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Trade Union Responses To Outsourcing In Australia

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ABSTRACT

Australia has witnessed a rapid growth in outsourcing over the last decade. Explanations of the rise of outsourcing tend to emphasise economic and human resource management factors and neglect the collective dimension. However, outsourcing has been identified as a means of individualising the employment relationship and reducing union influence. This has been evident across both the public and private sector in Australia. Indeed, over the last decade the public sector has been a clear leader in outsourcing initiatives. This paper focuses on trade union strategies for maintaining a pro-active position within workplaces that embrace an outsourcing approach to work organisation.

INTRODUCTION

While ‘outsourcing’ tends to be thought of as a private sector initiative, implemented in conjunction with downsizing, in Australia outsourcing has become a prevalent feature of public management, particularly in local government and the utilities. During the 1990s, the rise of outsourcing in the public sector was typically associated with privatisation through contracting out and competitive tendering and was also a catalyst for the spread of non-standard employment (Teicher & Van Gramberg 1998). For the unions these developments have proved a serious challenge.

Outsourcing typically involves an external agent providing a service to an organisation which it traditionally performed itself. According to Ganz (1990, p. 24) it involves ‘the transfer of assets from a using organisation to a service vendor, where the vendor takes over responsibility for the outsourced activity under long-term contract’. The work may be performed outside the workplace by contracting to another organisation or within the workplace by staff contracted by the service supplier. Duration of employment may be fixed, either for a specific project or for a specified time (Hartmann & Patrickson 2000).

In this paper, we explore trade union responses to outsourcing using a typology developed by Foster and Scott. The case studies examined include a major public utility and local government. This research draws in part from an Australian Research Council funded project on the industrial relations and labour process implications of Australian privatisations. The primary source of information was interviews with key informants among management (including former managers), union officials and delegates and various public record documents including government reports and newspaper articles.

OUTSOURCING IN AUSTRALIA

The spread of outsourcing has been inextricably linked to ‘downsizing’ in the sense of workforce reductions resulting from some form of ‘strategic intention’ (Littler, Dumford, Bramble & Hede 1996). In Australia, the spread of outsourcing occurred while the deregulation of the labour market lowered the locus of employment regulation from industrial tribunals to the workplace.

The uptake of outsourcing options has been rapid, though this has occurred off a relatively low base. Agency employment, defined as 'paid by a placement or employment agency while working at the workplace' (Australian Workplace Industrial Relations Survey 1995, p. 408), more than doubled between 1990 and 1995, with the number of workplaces using agency staff increasing from 14 to 21 percent in the same period (AWIRS 1995). Further analysis of this data revealed an annual growth of 7.5 percent per annum in the use of contractors and their employees compared to a 1.6 percent per annum growth in direct employment (Wooden 1999). Hartmann and Patrickson (2000) reported that in 1998, 52 percent of Australia's top 500 companies used contract labour and a further 27 percent were planning to use it.

In the public sector, the use of contracting out, particularly in Victoria, has been widespread, with utilities at the forefront of these changes. For example, AWIRS (1995) found that among 12 industry groups outsourcing was highest in public utilities (69 percent of respondent firms) and fifth highest in government administration (52 percent), leading Burgess and Macdonald (1999, p. 37) to observe 'that it is the public sector which is seen to be leading the way over a more cautious and conservative private sector'.

The Rationales for Outsourcing

The underlying themes of cost reduction and increased flexibility have driven the outsourcing phenomenon (Hartmann & Patrickson 2000). In the human resource management literature, outsourcing is often portrayed as a means of enabling organisations to focus their resources on the core business, while facilitating new forms of work for other business areas. By matching organisational resources more closely with customer or product demand, organisations should reduce fixed labour costs and increase efficiency and competitiveness (Domberger 1994; Zappala 2000). The ability to change the structure of the workforce or work patterns has been described as a key to efficient and effective utilisation of human resources (Emmott & Hutchinson 1998). Outsourcing also provides organisations with expertise not available in-house (Young 2000).

According to Quiggin (1996) the mainstream economic rationale is that outsourcing provides a means of transferring the significant or unpredictable risks, particularly financial risks, to contractors, while enabling the principal to retain control over the service. This argument has also been cast in terms of increased reliability, that is, using contracting to reduce vulnerability to disruption, including that caused by labour disputes (Perry 1997). Outsourcing enables organisations to transfer the responsibility for employee relations to a third party, thereby avoiding strong or militant unions and/or side-stepping provisions of agreements and arbitrated awards. Thus, outsourcing may be used strategically by employers, particularly they "have not been able to implement numerical flexibility or casualisation, and have therefore chosen to contract in new groups of workers who are not covered by the usual protections" (ACIRRT 1999, p. 142).

The most common rationales for outsourcing focus on the organisation in isolation, neglecting the process of market liberalisation undertaken by Australian governments since the 1980s. Along with asset sales, outsourcing was viewed as a mechanism for shrinking the public sector and eliminating budget deficits (Bell 1997). At the state level in Victoria, an efficiency-oriented rationale was ostensibly at the core of the radical agenda pursued by the Kennett Liberal-National Party government between 1992 and 1999. Here, the Treasurer

endorsed the system of compulsory competitive tendering (CCT) in local government as providing an injection of private sector best practice and superior performance which was to significantly reduce business risks, allow organisations to focus on their core activities and access technology and expertise (Stockdale 1995, pp. 27-28). Similar arguments were applied across the entire public sector, including in public service departments and off budget entities. Such arguments obscure the underlying ideological dimension of public sector outsourcing demonstrated in the UK by the Thatcher government's preoccupation with weakening trade unions and reducing the size of the public sector (Heery & Abbott 2000).

The need to undermine union organisation and individualise the employment relationship is both a theoretical proposition and an ideological cornerstone of neo-liberalism. At both the national and state levels, but particularly under the national *Workplace Relations Act* 1996 (Cth), the emphasis on individualising employment regulation, supplemented by guarantees of 'freedom of association', has assisted in the rise of non-union 'collective' agreements and individual agreements. Additionally, the Liberal-National government elected in 1996 actively marketed its preferred form of individual agreement, the Australian Workplace Agreement (Burgess & Strachan 1999). Thus, outsourcing and other forms of non-standard work has been facilitated by governments through legislation and by example in their own workforces (Teicher 1998).

Implications of Outsourcing for Employees

One consequence arising from the rapid uptake of outsourcing is the continuing contraction of award coverage and an associated reduction in the proportion of the workforce covered by the safety net of minimum wages and conditions prescribed by arbitral tribunals. Award coverage has fallen from around 85 percent in 1985 to an estimated 70 percent in 1999 (Ross 1999). The likely continuing decline in award coverage means that a large proportion of the workforce will lack protections such as minimum wages and hours of work (ACIRRT 1999; Burgess & Strachan 1999). Such changes may also result in a re-contractualising of the public sector employment model, enabling the employment relationship to be ended at short notice with limited termination compensation and little justification (Robinson 1996). Given that workers affected by these changes are unlikely to be union members, many of those adversely affected by outsourcing initiatives will not have access to the generally superior negotiated benefits applying to unionised sectors.

This shift in power in the employment relationship enables management to further reduce costs through diminished conditions of employment and increased use of part time and flexible working patterns. Certainly, in the Australian public sector, there is general agreement that outsourcing through CCT led to the erosion of wages and conditions of employment. Various studies (e.g. Walsh & O'Flynn 1999) argue that the main ways of achieving savings were lowering wage rates, increasing the spread of ordinary weekly working hours, reducing or removing penalty rates and allowances and cutting training opportunities. For those on fixed-term contracts and casual or part-time work, the lack of entitlements, job insecurity and increased stress, go hand-in-hand with almost non-existent career prospects (Emmott & Hutchinson 1998; Teicher & Van Gramberg 2000). Further, savings to organisations through outsourcing services were found to arise through cost shifting and work intensification (e.g. Quiggin 1996).

Much debate has surrounded the development of flexible work and management practices as part of a management strategy using internal and external labour markets. However, less attention has been paid to the role and influence of unions in the outsourcing process. The progressive deregulation of the Australian labour market, decline in union membership and reduced job security has apparently resulted in a more conciliatory stance from the unions (Hartmann & Patrickson 2000).

UNIONS AND OUTSOURCING

The interface between management outsourcing strategies and union responses and efforts to adopt a proactive role in the workplace is the principal focus of the case studies below. Although there have been various attempts to analyse union strategy, there has been little attempt to examine the specific issue of union response to outsourcing. Foster and Scott (1998) identified three types of response to contracting out: defiance (either through industrial action or non-involvement); incorporation (pragmatic compliance); and external appeal, primarily by legal challenge. Each of these strategies and responses have been utilised in varying degrees by Australian unions.

Victorian Local Government

Under the Kennett Liberal–National Government (1992-1999) CCT, the mandatory market testing of council service provision expenditure, was enshrined in the *Local Government (Competitive Tendering) Act, 1994*. Of course, contracting out was not new to local government; having been used where there was clear and reliable competition, flexibility in the availability of plant and equipment required for special projects, or where service provision was characterised by irregular demand or seasonal fluctuations (Evatt Research Foundation 1990).

The Victorian approach to CCT was similar to that adopted in the UK and New Zealand: a legal requirement was placed on local government to invite competitive tenders from the private sector for the provision of its services. CCT in Victoria was distinctive because the Act required local government to subject increasing proportions of council expenditure to market testing: 20 per cent in 1994/5, 30 per cent in 1995/6 and 50 per cent in 1996/7. Secondly, the legislation did not prescribe the services to be contracted out. Consequently, CCT created a situation where there was a shift to outsourced provision in the sense that non-traditional services, particularly in the human services area, were submitted to a tendering process. CCT also created a situation which mimicked the outcomes of outsourcing, both structurally (purchaser-provider split) and in process terms (competition between in-house and external providers).

Trade Union Response

For the Australian Services Union (ASU), the major union in local government, non-involvement was from the outset regarded as a non-viable option. Initially, the national union and its state branches campaigned against CCT by taking industrial action. However, faced with widespread redundancies resulting from amalgamations, the effectiveness of this response was compromised. The ASU reported difficulty in conducting a meaningful dialogue with members about “the good fight against CCT” (Union interview 1998), when members were preoccupied with the terms of redundancy. Consequently, the union moved

away from defiance, instead concentrating its attention to negotiating redundancies on the most favourable terms. One organiser claimed that “there is no point sitting back and protesting; the union has to identify the vehicles it has available and possible protections” (Union interview 1998). In other words the response was a form of incorporation.

In 1994, the ASU (with the other unions in the sector) entered into pattern-bargaining style agreements with councils, designed to deliver a consistent approach to redundancy and redeployment. The resulting redundancy agreements provided severance payment entitlements above those specified in the industry award. Provisions regarding notification periods, re-training and opportunities for transfers were also included. This pragmatic approach made it clear that the ASU was not opposed to competitive tendering as such. Whilst this led to dissatisfaction among some members, it ensured that the union was not excluded from the decision making process altogether. Nevertheless, one senior union official reported that membership fell by 5,000 across Victoria due to the direct and indirect effects of (union interview 1998). Downsizing following council amalgamations directly removed members, as did the process of arriving at competitive in-house bids. Members also resigned because of “dissatisfaction with the union and the way it handled the amalgamation and the CCT process” according to an ASU organiser (union interview 1998).

In an attempt to influence the CCT process, the ASU formulated a preferred model, its ‘Best Practice Approach to Competitive Tendering in Local Government’, which sought to protect wages and conditions by requiring all tenderers to be bound by the *Victorian Local Authority Interim Award, 1999*; establish joint union-management CCT committees; and develop contracts and timeframes and formulate evaluation criteria for tenders. The ASU attempted to implement its model by serving it on all Victorian councils as a log of claims for inclusion in enterprise bargaining agreements. This approach was successful to the extent that the councils signed a framework agreement containing elements of the ASU model, but key clauses, including the protection of wages and conditions, were not accepted by any council.

This response can be described as pragmatic compliance aimed at retaining members in councils and external service providers by focusing on the workplace, that is, playing an active role in reviewing awards and negotiating certified agreements and Local Area Workplace Agreements (LAWAs) specific to individual business units. Minimum terms awards, modelled on the *Local Government Award*, were negotiated with contractors Manikow Works and Serco, Remy-Moffit, and Glad/Silver Circle. Attempts to negotiate enterprise agreements with private contractors were generally less successful. As CCT progressed, LAWAs were signed by the union in an attempt to secure members’ jobs through in-house tendering. As the Australian Industrial Relations Commission (AIRC) acknowledged, CCT places both union and employees in an invidious position: to oppose a LAWA and render a bid ‘uncompetitive’ effectively deprives workers of their jobs (Nolan 1996).

The ASU initially adopted a defiant stance. However, when they became aware of their members’ lack of ‘fight’, they adopted a more pragmatic stance of incorporation supported by legal means to prevent contractors gaining a competitive advantage through degradation of wages and conditions of employment. This approach had been used successfully by British unions who utilised the transposition of European legislation, the 1991 Transfer of Undertaking Protection of Employment (TUPE) regulations, to protect the rights of employees in the event of a transfer of an undertaking to a new employer. In a move reflective

of this experience, the ASU applied to the AIRC in 1995 to insert a new clause, styled as the 'contractors clause', into the *Victorian Local Authorities Interim Award*. However, fearing adverse impacts from the then recently enacted *Workplace Relations Act* 1996, plus the uncertain outcome of its application, the ASU obtained an adjournment in 1996.

In the meantime, other public sector unions pursued employment protection and challenged reductions in wages and conditions as a result of outsourcing by initiating actions under the 'transmission of business provisions' provisions in s.149 (1)(d) and s.170MB of the federal *Workplace Relations Act*. This legislation provides for the continuing application of an award when a new employer takes over an existing business. Two Federal Court decisions strengthened the unions' position on this point: *Northwestern Health Care Network v Health Services Unions of Australia* (FCA 897, 2 July 1999) and *Community and Public Sector Union v Stellar Call Centres Pty Ltd* (FCA 1224, 3 September, 1999). In the landmark *Northwestern* case, the Full Bench found that former public sector home-care workers employed by Northwestern were entitled to retain their terms and conditions of work. Since the *Workplace Relations Act* applies to Victorian local government, the ASU then sought employment protection under the transmission of business provisions. Almost immediately, it secured an out-of-court settlement on behalf of 40 former local government home-care workers employed by the private company, Silver Circle (Carson 1999, p. 9). Following this, the ASU prepared a class action on behalf of 5,000 local government workers who lost pay and other benefits as a result of CCT (Long 1999). Consequently, the final phase of the union response in local government was a mixture of compliance and legal challenge.

Electricity Generation

Arguably, the economics of electricity generation reflected the employment authority's history of concessions on staffing and work practices, which made it uncompetitive compared to suppliers in other states. While labour costs at the State Electricity Commission of Victoria (SECV) were clearly an issue, so were poor capital investment decisions, over-capitalisation of assets and low levels of plant availability. The SECV's problems were compounded by the fact that NSW and Queensland had undergone extensive restructuring, including reducing staff levels, which placed Victoria at a significant cost disadvantage. In the circumstances, distancing through outsourcing was a logical step for a government to take.

The problems outlined above led the SECV to reduce costs, first by cutting the workforce, and then by outsourcing various functions. The process of workforce reductions commenced in 1989 with the adoption of a target of 10 percent over two years and a call for voluntary redundancies in areas where senior management believed losses could be sustained without any adverse impact. Accordingly, a Voluntary Departure Package (VDP) of 2 weeks pay for each year of service, pro rata long service leave of 13 weeks salary per year of service and a retrenchment benefit consisting of the employer and employee contributions from the superannuation fund was provided. The package proved more popular than expected with the target being met within a month (Ruschena 1999).

Following the appointment of a new chief executive officer in 1990 the SECV conducted a joint review of non-core functions, the Activities Review, which provided clear evidence that areas such as transport and the mechanical and electrical workshops were not commercially viable (Management interviews, 2000). The process of outsourcing began with the sale of the transport fleet and associated functions. The unions affected by this announcement, the

Municipal Officers Association (forerunner to the ASU), Storemen and Packers Union and the Transport Workers Union, organised protest rallies and work bans in late November 1990. This, however, did not prevent a contract being signed with a major transport and logistics firm, Linfox. Amidst continuing industrial action, SECV management wrote to the workers offering three options: redeployment, acceptance of a VDP and departure from the industry, or acceptance of employment with Linfox. The latter option included a signing-on benefit of one week's wages and a VDP. Disputation continued into January, 1991 with hearings in the Australian Industrial Relations Commission and applications for injunctions against the industrial action. Ultimately, the SECV reached agreement with the TWU, the major union and the protest campaign waned.

Having outsourced the transport fleet, the SECV sold the electrical workshops to Siemens in October 1991. There was little opposition from the employees, though the Electrical Trades Union attempted to rally community and union support to oppose the sale. Another outcome of the Activities Review was that the transport workshops were benchmarked against their private sector competitors and services could only be charged out at commercial rates, leading to massive losses. A major problem, which the shop stewards came to appreciate, was that entrenched demarcations and inter-union rivalries precluded the introduction of efficient working practices, making closure or outsourcing inevitable (Management and union interviews 2000). Once the workforce was conditioned to the inevitability of outsourcing, management sought expressions of interest on the basis that the unions would be involved in the outsourcing process and that the workers would not be disadvantaged. This continued a longstanding pattern of management involving the unions in major change initiatives.

The next outsourcing project was power station and mine maintenance, arguably core business activities. The first attempt was in April 1992, when the SECV attempted to use contractors for specified works. The metals unions had a long history of resistance to outsourcing in any form, with 'even the suggestion of outsourcing' giving rise to strike action (Management interview 2000). On this occasion, strike action forestalled outsourcing and prompted the formation of a joint Maintenance Review Task Force, charged with achieving significant performance improvements in a co-operative environment. This process was not successful, with the delegates making undertakings that were 'not delivered on the shop floor' and, by the end of 1992, it was clear to management that improvements would be marginal at best.

While unions had a role in the selection of contractors, the basic parameters of the outsourcing process were determined unilaterally. By this stage, in readiness for privatisation, each power station had been established as a separate business with its own workforce, which included clerical, operations and maintenance workers. This allowed separate tenders to be called for each station and mine in order to create a competitive market for maintenance services. Contracts were to be of variable duration (from 18-24 months in the first instance) in order to minimise the potential for unions to negotiate uniform wages and conditions across employers. In addition, a small in-house maintenance workforce was retained at most sites, largely in order to provide some insulation against industrial disputes in the contracting industry (Management interview 2000). As with previous outsourcing projects, workers were given the options of redeployment, voluntary redundancy or transfer to the contractor. The latter option also entailed receipt of a VDP. Importantly though, job security with the SECV was exchanged for an employment guarantee limited to the life of the contract.

With the transition of the maintenance workforce to contracting firms, the unions, led by the Amalgamated Metal Workers Unions (AMWU), established enterprise agreements which were underpinned by the predominantly private sector *Metal Trades Award* and provided similar levels of remuneration to that previously received under SECV awards and agreements. For example, in the first of the power station agreements, at Loy Yang B, differences in conditions, such as longer working hours (up from 37.5 to 38), were offset by increased wages (\$50 per week) (Union interview 2000). At the time, many employees did not fully grasp that they had traded job security for lucrative VDPs and similar total remuneration.

The paradox of outsourcing, particularly in the maintenance areas, was that opposition by unions was neither fierce nor sustained. On closer examination, it is evident that lack of solidarity among the unions and careful planning by management ensured that defiance quickly gave way to pragmatic compliance (incorporation), at least on the part of the key unions. Further, the choice of pragmatic compliance appears likely to exert a continuing influence on the capability of the unions to protect the wages and conditions of members in the contracting industry and perhaps more widely in the power industry.

Three points are central to understanding the union response to outsourcing. First, the outsourcing of transport produced an immediate union protest (defiance) led by the Victorian Trades Hall Council, but ultimately the asset sale and outsourcing proceeded. This set the pattern for subsequent outsourcing activities. Secondly, the SECV had reached an agreement with the AMWU, the key and historically most militant maintenance union. As a former manager explained: 'There was a deal done with the AMWU to make them the sole union in the maintenance industry, probably to the detriment of the AWU and the ETU following and picking up the scraps'. Thirdly, a sophisticated process, combining marketing and promotion of VDPs and threats, was used to reduce workforce numbers and overcome resistance to outsourcing. Some accounts suggest that management waged a war of psychological attrition, principally against white collar workers, in which individuals were placed in the 'vegie patch', removed from their previous duties and denied meaningful work. This was compounded by threats that if the hapless employees did not accept VDPs, they would be retrenched compulsorily (Management and union interviews 1998 and 1999). Management was also said to have adopted a 'floodgate strategy', consisting of a combination of periodic pauses in the offering of VDPs and the deliberate circulation of rumours that the packages were to cease, in order to create a clamour of resignations (Union interview 2000). At one power station, Yallourn W, half the dredger drivers resigned on one day alone leaving a serious skills gap (Management interview 1998). The attractions of a large redundancy package at concessional taxation rates and the prospects of continuing employment had to be weighed against the alternative of remaining with the corporatised employer and having little prospect of meaningful work. Almost all our informants, on both sides, stressed that the offer of voluntary redundancy was tinged with threats, either that the offer was finite or would be replaced by compulsion.

Clearly the main factor in explaining the unions' lack of efficacy in the face of a determined management lay with the level of internal divisions. This was part of an historical pattern in which the SECV made alliances with particular unions when there was a coincidence of objectives and the opportunity to exploit inter-union divisions. Significantly, these divisions were intensified in the context of the implementation of the ACTU policy of union

rationalisation and the instability generated by the process of outsourcing and privatisation in the electricity industry.

In view of the level of division, it was not surprising that the AMWU took the opportunity to preserve its membership and role in power generation through a strategy of pragmatic compliance or incorporation. The alternative would have been the gradual absorption of its members by other unions such as the ASU. But the AMWU response was to have two major consequences for ongoing workforce unity in electricity generation. Firstly, in large measure, outsourcing institutionalised longstanding divisions between the operators and the maintenance workforce. Secondly, the outsourcing model implemented by the SECV produced deep divisions within the maintenance workforce. The origins of these divisions lay in the labour utilisation strategies of the contracting firms who, unlike the former SECV, did not staff for peaks. Instead, they created a core workforce with employment for the life of the contract and a peripheral workforce of casuals who were utilised on a 'needs' basis, such as for major outages. The divisions between these groups became patent as the first round of maintenance contracts came to an end and the contractors resumed workforce downsizing. This process re-commenced at Hazelwood power station in late 1994 where the employer dismissed 27 employees, including all the shop stewards. The unions responded by calling a meeting of the industry maintenance workforce and recommending retaliatory industrial action against all the contractors. After a heated debate, this recommendation was narrowly defeated, with the votes of the casual workers proving decisive. At the time, a large overhaul was about to commence and industrial action would have led to postponement of that work to the detriment of the casuals. According to a longstanding union official (Union interview 2000):

From that day on we lost because we lost the ability to campaign as a group. Once Transfield had been left high and dry they would not help out workers at other contractors.

Thus, a situation has been reached, where for the foreseeable future, the maintenance workers have ceased to be a united force in power generation. Yet it is not clear that they have become integrated into the industrial relations of the broader contracting industry

CONCLUSION

In an environment where the political and legislative framework has become increasingly hostile to unions, governments at both federal and state levels have adopted a neo-liberal ideology which embraces individualisation of the employment relationship, outsourcing and privatisation. It is not surprising that, under such conditions, unions have found the battle against outsourcing difficult. What is surprising is that traditionally strong, militant unions such as the Australian Services Union and Amalgamated Metal Workers Union have been apparently incorporated into management's restructuring agenda.

This study of the union responses to outsourcing demonstrates that unions moved from defiance to pragmatic compliance when faced with a hostile environment and a lack of grass-root support from their members. One of the unions (ASU) in this study did not oppose outsourcing per se and this enabled a smooth transition to pragmatic compliance and legal responses. It also enabled the union to sustain a representative role in local government,

which was little different to that which it had traditionally played, though its membership was substantially eroded in the process.

In the case of electricity generation, and particularly the outsourcing of maintenance, union divisions and management strategy have meant that the shift from defiance to compliance has been associated with a much weakened position and diminished status in the industry. Management strategy consisted of a well planned and consistently implemented management strategy which compelled outsourcing through extensive consultation with workers and unions and offers of attractive redundancy packages. Secondly, in the generation industry, a complex, multi-union environment with a long history of inter-union rivalry and division laid the seeds for the apparent ineffectiveness of unions to prevent outsourcing. For years agreement could not be reached either among themselves or with the SECV on efficient and effective work practices which may have circumvented the need for outsourcing. When outsourcing became an imperative for management, continuing inter-union divisions meant that a united position on contracting out was beyond the reach of the power unions.

In the two cases considered above, we see that outsourcing can be used by management to present unions with an ultimatum: comply or become irrelevant.

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