

The Call to Arms: Organizing Temporary Migrant Workers in Australia

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ABSTRACT

This paper aims to discuss Australian trade union responses to Visa 457 migrant workers. Since its inception, the Visa 457 scheme has attracted criticism from trade unions. While reflecting historically held attitudes towards migrant workers, the paper describes responses by trade unions to abuses of Visa 457 workers work and citizenship rights that also reflect social justice tenets. Drawing on Polyani and Foucault, it is argued that social justice tenets can be detected in trade union responses towards Visa 457 workers because the conditions under which they entered, worked and lived in Australia between 1996-2007 challenged certain 'moral principles' that are not just embedded in Australian society, but within unions and union officials.

INTRODUCTION

The circumstances under which temporary labour migrants or Visa 457 workers entered Australia between 1996-2007 put them at considerable disadvantage in the labour market. Reflecting the market-driven policies of the Howard Government, the *Temporary Business (long stay) Visa subclass 457 Programme* was the Government's answer to the demands by employer interests for a quick-fix solution to secure requisite skills (Parliament of Australia, 2007; Khoo et al, 2007). Demand for skills had risen dramatically due to the combined effects of Australia's resources boom and low unemployment levels. While supply of skilled labour was undeniably influenced by demographic trends including falling birth rates and an ageing population that was living longer, a major contributor to the skills shortage was the failure by government, employers and workers to invest in adequate skills training and education programmes, particularly in apprenticeships and trade training programmes (Caspersz, 2007a).

To respond expeditiously to employer demand for labour, numbers allowed entry under the scheme increased and the scheme was expanded into lower-skilled occupation areas while also allowing increasing numbers of workers with lower levels of English language skills entry into Australia (Evans, 2008). In addition, the scheme was subject to a 'radical simplification of the rules and procedures governing the temporary entry of skilled workers' in order to fast-track the approval process (Khoo et al, 2007, p483). However, while expediting employer use, the operationalisation of these 'simplified rules and procedures' simultaneously generated a groundswell of oppositional discourse that challenged the 'effectiveness, fairness and integrity' of the programme¹. These oppositional voices did not go unheard. After defeating the Howard government (1996-2007) and assuming office in November 2007, the Rudd-led Labor Government implemented the "Subclass 457 Integrity Review" (or Deegan Review) and has subsequently legislated changes in the scheme under the *Migration*

¹ These terms framed the COAG and JCIM inquiries into the scheme that are described later in the paper.

Legislation Amendment (Worker Protection) Act 2008. These changes are aimed at improving sponsorship obligations, information sharing about the status of Visa 457 workers and expanding the investigative and sanction power of Government to “strengthen the integrity of temporary working visa arrangements” (Jockel, 2009).

In reviewing these events, it is clear that the union movement was at the forefront of generating the groundswell of oppositional discourse to the scheme, as well as architecting many of the changes that will now become law when the Act comes into effect in September 2009. In describing the bases of union engagement in this issue, one official suggested it was reflective of ‘organic unionism’ rather than ‘cheque book’ unionism, meaning that the union’s engagement with these workers was meeting ‘real’ needs related to social justice ideals, rather than for instance, union organizing to increase union membership. While laudable, it is nonetheless the case that the history of Australian trade union involvement with migrant workers has not always reflected these social justice tenets. Thus, while one aim of this paper is to describe trade union responses to the scheme, the additional aim is to theorise shifts in this response by trade unions towards Visa 457 workers. Drawing on Polyani and Foucault, it is argued that social justice tenets can be detected in trade union responses towards Visa 457 workers because the conditions under which they have entered, worked and lived in Australia challenged certain ‘moral principles’ that are not just embedded in Australian society, but also within union officials themselves. The paper draws on analysis of relevant documentary sources and interviews conducted during 2008 with six union officials and twenty Visa 457 workers to discuss these arguments. Included amongst officials were organizers, as well as office bearers of unions. The twenty visa 457 workers were from the Filipino community.

REVIEWING HISTORICAL ATTITUDES

Although trade unionism has traditionally claimed to be concerned with social justice, in terms of migrant workers, trade unions have generally favoured selective, exclusionary and restrictive policies to safeguard domestic worker conditions of employment (Avci & McDonald, 2000, p198). The history of Australian trade union engagement with migrant workers confirms this picture (Teicher, Shah & Griffin, 2000). While immigration and in particular anti-Asian immigration has shaped Australian economy and society since European settlement, union leaders and officials throughout the early period of Australia’s history were just as fearful of the ‘yellow peril’ as their fellow citizens. Framed by the sentiments embodied in the *Immigration Restriction Act of 1901* and the *Contract Immigrants Act 1905*, trade unions expressed antagonism against migrant workers. This was especially against non-European labour through union membership rules that excluded Chinese, South Sea Islanders, Kanakas and Asiatics. In other words, trade unions did not even *want* these migrant workers as members. As O’Donnell and Mitchell (2000, p 21) state, such discriminatory rules were not considered to offend the provisions of the *Conciliation and Arbitration Act 1904*.

It was not until 1952 that these provisions were overridden with the introduction by the Federal government of a statutory right to union membership. This coincided with the extensive immigration policy embarked upon by the government post 1945 to attract permanent settlers into Australia. While ostensibly shifting, the change in attitude amongst trade unions at this time could be described as reflecting a ‘business’ perspective as from the standpoint of Australian unions “any attempt to exclude immigrants would have been suicidal in the context of the massive postwar intake” (Lever-Tracy & Quinlan as quoted by O’Donnell & Mitchell, 2000, p 21). However, while not restricting right of membership, trade unions continued to be

fearful that migrant workers would remain un-unionised and be used to break down working conditions and undermine the union's power (O'Donnell and Mitchell, 2000, p 20-21). That these attitudes limited union response to migrant workers was highlighted in research by Bertone and Griffin who found that even despite the increase in entry of numbers in the postwar period, by 1992 only a third of the unions they surveyed offered specific services (such as translation of information) for migrant workers (1993).

TRADE UNION RESPONSE TO VISA 457 WORKERS

While themes reflective of this historical attitude of unions towards migrant workers can be discerned in trade union responses to the Visa 457 scheme, it is important to understand the context framing these responses. While Australia's immigration policy had always formally provided for temporary workers, this was not true in practice until 1996 when the ability to engage migrant workers as temporary rather than permanent settlers was made more widely available under the introduction of the Visa subclass 457². While not disputing the immediacy of a labour skills shortage that had led to expansion of the scheme to meet requisite labour skills needs, it was the measures introduced to expedite the recruitment of migrant workers that caused the union movement greater concern. These included for instance relaxing the requirement on employers to demonstrate that they were unable to find a suitably qualified Australian resident to fill the position, or that there was a training benefit to Australian workers such as for instance investment by employers in training for the long term in recognition of being able to 'import' their training skills to fill short term needs³. In short, the scheme was squarely focussed at meeting employers' needs, even if this was at the expense of domestic workers status.

It was arguably these aspects of the scheme that triggered trade union responses that could be accused of 'harking back to the past'. The construction branch of the Construction, Forestry, Mining and Energy Union (CFMEU) for instance remained vehemently opposed to the scheme 'to protect jobs for local workers' (Reynolds, 2008). Other unions voiced concern about the effect that specific aspects of the scheme operation could have on working conditions and standards. For instance, the Australian Manufacturing Workers Union (AMWU) expressed concerns about the dominance of Visa 457 workers in certain occupations, which they argued could undermine long term skills development as employers failed to invest in skills training because they had a 'quick-fix' route to skills supply. The AMWU expressed further concern about the effect of this on future funding of apprenticeship training as employers resort to temporary migration to ease labour problems, rather than provide opportunities to up-skill domestic workers (AEGIS/AMWU, 2006). In addition, the ACTU (Australian Council of Trade Unions) President Sharan Burow was quoted as being concerned about the effect on safety arising from inadequate training and workers standard of language skills (ACTU Media Release, 26 June 2007). However, the aspect of greatest concern for unions about the Visa 457 scheme was the Minimum Salary Level (MSL) scheme that set minimum wage levels for temporary migrant workers. The discrepancy between the MSL and comparable wage levels for

² The significance of the scheme is apparent when noting that numbers of primary and secondary 457 visas granted more than doubled from a total of 30 880 in 1997-98 to 64 460 in 2006-07 (Report of the Joint Standing Committee on Migration, August 2007, table 1.1, p 15).

³ Khoo et al (2007) note that in addition to these arrangements, medical checks of migrant workers were also streamlined to fast-track approval processes for applications, and since November 2003, employers could submit visa and sponsorship applications online to, once more, fast-track the approval process.

domestic workers raised grave concerns amongst trade unions that temporary migrant workers could become a cheap source of labour, given that employers no longer had to prove they were unable to find a suitably qualified Australian resident first. In addition, employers met their obligations to migrant workers if they *only* paid the MSL, that is, they did not have to pay above the MSL limit. Thus, the possibility of replacing more expensive domestic labour with cheaper migrant labour was available. This was exacerbated by the fact that there was no quota placed on employer sponsorships under the scheme (Caspersz, 2007a).

However, while illustrating historically held attitudes by trade unions towards migrant workers, it was some of these same trade unions that generated the groundswell of oppositional discourse that has eventuated in changes to the scheme that will clearly advantage Visa 457 workers status. It is argued that while trade union response in sponsoring this groundswell was aimed at changing operational aspects of the scheme to safeguard working conditions, their discourse and actions became clearly associated with social justice tenets of 'fairness and integrity', both of which came to characterise the rhetoric used to dissuade government from continuing the scheme's operation in its pre 2007 form.

To mobilise this oppositional discourse, trade union action was targeted at two levels. The first was at a public level whereby trade unions were at the forefront of exposing infringements and exploitation of employers and migration agents of Visa 457 workers. These included employers charging costs to cover sponsorship charges, high rents for overcrowded accommodation, deducting costs for use of employer-provided transport and equipment (tools), as well as arrangements such as averaging working hours so as to avoid paying penalty rates (Caspersz, 2008). The effectiveness of this public-level campaign was evident. As early as July 2006 the *Council of Australian Governments (COAG)* asked the *Ministerial Council on Immigration and Multicultural Affairs (MCIMA)* to review the programme's operation to respond to concerns such as these. However, given the 'ongoing concerns about the abuse of the visas' (JSCR, xxiii), a *Joint Standing Committee on Migration* was formed during the period of the Howard government in June 2007. In addition to these, various industry sector 'reviews' were also held into the operation of the scheme. These included reviews by the trucking industry, agricultural industry, the on-hire recruitment industry and queries about the deployment of visa 457 workers in the meat industry.

The oppositional discourse generated by these events stirred government into action. For instance, in 2006 the then Minister for Immigration and Citizenship announced funding of 'investigative mobile strike teams' to ensure employers were complying with their visa 457 responsibilities, paying correct MSL salary levels and ensuring that workers were not being disadvantaged in labour agreement negotiations (Kinnaird, 2006). The Minister also introduced amendments to the *Migration Amendment (Sponsorship Obligations) Bill 2007* as an amendment to the *Migration Act 1958* to allow for new enforcement and sanction provisions by way of civil penalties against employers found in breach of their obligations. These were never promulgated because the Howard government lost office in 2007. Nevertheless, upon assuming office the Rudd government almost immediately announced what is referred to as the Deegan Review into the scheme's operation. The pressure that continued to be placed on government was clear when following the release of the Deegan reports, Rudd-Labor Minister Evans established a Skilled Migration Consultative Panel to provide advice on the implementation of the Deegan recommendations. Along with government, employer and industry sector representatives, the ACTU was also given membership of this panel.

Notwithstanding the vibrancy and effectiveness of this level of response, trade unions also directed their response at another level: that is, in facilitating social justice tenets by assisting Visa 457 workers to attain and safeguard their rights. While interviews with officials from other unions demonstrated a similar willingness to assist Visa 457 workers (Interview ETU Official, September 2008), AMWU union response is particularly illustrative of this level of union response. The union deployed internal union organising resources to actively assist Visa 457 workers in managing employer cases of abuse both in and outside the workplace. At the workplace, union organisers intervened to ensure Visa 457 workers were receiving due entitlements and had access to multilingual information about health and safety matters. Union organisers assisted workers to find alternative employer sponsors if necessary. In one case, organisers actively intervened with the Department of Immigration and Citizenship to try and prevent a worker who had lost employer sponsorship from being deported. The union also assisted workers in non-work related matters such as mediating with employers who were providing sub standard accommodation to workers while charging exorbitant prices. In addition, the union took an active role in providing information to workers. For instance, the union organised meetings at which Visa 457 workers could put questions about visa and other issues to Parliamentary officials as well as officials from the Department of Immigration and Citizenship (July 2008). Significantly however, the union actively assisted groups of Visa 457 workers to organise themselves. This was evident at a meeting organised by the union with Visa 457 workers from South Africa where it became clear that it was through the union that these workers had formed a solidarity group that offered each other assistance and support (July, 2008). Union action in this regard was also visible in the assistance provided by the union to Visa 457 workers from the Philippines to form their own civil association that was aimed at assisting workers regardless of whether they were union members (Caspersz, 2008).

THEORISING TRADE UNION RESPONSE

In theorising trade union response to visa 457 workers, it is suggested that the Polyanian concept of embeddedness (Polyani, 1944) is particularly helpful. Polyani used this to refer to the principles within society that influence the social and political order of the day (Munck, 2004, p 252). Polyani illustrated this concept when arguing that it was because certain 'moral' principles were embedded in nineteenth century society that a 'double movement' occurred during the Industrial Revolution: "while the market spread and all around it was commodified, society at the same time protected itself through 'a network of measures and policies [that] was integrated into powerful institutions designed to check the action of the market relative to labor, land and money" (Munck, 2004, p 252).

In reviewing the development of Australia's system of employment relations, it becomes clear that from the time of European settlement Australian governments of all persuasions remained committed to ensuring that the system operated in accordance with principles of social democracy. Liberals such as Australia's second Prime Minister Alfred Deakin demonstrated his commitment to social democratic ideals when introducing the *1904 Conciliation and Arbitration Bill* (quoted by Kelly, 1992, p 7): "This bill, marks in my opinion, the beginning of a new phase of civilisation. It begins the establishment of a People's Peace...which will comprehend necessarily as great a transformation in the features of industrial society as the creation of the King's peace brought about in civil society....".

Thus, drawing on Polyani, while 'the market spread and all around it was commodified', the embeddedness of these 'principles' in Australian society triggered a double movement which acted to protect Australian society through "a network of

measures and policies [that] was integrated into powerful institutions designed to check the action of the market relative to labor, land and money” (Munck, 2004, p 252). This ‘network’ came to be known as New Protection which resulted in the formal linking through legislation⁴ of protected manufactures and arbitrated wages whereby local manufacturers were granted tariff protection, on the understanding that this would enable them to pay higher wages and protect jobs for the growing number of urban workers (Plowman, 1992). The key mechanism by which the state affected this process was the system of compulsory conciliation and arbitration under which unions were ceded formal recognition as a bargaining agent representing the interests of Australian workers. New Protection became the greatest institutional monument to the Australian ethic of egalitarianism because the overall effect was to ensure that the wealth created by Australian capitalists was effectively re-distributed to Australian workers. For better or worse, New Protection led to the characterisation of Australian society as one wherein there existed symmetry of bargaining power between government, employers and unions: in Polyanian terms, New Protection reflected ‘certain moral principles’ of social democracy and pluralism. The fact that this system remained almost intact until 1983 is illustrative of their ‘embeddedness’ in Australian society.

It is without doubt that the period of the Howard government challenged both the thrust of these moral principles as well as their continued embeddedness in Australian society. This was particularly in relation to the commitment to pluralism and recognition of unions in the employment relations system. While the withdrawal of state support for unions had begun with amendments to the *Industrial Relations Act 1993*, even before he was elected as Prime Minister in 1996, Howard had made it clear that de-collectivising the regulation of work would be an essential component of his government’s agenda (van Barneveld and Nassif, 2003). The passage of the *Workplace Relations Act, 1996* (WRA 1996) was significant in achieving this aim. Along with increased restrictions on union right of entry into workplaces, the *WRA 1996* allowed for individual contracting between employers and individual employees under what became known as Australian Workplace Agreements (AWAs). Very significantly, unions were excluded from the processes of AWA ratification. *WRA 1996* also enabled non-union agreements to be determined between a company and its employees (s170LK) and allowed for the registration of enterprise unions. Though figures showed union density was already in decline⁵, Peetz (1998) demonstrated that the restrictions imposed by the *WRA 1996* contributed significantly to these post-1996. The process of de-collectivisation was compounded when upon attaining control of both houses of Parliament in 2004, the Howard government introduced *Work Choices* which as Richard Marles ACTU (Australian Council of Trade Unions) assistant secretary at the time noted, was ‘laced with a good deal of hatred for the trade union movement’ (2005). Not only was the Howard government’s anti-union stance reflected in further restrictions on union right of entry and representation in industrial matters such as unfair dismissal (see Teicher et al, 2005 for an overview of these changes), *Work Choices* allowed individual contracting (and

⁴ Other significant legislation was the Customs (Agricultural Machinery) Tariff Act 1906, the Excise Tariff (Agricultural Machinery) Act 1906, Sugar Bounty Act 1905, the Excise Tariff (Spirits) Act 1906, the Australian Industries Preservation Act 1906, the Excise Procedure Act 1907, the Bounties Act 1907, the Custom Tariff Act 1908, the Excise Tariff Act 1908, and the Manufactures Encouragement Act 1908 (Plowman, 1992, p52).

⁵ while the proportion of the Australian workforce covered by unions grew from 6% to 52% (Bray et al, p202-203) by August 2006 only one in five employees were trade union members in relation to their main job, and only 20 per cent of Australian employees are now union members (ABS, 2007).

individual bargaining) to override union bargaining (and collective bargaining) thus marginalising unions even more from representing Australian workers.

Again, referring to Polyani, it would appear that for unions, the period of the Howard government had achieved what Munck describes as Polyani's 'double movement' in reverse, "with the market successfully defending its prerogatives against what it saw as the encroachments of society and politics" (2004, p 252). Given this context, it is therefore not surprising that trade union response was cautious about a scheme such as Visa 457 that held the potential to further minimise their position in Australian employment relations. That they were justified in concluding this was reinforced from interviews with Filipino migrant workers revealing that, while not being forbidden, migration agents and employers actively discouraged migrant workers from joining Australian unions (June, 2008).

However Polyani suggests that it is the very challenge to these moral principles that triggers what he refers to as a 'counter-movement'. Silver (2003, p 20) defines this as "... the backlash resistances to the spread of a global self-regulating market, particularly by working classes that are being unmade by global economic transformations as well as by those workers who had benefited from established social compacts that are being abandoned from above". It is argued that trade union response to Visa 457 workers drawing upon social justice tenets can be viewed from this perspective. That is, whilst attempting to minimise and even annihilate through regulation and legislation 'certain moral principles' associated with social democracy and pluralism that had given unions a formal role in the system of Australian employment relations; the Howard government was unable to extinguish these from the moral character of Australian society or from the moral character of trade unions and individual unionists. Understanding this micro level of motivation however takes us away from Polyani and towards Foucault.

In *The Subject and Power* Foucault proposes that instead of viewing power as associated with the legitimacy of rule or as a force possessed by certain people (Gordon, 1991), what characterises power is that it brings into play relations between individuals or groups, that is 'society' (FOUCAULT, 1982, p 786). Within this analysis, the capacity for movement building thus lies at the level of the self. That is, given its *relational* nature everyone, regardless of class and other ascriptional ties thus has the power to act or reclaim 'effective bargaining power' (Silver, 2003, p 18) rather than await a destiny carved by the response from 'above' to the 'havoc' of the market. However, while characterizing society, Foucault went on to say that oppositional discourse is triggered when the exercise of these power relations transgresses the ethics by which the self comes to know the self: again, quoting Foucault, '(a) the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom' (1982, p 790). In noting this, it is important however to explain Foucault's concept of ethics. Rather than being seen as a code or collection of values and rules of action arising through mechanisms such as the family, educational institutions or the Church, Foucault's ethics was the study of practices, techniques and discourses by which the self comes to know, decipher and act on; in other words how the self governs the self (O'Farrell, 1989, p119-120). That is, through 'ethics' the individual develops an internal guide by which the self regulates the self. What Foucault showed us through his analyses is that while the exercise of power relations generated a consensual ethical framework in individuals that was necessary to maintain social order, at the same time, it was when the self felt that this ethical framework was transgressed that resistance against power relations was generated.

Thus from the perspective of this paper, interviews with union officials and workers confirm that it was this assault on the 'self's' conception or ethics of what constituted dignified working and living conditions that motivated responses by trade unions and individual unionists in accordance with social justice tenets. Officials for instance repeatedly described instances of employer abuse of workers as 'outrageous' while themes of 'fairness' and "equity' regularly arose in interviews with officials who felt that, while Visa 457 workers may not be union members, the union nonetheless had a responsibility towards them (December, 2008). The tenor of these responses was best captured in a quote from one unionist who described his response to Visa 457 workers status as a 'call to arms' (July, 2008).

CONCLUSION

While one aim of this paper has been to describe trade union responses to visa 457 workers, it is argued that through contextualising and theorising these responses (albeit summarily), some insights for further explorations in this area can be highlighted. One would be to engage in more extensive investigation of the relationship between trade union responses to Visa 457 workers and the project of union revitalisation. The work of Clawson (2003) highlights the possibilities that migrant worker mobilisation has held for the revitalisation of individual unions in the US as well as the union movement in general. The growing phenomenon of labour migration globally increases the urgency of the union movement to engage in an analysis such as this⁶. Imbricated in this analysis then is the requirement for a greater in-depth empirical investigation of the contribution of Visa 457 workers to the ACTU's 2007 election campaign which, as analysts have noted, was a significant feature in voting the Howard government out of office (Spies-Butcher & Wilson, 2008). While the passage of time may prevent an analysis of 2007 events, the impending federal election creates an urgency to engage in such an analysis. While a potential maelstrom of issues, it is suggested that while some sectors of the trade union movement may not wish to engage in analyses such as these, for other sections they regard them as critical to their future sustainability.

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⁶ The rapidly growing number of countries either sending and receiving temporary migrant labour confirms labour migrants' status as global rather than just local workers. The ILO estimates that of the 175 million international migrants in 2000, 86 million were economically active, and in 2005, formal remittances by migrant workers were estimated at US\$160 billion and informal remittances at US\$250 billion (ILO, 2006).

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Recasting transnationalism: new models of organising in the context of the internationalisation of the building and construction industry's workforce

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Abstract

Throughout much of the advanced industrial world the building and construction industry has historically been extremely reliant upon migrant workers to meet industry labour force needs. Unions, in the course of protecting wages and conditions, have consequently had to confront the challenge of organising among migrant workers. However, this reliance upon migrant workers has undergone a radical transformation with greater resort to temporary and irregular migrant workers and this has presented unions with a quite different industrial challenge. Considered in the broader context of the widespread embrace of labour market flexibility and the state engagement with neoliberal oriented labour market policies, this study charts the different dimensions of the internationalisation of labour force formation across the industry, on the one hand, and the shifting terrain of union strategies, national and international, to engage and organise the industry's global workforce, on the other.

Introduction

The internationalisation of capital has helped define the era of globalisation, and the critical underpin to this has been the raft of neo-liberal policies pursued by governments throughout the world that have freed commodities, money and capital from national regulatory constraints. In a range of ways, the uneven economic effects of trade liberalisation, the deregulation of cross-border financial flows and the international circulation of capital have had a catalytic impact on the international movement of people. Resurgence of international labour migration in particular has added a fourth pillar to the era of globalisation. State regulation of people movement throughout much of the world has been a relatively more qualified and instrumental process. Migration policy has been mainly designed to attract migrant workers to meet specific labour shortages and/or reduce labour costs, and placed greater emphasis on the employment of temporary migrant workers.

The different elements of this globalisation story have figured prominently in the historical transformation of the building and construction industry. The internationalisation of the industry has continued apace as the corporate giants have expanded their territorial presence. Accelerated by means of mergers and takeovers, the construction corporations have concentrated on financing and project managing construction and contracting out most of the physical work of building through extended multi-layered systems of sub-contracting. The internationalisation process has also been consolidated as increasing numbers of the specialist service providers in the industry, such as architectural design and other subcontractors, have also extended their operations beyond national borders.

Another critical feature of the globalisation of the industry has been the extraordinary reliance on international migration to meet labour needs, and probably more so than any other industry. The internationalisation of the major construction companies and specialist service providers and contractors provided the impetus for the increased international deployment of professionals and related project and site managers, but there is also much greater recourse to meeting trades and low skilled labour needs through the employment of migrant workers. There is nothing new in the industry's

reliance upon migrant workers. Throughout much the world building and construction has long been an industry in which a disproportionate number of migrant workers have secured work. But, whereas in the past migrant labour was associated with resettlement, the industry's reliance upon trades and low skilled migrant workers is now much more framed by the deployment of temporary migrant workers.

The different ways in which the globalisation story has been played out in the transformation of the building and construction industry has presented major challenges for organised labour. More particularly, the internationalisation of the industry's workforce, and its association with the prevalence of temporariness and which in turn is underscored by large numbers of undocumented migrant workers, has forced industry unions and international union federations to reappraise how to respond to the challenges of globalisation and an increasingly transnational work force. Before turning to examining the array of responses, it is constructive to outline some of the key aspects of the organisational and structural transformation of the industry and how this has contributed to the internationalisation of the industry's labour force. In doing so, the import of the industrial and regulatory transformations wrought by neo-liberal policies through state initiatives to deregulate, or rather re-regulate, labour markets to promote greater flexibility in employment practices and the organisation of work, will be briefly mapped.

1. Structural and organisational transformations and the internationalisation of labour market formation

The building and construction industry has been at of the forefront of the recent restructuring of global capitalism. The major corporate construction companies have consolidated their dominance through takeovers and mergers and by extending their global reach. In large measure, this has been organised around a shift in the focus of enterprise to concentrate on organising finance, either independently or in partnership with financial institutions, and project oversight. The corollary of this financialisation of capital has been diminished direct engagement in construction work. By means of tendering and outsourcing to sub-contractors, the majors have sought to strengthen their competitive position. Elaborate and extended multi-tiered sub-contracting chains now characterise much of the industry, with the consequence that the majors invariably employ very few if any construction workers (Center for Construction Research and Training 2008; IFBWW 2005; ILO 2001a; Druker & White 1996; Linder 1994). Most direct employment of construction workers is now organised by subcontractors.

The internationalisation of the industry has been reinforced with the increasing international orientation of specialist service providers. More recently, there are increased instances of subcontractors engaging in cross-border contract work. In contrast with the examples of Japanese subcontract firms being summoned by major construction companies, which was a feature of their expansion into East and South East Asia over the 1980s, there is a more independent momentum driving cross-border construction work (ILO 2001b; Fellini, *et al.*, 2003; Woolfson & Somers 2006; Weis & Clarke 2004; Cyrus 2004; Anderson & Rogaly; Rath 2002).. This is especially evident in Europe, for instance, with subcontractors extending the geographic reach of their work and the provision of labour, under the terms of the Posted Worker directive, and this process has accelerated with the accession of Eastern European countries (Balch, *et al.*; EMCC).

The multi-tiered subcontracting system has intensified competitive pressures and compelled to explore ways of reducing labour costs which has contributed to the internationalisation of the industry's labour market in several ways. In some sectors,

and especially in residential construction, recourse to extended subcontracting arrangements as a cost-cutting strategy has given rise to increased self-employment. Recourse to 'bogus' self-employment subcontracting arrangements has been one corollary because such arrangements provides a means of evading some of the associated costs, such as insurance and social security, with the direct employment of labour. 'Bogus' self-employment arrangements have provided a pathway for cross-border engagements, including in those in which there is a comparatively low ratio of migrant workers to indigenous workers.⁷

Another feature of the industry linked to this industry structure has been the comparatively high rate of 'undeclared' work in construction (Reyneri 2001; Cremers 2006). Cash-based transactions are a significant feature of the industry. Organised on the basis of paying workers cash-in-hand to avoid tax, insurance, social security and other obligations, 'undeclared' work is reflective of the competitive pressures in the industry that is reported in advanced, developing and transition economies alike (Schneider & Enste 2002; European Employment Observatory 2004).

The organisation of work on cash-in-hand bases has gone hand-in-hand with the increased casualisation of work and irregular employment practices which, in building and construction, are most typically characterised by day-labour hire arrangements. Industry recourse to day labour appears to have increased, in part because this employment practice has been facilitated by labour market deregulation programs, and in part as a cost-cutting strategy by an industry confronting increased competitive pressures and/or downturns in construction activity. Day-labour hire arrangements have injected a much greater degree of flexibility in industry employment practices as well as enabling employers to evade minimum employment and remuneration standards and other obligations such as taxation and insurance and/or social security requirements.

'Undeclared work' and day-labour employment arrangements have proved critical ingredients in the internationalisation of the industry's labour force. While many indigenous workers are engaged on these terms, many migrant workers are drawn into such employment and the arrangements have been particularly important in providing opportunities for undocumented migrant workers who, because they generally do not have to provide evidence of their employment status, can be engaged on a cash-in-hand and/or casual basis (Gill 2001; Valenzuela, *et.al.*, 2006; Kochhar 2008).

The extended multi-tiered subcontracting system and associated arrangements has also impacted upon labour market formation in terms of the industry's capacity and employers' inclination to invest in skill formation. The competitive pressures, the smaller scale of enterprises, self-employment, the relatively high rates of attrition among subcontractors as well as waged workers, and the significance of undeclared work has reduced the level of industry commitment to investing in construction skills (EMCC 2005; Arnholtz & Anderson 2007; Clarke 2007; Weis & Clarke 2004; Druker & White 1996). Similarly, the more precarious character of employment has acted as a disincentive diminishing indigenous workers' interest in a career in building and construction. Thus, the increased recourse to import skills and recruit lower-paid migrant workers is partly a response to this structural problem as well as a factor that has reinforced the internationalisation of industry labour market formation.

⁷. This is the case, for instance, in the Netherlands where Dutch employment agencies have specialised in recruiting and placing self-employed construction workers in France and Germany (European Employment Observatory 2004).

State labour market policies have also been a contributing factor in this internationalisation process as governments have sought to counter labour supply and skill shortages through migration policy. Most governments policies have been characterised by two quite distinctive emphases: supporting the immigration and resettlement of professionals and highly skilled workers, on the one hand, and adopting measures that permit access to lesser skilled workers on a temporary basis. Temporariness has become perhaps the most significant defining feature of the industry globally, not only as the result of being officially sanctioned and regulated, but also because of the extent to which it is *de facto* endorsed, and it is the absolute magnitude of 'temporary' labour migration and its link to irregular employment, or subterranean and unregulated work, that has presented organised labour with such complex challenges.⁸ The global financial crisis has amplified these challenges as unions seek to defend employment opportunities and as workers in those countries worst hit by the crisis turn to migration in search of offshore employment.

2. *Confronting the challenge of globalisation*

The structural transformations in building and construction have had a catalytic effect in reshaping labour market formation and industrial relations regimes and employment practices in the industry (ILO 2001b). The globalisation of the building and construction industry has presented organised labour with a quite different set of challenges to those experienced in most other sectors. Whereas most other employment sectors have been affected by the internationalisation of capital, the distinctive feature of building and construction is that organised labour has had to confront the opening up of local and national labour markets to international migration.⁹ Unions have had to rethink an hitherto primarily parochial oeuvre because, in contrast to the conventional wisdom that "there is no all encompassing global labour market," labour force formation in construction has become an integral feature of the globalisation of the industry (Harrod & O'Brien 2002: 13). This

⁸. The construction boom in the Gulf states that followed the oil price hike of the mid-1970s set in train a pattern of offshore recruiting that became more globally pervasive especially over the course of the 1990s. Advanced industrial countries as diverse as the United States, member countries of the European Union, especially following the collapse of the Soviet bloc and the accession of former Eastern European states, and Singapore and some of developing economies of South East Asia and East Asia, became reliant upon the employment of migrant workers to meet labour shortages in construction. Construction industry labour needs in Japan, South Korea and Taiwan have also been partially met through the employment of migrant workers. Reliance on 'temporary' migrant workers is heavily contingent upon 'undocumented' workers. The construction industry is, for example, the most significant employer of the 12 million 'illegal' migrant workers in the United States, and a substantial proportion of the Hispanic workers who account for 12% of the industry's workforce are undocumented (Kochhar 2008). Russia has drawn on substantial numbers of workers from the former Soviet satellite states for construction work, and industry analysts estimate that 40 % of the five million migrant workers are engaged in construction a substantial proportion of whom are undocumented because of the difficulty in securing written employment contracts (Human Rights Watch 2009).

⁹. The internationalisation of the health sector's labour force is an obvious exception.

reflection has carried prompted unions to explore internationalist and transnational approaches to engaging and promoting the interests of construction workers.

The challenge presented by the internationalisation of the industry's labour force has not been unproblematic, especially given that the deployment of migrant workers is often driven by employers' efforts to push down wages and conditions or because it has been bound up with the growth in irregular employment and increased significance of undocumented workers. Organised labour continues to campaign against recourse to migrant workers to undercut wage.¹⁰ In many instances, the instinctive response of unions to the influx of undocumented workers has been to press states to better enforce and police immigration and employment laws and to expel 'illegal' migrant workers. Campaigns have also focused lobbying governments to tighten immigration policy to reduce and regulate the inflow of migrant workers.¹¹ While not always initiated by unions, anti-immigration sentiments have become quite pronounced over the course of the current economic crisis as has been illustrated by anti-immigrant protests in Russia and Europe.

One of the consequences of such defensive approaches was that efforts to promote the interests of migrant workers tended to be initiated by civil society groups, including non-government organisations, migrant support groups and faith-based groups (Piper 2005; Rosewarne 2007). Such groups took the lead in lobbying support for the ratification of the United Nations *Convention on the Protection of all Migrant Workers and Members of their Families*, which eventually came into force in July 2003. This endeavour also turned attention to how few countries had ratified the 1949 ILO Convention on *Migration for Employment Convention*. These initiatives provided impetus for the formation of non-industry specific migrant unions. Some were set up in the workers' countries of origin in order to promote the rights of migrant workers in those countries in which offshore employment was concentrated. A number of non-industry specific unions were also formed in countries in which migrant workers were engaged, often with the support of civil society groups.

Partly as a result of these efforts and the political momentum that these engendered within the ILO and other multilateral forums, there was a discernible shift in the attitude of construction unions towards migrant workers evident in the latter part of the 1990s. The overtures that civil society groups initiated with unions became an important catalyst in this shift. This also coincided with shifts in thinking about the organising role of unions, especially as some unions began to explore the organising possibilities of social movement unionism. This reorientation was evident as some tendencies within labour movements in North America and Europe reflected on the industrial consequences of their failure to engage migrant workers, irrespective of their visa status, and set about organising among migrant workers. As a first step, some unions have petitioned for amnesties against the arrest and deportation of unauthorised workers, and for regularising migrant workers' employment status. Others undertook to organise among migrant workers, engaging in outreach programs to recruit workers as members (Hurd, Milkman and Turner 2003; Wrench 2004; Cyrus 2004). There has been considerable attention directed to engaging migrant workers in local unions. This has often been linked to campaigns against

¹⁰. The campaign by construction workers to block the employment of migrant workers by Total to construct the Lindsey oil refinery in East England earlier this year and the proposed balloting of union members by UNITE to launch industrial action in opposition to the wider employment of migrant workers on energy construction sites are indicative of this.

¹¹. This was a defining feature of AFL-CIO policy.

discriminatory employment practices, such as the 457 visa policy in Australia that sanction the right of employers to pay temporary workers less than industry minimum standards.

There have been a number of novel initiatives to establish unions specifically designed to represent the particular interests of migrant workers. The formation of the Korean Federation of Construction Day Labourers Union in the late 1990s, while not specifically formed to support migrant workers, provided a vehicle for engaging and supporting migrant workers, and there was a similar movement in Japan (Gill 2001). A more noteworthy development involved the Laborers' International Union of North America. With a quarter of its members immigrant workers and the desire to extend its reach into migrant communities, the union developed a range of innovative strategies to recruit irregular construction workers engaged as day labour, including the National Day Laborer Organizing Network, organising on street corners and in day labour centres.¹² Germany's construction union, the IG Bau, founded the European Migrant Workers Union in 2004 to provide representation for temporary posted and seasonal workers.

These initiatives have reflected a shift from an exclusive, and excluding, orientation to a more inclusive approach within national labour movements. Some have entailed cross-border liaison with civil society groups or unions in workers' countries of origin. The construction union led campaign in Norway, conducted in partnership with the IOM and the Polish Embassy, to empower Polish construction workers is a striking illustration of this. In the process, the organising strategies have become decidedly outward looking in their focus. Two emphases in this more inclusive and expansive orientation have been discernable: internationalist and transnationalist.

Perhaps the more significant has been the way in which international union federations have sought to project a more forceful internationalist strategic orientation. The impetus for this was partly the reaction to the increasing international attention directed to the plight of migrant workers, and particularly temporary migrant workers, over the course of the 1990s, and especially as a result of the work of the International Labour Organization campaigning for migrant worker rights and the exposés of abuses in the construction industry.¹³ This in turn brought a sea change in thinking among the international union confederations – both the ICFTU and its successor the IFTU and the World Federation of Trade Unions – and several regional groupings. Migrant worker rights became a focus of attention, and through engaging with civil society and human rights groups, the labour movement broadened its focus from union rights and issues of freedom of association and minimum labour standards to a human rights-based approach, and in the process, became more prominent in debates on international migration and migrant worker rights.

As this engagement was consolidated, so it also became more industry focused. International union federations launched programs to give voice to migrant worker

12. By the mid-2000s LIUNA's industrial focus was so much at odds with the AFL-CIO's Building and Construction Trades Division, which had lobbied against extending temporary migrant employment schemes, the Union disaffiliated from the AFL-CIO and redirected the funds saved to considerably expand its organising campaign among migrant workers.

13. The country reports published by Human Rights Watch stand out in this respect although there are a host of such reports, including those produced by the International Labour Organization.

rights. Both the two international construction union federations, the BWI (the Building and Wood Workers International which is affiliated with the International Trade Union Confederation) and the UITBB (the Trade Union International of Workers in the Building, Wood, Building Materials and Allied Industries, which is affiliated with the World Federation of Trade Unions) embraced the cause of migrant worker rights as key strategic focuses. Each has worked with affiliates and committed resources to organising and recruiting among migrant workers. They have worked actively to effect a change in approach among those affiliates that hitherto have been resistant to engaging migrant workers, and this strategy has proved reasonably effective in a number of countries in which construction unions are now actively working to promote migrant workers' rights and negotiating greater transparency in setting minimum labour standards for both migrant and indigenous workers.

The projection of the internationalist orientation has also entailed extending into those locales where there has been a weak or no union presence. The BWI has, for instance, launched organising campaigns among different migrant groups employed in the Russian construction industry. Both the BWI and the UTIBB have lobbied the Gulf states to improve employment conditions and to lift restrictions on the organising rights of migrant workers. They have also set aside their organisational differences and conducted joint forums to promote the cause of migrant workers.

The internationalist outlook has not been restricted to the global federations. Met by government intransigence on concessions regarding migrant worker rights, some national construction unions in Europe have pressured major construction companies to agree to international labour standards and endorse global framework site agreements that comply with international minimum standard and thus project a union presence into offshore construction sites. Construction unions have also lobbied multilateral institutions, such as the Asian Development Bank, to endorse core labour standards when providing financial aid. Several national unions have committed resources to supporting efforts to organise among migrant workers in locales where there has been little or no interest in the rights of migrant workers.¹⁴

There has also been a qualitative shift in this global organising focus that has embedded an engagement with transnationality in the internationalist project. Some of the efforts to engage migrant workers and improve migrant worker conditions have been underpinned by establishing transnational organising exchanges and forging cross-border agreements between unions in labour-sending countries and labour-recipient countries.¹⁵ The proposal to promote mutual recognition of workers' union membership is being canvassed as a result of the construction federations' appreciating the transformation in labour market formation. With temporary labour migration such a significant feature of the globalisation of building and construction, the organised labour movement has had to come to terms with providing mechanisms that enable union membership and which accord with the global

¹⁴. For example, Finland's Trade Union Solidarity Centre provided resources to support an organising campaign among migrant workers from Zimbabwe and Mozambique in South Africa. The BWI has launched a number of recruiting campaigns among migrant workers in Russia.

¹⁵. Numerous bilateral agreements have been negotiated among BWI affiliates across Europe. Agreements have been struck between the Taiwan affiliate NFCCWU and the Philippines NUBCW to secure minimum rates and entitlements, and between Nepalese unions and the Malaysian Trade Union Congress.

circulation of labour. This has prompted the embrace of transnationality as an organising focus. It has also translated into a strategic agenda that has entailed strengthening organisational links among affiliate unions, most concretely through regular regional and international conferences dedicated to addressing migrant worker concerns and to normalising the place of migrant workers in the labour movement. As well, the engagement with transnationality has contributed to efforts aimed at consolidating links with civil society groups in migrant workers' home countries and in the countries in which they are engaged is also contributing to this transnational orientation.

Conclusion

The globalisation of the building and construction industry has been underpinned by structural transformations engendered the internationalisation of capital, shifts in the business focus of the major construction corporations, and a deepening of the multi-tiered and extended system of subcontracting arrangements. These transformations have also driven a dramatic change in labour market formation in the industry with increased reliance upon labour sourced globally as a general phenomenon and increased recourse to temporary migrant workers more particularly. Globalisation has, thus, been a multifaceted process that has confronted organised labour with multiple challenges, and especially those engendered by the recasting of the capital-labour relation with the diminution of direct employment, especially by the construction corporations, a weakening in the regulation of employment relations as states have responded to calls to enhance labour market flexibility and failed to regular 'undeclared' work, and, above all, to the challenge of how to engage increasing numbers of workers whose employment rights have been compromised by their status as migrant workers. The increasingly transient nature of the industry's workforce and its increasingly irregular character have both undermined the capacity of industry unions to defend employment conditions and eroded their ability to engage migrant workers in organising endeavours designed to build collective responses to the structural transformations.

Over the course of the last decade, however, there has been a discernable shift in union responses to the globalisation process. Organised labour has crafted a strategic agenda that is internationalist in orientation, designed to breach the borders of the nation-state and to embrace transnationality as an organising agenda. It is nascent and it is not without its challenges, especially in the context of the global economic crisis in which construction companies recruit into the international labour market with the express purpose of undercutting labour costs and established working conditions. But it has set in place a program aimed at revitalising the labour movement in building and construction by projecting the organising and strategic focus of organised labour onto the global terrain.

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