

Lisa E. Berntsen

Agency of Labour in a Flexible Pan-European Labour Market

A Qualitative Study of Migrant Practices and Trade Union Strategies in the Netherlands

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ABSTRACT

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Regulatory frameworks on intra-EU mobility and flexible cross-border employment relations have stimulated competition on labour costs by recruiting migrants via cheaper labour market regimes. While it allows firms to remunerate migrants under different terms and conditions, blurring regulatory boundaries also generates opportunities for non-compliance, resulting in violations of migrant labour rights across Europe. Against this background, this thesis explores the agency of labour, more specifically of temporary migrant workers and unions, and the ways they cope with and respond to the competitive dynamics of the pan-European labour market. This study draws on 90 qualitative interviews with migrants, local workers, trade union officials and employers and on participant observations of union (organising) practices, in among others, the Dutch construction and supermarket distribution sector. It adds micro-level accounts of union practices with regards to mobile migrant labour and insights into the agency and experiences of work of a group of workers that is often talked about, but rarely talked with for academic or policy purposes. This contributes to our understanding of the dynamics of migrant employment and labour relations in contemporary Europe.

This thesis regards migrants as social actors who influence and shape working conditions and labour market structures through their actions. The variety of ways migrants exercise agency, more often through undeclared small-scale social and oppositional practices than through overt, organised acts, are embedded in and reinforce overarching oppressive employment relations. A discrepancy exists in the preferred ways migrants and unions exercise agency: small-scale and invisible versus overt and organised, respectively. The empirical material highlights the difficulties unions experience in bridging this distance to protect migrants from substandard employment conditions, but also points to some potential pathways to enforce migrant labour rights, engage migrants in union activities and reregulate the labour market for migrant employment. This adds to industrial relations literature a refined understanding of the multiple forms, intentions and effects of individual and collective agency and to migrant organising literature insights on the limits and possibilities of representation and organising strategies among fragmented and mobile workforces.

Keywords: agency, migrant organising, migrant workers, posted work, trade unions, Dutch industrial relations

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Lisa Berntsen

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LIST OF ABBREVIATIONS

CNV	Christian Union Federation (Christelijk Nationaal Vakverbond)
DC	Distribution Centre
ETF	European Transport Workers' Federation
EU2	Romania and Bulgaria
EU8	Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia and Slovenia
EU15	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.
FNV	Federation of Trade Unions (Federatie Nederlandse Vakbeweging)
PWD	Posting of Workers Directive
TWA	Temporary Work Agency
TWAD	Temporary Work Agency Directive

ARTICLES

- ARTICLE I Caro, E., Berntsen, L., Lillie, N. & I. Wagner (2015) Posted Migration and Segregation in the European Construction Sector. *Journal of Ethnic and Migration Studies*, doi: 10.1080/1369183X.2015.1015406.
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- ARTICLE V Berntsen, L. (2015) Stepping up to strike: A union mobilization case study of Polish migrant workers in the Netherlands. *Transfer* 2015-4. doi: 10.1177/1024258914567427.

1 INTRODUCTION

(Lukasz, scaffolder, Polish, 28): I've had three adventures with this company. Once, I worked for them in Germany, but before that I worked in Poland for three years or so. The earnings were very, very bad, however, and the work was horrible. Then I decided that I couldn't continue like that. I wanted to go abroad. I found a job in Germany, but I quit that after three months. It was really bad there. We lived in dramatic circumstances. My colleagues were drinking on the job. This was very dangerous. Now I'm lucky to have this job here for seven months already. It was a bit of a risk, because beforehand I didn't know exactly where I was going, but I knew that the circumstances in the Netherlands would be better than in Germany, especially with this company. When I arrived, one of my friends was already here and told me that things were OK here. Still, I don't see my future with this company. It is a bad company that has no regard for the wellbeing of their employees. Their attitude towards their employees... I mean, they take someone abroad, and then they put you in housing like that. I understand that the conditions can be a little worse sometimes, but this... Really, I should have made pictures.

In this profession, scaffolding, accidents happen, also deadly ones sometimes. We should receive some kind of care from our employers, so that we feel safe. From my own experience, and from what I have seen happen to my friends and colleagues, this doesn't happen. They see us as workhorses, only here to keep the company going. I've been on scaffolds that weren't assembled right so that we were bouncing in the air. It was really frightening. That's why I don't see my future in scaffolding. The circumstances are rough. I will do this for two more years max, and then I'll be gone. I'll quit. But I don't know what I'll do next.

The union, I think, can only help a whole team, and not just a single person. You know what happened to my colleague [name]. He was some sort of activist at the site, fighting with the union for better rates of pay and accommodation facilities, but they fired him. In general, there is a lack of solidarity among the workers. When I, or my friend here, would say something about this, no one would join us. We don't have the power as individuals, so our talking or acting upon this would be worthless and risky. Plus they [the employer] would tell us that we can just quit if we don't like it. So for us, the union is useless. Although recently, they did organise a large group of Polish workers at this big company called Remak. They may have the possibility to win, but we, as individuals working for a small firm, have none.

So many people have left Poland, especially from the small villages where jobs are scarce. Many that have left only return once or twice a year. I see them more often on Skype than in real life. Me, I don't miss Poland that much. Well, I have my family – my mother, father and brother and I'm concerned about my dad. He had a heart attack, so I'm concerned about his health. But he updates me every day. I don't see my future in Poland. I see my future there where there is work, because without work ... you know how it is over there [in Poland], it is difficult to get a job. If I look at my brother: he is well educated and quite intelligent, so he should be able to have a good job, but he works as a physical labourer. He lives close to his job, but his earnings are so low! Really, when he told me what he makes each month! I don't want to work for that anymore. It is such a different life.

Lukasz's story is exemplary of the experiences migrants face when they work in temporary, often low-skilled and manual, employment abroad. Limited job opportunities and low earnings at home motivate many workers to apply for a job elsewhere in Europe to improve their income and personal abilities. Due to European integration, crossing national borders for work has become relatively easy. Various subcontracting firms and temporary work agencies (hereinafter TWAs) specialize in bringing workers across borders, often arranging the complete migration process for them, including accommodation and transport abroad. The market logic behind European integration generates a competitive pan-European labour market with flexible, deregulated and individual employment relations (Sennett 2006; Bourdieu 1998; Kalleberg 2009; Arrowsmith and Pulignano 2013), which has distinctive impacts on migrants' experiences of work. Lukasz, one of the workers I interviewed during my research in the Netherlands, displays a casual attitude towards (mobility for) work: his job contracts are generally short-term and insecure and his employment relations more of a transactional than personal nature. Over the years, Lukasz has faced precarious conditions of work, such as underpayment, poor housing facilities, unsafe work situations, employer intimidation and little or no union representation. The money he earns through these jobs, though, makes him reluctant to try to change conditions of work by himself, with his colleagues, or with the help of a trade union. Lukasz's story is not exceptional. On the contrary, many workers, especially from Eastern Europe, benefit from an enlarged Europe but do so within poorly regulated employment relations in a pan-European labour market where the balance of power seems to have shifted away from organised labour towards employers.

It is by now well established that EU regulatory frameworks on cross-border labour and services and flexible, fragmented employment relations create possibilities for competition on labour costs through recruiting workers from cheaper labour market regimes (Lillie 2010; Lillie 2012; Lillie and Greer 2007; Meardi 2012; Cremers 2011). Especially since the two enlargement rounds in 2004 and 2007¹, the impact of regulatory changes at the European level on national institutional and judicial contexts has been discussed extensively.

¹ In 2004 the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia, Slovenia (EU8) and Malta and Cyprus joined the EU, followed by Bulgaria and Romania (EU2) in 2007.

Debates revolved mainly around fears of wage dumping and competition on labour costs due to the possibilities for 'regime shopping' within the EU by recruiting workers from more favourable labour market regimes (Donaghey and Teague 2006; Houwerzijl 2014; Lillie 2010). Through this migrants can be employed under different terms and conditions than local workers. To save on labour costs and acquire greater flexibility, firms may retain a core of direct employees while sourcing manual labour from abroad through subcontractors and TWAs, leading to fragmentation of work processes and workforces. The resulting division of labour not only divides workers contractually, granting different legal and material entitlements, but also tends to isolate migrants from existing institutional and representational structures (Wagner and Lillie 2014). This reinforces migrants' dependent and vulnerable position in host labour markets. Violations of migrants' labour rights and cases of social dumping have been reported across Europe and firms' regulatory non-compliance (in various degrees) become systematic due to the blurring boundaries of EU regulatory frameworks (Cremers 2011; Houwerzijl 2014; Lillie *et al.* 2014; Van Hoek and Houwerzijl 2011; Lillie 2010; Lillie 2012). All the while national industrial relations systems seem to have become ill adapted to effectively deal with the social consequences and downward labour market pressures of recent intra-EU mobility (Wagner 2014; Lillie 2012; Woolfson and Sommers 2006; Dølvik and Visser 2009).² While employers have been experimenting with EU mobility frameworks, pushing and transgressing its boundaries, trade unions and enforcement authorities have struggled to keep up with the sheer number of migrants temporarily working in their constituency and with the variety of employment arrangements used by employers to reduce labour costs. Despite trade union efforts to protect migrant workers, they have not been able to protect migrants from facing structurally substandard conditions in their labour markets, as the unions struggle to find ways to include mobile migrant workers in their membership and represent their differential interests.

Against this background, I explore the agency of labour in a flexible pan-European labour market. Though it is known that migrants frequently face a structurally marginal position on host labour markets (Piore 1979), their conditions tend to improve when they reside for longer periods in a certain country. However, in Europe today, many workers do not (intend to) settle down, but move between countries, jobs and contracts on a more or less continuous basis (Engbersen *et al.* 2011, 2013), while their employment relations remain short-term and insecure. These precarious cross-border employment relations are rather resilient and little improvement has been discernible over the years. To understand why the current power imbalance in the EU labour market persists and appears difficult to change, I examine migrant worker practices and trade union strategies from a micro-level perspective. By zooming

² The presence of cheap migrant labour also exerts downward pressures on employment conditions of local workers. In the international transport sector, some Dutch truck drivers have, for example, been forced to accept a reduction in their employment conditions, or payrolling constructions via Cyprus, under the threat of dismissal (see Cremers 2014).

in on the stories of migrants I show how these workers cope with substandard working conditions, the ways they express agency³ to create small, though incremental changes, and their incentives, abilities and opportunities to (not) challenge existing employment structures and conditions, by themselves or via trade unions. This adds to the literature on industrial relations and sociology of work an inside perspective of the agency of labour, more specifically of migrant workers and trade unions, in the dynamic, competitive and individualistic European market context after the 2004/2007 accession rounds. Whereas industrial relations studies often start from a union or management perspective, my points of departure are the migrants themselves and the ways they exercise agency individually and collectively within a flexible pan-European labour market. In this thesis, I consider migrants not as passive victims that simply accept substandard conditions of work and refrain from collective action, but instead as social actors that exercise agency in ways that often tend to reinforce rather than challenge oppressive relations at work. I argue that there is a discrepancy in the preferred ways migrants and unions exercise agency, in small-scale, often invisible ways as opposed to openly declared and organised forms, respectively. This has implications for unions that aim to bridge this distance to protect migrants from oppressive employment relations and other actors that attempt to reregulate the market for migrant employment.

This study focuses on the Netherlands as a country case. The Netherlands has a highly flexible labour market, with a particularly sizeable TWA sector, attracting large shares of low-skilled workers (Schrijvers and Kremer 2013; Kremer 2013). At the same time, it is characterised by dense regulation in most industries. Since 2007, the inflow of temporary migrant workers, particularly from Eastern Europe, has increased and several cases where migrant worker rights were violated have been reported.⁴ Migrants from the 2004/2007 accession countries have acquired a structural position on the Dutch labour market, in particular in the construction, agriculture and meatpacking sectors (Regioplan 2012). Nevertheless, few studies address the situation in the Netherlands.⁵ While the macro-level impact of EU migration appears small –

³ By *exercising agency* I mean the ways in which migrants shape their relationships with surrounding persons, places, institutions and events (Emirbayer and Mische 1998: 973). Agency, or being an agent ‘means to be able capable of exerting some degree of control over the social relations in which one is enmeshed, which, in turn, implies the ability to transform these social relations to some degree’ (Sewell 1992: 20).

⁴ In the transport, construction, agriculture and meatpacking sectors, several violations of migrants’ working conditions have been reported. In July 2014, Ikea was accused in the Dutch media of social dumping practices by using cheap Slovakian truck drivers. Via a tendering procedure, Ikea selected a Belgian transport company with a Slovakian subsidiary that in turn used a Slovakian TWA to recruit Slovakian truck drivers to work in the Netherlands and Belgium (*De Volkskrant* 15 July 2014). With the construction of Avenue 2 and 4 in the Netherlands, several violations were reported with regard to migrants’ employment and housing conditions.

⁵ In contrast, there is substantial research on EU migrant workers in the UK where the inflow of migrant workers increased from 2004 onwards when the UK labour

only 2.7% of EU citizens live in another EU member state (European Commission 2013b: 19) and in the Netherlands only 0.32% of the active labour force consists of migrants from the 2004/2007 accession states⁶ – the micro, local-level impact of labour migration can be substantial. In certain workplaces, such as meatpacking factories in the Netherlands, up to 80 per cent of the workforce is Polish. Though Poles have become a more established migrant group in the Netherlands, especially in the cities of The Hague and Rotterdam, this study focuses on workers who have resided for a relatively short period, or relatively short periods, in the Netherlands. These workers' intentions for the future are often undefined: some may decide to move elsewhere or back home, while others may try to stay more permanently. What all these workers have in common, however, is their economic motivation for being (for shorter or longer durations) in the Netherlands. Although the empirical focus is on the Netherlands and some of the findings are specific to the Dutch context, similar migrant employment and labour dynamics are present in other national contexts as a result of the EU regulatory frameworks on intra-EU mobility (Cremers 2011; Lillie *et al.* 2014; Lillie and Greer 2007). Since this study was undertaken as part of a larger project studying the impact of posted work on industrial relations in four different EU countries (the Netherlands, Finland, Germany and the United Kingdom), in some chapters reference is made to comparable empirical findings from the other countries.

1.1 A moral economy perspective to understand the agency of labour

To understand the agency of labour – of workers and trade unions – in a flexible pan-European labour market, social, economic and political acts need to be understood within their constituent contexts. Markets and employment relations do not function solely according to a market logic, but are grounded in economic, political and social relations and moral sentiments (Bourdieu 1998, 2005; Sayer 2007). A way to acknowledge the social construction and embeddedness of markets (Granovetter 1985; Polanyi 2001 [1944]) is by adopting a moral economy perspective. Moral economy is 'a conceptual scaffold that views economies as socially, politically *and* economically embedded systems, fuelled by norms and values' (Bolton *et al.* 2012: 121, emphasis in original). It recognizes that social relations and moral sentiments shape markets, economic actions, decisions and working lives (Bolton and Laaser 2013: 513). Through a moral economy perspective I explore what it is like to be a worker employed under the constraints of the European market

market was liberalised (*e.g.* Datta *et al.* 2007; Ryan *et al.* 2008; Meardi 2007; Düvell and Garapich 2011; Fitzgerald and Hardy 2010; Ciupijus 2011).

⁶ According to Statistics Netherlands (CBS), in 2012 around 237,000 migrants from EU8 and EU2 countries worked in the Netherlands in a total labour force of 7.4 million.

logic and understand the effects this has on experiences of migrant employment and labour relations at the micro level (Bailey *et al.* 2011).

Inherent to markets is a tendency to disembed economic transactions from the social sphere by transforming relations of production and employment into tradable commodities (Marx 1978 [1867]; Polanyi 2001 [1944]). Via a process of commodification, products are reduced to their sole exchange value, masking the social relations of production. When society is increasingly governed by the economic logic of the market, this threatens social relations and valuations. This, however, induces protective responses from societal actors, such as governments, trade unions or social movements, aimed to counter destructive effects of market forces. According to Polanyi (2001 [1944]), there is a constant struggle between advocates of market expansion towards a disembedded economy, and counter-movements by government, unions and workers who aim to restrain market forces. While Polanyi saw the expansionary, disembedding market system as inherently unstable, the market-making agenda in Europe shows a persistent trend over recent years, with national policymakers and unions struggling to keep up and protect workers from unbridled market forces. Though protective counter-movements can be identified challenging the dominant market order (Munck 2004; Adler *et al.* 2014), these have not been effective in structurally improving the position of migrant workers.

Although the power imbalance between employers and workers in the labour market constrains the agency of migrants, the market system at the same time provides opportunities to advance personal interests (see also Sayer 2000, 2007). In the following, I regard migrants as social actors within the pan-European labour market, who also influence and shape working conditions and labour market structures through their actions. As people may pursue different and often contradictory goals in life, I examine 'the practical and instrumental responses of people to given situations, not only as a community ... but also as individuals' (Bolton and Laaser 2013: 516). While the literature in industrial relations tends to study agency in its collective and organised forms, I argue that the agency of workers should be considered and conceptualised more finely. By recognising small-scale and differential acts of agency and the day-to-day dilemmas these workers face, the nuanced processes of labour practices and (non)unionisation can be more fully understood (Pereira 2014; Bolton and Laaser 2013). In this way, improved understanding of the dynamics behind current cross-border employment relations is generated.

In Chapter 8, the concluding chapter, I apply a moral economy lens to tie the contributions of the different chapters together to answer how the European competitive market dynamic affects the individual and collective agency of migrant workers employed on short-term (cross-border) contracts in the Netherlands. In the separate chapters of this thesis, I show some of the tensions created by the European labour market that result in *de facto* exclusions of labour rights for migrant workers, because of specific cross-border recruitment practices (chapters 3 and 4) and I discuss how migrants (chapter 5) and trade unions (chapters 6 and 7) respond to this. The moral economy framework is

used in the final chapter to highlight the social construction and dynamics of migrant employment and labour relations in the Netherlands and in Europe more broadly.

In the following sections, I discuss the market logic that underlies cross-border flexible recruitment practices in Europe and how this impacts the employment position and experiences of migrant workers. I draw on the trade union and migration literature, to highlight trade union' responses to these market dynamics in protecting migrants within their labour markets. Also, I discuss migrant practices in dealing with precarious forms of cross-border work. These sections introduce the themes on which the subsequent chapters of the thesis build further. After these sections, I focus on the employment situation of EU migrants in the Netherlands. Then, I briefly introduce the methodology, present a note on terminology and describe the outline of this thesis.

1.2 Cross-border employment relations in Europe

While European integration fuels labour mobility within the EU, the employment conditions migrants face are also a result of the global expansion of flexible, deregulated labour markets. Especially in the last decade, precarious work, or 'employment that is uncertain, unpredictable, and risky from the point of view of the worker', has increased substantially (Kalleberg 2009: 2).⁷ Employment relations are increasingly governed by short-term, market-based contracting (Arrowsmith and Pulignano 2013), slimming down the connection between workers and employers to a transactional relation. By outsourcing labour-intensive parts of the work process to subcontractors and TWAs, firms contract risk away and push it down the supply chain. TWA employment or labour-only subcontracting⁸ enable client firms to flexibly and arbitrarily manage part of their workforce, because recruitment and dismissal procedures are contracted away. To save on labour costs and acquire greater flexibility, firms retain a core of direct employees with knowledge and skills essential to the core business process, while sourcing manual labour from subcontractors and TWAs. This fragments the work process.

This 'division of labour' has important implications for migrants' experiences of work. The contractual status of TWA workers is short-term and insecure, as they can 'be fired as quickly as they are hired' (Sporton 2013: 450). Although subcontractors and TWAs are formally bound by (minimum provisions of) the legally extended sectoral collective agreements in the Netherlands, non-compliances and irregularities in working conditions are

⁷ I use the term *precarious*, instead of *flexible*, to denote the fluidity and uncertainty that this type of work entails for workers (Kalleberg 2009; Anderson 2010; McDowell *et al.* 2009).

⁸ Labour-only subcontractors basically supply labour (usually for lower rates) instead of a service, such as undertaking a subproject (see Cremers 2011; Cremers and Janssen 2006).

common, especially further down contracting chains. TWA employment and labour-only subcontracting embed migrants in a triangular relationship with a client firm and a TWA, where the actual work relation with the former is separated from the contractual employment relation with the latter (Smith 2010; Peck *et al.* 2005). The role of private actors, such as TWAs, in facilitating cross-border moves has become more pronounced (Menz 2010b; Peck *et al.* 2005). TWAs and labour-only subcontractors act as intermediaries in the migration process: they recruit migrants in the home country, organise the migration process and place workers in employment in a host country (Sporton 2013; Coe *et al.* 2010). This employer-arranged migration context creates dependencies of migrants on their employers encompassing not only the job, but often accommodation and transport facilities as well. Employers may use this as a strategy to divide and rule, deliberately separating migrants from other groups of workers and their local surroundings. In the workplace, migrants often work in teams aligned on the basis of nationality, and outside work they also tend to spend their time with their colleagues. In this way, migrants remain less informed about local institutional contexts and regulations. For employers this can be a strategy to maintain migrants as a pool of docile, disciplined workers (MacKenzie and Forde 2009; Sporton 2013), reducing workers actions and concerns at work to just those that are functional for achieving certain profit goals. Chapter 3 specifically explores how employer-arranged posting and agency work impact workers' experiences, and particularly how workers deal with the socio-spatial segregation processes these employment relations create.

Subcontracting and outsourcing practices segment labour markets by subjecting migrants to different terms of employment compared to other workers (Piore 1979; Menz 2001; Wills *et al.* 2010). Migrants are as a group disproportionately concentrated in precarious and low-wage work and tend to cluster in certain low-skilled sectors and occupations (Wills *et al.* 2010; Piore 1979). This has led to the emergence of new migrant divisions of labour at the bottom end of the labour market, depending on migrants' legal status and racial distinctions (Wills *et al.* 2010; May *et al.* 2007; McDowell *et al.* 2009). It has been argued that the very availability of migrant workers, who can and are willing to work for lower rates, constructs labour markets that are increasingly dependent on migrants (McDowell *et al.* 2009: 7; Favell 2008; Castells 1975; Bauder 2006).

Recent policy discussions in Europe have revolved around the effects of EU regulatory frameworks on cross-border labour and services and the possibilities it creates for competition on labour costs or so-called regime shopping by recruiting employees from favourable (meaning cheaper) labour market regimes (Houwerzijl 2014; Streeck 1992; Traxler and Woitech 2000). This may lead firms to import labour from elsewhere, instead of outsourcing or relocating production (Menz 2001). A hot-button issue is posted workers, whose employment conditions are regulated under the EU framework on free movement of services instead of free movement of workers (Cremers 2011). Posted workers are sent by an employer from a member state where they ordinarily work to temporarily perform services in another member state. Their social-security arrangements remain in the sending state, the country from

where the workers are posted. Thus, home-country conditions apply to part of the employment conditions for posted workers. This provides firms a legal opportunity to save on labour costs compared to domestic employers, as social contributions in Poland or Portugal, for example, are lower than in the Netherlands. Over the last decade, firms have increasingly used the services channel to employ workers across national borders (European Commission 2013a), and though some of it is legal posting, posting is regularly used as a route to recruit cheaper workers and avoid regulation by presenting workers as ‘posted’ while they legally are not (Cremers 2011; Cremers and Donders 2004; Lillie 2012; Wagner 2014). Four influential ECJ judgments, also referred to as the ‘Laval quartet’⁹, have fuelled the debate and changed the level playing field with regards to posting. These forced countries to change regulations and trade union practices, as the rulings constrained trade union bargaining rights and rights to collective action (Dølvik and Visser 2009; Woolfson and Sommers 2006; Bengtsson 2014). While the impact of the Laval quartet decisions was limited on the regulatory context and on trade union practices in the Netherlands¹⁰, posted workers have become an increasing migrant group over the years, especially in the Dutch construction sector. The majority of migrants in the Netherlands are, however, employed via TWAs (Gijsberts and Lubbers 2013), which sometimes use posted employment arrangements. Posting is part of a labour recruitment system that has developed in Europe, where firms use various channels of migration and recruitment to differentiate between terms and conditions of migrant workers, exploiting the blurred boundaries of regulatory frameworks on EU mobility. Enforcement of labour standards is complicated by the cross-border context, often rendering it absent or ineffective.¹¹ This has created grey zones, or ‘spaces of exception’, where migrants work for cheap rates under precarious conditions while experiencing very scant protection from established representation and enforcement authorities (Lillie 2010; Ong 2006; Wagner and Lillie 2014; Lillie *et al.* 2014).

⁹ The ‘Laval quartet’ refers to the ECJ judgments *Laval un Partneri* (C-341/05), *Viking* (C-438/05), *Rüffert* (C-346/06) and *Luxembourg* (C-319/06).

¹⁰ The impact of this case law was limited in the Netherlands, because Dutch strike law, public procurement law, private international law and the implementation of the Posting of Workers Directive were all more or less in line with the four judgments (Houwerzijl 2010: 33). The kind of strikes in the *Viking* and *Laval* cases, collective action in order to compel a foreign firm to adhere to a collective agreement, are unlikely to be performed by Dutch unions. The indirect effect of these rulings may, however, be reluctance among Dutch unions to strike in cross-border situations (Houwerzijl 2010: 34). The *Rüffert* ruling did not have much impact, as it was not customary for Dutch authorities to put a social clause in public procurement contracts anyway. Also the Netherlands did not use the possibility when implementing the PWD to impose more than the hard core, and therefore the *Commission/Luxembourg* judgment had no impact either (Houwerzijl 2010: 36–37).

¹¹ The Dutch labour inspectorate wrote in her 2013 annual report, for instance, that ‘matters are becoming more complex due to international formats, the volatility of businesses and limits to instruments of enforcement’ (Inspectorate SZW 2013: 2).

This exerts downward pressures on wages and employment conditions in certain occupational markets (Mearidi 2012; Lillie 2012), which some refer to as a social dumping dynamic (Bernaciak 2015). How firms use cross-border recruitment practices to undermine or circumvent existing regulatory systems, is not often clearly recognized. Chapter 4 therefore presents three categories of firms' costs-saving regulatory engagement strategies, ranging from regulatory evasion and arbitrage to regulatory conformance.

1.3 Trade unions and migrant workers

Due to nationally focused representation structures, many trade unions have struggled in the past and present with their response to migrant workers (Penninx and Roosblad 2000; Lillie and Sippola 2011; Lillie *et al.* 2011).¹² Nowadays, most unions share the stance that migrants have the right and are welcome to work, as long as their conditions are in line with local labour standards. Trade unions may use social regulation to protect migrants from unrestrained market competition (Tapia *et al.* 2014). Many unions have made efforts to include migrants and other precarious workers as members to reduce the marginalisation of these workers and to protect their existing members' interests (see Adler *et al.* 2014; Holgate 2005; Holgate 2011; Connolly *et al.* 2011; Fitzgerald and Hardy 2010; Eldring *et al.* 2012; Alberti *et al.* 2013; Vandaele and Leschke 2010; Keune 2013; Bernaciak *et al.* 2014; Hardy *et al.* 2012; Wills 2009; Milkman 2000, 2006). Despite these efforts, migrants remain underrepresented in trade union membership, as they tend to work more often in sectors or workplaces where trade union presence is weak or non-existent (Gorodzeisky and Richards 2013).¹³ Additional barriers for migrants to union membership are lack of language ability, fears of dismissal or employer retaliation and unfamiliarity with local trade union structures and practices (McKay 2008; Schmidt 2006). Also, the precarious contractual status most migrants face limits their interests in joining local trade unions. However, in the US context, unions have succeeded in unionising and organising precarious workers such as undocumented migrants by making strategic efforts to do so (see Milkman 2000, 2006; Savage 2006).

Changed employment structures, and especially subcontracted and TWA employment, complicate union representation strategies (Wills 2009; Gumbrell-McCormick 2011; Keune 2013; Vandaele and Leschke 2010; Holtgrewe and Doellgast 2013; Flynn 2006; James and Karmowska 2012). With subcontracted and TWA employment, addressing the 'real' employer proves particularly

¹² Penninx and Roosblad (2000) formulated three dilemmas trade unions face in dealing with (im)migrant workers: i) to resist or support migration; ii) to include or exclude migrant workers as members; and if trade unions decide to include migrants in their ranks, iii) to create special initiatives for migrants or not.

¹³ The Swiss trade union Unia would be an exception here, as more than 50 per cent of Unia's members are migrants (Pereira 2007).

difficult (Wills 2009). Trade union policy is usually to target the ‘real’ employer, the client firm at the top of the contracting chain, to change the terms and conditions of employment within the chain on a structural level (Wills 2009; Alberti *et al.* 2014). To pressure employers to change employment conditions structurally, some unions have sought collaboration with societal actors to change the scope and scale of campaigning by recasting workplace issues as matters for the wider community to realign campaign demands with migrants’ interests (Wills 2004; Wills 2008; Milkman 2006; Holgate 2013).

The role of trade unions as membership-driven organisations has been under pressure, as unions around the world have experienced precipitous declines in union membership rates.¹⁴ In response to declining union density, unions have adopted different renewal strategies, of which organising, by attracting new demographics into membership, is one of the most prominent (Frege and Kelly 2003; Hickey *et al.* 2010; Gall and Fiorito 2011; Kelly 1998). Organising as a union approach is often contrasted with servicing or business unionism. Servicing unionism is characterised by social partnership between management and labour, while organising is based on a more conflictual union model. Servicing trade unions provide benefits to their members through collective bargaining and representation services in case of individual grievances. Where members of servicing unions are regarded as rather passive recipients of trade unions services, in organising campaigns, members are collectively engaged in developing their own representative capacities, with the union providing background support (Gumbrell-McCormick and Hyman 2013: 55–56). Organising tactics have also been applied successfully in different institutional contexts to draw migrant workers into union membership (Milkman 2006; Savage 2006; Connolly *et al.* 2011). In the Netherlands, where trade unionism is characterised by a social partnership tradition, organising approaches have been introduced on a limited scale over the last decade. This is a change from the traditional cooperative and non-confrontational strategies of Dutch unions (Connolly *et al.* 2011; Sprenger and Van Klaveren 2009).¹⁵ The organising initiatives in the Netherlands are, however, only ‘islands of organising in a sea of union services’ (VanDaele and Leschke 2010: 24).

When migrants are frequently employed under substandard conditions, this undermines local labour standards. In the Netherlands, migrant wages and conditions are covered by collective agreements, even if migrants are not Dutch union members, due to the practice of legal extension of collective agreements.¹⁶ To counter the undermining of Dutch labour standards, Dutch trade union policy is to actively include and organise temporary and migrant workers (Kloosterboer 2007; Boonstra *et al.* 2010). Where firms separate workers by

¹⁴ In the Netherlands, union density is around 20 per cent (in 2011), representing a decline from the 1980s, when trade union membership rates were above 35 per cent (Ter Steege *et al.* 2012).

¹⁵ Organising activities in the Netherlands have been most prominent in the cleaning sector, where in 2010, 2012 and 2014 extended strike activities of cleaners (many of whom have an immigrant background) took place within an organising campaign by FNV Bondgenoten (Heuts 2011; Connolly *et al.* 2011).

¹⁶ Collective agreement coverage is around 85 per cent in the Netherlands.

employing them under different contracts and conditions, which undermines shop-floor solidarity, Dutch trade union policy is to counter such employers' workforce fragmentation strategies by creating solidarity between different groups of workers, emphasizing their shared interests and organising them on this basis (Kloosterboer 2007). This qualifies as an inclusive approach towards migrants to integrate them into broader union structures (Benassi and Dorigatti 2014). Unions have also adopted 'particularistic' approaches by targeting 'migrant workers as members of specific ethnic communities, or as migrants with specific social and workplace needs' (Alberti *et al.* 2013: 4139). Examples of the latter are special union branches created for recent Polish migrant workers in the UK (Fitzgerald and Hardy 2010) or for posted workers in Germany (Greer *et al.* 2013).

While studies have addressed trade union initiatives to represent and include migrant workers in different sectors and national contexts, few address the Dutch trade union approach herein (except for Connolly *et al.* 2011; Marino 2012; Marino and Roosblad 2008). I show that the approach Dutch trade unions take is an inclusive one, trying to integrate migrants into existing trade union structures while at the same time taking into consideration the specific interests migrant workers have as migrants. While there have been several initiatives, the successes of these tend to be driven by the involvement of enthusiastic local union officials, and coordinated approaches that overarch local, regional or national contexts appear to be lacking (Fine and Holgate 2014: 139). In Chapters 6 and 7, I discuss two case studies of trade union practices aimed at representing temporary migrant workers. These empirical examples show the difficulties unions face in enforcing local labour standards on migrant employment and in representing the interests of workers who are not part of their core membership base. However, they also highlight some of the possibilities to engage migrants in collective activities.

1.4 Migrant worker practices in dealing with precarious work

Explanations for migrants' marginal, precarious position on host labour markets and their general reluctance to resist substandard conditions are often sought in migrants' economic, instrumental motivations for working abroad. Migrants may approach their jobs instrumentally because they plan to move back or move on elsewhere to a better position (Anderson 2010). This creates an 'imagined temporariness' (Anderson 2010: 304) that makes them, particularly in the early stages of their migration trajectory, according to Piore (1979), more inclined to accept low-paid, low-status jobs at the bottom end of the labour market. While this perception of temporariness may in the beginning be informed by lower expectations, restricted language skills and limited understanding of the host labour market, as time passes, workers' imaginations might change, when they acquire knowledge of the job market and local (institutional and representational) structures, establish functional social (and

transnational) contacts and improve their language skills (Anderson 2010; Pool 2011; Datta *et al.* 2007; Ryan *et al.* 2008). For a while, however, worker and employer interests may coincide, when employers' demand for cheap, flexible and hard-working labour (MacKenzie and Forde 2009) is met by migrants willing to tolerate precarious conditions, at least for the time being. While in general, precarious forms of work, even though they involve risks and dependency for workers, can provide opportunities for advancement (Garsten 1999), studies find mixed evidence for migrant employment. Some confirm that precarious forms of work may function as a route into other, more secure forms of work for EU migrants (McDowell *et al.* 2009; Krings *et al.* 2013), whereas others question whether upward mobility via precarious work is indeed a possibility (Sporton 2013; Sumption and Sommerville 2010). Migrants' abilities to change jobs in a host labour market are restricted, however, when their dependencies on an employer stretch beyond the job, as when job loss coincides with the loss of a place to stay abroad.

Research has highlighted the importance of communities for migrants. Social networks may provide emotional, informational and instrumental support, as well as companionship and opportunities for socializing (Ryan *et al.* 2008: 674). Social networks, but also transnational arrangements and geographic, cultural and linguistic links between sending and receiving countries, can direct migration flows (Massey *et al.* 1998; Kahanec *et al.* 2010),¹⁷ but migration itself also creates communities and networks that may facilitate the migration process as well as help sustain migrants during their stays abroad (Portes and Sensenbrenner 1993; Ryan *et al.* 2008). Migrants tend to secure work via their personal connections, which contributes to the clustering of certain (national) migrant groups in specific sectors (Datta *et al.* 2007; Wills *et al.* 2010). Migrant networks often span across national borders and close contacts with home may provide migrants 'transnational sources of emotional support and advice' (Ryan *et al.* 2008: 684). These networks are fluid and change, just as migrants' needs and circumstances alter over time: the networks addressed shortly after migrants' arrival in a new country may differ from the ones they establish after working abroad for a while, when they have had a chance to develop new relationships and find alternative sources of information and support (Ryan *et al.* 2008; Ryan 2011). Migrant networks not only consist of helpful friends and family members but may also encompass ties with other actors, such as employers and other intermediaries, consultants for instance, who offer services to facilitate or support the migration process (Elrick and Lewandowska 2008; Krissman 2005).

The strategies migrants adopt in coping with migration and precarious work have not often been the subject of research (except for Datta *et al.* 2007; Andreotti 2006). Datta and colleagues (2007) showed that migrants in London's low-paid economy employ a range of tactics to ensure a liveable situation for

¹⁷ Whereas Romanian and Bulgarian migrants show a preference for Southern European countries, Polish workers for example tend to move more often to Western European and Scandinavian countries.

themselves and their relatives in London. Their coping mechanisms were greatly influenced by experiences of economic and social exclusion. To survive in the city, migrants employed various income-increasing and household-expenditure-saving tactics, and relied on their own community of family and friends for support. Participation in faith-based and other civil society organisations helped migrants to counter social exclusion and gain spiritual and material support (Datta *et al.* 2007; see also Holgate 2013).

I show in Chapter 3 that temporary migrants, especially when they do not live in city areas, do not tap into existing social networks in host countries, because of their temporary stays abroad and because their lives, especially when they do not bring their families with them, take place mainly through the support networks of their employer. While workers maintain close (virtual) transnational connections with their families and friends, abroad they rely primarily on the support of their colleagues, or friends, their employer and sometimes a trade union. In chapter 5, I argue that although migrants may appear to be relatively tolerant of precarious employment conditions, this does not mean that they do not try to change their position in the labour market. Through small-scale acts, migrants may maintain and negotiate their position within the pan-European labour market to create strategic rewards and opportunities for themselves. Such practices may paradoxically, however, contribute to the resiliency of current precarious employment relations.

1.5 EU migrant workers in the Netherlands

The 2004 and 2007 Eastern enlargements of the European Union changed European migration patterns. The annual flows of workers from the EU8 to the older member states tripled compared to the flows before enlargement (OECD 2012; Kahanec and Zimmerman 2010).¹⁸ While traditionally most migration patterns could be captured by dichotomous categorisations of either temporary or permanent, from a place of origin to a specific destination, current movement patterns in Europe are more fluid and dynamic, and transgress and shift between existing categories (Collyer and De Haas 2012: 479; Engbersen *et al.* 2010). A fluid migrant status is considered characteristic for recent EU migrants, with workers moving across borders for short periods (often for less than 12 months) and in a casual manner (Meardi 2007). Fluid migration is possible due to the free movement of EU citizens, which allows workers to move flexibly between EU countries, or between one country and the home country following

¹⁸ In the UK, Sweden and the Netherlands, 90 per cent of population flows since 2004 can be attributed to the 2004 enlargement, while this number is only 10 per cent in Germany (Germany was already experiencing substantial inflows of migrant workers before the enlargement rounds). Since the 2007 enlargement, more than 75 per cent of population flows of Bulgarians and Romanians to the Netherlands (and Sweden and Denmark) can be attributed to the 2007 enlargement (Holland *et al.* 2011: 85–86).

job opportunities. Poland and Romania, countries with high population sizes, are the main countries sending workers to the older member states. According to citizenship data, the number of EU8 citizens in the Netherlands increased more than 600 per cent from 2004 to 2013 (see Table 1.1).¹⁹ The inflows in the Netherlands increased especially from 2007 onwards, when the restrictions on labour market access for Poland were lifted (Ooijevaar *et al.* 2013).²⁰

In the Netherlands, labour migration from other EU countries forms the largest migrant category entering the country (Berkhout and Hof 2012). EU migrants in the Netherlands are often young and without family, and they migrate to work. They find employment primarily in the low-wage sector and in low-skilled jobs in agriculture, construction, production and warehouse work, domestic care and cleaning (Gijsberts and Lubbers 2013: 89; Berkhout and Hof 2012: 9). The majority find employment via TWAs (Gijsberts and Lubbers 2013). Some argue that it is the flexible labour market in the Netherlands, with a large TWA sector, that in fact attracts large shares of low-skilled migrant workers (Kremer 2013). Migrants that work on temporary contracts, especially seasonal workers, enter the Netherlands once or a couple of times a year and those that stay longer often return home after some years. EU migrants return home more often than other migrant groups because the physical distance from home is smaller and their legal status as EU citizens is not lost when a worker returns home (Berkhout and Hof 2012).

Table 1.1 Number of EU8 citizens in Belgium, Germany (DE), the Netherlands and the United Kingdom

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
BE	15,071*				41,609	48,739	57,369	67,131	75,072	81,849
DE	480,690	438,828	481,672	562,444	594,277	603,783	615,060	653,976	740,804	848,996
NL	13,125	17,883	23,212	28,394	36,365	48,131	58,201	71,418	87,239	99,532
UK	82,769	180,212				562,031	615,243	661,777	965,575	934,287

*This is the number for 2003, as Belgian data for 2004 was missing; Source: Eurostat

Engbersen and colleagues distinguish four different migration patterns among central and Eastern European migrants: circular migrants with weak attachments to the country of destination; bi-nationals or transnationals with strong attachments to both the country of origin and of destination; footloose migrants with weak attachments to both the home and destination country; and settlers with weak attachments to the home country (Engbersen *et al.* 2011, 2013). They estimate that 41 per cent of Polish, Bulgarian and Romanian migrants in

¹⁹ The numbers present only registered people with EU8 nationality. Many migrant workers, especially seasonal workers, remain unregistered, however, because of their short stays in a host country or because they fail to register.

²⁰ The Netherlands imposed transitional measures for workers from the EU8 countries (lifted 1 May 2007) and for workers from Bulgaria and Romania (lifted 1 January 2014). During this transition periods, workers from those countries had to have a work permit to enter the Netherlands for work.

the Netherlands are footloose migrants, that 23 per cent are circular (seasonal) migrants, 13 per cent transnational and 22 per cent settling migrants (*ibid.*).

In the Netherlands, Polish, Bulgarian and Romanian workers are overrepresented in low-skilled sectors, often working jobs below their home-country education level (Gijsberts and Lubbers 2013). Poles are, at around 70 per cent, the largest migrant group on the Dutch labour market (Ooijevaar *et al.* 2013). The Netherlands is one of the top five destinations for Poles who move abroad within the EU (Fihel *et al.* 2012). Polish migrants also achieve the highest employment degree, with 83 per cent, among all migrants from the 2004/2007 accession states, of which around 75 per cent are employed (Ooijevaar *et al.* 2013: 6). Table 1.2 provides a more detailed overview of the number of EU migrants from the 2004/2007 accession states working in the Netherlands.²¹ Accurate data on the number of EU migrants in the Netherlands is lacking, however, because not all migrants register in the municipal personal records databases. Everyone who stays for at least four months in a Dutch municipality is obliged to register at a municipality, but many migrants, especially seasonal migrants, stay for shorter periods or fail to register if they do stay for a longer period. Moreover, it is unknown whether migrants housed by a TWA always register at a municipality.²² In 2012, 58 per cent of people from the 2004/2007 accession states registered in the municipal personal records database, while in 2007, this number was as high as 65 per cent (Ooijevaar *et al.* 2013: 5). In 2012, 237.000 migrants from the 2004/2007 accession states (including ones not registered in the population database) were working in the Netherlands

Table 1.2 EU8 and EU2 nationals with a job in the Netherlands

	2007	2008	2009	2010
Bulgaria	3,830	5,490	6,270	6,400
Estonia	200	350	490	630
Hungary	5,230	9,390	10,960	11,770
Latvia	520	940	1,940	4,040
Lithuania	1,790	2,170	3,320	5,040
Poland	142,000	188,640	184,270	206,220
Romania	6,560	7,570	8,110	8,670
Slovenia	90	150	160	200
Slovakia	2,030	3,310	3,250	3,740
Czech Republic	1,340	1,720	1,700	2,030
Total	163,590	219,730	220,470	248,740

Source: Migrant Monitor, Dutch Statistics ('*Migrantenmonitor*', CBS)

²² Migrants are often accommodated by their employer on bungalow parks, where they share accommodation with colleagues. During their job, they often change houses and sometimes bungalow parks when colleagues leave the job or when new workers come in.

Migrants find employment in a variety of ways. Some are recruited directly by a TWA or service provider in their home country, or indirectly via an intermediary or TWA. Others find a job via indirect channels, through family or friends, or by simply going abroad and looking for employment 'on spec' (Fitzgerald 2007). Recruitment channels tend to vary per sector. In the construction sector, direct company recruitment is common, whereas in other sectors, such as in the UK food processing industry, direct TWA recruitment is predominant (Fellini *et al.* 2007; Fitzgerald 2007). In the Dutch construction sector, the majority of migrants are employed via Dutch or foreign TWAs or via foreign service providers, or they are self-employed²³. In most sectors, such as food-processing or warehouse work in the Netherlands, migrants are employed via TWAs.²⁴ The various employment setups entail different contractual arrangements and employment conditions. Table 1.3 summarizes the differential cost structure for TWA workers, posted workers and self-employed workers, the main categories of migrant employment in the Netherlands. The table shows the legal cost structure. Firms, however, use many illegal arrangements within seemingly legal work relations to further reduce labour costs. For example, by having employees work more hours than registered on the pay roll, thus decreasing the hourly wage, or deducting excessive costs for accommodation, tools or work clothes (see also Lillie *et al.* 2014; Cremers 2011).

The wages and working conditions of posted workers are regulated by the 1996 Posting of Workers Directive (PWD). The PWD establishes a nucleus, or hard core, of minimum terms and conditions of work and employment for posted workers that a service provider from a sending member state needs to comply with in a host member state.²⁵ These terms and conditions must be laid down by law, regulation or administrative provision and/or by collective agreements or arbitration awards that have been declared universally applicable in the member state to whose territory a worker is posted. During

²³ Many ostensibly self-employed migrants are actually in a dependent employment relation and thus, in fact, bogusly self-employed. During the transition period, self-employment was used as a way to avoid the need to apply for a work permit (because self-employed workers formally move under the free movement of establishment). The number of self-employed Polish increased from 190 in 2002 to 7,000 in 2008 and 60 per cent of this group was employed in construction (Korf 2009; Regioplan 2012: 12). Employers misuse the self-employed status because employment conditions of the self-employed are not regulated by collective agreements, nor does the statutory minimum wage apply, because self-employed workers set their own tariffs.

²⁴ According to estimates from the TWA branch, around 190,000–200,000 workers from Eastern Europe work in the Netherlands on TWA contracts (Regioplan 2012: 12).

²⁵ Article 3(1) establishes the minimum conditions that need to be respected, which are: (a) maximum work periods and minimum rest periods; (b) minimum paid annual holidays; (c) the minimum rates of pay, including overtime rates (this point does not apply to supplementary occupational retirement schemes); (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings; (e) health, safety and hygiene at work; (f) protective measures regarding the terms and conditions of employment of pregnant women or recent mothers, children and young people; (g) equality of treatment between men and women and other provisions on non-discrimination.

the period in which a collective agreement is legally extended, the agreement is universally applicable, meaning that all firms in the industry must observe the provisions of this agreement and in case of posted work, firms need to respect the minimum provisions of the collective agreement as specified by the PWD (Houwerzijl 2010). In the construction industry, this implies that about half of the extended collective agreement provisions that apply to domestic workers also apply to posted workers, and these include all basic working and employment conditions (Houwerzijl 2010: 14).

Table 1.3 Employment types and cost structure

	Dutch TWA	Foreign service provider or foreign TWA (posted)	Self-employed
<i>Employment contract</i>	In the Netherlands	In the sending country	In the Netherlands
<i>Working conditions and pay</i>	Dutch CBA	Nucleus of Dutch CBA (as established by PWD)	Not regulated
<i>Social security payments</i>	In the Netherlands	In the sending country	In the Netherlands
<i>Costs for transport, lodging and administration</i>	For individual	For employer	For individual

The Netherlands was one of the first countries to establish a collective agreement for the TWA sector (Salverda *et al.* 2008). This collective agreement is legally extended. The wage for the TWA sector is close to the Dutch statutory minimum wage. Depending on the specific agreements in place, sectoral or company agreements may also (partly) apply to TWA workers. In construction, for example, the whole collective agreement of the construction sector applies to TWA workers. In the metal sector, the agreement specifies that the conditions for TWA workers should not deviate by more than 10 per cent from conditions of workers directly hired by a client firm. Despite these regulations, many TWAs structurally disrespect Dutch wage standards and conditions and offer workers low pay, long working hours, poor working conditions and no job security.²⁶

Migrants employed by Dutch TWAs are remunerated according to Dutch regulations. However, when migrants are posted by a foreign TWA only part of the Dutch collective agreement applies to them, as established by the PWD. In a posting employment relationship, the employer should pay transport, lodging and administrative costs and this holds for posted TWA workers as well.

²⁶ Estimates indicate that around 5,000–6,000 TWAs structurally evade Dutch regulations (De Bondt and Gijpstra 2008).

Workers employed by a Dutch TWA, however, have to cover these costs themselves. In the TWA branch, employers often arrange housing and transport for migrant workers unable to do so themselves. The TWA then deducts these costs from the workers' salaries.

1.6 Methodological approach

Except for policy-oriented studies (Holtslag *et al.* 2012; Berkhout and Hof 2012; Regioplan 2012; Gijsberts and Lubbers 2013; Dagevos 2011; Kremer and Schrijvers 2014) and some academic studies (Engbersen *et al.* 2010; Engbersen *et al.* 2013), little is known about the experiences of temporary EU migrant workers in the Netherlands. To explore their position on the Dutch labour market, I adopted a qualitative case study approach. This approach was taken to gain in-depth insights into the lived experiences of work and trade union interaction of this particular migrant group in the Netherlands. I used different research methods and data input to achieve data triangulation. The open interview was my main source of information. In the interviews, I discussed several themes with the workers, but it was open to the workers to bring forward the dimensions and depth they considered important. In total, I conducted 90 individual and group interviews: 67 individual and group interviews with (migrant) workers employed in construction, supermarket distribution and meat-packing and 23 interviews with knowledgeable actors in the field, such as trade union officials, employers and enforcement agents. In addition, I did participant observations of trade union work aimed at representing and organising temporary migrant workers. This provided insights into trade union activities and trade union officials' considerations on the ground over how to reach and represent this group of workers that is underrepresented by Dutch trade unions. I also went to several accommodation sites where migrant workers lived during their stays in the Netherlands and observed their situation. These fieldwork experiences were covered in extensive field notes, which I also used in my data analyses as a source of information. Furthermore, I used several policy reports and media items to extend the empirical grounding of my research. Chapter 2 provides a more extensive overview of my research methods.

1.7 Definition of migrant workers

This study focuses on workers from EU member states that work in the Netherlands on temporary and insecure contracts and who usually move abroad as part of a dependent work relationship with an employer from their home or another sending country. I refer to these workers as migrant workers, even though these workers in fact exercise their EU freedom of movement

rights and in a demographic sense, due to their short stays of often less than 12 months, cannot be qualified as migrants. Additionally, the migrant status is for most undefined, as many have not decided or been able to decide on their length of stay in the Netherlands. I nevertheless refer to them as migrants to be able to tie into existing literature dealing with migrant workers. The term *migrant worker* is also common across Europe to refer to workers moving within the European Union for work. The migrants included in my research were either employed on TWA contracts or posted (TWA) contracts. Even though these two groups of workers are formally employed under different contractual categories and therefore subject to different regulatory frameworks, their socio-economic position and labour market experiences are comparable. Therefore, instead of distinguishing between posted and TWA workers, as their contractual status is difficult to establish in practice without considering the actual employment contract, I refer to both groups as migrant workers.²⁷

1.8 Outline of the thesis

In this thesis, I focus on migrant practices and trade union strategies in the Dutch labour market and how this has been impacted by European regulations on intra-European mobility. Employment practices, migration patterns and industrial relations are influenced by European integration in line with a market logic that tends to shift the balance of power in favour of employers over organised labour (Geddes 2008; Lillie 2010; Arrowsmith and Pulignano 2013). This context constrains workers and trade unions in their actions. Therefore, the first part of this thesis consists of two chapters that focus on the social and market context within which migrants are embedded. The scope in this part is wider than the Netherlands, to delineate employment dynamics in European labour markets more broadly. Also, since I conducted my Ph.D. within a larger project studying the impact of posted work on industrial relations in the Netherlands, as well as in Finland, Germany and the United Kingdom, I draw in this section on insights from these countries as well.

In Chapter 3, I describe the migration context within which temporary migrants move within the EU and how this impacts these workers' working and social lives abroad. I show that it is the employer-arranged migration context within which temporary migrants generally move between EU countries that sets them apart from other migration flows and places them in a dependent and vulnerable position in relation to their employer. This chapter is co-authored with Erka Caro, Nathan Lillie and Ines Wagner. Since this article went through several rounds of revisions, it is difficult to disentangle the exact individual contributions. I had a defining role in shaping the theoretical section

²⁷ Except for Chapter 3, where I use the term *posted workers* to refer to this group. In this chapter, I use a substantive definition of posted workers by using the posting concept to describe workers who migrate as part of a *de facto* dependent employment relationship.

(Posted workers as a specific form of contemporary EU labour migration), delineating posting as a different form of employer-led migration, contrasting it with other migration flows, and developing the conceptualization of socio-spatial segregation based on existing literature in the fields of social psychology (Berry 1997) and human geography and urban studies. Furthermore, I structured and developed the empirical sections of this chapter. My fieldwork contribution to this chapter was greater than that of any of the other authors. Nathan Lillie managed and coordinated the field work, provided funding for the project, drafted the section on the regulation of posted work, conducted one of the interviews in Finland, and assisted with the meta-structuring of the article. Ines Wagner contributed to the section on the regulation of posted work and on how the construction sector works more generally. Ines contributed the fieldwork material for the German context and contributed to the formulation and development of the empirical and theoretical part more generally. Erka Caro developed the idea of the article, she structured the theoretical part, framed the orientation of the empirical discourse and developed the discussion and conclusion of the paper.

Chapter 4 focuses on firm recruitment practices to achieve labour costs savings. By discussing some concrete examples, this chapter shows how firms strategize around existing EU regulatory frameworks to avoid and undermine these to save on labour costs. This part thus presents the background to understand the context within which migrants and trade unions operate. This chapter is co-authored with Nathan Lillie. We developed the three-fold classification of social dumping practices jointly. Nathan initially wrote the section on the use of the social dumping term, while I developed the section on posting, subcontracting TWA work and social dumping and the sections on the varieties of social dumping and the conclusion. I provided the empirical examples from the Netherlands for the chapter, which is the majority of them; Nathan Lillie provided the empirical examples from Finland.

The second part of this thesis consists of three chapters that explore the agency of temporary migrant workers and Dutch trade unions. Chapter 5 is an examination of worker practices and looks at the ways these workers exercise their agency if not in collective or organised ways. I show that workers mostly act within the constraints set out by European regulations and employer practices, accepting current structures and sometimes challenging those (albeit in minor ways), contributing to the resiliency of current precarious cross-border employment relations. Chapter 6 is a case study of trade union efforts to represent hyper-mobile migrant construction workers and highlights the difficulties trade unions face in enforcing labour rights. This chapter is co-authored with Nathan Lillie. This article went to several review processes, making it more difficult to disentangle the individual contributions. While Nathan initially developed the section on hyper-mobile workers in the pan-European construction sector, the final version of this section was written jointly. Furthermore, I developed the empirical case analysis, as it is based on my field research in the Netherlands. Chapter 7 further discusses the potential for organising among migrants with a case study of a collective action by Polish

TWA workers. In this chapter I highlight the importance of solidarity-building among fragmented workforces.

Since this is an article-based PhD thesis, some repetitions occur in the chapters.

1.9 Chapter summaries

Chapter 2 provides an overview of the research methods used in this study. It also presents the data and discusses how I gathered and analysed my data during this study.

Chapter 3 highlights the interaction between social and spatial segregation and transnational mobility of temporary migrant workers that work on large-scale construction sites around Europe. It is based on 70 in-depth interviews and 18 group conversations with workers in the Netherlands, Germany and Finland. I argue that the work-focused and employer-dominated nature of these workers' social world abroad contributes to their segregation from host countries and reinforces workforce fragmentation. The employer-arranged migration context further limits the opportunities and interests of temporary migrant workers to integrate in and acquire knowledge of host societies and workplaces compared to other types of migrants. This extends migration literature that focuses on social network-driven migration with an analysis of more individual, employer-network driven migration in contemporary Europe.

Chapter 4 examines different firm strategies for regulatory engagement undertaken to achieve cost savings. Drawing on cases regarding the use of migrant labour in the Netherlands and Finland, three categories of social dumping behaviour are identified. *Regulatory arbitrage* is strategizing about the regulatory treatment of a transaction in the selection between two or more alternative regulatory regimes. *Regulatory evasion* means violating existing norms and concealing the violations. *Regulatory conformance* means conforming to consensus norms within an industrial relations system, but manipulating them for cost advantage.

In Chapter 5, I analyse the agency of migrant construction workers and the ways they negotiate and navigate an increasingly flexible and pan-European labour market. This chapter draws upon 51 individual and group interviews with workers on large-scale construction sites in the Netherlands. It proposes a refined understanding of agency that recognizes its multiple forms, intentions and effects. It extends the conception of agency to include small-scale, often invisible, social and oppositional practices of individuals and groups and their effects. I argue that the precarious employment context restrains workers' interest in collective action, but that workers employ a wide range of strategies to 'get by' and 'get ahead'. This analysis contributes to an understanding of the resiliency of current employment relations. As these workers' common pragmatic response to substandard employment conditions is either to accept such conditions or move on to another job, they refrain from challenging the

way cross-border employment relations are organised and instead contribute to the continuation of current labour relations.

Chapter 6 analyses Dutch union efforts to represent hyper-mobile construction workers at the Eemshaven construction sites. It is based on individual and group interviews with workers, managers and trade union officials and on participant observations of union tactics to represent workers on the Eemshaven sites. It shows that 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 is favourable, such as the Netherlands, unions struggle with maintaining labour standards for these workers. This chapter 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.

In Chapter 7, I examine a union mobilisation of Polish migrant workers. This case is based on interviews with Dutch and Polish workers, union officials and management at three different supermarket distribution centres in the Netherlands. The case study contributes to the migrant organising literature a micro-level account of the dynamics of mobilisation from the viewpoint of the migrants and organisers involved. The findings emphasize the importance of key actors in building solidarities within and between different groups of workers in fragmented workplaces, with implications for unions seeking new ways to respond to changing employment practices. This study highlights some of the possibilities and limitations of organising among contractually fragmented workforces.

In Chapter 8, I use a moral economy lens to reflect on the themes of the different chapters in this thesis. This chapter highlights some critical concerns on the workings of an increasingly liberalised and deregulated European labour market, the inherent tendency to treat migrant labour as a disposable commodity and the responses of the Dutch government, trade unions and migrants to this trend.

In sum, this thesis contributes to an improved understanding of the agency of temporary migrant workers and trade unions in the Netherlands and shows that enforcement, employer, trade union and worker practices contribute to the resiliency of current precarious cross-border employment relations. In the next chapter I provide an overview of the research methods and data.

2 RESEARCH METHODS²⁸

This chapter provides an overview of the research methods and data gathered in this study.

2.1 Qualitative research approach

In this thesis, I use a qualitative approach to research the agency of migrant workers and strategies of trade unions dealing with them in the Netherlands. Qualitative research seeks to ‘unpick how people construct the world around them, what they are doing or what is happening to them in terms that are meaningful and offer rich insight’ (Gibbs 2007: x). The research methods used in qualitative research are flexible and fluid, to gain understanding of the subjective experiences and interpretations of specific groups (Liamputtong 2007: 7). The intention is to provide a ‘thick’ description (Geertz 1975) that demonstrates the richness of what is happening and emphasizes the ways it involves people’s intentions and strategies. I studied the ‘thickness’ (Bolton and Houlihan 2007) of the employment relations in which the migrant workers are embedded, to increase understanding of their situation and look for explanations for what is happening (Gibbs 2007: 4). Qualitative research provides rich and complex data that cannot be generated via other means. Gaining insights into this particular group via quantitative methods is complicated because migrants oftentimes do not register, or else register incorrectly in population registries, and difficulties in accessing this population hinder reliable survey research. Such research is furthermore complicated due to the likelihood that workers may provide incorrect or politically correct answers to researchers they do not trust.

²⁸ Parts of this chapter were presented at the Ethnography Symposium, VU University Amsterdam, 28–30 August 2013.

2.2 Summary of field research and data corpus

Field research took place from January 2011 till November 2013, with more or less extensive fieldwork periods depending on developments in the field and access to informants. The largest share of data was gathered through interviews with migrant workers and, if possible, with Dutch workers who work with them, as well as through interviews with experts in the field (trade union officials, employers). In addition, I conducted participant observations of trade union campaigns that focus on representing or organising temporary migrant workers, which I reported in extensive field notes. See Table 2.1 for an overview of the interviewees. This data was complemented with a desk study using media articles and policy reports. In addition I wrote field notes about my observations and information gathered by, for instance, attending expert meetings or events in the Netherlands related to my field cases. I also gathered information through attending meetings at the EU level about cross-border labour migration and posted work. In these EU-level meetings, trade unions, policymakers, enforcement agencies and other interested actors were involved and discussed their experiences with migrant and posted work.

Table 2.1 Overview of informants

Type of informant	Themes	Tool
<i>Trade union officials</i>	Migrant representation and organising techniques	Interviews (14) and participant observations
<i>Other experts</i>	Recruitment practices, (sub)contracting, employment conditions migrant workers	Interviews (9)
<i>Workers</i>	Work experiences, job searches, trade union experiences	Interviews (50) and group conversations (17)

Data triangulation and between-method triangulation (see Flick 2000: 178–180) was used to increase the reliability and trustworthiness of the findings. *Data triangulation* means combining ‘data drawn from different sources and at different times, in different places or from different people’ (Flick 2000: 178). By combining different methods (Flick 2000: 180), such as interviews, participant observation and desk research, different aspects of the issue at hand were captured.

In general, the research methods I used to gain understanding of the position of EU migrant workers in the Netherlands were flexible and along the

lines of 'polymorphous engagement' (Gusterson 1997: 116), by interacting with and interviewing informants in different settings and contextualizing data with input from different sources. For example, workers were interviewed face-to-face as well as via telephone or Skype and sometimes even via email. Trade union officials and other experts were interviewed face-to-face in their offices, and additional information was gathered if possible through phone conversations as well as informal chats in the field during field observations.

The interview approach was chosen as the main method as it allows informants to express their feelings and experiences in their own words (Liamputtong 2007: 7). Through quotations from the interviews, this dissertation gives voice to workers who in most academic research and policy reports are not considered on their own but solely discussed as a group, based on data gathered through surveys or expert interviews. The stories of these migrant workers form the basis of this dissertation and provide a window into their lived experiences in the Netherlands.

The data corpus consists of individual worker interviews (50) and group conversations with workers (17)²⁹, of expert interviews (23), field notes on meetings, observations and informal conversations with various actors during field trips, field notes on participant observations of union activities, summary reports from meetings at EU level, and desk research using websites, policy reports, media clips and newspaper articles.

2.3 Case study approach and case selection

Qualitative research does not generate context-independent general knowledge, but functions to increase understanding of a particular situation. The information obtained via interviews is formed in a specific context; it is produced between interviewer and interviewee, and leads thus to situated knowledge (Kvale 2007). Therefore, a case-based approach was taken in this study, in which information from different types of informants was sampled on a case basis. In this way, I gathered a more accurate view on what was happening on the ground because I included more than one view in constructing my analysis.

Though this study is embedded in a larger project, studying posted work in four different countries (the Netherlands, Germany, Finland and the UK), the starting point for this research was to study how EU migrants exercise their agency, individually and collectively, in the Netherlands. The research thus follows in this regard the logic of a critical country case.

In qualitative research using an open interview approach, reliability and trustworthiness of interview data is increased when informants are interviewed more than once. Inconsistencies, for example, will be teased out when one talks

²⁹ Twenty-two workers who were interviewed in an individual or group setting were interviewed more than once.

a couple of times to the same person. Nevertheless, follow-up interviews were made difficult by the high mobility and occasional reluctance of the workers to be involved in the research. Most workers (around 75 per cent) were interviewed only once.³⁰ Therefore, it was important to contextualize the information from their interviews with information from other people involved at the same work site and to corroborate their telling of events with other people's story of events. This was important to get a feeling for the data and information and to be able to check whether the information shared by informants was reliable. Therefore, I sought interviews with a range of workers as well as management from a particular work site and if possible with trade union officials about the respective sites. By basing this study on different sources of information, following a corroboratory mode, I was able to achieve triangulation (Yin 2009: 114-118). The aim of this method was not to do comparative case studies, but to spread my participants to gain more diverse information. Since I was able to link my field data to a particular site, this helped me to contextualize and evaluate the material I gathered.

This study comprises information from four different sectors in the Netherlands. Two sectors were researched in-depth and two sectors were studied more superficially to contextualise and broaden the scope of the research. The construction and supermarket distribution sectors were explored in more detail because of the presence of an active trade union campaign to represent and/or organise temporary migrant workers. In the construction sector I selected two large-scale construction sites that were similar in size and located geographically close to each other. In the supermarket distribution sector, I interviewed people from three different distribution centres. In the meat sector, four of the five informants worked at the same meat-packaging plant. In transport no specific case was researched, but I spoke several times with a trade union official, who also sent me documents in confidence on issues he encountered in the field. This was supplemented with trade union documents, media reports and conversations with trade union officials at the European level in this sector.³¹

These sectors were selected because of their relatively high continuing (and not seasonal) presence of EU migrant workers employed on temporary and insecure contracts. In construction, the share of temporary migrant workers is traditionally high because of the transient and labour-intensive nature of construction work (Bosch 2012). Trucking is an international sector, where

³⁰ The possibility to conduct follow-up interviews with migrant workers differed by sector. The number of follow-ups was limited in the construction sector because of the high mobility of workers. In the distribution and meat sector, on the other hand, I interviewed almost half of my respondents more than once. See Table 2.5 below for the exact numbers.

³¹ Although I did not personally conduct interviews with migrant truck drivers, I include the sector in this overview because I used sectoral information to broaden the scope of research. I read interviews with migrant truck drivers conducted by trade unionists and also followed court cases in this sector, which showed dynamics similar to the other sectors included in this study. In this thesis I refer to the transport sector a couple of times, albeit in minor fashion.

drivers regularly cross borders. This sector has received a good deal of media attention surrounding abuse of migrant drivers and accusations of social dumping practices. In the supermarket distribution and meat-packaging sectors, most jobs are lower-skilled, explaining the presence of (increasing) shares of migrants in the workforce. At some workplaces in the supermarket distribution sector up to 50 per cent of the workforce consists of migrant workers, whereas in the meat sector this can even be up to 80 per cent (interviews trade unionists, 2012/2013).

The case studies were purposefully sampled by selecting information-rich cases (Patton 1990: 169-186) where a significant share of the workforce consisted of migrant workers and, if possible, where trade unionists were actively approaching the workers or in contact with workers on site. Interviews with trade unionists were also conducted to gather information on potentially interesting and suitable sites for research. I selected cases based on information obtained via the media and expert interviews, but also let my sampling be guided by opportunities that occurred once fieldwork had started. A sampling strategy that takes advantage of 'whatever unfolds as it unfolds' is known as 'opportunistic sampling' (Patton 1990: 179). The mobilisation case discussed in Chapter 7 was sampled via this strategy.

2.4 Interview method and interview types

The main data collection method in this study was qualitative interviews. Interviews are 'a uniquely sensitive and powerful method for capturing the experiences and lived meanings of the subject's everyday world' (Kvale 2007: 11). It provides workers the opportunity to convey their situation from their own perspective and in their own words. Interviews can be structured, unstructured or semi-structured. Structured interviews are done to obtain standardisation across interviews, with predetermined and fixed questions in the interview. Unstructured interviews are more like a conversation and do not have a predetermined structure of questions. The interviewer often only has a topic list to cover or a guide through themes. Semi-structured interviews show a combination of both styles, with fixed as well as more open exploratory, in-depth questions (O'Reilly 2009: 126).

The migrant workers interviews in this study used an unstructured approach, in which the interviews were conducted as conversations (O'Reilly 2009, 2012). That an open, unstructured approach was taken does not mean there was no direction. Each interview with a new informant contained a more structured part in which information was collected about the informant's age, level of education, duration of employment on a particular site and some employment details. For the most part, the interview consisted of open questions related to work experiences in the Netherlands. I had certain themes I always discussed with the workers, but it was up to them to bring forward the dimensions and depth they found important. The 'right questions' were thus

sought in the field, not in a textbook (Bate 1997: 1152) and inquiries and themes developed 'on the go' (Geertz 1995: 133). I guided the workers toward certain themes during the interview, but not to specific opinions about these themes (Kvale 2007: 12). The goal was to explore different opinions and experiences of temporary migrant workers, by obtaining accurate and precise descriptions of how they acted and what they experienced and felt.

The expert interviews were semi-structured, with a predetermined list of topics covered during each interview. This interview guide was adjusted for each expert informant, guided by experiences and information gained through the research that had been done to that point. The interview themes for the experts were tailored to the specific expertise of the interviewee. All these interviews were recorded. Though the interviews were transcribed by an outside transcription service, I went through each transcript carefully and made changes where the transcriptionist had misinterpreted or missed something.

While all informants can be considered experts (Bogner and Menz 2009), as they tell you something you could not know otherwise, I use the term *experts* to denote informants, such as trade unionists or employers, who have knowledge that

... consists not only of systematised, reflexively accessible knowledge relating to a specific subject or field, but also has to a considerable extent the character of practical or action knowledge, which incorporates a range of quite disparate maxims for action, individual rules of decision, collective orientations, and patterns of social interpretation. ... As the expert's knowledge has an effect on practice, it structures the conditions of action of other actors in the expert's field in a relevant way (Littig 2009: 100).

2.4.1 Migrant worker interviews

The themes covered in the worker interviews depended on the sector and site where the workers were employed. In general, I always spoke with workers about their current job experiences, previous jobs, what made them work abroad, how they experienced working on short-term and insecure contracts, how they experienced working with other nationalities at the workplace, their relationship with home and their home country and their future plans. With each informant the conversation was tailored to the depth and themes they seemed keen to talk about. When I talked to a worker a second or third time, we would explore themes left untouched or themes they seemed explicitly keen to talk about. Most of the migrant interviews were conducted in the native language of the informant with the assistance of a native translator. The interviews varied in length, with most lasting between one and two hours. I tried to obtain follow-up interviews with informants that provided interesting insights and seemed keen to be involved in the research. This was complicated by the high mobility of the workers (especially in construction) and their busy and fluctuating work schedules (in the supermarket distribution sector). Therefore, phone conversations were conducted if face-to-face appointments were too difficult to arrange. For phone follow-ups that were conducted in a

language other than Dutch or English I provided an interview guide for my translator, with specific topics and questions to cover. I also instructed the translator on how to approach the worker and the conversation.

The majority of the worker interviews were recorded with the informant's permission. If permission was not granted, or the setting in which a conversation was conducted generated too much background noise, extensive notes were taken during the interview, which were afterwards put down in field notes. The recorded interviews were transcribed if they were in Dutch by outside transcription service; if they were in the native language of the worker(s), the translator present during the interview also transcribed the interview. This was done to minimize misinterpretations.

2.4.2 Group conversations

Several group conversations were conducted. This was because workers were often encountered in group settings, for example their homes, with the conversations conducted in one of the common areas in their homes. A group conversation, especially when encountering a new group of workers for the first time, was an opportunity to talk to several workers about a couple of issues, gather a variety of opinions, and establish contact and introduce my research. After a group conversation, I would try to make individual appointments with interested workers for a later point in time. Some workers also preferred to be interviewed together with one or two of their colleagues. The depth of information from individual participants in group conversations depended on the number of participants: when there were more than three, less specific information on each informant could be obtained.

With group interviewing, interactions between participants show greater complexity and it can sometimes be difficult to direct the discussion to the relevant topics without disrupting the social dynamics of the group (Davies 2008: 116). On the other hand, the benefits of group conversations lie in observing the interactions between the group, collecting a variety of opinions and establishing which workers would be suitable and interesting informants for an individual interview. Workers interviewed individually after a group conversation were usually more open and trusting, probably because they knew better what to expect from the interview.

2.4.3 2.4.3 On using translators

To be able to conduct interviews with migrant workers, I relied on the assistance of translators. Most workers did not speak any but their native language, and the few with English language abilities usually preferred to speak in their native language during an interview. All the translators I used during this study were native speakers. This helped in establishing contact with the workers: many were happy to speak to someone other than their colleagues in their native language. Still, it is inevitable that some level of meaning was lost in translation, as personal perspectives influence the interpretation and

translation process (Davies 2008: 125; Temple 1997; Temple and Young 2004). However, to minimize this, I gave my translators extensive instructions before we conducted an interview. I let them familiarize themselves with the themes and also supplied a questionnaire with potential questions that they had translated beforehand so they would be familiar with the terminology, phrasing and translation of certain questions. I also gave them specific instructions on how to introduce me as the researcher and the study itself, and how to explain their role as translator in the conversation. After each fieldwork session, we had time for debriefing, in which the translator would expand on what was said and could elaborate on their experiences. I also paid attention to non-verbal communication, such as body language, gestures and laughter, the type of language used (colloquial or formal and the use of swear words), as well as the meaning of silences.

After each fieldwork session or interview, the translator wrote up a short note about his or her observations on the fieldwork experience, the interview and the informant. Including these 'intellectual biographies' (Temple 1997: 608) from my translators in my research was a way to engage with their perspective on the fieldwork as well. This was important to contextualize and increase understanding of the (interview) findings. If possible, I would let the translator who joined me during the fieldwork session transcribe the interviews in which he or she had assisted. As transcriptionists they influence the research material with, for instance, their decisions to punctuate, or by noting or not noting the tone in which a comment was made (Temple 1997: 609). I also went through and if necessary discussed the translated transcripts done by my translators to increase understanding and verify accurate interpretation of the material.

2.5 Participant observations of trade union activities

The interview material was supplemented with participant observations of trade union activities towards temporary migrant workers. Four possible roles can be adopted when doing participant observations: complete observer, observer-as-participant, participant-as-observer or complete participant (Gold 1958). My role usually was one of an observer who participated in the union activities. This meant, for example, joining trade union officials and activists on visits to accommodations where migrant workers lived and contacting the workers. Often, my translators also joined and it provided an opportunity to establish contact with workers and make interview appointments. On these occasions, my translator sometimes translated for the trade union, too, when they did not have a translator available. To avoid ethical conflicts arising from this, I agreed with the trade unionists beforehand that I would be able to include information obtained in this way in my research. In addition, I was always present when the translator translated for the union officials, and supervised the process. I made sure the translator clarified to the worker(s) involved that he or she was working for me on an academic research project

and at the moment was assisting the trade union. This provided an opportunity to observe the union officials in action. I followed their activities closely during these field trips and could therefore observe developments in their campaign. This was specifically the case in the construction sector, where I was able to follow the trade union activities up-close for more than a year. During these observations, the union officials were very open about their approach in the field and I was never excluded from their conversations or activities during the visits. In total I joined the union on field visits on ten occasions in the construction sector and three occasions in the supermarket distribution sector. Afterwards, I reported my experiences in field notes that I included in the analysis.

2.6 Desk study

The field material was supplemented with desk research. Policy reports formed an important source of background information and insights into the position of post-accession migrants in the Netherlands, notably Polish, Romanian and Bulgarian people (such as Holtslag *et al.* 2012; Kremer and Schrijvers 2014; Berkhout and Hof 2012; Regioplan 2012; Korf 2009). I also included media articles in my desk research. With a newspaper database covering all Dutch national and regional newspapers, I conducted regular searches for news on the cases included in my research. For the two construction cases, located in the Eemshaven, I searched on the term *Eemshaven*. I also enabled an RSS feed on Google to receive updates on any news published online about the Eemshaven. For the other case studies, I also conducted newspaper searches via the database, although the papers covered these cases less extensively. Finally, the union used a website during its campaign in the distribution sector to report on their activities and these posts were included in my desk research.

2.7 Field entrance and contacting informants

The way the researcher gains entry in the field is the precursor to the trust and rapport necessary for good-quality interview data (Ortiz 2003). In my fieldwork, I gained entry to my informants through four different routes: via the trade union, via the employer, via house visits and via my own contacts.

For all my cases, I conducted interviews with trade union officials about the sites I wanted to research before contacting workers, and if possible I joined the officials in union activities. I also used their expertise by asking their advice and opinions on suitable case sites and used this information in my case sampling. The trade union interviews provided me with background information on the sites. If possible, I joined in trade union activities to establish contact with migrant workers. On a few occasions, the fact that I joined trade

unions in some of their activities created a bit of confusion among workers when I later asked them if I could talk to them for my research, as they conflated my position with the union. I always clarified my position as a researcher and not a union official. On the other hand, a benefit of gaining access via the union route was that the workers at least did not associate me with management, as this would have made them more mistrusting and suspicious. In general, I encountered several workers who were reluctant to talk, especially in the construction sector, because they feared losing their jobs or facing other negative consequences. When I asked people if they would be willing to talk to me, I always explained my intentions with the research and assured them of full confidentiality. If after this workers remained hesitant, I would not proceed with interviewing them.

In the construction sector, I went to several houses together with union officials and in this way recruited some of my informants. In the supermarket distribution sector, I established contact with workers at one of my case sites during a victory party organised by the trade union FNV at an accommodation site for Polish workers. At this party, I made appointments with several workers for individual interviews at a later moment. At another case site, I established contact with a shop steward via a trade union official. This shop steward then helped me get in touch with his Dutch and Polish colleagues.

The management route to accessing sites was the second entry route tried during the research. This did not always work well. At one of the construction sites I researched, management granted permission to conduct interviews with workers accommodated on one of their large-scale accommodation sites, where 1,200 workers were housed in individual containers. I had access to the common area, with a restaurant, café and leisure activities space (with billiard tables, darts, etc.), which I visited for several weekends to talk to workers. This site allowed me to approach many people during one day and collect a variety of opinions. This worked well a couple of times, until workers became frightened and more reluctant to talk (without any clear reason). When I interviewed workers, for example, colleagues walked by to warn them not to speak too much. When this happened several times (after my sixth visit), I did not go here anymore. At this site, I used the strategy of 'hanging out' to get in touch with informants. For example, I had lunch in the cafeteria where the workers were eating. In the distribution sector, I also gained access to Polish workers via management, but arranging contacts proved difficult due to internal reorganisation of the firm. In the end, I did not conduct interviews with migrant workers at this site, because I decided to instead include another site where Polish workers mobilised in my study.

Especially in the construction sector, I approached many of my informants together with a translator at the temporary homes where they stayed during their work in the Netherlands. This generally was employer-arranged accommodation. What I did was go to the workers' accommodation, ring the doorbell and ask if I could talk to them about their work and life in the Netherlands. When I approached the workers in this manner, bringing along a

native translator helped to establish trust. Most of these workers had little contact with their surroundings and Dutch people, worked on uncertain contracts, facing high labour turnover rates, and were therefore reluctant to talk. To be addressed by my translator, someone from their own country, helped to make a first connection and opened them up. Many appreciated being able to talk in their own language about their work experiences.

To find good informants via house visits was not always easy. In other field settings, researchers can use observational skills to select good informants in the field, or people that present a broad spectrum of experiences in the setting (Ortiz 2003). With the house visits, much depended on luck, in terms of finding people who were willing to talk. When I went to the houses, I would chat loosely with a couple of workers about their work experiences. Often, more people joined in the conversation or observed the conversation out of curiosity, as something was going in their houses. During such group conversations I could notice potentially good informants. After the group conversation I would then ask a particular worker or workers whether we could talk individually at another time. If they were interested I wrote down their phone number. After this, I would have my translator contact them and set up a meeting at a time and place that was convenient for them.

I always tried snowballing techniques with my informants, but especially with the construction workers, this was not very successful. Many workers did not have enough connections with their co-workers to feel they could ask someone, while others mentioned that they already knew that their colleagues would not be interested in participating in the study. Still, I managed to find three construction workers who asked a few colleagues to talk to me. One of them I consider a key informant: he brought me into contact with two of his friends, who were interesting and willing participants, and he himself enjoyed sharing his knowledge. Key informants can act as a bridge to help establish contacts with people and secure the trust of potential informants (Tewksbury and Gagne 2001 in Liamputtong 2007: 51). In the distribution sector I had two key informants. One was very helpful in bringing me into contact with his colleagues, and both enjoyed sharing their knowledge and showed interest in the research process.

The fourth route to access workers was via personal contacts. In the meat sector, I established contact with workers employed in this sector via the social networks of two of my Polish translators, and tried to use snowballing techniques here as well. The expert informants I approached directly or via a reference from someone else in the field. Access to trade union officials was usually not difficult to obtain and most were relatively open about their policies and interests as a union in dealing with temporary migrant workers. Interviews with employers were more difficult to secure, as most employers approached were reluctant to grant interviews. Several excused themselves for lack of time reasons, others did not see the benefit to themselves in participating and some just ignored requests for interviews. A few simply referred me to the general communications office of the main office; others were forbidden by their superiors from talking about their professional practices with me.

With the migrant workers, setting up appointments was challenging at times. Many migrants try to work as many hours as possible, leaving little spare time. The construction workers often had working weeks of six days and thus Sunday would be the only day they could meet. The distribution workers were often called off or called into work at the last minute, leading to last-minute cancellations. Therefore, I tried to plan the interview appointments shortly in advance. Still, workers often did not show up. Sometimes I managed to reschedule, although occasionally I was not able to reach them anymore. Sometimes the absence was due to fluctuating work schedules, other times due to illness. Another factor was that workers, particularly the Polish, sometimes spontaneously went home to their countries for the weekend.

2.8 Ethical considerations

The migrant workers included in this study qualify as a 'vulnerable' research population, since they often face substandard employment conditions and their employment relations can be terminated without a good reason. These workers face particular 'social vulnerability' (Quest and Marco 2003: 1297), and therefore require specific care from researchers. Other vulnerable or 'hard-to-reach' research populations include, for example, homeless people, children and adolescents, older people, people with disabilities, gay men and lesbians, indigenous populations and people from ethnic minority backgrounds (Liamputtong 2007: 4). These groups are often 'invisible' or marginalised in society (Liamputtong 2007: 4). Talking to an outsider, a researcher in this case, could have repercussions for them and therefore I tried to make sure this did not happen. We would always meet at a place where they felt comfortable, usually in a café or restaurant or at their temporary homes. This was done to ensure that workers felt safe to present views that their colleagues may not agree with and to express feelings about issues that may be sensitive.

In reporting my findings I tried to be cautious and aware to not reinforce stereotypes of my informants by my way of reporting. Therefore, quotes were always contextualized, to avoid the risk of confirming stereotyping images and leading the reader to draw incorrect conclusions.

2.8.1 Informed consent

I provided all respondents with information on the purpose of the research and interview procedures and informed them that their information would be treated as confidential. If a worker felt uncomfortable sharing personal information, contact details or real names, they were not compelled to do so. This study was subject to an ethical project policy that established that consent forms would not be used. Participation in the interview and giving answers to questions was considered consent (see Appendix I). Nevertheless, I ensured that each respondent understood that participation in the research was

voluntary and that they were not obliged to answer all questions or continue the interview further if they did not want to. All translators who assisted me in the interviews signed the project's ethical policy as well as an additional confidentiality agreement.

2.8.2 Respondent anonymity

Respondent anonymity was protected in this study, by using pseudonyms for my informants in the publications as well as by anonymising their information in the database. Additionally, I anonymised the research sites in the distribution sector, because the number of workers employed in this sector is smaller than in the construction sector. I did not anonymise the Eemshaven sites, since they are well-known in the Netherlands and the Netherlands is such a small country that anonymisation would not have provided much more protection. Also, the number of firms and workers involved at both construction sites was so high that identification of individual workers is unlikely. In the database, which is accessible to all researchers involved in the project research, I anonymised the worker details to avoid potential identification of the respondents, which might have occurred through the combination of field notes and interviews.

2.9 The research sample: Some characteristics

In total I interviewed 50 informants individually and conducted 17 group discussions with two or more workers in three industries. The largest sample was obtained in the construction industry, where 39 workers were individually interviewed, seven interviews conducted with two workers at the same time and five group conversations with three to seven participants, adding another 32 informants. In the supermarket distribution sector, 10 workers were individually interviewed, as well as two interviews done with two workers each and two group conversations with three participants for an additional 10 informants. In the meat sector one worker was individually interviewed and two interviews were conducted with two workers at the same time, providing a total of five informants. In the field, I however, had numerous conversations with (Dutch and migrant) workers and other actors in the field³²; I did not count these as interviews or group conversations, but did include the information they provided in field notes, which formed an additional valuable source of information (see O'Reilly 2012: 127).

³² These other actors included, among others, informal conversations with owners, managers or supervisors of houses or sites where migrants were accommodated, with local shop owners, people working at local cafes and restaurants, union activists and local politicians.

Table 2.2 Number of individuals interviewed in an individual or group setting

Sector	Individual	Group
Distribution	10	10
Meat	1	4
Construction	39	32
Total	50	46

Table 2.3 Nationality of informants, separated by sector

Sector	Belgian	Dutch	Irish	Polish	Turkish	Portuguese
Distribution		6		14		
Meat		1		4		
Construction	1	6	3	30	6	25
Total	1	13	3	48	6	25

In addition to the worker interviews, 23 interviews were conducted with experts in the field, of which a large share were trade union officials. I conducted 14 interviews with one or two trade union officials and talked in the field to a total of 21 union officials. I conducted five interviews with employers: one with a manager of the main developer of a construction plant; one with a manager from a construction firm; one with an employer in the supermarket distribution sector; one with a TWA that supplied workers to the two construction sites; and finally one with a TWA that supplied Polish workers to one of the distribution centres. Additionally, I interviewed a representative of the construction employers' association, an enforcement agent and a works councillor from a Dutch construction firm that regularly hires workers from abroad via various TWAs, and a Polish woman from a Polish community website.

2.9.1 Construction workers

The construction workers interviewed in this study were employed on industrial construction projects, which were large-scale building projects on which on average 2,500 workers worked. On one of these sites, 60,000 people worked in the course of five years (*De Volkskrant* 17 May 2014). I talked to pipefitters, welders steel fixers, carpenters, scaffolders, electricians and cable pullers. They were of various ages (see Table 2.4). The interviewed workers were employed on a posted, posted TWA, or TWA basis. Their relationships with particular employers were usually short-term and most of them were assigned on a project basis, meaning their contract length was tied to the duration of a particular (sub)project. However, even within a particular subproject, workers received several short-term contracts. Many Portuguese workers told me they would be sent home when their contracts finished after

three months and after a week in Portugal they would find out whether they could return to the construction project or not. Many of these workers tend to work abroad on a habitual basis and in different countries and therefore did not show any intentions to settle in the Netherlands. Others tried to stay in the Netherlands for work with regular visits home and another group planned to try to find a more permanent position in the Netherlands in the construction sector or another profession.

Table 2.4 Age group of informants, separated by sector

Sector	< 35	36-50	51-65
Distribution	17	3	0
Meat	1	4	0
Construction	24	21	25
Total	42	28	25

2.9.2 Distribution workers

The Polish distribution workers I interviewed all worked as order pickers at one of the three supermarket distribution centres included in this study. The majority of their Dutch colleagues, with whom I did four interviews, were employed as warehouse workers. The youngest worker was 16 and the oldest 42 years old. The majority of my informants were younger than 35 - with 40 per cent even younger than 25, reflecting the relative youth of the Polish people working in the supermarket distribution sector. Youth wage applies for workers younger than 23 in the Netherlands, and therefore young migrants are particularly attractive for employers. The intentions of settling in the Netherlands were quite mixed among the Polish workers: some wanted to stay, while others only aimed to stay as long as they had a job in the Netherlands as they envisioned their future in Poland. The union officials in the sector estimated that around one-third would eventually stay in the Netherlands, another third would return to Poland and the final third was undecided and could go either way. I was able to conduct follow-up interviews with almost half of my sample in the distribution sector (see Table 2.5).

Table 2.5 Follow-up interviews with workers, separated by sector

Sector	Follow-up	No follow-up
Distribution	9	11
Meat	2	3
Construction	11	60
Total	22	74

2.10 Analysis of interview and fieldwork material

All qualitative data was stored and analysed using the computer-assisted qualitative data analysis software (CAQDAS) MaxQDA. To be able to do so, I familiarized myself with the data by reading through the interviews multiple times during the coding process and analysis. Thematic coding was used to analyse the data. My coding of the data was data-driven, mixed with theory-driven insights. Inevitably, qualitative analyses are 'guided and framed by pre-existing ideas and concepts' (Gibbs 2007: 5). The data analysis was a multi-stage process of categorization and coding. I coded the material first via an open coding scheme, to categorize the text and establish a framework of thematic ideas about it. This in a later stage was recoded into more focused codes. A lot of text was densely coded and had more than one code attached to it. Through coding the material, interpretation and theory was added to the data. The aim was to develop theories and concepts 'in tandem with data collection in order to produce and justify new generalizations and thus create new knowledge and understanding' (Gibbs 2007: 5).

Thematic analysis is the most commonly used method of analysis in qualitative research and a useful way to elicit the complexities of meaning within the data set. In the end I had descriptive and analytic thematic codes, which formed the hierarchies (or families) under which a variety of codes were listed in trees. My most prominent themes were worker strategies, migrant representation and organising, collective action, worker mobility, flexible employment and employment relations. Under these thematic codes a variety of lower-level codes were listed, ranging from descriptive to more analytic codes.

This concludes the overview of my data and research methods. In the next part of this thesis I discuss the social and market context that characterises the pan-European labour market in which migrants are embedded.

PART I: SOCIAL AND MARKET CONTEXT

3 POSTING AND EMPLOYER-ARRANGED MIGRATION: A STUDY OF POSTED WORKERS IN THE EUROPEAN CONSTRUCTION SECTOR³³

3.1 Introduction

Since the accession of the Eastern European countries to the EU, Europe has been undergoing a new wave of temporary and circular labour migration. This is due to wage differences between the new and old member states, but is also the outcome of EU policies that have made cross-border movements within the EU less complicated. In the construction industry, much of this migration is occurring in the form of 'posted work'. Posted workers move abroad as part of a dependent work relationship with an employer from their home country or from another sending country, rather than moving as individuals to take up or seek a job in the host country. Although originally intended as a framework for firms to send employees abroad for short periods to perform specific tasks, it has become one of the formulations employers use to avoid labour regulation and employ low-wage migrants in precarious jobs (Bosch *et al.* 2013: 174-175; Cremers 2010). Partly as a result of the growth of posting, it is now common to find groups of workers of various nationalities living and working at and around large construction sites in Western Europe. They are there for short durations and then return home, or move on to other construction sites. They are flexible, contingent and usually poorly paid and accept their secondary position in Eastern European job markets because of poor employment prospects at home, or because their wages are high relative to wages in their home job market. The posting issue has risen to political salience because of the competitive threat posed by posted workers and the subcontractors and TWAs

³³ This chapter is co-authored with Erka Çaro, Nathan Lillie and Ines Wagner and a slightly different version is accepted and forthcoming in *Journal of Ethnic and Migration Studies*: Çaro, E., L. Berntsen, N. Lillie and I. Wagner (2015) Posted Migration and Segregation in the European Construction Sector. *Journal of Ethnic and Migration Studies*.

that employ them to native workers and firms in high-wage countries, and most of the academic work on the topic to date has focused on this aspect (cf. Menz 2010a; Lillie and Greer 2007; Felini *et al.* 2007; Cremers 2010, 2013).

There has been less research, however, on the subjective experience of posted workers, as a distinct form of economic migrant and on how they encounter their host-country surroundings. This chapter extends research on the industrial relations implications of posting in a different direction, to show how employer-arranged posting of workers on large construction sites leads to the social and spatial segregation of migrants from host surroundings. Based on interviews exploring the experiences and perceptions of posted migrant workers on large construction sites in three host countries (the Netherlands, Germany and Finland) this chapter argues that posted migrants' position in host labour markets and societies is characterised by spatial and social segregation and strong home-country orientation which impacts their working and private lives abroad. The ephemeral, disconnected and dependent character of posted migration ensures that posted migrants experience neither the integration process typical of established immigrant communities, nor the multi-sited embeddedness of transnational migrants. The social spaces where migrants reside have a logic of their own, which discourages contact between workers of different firms and nationalities and between workers and the host society. These facts have implications not only for the quality of the posted workers' working and social lives, but also suggest that they cannot build up the same structural resources in host societies and workplaces as more permanent migrant communities do.

3.2 Posted workers as a specific form of contemporary EU labour migration

Cross-border movements within the EU have become less complicated due to European integration and European regulatory frameworks promoting temporary migration.³⁴ Since the accession of Eastern European countries to the EU and the 2008 economic crisis, migration flows have largely been dominated by East-West and to a lesser extent South-North flows. These flows have a more transnational, circular and temporary character than those in the past (Engbersen *et al.* 2013; Meardi 2007). While more classic patterns of seasonal and settlement migration are still present, migration patterns have become more fragmented and undefined, less network-driven and more employer arranged, with migrants casually moving between multiple countries for work (Engbersen *et al.* 2013). Intra-EU labour migration flows include of course many

³⁴ Worker posting has existed in the European Union for decades, but its expansion in recent years is driven by the opportunity to recruit workers from low-labour-cost countries to avoid expensive regulations and high wage expectations of workers in Western European countries (Bosch *et al.* 2013: 174-175).

types of migrants and posted work is one example of the ways labour migrants access European labour markets.

Posted workers share certain characteristics with transnational migrants. Transnational migrants are 'immigrants whose daily lives depend on multiple and constant interconnections across international borders and whose public identities are configured in relationship to more than one nation-state' (Glick Schiller *et al.* 1995: 48). For example, a large share of migrants from Mexico to the United States could be described as transnational migrants. Transnational migrants sometimes settle and become incorporated, to a greater or lesser degree, into the society of the countries where they work but remain simultaneously embedded in their home country, as has occurred in the US-Mexico case (Roberts *et al.* 1999). In contrast, posted workers reside for limited periods in one or multiple countries, their migration process is employer-arranged and they often refrain from embedding themselves to any significant extent in any other countries but their home country.

For this analysis, the important delineating feature of posted migration is the organisational context in which workers move between countries. In comparison with transnational migrants who tend to move within specific social structures/networks and migrant communities (see Massey *et al.* 1993), posted migration is employer-arranged so that contact with the host society is mediated via the sending-country employer. The moving arrangements for their workers usually extend to paying for travel, board and lodging specific to the posting. Posted workers' approach to the transnational labour market is individual and not closely related to host-country ties (see also Chapter 5). Although posted workers are often 'alone movers' in that their migration process is embedded in employer networks rather than social networks, this does not necessarily mean they move alone; they often move together with groups of similarly isolated colleagues. In this chapter the notion of segregation from Berry's acculturation framework (1997) is used to describe the situation of posted migrants embedded in groups of co-nationals who move in a transnational labour market, but have only limited interactions with the host society. In Berry's framework, segregation is the opposite of integration, when workers do interact and become embedded in the host society. Factors which reinforce posted workers' segregation and home-country orientation include: the temporary nature of posted work, the fact that they do not bring families, language barriers, the employer-arranged character of their mobility and the workplace focus of the spaces where they reside and socialize.

The employer-arranged migration context entails that employers mediate posted workers' interactions with host societies. Other forms of work migrants have to worry about (for example) interacting with authorities, finding a place to live, learning the language, and setting up financial services (Datta 2009; Spencer *et al.* 2007). These interactions are rendered unnecessary for posted workers, on the one hand making things easier, but on the other limiting their interaction with the host society and triggering the social segregation of posted workers. Unless posted workers themselves actively seek contact with their

host surroundings, their lives remain quite disconnected, socially and spatially separated from the host society and region where they temporarily reside.

Studies in human geography and urban studies show the role neighbourhoods and communities play in the everyday lives of immigrants and the opportunities and constraints these create for integration in host societies (Gilmartin and Migge 2013; Musterd 2011; 2003; Bolt *et al* 2010). For posted workers, employer-arranged migration reinforces connections with co-nationals as they often share the same work and accommodation environment. Communities may thus be created among posted workers of the same national group. Contacts with co-nationals are reinforced further because of language barriers posted workers face. For posted workers, foreign language skills are often not a necessity, because within the workplace it usually suffices if one member of a workgroup can speak the common workplace language as work teams are oftentimes aligned on the basis of nationality. Language barriers and lack of information about the institutional structure further prevents them from establishing strong contacts with the host society.

Employer-arranged migration and the social and physical segregation associated with it make integrating more difficult and also ensure that posted workers have less immediate incentive to do so. In these conditions, posted workers tend to develop better social connections with co-nationals within the working and living spaces and have a strong home-country orientation, rather than developing social contacts with their host society.

3.3 Motivations to move

Posted construction migrants exhibit many of the same motives as other temporary labour migrants moving within the EU. Trevena (2013) distinguished three different migration motives among Polish labour migrants in the UK: target earners, career-seekers and drifters (workers who pursue goals other than professional advancement or saving up). Of the posted workers interviewed, many would fit the definition of target earners, or workers who work abroad to achieve a certain monetary 'target' and once this is earned, return home. Datta (2009) describes the lives of target earners in the London secondary job market; these workers arrive without a fixed idea of what sort of work they will do and flexibly move from one job to another within the metropolitan region. While their lives are very focused on working, earning and saving, they cope with their environment in ways that involve a high degree of learning about host-society structures (Datta 2009). Similarly, Krings and colleagues (2013) note that many Polish workers in the Irish job market use peripheral jobs, often in construction, as a gateway to better employment in Ireland. Initially, when their cultural-linguistic skills were weaker, they took whatever jobs were available, but as they learned more about the Irish labour market and how to move within it, they often moved into more stable, better-paid and higher-skilled employment.

Unlike other temporary labour migrants, though, posted construction workers' strategies are defined more by the pan-EU labour market of their industry and craft and less by geography. Posted workers are pushed away from home due to limited job opportunities and low remuneration, and pulled abroad by the better prospects, such as higher wage levels and arranged and covered expenditures for travel and housing. Several interviewees mentioned countries with strong labour regulations, for example, Finland and Norway, as being particularly desirable places to work. In this context, in practice strong labour regulation means well-enforced extended collective agreements (Lillie and Greer 2007; Eldring *et al.* 2012) and can be considered a strong pull factor. The arranged migration trajectory simplifies the decision-making and migration process and obviates the need to adjust to a host society. Push and pull factors, however, are generally conceived as characteristics of host and home countries/regions environments (Mahroum 2002): for posted workers, the push factor may be a lack of opportunities, but the pull factor is a definite job offer – the host country usually has higher wages and better economic conditions, but it does not necessarily have to, because the posted worker is not necessarily looking to economic conditions generally, but foremost to the specifics of a certain job offer.

3.4 Posted work as a regulatory regime for employer-arranged migration in construction

The posted work phenomenon has emerged from the specific regulatory environment of the European Union and from firm contracting practices in certain industries, most notably construction. In this context, it has become a systematic and large-scale way for employers to (more or less legally) access cheap labour and avoid national labour laws and collective agreements (Lillie and Greer 2007). The construction labour market shapes and is shaped by the posted work phenomenon. High levels of subcontracting make for a fluid labour market. Subcontracting is used in construction to access specialized knowledge, increase flexibility, manage risk and reduce labour costs. In Finland, Germany and the Netherlands, large companies (in terms of turnover) function as main contractors or as building service providers while small and medium companies assume the role of the subcontractors and provide the majority of the workers (Wagner 2014; Bosch and Zühlke-Robinet 2003; Fellini *et al.* 2007). Transnational TWAs and construction subcontractors compete on costs against domestic subcontractors by bringing low-cost migrant workers to sites in high-labour-cost countries and preventing them from claiming the wages and benefits demanded by domestically hired workers. Therefore, the majority of posted workers on construction sites are employed via subcontractors or TWAs that are active within the lower levels of the contracting chains.

The practice of sending workers abroad to provide construction services while regulating their employment relations from their home sending country deterritorialises and deregulates employment relations; this is made possible by regulatory gaps which emerge in the transnational regulation of employment within the EU. The EU politics of labour mobility establishes a rights regime for workers migrating as individuals and a separate regulatory channel for workers posted by their employers. Individual labour mobility is regulated differently from posted work, because posted work falls under the free provision of services rather than free mobility of labour. The difference is that posting, firstly, invokes a different set of social protections (Dølvik and Eldring 2008). Secondly, national regulators are explicitly limited by EU law in the extent they can impose national rules on posted workers, as in a series of controversial decisions, the European Court of Justice has judged interference by national regulation as a potential impediment to the freedom of movement (Cremers 2010, 2013).³⁵ This enables and encourages employers to recruit migrants via transnational subcontractors and TWAs, because they can employ them under (partly) home-country terms of lower-wage countries.³⁶ The distinction of whether a person is 'labelled' a posted worker or an individual migrant worker thus has stark consequences on the rights regimes of the particular worker. Legally the line between posted workers and individual migrants is that if a worker comes from another country as part of an existing dependent employment relationship and does not pass into the labour market of the host country, then the worker is considered posted. However, in practice a large grey area exists, which is exploited systematically by employers seeking to arbitrage between national employment law and collective agreements (Cremers 2013).

Posting has a specific legal meaning, but because of the way it is used by employers this chapter focuses on the character of the employment relationship it implies, rather than whether a specific worker posting fits the strict legal definition. Because many employers use posting contracts as a way to avoid host-country regulation, the actual contractual relationship of posted workers is often vaguely defined, and only becomes specifically defined when host-country regulators look closely. Some of the posting encountered in this study was 'real' posting in the traditional definition: *i.e.* posting of workers with an employment relationship with the posting employer extending before and after the specific posting in question. More commonly, firms hire posted workers for a specific job; in this sense, the posting is just a convenient way to avoid host-country regulation. Other times, locally hired migrant workers are (illegally) classified as posted workers in order to complicate enforcement of labour

³⁵ These so-called Laval Quartet decisions are *Viking*, *Laval* and *Rüffert* and *Commission v Luxembourg*, issued between December 2007 and June 2008. The Court supported, in these four cases, the practical implementation of a 'country of origin' principle, asserting that union or government regulation of labour conditions at foreign service providers constitutes a violation of the free movement rights as set out in the 1957 Treaty of Rome.

³⁶ The actual regulatory framework is determined by a mix of home, host and European Union legislation.

regulations by local authorities. In countries (such as the Netherlands) where employers can avoid collective employment regulations by classifying workers as self-employed, it is common to encounter nominally self-employed migrant workers who are *de facto* dependent posted workers. Occasionally, workers were found who were posted in an organisational sense but not a legal one. These workers were brought by an employer to work on specific projects and had their accommodation and travel arranged as if they were posted workers, but they had local work contracts and social security. Although the details of contractual arrangements were often important in terms of particular enforcement efforts, the various forms of posting define a single labour market, with the line between the various categories blurred, through ignorance, legal indeterminacy and management strategy.

In this context, nationality becomes a cleavage that segments labour markets. Labour market segmentation scholars have argued that social cleavages such as ethnic divides are used to create labour hierarchies. Bonacich (1972) distinguishes three reasons why migrant workers are cheaper than their native counterparts: lower wage expectations; lack of knowledge about wage and employment standards in host country; and absence of organisation and representation of this group in the host society. Previous research on posted work similarly observed that posted workers are largely excluded from collective channels of worker representation (Lillie and Wagner 2014) and are 'cheaper' not only because of the lower wages but because of the exploitative practices that often occur due to the regulatory configuration (see also Chapter 6). This enables and encourages employers to create a segmented labour market in which the rights of posted workers are legally as well as *de facto* different, and more often than not lower, than those of native workers in the workplace. However, workers quickly learn how to operate within the labour markets where they find themselves, and try to claim their rights or pass to more protected market segments when they can (see Chapter 5).

3.4.1 Scope of posted work

Overlap with the grey economy and conceptual issues about how to count posted workers make it difficult to give an accurate estimate on the exact numbers of posted workers. However, the European Commission estimates that in 2005, 0.4 per cent of the EU's working-age population could be classified as posted workers (Eurofound 2010). Employers are supposed to file A1 forms with national authorities when they post a worker, in order to exempt that worker from host-country social security payments. According to the A1 forms, Finland saw 3.2 postings per thousand people in 2009, and 4.3 per thousand in 2011. In Germany there were 2.7 posting per thousand in 2009 and 3.9 per thousand in 2011, and the Netherlands 4.9 in 2009 and 6.6 in 2011 (Ismeri 2012 for 2009; European Commission 2013a for 2011). EU figures clearly indicate that postings mostly occur from Eastern to Western European (EU15) countries, although there are significant numbers of postings that do not follow that pattern.

A1 data, however, has serious limitations; it does not specify the sector, many employers do not fill out A1 forms and management expatriates are included, although their situation is conceptually different (Eurofound 2010). It also indicates the number of postings but not the labour market impact (*i.e.* a posting can be of long or short duration and one worker might be posted multiple times). Widely used practices such as bogus self-employment or the miscategorisation of workers also lower the recorded numbers of worker postings. Regardless of the flaws of these numbers, statistics on posted workers show their number has been increasing in Western European countries since the 2004 enlargement.

3.5 Methods and approach

The research for this chapter was part of a larger project looking at posted work in Finland, Germany, the Netherlands and the UK. This chapter draws on 70 in-depth interviews and 18 group conversations with posted workers in the Netherlands, Germany and Finland between 2011 and 2014. Interviews were conducted with Polish, Portuguese, Turkish, Italian, Serbian, Croatian, German, Romanian, Dutch, Irish, Estonian and Slovakian construction workers. In addition, expert interviews with officials from trade unions, from management, government, employer associations, and work councils were conducted. This chapter draws on two Finnish, two German and two Dutch cases of large construction sites, as the prevalence of posted workers at such sites is the highest. These sites have become international, in terms of both the contractors and workers employed at them. At some sites, only the managers are natives, while at others native workers remained in certain manual jobs at some firms. The interviews and group conversations were conducted either at the workers' accommodation sites or in public places, such as cafés or restaurants. Interpreters were used in the frequent cases where the interviewer and interviewee did not share a language. Informants were asked about their work experiences, social life and activities when not at work. Interviews were recorded with permission of the participant(s) and transcribed verbatim afterwards, or conducted with the interviewer taking notes, in cases where the participant preferred not to be recorded. In addition, extensive field notes were written about, among other things, the physical environment where posted workers live.

In this chapter workers are referred to as posted workers when they are sent by their employer to work in another country. However, this is not limited to the strict legal definition of posted work, but instead the posting concept is used to describe workers who migrate as part of a *de facto* dependent employment relationship. This definition reflects the reality of posted workers' dependence on their employers, allowing a focus on the conditions, situations and experiences which result from that type of employment. Posted workers in this study can thus refer to legally posted workers, project-based postings,

posted TWA workers, or even domestic TWA workers and (bogus) self-employed workers, as long as they were recruited and sent from their home country (or a third country) to work abroad while their employer arranged administrative as well as physical aspects (transport, housing) of their migration process. This *de facto* definition can include third-country nationals as posted workers as well.

3.6 Construction job market context

The interviews conducted for this chapter took place with workers at large construction sites, where there were multiple nationalities, sometimes as many as ten different ones. Travelling to work at such sites and being temporarily accommodated nearby was not uncommon in the past for native workers – although few such workers were seen in this study, perhaps due to their being more expensive than their foreign competition. The duration of their employment varied greatly, from a couple weeks to several months to one or two years. Most were employed on temporary project-based contracts, where the employment relation between worker and firm lasts for (at most) the duration of a particular project. After a construction project, or segment thereof, finishes, workers usually need to look for a different project and also a new firm to employ them. Social networks, the Internet and intermediaries are the main sources on which posted workers rely to secure their employment. There are many Internet forums and blogs where people exchange opinions and discuss work experiences that workers consult when considering taking up a job with a firm that they have not worked with before. Most workers returned home regularly between their contracts and oftentimes during their contracts as well, when periods of working abroad were alternated with one or two weeks spent at home. Many workers had a family back home to support, who generally did not visit them while they were abroad. The working conditions of posted workers were characterized by long working hours and oftentimes payments below local labour standards; many also faced a lack of proper social insurance, non-payment or underpayment of overtime, or unfair deductions for administrative costs, lodging or transport (Cremers 2013). The skill level of the informants varied. Interviewees included concrete finishers, labourers, welders, pipefitters, mechanics, steel fixers, carpenters, scaffolders, crane operators and cable pullers. The earnings varied as well, between 8 to 26 euros gross per hour. Pay hierarchies based on nationality were quite typical, but with substantial differences based on skill, location and contingencies such as local union influence as well. It is important to note that the large construction site context is probably more isolated and independent of the local environment than smaller sites, or work sites in other industries. While similarly isolated groups of workers can be found elsewhere, for example in meat processing in Germany (Wagner 2015), in other industries, such as supermarket distribution in the

Netherlands, there are more local workers present in the workplace, working together with the migrants (see Chapter 7).

3.7 The spatial segregation of employer-arranged accommodation sites

Accommodations are generally linked to posted workers' employment on a certain site and with a specific employer. They vary greatly in form and quality. Workers are often housed in apartments, houses or in bungalow/camping parks together with colleagues. Other times workers are accommodated in temporary containers, which they share or have to themselves. The accommodation may be in urban, industrial or rural areas. Usually employers want to accommodate workers within close distance to the workplace, but it is generally not the case, as in the dormitory labour regimes in China (Smith and Pun 2006), that workers are accommodated on (or around) the grounds of the work sites. The spatially separated accommodation arrangements for posted workers has certain similarities with residential segregation, where specific minority groups are clustered together and away from the host society (Musterd 2003, 2011)

The living environments abroad tend to be spartan, with only minimal efforts to customise them to produce a homey environment. They are usually devoid of personal objects and decorations, furnished with functional furniture, without personal items in the common rooms:

As we entered the house, we spotted a common room in front of us. The room was around 30 square meters. There was an old TV set, with a video-player, but it looked unused and a little dusty. The space did not contain many items (no newspapers, books, drinks, nor snacks); only ashtrays and empty beer cans were lying around. The common room looked as if the workers had just moved in, or as if they were afraid of leaving any personal belongings in the common area. (Field notes, the Netherlands, March 2011)

The way posted workers are accommodated generates a segregated, disconnected position toward the host society.

Here we feel like we are in a prison, as in a concentration camp. Many are not used to that type of life. I, for example, am used to this. I have worked for different companies, I am used to life in the field and that's what keeps me here. Otherwise I would stay 3/4 months and leave. [Laughs] (Portuguese pipefitter, the Netherlands, December 2011)

When I worked and lived in the area near Rotterdam, we would get out of the job and we would socialize with people. Even without knowing English, we could communicate with the Dutch. The Portuguese are that way. Here, there is nothing. This is a rural area, there is a minidisco, but it is too small. (Portuguese welder, the Netherlands, December 2011)

Whether residing in rural or urban industrial areas on the outskirts of cities, posted migrants are often housed in areas with minimal public transport, which tends to further isolate them.

Employers, to varying degrees, provide amenities. Sometimes workers have to clean the accommodation themselves; other times this is arranged by the employer. Most of the time televisions are present, which do not always carry channels from the workers' home countries. Most, but not all of the accommodations have Internet connections. In smaller-scale accommodations workers prepare their own food. When workers live at larger-scale accommodation sites, there is often a cafeteria where the employer provides food. Many workers appreciate food arrangements by their employer as it saves them time, which is at a premium due to their often-intensive work schedules:

At my previous workplace, food was provided, which was a big plus for me ... in the sense of saving time.... Now I finish work at 6 pm. Then we need to go shopping, by bus, so we get back here at the camp at 7.45 pm. And then we still need to cook, clean, do the dishes. So practically, I am free at 9 pm or so... And I have to wake up at 4:45am. (Polish scaffolder, the Netherlands, June 2012)

The housing sites take up an important place in posted workers lives after work: it is where they socialize and interact with fellow posted workers.

After work we have nothing special to do, we just hang around here, nowhere to go, often we get bored but what can we do. (Italian welder, the Netherlands, May 2011)

While many might complain about a lack of entertainment and social activities, others indicate that since their working days are so long (and many work six days a week), they prefer to sleep when off work. Several workers also mention that colleagues of theirs (rarely do they admit to doing this themselves) go to a nearby 'red light district'. Other activities include picnics or barbecues, visits to colleagues, friends and/or family or sightseeing tours to larger cities or historic towns. Some perform everyday activities such as cooking together with their colleagues, which often creates a sense of community and social activity. Also drinking alcohol together creates bonds between the workers. Workers create their own social bonds and leisure activities within given accommodation arrangements:

And sometimes we make a party, we prepare everything together. How a party can look like here? Well, we have the alcohol, and some appetizers and snacks. That would be it. (Polish welder, the Netherlands, March 2012)

The employer-arranged and spatially separated accommodation and victualing facilities shape a particular living environment in which posted workers are embedded when abroad. This environment obviates the need to interact with locals and is sometimes focused around minimising the need to take care of

non-work tasks. To the extent that posted workers socialise, it is usually with others of their own nationality or from their own work group.

' " , ' **Social segregation between posted workers and the host environment**

The temporary duration of posted workers' stay, language barriers and lack of information about local institutional structures mean that substantial contacts with the local population have little chance to develop. Most workers seem uninterested in developing contacts with locals and do not have to, as their lives can take place solely in the spaces their employer and they themselves create, separated from host society. Efforts at social contacts with locals are sometimes rebuffed, reinforcing social segregation, as one worker notes:

There haven't been any big problems with Finns but they don't want to talk with Estonians, in their spare time nor at the work place. Finns are scared of the Estonians. I have tried to say 'good morning' in Finnish without any reply. Finns would rather stop talking when they hear somebody is speaking Estonian. (Estonian carpenter, Finland, April 2014)

Most of the workers interviewed did not mention such experiences, but it does underline that for most contact with locals was often limited to short encounters in supermarkets or cafés. Still, local firms and entrepreneurs may (try to) benefit from the presence of posted workers in the region. Cases were found where small-town supermarkets near major construction sites had several Polish beer brands in their assortment to benefit from the increased clientele. One owner of a small shop mentioned adjusting opening times to the working rhythm of the workers accommodated across the street.

While their presence in a particular location is temporary, workers can be posted repeatedly by management over substantial periods of their lives. One worker told us that he had been working in Germany as a posted worker for a long time but due to the short-term nature of each posting, the convenience of living among fellow countrymen and the spatial segregation from the host society he was not socially connected to the country:

He cannot speak German even though he has been working in Germany for 15 years. The cashiers in the supermarket are Polish so even there he does not have to speak German. (Interview notes, Germany, March 2012)

The structure of posted workers' lives therefore discourages them from developing local connections and encourages a continued reliance on their employers and on support networks among co-workers. Only on a few occasions in this study did posted workers connect meaningfully with locals:

We played football and sat in chair on the streets. We went to church in order to get to know the local population and to make friends. Over the

time people started to recognize us, to get to know us and then they talked to us. (Serbian electrician, Germany, October 2012)

The opportunities for establishing local connections are limited because employers usually house co-nationals together, segregating workers not only from the host society but also according to nationality. A manager of a housing site in the Netherlands explained that nationalities tend to stick together, especially when they are away from their home for a long period of time, because it creates hominess. This might be by preference, but is also triggered by language barriers and cultural differences. Workers often mention, even if they have foreign language skills, that while working abroad socializing with fellow countrymen is the easiest:

In my own language is the easiest. Most of my acquaintances are Polish. (Polish pipefitter, the Netherlands, November 2011)

Workers responded differently as to how language barriers exist. Some workers said that they have no idea what the conditions of workers of other nationalities are because they cannot communicate. One Romanian worker who spoke English explained that language might be a barrier to interaction among different nationalities but not always, as sometimes English would serve as a *lingua franca* on the worksites:

For me it was good I knew English ... usually all those that are bosses here [in Finland] ... they know English.... (Romanian carpenter, Finland, August 2011)

Although English sometimes served as the main language of communication at the work site, it did not always help workers in social life. The aforementioned carpenter working in Finland also referred to his lack of skill in Finnish as a 'handicap', which impeded relations with Finnish workers.

The social cohesion one might expect to find among migrants living and working together in such close proximity is often lacking among posted workers, as they are grouped together only temporarily in certain work/living spaces. Strong bonds between different nationalities rarely happen due to language barriers and residential segregation. While posted workers generally do not integrate into host society, some do develop social bonds with their co-national colleagues, especially when they work in the construction profession abroad for several years.

We don't hang around in groups as the Portuguese do for example. They come and sit at these tables with 8 or more people, and even add tables if needed. That is their lifestyle. We don't do that as much, we do eat together at breakfast but with 5 people or so, not 25. But we live together [on the park in individual containers, but in one block]. We keep our doors open so that we can visit each other. (Polish cable puller, the Netherlands, June 2012)

The limited amount of cohesion between different national groups of posted workers is illustrated by the fact that most workers are accustomed to social

conflicts happening once in a while. Social conflicts sometimes arise because of the situation of many men living in close proximity with limited contact with their surroundings and with their families, and with little to do when they are off work. One worker explains:

The lack of living space. I think this is the major problem. Missing your family or other situations when there is alcohol in play. (Polish pipefitter, the Netherlands, November 2011)

The specific characteristics of the spaces where posted workers reside when abroad tend to segregate workers into different national groups. As most live together with co-nationals, they rely primarily on these social contacts to get by while living abroad.

3.9 Social connections with the home country and family

Posted construction workers move alone, or together with colleagues, and rarely bring families. As a consequence their lives continue to be very interrelated with their home countries and many have specific aspirations related to their home countries. Affordable transportation has stimulated geographical mobility within and between countries and inexpensive communication has alleviated the psychological barriers to movement. Posted workers usually maintain a strong connection with their families at home. This strong connection with family and home country reinforces the (lack of) integration intentions of posted workers (Kofman 2004).

Most workers keep up with events at home by following the news on the Internet and television. The orientation and connection these workers maintain with their home country are reflected, for example, in the importance some of the Portuguese workers attach to having Portuguese television channels available. One Portuguese worker complained:

A reason why many people leave [is]... we only have one Portuguese channel. We want SIC and TVI but we only have RTP international [Portuguese channels], which does not have anything. (Portuguese pipefitter, the Netherlands, December 2011)

Communications via cheap telephone and Internet calls serve, according to Vertovec, 'as a kind of social glue connecting small-scale social formations across the globe' (2004: 220). Regular mobile phone and Internet contact allows workers to maintain a sense of connectivity and collectivity with their families. Through regular contact, workers abroad can still be involved in making family decisions (cf. Bonini 2011; Madianou and Miller 2011), helping them feel less dissociated from their (home) lives. One Serbian worker explained how the Internet enabled him to participate, even from afar, in his daughter's development.

I have seen the first steps of my daughter via Skype. I have heard her say her first words via Skype. I see her every day. She is almost two. I experience her growing up via Skype even though I was not there in person. (Serbian electrician, Germany, October 2012)

Though the possibilities to stay in touch with their families back home are usually good, workers often express that they miss their families and being apart is difficult. Migration is an important strategy to cope with economic difficulties but at the same time it creates emotional distance between children and parents and husbands and wives. Several other workers mentioned that separations put a strain on relationships, sometimes leading to break-ups or divorces.

Well, the going back and forward, and the feelings when we are out and come home are very emotional. Every day we think about the family, but every day we have computers and every day we talk to each other. What I like about this is that we know that after some time we will make money and that life is going to be better. (Portuguese welder, the Netherlands, June 2012)

The paradox thus is that while posted workers are mainly motivated to earn money to improve their lives at home, their working and living situation creates distance between them and their home environment.

3.10 The relations between social and labour market segregation

This chapter has highlighted how the organisational and regulatory configuration used to support posted work is different from and in many ways produces higher segregation than other forms of migration. The research suggests the ways workers are accommodated in host societies and kept separate from other national groups and the host society enables the continued segmentation of this workforce by slowing the process of learning about and integrating into host societies. It is argued that posted workers are more segregated and less predisposed to be part of the host society, learn the language and socialize than other migrants because of the nature of their work and living arrangements. The high cross-border mobility ensures that posted workers do not have the same opportunities or interests to build structural resources in host societies and workplaces as more permanent migrants. Barriers such as long working hours, residence in remote/rural areas, language and lack of information about institutional structure make integration unfeasible in the short time frames they intend to remain. Employer involvement in organising the migration process both reflects and reinforces this tendency.

Similar to circular migrants in the study of Engbersen *et al.* (2013), posted migrants show weak and ephemeral ties to host-country environments: the

workers are focused on doing their work, passing time and getting paid – life for them occurs elsewhere. Posted workers are present long enough in host societies to have an impact – months or years – but their stays are short enough that host society integration is unlikely. Employer strategies encourage this short-term perspective, since it makes them less demanding and more vulnerable to exploitation. Furthermore, the absence of family and social life in the host country gives the posted worker extreme flexibility. Posted migrants do have a life beyond their work and create social connections with their co-national colleagues and maintain contacts with their families and home country, but their social contacts tend to reinforce their segregation from their host-country environment rather than embed them in it.

Posted migration follows particular kinds of (construction) jobs over pan-European spaces and not the low-paid job market as a whole within the confined space of a country or city area (compare with Datta 2009). It is possible that for some posted workers at least, the hypermobility and segregation observed could be an initial stage, to be followed by integration at a later point, as their job market overlaps sometimes with that of other temporary migrants. However, many of the workers interviewed had been working within this pan-European labour market for many years and some seemed to be making a career of it.

3.11 Conclusion

Posted migration, as a distinct form of temporary circular migration, is becoming more and more widespread, and unlike more conventional forms of migration, its effects on individuals and societies have not been widely investigated. In the migration literature there is a debate on the policy and economic impacts of temporary circular migration, with governments of both sending and receiving countries emphasising the positive outcomes of migration and promoting temporary circular migration as a form of development (Kapur and McHale 2003). Similarly, posted work is explicitly promoted by EU institutions as a means to improve competitiveness and generate employment; it is made possible by opportunities for regulatory arbitrage in the European Union, which are inherent to the structure of EU regulation. Whatever the economic benefits, the growth of a socially disconnected floating workforce which has little investment in and social connection to any particular physical location or community raises social and political concerns, not the least of which is the effect on the posted workers themselves of living and working in a semi-permanent state of segregation.

4 BREAKING THE LAW? VARIETIES OF SOCIAL DUMPING IN A PAN-EUROPEAN LABOUR MARKET³⁷

4.1 Introduction

Where the previous chapter focused on the employer-arranged migration context and its impact on the social lives of posted workers, in this chapter I discuss the market context surrounding posted work through a study of firm cross-border recruitment practices. Firms engage in transnational hiring and, in doing so, consciously strategize across sovereign sites and arenas of regulation in order to take advantage of lower cost structures and less strict regulatory environments. These practices are part of a pervasive dynamic of labour-cost competition which is integral to the growth of capitalist markets (Bernaciak 2015). When firms transgress certain normative boundaries as a way to make themselves more competitive, they often trigger accusations of social dumping. In Europe, such accusations usually refer to normative structures inherited from the post-war national industrial relations systems of western Europe, which sought to ensure income stability for workers, humane treatment and due process in the workplace, as well as rights to workplace representation and collective action, reasonable notice prior to dismissals, and similar worker protections (Bernaciak 2015). However, business actors are constantly testing the boundaries of what is acceptable and what they can get away with (Streeck 2009) and increasing numbers of employers reject the existing norms – if not in principle, then certainly in practice. Some companies play a double game in which they appear to support and conform to the traditional normative frameworks of industrial relations, while in fact they operate in ways that allow them to remain price competitive in unconstrained markets. For unions and

³⁷ This chapter is co-authored with Nathan Lillie and will appear in an edited book volume: Berntsen, L. and N. Lillie (2015) *Breaking the law? Varieties of social dumping in a pan-European labour market*. In Bernaciak, M., ed., *Market expansion and social dumping in Europe*, London: Routledge.

society as a whole, the challenge is to enforce normative constraints on such 'unruly' (Streeck 2009: 75) employers.

Much has been written about the conditions and downward labour market pressures created by recent intra-EU labour mobility (Lillie 2012; Meardi 2012; Wagner 2014). The term 'social dumping' may be politicized and ill defined (Bernaciak 2012), but the basic premise that wages and employment in western Europe have come under pressure as a result of migration in certain occupational labour markets is indisputable (Meardi 2012). Labour mobility in the EU is creating a more competitive labour market environment – as indeed it is intended to – as EU institutional actors such as the European Court of Justice (ECJ) and the European Commission have made clear in public documents (see, e.g., European Court of Justice 2007). A premise behind EU policies and ECJ rulings is that market-making and market expansion will lead to efficiency increases. In practice, this means the removal of barriers to the free movement of workers and services, and the intensification of competition – including wage competition.³⁸ Regulatory regimes, and firms' ability to interact with them, have become a competitive parameter that tends to favour less restrictive and cheaper regulatory environments. Similarly, the regulation of employee posting has created new windows of opportunity for labour-cost competition by defining posted workers as those remaining partially outside the national regulatory scope of the receiving country, given that they come from different legal, social and organisational contexts (Wagner and Lillie 2014).

This chapter focuses on strategies for regulatory engagement that firms employ when they have the option of choosing between different national regulatory regimes. Drawing on examples from Finland and the Netherlands, it examines how firms hire and manage foreign labour, and how they strategize between the regulatory frameworks of various national industrial relations systems. This chapter shows that workers from low-wage countries are employed in high-wage countries under conditions that in certain respects refer back to the labour standards of their country of origin (posted work), or under contracts conditioned by host-country regulations (TWA work). On the basis of this study, three categories of firms' cost-saving regulatory engagement strategies are identified, which can also be viewed as different types of social dumping. *Regulatory evasion* refers to the violation of formal and informal national industrial relations rules, and to concealing these violations, presumably to avoid enforcement. *Regulatory arbitrage* is defined as strategizing about the regulatory treatment of a transaction in the selection between two (or more) alternative regulatory regimes from different sovereign territories (Fleischer 2010: 4). It involves conformance to formal rules, and possibly informal ones, but makes a claim for exception from the normal local rules on the basis of adherence to an alternative set of foreign rules. *Regulatory*

³⁸ Meier (2004), for example, argues that employee posting results in welfare gains for the EU economy as a whole, and that any application of minimum wages to such workers via the PWD can only have the effect of reducing these welfare gains.

conformance means conforming to the formal industrial relations system but potentially manipulating the rules for cost advantages. Regulatory conformance does not involve breaking industrial relations rules directly, but may put them under pressure as employers access foreign workers who may accept worse treatment than natives on an informal level.

All three practices presented in this chapter involve strategizing between rule systems – even regulatory conformance is a decision not to take advantage of foreign regulatory systems and to stick with the local regulatory regime. It is important to note that this study does not make a strict differentiation between legal and illegal, because social dumping is not just about the legality or illegality of actor behaviour, rather this chapter discusses violations of social and industrial relations norms in ways that create a certain kind of competitive dynamic (Bernaciak 2015). Interpretations of what is legal and what is illegal can vary, especially between unions and employers (see Arnholz and Eldring 2015), given that there are conflicts between legal frameworks resulting from EU regulation and overlapping national jurisdictions. Industrial relations practices and legal rules are often applied in national contexts where they conflict with formal and/or informal industrial relations norms and laws. This patchwork of EU and national regulations results in ‘grey zones’ where actors do not necessarily know the rules or feel invested in them.

This chapter draws on case studies from the Dutch and Finnish construction and distribution sectors. It is based on qualitative interviews with unionists, employers, employer associations and government officials about firm practices of recruiting and managing international personnel, as well as interviews with foreign workers about their jobs and working conditions. The interviews were conducted between 2005 and 2012 in Finland and from 2011 to 2013 in the Netherlands. Interview data is supplemented with media searches and reports, as well as discussions and meetings in Brussels with EU actors.

4.2 The use of the term social dumping

In the public discourse, the term *social dumping* is applied pejoratively and strategically as a way of condemning firms that seek to access the lower cost structure of labour in another country or within a country or firm. In this respect, social dumping is used as a politicized label in conflicts about who gets what work and how much they should be paid. It may also invoke a competitive aspect concerned with the way firm practices erode existing social and labour standards through regime competition (Streeck 1992) or cost-based competition founded on the characteristics of social systems, collective bargaining agreements or welfare regimes.

The fundamental premise of the social dumping frame is that it is normatively wrong for firms to make a competitive advantage out of seeking out the lowest social- and wage-cost structures they can find. The logic of free movement and economic liberalization in the EU, however, leaves no room for

the normative evaluation of firms' practices as potential sources of social dumping. This is because labour standards are regarded as a potential source of competitive advantage, and the exploitation of such advantages is judged as a fundamental right. There is also an explicit outcome-focused reasoning in the 'Laval quartet' concerning the relationship between national industrial relations and EU free movement rights, which justifies the setting aside of national rules in order to boost regime competition. In the Laval decision (Laval Case C-341/05), the ECJ concludes that 'the right of trade unions of a Member State to take collective action [designed to raise the pay and conditions of posted workers above legal minimums]...is liable to make it less attractive, or more difficult, for undertakings to provide services in the territory of the host Member State, and therefore constitutes a restriction on the freedom to provide services within the meaning of Article 49 EC'. The Latvian firm Laval un Partneri had won its contract in Sweden on the basis of being able to offer services at a lower cost, therefore union (industrial) action that served to erase this cost advantage could be considered a restraint on free movement. The Court has made it clear that any attempt to interfere with strategies based on labour costs constitutes an a priori restriction on free movement. Restrictions on free movement can be justified, but the reasons for such restrictions must be substantiated, and the means used to achieve them should be proportional (Viking Case C-438/05).

Following the ECJ's reasoning, if firms observe legal minimum wages and legally extended collective agreements, and abide by the framework for intra-EU posting, they are not involved in social dumping, or at least are not doing anything that would provide grounds for unions or governments to apply sanctions. According to the ECJ, then, 'social dumping' refers to existing minimum-wage laws and legally extended collective agreements: firms that violate legally mandated standards for labour-cost advantage are engaging in social dumping, while firms that uphold legal standards are not. If one follows this legalistic definition, social dumping becomes impossible in countries or industries where there are no minimum wages or legally extended agreements because there are no standards to violate.

In a broader view, however, social dumping is any competitive strategy that relies on accessing labour supplies that are cheaper due to looser regulatory frameworks or differences in wage levels or wage expectations. This is closer to the way the term has been used in academic discussions and political debates. Belgian politicians, for example, accuse the German meat-packing industry of social dumping precisely because there is no minimum wage in this sector and so posted workers from Central-Eastern Europe (CEE) can work there for very low wages (Debroux 2013). German-based firms, however, are simply making a competitive advantage out of the looser regulatory framework in the German meat-packing industry. This game of creating and exploiting 'regime competition' (Streeck 1992) is one of the core ways in which many scholars have tried to define what social dumping is exactly (Erickson and Kuruvilla 1994; Alber and Standing 2000; Kvist 2004;

Donaghey and Teague 2006): that is to say, an economic dynamic that puts pressure on the regulatory framework to allow lower standards.

The term 'social dumping' has also been applied to governments seeking to use lower social security or labour standards as a way of attracting capital (Alber and Standing 2000; Šćepanović 2015). Although governments' market-making efforts and company's social dumping strategies are not synonymous, these two aspects are connected, because firms react to government incentives when they engage in social dumping. Low standards for workers in one context can also affect conditions for workers in other settings if the latter have to compete with the former. Growing competitive pressures create incentives for market actors to undermine or circumvent social regulations, which may lead to the erosion of the existing standards. By the same token, social dumping is encouraged by EU institutions. Kvist (2004) points out that the EU has brought about a 'dual development' in which the EU puts pressure on national social standards via competitive mechanisms, but at the same time provides EU citizens with access to EU- and national-level rights through EU legislation and jurisprudence. As observed by Höpner and Schäfer (2012), however, the dynamic created by the interaction of these two developments erodes national welfare states. The market-making agenda of the EU continuously pushes national consensus norms down the liberalization path, and social aspects are increasingly less important than market norms.

4.3 Posting, subcontracting, TWA work and social dumping

Labour mobility in Europe can occur either as posting – when an employer sends an employee abroad to perform a job – or as individual migration. These different forms occur under different regulatory frameworks (the free movement of services and the free movement of workers, respectively) and activate different sets of worker rights and protections (Dølvik and Eldring 2008). Whether workers come as posted workers or individual migrants, they most often are employed via TWAs. Posting of workers also occurs via subcontractors or between subsidiaries of multinational enterprises. The difference between a subcontractor and a TWA is that, in the latter case, the customer firm has a much greater role in organising the work. Subcontractors provide their own management and micro-organisation of production, while TWAs perform only recruitment, payroll and human resource functions (MacKenzie and Forde 2005).

Firms employing foreign workers in host countries strategically situate themselves in particular regulatory regimes or industries. In the Netherlands, for example, the benefits applicable to posted workers in the construction sector are more extensive than in the metal sector, allowing for cost savings when firms post workers under the conditions for the metal industry. TWAs can choose between situating themselves in the host country and employing the foreign workers under TWA contracts, or posting the TWA workers from the

home country, or even a third country in which social security contributions are lower. With the first option, employment conditions have to be regulated in line with the host-country framework; in the second and third option, there will be a combination of host- and sending-country regulations (see table 1.3 in chapter 1).

Over the last decade, TWA work has increased significantly throughout Europe (Markova and McKay 2008) and is considered one of the most rapidly growing forms of atypical work (Schmidt 2006). In the Netherlands, TWAs are the most important providers of foreign workers (Fellini *et al.* 2007). TWAs play an important facilitating role in the migration process by offering workers 'all-inclusive' packages arranging travel, accommodation and food. Going for short tenures abroad is very much simplified through the transnational TWA sector.

The Temporary Agency Work Directive (TAWD), passed in 2008, puts forward the principle of equal treatment for TWA workers compared with direct hires at a client firm from day one of their assignment. The TAWD establishes that the basic working and employment conditions applicable to TWA workers should be at least those that would apply if they had been recruited directly by that undertaking to perform the same job. The level and scope of implementation of the TAWD is left to EU member states to decide upon and the impact thus depends on each EU member state's own labour institutions and traditions (Wynn 2014).

The Posting of Workers Directive (PWD), passed in 1996, establishes that posted (construction) workers are entitled to the statutory minimum conditions of either their host state or sending state, whichever is better from the worker's perspective, thus extending national regulation of employment to transnational subcontractors. The Laval quartet of ECJ decisions, however, redefined the list in the PWD as a comprehensive limit to what national regulators are allowed to regulate, making it clear that governments and unions cannot seek to enforce any standards for posted workers that are not both explicitly mentioned in the PWD and set down in national law. Therefore, the full range of benefits accorded to native workers and individual migrants cannot be mandated for posted workers, but only the more limited set in the directive. Furthermore, minimum-wage laws (or the legal extension of collective agreements) and not collective bargaining *per se* must be the mechanism to enforce wage levels. Therefore, even when the legal wage minimums and extended collective agreements are fully applied, it is still possible that posted workers can end up being cheaper than domestically recruited workers (Lillie 2012). In Finland and the Netherlands, national labour law and collective agreement systems in principle provide for host-country regulation of wages, even under the constraints of the Laval quartet decisions, although, as will become clear from the cases, it is still possible to circumvent certain wage provisions and employment conditions.

The Netherlands and Finland are characterized by strong market regulations and high degrees of cooperation and coordination between state, capital and labour. In both the Netherlands and Finland, wages for most workers are regulated via extended sectoral collective agreements. The

Netherlands also has a minimum wage, which is lower than collectively agreed wages; Finland does not have a minimum wage, but most workers are covered by legally extended collective agreements. The way pay is regulated in the Netherlands and Finland – in contrast to Germany, for example – sets a lower boundary on working standards, meaning that foreign employers employing posted workers must maintain a certain minimum-wage level set by the host country, even given the constraints of the Laval quartet. As will be shown, this does not mean that there is no legal room for labour-cost savings, but it does mean that the room for legal cost savings on wage payments through using posted workers is limited. In effect, in these countries there is a brighter line between legal and illegal behaviour in Finland and the Netherlands than in national contexts where wages are not regulated by law, because norm-conforming firm behaviour tends to be legal, and norm-violating behaviour illegal. In contexts where legal protections are weak, but worker protections are effected through other channels, it is common to see norm-violating behaviour which is perfectly legal.

The share of foreign workers in the Dutch TWA workforce was 35 per cent in 2003, compared to 16 per cent in the workforce at large (Tijdens *et al.* 2006). More recent estimates indicate that 50 per cent of Central-Eastern Europeans working in the Netherlands are employed via TWAs (Tweede Kamer 2011: 33). Three types of TWAs were identified as active in the Dutch market: law-abiding TWAs; TWAs operating in a grey zone; and the so-called ‘mala fide’, law-evading TWAs (Tweede Kamer 2011). It was estimated that around 5,000 to 6,000 law-evading TWAs were active in the market, supplying an estimated 100,000 CEE workers (De Bondt and Grijpstra 2008). In Finland, labour migration occurs through posting by subcontractors, TWA work and individual migration. The tax office noted that in 2012, 53,000 foreign construction workers were issued tax numbers (Mäkelä 2012). This would indicate that legally employed foreign labour constitutes about one-third of the Finnish construction labour force (Rakennusteollisuus 2012).

Even though conditions for migrant posted and TWA workers are relatively well regulated by Dutch and Finnish law, in practice the enforcement of these regulations to fight social dumping practices remains problematic. As a Dutch labour standard enforcement agent (2012) explained:

It is well regulated. Only, it is so well regulated to the smallest details that it becomes very unclear. It is not simply, oh this person comes from Germany and these are the employment conditions that apply. No. So I think it needs to be made much simpler so that it is clear for everybody which regulations apply. I think that that is very important.

Effective enforcement requires extensive research into firm behaviour and gathering evidence of malpractices. For example, even just determining whether the collective labour agreement for the construction sector should be applicable to a firm’s business practices is a time-consuming exercise. Another issue with foreign workers is the difficulty of cross-border enforcement because labour inspectorates from different countries collaborate very little, even

though firms' cross-border practices often fall under the scope of both the sending and receiving countries' regulations regarding social security (the former) and taxes (the latter), for instance in the case of posted work.

4.4 Varieties of social dumping

As the application of regulation across spaces – whether geographical or social – has become more fragmented and contingent (Martinez Lucio and MacKenzie 2004), firm compliance with regulation has become strategic. The ability to strategize successfully between regulatory frameworks has turned into a competitive parameter, and companies have different approaches to this issue. Based on the evidence from the Dutch and Finnish construction and distribution sectors, three distinct categories of firms' cost-saving strategies in engaging with regulatory frameworks are identified: regulatory evasion, regulatory arbitrage and regulatory conformance.

4.4.1 Regulatory evasion

Regulatory evasion involves the violation of formal national industrial relations rules, and implies the concealment of these violations from regulatory authorities. Quite often, this is done by obscuring a firm's practices, or increasing the level of legal uncertainty about whether a firm's practices are illegal, by means of regulatory arbitrage. For example, by hiring employees in another national jurisdiction than the one in which the work is performed, regulatory evaders make it difficult for regulatory authorities to check whether the employment conditions meet the existing standards. Control and enforcement by compelling client firms to avoid using subcontractors who practice regulatory evasion is indeed a challenge:

There can be highest managers, they can give the orders that we have to control this way, but lower in the organisation there can be some manager who can get some benefit, he can even get bribes from illegal subcontractors when he's using them...We can't show anything, but we know that, and even this middle management's organisation, they admit that among their members, these *rakennusmestarit* [master builders], they even admit that there are some men who are taking bribes... (Finnish trade union official, 2009)

Much of the public attention given to posted work has been due to the very poor labour conditions of some posted workers and the illegal activities of their employers. The growth of posted work has been associated with the appearance of numerous 'fly-by-night' TWAs supplying cheap labour at substandard conditions (Finnish union official interview 2005). These are so-called shell firms that disappear as soon as regulatory authorities take too close an interest; they often simply change their names and move elsewhere. Many of

these firms appear to be just small entrepreneurs, using their personal contacts to deliver workers to job sites; one Finnish shop steward at a shipyard referred to them as 'the guys with lots of chains, a mobile phone and an SUV' (Finnish shop steward interview 2009). Employers rhetorically draw a line between themselves and unscrupulous grey-market employers. In this way, they make the problem of regulatory evasion out to be a technical issue of control and enforcement (interviews with Finnish construction employers 2008; the Finnish Employers' Association 2009; and the European Construction Industry Federation 2006). However, these types of labour suppliers nonetheless are often present on the production sites of 'respectable' core firms. Many 'respectable' firms play a political double game of rhetorically supporting high standards while actually obstructing the enforcement of labour standards on the fly-by-night operators where the most serious violations tend to occur (Lillie *et al.* 2014). Therefore, while these TWAs represent only a segment of the labour market, they are not a segment apart, as some client firms and employer associations would like to present them, but rather a part of a spectrum, and an inevitable presence in the regulatory environment that permits and promotes their activities. For example, at the major power-plant construction sites of Olkiluoto 3, Finland, and at the construction of Avenue 2 in the Netherlands, they were an integral part of the production process. Some of these shady businesses operate on a larger scale, and in the case of at least one well-known example, they have professionalized as well.

The case of Atlanco Rimec demonstrates that a thin professional veneer allows even persistently and strategically evasive TWAs to access respectable client firms. Atlanco Rimec is a multinational manpower firm that has made a business out of hiring workers from low-wage EU countries for work in high-wage EU countries. It has also systematically utilized the legal uncertainty and enforcement difficulties created by the interaction of national systems and EU rules to violate national laws and industrial relations norms. While doing this hardly makes it unusual, what is unusual is that it operates on a large scale, in a systematic and apparently respectable way. Its clients are often well-known firms and household names. Atlanco presents a respectable public face, advertising itself as an 'expert in the mobilisation and management of teams of workers within the borders of Europe to meet the needs of our clients' (Atlanco Rimec website 22 October 2012). It has offices around Europe and appears to be a firm of substantial size and resources; it reported €84.3 million turnover in its 2004 Annual Report. According to research conducted by Swedish journalist Anna-Lena Norberg (2013a), the company maintains a database with information about past and current employees. There are around 500,000 names in the database, including former job applicants. In addition, the database contains addresses, phone numbers, passport and tax identification numbers, information about current and previous job locations and field of work, as well as details about personal character and behaviour (attitude, skills, punctuality, and information concerning the premature termination of contract). For every person, the database specifies advice on possible rehiring: each worker is either recommended or blacklisted.

Atlenco Rimec consists of a network of companies, which appear in many cases to be shell firms created with the goal of avoiding legal responsibility.³⁹ Workers' employment can be moved from one company to another, as is illustrated by an excerpt from an Atlenco Switzerland employment contract of 2012: 'The company reserves the right to transfer the employee at any time to other companies of the group of which the company is a member on similar terms within the period of the agreement' (Norberg 2013a). This is similar to the strategy used by certain kinds of firms in the maritime shipping business where, as in the case of Atlenco Rimec, complex multinational networks of shell companies shield owners from liability (Stopford 1997).

Workers who have worked for Atlenco or one of its subsidiary firms, as well as unions that have dealt with them, accuse them of not paying regularly, of dismissing workers who complain, and of using double contracts and paying wages in violation of the relevant collective agreement and/or less than what was originally agreed. One former office staff member of Atlenco who successfully sued the company and was quoted in a Swedish news article related: 'I have worked for a long time for Atlenco and some of the workers see me as part of the company. With this judgment, I can show that I have nothing to do with Atlenco's tricky business. That is the most important thing for me' (Norberg 2013b).

By employing workers via Cyprus, sometimes without their knowledge and without workers having ever been there, Atlenco prevents its temporary staff from acquiring social security and pension rights in their home or host countries. This seems to be a side effect of locating in Cyprus rather than a deliberate action, however. At the same time, Atlenco has been at the centre of several industrial and legal disputes. Misconduct by Atlenco has been reported at the construction of the nuclear power plant in Flamanville, France, at Olkiluoto in Finland, at the Eemshaven and Avenue 2 construction sites in the Netherlands, and at several sites in Sweden. At Olkiluoto, Atlenco Rimec's behaviour resulted in a major work stoppage (Lillie and Sippola 2011).

At the building site in Eemshaven, several Atlenco employees did not receive the collective agreement wages. An Atlenco Rimec worker interviewed when working in the Eemshaven (2011) explained the firm's practices as follows:

Atlenco Rimec is a dangerous firm because it abuses people...It abuses the law, in this case the Dutch law, by stretching it to find ways to circumvent it, only to rob us. It is a criminal TWA. This is the first and last time that I work with them.

³⁹ In 2004, Atlenco reported the following subsidiary companies: Atlenco Limited (Republic of Ireland), Atlenco UK, Atlenco Selecção Lda (Portugal), Atlenco South Africa Pty, Atlenco Poland, Atlenco Worldwide Limited (Republic of Ireland), Atlenco S.R.O. (Czech Republic), Rimec Limited (Republic of Ireland), Rimec B.V. (the Netherlands), Rimec SRO (Czech Republic), Atlenco Spain SL, Rimec Contracting (the United Kingdom), Rimec Poland and Rimec Hungary (Norberg, 2013b). In 2013, Atlenco's website reported company contact points in four countries: Ireland, the United Kingdom, Denmark and Portugal (Atlenco Rimec website, accessed 13 May 2013).

Atlenco often lumps all social security deductions together so that workers cannot detect what kind of payments have been made on their behalf. This is something the before mentioned worker also discovered when he received his first payslips:

When the first pay slips arrived, they did not provide us with any information, except for my last name, the company name, and a mysterious logo. The TWA's address is not on there, nor my personal identification number. There are no separate entries for pension or social security or tax payments. There is only a general sum. This is very secretive.

This worker contacted Atlenco about this, but they did not provide him with any explanation. The firm is known to not be forthcoming with information and has a reputation for threatening legal action to prevent its activities from being disclosed.

Regulatory evasion is made possible by the existence of the formally, legally legitimate strategy of regulatory arbitrage. The Atlenco Rimec case illustrates how legal ambiguity and enforcement difficulties mean in practice that it is difficult to draw a clear line between these two types of social dumping.

4.4.2 Strategic posting: Regulatory arbitrage

Regulatory arbitrage is the exploitation of differences between national systems within the constraints set out by the PWD. Firms that engage in regulatory arbitrage follow EU rules and the appropriate national rules, but they remain partially outside the national industrial relations framework of the host country. Firms strategically locate themselves and post employees so as to benefit from the differences between national social security systems in Europe. The PWD ensures a minimum set of rights for posted workers, including minimum-wage standards in countries where these are present, but this list of rights does not concern social contributions. Social contributions are paid in the country from which a worker is posted (which is not necessarily the worker's home country). Tax authorities, but also trade unions in Finland, Sweden and the Netherlands have noticed that over the last few years, Cyprus, Luxembourg and Slovakia have been increasingly used as places of residency by TWAs.

Many practices of regulatory arbitrage currently fall into a grey zone in EU legislation. Unions have campaigned against the opportunities for social dumping practices that the PWD creates. For example, the European Transport Workers' Federation (ETF) noticed, after interviewing around 1,000 professional drivers in the period 2008–2012, that it is common for firms in road transport to open letter-box companies in EU member states with lower levels of social protection and lower labour standards (ETF 2012; also see Cremers, 2015). This is the case even though a posting firm is formally required to have a genuine business activity in the posting state in order to be able to legally post workers. The European Commission (2012) has published explicit rules

concerning this issue, but their enforcement is weak and thus letter-box posting has become widespread.

In this study many instances of strategic posting were encountered. One example was a Portuguese TWA that posted Portuguese and Polish workers to work in the Netherlands. A Polish worker explained (2012) that he had been recruited in Poland but had received a Portuguese employment contract from a Portuguese subsidiary TWA of the Polish firm that had recruited him. Since he worked as a posted worker via Portugal, he thought all social security payments were made in Portugal, but he was not sure:

...all such payments [pension, social security, etc.] go to Portugal. At least that is what they tell us... Time will tell [if the TWA is being truthful].

A Portuguese posted worker (2012), also on a Portuguese contract, related:

We are basically subcontracted. We have normal benefits, housing, food and travelling. The pension and social security is paid in Portugal and taxes in the Netherlands.

The practice of regulatory arbitrage is a known phenomenon among TWAs in the construction sector, as this Dutch trade union official (2011) elaborates:

What they [TWAs] do is look for the countries with the lowest social contributions, in this case Portugal [put them under Portuguese contracts]...and pay social fees in Portugal instead of in the Netherlands or Poland. And if you compare these rates, there is an easy difference of 25 per cent to be made.

Table 4.1 provides an overview of the cost savings that can be achieved through strategic posting. The example shows that even though the three nationals earn the same net income, posting a worker from Portugal (or Poland) saves an employer a significant amount on labour costs through the difference in social security payments.

Table 4.1. Savings made by companies through strategic posting

Dutch worker		Portuguese worker		Polish worker	
Net salary	1600	Net salary	1600	Net salary	1600
-/- soc. sec in NL	496	-/- soc. sec in Portugal	81	-/- soc. sec in Poland	350
-/- taxes in NL	81	-/- taxes in NL	81	-/- taxes in NL	81
Gross salary	2177	Gross salary	1762	Gross salary	2032

Source: Wapening in Beton (2012), p.7.

Also in regard to wages, it is possible to make cost savings compared to firms complying with host-country regulatory frameworks. In Finland, wages are set through national-level collective bargaining, with uniform minimum standards through the whole country. In the construction sector, collective agreement wages are quite often the actual wage in rural areas, particularly in the north. In

the Helsinki region, however, wages have commonly been much higher than the collective agreement wages. Firms practicing regulatory arbitrage make cost savings by paying their workers exactly the collective agreement rate, employing their workers on home-country contracts, and conforming to Finnish norms only in regard to the mandatory items mentioned in the PWD (Lillie 2012). Finnish unions have de facto accepted employment on foreign contracts that comply with the PWD but not with the full range of standards to which Finnish workers are entitled – only because the workers are foreign. Furthermore, Finnish unionists and labour inspectors frequently voice suspicions that these workers are not actually receiving the wage levels they say they are, making the boundary between regulatory arbitrage and evasion difficult to define.

4.4.3 Regulatory conformance

Employers often make an argument that sourcing foreign labour is not about exploiting labour-cost differences but about finding workers for jobs for which there are no locals available, either because they do not have the skills or because no local person is willing to do that particular job. In the former case, certainly there is room for worker posting that would not trigger social dumping accusations, while the latter is in principle possible but may also be related to the ethnicization of labour markets or the redesign of jobs in ways that make them less desirable precisely because there is a cheap labour force available to do them. Even when firms comply with the regulatory framework, they can still set in motion a social dumping dynamic. This is referred to as regulatory conformance, which means conforming to the formal industrial relations system, but manipulating the rules for cost advantage. There is generally considerable room for achieving labour-cost savings in ways that bend but do not break the rules of the national social and industrial relations systems. Often firms find it cheaper or more convenient to follow local rules than to access foreign rule systems.

In the Dutch supermarket distribution sector, for instance, firms exploit loopholes in the TWA regulatory regime to segment the labour market into domestic core workers and contingent foreign workers in order to maximize their flexibility and achieve cost savings. There are two main groups of workers: the Dutch, who usually work on permanent contracts with the client firm, and the Poles, who generally work on TWA contracts with a Dutch TWA. In the Netherlands, the collective agreement for the TWA sector provides for the ‘contractual phase system’ for TWA workers. The system consists of phase A, phase B and phase C contracts. Phase A is the first phase, where there is no limit on the amount of temporary contracts an employer can sign with an employee, but the total duration is maximum 78 weeks (unless other arrangements are made in a company collective labour agreement). Phase A TWA contracts can be terminated at any time and the worker has no guaranteed number of hours’ work, as this Dutch TWA worker explained (2013) when interviewed about his employment contract:

A phase A contract is a zero-hours contract...But it is only one way. Because when you say one day in advance that you cannot come to work, it is not possible. But when they [the TWA firm] say that you don't have to come, there is nothing you can do about it.

After 78 weeks, the firm must provide the employee with a phase B contract if the working relationship continues. The phase B contract gives an employee more job security because it provides a guaranteed number of hours, for example, which is not the case under phase A. However, when an employer sends the employee on a break that lasts at least 26 weeks, the worker's length of employment is reset and the worker can be rehired by the same firm on a phase A contract again. This is general practice for the Polish TWA workers in this industry, as this Polish TWA worker explained (2013):

I had been working for 1.5 years in phase A. Then I had a six-month break, well it was a forced break. Then I came back and I have been working for six months now...In phase A they can sack you any time and it overall lasts for 78 weeks. Then you either receive phase B or you are sacked. There is a policy of almost never giving phase B. Once you have worked for that period, then you are simply kicked out.

The firms' practices comply with the letter of the regulatory framework for the TWA sector. However, they do so in a way that undermines the intention of the collective labour agreement, which is to provide workers with a longer length of employment and more job security. In the sector examined here, the regulations are used in such a manner that Polish TWA workers almost never attain this more secure phase of employment. As a result, even though firms do not violate the rules enshrined in law, they do violate the expectations that unions had when they concluded the collective agreement. Recent industrial actions organised in 2013 by the Dutch FNV union and Dutch and Polish distribution workers against this form of insecurity show that the unions consider this a violation of the spirit if not the letter of the collective agreement, protesting that this was not in line with the client firms' proclaimed corporate socially responsible behaviour. Their actions forced the client firms to change their policies; the latter agreed to stop this practice of resetting the length of employment of the Polish workers they hire via TWAs and instead to accumulate the total length of employment in the future (see chapter 7 for more information on this).

4.5 Conclusion

The different sectoral and national regulatory structures that are in place inform firm strategies. More lax regulation in one sphere attracts firms seeking cost advantages that subsequently employ workers under that particular regime. Countries with less extensive social security systems, such as Cyprus, attract

letter-box posting companies that post workers all around Europe to save on indirect labour costs. Differences in industry arrangements makes employing scaffolders, for example, for wages set by the collective agreement for the metal sector in the Netherlands a lucrative option because these are lower than the wages set in the construction collective agreement. Firms also strategize in terms of the way they operate and structure their firm: for example, do they operate as TWA, a posting subcontractor firm or a posting TWA? For each type of firm, different regulations apply and provide the firm with different responsibilities towards their employees.

EU regulations on transnational employment relations are not yet well established and firms exploit existing legal uncertainties to their advantage. Firms often change appearances using shell companies when it seems strategic to do so. Many workers interviewed in this study were unsure about where their contractual employer was legally based, given that many of these firms have branches in several European countries. The fact that EU law leaves room for firms to move between and exploit different regulatory regimes without problems makes legal abuses difficult to detect for the controlling and enforcing authorities.

The categorization presented in this chapter captures firms' social dumping practices using examples that can clearly fit into one category or the other. In reality, of course, firms experiment and move fluidly between one strategy and another. Certain instances of regulatory arbitrage, such as the case of a Portuguese posted construction worker discussed earlier, seem to be legally sound. Others, such as the case of the Polish construction worker recruited in Poland but posted via a Portuguese TWA to the Netherlands, represent an abuse of the posting regulations according to trade unions. Since enforcement remains ineffective and since jurisprudence on posted workers' employment rights remains slim, firms continue to operate via these channels and within these grey zones, pushing the boundaries of the regulatory system.

In this chapter it is argued that due to its vagueness, the discursive use of the term 'social dumping' does not capture differing firm practices nor delineate the defining feature of social dumping: the norm-undermining and norm-violating tendency of this type of behaviour. The fact that firms involved in regulatory arbitrage operate in a legal grey zone where effective enforcement is lacking makes regulatory evasion hard to detect and control. As a result, firms experiment with cost-saving social dumping practices without having to take the risk of getting caught or punished. Furthermore, it creates a dynamic where the ability and willingness to violate norms becomes a competitive parameter. In cases where the national framework itself offers opportunities for cost-saving, as in the Dutch distribution sector, firms can engage in social dumping while still complying with national industrial relations frameworks.

The term 'social dumping' can thus be used to label different forms of firms' strategic engagement with regulatory frameworks undertaken to achieve costs savings. In this chapter, a taxonomy of firms' social dumping practices is proposed that encompasses regulatory compliance, regulatory evasion and regulatory arbitrage. The examples discussed in this chapter to illustrate the

three types of behaviour are not limited to these countries, sectors or firms, rather are widespread in Europe. The EU market-making agenda creates opportunities for firms to continuously push and often transgress the boundaries of regulatory systems because the profits are high and the risks of punishment remain low due to inefficient enforcement.

This chapter concludes the first part. The social and market context as discussed in these two chapters impacts the potential for individual and collective agency of migrant workers and trade unions, which is the focus in the second part of this thesis.

PART II: AGENCY OF LABOUR

5 STRATEGIC ACCEPTANCE AND MOBILITY: ON THE AGENCY OF UNORGANISED MIGRANT CONSTRUCTION WORKERS⁴⁰

5.1 Introduction

An increasing share of workers in the European Union is employed via subcontractors or TWAs and works across borders on contracts that are short-term, contingent and insecure (Cremers 2011; Favell 2008; Kalleberg 2009). Migrant workers tend to be over-represented in precarious forms of work and are likely to face conditions that undermine local labour standards (Wills *et al.* 2010; Cremers 2011). While studies have described how different forms of cross-border precarious employment are shaped by changes in regulations and employment practices (Anderson 2010; Kalleberg 2009; Krings *et al.* 2011; MacKenzie and Forde 2009), the discussion on the agency of migrants in these types of employment remains underdeveloped.

In industrial relations literature, agency has been conceptualised primarily as workers' ability to act within organised and collective forms of resistance, focusing on the ability of trade unions to represent migrant workers' interests (Penninx and Roosblad 2000). Studies have shown that migrant workers can be organised (cf. Fitzgerald and Hardy 2010; Milkman 2000), but these studies tend to focus on settling migrants. Many migrant workers, however, do not settle down in particular places, but continue to move between contracts, worksites and countries. This group of workers is relatively tolerant of substandard employment terms and reluctant to individually or collectively resist their employers (Greer *et al.* 2013). From a collective agency point of view these workers appear to be disempowered actors (Collyer 2012) who passively accept exploitative employment relations. This perspective overlooks the small-scale incremental and sometimes opposing ways in which these workers exercise their agency.

⁴⁰ This chapter is under review at an international peer reviewed journal in industrial relations.

This chapter is based on qualitative research with migrant construction workers, who are transnationally mobile and regularly work on precarious employment contracts. It shows that migrant construction workers are strategic actors who utilise their labour power through small-scale acts that shape their working lives and help them negotiate and navigate a flexible, transnational labour market. It is argued that the context of insecure, temporary cross-border employment relations restrains workers' interest in collective or individual resistance and that workers employ a wide range of strategies to 'get by' and enhance their individual and collective opportunities within the confines of existing employment structures.

This chapter contributes to industrial relations literature in two ways. First, the analysis proposes a refined understanding of agency that recognizes its multiple forms, intentions and effects (Carswell and De Neve 2013: 64). The view that workers exert agency in overt and collective ways via trade unions is extended by showing the small-scale and often invisible social and oppositional practices of unorganised migrant workers and their effects. Even though most of these acts only have micro-level impacts, they do create incremental and meaningful changes in the material lives and work experiences of these workers. Second, it contributes to an understanding of the resiliency of current employment relations, particularly for migrant workers. Other research on the impact of changing employment regulations in the EU for migrant employment and working conditions (cf. Anderson 2010; Cremers 2011) is complemented with an in-depth analysis of worker practices showing that the ways these workers exercise their agency in fact reinforce current precarious employment relations. As the common pragmatic response of these workers to substandard employment is to either accept these conditions or to move on to a better job opportunity, they avoid challenging the way cross-border employment is organised and instead contribute to the continuation of current labour relations.

5.2 From collective agency to a refined understanding of worker agency

Labour process studies have established that workers exercise agency in the workplace and cannot be perceived as plain commodities bought and sold in the market nor as passive resource in the labour process. Workers may reclaim a degree of autonomy at work through diverse acts of agency. Burawoy (1979) showed, for instance, that workplace games and routines that align workers' and management interests actively construct workers' consent to accept and reproduce relationships of production. Various studies with a focus on employee misbehaviour found agency in workers' struggles over working time, working effort, the product of work and work identities (Ackroyd and Thompson 1999; Hodson 1995; Thompson and Smith 2010). Within labour process studies, labour effort is considered the primary source of workers'

labour power. However, for an increasing share of workers that find employment in flexible work arrangements, mobility power forms an additional and important source of leverage (Smith 2006, 2010). An employer's mobility power consists of strategies to select, retain and reward workers. The mobility power of workers, on the other hand, is manifest in the time involved with network-building, the resources used to plan and explore job moves and the use of mobility threats to create strategic rewards (Smith 2006: 391).

In addition to workplace studies, industrial relations literature has conceptualised agency largely in its collective and organised forms. Union organising literature focuses on how changes in power relations at the workplace level can be achieved (Heery 2005; Bronfenbrenner 1998), whereas critical industrial relations literature links workplace struggles to inequalities cast by society at large (Elger 2001). Though some trade unions may have been reluctant in the past to represent migrant workers (Penninx and Roosblad 2000), studies have shown that immigrants, migrant workers with settling intentions and circular migrants do join trade unions when unions make strategic and resourceful efforts to include them (Pereira 2007; Skjaervø 2011; Eldring *et al.* 2012; Milkman 2000). However, an increasing share of migrant workers, especially in construction, does not settle down in certain places but continues to move between contracts, worksites and countries. This group only rarely joins local trade unions (Greer *et al.* 2013) and when they do, it is only for the limited duration of their job at a particular worksite (see also Chapter 6). A focus on collective forms of labour agency, however, suggests that unorganised workers do not exercise their agency in incremental and opposing ways and portrays them as rather passive recipients of unequal power relations instead. This overlooks the small-scale practices through which workers may (re)claim a position within precarious or oppressive employment structures.

Agency, or being an agent 'means to be capable of exerting some degree of control over the social relations in which one is enmeshed, which, in turn, implies the ability to transform these social relations to some degree' (Sewell 1992: 20). Agency is always agency *toward* something, the ways in which actors shape their relationships with surrounding persons, places, meanings and events (Emirbayer and Mische 1998: 973). To analyse the agency of migrant construction workers, this chapter draws, following studies in labour geography (Coe and Jordhus-Lier 2011; Carswell and De Neve 2013; Sportel 2013), on the disaggregated conceptualisation of agency developed by Katz (2004). Katz's theoretical approach analyses a wide variety of (small-scale) social practices and not only large-scale protests and manifest, organised acts of resistance. Katz considers social practices as creative strategies 'through which people live their everyday lives and shape opportunities and possibilities in the face of broader neo-liberal transformations' (Carswell and De Neve 2013: 64). Katz distinguishes between social practices 'whose primary effect is autonomous initiative, recuperation, or *resilience*; those that are attempts to *rework* oppressive and unequal circumstances; and those that are intended to *resist*, subvert, or disrupt these conditions of exploitation and oppression' (Katz

2004: 242). This refined conceptualization allows understanding agency and its multiple practices, objectives and effects.

Katz argues that not every autonomous social act should be considered as an instance of resistance, even when these practices by the individuals involved are intended to improve or ease their circumstances. To move from one country to another can be an act to resist oppressive structures in the home country (Coyle 2007), but for many migrant workers it is rather a conscious strategy to improve their lives (Datta *et al.* 2007). In the literature, agency often gets conflated with resistance. Resistance, or the 'intentional, and hence conscious, acts of defiance or opposition' (Seymour 2006: 305) by an individual or a group against a superior (group of) individual(s) is a specific form of agency. Resistance has been explored extensively in various contexts characterised by differential power relations and has been found in a variety of (oppositional) autonomous acts (cf. Scott 1985; Ong 1987; Carswell and De Neve 2013).

Other studies have focused on coping mechanisms, or in Katz's terminology *resilient strategies*, of migrant workers abroad (Datta *et al.* 2007; Andreotti 2006). Datta and colleagues noted that the acts of low-skilled migrant workers in London 'are often, although not always, reactive, fragmented and fragile' (Datta *et al.* 2007: 425) due to the barriers these workers face in hostile labour markets and societies abroad. As their ability to 'strategise' is limited, Datta *et al.* propose that workers' efforts are better understood as 'tactics' employed to cope with life abroad (Datta *et al.* 2007). Social networks may enhance (and restrain) migrants' agency. Social networks are for example important in facilitating moves across borders and once arrived in the host country, social ties are important for 'getting by' (Hagan 1998; Menjivar 2000; Ryan 2011). While abroad, migrant workers' ability to strategise may depend on their length of residence, language skills, nationality, class and gender (Datta *et al.* 2007: 409).

Katz's categorization adds strategies of reworking as an analytical category to understand another form of agency. Reworking strategies are 'accumulative' practices (Datta *et al.* 2007: 419) and although they materially improve an individual's position, they do so within the confines of existing social and power relations and do not (attempt to) change underlying power imbalances. Burawoy's game of 'making out' could be considered an act of reworking. Instead of focusing only on the intentions of specific acts (cf. Scott 1985: 290), Katz's classification captures both the intentions and the broader consequences of social practices. Social practices are driven by different degrees of consciousness of the social circumstances in which workers are embedded. Where acts of resilience build on a limited consciousness of the oppressive relations that shape agency, acts of reworking and especially of resistance stem from and (re)produce a more critical and oppositional consciousness of power imbalances (Katz 2004: 239-259; Carswell and De Neve 2013: 63). As social practices are constrained by the social relations in which actors are embedded and this context concurrently conditions the potential for agency (Emirbayer and Mische 1998: 1002), this chapter discusses, using Katz's categorisation, how the agency of migrant construction workers is shaped by and shapes the relations of employment.

This chapter presents the strategic decisions and strategies workers make and employ in facing a labour market regime characterised by short-term precarious contracts and high worker mobility. The next section outlines the research methods and data, followed by an overview of migrant employment in the construction sector. The subsequent sections discuss why these workers refrain from collective agency and show the various ways in which they exercise their agency.

5.3 Data and methods

This chapter is based on qualitative research conducted between 2011 and 2013 at large-scale construction sites in the Netherlands (average number of workers 2,000–2,500). On these sites, the majority of workers were non-Dutch and at least 10 different nationalities were present. In total, 39 workers were individually interviewed. Repeat interviews were sought but difficult to obtain due to the mobility of the workers. In addition, seven interviews with two workers and five group conversations with three to seven participants were conducted, which added another 32 informants. The workers were of Polish, Portuguese, Turkish, Dutch, Belgian and Irish nationality. The majority of the informants were Polish and Portuguese nationals, the main nationality groups on the construction sites. This material was complemented with newspaper articles and media clips and with data gathered through interviews with other actors in the field, such as union officials, the construction employers' association, a labour standards enforcement agent, a works councillor and three (project) managers from Dutch construction firms and TWAs. This was supplemented with (participant) observations of union strategies aimed at helping and representing migrant construction workers.

The main research method was qualitative open-ended interviews. The central focus in the interviews was the workers' lives as lived abroad, to understand how the workers acted and shaped their working lives in the Netherlands. The interviews were conversations in which the workers were loosely guided through pre-set themes. The depth and order of exploration of these themes depended on the amount and depth of information the worker wanted to share. Each first interview also contained a more structured part, to collect some general background characteristics of the worker (age, length of employment, educational background, etc.). The interviews were conducted in the temporary homes of the workers or in public spaces. Workers were interviewed face-to-face and, if possible, follow-ups done in person or via phone, Skype or email. The interviews were done in the native languages of the interviewees, in most cases with assistance of interpreters. Most interviews were recorded and transcribed verbatim afterwards. When permission was not granted to record, extensive notes were taken during the interview. This chapter uses pseudonyms to protect the identity of the informants. Computer-assisted qualitative data analysis software (CAQDAS) was used as a tool for

data organisation and analysis. All qualitative data was organised, coded and analysed through an open coding scheme and later recoded into more focused categories of labour power and worker strategies.

The nationalities, job functions and identities of the workers included in the research showed great variety. The informants worked as welders, pipefitters, mechanics, electricians, steel fixers, carpenters, scaffolders and cable pullers. Even though it is difficult to reduce all that variety into distinct categories, two broad groups of workers can be distinguished (see Table 5.1). There are the casual movers, usually under age 35, with little experience in construction, who are either undecided about their future career in construction, or hope either to perform these jobs for a couple of years before moving on to another profession or to have saved up enough to build a house or start up a company. Casual movers work on smaller- and larger-scale construction projects and may sometimes accept employment in other sectors. The largest group, 75 per cent of the sample, are professional movers, who have performed this type of work for years, sometimes decades, moving between different construction sites, employers and countries on a continuous basis and plan to continue doing so for the remainder of their professional careers. Professional movers generally work on construction or maintenance of mechanical engineering or infrastructural projects that are large in size.

Table 5.1 Characteristics of informants

		Casual mover	Professional mover	Total
<i>Nationality</i>	Belgian		1	1
	Dutch		6	6
	Irish	1	2	3
	Polish	15	15	30
	Portuguese	2	23	25
	Turkish		6	6
<i>Age</i>	25–35	14	10	24
	36–50	4	17	21
	51–65		25	25
	unknown		1	1
<i>Work experience abroad, in years</i>	0–4	12	6	18
	5–9	3	11	14
	10–40	1	33	33
	unknown	2	4	6
<i>Work experience in construction, in years</i>	0–4	8	1	9
	5–9	5	8	13
	10–40	3	41	42
	unknown	2	3	5
<i>Interview type</i>	individual	10	29	39
	group	8	24	32

The workers interviewed were either posted or TWA workers, or a combination ('posted TWA workers'). The contractual employment relationship of an individual worker was often unclear and therefore all informants in this chapter are referred to as simply *migrant workers*. The interviewee sample is not intended to be representative of the migrant construction workforce in the Netherlands. However, their experiences as described here are representative for a large share of the mobile migrant construction workforce as data was gathered until this point of saturation was achieved.

5.4 Migrant employment in the construction labour market

In most European countries, migrant workers form an important share of the construction workforce. Firms recruit migrants to solve local labour shortages and as strategy to reduce labour costs (Fellini *et al.* 2007). Labour-intensive business activities are subcontracted to competitive and/or specialized construction companies and TWAs and this increasingly takes place within a cross-border context (Bosch 2012). Contractors and TWAs often have subsidiary branches in multiple EU countries and recruit workers from areas where labour is abundant and send them wherever they are needed. Most workers are employed 'on an "as and when needed" basis' (Gall 2012: 413) and assigned on project-based contracts limited in length to the duration of a particular (sub)project. Except for some large companies that primarily manage whole building projects and source manual labour from other firms, construction tends to be dominated by small firms with limited fixed capital (Bosch 2012: 16). This combined with the temporary nature of construction work, discourages the development of stable employment relations and creates high labour turnover rates. Construction workers continuously move from one place to another for work and inter-company mobility is common. In this study, except for the Turkish workers, all informants were EU citizens and therefore able to freely move within the European territory.

Although employment relations are fluid, subcontractors and TWAs do (try to) establish longer-term relationships with contractors that hire their services. The workers, in turn, are often contracted or managed multiple times by specific companies during their careers: it is 'a rather narrow world of contractors', as one Polish worker phrased it. In the Netherlands, the TWA sector is the primary employer of most migrant workers. While their contractual employment relationship is with the TWA, which arranges administrative matters, their work is managed by a (sub)contractor. Migrants employed via TWAs form an important flexible labour pool that contractors can tap into whenever they need to, as a Dutch project manager explained:

Yes, their job is mainly manual, delivering manual labour and yes, you hire those at the moment you need them. When you don't need them [anymore] (...), you will decrease their numbers.

Construction employers commonly arrange non-employment aspects for workers that they bring in from geographically distant locations, including administrative formalities, housing and transport. This organisational context brings employers several advantages, as a project manager of a TWA explained:

To have 100 Polish workers at one place means all 100 will be present at 7 am. If someone oversleeps, his colleagues will wake him. And they will be present, all of them. They live only 15 kilometres away, so they come as a group and leave as a group. Logistically extremely easy. They don't have to leave half an hour earlier to get their kids from school, or to go to the hospital because the wife broke her ankle, because the wife isn't even there!

Workers thus move between worksites within a specific organisational context and this places them in a dependent position vis-à-vis their employer. They depend on their employer not only for their job, but also for their accommodation in the host society and local transportation. When workers lose their job, they also lose these side benefits (see also Chapter 3).

Work teams in construction are commonly aligned on the basis of nationality, allowing workers to communicate on the job in their native language. Foreign language skills are not a necessity and a basic understanding of English usually suffices. Due to the specific organisational context and language barriers, workers only sparsely interact with their local surroundings. Most workers will not tap into existing migrant networks in the host society because their period of stay is too limited for them to seek and establish such connections. This is in contrast to other types of migrants who do oftentimes find support in migrant enclaves and faith-based or community organisations (Datta *et al.* 2007; Ryan 2011).

The inflow of migrant workers in the Dutch construction industry has remained relatively small compared to neighbouring countries due to the industry's dense regulation and stringent qualification requirements to enter the sector (Krings *et al.* 2011: 461). In Germany, in contrast, the number of foreign workers has increased since the 1990s and a large share of migrant workers work under posted employment arrangements (Fellini *et al.* 2007). In the UK, migrant workers have entered since the 2004 EU enlargement and practices of subcontracting and bogus self-employment are widespread in construction (Krings *et al.* 2011; Forde *et al.* 2009). Since the 2000s, the Dutch construction sector has internationalised quickly (Bosse and Houwerzijl 2006) and although there is little reliable data, union officials indicate that on large-scale construction projects, the majority of workers, especially in the lower echelons of the contracting chains, now come from abroad.

Although few migrant workers are Dutch union members, their employment conditions on Dutch construction sites are regulated by the legally extended agreements for the construction or metal-electric sector. For migrants employed by Netherlands-based firms, the same conditions apply as for Dutch nationals. For posted workers, a nucleus of minimum regulations apply in relation to, among others, minimum rates of pay, minimum paid annual holidays and maximum working periods as established by the legally extended

sectoral agreements. In addition, there is a statutory minimum wage in the Netherlands; however, the sectoral wages in construction and metalworking are higher than this. The competent enforcement authorities of the collective agreement wages are the Dutch trade unions. Though the 'Laval quartet' judgements have limited the scope for trade union action in several countries, the Dutch industrial relations system with legally extended sectoral agreements still functions under the constraints of the 'Laval quartet' (Houwerzijl 2010).

However, on large construction sites, union officials estimate that around 75 per cent of the migrant workers are not paid in accordance with Dutch collective agreement wages. In addition, maximum working periods and minimum rest periods are regularly violated and social security payments are often circumvented. Still, only a small number of migrant workers come forward with claims of under-payment to the Dutch authorities. The relative acceptance among migrant workers of lower wages and worse conditions has been explained in the literature by migrants' 'dual frame of reference', where they compare employment terms abroad with job opportunities at home (Waldinger and Lichter 2003). As wage differences within Europe are still profound and workers can earn up to four times as much as in their home country, migrants oftentimes choose to accept substandard conditions.

5.5 The lack of collective, organised agency among mobile migrant workers

The distinctive temporary nature of employment, together with the specific organisational context in which these workers are embedded limits their interest in collective organisation and makes unionisation an unlikely option for the majority of them. In contrast to other groups of migrants, these workers have few opportunities to develop a workplace collective or collective consciousness, as they spend only short periods of time together and in the host society. Most workers mentioned that they believe it is not worthwhile to join a union in the Netherlands or attempt to change their local employment conditions, as their stay in the country and on a particular worksite is only temporary.

In addition, when trade unions try to enforce local labour standards for migrant workers, they oftentimes fail to protect workers from employer retaliation. As one trade union official shared:

What happens is that these workers often actually don't benefit when trade unions start compliance measures. Whatever we do as unions, they are the ones who are held responsible for it and get fired easily. They get kicked out, have no job anymore and oftentimes no accommodation, and find themselves, literally, standing in the streets without any protection.

Many workers feel that unions are not equipped to help them:

I learned here that though it is said that trade unions help workers, the reality is that we need to look after ourselves. (Marcelian, 50-year-old pipefitter, Polish)

If you go and start stirring things up over here, you would be off the project. (Liam, 42-year-old electrician, Irish)

Faced with these retaliation threats, most workers refrain from engaging with unions or public authorities at all, unless they face extremely exploitative conditions or when they fear no payment at all (see also Chapter 6).

No, I didn't think about it [going to the union] because it would have to be the whole team and not just a single person. As a single person you don't have any influence on the betterment of this whole situation. (Jarek, 26-year-old scaffolder, Polish)

Workers generally show little interest in standing up collectively to support their colleagues in claims against defaulting employers; since most are colleagues only for the duration of a project, there is little solidarity. Dawid, a 29-year-old Polish pipefitter, tried to upgrade the pay rates and accommodation facilities for himself and his colleagues with the help of the union and got fired in the process. Dawid's colleagues did not support him, even though he also stood up on their behalf. Union officials confirm solidarity among these workers is limited and that they have not found effective ways to protect individuals or small groups of workers from employer retaliation.

Even though workers may be conscious and critical of oppressive and exploitative firm practices, this usually does not translate into workers directly and overtly challenging these practices. Instead, workers may opt for more covert resisting acts, by reducing their working effort, for example. When workers knew, or had grounded suspicions, that their jobs would end in the near future, they were more inclined to reduce their work effort as a conscious act to undermine the profitability of the labour process.

5.6 Strategic acceptance of precarious employment conditions

Given the difficulties of collective agency, workers oftentimes opt to accept a certain level of precariousness in their employment conditions, mainly because these jobs yield higher earnings than at home and job opportunities are scarce.

I'm here only for the money, not to spend the money. I prefer to work on Saturdays because then I can earn some more money. What I do here on a day off? Nothing. When I go to Portugal, I have a good life, you know. Here, I prefer to just go working. (Antón, 37-year-old welder, Portuguese)

Where professional movers use their earnings to maintain a structurally higher standard of living at home, casual movers tend to use the money more often to

save up for the future. While abroad, all workers are eager to work and this eagerness makes them more willing to enter poorly regulated employment relations. Workers are often aware that employment terms may not be in accordance with host-country standards, but accept this when it provides opportunities to further their individual (monetary) interests. For example, by working more hours than is legally allowed, they increase their earnings. Moreover, working in a highly competitive job market may force workers to accept substandard conditions, as the alternative is no job at all. Even professional movers indicated that they sometimes sign employment contracts without having them translated to a language they can understand.

If I don't accept it, someone else will come. There have been jobs where I said no, and a lot of Portuguese guys said no. But then other guys came and said OK. (Davi, 27-year-old welder, Portuguese)

People are aware what they signed in for and if they don't like something, as I said: they are free to leave. It is a two-way street. (Wiesław, 39-year-old electrician, Polish)

Most workers are thus conscious of their precarious employment situation and either decide to accept it, or to strategically use the market to negotiate a better position.

5.7 Navigating a flexible, transnational job market

Though some workers might go abroad uninformed, most, in particular professional movers, try to make an informed and well-considered decision, however difficult that may be sometimes with firms changing names and residences regularly. Ways to secure the job situation abroad is by asking friends or checking the Internet for (blog) posts on the firm that they are considering.

This is not our first contract. We have learned how certain firms operate in different countries. We know that we have to check this, to avoid having problems later on. I have worked in different countries and in each country firms operate differently. (Marcelian, 50-year-old pipefitter, Polish)

Workers either move on an individual or group basis between work sites. Even when they come to a new job site alone, professional movers usually know colleagues from before, because many continuously circulate between construction sites in Europe. Social networks are an important source for finding and ensuring acceptable and well-paid employment. Over the years, professional movers have built up transnational networks formed on the basis of shared experiences of working in a particular country, sector or firm. The strength of these ties lies in their functionality and efficiency (Morokvasic 2004)

and the fact that these can be mobilised quickly when needed, facilitating easier moves and stays abroad.

In this type of work, after a year or two, we all end up in the same places. Like a family. One tells the other: let's go there. That's how it works. (Raymundo, 52-year-old welder, Portuguese)

Social networks support workers and make life abroad more liveable. Many workers appreciate being able to communicate in their own language with co-nationals when abroad. Construction contracts usually include a rotation system, in which periods of working abroad (of one to three months) are alternated with one or two weeks spent at home. At one of the construction sites, the Portuguese workers who returned from their week(s) at home brought along typical Portuguese food, such as sausages and fish, and together with their colleagues they would enjoy extensive barbeque lunches on Sundays. Other times, when workers experience problems abroad, they turn to their colleagues for help and assistance.

There is a company here, a Portuguese one, which owes money to people that worked here before. I'm now busy obtaining the report on the hours worked for a friend. I'm trying to obtain his time sheet, so that he can force that company in Portugal to pay. (Carlos, 59-year-old pipefitter, Portuguese)

Oftentimes, workers may prefer to work with companies they themselves or colleagues have worked with before. To ensure future employment, several professional movers mentioned that they always try to finish a contract with a particular employer and sometimes even ask for a letter of recommendation. Other workers, especially the casual movers, prefer to be employed close to their home country or somewhere where there are direct and cheap flight connections.

I'd prefer to go to the Netherlands or Germany as they are relatively close and I've been there a couple of times already, because, how to say it... I would feel more secure there. (Olek, 43-year-old steel fixer, Polish)

The choice where to work is primarily driven by monetary considerations and workers will change jobs when it makes economic sense to do so. When workers perceive terms of employment to be unacceptable, the common pragmatic response is to change jobs instead of trying to get an employer to change the conditions. Staying flexible and mobile is a way to cope with the precarious work arrangements.

I could always change the firm, that would be the fastest solution. Fighting it is useless, as nothing really can be done. So just search for a better offer in a different place. That is how it works. (Wieslaw, 39-year-old electrician, Polish)

I'm a mercenary. Today, I'm working for [firm name], tomorrow I'm working for ... more money. (Davi, 27-year-old welder, Portuguese)

The project-based employment contracts provide workers with limited job security as the end dates specified in the contracts are regularly and easily revoked or extended. The set-up of these contracts allows employers to manage their workforce in a very flexible and arbitrary manner. All workers know examples, from their own experience or from colleagues or friends, of being laid off on very short notice. Though this places workers in weak positions vis-à-vis their employer, the ambiguity and arbitrariness of the employment relations and contracts also undermines workers' loyalty to employers and allows them to flexibly and opportunistically manoeuvre the job market:

Everyone here is employed via TWAs. There are no obligations. The TWA has no obligations vis-à-vis us and we have no obligations vis-à-vis the TWA. (Grzegorz, 43-year-old scaffolder, Polish)

There is a constant mobility bargain (Smith 2006, 2010) between employers trying to retain labour till a project is finished and workers who are open to change jobs on short notice when a better-paying opportunity comes along. How to best move between jobs, sites and countries is something workers learn by doing as they acquire knowledge through experience. This has been called a '*savoir se mouvoir*' – a 'know-how-to-move' (Morokvasic 2004) and feeds into a worker's mobility power.

Well, before I thought that it does not matter how long you stay in one site: what you know at the beginning, you know at the end. Here, I see that that is different. I have been here only for two months and I see that I know much more than when I arrived. I am more aware of things. I see other people and learn from their experiences. I know now that I have rights. I know that I don't get paid as much as I should. I know that I deserve to work less and have more holidays. I think that being here in the end will help me to know better what to do next time that I get a contract. (Andrzej, 45-year-old pipefitter, Polish)

The negative as well as positive experiences gained through working abroad form workers' resources to make informed decisions on how to improve their material and immaterial position when changing jobs. Several of these practices do not stem from a critical consciousness of the employment system or a willingness to change this. Instead, these are autonomous initiatives to make life more liveable or acts of resilience that help workers sustain their lives while they are abroad and acts of reworking that help them deal with the difficulties they face and create strategic rewards for themselves.

5.8 Acts to redress power imbalances and increase workers' bargaining leverage

Workers' mobility strategies as well as acts to materially improve their position and bargaining leverage are acts that spring from a more critical consciousness

of the power imbalance, but do not attempt to change this imbalance as such. Such reworking acts are more marked among professional movers as they require knowledge and understanding of how the job market operates.

Some workers use their accumulated knowledge to redress some of the imbalances cast by the employment system. Grzegorz, for example, a Polish construction worker of 43 with three years of work experience in scaffolding in the Netherlands, had worked on different sites for different employers and gained basic knowledge of the Dutch regulatory system and institutional framework. When he broke his arm and his employer refused to pay sick benefits or refund him for his damages, Grzegorz decided to threaten his employer with informing the Dutch labour inspection about this. This made his employer pay sick benefits during Grzegorz' recovery time in Poland. The amount Grzegorz received was, however, less than he was legally entitled to. Still, when asked why he did not fight for the higher amount, Grzegorz replied: 'Because then I would not have a job anymore. And now I returned because I like the project.' Grzegorz thus individually challenged his employer while staying within the bounds of a poorly regulated employment relationship. He deliberately chose to solve his problem himself because he believed local unions could not support him in this. Instead, he weighed his options, knew his individual space for manoeuvre and the right local authorities to threaten his employer effectively with. Grzegorz did not agree with his employer's treatment of him, but acted in this manner because he thought it would provide him with the best opportunities.

Since individual workers lack bargaining power vis-à-vis employers, often workers prefer to move between jobs in a group. Lukasz, a Polish worker with work experience in Poland, Germany and the Netherlands, decided to take matters in his own hands and started forming a work team with colleagues:

Till now, it has been OK here, but I know this won't last for long now. So I've been busy building up a team. I have six people now.... We would still do the same work, but then work as one group. The atmosphere will be better, because we know each other well. (Lukasz, 28-year-old scaffolder, Polish)

The reason to form a team for Lukasz was to be able to work with acquaintances on the next site. Still, when Lukasz moves with this group of colleagues as a proper work team, he increases his bargaining power towards his future employer, as it will be more difficult to fire a group of workers than an individual worker. Moving between sites with a group as a work team is a way to reclaim power. These reworking acts by Grzegorz and Lukasz show an increased critical consciousness of the existing employment relations and are pragmatic responses to materially improve and increase their bargaining position, without actually changing or challenging the way employment is organised.

The fact that most mobile construction workers remain unorganised thus does not mean that they are not strategic actors. Instead, reworking acts, such as strategic moves between contracts, stem from a critical consciousness and

understanding of the power imbalances present in the labour relations and are workers' creative and innovative attempts to redress some of these imbalances to make their life more liveable and 'to create viable terrains of practice' (Katz 2004: 251).

5.9 Conclusion

In order to better understand the position and agency of mobile migrant construction workers within precarious cross-border employment relations, this chapter has drawn on the resistance, reworking and resilience framework as proposed by Katz (2004). This adds to industrial relations literature an understanding of work experiences and strategies of a group of workers that has remained under-researched, but that is growing in size. Drawing upon qualitative interview data, this chapter has shown that the precarious employment context restrains workers' interest in collective or individual resistance, but that workers employ a wide range of strategies to get by on a daily basis abroad (resilience) and to materially improve their position (reworking). These acts create incremental changes in the workers' experiences of work and opportunities abroad, albeit within the overarching precarious and often oppressive employment system.

While construction workers have always been mobile, the degree of flexibility and mobility in contracts is spreading to other sectors, such as trucking, production and logistics, and labour mobility in the EU is nowadays increasingly characterised by fluid, open-ended, non-linear moves (Düvell and Garapich 2011: 14; Favell 2008). Large shares of these temporary migrant workers remain, like the construction workers, unorganised. Traditional representational bodies, institutions and grievance procedures are not the ways these workers resolve disputes in the first instance, except when they face extreme conditions. Instead, they prefer to accept substandard conditions or exercise their mobility power to improve their situation. More research should be done to understand the effects 'workers can exert by using the labour market for dispute resolution' (Smith 2006: 393) and how this impacts the labour process.

By now, the problems that occur in different institutional contexts due to EU regulatory frameworks on cross-border labour and services and flexible, precarious forms of work are well documented. This analysis has broader significance in its ability to further understanding of the resiliency of the current EU labour regime. In addition to research on firm recruitment practices, regulatory change and trade union enforcement (*e.g.* Fellini *et al.* 2007; MacKenzie and Forde 2009; Cremers 2011; Wagner 2014; Eldring *et al.* 2012), this chapter analysed worker practices and shows that it is workers' (strategic) behaviour that intentionally and unintentionally contributes to the continuation of current oppressive employment relations. As shown, manoeuvring the job market as it is currently organised creates strategic rewards for many of these

workers. This complicates efforts to improve the working conditions for this group of workers, as they are reluctant to challenge the boundaries of the system. For regulators, enforcement authorities and trade unions this implies that if they want to protect these workers from the deteriorating effects of cross-border recruitment and market competition, they need to take a more proactive stance, as the initiative for change on a broader level is unlikely to come from the workers themselves.

6 HYPER-MOBILE MIGRANT WORKERS AND DUTCH TRADE UNION REPRESENTATION STRATEGIES AT THE EEMSHAVEN CONSTRUCTION SITES⁴¹

6.1 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 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 chapter looks at transnationally hyper-mobile construction workers at two large construction sites at the Eemshaven, in the Netherlands. The term hyper-mobile is used to refer to workers employed on short-term, project-based contracts, with limited job security and no connection to the society in which they work. These workers 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 organise and represent these workers (Cremers 2011; Wagner 2014; Dølvik and Visser 2009; Kilpatrick 2009), and that unions in many places need to develop new strategies given the diverse workforces they encounter (Connolly *et al.*

⁴¹ This chapter is co-authored with Nathan Lillie and forthcoming in *Economic and Industrial Democracy*: Berntsen, L. and N. Lillie (2014) Hyper-mobile migrant workers and Dutch trade union representation strategies at the Eemshaven construction sites. *Economic and Industrial Democracy*. doi: 10.1177/0143831X14537357.

2014; Eldring *et al.* 2012; Bengtsson 2013; Greer *et al.* 2013; Kahmann 2006). This chapter shows 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 chapter 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 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, it is known that on larger construction sites in different legal and industrial context, 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 unions⁴² 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.

⁴² The terms 'the unions' and 'FNV' are used to refer to *FNV Bouw* and *FNV Bondgenoten*, the two affiliates of the FNV confederation with active presence on the Eemshaven sites.

6.2 Methods

From 2011-2013 the development in migrant construction workers' perceptions of the host country unions during the course of ongoing efforts to recruit and represent them were examined. This 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. It included joining the union on housing visits, observations of information meetings and following the unions' activities and actions in person, in the media and through interviews. Workers of various nationalities were interviewed (Polish, Portuguese, Turkish, Dutch, Belgian, Italian, Slovakian and Irish). Interviewee statements were not taken at face value, but were critically analysed, for internal consistency, consistency with each other, including with the many interviews not cited, and consistency with media reports. In this way, a version of events is presented that is 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 organising and representation. At the construction sites of the Nuon gas-fuelled and the RWE coal-fired energy centrals 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 they are treated 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 organising and representation efforts learned from at home and abroad.

6.3 Hyper-mobile workers in the pan-European construction sector

Transnational hypermobility 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 characterised 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 TWAs. 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 TWAs 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 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 TWAs, 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 TWAs, 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 the workers is recruited in the home country and *posted* by an 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; Thornquist 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 per cent 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. In this study intra-EU posted workers working for construction subcontractors and others sent by TWAs were encountered. There were also locally hired migrant TWA workers. There were self-employed migrant workers, some of whom worked under circumstances suggesting a dependant 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 this study and from the union estimates, the majority of workers on the Eemshaven sites were foreign workers posted by subcontractors or TWAs. 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, and their effect in contexts where there is no legal extension of collective agreements. Woolfson and colleagues note that the 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 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 of wage and

employment conditions in the market for all workers employed in the Netherlands, the enforcement of these conditions is very difficult, as shown 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 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 protections and there is a large pool of would-be 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 busses, and workers had limited contact with their host environment.

While in some ways, migrant construction workers are similar to other forms of vulnerable migrants, the high mobility inherent in the way their labour market is constituted and the project-based employment contracts constructs their interests differently. They perceive the whole of Europe as their labour market, and their interactions with particular work contexts and national union organisations 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 several trade unions in Europe have adopted organising 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 organising 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). However, 'hermetically sealed' is only a slight exaggeration of the situation of hyper-mobile workers at Eemshaven and similar large-scale construction/engineering projects, as keeping the foreign workforce separated from local workers and institutions appears to be common practice in the sector (Fitzgerald 2011).

6.4 The Dutch unions' approach to the Eemshaven sites

The unions at the Eemshaven sites deployed organising 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 organised with good social relations and constructive dialogue. Overall trade union density was 20 per cent in 2011, though in construction it was higher with 31 per cent (CBS 2012). Since Dutch unions do not need a certain membership rate to be recognized as bargaining agents, incentives for organising 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 organising 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 organising campaign in the cleaning sector is a well-known success (Connolly *et al.* 2011), which inspired and informed certain aspects of the unions' approach at the Eemshaven. The unions also borrowed elements of an earlier campaign '*FNV Opdebouwplaats*' (at the construction site), involving regularly hosting on-site 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. pay slips 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

organising tactics to contact workers and win their trust, it was not an organising drive.

The Eemshaven campaign was funded as a regular project, rather than an organising 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 2.000 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.

6.4.1 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 who is already employed at a workplace. The problem at the Eemshaven was that the main contractors and the majority of subcontractors and TWAs 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 TWAs, 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 mobilisation at the Lindsey oil refinery, see Gall 2012). The few Dutch members that were present only worked there for short periods and the ones that 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.

6.4.2 Leafleting

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 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, leafleting did not by itself serve to interest any workers in approaching the union.

6.4.3 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.

6.4.4 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 hours and seek help, which they did not. At the work site, 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 to be 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 TWA)

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.

6.5 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 into following 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 organising 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.

6.5.1 Media coverage

The Eemshaven sites received a good deal attention in the press for bad labour relations. While the small contractors and TWAs 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 work site and in 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).

6.5.2 Mobilisation

Despite their reluctance to protest and their relative tolerance of poor conditions, the Eemshaven workers did mobilise around specific issues, particularly when the situation reached an extreme level, such that 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 mobilisation. There was for example a spontaneous strike action by several Dutch and foreign workers when 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 management of the accommodation site resolved the issue quickly. In another case, when a Polish worker, who worked for a Turkish firm, fell of 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 send back to Poland.

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

6.5.3 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 Irem⁴³ and French Ponticelli. These contractors in turn engaged TWAs to supply workers. The unions found out that workers employed by different TWAs 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, a Portuguese pipefitter earned 10,10 and a Polish pipefitter only 9,54 euro 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?⁴⁴

After half a year of stalling, Fabricom decided to stop working with the TWAs 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 sent away.

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 TWA that was sent away)

6.5.4 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 moment, 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

⁴³ Also known for its involvement in the Lindsey oil refinery dispute.

⁴⁴ FNV press release (24-02-2012)
<http://www.fnv.nl/pers/perskamer/persberichten/120224FNVsignaleertopenlijkediscriminatieopdebouwplaatsEemshaven/>

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 fired for exactly that, reflected negatively on the unions, and profiled the unions as weak in representing migrant worker interests.

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

One year into the Eemshaven campaign, the unions organised a successful large-scale mobilisation 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 on-site 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 also was 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 they would 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 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.

6.5.6 Assessing the unions' tactics

The unions found that the workers' mobility and 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 TWA)

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 backpay; 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 TWA)

Once workers came forward with labour violations, enforcing the collective agreements through leverage tactics on management not always sufficed 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 often 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 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 explained:

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 organise these people. (FNV official 1)

The union therefore had, in effect, to use leverage tactics in order to win what they already had in the law and collective agreement. As is often the case, subcontractors and TWAs 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) TWA 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 a TWA.

Although the unions had mixed successes in representing the hyper-mobile workers, the active union presence on the Eemshaven sites did lead to a changed attitude to employment relations of some companies. A Dutch TWA 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 Dutch TWA). 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.

6.6 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. 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 hypermobility 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 of the FNV's pro-active 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, make 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 ways to represent them through a self-sustaining approach. 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.

While in this chapter I highlighted the difficulties Dutch unions experience in enforcing collective agreement conditions for migrant workers and in representing this group of workers, the next chapter discusses a case where the union managed to engage migrants in collective action.

7 STEPPING UP TO STRIKE: A UNION MOBILISATION CASE STUDY OF POLISH MIGRANT WORKERS IN THE NETHERLANDS⁴⁵

7.1 Introduction

As a result of European integration, persistent wage differences within the EU and the increase in flexible and precarious forms of employment, a considerable share of the workforce in western European countries consists of temporary migrant workers. Many of these workers are in low-paid, insecure jobs in sectors with weak or non-existent union presence (Wills *et al.* 2010; Milkman 2006; Alberti *et al.* 2013). Working segregated from native workers, they are often subject to less favourable employment conditions than their native counterparts. Still, the share of migrant workers holding union membership remains low due to short job tenures at particular workplaces, unfamiliarity with local institutional structures and collective actors, language barriers and the fear of being dismissed for union activities (Schmidt 2006; see also the previous chapter). Unions have had successes representing, organising and including immigrants in their ranks (cf. Milkman 2006; Fitzgerald and Hardy 2010; Eldring *et al.* 2012; Connolly *et al.* 2011), but the increasing share of flexible workers from abroad, who have neither the intention nor the possibility (yet) of settling in the country or job where they work, remains a group that trade unions regularly fail to reach.

Against this background, this chapter discusses the case of a union mobilisation of Polish migrants working on TWA contracts in Dutch supermarket distribution centres (hereafter 'DCs'). In this sector the share of TWA workers increased in some workplaces to 50 per cent over the last ten years. These workers are often considered difficult to organise due to their precarious contractual status, a type of zero-hours contract that provides no job

⁴⁵ This article is forthcoming in *Transfer*: Berntsen, L. (2015) Stepping up to strike: A union mobilization case study of Polish migrant workers in the Netherlands. *Transfer* 2015-4. doi: 10.1177/1024258914567427.

security. The mobilisation discussed here consists of a small protest action by Polish workers that later developed into a collective strike action by Polish and Dutch⁴⁶ workers and is embedded within a union organising campaign in the distribution sector. The case shows the possibilities and limitations for unions to organise within contractually fragmented workforces through building solidarities within and between these groups. Especially challenging in this regard is establishing common interests between contractually different groups and finding ways to represent differential interests within existing union structures.

Where many studies on migrant organising focus on union efforts to frame collective issues, this chapter adds a micro-level account of the dynamics of mobilising, from the point of view of the experiences of migrants and organisers involved (Alberti 2014: 5). Even though mobilising efforts cannot be directly transposed to other institutional contexts, as they are always tailored to specific characteristics of a group of workers, the national and sectoral context (Keune 2013; Gumbrell-McCormick 2011; Krings 2009), this case has relevance as an example of a migrant mobilisation within fragmented workplaces. As such, this case study provides insights into the factors that may facilitate and limit the mobilisation process and contributes to the extension of the theoretical and empirical literature (Snow and Trom 2002) on organising migrants (Milkman 2006; Alberti *et al.* 2013) and contingent workers (Jenkins 2013; Simms and Dean 2014). More specifically, it shows the importance of key actors in building up solidarities within a group and between contractually different groups of workers. The case discussed here is of particular relevance as the share of (migrant) workers temporarily employed in precarious conditions continues to rise and work patterns and workforces become increasingly fragmented (Kalleberg 2009). This has wider implications for unions seeking new responses to changes in employment practices to represent the interests of workers that otherwise tend to remain outside established union structures.

7.2 Mobilising temporary migrant workers

Trade unions have responded in a variety of ways to the presence of insecure, temporary migrant workers (Penninx and Roosblad 2000; Eldring *et al.* 2012; Milkman 2006; Heery 2009; Gumbrell-McCormick 2011; Keune 2013). Heery (2009) distinguishes four different trade union approaches to contingent workers, ranging from exclusion to acceptance in a subordinate position, acceptance on the basis of equal treatment with workers in permanent employment and acceptance through 'engagement' (Heery 2009: 430). The latter

⁴⁶ Many workers with a (former) immigrant background, such as Turks and Moroccans, work in the DCs on the same conditions as native Dutch workers. Although this group is thus quite diverse, for the sake of simplicity I refer to all of them in the remainder of this chapter as 'Dutch workers' (many have Dutch nationality) or as 'direct employees'.

approach entails union policies or initiatives to represent the specific and differentiated needs of contingent workers. Similar union responses have been identified with regards to migrant labour (Penninx and Roosblad 2000). When trade unions represent migrant interests, they may do so on an inclusive basis of equal treatment or through a 'particularistic' approach (Alberti *et al.* 2013: 4139). Particularistic approaches are similar to Heery's engagement responses, only particularistic responses address the differentiated interests of migrants. Examples of the latter are the establishment of special union branches for migrant or contingent workers (Greer *et al.* 2013; James and Karmowska 2012; Simms and Dean 2014). Studies show that by adjusting organising efforts to match the interests and life worlds of non-organised contingent and/or migrant workers, unions are more effective in engaging them in union activities (Jenkins 2013; Alberti *et al.* 2013; Milkman 2006). In the case discussed here, the union first approached the Polish TWA workers in a worker-centred and flexible manner, to engage with their interests and guide them into collective action. After this, the union approach became more inclusive when Polish and Dutch workers went on a joint strike.

Contingent workers generally have, due to the short-term nature of their employment contracts, low commitment to a particular workplace. Therefore, unions have scaled up interest representation of this group beyond the workplace level by moving from enterprise unionism to industrial and occupational unionism (Milkman 2006; Heery 2009; Simms and Dean 2014; Benassi and Dorigatti 2014). In the cleaning sector, in different national contexts, organising drives succeeded in building up solidarity among predominantly (im)migrant workers on subcontracted and TWA contracts to fight for improved employment conditions (Milkman 2006; Connolly *et al.* 2011). Not only have unions extended the scale of organising, some have additionally extended the scope of organising via coalition-building with community organisations, social movements, etc., and by campaigning for non-work related issues such as human rights, for instance (Milkman 2006; Alberti *et al.* 2013; Holgate 2011). The mobilisation discussed here was embedded in a sector-wide organising campaign in the Dutch supermarket distribution sector, and to engage Polish workers in union activities, the union considered and addressed non-workplace issues too.

An obstacle to unionisation in workplaces with a contractually fragmented workforce is that divergent terms and conditions of employment create differences in interests between contingent and non-contingent workers. This complicates building up solidarities, especially when workers perform similar jobs in a particular workplace. Leadership and appeals to solidarity from the union side are frequently important to convince members and union officials of the need to include contingent workers (MacKenzie 2010; Gumbrell-McCormick 2011; Simms and Dean 2014). Additionally, workplace leaders are often essential as well in setting a mobilisation process in motion (see Milkman and Wong 2000; Simms and Dean 2014), and for shaping peoples' definitions of interests and promoting a generally felt sense of injustice (see Fantasia 1988; Batstone *et al.* 1978).

The case discussed in this article provides insights into a mobilisation process of migrant TWA workers. It is argued that building up solidarities within this group as well as between this and another group was important for the mobilisation to develop (see also the mobilisation analysis of contingent workers by Simms and Dean (2014)). Kelly (1998) distinguishes different processes involved in workers' mobilisation. An important element is a collective sense of injustice: workers need to perceive their interests as collective and as opposed to the interest of a specific actor, usually management. When workers frame problems as an injustice, it detaches (groups of) workers from loyalty to their employer, creating opportunities for collective action (Kelly 1998: 29; Blyton and Jenkins 2012).⁴⁷ The process of social identification and collective interest formation is central to solidarity-building. Solidarity is something that is 'created *and* expressed by the process of mutual association' (Fantasia 1988: 11, emphasis in original), and thus not something that simply exists (Simms and Dean 2014: 3). Solidarity-building is enhanced when workers share a commonality of experience, for instance when they perform a similar job, share a common social position, or live in the same geographical area (Blyton and Jenkins 2012: 27). A shared experience of marginalisation at work may also enhance feelings of solidarity among migrants (Milkman 2006). Though solidarity-building within groups is important, workers may also form alliances with other groups in their fight against management (Simms and Dean 2014: 4). In this chapter's case, solidarity was first built up among a group of Polish TWA workers and this was later extended between Polish and Dutch workers. Furthermore, alliances were formed with distribution workers from other supermarket chains.

7.3 Research methods

This article is based on qualitative research conducted between 2012 and 2013. The main data originates from interviews with workers, union officials and management at three different DCs of the two largest Dutch supermarket chains. This article focuses on the mobilisation of Polish workers from one of the DCs of the largest Dutch supermarket chain by trade union FNV Bondgenoten⁴⁸.

Most of the workers subject to this study were accommodated by their employer on a bungalow park and some had arranged private housing. Contact with the workers was made after their first mobilisation effort, a protest action in January 2013, during a victory celebration in the beginning of February. In March, Polish and Dutch workers went on strike and several workers involved were interviewed about these collective efforts. Most conversations were

⁴⁷ Or in Marx's terms: convert a class-in-itself to a class-for-itself (Kelly 1998: 29).

⁴⁸ In the remainder of this article I refer to FNV Bondgenoten as 'FNV' or 'the union'.

conducted in Polish with the assistance of a translator and some in English or Dutch. In this article, pseudonyms are used to protect the identity of the workers. This material was supplemented with union interviews as well as media documentation from, among others, a website where the union reported campaign activities. The data was coded and analysed thematically using qualitative data analysis software.

7.4 Dutch industrial relations

The Netherlands is considered a corporatist model of industrial relations, with a strong tradition of social partnership. Dutch trade unions have a firm institutional position, even though the organisational degree is around 20 per cent. Collective agreement coverage on the other hand is high, at around 85 per cent, due to the practice of legal extension of collective agreements. In general, strike activity is low. If strikes occur, it is usually when a collective agreement has expired and efforts to negotiate a new one have failed (Visser 1998: 276).⁴⁹ This was also the case with the strike discussed here.

The main trade union confederation is the social democratic Dutch Federation of Trade Unions (FNV, *Federatie Nederlandse Vakbeweging*) with almost 1.4 million members. FNV Bondgenoten, a multi-industrial union, is its largest affiliate.⁵⁰ Dutch trade unionism is known for its servicing character, but initiatives to organise have increased over the last decade. FNV Bondgenoten has, for instance, completed successful campaigns organising (immigrant) cleaners (Connolly *et al.* 2011). Union representation has, however, traditionally been weak at the workplace level. Union policy is to include and organise temporary and immigrant workers, especially in the low-wage service sectors (Kloosterboer 2007; Boonstra *et al.* 2010). The idea is that actively organising solidarity between different groups of workers on the basis of shared interest avoids the undermining of union power (Kloosterboer 2007: 27).

In sectors where union presence is weak, firms' use of flexible labour expanded during the 2000s (Boonstra *et al.* 2010). Though Dutch union policy is to regulate temporary employment by collective agreements and law, unions see collective agreements increasingly 'turned into instruments of flexibilisation instead of reduction of flexibility' (Keune 2013: 71). Especially the TWA branch, which is the primary employer of Eastern European migrant workers in the Netherlands (Gijsberts and Lubbers 2013), has experienced an increase in law-

⁴⁹ In the Netherlands, industrial action is considered legal unless ruled otherwise by a court. Industrial action, however, should only be used as a last resort (*ultima ratio*). The peace obligation applies in the Netherlands, meaning that actions may not aim to change a collective agreement that is in force. Also strike actions need to be in reasonable proportion to the demands and should not disproportionately encroach on the rights of others (Warneck 2007: 52–53).

⁵⁰ The Christian Union Federation (CNV, *Christelijk Nationaal Vakverbond*) is the second-largest union in the Netherlands.

evading TWAs that offer workers lower pay, long working hours and poor working conditions.

7.5 The regulation and organisation of Polish TWA workers in the supermarket distribution centres

The share of flexible employment in the Dutch supermarket DCs increased from 20 per cent in 2004/2005 to around 50 per cent in 2013 (FNV 2013b). From the 5,000 workers employed at the DCs of the largest Dutch supermarket, around 2,200 are TWA workers and 1,000 work on temporary (part-time) contracts. More than two-thirds of the TWA workers are Polish (FNV 2013a, 2013b). In the past ten years, according to a shop steward, no (or hardly any) new permanent workers were hired, while the percentage of flexible workers increased steadily (interview February 2013). According to the union, 'TWA and temporary employment are used by [these] companies ... to exert downward pressure on Dutch wage and security standards' (FNV 2013b: 21).

The DCs work with 'in-house' services of TWAs, where the TWA supplies and manages the flexible workforce for a period of one or two years. Every one or two years, the supermarket selects one or more TWAs through a bidding procedure to supply the flexible workforce. Not all Polish workers find employment in the Netherlands; many are recruited via subsidiary branches of the TWAs in Poland and then sent to work in the Netherlands. Some work on a 'posted' basis when they have a formal contract with the Polish subsidiary branch; others are employed on Dutch-based TWA contracts.

TWA workers work in the DCs as order pickers, whereas direct (Dutch) employees perform a variety of tasks as warehouse workers. As order pickers, the job is solely to retrieve products from the warehouse, a standardized and individualized job. Order pickers wear a headset that informs them which products to retrieve. This system is available in Polish. Some of the workers jokingly refer to the female Polish voice in their headset as 'Kasia'⁵¹. Not only is there a division of labour between the TWA and direct workforce at the DCs, the Polish workers also spent their breaks in separate canteens, limiting the interactions between the different groups of workers to a minimum. This may be an employer strategy to divide and rule, separating the workforce deliberately to keep them from developing common interests.

The TWA sector is regulated by a sectoral collective agreement with a periodical system, ranging from phase A to C.⁵² Polish workers tend to remain employed in phase A, the most precarious, for many years, because employers use a clause in the collective agreement to continuously reset the length of employment. The collective agreement specifies that phase A may last 78 weeks

⁵¹ Kasia is a common Polish female first name.

⁵² The consequences of the implementation of the EU directive on TWA work in the Netherlands in 2011 were minor, as Dutch legislation was already largely in conformity with the directive.

maximum, unless a worker does not work for a client firm for 26 weeks, in which case the length of employment resets. When Polish workers have reached the maximum number of weeks in phase A, employers send them away for half a year until they can be rehired on another phase A contract. Phase A contracts provide no guarantee on the number of working hours per week, are of short duration and can be dissolved easily, whereas in phase B employment security increases. Some Polish workers circulate between different supermarket DCs when they have reached the maximum period, others claim three months' unemployment benefit in the Netherlands during the 'reset period' and try to get through the other three months on their savings or by finding a short-term job. The trade union dubbed this practice the 'Pole-carousel', as it keeps the Polish working under the most precarious terms and conditions.

The precarious nature of the employment conditions of phase A TWA workers complicates union efforts to represent this particular group:

It is challenging, let me put it like that. It is a very difficult group, because they have no protection at all. Normally, people have their contracts, even if these are temporary, to protect them from being fired like that. These people can be let go every day. That makes our work more challenging. (interview union organiser, June 2013)

I think the unions are only for people with permanent contracts. They have more rights and these are written down in their contracts. We also have contracts, but these are contracts with which they [the employer] can dump us at any moment in time. So no, I don't think the unions can do much for TWA workers. (Tomek, January 2013)

The majority of Polish workers in the Netherlands work via TWAs (Gijsberts and Lubbers 2013) on phase A contracts, making this a problem not unique to the distribution sector but general to all places where migrants find TWA employment.

Many of the Polish DC workers are indecisive about their length of stay in the Netherlands. The FNV estimates that around one-third of them will stay in the Netherlands on a more permanent basis, one-third will return to Poland in the near future and one-third are undecided and could choose either option. In organising them, the union aims to focus on the first and latter categories of workers (interviews union officials, 2013). On a more general level, Engbersen and colleagues (2011) estimate that amongst contemporary migrants from Poland, Bulgaria and Romania, almost 80 per cent reside in the Netherlands on a more or less temporary basis.⁵³

⁵³ Engbersen *et al.* (2011) estimate that 23 per cent is circular or seasonal, 13 per cent transnational, 41 per cent footloose and 22 per cent settlement migration.

7.6 The campaign in the distribution centres: A short overview

The organising campaign in the DCs (2009–2013) targeted the two largest supermarkets. It campaigned against the increased flexibility of employment contracts and for more respect for workers. Though the union intended to include Polish workers in the organising drive, they experienced little interest among Polish workers to join; they appeared not to trust the union and feared employer retaliation and dismissal. In 2010, the union tried to reach out to this group by focusing on non-work-related issues and forced a TWA to improve the substandard conditions at one of the accommodation sites for Polish workers, but without further engaging Polish workers in the campaign. The remainder of the campaign then focused on building up stronger shop-floor collectives among the Dutch workforce. Through several smaller-scale, workplace-level actions ('issue-fights') during the period 2010–2012, the FNV built up worker strength. Issue-fights were petitions or small actions to change work pressure, payment problems, respect issues, etc. The idea was to reach different groups of workers, such as the Polish workers, by having a well-organised core (interviews union officials 2012).

In 2013, during the negotiations for a new company collective agreement between the largest Dutch supermarket and the unions FNV and CNV, the FNV campaign entered a different phase. In January, a group of Polish TWA workers from one of the DCs protested together with the FNV in front their workplace for better work and living conditions. In February, the collective bargaining negotiations hit an impasse.⁵⁴ In March, Dutch and Polish workers went on strike for more employment security and against subcontracting, work pressure and the 'Pole-carousel'. The strike took place a few weeks before Easter, during one of the peak times for supermarkets. All workers who went on strike were, or had become, union members and received compensation from the union's strike fund. After one week of striking, the negotiations were back on and a new agreement was concluded. The results were a four-year extension of the severance pay for the Dutch workers, a stop to the Pole-carousel and the opportunity for 200 TWA workers to receive direct employment contracts at the supermarket.⁵⁵ Also, the TWA promised to solve all the problems that the Polish workers faced.

⁵⁴ The CNV accepted the supermarket's final offer that the FNV rejected. The collective actions that followed only involved FNV members.

⁵⁵ The agreement stipulated that the time an TWA worker works in a supermarket DC would from then on be accumulated, making a reset period superfluous. After working one year in phase A, the TWA would have to provide a worker a phase B TWA contract. The downside implication of these new regulations may be that Polish workers will only be employed for one year, after which they become more expensive and will no longer be contracted. Polish strikers were also eligible for direct contracts with the supermarket if they met certain criteria. The direct contracts offered were fixed-term contracts of one year, with no guarantee of extension.

The next two sections analyse in more detail the mobilisation process of the Polish TWA workers, paying specific attention to the process of solidarity-building within and between groups and the role of leadership.

7.7 A small protest action to build within-group solidarity

The mobilisation process commenced with Polish workers discussing among themselves the problems they faced related to incorrect payslips and payments. When they addressed these problems at the TWA office, many encountered a Polish representative who they felt treated them unfairly and disrespectfully. When they were unable to solve these issues with the TWA themselves, they approached one of their Polish colleagues who they knew was a union member. They told him about their problems, that many other Polish workers faced the same issues, and that it was not the first time such problems had occurred.

A few people came to me knowing that I belong to the trade union. They informed me that the TWA is cheating Poles in terms of payment. It was about 3 or 4 weeks ago. Then I called [name union organiser] and he told me that they could organise a meeting. (Tadek, February 2013)

Tadek, the Polish union member, was an important informal leader in bringing the mobilisation attempt forward. He had connections with the shop steward network at the DC and they helped approach the union. Tadek had been a union member when he worked and lived in Poland and joined the Dutch union in 2010. When his colleagues approached him, Tadek contacted the union organiser he knew from when he signed up and they organised a meeting at the bungalow park (where the Polish workers lived) to talk about the grievances. Around 60 Polish workers attended this first meeting. Some were actively persuading other workers to attend this meeting, saying it might help change their situation as well. Tomasz, a worker with a fair knowledge of English, was one of the people persuading others to join the meeting and later became an important go-between for the union and the workers because of his English language skills.

When the union came into the picture, the formation of collective interest and solidarity-building had already started. For the union organisers, the fact that they were approached by Polish workers themselves was unexpected, because their insecure contractual status had prevented most from joining union activities in the past.

At this DC there was an acute problem and that's why so many came to the first meeting. That is actually very special, that doesn't happen often. Normally, you first need to talk with people, go on home visits and talk with them about the union, what they can do, and try to get the workers 'action prone' by inviting them to a meeting when there are some problems. That is how we try to build a group normally. (interview union organiser, June 2013)

Although the workers may have had different motivations for joining the collective actions, the commonality of experience from living on the same bungalow park, sharing accommodations and facilities, and suffering from marginalisation at work with repeated payment irregularities created feelings of solidarity and convinced them to stand up as a group:

No, I didn't have problems, but I supported them. You have to be in a group, it's the basics abroad. If everyone'd isolate himself, then everyone could be destroyed. (Bartosz, February 2012)

While migrants in comparable situations often fear being associated with a union and may prefer reaching out to a lower-profile organisation such as a community initiative (Wagner 2015), the workers in this case contacted the union because they believed a union could protect them from being fired for their activities:

We could solve it ourselves, but people wouldn't have this protection ... and they [the TWA] could 'thank us for our work', because we cause them problems. The union gave some sort of security that they couldn't kick us out just like that. (Tomasz, March 2013)

During the first meeting, the union framed the grievances together with the workers into concrete points of action. The issues were related to pay, deductions and incorrect corrections that were made, and to the TWA representatives' and supervisors' attitude and treatment of Polish workers. Non-work issues related to accommodation facilities and costs were also included. The initial intention was to solve the issues through dialogue with the TWA and supermarket:

Nobody thought about action, nobody talked about action in the first meeting. We only spoke about problems in the first meeting.... After a couple of days somebody spoke about protest, I think. But I don't remember how. [Laughs.] (Tomasz, March 2013)

When the workers and union officials felt the dialogue would not solve the issues, they decided to protest in front of the workplace:

The next step was the organisation of the action, as a form of protest. We decided to do it at 11.30h, it is our unpaid break for food. The people who were working went outside and also some others who were not working came from the bungalow park. (Tadek, February 2013)

At this protest action, around 20 to 30 Polish workers stood outside the workplace, accompanied by some Dutch shop stewards showing their support. Not everyone that attended the bungalow park meeting joined the action. For several workers, this job formed their only source of income in Poland and they were too afraid to lose their jobs over it. The protest action received media attention, and a week after the protest action management of both the TWA and the supermarket promised to solve all the issues the workers had raised. Two

months later, the TWA's efforts to implement changes appeared to be limited and the Polish workers went on strike together with their Dutch colleagues.

Protesting together built up solidarity within the group of migrant workers and introduced the ones that had no previous union experience with Dutch unionism and the possibilities of collective action. Polish workplace leaders, such as Tadek and Tomasz, were key to constructing solidarity within the group and to establishing and maintaining contact with union organisers. Additionally, Dutch shop stewards not only supported the Polish, but also explained to their Dutch colleagues the importance of supporting the Polish workers and pressed matters forward with the union (interviews shop stewards February and November 2013). In the time leading up to the protest, the union considered the interests of the migrants and involved them in determining the pace of collective action, and thus took a particularistic approach (Alberti *et al.* 2013). This changed to a more inclusive response in the following phase, when the Polish joined their fight against the TWA with the their Dutch colleagues' fight for a better collective agreement.

7.8 Between group solidarity and a united strike action

Two months after the protest action, the Polish TWA workers and Dutch employees went on strike against rising insecurity and work pressure and for a wage increase. Though the objectives for joining the strike activity differed between the TWA and direct employees, the union mobilised both groups on the basis of their shared interest to improve the insecure employment position of DC workers. The direct employees campaigned against the supermarket for a better collective agreement and a stop to the increasing use of flexible labour. The Polish workers, on the other hand, mobilised again because of the continuing problems they experienced with the TWA. Most Polish workers blamed the TWA for this, not the supermarket. Despite union efforts to convince them of the need to address the supermarket as well in order to achieve more structural changes in their conditions, the majority maintained a loyal attitude towards the supermarket. That the Polish decided to join their fight against the TWA with their colleagues' fight against the supermarket was out of solidarity considerations and because it would strengthen their message. An additional motivation was the possibility of gaining a direct position at the supermarket with more employment security and better working conditions.

We [Polish workers] also wanted their [the Dutch workers'] help. We helped them and they helped us. We had our goals, they had their goals. Since we are in one trade union, we need to support each other. (Tadek, March 2013)

We did it for everyone.... Someone could say that I fought only for myself, but really everyone got something from it, so not only people from [this DC] but the whole company. (Tomasz, March 2013)

By uniting both groups of workers in industrial action the collective negotiations moved forward, as it allowed the FNV to send out a united message of solidarity towards to supermarket, the TWA and the media. Although the strike officially targeted both the TWA and the supermarket, the supermarket was the one that was more prominently addressed by the union as well as in the media.

During the strike, Polish leadership was again important. When new activities were planned, the union called Tomasz, a worker with English language skills, to spread the word among his Polish colleagues who lived like him at the bungalow park. Tadek and other Polish workers went to several DCs during the strike activities to talk with Polish workers about what they were fighting for and try to persuade them to join:

I was a supporter, I was some sort of person who helped and supported to explain to Poles more directly what we are fighting for exactly. As DC worker, I knew what's going on so I could explain it more clearly to them. Of course, Pole to Pole, we have a better communication than a Dutch person who says something. (Tadek, May 2013)

During the strike, the union established solidarity links beyond the company level to strengthen the strike message. Distribution workers from the second-largest supermarket, who were also included in the broader FNV organising campaign, put out a statement expressing their solidarity, saying that similar issues were at stake at their workplaces. Also, American supermarket employees employed by the same mother company in the United States showed their support via short video messages on the Internet. After striking for one week, the bargaining negotiations continued and a new agreement was concluded that put a stop to the Pole-carousel. It also included direct contracts with the supermarket for Polish TWA workers and for Dutch workers, among other things, an extension of severance pay. In addition, the TWA agreed to handle the problems Polish workers faced promptly. The joint collective action was possible because of the solidarity created between the two groups of workers.

7.9 Shared and conflicting interests

The Dutch and Polish workers mobilised to jointly fight for a more secure position of DC workers in general. However, reflecting back on the mobilisation, some Polish workers expressed doubts about their own participation in the strike. They were afraid the union had used them as leverage to bring back the use of flexible labour, which is more in the interests of Dutch workers than theirs. For Polish workers that have the intention of settling in the Netherlands and are able to move into more stable and rewarding employment at the TWA or supermarket, the newly concluded collective agreement may work to their favour. The workers that landed a direct contract with the supermarket

received a fixed-term contract for one year. A shop steward uttered concerns that these contracts might not be extended after that year and that the more secure employment position would thus only be short-lived (interview November 2013). For workers who intend to work in temporary jobs for some years, who according to union estimates may comprise 30 to 65 per cent of the workers, the changed regulations may limit their possibilities. With the new collective agreement, the time someone can be employed at the supermarket with an insecure phase A TWA contract has been set to a maximum of one year. Chances are that TWAs will only hire workers for a maximum of one year to avoid having to offer more secure (and expensive) employment conditions.

Within the group of Polish migrants there thus exist different interests and expectations with regards to (temporary) employment in the Netherlands. Also, not all Dutch union members were in favour of 'their union' supporting the interests of the Polish. A shop steward mentioned that after the strike, some members resigned from the FNV and instead joined the other union CNV, because the CNV had not participated in the strike (interview November 2013). Dealing with differential interests and opinions within the existing membership base is a general challenge unions face. It is, as one union official called it, the 'burden of democracy' (interview October 2013). This challenge, however, becomes more complicated when unions seek to represent the interests of workers with increasingly diverse employment relations.

7.10 Conclusion

In the case discussed here, the Dutch union engaged Polish migrants in union activities via a flexible and worker-centred approach, allowing the pace of mobilisation to be driven by the workers themselves. This corroborates findings from the UK context, where Alberti and colleagues found that union approaches that consider the specific situation and interests of migrant workers are more likely to actively engage them in union activities (Alberti *et al.* 2013). The initial build-up of within-group solidarity through a small protest action was also essential for the Polish workers to step up and strike together with their Dutch colleagues. Through exploring the mobilisation process from the point of view of the experiences of migrants and union organisers involved, this chapter shows, in line with Fantasia (1988) and Simms and Dean (2014), the importance of key actors for building within-group solidarity and solidarity between different groups of workers. To the literature on migrant organising this adds insights on solidarity-building processes among fragmented workforces. The example discussed here shows the possibilities, but also highlights some of the difficulties and limits to jointly mobilising a fragmented workforce. Especially challenging for unions in this regard is establishing shared interests among workers employed on very different terms and conditions while still finding ways to represent the differentiated interests of migrants within existing union structures.

How unions can represent both established (core-membership) interests and the interests of more mobile workers is a fundamental question unions need to deal with, as workforces and workplaces are becoming increasingly fragmented and transient. In this case through a worker-centred approach, through key actors that helped build up solidarity and access union structures, and through effective framing during the mobilisation process, the union was able to find commonalities of interest between a contractually fragmented workforce. However, it remains to be seen whether Dutch unions will be able to include migrants and their interests in union structures on a more permanent level to make union representation more accessible for this group of workers and improve their position on the Dutch labour market more structurally.

8 CONCLUSION

8.1 Introduction

In this concluding chapter I use a moral economy lens to tie the themes of the different chapters of this thesis together. Moral economy is 'a conceptual scaffold that views economies as socially, politically *and* economically embedded systems, fuelled by norms and values' (Bolton *et al.* 2012: 121, emphasis in original). Moral economy rejects economic reductionism and emphasizes that employment is both an economic and social relationship (Bolton *et al.* 2012: 122; Sayer 2007). It is a framework to analyse the effects of macro-level societal and economic changes on experiences at the micro-level (Bailey *et al.* 2011) and provides the opportunity to examine contemporary lived experiences of work (Bolton and Laaser 2013: 509). This chapter highlights some critical concerns on the workings of an increasingly liberalized and deregulated European labour market, its inherent tendency to treat migrant labour as a disposable commodity, and the responses of governments, trade unions and workers to this. At the end of this chapter I draw theoretical and practical implications from this study and provide some suggestions for further research.

8.2 A moral economy approach

The concept of moral economy has its roots in historical and anthropological accounts of pre-market societies in which the economy is considered embedded and enmeshed in social relations and institutions. Such economies are often contrasted with market economies, where economic transactions are disembedded from the social sphere and where labour, land and money are commodified (Polanyi 2001 [1944]). In orthodox economics, market and society are generally assumed to operate as separate spheres: a 'sociologically thin notion of market economy' (Gemici 2008: 25). Moral economy moves beyond this dichotomist view by understanding social relations and moral sentiments

as constituting markets, economic actions, decisions and shaping working lives (Bolton and Laaser 2013: 513). It is a substantivist, holistic approach to understanding economic life and the mutually constitutive relations between different actors and institutions (Gemici 2008; Peck 2013). Moral economy is a methodological approach that I use to understand the social construction and dynamics of migrant employment and labour relations in the Netherlands and contemporary Europe.

Though a market logic prescribes market expansion for profit accumulation, markets are also underpinned by a social, political and moral sphere that works to protect society from the corrosive effects of markets (Polanyi 2001 [1944]). According to Polanyi, this results in a constant struggle between advocates of market expansion towards a disembedded economy and counter-movements by government, unions and workers who aim to restrain market forces and 'insist on the prevalence of moral and social obligations' (Bolton and Laaser 2013: 513).

Polanyi conceived of counter-movements as operating primarily at the collective level (states, trade unions, social movements), but within and between counter-movements, internal differences and motivations may also exist that trigger specific and various responses (Chin and Mittelman 1997: 30). In his analysis of British food riots in the eighteenth century, Thompson (1971) showed the importance of working-class traditions for class formation. He showed that it was the perceived violations of customary and community social norms and values by industrialists that motivated people to protest (Thompson 1971; Bolton *et al.* 2012). Thompson thus emphasized the 'agentic capacity of people' (Bolton and Laaser 2013: 513) and drew attention to the importance of moral values and norms of a given group at a given moment in time (Fassin 2005: 365). However, collective action, or resistance, is not always openly declared and may also take individual forms. James Scott (1976) in explaining Malay peasants' resistance (and the lack thereof) showed that peasants were primarily concerned with ensuring a basic income, resulting in a 'subsistence ethic'. This explained peasants' risk-averse behaviour and the various forms of 'everyday compliance' and 'everyday resistance' they practiced. The small-scale, undeclared forms of resistance ranged, among others, from 'foot dragging, squatting and gossip to the development of dissident subcultures' (Chin and Mittelman 1997: 31). Moreover, when examining the social concerns that motivate people to collective action it becomes apparent that the demands of subordinate groups of workers are often restorative and defensive in nature rather than revolutionary (Posusney 1993; Chen 2003): collective action is often 'a response to violations of norms and standards to which the subaltern class has become accustomed and which it expects the dominant elites to maintain' (Posusney 1993: 85). This explains why people may be more inclined to restore (substandard) conditions to which they feel they are entitled than to challenge the system as such on a broader scale.

While power imbalances and flexible employment relations may constrain individual and collective agency, the market context at the same time provides opportunities for people to advance their own interests, or to 'flourish' (Sayer

2000, 2007). For migrants, the European labour market provides opportunities for as well as constraints to improving their livelihoods. Though people may pursue different and often contradictory goals in life, the conceptual framework of moral economy captures 'the practical and instrumental responses of people to given situations, not only as a community (...), but also as individuals' (Bolton and Laaser 2013: 516). This can further understanding of current dynamics in the European labour market, of potential conflicts between different groups in the workplace and society and highlight the day-to-day dilemmas people may encounter.

In the following, I discuss the tendencies of firm recruitment practices towards commodification of migrants, the social and moral commitments of migrant workers and the responses of unions and the Dutch government to migrants and the market.

8.3 Commodified workers in a pan-European labour market

Migrant workers in the EU are embedded in a labour market governed by host- and home-country regulations as well as EU legislation. Firms make strategic use of the loopholes and legal opacities in existing frameworks on intra-EU mobility to reduce labour costs by recruiting foreign labour (Cremers 2011; Lillie *et al.* 2014; Wagner 2014; Lillie and Greer 2007; Houwerzijl 2014). Firms' regulatory engagement strategies are often, as Chapter 4 shows, norm-undermining or norm-violating, exerting downward pressures on collective labour standards. It is the absence of effective enforcement that enables firms to experiment with cost-saving employment practices without having to risk getting caught or punished. The EU market-making agenda creates opportunities for firms to continuously push, and in some cases transgress, the boundaries of the rule of law and decent employment conditions, as the profits are high and the risks of punishment low. This creates a market dynamic where it becomes common for migrant workers to face varying degrees of substandard employment conditions and for firms to systematically undermine regulations (Lillie 2012). Not only does this affect the migrants involved, it also affects other groups on the labour market. Labour standards in industries where migrants find employment are pushed down, exerting pressure on the employment conditions of migrants and native workers alike (Van Hoek and Houwerzijl 2011; Lillie 2012). In the Dutch transport sector, for instance, some Dutch truck drivers have been confronted with accepting payroll employment via Cyprus, which is usually offered by their employer as an alternative to dismissal in order to remain competitive in a market increasingly dominated by cheaper migrant truckers (Cremers 2014).

Recruitment of cheap migrant workers from elsewhere has become common and even a competitive parameter in certain sectors (Lillie 2012). The organisation of migrant employment, with combined work and accommodation arrangements, creates dependencies. This employer-arranged migration context

leads not only to institutional isolation of migrants, as they often have limited knowledge of local regulations and institutional structures, but also segregates them spatially and socially from their host surroundings because of the way they are brought in and accommodated by their employers, as Chapter 3 shows. Migrants often work in co-national work teams under a co-national supervisor who functions as a go-between the migrants and management of the contractual and client firm.

Flexible, casual and insecure employment conditions are common for many workers nowadays. This leads, according to Standing (2011), to the rise of a new precarious class. Firms that use subcontracted and TWA labour tend to conceptualise employment relations in a 'thin' rather than 'thick' manner (Bolton and Houlihan 2007: 2; Sayer 2007). Employment is regarded 'as just a "contract" for meeting economic interests' (Meardi 2012: 3), preferably reducing workers' actions and concerns at work to just those that are functional for achieving the (profit) goals of the employer (Sayer 2007: 29). With TWA and subcontracted labour, firms are no longer concerned with investing in these workers, limiting commitments between workers and contractual and client firms.

The migrant recruitment process and the 'thin' employment relations show that migrant labour is treated as a 'fictitious' commodity (Polanyi 2001 [1944]). Employers prefer hard-working, non-demanding workers who follow management instruction and work long and flexible hours as and when the firm requires it (MacKenzie and Forde 2009: 150). The very language of recruiters reflects this commodification aspect is reflected:

When you recruit Polish labourers from Poland, you eh... order them per four or six.... That's because they fit with either four or six in a car.
(Interview supermarket manager, November 2012)

The way firms manage their migrant workforce, regularly employing them under substandard conditions, laying them off on short notice and providing little or no job security, reflects that EU migrant workers are viewed primarily as cheap labour. Labour turnover rates are sometimes kept deliberately high, to keep workers from becoming too demanding, or too 'British' in MacKenzie and Forde's study in the UK (2009). This segments migrant labour markets into various layers, depending on migrant status and employers' conceptions of 'good workers', creating complex (informal) hierarchies between direct and subcontracted/TWA workers, as well as among and within different groups of migrant workers (Hopkins 2011; MacKenzie and Forde 2009). In the UK, and especially the London labour market, this has led to the emergence of new migrant divisions of labour (Wills *et al.* 2010; McDowell *et al.* 2007).

The perception of migrants as being hard working employees 'becomes a form of entrapment which normalizes the culture of long working hours and allows employers to legitimize the intensification of work' (Ciupijus 2011: 546). When such perceptions remain uncontested by migrants, who tend to conform to employers' expectations in order to ensure their job and income abroad, this

maintains and reproduces migrants as a commodified and cheap labour source. Although the commodified employment context tends to disempower migrants, at the same time it enables them to live better lives than they would if they opted not to participate in this European market context.

8.4 (Conflicting) moral and social commitments

The undeniable benefits workers generate through working abroad may create certain moral dilemmas. One worker, working on an oil refinery, wrote me:

I have some mixed feelings. Because this platform is to drill the Arctic. There were protests against this by Greenpeace, against drilling in the Arctic as it would lead to environmental destruction. But I have to choose a family for which I have to work. (Email Polish construction worker, June 2014)

While migrants may be instrumentally motivated to accept a job abroad, this sometimes requires them to set aside some of their moral conventions to fulfil other social commitments, especially when the alternative is no job or a job with much lower earnings.⁵⁶ When migrants work in substandard employment, many may not agree with the conditions and circumstances of work. Most of the workers I interviewed indicated that they know (or feel) they should earn more and be treated equally with other workers, without, however, exhibiting a willingness to fight for this. Unless workers feel there is no alternative, for instance when they fear non-payment, most will accept conditions they would under other circumstances reject. Through this behaviour, it seems that the majority of migrants passively accept substandard conditions of work, because overt resistance or unionisation hardly takes place. A micro-level perspective considering the motivations and considerations of these workers, however, reveals that they try to improve their employment position through small acts that do not challenge the way current employment relations are set up, as I show in Chapter 5. These small acts are important for workers to 'get by' and 'get ahead' in a competitive labour market and make a living for themselves and their families. Even though the way employment relations are organised shapes migrants into 'ideal workers', this context also provides workers opportunities to better themselves (Sayer 2007). Given the employment and market conditions, workers make strategic economically and socially informed decisions as to what degree of substandard conditions to accept or, the alternative in most cases, to look for another job opportunity elsewhere. The

⁵⁶ Such dilemmas are not, however, exclusive to migrants, as other workers may also experience conflicting moral and social commitments with the work they do. However, migrants often have families back home that are dependent on them (many are sole breadwinners), making having a job to provide for their family a primary livelihood concern, and having a 'good' job that is in line with moral conventions secondary to that.

insecure and short-term employment relations also afford workers the freedom to quickly change employment. This allows them to create strategic rewards for themselves and others, for instance the family they support. For instance, the earnings on the oil platform provide the above-mentioned worker with the ability to work some months abroad and spend the remainder of the year with his family in Poland.

Though many migrants from EU countries reside in the Netherlands on a temporary basis, some may settle down and stay for longer periods (Engbersen *et al.* 2011). Their attitude towards work and what is acceptable in terms of treatment may change. The automatic assumption of management that Polish workers, in contrast to Dutch workers, always accept requests for overtime, since they want to work as many hours as possible, is something that bothers some migrants. One Polish worker told me that this became especially annoying when his supervisors did not accept his rejection to work overtime:

That is such an inhumane treatment. I mean, we are humans too, and we too have a private life. There might be Poles that come here just to quickly earn money and leave quickly after that. But I am different. I live here. As I told you, I have a family here. I don't come home to an empty house... I do have someone with whom I can spend my free time. I just wish they would treat everyone [Dutch and Polish] the same. (Interview Polish TWA worker, January 2013)

The treatment of workers as disposable commodities, appreciated only for their labour power, may conflict with migrants' intentions and social commitments after a while. Where migrants in the beginning of their jobs may be more accepting of substandard conditions, as time progresses their needs and desires change, and migrants may want to be treated as more than just workers. While for a while, migrant instrumental intentions and employer expectations may coincide, this is an unequal balance that is not sustainable in the longer term.

In some cases, as Chapters 6 and 7 show, workers no longer accept their treatment and choose to resist their conditions of employment. While Foucault argued that where there is power, there is resistance (Foucault 1979 in Sayer 2007: 26), this does not explain why workers do or (as happens most of the time) do not resist. A moral economy lens can shed light on the social relations of individuals and groups and their resulting motivations for (non)resistance (Scott 1976; Thompson 1971; Posusney 1993). Workers in the engineering construction sector, as Chapters 5 and 6 show, are less liable to engage in collective action, because there is little time to establish a shop floor collective due to the short-term nature of their employment and insecure contracts and because they often work in small teams, which creates few possibilities to build collective power. Moreover, since most workers consider the potential effectiveness of collective action to be slim, they prefer to reclaim power through small, hidden acts of reworking (Katz 2004) that improve their individual position on the labour market, as I show in Chapter 5.

When migrants do act openly and collectively, their claims are often restorative in nature, reclaiming their entitlements and not necessarily

motivated by a desire to change employment conditions or their employment status more structurally. The migrants in the case discussed in Chapter 7 were not fed up with being treated as substandard workers, working very flexible hours for minimum wages, but with not being treated and remunerated as such workers. They were motivated into collective action because they continuously faced problems with payments, deductions and living conditions and felt they were not taken seriously in their claims by the TWA office staff. Acting collectively made them visible as TWA workers, and not just as workers, but as workers who have social considerations, social relations and families that matter to them:

And finally they saw us and noticed that we are workers and that we fight for our rights. And that we aren't only workers for work, but that we also have our families, that we also wanna look after them, that we'd also like to live here and support the Netherlands somehow, even via paying taxes. I think this way we received some understanding and finally they saw it.
(Interview Polish TWA worker, May 2013)

The complex employment relationship between migrants and their employers, together with the dependency inherent in employers' control over several non-work aspects of migrants' lives, creates conflicting commitments when workers protest. One of the Polish workers in the case discussed in Chapter 7 joined the strike activities, while at the same time continued working.⁵⁷ He explained to me that he did not need the strike fee from the union, as he was capable of both continuing to work and participating in the strike activities. This worker was caught between his commitment to his job and his loyalty to the supermarket on the one hand, and on the other hand his anger at the treatment by the TWA and his loyalty to his striking colleagues. Even though contracts and the resulting employment relations with employers may be short-term, migrants may still feel certain obligations and loyalty to their work and employer, especially when their job is essential for sustaining themselves and their relatives. For this reason, trade unions experience more difficulties convincing workers to start strike activities than in engaging them in symbolic protest (see also Posusney 1993: 89).

8.5 Trade unions and counter-movements

While Polanyi emphasized the central role of the state in constraining expanding market forces, trade unions are important actors in countering market expansion as well. Through social regulation, trade unions may protect workers and society from unrestrained market competition (Tapia *et al.* 2014). In this section I discuss some union practices to protect migrants from the

⁵⁷ He joined the strike activities during the day and worked at night during the night shift.

erosive tendencies of the European market project and from employer fragmentation strategies and attempts to counter, rebalance and restructure the market towards societal and migrant needs.

In the Netherlands, trade unions have established a social partnership tradition and employment regulations are generally the product of collaboration between the state, capital and labour. Dutch trade union policy is to regulate temporary employment conditions via collective agreements and law (Boonstra *et al.* 2010). Still, the use of flexible labour in the Netherlands has increased the last decades, especially in sectors with weak union presence (Boonstra *et al.* 2010). Trade unions have become less powerful in restraining the expansion of flexible labour, as they see their collective agreements increasingly 'turned into instruments of flexibilisation instead of reduction of flexibility' (Keune 2013: 71). This undermines the effectiveness of collective agreements and union power, as concluding legally extended collective agreements forms one of the major sources of bargaining strength of Dutch unions. While unions may sometimes conclude agreements with firms on the use of a certain level of flexible labour, unions have not always enforced these agreements, thus indirectly allowing firms to increase their flexible workforce.⁵⁸ The case in Chapter 7 shows how a provision in the supermarket agreement that was supposed to provide TWA workers more job security after a year, was instead used by firms to keep TWA workers in insecure employment. Though the social parties have established dense regulation, for instance in the Dutch construction sector, regulations have become so complicated, especially in cross-border situations, that it is difficult for firms, workers and enforcement authorities to find out exactly which conditions (should) apply to a specific employment relation, opening the door for systematic non-compliance by firms recruiting labour from abroad.

The deregulation trend, the increased cross-border recruitment and the spread of precarious work tend to favour the bargaining position of employers over trade unions. The fierce competition and fluidity in the pan-European labour market, with firms often disappearing across borders or going bankrupt, complicate union enforcement efforts of local labour standards. In addition, representing subcontracted and TWA workers entails practical difficulties, especially in addressing the 'real employer' (Wills 2009). The 'real employer' is the client firm at the top of the contracting chain, that is, the firm able to change the terms and conditions of subcontracted and TWA employment further down the chain on a more structural level. Targeting TWAs or subcontractors lower down the chain is not as effective, as they can simply be replaced (Wills 2009). The union in the supermarket distribution campaign (see Chapter 7) primarily targeted the supermarket to change the rules of the game, but encountered difficulties convincing the migrant workers to concur with this, as most of them

⁵⁸ The FNV started legal proceedings when a firm in the supermarket distribution sector violated their union agreement on the percentage use of flexible workers. The court, however, reasoned that since the trade union had not enforced this aspect of the agreement, it indirectly allowed the firm to increase the share of flexible workers in their workforce (Interview trade union officials, June 2013).

perceived the supermarket to be a 'good employer' and the TWA to be the bad one. In the construction cases, as discussed in Chapter 6, the union targeted the main developers or main contractors on the sites to change conditions further down in the chain, appealing in the media to their corporate social responsibility. The union was able to do so without the active involvement of migrant workers. Figure 8.1 shows how a media article addresses main developer Essent for the underpayment of Polish metalworkers employed by one of their subcontractors.⁵⁹



Figure 8.1 Polish workers Essent-central underpaid: metalworkers receive 20 per cent less than Dutch colleagues', source: De Volkskrant, 11 May 2012

In the face of market deregulation and the expansion of precarious work, some trade unions have started to act more as social counter-movements to mobilise people in workplaces and society to fight for social change (Tapia *et al.* 2014). Influential campaigns with high-profile media, include the living wage campaign and the justice for cleaners campaign in the UK and the *sans papier* movement in France (Tapia *et al.* 2014; Wills 2004). In these campaigns, unions sought successful collaboration with civil and community organisations to expand the scope of organising beyond the workplace level to include issues related to migration and human rights (Simms and Dean 2014; Alberti 2014). Trade unions in the Netherlands have commenced exploring these routes as well (for example through collaborations with community and faith organisations in the cleaners strikes; see Connolly *et al.* 2011), but have not been involved in a counter-movement fighting for social change in society at large. Still, expansions of the scope of organising are present in union approaches towards migrants. In the construction sector, the union approached migrants outside their work environment to established contact and build up trust. The union also tried to organise migrants initially on non-work related issues. In the supermarket distribution sector, an important aspect of the campaign was to make the invisible, voiceless migrant workforce in the distribution sector visible and heard (see figure 8.2). While many of the workers' demands were related to material issues, they also campaigned for more respect, a demand that the cleaners also expressed during their strike activities (Heuts 2011).

⁵⁹ For the full article (in Dutch) see Appendix IIa.



Figure 8.2 Picture from a protest action by Polish TWA workers. The text reads: 'Never invisible again' and in the back 'Respect for hard working people'. Picture from distribution campaign. Source: www.distributiewerkers.nl

Trade unions experience difficulties in finding a common basis to organise increasingly fragmented workforces. For migrant workers, precarious contractual status and migration-related issues form real barriers to union engagement (Alberti 2014; McKay 2008). As Chapters 5 and 6 show, the temporary and insecure nature of migrants' jobs in construction makes them more committed to keeping their jobs than to fighting for a possible chance to change their terms of employment. Though unions have had successes in representing and organising migrant workers at a local level, coordinated approaches that overarch local, regional or national contexts are often lacking (Fine and Holgate 2014). Moreover, engaging migrants on a more permanent level in trade union membership remains complicated because of their temporary and insecure employment position. This is a dilemma for trade unions, as it forces them to represent workers that become temporary paying members at best. Some trade unions try to organise them nevertheless, because migrants have become a structural part of the labour market. By trying to counter the fragmentation of workforces, trade unions hope to achieve a more socially balanced and sustainable society (Tapia *et al.* 2014: 20).

On the European level, trade unions have campaigned against the detrimental effects of the Posting of Workers Directive. The fact that posted workers are entitled to only limited guarantees of wage and employment conditions from the host country creates wage competition that exerts downward pressure on local wage and employment standards (Houwerzijl 2013; Van Hoek and Houwerzijl 2011). Unions have campaigned against

widespread violations of migrant and posted workers' labour rights at the EU level.⁶⁰ Unions for example demanded an amendment of the PWD, but the EU parliament instead adopted an enforcement directive to improve the enforcement of the PWD. General sentiment, especially among unions, is that this enforcement directive will have little effect on improving the labour conditions of migrants in Europe. The main reason is that the posting regulations are wrongfully applied to systematically employ under posting regulations workers who are not posted workers in a legal sense. In my fieldwork I encountered very few migrant workers that actually had a continuous employment relation with the firm in the country from which they were posted. For the majority of workers, who are not posted workers in a legal sense, the enforcement directive offers no possibilities for improvement.⁶¹

8.6 State as constraining force

With the creation of the European Union, the regulation of certain policy domains has moved from the national to the European level. The European Union, with its internal market-making agenda (Geddes 2008), emphasizes the importance of 'promoting labour mobility, both domestic and migrant, for addressing labour and skills shortages and rendering the EU workforce more adaptable to change' (Council of the European Union 2012: 2). This EU market logic has conflicted with certain national industrial practices. European Court of Justice rulings (the 'Laval quartet'⁶²), for instance, prevent nation states and trade unions from taking measures that impinge on freedom of movement within the EU (Woolfson and Sommers 2006; Dølvik and Visser 2009). While the Laval quartet case law had limited impact on the Dutch regulatory and industrial relations context (Houwerzijl 2010), the growth of posted and other types of temporary workers sometimes presented as posted workers, whose labour rights are regularly violated, has impacted sectors of the Dutch labour market substantively.

So much migration puts Europe's dykes in danger of bursting

The PM plans to renegotiate the basic tenets of the EU. He may find more support in surprising quarters, including the Dutch liberal left

Figure 8.3 Goodhart and Asscher in *The Independent*, 18 August 2013

⁶⁰ On 23 January 2013, the European construction, transport and agricultural unions (EFBWW, ETF and EFFAT) launched the campaign to 'Stop social dumping', which demanded better monitoring and enforcement to stop widespread exploitation of migrant workers.

⁶¹ This was one of the outcomes of an expert workshop on transnational migrant and posted workers in Germany and the Netherlands organised by Ines Wagner and me at the WSI/Hans Böckler Stiftung in Düsseldorf, 2 April 2014.

⁶² See footnote 9 on the Laval quartet and footnote 10 on the impact of this case law on the Netherlands.

The current government has addressed fighting unfair competition and unequal treatment of migrant workers.⁶³ In August 2013 the Minister of Social Affairs and Employment, Lodewijk Asscher, issued an 'orange alert'⁶⁴ in a Dutch and UK newspaper about the negative impacts of the free movement of workers in the EU (see Figure 8.3 for the item in the UK newspaper).⁶⁵ According to Asscher, the increased labour migration following the European enlargements has had disruptive effects especially for those in lower-skilled jobs, where workers compete with Eastern Europeans with lower wage expectations. To fight the abuses migrant workers often face, the Minister proposes increased cooperation between the different EU countries: 'There is a lack of urgency in Brussels on this question, which is why we strongly urge our European colleagues to put the downsides of the free movement of workers high on the agenda and tackle this issue together' (Goodhart and Asscher 2013; Asscher and Goodhart 2013). Cross-border collaboration between enforcement authorities is considered important as 'no country can fight cross-border malpractices alone' (Asscher 2014). Some suggest that the Netherlands should lobby for changes on this matter during its EU presidency in 2016 (Van Dalen 2014). The Minister proposes that the principle of equal treatment should also apply to posted workers to level the playing field and avoid unfair competition between posted workers and other workers on the Dutch labour market (Asscher 2014). While the reasoning behind the Posting of Workers Directive was that posted workers do not access the local labour market, as their presence lasts only for the duration of their posting, research on the ground shows that posting regulations are misused systematically and do create competition on wage levels in local labour markets (Van Hoek and Houwerzijl 2013; Lillie 2012; Wagner 2014).

These developments may lead national governments to adopt changed regulations to increase compliance with local labour standards. While in the Netherlands a client firm can be held liable for the payment of statutory minimum wage by a TWA in the Netherlands, there are no liability arrangements with regards to collective agreement wages. A law against bogus-employment (*wet aanpak schijnconstructies*) that includes a provision for chain liability for collective agreement wages is currently in preparation (Ministry of Social Affairs and Employment 2014). Trade unions are hopeful this will provide them with an extra tool in enforcing collective agreements (Interview trade union official, June 2013).

These are some attempts by the Dutch government to reregulate the market within the constraints set out by the European Union. However, as has become clear from this thesis, fundamental problems exist due to different

⁶³ In April 2013 an action plan against bogus employment constructions (*'Actieplan bestrijden van schijnconstructies'*) was launched by the government (Tweede Kamer van de Staten Generaal, bijlage bij kamerstuk vergaderjaar 2012-2013, 17050 nr 428).

⁶⁴ An 'orange alert' is generally issued in the Netherlands when the country's rivers have risen to alarming levels. Here the Minister uses it to warn about against negative consequences of free movement within the EU.

⁶⁵ See Appendix IIb for the full article.

regulatory channels in Europe, lack of national enforcement capacity and limited cross-border cooperation between unions and enforcement authorities. In the next sections, I conclude with the overall theoretical and practical implications of this thesis and some ideas for further research.

8.7 Theoretical implications

Studies have shown that regulatory frameworks on intra-EU mobility have created possibilities for firms to recruit migrant labour for lower rates, generating unequal power relations in cross-border employment (Lillie 2010; Lillie 2012; Lillie and Greer 2007; Meardi 2012). In this thesis, I have taken this as a starting point to analyse the agency of labour, more specifically of temporary migrant workers and unions, and the ways they cope and respond to these dynamics. To the literature on industrial relations, sociology of work, migrant organising and migration studies, I add micro-level accounts of trade union practices with regards to mobile migrant labour in the Netherlands and insights into experiences of work and agency of a group of workers that is often talked about, but rarely talked with for academic studies, policy reports and public debates. Through exploring micro-level experiences of work and how the pan-EU labour market impacts these experiences, this study generates in-depth insights of the dynamics of migrant employment and labour relations in contemporary Europe. Workers and unions are embedded in a complex web of relations, each of which contributes and constrains potential for agency. While the EU market context constrains potential for individual and collective agency, it also creates opportunities to challenge unequal power structures and employment relations, albeit in small but incremental ways. Studying micro-level practices generates understanding of the resiliency of current oppressive and unequal power relations and structures in Europe.

More specifically, I have shown the importance of considering agency in its multiple forms, intentions and effects. Migrants exercise agency in a variety of ways, which usually do not entail open, collective or organised acts, but more often undeclared, small-scale social and oppositional practices. Although these generally have only micro-level effects, they can generate incremental changes in workers' experiences of work and opportunities abroad, albeit within overarching unequal power relations. This thesis thus goes beyond regarding migrants as passive actors who simply accept substandard conditions of work and refrain from collective action, to show how migrants actually deal with oppressive employment relations. The implication is that migrant practices tend to reinforce oppressive relations at work, rather than challenging those. This means that there exists a distance in the preferred ways migrant workers and unions exercise agency (small-scale invisible vs. overt and organised). The case studies in this thesis highlight the difficulties unions experience in bridging this distance to protect migrants from oppressive employment

relations, but also point to some potential pathways to engage migrants in collective activities and reregulate the labour market for migrant employment.

The theoretical implication of this for labour studies is the need to reconceptualise agency of unions and especially of migrant workers towards a refined understanding of the multiple shapes, intentions and effects of individual and collective agency. To the literature on migrant organising this adds understanding of potential pathways to represent and organise among fragmented and mobile workforces, while at the same time highlighting the difficulties for unions to reregulate the market and create structural improvements in the position of migrants within host labour markets.

On a more general level, this thesis shows the need for interdisciplinary approaches to understand the dynamics of current labour relations and migrant employment in Europe. In this thesis I combined literature from industrial relations, sociology of work, migrant organising and migration studies to increase our understanding of the resiliency of current cross-border employment relations in the EU.

While the strength of this study lies in its micro-level perspective, this is also one of its limitations. The limitations for generalisation are readily acknowledged. This study, nevertheless, contributes to a growing body of literature and qualitative studies that aims to disentangle the complex relationships and power dynamics at play in migrant employment in Europe.

8.8 Practical implications

Although migrants formally are not excluded from labour rights, this thesis has shown that regulations are enacted such that *de facto* they oftentimes are. The source of this problem lies in regulations on intra-EU mobility and a lack of effective (cross-border) enforcement, as well as the flexible labour market in the Netherlands that provides workers very little stability and security. Although the Dutch government and trade unions have undertaken efforts to fight migrant worker abuses and to improve enforcement, these have not been able to structurally improve the position of temporary migrant workers on the Dutch labour market. From a longer-term perspective, structural improvements are important, as with an aging population the need for manual (migrant) labour is unlikely to subside. Moreover, migrants have already become a structural part of the workforce in certain industries. Part of the problem is the complex interaction between employers, workers, trade unions and enforcement actors at the national but also EU level, which complicates efforts to reregulate the market. To protect migrants more effectively, a holistic and coordinated approach would be needed that acts on different levels and takes different forms of action. In the following, I formulate some recommendations that arose from my research, focusing on enforcement and (transnational) cooperation, regulatory adjustments and information.

Enforcement is important to ensure that laws and collective agreements regulate employment conditions in practice as envisioned on paper. Dutch enforcement authorities work with an indication-based enforcement system. However, this study has shown that migrants are very reluctant to approach Dutch unions or enforcement authorities when they encounter problems with their employment conditions. A more proactive enforcement approach would thus be needed from the relevant actors to change conditions for these workers.

In the Netherlands, enforcement of collective agreements has a private law character, meaning that it is the responsibility of the social parties to enforce compliance. Though Dutch unions are traditionally characterised by a servicing identity, efforts to use more proactive organising tactics have been made, as I showed, by targeting sectors or workplaces that are liable to non-compliance.⁶⁶ Important in this regard, however, is developing coordinated approaches that overarch local, regional and national contexts. Successful cases of migrant engagement and protection, as I discussed, tend to depend on local initiatives, often driven by enthusiastic union officials, more often creating temporary or small-scale changes, than structural change.

Furthermore, public enforcement is scattered across different institutes, complicating collaboration and coordination between different enforcement authorities, especially in cross-border situations.⁶⁷ Transnational cooperation and learning between trade unions as well as between and among enforcement authorities can be developed and intensified. Most EU countries experience migrant labour abuses and while firm practices are crossing borders without difficulties, enforcement actors have maintained a national focus.⁶⁸

Regulatory adjustments may improve tools for the enforcement of existing regulations. For instance, a law is being prepared that would establish chain liability for collective agreement wages. Practical enforcement aspects of liability arrangements need to be considered, however. For instance, the responsibilities of main contractors in monitoring compliance with collective agreements in contracting chains should be specified clearly.⁶⁹ In the Netherlands, many migrants face substandard employment conditions while employed by TWAs. Although efforts have been taken to fight abusive TWAs and malpractices, including higher fines and more enforcement inspections, no

⁶⁶ The FNV announced in 2013 the establishment of a compliance office focused on specific sectors that are more liable to non-compliance, such as construction (FNV 2013c).

⁶⁷ Cross-border enforcement is not very effective. For instance, only 15 per cent of foreign claims are eventually paid (Jorens *et al.* 2012: 122).

⁶⁸ A cross-country collaborative project of labour inspectorates has resulted in improved collaboration and transnational learning. The results have been published in *Posting of workers: Improving collaboration between social partners and public authorities in Europe*.

⁶⁹ In Germany, for example, chain liability exists in the construction sector. However, main contractors force their subcontractors to sign a paper stating that they comply with existing wage standards in the sector. Contractors escape liability through this practice, without having to put in any effort to monitor actual employment conditions.

proposals have been made to structurally change the TWA sector as such.⁷⁰ More generally, flexibility in the labour market could be reduced (Kremer 2013). The new law on work and security (*wet werk en zekerheid*) reduces some of the flexibility in the Dutch labour market, but the TWA sector is one of the exceptions in this law.

To protect migrants more effectively, more information needs to be gathered about the size of different groups of migrant workers in the Netherlands and the employment conditions they face. This would be needed to sort out problems more structurally and develop policies that address their specific problems.

In general, it remains important to provide information and educate workers about their labour rights and employment conditions. Many migrants interviewed in this study were unaware of the conditions that should apply to them. Even if migrants were fully aware of their rights, the trajectory for migrants to individually or collectively claim their rights is a long one, especially if legal proceedings need to be taken. Although the reluctant attitude among migrants to claim entitlements is understandable, they do also have a personal responsibility to address substandard conditions of work for their own and their colleagues' sake.

8.9 Future research

Future research may focus on further differentiation between migrant categories and their practices on the labour market. This study, with its focus on migrants from EU member states, may be extended with research on third-country nationals or irregular migrants to explore how labour market experiences of other worker categories differ, and to what extent and in which ways differences in legal status and legal entitlements make a difference. In this regard, establishing grounded estimates of the size of different migrant groups would help to gain more general insights into their situation and the problems they face (e.g. Van der Heijden *et al.* 2013).

In Europe, the role of private actors and TWAs in facilitating cross-border moves has become more pronounced. To date, few studies have addressed this process in more detail from the sending-country perspective. Future research may address the dependencies and vulnerabilities created through these recruitment processes and how these impact the quality and experiences of work of migrant labour.

In this thesis I focused on the agency of migrant labour and unions in the Netherlands. Further research may examine differences and similarities across institutional contexts. Different institutional contexts may create more or fewer opportunities for migrants to express agency or claim their rights and various

⁷⁰ For example, the license requirement that was in place till 1998 could be reinstated, establishing a barrier to the creation of new TWAs.

actors may be important in facilitating and/or constraining this process. While there are country comparative studies that address trade union responses to migrant labour from EU member states (cf. Eldring *et al.* 2012; Hardy *et al.* 2012; Krings 2009), little is known about Dutch trade union practices with regards to migrants from the 2004/2007 accession states from a comparative perspective. Moreover, few studies address migrant agency from a comparative perspective. Studies have shown that community initiatives, migrant organisations and worker centres have been successful in linking up with migrant interests and play a role in enhancing opportunities for agency and change (Fine 2007; Fine and Gordon 2010). The impact of these societal actors may be explored more through comparative studies.

Finally, future research may further investigate how these dynamics develop, especially whether and in which ways migrant workers, unions, governments or other societal actors act and strategize to counter market forces to rebalance the European labour market.

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APPENDICES

Appendix I Ethical policy

Ethical Policy for Transnational Work and the Evolution of Sovereignty (TWES - 263782)

Nathan Lillie

1. Interviewing of vulnerable or potentially vulnerable persons

Who is vulnerable or potentially vulnerable?

Migrants and other workers in non-supervisory positions are considered, for purposes of this study, to be in vulnerable positions. This is primarily because they may be victimized by their employers should confidentiality be violated. Also, participants should feel safe to present views which their colleagues may not agree with. This study deals with issues that may be sensitive – inter-ethnic relations, views on management and trade unions, political viewpoints – and the objective of the data handling policy must therefore be to prevent data being disclosed in a way which can be traced back to individual workers.

Foremen, union representatives, shop stewards, employer association representatives, human resource directors, politicians, government bureaucrats and similar persons, will be interviewed as “experts” rather than as research subjects *per se*. These people have experience dealing with the press, and are capable of taking care of their own interests related to interacting with researchers. These people are not considered “vulnerable”. However, to simplify matters, in general, interviews with these people will be handled mostly under the same policies as those of migrants and native workers. The differences have to deal with the nature of anonymization, and how to deal with that (see the ethical annex for the TWES application). Because ongoing relationships with these people is a part of the research process, and because they are not in significant danger of harm, their interviews are not anonymized, except, possibly, at the publication stage. At that point, permission will be sought from the individual concerned to use their interview information in the context of a particular publication, and, if the intention is not to use it anonymously, then permission will be sought for that as well.

2. Selection of interviewees

The project is to be conducted by worksite. Interviews of managers and other “experts” will be conducted as well. Once worksites are selected, a decision will be made on whether to approach the workers via management, the trade union (or works council), or possibly via some other organisation with access to workers on the site. If reliable systematic access is granted to the workforce via

an organization able to do this, it will only be accepted (i.e. research will only proceed on this basis) if the organisation accepts the conditions necessary to preserve confidentiality.

If such access is not granted, an attempt will be made to conduct interviews with workers via “snowballing” social networking methods, whereby workers are asked to identify others who would also participate in the study. This is a less systematic method, and thus not favored from a scientific perspective, but also does not raise the same issues of ensuring that an access-granting organisation does not seek access to the data.

3. Issues with interviewing

Interviews will be conducted in a time and place of the interviewee’s choosing. Interviewees will be read a brief description of the project, informed of the project goals, and told that all their answers will be confidential, and will only be used in an anonymized manner. Permission will be sought to record the interviews, but if it is not granted, or if the interviewee appears at all uncomfortable with the idea, then no voice recording will be made.

Interviews will be conducted in a language the interviewee is comfortable with. If that is not available in the research team, we will hire an interpreter. Understanding that interpreters are a potential source of information leakage, we will make every effort to ensure the integrity of the interpreters, by using the same ones repeatedly, by checking the references of the ones we hire, and by requiring them to sign a form binding them to confidentiality.

Interviewees will not be required to give contact information, or their real names. Interviewees who feel particularly vulnerable will therefore be allowed to participate on a totally anonymous basis. Consent forms therefore will not be used because participation in the interview and giving answers to particular questions constitutes consent. Furthermore, the existence of consent forms signed by vulnerable people is one more thing that the research team would have to make sure didn’t fall into the wrong hands. As such, these would provide no added protection to the interviewees, would constitute an unnecessary data protection challenge, and would in some cases jeopardize the willingness of interviewees to participate.

4. Handling of data

External contractors will often be used for transcription and/or translation of interviews, and these will be asked to conform to the project’s ethical standards in the same way as the interpreters mentioned above. The interviews they are to transcribe will not have interviewees names mentioned in them.

Recorded data, interview notes, survey forms and interview characteristics and contact information will be inputted into a computer

database. Access to the database will be password protected, and the password only available to members of the research team. Information in the database will be used in a manner which connects interviewees with their own answers only for follow up interactions with that particular interviewee.

Moving to the next stage, interviewee names will be removed from the data, and the interviewee's anonymous data placed in a new database, which will be used for analysis and referred to when preparing publications. Contact information for the interviewees will therefore not be available in this database.

The research team will, of course, still be able to trace particular answers to particular people using an extra step of entering a password, if needed (for example, to ask a follow up question), but for the open data, which will eventually be accessible to interested scholars, it will not be possible to do this.

5. Publication of data

Data will be published in an anonymous manner. Furthermore, care will be taken to ensure that any quotes or paraphrases used will not be traceable to a particular individual, for example by inferring from context who a particular informant might be.

6. Destruction of non-anonymized data

It is anticipated that the anonymized data of vulnerable groups, and all the data from the non-vulnerable group will be kept indefinitely. The database with the names of interviewees from the vulnerable group will be purged on completion of the project.

7. Training of the research team

Each new research team member, when they are hired, will be informed of these policies, and required to sign a form agreeing to abide by them.

8. Monitoring and supervision of project's ethical requirements

This project's ethical policy has been ethically approved by the Research Ethics Committee of the Faculty of Economics and Business Research Lab (the Chairman is Professor Bernard Nijstad), and by Director of the SOM Research Institute, Professor Tammo Bijmolt.

Line Eldring, a researcher at FAFO, the Norwegian Institute for Social and Labour Research (<http://www.fafo.no/english/hist/abo-Fafo.html>), will serve as an external ethical advisor for the project. She will complete reports

which will be appended to the scheduled periodic research reports the PI will make to the ERC regarding the project's progress. .

Project Description (to be presented and/or read to interviewees)

This is an EU funded a project researching how labor mobility is developing around the EU. It is an academically oriented project without a political agenda. Participation is voluntary and you are free to refuse to answer any or all of the questions.

We are seeking to understand the social and political impacts of how labor mobility is regulated. Accordingly, we have a list of questions we hope you will answer. We hope in this way to gain a better understanding to further public debate on the issue.

Nathan Lillie

Principle Investigator

Metaalwerkers krijgen 20 procent minder dan Nederlandse collega's

Poolse arbeiders Essent-centrale onderbetaald

Van onze verslaggever
Elsie Vermeeren

AMSTERDAM Poolse metaalwerkers in de Groningse Femschaven verdienen ruim 20 procent minder dan hun Nederlandse collega's. In de haven werken ruim zeshonderd Polen aan een kolen-centrale van Essent.

Het Poolse uitzendbedrijf Remak betaalt niet volgens de Nederlandse cao, waartoe het bedrijf volgens Europese wetgeving wel verplicht is, en betaalt de arbeiders niet voor werk dat ze in het weekend uitvoeren. Ook

overuren worden niet uitbetaald. Vandaag overhandigen Poolse en Nederlandse metaalwerkers een petitie aan Essent waarin ze oproepen een einde te maken aan de oneerlijke concurrentie op loon. Ze willen dat Essent scherper toeziet op handhaving van de cao's door Poolse uitzendbedrijven. Jeroen Brouwer van Essent neemt de handtekeningen in ontvangst, maar het bedrijf is geen partij in het conflict, benadrukt hij. 'Onze hoofdnammer neemt weer onderaannemers aan en zij doen dat ook weer. Die bedrijven zijn niet onze verantwoordelijkheid. Als juridisch is vastgesteld dat er echt misstanden

'Die bedrijven zijn niet onze verantwoordelijkheid'

plaatsvinden op onze bouwsite, ondernemen we natuurlijk actie.' Hermen Pol, bestuurder van FNV Bondgenoten in de Eemshaven: 'Nederlandse en Poolse arbeiders doen precies hetzelfde werk in de Femschaven. De één wordt fatsoenlijk betaald en de ander krijgt honderden euro's minder. Dat is discriminatie op

grond van nationaliteit en dat moeten we niet willen met z'n allen.'

Eind april daagde de FNV Remak voor de rechter. FNV eist dat Remak het achterstallige loon betaalt. Ook eisen ze dat het ontslag van elf Polen ongedaan wordt gemaakt. Zij werden vorige maand ontslagen omdat ze werkten een verklaring te ondertekenen waarin stond dat Remak zich aan de Nederlandse cao-wetgeving houdt.

Het uitzendbedrijf Remak was niet bereikbaar voor commentaar. Pol: 'De Polen worden onderbetaald, maar zijn alsnog doblij met hun werk. Klagen doet deze groep niet snel, want dat betekent een en-

keltje naar het land van herkomst. We verwachten dat ervan de zeshonderd Polen in de haven zo'n honderd zullen komen opdagen voor de actie.'

De cao's voor arbeiders worden niet nageleefd, terwijl ze daar volgens Europese wetgeving wel toe verplicht zijn. 'Het is verbazingswekkend hoe weinig controle daar op is', zegt Pol. 'Ze hadden natuurlijk gehoopt dat niemand het zou ontdekken.'

In de Eemshaven bouwt Essent aan de grootste kolencentrale van Nederland. Essent steekt 2,6 miljard euro in de centrale. Op het bouwterrein in de haven is 30 procent van de arbeiders van Nederlandse afkomst.

Appendix IIb Newspaper article

DAVID GOODHART & LODEWIJK ASSCHER

Sunday 18 August 2013

So much migration puts Europe's dykes in danger of bursting

The PM plans to renegotiate the basic tenets of the EU. He may find more support in surprising quarters, including the Dutch liberal left

In the Netherlands, an "orange alert" is issued when the country's rivers rise to alarming levels. The time has come to issue another kind of orange alert – one that warns about some of the negative consequences of the free movement of workers within the European Union. We need to watch out: in some places the dykes are in danger of bursting.

Most of us benefit from the free movement of workers within the EU. It is important to our economies, especially in professional occupations where one can see the outline of a European labour market emerging, and the principle is rightly seen as part of the European ideal. We do not want to see this pillar damaged through dwindling popular support. That is why we, especially on the European centre-left, must think harder about how to make it work in the interests of all our citizens, not just well educated professionals.

The right to live and work in other EU countries is one of the founding ideas in the 1957 Treaty of Rome. But until the mid-2000s it was rarely taken advantage of; in the year 2000 only about 0.1 per cent of EU citizens moved to another EU country.

That changed in 2004 when the UK, Sweden and Ireland waived the seven-year transitional period and allowed immediate access to their labour markets for the new member states in Central and Eastern Europe. The effect, especially in the UK, was rather dramatic with about 1.5m people arriving in the UK from those countries in the following six years. Since 2011, all the other EU states have opened up too, with further significant flows from central and Eastern Europe into countries including Germany and the Netherlands.

In retrospect, not enough thought was given to the scale of the flows. Up until the mid-2000s very few people took advantage of free movement because the economic levels of different EU countries were similar. Yet with the accession of the central and Eastern European countries in the mid-2000s, a bloc of countries joined the EU (combined population around 80m) with income per head of only around a quarter of the richer EU states.

This has created a big incentive to move, at least temporarily, especially for those in lower skill jobs. And this has had a disruptive effect on some of our

poorer and less well educated citizens in the richer EU states like the UK and the Netherlands. They are competing against people with much lower wage expectations.

In the UK, about 20 per cent of all low-skill workers are born outside the country and certain low-wage sectors such as hospitality and food manufacturing are heavily dominated by people from poorer EU countries. In the Netherlands, workers from central and Eastern Europe make up 12 per cent of all employees in agriculture and horticulture.

We need a new settlement which is fair both to the people of the sending countries and the receiving ones. And we need to stamp out abuse. Workers from poorer EU countries are sometimes taken advantage of by unscrupulous employers who win a competitive advantage over those who play by the rules. Too often workers receive low wages, work long hours and sometimes pay high rents for terrible accommodation.

The Netherlands is already taking a tougher line, imposing higher fines on unscrupulous companies and appointing inspectors who target fraud and rogue employment agencies. But we need to do this together, within the EU.

Even when the system is not being overtly abused there is some displacement and competition that is considered unfair, especially when unemployment is high. Some of our weakest citizens are losing out in the labour market to better equipped outsiders. It is important to think about how we can protect the labour market situation of these vulnerable groups.

It is wrong to dismiss the complaints of those affected as the usual gripes about "foreigners". Even if such complaints are often exaggerated, we must nevertheless take them seriously; if we don't, they will fuel xenophobia.

In continental Europe, countries warn each other when their river levels rise. For the Netherlands, that's very reassuring. We're able to take timely safety measures and avoid undue disruption.

That is the thinking behind this Anglo-Dutch warning too. So while free movement is a cornerstone of the EU, as our experience of it grows we must be alert to the side effects and ready to be flexible in our response. We must not be blind to the fact that the EU approaching 2014 is different from the EU of years past.

There is a lack of urgency in Brussels on this question, which is why we strongly urge our European colleagues to put the downsides of the free movement of workers high on the agenda and tackle this issue together. If we wish to keep enjoying the benefits of free movement, we must be prepared to combat its negative side effects. This is in the interest of every EU citizen.

Correction: The original version of this article incorrectly stated that "in the year 2000 only about 0.1 per cent of EU citizens lived and worked in another EU country". It has now been changed to: "in the year 2000 only about 0.1 per cent of EU citizens moved to another EU country".

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David Goodhart is director of Demos. Lodewijk Asscher is Deputy Prime Minister of the Netherlands and Social Affairs and Employment Minister. He represents the Labour Party in coalition.

Available at [accessed 29 October 2014]:

<http://www.independent.co.uk/voices/comment/so-much-migration-puts-europes-dykes-in-danger-of-bursting-8772630.html>