



Relaunching Collective Bargaining Coverage in Outsourced Services

RECOVER POLICY PAPER

Who overcomes collective bargaining?

Outsourcing practices and regulation in Spain

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POLICY PAPER: SPAIN

INTRODUCTION

The outsourcing is a growing process in Spain since the 90s with the beginning of the privatization of the public sector and the decentralization of production and services in the private sector. Nowadays, the 30% of Spanish companies are involved in outsourcing processes (European Company Survey, 2013). Some studies on the Spanish case point to an increase in outsourcing processes in companies from 80% from 2007 to 2014 (López, 2015). According to this study, Spanish businesspersons recognize that the economic offer is the main reason to select a supplier. We understand that outsourcing has become a key tool to reduce costs during the period of economic crisis.

However, it is not only an economic issue. Outsourcing has become another tool to make work processes more flexible and transfer the risk of labor conflicts to other organizations. In this way, the greater adaptability, performance and lower labor cost of the employees in these supplier companies consequently improves the productivity of the client organizations, which focus on their central functions.

Outsourcing was already a prominent phenomenon since the early 1980s in the industry worldwide and, specifically, in Spain, especially in the manufacturing sector. During the 90s and, moreover, since the beginning of the 2000s, outsourcing became an incipient practice also in the service sector, both internationally and in Spain. Thus, this phenomenon concerns not only blue collar activities, but, in this new wave of outsourcing, has an effect on occupations traditionally considered white collar.

In that regard, collective bargaining system is gradually introducing clauses regulating outsourcing and mechanisms aimed to solve the problem of the determination of the collective agreement applicable to outsourced workers, particularly for those in facility management companies.

Taking in consideration RECOVER project classifies the different outsourced activities by its level of qualification and its implementation on-site or off-site, we highlighted some of the main outsourced services in Spain: communication, logistics, security, cleaning, health services and IT. From those, we selected Journalism (a high-qualified activity with occupations implemented both on-site and off-site) and Chambermaids (a

low qualified activity implemented in the establishment of the client company).

INDUSTRIAL RELATIONS RECKONING WITH OUTSOURCING

1. COLLECTIVE BARGAINING COVERAGE

Before economic crisis, the Spanish collective bargaining system was very coordinated, prioritizing sectoral level and setting determined issues at lower levels (generally regional). Once it started economic crisis, labor reforms of 2010 and, mainly, 2012 granted application priority to the collective bargaining company level instead of sectoral in the regulation of certain key issues such as wages and working time (Pastor 2014). In 2014, the number of new company agreements (most of them in SMEs and micro companies) tripled compared to previous years (Górriz 2015). Likewise, labor reform made more flexible opting out possibilities for collective agreements. All this means "an important brake on the pace of negotiation, with a loss of coverage of companies and workers (Alós, Beneyto and Jódar 2017).

Therefore, the key role of collective bargaining shaping employment has declined during the crisis period in Spain (Molina and Miguélez 2013) and Europe (Visser, Hayter and Gammarano 2015), being urgent to take it up again through mechanisms such as coverage to counteract growing inequalities in employment (Visser et al. 2015) such as disparity between internal and external workers. In this way, coverage of both collective bargaining and agreements becomes fundamental mechanism for the employment configuration. In Spain, the coverage rate has remained around 80% since the beginning of 2000's. During economic crisis, coverage rate slightly increased to 81.41% (2009) due to the greater proportion of "insiders" within the labor force, remaining currently stable at 77.5%. Comparing to other European countries, Spain is above the EU average (52.85%) (ICTWSS, 2018). This is due mainly to *Erga Omnes* principle: This high coverage rate contrasts with a low union density: 16.88% in 2013. Despite the high coverage rate of collective bargaining, there are situations in which it is not clear whether workers are covered by collective bargaining or what is the collective agreement applied, that is a common scenarios for outsourced workers working.

2. THE EXTENSION, REGULATION AND FORMS OF OUTSOURCING

Some of the major problems about outsourcing practices increase relates to collective bargaining coverage. In many cases, collective agreements covering outsourced workers are usually different from internal workers or even they do not have any type of coverage, as the case of the dependent self-employed persons. This growing weakness may generate uncertainties concerning employment stability in cases of business transfers. In this regard, the "Transfers of Undertakings Directive" (2001) was approved by the European Commission in 2001 to guarantee not only the durability of existing contracts prior to a transfer of companies, but also the permanency of conditions of those contracts. In the case of Spain, this directive drove the reform of Article 44 of the Workers' Statute in 2002 (Desdentado, 2002), promoting the introduction of subrogation clauses in sectoral collective agreements, referring to the employer's obligation to maintain employees in cases of transfer of undertakings in outsourced activities. Thus, 19.68% of collective agreements and 22.77% of workers throughout the labor market were covered by subrogation clauses in 2015 (Ministerio de Empleo y Seguridad Social 2015), confirming importance of outsourcing phenomenon in Spain.

Regarding the main forms of outsourcing in Spain, we find that the supplier companies (with a growing importance of facility management companies) are the most common type of organization providing outsourced services, followed by temporary agency workers and dependent self-employed workers (also with a significant increase in qualified professions). These forms entail different regulations for the Spanish context.

As highlighted, the model of supplier companies providing certain services, both to public and private organizations, is the most common form of outsourcing in Spain. Data collected by the European Company Survey refers mostly to this outsourcing model (enhancing its impact up to 31.70% of Spanish companies). Negotiation processes between client and supplier organizations frequently give to employees a minor role, practice increased when outsourced services are not part of the core activity of the client company.

In relation to Temporary Agency Work, this format of employment was approved in 1994 in Spain, growing since then up to around 16,20% of the total contracts in 2016 (Ministry of Employment, 2017), showing its importance in the Spanish economy. The relative use of TAW has increased during the crisis (10% in 2010 and 10,6 in 2013).

Concerning the self-employees, Spain is one of the EU countries with the highest percentage of this figure in total employment: 11.3% in 2017 (Eurostat 2018). Within self-employment figure, we can distinguish the economically dependent autonomous workers, that is becoming a recurring pattern of outsourcing (more often in qualified occupations). A common trend is that many of these self-employed workers maintain in fact an employment relationship, but a business relationship 'de facto' (what experts call "bogus self-employment"). Today it is difficult to quantify the number and

proportion within the economy of economically dependent self-employed (Zufiaur, 2010; Rocha, 2017).

3. FACILITY MANAGEMENT COMPANIES

A factor that has contributed to the rise of Facility Management is the lack of adequacy of regulations to this phenomenon, contributing to the proliferation of companies whose competitiveness base on prices reduction of supplied services. In addition, with the 2012 labor reform (giving priority to company level agreements), many companies started to have their own agreement in order to downgrade employment conditions settled at sectoral level. All these companies' agreements signed had formal defects, so unions appealed to justice courts, wining all the processes (50 agreements blocked). However, the companies continued to apply these cancelled agreements, so public labor inspection organisms had to intervene. At that time, companies began to step back and sought a sectoral collective bargaining with unions. To articulate this negotiation process, the companies had to organize themselves as an association. Initially, main unions supported the initiative to improve the worsening of FM employees working conditions, who usually have lower wages than those established in sectoral agreements. Finally, unions retracted, because they understand company level supremacy derogation is the mechanism to reverse this scenario. Last consultations made doubt that this association is still active.

Even so, last studies registers 273 company level agreements in FM firms, 55 of them at national level, covering around 60.000 workers in Spain (Gabinete Técnico de Acción Sindical UGT 2018). Regarding economic activity registered, these agreements register 15 different NACEs (e.g. 55 in Support activities to firms, 33 in Comprehensive services to Facilities or 23 in Industrial cleaning). This disparity shows the difficulty to regulate FM phenomena, and to organise workers representatives, implying high coordination between sectoral federations.

CASES ANALYSED

1. CHAMBER-MAIDS

The situation of the chambermaids is paradoxical in Spain: while the tourism business (and specifically hotels) has improved in recent years, the employment situation of chambermaids has worsened. The main cause seems to be in the increase of outsourcing

and in the dynamics of price competition between supplier companies. The tourism is a key sector of the Spanish economy, representing a 10,2% of total GDP and 12,7% of total employment (CNE and EPA, 2017). Within the relevant subsector of Hotels, the 24,09% of workers are chambermaids, whom around 80% are outsourced. The Facility Management Companies have a key role in this process, providing not only Chambermaids services but general cleaning, catering, security and even reception desk services. The aims of outsourcing of this activity in Spanish hotels are: a) the conversion of client fixed costs to variable costs (e.g., the supplier companies charge per room cleaned). b) The direct reduction of cost per labor unit through practices in collective bargaining (e.g. arbitrary agreements coverage).

Some of the main consequences of outsourcing practices for chambermaids and other occupations in hotels are: 1) Arbitrariness with collective agreements coverage applying cleaning agreements or company level agreements (Facility Management Companies) rather than Hotels sectoral agreement. This usually means substantial salary and professional category reductions. 2) Less stability and insecurity about hours and days of work. 3) Workload intensification. 4) Health and safety problems. 5) Loss of quality of service and risk of de-professionalization. 6) Segmentation, division and increased competition among hotel staff. 7) Weakening of trade unions power to defend their interests (Cañada, 2016). Despite these facts, the profession shows low levels of affiliation. However, a professional association called “Las Kellys” has raised within the chambermaids as collective to denounce not to be represented by unions and stressing outsourcing practices as an outrage.

The current collective agreement for hotels sector (ALEH 2015), bargained at national level, works as general framework for agreements at regional level. Despite the relevance of outsourcing phenomena in the sector, the agreement does not deal with this topic at national level. However, some regional agreements (e.g. Baleares) settle limits to outsourcing practices. The real thing is that provider companies apply generally the cleaning sector agreement, with a consequent downgrade of working conditions compare to Hotels agreement, or even, in the case of many facility management companies, chambermaids are covered by Facility Management Company agreements that erase any sectoral framework previously agreed.

2. JOURNALISM

The journalism is immersed in several crisis: the digitalization is reframing the profession, the financing model has changed once the funding from advertising is decreasing and the economic crisis has affected the quantity and quality of work. The three crises together have accelerated the impact over journalists’ jobs, not only increasing unemployment levels but weakening employment relations with organizational practices as outsourcing.

In regard to outsourced work in journalism, the most common form of outsourcing within the sector are the self-employed workers, called generally "collaborators". According to the survey report of the journalism profession (APM 2008, 2017), while in 2007 87.8% of journalists were employed by media, in 2016 this figure was reduced to 73.2%, working the remaining 26.8% as self-employed. According to this source, given the sample used (mostly journalists from the press associations) the self-employed workers are probably underrepresented, estimating that the actual ratio is 60-65% of employees compared to a 40-35% of self-employed (Palacio 2018).

The 20% of the "collaborators" work for only one company and more than 19% is integrated in their company client (thus, bogus self-employment). Even those who "collaborate" with some companies (41,50%), the most of them have a main client depending financially on them (APM 2016). Generally, these "collaborators" reproduce the same role as internal workers, following the same organizational guidelines and even attending their work place daily in client organizations.

The conditions of these "collaborators" are usually agreed unilaterally by the client companies and, in many cases, do not follow a common pattern, but vary according to one collaborator or another. Likewise, these workers usually work for a single client, although in the latter there is a tendency to diversify the number of clients to increase or maintain income. Therefore, there are not covering conflicts as far as "collaborators" cannot be covered by any agreement. The current collective agreement of daily press (2017) covers journalists at national level. However, big media usually have their own company agreements. This national agreement does not address outsourcing issues and few company agreements regulates the relation between media and self-employees (specifically payments). This scenario of lack of coverage generates situations of low(er) retributions, continuous availability and insecurity.

3. FACILITY MANAGEMENT COMPANY

The company analysed defines itself as facility services firm, aiming to not get involved in bad practices of facility management companies in Spain. They provide and manage all the general services that a facility or company may require. In this sense, the strategy of the company is to offer these services in a comprehensive way to their clients, not only supplying these services, but also coordinating between them and the core activity of clients' organizations. The firm is aimed at large clients, even specializing in global coverage: provision of all outsourced services in all geographies to the same global client, emphasizing this product as the differential element of the company. Regarding "matrioska" practices, the firm also outsources certain services, as far as they develop any outsource activity of facilities, but it represents a marginal

percentage.

Regarding both company and workers representatives' statements, every activity supplied by the company is covered by its appropriate sectoral agreement. Union representatives highlight the firm as exemplary in that field and in general in the management of personnel. Regarding company level, the firm have two company agreements: one for offices personnel and other company agreement for activities of control and maintaining of facilities. However, this agreement specifically settles that is excluded any activity that may fit into another sectoral agreement.

POLICY RECOMMENDATIONS

Regulatory mechanisms at sectoral level such as the implementation of subrogation clauses seem good practices both to guarantee coverage and to protect employment conditions in the activities. However, outsourcing forms like self-employment does not allow its application. In addition, initiatives like the social criteria established by City council of Barcelona exemplifies the role that Public Administrations must fulfil in preserving and improving the quality of outsourced employment. But, overall, the facility services company analysed shows one of the best practice in these cases with the proactive role of employers to apply appropriate sectoral agreements.

References

Alós, R; Beneyto, P; and Jódar, P. (2017). Reforma laboral y desregulación del mercado de trabajo. Anuario IET de Trabajo y Relaciones Laborales, 4, 73-86.

Cañada, E. (2016). Externalización del trabajo en hoteles. Barcelona: Alba Sud.

Desdentado, A. (2002). La sucesión de empresa: una lectura del nuevo artículo 44 del Estatuto de los Trabajadores desde la jurisprudencia. Revista del Ministerio de Trabajo y Asuntos Sociales, 38, 241-266.

Gabinete Técnico de Acción Sindical UGT (2018). Empresas multiservicios, o cómo precarizar el empleo. FeSMC - Servicios, Movilidad y Consumo.

Gorriz, R. (2015). La negociación colectiva: cobertura, estructura y contenidos. Gaceta sindical, 24, 335-348.

López, J. L. (2015). Primer estudio GrupoUno CTC sobre la evolución de la externalización de procesos de negocio en España. GrupoUno CTC.

Palacio, L. (2018). La subcontratación en el sector de los medios de comunicación. Seminario debate “Las relaciones laborales ante el reto de la externalización”. Disponible en: <http://fesp.org/index.php/documentos/item/8473-la-subcontratacion-en-los-medios-de-comunicacion>

Pastor, A. (2014). La reforma del sistema de negociación colectiva español y sus implicaciones desde una perspectiva jurídica. Anuario IET de Trabajo y Relaciones Laborales, 2, 35-47.

Rocha, F. (2017). “El trabajo autónomo económicamente dependiente en España. Diagnóstico y propuestas de actuación.” Revista de Derecho de la Seguridad Social, nº 10, pp. 301-326.

Visser, J; Hayter, S; and Gammarano, R. (2015). Trends in Collective Bargaining Coverage: Stability, Erosion Or Decline? ILO - Labour Relations and Collective Bargaining, Issue Brief 1.

Zufiaur, J. M. (2010). Dictamen Tendencias en materia de trabajo autónomo. Bruselas SOC/244.