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National unions and transnational workers

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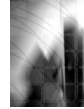
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Article

National unions and transnational workers: the case of Olkiluoto 3, Finland

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Abstract

This article argues, through analysing industrial relations at the Olkiluoto 3 nuclear power plant construction site in Finland, that national unionism is inappropriately structured for the transnational construction industry. Olkiluoto 3 is being built by a French/German consortium employing mostly posted migrants via transnational subcontractors from around Europe. Despite the strong Finnish unions, contractors successfully contested the right of Finnish actors to regulate the site, placing labour relations in a deregulated space between national systems. Although the posted migrants eventually self-organized, Finnish unions remained unresponsive, reluctant to act outside the normal Finnish social partnership industrial relations paradigm. The case illustrates how the nationally based structure of the labour movement is ill-suited to represent a pan-European labour force.

Keywords

construction, European Union, migration, Nordic model, posted workers, subcontracting, transnational union cooperation

Introduction

In recent years, the number of construction workers ‘posted’ abroad in the European Union (EU) has risen, driven by the accession of East European countries and changes in the regulation of intra-EU mobility. National labour markets are breaking into tiers, with transnational migrants, employed through subcontractors, making up the lower tier.¹ Worker posting has become politically salient and raises serious issues for trade

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unionism and worker rights. High profile European Court of Justice decisions around posting, such as *Laval un Partneri* in 2007 in which important aspects of Sweden's industrial relations model were found incompatible with EU law, have prompted debate over whether unions should continue to support European integration (Monks, 2008). A public backlash against posting-related job losses appears to be building, identifying the EU as the culprit. For example, in 2009, wildcat strikes swept across the UK, as British workers protested against the employment of Italian and Portuguese posted workers at construction sites. The stakes are high and at the centre is the issue of representation of posted migrant workers.

Attention has focused on legal issues around *Laval* and other aspects of EU-level regulation² but there is also a more fundamental problem in that the structure of the European labour movement is incompatible with a transnationally mobile workforce. Unions around Europe have experimented with strategies for organizing and representing posted migrants (Lillie and Greer, 2007) but these tactics remain caught between the partially contradictory imperatives of representing migrants, protecting native union members from foreign competition (Penninx and Roosblad, 2000) and complying with an EU regulatory framework that is increasingly restrictive on trade union action (Hyde and Ressaissi, 2009). The right to union representation, European welfare states and modern conceptions of citizenship developed together and are interdependent (Marshall, 1992 [1950]) but this unified conception of citizenship is connected to territorially sovereign states, which are being dismantled by the EU (Ong, 2006: 15–16). This article argues that unions are unprepared to contest or to shape this 'disaggregation' of citizenship because of their continuing basis as actors in national systems.

The case of the Olkiluoto 3 nuclear power plant construction site in Finland shows that although Finnish unions have a powerful set of tools to regulate Finland's labour market, including secondary boycotts and legally extended collective agreements, posted work gives employers the means to 'opt out' of national regulation. The temporary and mobile nature of posted migrant work and partial legal immunity from local labour standards provided by the EU regulatory framework circumvent the nationally focused structure of union representation. The nation-state focus of the labour movement ensures that the Finnish construction union does not have a strong interest in representing, or the technical ability or an adequately protected legal right to represent, posted migrants under the circumstances at Olkiluoto 3.

This article begins with a discussion of methods and sources. It then discusses the nature of union-migrant relations and the EU regulatory framework around posted work. The Finnish industrial relations system and Finnish unions' experiences vis-a-vis migrants are then described. It is shown how, through transnational subcontracting, Olkiluoto 3 is marked off from the rest of Finland as an exceptional deregulated space, inhibiting the Finnish unions from maintaining labour standards there. Finally, the article concludes by discussing the implications for European integration and the future of trade unionism.

Methods and sources

This article presents a case study based primarily on interview data from informants, supplemented by media and government reports. Case studies are the best method for

researching power relations and complex social interactions, particularly where these are in flux (Kitay and Callus, 1998) and new theory is needed (Eisenhardt, 1989). This is the situation in construction, where national institutions are being undermined and the line between legal and illegal or formal and informal employment is blurred. Official data sources and statistics are unreliable or unavailable and in any case do not address the key question of this study: why do trade unions have such difficulty in representing posted migrant workers?

Because of the way construction is organized, project sites are where the dynamics affecting posted workers – relations between main contractors and subcontractors, workers, lay representatives and unions – come together. For this analysis, a large site was selected because these receive more trade union attention. Finland makes a suitable research context because it has probably the strongest construction union in Europe, with high membership, broad legal rights, strong legitimacy, a militant tradition, substantial financial and organizational resources and good political access. The Finnish construction union leadership recognizes the issues at stake and has developed sophisticated, if nationally focused, strategies to address them. If the union is ineffective here, one can conclude that nationally focused, ethnocentric trade union strategies generally will be vulnerable to undermining by the strategies employers used at Olkiluoto 3.

Workers at Olkiluoto 3 mostly fall under the jurisdiction of the Finnish Construction Workers' Union (Rakennusliitto) or the Metalworkers' Union (Metallityöväenliitto), with the former more important in this case. From 2005 to 2009, interviews and discussions were conducted with six union officials in the Rakennusliitto's national and Satakunta regional offices and one official at Metallityöväenliitto's regional Satakunta office. Interviews and follow-up discussions were also held with three Olkiluoto 3 site managers, three subcontractor managers, two employers' federation officials, three government officials, one shop steward, three HR managers from Finnish builders not involved with Olkiluoto 3, one Brussels based employer association representative and two Brussels based union organizations representatives. A discussion was also held with a Polish representative of a German construction union, because of that union's involvement in the case. Informants are cited anonymously, by organization and number: e.g. construction union official #1 or site manager #2 and so on. The analysis also involved examination of newspapers, trade journals, union newsletters, government reports and television transcripts.

Despite Nordic traditions of transparency, Olkiluoto 3 is being built in an environment of controlled information dissemination, referred to by one television public affairs programme as the 'Olkiluoto Code of Silence' (*Ajankohtainen kakkonen*, 2008b). Management and union officials sometimes obfuscated, stalled or sought to deny interviews with key individuals. Persisting in this research was nonetheless worthwhile because the dubious practices which made information gathering difficult also made the case interesting. Subcontractors and employees have contractual obligations for confidentiality, so in the rare cases where our citation system might not provide sufficient protection to an individual no one is cited.

Interviewees often perceived discussions with researchers as part of a political game. Interviewee statements are therefore not taken at face value but have been subjected to a form of data triangulation. Triangulation involves incorporation of data from different

sources, to ensure the perspective of the researcher or individual interviewee does not unduly influence the conclusions. Through data triangulation, researchers can accumulate a body of knowledge which most impartial observers would agree with (Stake, 1995: 110). By examining interviewee statements for internal consistency, consistency with each other and consistency with media reports, this article presents a version of events factually consistent with the information given by all the interviewees and media. Judgements about causality are based on this account.

Unions and migration in an integrating Europe

Posted work is a form of labour migration and raises similar issues, although the EU complicates matters by constraining the right of member states to regulate mobility and labour conditions. As Dolvik and Eldring point out, intra-EU migration of individuals and migration as posted workers are regulated under EU law via separate channels. Those who migrate as individuals are regulated under EU frameworks for labour mobility, while those who are posted are regulated as dependant employees of service providers, even though both kinds of workers compete in the same labour and product markets (Dolvik and Eldring, 2008: 51–52). Regulation of labour mobility as a service, in particular, raises issues of union jurisdiction and transnational inter-union relations.

The nation state has long been the implicit boundary of the collective ‘us’ for national labour movements. Globalization provides labour movements with a functional imperative to redefine this boundary (Helander, 2008), encouraging unions to re-frame their interests (Gajewska, 2009). To borrow the typology Perlmutter (1969) applies to multinational corporations, unions are ethnocentric organizations, meaning they reflect a particular national origin in their structures, strategies, staffing and mentalities. They reflect national-ethnocentric formulations of class interest, arising out of national trajectories of working class formation (Harvey, 1995; Lillie, 2006). Specific labour movements grew up in interaction with modern nation states and their institutional frameworks for regulating modern capitalism (Crouch, 1993). In this respect, the Finnish labour movement is no different from any other.

On a structural level, nationally bounded union organizational logic can drive unions to treat migrants as a threat, although how to deal with this is a strategic choice. As Penninx and Roosblad point out, unions may either choose to protect their native members by excluding migrants from the labour market or alternately to represent migrants to ensure they are not exploited and thereby prevent wage competition with native workers. Pushing for the former reduces their ability to recruit migrants, which interferes with their ability to accomplish the later (Penninx and Roosblad, 2000). The two strategies are mutually exclusive at a given moment, although over time they can and do change (Virdee, 2000).

Willingness to represent them, however, is only one aspect of union relations to immigrants. Inclusion in activist and leadership positions is a further and more difficult step but one which is seen as important to successful recruitment and representation (Holgate, 2005; Milkman, 2006). For example, as Mulinari and Neergaard observe from interviews of immigrant union activists in Sweden, many native Swedes assume that immigrants cannot be full participants in the collective historical experience of Swedish working

class struggle. Further, they do not always trust the immigrants' methods, sometimes seeing them as too radical or emphasising the wrong issues (Mulinari and Neergaard, 2005). However, existence of migrant and native workers in the same labour markets can over time erode the barriers which caused unions to prefer exclusion, prompting them to take up causes like multiculturalism and immigrant integration into leadership (Virdee, 2000). Multiculturalism shifts the ethnocentric focus of the union, without changing the fundamental ethnocentricity of the union organization – now its ethnocentricity just takes on a different character.

Immigration, per se, does not therefore necessarily bring about union decline, since after a time unions and immigrants adjust. Posted work, however, short-circuits possibilities for union representation of migrants, by shortening the time horizons and by making the right of access to union representation legally uncertain. Posted work changes the regulatory landscape from one in which migrants move from one geographically self-contained regulatory regime to another, to one in which different regulatory regimes apply to different people depending on the situation (Lillie, 2010).

EU regulation of labour mobility

Recent developments in EU jurisprudence have opened labour markets, in ways which hamper the ability of unions to regulate them. The EU politics of labour mobility in construction have revolved around a series of cases before the European Court of Justice (ECJ), the 1996 Posted Workers Directive, the 2004 accession of East European countries to the EU and the 2006 Services Directive. In 1996, the EU passed the Posted Workers Directive, establishing that posted construction workers are entitled to the statutory minimum conditions of their host state or sending state, whichever is better from the worker's perspective. The directive was seen at the time as establishing a 'host country' principle in employment relations in construction, which has since been reinterpreted by the ECJ in precisely the opposite direction.

From 2003 to 2006, service industry interests worked with the EU Commission to pass a directive on the free movement of services which they hoped would establish a 'country of origin' principle for regulating service-sector firms. The Services Directive attracted vociferous criticism and protest from the labour movement and elsewhere and as a result passed only after the offending clause was removed (Gajewska, 2009). The unions' (defensive) victory proved short-lived, however, as the action quickly passed to the European Court of Justice. In four recent decisions,³ the court supported the practical implementation of a country of origin principle by asserting that union or government regulation of labour conditions at foreign service providers constitutes a violation of the free movement rights set out in the EU's founding document, the 1957 Treaty of Rome (Hyde and Ressaissi, 2009). The country of origin principle encourages firms to base themselves in, or subcontract activities to, countries with favourable regulatory regimes while providing services anywhere they like. There is an assumption of extraterritoriality for capital behind the way 'freedom of movement' is interpreted, enabling firms to carry with them home country practices and regulatory frameworks as they move across national boundaries, unregulated by local authorities and trade unions.

More than other industries, construction is amenable to the use of transnational subcontracting to access cheap labour. The industry is made up of general contractors or large firms who manage entire projects, and subcontractors who perform segments of projects. Transnational subcontractors win bids by offering to work at rates that domestic subcontractors cannot match. Transnational subcontractors are often legitimate subcontractors – e.g. concrete firms doing concreting – but may also be ‘labour-only’ subcontractors, also known as work agencies. Conceptually, subcontracting is the organization of production ‘through a series of commercial contracts’ while agency work involves subcontracting of only certain tasks related to labour control (MacKenzie and Forde, 2006: 76). Extensive subcontracting, particularly labour-only subcontracting, is problematic for unions because many workers will be employed by subcontractors with little ability to shape their own industrial relations and because unions must find ways to link workers across firms within projects. With transnational subcontracting, worker representation becomes difficult as workers may be unfamiliar with their rights in their new surroundings. They perhaps do not trust the unions there and may be accustomed to lower wages and conditions than those prevailing in the host country.

The Finnish context

Finnish unions undertake no special activities to integrate migrants but rather perceive their representation as part of their ‘normal’ work (Alho, 2008: 306). Instead of thinking in terms of organizing posted workers, Finnish unions think in terms of providing labour rights information and ‘monitoring’ to ensure conditions are not below established norms. There are no special recruitment efforts for foreign workers and they are almost completely unrepresented in the nearly all-Finnish staff and lay activist structures of the Finnish labour movement. Migrant programmes are limited to brochures in various languages and the Rakennusliitto’s special section employing Russian- and Estonian-speaking staff to monitor posted worker conditions.

Union organization and posted migrants on Finnish construction sites

Finland has a Nordic-corporatist model of industrial relations. Unions and employer organizations work together on labour policy issues. An economy-wide union density of about 70 per cent is supported by a modified Ghent-style union-run unemployment insurance fund system. Finland’s wage bargaining system consists of sectoral agreements which set industry minimums and in most cases, including construction, are extended over the whole sector by government decree. High union density in construction also depends on the existing network of shop stewards (construction union official #4). Blue-collar construction workers are organized by a single union, the Rakennusliitto. Union membership density in construction is 70–80 per cent although at Olkiluoto 3 union density is closer to 30 per cent. The Rakennusliitto has a close relationship with the employers’ association, as well as with the larger construction firms, and in this sense has a ‘social partner’ ideology. The union, however, comes from a militant left tradition; the leadership was historically communist and is now aligned with the Left Alliance party (the only significant successor to the Finnish Communist Party, which collapsed in the

early 1990s). Nonetheless, the Rakennusliitto is regarded (and regards itself) as a 'responsible' partner in the management of industrial relations although taking pride in its tradition of shop floor militancy.

The Rakennusliitto relies on its shop steward organization for monitoring and exercising influence over employers. Stewards represent the workers of particular firms, so particularly at large sites, stewards from various firms must work together. Sites generally have a 'health and safety man' and/or 'site convenor', who ensures that the shop steward network works together. This network is important for implementing the union's most important tactic to enforce the collective bargaining agreement (hereinafter, CBA): the 'boycott.' Boycotts can be called against any firm not complying with the CBA but it is clear from the Rakennusliitto's boycott list that in practice they are a tool against transnational subcontractors paying below-contract wages.⁴ When a boycott occurs, union members are asked not to work for the boycotted firm. Although ostensibly organized to deny labour to the subcontractor, boycotts really work by pressuring main contractors, who end their ties with boycotted firms because of the possibility of solidarity strikes and worries about their own reputation. While not enthusiastic about boycotts, construction employers accept them as necessary to combat semi-illegal transnational contractors (construction union official #4; HR director #1).

The Rakennusliitto's boycotts comply with Finnish law, which allows unions to defend extended CBAs, even if the workers in question are not union members and take no action themselves. The tactic is similar to that used by the Swedish construction unions, which was placed in legal jeopardy by the *Laval un Partneri* ruling, with the key difference that Finnish construction agreements are legally extended while Swedish agreements are not. In this case Swedish unions blockaded a Latvian building subcontractor, because the contractor would not sign a Swedish CBA. The ECJ judged the unions were not entitled to take industrial action to increase posted workers' pay above the minimum set by national legislation, as such industrial action contravenes the employer's right of free provision of services. In Sweden, no minimum wage exists (ECJ, 2007). Finland's legislation specifies that posted workers are covered by the extended CBAs, meaning all employers, including those at Olkiluoto 3, must pay CBA rates to posted workers. The *Laval* ruling specifically upholds the right to industrial action to support legally established standards. Rakennusliitto officials maintain they will continue to use boycott tactics and have the legal basis to do so (construction union official #4).

Unlike most European countries, until recently Finland has seen little inward labour migration. In construction, however, the recent trend to worker posting from the Baltic States has resulted in numbers of migrants proportionally comparable to those in other European countries (Lillie and Greer, 2007). In most West European countries, temporary transition periods of controlled migration were intended to cushion the impact of East European accession. In Finland, unions noticed that the transition period was diverting individual migration into posting, making it harder to monitor working conditions, and with union support the transition period ended in May 2006. Revelations of poor labour practices among subcontractors were for a time common in Finnish media, with reports on low pay, poor living and working conditions and other abuses. Although many

foreign (mainly Estonian) subcontractors and workers work in Finnish construction, mostly these subcontractors now follow the Finnish CBA. Overall, there are around 100,000 workers in blue collar trades in the Finnish construction industry, out of which just over 15,000 were non-Finns in 2006 (employer's association official #1).

The Olkiluoto 3 project

Olkiluoto 3 is one of the largest construction sites in Europe. When complete, the reactor will be the most powerful in the world and the first completed in Europe in more than a decade. The project began in 2004 and is due to finish in 2012, far behind the originally scheduled date of 2009, having been plagued by mismanagement and scandals. Olkiluoto 3 resembles a veritable Tower of Babel, involving over 1500 contractors from 28 different countries (*Frankfurter Allgemeine Zeitung*, 2008). In August 2008, about a third of the 3400 workers were Finnish, with the rest coming from over 50 different countries, the largest foreign groups being French, German and Polish (Backman, 2008). The developer is Finnish energy supplier *Teollisuuden Voima Oy* (TVO), a company founded by a consortium of 16 Finnish industrial and power companies. Main contractor responsibilities are divided between TVO and the 'consortium' of AREVA, a mostly French-state owned atomic energy company and Siemens, a German technology conglomerate. The fixed-price 'turn-key' nature of the contract meant the consortium's profit margins depended on finding cheap subcontractors. AREVA-Siemens selected bids based on cost rather than experience and technical capacity (STUK, 2006). Problems with unqualified subcontractors, however, caused delays and overruns, for which the consortium is contractually obliged to bear the costs and these costs have been the source of numerous disputes between the contractors and the developer (MacLachlan, 2006).

Union struggle to control the site

Despite a national industrial relations context in which large employers normally join the construction industry association, the AREVA-Siemens consortium located itself outside Finland's institutions of consensual industrial relations. Industrial relations are different from the Finnish model in four main respects. First, the consortium did not start from a position of cooperation with the Finnish unions but rather sought to keep them off site and undermine their activities. Second, work organization was more hierarchical and formal than is normal on Finnish sites, with subcontractors connected via long contractor hierarchies to the main contractor. Hierarchically organized contracting chains inhibited the functioning of the shop stewards network (construction union official #3). Third, the workforce was mostly posted, including the main contractors' workforces. While foreign posted workers are common on Finnish construction sites, they are usually a minority and work for subcontractors. Finnish main contractors employ almost exclusively native Finnish workers (construction union official #1; Finnish main contractor HR director interviews). Lastly, the Rakennusliitto's boycotts tactics were unsuccessful, since it did not have the membership to stop work at the foreign contractors.

Site level policies

There is no site level industrial relations policy at Olkiluoto 3 per se. Neither TVO nor the consortium attempted to monitor subcontractors' labour practices on the site (site manager #1). Instead, TVO asserted that monitoring was the task of the unions and government inspectors, although their access to the site was deliberately limited by TVO and the consortium. In Finland, it is common for main contractors to have well developed programmes for monitoring standards at subcontractors' sites, in order to prevent the disputes which occur if there are problems at the subcontractor level of which the main contractor is unaware. The Finnish YIT and Swedish Skanska, for example, have their own company-level monitoring systems which they apply in the Finnish context (HR Director #1; HR Director #2). General contractors are normally aware of the influence of labour costs on subcontractors' bids and realize when a bid is so low that the subcontractor cannot be paying according to the Finnish CBA (construction union official #1; HR Director #1). *Not* setting site-level standards could be regarded as a strategic decision to gain cost advantage in the tendering process. The consortium's secrecy about the contracting conditions allowed management to maintain the appearance that the main contractor was not responsible for CBA violations but still benefit from the low cost of labour reflected in the subcontractors' bids.

The initial boycott

Starting in the initial stage of construction in autumn 2005, management prevented Rakennusliitto officials from entering the site on the basis that it would violate the law on nuclear safety. The Rakennusliitto regarded the obstruction of site access as a ploy to avoid union officials inspecting foreign workers' conditions and threatened to strike. As senior Rakennusliitto official Kyösti Suokas stated,

How is it possible to regard Rakennusliitto officials as a safety risk, when there are hundreds of foreign workers whose backgrounds, skills and salaries nobody is going to clarify? One might assume this would pose a safety risk to the nuclear plant construction as well. (Suokas, quoted in Lapintie, 2005)

Simultaneously, a dispute occurred over reporting of an Estonian worker's wages at a subcontractor of the AREVA concrete supplier Forssan Betoni, resulting in a Rakennusliitto boycott. While nominally caused by inadequate reporting on compliance with the CBA for an Estonian worker (construction union official #2), other sources report that the Rakennusliitto wanted a leverage point and thought they had found one in Forssan Betoni. The Rakennusliitto declared victory within a week, when TVO allowed it would grant access according to 'normal procedures'. These procedures, however, did not differ from the way access was granted before the boycott threat (site manager #1). Since the union could not carry out an effective boycott in the absence of a strong presence at the main contractors, they were unable to force management to arrange better access for union officials.

Representation and organizing of migrants

By spring 2007, a shop steward network was in place but did not develop close relations with site management or with the posted workforce. There was a site convenor, a health and safety representative and an 'almost' full-time shop steward at Bouygues, a major AREVA subcontractor. The metalworkers' union also had a convenor and a health and safety representative. Some other subcontractors had lay representatives of their own. Despite claims of regular meetings and positive relations, when asked by the researchers neither TVO nor AREVA-Siemens site managers could describe who the shop stewards were or what they were doing.

The shop steward network was until 2008 exclusively Finnish, despite Finns being a minority on site, consisting of activists with the trust of the relevant union. The official languages on the site were English and Finnish, although French, German and Polish, among others, were also used. Language problems hampered the shop stewards' effectiveness. Aimo Ruusunen, writing for *Rakentaja* [*The Construction Worker*], notes that some of the Poles spoke English and these spoke for the rest (Ruusunen, 2007). While management promised to provide interpreters, the shop stewards found interpreters were not made available in a timely fashion if the issue had to do with worker representation (Timo Kallio, cited in Korhonen, 2007) and there were suspicions that interpreters paid by the employer did not respect confidentiality. Construction union official #3 told us that '[The employers' interpreter] leaked all the Poles' concerns to Rimec [a subcontractor], which was a complete fiasco for representation.' Professional support, language and cross-cultural organizing training would have been crucial for developing the shop steward network and aiding the stewards in communicating with the posted workers. The union, however, did not train the shop stewards in representing migrants and instead settled for 'monitoring' of posted workers through documentation checks.

The difficulties of the *Rakennusliitto* in gaining access and the lack of cooperation by the AREVA-Siemens consortium in providing information meant that although it was clear there were CBA violations in specific cases, it was impossible to show violations were systematic. Unionists and shop stewards suspected systematic violations of Finnish labour standards at Olkiluoto 3 and expressed this view in numerous newspaper interviews but had no proof. The AREVA-Siemens consortium denied any violations and claimed to have figures proving positive wage developments but that showing the figures would involve revealing confidential business secrets (email from site manager #2). A government work inspector found irregularities with overtime pay and minor cases of non-compliance with Finnish standards, which he attributed to a lack of awareness of Finnish norms, rather than systematic dishonesty. The same inspector also noted, however, that given the amounts of money awarded for subcontracts and the length of the subcontracting chains, there was no way all the subcontractors could have been complying with the Finnish CBA (government inspector #1).

The posted workers (at least, initially) did not usually come to the union of their own initiative and the shop stewards found they did not have the capacity and skills to check employment conditions in a meaningful way. Finnish unionists were exasperated by the reluctance of many Polish workers to complain when working conditions did not match the Finnish CBA. As construction union official #4 stated:

They got our flyer ... yes, they must have an idea, what they should get. But the employer makes them afraid, that if there is a problem with their working conditions, they will have to go home ... But if no one tells us anything, we can't get to the bottom of things. We can't bring out against the workers' own will the fact that they are getting too little pay.

This official doubts whether efforts to represent workers 'who take no action on their own behalf' are worthwhile.

The unions relied on documentation checks by stewards and government inspectors, despite knowing that these methods were unreliable in the circumstances. Posted workers came from a wide variety of countries and Finnish shop stewards were hard put to verify the authenticity of the foreign pay documentation they were presented with as evidence of compliance with Finnish standards. As Timo Kallio, the Rakennusliitto's site convenor, states, 'On paper, you can write whatever you want.' (Rantanen, 2007) At the local Satakunta office, officials insisted that the disputes were being solved on site and the union would consider that the Finnish CBA was being respected 'unless informed to the contrary'. Construction union official #2 related that the monitoring of working standards of non-unionized foreign labour is the responsibility of the government Work Inspectorate, which is contrary to the Rakennusliitto's usual thinking. As construction union official #4 pointed out in a later interview:

When there is a problem, the work inspectorate sends a letter ... But these aren't Boy Scouts bringing the foreign workforce here ... the work inspectors haven't got the means to get information from them.

The number of foreign union members fluctuated but remained low. Finnish union officials stated that low membership was due to the temporary nature of the postings and the fact that foreign workers did not join readily. As Kallio puts it:

We got together, after great efforts, more than one hundred members. But then their half-year stints ended and new people came. When it takes four months to get someone to sign up, he's a member for a few weeks and then leaves. (Quoted in Rantanen, 2007)

Finnish unionists are accustomed to workers signing up on their own for access to the union unemployment fund and because of the unions' societal legitimacy. For those few who forget it is usually easy for the shop steward to remind them – rarely does anyone have to be convinced. Posted workers, however, remain outside this national consensus about the role of trade unionism.

Polish workers take the initiative

Although professing to want the Olkiluoto posted workers to support the Rakennusliitto's agenda, it turned out the Rakennusliitto was reluctant to support the posted workers' agenda when they showed themselves willing to strike on their own behalf. In August, 2007, Polish Rakennusliitto members employed by the Atlanco Rimec Group complained to the Satakunta Rakennusliitto office of wage, working hours, holiday pay and other violations. Atlanco Rimec is a major transnational labour agency based in Ireland, which

supplies mostly East European workers for industrial and construction work around Europe. It had more than 300 workers at Olkiluoto (*Ajankohtainen kakkonen*, 2008a). The most important complaint was that Rimec had taken large pay deductions, of about 30 per cent of the workers' salaries, for 'taxes' to be paid to the government of Cyprus. The workers, however, were hired from Poland and their tax liability was to Poland or Finland, depending on their length of stay. The deductions appeared fraudulent.

When the Rakennusliitto appeared to do nothing the workers became frustrated and cancelled their memberships. Satakunta union officials and Olkiluoto 3 shop stewards kept the incident secret from the national office, prompting the Polish workers to pursue the matter through other channels, among other things by contacting the Warsaw office of the European Migrant Workers Union (EMWU), an organization created by the German construction workers union, IG Bau, to organize posted migrants (construction union official #3, German union official).⁵ According to construction union official #3, this 'was not a marginal incident. There were tens of them, who decided to cancel membership. There was a complete loss of trust.' EMWU staff responded by having the international department of IG Bau contact Rakennusliitto's national office. IG Bau offered to send Polish speaking staff to help but the Finnish union rejected the overture because 'it looked like there was a propaganda motivation behind it'. According to construction union official #4, the EMWU is not a 'genuine' union and IG Bau is too weak to make an attractive partner. Furthermore, in the official's view, the EMWU was likely to have pursued a confrontational style unsuited to Finland.

The Rakennusliitto national office investigated the allegations made by the Atlanco Rimec workers but no clear changes were made to policy and the issues raised were not addressed. A Rakennusliitto official put the Poles in touch with a television public affairs programme, which aired an exposé on 1 April 2008. In August, one of the Rimec workers who spoke on the programme was fired (*Ajankohtainen kakkonen*, 2008b). At that point, however, the Polish workers were beginning to organize themselves and the firing was followed by a small impromptu job action. One of the Rimec workers came forward as shop steward for the group. Finally, the Rakennusliitto issued a strike warning on 26 August 2008 and began negotiations with the employer.

It emerged then that the workers actually were employed via Cyprus, although without their knowledge and were therefore liable for social fees there. Since the deductions were apparently legal, a strike might have been judged illegal. The Rakennusliitto therefore cancelled the strike warning. Many of the Polish workers felt they had not had enough input into the negotiations and strike decision-making process. Throughout the negotiations, Rakennusliitto's representatives and the Polish representatives maintained different bargaining goals and had different perceptions of the outcome. The representatives of the Poles had to take the Rakennusliitto's word about important aspects of the situation. In the negotiation process and after it, the Poles did not see any clear reason why the strike did not begin. Many were dissatisfied and cancelled their memberships.

The incident with the Polish Rimec workers confirms that the Rakennusliitto was either unwilling or unable to meet the demands of the Polish workers at Olkiluoto 3. Despite the prevalence of foreign contractors and workers at the site, the Rakennusliitto initiated no foreign contacts and rejected an overture from a foreign union to help.

Although maintaining that the problem was an unwillingness of the Polish workers to act on their own behalf, when the workers self-organized, the Rakennusliitto did not include them in key aspects of their own representation and sought to defuse the conflict, rather than leverage it to improve conditions. Admittedly, the legal uncertainties surrounding industrial action would make any union cautious but alternative means of pressuring the employer were not pursued. It seems unlikely that the union would have remained so passive were native Finnish union members victimized by such an extraordinary and convoluted employment situation.

Discussion and conclusion

Key factors in the Rakennusliitto's failure at Olkiluoto 3 were the ineffectiveness of secondary boycott tactics, the inability to organize, develop leadership among and win the trust of posted migrants and an unwillingness to cooperate with foreign unions. Rakennusliitto, despite being a strong union, is not structured to address the problems of a transnational workforce. Of course, no national union really is but if the Rakennusliitto with its impressive array of power resources is unable to regulate employment at a high-profile construction site, weaker unions working under less favourable circumstances have even less chance. A reliance on the usually successful boycott tactics, which do not require the active support of posted workers, left the Rakennusliitto without an apparatus to win hearts and minds. This reliance made the union slow to recruit members and develop shop stewards among the posted migrants at Olkiluoto 3.

Looming over the case is the question of whether the recent ECJ court cases deterred the Rakennusliitto from supporting the Polish workers in their industrial action. Union policies which serve to protect national labour markets are clearly considered to violate firms' freedom of movement but the legal scope for host country unions to represent migrants has also become limited. Although the *Laval un Partneri* verdict states unions may act to enforce national minimum wage laws, union action to increase the wages of posted workers beyond that constitutes a violation of the principle of free movement – and what constitutes an increase beyond legal minimums could be open to interpretation. Because the employers appeared to be in compliance with EU regulations, which allowed them to use Cyprus as a 'home' in which to base their workers' employment contracts, the Rakennusliitto felt it could not risk strike action. It is likely that in Finland the use of secondary boycotts will remain an important tool for enforcing standards, particularly where posted workers circulate quickly, but EU rules are likely to constrain the circumstances under which this tactic is used.

Migrant organizing techniques and union structures to integrate migrants better and more quickly into leadership positions would have been useful at Olkiluoto 3. However, neither of these solutions or even both of them together resolves the root problem, which is that nationally based, 'ethnocentric' union structures are inappropriate to represent workers in a transnational labour market. Organizing migrants is usually not financially self-sustaining because, if the migrants only stay a short time, the investment in organizing them will not justify itself financially. As Rakennusliitto official #4 related in an email:

Water carried to the well does not stay there. When people are temporarily in the country, they aren't interested in unions and if you get them to join, they leave the union when they go home. Which is completely understandable.

The Rakennusliitto, it should be noted, actually *has* the capacity to service Russian and Estonian speakers – just not Polish ones (Alho, 2008). In many immigrant unionization success stories, such as the drywallers in Los Angeles (Milkman and Wong, 2006) or cleaners in London (Wills, 2008), despite the organizing challenges, the unions at least had the advantage of a workforce of stable composition and predictable patterns of mobility. At Olkiluoto 3, the workers expected to be there at longest for the duration of the project or sometimes only six months, before moving to another project, which could be anywhere in Europe. The transnationalization of the labour market forces construction unions to learn how to service and integrate new nationalities of workers in extremely short time frames.

As the Olkiluoto 3 case shows, the ethnocentric character of unionism, although a natural outgrowth of its historical role in defining the meaning of national citizenship, now functions as a barrier to the development of European-level labour citizenship. Trade unions have been a vehicle for the construction of national citizenship over a broad social basis (Marshall, 1992 [1950]), as a core part of nationally focused processes of class compromise which occurred in the advanced capitalist countries in the post-World War II period. These compromises are now disappearing and with them the vision of national citizenship on which they are based (Ong, 2006: 15–16). Although EU citizens may participate freely in labour markets within the European Economic Area, the passports they carry still in part determine their access to certain kinds of labour rights and social benefits. As Benedict Anderson writes, passports are 'less and less attestations of citizenship, let alone of loyalty to a protective nation-state, than of claims to participation in labor markets'. In this logic, national citizenship becomes nothing more than an increasingly thin justification for 'differential tariffs on human labor' (Anderson, 1994: 323–324). The European Union has overruled member states and unions in those member states, in their attempts to assert the equal rights of posted workers in the nations in which they work. As the Olkiluoto 3 case shows, under circumstances of labour mobility, this denial of territorially established labour rights functions as an abridgement of labour rights generally because labour protections have not in practice been transferred to the European level.

It is clear from the Olkiluoto 3 case that posted workers are outside the national consensus on which labour rights and responsibilities are based – they are seen as a threat rather than as true and trustworthy members of the Finnish working class. Given the findings of past research on relations between migrants and trade unions, the tendency to view posted workers as outsiders is unsurprising but in the context of increasing labour mobility it is troubling. As Jennifer Gordon notes, permanent immigrants have time to integrate and are set on a path to attainment of full national citizenship but temporary migrants are denied such access. Her solution is the concept of 'transnational labour citizenship', which 'insists that *all* migrants are full human beings and deserve to be treated as such ... [and] respond[s] to the reality of temporary labor migration while refusing to treat temporary migrants as commodities to be traded on a global market' (Gordon, 2009: 1). While the policies Gordon proposes in her essay are specific to the American context,

the principles she sets out clarify the problem with the current European situation. EU regulation *explicitly* treats posted workers as commodities, rather than as 'full human beings'. Regulation of posted workers in this way illegalizes attempts to enforce equal treatment of workers within defined territorial spaces as violations of the principle of free movement. Most distressingly, the labour movement has shied away from setting itself in opposition to this vision of a future of labour markets segmented by national origin and citizenship rights determined by contingency.

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Notes

- 1 See Lillie and Greer (2007), Felini et al. (2007) or Menz (2005). See also the December 2007 edition of *Construction Labour Review* edited by Linda Clarke (2007).
- 2 See the extensive bibliography on the effects of these cases at <http://www.etui.org/Headline-issues/Viking-Laval-Rueffert-Luxembourg/2-Articles-in-academic-literature-on-the-judgements> (consulted 27 January 2011).
- 3 Viking Line vs the Finnish Seamen's Union and the International Transport Workers' Federation (2007); Laval un Partneri vs the Swedish Construction Workers' Union and Swedish Electrical Workers' Unions (2007); Dirk Rüffert vs Land Niedersachsen (2008) and Commission vs Luxembourg (2008).
- 4 Boycotts are listed on the Rakennusliitto Web site: http://www.rakennusliitto.fi/viestinta/mediapalvelu/liiton_julistamat_saarrot/ (consulted 6 August 2008). Most boycotted firms have Estonian names.
- 5 The EMWU is a theoretically independent migrant union, which seeks membership and support from unions and workers inside and outside of Germany. It does not have a large membership and many unions have been critical of it. Nonetheless, it has been a repository of expertise for assisting transnational migrant workers in Germany (Greer, 2007).

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