



ILS and precarious work: effective recognition of CB

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Many forms of precarious work

- Temporary work through agencies
- Sub-contracting
- Hidden employment relationship
- Informal economy
- Seasonal work
- Fixed-term contracts



Precarious work

- CFA receives increasing proportion of complaints related to FA violation at the workplace linked to the precarious nature of the employment
- The methods used for non-recognition of **strong and independent** workers' organizations vary but the results are the same



Illegal dispatch workers

- Workers doing the same job as company employees for an indefinite time but with an agency employer
- Purported coverage of labour legislation but rights impossible to exercise
 - Recurring acts of anti-union discrimination and dismissal
 - Employer refusal to bargain
 - Further threat of imprisonment and exorbitant compensation suits for obstruction of business
- Law to protect dispatched workers does not effectively protect agency workers



Making CB meaningful in the context of sub-contracting

- Particularly vulnerable sectors (ie., the construction industry)
- Can involve a complex bargaining context with several layers of subcontractors
- **Collective** force may only be meaningful at the regional/sectoral level
- Government to **promote** collective bargaining between construction sector employers and trade unions, in particular with regard to the terms and conditions of employment of **vulnerable "daily" workers** and to provide support with a view to building negotiating capacity



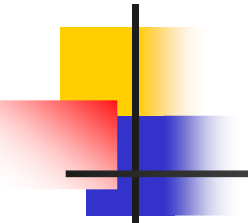
Inadequate protection

- Workers are not fired, their contracts are simply not renewed
- Non-extension of contract with sub-contractor/agency, but privileged renewal of non-unionized workers
- Principle of private autonomy/freedom of contract



The Catch 22 of CB

- Union activities directed at the principal employer are labelled as illegal
- The issue of whether a subcontracting company/main employer is under an obligation to negotiate is for the courts
- Subcontractors/agency claim to have no control over the terms and conditions of employment in the plant
- Industrial action is either seen as premature or as directed against an unrelated party and deemed illegal



Definition of “employee”

A case study

- Workers in social services, health and home child care overcome geographical and social isolation to form trade unions under relevant labour laws and give notice to begin CB
- Are re-designated “independent workers”; employment relationship redefined as contract for services
- Union certification revoked
- Consultation mechanisms replace CB
- Redefinition of the bargaining unit



Limits to the principles

- FA/CB rights to all workers - Sub-K should not be used to evade FA/CB rights and responsibilities
 - With which union?
 - Of their own choosing (Case No. 2556)
- Bargaining with which employer???
 - Temporary employment agencies??
 - Level of bargaining up to parties – a right to strike for industrial level bargaining
- Reorganization of bargaining units not challenged (2304)
- Differentiated treatment?
 - Part-time employees – def of bargaining units, certification, CB conditions



Where do we go from here?

- Meaningful promotion of CB and protection of organizational rights needs to **directly address these gaps** in full consultation with the social partners
- Steps for **adequate** protection of FA/CB for agency workers
- Promotion of industrial/sectoral level bargaining with extension to all relevant workers – R 91
- Determination of bargaining units to promote collective bargaining
- Ensure meaningful responsibility and remove incentives to disguise ER (R198 – 4(d) and 17)
- Ensure level playing field
- ILO role to promote good practices