

The Temporary Staffing Industry in Protected Employment Economies: Germany, Japan and the Netherlands

- Karen Shire
Institute of Sociology and Institute of East Asian Studies
University of Duisburg-Essen, Germany
karen.shire@uni-due.de
www.uni-due.de/soziologie/shire.php

- Danielle van Jaarsveld
Sauder School of Business
The University of British Columbia
danielle.vanjaarsveld@sauder.ubc.ca
www.sauder.ubc.ca

The Temporary Staffing Industry in Protected Employment Economies: Germany, Japan and the Netherlands

Karen Shire

Institute of Sociology and Institute of East Asian Studies

University of Duisburg-Essen, Germany

karen.shire@uni-due.de

www.uni-due.de/soziologie/shire.php

Danielle van Jaarsveld

Sauder School of Business

The University of British Columbia

danielle.vanjaarsveld@sauder.ubc.ca

www.sauder.ubc.ca

Abstract:

The paper addresses how the temporary staffing industry secures social security and a degree of employment stability in three non-liberal market economies with a well developed temp work sector and several decades of industry regulation. Until the 1980s unions in Germany, Japan and the Netherlands effectively opposed the deregulation of the staffing industry. Restrictions placed on the temporary staffing industry institutionalized an “employment-type” alternative to the US-style form of “registered” and “on-call” temp staffing. In the face of high unemployment in the 1990s unions participated in de-regulatory drives aimed at expanding the role of the industry in troubled national labor markets. In most cases, de-regulation dismantled key dimensions of the “employment type” of staffing, and unions shifted their efforts to securing equal treatment of temporary staff. To date, legislation has fallen short of mandating equal treatment, and in the best cases (Germany and the Netherlands) collective bargaining has taken on the role of securing equal wages for temporary staff. Japan, Germany and the Netherlands represent three different degrees of industry de-regulation, with the best case of equal treatment of temps in the Netherlands, and the deepest segmentation of temporary and regular workers in Japan. In comparison to Germany and Japan, Dutch unions early on engaged in regulating temporary staffing services. The early experience of regulating rather than rejecting contingent labor and the density of neo-corporatist institutions for social bargaining in the Netherlands means that Dutch unions have developed stronger capacities for regulating contingent employment despite the weak organization of contingent workers. Unions in Japan and Germany have only recently developed capacities for representing contingent labour, but the significant weakening of social bargaining in both countries is associated with growing labor market segmentation between temporary and regular employees.

1. Introduction: Varieties of temporary staffing in the protected employment economies

Germany, Japan and the Netherlands are countries with very strong protections of permanent workers in the form of legislated regulations or judicial precedence. On the OECD scales covering employment protection, these three countries are among the strictest in terms of limiting individual dismissals (OECD 2004, pp. 72). In the *Varieties of Capitalism* literature, the “preference” for permanent employment in coordinated capitalist countries (like Germany and Japan) is attributed to firms’ strong investments in skill formation and workers’ interests in counteracting the negative effects of having acquired firm-specific skills during economic downturns (Estevez-Abe et al. 2001; Iversen 2005). As the argument goes, workers and their representatives have demanded protections in *coordinated capitalist* countries because firm-specific skills are not transportable to other firms in the case of dismissals. A shared interest by labor and capital in protecting skill assets lays the basis for societal preferences for long-term employment commitments. In contrast to *liberal capitalist* countries, the market for temporary staffing in *coordinated capitalist* countries was (until recently) restricted by labor laws in line with societal preferences for long-term employment, suggesting that varieties of *capitalism* are also varieties of *temporary staffing*.

Yet temporary staffing is not a new industry in the protected employment economies of *coordinated capitalism*. In Germany, Japan and the Netherlands a hybrid form of agency work had emerged by the early 1990s combining elements of regular employment contracts with limited durations of placement in client firms, constituting an alternative model of “employment type” temporary staffing. At the core of this alternative is the establishment of a “regular,” though often, limited-term, employment contract with a temporary staffing agency. The first part of this paper highlights the role of government and the social partners in negotiating the legalisation of the industry up through the 1980s in these three countries. In the context of rising and high unemployment in the 1990s, governments and the social partners grew more interested in an expanded staffing industry as a way to activate labor markets. As liberalisation pressures grew however, departures from the “employment form” of temporary staffing and differences among the *coordinated capitalist* economies in the social protection of temporary staff became more evident. These regulatory changes

and the differences between the staffing industry in Germany, Japan and the Netherlands are the subject of the second part of the paper. The paper concludes with an assessment of the continuing attempts to establish a form of temporary staffing with employment, wage and social protections.

2. Initial Union and Regulatory Responses to Temporary Staffing in the Protected Employment Economies

The temporary staffing industry in Germany, Japan and the Netherlands dates back to the 1960s – the same time as the industry took hold in the US. Today, Dutch-owned companies are among the most important world players in the staffing industry (Coe et al. 2004) while Japanese staffing firms are expanding into Asian labour markets. The first temporary staffing firms in Germany and Japan were foreign investors entering these markets from abroad; yet in contrast to the US, where the staffing industry strongly lobbied for legalisation and legitimating (Gonos 1997), staffing operations in the protected employment economies settled into niches and stayed there for nearly 20 years, tolerated by both the social partners and government bodies in the protected economies, often despite dissonance with legislative restrictions.

In the Netherlands the temporary staffing industry was faced with early regulation, in response to the continuing operation of private staffing agencies despite the intended monopoly of public labor exchanges in placement services. The provisions of the Temporary Employment Act of 1965 required licensing, the prohibition of the industry in specific industries (e.g. shipping, construction) the application of maximum durations for temporary placements and the prohibition of the use of temps to replace striking workers (Sol 2005). The early Dutch law prefaced the types of regulations which governments in Japan and Germany would legislate some twenty years later and established a style of regulation shared by the protected employment economies, based on the recognition of temporary staffing as an employment relation between a temporary agency and the temporary worker. In the early Dutch law, this recognition was based on the extension of unemployment protections, sickness and disability provisions enjoyed by regular employees (under Dutch labor laws) to the temporary agency workforce (Sol 2005; Koene, et al. 2003).

The entry in 1962 of the US-based Manpower agency into Japan, and in the same year, of Swiss-based ADIA into Germany were partly intended and perceived as challenges to the legislative and cultural barriers facing the staffing industry in these two strong industrial economies (see below). In neither case however, did a serious challenge to employment protections through the substitution of permanent with temporary labor arise. Governments maintained their prohibitions against agency employment, labor unions tended to ignore temporary agency employees and the few agencies in these countries continued to take root and expand their services with little disruption by finding niches on the labor market peripheries of the protected employment economies.

These labor market peripheries were composed of either female or low-skilled workers. Manpower in Japan, for example, focussed its business explicitly on the placement of female clerical workers, who in cultural terms, were considered to be temporary labor market participants anyway. Rather than challenging commitments to permanent employment, the industry actually aligned itself well with gendered Japanese employment practices distinguishing between long-term employed male breadwinners, and young female clerical workers who were expected to resign upon marriage. The dispatching of male staff fell initially outside the purview of the staffing industry, but was practiced strongly in manufacturing in the contexts of inter-firm supply chains. Temporary staffing in Germany began with the placement of female clerical workers, but soon moved into the placement of low-skilled male and female employees in manufacturing industries. Temporary staffing in Germany mainly served the function of providing replacements for employees on leave, in the context of this country's generous sickness, maternity and vacation leave provisions. In contrast to most other countries, temporary staff in Germany is primarily men dispatched to manufacturing industries. In the Netherlands, the public employment exchanged focussed on the placement of workers into full-time regular jobs, leaving temporary placements to the private agencies (Koene, Paauwe & Groenewegen 2004). Further, the constitution of temporary agency staffing as a normal employment contract with unemployment and social benefits lent the industry more legitimacy earlier on in the Netherlands (see Storrie 2002; Koene, Paauwe & Groenewegen 2004), than was the case in either Germany or Japan, where the industry remained formally illegal until the 1980s.

Unions in Germany, Japan and the Netherlands opposed the legalisation of the industry well into the 1980s, and the involvement of the social partners in national negotiations of employment regulations insured that the staffing industry, where permitted, operated under tight restrictions. From an historical perspective, union opposition was rooted in the successful elimination of the labor boss systems of early industrialization through national prohibitions aligned with ILO regulations outlawing private and favouring public labor market exchanges. Strong involvement of the social partners in the governance of the public labor exchanges in Germany underwrote a monopoly of public employment services. In Japan, public exchanges played a less important role, while employer preferences for transfers of labor within firm group networks and the preference for relational contracting with labor suppliers posed normative and practical limits to the establishment of the staffing industry as a private market service.¹ Unions in the Netherlands opposed the expansion of temporary staffing industry, but at the same time favoured the extension of protections to temporary staff (Koene et al. 2003). In retrospect and in comparison, this early experience with the regulation of the industry in Holland provided an important learning opportunity for unions in representing the interests of contingent workers, and aligning these interests with those of their “core constituents” of regularly employed union members.

The first wave of regulations covering the staffing industry in Germany was provoked by the establishment by ADIA, a Swiss staffing agency, of a branch in Hamburg in 1962.² The provocation was met by a Hamburg court ruling against the company; ADIA in turn fought the decision on the basis that it violated the German constitutional right to the free choice of occupations. The German constitutional court partly supported ADIA's claim with its August 1967 decision to legalise temporary work as a recognized occupational choice. At the same time, the court confirmed the public monopoly on labor exchanges, drawing a fuzzy line between the staffing industry and (officially illegal) private labor exchanges. A further decision followed in July 1970, which established clear employment rules governing staffing services,

¹ A grey zone of labor supply contracting emerged in post-war Japan, whereby some suppliers were relied upon to supply labor rather than goods for production. The first forays into legalising the temporary staffing industry were motivated by government efforts to regulate the private labor supply practices (Imai 2004).

² The history of German and Japanese regulations presented here are the results of a project comparing the deregulation of temporary agency employment in Germany and Japan, funded by the German Science Foundation and led by Karen Shire. The German research was carried out by Katrin Vitols, who has presented the entire history in her dissertation; see especially Chapters 4 and 5 in Vitols 2007; the Japanese research was conducted by Jun Imai, and reported in his forthcoming book (2009).

carefully defining the relation between agencies and their registered temps as an employment relation. Essentially this obligated staffing agencies to cover social benefits and continue to pay dispatched workers during pauses in their dispatching, thereby establishing agency work as a “regular” employment contract.³ This decision was transformed into an elaborate law covering dispatching of employees and passed by the German parliament in 1972. Perhaps the clearest indication of the extent to which the staffing industry was forced to take on the role of employer were the provisions against synchronising the length of employment (with the agency) to the length of dispatching to a client firm (*Synchronisationsverbot*) and the provision concerning continued payment of wages between periods of dispatching (*Lohnfortzahlung*). Up until that time however, the implementation of these regulations was indirectly delegated to the public labor exchanges, which became responsible for issuing concessions.⁴ Ten years later, in 1982, a further restriction was added, prohibiting temporary staffing in the construction industry. In the context of this first wave of regulations the German staffing industry grew from 145 enterprises in 1968 to over 1,000 in 1972, but remained under 2000 firms through until the mid-1980s (see Diagram 1). These regulations remained in place until 2004 when a fundamental deregulation of the staffing form of employment was enacted.

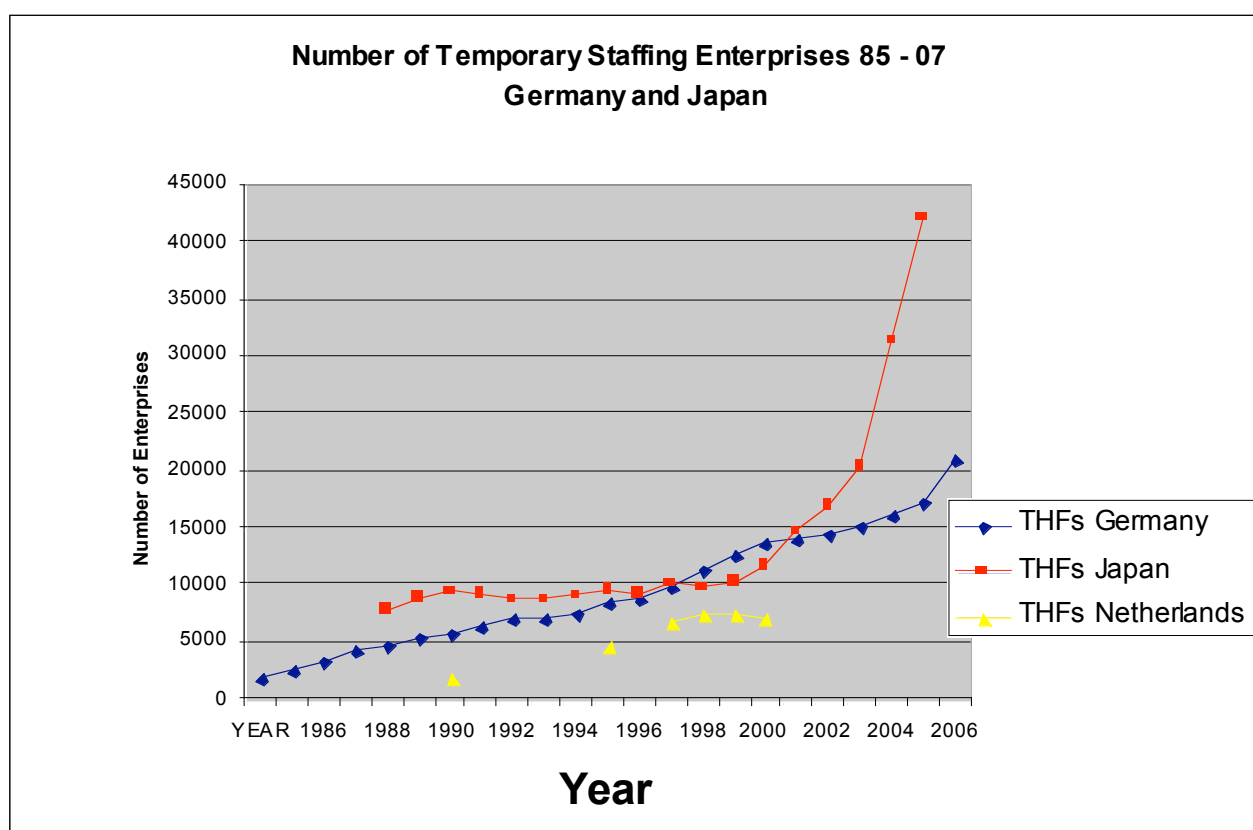
As in Germany, the staffing industry in Japan originated with the entry of a foreign firm, this time the US-owned Manpower. Into the 1980s, the staffing industry focus remained on the placement of female clerical workers. In contrast to Germany, where the event of a foreign direct investment cascaded into a series of legal judgments and legislation regulating the industry, staffing firms operating in Japan were tolerated for several decades before the initiation of measures to legalize the industry. The first law regulating the industry, passed in 1986 was only partly aimed at regulating the clerical staffing industry. Legalization was motivated primarily by the need to bring the extra-legal system of dispatching personnel from subcontracting firms within supply chains (*konai ukeoi*) into the realm of legality. In the face of

³ Although these contracts could be limited-term, the ban on what became known as the “synchronisation” of employment with an agency and dispatching to a client, together with restrictions on limited-term renewals, gave agencies legal incentives for providing at least some temps with open-ended contracts.

⁴ The decisions about concessions were delegated to the Federal Labor Exchange, itself governed by tripartite commissions of labor, employers and the state at the level of the federal states. Commissions were initially granted for a limited period of one year, after which, upon review, they could be extended to three years. This provision created a mechanism for the social partners and the state to closely monitor and govern the employment and social protections laid down by the 1972 law on employee dispatching (*Arbeitnehmerüberlassung*).

corporate restructuring in the wake of the oil crisis, but also due to growing demand for IT and other new occupations, the intra-firm dispatching practices had become commonplace in the automobile and electronics industry. An indication of the spread of the industry into skilled domains of employment was the fact that 20% of all temp staff after legalisation were in professional occupations. Moreover, the workers dispatched along supply-chains were primarily male workers. The expansion of sub-contracting firms prior to the legalisation of temporary staffing in 1986 is a very rough indicator of the size of this "predecessor" to the staffing industry. More than half of the sub-contracting firms in the year 2000 had been established during the 1980s (15% in the 1970s and 22.5% during the early 1990s) (Shirai 2001, cited in Imai 2004, pp. 8).

DIAGRAM 1⁵



Note: the size of the industry is of course limited by the size of the country. The Dutch temporary staffing industry is an important global player, despite the relatively small number of enterprises in Holland.

The temporary staffing of clerical workers in Japan operated in much the same way as in the US – temporary staff being dispatched as needed, and thus left without

⁵ Sources for Diagram 1: the Netherlands – CBS, Statline, various years, Germany -- Amtliche Nachrichten der Bundesanstalt für Arbeit: Arbeitsmarkt, Sondernummer, Nürnberg, Bundesanstalt für Arbeit, various years, Japan -- Haken Rôdô ni kansuru Jittai Chôsa, various years

employment between assignments. This “classic” practice contrasted with the sub-contracting of personnel within supply chains, who retained regular employment contracts with their original firms before, during and after the period of dispatch. This latter form of temporary staffing, covering primarily male employees, involved a level of employment and social security not accessible to the dispatched staff of the “classic” temporary staffing agencies.⁶ The legalisation of temporary staffing through the first law covering the employment form in 1986 retained this key difference in forms of staffing, with important consequences for the segmentation of the staffing labor force: the largest segment was the female dominated “classic” temporary worker (*touroku gata* or “registered type”, about 80% of all temps in the late 1980s) and a domain of primarily male workers with regular employment contracts, dispatched to client companies (*jouyou gata* or “employment type”). The 1986 temporary staffing law in Japan limited the industry to a short list of 13 occupations, extended to 16 in a 1990 revision, 26 in 1996 and eventually abandoned in the ensuing wave of deregulation from 1999 onwards.

The initial wave of legalisation and regulation of the staffing industry in the Netherlands, Germany and Japan extended many aspects of “normal” employment relations to temporary staff. This happened early on in the Netherlands, but most clearly in Germany. Thus, the synchronization of temporary assignments and employment by an agency was prohibited in German regulations, but not in the Netherlands (Wilkens 2005). The Japanese “employment type” of staffing arose alongside a “registered type” segmented along sectoral, occupational and gender divisions. The “employment type” was not based on a “synchronization prohibition” as in Germany, but in the fact that the regular staffs of supplier companies was dispatched to client firms – in extreme cases suppliers only supplied staff. In both the Netherlands and Germany, the “employer type” evolved out of a situation of union opposition and public commitments to the monopoly of public labor exchanges. Added to this in the Netherlands was the engagement of unions early on in balancing the interests of regular and contingent workers. German unions failed to do so. A similar emphasis on “employment” and “employment-like” forms of temporary staffing, as well as the different origins and regulatory legacies in these countries set

⁶ Following the lead of Manpower, Japanese staffing firms were established in the 1970s, including the predecessor of the largest Japanese staffing firm, Pasona. See Imai 2004 for a full history of the Japanese staffing industry and its regulation.

the stage for how well these alternatives to the US-style of “registered” temp staffing survived the next wave of regulatory changes.

3. Regulatory and Deregulatory Efforts in the late 1990s

The legal constitution of temporary staffing as a regular employment contract between agencies and workers extended many of the social protections enjoyed by regular employees in the protected employment economies to temp staff, insuring against the substitution of regular with temporary employees. Limitations on the licensing of staffing firms also helped to preserve the monopoly of public labor exchanges in Germany and the Netherlands, while in Japan, the prerogative of firm groups to exchange labor internally and informally was acknowledged. Crises in the public labor exchanges in the Netherlands and Germany, and redundancies and downsizing in the Japanese private sector exposed the limits to these established functional alternatives and predecessors to the contemporary staffing industry in the face of fundamental economic restructuring and rising unemployment. The regulatory tenor of temporary staffing shifted during the 1990s in all three countries as public actors turned to staffing as a solution to high rates of unemployment, labor shortages in new industries and in Germany and the Netherlands, as a solution to the ineffectiveness of public labor exchanges in placing long-term unemployed.

In all three countries, the de-regulation of temporary work was a matter of political negotiation, but negotiations did not include unions to the same degree. Cross-national differences in the “infrastructure” of social partnership, the role of this “infrastructure” in policy formulation and the role of the state and government in policy formulation all affected the outcomes of employment reform on protections for temporary staff and the de-regulation of the staffing industry. Considering the extent to which unions participated or were bypassed, often through state intervention, the Netherlands and Japan fall, in many respects, at opposite ends of the degree of labor participation in regulatory negotiations. The social partners in the Netherlands succeeded early on in taking a lead in the renegotiation of employment policy through the 1982 Wassenaar Accord ushering “in a period of vibrant, negotiated reform,” on the foundation of a dense infrastructure for negotiations between the social partners (Hemerijck & Vail 2006).⁷ In Japan, a fundamental policy shift in 1995

⁷ The agreement de-indexed wages from cost of living, enacted cost-neutral work-time reductions, job sharing and decentralized wage bargaining. STAR, a foundation of labor carried by unions and employers associations, SER, the Social-Economic Council serving as a tripartite advisory body,

favouring deregulating and strengthening the role of the cabinet office in such efforts effectively marginalized the role of social negotiations, with reforms proceeding “without labor” (Imai 2004).⁸ Germany tottered in this period, between state incentives for a renewal of social partner negotiations under the Alliance for Jobs, state initiatives (e.g. the Job-AQTIV Law) and then in a new direction favouring an independent commission of state appointed experts in a constitution which marginalized labor participation and influence -- the Hartz Commission (Vitols 2007).

These differences in state action and labor participation continue to shape the dynamics and outcomes of the regulation of the staffing industry in the protected economies. There is a shift away from the “employment type” of temporary staffing in Japan and Germany, but in some important respects, this alternative to “registered” temping has been strengthened in the Netherlands. These differences, among others, also shape the effectiveness of collectively bargaining for temporary workers, which has entered the stage as a regulatory option in the Netherlands and Germany. Where the social partners have been most thoroughly excluded from employment policy negotiations – Japan – advances in protections for temporary workers in the context of industry deregulation are the weakest.

The severity of labor market performance was first evident in the Netherlands, which suffered a more severe recession the early 80s than in other OECD countries in the wake of the second oil shock (Hemerijck & Vail 2006). Germany and Japan seemed to recover well until the early 1990s, when Japan was launched into a long and deep recession after the Asian financial crisis and Germany was faced with the economic absorption of the new federal states under the unification policy following the fall of the Berlin wall. While the public discourse around temporary staffing in many of the liberal market economies (e.g. the UK and the US) has been centered around demands and discussions about numerical flexibility, in the protected employment economies rising unemployment (in the Netherlands, low employment rates) played a far more important role in pressures for deregulation. The utility of temporary staffing was viewed less in the replacement of “regular” with temporary staff, and more in creating transitional employment for workers dislocated by

together with an infrastructure for economic forecasting, constitute the infrastructure for social negotiations in the Netherlands (Hemerijck and Vail 2006).

⁸ Both the Dutch success in revigorating social negotiations and the Japanese failure occurred in the midst of the most serious recessions and under center-right governments.

industrial restructuring. This difference also identified a specific “performance goal” (and social contribution) for the staffing industry – moving workers, through temporary assignments, back into permanent or regular employment.

An important symbolic resource for dismantling the traditional opposition of labor to the deregulation of staffing was the replacement of ILO convention 96 prohibiting private labor exchanges with convention 181 (in 1997) on private employment agencies. This new convention recommended national level regulation of the industry, and thus opened gates for the re-deliberation of existing restrictions among the social partners and in the employment policy formation process. Convention 181 also included a list of recommendations for the social sustainability of temporary staffing, and developments in EU policy-making began to formulate directives for the equal treatment of temporary staff. These formulations served as guidelines for labor from the late 1990s onwards, in developing positions and demands in regulatory discussions and processes, helping to compensate for the general lack of attention of labor, especially in Germany and Japan, to the situation of contingent workers.

With both the willingness and resources for neo-corporatist negotiation of employment policy, and an early commitment to improving the situation of contingent workers, the Dutch social partners signed a new agreement in December 1993, setting, as the agreement was called, a “new course” of “balance between flexibility and security by reducing levels of protection of existing (“core”) workers, coupled with enhanced employment opportunities and social security for atypical workers.” (Hemerijck & Vail 2006). Dutch legislative initiatives were developed to counter the inflexibility of the open-ended employment contract which made it extremely difficult for employers to dismiss full-time employees (Storrie, 2002; Bas et al., 2004). Exactly this coupling of a reduction of protections for the regularly employed with an improvement of protections for atypical workers is the unique feature of the so-called “Dutch model”.⁹

For the first time in 1995 a collective bargaining agreement between unions and associations of temporary staffing firms concluded an agreement regulating employment security and pension coverage after two years of affiliation with a temporary agency (Visser & Hemerijck 1997). A comprehensive legislation regulating

⁹ Among the European protected employment economies only Denmark has undertaken a similar departure from employment protections.

the operations and obligations of labor intermediaries in the Netherlands (“Wet allocatie arbeidskrachten door intermediairs” or WAADI) followed in 1998, establishing a range of securities for temporary workers and obligations for staffing agencies. Existing regulations restricting the market for temporary agency employment were lifted, most importantly the licensing of temporary staffing firms.¹⁰ A number of obligations on staffing firms and the temporary employment relation were imposed by this law: making agencies responsible for tax and social benefit deductions, imposing the principle of equal pay between temporary workers and regular workers doing similar work in user firms, requiring user firms to provide information about jobs and qualifications in order to improve health and safety conditions, among others (Wilkens 2005). The 1999 Flexibility and Security Act (Flexwet) re-established some licensing requirements (Tijdens, van Klaveren, Houwing, van der Meer & van Essen 2006), though these have not stemmed the rise of agencies engaged in illicit dispatching operations, for example, of undocumented workers (Wilkens 2005). Most importantly, the Flexwet defined the status of temporary agency affiliation as an employment contract, subjecting the relationship between agencies and staff to the Dutch civil code stipulations and rights for all other forms of employment contracts. Additionally, the Flexwet opened the possibility for temporary agencies to collectively bargain with unions over deviations and additions to some of the provisions covering temporary employment (Koene, Paauwe & Groenewegen 2004). Through the extension of collective agreements to the entire staffing workforce, coverage is now 100%.

The main accomplishment of two subsequent waves of collective bargaining which followed the Flexwet has been the institutionalization of a Phase System whereby the duration of contracting with a specific temporary agency can eventually lead to a regular open-ended employment contract between the agency and the dispatched workers. While the culmination of these phases and an open-ended contract takes 3.5 years on the whole (Wilkens 2005), an important dimension of the phase system is the gradual improvement of social and employment protections from the twelfth week onwards (Koene, Pot and Pauuwe, 2003). These provisions provide for better sick leave and pay, access to enterprise pension plans, pay between contracts, training contributions and better coverage by dismissal rules. Reversions to previous phases are possible when minimum durations are not met, meaning that

¹⁰ Also lifted were restrictions on the duration of dispatching and limitations blocking offers of open-ended contracts to agency staff by user firms.

agencies have plenty of opportunity to prevent protections as well. But since the collective agreements “replace” the equal treatment clause in the 1998 law, agencies have an incentive to make sure protections remain intact. These legal and bargained provisions fall short of comprehensive equal treatment and employment protection, and thus tend to benefit those employees with the best chances of finding permanent employment anyway. While the number of temporary staff firms has expanded under these provisions, this expansion is generally attributed to the lifting of many licensing requirements rather than the expansion of temporary employment, which has hovered under about 3% of the dependently employment over the past years.

In Japan, the occupational restrictions placed on temporary staffing in the first 1986 regulation of the industry were aimed at a selective expansion of the market for temporary staff in sectors plagued by shortages of high-skilled workers (e.g. software specialists) and/or where work organizational factors (e.g. project-based work) demanded temporary work assignments. The exception to these criteria within the list of occupations was clerical work where neither shortages nor temporary work organisations mandated demands for temporary contracts. The inclusion of clerical work in the temporary staffing occupations signalled instead a willingness on the part of the government and social partners to permit firms to reduce their commitments to female workers in the face of white-collar rationalisation. On the basis of this law, many major corporations established their own staffing subsidiaries, and began sourcing all new female clerical staff from these subsidiaries¹¹.

The deregulation of the temporary staffing industry became an aim of policy makers in the context of an economy-wide deregulatory drive from 1995 onwards. The lifting of the ILO convention prohibiting private labor exchanges in 1997 was instrumentalized by the Japanese government to force labor to engage in deliberations over the deregulation of the staffing industry. At the same time however, the initiative was taken by the Cabinet Office rather than the tripartite advisory council in the Japanese labor ministry¹², effectively marginalizing labor participation in the drafting of the new legislation. Labor participation was restricted to a final approval of a prepared draft, and attempts to then influence parliamentary

¹¹ Later reforms enacted a mild restriction on this practice by prohibiting subsidiaries from only dispatching workers to their own parent firms.

¹² During the 1980s the role of labor was actually strengthened in ministerial policy formation, but this trend was decisively reversed in the context of deregulatory drives and the shift of policy formation out of the ministries and into the Cabinet Office after 1995.

actors to oppose the law. The new law based on the Cabinet Office draft and implemented in 1999 replaced the previous “positive list” of 26 occupations with a small “negative list” of occupations where staffing remained restricted (e.g. construction), effectively opening the market for the temporary staffing industry. Moreover, licensing requirements of agencies were significantly relaxed. No meaningful measures were included in the new law to protect temporary workers or to insure their transition into regular employment contracts. Since 1999, most of the remaining restrictions have also been lifted by the Cabinet Office, without labor participation. As a result, the number of temporary help firms has grown from about 10,000 in 1999 to over 40,000 today (See Diagram 1 above), and the size of the temporary workforce has expanded by 180%.

Statistics on the industry and staff since the 1999 reform reveal growing heterogeneity of the temporary workforce, with strong expansion both into domains of high skilled employment and replacement effects of regular workers (especially of subcontracting firms) in manufacturing (Imai & Shire 2006), a continuing shift of female labor out of regular and into temporary (and other contingent) forms of employment with little access to pensions or other social insurance (Shire 2008), the rise of permanent temporary workers in services and sales, and growing labor market segmentation between a shrinking core of long-term employed and an expanding segment of temporary staff (Imai 2009 forthcoming). Both the “employment type” and “registered type” of temporary staffing expanded in the wake of the 1999 regulation. The number of individuals registered at staffing agencies grew four-fold from 437,000 in 1994 to 1,721,000 in 2002. The number of actual placements during this period grew three-fold, from 99,400 in 1994 to 335,000 in 2002, most of which were placements for the “operation of office machines” or clerical work (Imai 2004, pp.29). The number of temporary staff in the smaller sector of “employment type” staffing, covering semi- and skilled sectors of manufacturing and high-qualified staffing also more than doubled in this period, from 138,900 in 1994 to 338,600 in 2002 (Imai 2004, pp 30).

Since 1999 temporary staffing firms in Japan have created new forms of business, for example absorbing groups of older redundant workers from client firms in what the staffing industry calls its “restructuring services.” Pasona Inc., the largest Japanese staffing firm, reported 32% of its profits in 2002 in this “outplacement” type of staffing service. Moreover, the staffing industry has increasingly diversified into

comprehensive personnel services, offering headhunting, individual temporary placement (59% of Parsona Inc profits in 2002) and outsourcing (6% of Parsona Inc profits in 2002). Moreover, a number of subcontracting firms which had previously dispatched workers have become temporary staffing agencies, accounting partly for the four-fold boom in the number of staffing firms since 1999.

The heterogeneity of the temporary staffing workforce in Japan, together with the absence of any attempt to institutionalize equal treatment, is especially evident in wage forms and ranges among Japanese temp staffing. “Employment type” staff are more likely to receive monthly wage payments (about 60% of all staff in this category) while “registered type” receive hourly payments (82.9%). Wages for temporary staff are market-driven, and range from an average hourly rate of ¥2069.30 for software development temps to half that rate for temps in sales (¥1050).¹³ Female temps earn on average 65.6% of male temp wages. Average wages of “employment type” and “registered type” temps are about the same, but benefits and social insurance cover differs a great deal: “employment type” temps are more likely to receive commuting allowance and annual bonus payments received by regular workers and are more comprehensively covered by both employment and health insurance (Imai 2004, pp. 52, based on the *roudousha haken jigyou jittai chousa* for 2001). Overall, 70% of temps were covered by health insurance in 2001.

Efforts to re-regulate temporary staffing in Germany can be seen as a rather poor imitation of developments in the Netherlands – in Germany there were also early experiments with collective bargaining, peak negotiations between the social partners to deregulate the industry, the legal institutionalization of equal treatment and then the development of collective bargaining in the stead of equal treatment on the other. In contrast to the Polder model in the Netherlands however, the social partners in Germany lacked a solid infrastructure for engaging in peak level negotiations over employment policy (Hemerijk & Vail 2006). Unions, but also the oldest and most established of the two major employers’ associations representing the staffing industry (BZA) showed no interest in collective bargaining until forced to do so several years later. On through the year 2000 the German trade-union federation (DGB) favoured either a strengthening of limits on the industry and

¹³ In Euro these wage rates convert to 12.70 Euro and 6.43 Euro respectively. For a loose comparison, the low wage threshold

staffing, or legislation guaranteeing the equal treatment of temporary staff (Vitols 2007, pp. 173 - 174).

The Alliance for Jobs, a government initiative to bring the social partners into negotiations over a range of employment issues, also thematized the re-regulation of temporary staffing, but these negotiations ended in 2001 with a deadlock between unions and employers, with the former only willing to give up regulations if these were replaced with equal treatment, and the latter rejecting all restrictions and equal treatment. The German social democratic coalition intervened to reach a compromise on behalf of the social partners in the Job-AQTIV law enacted in January 2002. This law met an important employers' demand by extending the maximum duration of dispatching to a total of two years (employers demanded three), and bowed to labor by mandating equal treatment from the thirteenth month of a temporary assignment onwards (unions favoured equal treatments ideally from day 1, or at least after several weeks). Temporary agencies, in response, simply cut assignments to 12 months or less in order to avoid equal treatment (see Vitols 2007, p. 175 - 176 for staffing agency views), so that the law (and the compromise it signalled) failed to either de- or re-regulate the staffing industry.

On the heels of the Job-AQTIV law, the failure of the social democratic government to reduce unemployment levels, the uncovering of a scandal at the public labor exchange regarding over-reported placements of unemployed workers and the fact that 2002 was a federal election year all spurred the social democratic government to intervene again, but this time not by calling the social partners together, nor by initiating reforms on their behalf. Instead, the Schroeder government formed an independent commission of industry experts, most of them from large export-oriented German firms and international consultancies specialized in change management, with the explicit aim of overhauling the organization of the public employment exchange. Of the 15 government appointed members of this independent commission, lead by the VW manager Peter Hartz, only two were union officials and one an official of an employers' association (Vitols 2007, pp. 176 – 178).

The Hartz commission recommended lifting nearly all restrictions on the temporary staffing industry, while creating a sector of public staffing services to place long-term unemployed. State-paid wage subsidies were recommended to create an incentive for private sector firms to take on long-term unemployed on a temporary basis. Given the obvious competitive disadvantages for the private sector temporary

staffing industry of a public sector staffing service at low wage rates, unions were forced to abandon efforts to make equal treatment part of the Hartz recommendations. Union agreement to collective bargaining on the other hand, was wrought through a political exchange within the commission, as the price for guarantees that unemployment benefits would not be cut for older unemployed workers (Vitols 2007, pp. 180 - 183).

In January 2003 the first Hartz law removed most of the legal restrictions on temporary staffing, including the key prohibition on synchronizing employment and staffing assignments of temp workers, which had constituted the relationship between agency and temporary worker as an employment relationship. Since restrictions were lifted, the temporary staffing sector has expanded from 13,824 firms in 2002 to nearly 21,000 in 2007 (see Diagram 1 above). The number of temporary employees has more than doubled in this time period, from 273,000 in June 2003, to over 630,242 in June 2007 (Bundesverband Zeitarbeit Personal-Dienstleistungen e.V. (BZA) 2008)

The removal of restrictions however, also involved political exchanges meant to reward union support in the 2002 re-election of the social democrats and to open mechanisms for protecting temporary employees. Thus, the 2003 law included, against the recommendation of the Hartz commission, an equal treatment clause. EU-level deliberations over an equal treatment directive were used by the social democratic labor minister to legitimate this change of course.¹⁴ Before this law was passed however, the new government made it clear to the unions that the inclusion of equal treatment clause was based on the strong expectation that collective bargaining would replace it. After all, union representatives in the Hartz commission had already agreed to collective bargaining. The government argued that the legislation of equal treatment created a bargaining resource for unions, who had up until then rejected bargaining on the basis of their organisational weakness in representing temporary workers. The state imposed “threat” of equal treatment created a bargaining advantage for unions, and the bargaining partners were given a one year deadline for concluding agreements before the equal treatment clause would be enacted. This limit also reversed the opposition of some staffing industry

¹⁴ In June 2003 these same directives were rejected by the German government, in a rather perverse political exchange with the British government in the European Council. In exchange for British support in opposing new corporate take-over directives, which would have exposed a number of German corporations to take-over drives, Germany agreed to support British opposition against the equal treatment direction. See Vitols 2007, p. 185.

employers' associations, who wanted to avoid equal treatment (Vitols 2007, pp. 185 - 187).

The bargaining advantage for unions was just as quickly taken away as competitive Christian unions in some German regions reached agreements as early as February 2003, undercutting the German DGB union federation wage proposals before they could be brought to the bargaining table. Whereas the original DGB proposals aimed at wage minimums of 8.40€, the first Christian union agreement installed an hourly wage floor of 6.70€ in the old federal states and 6.20€ in the new federal states. Union competition drove minimums for both the DGB and the Christian union agreements downwards, with the DGB hourly wage floor at 6.85€, and the Christian union wage floor dropping to as low as 5.78€ in the old federal states and €5.52 in the new states. When the one year deadline for collective agreements fell in January 2004, 99% of temporary staff were covered by a collective agreement, but with wage levels varying by agreement and qualification steps between 5.52€ and 15.50€ (Weinkopf 2006, cited in Vitols 2007, 191, see also Vitols 2007 pp. 188 - 194). By way of comparison, a recent study defines wages below 9.96€ on average as the low wage threshold (Bosch & Kalina 2007, pp. 31). This relative disorganisation of both the union and employers' associations in the temporary help industry in Germany draws yet another contrast to the Dutch case, where central agreements and extension clauses have created nation-wide wage grades and relatively uniform conditions for temporary staff. Collective bargaining in the temporary staff industry is now considered by unions in Germany to have failed, with renewed calls for state intervention, at the very least for setting minimum wage levels to raise the floor on staffing industry agreements.

(very tentative) Conclusion

In what sense has the analyses of temporary staffing in this paper demonstrated a “variety of temporary staffing” characteristic of the protected employment economies of coordinated capitalisms? In Germany, the Netherlands and Japan the expansion of the temporary staffing industry was a “negotiated expansion” well into the 1980s. An important similarity across these three protected employment economies was the attempt to institutionalize temporary staffing as an employment relation between agencies/dispatching firms and temporary workers.

This was accomplished informally in Japan, along the lines of inter-firm supplier networks. The employment status of temporary staff and restrictions on the staffing industry to institutionalize employment protections were strongest in Germany. The role of unions in these Germany and Japan however, was more oriented toward preventing the substitution of regular with temporary staff, and less concerned with the actual employment conditions of contingent workers. Only in the Netherlands did unions take up the cause of improving conditions for temporary workers in the 1980s.

The “employment variety” of temporary staffing has diverged in the course of the 1990s. We have argued that differences in the infrastructure for social bargaining and the inclusion of labor in major re-regulations of temporary work shaped the extent to which the “employment variety” could be secured through either the institutionalization of equal treatment or collective bargaining. The nearly complete exclusion of labor in Japan and growing segmentation within the booming sector of staffing employment as well as between “permanent temporary” and regular employment have transformed temporary staffing into an extremely heterogeneous and relatively unprotected form of employment. The marginalization of labor in the re-regulation of temporary staffing in Germany and a bizarre sequence of political bargains by the ruling social democratic coalition have rendered equal treatment inaccessible and collective bargaining ineffective. The consequence is the unintended rise of low-wage temp staffing. Under far more favourable circumstances, trading off equal treatment for collective bargaining in the Netherlands has opened up the possibility for strengthening the “employment type” of temporary staffing through the phase system. The experience with the phase system is still young, the opportunities plentiful for temporary staffing agencies to evade the movement of workers into higher phases, so that the actual success of this model is not yet clear. As the first decade of twenty-first century comes to a close, divergence rather than convergence characterizes the comparison of employment status, working conditions and social protections for temporary staff within the most protected employment economies of coordinated capitalism.

References

- Bosch, Gerhard / Kalina Thorsten 2007: Niedriglöhne in Deutschland – Zahlen, Fakten, Ursachen. In: Bosch, G. / Weinkopf, C. Arbeiten für wenig Geld: Niedriglohnbeschäftigung in Deutschland. Frankfurt: campus, pp. 20 – 105.
- Bundesverband Zeitarbeit Personal-Dienstleistungen e.V. (BZA) 2008: Mitarbeiter in der gewerblichen Zeitarbeit per Stichtag. (www.bza.de, downloaded March 15, 2008)
- Coe, Neil / Johns, Jennifer / Ward, Kevin 2004: Mapping the Globalisation of Services: the Top 20 International Temporary Staffing Agencies. Working Brief 1, downloaded June 1, 2006.
- Estevez-Abe, Margarita / Iversen, Torben / Soskice, David 2001: Social Protection and the Formation of Skills: A Reinterpretation of the Welfare State. In: Hall, Peter A. and Soskice, David (Eds.) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. New York and Oxford: Oxford University Press, pp. 145 - 183.
- Hemerijck, Anton C. / Vail, Mark I. 2006: The Forgotten Center: The State as Dynamic Actor in Corporatist Political Economy. In: Levy, Jonah C. (ed.) *The State after Statism: New State Activities in the Age of Liberalization*. Harvard University Press.
- Iversen, Torben 2005: *Capitalism, Democracy, and Welfare*. New York: Cambridge University Press.
- Gonos, George 1997: The Context over “Employer” Status in the Postwar United States: The Case of Temporary Help Firms, In: *Law and Society Review*, Vol. 1, pp. 81-110.
- Imai, Jun (forthcoming) 2009: *The Transformation of Japanese Employment Relations: Reform Without Labor*. Palgrave Press.
- Imai, Jun and Shire, Karen 2006: Employment Deregulation and the Expanding Market for Temporary Labour in Japan, in Haak, René (Ed.) *The Changing Structure of Labor in Japan – Japanese Human Resource Management between Continuity and Innovation*. London: Palgrave Press, pp. 113- 129.
- Imai, Jun 2004: The Rise of Temporary Employment in Japan: Legalisation and Expansion of a Non-Regular Employment Form. Duisburg Working Papers on East Asian Studies, No. 62/2004, 64 pages.
- Koene, B., Paauwe, J. and Groenewegen, J. (2004). 'Understanding the development of temporary agency work in Europe.' *Human Resource Management*, 14: 53-73.
- Koene, B., Pot, F. and Paauwe, J. (2003). 'Contingent employment in the Netherlands'. *Contingent Employment in Europe and the United States*. In O.

- Bergström and D. Storrie, (eds). Cheltenham, Edward Elgar Publishing Limited, pp. 195-223.
- OECD 2006: Boosting Jobs and Incomes: Policy Lessons from Reassessing the OECD Jobs Strategy. Paris:OECD
- Shire, Karen (2008 in press): Gender Dimensions of the Aging Workforce in Japan. In Coulmas, Florian (ed.) *Challenges of Demographic Change in Japan*. Leiden: Brill Academic Publishers, 27 pages.
- Sol, E. 2001: 'Employment Services in the Netherlands.' *Comparative Labor Law & Policy Journal*, **23**: 81-128.
- Storrie, D. 2002: Temporary agency work in the European Union. Luxembourg, European Foundation for the Improvement of Living and Working Conditions.
- Visser, J. and Hemerijck, A. 1997: *A Dutch Miracle: Job Growth, Welfare Reform and Corporatism in the Netherlands*. Amsterdam, Amsterdam University Press.
- Vitols, Katrin 2003: Die Regulierung der Zeitarbeit in Deutschland: Vom Sonderfall zur Normalbranche. Duisburger Beiträge zur Soziologischen Forschung, No. 5/2003, 37 pages.
- Vitols, Katrin 2007: Zwischen Stabilität und Wandel: Die Sozialpartnerschaft in Deutschland am Beispiel der atypischen Beschäftigungsform Zeitarbeit. Institute of Sociology, University Duisburg-Essen, dissertation manuscript, 261 pages.
- Wilkens, Ingrid 2005: Arbeitnehmerüberlassung in den Niederlanden. In: bundesarbeitsblatt, nr. 11, November, pp. 18 – 25 (downloaded from www.bundesarbeitsblatt.de 25. März 2008)