would be blacklisted (Ashworth 1915: 67–68). As a self-regulating, voluntaristic organization, the molders relied upon the individual actions of their members to honor the union rules to which

they had each voluntarily agreed. Each member should refuse work where owners insisted upon the berkshire system, and any member who violated these rules would be fined and denied access to union jobs. The struggle against the berkshire system lasted over half a century, involving numerous strikes and lockouts, and gradually the system was eliminated (Ashworth 1915: 68–71; Nelson 1995: 41).

Other unions pursued a different strategy in the face of the contract system. The puddlers and rollers in the iron and steel mills (who formed the largest and most powerful union in the 19th century), as well as other manufacturing trades such as the glassblowers, potters, and blacksmiths, were more amenable to the contract system. Rather than oppose the hiring and payment of helpers by journeymen, they used union rules to ensure that the strong did not exploit the weak by limiting the number of helpers, the work that helpers could do, and the pay that they would receive (Ashworth 1915; Clawson 1980; Montgomery 1979).

The puddlers, for example, favored allowing every man the "privilege of selecting his own assistant without dictation from management." Yet union rules collectively set the wages of helpers at "one-third and five percent" of the payment received by the journeyman (Ashworth 1915: 72–77). According to Montgomery (1979: 11–15), at the Columbia Iron Works in the 1870s, management provided raw materials, a place to work, and sold the finished product. The rest was up to the workers. The iron rollers organized themselves into 12-man teams. They negotiated a rate for each rolling job, and workers decided collectively how payments would be distributed among team members and how the supervisory function would be executed.

As Ashworth (1915) explains, the contract system was not opposed by the puddlers in steel in part because of the nature of the production process.[5] In a capital-intensive industry such as steel, output varied little when additional workers were added or work pace increased. In other words, in part because of the context in which the contract system existed, it did not tend toward sweating (Clawson 1980).

In contrast, the garment industry, in which the contract system also proliferated, was plagued by sweating, partly because of its labor-intensive production processes and partly because it required little capital to enter and thus was highly competitive. Garment unions initially pushed for an end to contracting in the pre-WWI era. But unable to abolish the system, they instead sought government regulation of the wages and hours of contract workers, and they attempted to police the behavior of contractors by putting pressure on the owners. At various historical

junctures, unions had enough economic power to hold owners responsible for the wages, benefits, and working conditions in contractors' shops and to force owners to award contracts only to firms that were unionized (Mazur 1994; Fraser 1991).[6]

The building trades were even more successful in limiting the exploitative aspects of the contract system. Practicing a classic form of occupational unionism, they gained the loyalty of the workforce through control over training and access to good jobs. And, as in the garment trades, they exerted economic pressure on the general contractor to use only unionized contractors or contractors who met certain minimum standards in their employment practices (Mills 1980).

Teamsters and the Debate over Union Membership

Manufacturing unions differed among themselves in their responses to contracting and in their views of whether or not the contracting journeyman should be a member of the union. The majority appears to have thought that taking on certain managerial functions per se did not disqualify one as a worker. What was determining, however, was the number of helpers the journeyman employed, whether the journeyman continued to do the work of the craft, and whether or not the journeyman's managerial function was permanent (Clawson 1980: 86–90).

The same issues surfaced in the transportation industry. The historical records of the IBT provide one of the fuller accounts of the debate over union boundaries and the criteria workers devised to determine who was a worker. The first national organization of team drivers, founded in 1899, affiliated with the American Federation of Labor (AFL). Nevertheless, many of the locals that gathered to form the Team Drivers' International Union (TDIU) had earlier been linked, either formally or informally, with the Knights of Labor, the AFL's rival and the largest labor federation of the 19th century (Witwer 1994). The Knights' admission policy reflected a "producerist" consciousness that was rooted in moral as well as economic views on how economic value was created. All producers of commodities and services were welcome to join, including housewives, small farmers, employers, and others. Only financiers, lawyers, bartenders, large manufacturers, and others deemed nonproducers were excluded (Fink 1983; Cobble 1997).

Not surprisingly, then, the first national organization of teamsters included not only team drivers but also those who owned teams, even when they employed other team drivers. In its constitution, the TDIU opened membership to "any Teamster engaged in driving a truck, wagon,

hack or [other] vehicle, who does not own or operate more than five teams" (TDIU Constitution and Bylaws 1899: 4). This membership clause, which was rooted in an ideology compatible with the principles of the Knights of Labor, allowed two categories of teamsters to coexist in the union, namely, "employee-drivers" (i.e., drivers employed by owner-operators or employers) and "owner-operators" (i.e., drivers owning and operating up to five teams of horses).

This clause became the focus of considerable debate inside the union as early as 1901. A sizable segment of teamsters criticized the union as a "bosses" organization, dominated by "owner-operators" who were really "employers" and not "workers." They feared exploitation of drivers by owner-operators. Their concerns also reflected a growing trend in the early 20th century labor movement to formalize the distinction between workers and employers and to admit only wage earners into union membership. AFL President Samuel Gompers, for example, proclaimed there was "a deep-seated conviction among team drivers that employers of labor have no right to become members of any local union." And, he continued, "that conviction is fully shared by the members of the Executive Council of the AFL as well as the AFL itself." The teamsters' leadership, he added, should "make the TDIU what it was destined to be, that is, an organization of the workers, by the workers, and for the workers" (letter to George Innis, August 28, 1902, in *Proceedings of the Fifth Annual Convention of the TDIU* 1902: 15).

The opposition to including owner-operators in the union boiled over in April 1902, when a group of Chicago teamsters seceded and formed the Teamsters' National Union (TNU). The TNU vehemently objected to the TDIU because it believed that the TDIU's General Executive Board was dominated by men who owned "five to fifteen" teams of horses. Such men, it thought, should more appropriately be grouped with the owners of the means of production (i.e., the capitalist class) and excluded from union membership. The interests of these owner-operators, it argued, inevitably conflicted with the interests of the average driver whose income derived solely from his labor (*Team Drivers' Journal,* March 1902: 1–2, 13).

At the TDIU convention in 1903, a compromise was reached between the two factions, facilitated by the intervention of the AFL. The factions reunited and founded the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America (IBT). Membership in the IBT was now limited to teamsters or helpers who do not "own, operate or control more than one team or vehicle." Moreover, "should any member become an employer [i.e., own more than one team], he shall be given an honorable withdrawal card" (IBT Constitution and Bylaws, October 1, 1903: 4).

In spite of its controversial nature, the constitutional amendment temporarily resolved a complicated question about who did and did not belong to the working class, at least from the perspective of teamsters. The majority of drivers thought that the number of teams one owned was crucial in determining class and craft allegiance because it was the best predictor of how one's time was spent and how one's income was derived (be it from capital—the team, truck, or equipment—or from labor). Those who owned more than one team were indeed employers, but those owning only one team were not—despite their ownership of the means of production and their taking on the employerlike functions of hiring and supervision.[7] The IBT thus rejected a narrow notion of worker that would preclude self-management and supervisory functions, but they also limited the extent to which members could be "capitalists" and employ others. They declared all who spent the majority of their time driving as members of the craft, even if they also derived income from capital and "employed" other team drivers. They recognized that many in their craft were not entirely either employee or employer, and they adjusted their policy accordingly. Like the Knights of Labor, their membership was not restricted to wage earners. Yet unlike the Knights, they had moved beyond the essentially moralistic categories of the 19th-century "producerist" world view.

In the 1920s and 1930s, IBT membership policies came under scrutiny once again. Not only was the issue of operators who owned more than one team reopened, but questions also were raised about union membership for the growing number of self-employed drivers who were engaged in sales ("vender-drivers"). Dan Tobin, the IBT president, initially opposed membership for both. But with the onslaught of the Depression, the rise of cutthroat competition for transport jobs, and the changing nature of delivery work, the IBT adjusted its membership policies dramatically. In 1940, the union amended its constitution to include "vender-drivers" in its membership, defining *vender* as "a person who purchases products and sells the same on his own behalf" (IBT Constitution and Bylaws 1940: 5). In addition, the IBT opened up its membership to drivers who owned *more* than one team or vehicle and to "owner-equipment operators," or drivers who owned other equipment (IBT Constitution and Bylaws 1940: 5).

Tellingly, however, some restrictions were placed on the admission of venders and owners. For example, the IBT president could exclude them if their joining the union were deemed detrimental to the members in existing local unions. Of equal importance, the constitution denied them the right to hold office and to vote on wage and hour scales, unless their local was composed only of owners and venders. In both these instances, the primary concern (like that of the manufacturing workers in the 19th century discussed previously) was to protect the working conditions of those who derived their livelihood *solely* from the sale of their labor.

Nonetheless, these changes amounted to a significant expansion of the definition of membership, which helped the IBT add close to a million new members to its rolls, including many from the groups Tobin had earlier been reluctant to admit (Estey 1976: 10). From the postwar decades forward, the IBT retained its expansive definition of membership[8] and, in the case of trucking, negotiated master freight agreements that covered "regular" employees as well as owner-operators, vender-drivers, and owner-equipment operators.

The IBT, however, was increasingly precluded from acting on its own evolving definition of "community of interest" by changes in the labor law. The 1935 Wagner Act did not define "employee" explicitly or narrowly (Linder 1989: 558), but its passage made the state rather than the unions the principal arbiter of eligibility for collective representation. In 1947, the Taft-Hartley Amendments to the Wagner Act narrowed the definition of "employee" considerably, explicitly excluding "independent contractors" and similar groups from coverage.

The debate over Taft-Hartley in the Republican-dominated Congress revealed the degree to which employment relations were still mired in outmoded common-law assumptions premised on the master–servant relationship. As the 1947 report by the House Committee on Education and Labor put it, "[T]here has always been a difference, and a substantial one, between 'employees' and 'independent contractors.' 'Employees' work for wages and salaries under direct supervision." Those who "decide how their work will be done" or who "undertake to do a job for a price" rather than a wage or who hire others were termed "independent contractors" and hence were not employees (House of Representatives, 80th Cong., 1st sess., 1947, H. Doc. 245, 18, cited in Linder 1989: 567). Congress thus assumed a clearly divided world "in which 'almost everyone' would know an employee when he saw one" (Linder 1989: 566–568).

The courts, for their part, continued to recognize "the existence of gray areas where line-drawing would be difficult," but they gradually also came to embrace a narrower and more dichotomous world view. Increasingly, the courts have relied upon what have been termed the "common-law agency criteria" (which emphasize a worker's lack of control) for determining who is an employee rather than the "economic reality of dependence test" (which emphasizes more the economic character of the employment relationship) (Linder 1989: 567).[9]

The Two-Edged Character of Contracting

What can be learned about present-day approaches to upgrading nonstandard work from these historical accounts of workers' responses to nonstandard work arrangements? These cases suggest that an analysis of the larger context in which contracting arrangements exist is crucial for devising strategic responses. The exploitative potential of contracting appears to be as much a function of the larger technological and market context in which it is situated as it is of the system of contracting per se. For example, in situations where the technological process itself or the nature of the market limited or even precluded speedup, workers did not resist the contract system. They found that it offered as many advantages as disadvantages. They gained some measure of flexibility, autonomy, and opportunity; and through their union rules they were able to inhibit the tendencies in the system toward exploitation, or sweating. In other settings, however, the contract system devolved into sweating, pushed by a labor-intensive production process or the pressures of a competitive market. Here, the "competitive menace," to use John Commons's phrase, was exacerbated by the contract system and could be restrained only through a combination of union power and state regulation (Commons 1909).

Current policy proposals need to recognize the malleable character of contract work: its ability to enhance as well as to degrade working conditions. Workers may use it to reestablish control over production, but employers can use it to bolster their own power. And the balance between exploitation and freedom can shift, depending on the larger context.

In addition, however, the history of workers' responses to contract work suggests that one of the greatest weaknesses in current policy debates over how to improve nonstandard work is the almost exclusive focus on state regulatory solutions. As Eileen Boris (1993) and others have shown, attempts to end sweating (or even to regulate it) solely through government fiat have been failures, particularly in sectors characterized

by labor-intensive, small, mobile enterprises that can easily escape government scrutiny. Thus, it is important to move beyond protective state policies and explore ways that worker self-organization and self-protection can be strengthened. Workers and their voluntary organizations need to be empowered if the potentially exploitative structural imperatives of the contract system are to be avoided.

The Limits of Seeking to Define an Employee

Similarly, the question arises as to what a historical perspective offers those trying to resolve the vexing dilemma of who is an "employee" and who is an "employer." Many policy analysts, including those on the Dunlop Commission, now recommend placing economic realities at the center of any legal definition of "employee" and classifying workers as "employees" if they depend on a single firm or another individual for their livelihood. This standard would displace the current reliance on the control test, in which workers who exercise independent judgment and control are defined as "independent contractors" and hence not "employees."

The history sketched here certainly supports this proposition in many respects. The majority of workers in the 19th and early 20th centuries successfully combined self-management, peer management, and team work with collective representation. Why should worker autonomy and independent judgment be thought incompatible with the right to collective representation? Why should the common law of master and servant dominate employment policy in the very era that celebrates discarding paternalism and loyalty?

Increased reliance on the economic realities test in defining who is an employee is necessary for progress. Yet it is not sufficient. Tests of employee status that focus on economic dependence fail to provide a principled or coherent distinction between independent contractors and employees, and in arguing for this approach, advocates may simply be replacing one narrow test with another (Vosko and Fudge 2000). Another problem with the economic realities test is its reliance on dependency rhetoric. This emphasis is at odds with the historic goals of workers to increase their control and autonomy at work.

In view of the limitations of the control test and the economic realities test, one alternative is to abandon the distinction between independent contractors and employees altogether and to recognize a general category of "contracts for the performance of work," whereby social benefits and labor protections would be provided independent of specific employment relationships. Instead, standard protections would be provided by all contracts in which work is performed (Brooks 1988).

The world of work has changed dramatically since the New Deal era, and the notion of formulating any one criterion that can divide employees from employers is no longer tenable. Policy analysts and the courts need to reject a dichotomous approach to the work world and acknowledge that a growing number of workers are neither fish nor fowl, neither employees nor employers.

Indeed, why should the state limit the rights to representation a priori? The 1994 Dunlop Commission, for example, recommended including supervisors and professionals in NLRA coverage in the private sector but held the line on managers, although managers in the public sector may organize. How can such a distinction be justified, especially in view of the fact that managers are successfully organized throughout Europe? Why not shift the burden of proof and assume that all workers have the right to organize unless it can be shown that their organization will be destructive and harmful to the social good?

Moving Workers to the Center of Reform Strategy

Ultimately, it is important to question the narrow parameters of a policy debate that focuses so exclusively on how the state should determine who qualifies for labor protections rather than on how to return more agency and responsibility for self-definition to workers themselves. Before the New Deal, workers defined their own community of interest and insisted upon their right to set their own criteria for union membership. Workers' loss of their right to self-definition has weakened not only the labor movement but also the efforts of social reformers to achieve a rational system of employment protections.

The historical cases presented here suggest that workers in some ways have been better at facing ambiguity and acknowledging the evolving realities of work than has the state. Nineteenth-century unionists did not insist that only those without capital, power, or autonomy could join their movement; rather, they embraced those who needed or wanted collective representation, including many who would today be labeled managers, contractors, or self-employed and hence denied representational rights. These early unionists acknowledged that many in the labor force had supervisory responsibilities, made a living from profit as well as wages, and saw themselves as "independent." Yet these characteristics did not automatically signal exclusion from the ranks of organized labor.

Today, as the functions of buyer, seller, and producer once more increasingly overlap, we need to be able to acknowledge these multiple identities without losing sight of how to distinguish which of these is the

primary identity in a given context. The key, as the early teamsters argued, is to focus on how the balance is struck between labor and capital. The critical issue, according to the IBT, was not ownership or selling or even economic independence but rather a realistic assessment of where the person's primary allegiance lay: Did their income primarily result from the work they did or from the capital they invested? How was their time spent (both short term and long term)? Was it primarily spent supervising others? Would it remain so in the long run?

Last, the question of who is a capitalist was just as important to workers historically as who is a worker. Today, that question deserves revisiting as much as, if not more than, the definition of employee. After all, it is the rhetorical ground marked off by conservatives, and in fact, it may be the redefinition and expansion of the concept of entrepreneurs by conservatives that has so eroded and narrowed the definition of employee. One can hardly pick up a business magazine without encountering the argument that we are now all entrepreneurs and hence free from exploitation by employers or the market. We are entering the world of "Me, Inc.," as one article puts it, a strange new world in which everyone can define themselves as "independent economic entities" and sell themselves as products on the market (Porter, Porter, and Bennett 1999).

Drawing on historical understandings of how workers organized themselves before the New Deal helps pierce the veil of this troubling rhetoric of entrepreneurial independence (Linder 1989: 598). Workers understood that even many of those who owned capital, employed others, and sold a product or a service were still in need of protection from the market, just as were those paid wages for their labor. And they understood that for them the only real freedom in the market came not through autonomy but through greater equality of bargaining power—a bargaining power based on the most expansive definition of *worker.*

Acknowledgments

The authors would like to thank Michael Merrill, Gerald Kernerman, Mike Belzer, Francoise Carré, Marianne Ferber, Ruth Milkman, Paula Voos, and David Witwer for their advice and encouragement.

Notes

[1] The term is from Herzenberg, Alic, and Wial (1998), but a certain nostalgia for the so-called golden era of the 1940s and 1950s is widespread in the industrial relations literature. One issue not addressed in this literature is "golden" for whom?

[2] *Taylorist* refers to the ideas of Frederick Winslow Taylor. His system of management, called Taylorism, was originally described and publicized in his book *The Principles of Scientific Management* (1911). It quickly became the dominant managerial philosophy of its time.

[3] At the same time, Taylorist techniques are by no means becoming entirely obsolete. In the case of electronics assembly, garment work, and even auto-parts manufacturing, "hyper-Taylorism"—that is, an extreme fragmentation and deskilling of jobs—is perhaps the more dominant trend (MacDonald 1991; Graham 1995).

[4] Despite many obstacles, various initiatives are under way to introduce worker- and union-run hiring halls, the most successful of which operate in a well-defined geographical area and confine themselves to a single sector, such as farm labor or telecommunications. For examples, see Vosko (2000b, ch. 8).

[5] Indeed, as Stone (1975) argues, the contract system among puddlers, unlike that among iron molders, was ended primarily at the behest of employers. The Homestead Strike of 1892, for example, a lockout initiated by the Carnegie Steel Works under the supervision of Henry Clay Frick, resulted in a disastrous decline of union power in steel and the replacement of the inside contract system with foremen and waged day labor.

[6] Like the construction unions, garment unions until recently enjoyed certain exemptions from both the Taft-Hartley Act and the Landrum-Griffin Act. These exemptions allowed the unions greater freedom to engage in concerted activities against employers and to fine and discipline their own members.

[7] There were those who argued that employers (those owning more than one team) should remain in the union for the sake of controlling the labor market and permitting "a thorough unification of our branch of industry" (*Proceedings of the Fifth Annual Convention of the TDIU* 1902: 15).

[8] To date, the IBT continues to include owner-operators, vender-drivers, and owner-equipment drivers in its membership, based on a membership clause reminiscent of that adopted in 1940 (IBT Constitution and Bylaws 1991: 6–7).

[9] See Justice Souter's majority opinion in the recent Supreme Court decision *Nationwide Mutual Insurance Co. v. Darden,* 503 US 318 (1992).

References

Appelbaum, Eileen, and Rosemary Batt. 1994. *The New American Workplace: Transforming Work Systems in the United States.* Ithaca, NY: Cornell University Press.

Ashworth, John H. 1915. *The Helper and American Trade Unions.* Baltimore: Johns Hopkins Press.

Benson, Susan Porter. 1986. *Counter Cultures: Saleswomen, Managers, and Customers in American Department Stores, 1890–1940.* Urbana: University of Illinois Press.

Boris, Eileen. 1993. "Organization or Prohibition? A Historical Perspective on Trade Unions and Homework." In Dorothy Sue Cobble, ed., *Women and Unions: Forging a Partnership.* Ithaca, NY: Cornell University Press, ILR Press, pp. 207–225.

Brooks, Adrian. 1988. "Myth and Muddle: An Examination of Contracts for the Performance of Work." *University of New South Wales Law Journal,* Vol. 11, no. 2, pp. 49–101.

Cappelli, Peter. 1995. "Rethinking Employment." *British Journal of Industrial Relations,* Vol. 33, no. 2, pp. 563–602.
Cappelli, Peter, L. Bassi, H. Katz, D. Knoke, P. Osterman, and M. Useem. 1997. *Change at Work.* New York: Oxford University Press.
Chandler, Alfred. 1977. *The Visible Hand: The Managerial Revolution in America.* Cambridge, MA: Harvard University Press.
Clawson, Dan. 1980. *Bureaucracy and the Labor Process: Transformation of US Industry, 1860–1920.* New York: Monthly Review Press.
Cobble, Dorothy Sue. 1991a. *Dishing It Out: Waitresses and Their Unions in the Twentieth Century.* Urbana: University of Illinois Press.
Cobble, Dorothy Sue. 1991b. "Organizing the Postindustrial Work Force: Lessons from the History of Waitress Unionism." *Industrial and Labor Relations Review,* Vol. 44, no. 3 (April), pp. 419–436.
Cobble, Dorothy Sue. 1994. "Making Postindustrial Unionism Possible." In Sheldon Friedman et al., eds., *Restoring the Promise of American Labor Law.* Ithaca, NY: Cornell University Press, ILR Press, pp. 285–302.
Cobble, Dorothy Sue. 1997. "Lost Ways of Organizing: Reviving the AFL's Direct Affiliate Strategy." *Industrial Relations,* Vol. 36, no. 3 (July), pp. 278–301.
Commons, John. 1909. "American Shoemakers, 1648–1895." *Quarterly Journal of Economics,* Vol. 24 (November), pp. 39–81.
Dunlop, John T. 1994. *Report and Recommendations: Commission on the Future of Worker–Management Relations.* Washington, DC: U.S. Department of Labor.
Edid, Maralyn. 1994. *Farm Labor Organizing: Trends and Prospects.* Ithaca, NY: Cornell University Press, ILR Press.
Estey, Marten. 1976. *The Unions: Structure, Development, and Management,* 2nd ed. New York: Harcourt Brace Jovanovich.
Fink, Leon. 1983. *Workingman's Democracy: The Knights of Labor and American Politics.* Urbana: University of Illinois Press.
Fraser, Steven. 1991. *Labor Will Rule: Sidney Hillman and the Rise of American Labor.* New York: Free Press.
Fudge, Judy. 1993. "The Gendered Dimension of Labour Law: Why Women Need Inclusive Unionism and Broader-Based Bargaining." In Linda Briskin and Patricia McDermott, eds., *Women Challenging Unions: Feminism, Militancy, and Democracy.* Toronto: University of Toronto Press, pp. 231–248.
Gordon, Colin. 1999. *The Lost City of Solidarity: Metropolitan Unionism in Historical Perspective.* Center for Labor Studies, Working Paper No. 8 (March). Seattle: University of Washington.
Graham, Laurie. 1995. *On the Line at Subaru-Isuzu: The Japanese Model and the American Worker.* Ithaca, NY: Cornell University Press, ILR Press.
Gray, Lois, and Ronald Seeber, eds. 1996. *Under the Stars: Essays on Labor Relations in Arts and Entertainment.* Ithaca, NY: Cornell University Press, ILR Press.
Grebelsky, Jeff. 1999. "Building Trades." Paper presented at the Symposium on Changing Employment Relations and New Institutions of Representation, Cambridge, MA, May 26.
Herzenberg, Stephen, John Alic, and Howard Wial. 1998. *New Rules for a New Economy: Employment and Opportunity in Postindustrial America.* Ithaca, NY: Cornell University Press, ILR Press.
Jackson, Susan. 1999. "Work in the 21st Century." *Rutgers Focus,* April 16, p. 8.

Kalleberg, Arne, E. Rasell, K. Hudson, D. Webster, B. Reskin, N. Cassirer, and E. Appelbaum. 1997. *Nonstandard Work, Substandard Jobs: Flexible Work Arrangements in the U.S.* Washington, DC: Economic Policy Institute.
Kessler-Harris, Alice. 1982. *Out to Work: A History of Wage-Earning Women in the United States.* New York: Oxford University Press.
Linder, Marc. 1989. "Towards Universal Worker Coverage under the National Labor Relations Act: Making Room for Uncontrolled Employees, Dependent Contractors, and Employee-like Persons." *University of Detroit Law Review,* Vol. 66, no. 4 (Summer), pp. 555–602.
Linder, Marc. 1992. *Farewell to the Self-Employed: Deconstructing a Socio-economic and Legal Solipsism.* New York: Greenwood Press.
MacDonald, M. 1991. "Post-Fordism and the Flexibility Debate." *Studies in Political Economy,* Vol. 14, no. 2 (Autumn), pp. 177–200.
Mazur, Jay. 1994. Testimony of the ILGWU before the Commission on the Future of Worker–Management Relations, July 25.
Medoff, James. 1993. "Middle Aged and Out of Work: Growing Unemployment Due to Job Loss among Middle Aged Americans." Washington, DC: National Study Center.
Milkman, Ruth, and Kent Wong. 2000. "Organizing the Wicked City: The 1992 Southern California Drywall Strike." In Ruth Milkman, ed., *Organizing Immigrants: The Challenge for Unions in Contemporary California.* Ithaca, NY: Cornell University Press.
Mills, D. Quinn. 1980. "Construction." In Gerald G. Somers, ed., *Collective Bargaining: Contemporary American Experience.* Madison, WI: Industrial Relations Research Association, pp. 49–98.
Montgomery, David. 1979. *Workers Control in America.* Cambridge: Cambridge University Press.
Morse, Dean. 1969. *The Peripheral Worker.* New York: Columbia University Press.
Nelson, Bruce. 1988. *Workers on the Waterfront: Seamen, Longshoremen, and Unionism in the 1930s.* Urbana: University of Illinois Press.
Nelson, Daniel. 1995. *Managers and Workers,* 2nd ed. Madison: University of Wisconsin.
Piore, Michael, and Charles Sabel. 1984. *The Second Industrial Divide: Possibilities for Prosperity.* New York: Basic Books.
Porter, Shirley, Keith Porter, and Christine Bennett. 1999. "Be Your Own Boss." *National Business Employment Weekly,* May 2–8, pp. 11–12.
Rubenstein, Saul, Michael Bennett, and Thomas Kochan. 1993. "The Saturn Partnership: Co-management and the Reinvention of the Local Union." In Bruce Kaufman and Morris M. Kleiner, eds., *Employee Representation: Alternatives and Future Directions.* Madison, WI: Industrial Relations Research Association, pp. 339–369.
Spalter-Roth, Roberta, and Heidi Hartmann. 1998. "Gauging the Consequences for Gender Relations, Pay Equity, and the Public Purse." In Kathleen Barker and Kathleen Christensen, eds., *Contingent Work: American Employment Relations in Transition.* Ithaca, NY: Cornell University Press, pp. 69–103.
Stone, Katherine. 1975. "The Origins of Job Structures in the Steel Industry." In Richard C. Edwards et al., eds., *Labor Market Segmentation.* Lexington, MA: Lexington Books.

Vosko, Leah F. 1997. "Legitimizing the Triangular Employment Relationship: Emerging International Labour Standards from a Comparative Perspective." *Comparative Labor Law and Policy Journal,* Vol. 19, no. 1 (Fall), pp. 43–77.

Vosko, Leah F. 2000a. "Gender Differentiation and the Standard/Non-standard Employment Distinction: A Genealogy of Policy Interventions, Post World War II–Present." In Danielle Juteau, ed., *Social Differentiation in Canada.* Montreal and Toronto: University of Toronto Press, University of Montreal Press.

Vosko, Leah F. 2000b. *Temporary Work: The Gendered Rise of a Precarious Employment Relationship.* Toronto: University of Toronto Press.

Vosko, Leah F., and Judy Fudge. 2000. "Prospects for the Current Legal and Legislative Framework." In R. Chaykowski and A. Starkman, eds., *Labour Policy in the New Millennium.* Toronto: University of Toronto Press.

Witwer, David Scott. 1994. "Corruption and Reform in the Teamsters Union, 1898–1991." Diss., Brown University.

Zuboff, Shoshana. 1988. *In the Age of the Smart Machine: The Future of Work and Power.* New York: Basic Books.