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# **Trade Union Responses to Precarious Employment in The Netherlands**

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## 1. Introduction

The Netherlands is in many respects a country that does well in international comparison in terms of poverty, marginalization and precariousness. As a result, for many years politics, social partners and the public in general paid little attention to these issues. This has been changing in recent years. More and more it is becoming clear that the Dutch labour market has changed dramatically since the 1990s. In particular, the share of various types of flexible types of employment (fixed-term contracts, temporary agency work, payrolling constructions), of part-time employment and of low wage employment have rapidly been growing and the end of this growth does not seem to be in sight. The mounting incidence of such types of employment have serious consequences for workers and their families. They lead to growing poverty, feeling of insecurity and stress, and to declining possibilities to lead a decent life, get a mortgage to buy a house or to send children to sports clubs or music lessons. Also, it increases levels of inequality and growing differences between haves and have nots or between insiders and outsiders, leading potentially to new tensions and conflicts in society.

Dutch trade unions for some time downplayed the possibility that the Dutch labour market would suffer from increased flexibilisation and precariousness. In fact, in the late 1990s the unions reached an agreement with the employers and the government on changes to labour legislation that made it easier to use flexible contracts. On the one hand, this was accompanied by increased social security right for flexible contracts, which at the time seemed a reasonable trade-off. Also, collective bargaining was assigned a potentially important role in determining the use and precise rules concerning flexible contracts. Since they were occupying important institutional positions in the Dutch polder model and with bargaining coverage being high, the unions were confident that they could to a large extent control and limit the growth of flexible and/or precarious employment. Some 13 years later it is clear that this was a misjudgment. Flexibilisation took a flight during the 2000s, especially in the sectors where unions are weak and through the growth of the number of self-employed without personnel, also largely outside union control. Also, the attitude of employers has changed, pushing more vigorously today than in the 1990s for the free use of

flexible types of employment. Also, ongoing globalization, European enlargement and increasing competition from low wage countries have increased the perceived pressure on wages and working conditions in the Netherlands and have strengthened the bargaining position of employers relative to workers. These pressures have been aggravated by the present crisis.

As a result, during the 2000s unions have started to fully taken the issue of precarious employment on board. Strengthening the position of workers at the lower end of the labour market has become a priority. In this report we will discuss a wide variety of activities and strategies that are deployed to this effect, ranging from attempts to influence legislation to the organizing of workers in precarious sectors.

Some words on the concept of precariousness. Precarious employment refers to insecure, vulnerable and/or low quality employment, characterized by high flexibility, low wages and/or limited access to social protection, that does not allow workers to have a decent working and private life. It can be seen as the opposite of the ILO's concept of Decent Work. There is no single indicator of precariousness available and we will use indirect indicators. In this report we will focus mainly on the incidence of a number of so-called a-typical or non-standard types of employment (i.e. employment that is not permanent and/or fulltime), and the extent to which they suffer from low wages, lower labour and social security rights, and limited access to e.g. employer-financed training. In particular we will look at fixed-term employment, part-time work, temporary agency work and (dependent) the self-employed without personnel. However, a-typical employment is not necessarily precarious. For example, high paid professionals (e.g. lawyers) that work as self-employed without personnel can hardly be considered precarious. The same can be said for voluntary part-time work, especially if the part-time worker has a working partner. Also, certain standard jobs may be considered as precarious, especially those suffering from low pay. An additional issue here is that in the Netherlands different sources use different definitions and give different numbers on the incidence of a-typical forms of employment. In this report we will use internationally comparable data as much as possible.

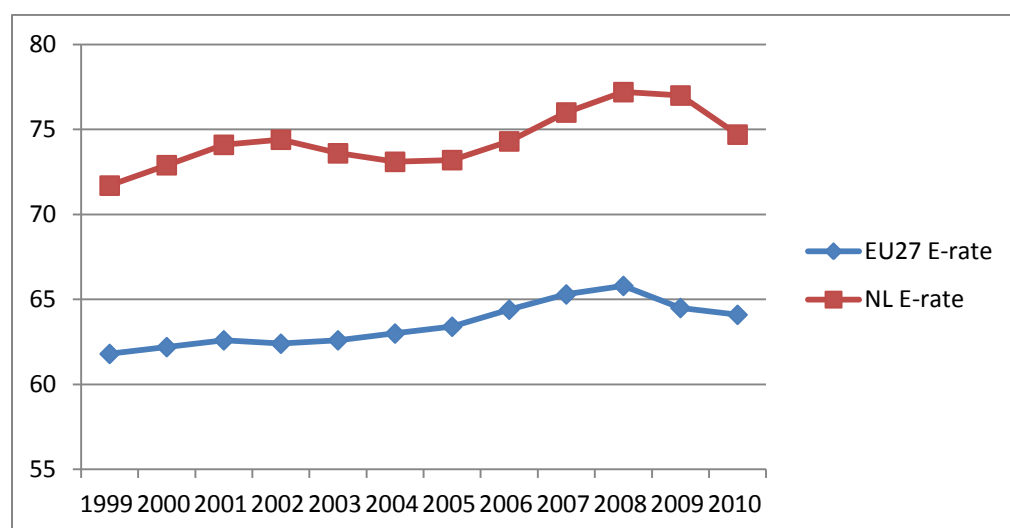
The structure of this report is as follows. In section 2 we provide a synopsis of labour market developments since the late 1990s, with a focus on the development of a-typical forms of

employment and their characteristics. In section 3 we present an overview of the basic employment and social rights that apply in the Netherlands, differences in rights between different types of employment and their possible link to precariousness. In Section 4 trade union strategies aimed at reducing precariousness will be discussed. Section 5 concludes.

## 2. The Labour Market in the Netherlands

In the 1960s-1980s work was largely standard full-time and permanent employment and there was little debate about precarious employment. This has changed in recent decades with the rapid rise of non-standard or atypical types of employment. Here we will illustrate this by a brief discussion of recent labour market trends. In the past decade or so the development of the Dutch labour market can be characterized by four main developments: a relatively high and increasing employment rate combined with low unemployment; a high and increasing share of part-time employment combined with a growing incidence of low pay; and increasing use of flexible types of employment.

Figure 1: Employment rate, the Netherlands and the 27 EU member states, 1999-2010 (%)

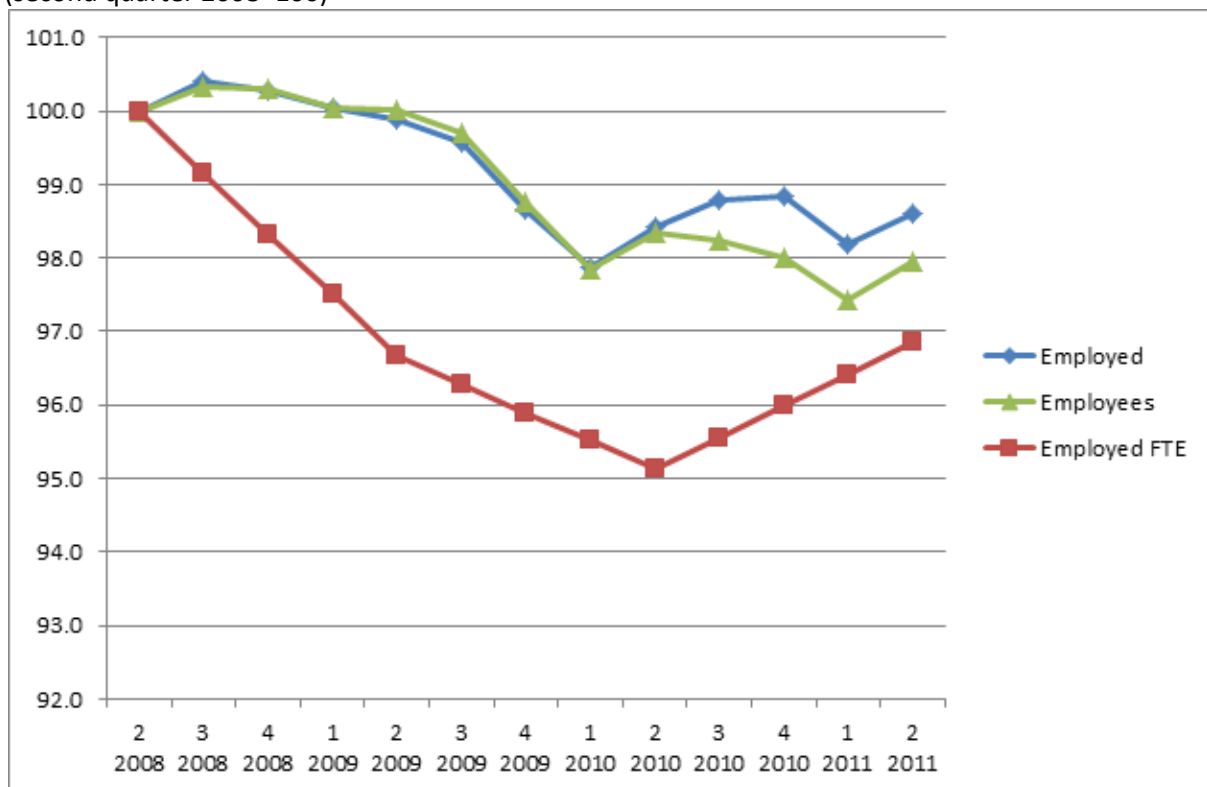


Source: Eurostat

The Dutch employment rate has been one of the highest in the EU for many years and the labour market was very tight for most of the 2000s. In 1999 the employment rate amounted to 71.7 percent and it reached its highest level in 2008 with 77.2 percent (Figure 1). As figure 1 shows, the Dutch employment rate has consistently been far above the average for the EU, the difference being around 10 percentage points over the entire 1999-2010 period. Indeed, in terms of the employment rate the Netherlands has been one of two top performers in the EU, the other one being Denmark. With the onset of the recession the employment rate

dropped but its decline was much more moderate than the fall in GDP, which only in 2009 already reached -3.5 percent. Indeed, the employment rate still stood at almost 75 percent in 2010. The limited fall in employment can to a large extent be explained by the much sharper decline of the hours worked by the employed (Figure 2 Wiemer). Employers have often been reluctant to dismiss workers because of the expectation that the labour market would again become tight after the crisis and preferred to adjust to the crisis by reducing hours instead of jobs. Especially in certain sectors (engineering, chemicals) this was further stimulated by part-time unemployment benefits schemes (*deeltijd-WW*) under which companies experiencing a serious decline in activity could put part of their workforce on reduced working hours; the non-worked hours were then (partially) compensated for by unemployment funds.

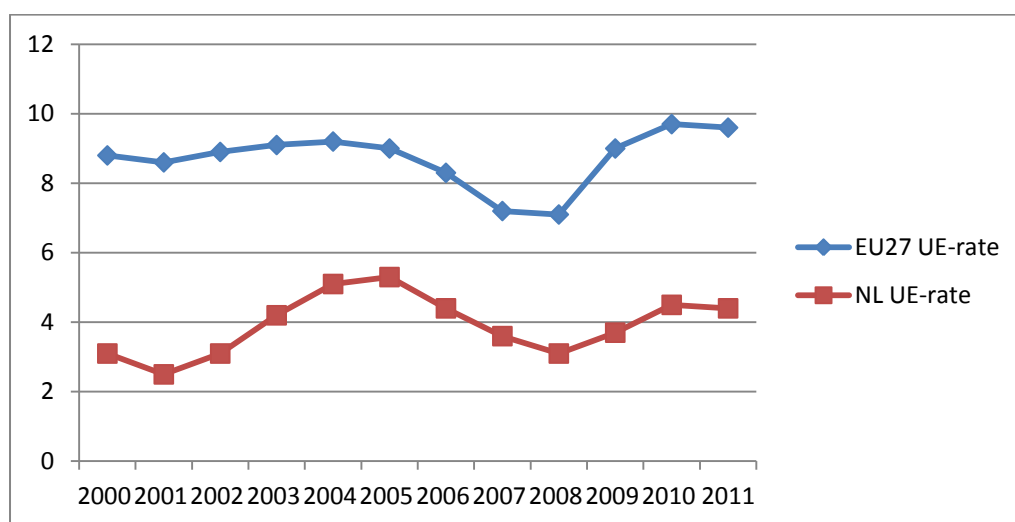
Figure 2: The development of the employed, employees and full-time equivalents during the crisis (second quarter 2008=100)



Source: Salverda (2011) based on CBS, update provided by author.

The high employment rate is mirrored by a low unemployment rate (Figure 3). According to Eurostat data Dutch unemployment moved between 2.5 and 5.3 percent in the 2000-2011 period. This has been continuously been far below the average for the EU 27, the difference moving between 3.6 and 6.1 percentage points. Between 2008 and 2010 the recession caused unemployment to rise but it still remained below 5 percent. This is strikingly low if compared to most other EU countries.

Figure 3: Unemployment rate, the Netherland and the 27 EU member states, 2000-2011 (%)



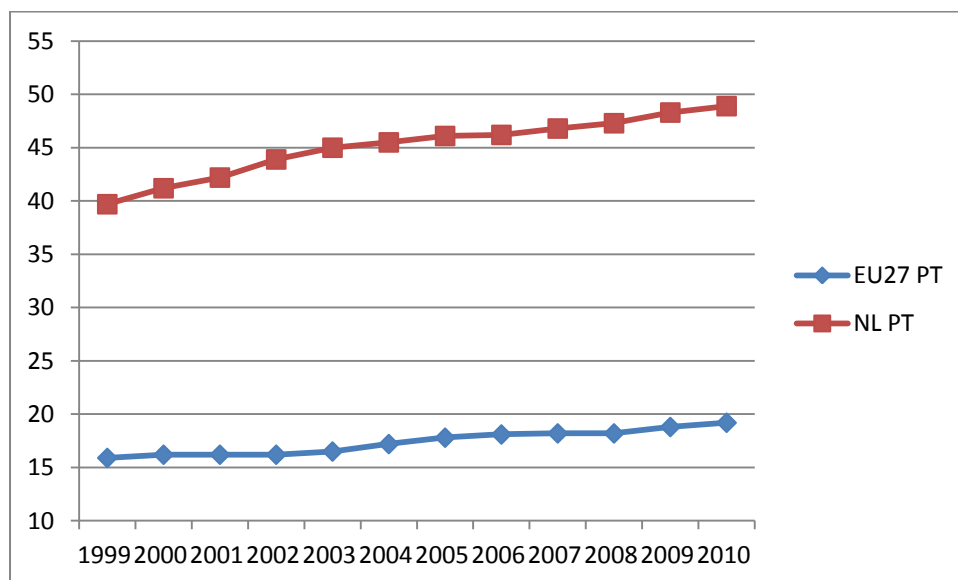
Source: Eurostat

One of the explanations of the high employment rate in the Netherlands is the very high and ever-increasing rate of part-time employment. In 1999, part-time employment already made up close to 40 percent of total employment and it further rose to close to 50 percent in 2010 (Figure 4). The high share of part-time employment points to the need to rightfully interpret the high employment rate: the Netherlands is not particularly good at creating high numbers of working hours but rather at distributing the available working hours over a large group of people. In full-time equivalents the Dutch employment rate is close to the EU average. The rapid diffusion of part-time employment was caused largely by women massively starting to enter the labour market as of the late 1970. Since contrary to, for example, the Scandinavian countries, Dutch women could not count on public facilities (e.g. child care) to support the combination of work and motherhood, part-time employment



represented their dominant ‘coping strategy’ (Visser 2002). Increased female participation may also be linked to the need for households to keep up their income levels in face of long-term wage moderation (Salverda 2008). Today some 75 per cent of working women work part-time while also among men the rate is around 25 percent. As a result, although part-time employment is generally labeled as ‘a-typical’ employment, in the Netherlands this does not hold true anymore. According to Eurostat data, in 2010, for 32.4 percent of part-time workers the main reason not to work full-time was care for children or incapacitated adults; for 22.3 percent the main reason was their enrolment in education or training. For 5.7 percent the main reason was that they could not find a full-time job. The high share of part-time also means that the average number of hours worked in the Netherlands is far below the EU average: 30.6 compared to 37.5 weekly hours respectively. The average number of hours worked by part-time workers was much more similar: 19.7 percent and 20.1 percent respectively.

Figure 4: Part-time employment, the Netherland and the 27 EU member states, 1999-2010 (% of total employment)



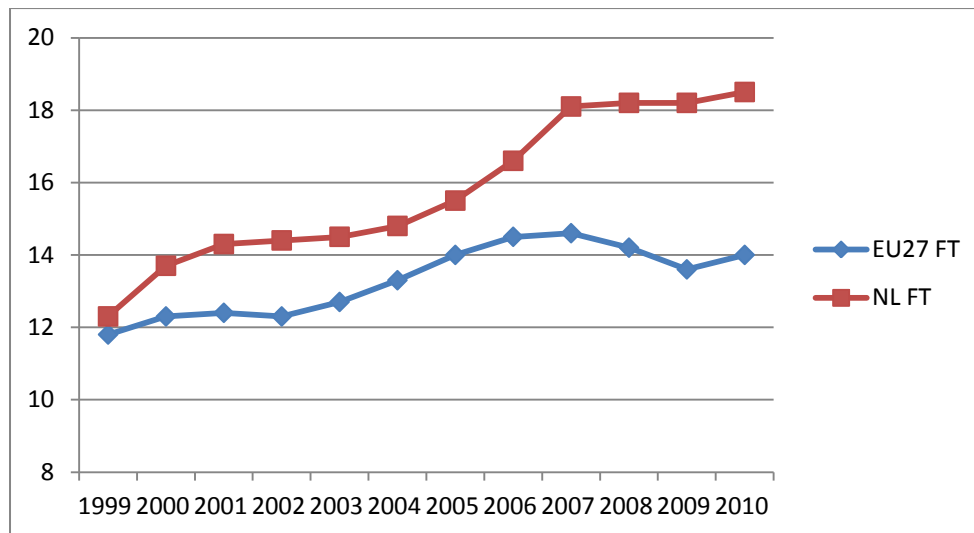
Source: Eurostat

A substantial part of part-time jobs are however very small jobs. Such jobs are problematic in terms of earnings. On the one hand, by themselves they are generally not able to sustain

the income of a household and need to be complemented by other sources of income to prevent households from falling into poverty. On the other hand, small part-time jobs are often low wage jobs, i.e. jobs where the hourly wage is below two-thirds of the median wage. Some 27 percent of part-time jobs are low wage jobs, while 70 percent of all low-wage jobs in the Netherlands are small part-time jobs (Salverda 2010). Low wage employment amounted to some 10 percent of employment during the 1980s and rose to over 15 percent in the late 1990s. This was enabled by the declining relative value of the adult minimum wage to below two-thirds of the median wage (*ibid.*).

During the 2000s also the incidence of flexible forms of employment went up rapidly. This is first of all the case for fixed-term contracts. Employers have increasingly resorted to such contracts to increase hiring and firing flexibility and to extend probation periods. The use of fixed-term contracts was made easier in the late 1990s as part of the flexibility and security reforms. The maximum number of consecutive fixed-term contracts was raised to three with a maximum of three years in total. Within this context, the share of fixed-term contracts in total employment augmented from 12.3 percent in 1999 to 18.5 percent in 2010 (Figure 5). As a result, whereas in 1999 the Dutch fixed-term rate was virtually equal to that for the EU27, in 2010 there is a difference of 4.5 percentage points between the two. In 2009, the main reasons for having a temporary contract were the inability to find a permanent job (close to 40 percent) and being in a probation period (40 percent); less than 20 percent had a fixed-term contract because no permanent contract was desired (Houwing 2011). Fixed-term contracts only to a limited extent function as a stepping stone towards a permanent contract. For example, of employees with a fixed term contract in 2007, two years later one-third had a permanent contract, 48 percent was still working on a fixed-term contract and 18 percent was not in employment anymore (UWV Kenniscentrum 2010). And there is evidence that this stepping stone function has declined in recent years (Muffels et al. 2011). As a result, more and more workers are trapped in flexible contracts, occasionally interrupted by spells of unemployment.

Figure 5: Fixed-term employment, the Netherland and the 27 EU member states, 1999-2010 (% of total employment)



Source: Eurostat

Apart from fixed-term contracts, also temporary agency work (TAW) is of importance. Also here an increase can be observed in recent decades. UWV figures indicate that in 1996 the number of temp workers was 247,000 and in 2009 323,000, with some 12,000 agencies being active. In 1998 the permit system for temporary work agencies was abolished by the government, freeing up the TAW market. However, this has led to many ‘malicious’ agencies being active which do not respect the law or good practice and provide work with low pay, no respect for the minimum wage, bad working conditions, no or limited pension and healthcare benefits, etc. And this in an already very flexible sector. To improve this situation and reduce unfair competition the sector issued its own quality certificate for TAW agencies and about 50 percent of agencies are certified today.

In most recent years there is also a growing use of payroll constructions, in which companies hire workers but have an external bureau taking responsibility for the administrative and legal aspects of the employment relationship. Today some 180,000 persons are employed through such a construction which is characterized by a split in the role of the employer into a ‘formal’ and a ‘material’ employer, much like the contract of temporary work agencies. The difference however, is that in practice the contracts very closely resemble the normal contract because, other than the temporary agency contracts, the employer in who’s

undertaking the work takes place (the 'material employer') hires the worker himself and merely transfers responsibilities to an agency (the 'formal employer'). This concerns responsibilities concerning pay, leave, sick pay, dismissal, pensions, in fact basically all conditions of labour. And it is not only used in the private sector: also a number of government agencies use the payroll construction to reduce administrative burdens and increase their flexibility, albeit at the cost of the security and working conditions of the employees. At first this was regarded as a specific form of temporary agency work, but recently it has been argued more and more that these workers do not differ in any sense from the normal employees of the material employer. As a result, the payroll construction is suffering from quite some criticism as it is argued to obscure the employment relationship, weaken the legal position of workers and providing jobs with inferior conditions and benefits.

A final form of flexible employment is that of the self-employed without personnel (ZZPers). The number of ZZPers exploded during the 2000s and according to CBS figures, in the third quarter of 2011 there were 732,000 ZZPers active, up from 400,000 in 1999. For many becoming a ZZPer is an attractive alternative as it gives independence and opportunities to earn a good income. For others however it represents a last resort. Also, there have been many cases where companies fired employees to take them back on as a ZZPer, with the aim to reduce social contributions and increase flexibility. About one-third of ZZPers can be classified as 'bogus' or 'dependent' self-employed as they work almost exclusively for one and the same client (Knecht et al. 2007: 125). Also, a substantial share earns very low incomes and has very insecure prospects.

One last remark here on the consequences of flexible employment. CBS figures show that in 2009 there were 370,000 employed persons living on incomes below the poverty line; the main reasons for this are that they earn low wages or have very low or negative incomes from operating their own business (CBS 2011). According to CBS (2011) self employed and flex workers have relatively high probabilities to be poor. For example, "People on incomes below the low-income threshold are more often working on temporary or flexible employment contracts. For example, 28 percent of workers with a risk of poverty were temps or flex workers versus 9 percent of workers with higher incomes (ibid.)."

### 3. Labour Rights

The extent to which employment is precarious depends to an important extent on the basic rights conferred by the employment protection and social systems. Here we will therefore briefly introduce the fundamentals of employment protection legislation, minimum wages regulations and the social protection system. This will be followed by a discussion of the regulations concerning various types of atypical contracts and their possible relationship with precariousness: temporary contracts (fixed-term, assignments/service contracts) and temporary agency work; training/apprenticeship contracts; and self-employment (with a focus on economically dependent self-employed).

#### *3.1 Employment protection*

Dismissal law is the final element of the protective rules: if an employer could simply dismiss an employee who demands the observance of his rights, no employee would ever do so. All European countries have therefore introduced rules to prevent unjustified dismissal. Legislation in most European countries is based on the principle that employers may at any time terminate the employment contracts with their employees. In a few European countries the first principle has been dropped: in the Netherlands, an employer who wishes to terminate an employee's employment contract needs the prior approval (permit) of the authorities (in this case the UWVWerkbedrijf) or must request the cantonal judge to dissolve the employment contract. The legal basis of the prior approval or permit, needed by an employer to give notice, is the Extraordinary Labour Relations Decree (Buitengewoon besluit arbeidsverhoudingen, 1945). The procedure to obtain a permit is quite easy and not a legal procedure. There are no legal remedies against the granting of the permission. After having obtained the permission (approval), the employer can terminate the employment contract by giving notice of termination, usually while observing a notice period. The notice period depends on the duration of the employment contract and varies from one to four months. Afterwards, the employee may seek compensation if the termination is manifestly unreasonable. This unreasonableness can be grounded on the reason for dismissal as being evidently unfair or incorrect, but also on the disproportionately harmed interests of the

employee by the dismissal. There is a lot of case law on this matter, but it is fair to say that the outcome of these proceedings is uncertain, in terms of whether a dismissal is considered to be manifestly unreasonable and in terms of the compensation when decided in favour of the dismissed employee.

Dismissal by giving notice on certain specific grounds is prohibited. Those grounds are pregnancy, absence from work during maternity leave, absence from work (actual or foreseeable) in order to care for dependents, absence from work as a consequence of compulsory military service or other civil or political service, and temporary absence from work due to illness or an accident. In the Netherlands, these bans on termination by giving notice apply. If the employer terminates the employment contract contrary to such a ban, the employee may nullify the termination. The employee has a choice: he may also opt to maintain the termination and to try and obtain financial compensation. In case the employment contract is dissolved by court, these bans are not applicable.

The other possibility to terminate the employment contract is to request the cantonal judge to dissolve the contract. When the cantonal judge dissolves the employment contract the employer must pay compensation to be determined by the cantonal judge in reasonableness. The judges themselves made recommendations to determine the compensation. This compensation almost always equals at least one monthly salary for every year of employment. The average number of terminations of the employment contract by the employer (so without consent or a request from the employee) in the Netherlands is about 100.000. Fifty percent of these terminations are dissolutions by court, the other fifty percent is terminated by giving notice.

Dutch dismissal law is thus characterised by a system in which the employer decides on the manner of termination of the employment agreement. Getting approval from a judge involves a serious procedural burden and costs, which can be seen as significantly enhancing employment protection. Alternatively, the employer may ask permission from the designated institution and then give notice of termination. Obtaining this permission can be difficult – more difficult than dissolution by the court – but once the permission has been obtained in principle no compensation is due upon termination unless the dismissal is manifestly unreasonable. Due to this system of protection, in international comparison the

protective function of employment protection legislation is rather strong. However, these protective rules are only applicable to permanent employment contracts.

### *3.2 The minimum wage*

In the Netherlands a minimum wage is set by law (wet op het minimumloon) at € 1424,40 gross per month. The statutory minimum wage applies to all professional categories. Persons entitled to the statutory minimum wage include employees of either sex, aged between 23 and 65 and working at least one-third of normal working hours, are entitled to receive the statutory minimum wage. For persons between the ages of 15 and 22 the Dutch law provides a statutory minimum wage which is fixed at a specified percentage of the minimum wage for adults. This percentage ranges from 30 to 85 per cent, depending on the age of the individual involved. As discussed above, the relative value of the hourly adult minimum wage has declined over the years and it is now below two-thirds of the median wage (and of course so are the minimum wages for younger workers). Hence, it does not necessarily protect against low hourly pay. Also, the high incidence of part-time work, especially among women who are working part time to be able to take care of the children, leads to many having a monthly wage (far) below the monthly minimum. As long as there are other incomes in the household this does not have to represent a problem in terms of poverty but there is a substantial group of poor working single mothers.

### *3.3 Social protection*

#### Pension rights (old-age)

The Dutch old age pension system is based on three pillars. The first pillar is the basic old age pension (Old Age Pensions Act, AOW). It provides all residents of the Netherlands at the age of 65 with a flat-rate pension benefit that in principle guarantees 70% of the net minimum wage. It guarantees a decent minimum income for all citizens. Other forms of income have no effect on the AOW benefit. The AOW is based on the principle of residence and is calculated, starting at the age of 15, at 1.5% of for each year of residence in the

Netherlands. A lot of migrant workers, who came to work in the Netherlands in the seventies of the last century, are now facing with a low AOW.

The second pillar is the largest of the three pillars and consists of supplementary pensions which are built up as part of people's terms of employment. The primary responsibility for these pensions therefore lies with employers and employees. Representatives of employers and employees have made collective pension arrangements for almost all workers and covers about 85% of the workforce. The supplementary pension schemes (including those for civil servants and teachers) are funded systems. The second pillar used to consist mainly of defined benefit pension plans but today most are based on defined contributions schemes. Its direct link to years or hours of employment and wage levels means that low wages, part-time employment or interrupted careers may lead to low pensions in the second pillar. This first of all affects women. The third pillar consists of supplementary personal pensions which anyone can buy from insurance companies. The non covered workers, working in a sector without a pension fund, and the workers with less coverage (i.e. due to a waiting time before being able to participate, as exists in the temporary agency sector) are supposed to buy a third pillar pension. The group of non covered workers is most often not able to buy such expensive pensions. In this group main representatives are low educated and migrant workers, and the low paid self-employed.

### Unemployment benefits

To qualify for unemployment benefit, a person who becomes unemployed must have been –according the Unemployment benefit act (Werkloosheids Wet, or WW)- employed for at least 26 weeks in the 39 weeks immediately preceding unemployment and must have worked at least four years during the last five (the so-called *referte-eisen*, i.e. eligibility requirements). If these requirements are met, the benefit is calculated as 70 per cent of the daily pay last earned. The duration of the basic benefit is six months for every unemployed person, but may be extended up to a maximum of five years depending on an individual's employment history and age. If only the first requirement is met, the duration of the benefit is six months and is based on the minimum wage. It is obvious that these requirements disadvantage workers with short fixed term contracts and temporary agency



workers. If the worker is still unemployed after the expiration of the unemployment benefit of the WW, he is eligible for a benefit based on the Social Assistance Act (Wet werk en bijstand, WWB). It is possible to qualify for unemployment benefit as a self-employed, but most self-employed don't qualify and are solely responsible for the financial risks related to the loss of income when ill and/or unemployed.

### Sickness leave

Due to an exhaustive use of the public administered sick pay funds, the responsibility for an sick employee was transferred to the parties of the employment contract. An employee who cannot work due to sickness is entitled to continued wage payments (by law limited to 70 percent but by collective agreement usually raised in the first year to full wages) for a period of two years. During that period, the employer and the employee are obligated to search for other suitable work. Employers are generally insured against the risk of continued wage payments in the event of sickness. This privatization of responsibility for sick employees to the parties of the employment contract increases the importance of having an employment contract.

In case the employment contract ends during sickness (or as is the case in the temporary agency sector: because of the sickness, see later) or in case the worker, entitled to a benefit for unemployment becomes ill, the Ziektewet (Sick pay Law) stipulates that a public institution (UWV, administrative office for employed persons insurance schemes) takes over the obligations to re-integrate the ill worker and to pay a sickness leave of 70% of the last earned wages.

If the employee after two years of sickness leave is still occupationally disabled, he is eligible for a benefit based on the Wet Arbeid en Inkomens (Work and Income Act), but only if the loss of income due to the disability is more than 35% of the last wages. The duration and amount of the benefit depends on the remaining capacity to work, the employment history and age. In case the benefits for the occupational disabled worker are below minimum, the Social Assistance Act (WWB) will supplement the benefits based on the Act. Self employed usually don't qualify for a benefit based on the Ziektewet and are solely responsible for their

income during illness. Private insurance companies offer insurances to cover this risk, but premiums are high.

### **3.4 A-typical contracts and precarious employment**

#### Fixed-term contracts

In legal terms, the difference between fixed-term employment contracts and open-ended employment contracts is that fixed-term employment contracts end by operation of law and that therefore no legal act of the employer is required to end the employment relationship. They therefore offer no or much less protection against dismissal. The possibilities to conclude fixed-term employment contracts are limited by a European Directive (1999/70/EC). This Directive states that a permanent employment contract is the normal situation and a fixed term contract an exception. The Directive stipulates as a minimum requirement that the Member States must regulate at least one of the three following points: (a) the total duration of fixed-term employment contracts, (b) the grounds on which temporary employment contracts may be concluded and (c) the number of fixed-term employment contracts that may consecutively be concluded. This directive is implemented in the Dutch Civil Code (Burgerlijk Wetboek, BW). Article 7:668a BW stipulates that fixed-term employment contracts may be concluded no more than three times in succession and / or may not last longer than a total of three years. If those limits are exceeded, the employment contract is deemed to be an open-ended (permanent) employment contract. The interval period in between two temporary contracts in order for them to belong to a sequence (with specific law applying to it) is three month. If fixed term contracts between the same parties are concluded with an interval of more than three month the sequence is broken. In some sectors this interval period seems to be used in order to prevent the claim of a fixed term contract worker to a permanent contract, although there is no indication that this use is widespread.

Article 7:668a BW has some stipulations to prevent abuse. If an employer is succeeded by another employer, the sequence of fixed term contracts is not broken. If, i.e., a temporary agency worker on a fixed term contract is stationed at the reception desk of a certain

company, and after the termination of the relationship with the temporary agency this company agrees a fixed term contract with this worker, to be employed at the reception desk, the company will be considered a successive employer and the fixed term contract will be considered the second in the sequence.

Paragraph 5 of article 7:668a BW states that the ruling is semi-mandatory and allows deviation by collective labour agreement. According to research this possibility is often used, in both ways: sometimes the duration of fixed term contracts is shortened and sometimes it is enhanced (Houwing 2010). It is therefore difficult to give general statements in terms of increasing or lowering the level of employment protection for fixed term workers. In a few sectors the collective labour agreement excludes the whole regulation of article 7:668a BW and allows fixed term contracts for an indefinite period and / or amount. The Amsterdam court of appeals ruled that such a stipulation is not in accordance with the European directive.

One of the major reasons a fixed term contract are often considered to be precarious, is the lack of employment protection. Even in case of sick leave, the fixed term contract ends by operation of law at the time. If parties agreed upon the possibility of a interim termination, such a termination is possible (but the normal rules for termination are applicable) and reduces even further the employment protection. Workers with a fixed term contract in the Netherlands often do not have the possibility to buy a house because banks are not willing to lend money to fixed term workers, claiming their income is uncertain. Also, workers, working 'permanently' on fixed term contracts, in general don't participate in pension funds and get less training and education paid by the employer in comparison to workers on a permanent employment contract.

### Temporary agency work

The majority of temporary agency workers have a contract covering a duration of 4 to 12 months. Companies may engage temporary employees without any limitation: the temporary employment agency is regarded as an employer and temporary employees may exercise all their rights against that employer as if it were an ordinary employer, although

some limitations are given by law. Indeed, in the Netherlands, temporary agency work is regarded as regular labour. Article 7:690 BW stipulates that a temporary work agreement between a temporary agency worker and a temporary agency is considered as an employment contract. During the first 6 months, however, two specific rules apply, as stipulated by article 7:691 BW:

- Contrary to other fixed-term contracts, more than three temporary agency work agreements can be concluded without this automatically leading to conversion into a fixed-term contract.
- Temp-agency and temporary agency worker can agree in writing that the temporary agency work agreement is dissolved in case the hiring company sends the worker back.

The duration (six month) of this stipulations is semi-mandatory, and the applicable collective labour agreement uses this possibility to extend the period to 1.5 year. The level of employment protection of temporary agency workers is therefore very low. On the other hand, temporary agency workers can quit their job any time they like. There are two preconditions for the application of these (specific rules or) exemptions: the employer needs to have a real intermediary position on the labour market and the agency (employer) and the company that employs a temporary agency worker are not linked to each other in a concern relationship. With this preconditions the legislator tries to prevent abuse of the regulation.

After 6 months, by law all regulations regarding an employment agreement fully apply, unless a collective labour agreements deviates from the law. As said before, the collective labour agreement on temporary agency work entails those deviations and allows, deviating from article 7:668a BW, a period of one and a half year of consecutive fixed term employment contracts which will be terminated by law. In the collective labour agreement is stipulated that in case the hiring company doesn't want to employ the worker anymore within 1.5 year, regardless the amount of contracts, the contracts ends. The collective labour agreement entails some more deviations that worsen the employment protection of the temporary agency worker, i.e. a construction under which the illness of the TAW is considered an expression of the hiring company not to allocate the worker any longer, in

which case the employment contract ends by law. In short: it is fair to say that the position of a temporary agency worker is very uncertain during the first year and a half of service. Most temporary agency workers are dismissed before they obtain a right to a fixed term contract for a certain period, or can claim other rights.

Article 8 of the law on allocation of labour forces through intermediaries (WAADI) stipulates that temporary agencies should pay temporary agency workers wages equal to those earned by workers in the client enterprise. There are two exceptional cases to this rule:

- If the Collective Agreement on temporary work comprises agreements concerning temporary agency workers' wages.
- If the Collective Agreement of the client enterprise comprises agreements concerning temporary agency workers' remuneration in the sector.

The collective labour agreement for temporary agency workers establishes a pension fund, but participation is only possible after half a year of service, a threshold most temporary agency workers do not pass. The collective agreement establishes a vocation training fund, but the savings of that fund (up to more than € 100 million) indicate that the fund is not much used.

The temporary agency worker is often seen as precarious since he has no employment protection of any substance. Also, the temporary agency as an employer seldom offers (vocational) training or schooling and for a temporary agency worker the participation in the pension fund is hard to achieve as the threshold of six months of service is a real obstacle. Moreover, the temporary agency worker is entitled to social benefits for unemployment, but it is difficult to meet the requirements especially for the wage-related unemployment benefit.

### Self-employment

An employment contract is an obligatory contract regulated by law. Irrespective of the name that the parties give the employment contract, if the statutory conditions have been met (i.e. that labour is performed for pay in an employer/employee relationship, which is

defined by the subordination of the one party to the other) an employment contract is deemed to exist. That contract is governed by the applicable statutory provisions. There are several law cases in which a self employed relationship was considered an employment contract., but it is hard to predict, at the edges of the employment contract and the self employed relationship, what the decision will be. The main difference between the two is the subordination of the worker. Due to societal and economic changes employees consider themselves increasingly less subordinate to the employer, and consider themselves to be responsible for the task commissioned on them. The legal structure of self employment is that of the contract of services. This legal structure is designed for short contracts to hire employment, like that of a hairdresser or a painter. The law imposes on the contractor the obligation to obey the assignments (or follow the instructions) given by the principal. The line between subordination and the obligation to obey assignments, and therefore the line between an employment contract and a contract of services, is rather vague.

Judges tend to bring into labour law those contractors, who's societal position is less favourable, and according to the Supreme Court it is allowed to take into account, when deciding upon the applicability of labour regulations, the workers' societal or economic position. Relevant aspects are the presentation of the contractor on the market. If the contractor presents himself on the market and tries to acquire more customers by advertisements, he is easily considered to be a real entrepreneur and not an employee. Self-employed workers, working for one main principal and not presenting themselves as entrepreneurs (often former employees of the principal), are often (still) regarded as employees.

When in doubt, a principal can ask a contractor to hand over an official paper that self-employed workers can receive from the tax authority (Verklaring arbeidsrelatie VAR; Declaration of employment relation in the preceding year). This declaration indemnifies principals from claims for premiums and taxes, but not from claims based on the applicability of labour laws. The declaration does not bind the private parties and is no proof of the absence of an employment contract, but it is of course a indication for the legal status of the relationship.

As the self employed worker is not an employee, labour laws and regulations are in general not applicable, making his position potentially precarious. It implies for example that there is no protection against dismissal (in some rare cases the BBA is applicable on contactors) and contractors have no codetermination rights. Similarly, working time regulations do not apply to self-employed workers. Also, due to European regulations collective labour agreements can't be applicable to contractors because that would harm free competition economy, and they receive much less training paid for by the company than employees. Moreover, self-employed workers are responsible for themselves in case of income loss, holidays, sickness absence or loss of work and resulting unemployment.

## 4. Trade Union responses to precarious work

### 4.1 Dutch trade unions and precarious work

Poverty and precariousness were until the late 1980s closer connected to social security than to work. For the trade unions this meant that they could prevent workers from falling into precariousness by putting all efforts to continuation of (workers in their own) jobs, most of them permanent and full-time jobs, and improvement of social security provisions. Precarious employment was not so much of an issue, also because dismissal protection for standard contracts in the Netherlands is quite strong. This started to change when already in the early 1980's temporary work agencies started to be established and little by little expanded their share in employment, leading to the growth of a-typical employment of a potentially precarious nature. Subsequently, this trend was strengthened when from the 1990's onwards employers themselves started to expand the use of a-typical contracts (fixed-term, flexible hours etc.) enormously as described in section 2. Added to that is the practice that a large majority of women in the Netherlands works part-time. All this amounts to an estimate of about one third of the workers working in some form of flexible or marginal contract today. It has not been easy, and is still no sinecure, for the trade unions to get a grip on this process. The original 'rank and file' of the unions did not accept these developments with open arms but rather felt threatened by it. Initially flexible types of employment were rejected as unacceptable. However, as a consequence of actual labour market developments characterized by a growing share of flexible jobs, the trade unions soon started to follow a strategy directed at inclusion of this a-typical workforce. The idea was for all work to be uplifted to the standards of the law and the collective labour agreements, improving the legal position as well as the working conditions of flexible workers. Of course, this all took place at a time when the requirements to obtain any kind of social security benefit was far less restrictive than it is now.

In the second half of the nineties however, it became clear that the division on the labour market between the formerly standard contracts and the a-typical standards was widening. Flexible contracts were more and more working as a valve on the labour market, affecting



specific groups like young people, women, ethnic minorities and so on. In order to regulate this, the social partners concluded an agreement in 1999 in which they traded off their interests according to a model that has become known as flexicurity, codified in the Law on Flexibility and Security that came into force in 1999. Trade unions accepted more flexibility for employers, but in exchange demanded the guarantee workers' rights and extension of social security rights to atypical jobs. Also, the use of part of this flexibility was restricted in the sense that it could only be achieved through collective agreements. For the trade unions this was an important issue and they were confident that in their position as the bargaining partner they would be able to limit the use of flexible contracts and/or their level of flexibility.

After a little over ten years however, the trade unions have started to recognize to some extent that this has been a miscalculation. There are sectors and groups on the labour market where flexibility is now standard, instead of the exception that the trade unions foresaw when they concluded the agreement. On top of this, like in many other countries, forms of bogus self-employment have developed that are very difficult to address, marginal part-time employment is expanding, and most recently also new forms of flexible types of employment like the above-discussed payroll constructions have emerged. Combined with the restrictions that have been put on access to social security schemes, the trade unions have started to recognize that the general inclusive approach to battle flexible contracts in order to prevent precariousness is not paying off adequately for a large group of workers.

This situation has put the unions in a difficult position. Ongoing labour market flexibilization and increasing precariousness come, not as a coincidence, in times when the unions are not at their strongest. Trade union membership is slowly but surely declining and today is around 20 percent of the working population. The traditional trade union stronghold, the manufacturing industry, is getting smaller and smaller. The growing private services sector is where much of the new flexibility can be found, but in sectors and companies that are notoriously difficult to organize for trade unions. Also, austerity measures and the introduction of new public management principles in the public sector, the 'new stronghold' of trade unions, make that also here flexibilisation is on the agenda. And although the coverage rate of collective agreements remains high at around 85 percent, it is getting more

and more difficult for unions to prevent collective agreements from turning into instruments of (controlled) flexibilisation.

Also, unions are struggling with their identity in an increasingly segmented labour market. Their members often belong to the so-called insiders, i.e. those with permanent contracts, higher-than-average wages and good social security rights. These often feel threatened by the competition of the outsiders, i.e. the marginal and flexworkers, and fear that this competition will lead to lower standards in their own jobs. At the same time, the trade unions do not only want to represent their members but society at large as well, including especially the flexible part of the labour market that is often not a union member. This broader societal function has traditionally been an important part of trade union activities, illustrated by their participation in a series of national tripartite and bipartite bodies that influence government policy, as well as their role in the signing of national social pacts, in which they exert influence on wage and incomes policy, labour market reforms and the social security system (van der Meer and Visser 2010). Also, they see that safeguarding the standards of the insiders requires putting a halt to the precarisation of the labour market as a whole and improving the position of flexible workers. The larger the group of outsiders, the more difficult it is to maintain the standards of the insiders.

As a result, precarious work has received more and more attention from the side of Dutch trade unions. Several different strategies have been developed to address issues related to precarious employment, some of which we will discuss in detail below. First however it is important to point out that the Dutch unions have not done so in isolation. Most importantly, they have joined the International Labour Organisation (ILO), other United Nations organizations and the International Trade Union Confederation (ITUC) in their campaign for 'decent work'. The Decent Work Agenda was developed by the ILO in 1999 as a strategy that aims to give all women and men the possibility to work in freedom, equality safety and human dignity. It aims to promote productive and quality work and to reduce poverty and increase equality. The Decent Work Agenda is also part of the first millennium goal of reducing extreme poverty by 50 percent by 2015.

For the Dutch unions (as well as for the unions in other European countries) initially the Decent Work initiative was understood mainly to concern the developing countries of the

global South. This can still be seen from the importance of the Decent Work Agenda for the development aid activities of the Federation of Dutch Trade Unions (FNV) and the National Federation of Christian Trade Unions (CNV), the two largest unions in the Netherlands. Through development projects and cooperation with unions in developing countries they try to promote decent work over there.

However, increasingly decent work was also linked to the Dutch situation. In particular the FNV is referring more and more to decent work (Gewoon Goed Werk) when discussing the problems of the Dutch labour market. It argues that the growth of flexible and precarious work discussed above shows that also in the Netherlands the Decent Work Agenda is of great importance. In fact, in developing its broad principles on the solutions for increased precariousness, the FNV bases itself on the basic values of the ILO. In doing so it sees three main principles:<sup>1</sup>

- Limit flexible contracts to 'sick and peak', i.e. to the replacement of permanent workers that are ill and to peaks in economic activity. If a person works for 9 months a year it should be on a normal (permanent) contract.
- Equal pay for equal work. For example, temporary agency workers should be paid according to the normal collective agreement valid at the company where they work from the very first day.
- Work should lead to economic independence and not to low pay and working poverty.

Also, the FNV has identified a number of sectors where it sees problems related to the Decent Work Agenda, including the postal sector, the cleaning sector, meat processing, the supermarkets, domestic aid, the construction sector, education, the taxi sector and the temporary agency work sector. On the FNV web page visitors can even do an on-line decent work check to test the state of their own job.<sup>2</sup>

In the next section we will discuss five trade union strategies towards precarious work in more detail.

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<sup>1</sup> See: [www.fnv.nl/publiek/themas/Decent\\_Work/standpunt-fnv](http://www.fnv.nl/publiek/themas/Decent_Work/standpunt-fnv)

<sup>2</sup> [http://www.fnv.nl/publiek/themas/Decent\\_Work/139009/](http://www.fnv.nl/publiek/themas/Decent_Work/139009/)

## 4.2 Five trade union strategies

The trade unions are reinventing the strategies they have at their disposal to address precarious work. In the respective activities of the Dutch unions we distinguish five main strategies or instruments which we will discuss below, each illustrated by an example of its use in addressing a particular form of work that is apt to lead to precariousness. The five strategies and the respective examples are the following:

- The conclusion of collective agreements (example: fixed-term contracts and employment agency work);
- Litigation (example: payrolling);
- Influencing the legislative process at central level (example: replacement of indefinite contracts by atypical contracts or self-employed);
- Organizing (example: the cleaning industry)
- Publicity, media influence (example: the insecure existence campaign)

### Conclusion of collective agreements (fixed-term contracts)

The 'original' Dutch Labour Code of 1907 contained provisions on just two types of contracts; fixed-term and indefinite. Dismissal law at that time had scarcely developed, so effectively, for the worker the fixed-term contract provided the best protection against a loss of income. The employer was not allowed to finish the contract before the concluded date, and if he did so anyway, had to pay damages. When from the late 1950's dismissal took form in the legislation, the workers' preferences started to shift. Indefinite contracts gave more protection against unemployment. This was also due to the fact that contrary to earlier times, employers started more and more to add a provision in fixed labour contracts that

allowed them to terminate a contract before the set date, thereby limiting compensating damages for untimely dismissal.

From that time the indefinite contract became the most commonly used form of contract, which was supported by provisions according to which successive fixed-term contracts were automatically transposed by law into indefinite contracts. This legislation was amended in 1999 by means of the earlier-discussed Flexicurity legislation, according to which longer chains of fixed-term contracts were allowed by law, and even more by collective labour agreements (according to the system of so-called three-quarter mandatory law). The statutory law provides that after three fixed-term contracts, the fourth is an indefinite contract, or the second option, that after more than one contract, the next contract is automatically transposed into an indefinite contract after 36 months have passed. In most sectors the collective agreement follows the legal regulations and does not deviate from it. Hence here collective agreements are not used for further flexibilisation nor for reducing the impacts of the legal reform of 1999. In some sectors of industry, in particular where the union do not hold a very strong position, this has led to the possibility of a long chain of fixed-term contracts. A good example here is the media sector. In other sectors, not covered by a collective labour agreement, we find that workers on chains of fixed-term contracts are 'dismissed' right before their contract would be transposed into an indefinite contract according to the statutory law.

At this moment the widespread and extensive use of fixed-term contracts, in particular among young workers, is regarded by the trade unions as one of the major problems of the labour market, and, logically as one of their main challenges. The problems with the fixed-term contracts are multifold. Not only the risk of losing income and insecurity due to lack of guarantee of continuance, but also because other conditions of labour, like training and pensions are not provided in an equal way to temporary workers. The trade unions are addressing this problem with multiple approaches. Where the statutory law is concerned, it directs its attention to the government and (at this moment unsuccessfully) tries to convince it to change the law. A somewhat unfortunate circumstance is however that the adversary argument is always that the unions are at the negotiating table concluding collective agreements, and that they should direct their efforts at that process, especially since the

law leaves space to collective agreements to increase or decrease the allowed number of contracts or their duration. When the legislation was adopted, the idea was that the position of the trade unions was powerful enough to safeguard against extensive use. This was actually also true at the beginning, but employers' attitudes toward forms of contracts have altered so much that the bargaining position of the trade unions in quite a few sectors is simply not strong enough and that collective agreements in many occasions are used to further flexibilise the regulations concerning fixed-term contracts. Trade union policy is to try and reverse the use of the three-quarter mandatory law that leads to deviation of the law to the disadvantage of the worker, i.e. more than three fixed-term contracts or more than 36 months. This strategy has not yet been terribly successful in practice.

A specific form of temporary work is temporary agency work, which is not fixed-term in the strict sense, but usually will amount to such. This form of contract is defined in a special provision in the Labour Code. Other than in most countries, this part of the Dutch labour market is also covered by two collective labour agreements, one of which is usually extended to the whole temporary agency sector. Part of the employers in this sector are willing to enter into collective agreements supposedly because they have an interest in distinguishing the bonafide part of the temp market from the malafide part. However, they also have more down to earth interests. The collective agreements contain a phase system: in phase A the employment relationship between the agency and the worker automatically ends at the end of the assignment at the client company; in phase B the worker has a fixed-term contract with the agency; and in phase C the worker has a permanent contract with the agency. Whereas by law a worker goes from phase A to phase B after 26 weeks of employment, in the collective agreements this period is extended to 78 and 130 weeks, substantially increasing the level of flexibility available to the employer (Houwing 2011). The vast majority of temporary agency workers are in phase A. In exchange for this increased flexibility the temporary agency workers received certain rights to pension and training. For example, workers of 21 years and older start accumulating pension rights after 26 weeks of employment (*ibid.*). Indeed, the collective labour agreement assures that the conditions under which workers are employed get better the longer the relationship lasts.

In this sector a specific technical problem in the legislation that regulates the extension of collective labour contracts (also known as *erga omnes* application) became apparent. As a consequence, the extension was not continuous and applicable to non-organized employers. In response, the employers organizations and trade unions concluded a collective labour agreement for an exceptionally long term, i.e. five years – instead of the normal one or two years. Although the trade unions always use this strategy somewhat grudgingly, because they would more prefer normal indefinite contracts for all workers with the actual employers where the work takes place, they also recognize that the benefits outweigh the disadvantages. At the same time, within the unions a debate is ongoing concerning if it is indeed the best solution to have a collective agreement for the temporary agency sector or if the conditions of employment of temporary agency workers should depend on the regular collective agreement of the sector or company in which they are employed.

#### Litigation (payrolling)

The practice of ‘payrolling’ is a fairly recent one. The construction is characterized by a split in the role of the employer into a ‘formal’ and a ‘material’ employer, much like the contract of temporary work agencies. The difference however, is that in practice the contracts very closely resemble the normal contract because, other than the temporary agency contracts, the employer in who’s undertaking the work takes place (the ‘material employer’) hires the worker himself and merely transfers responsibilities to an agency (the ‘formal employer’). This concerns responsibilities concerning pay, leave, sick pay, dismissal, pensions, in fact basically all conditions of labour. At first this was regarded (also by the trade unions) as a specific form of temporary agency work, but in the last couple of years it became clear that these workers do not differ in any sense from the normal employees of the material employer. The trade unions have consequently decided at federation level that they no longer want to incorporate this form of employment in their collective bargaining strategies, but to develop a strategy that abolishes the use of the payrolling contract altogether and makes sure that the formal and material employer again become one and the same. They announced that they will not renew the collective agreement for the sector that after five years ended early 2012. This also because according to the unions many payrolling

companies did not respect the collective agreement, including members of the employers' association of the sector (VPO) that concluded the agreement. Moreover, the whole intention from the side of the unions to include a collective agreement for the sector was to achieve better working conditions than in the temporary agency work collective agreement. In practice many payroll companies follow the latter collective agreement instead of the one for their own sector.

Several legal academics have written about payrolling and have argued that the construction (which makes use of the specific Labour Code provision concerning temporary work agencies) is not in conformity with the law. The point of view is basically that the specific provision is written for constructions in which the agency truly plays an allocative function in the sense that it provides workers for short periods of time and special reasons (like replacement of a sick worker or during peak periods). Although this is not literally written in text of the Labour Code provision, the argument is supported in documents on the legislative history. As a result, the FNV has decided to develop a litigation strategy and take the matter to court. It has to be noted that this is one of more strategies directed at this phenomenon and that the other strategies mentioned in this paper will, and are, also applied.

A litigation strategy may seem to be the obvious strategy to choose, but in practice it is very difficult to apply, in particular where it concerns vulnerable workers. The first difficulty in individual cases is that litigation singles out a worker who is dependent on the continuation of his work for his income. It is precisely this uncertainty that dissuades a worker either individually, but also under protection of the trade union, to take his case to court. The paradoxical situation appears that through a claim in litigation the worker might lose his opportunity of continuation of the labour relationship with this employer. The trade union of course is not much inclined to risk or trade off the interests of their members for a matter of principle. This is even more true because the trade unions are very aware that one case won does not necessarily change the labour market.

A collective litigation case is in this sense less risky, but more difficult to arrange. At the moment there is such a case which is promising for the unions, especially because the material employer is a government agency.



### Influencing the legislative process at central level (replacement of indefinite contracts by a-typical contracts or self-employed)

Under Dutch law an employer who wants to dismiss a worker with an indefinite labour contract has to obtain a permit from a semi-government agency. The permit is granted on condition that the applicant employer substantiates the reason for the foreseen termination of the contract (either a financial/managerial or personal/labour relation-related reason) . At the beginning of 2010 the trade unions detected a change in policy of this agency. Formerly such permits were refused in cases where the employer planned to replace the indefinite contract worker for a worker with any kind of a-typical contract or a (bogus) self-employed worker. Around that time this policy seemed to turn. Permits were issued where a seemingly well protected worker was replaced by one with an uncertain contract. The trade unions jumped to protest against this change. The legal structure of the regulation on the dismissal permit is complex and, consequently, it cannot be addressed with one simple trade union strategy. The obligation of a permit is not regulated in a formal law, but in a decree. It is not the central government that is the executive body, but an independent semi-government body that works according to jointly formulated rules. These rules are public, but it is not formal legislation. If the trade unions want to be successful in challenging this change of practice, it has to address the government, including the semi-government body. And, although it is clear the strategy has to be aimed at the rule makers and keepers, i.e. the (semi) government, the employers' organizations also have to be addressed, because it is the employers who are using the new rules on job replacement.

The Netherlands knows several bi- and tripartite organs in which the government (in several appearances) and the social partners meet on a regular basis. A tripartite organ is the Social Economical Council and a bipartite organ (social partners) is the Foundation of Labour. Both organizations have a common informal agenda setting committee, in which staff members of the Ministry of Social Affairs also participate. Here, at the centre of the ' Poldermodel', is, according to the unions, the appropriate place to address a matter like the one here described. And indeed, the unions have put the replacement issue on the agenda of these organs, making it part of the political debate.

When the Minister of Social Affairs was confronted by the trade unions with their strong impression that the policy concerning dismissal permits had assumedly been altered, this was denied by the government. Certainly, some amendments had taken place, but the minister claimed that these were merely of a technical nature, to accommodate some unforeseen issues. Within the present political constellation, with a centre-right minority government of liberals and Christian democrats, the minister could not have said anything else, because if he had he would have contradicted the stance of the current government. At the same time, the party condoning the government (the PVV) has made its support conditional on the promise that dismissal law would be left unaltered. The trade unions could use this reluctance to accept modifications to dismissal regulations in their strategy to reverse the changes in policy as much as possible. This strategy has carefully begun to yield some success in the sense that the instructions of the government to the agency that issues permits have been altered recently.

#### Organizing (workers in the cleaning industry)

In the US, and more recently also in countries like the UK and Germany, the organizing model is used by trade unions to try and access groups of workers in companies and sectors where it has been difficult for unions to gain members and develop union activities. Trade union representation at the workplace, like the activities of shop stewards in the UK, has traditionally never been very strong in the Netherlands. The organizational model of Dutch unions depends more on independent unions that negotiate with the employers on collective agreements that are incorporated in the individual agreements. Although the unions are of course associations, which allows members to be involved and influence their strategy, not many members usually directly concern themselves with the internal democracy. One of the consequences of this model is that it is sometimes difficult for a trade union to enter companies where potential members work. This is particularly true for low skilled sectors of industry like the supermarkets or the cleaning industry. Here we will focus on the latter sector. An additional problem in this sector is that an exceptionally high number of workers are migrants, who have difficulty with the Dutch language.

Not surprisingly, due this tangle of circumstances it was hard for the trade unions to gain a powerful position in the sector in order to improve the conditions of work. The sector is characterized by the use of low-paid fixed-term contracts, little respect for the interests of the workers, an unhealthy and unclean work environment, and so on. An additional problem is that in this sector, like in other 'precarious-apt' sectors, we in fact see a triangular relationship that has a strong impact on the price of labour. Companies have contracted out all their cleaning to large cleaning firms, creating a highly competitive market. The client companies continuously pressure the cleaning firms to improve their offers, i.e. to reduce labour costs through low wages and through reducing the time workers are allowed to use to clean an office, airplane, train or toilet. It is generally acknowledged that the workers are paying the price for this business model through poor, and increasingly deteriorating, conditions of labour, including low wages, extreme work pressure, very high flexibility and no collective voice.

In order to turn this race-to-the-bottom around, the trade union that covers the cleaning services adopted a USA-inspired strategy of organizing. Training within one of the trade unions was provided by experienced trade unionists from the United States, who had in the domestic market successfully increased membership figures and improved the labour conditions for these workers.

The largest trade union in the cleaning industry initiated the 'cleaning campaign' in 2007. This included a more grass-root approach, in a way contrary to what the unions in the Netherlands usually do. Before the negotiations on the collective agreement with the employer even started, the workers (many of whom were not trade union members at that time) were asked what their demands would be and how they would prefer these demands were disseminated. The workers were organized in small committees at work floor level. Instead of merely regarding the cleaning companies as 'opponent', it was decided to also address the companies that hired the services of the cleaning companies. This included large companies that perform very visible services like the airport Schiphol and the Railroads NS, and also two major financial institutions. After the kick-off of the campaign, letters were sent to these companies. When these letters remained unanswered a delegation of trade union spokespersons went to the companies in order to substantiate the demands. When

this did not lead to any reaction other than: 'this company is not the right one to address', brochures with information on the background of the collective actions were sent to employees of the companies and customers. More and more awareness was raised among the general public and this also led to a good amount of attention from journalists. When after all this the negotiations with the cleaning companies went into deadlock, the issue was widely known among the public in the country. Only then did the trade unions initiate collective actions in the form of strikes, sit-downs and blockades. Their actions had a lot of visibility as for example the litter in train stations piled up. The demands of the strikers were simple; a net wage of 10 Euros per hour, access to the work place for the trade unions, better facilities for representation of the workers at the work place, better places to rest and sanitary facilities and work-pressure measurements once every 6 months.

After weeks of strikes and other forms of actions, the employers gave in and many of the demands of the workers were met. It is generally acknowledged that the public opinion played quite an important role. One telling example is that one editor in a serious newspaper appealed to the president of the board of the airport Schiphol to stop denying responsibility for the conditions of labour of the workers on the premises of the airport. Within the trade unions the successful strategy that was applied in the cleaning industry is regarded as an example for similar situations in the future.

More recently, the unions have again initiated a number of actions in the sector when the negotiations on a new collective agreement were unsuccessful. One of the major demands of the unions this time is the right of workers to receive compensation during sickness from the first day on. After employer refusal on this and other issues demonstrations were organized and again major client companies were targeted. Again the union action are very visible and raise a lot of public indignation.

#### Publicity, media influence (working poor in general, humane aspects)

In order to expose the actual situation of the working poor in 2009 the largest trade union federation launched an exhibition along with a book that is called 'An insecure existence, life at the frayed end of the labour market' (Tinnemans 2009). The project draws attention the

those workers and self-employed who, even though they are working, have a difficult time making financial ends meet. A large number of precarious workers was interviewed for the book. The exposition is accompanied by a performance in which actors portray the people in the book and tell their story. Often these are mothers of single parent families, people working on insecure contracts, temporary agency contract, payroll-constructions like discussed above or other contracts that guarantee minimal security for the workers and maximum flexibility for the employer.

The projects both deals with precarious work, and precarious workers, i.e. it shows that sometimes the work is inherently precarious, read dangerous, but even more often, that the lives of these workers is precarious outside the immediate work-related matters. It shows elements of the lives of the hundreds of thousands of workers who work hard under bad working conditions to earn a minimal income of which they cannot live decently. They work at impossible hours, sometimes have two jobs, and they go from one temporary contract to another, sometimes not knowing today if they will have work tomorrow. The project shows how these workers lay awake at night because they cannot send their kids to swimming lessons and how they feel they have failed. It also shows how it is very difficult to obtain good housing on an insecure minimum income, or to provide good food and clothing for the family. The project also raises thorny questions like: why are part-timers in health care or supermarkets not allowed to work full-time, something which would allow them to earn a decent income? Is the flexibility that their contracts offer to the employer more important than the dignity and security of the workers? Why is work not anymore a remedy against poverty?

By raising awareness the project aims to find solidarity among the general public for these workers, the ones that carry the flexibility burden of society but that are never heard and that feel that nobody sees them. But they don't speak up because they are too modest and fear losing their job if they do tell their story. The exhibition has been a great success in the sense that it has been traveling through the country continuously attracting a lot of interest, in fact two more versions were produced. For obvious reasons, it is not easy to access how successful the real goal, better awareness for better circumstances, will be. There is little doubt however that projects like this, as well as, for example, the earlier discussed

campaigns of workers in the cleaning sector is of great importance to get attention for precarious workers.

## 5. Conclusions

Since the late 1990s, the employment rate in the Netherlands increased substantially, making it one of two top performers in the EU. However, this high employment rate should be qualified in two ways. One is that employment growth has largely consisted of part-time jobs, by now making up about half of employment. Hence, it seems that the Netherlands has been more successful in distribution available working hours over a larger group of workers, a positive achievement in itself, than in increasing the total number of hours worked. The other is that more and more of the employed are in precarious jobs, following the growing use of various types of atypical employment contracts, of small part-time jobs, of low wage jobs and of growing numbers of self-employed without personnel. These developments have to some extent been facilitated by changes in legislation and by continued legal disadvantages attached to certain types of non-standard employment. They also follow from changing preferences and attitudes from the side of employers and from the growing propensity of a part of the labour force to opt for self-employment, either as a positive choice or as a last resort. Finally, an important factor has been that trade unions have not been able to halt the trend towards more precariousness.

Still, curbing the growth of precarious employment is today at the top of the list of priorities of the Dutch unions. They have started to develop multiple strategies in this sense, ranging from collective bargaining to litigation to organizing and from influencing public opinion to influencing the legislative process. And although for the moment these have not been sufficient to stop, let alone reverse, the growth of precarious employment, they do seem to have an impact. One important achievement is that precarious employment is now an issue known to the broader public, which seems sympathetic to the view of the unions. Also, the successful organization of workers in the cleaning industry and the subsequent improvement in their working conditions can become an example for other sectors. More in general it seems a positive development that the unions are exploring multiple instruments to address precariousness. It remains to be seen if their efforts will have the desired impact.

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