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**MAJOR
COLLECTIVE
BARGAINING
AGREEMENTS**

SUBCONTRACTING

Bulletin No. 1425-8

April 1969



UNITED STATES DEPARTMENT OF LABOR

BUREAU OF LABOR STATISTICS

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**UNITED STATES DEPARTMENT OF LABOR
George P. Shultz, Secretary**

**BUREAU OF LABOR STATISTICS
Geoffrey H. Moore, Commissioner**

Preface

This bulletin is the eighth in a Bureau of Labor Statistics series of studies surveying the entire scope of the collective bargaining agreement. Previous reports are listed on the last page.

Subcontracting remains one of the sensitive issues of day-to-day labor-management relations, a frequent subject of arbitration and National Labor Relations Board cases, and a matter which has required U.S. Supreme Court decisions. Agreement provisions governing contracting out of in-plant production, construction, or maintenance work embody the settlement reached by the parties to resolve their contracting out problems. This bulletin describes subcontracting provisions and reports on their prevalence in major contracts.

The study is based on agreements in the United States covering 1,000 workers or more, exclusive of the railroad and airline industries and the government. These contracts accounted for almost half of the estimated coverage of all agreements outside of the excluded industries. The study does not necessarily reflect practices in minor collective bargaining situations.

The clauses quoted in this report, identified in appendix B, are not intended as models. The classification and interpretation of clauses, it must be emphasized, reflect the opinion of outsiders, but not necessarily of the parties who negotiated them.

The bulletin was prepared in the Office of Wages and Industrial Relations by Leon E. Lunden, assisted by Theesa Ellis and Ernestine Moore of the Division of Industrial Relations.

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Subcontracting

Introduction

Few firms can perform all of the activities necessary to operate their businesses successfully, and consequently they contract with other companies to assume responsibility for specified work activities. Some companies contract out infrequently; others, more regularly. Some let out excess production or the manufacture of parts; others engage contractors to perform only ancillary maintenance, construction, or janitorial services.

Although appearing to be a normal economic practice and having characteristics of a peaceful, unencumbered activity, subcontracting is a volatile and complicated collective bargaining issue. For management, subcontracting raises issues of company flexibility, of the firm's ability to progress economically, and of management's right to pursue freely its economic goals. For workers and unions, subcontracting evokes job insecurities, challenges from competing groups of workers and unions, and threats that contract standards will be undermined. The degree to which these problems trouble the parties may vary according to the economic health of the enterprise, industry, and economy.

The importance of contracting out for management and organized labor is apparent in their confrontations, especially in disputes which eventually go to arbitration or reach the courts, and in the growing prevalence of subcontracting provisions in collective bargaining agreements. An earlier Bureau of Labor Statistics study¹ reviewed the status of published arbitration decisions involving subcontracting issues where there were no subcontracting provisions in the agreement to guide the arbitrator. The study also highlighted the 1960 decision of the U.S. Supreme Court in the *United Steelworkers vs. the Warrior and Gulf Navigation Company* case which held that subcontracting—and other issues—were arbitrable, even in the absence of specific contract language.²

The focus now has shifted towards subcontracting as a collective bargaining issue; it results from legislative action and a series of decisions by the National Labor Relations Board (NLRB) and the courts.

In the Labor-Management Reporting and Disclosure Act of 1959,³ there was, among several amendments to the Labor-Management Relations Act of 1947, one pertaining to "hot cargo" agreements, section 8(e), which stated that it would be an unfair labor practice for any employer and labor organization to agree openly or tacitly to arrangements under which the employer would not handle, use, sell, or transport the goods of another employer or would not do business with him. Apparel and construction industries were specifically exempted from this proscription. This section of the law, which was intended to handle hot cargo problems, also was pertinent to contracting out provisions, since such provisions in effect governed the relationship between a primary employer and a secondary employer (the subcontractor). Accordingly, contracting out clauses had to be written carefully to avoid the prohibition on secondary boycotts or also be declared unenforceable in any subsequent litigation.

Since the earlier Bureau study, NLRB policies have undergone a significant transformation, a process which was aided by crucial court decisions. The board has been involved in subcontracting matters for over a quarter-century. As early as 1941, the board had decided that employers were obliged to bargain with unions over the effects that subcontracting decisions had upon workers.⁴ Management also was required to bargain over a decision to contract out that had an antiunion motivation. However, economically motivated decisions were not subject to bargaining until the board released its findings in the *Town and Country Manufacturing Case*.⁵ Although the board ordered bargaining when subcontracting was based in part on economic motivation, the U.S. Court of Appeals, in upholding the NLRB, ignored the economic motivation rule and justified its

¹ Subcontracting Clauses in Major Collective Bargaining Agreements (BLS Bulletin 1304, 1961).

² 363 U.S. 574.

³ 73 Stat. 519, as amended 79 Stat. 888.

⁴ *Brown vs. McLaren Manufacturing Company*, 34 NLRB 984 (1941).

⁵ 316 F.2d 846 (Fifth Circuit, 1963).

decision solely upon the employer's antiunion motivation. Thus, there was no clear cut court recognition that the board had reversed its rule, until the Fibreboard Paper Products Corporation decision.⁶ In this case, the U.S. Supreme Court concluded that, because the employer's economically motivated decision to contract out affected the terms and conditions of employment, management was required to bargain with the union before it could implement its decision. Bargaining did not mean agreement, but "good faith" bargaining, which conceivably could terminate in an impasse.

The court's decision was limited narrowly. It has since been amplified in additional NLRB and court decisions.⁷ These cases have distinguished between economically motivated decisions in which bargaining is mandatory, and those in which bargaining is not required. For example, the board has decided that certain management rights clauses or certain subcontracting provisions have freed the employer of the duty to bargain over the decision to let out contracts. At the present time, the process of refining the Fibreboard doctrine continues, and eventually should provide a clearer understanding of the employer's obligation to negotiate on economically motivated decisions.

The present examination of subcontracting provisions found that such clauses were much more widespread in 1965-66 than in 1959, when the Bureau's first study was initiated. In the intervening 7 years, the number of contracting out provisions has almost doubled. Although fewer than half the agreements studied referred to subcontracting, these agreements affected over three-fifths of the workers in the study. Over four-fifths of the provisions established rules governing the subcontracting of all or some of the production process (a term specifically applicable to manufacturing) or of the major activity (a term specifically applicable to nonmanufacturing), whereas only slightly more than one-third of the provisions established rules applicable to ancillary construction, maintenance, and/or services. Frequently, provisions preserved in-plant job opportunities, protected contract standards, or established certain business conditions under which restrictions on contracting out would not be operable.

Subcontracting provisions accomplished their regulatory goals in a variety of ways. Most prominently—and significantly, for the recent NLRB trends cited above—clauses

required notice to the unions of the subcontracting decision and the right of unions to consult or negotiate with management.⁸ Others permitted subcontracting if there were no layoffs; if unemployment would not result; or if subcontractors observed the prime employer's agreement or were themselves "union" subcontractors. Contracting out also was permitted if the prime employer needed equipment or lacked the skills and manpower; if costs or the efficiency of the enterprise would otherwise be affected; if business was at a peak; or if emergencies required subcontracting.

Related Studies. Subcontracting references in management rights clauses were discussed in an earlier bulletin in this series.⁹ Pertinent job security issues, including plant movement, interplant transfer, relocation allowances, and layoff and recall procedures, are subjects of other studies, either in progress or planned, in this Bureau series.

Scope of Study. For this study, the Bureau examined 1,823 major collective bargaining agreements, each covering 1,000 workers or more, or virtually all agreements of this size in the United States, exclusive of those in the railroad and airline industries and in government. These agreements applied to 7.3 million workers, or almost one-half of the total covered by collective bargaining agreements outside of the excluded industries. Of these, 4.2 million workers covered by 1,048 contracts were in manufacturing; and the remaining 775 agreements, applying to approximately 3.2 million workers, were in nonmanufacturing. Most of the contracts were in effect in 1966 or later. Fewer than one-tenth expired during the last 3 months of 1965. For these, renewed agreements were not available at the time that tabulations for this study were completed.

For purposes of this analysis, provisions banning conversion of workers into subcontractors and barring lumping (i. e., contracting out of labor services only) were tabulated for the first time, as were letters of intent. The former did not affect comparisons to the

⁶ 379 U.S. 203 (1964).

⁷ For instance, it has been held that there is no requirement to bargain unless the subcontract would have an immediate adverse impact upon the bargaining unit. Puerto Rico Telephone Company, NLRB 359 F. 2d 983 (1966).

⁸ In *Shurtenda Steaks, Inc. vs. Meat Cutters*, 161 NLRB 88 (1967) the Board held that notice and consultation were required even if subcontracting was for economic reasons.

⁹ Major Collective Bargaining Agreements: Management Rights and Union-Management Cooperation (BLS Bulletin 1425-5, 1966).

Bureau's 1959 study since in 6 out of 7 cases, these provisions also contained other references to subcontracting. Letters of intent had no impact on provision prevalence, but worker coverage was influenced because one was the General Motors-UAW letter.

Clauses were selected for quotation in this report to illustrate either the typical characteristics under consideration or the variety of ways in which negotiators have modified that form. Minor editorial changes were made where necessary to highlight particular characteristics, and irrelevant parts were omitted. All illustrations were taken from agreements in effect during the last quarter of 1967 or later. Most provisions used were effective in 1968 or later. The clauses are numbered and the agreements from which they have been taken are identified in appendix B. In appendix A, several provisions are produced in their entirety to illustrate how the various features fit together.

Prevalence and Trends

Out of 1,823 agreements studied, 43.9 percent contained clauses referring to contracting out (table 1). These agreements covered 4.5 million workers, or 61 percent of the 7.3 million in the study. Clauses were evenly divided between manufacturing (396) and non-manufacturing (405) industries, but in terms of worker coverage, manufacturing provisions affected about 600,000 more workers than subcontracting clauses in nonmanufacturing. The difference reflects contracts covering large, multiregional employers, especially in primary metals and transportation equipment. In both manufacturing and nonmanufacturing, however, about three-fourths of the work force was protected by subcontracting clauses.

Six industries accounted for over one-half the contracts (58.5 percent) and over three-fifths of the workers (62.3 percent) covered by subcontracting provisions. Included were construction and apparel, in which contracting out is the accepted way of doing business, as well as transportation, utilities, machinery, and transportation equipment.

Interregional agreements, because of the large size of many of the units, continued to exert a special influence on worker coverage and accounted for only 16.8 percent of the contracts referring to subcontracting, but for 49 percent of the affected workers. This influence was even more dramatic when data were classified by size of bargaining unit. There were 86 agreements, or 10.2 percent of all those referring to subcontracting, each of which covered 10,000 employees or more. In total, 2.7 million workers were affected,

or 59.3 percent of all persons covered by contracting out clauses.

Seventy-three different national and international unions, exclusive of single-firm independent unions, had affiliates which had negotiated one subcontracting clause or more. Twenty unions each accounted for 20 clauses or more, including 6 whose affiliates had negotiated 40 subcontracting clauses or more.

Trends. This study of subcontracting provisions in major collective bargaining agreements is the second for the Bureau. The first study analyzed clauses in effect in 1959—a period shortly before the enactment of the LMRDA amendments to the Taft-Hartley Act and the decisions in two major court cases noted earlier (*U.S. Steelworkers vs. Warrior and Gulf Navigation Corporation*, and *Fibreboard Paper Products Corporation vs. National Labor Relations Board*).

Provisions in major agreements referring to subcontracting have doubled over the 7-year period; rising from 22.6 percent in the total studied in 1959 to 43.9 percent in 1965-66. Workers affected by contracting out provisions increased about as sharply and accounted for three-fifths of the workers in the present study (chart, page 4).

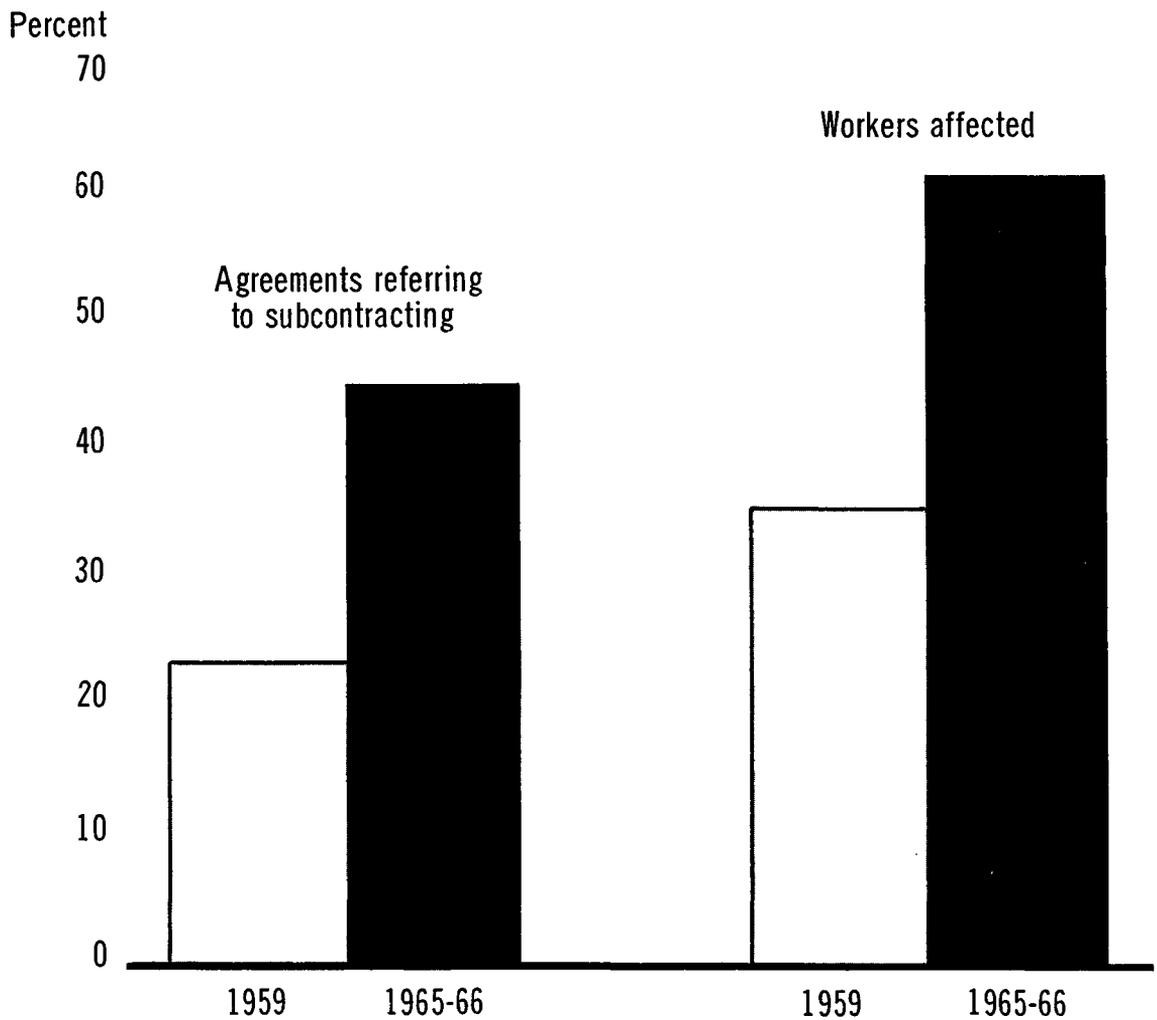
An examination of industry changes revealed that the number of construction industry agreements included in the study had risen markedly, from 155 in 1959 to 256 in 1965-66; worker coverage rose from 701,900 in 1959 to 970,000 in 1965-66. A relative as well as an absolute increase occurred in construction agreements and workers covered. Since the construction industry is one in which contracting out is a regular way of doing business, and since it is likely to have a high prevalence of contract clauses, it was conceivable that construction's increased contribution to the study would influence the results. Accordingly, data from the two Bureau studies were reviewed, first including and then excluding the construction industry.

Percent referring to subcontracting

Year of study	Construction included	Construction excluded
1959:		
Agreements -----	22.6	19.3
Workers -----	34.6	31.5
1965-66:		
Agreements -----	43.9	38.2
Workers -----	60.8	57.3

Within the confines of each study, removal of construction industry data decreased the proportion of contracts referring to subcontracting and workers affected by them. However, exclusion of construction industry data

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had little effect on the upward trend of subcontracting provisions from the first to the second study. The proportion of agreements referring to contracting out doubled, even with the absence of construction industry data.

More unions have negotiated agreements that contain subcontracting provisions. As noted earlier, affiliates of 73 different national and international unions, exclusive of single-firm independent unions, compared to 56 in 1959, had negotiated one contracting out provision or more. In general, however, subcontracting provisions were concentrated in contracts involving affiliates of a handful of unions. The number of labor organizations having affiliates which negotiated 10 clauses or more almost doubled, rising from 11 in 1959 to 20 in 1965-66. Four of the nine new unions in this category were in the building trades (Bricklayers, Iron Workers, Painters, and Plumbers), again reflecting the increase of construction industry agreements in the study. Of the remaining five, three were in manufacturing industries (Furniture Workers, Rubber Workers, and Electrical Workers, IUE); and two (Utility Workers, Service Employees) organized nonmanufacturing employees.

Provisions referring to management's right to subcontract, as well as clauses permitting contracting out subject to limitations, shared in the general rise in prevalence. Although still not numerous, agreements leaving the employer free to subcontract rose from 4 in 1959 to 38 in 1965-66. These were particularly clustered in the electrical machinery industry, which alone accounted for almost one-third of the agreements and over one-half the workers covered by clauses declaring management's right to subcontract.

The marked rise of this particular group of provisions follows the Warrior and Gulf decision in 1960, which, as noted earlier, had declared that a matter could not be excluded from arbitration unless there was forceful evidence that the parties contemplated such an exclusion. Among the 12 provisions in the electrical machinery industry were several which specifically excluded subcontracting as an arbitrable issue. General Electric and Westinghouse negotiated about one-half the industry's provisions.

Provisions which in some manner restricted management's right to subcontract were far more numerous and accounted for most of the upswing in subcontracting clauses. In 1959, a total of 378 clauses were in this category, compared with 763 in 1965-66. Clauses which prohibited subcontracting or which vaguely established limits remained the same during the 7-year span, so that the increase centered entirely in the agreements setting limitations on subcontracting. The latter rose from 369 in 1959 (21.9 percent of all contracts studied) to 755 in 1965-66 (41.4 percent of all contracts studied) (table 2). The rise was even more marked for the proportion of workers covered, increasing from 34 percent in 1959 to 57.1 percent in 1965-66.

Five industries combined, accounted for over three-fifths of the rise in agreements limiting subcontracting and almost three-fourths of the increase in workers covered (table 2). The rise in provisions was particularly dramatic in the primary metals industry, where steel's experiment with subcontracting practices under the Human Relations Committee was finally incorporated into the contract. The machinery industry also experienced a sharp rise. To a large extent this reflected the heavy representation of Steelworkers and Auto Workers in the industry.

Three other industries (transportation equipment, transportation, and construction) significantly increased their totals. In each, subcontracting provisions limiting the rights of the prime employer had established a foothold in 1959. By 1965-66, there had been a dispersion to a larger number of employers in transportation equipment and transportation. The increase of provisions in the construction industry, as noted earlier, results from a larger number of agreements in the 1965-66 study than in the 1959 study.

Four manufacturing and two nonmanufacturing industries experienced sharp rises, either in the number of agreements or in the number of workers affected, or in both. These six industries, combined, accounted for three-fifths of the increase in agreements and three-fourths of the rise in workers affected from the first to the second Bureau study:

	Having reference to subcontracting					
	Agreements			Workers (in thousands)		
	1959	1965-66	Increase	1959	1965-66	Increase
All industries -----	378	801	423	2,588.1	4,464.4	1,876.3
Total (6 industries) -----	158	422	264	1,411.3	2,858.9	1,447.6
Primary metals -----	9	45	36	35.0	423.6	388.6
Machinery -----	11	47	36	17.5	158.9	141.4
Electrical machinery -----	6	22	16	11.6	175.3	163.7
Transportation equipment -----	26	49	23	654.3	821.6	167.3
Transportation -----	23	56	33	240.7	463.9	223.2
Construction -----	83	203	120	452.2	815.6	363.4

Types of Provisions

Of the 801 clauses referring to contracting out, only 38, or less than 5 percent stipulated that the employer's subcontracting activities would not be restricted (table 1). Most of these (29) specified that management had the right to farm out production and/or maintenance work. The Bureau's 1959 study of subcontracting provisions found only four clauses asserting management's right. In the 1963-64 study of management rights provisions, 31 contracts referred to subcontracting, but not all left the employer completely free of restrictions.¹⁰ Moreover, the Bureau did not examine the agreement beyond the management rights clause to determine if additional provisions modified the exercise of management's rights in this area. In the present Bureau study, the 29 agreements stipulating the employer's freedom to subcontract were not limited by other provisions. Typically, the statement that management was free to contract out appeared in the management rights clause, as in the following examples:

Except as otherwise specifically provided in this agreement, the employer has the sole and exclusive right to exercise all rights or functions of management, and the exercise of any such rights or functions shall not be subject to the grievance or arbitration provisions of this agreement.

Without limiting the generality of the foregoing, as used herein, the term "rights of management" includes . . . the placing of production, service, maintenance, or distribution of work with outside contractors or subcontractors. (1)

* * *

Subject to the provisions of this agreement, the company retains the sole right to manage its business and direct the working forces, including, but not limited to the right to: . . . distribute work among departments and yards, to subcontract work, . . . (2)

* * *

The company shall retain all rights, powers, and authority it had prior to entering into this agreement, including, but not limited to the sole right to manage its business and direct the working force including the rights . . . to determine whether and to what extent any work shall be performed by employees. . . . (3)

As in the first illustration above, several stipulated that all rights set forth in the management rights clause would be excluded from arbitration procedures. The illustration below is more direct in barring subcontracting issues from arbitration:

The management of the plant and the direction of the working forces, including, but not limited to . . . the contracting or subcontracting of production, service, maintenance, or other type of work performed by the company . . . are vested exclusively in the company, and, excepting disciplinary suspensions and discharges, are not subject to the arbitration procedure provided in this agreement. (4)

Another nine have the same force as a management rights clause, but are found elsewhere in the agreement. These either stipulated that the employer's subcontracting activities were not subject to arbitration or combined this kind of declaration with another statement in the management rights clause. Among these was the following which made subcontracting subject to arbitration only by management's voluntary agreement:

All requests for arbitration which are not subject to arbitration as a matter of right . . . are subject only to voluntary arbitration. In particular, it is specifically agreed that arbitration requests shall be subject only to voluntary arbitration, by mutual agreement, if they . . .

Involve issues which were discussed at national level negotiations, but which are not expressly covered in this national agreement (e.g., subcontracting). . . . (5)

Such provisions were found mostly in General Electric and Westinghouse agreements.

At the other end of the continuum of references to subcontracting were four agreements which barred contracting out:

There shall be no subcontracting. (6)

In addition, four contracts alluded to subcontracting in diverse ways. One referred to a special memorandum on subcontracting that was not part of the agreement; one referred subcontracting issues to local negotiations; and two noted that contracting out activities could cause layoff. Although not limiting the employer's actions, one guaranteed severance pay to affected workers, and the second made affected workers eligible for preferential hiring through an "Industry Wide Automation Unemployment List."

Most agreements referring to subcontracting (755) permitted the practice, but at the same time established various restrictions that were designed to safeguard workers, unions, and contract standards. The rest of this study will discuss details of these arrangements.

Areas of Permitted Subcontracting

Of the 755 provisions permitting subcontracting, over 85 percent regulated farming out of production processes or major activities of the employer¹¹ (table 3). In 35 percent of the agreements, controls were placed on

¹⁰ Ibid., p. 14.

¹¹ Major activity, for purposes of this study, is the non-manufacturing equivalent of production work, i.e., the basic function of the firm to which all others are ancillary.

contracting out construction, maintenance, repair and installation activities; services were specifically referred to in slightly more than 7 percent of the agreements. Construction and services together (as in the 1959 study) accounted for 275 agreements, or 36 percent of the total permitting subcontracting subject to restriction.

Those provisions governing the production process or major activity were found more often in nonmanufacturing than in manufacturing industries. To a large extent, this finding was influenced by the preponderance of these provisions in the building trades, as well as by the presence of substantial numbers of such clauses in electric and gas utilities. However, provisions controlling production also were fairly widespread in manufacturing. Among those clauses limiting production or major activity subcontracting were the following:

The company recognizes and acknowledges the rights of its employees to perform its telephone work, and agrees not to contract work out that is not customarily contracted out in such a way as to currently and directly cause layoffs and/or part-timing of present employees . . . (7)

* * *

In the event company shall contract or sublet any electrical work which under ordinary circumstances it would perform in the regular line of its operation, it agrees to impose the conditions as outlined herein upon such contractor or subcontractor; it being understood, however, that this section does not apply to work not so classified . . . (8)

* * *

This provision shall apply only to contracts and subcontracts for the performance of logging and lumbering operations and shall not apply to building construction contracts or other contracts outside logging and lumbering operations themselves. (9)

Clauses regulating construction, maintenance, and repair were preponderantly in manufacturing industries, especially in primary metals, machinery, and transportation equipment. Typical of the language in these provisions were the following:

The union shall have jurisdiction over all maintenance, repair and other work in and around the plants under this contract, except when the manufacturer decides that such work will be done by contract. Manufacturer shall not exercise this right unreasonably. The manufacturer also agrees to keep the local union officers informed of construction jobs that are to be contracted. (10)

* * *

When maintenance department employees are laid-off or working in other departments, the company will not hire outside contractors to come into the plant and do the work until the company has first discussed the proposed work with the bargaining committee. A violation of this obligation shall result in pay to the appropriate employees for time loss, if the work was of the kind, quality, and amount normally performed by the maintenance department. (11)

* * *

Maintenance work, in-plant repair work, and in-plant construction work, of the nature that employees of the bargaining unit are able to do such work with due regard to their own safety, through the exercise of their normal skills, and within the time limits imposed by the company's business requirements, shall be performed by employees of the bargaining unit. (12)

As noted earlier, subcontracting of construction and maintenance work may lead occasionally to conflicting claims between the in-plant union seeking to retain such work and the outside union seeking it for seasonally unemployed members. In such cases, the dispute not only involves labor and management, but also causes jurisdictional rivalries between in-plant and outside unions.¹²

One avenue for the peaceful settlement of these jurisdictional conflicts was to differentiate in the agreement between the kinds of construction and maintenance work that would be retained by in-plant workers and the kinds that could be subcontracted. Of the 267 agreements which contracted out construction and maintenance, 42 percent adopted such demarcations. The clustering in primary metals was particularly strong. As a rule, clauses covering these areas permitted subcontracts for major or new construction or installation, or additions to existing plants:

New construction including major installation, major replacement, and major reconstruction of equipment and productive facilities at any plant may be contracted out, subject to any rights and obligations of the parties which, as of the beginning of the period specified above, are applicable at that plant. (13)

* * *

The company reserves the right to contract work when it does not take work from the production and maintenance unit or when men are unavailable in the unit for temporary or seasonal jobs to perform the work when required.

Contracting major new surface construction, or major alterations of existing surface facilities, excluding short connecting lines to the project, shall not be considered as taking work from the production and maintenance unit. (14)

* * *

¹² For an interesting exposition of this view, see Margret Chandler, Management Rights and Union Interests, New York, McGraw-Hill, 1964, 329 pp.

The company agrees that it will not subcontract maintenance work (as distinguished from new construction or major modification or rehabilitation work) to be performed on company premises when such subcontract covers continuing work operations. . . . (15)

The small number that allowed services to be contracted—i. e., trucking, janitorial, and cafeteria services—was concentrated largely in primary metals. Very few stipulated services perhaps, because of the broad interpretation that might be given to maintenance provisions. The few specifying services largely adopted uniform language as follows:

If production, service, and day-to-day maintenance has in the past been performed within the plant under some circumstances . . . and under some circumstances by employees of contractors, or both, such practice shall remain in effect . . . (16)

* * *

Irrespective of any other provision or provisions of this agreement, the company retains and may exercise the free and unrestricted right and privilege to contract or subcontract . . . for the performance of any work, services, projects, jobs, or operations of the character or nature heretofore so contracted or subcontracted and performed by outside contractors. The company shall not contract or subcontract for or assign any work, services, projects, jobs, or operations to outside contractors not heretofore performed by outside contractors or subcontractors and which is normally performed by employees within the bargaining unit before discussing same with the union. (17)

Over one-fifth of the agreements permitting subcontracting covered more than one area, most often production and construction; but 45 covered production, construction, and services. Among these combinations was the following letter of intent regulating the subcontracting of production and maintenance work:

All production and maintenance work customarily performed by the employer in its own plant and quarries and/or mines and with its own employees shall continue to be performed by the employer with its own employees . . . so long as the company has the facilities and equipment and available trained personnel to properly perform the work required. (18)

As the following pages will indicate, the area of subcontracting, in some cases, has influenced the kind of limitation placed on such activities.

General Provisions

Two hundred and twenty-six provisions attempted to define, in broad terms, the limits of permitted subcontracting. Although no precise data were available, more than one-half of the clauses retained a measure of flexibility. They did not stipulate the work that would be excluded from the clause's limitations, but specified the work normally, regularly, or customarily performed by the

bargaining unit which came under the subcontracting provision's restrictions. By implication, all work not falling within this vaguely defined area was excluded from the provision's jurisdiction:

Work usually performed by employees in this bargaining unit will not be contracted out if it will result in layoff of the employees covered by this agreement. (19)

In contrast, very few provisions described the kind of work which would not be covered by the clause:

It is recognized that the employer and the union have a common interest in protecting work opportunities for all employees covered by this agreement. Therefore, except for work which is exclusively inventory or janitorial (such as washing windows, washing or waxing floors, and cleaning rest rooms) work or work hereinabove excluded (e.g., stocking, rearranging, and displaying of nonfood merchandise . . . such as drugs, health and beauty aids, housewares, soft goods, books and magazines is being done by an employee of a rack jobber or service merchandiser in all or any of the retail food stores of an employer within the geographical jurisdiction of the contract . . .), no work covered by this agreement, . . . shall be performed under any sublease, subcontract, or other agreement unless . . . (20)

* * *

When overtime work by contractors is authorized and controlled by the company, equal opportunity for such overtime work shall be afforded those company employees normally doing the same type of work within the same exchange in which contract labor is employed. As an example, the work of tree trimming, on an extensive scale, is a specific type of work not normally performed by company employees. (21)

Additional clauses cited work which habitually the employer had subcontracted and stipulated that such past practice, when already established, should be allowed to continue:

. . . nothing herein shall prevent the company from following companywide past practices in engaging outside contractors to do work when necessary. (22)

* * *

The employer shall not engage any outside persons, firms, or corporations to do any of the work that can be efficiently performed by the employees covered by this agreement, except work that has normally been sublet. (23)

* * *

The company agrees not to contract out work customarily performed by its employees. However, nothing herein contained shall prevent the company from continuing to have work performed outside of the company which prior to April 30, 1962, it customarily has had performed outside the company. (24)

Other provisions relieved the employer from increasing the size of the regular in-plant labor force for short duration jobs. Accordingly, a few clauses allowed such jobs to be subcontracted without restriction:

. . . the company may subcontract where . . . the work is of such urgency or short duration as to make it impractical to add additional men to the regular production or maintenance force . . . (25)

Clauses also might define short duration as in the following:

Work performed by a subcontractor within the plant for periods in excess of 2 consecutive weeks will be discussed with the union . . . (26)

* * *

The company agrees that it will not subcontract maintenance work operations to be performed on company premises when such subcontract covers continuing work operations to be performed for longer than two (2) months and when the work operations involved have normally been performed by employees in the bargaining unit, unless a sufficient number of employees are not available to perform such work operations within the time required. (27)

One variant of the short duration provision described jobs outside the scope of the subcontracting clause as one-time jobs, and another variant in effect excluded jobs over a given cost:

The company will not subcontract work normally performed by men in the association, except for one-time jobs. (28)

* * *

The company agrees that it will not subcontract maintenance work (as distinguished from new construction or major modification or rehabilitation work) to be performed on company premises when the work operations involved have normally been performed by employees in the bargaining unit, except in the following instances:

. . . Where unusual or one-shot jobs are required which are not usually performed by the company. (29)

* * *

Where the company contracts for an item or service which is made or worked on by its own employees, for which it has not contracted for in the past, and which exceeds \$750.00 in cost, it will, upon the request of the grievance and negotiating committee, explain the reason for so doing. Such request shall be made by the unit chairman to the personnel director. (30)

Provisions which stipulated that the volume of subcontracting would be maintained at present levels were rare:

. . . With respect to work or functions which in the past have been performed for the company both by persons within and without the unit the company may continue to have such work performed outside the bargaining unit to a degree no greater than heretofore. . . . (31)

Provisions Protecting In-Plant Employment Opportunities

About two-thirds (498) of the agreements permitting subcontracting had one rule or

more which directly or indirectly safeguarded in-plant workers and their jobs (table 4). Of the three categories of controls (to protect in-plant workers, and union and contract standards, and to establish business conditions permitting subcontracting), regulations protecting in-plant workers were the most numerous. Included were 16 provisions which also protected employees of regular rather than occasional subcontractors. The 498 provisions covered over three-fourths of the workers (3.2 million) under provisions permitting subcontracting. Manufacturing companies were more likely to have included employment protection rules, where provisions were found in more than 78 percent of manufacturing agreements, than nonmanufacturing firms, where slightly under 55 percent protected in-plant work opportunities. Nonmanufacturing's lower prevalence was influenced by the construction industry, where only about one-third of the provisions safeguarded in-plant job opportunities.

The construction industry subcontracts as an accepted daily activity and since the same unions represent both subcontractors' and prime contractors' workers, subcontracting policies concentrate more on insuring contract and union standards than on retaining job opportunities. However, the apparel industry, which also subcontracts as a matter of course, followed different policies. Almost all of apparel's 52 provisions regulating subcontracting out contained one rule or more safeguarding work opportunities. In part, this divergence can be explained by the differing attachments that workers have to employers in each industry. Attachment in the construction industry is casual. Workers are likely to be employed by several different construction companies during one season. Accordingly, construction workers are more interested in areawide contract standards than in preserving employment opportunities with a single firm. In the apparel industry, on the other hand, attachment to an employer is relatively firm. Workers are likely to be employed by one manufacturer for the season; they also might work casually for him during the rest of the year. In addition, there is a regularity in the attachment of subcontractors to particular prime contractors. As a consequence, some effort is made to safeguard employment opportunities for workers of both the inside shop and the regular subcontractors.

In part, the divergence of subcontracting policies between construction and apparel also can be explained by diverse strategies to control contract standards. As will be noted in

a later section, construction contracts often provide that the collective bargaining agreement of the prime employer will cover workers of the subcontractor. This firm control assures that wages and other working conditions will not be undercut. The apparel industry has not protected standards in this way; instead, it has stipulated that the subcontractor be organized by a union, and usually, be registered by the prime employer. Both are general controls of subcontracting. By requiring notice or union approval of specific subcontracting actions, industries other than apparel ordinarily allow in-plant workers to compete with outside workers for job opportunities. Thus, apparel unions have obtained an additional control against abuse of subcontracting to the detriment of in-plant workers and their standards.

Provisions which applied to construction, maintenance, and services were more likely to protect in-plant employment opportunities than provisions which covered the production process or major activity. Almost two-thirds of the clauses covering the production process (65.1 percent) protected in-plant opportunities, but four-fifths of those pertaining to construction and maintenance (81.3 percent) and almost nine-tenths of those dealing with services (89.1 percent) had one rule or more concerning in-plant workers and their jobs. Again, the lower prevalence of clauses pertaining to production or a major activity was influenced largely by construction industry data. In addition, the subcontracting of production or a major activity is likely to occur in emergencies, when facilities become overtaxed or when deadlines must be met. Consequently, production workers would be less concerned about lost opportunity than maintenance workers who, in periods of diminishing employment, see work that they can perform going to outside contractors.

Notice and Consultation Provisions. In light of the recent focus on management's duty to bargain over its economically motivated subcontracting decisions, it is significant that specific notice and consultation clauses were the most prevalent of those provisions dealing with employment opportunities (258), but accounted for only about one-third of the 755 provisions regulating contracting out (table 5). These clauses covered about 45 percent of the workers under provisions governing subcontracting activities.

There are probably additional collective bargaining situations in which a notice of intention is provided. First, if a regulatory provision exists in the contract, employers

informally must give notice of their decisions to activate, in good faith, existing contractual rules or subcontracting. Second, even in the absence of a subcontracting provision, it is also possible that the Fibreboard and subsequent decisions have increased the informal practice of providing a notice of intention to subcontract.

Although the 258 notice and consultation provisions were relatively widespread among all industry groups, five industries had marked concentrations. Together, these five accounted for one-half of the agreements and three-fourths of the workers covered by notice and consultation clauses:

Industry	Having notice and participation provisions	
	Agreements	Workers (in thousands)
Total -----	132	1,417.2
Apparel -----	21	173.0
Primary metals -----	40	414.4
Machinery -----	24	117.0
Transportation equipment--	24	648.0
Utilities -----	23	64.9

The totals were affected particularly by the primary metals industry where the Steelworkers' settlement with Big Steel established a pattern for the rest of the industry. Because of the large size of many steel bargaining units, its influence was particularly strong on worker coverage; in the transportation equipment industry worker coverage was affected similarly.

Over one-half of the construction and maintenance contracts (58.1 percent) covering three-fourths of the workers (75.3 percent) provided for notice and consultation provisions compared with fewer than one-third of the production process or major activity agreements (31.3 percent) covering two-fifths of the workers (42 percent). However, more agreements involving production or a major activity had notice and consultation clauses (203) than those involving construction and maintenance (155). This dichotomy merely reflected the greater number of agreements limiting subcontracting of production that were in the study. Proportionately, construction and maintenance provisions which had notice policies were more prevalent because retention of job opportunities was a more sensitive issue for in-plant maintenance workers than it was for production workers.

Timing the notice was critical to the effectiveness of the clause. Discussion at the time or after a contract was already let obviously gave the union little room to act for its in-plant membership except that by retrospective review a policy for future subcontracting activities of the employer could be established. Few provisions would give notice or discussion after the decision had been made. Among the few was the following:

If the union wishes an explanation as to why the company has contracted out certain work, the union shall make an inquiry at the personnel office and receive a prompt answer as to why the company deems it necessary to contract out such work. (32)

Provisions in which timing of notice was vague were equally rare:

If any question arises concerning the effect of subcontracting on bargaining unit employees' jobs or hours of work, the company will negotiate with the union. . . . (33)

Most of the provisions stipulated that notice had to be given before a contract could be let. A number of provisions furnished both advance notice and a committee review of subcontracting policies. By specifying prior notice the union had more opportunity to convince management of the advantages of permitting inside workers to do the job:

Prior to engaging an independent contractor, the company will notify the union and will outline the nature of the project or plan, and the union will be given an opportunity to make prompt suggestions for consideration by the company. (34)

* * *

. . . In any case in which it is proposed to use an outside contractor for work usually done by the regular employees of the company which does not result in the discharge or layoff of regular employees or in a reduction in their rate of pay, the union shall be given notice and an opportunity to be heard before the contract is let. (35)

* * *

Without diminishing in any way its right to subcontract, the company agrees to give the local union advance notice in writing of work to be subcontracted. (36)

An occasional clause recognized that under certain circumstances, the company might not be able to give early notice of subcontracting. The following provision insured the company against delay in case timely arrangements could not be agreed to with the union:

Maintenance and repair work on any of the mechanized, semi-mechanized, or retrofit vessels of the company while the vessels are in port, which falls within the jurisdiction of the licensed engineers and can be performed aboard the vessel, shall be performed by the regular complement of ship's engineers or licensed engineers who have been cleared by the union for such work, and shall not be contracted out, provided that the

work, when so performed, under the company's basic managerial responsibility is not more costly and can be performed as timely and effectively as compared with outside repair work personnel. The arrangements therefore shall be worked out in advance between the parties; however, should the parties be unable to work out arrangements in advance, there shall be no delay in maintenance and repair work. The wages, hours of work, and other conditions of employment for such work shall be negotiated between the union and the company. Any dispute arising hereunder shall be subject to provisions of section 2 of the agreement. (37)

The union was designated most often as the party to receive notice. However, several individuals and groups might receive notice. Stewards, shop delegates, chairmen of the shop committee, shop committeemen, and local union officers were specified in various provisions. In others, an unnamed committee, or the shop, union, or bargaining committee also might be notified or consulted.

Notice provisions allowed the union to try to retain work for in-plant workers. These provisions gave the union the opportunity to request detailed justification from the company, file a grievance if the employer persisted in his decision to subcontract, or consult and discuss the decision with the employer to convince him to abandon his decision. Basically, however, the decision remained with the employer. However, 32 provisions modified management's right to farm out work to the extent that agreement or union consent was necessary for the prime employer to subcontract. Fully one-third of these provisions were in the apparel industry, where union consent was a regulatory tool adopted for plant removal as well as for subcontracting:

It is agreed that no member of the association shall have any work performed or any of its products or parts thereof (including binding and piping) manufactured outside of its own shop except with the consent of the union, . . . (38)

* * *

Employers shall not manufacture or cause to be manufactured in whole or in part, in places other than on the premises owned, operated, or leased by them; however, employers whose factory space and facilities are used to full capacity . . . may apply to the union for consent to have ladies' or children's hats manufactured in other shops . . . (39)

* * *

Work regularly performed by the bargaining unit employees shall not be contracted out except by mutual agreement of the company and the union. (40)

Under a few provisions, the employer's subcontracting program was to be subject to periodic review. These stipulations permitted management's policy to be questioned, and the union to exert an influence towards changing

the company's subcontracting policy. As a rule, these provisions simply stipulated the period of review:

It is the intent and desire of the company to utilize its own employees to do the kind of work they have customarily done in the past in our plants to the extent it is practical and economical to do so. It is the intention of the company to use the machine shops in the plants wherever it is efficient and economical to do so with the existing machinery, equipment, and manpower. The company will meet locally with the union officers periodically, but no less often than once each three (3) months, for the purpose of discussing subcontracting. . . . (41)

* * *

The company agrees to review annually with the union information showing by crafts the work contracted out and the number of men employed to perform the work. (42)

In the following clause, the periodic meeting required the company to furnish detailed information. It specifically exempted subcontracting decisions from grievance procedures or other contract provisions:

In recognition of the union's interest in the company's make-or-buy or subcontracting activities, and the mutual desire of the company and union to maximize employment opportunities, the parties agree that during the term of this agreement they will engage in discussions of such matters in the following manner and to the following extent.

1. A committee of three union representatives to represent all . . . unions representing employees of the company will be established.
2. The said committee will meet quarterly on a regularly scheduled day beginning June 1964 with the executive vice president of the company (or his personal representative) and two additional company representatives to be designated by him.
3. At each quarterly meeting, the following areas will be reviewed:
 - a. The significant make-or-buy, and subcontracting decisions of the previous quarter;
 - b. The significant anticipated business of the coming quarter, and the probable direction of make-or-buy, or subcontracting decisions anticipated during that quarter;
 - c. The recommendations and suggestions of the union committee with respect to anticipated decisions and their comments or views as to the decisions of the previous quarter, will be given consideration with a view to retaining at the company's Long Island facilities the maximum amount of work feasible under all relevant circumstances, such as scheduling and cost.
 - d. Any special problems that may arise with respect to these areas.
4. It is recognized and agreed that decisions as to make-or-buy and subcontracting must finally rest with the company, and shall be the responsibility solely of the company.
5. No matter or issue related to or growing out of subcontracting or make-or-buy decisions of the company or the effect of such decisions, or concerning this memorandum, shall be subject to the grievance or arbitration procedures of the contract, under any provisions of the contract or any provision of this or any other memorandum or understanding. (43)

Fifty-three agreements combined two of the various types of notice and consultation provisions. For example, in the following provision, the company was required to give written notice of its intention to contract out, and the union was allowed a minimum of 10 days to discuss the matter before the subcontracting occurred. In addition, a committee was established to discuss with management specific contracting out problems:

When the contracting out of such work is being considered, the company shall withhold taking such action to provide the union a reasonable opportunity for discussion of the matter.

A reasonable opportunity for union discussion shall mean a period fixed by written notice to the union of not less than 10 working days, unless the company explains to the union the reason why a shorter discussion period is specified.

. . . The purpose of this committee shall be to discuss other specific problems raised by either party in connection with contracting of work regularly and customarily performed by employees and to develop a background of experience for future guidance. (44)

Of the 53 combinations, 35 were in primary metals. The clause was lengthy, but in essence, it provided that agreement (1) would be required to subcontract production, services, and day-to-day maintenance and repair within the plant where the practice had been to have the work performed by the bargaining unit; (2) would be required if there were any change in past practice where such work (a) had sometimes been contracted out, or (b) had always been contracted out. In addition, the parties established a joint committee to resolve problems in the operation, application, and administration of the subcontracting provision and to discuss current subcontracting problems and related items.¹³

Layoff and Part-Timing of Workers. Of the 498 provisions protecting job opportunities, 187, or over one-third, applied to rules restricting contracting out where in-plant workers were on layoff or working part time; or if, as a result of subcontracting, workers would be laid off or placed on a part-time schedule (table 5). Almost one-fourth of all clauses regulating subcontracting included such a layoff or part-time provision. Nearly two-thirds were in nonmanufacturing, where they were heavily concentrated in transportation (45), utilities (44), and communications (20). These three industries, combined, accounted for 58 percent of the 187 clauses and

¹³ The full clause appears in appendix A.

almost 72 percent of the workers covered by such rules. Provisions concerning layoffs and part-time work were widely scattered in manufacturing but no significant concentrations exist.

Agreements pertaining to construction and maintenance had proportionately more provisions with layoff or part-time rules (33.3 percent) than those concerning the production process (24.9 percent).

A variation of the layoff or part-time rule was the provision stipulating that work could not be subcontracted unless the inside shop was fully supplied with work. These provisions were found in 55 agreements, 38 of which were in the apparel industry. The language was particularly suited to such piecework industries.

Combined, layoff or part-time provisions and those stipulating that regular employees be fully supplied with work were found in 240 contracts covering 1.4 million workers which contained provisions to protect regular employees from the adverse effects of subcontracting. This total does not double count two agreements which had both provisions and which covered 3,700 workers. This number was slightly over 30 percent of the contracts and workers under the 755 agreements regulating contract work.

Typical of those provisions which prohibited subcontracting if workers were already laid off are the two illustrations below, both from different plants of the same company and each organized by a different union. Although the principle remained the same, choice of language was different and an overtime waiver was included in the second provision. The waiver applied to skilled crafts in the plant:

It is the intention of the company to provide full and regular employment for its employees except during periods when conditions necessitate reduction in plant output. In accordance with this intention, the company agrees that work performed by members of the unit shall not be contracted out . . . so long as there are qualified employees available from among present and/or laid off employees eligible to return to work under the recall provision. (45)

* * *

The company will not contract out maintenance work while there are employees available on the active payroll working in the required craft or working in another department in lieu of layoff, or employees entitled to recall from layoff who have seniority in the required craft . . .

This provision above shall not obligate the company to provide overtime work for employees in the required crafts or craft, nor shall it obligate the company to hire additional employees. (46)

In the following provision, normal and routine work could be let if there was no layoff, but if layoff should occur during the contract, no further work would be farmed out:

. . . the company will enter into outside contracts for normal and routine work such as laying mains and services or installing or regulating gas appliances only when all employees engaged in such work are working full time and when the work contracted for is of such a nature that it cannot be postponed. In case layoffs for lack of work occur in a line of work which is being performed under a contract, the company agrees not to enter into any additional contract or contracts affecting that work, until all regular employees so laid off have been returned to work.

The company will continue, as in the past, to employ architects and contractors, as occasion and fair outside business relations may require, for construction and building operations and for special maintenance projects not regularly a part of its activities in producing and distributing natural gas. The company will not undertake to regulate the conditions of employment which may prevail under outside contracts or subcontracts covering such construction, building or maintenance. (47)

Other agreements barred contracting out if regular employees were not working 40 hours a week or a full week plus overtime:

Each member shall manufacture its requirements of dresses, completed articles, parts, wigs, masks, shoes, stockings, and clothing in its plant wherever located to the limit of its maximum capacity.

A member shall be deemed to be manufacturing its requirements of the items referred to above to the limit to its maximum capacity only when all of its employees who have not lost their seniority under this agreement are working at least a full 40 hours a week during the entire period in which work is given to companies or contractors or is purchased from outside. (48).

* * *

It is agreed that . . . the company will not subcontract or send out work to be performed by any other company unless the employees covered by this agreement are working at least forty (40) hours weekly in the department within which such work would be normally performed. . . . (49)

* * *

No work shall be given to any contractor, subcontractor, or branch factory of said employer unless all employees covered by this agreement are working a full week including maximum overtime . . . (50)

Most numerous were those provisions which prohibited subcontracting if, as a result, workers would be laid off or placed in part-time status. The concentration was especially heavy in electric and gas utilities which alone accounted for 42 out of 90 provisions. Some of these clauses stipulated that work would not be subcontracted if workers would be laid off, displaced, or deprived of employment. The first illustration protected

only workers who had 10 years of service. In a second variation, management agreed to consider employment security before subcontracting as in the third illustration below:

The company may let independent contracts but will not let a maintenance contract . . . that will cause an employee in either mechanical division who has 10 or more years of plant service to be laid off for lack of work during the term of this agreement. (51)

* * *

The company shall have the right at any time to enter into a contract or contracts with any person, firm, or corporation for plant repairs, changes, improvement, or major maintenance, or for the installation, removal, or changes of machinery and equipment, provided that no company employees who are capable of performing such work will be displaced, and the union will not interfere with such independent contract work. . . . (52)

* * *

When it becomes necessary to determine when, or what, to subcontract, it is, and will be, the policy of the company to first consider the impact on the employment security of its employees. . . . (53)

Other provisions specified that a reduction in weekly hours, in addition to layoff, might be sufficient grounds to deny subcontracting. In the second illustration, subcontracting that resulted in the demotion of regular employees was forbidden:

The company agrees that the work ordinarily and customarily performed by its own employees will not be contracted out if such contracting would result in the direct layoff of its forces or in a reduction of their workweek below the normal workweek of the company. . . . (54)

* * *

All work contracted by the company with a contractor will not in any way cause layoff, curtailment below a normal scheduled workweek, or demotion. (55)

Two interesting clauses provided work guarantees. In the first, in-plant jobs could be eliminated, but if the subcontractor did not hire displaced workers in comparable jobs, the prime employer would be obligated to place them in equivalent work. The second provisions insured workers against layoff or reduced weekly hours, but waived the guarantee when it would be necessary to prefabricate work elsewhere to obtain materials:

When the transferring or contracting of work to others involves the elimination of jobs of regular full-time employees, it is agreed that if the transferee or contracting company does not afford said employees the opportunity to continue the same general type of work, the company shall furnish such employees with work requiring comparable skill. When such employees are furnished such other work within the company, their tenure of employment shall thereafter be subject to the same conditions as apply to other regular full-time employees. (56)

* * *

During the time that any outside contract is in effect for work which could be done by the company's own mechanics, no regular mechanic will be transferred out or laid off from his skill, nor scheduled for less than a 5-day workweek. An exception will apply when work is fabricated elsewhere in order to secure the materials. . . . (57)

In 18 cases, subcontracting was permitted if in-plant workers either were not on layoff or if layoff would not result:

The company will not enter into a contract or contracts for the construction of telephone plant or the installation of telephone equipment . . . without first having obtained in each instance the consent of the union . . . ; except that where (it) is not coincident with or will not result in any layoff of employees who could perform the contracted work, the consent of the union need not be obtained. (58)

The variant noted earlier, appearing in 38 agreements, barred subcontracting unless regular employees were fully supplied with work. The illustration below required, in addition, that in-plant workers would have to be working overtime:

When transfers, upgrading, overtime, and rehiring of laid-off personnel will not meet the overload situation, we must meet it by hiring new personnel or subcontracting.

Under normal circumstances, we would not subcontract unless our own people were on overtime. . . . (59)

In the apparel industry eight agreements allowed expansion of subcontracting only if in-plant workers and workers of regular subcontractors were fully supplied with work:

A member of the association shall have the right to designate an additional contractor or contractors, when the employees of his inside shop, if he maintains one, and all of his designated permanent contractors who employ workers in the crafts covered by this agreement are fully supplied with work . . . (60)

* * *

In order to safeguard working standards and employment opportunities of the workers covered by this agreement, it is agreed . . . that the employer shall not sell or handle, purchase or obtain, as sales agent or otherwise, directly or indirectly, from or for other manufacturers, jobbers, merchants, wholesalers, or contractors, any other wholly or partly finished garments whatsoever during the term of this agreement unless his inside shop and the shops of his duly designated contractors are fully supplied with work, and no such purchase and sale shall be made unless the same is bona fide and genuine or if the employer's purpose is to avoid any of his obligations under this agreement. (61)

Miscellaneous Protections. In 33 agreements, several different protective approaches were adopted to retain job opportunities for in-plant workers and, in 16 of these, for workers of subcontractors. Fifteen

of the 33 provisions were in the apparel industry and accounted largely for the agreements covering workers of subcontractors. Most numerous were 17 provisions that obligated the prime employer to use his best efforts to obtain jobs for laid off employees with the subcontractor or employees who could be released to work for the subcontractor:

In all operations, when contract work is necessary, the company agrees to use its best offices that the contractor employ available Continental employees who can be released or Continental laid-off employees who are qualified . . . (62)

One provision stipulated that an employee working for the subcontractor would be guaranteed reemployment with his former employer:

The employer agrees that its employees then engaged in the particular work which is contracted out shall become employees of the initial contractor or any successor contractor, and agrees to employ or reemploy those employees in the employment of the contractor at the time of termination or cancellation of the contract . . . (63)

Fourteen provisions protected the seniority of in-plant employees assigned to a subcontractor:

Employees granted leaves of absence to work for a contractor performing services for the employer shall retain their seniority on the same basis as though they had continued to work for the employer. (64)

Among the clauses that protected subcontractor's employees were a number establishing the principle that work would be shared equally among employees of the inside and the regularly designated outside shop during slack seasons. This clause was typically found in apparel agreements:

It is further agreed that during the slow season, all work shall be divided as equally as possible between the inside shop and the shops of the duly registered regular or permanent contractors or submanufacturers working for the employer. . . . (65)

Others provided that the workers of a regular subcontractor who planned to terminate operations or sever the contractual relationship with the prime employer would be absorbed by the inside shop or the remaining subcontractors:

Should a contractor designated by a member of the association abandon his designation or cease to operate his business . . . the workers of such contractor shall immediately be absorbed either by the inside shop of the member, if he maintains one, or by the remaining designated contractors of such member. . . . (66)

Preferential Consideration. Fifty-four provisions covering over one-half million workers stipulated that the employer, in

making his subcontracting decision, would give preference or consideration to in-plant workers (table 5). About one-half of the agreements as well as 87 percent of the workers covered by such provisions were concentrated in machinery, transportation equipment, and transportation. The provisions were about evenly divided between those who subcontracted production work and those who farmed out construction activities.

Basically, provisions of preferential consideration weakly restricted management's activities. The decision to subcontract remained with management and was virtually unimpeded, except that the employer would allow in-plant workers to compete for the work; would prefer in-plant workers to the fullest extent practicable; would give advantages that can be reasonably provided to his employees; or would consider them:

The employees covered by this agreement shall be given preference for maintenance and construction work in the plant to the fullest extent practicable. (67)

* * *

The method or combination of methods used will vary depending upon the circumstances, but we can state as a general principle that our intent in all cases is to give our own people all the advantages that can reasonably be provided before we hire new people or subcontract. I feel sure that union and company can agree on this principle and that differences in opinion will arise only in deciding in specific instances what advantages for our own people can reasonably be provided . . . (59)

* * *

In cases of unusual items of work which the company contemplates letting out on contract, consideration will be given to having such work done by its production and maintenance employees. (68)

Overtime Provisions. One means of persuading employers not to sublet work was to raise the cost of such contracts so that the employer would benefit by keeping the work in the plant. In 29 provisions, overtime was employed towards this goal. In the first illustration, plant employees would receive overtime if workers for subcontractors were receiving overtime; in the second, in-plant workers must be receiving overtime before work could be contracted out. The second illustration waived this obligation for new construction:

If contractors' or other utilities' employees are used on company property during emergencies and are receiving double time, company employees in the same department and district working on the emergency shall be paid two times the straight-time wage rate. This shall also apply to employees from other departments working on such emergencies. . . . (69)

It will be company policy to accomplish its general maintenance work with its own employees . . . In every instance, consistent with said policy, company employees will be utilized, in preference over outside contractors, and a 6th day of work will be offered to such numbers and classifications of its employees as the company's needs may require.

In the case of new construction it will be company policy to accomplish a large amount of such work with the employees of the new construction section of its own maintenance department and to employ outside contractors for new construction when deemed advisable, without any obligation as to lengthening the workweek for any of the employees of the company. . . . (70)

Waivers, in fact, were characteristic of overtime restrictions. The first provision below gave in-plant workers preference over the subcontractor's employees for overtime work, if it did not affect efficiency or over-all cost. The second waived overtime requirements when the skills required by government and insurance regulations were not available among company employees; and the third would forego overtime when industry practice or the continuous basis of the job necessitated subcontractor's employees working overtime:

. . . The company will, as far as practicable, restrict contractors to the same workweek as that established for employees under this agreement. With regard to overtime work, the company will, as far as is practicable, follow the policy of assigning such work to its own employee work forces rather than those of contractors in those instances where the effect of such assignment would not adversely affect either the efficiency or over-all cost of doing the job. (71)

* * *

Contract work performed on the company's manufacturing premises at its Rumford plant . . . will be done only while the company is providing a 48-hour workweek for an equivalent number of its own employees corresponding to those the contractor is using. Where governmental or insurance regulations require on such work the use of men with special qualifications or licenses not possessed by Oxford employees than the foregoing obligations to work corresponding employees on a 48-hour basis will not apply. (72)

* * *

With respect to skilled trades within the plant, it is understood that if a contractors' employees work overtime, then, at least an equivalent number of available plant employees of the same skill will be permitted to work overtime on the same day, except when special circumstances exist, such as:

1. Industry practice as regards to brick masons provides that overtime must be worked.

Example: Silicate furnace tank repair—contractor personnel cannot be obtained unless they work 10 hours a day.

2. Where the job must be worked on a continuous basis.

Example: Where welding and annealing pipe lines is involved and must be continued until job completion. (73)

Protecting Individual Workers. The presence of subcontractor's employees working in the plant can create resentments which eventually could result in trouble between the in-plant and the subcontractor's workers. To

avoid this potentiality, four agreements stipulated that in-plant workers did not have to work with contractors' employees:

When construction work is being performed by outside contractors, company employees are not to be required to work in conjunction with contractors' employees. (74)

Seventy-nine provisions prohibited employer efforts to convert in-plant workers into individual subcontractors. Such contracts were basically contracts for labor only, and could result in removing jobs from the plant and in undercutting contract standards by changing the existing employer-employee relationship:

No employer shall set up any employee in his own shop as a contractor or in any other shop, directly or indirectly, in order to evade the terms of this agreement. (75)

Sixty-one of the 79 clauses were in construction industry agreements. A number of these clearly prohibited contracts for labor services only—sometimes called lumping. Thus, construction industry provisions appeared to be directed more towards maintaining contract standards than retaining jobs:

No journeyman shall be permitted to subcontract or lump the installation of any work under the jurisdiction of the local union. Both parties violating this section shall be penalized by their respective organizations . . . (76)

* * *

No work covered by this agreement shall be performed at piece rates and no work shall be let by piece, contract or lump sum for labor services only. The only method of payment shall be on an hourly basis in accordance with the provisions of this agreement. (77)

* * *

No work will be let by piece, contract or lump sum direct with journeymen or apprentices for labor services on carpenter work. The prime contractor agrees that he will not award a subcontract pertaining to carpenter work to be performed on any construction site unless it provides for the furnishing of power equipment and carpenters necessary to do the work. The union agrees that no carpenter shall be allowed to do piece work or contract for labor services only. (78)

Several contracts prevented management from converting workers into individual subcontractors by banning their buying machines or equipment as a condition of employment:

The employer shall not require, as a condition of continued employment, that an employee purchase a truck, tractor, and/or tractor and trailer, or other vehicular equipment. (79)

Protecting Contract and Union Standards

The prevalence of restrictions designed to protect contract and union standards was nearly as high as limitations for protecting

in-plant job opportunities (table 4). There were 471 agreements covering 2.6 million workers protecting contract and union standards. Manufacturing covered fewer provisions and workers than nonmanufacturing agreements, reflecting the influence of construction industry agreements. This industry accounted for 40 percent of all clauses protecting contract standards (191) and represented about 30 percent of the workers covered by such clauses (780,000).

Four industries accounted for over 30 provisions controlling contract standards, and each covered over 300,000 workers. The 4 were responsible for two-thirds of the 471 provisions protecting standards and three-fourths of the 2.6 million workers covered:

Industry	Having provisions	
	Agreements	Workers (in thousands)
Total -----	319	1,981.2
Apparel-----	48	381.0
Primary metals ----	31	380.1
Transportation -----	49	440.2
Construction-----	191	780.0

Provisions concerned with the production process or a major activity were more likely to protect contract standards than agreements bearing upon construction, maintenance, installation, and repair work. Three of the four industries having the largest proportion of contract protection provisions (apparel, construction, and transportation) in particular influenced this conclusion. In the first two, subcontracting was part of the normal mode of operations, and in the third (transportation), leasing operations normally occurred during peak capacity. As a rule, the same unions organize both in-plant and subcontractors' workers. Thus, in all three, the concern is not to preserve opportunities—in this respect, their provisions are permissive—but to protect wages and terms of employment of regular in-plant workers from being undercut when excess production work or major activity is let.

Compliance Provisions. One hundred and eighty-one provisions required the subcontractor to comply with the prime employer's labor contract (table 6). These represented slightly under one-fourth of all 755 agreements and applied to 20 percent of the 4.2 million workers under contracts which had subcontracting controls. Compliance clauses were overwhelmingly a construction industry phenomenon. Almost three-fourths of these provisions (131 out of 181) involved building trades unions and contractors.

Another 190 agreements contained general compliance clauses—i.e., provisions requiring the subcontractor to observe union rates or prevailing standards of the contract rather than the specific norms established in the prime employer's agreement, or requiring prime employer or subcontractor not to evade the agreement. These provisions were clustered in three industries: Transportation (48), primary metals (31), and construction (31). Together these accounted for over 57 percent of the general compliance agreements and more than 72 percent of the workers affected by them.

In 23 provisions, the subcontractor could be required to adopt the terms and conditions of the prime employer's collective bargaining agreement under certain circumstances, but in other situations he could be required to adopt only general observance of prevailing rates. When these 23 provisions were taken into account, there were a total of 348 compliance provisions, or just under 50 percent of the 755 controlling employer subcontracting activities.

Provisions requiring the subcontractor to apply the prime employer's agreement to his employees were the most numerous of all contract compliance provisions, accounting for 115 of the 181 provisions. In requiring this observance, they used diverse language. For example, the contractor had to comply or be bound by the agreement; or the terms of the prime contract had to be equally effective for workers of subcontractors:

It shall be the duty of all contractors subletting bricklaying or masonry contracts to ascertain that the subcontractor is reliable, financially responsible, and will comply with the provisions of this agreement. (80)

* * *

If a contractor, bound by this agreement, contracts or subcontracts, any work covered by this agreement to be done at the job-site of the construction, alteration or repair of a building, structure or other work to any person or proprietor who is not signatory to this agreement, the contractor shall require such subcontractor to be bound to all the legally enforceable provisions of the agreement. . . . (80)

* * *

No member of the association shall send any work, including shoulder straps, to be done by, or obtain work from, any contractor or submanufacturer unless such contractor or submanufacturer is under contract with the union and maintains the conditions of labor specified in the contract . . . (82)

* * *

It is agreed that all provisions of this agreement shall be equally effective under any subcontract covering work done in the hotels within the classifications of work herein set forth. (83)

These guarantees were automatic and did not call for separate negotiations between the union and the subcontractor. Thus, the prime contractor becomes responsible for the enforcement of contract standards.

Other provisions added extra insurance by requiring that the subcontractor's promise to comply must be in writing. In a rare case, the subcontractor might have to sign the prime employer's agreement or a short form agreeing to comply with the contract:

The employer shall require the contractor to become a party to this agreement and to file a subassent hereto with the union through (the association), and the contractor shall agree to be bound by all the terms and provisions thereof in the same manner and to the same extent as members of (the association) . . . (84)

The most frequent written compliance provision stipulated that the contract between the prime employer and the subcontractor (i.e., the agreement establishing the business terms of the subcontract) had to guarantee compliance with the wages and conditions of the prime employer's collective bargaining agreement. Sixty-four provisions included this requirement:

The employer agrees to specify in all contracts and subcontracts that all subcontractors performing work on the job site within the council's jurisdiction must comply with the terms and provisions of this agreement, including the union membership provision, or be a party to an agreement with the council for such work. (85)

* * *

That if a contractor shall subcontract job-site construction work covered by this agreement, said subcontract shall contain the provisions:

That the wages, benefits, hours, and other conditions (of this contract) shall be paid and observed on all such subcontract work by the subcontractor . . . (86)

* * *

If the contractor or subcontractor shall subcontract job-site work covered under the jurisdiction of the union, including the furnishing and installation of materials, performance of labor, or the operation of equipment, provisions shall be made in writing for the observance and compliance by the subcontractors with the full terms of this agreement. (87)

The 190 general compliance provisions took several distinct forms. For instance, some stipulated that subcontracted work would have to be performed under union conditions:

In the event new construction is contracted out, such work shall be performed under the applicable building trades wages and conditions. (88)

* * *

In all new construction work where outside contractors may be employed it will be the established policy of the company to have such work done under union conditions if possible. (89)

Others did not specifically require compliance with the prime employer's contract, but nevertheless achieved this goal by awarding the subcontract dependent upon the subcontractor's workers receiving the same compensation and other conditions of employment enjoyed by in-plant workers:

The contractors agree that whenever any work covered by this agreement is subcontracted, it shall be subcontracted only to a subcontractor whose employees enjoy wages, hours, and other conditions of employment equal to those contained in this agreement. (90)

* * *

The company shall require subcontractors to pay all persons employed on or in connection with said work at least the basic rate of pay prevailing at the shipyard for the same or comparable class of work. In addition the subcontractor shall pay the appropriate overtime premium, the recognized paid holidays and the vacation schedule prevailing in the shipyard. (91)

Compliance provisions, appearing in 94 agreements, banned subcontracting which would evade contract obligations:

Maintenance and repair work performed within the plant, other than that described in paragraph one, and installation, replacement and reconstruction of equipment and productive facilities, other than that described in paragraph three, may not be contracted out . . . unless contracting out . . . as of the time of decision to contract out . . . can be demonstrated by the company to have been the more reasonable course . . . Whether the decision was made at the particular time to avoid the obligations of this paragraph may be a relevant factor for consideration. (92)

* * *

It is further agreed that the intent of this clause and this entire agreement is to assure the payment of the union scale of wages as provided in this agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scale provided in this agreement. . . .

It is further agreed that the employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the agreement, wherein the provisions as to compensation for the services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be canceled for the purpose of depriving union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to the grievance procedure of the agreement. (93)

One variation of the contract evasion restriction barred subcontracting if it deprived employees of work. These differed from those clauses discussed earlier where work could not be contracted out if layoff or part-timing

would result. The contract evasion provisions cited here involve loss of work as a deliberate purpose of subcontracting and barred such actions:

The employer agrees not to subcontract work normally performed by the employees under this agreement . . . in order to deprive employees of work. (94)

* * *

The company subscribes to the principle of telephone work for telephone employees and will not contract out work presently and regularly done by employees for the sole purpose of decreasing the available work for employees in the bargaining unit. . . . (95)

A second variation prohibited subcontracting which discriminated against the union or employees:

The company agrees not to transfer any of its work to any other concern for the purpose of discrimination against the union. (96)

* * *

. . . it is understood that the company will not exercise these rights (to subcontract) for the purpose of discriminating against the union, or an employee, or a group of employees. (97)

Union Contractor Requirements. One hundred and sixty-eight provisions stipulated that the prime employer had to choose a union subcontractor (table 6). Over two-thirds of these had been negotiated in the apparel and construction industries, both of which had been specifically exempted, as noted earlier, from section 8(e), the hot cargo provision of the Labor Management Relations Act of 1947, as amended.

The first illustration required the subcontractor to have an agreement with the same union, but not necessarily the same agreement, as the prime employer's. The second clause necessitated the subcontractor's having a contract with a local in the same international union. In the third illustration, the subcontractor could have an agreement with any of the building trades unions. The expulsion of the Teamsters from the AFL-CIO has not obviated the need for construction unions to work harmoniously with this labor organization. Consequently, this third provision permitted relations with unions now or previously affiliated with the AFL-CIO's Building and Construction Trades Department or related intermediate bodies:

The employer agrees that when subletting or contracting out work covered by this agreement which is to be performed within the geographical coverage of this agreement and at the site of construction, alteration, painting, or repair of a

building, structure or other work, he will sublet or contract out such work only to an employer who has signed or is covered by a written labor agreement with the union (which agreement shall be in substance identical with this agreement) and who employs or agrees to employ two (2) or more journeymen during at least thirty-nine (39) weeks of the year. (98)

* * *

. . . The company agrees it shall manufacture garments only in such outside factories as are under contract with, and employ numbers of the Amalgamated Clothing Workers of America. (99)

* * *

Each individual employer agrees that he will not contract to have performed any work at the site of construction alteration, roofing, or repair of a building, structure or other work with anyone not signatory to a collective bargaining agreement with (1) a national or international union now or previously affiliated with the building and construction trades department, AFL-CIO, or (2) a labor organization whose national or international union was or is now affiliated with the building and construction trades department AFL-CIO or its predecessor, or (3) a State or local building and construction trades council. (100)

The union subcontractor requisite was not a rigid rule. Typically, flexibility was injected by setting conditions under which the union stipulation might be waived. Thus, apparel and construction unions were able to control the use of nonunion contractors to the advantage of union employers. For example, a nonunion contractor could be hired only if the union and employer reached agreement:

A manufacturer who employs contractors shall employ only contractors who are in contractual relationship with the New York Joint Board of the Amalgamated Clothing Workers of America and shall not cause or permit any work to be performed for him, directly or indirectly, by any person, partnership, corporation or contractor who is not in contractual relationship with the New York Joint Board except by mutual agreement of the Exchange and the New York Joint Board. (101)

A prime employer could hire a nonunion subcontractor if no unionized subcontractors were available. The second illustration below also required that the union be given the name and location of the nonunion subcontractor—obviously with the intent to organize his workers. The first illustration required the nonunion subcontractor to sign a union contract following a trial period:

The employer may use the services of nonunion contractors only under the following circumstances, but only if it has first given the union written notice thereof, and in no event shall such contractor be one whom the union is picketing or otherwise engaging in a labor dispute.

1. The employer contemplates the manufacture of a new garment or style for which production facilities in the existing factories are inadequate; or

2. Production facilities of the permanent contractors are inadequate to take care of an increased volume of production; or

3. A permanent contractor refuses to accept a garment or style at the piece rate established for that or similar work in the Bay Area industry by collective agreement.

The period of trial for any such nonunion contractor shall be agreed upon in writing between the employer and the union. After such trial period, the contractor shall become a signatory to the union agreement. Failure to sign the agreement by the contractor shall make it mandatory upon the employer to cease dealing with such nonunion contractor. (102)

* * *

No work shall be caused to be performed by an employer in a shop not under contract with the union, unless the union upon written notice from the employer, fails within seven days thereafter to notify the employer in writing of a shop under contract with the union which can reasonably perform the work and which is willing to take the work. If work is sent to a nonunion shop, the employer, at the request of the union, shall furnish the union with the name and address of such nonunion shop. (103)

The union subcontractor rule also might be waived for certain kinds of operations not normally performed by the prime employer. Thus, building trades, landscaping and trucking operations, and special equipment installers were excluded from the nonunion bar:

. . . However, the employer agrees he will not subcontract on-site construction work except to subcontractors having collective bargaining agreements with unions affiliated with the local building trades council and shall so advise prospective subidders. The above shall not apply to installation by technically trained factory representatives, and other such special situations. (104)

* * *

The employer agrees that all subcontractors performing work covered by this agreement must be union subcontractors. Except that the above shall not apply to landscapers, vendors furnishing material solely or to any persons furnishing trucking or transportation. (105)

One interesting provision was designed to prevent abuse of the union subcontractor requisite to control the supply of employers in the industry:

The employer agrees that no firm, person, or corporation shall be engaged as a subcontractor to perform any of the work covered by this collective bargaining agreement unless such firm, person, or corporation is in contractual agreement with a local union of the (international union). This section shall not be used to prevent an employer from entering the segment of the building industry covered by this agreement. (106)

Thirty-nine agreements dealt with possible jurisdictional disputes between contractor and subcontractor employees. Thirty-one of these were in the construction industry where jurisdictional problems are of long standing.

In these situations, one type of clause called for the employer and the union to confer and cooperate should the work of in-plant employees be transferred. More prevalent, however, were construction industry provisions which required the prime employer, in his agreement with the subcontractor, to include a clause binding the latter to the jurisdictional settlement machinery in the industry:

In recognition of the rights of the employees covered hereby to perform available work of the character covered by this agreement for the company, the company agrees to confer and cooperate with the union on any matter involving the efforts of other labor organizations to take such work away from employees of the company. (107)

* * *

The employer agrees that it is in the best interests of job progress and efficiency to, insofar as possible, develop and encourage a uniform labor policy on any particular job. In order to promote, insofar as possible, the principles set forth above, the employer agrees to insert in his subcontract documents, a provision which would require the subcontractor and his subcontractors to be bound by the terms and provisions of the agreement creating the National Joint Board for the Settlement of Jurisdictional Disputes. In addition, the employer agrees, through the association's respective committees, to encourage the architects to include in their specifications a requirement that all contractors on the job, whether general, prime, sub, or sub-sub shall be bound by the terms and provisions of the agreement of the National Joint Board.

Nothing in this article shall be construed to limited or restrict, in any way, the employer's right to determine which portion of the work, if any, he may perform with his own employees or may subcontract to others. (108)

The employment of union labor by the subcontractor was specifically referred to in 56 agreements—again overwhelmingly in the construction industry. In 44 agreements, union labor was a requisite. Such provisions might stipulate that workmen hired by the subcontractor had to be furnished through the union hiring hall. In the second illustration, unions extended their jurisdiction to the transportation of materials to the site, whether by the primary employer or his subcontractor:

. . . in the event it subcontracts any work coming under the provisions of this contract . . . it shall subcontract the same only to another employer either a party to this contract or who adopts the same by employing employees through the hiring hall established under this contract . . . (109)

* * *

So far as it is within the control of the employer or his subcontractor all materials, supplies, and equipment used on the job shall be transported to or from the site of the work by workmen furnished by the appropriate craft union signatory hereto. Nothing herein contained shall be construed to prohibit the normal delivery of freight by railroad. (110)

In 12 provisions, specific language relieved the subcontractor of an obligation to hire union labor. However, the subcontractor had to comply with the prime employer's agreement or with similar standards:

The contractors agree that whenever any work covered by this agreement is subcontracted it shall be subcontracted only to subcontractors whose employees enjoy wages, hours, and other conditions of employment equal to those contained in this agreement. . . . The union agrees that the scope of this article is expressly restricted to the aforesaid subjects, and shall not be construed to include union recognition, union security, or hiring clauses, or any other provisions related thereto. (111)

Unfair Goods and Strikes. Forty-five agreements restricted the handling of unfair goods. All but three provisions were either in the apparel (28) or construction (14) industry, both of which are exempted legally from the hot cargo prohibition (section 8(e) of the LMRA). Two kinds of goods were designated as unfair in these provisions: (1) Those processed by nonunion subcontractors, and (2) those processed by employers whose workers were on strike.¹⁴ These types of provisions in the apparel industry barred the prime employer from doing business with nonunion subcontractors. Construction industry clauses, on the other hand, were less clear when requesting contractors and subcontractors to refrain from using materials or equipment which might cause discord and disturbance. Such provisions could apply in a variety of situations and disputes:

No member of the association shall . . . obtain work from any contractor or submanufacturer unless such contractor or submanufacturer is under contract with the union and maintains the conditions of labor specified in this contract, and unless the name of said contractor is included in the list of union shops furnished by the union. (112)

* * *

That the contractors and their subcontractors shall have freedom of choice in the purchase of materials, supplies, and equipment save and except that every reasonable effort shall be made by the contractors and their subcontractors to refrain from the use of materials, supplies, or equipment which use will tend to cause any discord or disturbance on the project. (113)

Provisions against struck goods were closely allied with clauses which restricted subcontracting with employers whose workers were on strike. Such provisions generally absolved workers from any discipline stemming from a refusal to handle hot goods. As the first illustration shows, prime employers also could be restricted in handling struck goods:

The members of the association shall not, directly or indirectly, handle or obtain any goods or merchandise or parts and/or components thereof, whether finished or partly finished, of the type usually made by workers employed under union agreement from . . . any contractor, jobber, or manufacturer against whom a strike declared by the (union) or any of its affiliates is pending, and the members of the association shall in no event request any of their respective employees to perform work destined directly or indirectly for any such concern. Such work shall not be deemed in the workers' regular course of employment and the workers need not perform such work. (114)

* * *

. . . in no event shall (the employers) request any of its employees to perform work destined, directly or indirectly, for such concern (against which a strike or labor dispute exists). Such work shall not be deemed in the workers' regular course of employment. (115)

Seventy-one provisions stipulated that signatory employers would not deal with struck employers, either as a subcontractor or prime employer. Failure to handle such work was not to be considered a contract violation:

No member of the association shall, directly or indirectly, perform work for or have work performed by, obtain products from or sell products to, any concern against which there is a pending strike declared by the ILGWU or any of its locals. (116)

* * *

If work on a project is declared to be unfair by a (union) and the work thereon is stopped for that reason, the union shall not be deemed to have violated this agreement if, during the period of said work stoppage, the members of the union fail to perform their work for the contractors or the subcontractors. (117)

* * *

If a contractor is performing work on a job, it shall not be a violation of this agreement or cause for discharge or disciplinary action in the event that the (union) or any of its affiliated unions places a lawful primary picket line on such job and any employee refuses to go through or work behind any such lawful picket line. Nor shall the contractors be deemed to have violated this agreement if they cease operations during the period if a stoppage of work by unions other than those who are parties hereto. (118)

Registration Provisions. Sixty-four agreements made registration of the subcontractor a requisite for letting out the contract and gave the unions considerable control over

¹⁴ A third category of unfair goods would be prefabricated items which conflicted with the work preservation goals of in-plant unions. No attempt was made to tabulate these prefabrication provisions as such since they were more pertinent for study of secondary boycotts than of subcontracting. However, the discord and disturbance clauses in the construction industry are broad enough to include prefabrication prohibitions.

such arrangements. Each agreement allowed the union to investigate the subcontractor, his wages, and working conditions when he operated under a separate contract. Registration provisions were especially concentrated in the apparel industry (34) and to a lesser degree in construction (14). The rest were scattered among eight other industries, some of which, like textile and toy manufacturing, had operating procedures somewhat similar to apparel:

No member of the association shall have work performed outside its own shop . . . unless such outside shop . . . is registered by the members of the association with the union herein . . . (119)

In some, registration was required at the same time that the business relationship was established or within a short time thereafter. In the second illustration, the union, in turn, was to furnish a current list of organized contractors to the employer association. In others, registration had to be completed before the subcontractor received any work. In the illustrations below, the subcontractors first had to be registered with a labor-management committee:

The individual employer will give written notice to the union of any subcontract involving the performance of work covered by this agreement within 5 days of entering such subcontract, and shall specify the name and address of the subcontractor. (120)

* * *

The employers are to register with the union the names of all the shops they buy goods from immediately upon entering into business relations with them, and in no event later than 1 week after business relations have been entered into. . . . The union shall furnish the council with a list of all shops in contractual relations with the union, which is to be kept up-to-date weekly . . . (121)

* * *

. . . Painting contractors will be permitted to sublet contracts and in such cases shall mail to the county joint committee, prior to the start of such sublet contract work, the list of the subcontractors' names and address . . . (122)

A small number of agreements attempted to maintain stability in the industry by controlling further contracting out by subcontractors. Such activity was either banned outright or was subject to the permission of the prime employer, as in the second illustration. Thus, responsibility for the subcontractor's actions rested on the prime employer:

No employee shall lump or work piece work for any employer. All T. and G. Flooring shall be laid by employees on the job unless this work has been sublet for labor and material to an employer who accepts this agreement. Upon request the union shall be furnished with the names and addresses of all subcontractors on the job doing work which is covered by this

agreement. The subcontractors must be such employers who have agreed to this agreement. The subcontractor shall not sublet any part of the subcontract.

No employee shall while working for an employer, rent or furnish either bench clamps, handscrews, mechanical mitre boxes, power tools, trucks, or lock mortising machines. (123)

* * *

The contractor shall not permit subcontracting by subcontractors without his knowledge and permission in writing. (124)

Protecting the Subcontractor's Employees. Even though compliance provisions assure negotiated wages and working conditions to employees of subcontractors, a number of agreements (82) provided that actual payments to employees and/or trust funds were the ultimate responsibility of the prime contractor. This guarantee against delinquency by the subcontractor took several forms. Typically, the prime employer was required to negotiate and enforce a contract compliance clause with the subcontractor, or, alternatively, he had to be responsible for payments to subcontractors' workers or make the payments himself. In the second illustration, the prime employer, in effect, guaranteed payments by accepting responsibility for violations by the subcontractor:

In the event employer subcontracts out any work that would otherwise be subject to this agreement, employer shall have the option either (1) to obtain from the subcontractor an agreement to comply with the minimum compensation provisions in this agreement and cause such subcontractor to comply with such provisions, or (2) in the alternative, employer shall make such payments. (125)

* * *

Employers shall be held liable for all violations of this agreement, including violations committed by subcontractors. (126)

Several apparel industry agreements included stipulations that the contract had to provide sufficient compensation to enable the subcontractor to meet labor and operating costs:

It is recognized that the employer is a substantial ultimate source of employment for and of wages and other benefits paid to or for employees of contracting shops to which the employer supplies work, and that the employer is concerned with the payment of wages and other benefits to or for employees in contracting shops. The employer agrees therefore that, if and when it contracts out work, it shall, in order to prevent undermining of union wage scales and their standards of benefits, pay to each of the contracting shops for work performed for the employer an amount sufficient to enable each of said contracting shops, after retaining a reasonable amount for overhead for producing the employer's work, to pay to its employees the wages and benefits provided for in the agreement now, or hereafter in force between the contracting shop and the union during the term of this collective bargaining agreement. (127)

For delinquency, some construction industry contracts required prime employers to (1) exert pressure on subcontractors, to (2) withhold payments to the subcontractor until workers were paid, (3) use withheld payments to pay workers, (4) require certification of payments by the subcontractor, or (5) post a bond to cover at least trust fund payments. The second illustration also placed a time limit upon the prime employer's liability, a provision frequently included, and waived liability when the union continued to refer workers to delinquent subcontractors:

In the event any subcontractor or an individual employer fails to comply with the terms or conditions of this agreement . . . upon notice from the union the individual employer shall immediately demand that the subcontractor remedy any such noncompliance and comply fully with the terms and conditions of this agreement. In the event any such subcontractor fails to respond to such demand of the individual employer and fails to comply, . . . the individual employer shall withhold payment of the next payable amount due to the subcontractor until such sections have been complied with in full by such subcontractor; provided, however, that if the payment next due to the subcontractor is the last or terminal payment under the subcontract then the individual employer shall require a certification from the subcontractor, as a condition of making such last or terminal payment that the subcontractor has complied in full and has made all payments in full.

The individual employer shall require all subcontractors performing work covered by this agreement, prior to the commencement of work under the subcontract, to post a surety bond, or cash bond in lieu thereof, in the amount of ten thousand dollars (\$10,000.00) to cover payment of contributions to the trust funds specified in this agreement. A copy of said bond shall be posted with the trust funds. Each of such trust funds shall certify that such bond has been so posted and the subcontractor will deliver such certification to the individual employer. Failure of the individual employer to enforce the provisions of this subsection shall make said individual employer liable for payment to the appropriate trust fund or trust funds with respect to all contributions and payments specified herein for all work performed by the subcontractor on the job or jobs of the individual employer. The provisions of this subsection requiring the posting of a bond shall become effective on or before October 13, 1965. (128)

* * *

An individual employer who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this agreement, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein . . . except as follows:

The individual employer will give written notice to the union of any subcontract involving the performance of work covered by this agreement within 5 days of entering such subcontract, and shall specify the name and address of the subcontractor.

If thereafter such subcontractor shall become delinquent in the payment of any wages or benefits as above specified, the union shall promptly give written notice thereof to the individual employer and to the subcontractor specifying the nature and amount of such delinquency.

If such notice is given, the individual employer shall pay and satisfy the amount of any such delinquency by such subcontractor occurring within 60 days prior to the receipt of said notice from the union, and said individual employer may withhold the amount claimed to be delinquent out of the sums due and owing by the individual employer to such subcontractor.

The individual employer shall not be liable for any such delinquency if the local union where the delinquency occurs refers any employee to such subcontractor after giving such notice and during the continuance of such delinquency.

The individual employer shall not be liable for any such delinquency occurring more than 60 days prior to receipt of written notice from the union. (129)

In one agreement, the prime employer could enlist the assistance of the union to determine contract compliance by subcontractors:

The employer agrees that all subcontractors shall comply with and be governed by this agreement. Failure to do so shall constitute a violation of this agreement and the employer shall be responsible therefore. The employer may request the local union to check and verify if their subcontractor on his job-site has complied with all wages and fringe benefits. The union shall reply to such a request of the employer within a reasonable time thereafter. This paragraph shall not apply to vendors furnishing materials solely, or to any person furnishing trucking or transportation. (130)

In the apparel industry, almost all of the agreements included a provision which protected the subcontractor from abuse by the prime employer. By protecting subcontractors, the union stabilized the industry and thereby indirectly protected the workers. These sophisticated and extensive clauses required prime employers to distribute work equitably among its permanent or designated subcontractors and governed the addition, diminution, or substitution of subcontractors. Some also set conditions for the use of temporary subcontractors, and others regulated trial or probationary periods for newly designated subcontractors. The following provisions illustrate some, but not all, of these regulatory devices:

The employer shall distribute its work among its factories and the factories of its permanent contractors on as equitable a basis as is practically possible. . . . The services of a permanent contractor shall not be terminated by the employer except upon 4 weeks' notice and only for just cause. (102)

* * *

In order to protect employment opportunities . . . and to insure that there shall be no discrimination in the distribution of work against employees working in shops of contractors designated . . . by a member of the association, it is agreed that . . . a member of the association whose garments are manufactured in shops of his contractors . . . shall not open an inside shop on his own premises or elsewhere, nor shall he enlarge his inside shop, wherever situated, if at the date of the execution of the agreement he maintained one, by employing a larger number of machine operators, unless with the consent and approval of the administrative board. (131)

* * *

All contractors (and the workers thereof) who were designated by a member of the association as of May 31, 1967, shall continue to be the designated contractors of such member during the term of this agreement provided they and each of them continue to maintain union shops.

The determination of whether a member of the association requires additional contractors and the number of contractors which shall be designated by a firm which becomes a member of the association after the effective date of this agreement, shall be made on the following basis: (1) The annual volume of such firm's production; (2) the capacity of the designated contractors to produce. If such firm has not theretofore been in business, it shall designate the member of contractors, if any, which it actually requires.

. . . He shall distribute his work equitably among his contractors with due regard to their ability to produce and perform.

If the member making such designation shall, at any time, change the character of his product and the contractors designated by him or any of them and the workers thereof shall be incapable of meeting his changed requirements he shall have the right to substitute and/or add such other contractors in place of those incapable of meeting his changed requirements. . . . (132)

In a few collective bargaining situations, however, a provision has been inserted absolving the prime employer of any responsibility:

It is recognized that if the terms of employer's lease, contract or other agreement obligates the lessee or other party, as the case may be, to pay the wages and observe the other terms and conditions of this agreement, then the union agrees that the sole and entire financial responsibility for meeting the costs of observance of this agreement shall be upon said lessee or other party and not upon this employer and that he shall be, and by these presents is, hereby released from any and all financial liability in connection therewith. (133)

* * *

. . . No individual employer who has complied with this requirement shall be liable to the union or any employee for any default of his subcontractor in the observance of the terms and conditions of this agreement. (134)

Limitations Concerning Cost, Production, and Other Business Conditions

Of the three major areas into which restrictions upon subcontracting have been grouped, limitations concerning cost, production, and other business conditions were the least prevalent (table 4). Under 40 percent of the 755 agreements permitting subcontracting subject to restrictions (294) pertained to business conditions. These, however, applied to over one-half of the workers covered by such provisions—i. e., to 2.1 million workers. Apparently, agreements involving large employers accounted for this substantial worker impact.

Provisions of this nature appeared more frequently in manufacturing than in nonmanufacturing agreements. Of the 294 provisions, 205, covering 1.6 million workers, were in manufacturing; only 89, covering 560,700 workers, were in nonmanufacturing. Neither the apparel nor the construction industries contained any significant number of provisions about business conditions permitting subcontracting, since in both, subcontracting was a regular mode of operations.

Agreements concerned about construction, maintenance, and installation activities were more likely to include provisions dealing with business conditions than contracts about production or major activities. This conclusion, too, was influenced by the absence of building trades agreements.

Industries having concentrations of business conditions provisions included primary metals (41), machinery (27), transportation equipment (37), transportation (41), and utilities (24). These five industries accounted for 170 (57.8 percent) of the 294 agreements and 1.8 million workers (83.5 percent) out of 2.1 million workers covered by them. Transportation equipment, transportation, and primary metals had a particularly strong impact on worker coverage totals.

In a sense, restrictions or limitations about business conditions are a misnomer. Agreement provisions falling into this classification actually set conditions which permitted employers to contract out. As table 7 shows, these fell into four categories, all of which are discussed below.

Cost and Efficiency. The 149 cost and efficiency requirements (table 7) appearing in subcontracting provisions were found largely in manufacturing industries (which accounted alone for 124 provisions) and were concentrated especially in primary metals (37), machinery (24), and transportation equipment (20). The provisions were about evenly divided between those covering the production process or a major activity (112) and those covering construction, maintenance, and installation (121).

The clauses used relatively inexact language, which was largely imprecise and undefined to anyone not familiar with the bargaining relationship. Generally, a broad principle is established which must be applied on a case-by-case basis. For example, some provisions allowed subcontracting when it was practical and expeditious, economically feasible, when the employer had strong economic

and practical reasons, and when it was a distinct economic advantage, or when it was not practicable to use the in-plant work force because it could not perform the work economically or efficiently:

. . . Insofar as practical, all work within the factory grounds, including maintenance of equipment at receiving stations, except for emergency or minor repairs, shall be performed by employees covered by this agreement. . . . (135)

* * *

It is the policy of the company to use its own employees as much as possible in the performance of construction and maintenance work consistent with such consideration as efficiency, economy, quality, governmental, customer, or time requirements, and with regard for the interest of affected employees . . . (44)

Others adopted even more general terminology. Thus, the company's operating requirements might require decisions in light of sound business practice, or contracting out might be the more reasonable course:

The company recognizes the union's desire to retain work normally performed and will continue its practice of using unit employees to perform this work. However, it is recognized that the company's operating requirements may necessitate the contracting out of such work after a thorough review of its decision in the light of sound business practice. Such action will be reasonably and fairly applied . . . (136)

* * *

Maintenance and repair work performed within the plant other than that described (above), and installation, replacement, and reconstruction of equipment and productive facilities, other than that described (above), may not be contracted out for performance within the plant unless contracting out under circumstances existing as of the time of the decision to contract out was made can be demonstrated by the company to have been the more reasonable course than doing the work with bargaining unit employees, taking into consideration the significant factors which are relevant . . . (137)

Provisions also could focus on the cost factor. Thus, the employer could subcontract if the cost of in-plant work was high, but contracting out would not be allowed if in-plant costs were reasonably competitive as in the following illustration:

Fabrication and machine shop work normally performed for a plant by its mechanical departments will not be contracted out if such departments are equipped and qualified to perform such work at a reasonably competitive cost and within the allotted time . . . (138)

In one contract, the parties defined the cost level that would allow the employer to subcontract as at least 15 percent less than in-plant costs:

Whenever the journeymen skilled trades employees in any given craft are scheduled for less than forty (40) hours per week or are laid off and are available for immediate recall, the company may not contract work normally done by such journeymen except when the company has made the determination that: . . .

The company can obtain the work to be performed at a cost at least fifteen (15%) percent less than the cost of doing the work with its own employees using its established cost accounting procedures. If in order to meet a time limitation as set forth . . . it would be necessary to schedule company employees overtime, the company shall be entitled to calculate such overtime costs as part of the total cost in determining whether or not there is sufficient cost differential to warrant contracting the work, . . . (139)

Equipment, Skill, and Manpower. Over three-fifths of the contracts concerning business conditions (180) provided that the employer could subcontract whenever he lacked the skills, manpower, or equipment to do the contemplated work inside the shop. These conditions were more likely to be found in manufacturing agreements than in nonmanufacturing, especially in transportation equipment (32) and machinery (20). They also were more likely to be found in agreements covering construction, maintenance, and installation activities than production processes or a major activity.

Few provisions stated in positive terms that the lack of manpower or equipment would be a reason for letting out a contract, as in the following:

The employer agrees that he will hire equipment to supplement his own equipment only when he does not have the number or type of equipment required for his purpose. (140)

More frequently, provisions stated a policy of not contracting out and then waived the policy in the event of a shortage of skills or machinery:

It is the intent of the company to utilize its employees for all work in the yard which it customarily performs; except, however, the company may subcontract work if the requirements for men or materials make such subcontracting necessary. The company may subcontract work on new facilities for the yard. (141)

* * *

It is the policy of the (company) to perform, maintenance work with its own employees, provided it has the manpower, skills, equipment, and facilities to do so. . . . (142)

As in cost and efficiency provisions, the use here of such terms as necessary, sufficient, or specialized skills or equipment gave a great deal of flexibility to the clause. For example:

The company states that it will be its policy and intention to use the employees covered by this contract and will not subcontract work customarily performed by such employees to another firm . . . unless adequate existing equipment and/or other facilities are not available to perform the work when it is needed or unless the company does not have employees covered by this contract in sufficient number and/or with sufficient skill to perform such work . . . or unless it is deemed necessary to transfer or subcontract such work because of other demands on such equipment and other facilities to do other work which is to be performed. (143)

* * *

During the life of this agreement, the company agrees that it will not contract out work, other than work which is customarily contracted out, except when the work force does not have the skill, or ability to do the work, the necessary equipment, or machines to perform the work . . . (144)

* * *

The company agrees that it will not subcontract maintenance work (as distinguished from new construction or major modification or rehabilitation work) to be performed on company premises . . . when the work operations involved have normally been performed by employees in the bargaining unit, provided there are sufficient employees possessing the necessary maintenance skills then available to perform such work operations within the time required. (145)

* * *

The situations which develop into problems in our relations with employees involve subcontracting of maintenance and in some cases certain tool and die work. In this area, there is recognition by the union that among other things:

1. It is necessary to contract work which requires specialized tools or equipment and special skills . . .

It is our intent and desire to utilize our own skilled trades employees to do the kind of work they have customarily done in our plants in the past, to the extent that it is practicable and economical to do so. We have neither the equipment nor personnel to do all of the maintenance and tool and die work in our plants . . . (146)

* * *

Where deemed advisable, contracts will be let to outside contractors under certain conditions. Such outside assistance will be engaged where peculiar skills are involved, where specialized equipment not available at (the company) is required, or where for other reasons economics can be realized because specialized contractors can better perform the work in question . . . (147)

Production Needs. Subcontracting restrictions could be waived when circum-

stances in the plant warranted. In 128 agreements, for example, the usual limitations did not apply if the employer experienced either a peak period in operations or other emergencies:

. . . Overflow loads may in any event be delivered by drivers other than the employer's employees provided all provisions of this contract are observed. Loads may also be delivered by other agreed to methods or as presently agreed to. (148)

The clauses fall into two classes: First, there were the provisions which waive subcontracting restrictions in an emergency. Normally, emergency was undefined:

The employer represents that it will not change its present and normal practice of using its normal sources of supply for any lithographic production work. Any deviation from the normal practices will not be considered to be in conflict with the above provisions where such deviations are due to emergencies . . . (149)

* * *

. . . Insofar as practical, all work within the factory grounds, including maintenance of equipment at receiving stations, except for emergency or minor repairs, shall be performed by employees covered by this agreement. It is understood, for example, that situations may arise wherein it is necessary to employ temporarily or to contract out work where; . . . such work cannot be completed by employees within required time limits. (135)

* * *

The management of the company believes that as a general rule it is not desirable to obtain the services of contract engineers who are not employees of the company for the purpose of using such engineers in the plants of the company on work equivalent to that performed in various job classifications covered by this agreement. However, to meet certain emergencies or special conditions, it may be in the best interests of the company to obtain and use such services. . . . (150)

In public utilities, on the other hand, an emergency may be defined, as in the following illustration, as any condition endangering the public:

Overhead line work . . . may be let to a contractor when . . . an emergency exists jeopardizing life, public safety, property, and service to customers . . . (151)

In its second form, the clause underscores the importance of the volume of production or work. Thus, the employer may subcontract when the volume of work increases or when the shop is so busy that the work subcontracted could not be done in the plant.

. . . In addition, work may be contracted out on occasions where the volume of work, or the time limits for completing the work, precludes the possibility of effectively using our own personnel. (152)

* * *

All work which has been performed in the tool and die department . . . shall continue to be done there and shall not be contracted out except where the shop is so busy that it is unable to do necessary work . . . (153)

Among the 128 provisions, 11 referred specifically to the employer meeting delivery dates:

It shall be the policy of the company to utilize its seniority employees by continuing to use its best efforts to keep the production of work parts, tools, dies, fixtures, and maintenance in the works insofar as practical and efficient to do so. . . . The objectives of the policy will require the company's consideration of whether (a) there are adequate numbers of qualified seniority employees available to perform the needed work within any required time limitations as well as continuing to meet time limitations on other scheduled work . . . (154)

Customer Relations. Fourteen provisions stipulated that customer and/or public relations requirements would be a consideration whether to contract out. Such considerations, however, also underlie the clauses which refer to production requirements and similar needs in subcontracting decisions:

The company will have the right to contract out work when . . . public and customer relations require it. (155)

* * *

The company shall have the right, at its discretion, to apporportion work by subcontract to company employees or others, as it may see fit in order that the contractual work to which the company may be committed at that time, may be carried out in the most economical and expeditious manner for the benefit of the customer and the remainder of the work or any particular vessel or vessels. (156)

Disputes Settlement and Savings Provisions

Disputes Settlement. As a rule disputes over contract provisions are subject to the traditional settlement procedure of the agreement—namely, the grievance and arbitration machinery. Yet, over one-fourth of the 755 subcontracting provisions (192) specifically established procedures to settle differences and/or compel observance of the subcontracting provision. Another seven clauses were at the other pole and stipulated that subcontracting provisions were outside the scope of the contract's grievance and arbitration procedures.

These 192 provisions were about evenly divided between manufacturing (100) and non-manufacturing (92). Although provisions were

clustered in the construction industry (47 out of 202), actual short-term employment on building projects meant that enforcement by the grievance procedure was not as practical as in industries characterized by year-round employment. Over one-half of the construction industry's enforcement provisions specified that building tradesmen could strike if they concluded that the subcontracting provision had been violated. Other industries having substantial numbers of enforcement provisions specifically relating to subcontracting included apparel (32), primary metals (35), and transportation (38). The four industries together accounted for over three-fourths of the provisions particularly dealing with compliance.

Neither provisions concerning production or major activities nor provisions about construction, maintenance, and installation tended to include enforcement procedures in any great numbers. Although the former had almost 3 times as many provisions (184) as the latter (63), relative to the total number of provisions each had in the study, the practice was relatively close: 28.4 percent of the agreements concerning production and 23.6 percent of the contracts pertaining to construction, installation, and maintenance had enforcement provisions.

All provisions which barred enforcement stated that neither the employer's subcontracting actions nor subcontracting disputes would be subject to grievance and/or arbitration procedures:

. . . The company will give the union . . . notice of its intention to contract out . . . if such contracting out of work will result in the layoff of regular full-time employees covered by this agreement, and will discuss such action with union representatives. Contracting out of work shall not be subject to the grievance procedure or arbitration and in all cases the final decision will be left to the company. (157)

* * *

Arbitration of disputes before an impartial arbitration shall not be mandatory in the following instances: . . .

Where a subcontractor performs work exclusively on the job-site and with the knowledge of the contractor and after written notification from the union has failed, refused, or neglected to comply with the terms and provisions of this agreement. (158)

Of the 192 enforcement provisions, 129 specifically utilized the contract's grievance and arbitration machinery; 32 permitted workers to strike; 9 provided financial remedies or the suspension of management violators from their employer association; and 22 combined these enforcement remedies. In 129

contracts, the grievance and arbitration procedure represented the sole enforcement measure, and in another 17 clauses, it was combined with other procedures:

The area grievance committee members will be given notice by the company when the company believes it should have significant items of work performed in the plant by outside contractors. Should the area grievance committee members believe discussion to be necessary, they shall so request the company in writing within three days (excluding Saturdays, Sundays, and holidays) after receipt of such notice and such a discussion shall be held within three days (excluding Saturdays, Sundays, and holidays) thereafter. Should the company fail to give notice as provided above, or should the matter not be resolved by the discussion, then not later than (30) days from the date of the commencement of the work a grievance relating to such matter may be filed under the grievance and arbitration procedure. (159)

* * *

It is further agreed that the company, when it thinks it necessary to contract a job out, will, well in advance notify the union of its intention by letter, and by means of discussion, if requested by union officers, qualify their reasons for desiring to contract the work out.

Any differences that are left unresolved shall be settled through the grievance procedure.

It shall be the general policy of the company not to subcontract tool and die work when there are tool and die journeymen on layoff, unless the work is of a nature that the company does not have the equipment or skills to perform, and in such instances the union will be notified, in advance, by letter and afforded the opportunity to question and discuss the job in question. Any differences remaining unresolved will be settled through the grievance procedure. (160)

* * *

When major construction work is to be done, the company will call in the union, outline the work to be done, establish insofar as practicable the duration of time involved, and set down the manner in which the work will be done, whether by contractor or otherwise. Any major construction work as defined in its constitution within the jurisdiction of IAM will be performed by members of IAM. Any disputes shall be subject to the grievance procedure as now provided. (161)

In essence, the availability of the grievance procedure allowed the employer to initiate action subject to a subsequent challenge by the union. Recourse to the grievance procedure thus became a peaceful means to balance equities without obstructing activities. This practice was rather clearly set forth in the following provisions:

When the company is about to contract work . . . it will notify the chairman of the skilled trades council . . . The chairman . . . accompanied by as many as three other union representatives may meet with the company's representative who has issued the notice for the purpose of discussing the company's intent to let such contract. This provision is not to be construed to mean that the company may not let such contract until the union representatives have agreed that letting of the contract is justified. If the chairman of the skilled trades council believes that letting the contract was unjustified, he may file a grievance under the grievance procedure, challenging the company's determination under this section. (139)

A sensitive issue, especially when workers fear for their jobs, subcontracting occasionally has been accorded special treatment similar to appeals from discharge. Early steps of the grievance procedure could be by-passed to expedite settlement:

Within five (5) working days of filing of grievance claiming violation of this (subcontracting) article, the parties to this agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this agreement to the contrary notwithstanding. (162)

In a few provisions, the parties substituted negotiation for arbitration between high level company and union officials where a subcontracting complaint had been processed first through the lower steps of the grievance procedure without arriving at a settlement:

. . . It does not prevent the union from processing a grievance through the normal steps of the grievance procedure. Such grievance is not subject to arbitration, however, should the union not agree with the third step disposition, then the chairman and international representative may discuss the disposition with the corporate director of industrial relations or his designated representative. (163)

Under 32 provisions, workers could strike if subcontracting regulations were violated. These agreements were clustered largely in the construction industry where, as noted earlier, strikes were more likely to produce a meaningful settlement than grievance procedures because of the time element. Another 14 agreements allowed strikes as well as other enforcement measures:

(The) local union . . . is a part of the International Brotherhood of Electrical Workers, and any violation or annulment of working rules or agreement of any other local union of the IBEW, or the subletting, assigning, or the transfer of any work in connection with electrical work to any person, firm, or corporation not recognizing the IBEW as the collective bargaining representative will be sufficient cause for cancellation of this agreement, after the facts have been determined by the international office of this local union. (164)

* * *

. . . The employer, in an effort to maintain work jurisdiction peace, shall require all subcontractors to sign an agreement stipulating that the subcontractor shall agree to be bound by this agreement, including the submission by all subcontractors of all jurisdictional disputes, wherein this craft is involved, to the National Joint Board for the Settlement of Jurisdictional Disputes. All subcontractors shall be bound by that board's decision. In the event any employer under the terms of this article does not comply with its contents, this agreement is considered to be abrogated. (126)

* * *

Upon failure of the subcontractor to comply with such non-monetary terms or conditions within one (1) full working day after the determination by the association or its agent and the union or the arbitration committee, then in that event the union shall in addition to any and all other remedies available to it, be released from any provision of this agreement which restricts or delays their right to strike. (165)

Twenty-seven agreements provided that financial penalties could be assessed against employers violating the subcontracting clause or that such employers might be suspended from association membership. These clauses were confined almost exclusively to the apparel industry. The union's financial remedies were designed to counteract any advantage gained by the employer as a result of his violation:

The parties acknowledge that should a member of the association violate (the requirement that the subcontractor hold a contract with the union), such violation would have an adverse effect upon the interest of the workers, as well as upon the interest of the union in the establishment and maintenance of the labor standards provided for in union agreements with other employers in the industry. The parties also acknowledge that the damage to the union flowing from such violations is difficult, if not impossible, of accurate ascertainment. Therefore, the parties agree that in the event of such violation by a member of the association, such member shall pay to (the local union) liquidated damages computed as follows . . . (166)

* * *

Should a member of the association send piece goods to be cut to a "cut up" contractor or send garments to be manufactured by any "struck" contractor or, except as otherwise provided in subdivision . . . should a member of the association be found giving work to or dealing with a contractor who is not in contractual relations with joint council, such member shall pay to joint council damages for each such violation in a sum equivalent to twenty (20%) percent of the total amount (not merely the payroll of the contractor) paid by him and still due from him to such contractor for said work.

A member of the association who is in collusion with a contractor who sends such member's garments to be manufactured by other contractors or by "struck" contractors or to be cut by "cut up" contractors shall pay to joint council damages for each such violation in a sum equivalent to twenty (20%) percent of the total amount (not merely the payroll of the other contractor) paid out still due to such other contractor. (131)

The few contracts stipulating suspension from association membership for employers violating subcontracting jobs varied the duration of suspension, contingent upon the number of offenses and the magnitude of the offense:

Should an employer be found guilty of violating this article, he shall be subject to sanctions as follows:

(a) Upon a first conviction involving a system of violation (i. e., a number of garments at one time, or the repeated giving out or purchase of garments): Three months' suspension from the association.

(b) Upon a second conviction: One year's suspension from the association.

(c) Upon a first conviction growing out of isolated or minor transaction: Payment of the labor cost plus liquidated damages not to exceed one thousand dollars . . . (167)

Savings Clauses. Twenty-six agreements set the conditions under which subcontracting restrictions might be waived. Most were concentrated in trucking and construction and were concerned with the possible conflict between clause requirements and the law. Like general savings clauses in the collective bargaining agreement, those provisions specifically referring to subcontracting stipulated that illegal language would become inoperative:

If this article shall be held to be illegal, the same shall be eliminated from this agreement. (75)

One clause specified that if the provision was determined to be inoperative, then the parties would renegotiate the clause:

. . . This provision shall be operative only to the extent permitted by law. Should any final determination of any board or court of competent jurisdiction affect this provision, the contractors and the union shall meet within ten (10) days of such final determination for the purpose of renegotiating this paragraph D. (168)

Clauses, in addition to waiving restrictions for legal reasons, also might relinquish controls for economic reasons. These resembled cost and efficiency provisions noted above; thus, the following provisions were inoperative if cost would be unreasonable or excessive, or if the work would be delayed, or if the contractor would not be readily available or equipped:

If it becomes necessary for the company to contract out work of the type regularly and customarily performed by employees covered hereby, it shall so notify the union and give preference to qualified contractors in agreement with unions affiliated with the American Federation of Labor. Nothing herein shall require the company to violate any regulations, ordinance, or statutes of any kind whatsoever, nor shall it be required hereby to assume unreasonable or excessive cost. . . . (169)

* * *

When building or construction work of the type customarily performed by the Building Trades Unions of the American Federation of Labor is contracted out, preference shall be given to qualified contractors employing members of these trades unions, provided that nothing herein shall require the company to violate Federal, State, or municipal regulations, to delay the work or to employ a contractor either not readily available or not equipped to do the work. . . . (170)

Table 1. Subcontracting Provisions in Major Agreements by Industry, 1965-66

(Workers in thousands)

Industry	Total studied		Subcontracting—											
			Total		Unrestricted		Allowed but limited		Prohibited		Other ¹		No reference	
	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers
All industries	1,823	7,339.2	801	4,464.4	38	240.6	755	4,186.8	4	9.3	4	27.8	1,022	2,874.8
Manufacturing	1,048	4,155.5	396	2,542.0	35	231.2	356	2,278.0	1	5.0	4	27.8	652	1,613.5
Ordnance and accessories	18	69.9	5	32.9	1	6.4	4	26.5	-	-	-	-	13	37.0
Food and kindred products	126	382.0	31	131.7	1	2.8	28	120.9	1	5.0	1	3.0	95	250.4
Tobacco manufactures	11	24.2	1	1.1	-	-	1	1.1	-	-	-	-	10	23.1
Textile mill products	30	71.8	10	37.0	2	3.6	8	33.4	-	-	-	-	20	34.9
Apparel and other finished products	55	392.0	52	388.5	-	-	52	388.5	-	-	-	-	3	3.5
Lumber and wood products, except furniture	13	24.6	6	9.6	-	-	6	9.6	-	-	-	-	7	15.0
Furniture and fixtures	18	29.6	4	5.0	-	-	4	5.0	-	-	-	-	14	24.6
Paper and allied products	50	112.2	12	18.4	-	-	12	18.4	-	-	-	-	38	93.9
Printing, publishing, and allied industries	28	59.1	13	29.5	-	-	13	29.5	-	-	-	-	15	29.6
Chemicals and allied products	61	106.8	20	37.5	1	2.6	19	34.9	-	-	-	-	41	69.3
Petroleum refining and related industries	20	44.9	15	31.2	1	2.8	14	28.4	-	-	-	-	5	13.7
Rubber and miscellaneous plastics products	21	107.6	13	70.7	1	1.1	11	49.3	-	-	1	20.3	8	36.9
Leather and leather products	23	73.8	8	32.3	2	4.5	6	27.8	-	-	-	-	15	41.5
Stone, clay, and glass products	37	115.5	19	75.8	1	1.1	18	74.7	-	-	-	-	18	39.7
Primary metal industries	106	545.7	45	423.6	1	3.5	44	420.1	-	-	-	-	61	122.2
Fabricated metal products	55	129.9	12	33.5	1	1.5	11	32.0	-	-	-	-	43	96.5
Machinery, except electrical	115	314.6	47	158.9	5	13.5	42	145.4	-	-	-	-	68	155.8
Electrical machinery, equipment, and supplies	106	398.7	22	175.3	12	135.1	9	37.4	-	-	1	2.8	84	223.4
Transportation equipment	118	1,075.5	49	821.6	5	50.2	43	769.7	-	-	1	1.7	69	253.9
Instruments and related products	25	48.6	6	10.0	1	2.6	5	7.4	-	-	-	-	19	38.7
Miscellaneous manufacturing industries	12	28.9	6	18.4	-	-	6	18.4	-	-	-	-	6	10.5
Nonmanufacturing	775	3,183.8	405	1,922.5	3	9.5	399	1,908.8	3	4.3	-	-	370	1,261.3
Mining, crude petroleum, and natural gas production	16	111.4	10	103.0	1	1.6	9	101.4	-	-	-	-	6	8.4
Transportation ²	91	607.0	56	463.9	-	-	56	463.9	-	-	-	-	35	143.1
Communications	88	524.9	28	220.3	1	6.7	27	213.6	-	-	-	-	60	304.7
Utilities: Electric and gas	80	180.0	62	138.3	-	-	62	138.3	-	-	-	-	18	41.7
Wholesale trade	19	35.3	6	9.3	-	-	6	9.3	-	-	-	-	13	26.0
Retail trade	119	317.6	16	32.4	-	-	15	30.9	1	1.5	-	-	103	285.2
Hotels and restaurants	37	171.5	4	41.3	-	-	4	41.3	-	-	-	-	33	130.2
Services	65	258.2	20	98.5	-	-	18	95.9	1	1.5	-	-	45	159.7
Construction	256	970.9	203	815.6	1	1.2	202	814.3	1	1.3	-	-	53	155.4
Miscellaneous nonmanufacturing industries	4	7.2	-	-	-	-	-	-	-	-	-	-	4	7.2

¹ Subcontracting mentioned in the agreement but details are vague or subject to negotiations.² Excludes railroad and airline industries.

NOTE: Because of rounding, sums of individual items may not equal totals.

Table 2. Subcontracting Permitted Subject to Limitations in Major Agreements, Selected Industries, 1959 and 1965-66

Industry	(Workers in thousands)											
	Agreements						Workers					
	1959		1965-66		Proportion with provision		1959		1965-66		Proportion with provisions	
	Number studied	Number with provisions	Number studied	Number with provisions	1959	1965-66	Number studied	Number with provisions	Number studied	Number with provisions	1959	1965-66
All industries	1,687	369	1,823	755	21.9	41.4	7,477.3	2,545.6	7,339.2	4,186.8	34.0	57.1
Total (5 industries).....	618	148	686	387	24.0	56.4	3,436.0	1,391.6	3,513.7	2,613.4	40.5	74.4
Primary metal industries	124	9	106	44	7.3	41.5	724.8	35.0	545.7	420.1	4.8	77.0
Machinery, except electrical.....	117	11	115	42	9.4	36.5	283.9	17.5	314.6	145.4	6.2	46.2
Transportation equipment	127	26	118	43	20.5	36.4	1,152.2	654.3	1,075.5	769.7	56.8	71.6
Transportation.....	95	23	91	56	24.2	61.5	573.2	240.7	607.0	463.7	42.0	76.4
Construction.....	155	79	256	202	51.0	78.9	701.9	444.1	970.9	814.3	63.2	83.9

Table 3. Activities and Operations Governed by Subcontracting Limitations, Major Agreements, 1965-66

Activities and operations	(Workers in thousands)			
	Number		Percent	
	Agreements	Workers	Agreements	Workers
Total, all areas	755	4,186.8	100.0	100.0
Production process or major activity only	477	2,238.1	63.2	53.5
Construction, maintenance only	100	606.8	13.3	14.5
Services only	2	3.9	.3	.1
Combinations.....	173	1,300.0	22.9	31.1
Production and construction	120	843.6	15.9	20.2
Production, construction, and services	45	425.6	6.0	10.2
Production and services	6	26.2	.8	.6
Construction and services	2	4.7	.3	.1
Vague	3	38.0	.4	.9
Areas specified: ¹				
Production process or major activity	648	3,543.6	85.8	84.6
Construction, maintenance, etc	267	1,880.7	35.4	44.9
Services	55	460.3	7.3	11.0
Vague	3	38.0	.4	.9

¹ Nonadditive. More than 1 area is specified in 173 agreements.

NOTE: Because of rounding, sums of individual items may not equal totals.

Table 4. Specified Conditions Where Subcontracting Limitations Apply by Activities and Operations Governed, Major Agreements, 1965-66

Conditions specified ¹	(Workers in thousands)											
	Total		Production process or major activity only		Construction, maintenance, only		Services only		Combinations		Not clear	
	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers	Agreements	Workers
All agreements	1,755	4,186.8	477	2,238.1	100	606.8	2	3.9	173	1,300.0	3	38.0
In-plant employment opportunities	498	3,213.6	274	1,518.7	73	423.1	-	-	149	1,238.7	2	33.1
Union and contract standards	471	2,609.7	369	1,936.5	25	121.8	2	3.9	73	510.7	2	36.9
Cost, production, and other business conditions	294	2,143.2	109	600.5	68	468.2	-	-	117	1,074.5	-	-

¹ Nonadditive. More than 1 condition may be specified.

NOTE: Because of rounding, sums of individual items may not equal totals.

Table 5. Limitations Affecting In-Plant Employment Opportunities in Subcontracting Provisions, Major Agreements, 1965-66

(Workers in thousands)		
Limitations affecting in-plant employment opportunities ¹	Agreements	Workers
Total with limitations	498	3,213.6
Limitations specified:		
Layoff and part-timing	187	983.7
Fully supplied with work	55	397.3
Working with subcontractors' employees	4	30.9
Notice and consultation	258	1,905.5
Seniority protected	14	81.3
Overtime requirements	29	121.4
Consideration and/or preference to in-plant workers	54	559.1
Conversion of employee into subcontractor	79	343.2
Miscellaneous employment protections	33	281.6

¹ Nonadditive. Agreements may specify more than 1 limitation.

Table 6. Limitations Affecting Union and Contract Standards in Subcontracting Provisions, Major Agreements, 1965-66

(Workers in thousands)

Limitations affecting union and contract standards ¹	Agreements	Workers
Total with limitations -----	471	2,609.7
Limitations specified:		
Contract compliance -----	181	844.2
General compliance -----	190	1,352.5
Union subcontractor requirement -----	168	850.3
Union labor requirement -----	56	216.7
Unfair goods -----	45	314.4
Strikes -----	71	418.8
Registration requirement -----	64	547.0
Protecting subcontractors' workers -----	82	640.4
Protecting the subcontractor -----	25	206.6

¹ Nonadditive. Agreements may specify more than 1 limitation.

Table 7. Limitations Concerning Cost, Production, and Other Business Conditions in Subcontracting Provisions, Major Agreements, 1965-66

(Workers in thousands)

Limitations concerning cost, production, and other business conditions ¹	Agreements	Workers
Total with limitations -----	294	2,143.2
Limitations specified:		
Cost and efficiency requirements -----	149	1,328.5
Equipment, skill and manpower requirements -----	180	1,322.8
Peak periods, emergencies, and unusual order build-ups -----	128	1,273.7
Customer or public relations requirements -----	14	38.9

¹ Nonadditive. Agreements may specify more than 1 limitation.

Appendix A. Selected Subcontracting Provisions

This appendix illustrates how various parts of the subcontracting clause fit together. These clauses should not be considered as model or typical provisions.

From the agreement between

**New England Sportswear Manufacturing Association and the
International Ladies' Garment Workers' Union (AFL-CIO)**
(expires June 1970)

1. The employer shall employ or continue employing only such contractor or contractors who are conducting union shops and who are in contractual relations with the union. The employer shall not order or purchase goods or otherwise deal or continue dealing with any contractor not in contractual relations with the union. A union contractor's shop is herein defined to mean one which has a collective bargaining agreement with the International Ladies' Garment Workers' Union. The employer agrees that it will not do business with or give any work to any contractor or subcontractor who is not in contractual relations with the International Ladies' Garment Workers' Union.

2. The employer shall have no work performed by a contractor unless the workers of its inside shop are fully supplied with work, and unless such contractor is under a contract with the International Ladies' Garment Workers' Union. The employer shall designate and register with the union the names of all contractors presently doing work for the employer. Any needed additional contractor designated by the employer shall be registered with the union.

In the event of a change in the existing situation, the union reserves the right to reopen this clause for the purpose of negotiating new provisions regarding contractors in conformity with law.

3. Where an employer uses more than one contractor, it shall, during the slack season, distribute its work proportionately among all its contractors insofar as practicable. Where an employer with an inside shop uses contractors, it shall, during the slack season, distribute its work proportionately between the inside shop and its regular contractors, giving preference where practicable to the inside shop.

4. In order to safeguard working standards and employment opportunities of the workers covered by this and other agreements in the garment industry, it is agreed that all garments or parts thereof handled by the employer during the term of this agreement, whether finished or partly finished, shall be manufactured exclusively either in its own shop or, as parts of an integrated process of production under the jobber-contractor system of production, in a shop under contract with the International Ladies' Garment Workers' Union; and accordingly the employer shall not handle, purchase, import, or otherwise obtain, directly or indirectly, any other wholly or partly finished garments whatsoever during the term of this agreement.

5. In the event the employer sends garments to be manufactured by any "struck" contractor after notice that such contractor is being struck, or in the event the employer at any time sends garments to be manufactured by a non-ILGWU contractor, including a non-ILGWU "cutter contractor", the employer shall pay to the union damages for each such violation in a sum equivalent to twenty (20%) per cent of the total amount (not merely the payroll of the contractor) paid by it and still due from it to such contractor for said work. Such payment shall include the obligation of the employer stated in Article XV(4).

From the agreement between
**United States Steel Corporation and the
 United Steelworkers of America (AFL-CIO)**
 (expires July 1971)

The parties have existing rights and obligations with respect to various types of contracting out. In addition, the following supplements protections for bargaining unit employees or affirms existing management rights, whichever the case may be, as to those types of contracting out specified below:

a. Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees in the bargaining unit shall not be contracted out for performance within the plant, unless otherwise mutually agreed pursuant to paragraph 2-A-4-d.

If production, service, and day-to-day maintenance and repair work has in the past been performed within a plant under some circumstances by employees within a bargaining unit and under some circumstances by employees of contractors, or both, such contracting out shall be permissible under circumstances similar to those under which contracting out has been a practice, unless otherwise mutually agreed pursuant to paragraph 2-A-4-d.

Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees of contractors may continue to be contracted out, unless otherwise mutually agreed pursuant to paragraph 2-A-4-d. However, in the event reduced operations are anticipated in the seniority unit to which the work would most appropriately be assigned, management shall, prior to contracting out the work, give consideration to the assignment of such work to the employees within said unit providing such work will not involve overtime for such employees or alter schedules for the completion of other jobs.

b. Maintenance and repair work performed within the plant, other than that described in paragraph 2-A-4-a, and installation, replacement and reconstruction of equipment and productive facilities, other than that described in paragraph 2-A-4-c, may not be contracted out for performance within the plant unless contracting out under the circumstances existing as of the time the decision to contract out was made can be demonstrated by the company to have been the more reasonable course than doing the work with bargaining unit employees, taking into consideration the significant factors which are relevant. Whether the decision was made at the particular time to avoid the obligations of this paragraph may be a relevant factor for consideration.

c. New construction including major installation, major replacement and major reconstruction of equipment and productive facilities at any plant may be contracted out, subject to any rights and obligations of the parties which, as of the beginning of the period commencing August 1, 1963, are applicable at that plant.

d. At each plant a regularly constituted committee consisting of not more than four persons (except that the committee may be enlarged to six persons by local agreement), half of whom shall be members of the bargaining unit and designated by the union in writing to the plant management and the other half designated in writing to the union by the plant management, shall attempt to resolve problems in connection with the operation, application and administration of the foregoing provisions.

In addition to the requirements of paragraph 2-A-4-e below, such committee may discuss any other current problems with respect to contracting out brought to the attention of the committee.

e. The union committee members will be given notice by the company members, when the company believes it should have significant items of work performed in the plant by outside contractors. Such notice shall contain an adequate description of the

work to be performed and shall be given at such early date as will allow good faith discussion of whether such work should or should not be contracted out, unless emergency conditions prevent such early notice. Should the union committee members believe discussion to be necessary, they shall so request the company members in writing within five days (excluding Saturdays, Sundays, and Holidays) after receipt of such notice and such a discussion shall be held within three days (excluding Saturdays, Sundays, and Holidays) thereafter. The union members of the committee may include in the meeting the union representative from the area in which the problem arises. Should the committee resolve the matter, such resolution shall be final and binding. Should a discussion be held and the matter not be resolved or in the event a discussion is not held, then within thirty days from the date of the company's notice a grievance relating to such matter may be filed under the grievance and arbitration procedure. Should the company committee members fail to give notice as provided above, then not later than thirty days from the date of the commencement of the work a grievance relating to such matter may be filed under the grievance and arbitration procedure.

From the agreement between
**Climax Molybdenum Company, a Division of
 American Metal Climax, Inc. and the
 Oil, Chemical and Atomic Workers International Union (AFL-CIO)**
 (expires July 1968)

1. The company reserves the right to contract work when it does not take work from the production and maintenance unit or when men are unavailable in the unit for temporary or seasonal jobs to perform the work when required.
2. Contracting major new surface construction, or major alterations of existing surface facilities, excluding short connecting lines to the project, shall not be considered as taking work from the production and maintenance unit.
3. The following underground construction projects may be contracted. Neither the company nor the union concedes that similar projects are or are not bargaining unit work.
 - 3a. The construction of a crusher underground.
 - 3b. The construction of any shaft or shafts for transportation of ore from underground to the Storke Level yard.
4. The union will be informed before any work is contracted.
5. The company shall maintain its surface maintenance and residual electrical crews unless a reduction is brought about by a curtailment of operations, improved methods or equipment, or automation.
6. After the contractor has completely performed the contract, Climax employees will use and maintain the facility constructed.
7. No employees will be laid off for the purpose of permitting the company to contract work.
8. When the company temporarily assigns an employee to perform the work of a contractor at Climax, his hourly work rate shall be the highest of the following:
 - 8a. His hourly work rate as a Climax employee.
 - 8b. The hourly work rate of Climax employees doing the same work to which he is temporarily assigned.
 - 8c. The prevailing union hourly work rate the contractor would have paid had his employees done the work to which the Climax employee is temporarily assigned.

9. Any failure of the company to exercise any of its rights to contract out work shall not constitute a waiver or qualification of those rights as to that work or any other work.

10. The company may submit to arbitration the question of the company's right to contract work and/or the company may proceed to contract the work and the union may submit the question to arbitration within (5) workdays after notification meeting or the day following the regularly scheduled union meeting whichever is greater. For this paragraph one of the permanent arbiters listed in article 7 shall be selected immediately using the scratch system, the first scratch being decided by a coin toss. His decision shall be final and binding. For said arbitration the grievance procedure will not be used, and the facts will not be limited.

11. Any proposals submitted in negotiations on this article, nor the agreement of January 24, 1962, modifying article 5 of the old agreement, shall not under any circumstances alter or affect the interpretation or application of this article.

From the agreement between
**Weyerhaeuser Company and the
 International Woodworkers of America (AFL-CIO)**
 (expires May 1969)

The company shall require its contractors and sub-contractors to maintain the standards of wages and working conditions provided for in this agreement, subject to the following conditions:

A. This provision shall not apply to a contractor or sub-contractor during the time that such contractor or sub-contractor has a collective bargaining agreement with his own employees.

B. This provision shall only apply to contracts and sub-contracts entered into hereafter and to renewals of present contracts which are made hereafter.

C. This provision shall apply only to contracts and sub-contracts for the performance of logging and lumbering operations and shall not apply to building construction contracts or other contracts outside the logging and lumbering operations themselves.

D. Contracts and sub-contracts for logging or woods operations shall be made subject to the collective bargaining contract of the IWA, AFL-CIO, only if the collective bargaining contract of the IWA, AFL-CIO, and the company covers the woods or logging employees.

E. Contracts and sub-contracts for mill operations shall be made subject to the collective bargaining contract of the IWA, AFL-CIO, only if the collective bargaining contract of the IWA, AFL-CIO, and the company covers the mill employees.

F. This provision shall not apply to contractors and sub-contractors performing work which was not previously being performed by employees of the company.

From the agreement between
**General Telephone Company of Michigan and the
 International Brotherhood of Electrical Workers (AFL-CIO)**
 (expires May 1969)

Section 11—Contracting Work Out

A. The company recognizes and acknowledges the right of its employees to perform its telephone work and in protection of this right agrees to confer and cooperate with the

union with respect to efforts of other labor organizations to take telephone work from its employees.

B. Nothing in this agreement shall be construed to limit the company in the employment of such contract labor as in the discretion of the company may become necessary for the proper construction, installation, and maintenance of communication facilities owned, served, and/or operated by the company for the rendition of proper and adequate communication service to the public.

C. Work done by contractors shall in no way result in the laying off, part-timing, or demotion of any employee qualified to perform the work being done.

D. When overtime work by contractors is authorized and controlled by the company, equal opportunity for such overtime work shall be afforded those company employees normally doing the same type of work within the same exchange in which contract labor is employed. As an example, the work of tree trimming, on an extensive scale, is a specific type of work not normally performed by company employees.

E. None of the restrictions or limitations expressed herein shall apply to work done by employees of an equipment manufacturer in the course of a major installation, modification or rearrangement of equipment of his own manufacture or equipment associated with it in the offices of General Telephone Company of Michigan.

From the agreement between
National Lead Company and the
Oil, Chemical and Atomic Workers International Union (AFL-CIO)
 (expires February 1970)

It is the intention of the company to provide full and regular employment for its employees except during periods when conditions necessitate reduction in plant output. In accordance with this intention, the company agrees that work performed by members of the unit shall not be contracted out as long as the employer has the proper and sufficient equipment and so long as there are qualified employees available from among present and/or laid off employees eligible to return to work under the recall provision.

It is understood the plant cannot be staffed economically and efficiently for peak periods of maintenance, construction, material handling, etc., and will resort to outside contractors to augment the working force, which will not preclude overtime.

The union agrees it does not intend for the company to increase the work force, purchase additional, new or special equipment for the sole purpose to avoid the employment of contractors. Furthermore, it will not cause the company to work the present force on an overtime basis when such work can be contracted out on a straight time basis. On the other hand, this does not preclude present forces working overtime.

The company will advise the union and discuss the use of contractors and/or sub-contractors who will perform work referred to in Section 1, paragraph 2, on the premises performed by members of the union.

Nothing in this section is intended to prevent the layoff of employees because of technological improvements or to prevent the hiring of additional employees when considered necessary by the company.

From the agreement between

Northern and Central California Chapter, the
Associated General Contractors of America and the
Laborers' International Union of North America (AFL-CIO)
(expires June 1968)

Section 11—

The terms and conditions of this agreement insofar as it affects employer and individual employer shall apply equally to any subcontractor under the control of, or working under contract with such individual employer on any work covered by this agreement, and said subcontractor with respect to such work shall be considered the same as an individual employer covered hereby.

If an individual employer shall subcontract work herein defined, such subcontract shall state that such subcontractor agrees to be bound by and comply with the terms and provisions of this agreement.

A subcontractor is defined as any person, firm or corporation who agrees under contract with the employer, or any individual employer, or a subcontractor of the employer, or any individual employer to perform on the job site any part or portion of the construction work covered by the prime contract, including the operation of equipment, performance of labor and installation of materials.

An individual employer who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this agreement, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, including payments required by Sections 28 (A), 28(B) and 28(C), except as follows:

The individual employer will give written notice to the union of any subcontract involving the performance of work covered by this agreement within five (5) days of entering such subcontract, and shall specify the name and address of the subcontractor.

If thereafter such subcontractor shall become delinquent in the payment of any wages or benefits as above specified, the union shall promptly give written notice thereof to the individual employer and to the subcontractor specifying the nature and amount of such delinquency.

If such notice is given, the individual employer shall pay and satisfy the amount of any such delinquency by such subcontractor occurring within sixty (60) days prior to the receipt of said notice from the union, and said individual employer may withhold the amount claimed to be delinquent out of the sums due and owing by the individual employer to such subcontractor.

The individual employer shall not be liable for any such delinquency if the local union where the delinquency occurs refers any employee to such subcontractor after giving such notice and during the continuance of such delinquency.

The individual employer shall not be liable for any such delinquency occurring more than sixty (60) days prior to receipt of written notice from the union.

Appendix B. Identification of Clauses

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
1	Samsonite Corporation Rubber Workers (URW)	February 1970
2	Norfolk Shipbuilding and Drydock Corporation Boilermakers (BBF)	March 1970
3	Burroughs Corporation Auto Workers (UAW) (Ind.)	October 1970
4	Cameron Iron Works, Inc. Machinists (IAM)	July 1968
5	General Electric Company Electrical, International (IUE)	October 1969
6	Building Maintenance Employers Association Service Employees (SEIU)	February 1969
7	General Telephone Company of Indiana Communications Workers (CWA)	April 1969
8	Houston Lighting and Power Company Electrical, Brotherhood (IBEW)	May 1968
9	Potlatch Forests, Inc. Woodworkers (IWA)	May 1969
10	Glass Containers Manufacturers Institute, Inc. Glass Bottle Blowers (GBBA)	March 1968
11	Hupp Corporation—Gibson Refrigerator Division Auto Workers (UAW) (Ind.)	November 1968
12	Allis-Chalmers Manufacturing Company Steelworkers (USA)	September 1968
13	National Steel Corporation—Great Lakes Steel Division Steelworkers (USA)	July 1968
14	American Metal Climax, Inc. Oil, Chemical and Atomic Workers (OCAW)	July 1968
15	Lockheed Aircraft Corporation—Lockheed-California Division Machinists (IAM)	July 1968
16	Bethlehem Steel Corporation Steelworkers (USA)	July 1968
17	St. Joseph Lead Company Steelworkers (USA)	March 1968
18	I/A California Cement Companies Cement Workers (CLGW)	April 1969
19	Iroquois Gas Corporation Electrical, Brotherhood (IBEW)	February 1968
20	I/A Retail Food and Liquor Stores Retail Clerks (RCIA)	May 1971
21	General Telephone Company of Michigan Electrical, Brotherhood (IBEW)	May 1969
22	Holly Sugar Corporation Grain Millers (AFGM)	April 1969
23	Greater St. Louis Automotive Association Machinists (IAM)	July 1967
24	I/A Ice Cream Drivers Teamsters (IBT) (Ind.)	April 1968
25	Kearney and Trecker Corporation Employees Independent Union (Ind.)	March 1969
26	Rohr Corporation Machinists (IAM)	November 1968

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
27	North American Aviation, Inc. Auto Workers (UAW) (Ind.)	September 1968
28	Baltimore Transit Company Transit Union, Amalgamated (ATU)	September 1968
29	Lockheed Aircraft Corporation—Lockheed-Georgia Division Machinists (IAM)	July 1968
30	National Castings Company Auto Workers (UAW) (Ind.)	February 1968
31	National Broadcasting Company Broadcast Employees and Technicians (NABET)	March 1970
32	Birdsboro Corporation Steelworkers (USA)	October 1969
33	Torrington Company Auto Workers (UAW) (Ind.)	May 1970
34	Crown Zellerbach Corporation Papermakers and Paperworkers (UPP)	July 1970
35	Brooklyn Union Gas Company Transport Workers (TWU)	March 1968
36	Carrier Corporation—Elliott Division Steelworkers (USA)	March 1968
37	Pacific Maritime Association Marine Engineers' (MEBA)	July 1969
38	Pleaters, Stitchers, and Embroiders Association, Inc. Garment Workers, Ladies' (ILGWU)	February 1970
39	American Millinery Manufacturers Association, Inc. Hatters (HCMW)	December 1968
40	Cartage of Chicago, Inc. Illinois Motor Truck Operators Association, Inc., Central Motor Freight Association Machinists (IAM)	April 1970
41	National Lead Company—Doehler-Jarvis Division Auto Workers (UAW) (Ind.)	June 1968
42	Monsanto Chemical Company Metal Trades Council	May 1970
43	Sperry-Rand Corporation Electrical, International (IUE)	June 1970
44	Mack Truck, Inc. Auto Workers (UAW) (Ind.)	October 1967
45	National Lead Company Oil, Chemical and Atomic Workers (OCAW)	February 1970
46	National Lead Company—Titanium Division Painters and Paperhangers (BPDP)	March 1969
47	Southern Counties Gas Company Chemical Workers (ICW)	March 1969
48	Stuffed Toy Manufacturers Association Toy Workers (IDTW)	June 1970
49	Kollsman Instrument Company Machinists (IAM)	June 1968
50	Upholstery Employers Association Upholsterers' (UIU)	August 1968
51	Humble Oil and Refining Company Independent Industrial Workers (Ind.)	April 1969
52	Borg Warner Corporation—Gear Division Auto Workers (UAW) (Ind.)	October 1967
53	Bucyrus-Erie Company Steelworkers (USA)	August 1970
54	Boston Gas Company District 50 Mine Workers (UMW-50) (Ind.)	October 1969
55	East Ohio Gas Company Service Employees (SEIU)	June 1969

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
56	American Telephone and Telegraph Company—Long Lines Communications Workers (CWA)	January 1970
57	Kellogg Company Grain Millers (AFGM)	April 1969
58	General Telephone Company of California Communications Workers (CWA)	July 1970
59	Leeds and Northrup Company Leeds and Northrup Employees' (Ind.)	October 1967
60	United Better Dress Manufacturers Association, Inc. Garment Workers, Ladies'(ILGWU)	January 1970
61	New York Coat and Suit Association, Inc. Garment Workers, Ladies'(ILGWU)	May 1970
62	Continental Oil Company Oil Workers of Oklahoma (Ind.)	March 1968
63	Realty Advisory Board on Labor Relations, Inc. Service Employees (SEIU)	December 1968
64	Sinclair Refining Corporation Oil, Chemical and Atomic Workers (OCAW)	Open end
65	Association of Rain Apparel Contractors of New York and New Jersey Garment Workers, Ladies'(ILGWU)	July 1968
66	National Skirt and Sportswear Association, Inc. Garment Workers, Ladies'(ILGWU)	May 1970
67	Worthington Corporation Steelworkers (USA)	August 1968
68	The Peoples Gas Light and Coke Company Service Employees (SEIU)	April 1968
69	Pennsylvania Electric Company Electrical, Brotherhood (IBEW)	May 1968
70	Brown Company—3 plants Pulp (PSPMW)	April 1968
71	Consumers Power Company Utility Workers (UWU)	March 1969
72	Oxford Paper Company Papermakers and Paperworkers (UPP)	June 1968
73	Pittsburgh Plate Glass Company Allied Chemical and Alkali (Ind.)	October 1967
74	Libbey-Owens-Ford Glass Company Glass and Ceramic Workers (UGCW)	October 1968
75	Schiffli Lace and Embroidery Manufacturers Association Textile Workers, United (UTWA)	April 1968
76	Cook County Association of Plumbing, Heating and Cooling Contractors Plumbing (PPF)	May 1968
77	Associated General Contractors, Northern and Central California Carpenters (CJA)	June 1968
78	Associated Building Contractors of Colorado Carpenters (CJA)	April 1969
79	I/A General Trucking Agreement of New Jersey-New York Teamsters (IBT) (Ind.)	March 1970
80	Builders Association of Chicago Bricklayers (BMP)	May 1969
81	Associated General Contractors of Oregon and Southwest Washington Carpenters (CJA)	April 1968
82	Allied Underwear Association Garment Workers, Ladies'(ILGWU)	June 1969

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
83	San Francisco Hotel Association Hotel and Restaurant Employees (HREU)	December 1970
84	Midtown Realty Owners Association, Inc. Service Employees (SEIU)	February 1969
85	General Contractors Association of Bridgeport, Inc. Carpenters (CJA)	June 1969
86	Associated General Contractors and Other Associations Phoenix Building Trades Council	May 1970
87	Associated General Contractors of San Diego Engineers, Operating (IUOE)	May 1969
88	Florida Power Corporation Electrical, Brotherhood (IBEW)	October 1967
89	Public Service Company of Colorado Electrical, Brotherhood (IBEW)	May 1968
90	Heavy Constructors Association of the Greater Kansas City Area Laborers (LIUNA)	July 1969
91	Litton Industries—Ingall Shipbuilding Corporation Metal Trades Department	February 1968
92	United States Steel Corporation—American Bridge Division Steelworkers (USA)	July 1968
93	Oregon Draymen and Warehousemen's Association Teamsters (IBT) (Ind.)	July 1970
94	General Dynamics Corporation—Electric Boat Division Marine and Shipbuilding Workers (IUMSW)	March 1969
95	Rochester Telephone Company Communications Workers (CWA)	March 1970
96	Briggs and Stratton Corporation Industrial Workers, Allied (AIW)	July 1969
97	Warwick Electronics, Inc. Electrical, International (IUE)	January 1969
98	Allied Construction Employers' Association Carpenters (CJA)	May 1968
99	Merit Clothing Company Inc. Clothing Workers (ACWA)	May 1968
100	Associated Roofing Contractors of the Bay Area Roofers (RDWW)	July 1968
101	Uniforms Manufacturers Exchange Clothing Workers (ACWA)	May 1968
102	I/A Sportswear Industry Garment Workers, Ladies' (ILGWU)	August 1970
103	Needle Trades Employers Association Garment Workers, Ladies' (ILGWU)	January 1970
104	Associated General Contractors of St. Louis Laborers (LIUNA)	April 1969
105	Hartford General Contractors Association Laborers (LIUNA)	March 1970
106	Building Trades Employers' Association of Rochester Laborers (LIUNA)	April 1970
107	General Telephone of Wisconsin Communications Workers (CWA)	January 1970
108	Associated General Contractors of St. Louis Iron Workers (BSOIW)	April 1969
109	The Plumbing and Pipe Fitting Industry of the State of Washington Plumbing (PPF)	May 1968

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
110	Associated General Contractors of America, San Diego Building Contractors, Engineering and Grading Contractors Association, Inc., San Diego Chapter Building and Construction Trades Department, Teamsters (IBT) (Ind.)	April 1970
111	Heavy Construction Association of the Greater Kansas City Area Engineers, Operating (IUOE)	July 1969
112	The Negligee Manufacturers Association of New York, Inc. Garment Workers, Ladies' (ILGWU)	June 1969
113	Associated General Contractors of America—Southern Nevada Building and Construction Trades Department	May 1970
114	Belt Association, Inc. Garment Workers, Ladies' (ILGWU)	October 1970
115	Associated Garment Industries of St. Louis—Dress Branch Garment Workers, Ladies' (ILGWU)	February 1969
116	Lingerie Manufacturing Association Garment Workers, Ladies' (ILGWU)	June 1969
117	Southern California General Contractors Engineers, Operating (IUOE)	June 1969
118	Plumbing, Heating and Piping Employers Council of Southern California Plumbing (PPF)	June 1969
119	New Jersey Washable Dress Contractors Garment Workers, Ladies' (ILGWU)	January 1970
120	Associated General Contractors, Inc., Building, Heavy, Highway and Engineering Constructors Laborers (LIUNA)	June 1968
121	New York Industrial Council of the National Handbag Association Leather Goods, Plastic and Novelty Workers (LGPN)	May 1968
122	Los Angeles County Painters and Decorators Joint Committee Painters and Paperhangers (BPDP)	June 1969
123	Associated Contractors of Essex County, Inc. Carpenters (CJA)	May 1969
124	Mason Contractor's Exchange of Southern California Laborers (LIUNA)	April 1971
125	Television Film Labor Agreement Musicians (AFM)	April 1969
126	Master Builders Association of Bergen County, New Jersey Carpenters (CJA)	April 1969
127	Men's Neckwear Association of New York, Inc. Clothing Workers (ACWA)	August 1970
128	Associated General Contractors of America Plasterers' and Cement Masons' (OPCM)	June 1968
129	Associated General Contractors of California Laborers (LIUNA)	June 1968
130	New England Road Builders Laborers (LIUNA)	February 1970
131	Popular Priced Dress Manufacturers' Group, Inc. Garment Workers, Ladies' (ILGWU)	January 1970
132	Infants' and Children's Coat Association, Inc., and Manufacturers of Snowsuits, Novelty Wear, and Infants' Coats, Inc. Garment Workers, Ladies' (ILGWU)	
133	I/A Retail Grocery Industry Retail Clerks (RCIA)	March 1968

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
134	Plumbing, Heating and Piping Employers' Council of Northern California Plumbing (PPF)	June 1968
135	The Amalgamated Sugar Company Grain Millers (AFGM)	July 1968
136	Owen-Illinois, Inc. Glass Bottle Blowers (GBBA)	May 1968
137	Phoenix Steel Corporation Steelworkers (USA)	July 1968
138	Firestone Tire and Rubber Company Rubber Workers (URW)	April 1970
139	Maytag Company Auto Workers (UAW) (Ind.)	November 1967
140	New England Road Builders Association of Massachusetts Teamsters (IBT) (Ind.)	April 1970
141	Todd Shipyards Corporation Marine and Shipbuilding Workers (IUMSW)	July 1968
142	Chrysler Corporation—Airtemp Division Electrical, International (IUE)	October 1967
143	Anchor Hocking Glass Corporation Glass Workers', Flint (AFGW)	September 1968
144	A. E. Staley Manufacturing Company Industrial Workers, Allied (AIW)	July 1968
145	Lockheed Aircraft Corporation—Missiles and Space Division Auto Workers (UAW) (Ind.)	July 1968
146	Rockwell-Standard Corporation Auto Workers (UAW) (Ind.)	November 1967
147	Ford Motor Company Auto Workers (UAW) (Ind.)	September 1970
148	Labor Relations Advisory Association Teamsters (IBT) (Ind.)	November 1967
149	Graphic Arts Employers Association of San Francisco Lithographers and Photoengravers (LPIU)	October 1967
150	Boeing Company Seattle Professional Engineering Association (Ind.)	June 1972
151	Wisconsin Public Service Corporation Engineers, Operating (IUOE)	October 1968
152	Eaton Manufacturing Company Auto Workers (UAW) (Ind.)	October 1967
153	Eastern Products Corporation Furniture Workers (UFW)	April 1970
154	International Harvester Company Auto Workers (UAW) (Ind.)	September 1970
155	Pennsylvania Power and Light Company Employees Independent Association (Ind.)	May 1968
156	Alabama Dry Dock and Shipbuilding Company Marine and Shipbuilding Workers (IUMSW)	March 1970
157	I/A Sugar Plantation Companies Longshoremen's and Warehousemen's (ILWU)	January 1969
158	Ohio Contractors Association Teamsters (IBT) (Ind.)	April 1972
159	Calumet and Hecla, Inc. Steelworkers (USA)	August 1968
160	White Motor Company Auto Workers (UAW) (Ind.)	March 1968
161	Friden, Inc. Machinists (IAM)	March 1969

<u>Clause number</u>	<u>Employer and union</u>	<u>Expiration date</u>
162	Central States Area Local Cartage Agreement Teamsters (IBT) (Ind.)	March 1970
163	Ling-Temco-Vought, Inc. Auto Workers (UAW) (Ind.)	November 1968
164	National Electrical Contractors Association, Inc., St. Paul Chapter Electrical, Brotherhood (IBEW)	May 1969
165	Construction Industry Employers' Association of Buffalo Carpenters (CJA)	May 1969
166	National Association of Blouse Manufacturers Garment Workers, Ladies' (ILGWU)	May 1970
167	Associated Fur Manufacturers, Inc. Meat Cutters (MCBW)	February 1969
168	Associated General Contractors of Northern and Central California Carpenters (CJA)	June 1968
169	Jersey Central Power and Light Company and New Jersey Power and Light Company Electrical, Brotherhood (IBEW)	October 1969
170	Narragansett Electric Company Utility Workers of New England (Ind.)	March 1968

NOTE: All unions are affiliated with the AFL-CIO except those followed by (Ind.).

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