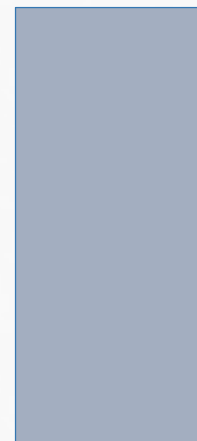




BUILDING AGENCY IN NON-STANDARD FORMS OF EMPLOYMENT

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EVOLVING FORMS OF EMPLOYMENT RELATIONSHIPS AND DECENT
WORK



BACKGROUND



- Technological, structural changes in the world of work – not new;
- Divisive – seen as “natural phenomenon”, with supporters and detractors;
- Key element of labour market regulation is agency;
- “NSFE – more often unable to exercise their FPRW, including FACB with the relevant employer(s) → Higher incidence of decent work deficits – workers may face barriers to collectively addressing them.” (2015 MOE)

KEY QUESTIONS



- What forms / processes do efforts to organize, represent and create voice for workers in NSFEE?
- What outcomes?
- How to ensure enforceability? How do we move toward collective bargaining?

TRENDS AND BARRIERS



- Lack coverage by basic legal and regulatory frameworks
- Worker classification issues, independent contractor
- Triangulated work relationships – who is the employer?
- Gig / platform work – where is the workplace?
- Defining characteristics of non-standard employment work

« Le salariat laisse la place, doucement mais sûrement, au retour du travail à la tâche »
Denis Pennel, WEC (ex EuroCIETT)

CHALLENGES TO BUILDING WORKER VOICE, COLLECTIVE IDENTITY, REPRESENTATION



- Portrayed, used, perceived as “outsiders”
- Legally precluded from unionization
- Independence
- Isolation, geographically expansive
- Direct competition
- Task-based, fragmented
- Short-term, no promise of re-employment
- ‘Implicit threat’
- Dispute settlement mechanisms lacking

“CASUAL” CONTRACTS



- Very short-term, casual contracts
- Peru - temporary contracts had prejudicial effect on exercise of TU rights (fear), negative impact on social protection;
- New Brunswick – excludes casual workers from definition of “employee” in Public Service Labour Relations Act (1/3 of normal working time), inferior pay and benefits, no CB rights;
- CFA – can only review short-term K regime as it impacts on FA rights; systematic use should not become obstacle to tu rights

ILO BASICS ON FACB



- All MS have obligation to promote in realize
 - FPRW increasingly recognized as human rights
- Relevant standards and principles defined broadly – workers not employees (C. 87, 98)
- Supervisory mechanisms:
 - tripartite complaints-based CFA;
 - independent regular reports to CEACR;
 - potential review by CAS
- First cases on NSFE in 1983 – “not specifically excluded”, “should naturally be covered”...

TYPES



- Debates on employment classification in courts, parliaments – workers seek collective agency.
- Some typologies emerge:
 - Union renewal
 - New union formation
 - Cooperatives
 - Online forums
 - Worker centres
- Not mutually exclusive, used to explore mechanisms through which worker power originates, evolves.

INTERNAL ORGANIZING & CAPACITY BUILDING



General Resources, identifying common concerns and trends, building relationships, etc. Each typology does this slightly differently

- Online Forums
 - Navigating online platforms
 - Good vs. bad requesters
- Worker Centers
 - General services (employment and non-employment)
- Union Renewal
- Cooperatives
 - Services and benefits
- New Union Formation & Minority Unionism

STRENGTHENING THE RELATIONSHIP BETWEEN WORKERS AND THE PLATFORM



- Addressing misclassification
- Increasing access to employer provided social services.
- Campaign building
- Platform cooperatives
- Giving workers a seat at the table

VOLUNTARY AGREEMENTS INCORPORATING END USERS



- Identifying commonalities between end-users – triangular bargaining
- Altruistic agreements vs. enforceable agreements
- Efforts aimed at establishing formal dialogue structures (works' council), moving toward collective bargaining

WHEN CB WORKS



“balance (unequal) employment relations between employers and workers”

- Securing regular employment
- Regulating work organization
- Negotiating equal pay
- Addressing scheduling / hours
- Extending maternity protection
- Making the workplace safe

SECURING REGULAR EMPLOYMENT



Collective agreement	Select provisions
Philippines: Indo Phil Textile Mills, Inc. and IndoPhil Textile Workers Union company agreement (2010-2015)	A temporary or casual employee performing the job of a regular employee who has worked for 156 days in any 12-month period is deemed a regular employee. ¹⁴
Canada: Crown in Right of Ontario and Ontario Public Service Employees Union collective agreement (2013-2014)	Where the same work has been performed by an employee in the Fixed-Term Service for a period of at least eighteen (18) consecutive months, except for situations where the fixed-term employee is replacing a regular employee on a leave of absence authorized by the Employer or as provided for under the Central Collective Agreement, and where the ministry has determined that there is a continuing need for that work to be performed on a full-time basis, the ministry shall establish a position within the Regular Service to perform that work.
South Africa: Road Freight Bargaining Council Agreement (2012-2013)	An employee of a temporary employment service who is provided to one or more clients within the industry for a period in excess of two months is deemed to be an ordinary employee and all relevant provisions of this Agreement are applicable to that employee
New Zealand: BOC/ Linde Engineering Employees and Engineering, Printing and Manufacturing Union collective agreement (2012-2014)	This clause does not permit the employment of temporary employees for successive engagement totalling more than six months, except where the employer, the employee and the union agree in writing to that longer duration.

REGULATING WORK ORGANIZATION



Collective agreement	Select provisions
Germany: Südwestmetall and IG Metall pilot agreement in the metal industry (2012)	Works councils have greater co-determination rights and the right to call for negotiations to regulate the use of temporary agency workers by a works agreement. Topics for such an agreement can range from the purpose and area of deployment and the volume of temporary agency work to the permanent employment of such workers.
South Africa: Motor Industries Bargaining Council agreement (2010-2013)	After August 2013 no more than 35 per cent of an employer's core workforce may consist of temporary employees
Colombia: Ecopetrol and Union Sindical Obrera (United Workers Union) company agreement (2009-2014)	Contracting and subcontracting firms undertaking activities directly related to the oil industry must pay their [contract] workers the same salary (in money and in kind) and benefits contemplated in this Convention.

EQUAL PAY



Collective agreement	Select provisions
India: Coal India Ltd. and Indian National Mineworkers Federation (INMF) and others, wage agreement for contractor workers engaged in mining operations (2012-2016).	Where the existing wage rate of any employee based on [a collective] agreement or otherwise is higher than the rate for contract workers, the higher rate shall be protected and treated as the minimum wage rate for contract workers.
Norway: Norsk Industry (Federation of Norwegian Industry) and Fellesforbundet (the United Federation of Trade Unions) sectoral agreement (2012-2014)	Employees in manpower or temporary work agencies shall have the same wages and working conditions that apply in the enterprise leasing such labour for the duration of the leasing period in accordance with the Working Environment Act.
Mauritius: Total Mauritius Ltd. and Chemical, Manufacturing and Connected Trades Employees Union company agreement (2014-2016)	All employees performing work of same value should be equally remunerated, including casual and contractual workers with a fixed-term contract of employment.

WORKING TIME



Collective agreement	Select provisions
New Zealand: McDonalds and Unite Union company agreement (2015-2017)	Workers will not be scheduled to work: (i) a shift that is less than three hours; (ii) more than two shifts per day; (iii) more than eight hours per day; (iv) more than 40 hours per week; (v) after 12 consecutive hours from the time work started on one day; (vi) on a sixth or seventh day in any week; and (vii) without a break of 9 hours between the end of work started on one day and the start of work the following day.
New Zealand: Restaurant Brands Limited and Unite Union collective agreement (2015-2017)	Rosters shall be published and made available on a Tuesday. The roster will confirm the employee's hours of work for the following seven days and provide initial notice of the employees' hours of work for the succeeding period of seven days. The minimum shift duration is three hours for any day, unless an employee is required to attend an official meeting or training session in which case a one-hour minimum applies. In exceptional circumstances, and after consultation with the union and the employee concerned, Pizza Hut may roster shifts of a minimum duration of two hours.

MATERNITY PROTECTION



Collective agreement	Select provisions
Denmark: Dansk Erhverv (Danish Chamber of Commerce) and Handels og Kontorfunktionærernes Forbund (Union of Commercial and Clerical Workers in Denmark) sectoral agreement (2014-2017)	Shortening of the qualifying period for agency workers to access maternity benefits from nine months in the same job to 1,443 hours employment within a three-year period.
Italy: Assosomm (Italian association of work agencies) and trade unions: CGIL, CISL, UIL, Felsa-Cisl, Nidil-Cgil, Uiltemp TAW sectoral agreement (2014-2017).	Maternity protection: • One-off payment of €2,250; • Childcare contribution: €100 per month up to the child's third year.

TRAINING AND SAFETY



Collective agreement	Select provisions
Spain: Fifth National Collective Bargaining Agreement for Temporary Agency Workers (2008-2010)	Temporary work companies will allocate an annual one per cent of the payroll to cover the occupational safety and health training needs of workers hired to be assigned to user enterprises.
Republic of Korea: Metal Industry Employers' Association and Metal Workers' Union industry agreement (2013-2014)	The employer should supervise in-company subcontractors [basically temporary agency workers] in order to prevent occupational accidents and illness and provide the relevant education in accordance with the Act on Occupational Health and Safety.
Mauritius: Building and Civil Engineering Contractors' Association, and the Construction, Metal, Wooden and Related Industries Employees' Union and the Private Enterprises Employees' Union multi-employer agreement (2011, undetermined)	Where an employee has less than 12 months continuous service, she/he should not be exposed to any hazardous job unless and until he/she has received appropriate training from a competent person.

CHALLENGES INTRODUCED WITH COMPETITION LAW



- Past challenges; what we have learned
 - Consumer rights vs. collective labour (human) rights
 - Commonwealth v. Hunt (1842) → Sherman Anti-Trust Act (1890) → Clayton Anti-Trust Act (1914) → Wagner Act (1935)
 - “It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce [...] by encouraging the practice and procedure of collective bargaining, [...] FOA.”
- Is CB detrimental to competition?
- Concentration of powers in large corporations
- Does this reduce concentration of power or heighten it?

RECENT CASES



- Netherlands, Ireland
- When workers become ***undertakings***?
 - Entity engaged in economic activity, consisting in offering goods or services on a given market, regardless of its legal status / how it is financed, is considered an undertaking.
- Can a CBA for freelancers be seen as a ***cartel***?
 - Agreement between competing firms to control prices or exclude entry of a new competitor in a market. It is a formal organization of sellers or buyers that agree to fix selling prices, purchase prices, or reduce production using a variety of tactics.

IRELAND



- CEACR: C. 98 establishes principle of free and voluntary collective bargaining and autonomy of parties with respect to all workers and employers covered by the Convention.
- Right to CB should also cover organizations representing the self-employed, being “nevertheless aware that the mechanisms for collective bargaining in traditional workplace relationships may not be adapted to the specific circumstances and conditions in which the self-employed work”

COMPETITION (AMENDMENT) ACT, 2017



- Defines ‘false self-employed worker’, ‘fully dependent self-employed worker’;
- Exempts three categories of workers from competition law;
- Establishes process for applying for future exemptions for workers fitting one of two above definitions, and for its withdrawal on the basis of new facts.

CLOSING REGULATORY GAPS



- New legislative proposals
- Tripartite agreements
 - Government, platforms and/or employers' associations, and workers' organizations
 - Shared development of regulatory frameworks by social partners
- Guilds
- Works Councils
- Establishing the location of the work

CLOSING THOUGHTS



- Non-standard work = work, done by workers (even if not employees); Work happens where the worker is;
- Broad-based, effective, adapted strategies
 - Larger, established unions - institutional power, resources, connections
 - Others familiar with local issues, industries; Connections with workers, communities
- Sustainable “wins” – governance structures
 - Sectoral bargaining may be particularly suited
 - Need strong representative worker structures
- Categorization, anti-trust continue as problems.