

COUNTERACT
Steelworkers' Contracting Out
Conference



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COUNTERACT: Contracting Out

**INTRODUCTION:
THE TRUTH ABOUT
CONTRACTING OUT**



THE TRUTH ABOUT CONTRACTING OUT

‘Contracting out’ can involve a manufacturing process, plant maintenance, inventory, sub-trades, special equipment operation, special projects or any other work functions which are given to a separate contractor to be done individually or with their own work forces. These work forces may or may not be unionized themselves. Contracting out can involve the permanent outsourcing of parts of production processes, or equally can involve the temporary hiring on to the worksite of specialized contractors to deal with unique or time-sensitive projects.

In order to be true “contracting out”, the employer must be found to have given up its authority to control and manage the employees of the contractor who are doing the work in question.

If the employer retains control over employees in a contracting out situation, it may be arguable that there has not been a true “contracting out” and the collective agreement applies to contractors’ employees.

Contracting out is a huge concern to the bargaining unit. It can fragment a labour force, reduce employment opportunities, availability of alternate work to accommodate injured workers, and job security for all. It can weaken the union’s bargaining position and can ultimately destroy a bargaining unit and depress wages and benefits across an industry.

Employers on the other hand wish to preserve their right to restructure their operations as they see fit, and to bring in specialized forces with a minimum of restrictions.

Unions face an uphill battle in limiting management’s ability to contract out. At the bargaining table, management will resist restrictions on their ability to restructure their operations. Total prohibitions of contracting out

are difficult to achieve, and compromises are rarely interpreted in the union's favour.

Unless the union can show that the contractor and the employer are really the same entity, or that the employer's actions are a bad-faith attempt to undermine the union's bargaining rights, decision makers will be sympathetic to evidence of management's desire to structure its operations in whatever it sees as the most efficient and cost-effective manner.

Legislation that offers relatively solid protection to bargaining rights and collective agreements upon sale of a company, is largely ineffective against restructurings that can have an effect on a bargaining unit's jobs and even certification rights. The historical labour relations vision of each enterprise as a discrete and transferable whole, with one employer and one work force, simply no longer applies in many cases.

As the International Labour Organization (ILO) puts it: "the organizational transformations of the company mean that the relations of employment often escape from the traditional legal framework."

Likewise, hard-won and seemingly solid collective agreement language can prove ineffectual in the face a continually transforming employer structure.

The following six sections cover different aspects of contracting out. The first offers a general overview. The second reviews collective agreement language dealing with contracting out. Within that general overview, there are three areas of possibility. One can attempt to negotiate a total ban on any contracting out. One can agree to permit contracting out, subject to certain restrictions, or one can defer the matter to be dealt with on a case-by-case basis, by imposing advance notice and consultation requirements.

The third section looks at some of the sector-specific experiences of contracting out. The mining industry has been especially hard hit, with moves towards sub-trades with expensive and specialized equipment, and



special project work replacing core long-term bargaining units. The language necessary to prevent or deal with this type of contracting out may be significantly different from that necessary in a manufacturing sector.

The forest industry on the other hand, has a long and complex history of multiple-contractor relationships. The practices that have built up around that reality are now being complicated by increased financial pressures pushing towards smaller, more specialized operations, as well as new legislation, on its face directed at licence-holders, but effectively requiring main contractors to divest large segments of their operations. In British Columbia this legislation will ultimately affect job security all along the coast, and has the potential to reduce employment opportunities throughout the province.

The fourth section examines some legislative attempts to 'deal with' contracting out. Although not directly related to the Steelworker experience, the experience of public sector unions during government drives towards privatization is also relevant. Governments have enacted laws that enable them to sell off their functions and rid themselves of public sector unions. This has had a wider impact on the restructuring of private sector enterprises and is especially apparent in Quebec, which previously had had a slightly more positive experience with contracting out legislation than the rest of the country.

The fifth section has examples of collective agreement language, and the final section discusses the health and safety implications of contracting out.