

JYX



This is a self-archived version of an original article. This version may differ from the original in pagination and typographic details.

Author(s): Ruotsalainen, Veera; Kall, Kairit; Lillie, Nathan

Title: Enhancing Economic Democracy for Posted Workers : The Case of Finland

Year: 2018

Version: Published version

Copyright: © The Authors & SOLIDAR, 2018.

Rights: In Copyright

Rights url: <http://rightsstatements.org/page/InC/1.0/?language=en>

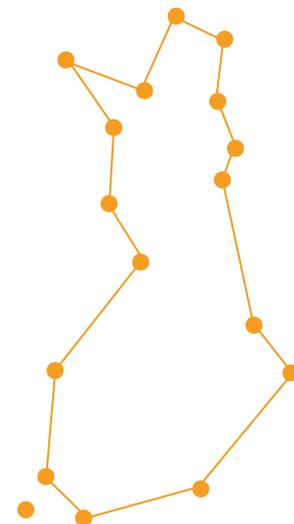
Please cite the original version:

Ruotsalainen, V., Kall, K., & Lillie, N. (2018). Enhancing Economic Democracy for Posted Workers : The Case of Finland. Solidar.

http://www.solidar.org/system/downloads/attachments/000/000/826/original/EEDPW_-_Finland_report.pdf?1541517246



COUNTRY STUDY



FINLAND

Enhancing Economic Democracy for Posted Workers: The Case of Finland

Veera Ruotsalainen, Kairit Kall and Nathan Lillie (University of Jyväskylä)



This report is based on two focus group interviews with three Finnish Construction Trade Union (Rakennusliitto, RL) representatives and two Industrial Union (Teollisuusliitto, TL) representatives and on individual interviews with Finnish Electrical Workers' Union (Sähköliitto, SL), and the Federation of Finnish Enterprises (Suomen Yrittäjät, SY) representatives. Interviews were conducted between April and May 2018. It also relies on interviews with Estonian construction workers working in Finland conducted between 2011 and 2017, under other projects: TWES, ERC grant #263782 and Academy of Finland, Industrial Citizenship and Labour Mobility in the EU, a Migrant Centered Study of Estonia-Finland and Albania-Italy Labour Mobility.



Institutional setting, union capabilities and priorities

Finnish industrial relations system with relatively strong unions, high union density and generally applicable sectoral level collective bargaining agreements can be considered as rather resistant to social dumping practices that can be related to posting (see, for example, Sippola and Kall 2016). However, unions in sectors, where posting has become an important phenomenon generally recognise that posting of workers brings with it some challenges and a need for innovative solutions. After the initial accession of eastern European countries to Finland, posting increased rapidly in importance, especially for Estonians working in Finland and particularly during the transition period of restricted labour mobility, when Estonians could be posted under freedom of services, but still needed a work permit if they came as individuals. Cases of extremely exploitive conditions were widespread, and the regulatory system was not well-designed to cope with this. Over the past decade or so, union strategies for engaging with and representing posted workers have improved, and legislation has also tightened to reflect the realities of posted employment. As a result, the labour market situation of posted workers has improved, as is reflected in, for example, the labour market integration trajectories of Estonian construction workers (Kall and Sippola 2016) and in an overall decline in Finnish media reports of extreme exploitation in the construction industry.

In relation to posting, the Finnish Construction Trade Union (Rakennusliitto, RL) has a central focus on defending their generally applicable collective agreements. This has motivated the union to develop tactics for 1) reducing the prevalence and economic viability of “grey” sector work through promoting legislation which tightens up enforcement; 2) developing more effective means

to engage with and represent migrant workers generally (which also means posted workers); 3) using its own officials and shop steward networks for monitoring work sites, and 4) pressuring employers, via, for example, discussing with main contractors about negligent subcontractors. In cases where employers are intransigent and other means seem unlikely to ensure that posted workers receive their legal rights in a timely way, this can potentially lead to site-level blockades.

Although in general regulation has been tightened, and the situation in the construction sector seems to have improved (in metalworking this is a little less clear), subcontracting liability rules are notably minimalist relative to other countries. However, given that the rest of the framework is generally more effective at regulating posted work than in most other countries, the lack of strong liability mechanisms is not perceived as a major problem.

Profile of posting in Finland

Sectors, that are most affected by posted workers (PWs) are construction and industrial sector (like electrics, technology, shipyards). The Finnish unions acknowledge that posting is a widespread phenomenon and an important issue but posted workers are not seen as a distinct group apart from other (migrant) workers warranting distinct policies. RL emphasizes that their aim is to protect the interests of all the workers in building trade regardless of the nationality or background of the worker.

The Finnish Electrical Workers’ Union (Sähköliitto, SL) also acknowledges that PWs are a major issue as there have been large numbers of posted electricians (mostly from Poland and Estonia) in Finland in recent years. However, as a smaller union SL does not have resources to develop as systematic an approach to posting as they would



like to. In the collective agreement of electrical installation field there is special article dealing with PWs, but the SL is concerned that special provisions may be problematic because of the EU anti-discrimination laws.¹ In practice SL applies the same principals to all the workers: if the wage group of the worker is not defined, the wage is dictated by the lowest pay grade of a professional electrician (and who is considered as a “professional electrician” is specified by law).

In the industrial sector posted workers are also an important source of labour. According to the Finnish Industrial Union (Teollisuusliitto, TL) there are tens of thousands of PWs in Finland round the year working especially in technology industry (e.g. at Olkiluoto 3, over the course of the project, a total of about 20 000 PWs worked there at one point or another, while at the Äänekoski bioproduct mill site 90% of 13 000 workers who have worked there were posted) and Shipyards (Meyer Turku). TL emphasizes that posting itself is not a problem as long as the work conditions of PWs are in order. According to TL it is important to have a union representative on sites where a large number of PWs are working. This way problem situations can be solved immediately and the quality of work will not suffer.

RL and SL reported that **underpayment** and issues regarding **working hours** (paying for fewer hours than actually worked, or not paying premium overtime rates) are the main problems they face when it comes to PWs. TL emphasized that working hour issues are the most common ones. PWs would like to work as much as possible and then go home, but this is not possible within Finnish regulations. Sometimes the employers also take advantage of this and will not concede holidays as they should, or at all. In addition, short work periods make it hard to the union to resolve problem situations while PWs are in Finland. After they go home the contact usually ends, and it is difficult to follow up.

According to RL the majority of the PWs the union representatives meet have not been paid in accordance with the collective agreement. Underpayment can be done in various ways. Sometimes not all of the hours they work are recorded, daily allowances are not paid or wages paid by the hour are smaller than they should be. Similar problems have been reported by Finnish labour inspectors as well (Alho 2018). “Basic” construction work is usually more problematic when it comes to PWs while specialist work is usually paid according to the CBA. In SL there have also been cases (e.g. Olkiluoto construction site) where PWs have been paid less than they were due based on a deceptive labelling of professional work as mechanical work. The “mechanical workers” were paid per the lower mechanical work wage scale, even though they were qualified as “professionals” and the work they did (such as cable pulling) were considered to be work that requires a professional electrician. That these workers should be entitled to the high professional work pay scale was one of the points of contention in the landmark *Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna* (C-396/13) decision of the Court of Justice of the European Union (CJEU)², which ruled in favour of the union and workers in this aspect of the case.

The posting of third country nationals (TCNs)

Third country posting can be an unclear term for unions. Unions recognize that there is workforce coming to Finland outside EU/EEA (construction, shipyards) but it can be hard to see the difference between TCNs posted to Finland via another European country and TCNs in general working temporary in Finland. According to TL third country sending or even more complex arrangements are increasing in Europe and are but not yet mainstream.

1. Note from authors: This should not be problematic as posted workers have not been subject to anti-discrimination provisions: in fact, the employer has the RIGHT to discriminate between host country workers and posted workers, because free movement means the frame of rights reference is the SENDING country. Therefore unions should also not be sanctioned for protecting the rights the posted workers actually have, instead of the ones they should have. This situation may change as the effects of the revised PWD are seen.

2. <http://curia.europa.eu/juris/liste.jsf?num=C-396/13>

Signs of this can be spotted also in Finland. The action of some of the companies which operate via letterboxes in certain EU countries has to do with tax evasion: No one can check if taxes and social fees have been paid or where. In the end, it is often the workers who suffer, if they cannot accumulate social security rights.

RL's definition of policy is that there is no reason for third country nationals to be posted (workforce coming outside EU/EEA) to Finland because there are a lot of unemployed construction workers in EU already. According to RL third country posting poses a higher risk of exploitation, as the employer might be the only contact the workers (without language skills) in Finland have. The experience of RL officials in representing non-EU citizens has been that for TCN posted workers, the cultural tradition of obeying the head of the community is exploited by employers as a tool to control the workers.

Strategies and difficulties in organizing and representing posted workers

Recruitment of posted workers into the union

According to RL organizing posted workers can be rather difficult. As is the case with unions elsewhere, the RL has found that making extreme efforts to recruit posted workers is in most cases not worthwhile given the temporary nature of their stay, and the difficulties inherent in recruitment. Usually PWs are not interested in becoming union members because they do not want to pay membership fees (they are working abroad to earn money as much as possible). Still, RL emphasizes that it is important that all the workers have a chance to become acquainted with the collective agreement, and they make efforts to engage with them for this purpose. It is clear from the interviews with Estonian construction workers (members and non-members) that the profile and reputation of RL has increased among Estonian construction workers during the past decade or so.

RLs policy of recruiting workers begins at grass roots level. In the Helsinki region, the RL has nine union representatives, who visit construction sites and talk to employees about the working conditions and the collective agreement. Other regions also have appropriate numbers of RL officials. Migrant workers are a main target group of these visits, but not the only one. The point is not to ask the workers to join the union but to make sure everyone knows about the collective agreement and their rights as workers. When encountering migrant groups, through casual conversation union representatives try to find key persons from the groups who are enthusiastic about trade unionism, and can take the message forward to their countrymen. Essential for involving others, this key person should have language skills and important position in the community. The RL representatives make a point of helping migrant workers also with everyday things (such as taxes, rents, and many other issues), when they can. This helps to give the migrant workers a positive image of the union.

The RL is also very dependent on its network of shop-stewards, who watch out for problems at subcontractors, as well as for issues in their own company. As a lot of problems arise with lower-level subcontractors, multifirm, site-level union structures allow the union also to monitor smaller firms on the bottom of subcontracting chain (often the ones using posted workers), where there are less likely to be shop stewards.

SL had had good experiences of posted electricians joining the union in construction sites where a SL representative has been appointed. The representative visited the construction site (Olkiluoto) once a week. However, within SL's resources it is only possible to arrange a special representative for PWs when there are a large number of PWs in one place (construction site).



The RL has also had similar success with appointing special PW representatives for large sites.

According to TL some employers manipulate PWs into believing that everyone in the receiving country is against them and it is better not to be in contact with anyone. Also in TL a union representative for the PWs is appointed to large sites where there are many PWs. The strategy is that the representatives build trust by casual conversation (like RL), making it easy for the PWs to talk to the unionists if they face any problems. TL has good experiences of this as there is a system ready in the workplace to solve efficiently problem situations. Yet according to TL this does not actually have any effect on the organization rate of PWs as it is more related to the length of the working period.

Cooperation with NGOs

Some unions (like RL) are awakening to the possibilities of partnering with NGOs in cooperation regarding migrant workers but there is neither systematic action nor are special resources allocated to this. The current cooperation is based on random contacts.

Case: *Recently RL has started an informal small scale cooperation project by coincidence with deaconesses' institution (Diakonissalaitos): A Romanian Finnish speaking staff member of the deaconesses' institution helps RL to inform Romanian community about collective agreements and RL and also informs RL about the problems of the Romanian workers.*

According to RL this represents a new way of thinking in the union: The union has to go where people are and share information, not just wait for migrant or posted workers to join the union. Workers do not necessarily know about RL and when they are in trouble they ask help from e.g. church because that is possible the only place they

know about. From there PWs are eventually guided to trade union if workers have faced difficulties concerning work conditions etc. However, in SL and TL there is no ongoing cooperation with NGOs regarding PWs.

Protection of PW labour rights in supply chains

In Finland, „contractors are required to ensure that their partners comply with statutory requirements before signing a subcontracting or temporary agency work agreement.“³ Contractors must obtain all the reports and certificates specified in the Act on the Contractor's Obligations and Liability when Work is Contracted Out. The aim of the Act is to prevent grey economy, and to promote equal competition between companies as well as compliance with terms of employment.⁴ The Regional State Administrative Agency for Southern Finland (labour inspectorate) monitors the compliance with the Act in Finland.

“The Act stipulates that the client requests and the contracting partner supplies information and certificates that are no older than three months:

- An account of whether the enterprise is entered in the Prepayment Register as stipulated in the Prepayment Act, the Employer Register and the Value Added Tax Register as stipulated in the Value-added tax Act
- An extract from the Trade Register
- A certificate that demonstrates that the enterprise does not have tax debt as defined in paragraph 2 of subsection 1 in section 20 b of the Act on the Public Disclosure and Confidentiality of Tax Information, or an account given by an official regarding the tax debt
- Certificates of pension insurances arranged for employees and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made

3. <http://www.tyosuojelu.fi/web/en/black-economy/contractor-s-obligations-and-liability>

4. <https://www.tilaajavastuu.fi/en/act-on-the-contractors-obligations-and-liability-when-work-is-contracted-out/>

- An account of the collective agreement or the principal terms of employment applicable to the work
- An account of provided occupational healthcare
- A certificate of mandatory accident insurance required in the building sector

If an employee's employer or a party of a subcontracting agreement is a foreign company, information corresponding to the clarifications and certificates according to the Contractor's Obligations Act must be submitted in the form of register extracts as stipulated by the laws of the country of business or similar certificates, or in another generally acceptable manner.⁵

According to RL the Act on the Contractor's Obligations and Liability when Work is Contracted Out has its uses, but is not comprehensive enough. The main problem the unions highlighted is that contracting liability (for wage taxes and social security contributions) only applies one contractor up the chain, meaning that liability does not necessarily extend to the principal contractor. RL and SL expressed that they would prefer to have liability through the whole chain. This is unlikely to occur in because the employers are against it.

RL representative emphasises that greater awareness of inspections by subcontractors would reduce violations, and this should be a responsibility of the main contractors. A RL representative noted that although Finland has more people involved in work inspection per worker than anywhere else in Europe, employment irregularities are nonetheless very common in posted work. She believes that, if main contractors would include clauses about inspections in the subcontracting contracts in order to better inform foreign subcontractors better, these foreign subcontractors would be more likely to proactively comply with Finnish employment norms. RL representatives note that in Finland the framework for fair work conditions to PWs already

exists: the legislation side with PWs is sufficient and even the employers have ethical programs to prevent social dumping but in practice there are loopholes that make it possible to mistreat PWs. According to RL the main contractors could make clearer rules and design their ethical regulation more carefully, but in some cases the employers are reluctant because they profit from loose enforcement of rules in their supply chains.

According to the TL the monitoring system in Finland and also in Europe in general is insufficient to prevent the violation of posted work. It is clear to companies what they should do, but they are not that likely to get caught if they break the rules. For example, electronic collection of data on workers, for taxes and so on, would be possible but would require a political commitment. TL representative maintains that in the end unions cannot do that much.

While the unions are not completely satisfied with Finland's subcontracting liability model, the Federation of Finnish Enterprises (Suomen Yrittäjät, SY) finds that the model works well precisely because it is so limited: subcontractors cannot "outsource" liability to the client. The SY maintains that extending liability to the whole chain would be unfair to clients and might reduce subcontracting in general.

Labour Inspection Role and Registration Systems

The Enforcement Directive article 10 (Inspections) also requires that compliance with the regulations of the Posted Workers Directive is monitored by appropriate and effective checks and monitoring mechanisms implemented by the authorities of the Member States. According to the SY's legal expert in order to make sure that the regulation in the article works, there should be more resources for labour protection, authority inspections and monitoring. The more inspections, the more violations will be spotted, and more fines collected.



5. <https://www.tilajavastuu.fi/en/act-on-the-contractors-obligations-and-liability-when-work-is-contracted-out/>



The obligation to submit an advance posting notification to Finnish authorities (*ennakkoilmoitusvelvollisuus*) was implemented in Finland in 2017 with the implementation of the Enforcement Directive. According to SY's legal expert this is essential in order to make the monitoring more efficient. RL agrees but adds that it is hard to say how well the reporting system works in practice.

The SL representative maintained that cooperation between the different actors involved in regulating posted worker conditions could be improved. According to him, monitoring is diffuse: there is no practical cooperation between different unions, labour inspectorates and other authorities. All the actors are busy focusing on their own area of responsibility which might lead to situation where something important might escape attention (especially when it comes to PWs). The SL representative points out that the law would also allow a different kind of monitoring model but he adds that maybe there is no will to "get things right". There should, according to him, be more cooperation between trade unions and authorities. Together with the protection of interests in the trade unions there should be a special approach to deal especially with PWs and problems they face.

The TL's specialist in international protection of interests also desires better cooperation between the unions and authorities. Cooperation between TL and labour inspectorates is good but according to TL there is not enough manpower doing inspections. As it is impossible to inspect all the sites, mistreating of PWs can escape one's attention, since PWs are often intimidated by the employer to keep quiet about their conditions.

Information Provision on Wages and Working Conditions

This area has been a point of mutual agreement between unions and employers. It is framed both in terms of informing workers of their rights, and informing employers of their obligations. According to SY's legal expert, the best way to ensure the realization of the working conditions demanded in the Directive would be to improve monitoring, but still is not a way to prevent violations. He emphasizes that providing information to workers is key. For some time the Rakennusliitto had an office in Tallinn providing information to Estonians considering work in Finland, but this is closed. Finnish unions in general, and the RL and SL in particular have made it a point to provide migrant workers with information through pamphlets and websites. This information is made available in common migrant worker languages.

The RL also emphasized their personal engagement with migrant workers, via their officials and shop stewards. Information/induction sessions are often arranged on large sites, or at companies. This is both in the employer's and union's interest as both get their own message out. Employers emphasize safety at work and the working-time system, and the RL gets new members. These kinds of events have worked well according to RL.

All the interviewed unions often cooperated formally with employers' federations to fight against social dumping, and information provision is one clear area where there is common ground. For example, together with employers' federation (Technology Industries of Finland) TL has produced guidebooks about posting for employers and for Finnish workers who are posted to another country. According to TL, some of the firms planning to send or



receive workforce like to consult the trade union in advance and check that their plans regarding work conditions, shift systems, and payment of wages meet union demands. At the site level, the above mentioned induction/information sessions for new workers are arranged with employer cooperation, and also with all relevant unions included.

Between SL and employers there are no joint projects at the moment. A few years ago there was a formal joint project with the employers' federation. The aim of the project was to prevent the grey economy by agreeing on shared definitions of policy and operational principles. Agreement was reached but according to the union in the end the employers did not want to take it to a concrete level. RL also has some formal cooperation/discussions with the employer's federations and they share same goals about preventing the grey economy, and so on (see also below) but currently nothing specific is going on.

Site-level representation at large sites

Large sites where there is project work tend to attract large numbers of foreign contractors, and therefore also posted workers. These sites also allow for a concentration of union resources, and encourage inter-union cooperation, since there are generally a variety of sectors involved. Unions cooperate with each other, employers, and state authorities to set up regulatory mechanisms for larger sites. TL, RL and SL have a record of cooperating especially on big (construction) sites. The TL representative told us that, on big construction sites (where there may be hundreds or even thousands of PWs), which involve work falling under multiple union jurisdictions, it is sensible to build a cooperative team of representatives from different trade unions. Trade union action on the site is discussed and agreed with the client in good time before the beginning of the work. TL considers as a good practice that their current system where cooperation between

the union representatives, employers and future employers has assured that problems regarding job conditions will be solved easily and efficiently.

Mandatory ID-cards with picture and tax number

According to RL system solutions like the mandatory ID-card system (to be able to identify which workers work for which employers) and tax code legislation in the construction industry (*rakennusalan veronumerolainsäädäntö*) has proven to be good practices and similar system level solutions are needed to be developed further. RL emphasizes that these legislative solutions have been promoted in cooperation with employers, and that they share the same goal of prevention of grey economy with the employers. Dissimilar to TL, according to RL increasing inspections is not seen good way to prevent social dumping because the inspection resources are limited and insufficient. The solution should rather be that dishonest firms should be prevented access to construction sites altogether, which can occur if regulatory practices are tightened up so that it is difficult to avoid them.

The SL representative agrees that the ID-card system in the construction sites is a good practice and it should be extended. The electricians should have the ID-card also in small construction sites and electrical installation sites but in many sites there is no monitoring of this at all. At the big construction sites the monitoring of this often works well and is accurate. By contrast on the energy/electric power network field where the workers go to work in the field it is extremely hard to monitor the usage of the ID-cards. Often no one even knows who is working on what, where and when.

Boycott and blockade practices

The RL maintains that the introduction of new regulations and tightening of their enforcement has made it difficult for unethical actors to conduct business in Finland. Serious problems are less common than they used to be, and when they



do come to light, employers and authorities are usually willing and able to resolve them in a way which ensures the workers in question receive their due. However, for difficult cases, the RL keeps a blacklist of contractors that are boycotted due to non-compliance with the collective agreement. Contractors which work with blacklisted firms may find themselves subject to site-level blockades. Boycotts are used also in the electrical sector. When a boycott occurs (or is threatened) RL and SL usually share the same interests and cooperate.

The system works as a deterrent and a remedy of last resort - subcontractor firms avoid falling onto the blacklist and main contractors avoid being associated with those on the blacklist. While there are a large number of firms on the blacklist, blockades occur very rarely in practice. Usually it is sufficient to make the main contractor aware that there is a problem or that a blacklisted subcontractor is on site: the main contractor will generally fix the problem and/or end the relationship before a blockade becomes necessary.

The extended collective bargaining agreement provides Finnish unions with legal grounds for using industrial action if contractors, also including foreign subcontractors, do not comply with the CBA. In contrast to the situation in Sweden which precipitated the Laval judgement, these grounds are compatible with the EU regulatory framework set out by the Laval decision, because the unions are defending a clear legally established standard. The compatibility of Finnish collective agreement provisions with Laval and the PWD has been confirmed, for example, by the *Sähköliitto* decision of the CJEU, while the wording of the Laval decision implies that industrial action is permitted for purposes of defending a clear, legally established standard which applies to both foreign and domestic firms equally.⁶ Therefore, unlike the unions in Sweden, or Denmark - or for slightly different reasons in Germany⁷ - Finnish unions have not found that the Laval Quartet judgements constrain

their activities. For this reason, the RL has not felt the need for major changes in its strategy or in the Finnish industrial relations system to allow it to continue to enforce its collective agreements.

The fact that site blockades can be used to defend the collective agreement does not imply that they generally are, particularly given recent improvements in the legal framework (detailed above), which give other instruments to limit the grey economy and prevent employer fraud. The RL's policy of blacklisting seriously negligent employers remains in effect, however, and the RL does have the legal right and means to execute site blockades as a means to remedy serious breaches of labour standards which cannot be remedied any other way.

According to TL's Head of International Action outside the construction sector, boycotts are much less effective way ensuring compliance in the industrial branch and this is why TL does not use the tactic of announcing boycotts. There was one such actions, for example at a Rautarukki factory in 2011 when close to 3000 metalworkers walked off in support of Polish workers who were fixing a blast furnace, but this was an exceptional reactions to specific cases of exploitation rather than a union policy.

According to SY legal expert boycotts of Rakennusliitto can be problematic if they fall on actors that have obeyed the law and regulations, but in general does not see them as problematic for employers as there are not so many of them. In general he thinks that Rakennusliitto's inspections at the construction sites are valuable in order to prevent grey economy and to support Finnish firms.

6. The employer's representative we spoke to at SY disagreed that the established standards are clear enough. ►►►

7. In the German case, it is not the Laval and Viking judgment which directly affected their regulatory system, but rather Rueffert, with its restrictions on imposing wage standards through public procurement processes.



Barriers in representing and protecting posted workers

None of the interviewed unions have specific activities targeted at PWs. In addition to some trade unions' opinion that posted workers should be organized in the sending countries and unionizing them in receiving countries is a waste of resources (due to their generally short stay), there are also other barriers that hamper the effective representation and protection of posted workers.

Language issues are a big difficulty for posted worker representation in all sectors. Posted workers usually lack local language skills. RL has one Russian and one Estonian speaking staff member to monitor work conditions of PWs and to help them out with all kinds of problems. Any tools or help possible is used: The representatives might use Google Translator to communicate with the workers on a construction site or if someone who speaks the same language with the worker/s happens to be present he is asked to interpret. RL told about a Romanian speaking group who found a Finnish speaking countryman in the deaconesses' institution and he became the main contact person between the Romanian workers and RL.

Basic information can be found in several languages online in the unions' websites. Also flyers with basic information about the collective agreements and wage rates are handed out to new language groups as soon as possible in their own language. However, the flow of information can be slow and it might take a while until the union knows that there is a new language group working somewhere.

RL has a department for foreigners (*Rakennusalojen ulkomaalaiset ammattilaiset*) and they offer them recreational activities to socialize workers more into union. Informing about the events of the department is done through social media etc. Still there is a lack of participants: Many migrant workers want to spend their free time somewhere

other than the workplace and work related activities. To RL it is important that the union is not only considered as insurance: a sense of community and building the union together with the members is seen as a goal.

TL points out that a lack of language skills is usually only the first of the barriers which make the problems of PWs hard to address. In the TL interpretation is arranged when needed whenever possible (it usually is). Of the unions, the RL provides most extensive website information to foreigners, and it is also easy to find in several languages. All the unions (RL, TL, & SL) try to hand out info flyers in several languages in info events, construction sites, employment office and wherever possible.

Cultural differences and building trust.

According to RL a lot of migrants come as a community/family (for example, Romanians or Uzbeks). Unions have to convince the head of the community in order to involve others. In many cases the migrant workers are "at the mercy" of the head of the community. It seems that unionists have to be ready to invest quite a lot in socializing with the workers and helping them with any problems they face (language, tax, rent, police...) as this is essential to build trust. All the unions emphasized casual conversation with PWs to build trust.

Free-rider problem and institutional barriers in representing non-members. According to the RL it is sometimes challenging to find the balance between helping the members and non-members. Union members are given top priority but in certain cases helping non-members is justified: The social impact and also the effect on members' employment must be taken into account, and leaving posted workers unrepresented can potentially also harm RL members. RL members' jobs and working standards can be secured by getting dishonest firms out of the market.



Helping non-members helps to inspire their confidence in the RL and take the message of the union forward among workers. If a non-member migrant/posted worker has been helped by the union at some point the worker is usually very grateful and will most likely become a loyal union member if he/she decides to stay in Finland.

All three unions help mistreated PWs whether they are union members or not. For example they will take up their wage claims. However, if representation goes to court, this requires union membership. The TL restricts its assistance to non-members only to big sites (where there is a permanent union representative). In smaller sites PWs have to be more proactive to defend their rights.

According to SL sometimes non-members can be represented in court in case of class-action suits based on power of attorney. However TL emphasizes that membership services are for union members but there is also the interest to prevent grey economy and development of dual labour market, and this may mean making exceptions. In RL, representation in courts requires six months of RL membership.

In SL PWs are protected by SL as any other workers - members or not. "Everyone must be protected from social dumping but the challenge is how to do it." Also SLs representation in court requires union membership. In the union regulation there is no definition of policy about representation of non-members in court or providing them legal help in order to fight against social dumping. In practice however this is done.

It is clear from independent interviews with Estonian workers in Finland that the RL's representation efforts for Estonians - many of whom were posted to Finland at one point or another - have had a long-term impact on the "union consciousness" of these workers, both in terms of recognizing

the effectiveness of union representation, and also building trust that the RL's agenda benefits them as well (Danaj et al. 2018). In this sense, it is clear there is a fundamental trade-off between the need to encourage union membership with reserved benefits for members, and to build the unions' reputation among posted workers. Each of the Finnish unions has a slightly different solution in this respect, involving situational pragmatic compromises.





References

- Alho, R. (2018). Transnational Monitoring and Enforcement of Posted Work: The Case of Finland. SOLIDAR. Available at: http://www.solidar.org/system/downloads/attachments/000/000/780/original/TNC_Report_-_Country_Study_Finland.pdf?1525778888.
- Danaj, S., Çaro, E., Mankki, L., Sippola, M., & Lillie, N. (2018). Unions and Migrant Workers: The Perspective of Estonians in Finland and Albanians in Italy and Greece. In: Doellgast, V; Lillie, N. & Pulignano, V. (Eds.). *Reconstructing Solidarity. Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe* (207-225). Oxford: Oxford University Press.
- Sippola, M. & Kall, K. (2016). Locked in inferiority? The positions of Estonian construction workers in the Finnish migrant labour regime. In: Dolvik, Jon Erik; Eldring, Line (Eds.). *Labour Mobility in the Enlarged Single European Market* (215-240). Emerald Group Publishing Limited.



solidar

Rue du Pascale 4-6
1000 Brussels
Belgium
T +32 2 500 10 20
F +32 2 500 10 30

Twitter: @SOLIDAR_EU
Facebook: SOLIDAR
www.solidar.org
solidar@solidar.org



This country study has been written
by: Veera Ruotsalainen, Kairit Kall and
Nathan Lillie (University of Jyväskylä)

Published and disseminated by: SOLIDAR

This publication has been written for the project “Protecting Mobility through Improving Labour Rights Enforcement in Europe (PROMO)”, VS/2016/0222. It has received financial support from the European Union programme for Employment and Social Innovation (EaSI) (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>. The information contained in this publication reflects only the authors’ views and does not necessarily reflect the official position of the European Commission. The Commission is not responsible for any use that may be made of the information it contains. The country reports are based mainly on local workshop(s) and/or interviews done in 2017 in which the knowledge and opinions of labour inspectors and other officials involved in monitoring and enforcing national rules related to the Posting of Workers Directive were solicited.

SOLIDAR is a European network of membership based Civil Society Organisations who gather several millions of citizens throughout Europe and worldwide. SOLIDAR voices the values of its member organisations to the EU and international institutions across the three main policy sectors; social affairs, lifelong learning and international cooperation.



Funded by the
European Union