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# CLR News

## Labour Migration

**CLR**

European Institute for  
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Jan Cremers,  
AIAS-University  
of Amsterdam,  
mid January  
2008.

## They went far...!

The 18<sup>th</sup> December 2007 the European Court of Justice came up with a Judgment in Case C-341/05, better known as the Laval/Vaxholm case. The Court ruled on “whether collective action by which a trade union attempts to force a foreign service provider to enter into negotiations on pay and to sign a collective agreement is consistent with community law”. To ensure equal treatment and observance of the host country principle in case of a posting of workers, the Swedish and Danish unions have always forced foreign suppliers, by means of union action, to enter into negotiations on pay and to sign collective agreements.

I have always been puzzled by the fact that the Swedish and Danish governments, after consultation with the social partners, decided not to implement Article 3.8 of the Posting of Workers Directive (Directive 96/71), which allows Member States to refer to the terms and conditions of generally valid collective agreements. The idea behind that article, formulated together with Danish members of the European Parliament, was that it could be used to

preserve the existing Nordic industrial relations system based on autonomous collective agreements with almost total coverage in the main sectors. The main Nordic argument for not applying was that pay issues in the bargaining system are considered an exclusive prerogative of the social partners. The Swedish and Danish social actors feared legislative interference with undesirable consequences for domestic practices (e.g. the incentives to enter unions and strike collective agreements). In view that foreign undertakings normally sign collective agreements, or application agreements, the use of Article 3.8 was neither considered necessary, nor feasible. Facilitated by consent from the employers' organisations, a regime based on collective agreements and the extensive rights of trade unions to use industrial action had over the years been considered efficient and flexible in securing a decent pattern of posting.

The preconditions for this approach have come under pressure, due to the legal challenge in the Laval/Vaxholm case. With the rising inflow of low-cost suppliers after enlargement, the task of

detecting violations, organising actions, and signing agreements with foreign companies has been burdensome for the unions. The publicly delegated function as ‘wage police’ is also demanding in terms of winning confidence among the posted workers and became a delicate issue of high politics when a Latvian hiring firm in 2005 took *Byggnads*, the construction union, to court for alleged violations of the principle of free provision of services. The case touches on fundamental issues concerning the relationship between the principles of free movement, equal treatment, the right to industrial action, the sovereignty of national industrial relations and implementation of the posting directive.

In December 2007 the Court ruled that industrial action, although recognised as a fundamental right, will have to fulfil the criteria applied by the ECJ that measures restricting free provision of services for the purpose of protecting posted workers have to be non-discriminatory, necessary and provide a real advantage for the employees involved. The Court sees the right of trade unions to take collective action by which undertakings established in other Member States may be forced into

negotiations as liable to make it less attractive, or more difficult, for such undertakings to carry out construction work in Sweden. The right to take industrial action therefore constitutes a restriction to the freedom to provide services. And in the Court’s view this restriction cannot be justified with regard to the public interest objective of protecting workers where the negotiations on pay form part of a national context characterised by a lack of provisions! In other words, by not implementing Article 3.8 of the Directive, the application of rules to foreign undertakings to which Swedish law does not directly apply creates in the Court’s view an inequality between Swedish employers that have not concluded a collective agreement and entrepreneurs from other Member States.

Now the discussion is running in Sweden on whether to adjust the Posting Law (LO-unions), the *Lex Britannia* (Labour Minister) and/or include minimum-wages in the agreements, in order to make the Swedish model EU-proof. The *Laval/Vaxholm* case has triggered a very unwelcome and overly harsh clarification from the Court, which we could live very well without. We will certainly come back to this debate in the near future.

## Note from the editor

But now for the content of our Number 4 issue of CLR-News. We have several subject articles related to the free movement and the migration of labour. Basic material comes from a joint workshop held by Westminster and the colleagues from Northumbria University in association with CLR. *Jörn Janssen* starts with a historical reflection on migration. Next we have contributions from participants. The summary of a FAOS study, by *Jens Arnholtz* and *Søren Kaj Andersen*, fits extremely well in this row. The report included deals with seminars that were dedicated to labour migration and cross border work. Finally, we took on board two reviews and the announcements for the Annual Meeting of CLR and for the international seminar planned by CLRdenmark.

## **Introduction: Labour in Neverneverland**

Linda Clarke,  
University of  
Westminster

The following articles represent summaries of presentations given at a seminar held at the University of Westminster in London on December 7<sup>th</sup> 2007, entitled 'Labour in 'Neverneverland?: regulating the situation of migrants in the British construction industry' and jointly organized with CLR and the Universities of Westminster and Northumbria. The title of the workshop 'Labour in Neverneverland' expressed our concern that, due to a lack of regulation, many migrants working in the construction industry in Britain do not know where they are or what is going on. For some, Britain may have appeared as a dream island – the 'Utopia' referred to by Jörn Janssen - but this has proved to be a deceptive fiction. Many are self-employed or at the mercy of agencies and gangmasters, employed below the terms and conditions established and agreed for the industry, as described by Ian Fitzgerald in relation to Polish workers in northern England. They become used by subcontractors for social wage dumping, causing resentment and problems for the domestic construction labour force and hardship for themselves. This suggests that the first issue is to ensure that they are employed on equivalent terms and conditions, as established by the Posted Workers Directive and the Agency Workers Directive, and that they are not subject to exploitation by gangmasters as proposed in the extension to the Gangmasters Licensing Act. These points are also stressed by Bob Blackman of Unite – the largest trade union in Britain – and brought into sharp focus by Jan Post, describing wage and tax audits of migrants in the UK.

One key reason why migrant labour is being employed to such an extent in the British construction industry is severe skill shortages, due in large part to an inadequate system of training. This was a subject covered in detail in the last joint CLR/University of Westminster seminar, held in September 2007 (see CLR News No 2/2007). Many migrants are overqualified for the work they are employed on; others have inadequate skills but no means to acquire the necessary training. At the same time, many thousands of young people on construction courses in Further Education Colleges cannot enter the industry because they are unable to obtain the necessary work experience on sites and/or the training itself is inadequate or inappropriate. There is no comprehensive

training scheme in Britain for, for instance, groundworkers, concretors or formworkers – activities on which currently many migrants are employed. This suggests that the second issue concerns skills, ensuring that migrants have their skills recognized through the appropriate CSCS (Construction Skills Certification Scheme) card and have access to any training needed. At the same time, it is critical that a long term comprehensive scheme of training is developed for the industry, to avoid what may be simply a short term solution to the skills crisis.

One problem with both exploitation and inappropriate skills and training is that this exposes the workforce, in an already extremely dangerous industry, to ever greater health and safety risks. There are increasing reports of accidents and fatalities amongst the migrant construction labour force. Our third issue concerns, therefore, the need for greater health and safety regulation, as well as a compulsory occupational health scheme covering the migrant labour force – a subject discussed from a legal perspective by Colin Ettinger.

A range of speakers – representing employers, trade unions, and policy-makers, as well as academics, lawyers and practitioners – were invited to give their perspective on what is happening and what is and can be done to regulate the situation for migrants. Most of these perspectives are reproduced here. The aim was to clearly identify the problems and the means by which these may be tackled. From an academic perspective, David Beaney fired a warning shot at simple push-pull models of migration, given the diverse character of the migrant labour force. Ian Greer examined union strategies in relation to the recruitment of migrants across Europe, seeking to place British union strategies in this context and quizzing the degree to which the European Migrant Workers Union (EMWU) - formed by the German union IG BAU – can and will be accepted by the dominant national unions, including the British ones.

The last two articles presented here present very contrasting pictures of the integration of migrants into the construction industry and the trade unions, from a Swiss and Danish perspective respectively. Jens Arnolz Hansen and Søren Kaj Andersen of FAOS, the Employment Relations Research Centre of the University of Copenhagen, highlight all the problems posed to the Danish construction industry by the presence of construction workers from Eastern Europe, from labour market integration to structural

challenges to the Danish model. And Margarida Pereira from the Swiss trade union Unia provides a fascinating account of how migrant workers were successfully recruited and the enormous benefits this has brought to the union both in strengthening its representative role and in the knowledge and experience migrants have brought. Her article well shows the advantages of organizing workers independently of their nationality, working permit and residential status and indicates how transparency of borders is necessary too for trade unions.

## Migrants or foreigners?

Being the first speaker, I am faced with the question, how to introduce into a workshop in a way that everybody's mind gets alerted to listen and to contribute, that is to mobilise everybody's intellectual resources.

Another task is to introduce the subject in a way that its very core comes to the fore and, at the same time, to widen the horizon for the greatest variety of aspects, to dispel prejudices and to encourage unconventional approaches.

I shall try to do both, get you alerted and to encourage extravagant (=outgoing) thinking.

The subject of our workshop is quite inspiring, or rather has inspired me.

Labour in 'Neverneverland'?

Is this heading meant to say that migrant labour has no firm relationship with particular localities? (Construction has always been a sector where migration was necessary to open up new routes and facilities.) I shall come back to this question later. It seems important to me.

Or does this subject mean that labour *never* arrives at the place where it ought to be or it is aiming for? This question reminded me of a quote of Oskar Wilde: "A map of the world that does not include Utopia is not worth even glancing

Jörn Janssen  
CLR,  
Introduction  
workshop  
"Labour in  
Nevernever-  
land", 7.12.07

at, for it leaves out the country at which Humanity is always landing. And when Humanity lands there, it looks out, and, seeing a better country, sets sail.”

You may regard this as an extravaganza (migration) of an eccentric poet, but I think there is more to it which I shall comment on at the end.

Before I try to comply with academic etiquette, becoming serious and objective, I ask you to offer me allowance for subjectivity.

I am a migrant and a foreigner myself. I was born into Nazi-Germany. As a teenager I spent a holiday alone in France and dreamt of becoming a Frenchman. After my studies at University I took a job in France, but as I did not earn enough to bring up a family, I returned to Germany. At the turn of the seventies I had a teaching job at the Technical University of Zurich in Switzerland. About 19 years later after completion of a major research project on working conditions in the construction industry I came to Britain to work with Linda Clarke. She then spent many years in Germany. And ever since, we are doing comparative trans-national research on construction labour – in Britain for the time being. My experience has taught me that there are great benefits in being a migrant – even if there is a little component of a refugee in it – and, seeing a better country, we may set sail.

Now, to make this point: *migrants are not foreigners*. Conversely, migrants may be perceived as foreigners. It depends on who looks at them. Before I proceed to say a few words on the difference between migrants and foreigners, be aware of a few more varieties of this species, for instance refugees, deportees, vagrants, vagabonds, conquerors, invaders, aliens, etc. I shall focus just on these two: migrants and foreigners.

Etymologically speaking a migrant is a wanderer, somebody who travels from one place to another. A foreigner, by contrast, is (literally) somebody outdoors. Migrants may often be outdoors, but this is not their intended destination. Going outdoors is their point of departure. Conversely, a foreigner is somebody outdoors, who is asking to come in, seen from those indoors. This is an essential distinction, the same person may be seen from where she/he comes from, as a migrant, and from where she she/he goes to, as a foreigner.

I shall make a quick tour through the history of England in order to show that migration is also seen differently depending on the perspective in time, as either beneficial or detrimental.

I do not know about the Brits, but the Romans invaded Britain in 43 AD. The Angles and Saxons came in the fifth century, later the Danes and Vikings raided some places and regions, eventually, in 1066 the Normans conquered England (the land of the Angles) and imposed their language. I leave it to you to decide whether these migrations have anything to do with labour migration, maybe they ought to be classified rather as conquests of land.

But labour migration was an acute grievance of the Lords and Commons in the late middle ages. After the Black Death in 1349 the villeins escaped from their duties by “fleeing from county to county”, as the early labour statutes tell us. A special statute was passed in 1495 “against vacabounds and beggers”. Labourers were mobile, but not the land on which the landowners required them to work. Conversely, at the request of the corporations a statute of 1515 forbade the artificers from the countryside to work at their conditions in London. A protracted dispute was waged in the 17<sup>th</sup> century by the ‘Company of Tylers and Bricklayers’ against the employment of ‘forrens’ (not free of the city) in London. The City had to burn down before legislation allowed ‘forrens’ to reconstruct with bricks what had been timber structures. Let us not forget the Dutch in the work of draining the Fens in the 17<sup>th</sup> century! And who built the British railways in the 19<sup>th</sup> century, if not the Irish navvies?

For different reasons Britain became a safe haven for French refugees after the 1789 Revolution, for Jews from Russia in the 1880s as well as Nazi Germany in the 1930s.

I deliberately left out the deportation of slaves. Its impact was temporary in Britain, whilst it was substantial for the development of the Americas.

Just to summarise, all the examples show the determining role of migrations in the development of society and its usually beneficial impact on the economy of the host countries. Yet, if we look at the process in more detail, the contemporaries tended to defend themselves against being ‘flooded’ by foreigners.

In the light of this historical panorama I shall resume the question of the relationship of migrant labour with particular localities. In fact the locality is more important to the migrants than to those, who remain settled where they were born. The migrants make choices based on judgements about advantages and disadvantages of localities. With each migration the basis of the migrants' judgement gets upgraded.

As with the dynamic of production and its transformation, natural and geographical resources may become obsolete or gain importance. Labour migration is an indispensable factor of adjustment to changing relations to these resources. Construction always plays a pioneering role in this process.

This was a very simplified picture of the virtues of migration. Like in every process of change in the social order, there will be criminals who take advantage, but they are marginal to the dynamic of the process. And criminality is to be observed on both sides, that of the migrants and of the hosts. A most effective means to combat criminality is to ask the foreigners to come in and to offer them equal living and working conditions. Then they cease to be foreigners and vulnerable to exploitation by criminals. I find it outrageously short-sighted and narrow-minded to oppose the European directive on equal rights for temporary workers – many of them migrants – and to keep those workers outdoors, as foreigners.

A last consideration concerning 'neverneverland'. A migrant belongs to humanity which "looks out, and seeing a better country, sets sail."

Bob Blackman,  
national  
secretary for  
construction,  
UNITE

## Regulating the situation for migrants in the British construction industry

### T&G Section of Unite

I present this in my capacity as Building, Construction and Civil Engineering National Secretary for the T&G section of Unite. The T&G section of Unite represents thousands of construction workers in the UK and now with the merger that took place on the 1<sup>st</sup> of May

with Amicus to form Unite it now represents thousands more within the industry. The merger means that there is now a single union that is signatory to every national agreement, covering the whole of the industry.

The T&G section is a signatory to many of the most important agreements in the industry including the Construction Industry Joint Council (CIJC) and the Building and Allied Trades Joint Council (BATJIC) which between them cover 800,000 construction workers. With 2 million workers, Unite is a significant union not just within the construction industry but in the UK economy in general.

### **What Migrant Workers bring to the UK Construction Industry**

Can I start by focusing on what migrant workers bring to the UK Construction Industry apart from just filling the skills gap? Most migrant workers in the UK construction industry are well trained and highly skilled, which brings obvious benefits both to the industry and the economy. Whilst they are here migrant workers give us a 'window of opportunity' to transfer their skills by training and upskilling our own UK workers. Many migrant workers have served 5 year apprenticeships such as once existed here in the UK, so their skill levels are generally high. However we must look upon migrant construction workers stay here as a loan. We are borrowing them until they return home, and most will.

There are economic benefits of migration according to the Bank of England, which has suggested that the new wave of migration has been one factor preventing the rapid rise in oil prices from unleashing a damaging surge of inflation. And weaker inflation means interest rates can remain lower than otherwise. But these economic benefits must not be achieved by simply underpaying and exploiting migrant workers, which is sadly often the case. Migrant workers are being exploited in the UK construction industry in many different ways. For example they are seen by Government, the largest UK construction client, as a source to get their jobs built on time if possible but more importantly at the cheapest price. Many migrant workers (particularly those working on major projects) arrive in the UK and become bogusly self employed as soon as their plane touches down; others are directed towards the informal sectors within the industry, places where you are unlikely to come across anyone from any enforcing authority such as the Inland Revenue or indeed the HSE.

According to a survey by the Institute of Civil Engineers, many migrant workers do not understand how they are employed (i.e. bogusly self employed) or who they are employed by. The reality is that migrant workers are often underpaid, work excessive hours, have no holidays, have no sick pay, some are forced to live in overcrowded accommodation that is not fit for purpose, or worse finish up homeless (1 in 6 people living on the streets in London are from Eastern Europe, predominantly from Poland). And, if all that is not bad enough, they are being put at danger on a daily basis.

I often hear people talking about making sure migrant workers get the employment rights they are entitled to, what employment rights? In the UK there is no unfair dismissal rights' protection for anyone in their first year of employment, with very few exceptions. So I am not sure what rights are referred to. If the complaint is about pay and conditions, they are usually sacked. It is the Government's moral responsibility to protect migrant workers from exploitation and abuse. It is really about looking after people, particularly those who are vulnerable. So what should the Government do to protect these exploited migrant workers in the UK construction industry?

### **Gangmaster Licensing**

For a start, the Government should extend Gangmaster Licensing to the construction sector, which would prevent those who have been unable to get a license in agriculture simply switching their unacceptable employment methods to another industry. The absence of effective regulation of labour agencies operating in construction provides significant scope to mistreat workers, a growing number of whom are vulnerable migrant workers, without fear of any action being taken against them. Welfare, safety and training are all being neglected as rogue labour providers drive down costs. Good employers cannot compete in these circumstances.

When we look at safety, we have also seen a dramatic rise in construction deaths, with a 30% increase on the previous year's figure. We are all aware that there is significant under-reporting of deaths and injuries among bogus self-employed and migrant workers who do not feature in the official statistics. This situation is a direct consequence of the self employment culture, which is about the industry not wanting to take ownership of its workforce and retaining a "hire and fire" culture. On a good day only 5% of reportable accidents amongst self employed workers are reported.

The purpose of the Gangmasters Licensing Act was to protect vulnerable workers from exploitation by labour providers within the food sector, a measure that drew support from all parties and across society. With an estimated 75% of labour providers (or gangmasters) now operating in sectors other than food the case for that law to be extended to protect workers displaced into other sectors, in particular to major employers such as construction, is self evident. The T&G section believe that extension of Gangmaster Licensing into construction would be a great benefit to the good employers in the industry who do look after their migrant workforce.

We have seen instances where construction workers are being redesignated as "security" staff so that they can sleep on site at night. And of injured security workers denied medical treatment they need because their employers are evading the authorities. Construction workers brought in from the EU and sent onto sites, without the language skills to understand health and safety warnings. Almost all health and safety information on UK sites is in English. This is particularly the case on small and medium sized projects. Both the Government and the HSE are in denial with regard to migrant workers being injured on sites.

We have seen workers from central Europe forced to pay commission to their gangmaster: £400 to be found employment, plus additional payments of £60 a week to ensure continued employment. Deductions are made for "administration, travel, accommodation and expenses" leaving workers with half a week's pay after a full week's work. Bogus self-employment is endemic. An estimated 8 out of 10 workers in construction in London are bogusly self-employed, and 55% of workers across the industry as a whole, which could be costing the Treasury £2.5bn a year in missing tax and national insurance contributions. The Inland Revenue have not helped the situation by issuing some 1.9 million CIS self employed certificates to construction workers since the current scheme was set up.

The abandonment of apprenticeships and training has caused skills shortages and pushed up demand for migrant workers, who are in turn mistreated and paid below the going rate.

### **Dependence on Migrant Labour**

The T&G section believe that the UK construction industry is over

reliant on an imported off the peg skilled workforce. A more balanced strategy is required of domestic and imported skilled construction workers if the UK is to be able to respond to changing levels of demand, not only when the industry as it does currently find itself in a boom but also when it is in recession.

Assuming the economies of the current EU members in Central and Eastern Europe expand, prompting migrant workers from the likes of Poland - currently the predominant imported skilled construction worker in the UK – to return home, the resulting gap will have to be filled. So can we simply rely on other migrant workers from other recent EU accession countries such as Bulgaria and Romania and in 2014 at the earliest Turkey to fill the gaps? – Well, put simply, no we cannot and nor should we be trying to.

Firstly, the Royal Institute of Chartered Surveyors (RICS) Construction Market Survey found that the construction industry is experiencing significant growth thus creating skill shortages even in the absence of any migrant worker departures. More importantly domestic skilled construction workers should be entitled to expect to benefit from the growth that is currently being felt within the UK construction industry. In addition the current political climate sees the numbers of migrant workers being restricted. So many more domestic skilled construction workers need to be trained, placed and used alongside their imported counterparts then is currently the case.

### **Skills**

We have to have a balanced approach to filling vacancies for skilled workers across the industry. And we must not lose sight of the fact that, by taking so many skilled workers from countries like Poland, we have simply transplanted our own skills shortages to that country. This will push up rates of pay in Poland, making it more likely that many migrant workers will return home.

Simply relying on migrant workers will only see employers erode the training base and further remove the training culture within the UK construction industry. 88,000 skilled workers are needed every year for the next 5 years – according to ConstructionSkills. However, in a time when the industry is booming and the demand is clearly there, it is unacceptable that, out of 50,000 applicants for construction apprenticeships this year, only 7,200 apprentices actually succeeded in being placed with employers in the industry. I was looking at the Mastic Asphalt Roofing Sector national intake for apprentices, which is

2. If we look further you can see that as we move south the numbers of craft apprentices reduces dramatically. For instance, 7 out of 100 construction workers in Scotland are apprentices (providing more than 23% of craftsmen). 0.9 out of 100 construction workers in London are apprentices. With 750 major construction projects already planned over the next 5 years, worth £250 billion, it should be feasible for more apprentices alongside migrant workers to each play their part in building the UK construction industry.

### **The Government**

The Government is the largest paymaster in the UK construction industry today so has a responsibility to make sure that the employment status in the UK construction industry is not a matter of choice, whether you are a migrant worker or someone from the UK. Through its procurement requirements Government can make sure that workers are directly employed, whilst also setting the minimum standards for the industry, including mandatory training requirements. To achieve this the Government must regulate, currently there is no enforcement agency looking at this industry, and there is no penalty system in place to punish offenders. This must be put right!

## **Polish Migrant Workers in Construction in Northern England**



Following the May 2004 EU accession of Eastern European workers (A8s), the UK witnessed its largest ever in-migration, with the Poles the largest ever single ethnic group (Salt and Millar, 2006)<sup>1</sup>. This migration took all by surprise and left many at a local level having to 'fire-fight' the numerous issues that have arisen. Migration has been dramatic for many small towns and villages in the north of England, with the Worker Registration Scheme (WRS) accession monitoring reports<sup>2</sup> stating that the North has a larger number of registered A8 workers than are registered in London and the South East.

Discussion here is based on a series of projects that the author has undertaken tracking A8 and Polish migration to the north of England (Fitzgerald, 2005; 2006; 2007a; 2007b; 2008; Banks of the

Wear, 2007)<sup>3</sup>. The main underlying aim of the research has been to identify trade union engagement with newly arrived Polish migrant workers in the north of England, in particular in North East and North West construction. The approach to the research has been a key respondent and action research approach. This has meant undertaking over 60 interviews with key contacts who are engaged with A8 and Polish migrants. In particular it has involved interviews with construction personnel and participation in: site meetings with teams of Polish workers; trade union construction representatives; and a mass meeting of Polish workers. The focus of the construction projects was to identify how Polish workers were obtaining their employment in the sector and how employers were treating these workers.

### **Polish workers in northern construction**

Before discussing the recruitment of Polish migrant workers in northern construction, it is worth highlighting the importance of differentiation when discussing migrant groups. Not only within groups themselves, for example around social class, gender and age, but also between those like the Poles and A8s who are entitled to live and work in the UK with little restriction. This is in contrast to other migrant groups who are often recruited via work permits or are importantly undocumented within the labour market. Legal entry into the UK labour market should have meant that the A8s and Poles were less open to exploitation, although the facts of the migration do not bear this assumption out (Fitzgerald, 2006). It is also important to record that for a number of reasons, most notably the easily accessible transport links, the early signs are that in particular the Poles are seemingly more transitory than many other prior groups of migrant workers (Fitzgerald, 2008). Finally, the point must be made that as with other early migrations to the UK Polish migration to the north is still developing, as communities establish themselves and newly arrived workers decide on what basis to remain and how secure they feel in their new surroundings. With construction used by some as an early employment path whilst establishing what other employment opportunities exist.

### **Recruitment of Polish workers into northern construction**

Prior to accession it was estimated that there were approaching 100,000 building workers with English as a second language (Considerate Constructors Scheme (2004))<sup>4</sup>. Since accession key respondents when questioned and participants at construction seminars have widely reported that there has been a major influx of A8 and in particular Polish workers into the construction sector.

Although, the WRS data records a different story, stating that only four per cent of all registered A8 workers are in the sector (29,075 – 70% Poles), with sixty-seven per cent of these labourers. However, the issue here is that the WRS does not take account of the self-employed, whilst it is also reported that many A8s are simply not registering to the scheme<sup>5</sup> and living and working in the UK in a murky neverneverland with initially little idea about their rights and responsibilities at workplace and in the community. So if there are growing numbers of Polish workers on UK building sites how have they got here, through migrant networks, Polish and UK companies and agencies or a more formalised route?

Although, still not fully granted, one of the four main freedoms of the European Treaty is the right of mobility for European workers. As part of this the EU in 1993 created EURES to allow formalised job-to-job movement, facilitating skill needs at a regional and local level with assistance given to both employers and European migrants. However, the reality found in the north of England was that two of the three EURES advisers present, noted limited or no engagement with the increasing number of Polish workers found in construction. Further, one of these advisers accepted that his recruitment engagement with the overall numbers of A8 workers coming into his region had been limited (Fitzgerald, 2007b). At a recent Polish government launch of a report into the general treatment of A8 migrant workers<sup>6</sup>, an EU official spoke of the need to reinforce the role of EURES<sup>7</sup>. In the northern construction sector it seems that often freedom of movement has been exactly that, with limited co-ordination by government or other agencies in this process. So if EURES are not the main facilitators of mobility how have Polish workers found their jobs in the sector and how have companies managed their recruitment needs? In Fitzgerald (2007a), which sought to identify routes into employment in the north in construction and food processing, it was found that three main recruitment routes had been used: on-spec recruitment, direct company recruitment; and direct agency recruitment - with no identifiable differences between the introduction of skilled and unskilled labour.

**On spec recruitment** relates to Polish workers who have made the decision to migrate to the UK to work without a particular job being offered. Overall in the labour market and in these sectors, this type of movement was identified as being prevalent in the early days of Polish accession migration. With Poles having a vague idea of where to go and what jobs to take, money was normally available for a short

period to cope without a job. In construction in both the North East and North West, this was not considered to have had a significant impact on the numbers of Polish workers coming into the sector. It was found in the North East that the Poles had used a Polish subcontractor and then begun to use developing Polish networks to identify higher rates of pay in the North West (see Balch et al., 2004<sup>8</sup> who note informal networks at site level as important for lower level skill recruitment in construction). In the North West, agencies were the dominant influence, with later waves of Poles travelling to the UK without jobs but then approaching agencies when here for employment.

With **direct company recruitment**, the study found that in the labour market generally some employers are beginning to use a number of resources to try to source Polish labour directly. For example, there are numerous web pages and Polish based newspapers advertising UK jobs. In Poland it was reported that job fairs were also a common means of staff recruit. This was sometimes based on a particular trade, for example bus drivers who were recruited on mass with UK union collaboration due to local shortages (Fitzgerald 2005). As noted in construction, only in the North East was this considered to be a main route into employment with at least one subcontractor advertising in places like newsagents in Poland for workers. Here the most worrying signs regarding skilled trades were evident. Subcontractors had directly recruited skilled workers from Poland and introduced them onto building sites at wages below the national industry (the Working Rule Agreement) and minimum wage levels (Fitzgerald 2006). The trade unions were often found to be 'policing' the skilled rate for the job, not only for the direct interests of members but also to contain the early signs of antagonism to the newly arrived groups of Polish workers. UCATT (Union of Construction and Allied Technical Trades) also managed to assist some skilled Polish workers onto one main contractor's core workforce with agreed rates of pay and conditions secured. This situation was also identified with regard to engineering construction skill rates (the National Agreement for the Engineering Construction Industry), which were again being undermined through the introduction by subcontractors of cheaper skilled workers from A8 countries (Fitzgerald, 2008). Here a union, in collaboration with the employer, has introduced a limited strategy of wage transparency to maintain the skilled rates.

The final **direct agency recruitment** route was identified by the President of the Federation of Poles in Great Britain as significant for

UK recruitment in the overall labour market (including construction) and this view was echoed by a number of Polish regional respondents in the north. A representative of the British Polish Chamber of Commerce (BPCC) in Poland interestingly noted that agencies had now become their largest single member group in Poland. He accepted though that agencies are often cited as being the worst perpetrators of the abuse of Polish workers and reported that the BPCC were working with EURES in Poland to identify the worst perpetrators. In North West construction, as noted, agencies were reported as providing the sole route into employment for both skilled and unskilled labour. The first wave of Polish migrants had been directly employed in Poland whilst later waves of Poles were mainly employed through networks of friends and families in the UK. Many agencies were believed to be of Polish ownership but UCATT reported that they were based in Dublin.

### **The conditions of Polish migrants in northern construction**

The rapid entry of Polish workers into the UK following their accession in May 2004 caught everyone by surprise. Often these workers came either 'on spec' or through fraudulent agencies and were left destitute and/or exploited with the worst excesses of a free market not uncommon and in some cases still remaining. *'...early on people were being sent over to construction from Poland and it was so bad. They were left without money, they were left without work'* (sub-contractor interview). From the Polish point of view this situation has improved with support networks forming, most notably around the web, the church, and through local UK activist from the traditional Polish community (Fitzgerald 2008). Local NGOs (e.g. Citizens Advice Bureau), trade unions and some local councils have engaged with the new entrants and provided valuable assistance. What was absent here was any form of government co-ordination at a local, regional or national level.

In Fitzgerald (2006) there was found to be a catalogue of abuse in the North East construction sector *'...Poles came to me and basically said "we're getting stuffed", as they are not stupid'* (UCATT official North East). For example in a questionnaire of 23 Polish workers all were paid under the minimum wage with no differentials between the skilled and unskilled. Many were tied to sub-contractor accommodation and following a dispute over the level and non payment of wages three Poles were sacked and immediately thrown out on the street. When they refused to go they were visited at night by thugs with baseball bats and physically ejected. Although much of

this was based on one particular company, other subcontractors were found to be intermittently abusing their Polish workers. Over a nine month project UCATT was able to alleviate many of these issues, with some Poles taken on directly by main contractors and some migrating from this region to the North West in search of better employers and wages.

### **The need for regulation**

Construction is historically a migratory sector and much of its labour force may not find it unusual to move to differing countries, regions, sites and jobs. However, what is worry is that, with a lack of regulation, a more systematic process of labour recruitment will come into operation for country migration that uses low wage economies to supply higher wage economies construction sector. A cycle begins where low wage Polish/A8 labour is used in the UK, whilst in Poland workers from Belarus and the Ukraine fill the jobs left and future needs of the sector. A UK main contractor's short-term approach to skill and recruitment needs leads to subcontractor profiteering, abusive labour practices and cohesion and integration issues. As Blach et al. (2004) note, lack of regulation in the UK construction sector has led to a reliance on both informal (the more 'on spec' approach to recruitment) and formal (agency approach to recruitment) networks for recruitment in construction.

Given this situation, trade union officials are often found firefighting the rate-for-job and working to alleviate many of the consequences of poor labour practices. There is a clear need for a co-ordinated approach to migration into the sector, involving the key construction stakeholders. For example, issues around language and health and safety are two of the most important components of any co-ordinated approach. An acceptance is needed that European legislation, such as the Temporary Agency Workers Directive, is of paramount importance to an efficient and effective European construction sector. In the UK the extension of the gangmasters legislation into construction is another valuable piece of this co-ordinated approach, but none of this will be, or is, effective without adequate policing of current and any new legislation.

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## Migrants in the British Construction Industry – Health & Safety

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There are numerous obligations imposed by law to ensure that safety is maximised on construction sites in Britain. Whilst obligations are imposed upon employers through the common law (judge made law), the tougher obligations have been passed by Parliament. The key regulations are:

- Construction (Health Safety & Welfare) Regulations 1996.
- Lifting operations and Lifting Equipment Regulations 1998.
- The Work at Height Regulations 2005.
- The construction (Design and Management) Regulations 2007.

It is important to note that these obligations impose requirements on those with responsibilities on construction sites beyond employees but extending to other persons under an employer's control. Accordingly, labour-only subcontractors will receive some protection from these regulations.

As already indicated, these obligations impose tough requirements on employers. If complied with, then construction sites should be safe places to work on. Unfortunately, this has not proved to be the case. The real problem that emerges in ensuring that construction sites are kept safe is enforcing legal obligations imposed upon an employer. The Health & Safety Executive (HSE) came into existence just for such a purpose. However, the HSE is understaffed and as a result not as effective as it should be. The HSE has considerable powers but lack of resource has meant restriction in implications. There are many examples of how this impacts an industry generally but even the HSE's own enquiries have identified that they are not prosecuting as often as necessary. It is also noteworthy that only 10% of major injuries are investigated.

Probably the best protection that any worker, including migrant workers, can take is by joining a trade union that is, preferably, recognized at the work place or at least does have active safety representatives. Research has shown that in such circumstances an individual is 50% less likely to be injured.

In 2007 the Trade Union Congress (TUC) published a practical guide for safety representatives called "safety and migrant workers". This provides guidance to safety representatives as to what they can do to ensure migrant workers' safety. If acted upon, then migrant workers on construction sites will find that legal requirements imposed upon employers are more likely to be complied with.

If a construction worker is injured during the course of their employment, then they are entitled to claim compensation. If they can establish fault on the part of an organization that owed them an obligation, then they will recover compensation. Bearing in mind the obligations imposed upon organizations in control of construction sites, it is likely that there will be a breach of at least one of those regulations in the event of the workplace injury occurring. All employers have to be insured. This means that, if a worker is injured on a building site, there is a decent prospect that they will be able to recover compensation for their losses.

If a migrant worker is a member of a trade union, then trade unions will offer legal support. Even if the worker is not a member of a trade union, then it is highly likely that they will be able to secure quality representation from specialized personal injury lawyers. They will be able to operate on a “no win no fee” basis which will ensure that the injured worker is not left liable to meet a large legal bill.

Health and safety laws concerning compensation recovery apply equally to migrant workers and therefore they should be afforded the same protections and access to justice.

## **Auditing wage and tax payments of migrants in the UK**

Jan Post,  
RIFT

As a major employer of migrant labour, the construction industry is sitting on a time bomb that is set to explode sooner rather than later. Exploitation of labour is something that many construction companies would like to think does not happen on their sites. The fact is that it is happening everywhere and very few companies have considered introducing any checks or balances that will protect their migrant labour force.

The result is that they are, however unknowingly, exposing themselves to great risk. The worst scenario is a corporate manslaughter charge following a fatal accident caused because of lack of attention to health and safety training. Bearing in mind the current level of accidents in the industry this is likely to happen in the very near future. At best, companies can expect some extremely bad publicity from a media which is always hungry for stories of the little man being bullied by the corporate giant.

So how do we know the full extent of this problem? Rift was founded in 1999 as a highly specialised tax consultancy, designed to assist workers in the construction industry to reclaim overpayments of tax from the Inland Revenue. In only eight years we have successfully reclaimed over £30m on behalf of our clients. Although we originally anticipated that our primary client base would remain in the construction industry, it very quickly became

apparent that there was another significant sector of the labour force that required our help – migrant workers.

A considerable percentage of the migrant labour force is located in the construction industry, and they face many problems which are common to migrant workers in all sectors. These range from a poor understanding of English, leading to communication problems and ignorance of official requirements, to the far more serious issue of exploitation (both financial and physical) that is, alas, rife in every industry where migrant workers are found.

It was therefore not long before we found ourselves providing a wide range of advice and assistance to migrant workers from all over Europe.

Rift now has a staff of 25 consultants who, between them, speak 8 European languages and handle around 3000 cases every year. And this is only the tip of the iceberg.

As well as helping workers in the construction industry, we now have clients from many other sectors, including agriculture, food processing and catering: all of them industries where employment and exploitation of migrant workers go hand in hand.

One of the services we have developed is a pay and conditions audit, where we examine, on behalf of a main contractor, the working arrangements between a sub-contractor and his labour force. The audit is wide-ranging and includes examination of wages and contracts of employment, working conditions and site safety training.

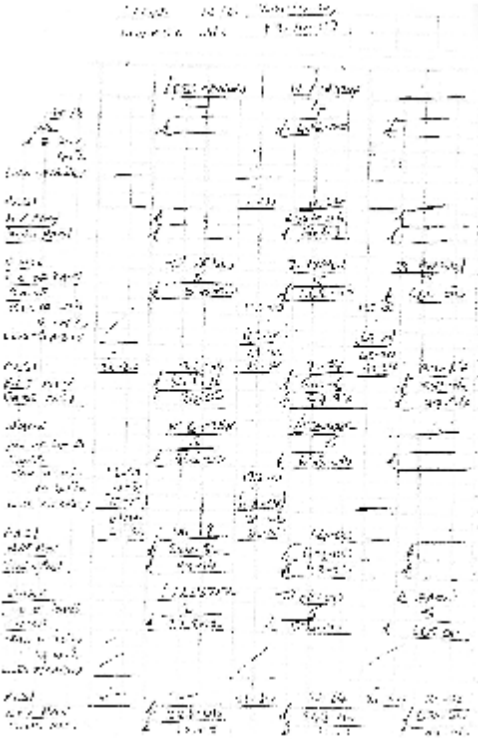
Needless to say, many subcontractors are extremely reluctant to allow us onto sites or supply us with the information we require, and with good reason. A simple examination of payment records is a reliable indicator of levels of exploitation. These illustrations are copies of actual wages slips and payment records from a recent site visit, with only the names of the employer and employee removed:

*Employee 1:*

his payslip shows two lots of tax and National Insurance. (UK and Polish) – His accommodation costs of more than £166 for a month are for sharing a single room with 9 other people!

*Employees 2 & 3:*

no cumulative figures are shown.



Company payment record: the payments schedule is not showing any cumulative pay and tax. It is handwritten on a scrap of paper and was only produced when the sub-contractor was threatened with eviction from the site!

Typically, we will find that migrant workers are being paid much less than their British colleagues for doing the same work – often well below the minimum industry standard. Where this is happening we would also expect to find that other

regulations regarding employment and working conditions are being flouted: potentially creating a serious problem for the main contractor should an accident occur.

Our consultants regularly visit sites to talk to the migrant workers and discuss their problems, but often they are unable to help. When they first arrive, the workers are very eager to speak to them and talk about their problems. Often they are being underpaid, have not received the necessary health and safety training and are very worried about being exploited, but are unable to do anything about it. Our consultants promise to help and make an appointment to return and discuss their problems in detail. On their next visit they find that nobody wants to talk to them – the workers have been warned that talking to Rift will mean losing their jobs. Unfortunately this is not a rare event; it is the rule rather than the exception.

Of course there are some workers who are not aware of their rights, but many of them are. However, they are also aware of the fact that any complaint is likely to be swiftly followed by the sack and any attempt to seek redress through an industrial tribunal is likely to result in the worker being blacklisted.

In December we asked HMRC to provide us with statistics regarding the number of migrant workers who have taken an employer to an industrial tribunal. This information has not been forthcoming.

In the last few years legislation has been put in place which is designed to protect workers from exploitation, but the onus is on them to come forward and complain. This is something the vast majority are unable or unwilling to do because of the reaction they can expect from their employer. Unless the system is changed so that it can be effectively policed by people with the power and authority to enforce the law, workers will continue to be exploited. With the expected increase in the number of migrant workers entering this country in the next few years the problem can only get worse.

Although Rift exists to support the rights of migrant workers in every aspect of their employment, we also support employers, helping them to minimise the risks associated with exploitation: risks they are unaware they have been exposed to.

Major construction companies farm out a large number of projects to subcontractors, or use subcontracted labour on a regular basis. In many cases they are unaware of what is actually happening on their sites, until they find themselves facing a law suit or some very damaging publicity.

The Rift audit service enables employers to monitor what is happening on their sites and ensure not only that they are compliant with the law, but also that their profits are not being generated on the backs of an exploited workforce.

# Migrant worker movement and characteristics of different migrant groups

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Traditional theories for the push/pull influences upon migrant worker movements may need to be re-appraised. Traditionally diversity in populations was regarded as having the potential to increase migration yet further, with diversity then declining as migrants became assimilated. Conversely, some migrants, depending upon newness to migration and distance effect, may require, or reserve, time to evaluate the economic benefits and losses of an executed move and may exhibit different demographic qualities. (Lee 1966)

## The development of Push / Pull models

Everett Lee's (1966) observations include some unique insights into how migration occurs and some distinctions which should be adopted, especially in looking upon migration as being most meaningful when it involves a permanent or semi-permanent change of residence. From an economic perspective, migration should be considered primarily upon the basis of attempted rational decision towards betterment. It must however also be something which exposes the migrant to the full weight of the economic benefits and losses deriving from a particular location, which an individual must evaluate in assessing relative utility. These interpretations i.e. Push / Pull factors are still in use by economists today, an example being Lubanski (2004 p13), noting the effects upon migration of European enlargement, summarized here as:

Push factors	Pull factors
• Economic crisis	• Higher wages
• Unemployment	• Better working conditions
• Bad working conditions	• Network attraction in the host country
• Low living standards	

Lee (1966) noted that a perspective migrant needs to be aware of the distinction which must be made between the actual and perceived differences between origins and destination. Such

perceptions will often be coloured by the personal preferences and / or sensitivities of the migrant and the availability of information / intelligence; especially where such information may not be entirely reliable, relevant or up-to-date. Of more importance perhaps would be the extent to which the potential migrant may not be equipped with the necessary awareness or indeed, not have fully equipped evaluation capabilities, to be able to judge and then exploit the information available. Lubanski (2004 p13) has illustrated this neatly by reference to the need to have access to information on the different organizational and institutional differences in labour markets in origins and destinations.

Lee has also commented upon how industrialization and concomitant settlement is a great creator of diversity, thus creating change processes and opening up an economy to new opportunities. This is a very dynamic view of migration, showing how resulting diversity in populations would increase migration yet further. Lee felt that the mechanism involved had both short term and long term effects. In the short term, diversity would imply differing social statuses and thus bring about discrimination; but this would then be followed by a decrease in diversity, as minorities became assimilated. He did not detail what such assimilation processes would be, nor how long they would take.

As regards recent European migration, it was observed by Lubanski (2004:12, citing Vestergaard et al) that the estimated migration rate would not only be relatively low, but would be highest in the first years of European enlargement and would then fall -noting especially here that residential migration for affected countries may be temporary. Whilst granting that we may be referring to expectation rather than evidence and recognizing that, within the context of the recently expanded European Union, countries such as the UK and Ireland have become a destination of preference for migrants from the new member states, nevertheless, as Lubanski (2004) has pointed out, such migration might be a second best choice / least worst choice. On the basis of the distance effect, one would assume that geographically nearer nations would be preferred, but are rejected because of permitted transitional arrangements.

Thus complexity in migration brings concern that the old observed certainties of push - pull may no longer be working in the same way, and that migration influences and obstacles are more easily

negotiated, and thus Lee's "flux" may be continued. It is suggested that there may be differences in the characteristics of different migrant groups in terms of those aspects which would inform their potential assimilation, and to which this examination is directed.

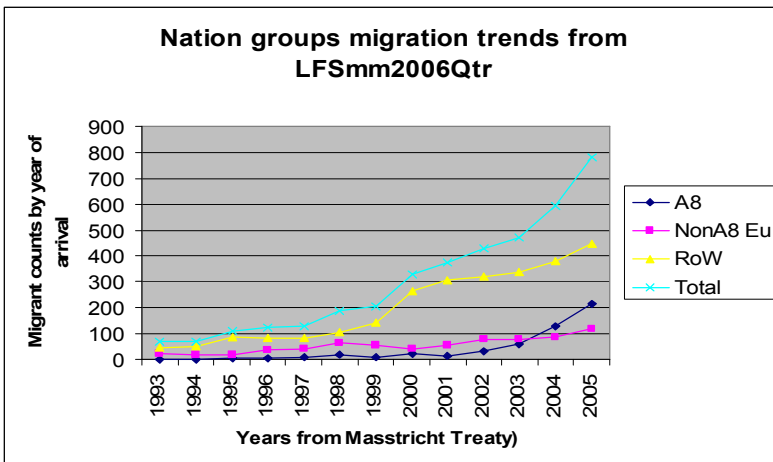
### Methodology

The Labour Force Survey Spring snapshot for March to May 2006 was adopted and analysed to determine if any differences could be seen in different migrant groups, specifically examining the differences which might arise by newness to migration and the distance travelled to the UK. This explores 3 different migrant groups:

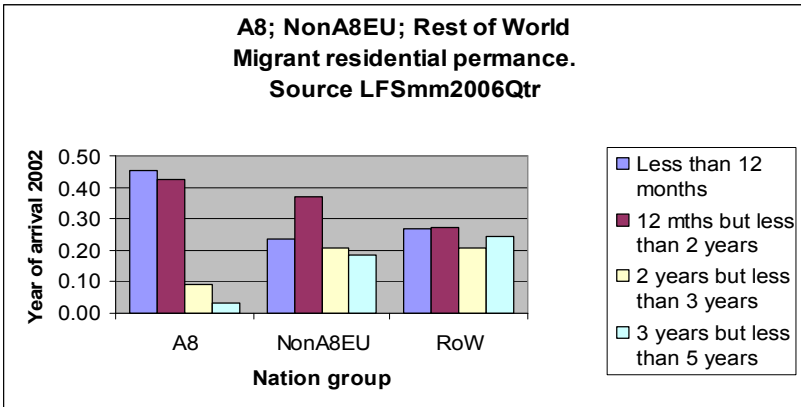
- The Accession8 group, popularly referred to as A8 migrants, (i.e. Czech Rep., Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia, and Slovakia).
  - Other European migrants to the UK.
- The Rest of the World migrants to the UK.

### Results

Starting with a view from the date of the Maastricht Treaty and its promulgation of enlargement, it is noted that the A8 group seems to have had some early movers with an observed increase in migration from this group in advance of the 2004 ratification.

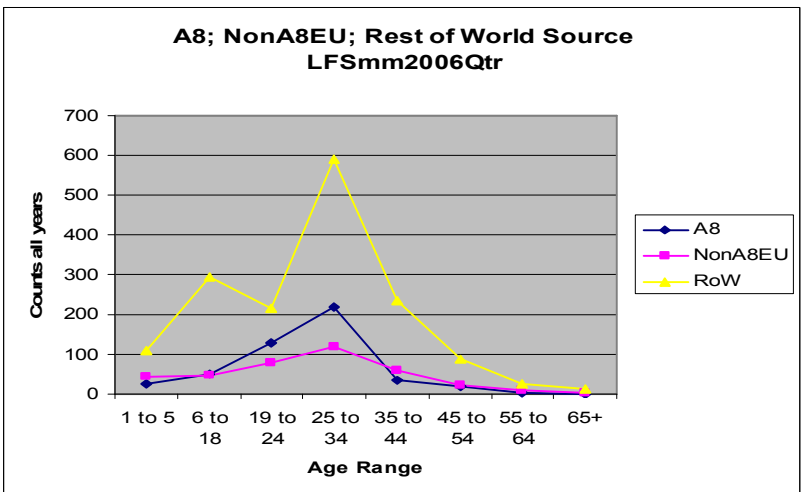


Source: LFS Spring Quarter 2006



Source: LFS Spring Quarter 2006

Given that such reduced residential permanence may only be possible for migrants who are either single or otherwise less attached to family considerations, an analysis was taken of the three groupings to explore differences by age. This showed that the A8 group is different in terms of age groupings and again that this difference is statistically significant.



Source: LFS Spring Quarter 2006

**Conclusions:**

The post 2004 A8 group appears to exhibit some differences from other migrants groups, both from the rest of Europe and also the rest of the world. These differences - in terms of low prior history of migration to the UK, lower level of residential permanence, and narrower distribution of ages - may act to preserve migration "flux".

Further work may also examine how migrant groups may exhibit differences in their settlement into different industry sectors.

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## British unions and migration: an international comparative view

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The construction labor market in Europe is becoming increasingly transnational. This does not mean that a huge percentage of the workforce is posted by their employer to a country other than where they live, or even that most workers are migrants who have put down roots and stayed in their host countries. In most countries, migrants account for 10-25% of the construction workforce. However, the national character of trade unions in Europe threatens to make trade unionism irrelevant to this group of workers. This is especially worrying in a country like the UK, where the share of migrants is increasing.

This article is based on a paper that I recently coauthored with Nathan Lillie ("Industrial relations, migration and neo-liberal politics: the case of the European construction sector", *Politics and Society*, 35:4, 2007). We looked at how trade unions were coping with migration at the European, national, regional and project

levels, based on interviews with trade unionists, managers, and others, in Finland, the UK and Germany, as well as in Brussels. References to the US reflect my work experience during the late 1990s with the carpenters union there.

When Nathan Lillie and I were sifting through the data, mostly gathered in 2006, the main difference between the UK and other countries seemed to be the building boom. Because of an expanding workforce and low unemployment, wages were going up, and union membership was stable. According to most trade unionists we met, migration was not a huge problem for British workers, because employers were still having difficulties recruiting, and this latter problem was pushing wages up. In Germany, by contrast (and contrary to the “varieties of capitalism” orthodoxy in academic political economy), the industry had shed half its workforce over the previous decade, unemployment was high, wages stagnant, union membership in rapid decline, and collective bargaining in disarray. In Finland, the union faced a stable construction market, which it successfully regulated construction sites through higher union membership, stronger shop steward structures, and most importantly, an iron-clad right to strike.

A related advantage of the UK was the relatively liberal approach here to migration. Because it was one of the first countries to allow workers from the accession states to freely immigrate and seek work, it was less important for workers here to be posted by their employer and there was less need to work on the black market, under the constant threat of deportation. It was easier to live and work in the UK, to put down roots, and, in principle, to participate in British society (including trade unionism). In Germany, and until recently, in Finland, most migrant construction workers were either undocumented or posted, and therefore sealed off from their host country, inaccessible to trade unions, and easy for unscrupulous employers to manipulate and control.

At a superficial level, with wages going up and union membership stable, Britain looks like a relative success story. However, I think that at least three features of the UK scene will cause problems in the longer run.

The first one is *institutional*. Not only does the UK lack a meaningful right to strike (at least compared to Finland), but unlike most other countries, collective agreements are not even legally enforceable.

Project-level regulation is underdeveloped, lacking the union structure of Finland, the strong government regulation of the US or Germany. Despite recent progress following an agreement at the massive Heathrow Terminal 5 project, the UK still lacks the strong public policy framework of the US, including prevailing wage rules governing wages on almost all publicly funded projects and the Project Labor Agreements and Community Benefits Agreements covering other issues, ranging from training and health and safety to organizing rights and affordable housing after the structures are complete.

The second problem has to do with *union strategy*. Partly because of the weak union and state structures governing work on British construction sites, trade unions here focus, like their German counterparts, on representing workers in industrial tribunals and collective bargaining. Without question, bargaining and servicing should be central to any trade union movement. However, as a recruitment strategy, representing workers whose employers have broken the law is expensive and slow. As a political strategy, it is narrow and disconnected from bigger issues facing the sector (like training and recruitment) and society (like the cost of housing) that unions in other countries have tackled. These themes, which U.S. construction unions have been tackling for some time, could be built into the rules regulating large projects like the Olympics or Thames Gateway, which would generate more interest in society as a whole for improving working conditions (both for migrants and British construction workers) and would complement any increased emphasis on organizing.

Problem three has to do with *union structure*. The UK has relatively broad and general structures, mainly craft groupings organized by UCATT, GMB or Unite at the national level, and nothing to attract and retain migrants specifically. For example, there is nothing like the craft-based union locals with a strong ethnic identity set up to deal with competition in the US, or a structure for transnational commuters like the European Migrant Workers Union (EMWU) established by the German union *Industriegewerkschaft Bauen-Agrar-Umwelt* (IG BAU). Union structure here has few ways to alleviate the competitive dynamic between British union members and non-member immigrants, and even when someone joins the union and feels committed to it, he or she has no reason to retain union membership after leaving Britain.

The EMWU model therefore deserves serious consideration, not just by construction unions in the UK, but by all unions seeking to represent migrants in Europe. Rather than setting up competing wage rates, EMWU has attracted people with language skills into trade union work, created new methods to uphold national standards, retained newly recruited members after they left Germany, and provided a credible answer to critics who accused IG BAU of being “protectionist.” It could do so, because it also provided clean organizational slate, a way around the inherent difficulties of reforming union bureaucracy from within.

For British unions, migration is a huge opportunity to make gains, especially in terms of membership. On their own, the problems mentioned above are not serious enough to prevent unions from revitalizing themselves. The EMWU shows that a union can create new structures that answer the challenges of migration in ways unthinkable under the dominant model of national unionism. It remains unclear, however, whether British unions would accept a truly transnational structure and how such a structure would complement an equally necessary, broader organizing program. The outcome is impossible to predict, because it depends ultimately on the strategies and policies of the unions themselves.

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## Eastern European Workers in Danish Construction

The Danish construction sector has been facing significant changes in recent years. After some years of discussion on how to increase productivity in the sector by means of technological innovation and improving the organisation of work, the booming economy and the EU-enlargement have set a new agenda. While employers and the government see the inflow of a new East European labour force as the solution to labour shortages and a way to stall wage increases, unions and part of the political opposition are concerned that the import of foreign low wage labour will undermine terms and conditions for native workers. Some even claim that this development is part of a general strategy of deregulation on the part of big construction firms. Stories of low paid Polish workers, living under horrible conditions and being cheated by their employers have raised

a great deal of awareness in the public. But at the same time the general debate on deregulation and pressure on wages have to a large degree been drowned in the continuing reports of labour shortages.

When considering the effect of the inflow of EEC-workers on wages and condition in the sector, it is important to take note of the current economic boom. It has involved a significant growth in production and a historic decline in unemployment (from 7 % in 2003 to less than 2 % in mid 2007). In this economic situation, few Danish construction workers can complain about their terms and conditions, as the average wage level rose by 5.2 % following the renewal of collective agreements in the spring of 2007. At the same time, it is important to note, that the inflow of Eastern European workers has been far more modest than in countries such as England, Ireland and Norway. According to the official statistics, Danish construction firms were slow in opening their eyes to the new labour market in Eastern Europe; less than 900 EEC-workers were employed in the sector by mid 2006. At this time, however, the Danish transitional scheme was changed, which seems to have had a major effect on the inflow<sup>1</sup>. In one year the number of EEC-workers with work permits tripled, to some 3,200. This is still a small number compared to other countries, and to the sector as a whole, but the official numbers do not encompass temporary or posted workers. Temporary work agencies have been very active in recruiting EEC-workers, and many of their employees are working in construction (while being registered in the statistics as working in the service sector). Furthermore, the number of Eastern European firms operating in the Danish construction sector has risen rapidly over the last 2 years, from under 300 to around 900. The number of employees they are posting in Denmark is unknown, but on the basis of a survey it is estimated, that there are some 13,000 posted EEC-workers in the construction sector. All in all it is estimated that there were around 20,000 EEC-workers in the Danish construction sector at the end of 2007, which amounts to approximately 10 % of the workforce in Danish construction.

With the first indications that economic growth is slowing down, and a continual growth in the import of EEC-workers, it becomes ever more relevant to examine a number of questions. First of all, little is known about the way Danish construction firms recruit and use EEC-workers (whether employed, posted or agency workers). It is generally assumed, that the EEC workers are used for 'hard and

dirty' work, but this is generally only speculation. Second, little is known about the position of EEC-workers on the Danish construction labour market. Rumours of low wages have circulated in the media, but whether these express general tendencies or simply some 'worst cases' is unknown. Third, the problems posed to the Danish model of labour market regulation by the presence of EEC-workers are well worth scrutinizing. From the problems encountered by unions in signing collective agreements and organizing workers to the practical interpretation of the relevant EU-regulation, this will be a theme in the Danish construction sector in the years to come.

### **Recruitment of Eastern European Workers**

In December 2007 the Employment Relations Research Centre FAOS concluded a research project on recruitment policies and terms and conditions for EEC workers in the Danish construction sector. Based on this research project, it is possible to shed some light on the problems and challenges posed by the presence of the EEC-workers in Danish construction. An important part of the project was a survey aimed at Danish construction firms using EEC-workers<sup>2</sup>. The results of the survey must be subjected to the reservation that employers' responses are in no way neutral. Nevertheless, the survey gives some evidence on recruitment patterns and terms and conditions regarding EEC workers.

For instance, it might be interesting to know that two thirds of the companies asked, had recruited their Eastern European employees by use of personal contacts. At first glance, this may seem to be a perfectly normal recruitment practice in Danish construction, where personal contacts play an important role. However it is important to stress, that it is the personal contact of management (not the employees) that is utilized in the case of EEC-workers. At the same time it should be emphasized that very few firms have experienced being contacted by EEC-workers searching for a job – the image of the EEC-worker going abroad looking for a job by himself seems to be an illusion. They are recruited by firms, via the personal contacts of management, and thus have limited access to obtain better working conditions by changing jobs. This should be seen in the context of the general emphasis on employment security instead of job security in the Danish labour market. This strategy depends on high levels of social security, continuous training for both employed and unemployed, but also on extensive social networks of the employees – used, once fired, to obtain a new job quickly. The importance of social network has proven to be a problem for other groups of immigrants and will probably be so for EEC-workers as well.

Second, temporary work agencies have also played an important role in the recruitment of EEC-workers, whereas almost no firms have used the public employment agencies. Firms with no personal contacts in the Eastern European countries often use agencies if they want to recruit EEC-workers. However the large number of labour court cases against temporary work agencies shows that this entry channel is a perilous one for EEC-workers; though some agencies promote a business profile that includes decent standards for their Eastern European employees, many agencies seem to have been set-up with the sole purpose of making high profits in a short time by exploiting EEC-workers. Thus a number of EEC-workers start out in exposed positions, but many firms tend to hire them after a while.

The third main road through which Danish construction firms attach EEC-workers is via subcontracting and thereby posting. This makes for an even more exposed position, due to the Danish implementation of the posting directive, which grants no minimum wages for employees not covered by a collective agreement. Furthermore, it is at general tendency, that posted workers are separated from Danish workers, and thus their chances of getting a foothold on the Danish labour market (by getting in contact with Danish workers and employers) are limited.

Based on these tendencies in recruitment practices, we can talk about three degrees of labour market integration for EEC-workers; from *slightly marginalised*, being employed but having less employment security due to a lack of extensive social network, over *exposed*, meaning working in the shady part of agency work but with the prospect of being hired by a Danish firm, to *non-integrated*, that is working completely by themselves under conditions similar to their home country or worse. Such a scale should of course be seen as a continuum, and the prospect that EEC-workers may in time obtain key positions in Danish firms and thus be more fully integrated should not be rejected.

However, this prospect would to a large extent have to be based on job security (as opposed to employment security), as construction firms have noted a number of difficulties in using EEC-workers. The main problem is that of communication, with few Poles speaking anything but Polish, and followed by EEC-workers lack of understanding for Danish construction standards and security procedures. On top of this come some problems with logging and administrative procedures, that all in all make employing EEC-

workers quite an investment or a strategic choice for the individual firm. Therefore few firms are potential workplaces for EEC-workers, giving them fewer chances of obtaining a new job if they are dismissed.

### **The Position of Eastern European Workers in the Danish Construction Labour Market**

It is well known, that there is no statutory minimum wage in Denmark. The minimal standards are set by voluntary agreements between trade unions and employer organisations in the collective agreements. However, the Danish transitional regime requires that EEC-workers are employed under 'normal' Danish conditions; otherwise they cannot obtain a work permit. To begin with, the term 'normal' was determined by individual interpretation by the regional employment councils, taking in to account the local wage level, working hours, etc. However, after the 2006 reform of the transitional regime, the term has more and more often been interpreted as equivalent to the minimum pay levels stated in collective agreements. This makes quite a bit of a difference in the construction sector, as there is a significant gap between the minimal hourly wage of 13 € and average hourly wage of 20 €<sup>3</sup>. Therefore it is no trivial matter, that one in four EEC-workers employed in Danish firms gets approximately the minimal wage<sup>4</sup>. They are not just at the bottom of the scale, but in a place where no Danish worker will be. Furthermore, according to the employers' own statements, the EEC-workers in construction are on average paid 16 % less than their Danish colleagues. This indicates that, even though the collective agreements are upheld, the EEC-workers are paid less and can be said to be in a marginal position. As for posted workers, their working conditions are regulated by the Danish implementation of the directive on posted workers (Directive 96/71/EC), which has reference to a number of Danish labour laws, but no reference to wagelevels. Wages are regulated via the collective agreements, making it fully legal to pay posted workers below the minimum levels stipulated in the agreements if the posting firm is not covered by such an agreement. The general picture painted by employers is, that their EEC-subcontractors are on average paying the employees around the minimum wage, but examples of hourly wages of 4 € have raised a lot of debate in a sector with an average hourly wage of 20 € among Danish workers. The lower wages are in some cases explained by employers by reference to lower productivity and lower working pace, but others simply state that they pay as little as possible.

On the other hand, a large section of the employers want their Eastern European employees to work in accordance with the Danish collective agreements. Large construction enterprises often make collective agreement coverage a contractual requirement for their subcontractors in order to avoid conflicts and negative media attention. Furthermore, one third of the employers in the survey have themselves made contact with the unions to make sure that the wage and working conditions for their EEC-employees are not violating the agreements. Some employers have even informed the unions about examples of underpayment or violations of collective agreements by other employers.

As for the EEC-workers, it is important to note that they are far from being a homogenous group. They range from some highly skilled construction workers, with 4 years of vocational training and a great deal of work experience within the sector, to former peasants with no experience in the construction industry that seems to try their luck on an 'adventure of the West'. Of course, these groups are meeting quite different responses from Danish employers – and different wage levels. It should also be noted, that Danish minimal wages are 3-5 times that of the average wage in, for instance, Poland and, when Danish tax-deduction schemes are taken in to consideration, EEC-workers' net income in Denmark will be even higher compared to, for instance, Poland.

### **The Danish model and challenges of the EEC-workers**

Seen from this perspective, the problems surrounding the EEC-workers can be separated into two different categories. On the one hand there are problems of large-scale underpayment and violated employment contracts, taking place in a grey zone between legality and illegality and attracting great awareness in the media. Examples would be EEC-workers getting no payment at all or very much less than was promised. This category of problems has the potential of being the basis for an alliance between EEC-workers, authorities and trade unions. On the other hand, there are problems of wage pressure, disorganisation and deregulation. An example would be unorganised EEC-workers getting the minimal wage as opposed to 'normal' standards, where workers are organised and get 50 % more than the minimal wage. This category of problems has the potential of being the basis for a confrontation between EEC-workers (well satisfied with minimum wages and without the tradition being organised), trade unions (eager to get the sector organised and uphold the Danish wage levels) and authorities (understaffed and uncertain to what extent they should get involved and on what side).

Thus, due to the special Danish model with no laws on minimum wages, the inflow of EEC-workers, has posed a significant challenge to trade unions in the sector. Problems of locating and investigating EEC-workers and EEC-companies, imposing and enforcing collective agreements on employers of EEC-workers, and gathering documentation for the labour court has been a common experience for local unions. These problems have been met with a great number of resources and revival of old strategies of organising workers by the unions. But the efforts have to a large extent been in vain. Only 2-4 % of the EEC-workers in construction have been organised in Danish trade unions, as opposed to a sector organisational degree of 80-89 %.

Furthermore, the inflow of EEC-workers and EEC-companies has run parallel to the appearance of new forms of employment and new problems - well known in many countries, but which have up until now had little foothold in the traditionally well-organised Danish construction sector. First, there are no official estimates as to how many illegal EE-workers there are in Denmark. The authorities simply do not have any general practise for making such estimates. However, there is no doubt that a number of EEC-workers are working illegally in Denmark – especially in the construction sector. Second, due to the attractiveness of posting workers, there has been a growth in the length of subcontracting chains, making it complicated to figure out who works for whom, and whether bogus posting is involved. Both police and unions are fighting a hard battle to identify cases of posting created just in order to circumvent the Danish transitional regime. Third, the phenomenon of bogus self-employment has been modest up until now, but there are tendencies suggesting that still more EEC-workers are registered as independent contractors even though it is unclear whether they can legally be characterised as such.

To sum up, the challenges posed by the presence of EEC-workers in Danish construction are multiple, ranging from problems of labour market integration of individual EEC-workers to structural challenges to the Danish model of labour market regulation. How and if these challenges will be met will have to be followed closely – focusing on both the aggregated tendencies in the attitudes and behaviour of construction firms, EEC-workers local unions on the one hand, and on the initiatives coming from central actors, such as unions, employer organisations and different state (and super-state) agencies on the other. FAOS will follow developments closely.

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1. Prior to the scheme-reform EEC-workers would not be allowed to work in Denmark while their application for a work permit was being processed. This meant that EEC-workers had to obtain a job in a Danish firm – a requirement for getting a work permit – and then send in their application. Afterwards they would have to go home and wait until their application was processed, which would generally take about 3 months. Not an optimal solution for EEC-workers eager to work or construction firms eager to use their new employee! After the reform, employers could get prior approval to hire EEC-workers, which would allow them to work for the employer while their application was processed.
  2. The following draws on a survey conducted by FAOS amongst 236 Danish construction firms. The original sample of 400 prior approved firms (see note 1) was reduced by approximately 120 due to various causes (wrong information in the public records of the firm, wrong phone number, did not pick up, did not want to participate or did not have the time), and another 40 did not have any EE-workers.
  3. This gap is due, among other things, to the high level of piece rate work and to clauses in the collective agreement prescribing additional decentralised wage bargaining.
  4. The term ‘minimal wage’ is used by the social partners to indicate that the sector is covered by a bargaining system with additional local bargaining, as opposed to ‘normal wage’ indicating that the sector is covered by a bargaining system where the centrally agreed wage is normally the wage paid. It is used here in order to avoid the term ‘minimum wage’, indicating a wage standard set by law.

## Supporting Migrants in Switzerland: the role of the trade unions

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### Introduction

On the 5<sup>th</sup> of December, I attended the CLR Seminar ‘Labour in Neverneverland?’ in London. The main subject under discussion was the increasing numbers of migrant workers, mainly from Poland and other eastern European countries, in the British construction sector. Throughout the course of the seminar, the focus was on the problems these new waves of migrants pose for the construction sector, and the possible ways of addressing these problems by the government, employers and trade unions.

Many of the seminar presentations and discussions made it clear that the problems in Great Britain today are the same in other European countries, as for example Switzerland, where I live and work for the trade union Unia. The process of thought and discussion in Britain around this subject now has been going on for

some decades in Switzerland, where the waves of migrants from distant and unknown countries began long ago.

It is based on the experience that we in Switzerland have acquired in the trade union work with migrants that I would like to share some ideas. In this paper, I will describe some of the successful strategies, including native-language information media, and regular workplace visits, that have been established and validated. I will then discuss the role of trade union as political mouthpiece for the interests and rights of migrants, and finally present future challenges for trade unions in their work with migrants.

### **Migration in the Swiss main construction industry**

Nowadays 21.9% of the Swiss population is foreign. The Italians are the biggest migrant group followed by citizens of former Yugoslavia and the Portuguese. The economy and working market depends heavily on the migrant workforce. Many economic sectors, such as the construction, hotel and restaurant services, health, cleaning services and household work would not function without foreign workers. 25.8% of the working population has no Swiss citizenship.

According to the statistics of the employers association in the main construction industry in Switzerland, only 35.2% of the workforce is national, a solid majority (64.8%) of the workers are migrants – 24.7% are Portuguese, 15.5 Italians, 7.8% Serbian and Montenegrins, 4.3% Spanish, and 2.9% German. Trades connected with the construction sector, but not part of the main building activity, such as painters, carpenters, electricians, plumbers, and so on, are not included in these numbers. If these specialist branches are taken into account, then the number of foreign workers falls to 31%.

Starting from 1890 Italians workers were recruited for large Swiss infrastructure building work. As early as 1910, 40% of construction workers were non-Swiss, mostly from Italy. In the decades of the 60s and 70s, the Italians continued to be the most numerous group on Swiss building sites. In the 70s, workers from Spain were also recruited, and in the following decades (80s and 90s), recruiting was also done in Portugal and in the former Yugoslavia. The Swiss government had special agreements with the above-mentioned countries, allowing for an annual quota of workers for the building business. Most of the workers were seasonal, meaning they possessed short term work contracts (from 8 to 10 months), with very reduced social and civil rights – no right to unemployment benefits, no right

to remain in the country after the end of the working contract, no right to family reunion, no right to job or employment change, and no right to geographical movement within the country. This posed barriers to integration, and represented a lack of social rights and benefits.

With the introduction of the free movement of workers in the European Union (EU), which Switzerland also benefits from by having signed bilateral agreements with the EU, the seasonal workers' status was abolished, but short term working contracts continue to exist and the number of temporary workers has increased, and the Swiss main construction industry continues employing many foreign workers (numbers are mentioned above). The newcomers are mainly from Portugal and Germany. The reduced numbers of migrant workers from the new EU member states (EU-10) are due to the existence of annual government quota. The full liberalization of the labour market for workers from Central- and Eastern-EU states will happen in 2011, and probably even later for Romania and Bulgaria. The restrictive migrant policies towards non-EU countries have kept out workers from those countries.

### **Migrants in the Swiss trade unions, namely in the Unia**

Migrant workers are a very important force in the trade unions in Switzerland, especially in the unions representing sectors of the private economy, such as the construction, metallurgic, and services industries. The biggest and most representative Swiss trade union today is Unia. Formed in 2005 through the fusion of three important trade unions of construction (GBI), metal industry (SMUV) and services (VHTL), Unia has almost 200 000 members employed in the most diverse branches of the mentioned sectors, and over 50% of its members are migrants. Almost 60% of all the construction workers, this means 47,000, are Unia members, 75% of who are migrants.

The significant number of migrants as members of Unia reflects the fact that, decades ago, some of the trade unions realised the need and importance of organising not only national, but also migrant workers. The trade unions responsible for construction had a pioneering role in this respect. In the decades that followed World War II, a special focus on the recruitment of the Italian workers, and later of workers of other nationalities, was given to trade union work in the construction industry. The active participation of these migrant workers in the trade unions and the workers' movement

has been a constant trait throughout the history of trade unionism in the Swiss construction sector. Many of the important conquests in terms of workers' and labour rights were obtained thanks to the engaged attitudes and the readiness to go on strike of many of the Italian, Spanish, Portuguese, and ex-Yugoslavian union members.

### **Key aspects in the recruiting and supporting of migrant as union members**

From early on, special attention was given to efficient ways of recruiting and supporting migrants as union members.

Right from the start, it was obvious that language was a key element. Addressing a worker in his own language enabled not only communication free from disturbances, but also trust and connection. It also proved to be very efficient if workers were addressed by people from their own countries. So the trade unions started including in their board of employees Italians, and, later on, Spanish, Portuguese and ex-Yugoslavians. In working places and companies, union representatives were also from different nationalities.

Information has proven to be another very important instrument to be used in the recruitment and support of workers. Information should be provided at a very early stage, and in the native language. In the past, the first contact of a worker with a trade union took place at his arrival in Switzerland. It was fairly easy to know, for example, when and where the Portuguese building workers were arriving in Zurich for their working season in 1982. All seasonal workers would enter the country at a precise date and were subjected to sanitary controls at the border, and trade unions could meet these workers as they entered the country. This is no longer possible, so the trade union Unia has developed cooperation work with trade unions in different countries (Italy, Portugal, Germany, Austria), so that workers have access to information before leaving home.

Producing information materials in the mother tongue is another essential tool in the trade union work with migrants. Flyers about labour or social security rights, brochures on temporary work and temporary workers rights, notices on the collective working agreements for specific branches / sectors or on salary increases, are some of the examples of some of the informative material produced with specific content aimed at target groups. Another important source of information is the trade union media. Besides the Internet

site, the Unia publishes 3 national trade union newspapers in German, Italian and French (the national languages in Switzerland), which union members get at home every 2 weeks. 9 times per year a supplement to these papers is published in 5 other languages – Portuguese, Spanish, Albanian, Serbo-Croatian and Turkish. This is one of the most appreciated services to migrant union members. The Unia offers legal counselling and support in the native language to its members. In the 45 Unia local sections, the teams of trade union workers in charge of the referred services frequently come from the same countries as the members, and speak their language. This means that Spanish, Italian or Kosovo-Albanian members, for example, can benefit from advice and legal consultation in their own language and with an awareness of potential difficulties in cultural understanding.

Regular visits to the working places to contact and inform newcomers as well as longer-term workers – both union and non-union members – are also one of the successful elements in trade union work on the construction sector. There are local union sections that are daily on building sites in close and personal contact with the workers. The teams that do this job are composed of union workers originally from the same countries as the building workers; in such teams, 3 to 5 languages are normally spoken.

Besides going to the working places, it is also very important to organise visits, information sessions, or other activities in migrant associations and clubs – the places where many of migrant workers tend to spend part of their free time, engage themselves in different activities, and feel at home. Informing and organising workers at their working places, and also at their associations and clubs has had many positive results.

Training courses in labour issues and trade union politics is another important means not only of recruiting and supporting members, but also of enabling them to participate actively in the structure of the union, as well as at their workplace. Every year the Unia carries out several courses, both nationally and regionally, in different languages and on varied themes, according to needs and interest.

### **Other aspects of the trade union work in the migration area**

Besides this direct involvement (personal contact, information, legal counselling and support, and training courses in the mother tongue), other important aspects of trade union work with migrants must be considered.

The trade union Unia sees itself as the voice of the interests of migrants and, with over 100,000 foreign members, it is the biggest migrant organisation in the country. In this respect, the Unia develops and implements policies with respect to migrants' integration and equality.

The information work referred to above is a means of empowering migrants, enabling them to acquire knowledge of the rules and laws, but also of their rights in the host country. Promoting the acquisition of the local language, as well as professional training is another of the concerns of Unia. Per year, a considerable number of language courses and training courses for different jobs are organized in cooperation with schools, employers associations, or other institutions.

In the negotiation of collective agreements, there is an effort to include equal rights and equal working conditions for all, and to carry out their implementation in enterprises and working places.

The political positioning and demanding, as well as lobbying on behalf of migrant workers are features of trade union work. Supporting or organising campaigns and referendums on migrant political issues are some of the concrete aspects of that work.

Last, but not least, is the participation of foreign members in the structures of the trade union, including advisory and oversight committees of the central union offices, member commissions in the local branches, and in local or national committees of migrant interest for union policy.

### **Future challenges**

The organisation of and the work with migrants within the trade union in Switzerland has undoubtedly had enormous benefits. On one side, it has contributed to the strengthening of the union in its role as the representative of all workers, including those who are more vulnerable to abuse, injustice, and disrespect. It has enabled the achievement of many rights for migrants – as workers, as people, and as citizens – and the improvement of their legal situation and their integration in the working world and in society. On the other side, the functioning and the shaping of the trade union has benefited from the knowledge, the experience, and the know how of people from other countries and cultures. The potential among migrants is of great value not only for employers, but also for the organisations representative of employees. In Switzerland, this potential was luckily identified soon enough by some trade unions.

The new political and economic environment in Europe does not make the task of trade unions in their work with migrant workers easy. The increasingly precarious forms of employment and working conditions, the great mobility of workers, the temporary status of work, and so on, pose new challenges to trade unions. In response, new forms of work and new projects are being tried out. Cooperative work with trade unions in the home countries of migrants, the cross-border trade union work in the form of committees, research and work groups, the European Trade Union Confederation, or the project of an European migrant workers network are some examples.

In a Europe where borders for capital investments, for company operations, and for worker recruitment and mobility do not exist any more, I believe the same transparency of borders is also necessary for trade unions to operate effectively.

The internal work in each European country with local issues keeps on being of great significance. The old and the new waves of migration in each country must not be forgotten, and the organisation of workers independently of their nationality, working permit, and residential status must be carried out. But more than ever, the work of trade unions must also be oriented towards a more European perspective. This is, in my opinion, one of the big future challenges for trade unions in Switzerland, as well as in Great Britain and in all the other countries of Europe.

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# Reports

Jan Cremers,  
AIAS, 28.11.07

Report of a  
conference,  
Amsterdam  
University, on  
27.10.07

## Cross border temporary agency work

It is no accident that the social partners in the temporary agency work sector in the Netherlands recently organised a meeting dedicated to cross border temporary work.

The largest European temporary work agencies have Dutch origins and in European overviews the use of temporary agency work in the Netherlands has always been very high compared to other countries. What is more, the Dutch employer's organisations and the trade unions in the sector have developed a strong tradition of social partnership over the last 20 years. They have concluded collective agreements that have been made generally binding; they have come up with several joint statements in the fight against fraud and bogus practices and they have established different joint institutions. A few years ago the biggest umbrella organisation on the employer's side (ABU) and the trade unions installed a paritarian office with control of contract compliance as a central task.

The collective agreement for temporary agency work includes an equal treatment clause for foreign workers (individual migrants travelling to the Netherlands to find a job) and a clause that implements the European Posting Directive (for workers temporary posted from abroad).

During the conference, organised by the ABU and the Hugo Sinzheimer Institute of the University of Amsterdam, several challenges were addressed that are well-known for readers of CLR-News.

- Our colleague Mijke Houwerzjl contributed with an explanation of the juridical aspects of cross border and temporary posting. She underlined the possibility to use the European Posting Directive for the control of the hard core of labour conditions defined in that directive.
- A representative from the employer's side stressed the need for prevention and control of compliance. It should not lead to a stigmatisation of the individual worker involved. The priority has to be a fight against *malafide* practices, against bogus agencies and other dubious go-betweens (also in lodging). The Posting Directive, as implemented into Dutch

law, did not cover this sector till a modification in the legislation in 2006. Today all sectors having generally binding agreements have to apply the provisions of the Directive. The collective agreement for temporary agency work was adapted accordingly and the social partners are discussing how to improve control of compliance.

- One instrument was introduced during the conference, an example of 'soft law'. The sector has developed a norm (NEN 4400-1) that guarantees the user-undertaking that, for the workers involved in the supply of a temporary workforce, social security and tax obligations are respected. The norm functions as a mechanism of self-regulation and certification. And again social partners have installed a joint supervision body.

The pro and cons of soft law and certification were discussed. One thing seems obvious: soft law can only function in a context where there is strong social partnership. It can be an important part of the joint activities to keep a sector transparent and legitimate. However, compared to stronger juridical forms of regulation, the absence of sanctions can hinder the functioning of the system. It is up to the sector to convince the user-undertakings (and the authorities) to work exclusively with certified agencies. At the moment the integration of an obligation to work with certified agencies into the generally binding collective agreement is considered an alternative.

# Reviews

Jan Cremers,  
AIAS , 5.12.07

## **Subcontracted illegality (L'illegalité sous-traitée) – Nicolas Jounin, Paris University, 2006.**

The French sociologist Nicolas Jounin has recently written several interesting articles based on his own research on construction sites. In February 2006 he delivered his doctoral thesis in a 600 pages document (*Loyautés Incertaines – Les Travailleurs du Bâtiment entre Discrimination et Précarité*, University of Paris 7, 2006). In that document he reports and analyses how work is more and more seen as a good that can be separated from the individual worker. His participation as a temporary apprentice building worker on several sites in the Paris' area brought him to the conclusion that it is impossible to view work as a regular product; workers cannot be interchangeable suppliers: 'The purely contractual dimension of wage earning always comes with the granting of a status, even an implicit one. That status determines the labour force supply, the quality of work as well as the loyalty of workers' (summary, *Loyautés Incertaines*). He signals that the status granted to workers in the building trades is not even and that the variety of status increases as a result of the reduction of general guarantees: workers 'appear' or 'disappear' as persons according to the conditions of production. In his thesis Jounin applies these observations to notions of ethnicity and discrimination. Outsourcing and flexibility contribute to a division between those (workers) in the centre and those at the periphery. But even the workers in the centre are confronted with the threat of precarity. Outsourcing leads to precarious work sites and the basic solidarity stemming from the direct link between the (ownership of the) workplace and the employment relation is vanishing. In his theory he partly applies the terminology of dependency theory, a body of social sciences theories about developed and developing countries, developed by Samir Amin and André Gunder Frank among others, based on the notion that there is a centre of wealthy states and a periphery of poor, underdeveloped states.

This notion of centre and periphery, of a hard core of 'privileged' workers on the one hand, and of non-represented workers in vulnerable positions on the other, is the central theme in a recent essay 'Subcontracted illegality'. His first observation is the heavy infraction of labour law on construction sites. His main argument however, is the impact of the use of gangmasters and agencies in a sector that is

characterised by outsourcing via subcontracting. Subcontracting as such does not necessarily lead to a lowering of working conditions and specialised subcontracting can be part of a logical division of labour. But, after the legal introduction of the use of temporary work agencies (for a long time forbidden in French construction) outsourcing in construction takes the form of labour only subcontracting (the return of the 'marchandage', a stable supply of precarious labour). He argues that the extensive use of subcontracting has led to a small, but powerful group of general contractors that wins tenders, manages the sites and has its logos on it. Professions and activities with high added value are incorporated (conception, finance, concessions). On site these contractors are no longer present with their workforce. They have externalised the discontinuity and uncertainty of temporary labour intensive activities and all the simple and repetitive work is handed over to subcontractors and agency workers.

The lowest echelon of temporary agency workers, mostly immigrants, does not figure in official construction workers' statistics: they are seen as part of the 'service providers' or simply ignored because of the irregular character of their work. These workers are not represented at all. Labour inspection has more and more tasks to fulfil and the interests of workers in vulnerable situations have no priority. Labour law is only applied for a hard core of regular workers. Workers' representation in the centre ignores the interests of those in the periphery and the representation in small subcontracting firms and agencies is poorly developed. All depends on the capacity of the workers' representatives at the top of the chain to look after interest beyond the borders of the main contractor. Trade union action so far has been dominated by the defence of direct labour and campaigns against outsourcing. Little has been done in favour of those that stand outside. The basis for public and collective action is therefore vanishing. The result is individual escape from poor conditions: absenteeism, sabotage, loss of knowhow, departure.

According to Jounin, this is how the industry will discover that the energy of workers is not a simple commodity that 'one can buy the same way as a kilo of potatoes'. His writings are certainly interesting for those readers that have to deal with the question of equal treatment on site and with the issue of liability in the chain of subcontracting. They also feed into debates on the question of when a contract for the provision of services becomes a labour

contract. Finally, his analysis pinpoints the Achilles heel of formal law and institutionalised forms of workers representation.

One remarkable observation on my part: obviously the language barrier is still so strong that there is no reference made to the similar debate going on in the Anglo-Saxon community of industrial relations experts. And, on the other hand, I have not seen any reference to Jounin's interesting thesis in that community. How European are we?

Jan Cremers,  
AIAS, 20.12.07

## **Revival of the political economy? Zur politischen Ökonomie der Schweiz. Eine Annäherung. Thinknet/Denknetz Jahrbuch 2007, Zürich 2007.**

Our Swiss friends from the Thinknet group have produced their Yearbook 2007 with a series of contributions that criticises neo-liberalism and mainstream economic thinking. In the editorial they promise a critical confrontation with thinkers like John Stuart Mill, Adam Smith, as well as with Keynesian and Marxian economists. Developments in today's society have to be analysed with other instruments. Dependency and the imbalance of power are as important as analyses of trade relations or financial markets. The statement is symbolic for a (still limited?) revival of the political economy in Europe. In several countries scientists are returning to theoretical concepts that go beyond the plain belief in the free market.

Next to an opening *Essay* the book has five headings (**Labour, Migration, Public Services, Political Economy, Thoughts**). The contributions provide a wide spectrum of thoughts based on the notions 'freedom, equality and solidarity'. The opening by *Saskia Sassen* could not convince me. She sees the emergence of a global city that creates the possibility for new types of what she calls 'a global society'. Globalisation combined with

strong human rights activities by non-political subjects will lead in her view to a transformation and de-nationalisation of our society with as a result extreme inequalities as well as conditions enabling 'progressive citizenship practices'. I was puzzled by her analyses and the wishful thinking in her contribution.

In the **Labour** paragraphs a critical review of the 'work instead of social protection' debate was picked up by *Eva Nadai*. Social protection is in this debate regarded as an instrument that paralyses people instead of activating them. She describes how social protection has become subordinated to the economy and competitiveness. As an effect, the individual is seen as the only responsible subject for his/her integration and his/her labour market perspective. Failure demonstrates the 'lack to integrate' (and other forms of stigmatisation). Editor *Beat Ringger* criticises the short term views that have dominated labour market debates till recently: first, the thought that mass unemployment would stay forever, nowadays the idea of structural labour shortages based on the age pyramid in our societies. Based on demographic and economic expectations the market outlook will probably relax in a few years. In the meantime, our economies have to be reformed in a sustainable direction. He formulates a plea for a long term vision and for a strategy that guarantees better opportunities for young people in vulnerable situations and with poor initial education. Therefore new forms of vocational training and education are a must. *Rudi Winkler* defends the thesis that the unemployed must have the right to decide on their vocational training and retraining. His contribution is a plea for a method to change 'concerned people' into 'participants'. The result will be increased motivation and improved qualification. *Holgar Schatz* finally comes up with strong criticism of the emphasis on training in today's political debate on inclusion and exclusion.

The **Migration** paragraphs start with a contribution called 'Migration and the precarity trap', written by *Vania Allewa* and *Hans Baumann*. They analyse the impact of old and new forms of migration on labour conditions. The Swiss situation is an interesting case: some 30% of migrants have already lived and worked more than 20 years in the country, 60% for at least 10 years. Various sectors would not function without migrant workers. The Swiss trade unions have succeeded in attracting migrant workers. They are prominently present in the rank and file as well as in the union leadership. The contribution of the authors reads like a manifesto

for equal treatment: fair labour conditions, recognition of home country education and training, abolition of discriminatory temporary permits, regularization of migrants that live already for years in Switzerland. Generally binding collective agreements can be seen as a strong weapon in this respect. These agreements, combined with minimum wage regulations, protect against social dumping as the joint, paritarian initiatives, developed by the social partners, demonstrate. *Annemarie Sancar's* contribution adds the notion that human rights are no commodity, but a political principle in our society. A consistent fight by the State against the precarious labour conditions of many migrants should have more priority than the optimality of the free movement of capital.

The remaining paragraphs include, for instance, a plea for an integral health care service and an excursion to the Finnish health care system. In the ***Political economy*** contributions an effort is made to analyse the development of the Swiss economy and the 'social reproduction of wealth'. For German readers the Yearbook 2007 is (again) a recommendation.

## CLR Annual General Meeting 2008

Thursday 13<sup>th</sup> March, 11-13h  
Brussels, Rue Royale 45/3<sup>rd</sup> floor

1. Presentation of participants
2. Annual report 2007 on activities and finances
3. Reports and planning:
  - Activities (migration, vocational training, health and safety, transformation of labour relations, social funds, self-employment)
  - Regional Offices
  - CLR-Studies
  - CLR News and Observatory
4. Current projects and research priorities (please bring abstracts)
5. European cooperation/networking

## CLR Seminar on health and safety, in cooperation with EFBWW

Thursday 13<sup>th</sup> March, 14-16.30h  
Brussels, Rue Royale 45/3<sup>rd</sup> floor

15 years ago the European temporary or mobile work sites Directive was formulated. Implementation took several years. During the seminar we will examine the impact the Directive has had on construction sites.

The seminar will be followed, from 16.30h on, by a drink/informal reception to celebrate the **15<sup>th</sup> Anniversary** of the **European Institute for Construction Labour Research - CLR**.



## **“Soft values in a tough Business” A seminar on education in the construction sector**

The network of construction research CLR Denmark = Construction Labour Research invites to yet another exiting conference on migrant labour, see [www.CLRdenmark.dk](http://www.CLRdenmark.dk)

**Date:** **Thursday 24<sup>th</sup> April 2008 at 9.00 – 14.00**

**Venue:** **3F-House, Kampmannsgade 4, DK-1790  
Copenhagen V.**

**Detailed programme not ready yet,  
but will be announced during February**

Participation is free of charge, but registration is necessary to Mrs. [sanni.hansen@batkartellet.dk](mailto:sanni.hansen@batkartellet.dk) no later than the 21<sup>st</sup> of April 2008.



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