

New ways of
WINNING
FIGHTING PRIVATIZATION AND CONTRACTING OUT

**Bargaining Protection
Against Privatization**

CUPE's National Privatization Conference, Toronto - March 27-30, 2003

CUPE·SCFP
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Bargaining Protection Against Privatization

CUPE has been fighting contracting out for several decades. Negotiating contract provisions to prevent or restrict contracting out has been our first line of defence. And we have been quite successful at it.

You can see the results in our collective agreements. CUPE contracts are far more likely to have some type of protection against contracting out than you will find in other Canadian collective agreements.¹

CUPE contracts stronger than others

Almost three-quarters (71%) of CUPE contracts have contracting out protection, compared to only about half (55.3%) of Canadian collective agreements.

The most common form of protection in CUPE contracts is that the employer must guarantee the jobs of all present bargaining unit members. Almost half (44.9%) of our collective agreements contain that level of protection.

CUPE has negotiated a complete restriction on contracting out in many of our collective agreements. This ideal has been achieved in 8% of CUPE agreements –one in twelve.

That number shows we have a long way to go to extend that level of protection to all CUPE members. But at the same time, we should note that we have done better than the norm for Canadian collective agreements. According to the Workplace Information Directorate, only 2.7% of Canadian collective agreements prevent the employer from contracting out.

¹ The source for data on CUPE collective agreements is CUPE Research SALAD – System for the Analysis of Labour Agreement Data. The source for Canadian collective agreements is Human Resource Development Canada. Workplace Information Directorate. CAIRS data base. 2001.

Still need better protection

While there is no doubt that we have achieved significant protection against contracting out for CUPE members, a large portion of our collective agreements still have no provision for contracting out. In fact, almost one in three CUPE contracts (29%) are silent on contracting out.

When we take a closer look by sector, we see some alarming gaps, given the drive to contract out by employers in all sectors. For example, less than half of our collective agreements in the social services sector have any form of protection against contracting out. One-third of CUPE contracts in the education sector are silent on contracting out. The municipal sector is at the same level as the average for all sectors – 29% do not have a contracting out clause. CUPE contracts in the health care sector are most likely to have contracting out language. Only 23% of agreements in health care don't mention contracting out. (See tables at the end.)

A different picture emerges when one looks by sector at where the complete restrictions on contracting out are. The social services sector leads the pack with 10.8% of contracts in that sector containing a ban on contracting out. It is followed by the education sector where 8.5% of CUPE contracts contain a complete restriction on contracting out and 7.6% of contracts in the health sector. The municipal sector is where one is least likely to find a complete restriction on contracting out with 6.3% of contracts containing this level of protection.

To look more closely at the extent of different types of contracting out protections in CUPE collective agreements and in Canadian collective agreement, turn to the tables at the back.



Bargaining Approaches to Fighting Privatization:

There are many different contracting out provisions that your local can bargain to fight privatization. Some completely restrict it, and others place obstacles in the way of privatization. Also, proactive language to prevent future privatization and to bring work back to the bargaining unit is important. The following are examples of the types of contracting-out and privatization provisions in our collective agreements.

Preventing Contracting Out:

A clause to prevent contracting-out of bargaining unit work is ideal. However, employers strongly resist it.

- ❑ **Complete restriction on contracting out any work presently performed by the bargaining unit**

This is a very difficult provision to negotiate in the current climate. But it does provide the maximum protection to our members. Only 8.1% of our collective agreements have such a provision.

Example:

Local 801 SD#46 Sunshine Coast

4.03(f) In order to provide job security for the members of the bargaining unit, the employer agrees that all work or services performed by the employees shall not be sub-contracted, transferred, leased, assigned or conveyed, in whole or in part, to any other plant, person, company or non-unit employee, unless mutually agreed to.

Creating obstacles to contracting out:

If a complete restriction on contracting-out is not possible, negotiating obstacles to it is important. The following six clauses place obstacles before employers who want to contract out work. They provide some level of protection for union members.

- ❑ **No contracting out if bargaining unit members are able to perform the work**

Example:

Local 2012 and the City of Terrace (B.C.)

16.01 Restrictions on Contracting Out

In order to provide job security for the members of the bargaining unit, the City agrees that all work or services normally performed by the employees shall not be subcontracted, transferred, leased, assigned or conveyed, subject to the following:

1. The employees are qualified to perform the work.
2. The equipment necessary to perform the work is available.
3. The work can be completed in the time available as governed by seasonal conditions.
4. The work can be performed by the City to the economic advantage of the City.

- **Employer must guarantee the jobs of all current bargaining unit members**

Example:

Health and social services sector management bargaining committee, Hospitals management bargaining sub-committees and the Provincial Council of Social Affairs of CUPE (FTQ)

29.01 Any contract between the employer and a third party that directly or indirectly takes away all or part of the duties performed by employees covered by the certification shall commit the employer to the union and the employees as follows:

1. First, the union shall be given an opportunity to examine the economic and non-economic basis for the institution's plan and, within a period of no more than sixty (60) days, to propose an alternative capable of meeting the institution's objectives and respecting the parameters of the plan.

The prescribed sixty (60) days period shall begin on the date the union receives the information mentioned above.

The provisions of this paragraph shall also apply when the contract is renewed.

2. The employer shall advise the third party of the existence and content of the certification and the collective agreement.

3. **The employer shall not proceed with any lay-offs, firings or dismissals arising directly or indirectly from such a contract.**
 4. Any change in the working conditions of an employee affected by such a contract shall be made in accordance with the provisions of this agreement concerning lay-offs.
 5. The employer shall send the union a copy of any such contract within thirty (30) days of it being signed.
- **Employer must guarantee the jobs of some employees (e.g. permanent employees or those with a certain length of service)**

Example:

Saskatoon Civic Employees Union, CUPE Local 859 and the City of Saskatoon

38.01 Having regard to the desirability of maintaining a stable workforce and having regard to periodic peaks in workload dictating the necessity of contracting work out, the parties agree as follows:

- a) No permanent employee engaged in a year-round job shall be laid off or have employment terminated as a direct consequence of the City contracting work out of a nature normally performed by C.U.P.E. forces.
- **Employer will endeavour to find alternate work for employees who will be displaced**

Example:

CUPE Local 30 and the City of Edmonton

11:04 The City recognizes and agrees that, during the term of this agreement, no permanent employee shall be laid off as a direct result of contracting out the work performed by such employees.

In the event that a permanent employee is displaced as a result of contracting out the work, the City shall place said employee in any position for which he has the required qualifications.

In the event that a permanent employee is placed in a lower position, said employees shall suffer no loss of wages as a result of being displaced.



- ❑ **Employer must require subcontractor to provide a comparable level of pay and benefits**

Example:

**University of British Columbia and CUPE Local 2950 (Library and Clerical)
(expiry: March 31, 2002)**

5.05 (f) In all work contracted out, all sub-contractors of the University shall provide wages and conditions of employment which are at least equal to the terms of this agreement.

- ❑ **Employer will not contract out work to volunteers**

Example:

Local 606 SD#79 Cowichan Valley

31.01 Community involvement in schools is encouraged as long as it does not result in the displacement of employees within the bargaining unit.

Consultation and notification

The following type of clause gives prior warning to the union before contracting out occurs. It can provide the union with time to mobilize and prepare a case against the proposed contracting out.

- ❑ **Employer will consult with the union prior to contracting out work**

Example:

New Brunswick Provincial Government Board of Management and CUPE Local 1251 Group: Institutional Services and Care

26.01 In the event of merger, amalgamation, closure of facilities, or contracting out, which may cause the displacement of employees, the employer agrees to give the union at least 180 days' notice of such change, and further agrees to consult with the Union with the view to ensuring continuing employment for the employees so affected.



Service Expansion and Preventing Future Contracting Out

As new services are added or existing ones expanded, it is important that they are not contracted out.

- **All new facilities under the operation of the employer will be covered by the collective agreement**

Example:

CUPE local 1356 (caretaking, grounds and trades at York University)

Letter of Understanding – Staffing of Newly Owned University Buildings

The University agrees that newly owned University buildings for which an occupancy permit has been received during the term of the collective agreement (“new buildings”) will be covered by the certificates issued by the Ontario Labour Relations Board dated March 1, 1971 and August 19, 1998.

The Union agrees that, in staffing the new buildings, new classifications may be created for bargaining unit positions. Wages for these new classifications may be different than the wages for any classifications outside of the new buildings in accordance with Article 23.04.

The Union agrees that the University has the right to contract with outside firms to manage University facilities and that these firms will have all the rights of the University under the terms of Collective Agreement to manage CUPE staff. This Letter of Understanding shall expire on August 31, 2005.

Local 951 University of Victoria (Inside)

31.04 Within the scope of the jobs performed in University departments by regular members of the bargaining unit:

- (a) the Union will notify the University at the beginning of a quarterly period of the types of contracted out work that is within the scope of the bargaining unit that the union would like to review. These requests will be sufficiently defined so as to allow the data collection process to proceed efficiently and without undue resource expenditure;

Contracting In

CUPE needs to bring more contracted work back in-house. Negotiating a process for doing so, usually involves having the employer agree to the following two things:

- ❑ **The employer is obligated to disclose all information on currently contracted out services**
- ❑ **The employer will consider proposals from the union to bring work back in house**

The following four examples show the kind of provisions that can be negotiated:

Local 917 University of Victoria

31.02 The University shall annually notify the Union of contracted-out-services which are within the scope of the jobs performed in University service departments by regular members of the bargaining unit and provide the Union with the opportunity to present alternatives. The University shall meet quarterly with the Union to review contracting out decisions and shall review contracting in issues pursuant to the Letter of Agreement.

CUPE Locals 79 and 416 and the City of Toronto

21.02(a) and 28.04

The Union and the City shall establish a joint committee to review all operations and services for the purpose of contracting in wherever feasible.

CUPE Local 5555 and Kawartha Pine Ridge District School Board

LETTER OF UNDERSTANDING Between Kawartha Pine Ridge District School Board and the Canadian Union of Public Employees Local 5555; Article 6.07 of CUPE Local 1022 and the Hastings and Prince Edward District School Board; and Article 4.05 of CUPE Local 1480 Limestone School Board.

The Employer agrees that all work and services currently contracted out or otherwise performed by persons other than bargaining unit members will be subject to an ongoing joint review to determine which work and services might be performed by members of the bargaining unit.

Ontario Council of Hospital Unions (CUPE) and the Ontario Hospital Association

10.03 Further to Article 9.08(d)(i)(1), the parties agree that the Redeployment Committee will immediately undertake a review of any existing sub-contract work which would otherwise be bargaining unit work and which may be subject to expiry and open for renegotiation within six (6) months with a view to assessing the practicality and cost-effectiveness of having such work performed within the Hospital by members of the bargaining unit.

Public Private Partnerships and Other Forms of Alternative Service Delivery

The need to bargain protection against Public Private Partnerships (P3s) and other forms of Alternative Service Delivery (ASD) is becoming increasingly important as governments and employers consider new forms of privatization.

The following are the elements of collective agreement provisions on P3s or ASDs.

- **The employer must notify the union about any P3 or ASD proposal within a specified time.**
- The employer must disclose all relevant information about a P3 or ASD proposal to the union within a specified time.
- The employer must consult with the union about the P3 or ASD proposal prior to its adoption, including providing the union an opportunity to formally respond to the proposal in writing.

The following two examples address the threat of P3s or other types of ASD:

CUPE Local 241 and the City of Guelph

38:02 The City shall advise the Union in writing at least thirty (30) days before the City officials make a recommendation to any Committee of Council or to Council that the City of Guelph enter into any joint arrangement with any public sector or private sector entity for the provision of public services at a facility, property or service in which the City has any present or future equity.

The City shall make available to the Union any technical or other information in its possession or that it may reasonably be able to obtain that may be required by the Union to evaluate the contract proposal and the work to be undertaken.



Within five (5) working days of advising the Union, the City shall meet with the Union to fully discuss the details of the work or service to be undertaken or the joint arrangement with any public sector or private sector entity, in order to afford the Union a sufficient opportunity to make a presentation to management, the relevant Committee or to Council in order to evaluate whether such work or service can be performed by employees of the City.

CUPE Local 1287 and the Regional Municipality of Niagara

Article 29 (in part) – TECHNOLOGICAL AND OTHER CHANGES

20.01 In order to give the Union ample opportunity to make representation in respect to the alternative delivery of service, which would result in the displacement of a bargaining unit employee, the Union shall be provided a minimum of ninety (90) days' written notice, except where unforeseen circumstances make such notice impractical or unworkable. Prior to a decision by a department to letting a contract for services of a kind provided by its employees, the Union shall be accorded an opportunity to discuss the issue with the concerned Department Director and to make a submission on the department's plan.

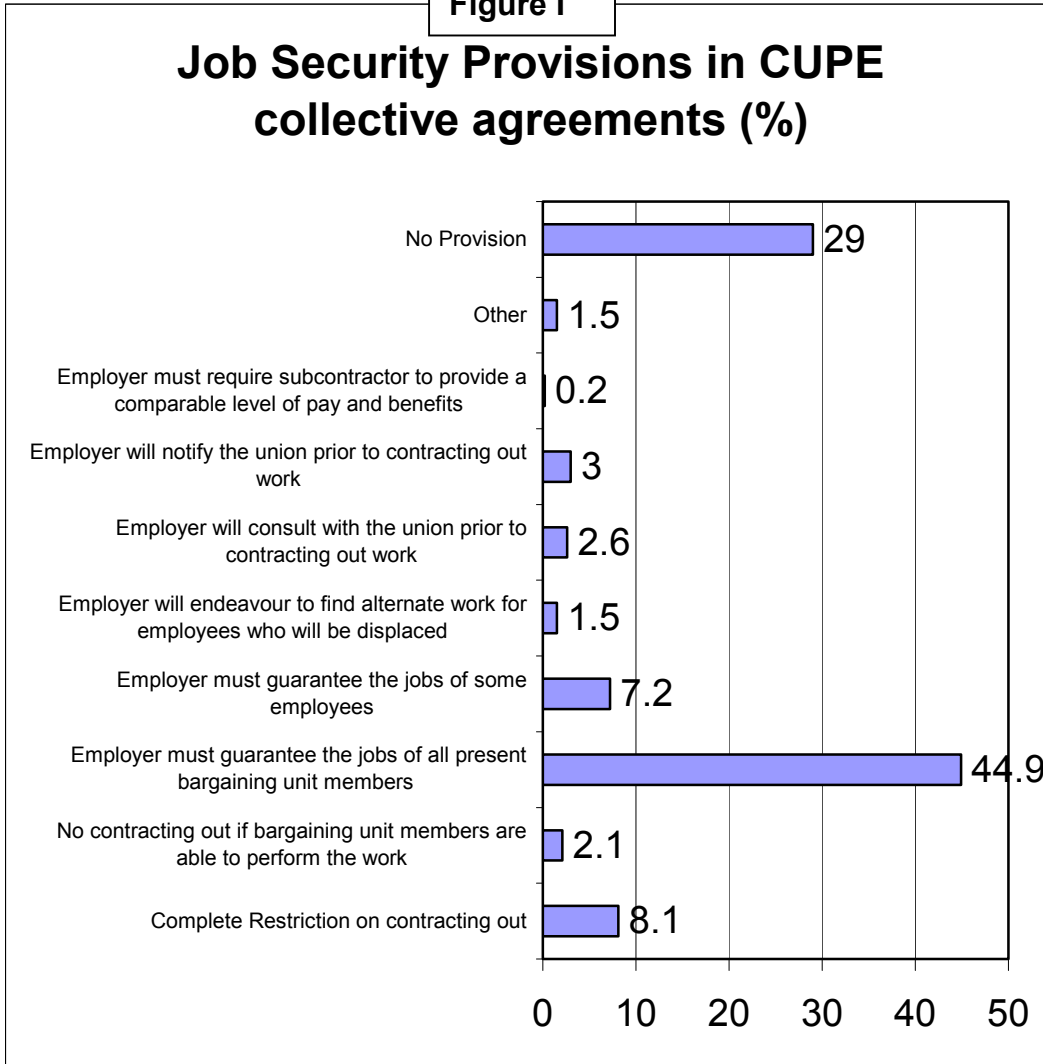
Following discussion with the concerned Department Director, the Union shall be given the opportunity to make representation to the appropriate standing committee of Regional Council with respect to contracting out of work in question, and the Corporation shall make available to the Union any material, of a non-confidential nature as defined by FIPPA (Freedom of Information and Protection of Privacy Act), being examined in support of its decision to contract out work at least six (6) weeks in advance of the scheduled committee meeting.

In the event that the Corporation pursues or enters into an alternative service delivery arrangement that may affect staffing levels, the Parties agree that notwithstanding the provisions of this article, the Parties may elect to negotiate a process of redeployment or appropriate conditions for voluntary separation, which, if successful, shall constitute the Union's final action in this matter.

Conclusion

Bargaining provisions that protect our members against contracting-out or other forms of privatization has been and remains our first line of defence. Continuing and increasing is essential in protecting our jobs.

Figure 1

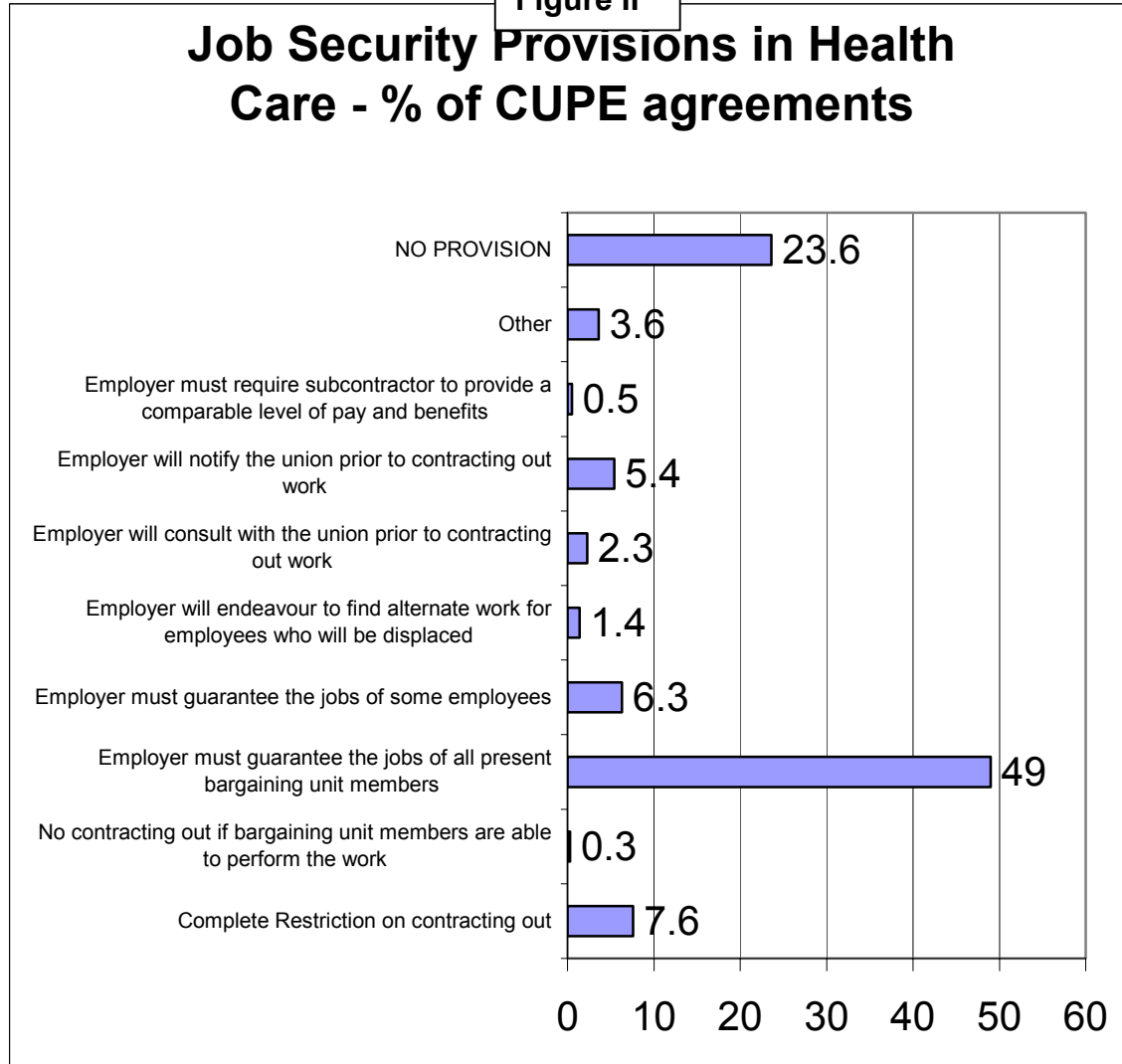


(Source: CUPE SALAD)

Note: CUPE SALAD codes collective agreements based on the best job security clause in the agreement. For example, a CUPE agreement might have a provision that the employer must guarantee the jobs of all current bargaining unit members and a stipulation that the employer must notify the union of any plan to contract out. This agreement would only be coded as the employer guaranteeing the jobs of all present members.

Figure II

Job Security Provisions in Health Care - % of CUPE agreements

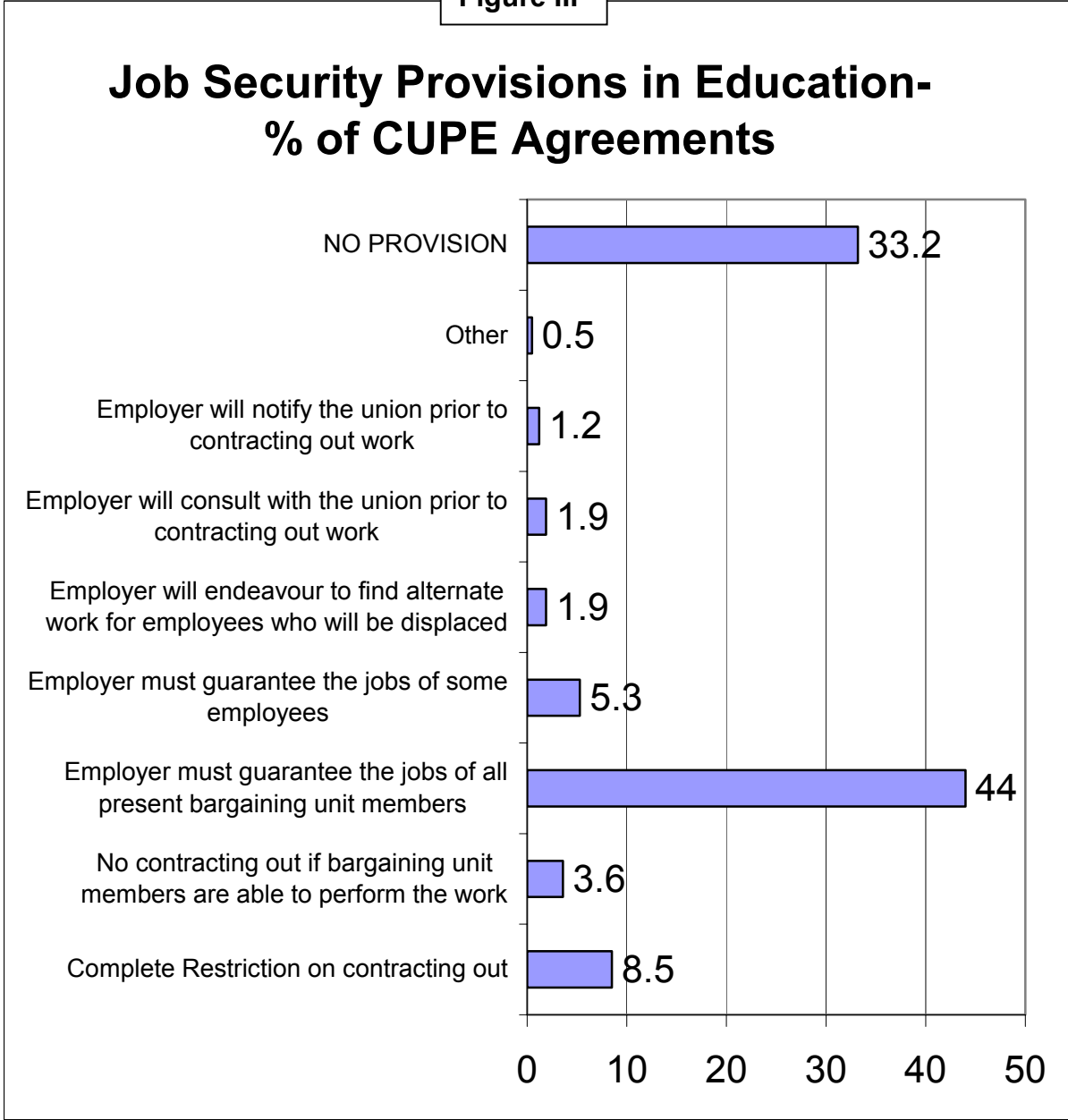


(Source: CUPE SALAD)

Notes:

Health Care refers to all CUPE Homes for the Aged, Health units, Hospital, Hospital sub-contractor, Hospital cleaning service sub-contractor, Hospital food sub-contractor, medical clinic, nursing home, retirement home, nursing home sub-contractor, medical service organization, and ambulance collective agreements.

Figure III



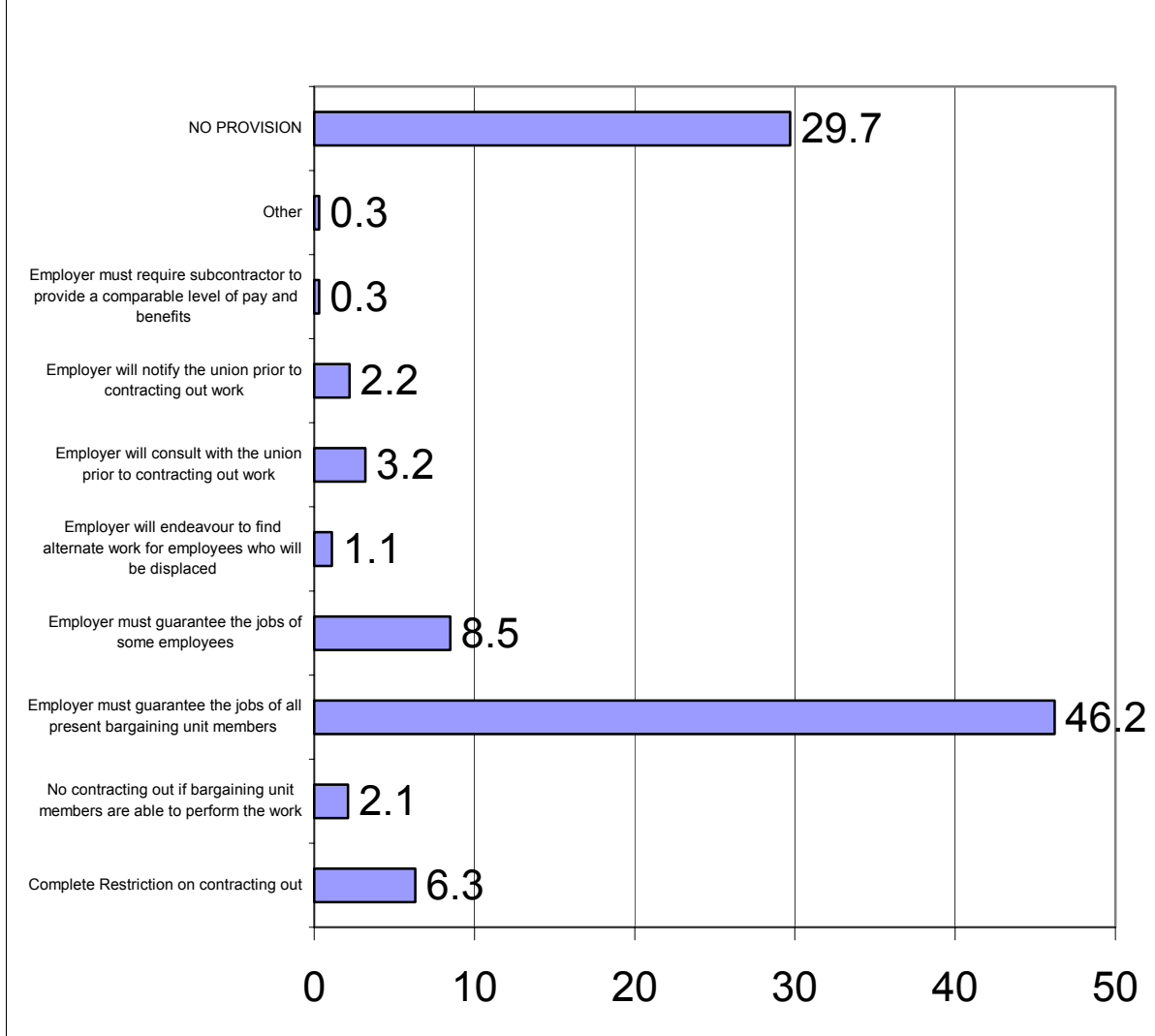
(Source: CUPE SALAD)

Notes:

The education sector refers to all CUPE school board and post secondary collective agreements including student unions and sub-contractors.

Figure IV

Job Security Provisions in Local Municipal Government - % of CUPE agreements

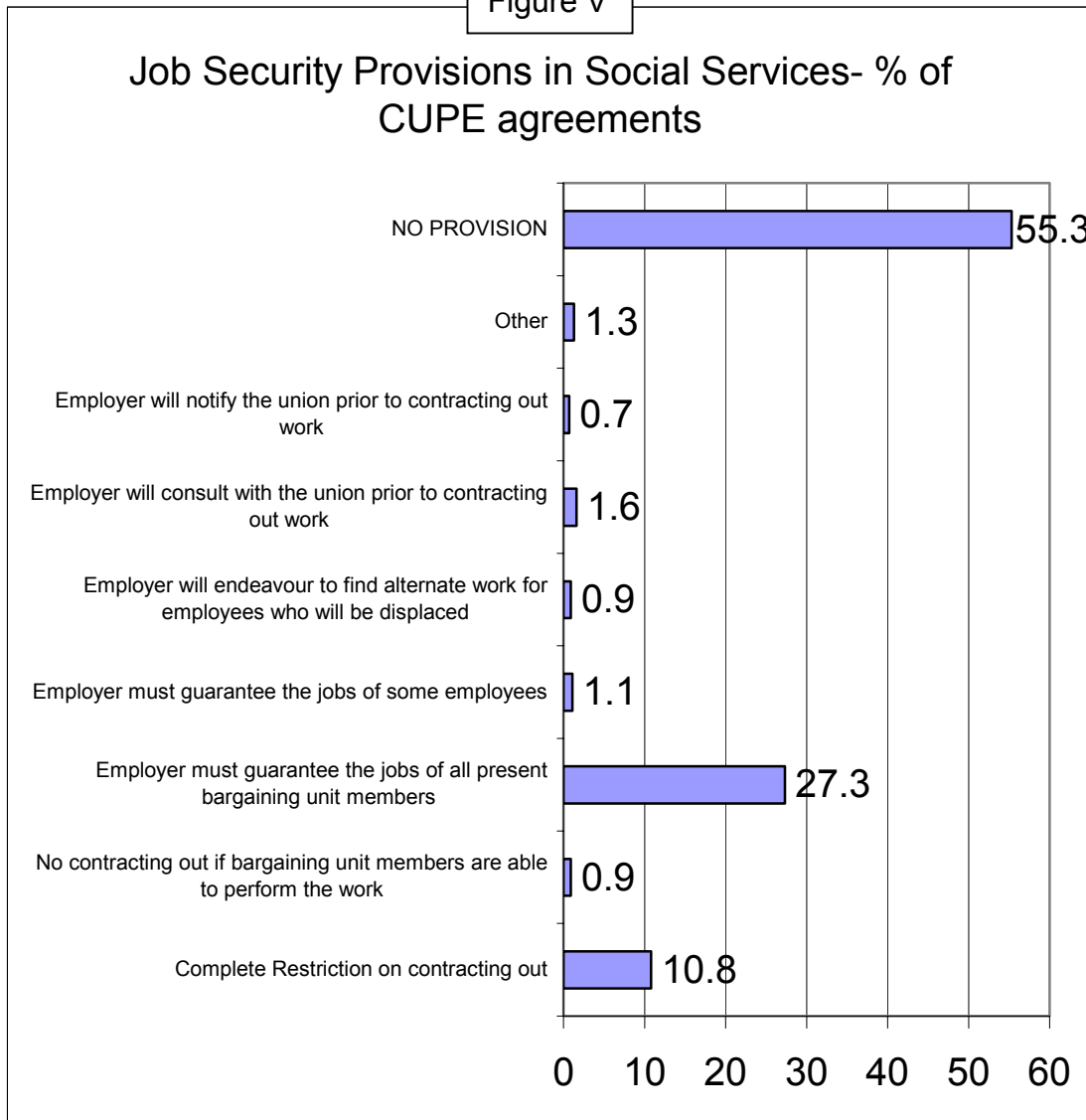


(Source: CUPE SALAD)

Notes:

Local government refers to all CUPE municipal, homes for the aged, health units, transit, police, fire, municipal sub-contractors cemetery, ambulance, animal shelter, day care centre, public library board and electrical utilities collective agreements.

Figure V

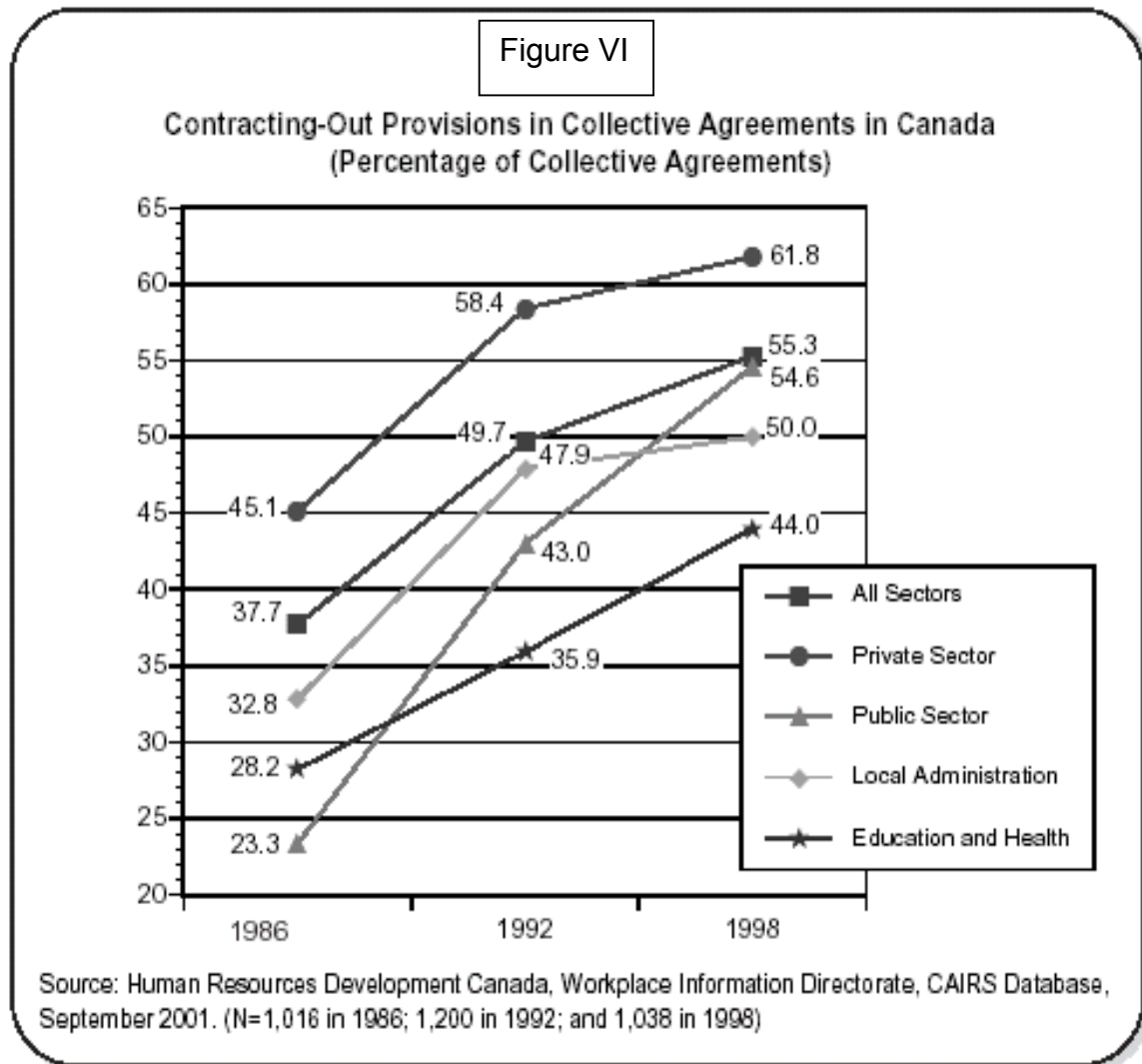


(Source: CUPE SALAD)

Note:

Social Services Refers to all CUPE Home Care, Social Service Agency, Day Care Centre, Children's Aid Society, Association for the Community Living, Children's Treatment Centre, Correctional rehabilitation facility, mentally/physically handicapped centre, Community legal services and Rehabilitation and/or halfway shelter group home collective agreements.

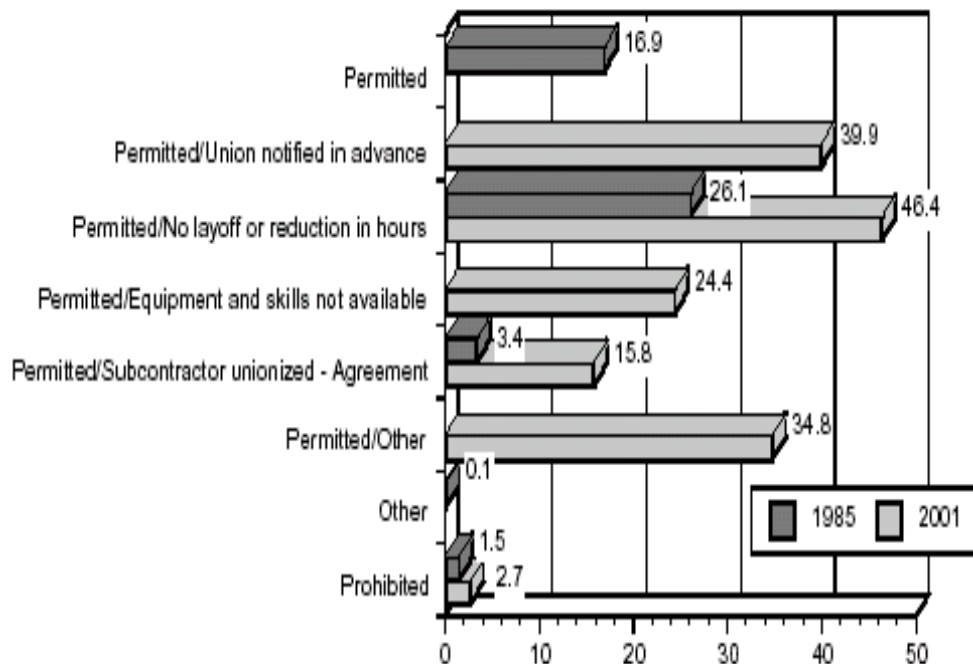
Over the past two decades, Canadian unions have been negotiating provisions in their collective agreements that prevent or reduce contracting out and its harmful effects. The following two charts illustrate an increase in contracting-out provisions in collective agreements for all sectors across the country. Both private and public sectors have placed an increasing focus on language that protects the jobs of their membership.²



² Patrice Jalette and Warrian, Peter, "Contracting Out Provisions in Canadian Collective Agreements – A Moving Target," *Workplace Gazette*, Vol. 5, No. 1, 2002.

Figure VII

Types of Restrictions on Contracting-Out Provisions in Collective Agreements in Canada
 (Percentage of Collective Agreements)



Note: The classification categories of contracting-out provisions changed between 1985 and 2001. For some categories, data are available only for 1985 or for 2001.

Sources:

1985 data from Labour Canada. July 1985. Provision in Major Collective Agreements cover bargaining units of 500 or more employees in all industries (excluding construction). Items can be summed. (N=960)

2001 data from Human Resources Development Canada, Workplace Information Directorate. CAIRS Database, November 2001. Collective Agreements cover bargaining units of 100 or more employees in all industries. Items cannot be summed because they are not mutually exclusive (excluding the prohibition category). (N=632)