



EFFECTS OF EMPLOYMENT INTERMEDIARIES ON TRADE UNIONS IN KENYA: A CASE OF MAASAI MARA UNIVERSITY

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Abstract: Employment intermediaries, and contract companies, are commonly believed to undermine the power of labor unions, by fracturing the collectivism that characterizes unions. However, the article examines the effects of intermediary employment on trade unions operations, strength and growth in Kenya. These may also serve as a barrier in the workplace – protecting the regular workers from fluctuations in labor demand. The analyses are based on staff unions of public universities in Kenya using descriptive statistics. The major findings reported were: Negative relationship between unionization and the use of employment intermediaries for staffing reasons, highly unionized establishments tend to have the lowest use of intermediaries and contractors for reasons that may replace regular workers, suggesting that unions are able to influence how employers use employment intermediaries, The enforcement of the implementation of the labour laws will be weakened with the use of intermediaries and contractors unlike in case of strong unionization, weak employer employee relationship and control in the case of intermediaries and contractors, low growth of institutions and planning in terms of human resource and research. The findings are discussed in relation to the regulated labor market in Kenya.

Keywords: Employment intermediaries, Contracts, Trade Unions, Human Resource, Labor Law

1.0 INTRODUCTION

Before the historical developments of labor hire are discussed, it is necessary to explain what the concept "labor hire" entails. It is a form of subcontracting, which means that certain services are obtained from an outside supplier. Labor hire can be defined as impermanent employment services or “third party labor brokerage in which employees recruited by one person are made available to another person for monetary reward” (Van Rooyen, 2003, p.163). Amongst numerous descriptions and a variety of terms, Johnstone and Quinlan (2005) identified labor hire as body hire and peak-period-people engaged by an



independent contracting agency and supplied to a host employer for temporary employment. Mitlacher,(2007) further defines the temporary nature of labor broking employment as freelances, contractual employees, temporary employees, casuals, seasonal workers, amongst others. It follows that, as Mitlacher argues, when a worker is employed temporarily, a situation of expecting him or her to leave his or her employer in a short period of time is anticipated and created. Macgregor (2001) refers to labor hire as the supply or outsource of skilled and unskilled blue collar workers hired for short- and long-term positions and are known or referred to as field workers regarded necessary for supplementary staffing. The International Labour Organization (ILO) Peetz (1979), distinguishes between two types of subcontracting, namely job contracting and labor-only contracting. In the case of job contracting the contractor offers certain services or equipment, while only labor is provided in the case of labor-only contracting. The characteristics of labor hire in Namibia fit within the latter category, where only labor is provided, or rather hired out, by the agency to the client which relates to the Kenyan situation. It is generally accepted that labor hire in Namibia functions in a way that completely deviates from the standard employment relationship Namibian citizens are familiar with. The reason for this is that a standard employment relationship is understood as a two-party relationship consisting of the employer and the employee, while in most countries three parties can be distinguished in the case of labor hire, namely the agency (which is considered/deemed the employer), the client, and finally the (temporary) employee (Laplagne and Glover 2005). The client would approach the agency when he or she has a short-term project that needs to be completed or when he or she is temporarily short of staff. Under circumstances like these the agency would lease an employee for that limited duration (Laplagne and Glover 2005).The agency would then pay the temporary employee for the duration of the contract with the client. As soon as the end of the term arrives, as agreed upon by the parties, the contract between the client and the labor broker ends by operation of law. In practice employees are, however, often placed with clients for extended or even indefinite periods of time. The agency is responsible for the remuneration of the temporary employee and the placement of an appropriate employee within a specific client's service. In contrast the client incurs little responsibility towards the employee, (Laplagne and Glover, 2005).



According to O'Neill (2004), Employment intermediary is a form of indirect employment relationship in which an agency supplies workers to work at a workplace controlled by a third party (the host), usually in return for a fee from the host. Employment intermediary also known as labor hire, 'on-hire', 'temp' or 'agency' employment is one of a range of flexible work arrangements available in the labor market, that also includes casual, part-time labor and fixed-term employment (Laplagne, Glover & Fry, 2005). Workers employed through labor brokers are paid significantly less than permanent workers and they usually do not enjoy any benefits. Many workers suffer from violations of the provisions of the Namibian Labor Act and do not receive any paid leave and not even severance pay in case of retrenchment.

Even if they worked for the same labor broker and the same client company for several years, they have no job security and are employed on the basis of "no work – no pay". Their employment contract with the labor broker is terminated as soon as the commercial contract between the labor broker and its client ends.

Although the legal provisions on employment termination apply (in theory) to labor brokers as well, the usual practice is to hire and fire workers at will. Client companies can request the removal of any worker by the labor broker at any time. The broker then provides a replacement which further advances the "commodification" of labor as an easily exchangeable and replaceable commodity.

The use of employment intermediaries in Kenya is not limited to peak periods and specific tasks only. Instead, it has become an established practice and in some instances permanent workers were retrenched and replaced by outsourced workers. Hired labor thus poses a threat to permanent workers, especially in the lower skills categories. They accentuate the division of labor into core (permanent) and peripheral workers. "The presence of labor hire workers puts downward pressure on conditions of employment for permanent workers because some companies retrench permanent workers and re-hire them through labour hire at lower rates. Salaries are cut in half and benefits are reduced" (quoted in LaRRI 2006). Employment intermediaries hardly provide a springboard to permanent jobs. Although a few workers were taken over by client companies as permanent staff, such practices are rather exceptional. Some brokers explicitly prevent their workers from taking up



employment at a client company. The employment creation effect of labor hire is very limited as almost all jobs are created by the client companies. While most employment intermediaries create business opportunities and profits for a small group of labor hire shareholders and managers, they do not contribute to socio-economic development and the creation of decent work. Given the very high levels of unemployment in, employment intermediaries use the widespread unemployment to their own advantage (Herbert .J. 2012).

However, it may be assumed that when an employment placement agency secures a worker a job, their relationship is likely to finish. With labor hire arrangements, the three-way relationship between host, agency and worker will continue for the period of the assignment.

Three industrial relations variables are found to be related to the use of labor hire: the presence of a closed union shop; the presence of a human resource manager at the workplace; and being involved in workplace bargaining. The presence of an active union at the workplace did not influence the probability of use, or the rate of use of labor hire. However, when all of its employees are unionized, so that the workplace is a closed union shop, the likelihood of use of labor hire becomes very low (but the rate of use is unaffected). A workplace employing a human resources manager is more likely than other workplaces to use labor hire. However, it uses it at a lower rate. This suggests that the employment of a human resource manager allows a firm to make a more informed choice between the various work arrangements available. Finally, workplaces engaging in workplace bargaining had a higher probability of use of labor hire. The proportion of workplaces that are closed shops decreased, more firms employed a human resources manager, and the proportion of firms engaging in workplace bargaining increased. All three of these industrial relations factors therefore had the potential to contribute to the increase in the proportion of firms using labour hire. The industrial relations factor that suppressed the use of labor hire the most was the existence of a closed shop. It may be speculated that any decline in the number of closed shops has contributed to a further increase in the number of firms using labor hire. Similarly, as workplace bargaining continued to spread throughout the economy, it is likely to have contributed to the growth of labor hire employment. Given that their presence at the workplace leads to a lower rate of use of labor hire, some ambiguity exists



regarding the overall influence of increasing numbers of human resources managers on the economy-wide rate of use of labor hire. However, taken as a whole, it seems likely that changes in the industrial relations environment and practices of firms have had a positive influence on that rate.

An assessment of the role of trade unions in the labor market, particularly on employment creation requires a more holistic analysis of trade unions. Hence this section tries to answer that by looking at the role of trade unions in development. This has been manifested in having directly contributed to improving standards of living for their members by negotiating not only decent wages, but benefits such as medical, housing, pension and so forth, which all contribute to improving the living standards of working people. The role of trade unions which moves beyond workplace collective bargaining is one that moves away from the simplistic notion of trade unions as organizations who represent the interests of a specific group of people – wage earners and places trade unions at the centre of the overall development agenda of a nation (Ntwala .M. 2008). The Webster (2005), define a trade union as “a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their employment” (1894:1, cited by Hyman 2001:2). This definition narrows the role of trade unions to collective bargaining whilst the literature included in this report shows that the role of trade union goes beyond dealing with workplace issues and only representing wage earners. Trade union’s influence in the broader society is manifested in the power that they possess which comes from collectivism. Webster (2005), citing SALB 1974 identifies this power as structural power which workers have in the workplace. Webster (2006) argues that workers in the workplace can “only improve their position if they can combine to put an end to the competition between themselves. Through combination they can turn their numbers, the source of their weakness, into a source of power. However, it should be noted that different circumstances call for different types of power which may also dictate the different forms of unionism adopted by trade unions. The involvement of trade unions in development is illustrated by the role that trade unions in developing countries played during the liberation struggles. Trade unions in developing countries which were previously colonized were key players in the democratization process of their countries. Furthermore, some trade unions went beyond the fight for the national liberation and became key developmental agents in their



societies. The newly elected governments expected the unions to continue with this role and prioritize it after independence (Webster 2007). It is within this context that the role of trade unions by and large has exceeded its initial limited scope based on the Webb's definition. However, an analysis of the role of trade unions in development requires an interrogation of the nature of trade unions and how this influences the role they play in society. According to Noe et al. (2000) temporary employment practices are exercised through external vendors for the purposes of improving systems effectiveness and processes for those employers who anticipate leveraged expertise accessible at lower costs. In the description of labor hire, the commonality found in the variety of these terms is the departure from full time employment (Mitlacher, 2007). Further, this lack of full time employment is characterized by, in most cases, the absence of an indefinite employment contract, the execution of duties at the employer's locality under the employer's direction and supervision (Boyce et al., 2007). From LaRRI's, (2000a) perspective, labor hire is a flexible form of employment enforced and exercised by employers for the purpose of achieving greater efficiency. "The use of labor hire workers reflects, in part, an attempt by employers to regain greater control over workers and their trade unions" (Jauch, 2002, p. 28). Below depicts the purpose of labor hiring.

1.1 Statement of the Problem

The rise in the proportion of workers and firms involved employment intermediaries has led to concerns about the implications of expansion for the job security, job safety and job satisfaction of workers (Hall 2000). Implicit in these concerns is the view that labor hire has grown rapidly because firms see it as a way of reneging on their responsibilities towards their workforce, thus undermining workers' pay and entitlements. Despite the fact that temporary employees can be found in professions such a teaching, information technology and law; Konchan, Smith, Wells and Rebitzer (1994) inform that temporary employees are generally employed in hazardous jobs or jobs of low complexity. The earnings of the temporary employees are significantly below that of their permanent counterparts and in most cases, temporary employees are less likely to have health and pension benefits (Boyce et al., 2007). This has been an experience in Kenya where institutions outsource skilled laborers rather than engaging them on full-time basis. It's urged that institutions like Universities in Kenya have adopted this form of employment even on complex jobs contrary



to Konchan et al., (1994) argument. This could be as a result to meet institution's production demand with minimal resources, less bargaining power of staff, transferred liabilities to third parties, risk diversification, and avoidance of Trade Union demands through Collective Bargaining hence high returns on investments. The involvement of trade unions in developing countries like Kenya plays a key role in fighting for the democratization of their members (Webster 2007). It is within this context that the current study sought to find out if the existence of Employment intermediaries has an effect on Trade Unions in Kenya using Public Universities as a case.

1.2 Study Objectives

The study employed the following objectives

1. The effects of labor hire on the growth and strength of trade unions in public universities in Kenya.
2. The implications of employment intermediaries on trade union's functions

1.3 Research Questions

The study uses the following research questions to address the above objectives

1. How does labor hire affect the growth and strength of trade unions in public universities in Kenya?
2. What are the implications of employment intermediaries on trade union functions in Kenya?

1.4 Theoretical and Conceptual Framework

1.4.1 Theoretical framework

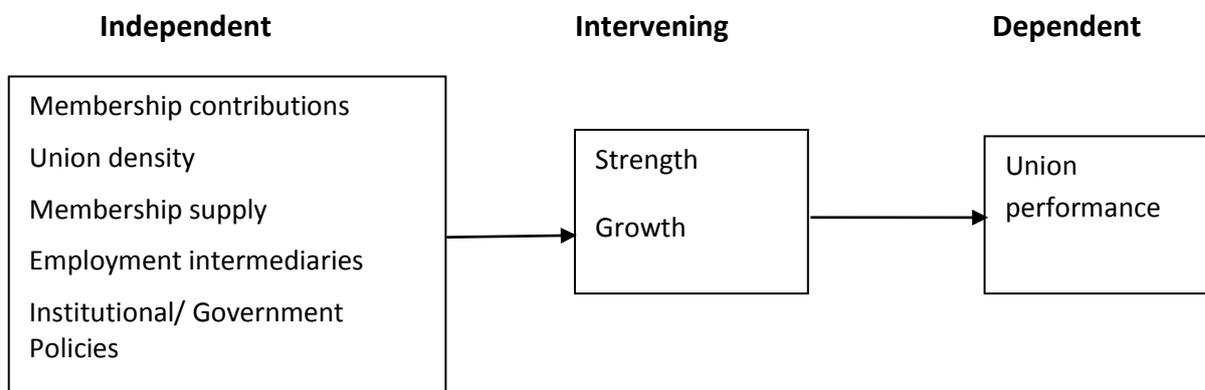
The study was guided on the foundation of two theories; The Bargaining Theory, and union membership theory. The former theory states that Most union "power" is derived from the threat of the strike, and, accordingly, it agrees with Charles Holt's recent suggestion that "... the theory and analysis of industrial disputes may help to clarify the role that unions play in the determination of wages". This theory is reinforced by union membership theory which states that; the behavior of the labor market in developed economies is largely affected by trade unions in their role as representatives of the workforce in collective negotiations with employers or the government. The ability of trade unions to influence the conditions of pay and work in the labor market depends to a great extent on the degree of unionization of the workforce, i.e. on the fraction of the workforce that has formally joined the trade union. On



the one hand, trade unions derive the legitimization to represent the interests of the workforce from a high degree of union density. Vanishing membership rates may lead a trade union to be excluded from the bargaining table. On the other hand, a large degree of unionization enhances the bargaining power of the trade union, and thereby enables it to raise the pay, to better the working conditions and, more generally, to shift the labor market equilibrium away from the competitive outcome. The study of employment intermediaries and its effects on trade unions is therefore an important step toward a better understanding of how labor markets work.

1.4.2 Conceptual framework

The study was conceptualized using independent, intervening and dependent variables as follows



Membership contributions- trade unions depend on monthly contributions from their members as a source of income to run their administrative and other core activities. In the event that there is a decrease in union membership, union become less effective in operations hence affects its growth and financial strength and this further affects the union's performance.

Union density - trade unions derive the legitimization to represent the interests of the workforce from a high degree of union density. Vanishing membership rates may lead a trade union to be excluded from the bargaining table. On the other hand, a large degree of unionization enhances the bargaining power of the trade union, and hence the realization of its strength and growth that influences performance.

Membership supply – unions derive their strength from the number of unionized labor force in the labor market. To sustain this in case of decrease in membership the labor



market should have a provision of an unionized labor force where trade unions can further draw new members to enhance strength and growth hence sustaining performance.

Employment intermediaries – intermediaries provide the employers with alternative labor force whose employment is temporary, fixed contract and part timed. The availability of this opportunity in the labor market affects the growth and strength of trade unions in their negotiation power that determines their performance.

Institutional/ Government Policies – unions' strength and growth depends a great deal from institutional and or government policy in terms of support and direct remittance of the members' fees. The different labor relation laws enacted will have either a positive or negative impact on the growth and strength of the unions hence their performance. With introduction of intermediaries the labor market will bring in a change in institutional/ government policies on employment that will further affect the unions' strength and growth.

2.0 METHODOLOGY

The study employed various designs to collect, organize and analyze data to draw conclusions and recommendations of the study. It describes the population sample size, sampling procedures and instrumentation, giving the nature of the study, type of information collected, source of information and hence data collection and analysis procedures.

2.1 Study design

A survey design was used to examine the effects of employment intermediaries on trade unions in Kenya. This design was found appropriate when collecting data from a large population to which the findings can be generalized. The design will involve measurement, classification analysis, comparison and interpretation of data.

2.2 Target population

The study population comprised of the management, academic and non academic staff of all public universities in Kenya and the academic union (UASU) and non-academic staff union (KUSU) officials, who are the implementers and beneficiaries of employment in the universities. Because of the large coverage, Maasai Mara University with a total population of 873 was used to represent the target population was because of shared characteristics and shared service delivery in all universities.



2.3 Sampling

2.3.1 Sampling method

Due to large and scattered population a random sampling method was used to sample the above. This is due to limited time and resources to cover the whole population.

2.3.2 Sample size

A sample of 266 staff from Maasai Mara University was used with a representative proportion of 30.5% teaching staff and 69.5 % non teaching staff. This is given by the following table

Nature of employment	Teaching staff	Non teaching staff	Total
Permanent	102	461	563
Casual		143	143
Part time	163		163
fixed contract		4	4
Total	265	608	873

Source: Researcher, 2014

Using the following statistical formula from Kothari (2004), in determining a sample size from a population.

$$nf = n/1+(n/N)$$

Where nf = the desired sample size (when population is less than 10,000)

n = the desired sample size (when the population is greater than 10,000) which = 384

N = the estimate of the population size.

Therefore: $nf = 384/1+(384/873) = 266$

In proportional representation the teaching staff is $265/873*266=81$ while non teaching staff was represented by $608/873 *266= 185$ hence making a total of 266 respondents.

2.4 Data collection techniques

Information was gathered from both primary and secondary sources. Primary data obtained from a case study in the university and first hand information collected from the respondent. Self administered questionnaire was the primary research tool used to collect the information.

2.5 Analysis techniques

A descriptive statistic technique was employed that called for the use of frequencies and percentages hence drawing conclusions and establishing patterns, and trends and relationships from the information gathered.



3.0 FINDINGS

The ability of trade unions to influence the conditions of pay and work in the labor market depends to a great extent on the degree of unionization of the workforce, i.e. On the fraction of the workforce that has formally joined the trade union. On the one hand, trade unions derive the legitimization to represent the interests of the workforce from a high degree of union density. Vanishing membership rates may lead a trade union to be excluded from the bargaining table. On the other hand, a large degree of unionization enhances the bargaining power of the trade union, and thereby enables it to raise the pay, to better the working conditions and, more generally, to shift the labor market equilibrium away from the competitive outcome.

The study findings indicated that 70% of the respondents believe that the public university staff unions (UASU and KUSU) are relatively strong since they are able to push for wage increases for their members and also sustain labor action. Secondly the findings indicate that 60% of the respondents attribute the strength and growth of the unions to the high number of union members while 56 % attribute it to the lack of sufficient alternative source of labor. 80% of the respondents observed that the fact that the unions are able to meet the needs of their members, there is a steady growth of membership from newly employed staff.

The study also found out that since the benefits accrued from union negotiations are public to members and non members, the unions have come up with a 5 % charge to the benefits of non members. This has greatly enhanced the unions' density by increasing membership hence the bargaining power. This has received an 85% support from unionized staff while 15% consider it punitive to non unionized staff.

However 45 % of the respondents indicated that there is a growing trend of universities employing less permanent staff and moving towards labour hire through outsourcing of support services such as security, cleaners, catering, landscaping and part time teaching and thereby weakening the unions' density.

67% of the respondents cited fears in the change in institutional and government policies on the strength and growth of the unions. This was in reference to the salaries and remuneration commission where salaries and allowances are structured nationally based on



economic trends and nature of the job hence limiting one of the unions' strong bargaining area. This is deemed to diminish the power of the unions and eventually unionization.

The government policy on outsourcing of non essential services such as accommodation, catering, security, cleaning, landscaping among others, has greatly enhanced the growth of employment intermediaries that provide the services. 73% of the respondents raised fears in the future strength and growth of unions such as KUSU which will lose most of its members to outsourced services. 65% of the respondents feared that the trend may be replicated in the teaching service where the university management will rely on part time lecturers while maintaining a skeleton permanent staff. Out of the 265 lecturers in the case study, 102 are permanent while 163 are part timers, hence affecting the strength and power of UASU.

4.0 CONCLUSION AND RECOMMENDATIONS

Union need to repackage their services to include other services such as improved work environment, quality of work life balance, embracing technology among others hence avoiding over reliance on wage and allowance improvement that currently dominate collective bargaining agreements.

Training and sensitization of members on the roles of unionization which will enable to focus on other services offered by unions.

The unions need to be proactive on coming up with services they can provide to employment intermediaries who are largely unrepresented yet they constitute a growing percentage of labor market.

Further research is recommended on the effects of employment intermediaries on trade unions. This is necessitated by limited knowledge locally in the area, the growing trend of employment intermediaries, the government policy on outsourcing of non essential services and the threat posed to unionization.

LIST OF ACRONYMS

KUSU: Kenya University Staff Union

ILO: International Labour Organization

UASU: University Academic Staff Union



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