Voice in a transnational multi-employer workplace: Evidence from two power plant construction sites in the UK

Introduction
Posted workers are a particular type of migrant workers, who are differentiated from the other types of foreign-born employees, usually categorized as long and/or short term immigrants, depending on their intent to settle or not and the way they are recruited. Long and short-term immigrants find employment on individual basis, mainly once they arrive in the host country, although new regulations have made this type of migration more difficult. Posting is done through agencies or companies who have hired employees in one EU country and send them to work temporarily in another one (Posted Workers Directive, Article 2/1). Their contracts are usually for a definite time period and agreements about payment and working terms and conditions are made prior to the transfer to the host country. Some of the main characteristics of posting include temporary employment, unsecure employment, shady contracts with ongoing trial periods during which workers could be fired at any time, longer working hours, poor living conditions, less holidays, less (or at least unclear) health and social insurance (Lillie Greer 2007).

Posting is mainly the result of the subcontracting chain, where companies outsource part of the work until one company brings their own workforce within the European Union. The literature suggests that as a result of subcontracting and the multi-employer employment situation, workers, especially non-local, have difficulties in addressing their grievances (Grimshaw and Rubery 2005) and articulating their voice (Marchington, Rubery and Cooke 2005), making it easier for them to be exploited, especially when there is no or weak representation in the workplace (Holgate 2005).

In this paper, we examine the working conditions of posted workers in a multi-employer setting with a particular focus on their voice and representation prospective. The research questions we asked were: How has the multi-employer relationship affected workers, especially non-UK workforce that is recruited through posting or agencies (or both)? And how have these new dynamics affected the relationship between posted workers and the existing representation, i.e. trade unions, on site?

The study is based on the cases of two power plant construction sites that have trade union representation on site. The data is gathered through qualitative methods such as in-depth interviews and non-participant observation of the working place and worker accommodations. The results show that workers do not join unions massively. The reasons are a combination of scepticism from previous bad experiences, fear as well as poor knowledge of the local language, as well as management strategies to prevent them from

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joining. The ones who join address the union for individual grievances, but also as the representing force on site. Joiners perceive British trade unions as representatives of all work force on site, not only the local one.

**Posted Workers in the UK**

Initially British Government under the Conservative Party was reluctant to implement the Directive as they considered it an impediment for British workers to compete for jobs in the EU (Novitz 2010; Clark 2010), but he Labour Party implemented it fully from 1999 (Fitzgerald 2009). However, no effort for specific legislation was made to regulate PWD into British law apart from the removal of clauses on territoriality and jurisdiction. The understanding of the PWD as a ‘floor of rights’ rather than a ceiling was believed would prevent social dumping and unfair competition, and thus protect posted workers. Nevertheless, there are a few issues that make this reasoning questionable, such as the fact that there is no time limit on posted workers’ stay in the UK; there is a lack of registration and control measures; temporary workers are excluded from protection as the latter is subject to qualifying periods; and the (dubious) reliance on private enforcement of the legislation by the workers themselves.

Furthermore, recent judgments of the European Court of Justice have cast doubt on the way the PWD has been transposed in the UK law. For example, the entitlements of the directive are ‘ceilings’ not ‘floors’, therefore after the judgment in *Luxembourg* it is made clear that any extension of employment regulation beyond the directive is considered a violation. The judgment in *Rüffert* also undermines the request of the trade unions to award service contracts only to those companies that agree to the terms of the collective agreements. And finally the *Laval* judgment has put significant limitations to the trade unions ability to call for industrial action when it comes to issues about posting (Novitz 2010).

While the implementation of the PWD was carried without any additional UK legislation to regulate it, new regulation has been introduced to make it easier for employers to hire work outside the UK. For example, new regulation has made possible for non-UK but EEA based companies to pay UK NI contributions for workers operating in the UK without registering a subsidiary in the country, which will influence the increase of temporary work in the UK (Clark 2012). British courts also seem to vote in favour of employers in the cases of industrial disputes in which posted or migrant workers are involved, although their judgments might be in violation of human rights, such as the violation of the freedom of association illustrated by the *Metrobus* case (Novitz 2010).

The open-door policy to A8 continued until 2009 when the UK went into recession. Since then there has been an attempt on the government’s side to control entry to the UK, especially as a reaction to the pressures of the indigenous working force and the public opinion on keeping ‘British jobs for British workers’, a slogan that has been taken from a speech delivered by the Prime Minister Gordon Brown (allegedly about trainings) in 2007 and adopted with strong nationalistic tones since the East Lindsey Oil Refinery dispute in 2009. As a result, residence and work permits have become more difficult to be approved,
and are directly conditioned by the work contract through the Tier system. The right to stay is subject to working status, and termination or continuation of the contract is left at the discretion of the employers (Anderson 2010). The implications of such power of termination on the side of the employers are severe, in fact ‘the limitations on migrants’ entitlement to commodify their labour power that result from state imposed restrictions, as in work permit systems, generate a form of unfree labour’ (Miles 1987 cited in Anderson 2010: 307). The discrepancy between the political rhetoric of national protectionist measures against foreign labour and state economic regulations for their acceptance has already artificed in the migration literature (such as the case of Italy in Ambrosini, 2011). They tend to produce institutionalized uncertainty (Anderson 2010) and create spaces of exception (Ong 2006) where workers are controlled and exploited (Holgate 2011).

Data on posting

The data on posting are missing as the UK government does not collect data on entry and departure of the posted workers (Clark 2012). What we find information about is the number of people employed in the UK born outside the country, for example, which has increased from 7.2% in 1993 to 14.4% in 2011. Foreign citizens have increased from 3.5% in 1993 to 9.2% in 2011, with a significant bump in 2006, which is the year UK markets were opened to workers from the A8 countries (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia and Slovenia). Nevertheless, these data do not include those who stay in the country for six months or less, which is most probably the largest number of posted workers (The Migration Observatory at the University of Oxford, 2012). Governmental statistics show that the number of immigrants reached a peak in 2006 but has slowly been decreasing, and more considerably so after the changes in policy in 2011 for work permits in the UK. Nevertheless, certain categories such as skilled workers, youth mobility and temporary workers have been slightly higher (approximately 2%) (ONS 2013). While statistics do not specify whether these are posted workers or not, their characteristics match considerably with posted workers, i.e. they are skilled, mobile and temporary.

Different authors try to estimate numbers based on other data, but it is difficult to understand the scale of posted workers’ presence in the UK. Novitz (2010) mentions 15,000 for 2007 based on a parliamentary debate, whereas Clark (2012) mentions the E101 certificates issued for the period, specifically

- 2006-07 – 46678
- 2007-08 – 49882
- 2008-09 – 45135
- 2009-10 – 40956

Relatively old data from IDEA and based on the EU statistics of the E101 suggest that the largest group of posted workers in the UK are French, followed by German and Polish. Meanwhile, trade unions believe the largest number of posted workers come from Poland, Hungary and Portugal, via Italian agencies. More recent reports seem to suggest that the number of posted workers in the UK is not large and mainly focused in the construction
sector (Clark 2012) and agriculture (Fitzgerald 2010). However, these data are questionable as the construction industry is characterized by flexibility and use of subcontractors, agency staff and self-employed workers, employment is casual, insecure and fragmented and there are many cases of bogus self-employment or the employment of irregular migrants (Fitzgerald 2010). While it is not certain that these workers are posted, they just add to the uncertainty about any estimates and the overall grey area of employment relations today.

**Theoretical framework**

Posting is done through the long chain of subcontracting and outsourcing to companies that bring workers from everywhere. Outsourcing and subcontracting have reshaped the relationship between employer and employee, turning it from a single to a multi-employer relationship (Rubery, Earnshaw and Marchington in Marchington et al 2005). Thus, ‘[t]here are numerous situations in which workers employed by different organizations, or by agencies, work alongside each other at the same workplace, often employed on quite different terms and conditions’ (Marchington, Rubery, Cooke 2005: 240). The situation of the workers becomes more complicated as they move between different forms of contingent labour as well as from contingent to direct employment and vice versa (Forde, MacKenzie and Robinson, 2009).

Subcontracting as a key feature of the restructuring of employment relationships has brought about uncertainty, the need to regulate demand, the need to supply labour and regulate that supply, and the need for mechanisms for auditing, reporting, and communicating information among contractors, but also for monitoring workers conditions in the workplace (MacKenzie 2000). In fact, the very complex network of inter-capital and capital-labour has resulted in the latter facing various potentially but unclear responsible layers where to respond to and address their grievances (Grimshaw and Rubery 2005), as a result of which worker voice has been found to be disenfranchised, fractured, fragmented and disconnected (Marchington, Rubery and Cooke 2005).

Apart from the division of labour, employers also attempt to minimize industrial action by revising existing collective agreements and/or making them not applicable for posted workers (a line which the ECJ decisions seem to support as we discussed above). Currently, foreign service providers might enter voluntarily into agreements with the trade unions but cannot be subject to industrial action that pressures them to accept any collective agreements (Novitz 2010). A final concern is about the blacklist, which has a long history in the construction industry first through the Economic League and then the Consulting Association both with a considerable number of major contractors as members (Druker and White 2013).

There seems to be less organized labour in the industries/workplaces posted workers operate, also because of the nature and duration of such jobs (Holgate 2005). And in the cases
where there have been, trade unions’ attitude to posting has been ambiguous. There have been attempts either to include posted workers and mobilize in their behalf and with them, but there have also been disputes under the ‘British jobs for British workers’ slogan.

Trade unions have not been pleased with the way the PWD has been implemented in the country, especially because of the lack of provisions under Article 3(8) to extend collective agreements in the construction sector. The main concerns have been about how the PWD will affect the job prospects for British workers and the wage levels of migrant workers in the UK but their requests for reform have been ignored by politicians of all parties (Novitz 2010). In 2004 the unions began a campaign to pressure the then Labour Government to strengthen the implementation of the directive by granting NAECI the status of general applicability. One of the unions, Amicus, reported the case of a Hungarian worker who was underpaid and talked about the inappropriate working conditions in which posting was carried (Clark 2012). Although the union was able to secure the job to that particular worker, many others in the same position left, despite the efforts of the unions to defend and secure their rights too (Lillie and Greer 2007). The campaign to make NAECI generally applicable was not successful.

Early studies that investigated how trade unions dealt with the presence of immigrant workers claimed that the structure of trade unions made them incapable of representing immigrant workers (Castles and Kosack 1973). The possibility of trade unions to incorporate migrant, minority or posted workers and represent them is examined from the perspective of the present relevance and power position trade unions hold today, their structural capacity to inclusively represent posted workers, their ability to revitalize or their ability to go transnational considering that posting goes beyond national borders and implicate both the sending and receiving countries workforce (see for example Hyman 2001; Frege and Kelly 2004; Lillie and Lucio 2004; Holgate 2005; Lucio and Perret 2009). TUs diversity in ideological orientation means that if we take into account Hyman’s typology (2001) two out of three types of unions (interest organizations with labour market functions and vehicles for raising workers’ status in society) are not able or willing to represent posted workers. Meanwhile the class struggle model might well include them in their war against capital. Regardless of their ideology, however, in times of acute class struggle and industrial unrest, trade unions in general have managed to overcome discriminatory attitudes and form a strong class identity such as in the 1970s (Virdee 2000). Positive inclusive examples of support for migrant workers are found today as well, especially in the case of employer mistreatment (Lucio and Perret 2009, Fitzgerald 2010). In 2005, unions were able to recruit some SFL (SAB Ltd) workers, one of whom provided vital information for the introduction of the audit process which is now a key safeguard in the NAECI (Fitzgerald 2010: 15). The change of attitude happens not only because they have understood and internalized the concept of rights, but also because diversification of the work force and the new dynamics of the global market put the collective representatives of workers in front of the pressure to change or perish (Schelkle 2011). The change implies the move from the relatively narrow agenda of
defending the rights of their members and adaptation of a wider scope in which they are concerned with the interests of all workers (Heery and Abbot 2000).

**Method and current cases**
This is a qualitative study based on in-depth interviews with workers and trade union representatives in two power plant construction sites in the UK: the Carrington CCGT (combined cycle gas turbine) Power Station and Ferrybridge (coal-fired) Power Station. We have interviewed eleven posted workers, eight shop stewards on site and the two national officers for the engineering construction for Unite the Union and GMB, the two signatory unions of the NAECI agreement, which is employed for these types of construction sites. The interviews are complemented with notes from an observatory journal kept regularly by the researcher in every visit to the sites and during the interviews with the informants. The data is analysed thematically with the assistance of the qualitative data analysis software MAXQDA. Both cases are power station construction sites in remote areas, i.e. Greater Manchester area and Knottingley. The main focus of the study is the engineer construction (co-)workers who have been posted to the sites; however, we provide some insight on the civil construction workers who are employed mainly via employment agencies. Both sites operate in scope, i.e. projects operating under the NAECI agreement. In both sites there are two senior shop stewards, one from UNITE the Union and one from GMB. There were initially 468 workers in Carrington and only 9 posted workers but the number has currently increased to 50, and 350 workers in Ferrybridge among whom approximately 100 non-UK workers. We have no information about agency workers who do civil construction as their employment is temporary and fluid (from a few days to a few weeks).

**The analysis**
Posted workers in both sites are recruited as one of the following categories:

– co-workers, i.e. people who have been with the same company for years doing engineering construction throughout the world (all in Carrington, some subcontractors in Ferrybridge),
– newly recruited by the contractor prior to the start of the project (in Ferrybridge),
– and agency workers (in Ferrybridge).

As already reported by Forde, MacKenzie and Robinson (2009) workers move from different forms of contingent work and between direct and contingent work, which is illustrated by the employment history of one welder on one of the sites:

‘A Spanish company contacted me to cover a part of the project of the power station of Ferrybridge, multifuel. And we came here, a couple of Spaniards, to work. That was the 13th September. We were there a couple of months. We worked for... we were subcontracted by a Belgian company called Fabricom, which is at the same time subcontracted by a Croatian engineering company which has the project, which is contracted by the power station [main contractor], which is Hitachi. We were working
there for a couple of months, till Christmas. The Spanish company did not do well. Apparently they did not have enough income with the project and so we had to leave the project. We all went back to Spain. The company who had subcontracted the Spanish company, Fabricom...contacted with the Spanish people, with the professionals who had been working for the Spanish company. The company suggested us to work for them in this project here in England, under certain conditions they established. Me and some other colleagues accepted the job and started working for Fabricom, this Belgian company. But we worked through an English short term employment agency, Shorterm, who mediated between Fabricom and us. Fabricom pays Shorterm. So we've started working after Christmas. We continued working... me welding, then there are the pipe fitters, coupling pipes, mechanics and so on. Then when the Spanish company got expelled Fabricom offered another Spanish company to take the place of the previous one. And now we've been ceded to a Spanish company. Before we were... Shorterm, working for Fabricom, the company who was at the top. Now a new Spanish company has come and we've been assigned to work for this Spanish company. Do you get what I mean?'

(Cervantes, Spanish welder, interviewed in Wakefield, 30 March 2014)

The worker and a few of his colleagues have been employed by one subcontractor who brought them to the Ferrybridge site, have returned home, have been re-recruited by another contractor who has firstly placed them under an employment agency and later under the supervision of a second subcontractor, while still having a contract via the agency.

There are several irregularities identified among the different subcontractors. Workers periodically work long hours, sometimes even on Sundays. NAECI guarantees higher pay for over time and double for weekends, however there have been at least two subcontractors in Ferrybridge who have not respected the collective agreement, in terms of contracting people as local workforce; give the same pay per hour regardless of the amount of hours worked; delayed payments (e.g. one company was paying workers on the 20th of the next month, i.e. 50 days later); only the first ticket back and forth from the sending country was paid; deductions for various expenses; and, two accounts in which payment is made to workers: one for the official salary and the other for ‘black money’. So, one of them said:

‘The Spanish company that is here pretends to be using the NAECI agreement but they don't. They cheat on the workers. The company says that it has to pay the flat, the car, the travels. That's what the papers say which they bring to the trade union. All is legal on there. But what they do in fact is taking off the workers’ salaries the house, the car... you know what I mean? And they pay them less... They appear to be doing all according to the law... The company does everything for them, they organise the travels, the houses, the cars... which is the way it is meant to work. But then they make them sign a paper saying that they have to pay the house, the car, the travels, etc.’

(Lorca, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

Another spoke of the delays in payment:
‘Sometime no paid, sometime Company any worker no paid. Say ‘ah, the project no is good, no money’.
(Cervantes, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

Irregularities were found even for issues of health and safety, which was mainly related to the fact that workers were asked to do tasks that were not within their trade:
‘A rear has a special training and knows how to do specific things without danger. If a Spanish supervisor asks you to do something a rear is meant to do he will not have to hire a qualified rear. You just do it however you can and if something happens the supervisor washes his hands and blames you. You know?’
(Cervantes, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

Voice and representation

The analysis shows that most posted workers address grievances individually:
‘Sometimes when 1h work is missing on pay slip.. but always sorted next week with next pay. Someone makes mistake on time sheet but.. it’s always sorted.’
(Czaykowski, Polish welder interviewed in Pontefract, 13 April 2014)

‘He's our boss, he's the person I have to talk to to solve problems. So if there's a problem I have to let him know, he speaks really well English, ‘come here, have a look here to see what's happening’. And then he tells someone else... he has a station to let people know. Whatever, a scaffold that hasn't been approved or someone jumping a fence. Whatever: ‘hey, X is happening’. For whatever I talk to E.....’
(Delibes, Spanish worker, interviewed in Carrington 12 May 2014)

Although the literature suggests that representation is less present in industries like construction (Holgate 2005), both of our case studies are in-scope sites, which means operating under the collective agreement for engineering construction workforce (NAECI), and therefore there are two senior shop stewards (one from Unite the Union, one from GMB) hired by main contractor, who conduct the initial induction and oversee the whole site, as well as shop stewards at the subcontractor level, who are elected by their fellow workers, members of the trade unions. Although joining the union(s) is encouraged in an in-scope site, that does not necessary translate into each company crew actually joining and have shop floor representation. However, when it comes to the British workforce, both unions have a membership of ninety percent or more, and in some contractors a hundred percent membership. The situation is different for posted workers. Only fifteen percent of the posted workers have joined the unions in the Ferrybridge site, but no one among them have joined in Carrington.
The attitude of posted workers towards Trade Unions

The small number of posted workers joining the union leads to the question of why they do not join and what is their perception of the trade unions. The research shows that some of them have had previous bad experience with unions in their home countries:

‘They work very bad for my understanding. They never fight for the worker but for their own interests. ... In Spain ... people don’t trust them’.

(Delibes, Spanish worker, interviewed in Carrington 12 May 2014)

Others are just afraid to join. When asked why most workers do not join to unions, one of them explained:

‘I think they are not because they are afraid of losing their job if they join the unions.’

(Cervantes, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

Despite a certain degree of indifference and scepticism about the unions, British TUs have been able to earn the trust of some workers. They see unions as the entity that can help them solve individual problems, such as missing hours on payslips:

‘Some missing hours that we weren't paid.... If that week you've worked 50 hours or 60 or 30, they might pay you only 20 because the company gets confused through the people in the office and so on and they write down the hours wrong. So we go to the Union and tell them what happened and the same morning everything gets sorted.’

(Unamuno, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

But apart from the instrumentalist perception, workers perceive unions as representing all workers, regardless of their ethnicity:

‘Well, we realised that here the Unions would care about the workers....I mean, you should know that in Spain the unions do nothing. So that was a new thing for us here. They gave us a talk and we were perplexed. ... The unions treat us really well, like if we were at home. No problems at all.’

(Lorca, Spanish worker in Ferrybridge, interviewed in Wakefield 30 March 2014)

Trust is earned even among those who have had previous bad experiences or are sceptic about the trade unions in general, as the following conversation illustrates:

LORCA. Yes. For example, two weeks ago they didn't write down a Saturday we worked and half an hour every day. And they were beating about the bush always blaming someone else. First it was the Fabricom, then it was Enwesa. And they also hadn't paid us the trip of that month. So we told the Union and they sorted everything.

ALEIXANDRE. Instead of going to protest to the office one day after another, we directly go to the Union and tell them what's going on.

LORCA. And two weeks later everything is solved.

CERVANTES. That doesn't happen in Spain. In Spain you go to the boss and he will ignore you, you go to the Union and...

LORCA. They also don't care. So you basically loose the money [laugh].

ALEIXANDRE. Here the Union does care about the workers.

(Spanish workers, group interview in Wakefield, 30 March 2014)
Apart from the attitude of the workers themselves, there are other factors that influence the workers’ decision not to join the unions. The management uses direct and indirect ways to deter organization. Some contractors tell workers explicitly not to join. This and the implied threat of dismissal discourage them to do so:

‘And the first thing the boss said was that none of the Spanish people should join the Union, so we wouldn't find out about it, you know?’

‘And I tell my friends: ‘go to the Union’. But they are afraid of being fired because in Spain there is no jobs and lots of them don't speak any English at all. So they're afraid of losing their jobs.’

(Cervantes, Spanish welder interviewed in Wakefield, 30 March 2014)

There are also more subtle ways, such as the creation of physical barriers to prevent people from coming together in one place. For example, at Carrington site, each subcontractor has a separate room where workers can sit for lunch or tea break. Within that space only workers from the same company/contractor can enter, the others are not allowed. Furthermore, it has been common practice is other sites to accommodate workers in the same building. That is not the case for most of the workers in the two sites. Their accommodations, which in general are offered by the companies, are scattered in the various small towns/villages nearby the construction site, and usually there are no more than four workers living in the same flat or house.

And finally, language remains a barrier. Most workers that are posted have limited English skills. Translation is provided by the companies and the trade unions feel that do not get through them:

‘There’s not many who speak English, it is a problem. That’s another problem we have actually when we get management in who will translate in the actual inductions, we’re saying to them in the inductions, we’re explaining and he’s translating but we don’t know what he’s saying to them. And sometimes there’s a little bit of laughter because we don’t know what he’s saying to them. We speak about the union etc and then he translates but we don’t understand him. He’s probably saying ‘if you join the union I’ll sack you all’. It’s easily done if we don’t understand.’

(Senior shop steward interviewed in Ferrybridge, 13 March 2014)

Conclusions

From the two power plant construction sites we learn that posted workers in the construction industry come either as co-workers or as recruited via employment agencies. Despite the fact that both sites are operating under the collective agreement for engineering construction (NAECI), a few irregularities have been identified, in particular in the Ferrybridge site. Certain subcontractors have not paid them according to the agreement, either in terms of money or schedule, and one or two have not paid for their travel or other expenses.
Furthermore, although it is against the agreement, workers are sometimes asked to carry tasks that are not part of their category, which has implications for health and safety, as well.

In terms of voice, most workers address grievances individually by going to the employer, mainly via their immediate supervisor or to the administrative personnel. A few of them also go to the unions on site. However, although among the two of them, Unite the Union and GMB have managed to recruit almost all the local workforce, their success rate among posted workers is only fifteen percent in Ferrybridge and virtually no one in Carrington. From the workers we learn that some of them do not trust the unions because they have had bad experiences previously or because they are afraid they might lose their jobs if they associate with the unions. Despite a certain degree of scepticism, some have become union members. The reasons for joining are either to solve individual case grievances, but also because they see them as their representative organs, defending the rights of all workers on site. The overall attitude of the workers is also affected by the fact that certain contractors explicitly tell their workers not to join, or make it difficult for them to organize by putting physical obstacles. Language is also perceived as an obstacle, as many do not speak enough English to communicate directly with the shop stewards on site.

Despite the complex multi-employer employment relationship, workers are aware of their conditions. Most of them accept the situation because of fear of losing their jobs, although a few have already understood the importance of membership in organized labour.
References


