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Abstract

The EU regulatory regime and employers' cross-border recruitment practices complicate unions' ability to represent increasingly diverse and transnationally mobile workers. Even in institutional contexts where the industrial relations structure and labour law are favourable, such as the Netherlands, unions struggle with maintaining labour standards for these workers. This article analyses Dutch union efforts to represent hyper-mobile construction workers at the Eemshaven construction sites. It shows that the nexus of subcontracting, transnational mobility, legal insularity and employer anti-unionism complicate enforcement so that even well-resourced unions can, at best, improve employment conditions for a limited set of workers and only for a limited period of time.

Keywords

Construction, Dutch industrial relations, migrant organizing, migrant workers, posted workers

Introduction

The accession of Eastern European countries and changes in the regulation of intra-European mobility have triggered an increase in the number of transnationally mobile workers in the European Union (EU). These workers now form a significant portion of

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the labour market in, among others, construction, trucking and shipbuilding throughout Europe. They usually work on contingent contracts for lower wages and under worse conditions than domestically recruited workers, and remain for the most part outside the normal scope of trade union representation. This article looks at transnationally hyper-mobile construction workers at two large construction sites at the Eemshaven, in the Netherlands. By hyper-mobile, we mean they are employed on short-term, project-based contracts, with limited job security, and have no connection to the society in which they work. They make migration decisions based on short-term economic considerations, with little consideration given to integration into their host societies. Arguably, hyper-mobile workers represent an existential challenge to union regulation and collective bargaining in many EU countries. Research has shown that the EU regulatory regime and employer strategies complicate unions' ability to organize and represent these workers (Cremers, 2011; Dølvik and Visser, 2009; Kilpatrick, 2009; Wagner, 2014), and that unions in many places need to develop new strategies given the diverse workforces they encounter (Bengtsson, 2013; Connolly et al., 2014; Eldring et al., 2012; Greer et al., 2013; Kahmann, 2006). We show using the Eemshaven example, that even in the Dutch case, where the labour law is relatively favourable, and the union representation strategy well-resourced and sophisticated, the unions were unable to arrive at a sustainable way to represent hyper-mobile workers. The root of the problem is that the migrant construction workers perceive themselves as existing within a transnational, pan-European labour market, which only intersects marginally with the national industrial relations systems of host societies. It is this overwhelming fact which shapes their views on and limits their interactions with trade unions.

This article presents an in-depth case study based on interviews with union officials and migrants and participant observations of union activities aimed at representing migrant construction workers on two large construction sites in the Eemshaven in the northern part of the Netherlands. The kind of multinational workforce present at the Eemshaven sites is typical of similar construction sites around Europe (Felini et al., 2007; Gall, 2012). From the literature as well as from the unions' experiences, we know that on larger construction sites in different legal and industrial contexts, employment conditions of migrant workers are often not legally in order (Cremers, 2011; Wagner and Lillie, 2014). In principle, the workers at the Eemshaven were covered by a minimum set of employment standards set by the legally extended collective agreements for construction and metalworking. However, enforcing these standards proved problematic, as the unions¹ needed the workers to provide proof of payslips and work contracts, and the workers were generally too afraid of retaliation from their employers to do that without considerable persuasion. The unions wanted to enforce their collective labour agreements to prevent a downward spiral in wages and conditions which would affect their native membership as well, so they were confronted with the dilemma of representing migrants who were not members, were unlikely to become members, and were willing to take little or no action on their own behalf. Though the Eemshaven campaign did not significantly increase membership rates, the workers did come to regard the unions as representative of their interests, providing the unions leverage in claims against defaulting employers, and helping them to regain some control over on-site labour standards. This local success was not self-sustaining, however, but came from a concentration of trade union resources that would be difficult to scale up beyond the level of selected sites.

Methods

From 2011 to 2013 we tracked the development in these migrant construction workers' perceptions of the host country unions during the course of ongoing efforts to recruit and represent them. Our case study is based on participant observation of union tactics to represent the migrant workers on both sites, on individual and group interviews with workers, managers and trade union officials and media reports. We joined the union on housing visits, observed information meetings and followed the unions' activities and actions in person, in the media and through interviews. We interviewed more than 60 workers of various nationalities (Polish, Portuguese, Turkish, Dutch, Belgian, Italian, Slovakian and Irish). Interviews were conducted in various languages and interpreters were used when necessary. Most interviews were recorded with the permission of the interviewees; others were conducted with the interviewer taking notes. Interviewee statements were not taken at face value, but were critically analysed, for internal consistency, consistency with each other, including with the many interviews we have not cited, and consistency with media reports. In this way, we present a version of events factually consistent with the information given by all the interviewees and media.

The Eemshaven was a pilot project for Dutch unions to try out various strategies for organizing and representation. At the construction sites of the Nuon gas-fuelled and the RWE coal-fired energy plants in the Eemshaven in the north of the Netherlands, the Dutch FNV trade unions (FNV Bouw and FNV Bondgenoten) actively reached out to represent hyper-mobile construction workers, by engaging with them through housing visits and conversations and through an on-site office offering information and representation services. Each building project had about 2500–3000 workers at the peak of the construction process, the majority recruited from abroad. The unions handled both sites together and therefore we treat them as a single case. The way national regulatory frameworks fit with EU labour mobility rules differs from one country to another and until now there has been no academic work on union efforts to represent hyper-mobile workers in the Netherlands. Furthermore, the Eemshaven site was of particular interest because the unions were engaged in a systematic and well-funded union effort to specifically represent migrant workers, deploying strategic lessons from organizing and representation efforts learned at home and from abroad.

Hyper-mobile workers in the pan-European construction sector

Transnational hyper-mobility in construction is a product of both the subcontracted nature of the industry, and the current pan-European East–West and South–North labour supply system. The construction industry structure is characterized by subcontracting, short-term contracts and contingent labour. The industry is made up of large general contractor firms who manage entire projects and subcontract parts of the building process to other firms who in turn engage subcontractors and work agencies. This means that supply chains can be opaque, as firms up the chain have only limited control over what happens in lower level subcontracts. Firms tend to push business risks down the supply chain, generating fierce intra-firm competition between lower level contractors, which puts pressure on work standards.

Contractors often come from different countries (and bring their own staff with them), and this means there are usually many nationalities working together under very different terms of employment. The majority of workers is employed by subcontractors or work agencies for periods 'ranging from a few to many months, on an "as and when needed" basis' (Gall, 2012: 413). The Europeanization of the construction labour market adds complexity and uncertainty to employment arrangements (Cremers, 2011). Many of the contractors and labour supplier firms at the Eemshaven have subsidiary branches in multiple EU countries and strategically recruit workers from locations where labour is plentiful, employ them under advantageous (national) labour contracts, and send them wherever they are needed. There is a difference between work agencies, which supply only labour but do not manage it, and subcontractors, who are managers of their own part of the construction process (MacKenzie and Forde, 2005). At the Eemshaven, many workers were employed via work agencies, meaning that while their work on site was managed by a (sub)contractor, their formal employment relationship was with the firm that recruited them.

Under which national employment law a particular worker falls depends on whether he (at the Eemshaven, we encountered no female construction workers) is recruited in his home country and *posted* by his employer to another state, or already present (making use of the free movement of workers) in the host country. Workers who migrate as individuals are regulated under EU frameworks for labour mobility, while those who are posted are regulated as dependent employees of service providers. Both kinds of workers are entitled to different sets of labour rights, even though they compete in the same labour and product markets (Dølvik and Visser, 2009). Individual migrants are subject to the whole range of host country employment regulations, whereas posted workers' employment remains regulated under the law of the sending state, except for certain minimum conditions enumerated in the European directive on the posting of workers (Directive 96/71/EC), which, among other things, allows partial enforcement of legally extended collective agreements.

Much of the discussion around temporary intra-EU labour migration in recent years has revolved around posting (cf. Cremers, 2011; Kahmann, 2006; Thörnqvist and Woolfson, 2013). Some of this is 'real' posting, i.e. workers who have an employment relationship with the posting employer which extends beyond a specific posting. Oftentimes workers are presented by their employers as posted, although they are not in a legal sense, and employers in reality recover directly from them the extra benefits paid to satisfy collective agreements and the law (Cremers, 2013). Union officials at the Eemshaven estimated that around 80% of the workers worked under conditions that were not in accordance with the collective agreements.

At the Eemshaven, alternative channels of migration resulted in many different types of employment relationships. We found intra-EU posted workers working for construction subcontractors, and others sent by agencies. There were also locally hired migrant agency workers. There were self-employed migrant workers, some of whom worked under circumstances suggesting a dependent employment relationship (i.e. 'bogus' self-employment). There were third country nationals, some of whom were posted and others employed on the basis of work permits. The variety of contractual arrangements, coupled with the fact that these could refer back to the national law of other countries (which was

not always the home country of the worker concerned), created a great deal of confusion about workers' legal rights, and this confusion served to make union representation complicated and difficult. No aggregate numbers were available by contract category, but to judge from our housing visits, and from the union estimates, the majority of workers on the Eemshaven sites were foreign workers posted by subcontractors or work agencies. Although the details of contractual arrangements were often important in terms of particular legal cases, the various forms of hyper-mobile workers formed a single labour market, with the line between the various categories blurred, through ignorance, legal indeterminacy and management strategy.

Much attention has focused on the so-called 'Laval quartet' of the European Court of Justice (ECJ), and their effect in contexts where there is no legal extension of collective agreements. Woolfson and colleagues note that the Laval decision has undermined the Swedish system of collective bargaining, because Swedish unions rely on case-by-case private collective bargaining rather than legal extension to compel employers that are not members of the employers' association to respect wage standards (Woolfson et al., 2010). This implies that if only there were legal extension, the problem might be solved. These decisions have had a dramatic effect in many places in Europe, but appear to have had no direct effect on union representation at the Eemshaven, although the complicated contractual arrangements sanctioned by the EU's mobility regime have. Legal constraints set down by the ECJ and articulated through Dutch law may have constrained the outer boundaries of possible trade union action at the Eemshaven (Houwerzijl, 2010), but in practice the unions did not challenge those boundaries directly. Secondary industrial action, or the threat of it, which might in the ECJ's view have pushed the boundaries of acceptable action, has been used successfully in the Finnish context to enforce extended collective agreements (Lillie, 2012), but this was not a realistic option at the Eemshaven, for two reasons. First, there would not have been enough Dutch union members on the site to conduct a successful action. Second, there is little tradition of and support for secondary industrial action in the Dutch context. Therefore union activity was restricted to mobilizing hyper-mobile workers to claim their rights under the law, assisting them to do this, and occasional protests to catch media attention and make visible the possible threat of industrial action. Though the *erga omnes* principle sets a bottom for wage and employment conditions in the market for all workers employed in the Netherlands, the enforcement of these conditions is very difficult, as we show below, due to contractual cross-border complexities and workers' reluctance in claiming their rights. As with the *Olkiluoto 3* case in Finland (Lillie and Sippola, 2011), the Dutch unions at the Eemshaven only managed partial enforcement of Dutch collective agreement standards, after great effort and at unsustainable expense. This suggests that even labour law systems which have legally extended collective agreements fail when it comes to enforcing those collective agreements in practice.

Hyper-mobile workers are defined by their transient nature; their position is therefore quite vulnerable. They are regularly threatened by their employers with dismissal if they voice grievances, particularly to local unions or the media. Their employment relations are precarious and easily dissolved, since they enjoy little employment protection, and there is a large pool of potential workers available when needed. Most workers not only depend on their employer for their job, but also for non-work related aspects, such as

accommodation and transport arrangements in the host country. Oftentimes, workers live and work in a separate self-contained reality, set apart from the host society. For example, one ethnographer who visited the Olkiluoto 3 construction site in Finland, well-known for its use of foreign labour, observed that their housing site was like an 'invisible village' (Kontula, 2010). Likewise, at the Eemshaven, the geographic and social isolation of the housing sites was striking, the workers were often taken to and from work in chartered buses, and workers had limited contact with their host environment.

While in some ways, migrant construction workers are similar to other forms of vulnerable migrants, we find that the high mobility inherent in the way their labour market is constituted and the project-based employment contracts construct their interests differently. They perceive the whole of Europe as their labour market, and their interactions with particular work contexts and national union organizations are inevitably temporary and limited. Some point out that unions have yet to arrive at a viable way of representing these workers (Meardi et al., 2012). Yet many trade unions in Europe have adopted organizing tactics to recruit migrant workers in their ranks, with mixed success (Bengtsson, 2013; Connolly et al., 2014; Eldring et al., 2012; Hardy et al., 2012). Fitzgerald and Hardy argue that in the UK context, migrant organizing strategies can work with the so-called 'A8' migrants (from the eight Central and Eastern European countries which acceded to the EU in 2004). According to them, these migrant workers do not 'constitute a segmented and hermetically sealed part of the labour market' (Fitzgerald and Hardy, 2010: 135). We think 'hermetically sealed' is only a slight exaggeration of the situation of hyper-mobile workers at the Eemshaven and similar large-scale construction/engineering projects, as keeping the foreign workforce separate from local workers and institutions appears to be common practice in the sector (Fitzgerald, 2011).

The Dutch unions' approach to the Eemshaven sites

The unions at the Eemshaven sites deployed organizing tactics and insights adapted to the specific temporality of employment relations in the construction industry, while maintaining aspects of the Dutch social partnership context. Thus, while they employed assertive tactics, putting pressure on employers and mobilizing workers, they did so through deploying the norms and discourses of Dutch social partnership, and by adapting worker engagement tactics to the reality that hyper-mobile workers would not be staying long. The core objective was to ensure that wages and conditions met Dutch standards by providing labour rights information, activating and mobilizing workers (when possible) and providing legal representation.

The Netherlands is considered to have a corporatist model of industrial relations and employers and employees in the Dutch construction sector are highly organized with good social relations and constructive dialogue. Overall trade union density was 20% in 2011, though in construction it was higher, at 31% (CBS, 2012). Since Dutch unions do not need a certain membership rate to be recognized as bargaining agents, incentives for organizing are relatively weak (Marino and Roosblad, 2008). Dutch unions have a reputation for being conciliatory, and for having a servicing rather than mobilizing union identity (Hemerijck, 1995). This is changing, however. Since the 2000s, the FNV has begun to

push organizing as a way of building union power through mobilizing their members, and attracting new demographic groups into the union (Kloosterboer, 2007), with campaigns in the cleaning, care and supermarket distribution sector. The Dutch organizing campaign in the cleaning sector is a well-known success (Connolly et al., 2014), which inspired and informed certain aspects of the unions' approach at the Eemshaven. The unions also borrowed elements of an earlier campaign, *FNVOpdebouwplaats* (at the construction site), involving regularly on-site union office hours.

The FNV unions did not approach the Eemshaven sites with the primary goal of recruiting the migrant workforce into membership. They certainly allowed and encouraged membership and participation by the Eemshaven workforce as much as possible; however they did not make it a precondition for representation or an end-goal for their campaign, realizing that these workers would become temporary members at best. Recruitment of the workers into the union was not seen as necessary as collective bargaining agreements in the Netherlands are generally conducted at industry level and legally extended, covering the majority of workers. Given this coverage, the unions only needed to enforce the terms and conditions as set in the collective agreements. To do so, cooperation of the workers was needed, as they had to share information about their conditions of employment (i.e. payslips and bank statements) so that the unions could check whether these fulfilled the collective agreement and when not, press forward with claims. Though the Eemshaven campaign used organizing tactics to contact workers and win their trust, it was not an organizing drive.

The Eemshaven campaign was funded as a regular project, rather than an organizing campaign, but received extra funding from the FNV to set up and develop the campaign since four union officials were assigned full-time to the Eemshaven (normally, one official is assigned per 2000 members). This (expensive) decision to actively represent hyper-mobile workers was not uncontested:

So basically most of ... well 70% of my colleagues say 'This guy is not a member of us, so we won't help him.' These Poles are not our business. All we have to do is make sure that they don't earn ... they're not supposed to be cheaper than the Dutch guy that is a member because we don't want them to push our people out of the market. That is our interest, our main interest as a union. And there's a few people, like ... they say you know, we have to do something for these people too because they will be our new crowd. That's the ones that we're supposed to represent. And you know, it's a dilemma, we're right in the middle of it. (FNV official 1)

The dilemma was the cost. Relatively few workers became union members and those that did usually required (legal) assistance. Although formally workers only have a right to receive legal services after they have been paying members for one year, the unions overlooked this requirement at Eemshaven, when it seemed strategically important to do so.

Approaching the workforce

In order to represent the workers of the Eemshaven, the unions needed to contact them, inform them of their rights and win their trust. To do this, the unions used contacts through existing members, leafleted at the gates, visited housing sites and eventually set up on-site union office hours.

Unions in the Netherlands normally approach non-member workers via their existing membership base already employed at a workplace. The problem at the Eemshaven was that the main contractors and the majority of subcontractors and work agencies came from abroad. At the Nuon site, the developer, Nuon, owned by the Swedish Vattenfall, contracted on a turnkey basis to the Japanese Mitsubishi, who worked with a consortium of foreign contractors and a couple of Dutch firms. The German RWE employed 70 direct contractors, who subcontracted to numerous construction firms and work agencies, most of them foreign. At the Eemshaven sites there were too few Dutch union members employed to help the unions locate foreign workers (this in contrast to, for example, the massive UK engineering construction sector mobilization at the Lindsey oil refinery; see Gall, 2012). The few Dutch members that were present only worked there for short periods and the ones who managed to gather information about employment conditions had to tread carefully:

They [migrant workers] obviously heard that I am active in the union ... and then more and more people came to me crying. Also at the worksite. And of course they [management] were watching me: am I talking with people or not? ... so I had to be really careful. (Dutch trade union member working at Eemshaven)

Therefore, the unions had to approach the workers for the most part from the outside.

Leafletting

Union officials and activists who leafleted at the gates of the worksites informed workers of their labour rights. They handed out flyers in various languages, with information on minimum wages and working conditions in the Netherlands. These proved an effective way of spreading information. Pay discrimination was a hot-button issue for the workers and leaflets that emphasized the systematic differences in pay between nationalities left an impression: several workers we interviewed mentioned that they found out about pay discrimination via the union leaflet. Though effective in raising the workers' awareness and in profiling the unions as active representatives of workers' interests, leafletting did not by itself serve to inspire any workers to approach the union.

Housing visits

Groups of union officials and activist volunteers (usually former shop stewards), therefore, also visited the accommodation sites, to knock on doors and discuss the employment conditions with the workers in their residences. Informal talks turned out to be the most effective way to gain information, as a structured survey about working conditions, which the unions attempted once, did not yield any useful results. Even at their residences, workers were sometimes reluctant to talk and seemed fearful. This was due to employer intimidation or because workers mistrusted their colleagues. Other times, union efforts to visit the workers at their homes were appreciated and created trust and openness.

The diversity of the workforce in terms of national origins also meant diversity in terms of languages. Construction employers use ‘ganging’ techniques, employing workers in single-nationality groups, in which one worker who can speak English, or the local language, serves as the foreman and spokesman for the rest. At the Eemshaven, most of the workers at the bottom of the contracting chains did not speak any but their native language, limiting the possibilities for communication between nationalities. The unions employed two union officials with native language skills of Polish and Portuguese, the two largest nationality groups on the construction sites.

Office hours on-site

In addition, the unions scheduled, taking inspiration from the *FNVOpdebouwplaats* campaign, regular office hours at one of the larger accommodation sites for Nuon workers, and on the RWE construction site. The office hours became possible later in the campaign after the union had established a rapport with site management. During the office hours union officials were present to inform workers about employment rights and this created awareness of the unions’ activities.

Well, what I have learned is that we [as a union] have grown to be very distant from the people at their workplace. And what we do in the Eemshaven is that we very intensively try to be present at the construction site, by trial and error. Yes, I think that is fairly unique, at least for us, at this moment. (FNV official 3)

The office hours at the accommodation site were less effective than those at the worksite because the unions expected workers to actively visit the office there and seek help, which they did not. At the worksite, in contrast, the union networkers actively approached the workers during their lunch breaks. One worker explained that he was aware of the union presence at his accommodation site, but he did not think them very effective:

... there is often some info around and so on. They [the unions] spread flyers, but in general it doesn’t create any changes for us. (39-year-old Polish electrician, employed via a Portuguese agency)

The main thing the unions learned was that they needed to actively approach the workers to inform them of their rights and their possibilities to claim them with the help of the union. The next section analyses how the unions, once they found out from the workers about violations of labour standards, tried to enforce the collective agreement.

Enforcing the collective agreement

The FNV unions focused on using the power hierarchies of the contracting chain, to oblige firms which otherwise had little incentive to respect labour standards to adhere to the Dutch collective agreements. The unions therefore began by establishing relations with the main contractors or client firms rather than with the contractual employers. This had been done successful previously, for example, in the organizing campaign in

cleaning (Connolly et al., 2014). The unions built pressure on management using media coverage, collective actions and legal proceedings. The basic problem was to do this without the workers who had stepped forward being victimized in the process, something that proved to be a continuous struggle for the unions.

Media coverage

The Eemshaven sites received a good deal of attention in the press for bad labour relations. While the small contractors and agencies usually responsible for the problems were little affected by such publicity, main contractors concerned about their reputations were more responsive. Unions appealed rhetorically to the social responsibility of the main contractor, who would then compel subcontractors to resolve problems and ensure good working conditions in the contracting chain. With the RWE the unions concluded an agreement in which the unions agreed to bring complaints to RWE first before taking them to the media and the RWE agreed to facilitate negotiations between the unions and firms being accused of labour violations. According to union officials, this agreement was effective in allowing the unions access to the worksite and in the case of small conflicts, when the RWE forced firms into compliance. However, the agreement as such was not instrumental to achieve effective enforcement of labour standards on a broader scale (interview, union official 3).

Mobilization

Despite their reluctance to protest and their relative tolerance of poor conditions, the Eemshaven workers did mobilize around specific issues, particularly when the situation reached an extreme level, such that the workers perceived no alternative. The union, when building up its contacts with the workers and seeking to identify grievances, also in some cases tried to raise their trade union consciousness and involve them in protest activities, which though relatively mild – such as speaking up about their grievances or taking out union membership – nonetheless helped demonstrate migrant worker support for the union's message.

Not all the actions took place as a result of union mobilization. There was for example a spontaneous strike action by several Dutch and foreign workers when the water froze at one of the accommodation sites and the workers were unable to use the bathroom facilities for days. The union supported the action and the management of the accommodation site resolved the issue quickly. In another case, when a Polish worker, who worked for a Turkish firm, fell off a scaffold, his Polish colleagues spoke to the labour inspectorate and the unions about unsafe working conditions and unpaid wages. They had not received any wages since starting work. These workers eventually received their back pay, but were sent back to Poland.

There were a large number of cases pursued by the FNV unions at the Eemshaven; we have selected three to illustrate the unions' enforcement approach in more detail. The cases show the mixture of tactics the unions applied, as each group of workers required a specific strategy to represent them demonstrating the expertise built up over time in the unions' enforcement strategies.

Media coverage and management negotiations to address pay discrimination at the FIP consortium

The FIP consortium consisted of three large multinational contractors, the Dutch/Belgian Fabricom, Italian Irem² and French Ponticelli. These contractors in turn engaged work agencies to supply workers. The unions found out that workers employed by different work agencies hired via the FIP consortium were remunerated differently based on their nationality, and launched a media campaign, playing on the norm of equal pay for equal work. A Dutch pipefitter working for FIP could expect €13.13 an hour, a Portuguese pipefitter earned €10.10 and a Polish pipefitter only €9.54 per hour. They laid the blame directly on the main contractor. Masja Zwart, one of the union officials involved in the Eemshaven campaign, stated in a FNV press release: 'It is ridiculous that multinational firms, such as Nuon and main contractor Mitsubishi, tolerate these abuses. Who pays, determines [the employment conditions]. These developers accept that Dutch collective labour agreements are undermined. Is this corporate social responsibility?'³

After half a year of stalling, Fabricom decided to stop working with the work agencies that paid the low wages and to only work with labour suppliers abiding by Dutch regulations. Although the unions had technically won the dispute, it did not bring anything to the workers who had spoken up about their situation. Instead, they lost their jobs because their contractual employer was no longer being used.

They [Fabricom] pretended like nothing was wrong just to get rid of the problem and not to help us ... They didn't take responsibility ... They just dumped us. (50-year-old Polish pipefitter, employed via an agency no longer used by Fabricom)

Media coverage and legal proceedings to fight underpayment and dismissal of Calbud employees

In another case, around 20 Polish workers from the Polish construction firm Calbud, a subcontractor of RWE, came forward to the unions with complaints about long working hours and underpayment. These workers voiced their complaints in the local media, on the radio and television. One of the workers explained: 'I work 12 hours a day, but the boss told me that I only receive wages for eight hours' work. We don't get money for work on Saturdays, nor for working overtime. This is an impossible situation for me.' At that point in time, Calbud had around 120 people working on the RWE site. Calbud forced their workers to sign a declaration, a sort of final acquittal, that Calbud did not owe them any money for their work in the Eemshaven. The workers that had spoken up publicly refused to sign and were fired for it. The unions are fighting this dismissal and for back pay recovery, but because Polish law applies, this had to be done in Poland. At the time of writing, the case is still pending. The fact that the Calbud workers who publicly voiced their grievances ended up being fired for exactly that, reflected negatively on the unions, and profiled the unions as weak in representing migrant worker interests.

Collective action and legal proceedings against underpayment of workers employed by Remak

One year into the Eemshaven campaign, the unions organized a successful large-scale mobilization effort, activating a large share of the 800 Polish posted workers employed by Polish company Remak, a RWE subcontractor. The unions found out about the employment conditions of these workers via the on-site union office hours. The function profiles of many workers were descaled into lower pay categories, so workers doing higher skilled jobs were being paid as low skill workers. There was also improper payment of holiday and overtime allowance. The union hosted a meeting for Remak workers at the union office in Groningen and around 100 workers attended. The meeting was scheduled after the workers' Sunday afternoon church visit and the unions enticed the workers with take-away Chinese food. At the meeting, the FNV emphasized the need for collective action, because only through acting as a group would they have the power to force their employer to respect their rights. Though many of the workers seemed on the verge of taking action, some still held back. They asked if the union could guarantee they would not lose their jobs. One worker said there might be snitches at the meeting. Still, many signed a petition for equal pay which the union and several Remak workers presented to RWE after around 1000 Polish, Dutch and Portuguese metalworkers had signed it. In the end 170 Remak workers became union members.

The FNV negotiated for several months with Remak, exerted leverage through press coverage that reached even the Polish newspapers, and filed a court case in the Netherlands. The union and Remak reached an out-of-court settlement on the advice of the judge, but Remak backed out at the last minute, so the court came to a ruling. The judge ruled that Remak had to pay its Polish workers in line with the core employment conditions as established in the Dutch collective agreements and the WAGA, the Dutch law implementing the European posting of workers directive. In contrast to previous cases, the large number of workers at Remak, and the comparatively large number who joined the union, meant they were safer in stepping forward. Still, in the end, a court ruling was necessary to enforce compliance.

In comparison with the Calbud case, the unions took a different legal approach, filing for preliminary relief proceedings (a *kort geding*) in the Netherlands, to get a quick court ruling. This allowed the news of the victory to quickly spread among the Eemshaven workers, making other workers less reluctant to approach the union. Winning the court case was seen as testimony of union strength and proved an effective way to build trust and recognition.

Assessing the unions' tactics

The unions found that the workers' mobility and the short tenure of their work contracts on the Eemshaven sites, their unfamiliarity with local labour rights and institutional structures, language barriers and their often profound fear of losing their jobs complicated the enforcement process. Most workers were reluctant to complain, as one worker explained:

... because our work is temporary it is not worth it. We are working here by the hour, tomorrow they can tell me 'you can leave'. (56-year-old Portuguese pipefitter, employed via a Portuguese agency firm)

The fear of losing their jobs kept most workers in the Eemshaven from seeking the help of the unions even when they knew their pay levels were below the collective agreement rate. The few that did approach the union on their own initiative often proved to be owed substantial sums of money in back pay; the spur to approach the union was that the workers had become afraid that they would not be paid at all. Many workers expressed that they would only come forward if they were certain that the union could help them and they themselves would not be victimized by their employers, which was something the union found difficult to guarantee.

... [go to] the union? But how would that help me? Only that they will fire me the next day. (43-year-old Polish scaffolder, employed via a Dutch agency firm)

Once workers came forward with labour violations, enforcing the collective agreements through leverage tactics on management did not always suffice to achieve compliance. Still, the unions always explored these options before taking cases to court, as legal proceedings are time consuming and expensive. Several cases from the Eemshaven were brought to court, but usually before they could be decided the workers had moved on. This did little to enhance the Eemshaven workers' confidence in the unions' effectiveness.

The fact that the employment rights of transnational workers are uncertain and contingent on factors which are difficult to determine also made enforcement more challenging. For the unions, finding out the actual employment conditions of these workers was often difficult, but even finding out the conditions which *should* apply proved problematic. It is understandable that many of the Eemshaven workers were unfamiliar with Dutch labour regulations, but the EU framework for labour mobility was (and is) in such a state of flux that even labour lawyers sometimes disagreed in specific cases as to what the applicable law was, making it difficult to determine the set of rights to which a particular worker should be entitled. The unions found that this confusion was a barrier to representation. One official told us:

So every time you have to figure out exactly what is the law that applies to this person. You know, does he have a Dutch contract? Does he have a Polish contract or a Romanian contract? Is he even under EU law? And that makes it almost impossible for us to really organize these people. (FNV official 1)

The union therefore had, in effect, to use leverage tactics in order to win what they already had in law and the collective agreement. As is often the case, subcontractors and work agencies proved difficult to address directly, so the FNV unions focused on Nuon and RWE instead. Unlike in some other countries, such as Germany, in the Netherlands, main contractors cannot be held legally liable for non-payment of collective agreement wages by lower level subcontractors, and the unions therefore had to rely on media

coverage, collective actions and management negotiations to force them to take responsibility for abuses in the contracting chain.

The fact that many of the Eemshaven workers had little leverage and were easily replaced, due to their short-term employment contracts, complicated enforcement. The unions found representing smaller groups of workers, in particular (posted) agency workers, especially challenging, as one FNV official related:

Small groups are very vulnerable. My own experience is that we haven't been able to change a lot, for the people themselves. (FNV official 5)

The relative success of the unions with the Remak workers, where the workers received their legal entitlements, and, unlike in many other cases, managed to keep their jobs during the process, likely reflects the larger size of the group of workers employed by the same firm and the fact that these workers worked directly for Remak, a construction contractor, rather than for an agency.

Although the unions had mixed success in representing the hyper-mobile workers, the active union presence on the Eemshaven sites did lead to a changed attitude to employment relations by some companies. A Dutch employment agency firm reported an increase in requests to supply labourers to the Eemshaven, specifically because it could guarantee that their contracts were in accordance with Dutch labour standards (interview, manager of Dutch agency firm). A Polish firm contacted the union for advice on how to set up legally sound posted employment contracts for Polish workers in advance of sending them to the Eemshaven (interview, union official 5). Even so, the chances of getting caught for labour violations, according to the union officials, were so low that the majority of firms using migrant labour made a systematic strategy out of undermining labour standards. Even for those firms who were caught and fined, the fines were often lower than the amount of money the firms saved through labour violations (interviews, union officials). The fact that several subcontractors active on the Eemshaven sites were involved in similar disputes at comparable sites in other countries (e.g. Olkiluoto 3 in Finland, see Lillie and Sippola, 2011; or the Lindsey oil refinery in the UK, see Gall, 2012) shows that the violations at the Eemshaven were not aberrations, but reflective of systematic pan-European practices.

Conclusion

The Dutch collective bargaining system, with its legal extension of collective agreements, should in theory provide trade unions with the appropriate tools to prevent hyper-mobile workers from causing a downward spiral in wage and employment. We have seen, however, that even when the Dutch unions employ high levels of union resources and appropriate tactics, they struggle to effectively enforce local labour standards for hyper-mobile construction workers. The hyper-mobility of both workers and firms, as well as the sheer size of the construction labour force at particular sites, makes it impossible for local unions to maintain labour standards for all workers employed there. At best, they can manage to improve conditions for a limited set of workers, through active and well-resourced efforts that explore the actual working conditions on-site and

persuade workers to claim their legal rights. The problem with the FNV's proactive enforcement approach is that it is expensive: to do it effectively, the unions must freely represent workers that will only be temporary members at best. Such an approach therefore has to rely on a cross-subsidization from the unions' native membership. This is similar to findings from Germany (Greer et al., 2013) and Norway (Eldring et al., 2012).

One aspect of the problem is the workers' nearly inevitable passivity. Even in the most active cases, such as Remak, the workers' role in terms of monitoring and enforcing their own employment conditions was fairly passive. Both the workers and the union officials regarded this worker passivity as the logical outcome of the temporary and insecure nature of their employment.

The difficulty of representing hyper-mobile workers is integral to the developing labour supply system in Europe. The Eemshaven case exhibits similar industrial relations dynamics and worker representation problems to other large construction/engineering project case studies, such as the Olkiluoto 3 nuclear power plant construction in Finland (Lillie and Sippola, 2011), the construction of the European Central Bank towers in Frankfurt, Germany (Wagner and Lillie, 2014), the Lindsey oil refinery construction in the UK (Gall, 2012) and the Cottam power plant in the UK (Fitzgerald, 2011). In comparison with these sites, the Eemshaven case exhibits a wider range of union tactics and coherent union planning, but also a high degree of reliance on the Dutch legal and collective bargaining framework. In this sense, it is more similar to the Olkiluoto 3 case, where the unions were also defending extended collective agreements, than the UK cases, in which native workers engaged in unofficial strike action. All the cases, however, reveal a gap in union representation. The nexus of subcontracting, transnational mobility, legal insularity and employer anti-unionism makes hyper-mobile construction workers a particularly difficult group for unions to represent.

The fact that well-resourced unions operating in a well-regulated institutional context struggle to represent and maintain labour standards for hyper-mobile workers shows that there is a fundamental problem in the way the pan-European labour market operates. Though unions may succeed in protecting worker rights better at one site, the workers will soon be gone and so will their union protection. While the number of migrant construction workers continues to grow, trade unions have not found effective self-sustaining ways to represent them. Unless legal frameworks or labour market structures change to make it easier for unions to enforce standards and harder for employers to circumvent them and intimidate workers, unions are unlikely to make substantial headway at re-regulating labour markets where hyper-mobile migrant workers are present.

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Notes

1. Where we talk about 'the unions' or 'FNV' we mean FNV Bouw and FNV Bondgenoten, the two affiliates of the FNV confederation with active presence on the Eemshaven sites.
2. Also known for its involvement in the Lindsey oil refinery dispute.
3. FNV press release (24 February 2012), at: www.fnv.nl/pers/perskamer/persberichten/120224FNVsignaleertopenlijkediscriminatieopdebouwplaatsEemshaven/.

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