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Organizing on-demand: Representation, voice, and collective bargaining in the gig economy

Hannah Johnston
Chris Land-Kazlauskas

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***Organizing On-Demand: Representation, Voice, and
Collective Bargaining in the Gig Economy***

Hannah Johnston*

Chris Land-Kazlauskas**

* Ph.D. candidate, Queens University, Kingston, Ontario, Canada.

** Freedom of Association and Collective Bargaining Specialist, ILO, Geneva.

INTERNATIONAL LABOUR OFFICE - GENEVA

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Introduction

‘Gig’ or platform-based work represents one of the most recent, highly-publicized labour market trends. Attributed to the increased demand for flexibility on the part of employers (Eurofound, 2015a), better labour market efficiency (IOE, 2017) and, in some cases the desire for greater flexibility on the part of workers (De Stefano, 2016), gig and platform-based work is one type of non-standard work facilitated through technology and digital markets, on-demand. Despite its relatively small size (Farrell and Grieg, 2016) the gig economy has the potential to rapidly change the way work is organized and performed, to alter the content and quality of jobs, and to reshape industries. This paper examines challenges to freedom of association and the effective recognition of the right to collective bargaining for workers in the gig economy, and explores the broad range of strategies that gig-economy workers are using to build collective agency, and to promote effective regulation of gig work.

The benefits and costs of gig and platform work for employers, workers, and society remain highly contested. Advocates contend that digital labour platforms can economically benefit socially marginalized groups including the unemployed, geographically isolated, and refugees (De Stefano, 2016; Byrne and Waters, 2015). For firms, gig work combines technological innovation with various contractual relationships that can reduce transaction and labour costs, provide ‘numerical flexibility’ in the face of fluctuating demand, and increase competitiveness (Peck and Theodore, 2012; ILO, 2016). However, like non-standard employment more broadly, work content and work arrangements in the gig economy are diverse. Despite the possible benefits, jobs in the gig economy can also be structured in ways that can negatively impact workers (unpredictable scheduling, inconsistent earnings, unreliable long-term employment prospects) and firms (unfair competition, lower productivity and absenteeism) (ibid, see also: Peck and Theodore, 2012; ILO, 2016; De Stefano, 2016).

We begin with an overview of gig and platform work and the structural and institutional challenges that gig- and platform-based workers in building collective, group agency.¹ This is followed by a review gig-worker organizing strategies based on the institutions or organizations that workers have formed or joined for the purpose of building agency. We stress the importance of workers’ organizations – broadly defined – as a site to agglomerate the economic, political, and cultural resources necessary to provoke change. The tenure of organizations allows workers to experiment with various tools and strategies to improve conditions and adopt those that are effective (Dias Abey, 2017). The four organizational structures we explore (union renewal strategies and new organizing initiatives, worker forums, worker centres, and cooperatives) represent a comprehensive list of organizations that are actively organizing and supporting gig economy workers. Given the rapid turnover of the on-demand workforce, we view the tenacity and adaptive strategies of workers’ organizations as vital to developing a sustainable and dynamic labour movement. Each initiative examined has its own section delineated by a heading and a summary of the principle strategies used. We then turn to efforts by employers’ organizations to support their members in adapting to, and influencing these new realities.

The paper ends with a discussion of barriers that self-employed platform workers face to effectively achieve collective bargaining and efforts to achieve effective representation and collective bargaining for workers in the gig economy. In this section we discuss important steps that could be taken to ensure the right to freedom of association and the effective recognition of the right to collective bargaining among independent contractors, who often find their these rights curtailed by anti-trust legislation. This section

¹ We define agency as intentional action that results in an observable outcome. Given the (unequal) bargaining power in the individual employment relationship, which may be exacerbated by work arrangements in the gig economy, agency can be expressed collectively when individuals make decisions to act together to maximize their ability to exert influence and bring about change. Roscigno and Hodson (2004) adopt the following definition: “the objective capacity of individuals to act collectively or individually in a manner that either reinforces or undermines prevalent social relations and organizational structure [...] agency is often expressed by workers and managers even in the face of some constraint and possible sanctions that expressions of agency might entail.”(16)

also highlights a number of recent efforts at collective regulation undertaken by workers and platforms in the gig economy.

Whereas digital labour platforms are often regarded as innovative and cutting edge “disruptors”, antiquated notions of collective bargaining pervade the discourse surrounding the gig economy. In light of the institutional flexibility and adaptability of collective bargaining, we examine the successes and challenges that gig workers have experienced in their early expressions of collective agency. Reflecting on the varied expressions of agency, and with careful consideration for the enforceability of collective gains, we offer recommendations that promote a role for collective bargaining as an important institution that can contribute to tailored, fair, and decent regulation in the gig economy. We maintain that technological innovation (including through the 4th industrial revolution) and collective bargaining are not mutually exclusive; an inability to conceive of their coexistence is nothing more than a failure of the imagination.

This paper is the result of extensive research conducted from October 2016 through December 2017. Industry trends and general themes were assessed through secondary sources including academic, industry, trade union, employers’ organizations and governmental publications. News stories provide context-specific information on targeted initiatives and case-specific developments. This background information is complimented by over twenty interviews with key informants working on issues relating to the gig economy and platform based employment. The strategies that appear under each section should neither be conceptualized as unique nor exclusive to the framework within which they are classified. Instead, this categorization helps to explore the central mechanism through which worker agency originates and evolves.

As has been the case throughout modern history, collective bargaining holds promise for responsive regulation balancing the needs of platforms, requestors, and those performing work through them. However, to be sustainable, improvements achieved through bargaining must be enforceable; a challenge we regularly observed. While some promising examples have been identified, the full development of collective bargaining is a challenging prospect for a host of reasons; regulatory lacunae – including unresolved allegations of worker misclassification – raise fundamental questions over the rights of gig workers.

In presenting these findings, and notwithstanding the challenges surrounding employment classification, we hold that labour performed under the banner of apps and platforms should be recognized as *work*,² and that the people performing on-demand labour must be recognized as *workers*. This premise has important implications for freedom of association and effective recognition of the right to collective bargaining for gig and platform workers and NSE more generally, and must be acknowledged given the applicability of international labour standards in this context. The realization of these protections requires a review of existing, and where appropriate the development of new, regulations to ensure a level playing field. It may also require an adaptation of machinery used for regulating terms and conditions of work, including through collective bargaining, for *bona fide* independent contractors. Appropriate workplace protections must be afforded and fundamental principles and rights at work promoted, respected and realized no matter how work is structured.

² Irrespective of whether the work is categorized as being done in the context of an employment relationship, based on national law.

1. Gig and platform work: an overview

Technological innovation has brought significant changes to work organization, employment relationships and labour relations, with positive and negative impacts. While “gigs”, or one-off jobs are not new, the increased use of technology has contributed to a rapid proliferation of this type of work. The gig economy has contributed to the growth of certain forms of non-standard employment through the creation of digitally mediated labour marketplaces, or labour platforms. Labour platforms use technology to connect workers with consumers for one-off tasks, or jobs that are completed either virtually or in person by an on-demand workforce. This workforce may operate with limited social and labour protections, which becomes increasingly relevant as more workers rely on platforms as their primary source of income.

The number of platforms and the size of the gig economy have yet to be accurately quantified. Research conducted in the United States by Katz and Krueger (2016) estimates the ratio of the US workforce earning the majority of their income through app-based platforms such as Uber, Handy, or Taskrabbit at only 0.5 per cent. Farrell and Greig (2016) arrive at similar estimates for the rate of participation in the United States, while surveys conducted by Huws and Joyce find that the 3 per cent of United Kingdom residents work via online platforms at least once a week, and 2 per cent of German respondents state that it represents their only income source. (Huws and Joyce, 2016a; Huws and Joyce, 2016b). Researchers have also sought to produce estimates of the extent to which gig work represents a primary, versus complementary, source of revenue for workers (ibid; Berg, 2016; Paolacci, Chandler and Ipeiros, 2010), or have begun to consider the impact of undeclared gig work on social security systems and public accounts (Baumann and Klotz, 2017). Uncertainty about the size and scope of the gig economy, coupled with platforms' diverse business models, present challenges to developing adaptive and innovative regulatory solutions.

In contributing to a typology of gig economy business models, Valerio de Stefano (2016) makes a useful distinction between ‘crowdwork’ and ‘work on-demand via apps’. Crowdworkers operate online through platforms that connect vast numbers of clients, organizations, and businesses, often across borders. Because crowdwork is performed online, an infinite number of workers and clients are often spread over large geographic distances (De Stefano, 2016; see also: Scholz, 2017). On the other hand, what De Stefano calls ‘work-on demand via apps’,³ is platform-facilitated yet place-based and geographically-limited work. This includes delivery driving, transportation, domestic work, home repair, and more; all requiring direct interface between gig workers and those requesting gig services (ibid). Work structure has direct bearing on a variety of factors, including worker concentration, the ability of workers to develop intra-platform alliances, and the extent to which worker-consumer alliances can be formed. These variables result in different strategies used by crowdworkers and place-based platform workers respectively.

Labour law, freedom of association and collective bargaining have long sought to bring balance to the unequal relationship between employers and individual workers, and to enable workers to act collectively to influence their employment and working conditions. Despite the importance of unionization for worker wellbeing, unionization rates have decreased globally and are particularly low among non-standard workers (Jaumotte and Osorio Buitron, 2015). For gig workers specifically, many platforms classify them as independent contractors⁴; in various jurisdictions this employment classification precludes workers from forming unions and engaging in collective bargaining.

Collective organizing challenges that stem from legal restrictions on platform and gig workers are compounded by the solitary structure of digital labour markets. Workers often labour independently, in isolation, over geographically expansive areas, and in direct competition with one another. Additionally, gig work is often short term or task-based and online labour platforms have high worker turnover rates

³ Todoli-Signes draws a similar distinction, differentiating between “online crowdsourcing”, and “offline crowdworking”, which shares many similarities with its online counterpart, but “requires local and physical performance.” (Todoli-Signes, 2017)

⁴ Whether this classification hides a disguised employment relationship is discussed below.

(Farrell and Greig, 2016). Moving in and out of different ‘gigs’ in a variety of sectors and often without the intention of long-term participation in the gig economy, inevitably impacts workers’ abilities to establish community and identify their shared interests. These characteristics inhibit collective organizing efforts as workers can be hard to find, hard to reach, and difficult to engage. As a result, workers and the labour movement have had to evaluate the best methods for organizing in digitally mediated labour landscapes.

Though currently representing a tiny percentage of the overall workforce, these apps have a global reach and affect the lives of millions. The potential disruptive effects of platforms on labour markets far outweigh their current importance as a source of employment, however, their expected growth has led many to speculate that these forms of work may contribute to the disappearance of formal employment completely (Drahokoupil and Fabo, 2016; Moody and Brooks, 2016). Given the potential growth in this sector, the promotion of an enabling environment for worker organizing and collective bargaining can help ensure that the use of digital platforms is not at the expense of good jobs and decent working conditions. Within this context, we turn to the agency-building efforts of gig and platform workers to see how they are striving to achieve this objective.

2. Trade Union Approaches

Unions have played a crucial role in facilitating worker organizing and supporting collective bargaining for decades. Collective bargaining has proven critical to secure lasting and enforceable workplace gains. As a fixture in both labour and political spheres, unions have also engaged in direct action, political lobbying, and community organizing. Changes in employment patterns, including the growing phenomenon of gig and platform work, pose new organizing and organizational challenges to the union movement. Many unions have sought to engage with gig and platform-based workers at times as part of a strategy to expand representation to incorporate non-standard workers more broadly (ILO, 2016).

These union renewal efforts draw on their experience from organizing and representing various types of non-standard workers in order to bolster outreach to gig and platform workers specifically. The tools unions are using vary and often overlap with strategies used in other organizing typologies, and their work in the gig economy is largely dependent on the political climate in which they operate. Kelly Ross, Deputy Policy Director of the AFL-CIO identifies three major trends in union-spearheaded, gig and platform worker organizing: The first approach is a legal strategy to address worker misclassification claims; the second approach has been the development of associations and alliances who provide services to gig workers and lobby on their behalf; and the third has been a push for legal and regulatory reform at municipal and state levels in order to promote organizing and bargaining rights for gig workers.⁵ As part of organizing turn, unions have also expanded their NSE worker outreach efforts to include gig and platform workers more generally, and have created new membership models and organizing tools to bring these workers into their ranks.

Legal strategies

Challenging worker classification is an attempt to bring gig and platform workers under the umbrella of existing statutes governing the employment relationship, thereby immediately providing the accompanying protections and benefits.⁶ A no less important benefit of employee status is the clear attribution of employer, and thus the collective bargaining counterpart; within the gig economy, digital labour platforms have overwhelmingly been regarded as the de facto bargaining counterpart, though these relationships are sometimes vague or unclear. Legal challenges on the basis of worker misclassification have been initiated in a number of countries. While there have been some class action suits originating outside of the labour movement (Lane and Daus, 2012), unions have taken a central role in challenging worker classification issues.

In the UK, GMB, the union for professional drivers, was successful in bringing forth, to date, one of the largest cases regarding worker misclassification against Uber. GMB argued that despite Uber's classification of drivers as independent contractors, a more appropriate classification for drivers would be the United Kingdom's 'worker' status. The ruling provided 30,000 drivers across the United Kingdom access to basic employment provisions including holiday pay, minimum wage, and breaks (GMB, 2016). Hannah Reed, of the Trades Union Congress, believes that litigation is one important strategy to increase worker voice in the gig economy. She notes that union misclassification challenges must prove, "all of the characteristics of work [for labour platforms] are the same as an employee or the same as a worker [...] and therefore [the individual] should be entitled to the [same] statute of rights".⁷ Unions, like GMB, have successfully argued before the courts that there is no real distinction between the content of work between those working via platforms and those who are not.

The New York Taxi Worker Alliance (NYTWA), discussed more extensively in the section on organizing, has also helped workers bring multiple cases against Uber. Initially, NYTWA assisted two Uber drivers with filing a successful unemployment claim against the company (Rivoli, 2016). This ruling

⁵ Interview notes, interview with Kelly Ross, 2 December 2016.

⁶ This may include provisions that cover workplace injury, unemployment, minimum wages, familial leave policies, etc. all of which provide workers with greater stability and expanded protections.

⁷ Hannah Reed, Senior Employment Rights Officer, Trades Union Congress, UK, Interview, May 5, 2017

may create subsequent opportunities for workers to gain employment-related protections including unemployment, guaranteed minimum wage, and other social protection measures. Although the first judgment did not address the labor force *en masse*, a more recent ruling found Uber “and other similarly situated” drivers to be employees for the purposes of qualifying for unemployment benefits (Griswold, 2017).

Union-affiliated guilds

The Independent Drivers Guild⁸ (IDG, or ‘the Guild’) is an affiliate of the International Association of Machinists and Aerospace Workers (IAM). IDG asserts that it represents 50,000 New York City Taxi and Limousine Commission-Licensed Uber drivers (Independent Drivers Guild, 2017). The Machinists’ Union has decades of experience organizing and representing the mostly immigrant workforce of black car drivers in New York City (Ness, 2010). While the IAM registered some isolated wins, including collective bargaining agreements with a number of black car companies, the industry’s structure and regulatory framework, paired with Uber’s disruptive market entry resulted in significant challenges to solving problems “base by base”.⁹ Thus, IDG was formed to help achieve wide-reaching industry reforms and create opportunities for dialogue between Uber drivers and the corporation. The four major issues the IDG has sought to influence include: a mandated tipping option; a minimum per minute / per mile rate (which would result minimum earnings of about \$250 for an eight-hour day); a cap on the number of TLC licenses (linked to number of trips, as a measure to limit competition in the labour market), and the right for a driver to appeal if the company undercharges or takes away money (for example, following a passenger complaint).

According to Ryan Price, Executive Director of the IDG, “while it *could* be done company-by-company, given the precariousness of the industry, company-by-company organizing would make it difficult to focus on the “big” issues. The Machinists realised an industry-wide association may be more effective, so we started bargaining with Uber to make the Guild happen.” What resulted was a five-year neutrality and recognition agreement between IAM and Uber, giving rise to a number of benefits, including a regular dialogue with local management.¹⁰ “We are building a union – without collective bargaining – but we function like an organizing union,” explains Price, “Our goal is to get them organized, and to get us to start thinking in a perspective of, ‘how do we change the fundamental rules of the industry?’ without worrying about the employee-independent contractor thing for now – just putting that on the back-burner.”

As offered by Kelly Ross, one of the benefits of the guild model is that it represents an avenue for unions to form relationships with gig and platform-based workers that positions them, should conditions change and formal union recognition become an option, to mobilize members into a formal organizing drive.¹¹ This view was shared by IDG’s Price, “The thing is, in our agreement [with Uber], as soon as [Uber drivers] have the right to collective bargaining, we can, and we will organize for collective bargaining.”

While the Guild’s direct engagement with Uber has not gone without criticism¹² it has provided what it views as an important comparative advantage: access. This includes access to the pool of Uber drivers,

⁸ Guilds have existed for hundreds of years as an avenue for people to pursue mutual purpose. Occupational guilds, commonplace in pre-industrial Europe, were organized by craft. Craftspeople, artisans, service providers, and manufacturers would join guilds for the purpose of mutual aid. These member-driven associations were economically important, serving not only as platform for expressing collective voice but also in securing market access for members and helping to formalize and professionalize work. That they have reemerged concurrently with the growth of non-standard employment links to the historical fact that guild membership was reserved for artisans seeking to protect and advance their interests in a context pre-dating the employer-employee relationship. For further reading see, (Lis and Soly, 2006; Ogilvie, 2014; Laubacher and Malone, 1997).

⁹ Interview notes, interview with Ryan Price, 4 April 2017. “A New Livery Base is a TLC licensed business that dispatches TLC licensed for-hire vehicles designed to carry fewer than six passengers, excluding the driver, which charge for service on the basis of flat rate, time, mileage, or zones.” (Taxi and Limousine Commission, 2017).

¹⁰ Other benefits included in the agreement: the ability to appeal deactivation decisions to an independent panel, with representation from the Guild; as well as discounted legal services, insurance and roadside assistance.

¹¹ Interview notes, interview with Kelly Ross, 2 December 2016.

¹² See: Katz, 2017; Scheiber, 2017 who draw similarities between the guild and ‘company unions’

and access to the company itself – through a works council¹³ – where the drivers represented by the Guild can raise issues with a view to their resolution. While the latter will be addressed under the section entitled “Toward Collective Bargaining”, access to drivers is seen by the Guild as an important factor influencing their strategy.

Finding and developing relationships with a dispersed workforce can be a major obstacle to organizing in the gig economy. The agreement with Uber provides IDG with driver contact information, a factor that has been incredibly important in shaping strategy. As Price points out, “Our organizing model is based on the fact that we have that list [of Uber drivers], because we can e-mail them all the time. [W]e can turn that contact into actual relationships through the stewardship programme. So, essentially, the staff—become just a hub that connects workers [with] other workers.”

Developing contacts into active representatives has been a major focus on the Guild. Price states,

Their goal is [to] help [drivers] through the industry; they help them with the Taxi and Limousine Commission, they help them communicate with companies, they help them with the N.Y.P.D. if they have to, they help them translate things. So our goal is, with our stewards, to build an actual union to build the feeling of community, the relationships that really are the brick and mortar, like the cement between the bricks of union.

New legislation

Following legal challenges to worker classification and the emergence of worker guilds, a third approach of US-based unions has been to introduce new legislation at a municipal level that bolsters rights and collective organizing opportunities for gig and platform workers. The most advanced cases were initiated by the International Brotherhood of Teamsters (the Teamsters) in Seattle. This legislation seeks to expand collective bargaining to independent contractors who work as drivers for Transportation Network Companies (TNCs, such as Uber and Lyft) and is discussed in detail in under “Toward Collective Bargaining”.

The organizing turn: NSE and gig worker outreach in Europe and the US

Union responses to on-demand work are highly influenced by local labour, political, and social cultures and traditions. Though individual strategies vary, they are all evidence of the ‘organizing turn’ many unions have taken to reach out to new sectors and traditionally unorganized workers (Fairbrother, 2008; Hickey, Kuruvilla, and Lakhani, 2010; Simms, Holgate, and Heery, 2012; Heery, Kelly, and Waddington, 2003; Heery, 2009; Heery, 2015). In addition to these new outreach efforts, unions have also had to restructure internally to create opportunities for non-standard worker affiliation, develop new organizing tools, and assess how to optimize spending in order to grow membership.¹⁴

Within Europe, many unions spearheading gig and platform worker organizing have a longer history of incorporating non-standard workers into their ranks. In Italy, for instance, unions responded to the needs of non-standard workers by creating specific representational opportunities in existing labour confederations for NSE workers (Pulignano, Gervasi, and De Franceschi, 2015). Structuring membership based on employment classification (rather than sectoral or occupational distinctions) provided a forum for workers to specifically address issues related to temporary contracts, low remuneration, inferior working conditions, and limited rights (ibid). Outcomes have included lobbying for legal reforms, aiding workers with contractual questions, increasing workplace protections for atypical workers, and

¹³ A concept much more common in European industrial relations, where it is governed by national laws and a European Council Directive, a works council may be defined in its most basic terms as a representative structure aimed at promoting information and consultation between worker representatives and management within an enterprise. In some countries, such as Austria and Germany, the role of a works council extends to co-determination.

¹⁴ See, for example, Simms, Holgate, and Heery, 2012; Bronfenbrenner and Hickey, 2004.

bargaining to encourage companies to favour traditional employment relationships (rather than shifting work to atypical employees) (ibid).

Unions are now using their history of collaboration with NSE workers to proactively reach out to gig and platform workers. For example, Mario Grasso of *Sindacato Networkers UILTuCS* in Italy, has been conducting a year-long survey to understand the scope of experiences faced by gig workers. *UILTuCS*'s eventual hope is to use the data collected from workers to determine how best to improve the terms and conditions for gig work. Grasso explains the various approaches under consideration,

You must remember that in Italy we have different legislation about work [...] For example in Italy there is the voucher.¹⁵ There are even some colleagues who have proposed to use a digital voucher for activities on the platform. There are also some others who would propose to create a benefits fund for these types of workers. We have also been trying in the last weeks to be in touch with the members of our Italian parliament who has proposed legislation about the sharing economy to try to push for some benefits like holidays, sick leave, and other protections.¹⁶

As *UILTuCS* continues to conduct research and develop a longer-term organizing strategy for gig and platform workers, the union currently offers individual support to gig workers with pressing concerns regardless of their membership status.

The ability of unions to integrate non-standard workers into collective bargaining or representation models may be a partial reflection of the strength of the labour movement industry-wide, regionally, or nationally. Benassi and Vlandas (2016) review the varied factors that encourage unions to engage with temporary workers. They determine high union density and strong collective agreements are two conditions that enable unions to bargain for greater protection for NSE workers. The goals of unionization among NSE workers have mirrored those seen in standard employment arrangements including the development of decent work standards, access to benefits, pensions, and negotiating collective agreements (Conaty, Bird, and Ross, 2016).

Pulignano, Gervasi and Franceschi (2015) argue that the response of unions to atypical work arrangements has focused primarily on one of two strategies. The first has been to reject non-standard work arrangements, fighting instead for full-time stable employment. The second has been to “adopt strategies aimed at improving working conditions, social rights and wages of such workers” (ibid, 41). In its report on non-standard work, the International Labour Organization makes similar observations and also encourages an examination of policy responses. The ILO highlights a number of different possibilities including: legislative reform, collective representation and bargaining, social protection policies, and programmes that support workers through labour market transitions (ILO, 2016).

The 2003 labour reform in Germany provided the impetus for *IG Metall*, a traditionally export oriented union, to develop an aggressive and inclusive membership outreach programme targeting non-standard workers to stave off use. Greater use of non-standard employees in unionized workplaces risked deteriorating industry standards achieved through collective bargaining (Benassi and Dorigatti, 2015). Since 2007, the union has sought to recruit temporary and agency workers, and is now actively involved in gig and platform worker outreach.

¹⁵ Though the *Buono Lavoro* voucher system as described above is unique to Italy, other countries have experimented with voucher systems as well. For example, in Belgium, a voucher system has been used to combat undeclared domestic work. Under the Belgium system, eligible service users can purchase vouchers to hire registered domestic laborers and workers' remuneration is subsidized by the government (Eurofound, 2010). Between 2008 and 2017 Italy issued vouchers to employers for the purpose of hiring workers on a marginal basis and up to a certain maximum income threshold. When cashed by workers, these vouchers were subject to various forms of employment related taxes and payments, including social security and workers compensation; (Balmer, 2017; Eurofound, 2009). The pilot was critiqued by unions for not offering sufficient worker protections, and was partially redesigned in 2017, by limiting its use to SMEs and households.

¹⁶ Interview notes, interview with Mario Grasso, 7 February 2017.

Six Silberman is at the forefront of IG Metall's current work on the gig and platform economy. Silberman has been working to develop an online website, FairCrowd.work where workers can provide feedback about the apps that they work for. He states,

FairCrowd.work asks workers what they like and don't like about the platforms that they work on and makes that information public. It's kind of like Tripadvisor or Yelp for online platforms. We've realized that one of the challenges with that is that online labour platforms are not like restaurants or hotels in that there are many different models of online labour markets. They're vastly different and the people participating in them have vastly different economic situations, life situations, goals or reasons for participating in online labour markets, expectations about what fair pay is, what good working processes are, and so on. You can't just ask people: is this platform good or not, or fair or not, or does it pay well or not.¹⁷

Silberman points to straightforward and quantitative questions regarding pay to illustrate his point. Depending on where a worker lives, what their expenses are, how long they have been working, and their level of financial dependency on the job, workers' opinions of platforms differ. Making a conclusive determination about a platform's working conditions is difficult given the extreme variability of worker responses. This creates an important role for labour unions in processing, interpreting, and presenting the data received from gig and platform workers.

The FairCrowd.work initiative is strikingly similar to efforts undertaken by online forums. This is not surprising as Silberman was hired at IG Metall following his long-time involvement as developer and moderator of Turkoption, an online forum for AMT workers. With the resources and backing of a major German union, the concept of an online forum and employer rating system can be scaled up to provide insight on what it is like to work for a number of different platforms. The expanded initiative is further facilitated by the cooperation of various European labour movement players. This has resulted in cross-border collaborations regarding FairCrowd.work that include Swedish and Austrian trade union partners.

Unionen, Sweden's largest union, has been a collaborator on the FairCrowd.work project and brings a unique perspective to worker agency, representation, and voice among non-standard workers. According to Fredrik Söderqvist, a Unionen economist, of their approximately 640,000 union members, roughly 10,000 are independent contractors or self-employed.¹⁸ They have primarily attracted non-standard union members through member services like insurance. Although the number of Swedish gig workers remains small, Söderqvist is optimistic about Unionen's ability to play a central role in instituting collective bargaining for gig and platform based workers.

Unionen approaches the gig economy with cautious optimism. Söderqvist doesn't believe there is anything fundamentally wrong with the idea of labour platforms, but believes they must be implemented with standards. He states, "The reason platforms exist is to lower transaction costs; that is the name of their business model. In order to do this effectively, you have to make it easy to match clients with providers of services and goods on the platforms. Ultimately that means you have to standardize". Unionen envisions creating a new type of institution owned together by social partners in labour and industry that would be tasked with creating industry standards and operating rules. In order for firms to participate in this institution, they must have a collective bargaining agreement in place. Söderqvist explains, "The idea is that if you want to create and negotiate these new standards, then you have to have a collective agreement in place in order to be a member of this institution that we are proposing. That basically means you can get the rule simplification that you want, but all of the stakeholders have to be present the process. So you can negotiate how the new standards should look. That is a tripartite idea."

In summary, Unionen's idea is to synchronize collective agreements with industry regulation and government bylaws. The Nordic region's tripartite agreements and industry-labour partnerships boast a long history of success. For example, Sweden has no statutory minimum wage; instead, prevailing national wages are determined by collective bargaining agreements that cover more than 70 per cent of

¹⁷ Interview notes, interview with Six Silberman, 27 January 2017.

¹⁸ Interview notes, interview with Frederik Soderqvist, 30 November 2016.

the population (Eurofound, 2015b). The uniqueness of the Nordic labour landscape indicates that the idea may be too regionally specific to be implemented elsewhere; however, in regions where tri-partite agreements have had proven success and where governments have indicated a desire to implement regulation, labour may find opportunities to advocate for workers via regulatory intervention.

The rise of the gig economy work has resulted in international collaborative efforts to address structural restrictions that limit the rights of gig workers, unions have participated in the measures as part of their renewal efforts. A hopeful, and broad-reaching step was the ‘Frankfurt Declaration on Platform-Based Work’, which was ratified by a host of unions throughout Europe and North America.¹⁹ The declaration proposes increased transparency between clients and workers, just disciplinary procedures, fair wages, and the right for workers to collectively organize (Austrian Chamber of Labor et al., 2016). In line with other efforts to address gig work conditions to date, the resolution identifies platforms as the pertinent counterpart for negotiations (ibid). Although these groups have achieved consensus on reforms necessary to improve platform-based work, the labour movement has not yet developed a cohesive approach to accomplish these goals.

Many established unions and labour confederations have recognized the need to develop a strategy that addresses the needs of non-standard and unrepresented workers. A common theme that emerges across unions and federations is their recognition of the need to develop a membership model that does not preclude workers from joining based on their employer or employment status.

New unions and worker organizing

In many industrialized and post-industrial countries, union engagement with non-standard workers has focused on applying existing collective bargaining frameworks to new workers. Simultaneously, alternative organizing efforts are underway, including the formation of new independent unions emerging from non-standard workers. These examples are frequently rooted in community and worker empowerment, and are distinguished by their lack of collective agreements (Fine, 2015; Morris, 2005). There is also significant overlap between the emergence of ‘independent’ unions and revitalization efforts of established unions in the face of efforts to build a broad and inclusive labour movement.

The concept of minority and independent unionism has not been wholly welcomed. Some critics express concern that minority unionism can lead to competition between unions for representational rights (Harcourt et al., 2014). Others fear that minority unions are susceptible to company influence and even cooptation (Fine, 2015). Irrespective of the controversy between members-only models and certified workplace majority unions, minority unionism can offer an immediate avenue to influence workplace politics and conditions in the gig economy and elsewhere.

The treatment of minority unionism differs across geographies. Some independent and minority unions follow externally established guidelines to obtain formal recognition; however, it is far more common for them to self-identify as a union and to develop their own thresholds for representational mandates. Because of their independence and self-direction, minority unions often operate outside of the regulatory framework that govern traditional union operations.

Within the United Kingdom, the Independent Workers Union of Great Britain (IWGB) provides one of the best-known examples of new union formation for gig workers. IWGB was formed explicitly to organize non-traditional, low wage, and immigrant workers. The group opens membership to, “all employees, workers and any other persons who accept the principles, objectives, and rules of the union” (IWGB, 2017). As a minority union, IWGB represents only a fraction of workforces in various industries and does so without the protections afforded to traditional collective bargaining agents. Nevertheless, the union boasts a history of substantial gains in multiple industries that are considered difficult to unionize including janitorial work and courier services. These gains, including a courier raise of 20 to 30 per cent

¹⁹ Austrian Chamber of Labour (Arbeiterkammer); Austrian Trade Union Federation (ÖGB); Danish Union of Commercial and Clerical Workers (HK); German Metalworkers’ Union (IG Metall); International Brotherhood of Teamsters Local 117 (USA); Service Employees International Union (USA); Unionen (Sweden).

at City Sprint, London's largest courier service, were achieved through targeted public relations campaigns and direct action.

Mags Dewhurst, a courier and union organizer with IWGB, explains their approach as community-based and as grassroots. Though she certainly sees value in formal union recognition and collective bargaining - a strategy that IWGB is now exploring - her experience as a union activist and courier in an industry marked by NSE demonstrates that gains can also be made without formal union recognition and outside of collective bargaining avenues. Dewhurst believes that unions with experience organizing non-standard workers boast an organizing skillset that is transferrable to new frontiers of gig and platform based work.

In August 2016 when the platform Deliveroo informed on-demand, delivery workers via email that their pay rates would be decreased, workers self-organized and protested outside of the head office (Osborne and Butler, 2016). IWGB attended the protests in support and has been organizing alongside the workers since. The role of IWGB was one of support and encouragement, rather than direction. Worker leadership and strong rank-and-file involvement and community ties were seen as keys contributing to union success. For IWGB Dewhurst suggests, "Community is the backbone of the union. It's not like the union came along and said we should organize these workers, the union emerged out of the community itself. I think that is really, really important to understand the gig economy and these new ways of organizing labour".²⁰ Although Dewhurst frames IWGB's focus on rank-and-file engagement and ground-up organizing as divergent from well-established unions, IWGB's practices and trajectory are similar to those used by now-dominant unions a century ago when they were first created.²¹

As a result of the August demonstrations, Deliveroo workers were successful in preserving previous pay terms (Osborne and Butler, 2016). IWGB continues to work with Deliveroo couriers to ensure that Deliveroo fulfills its commitments. In order to achieve this, IWGB is exploring the possibility of organizing a formal bargaining unit as per the traditional majority union representation model. Dewhurst states, "[recognition agreements are] something that we have [historically] found not to be necessary because we have won everything through campaigning. But obviously, depending on the employer and depending on the circumstances, recognition agreements can be really, really useful and we are going for them now in Deliveroo."

IWGB's ability to pursue formal recognition agreements, however, has come up against obstacles. While IWGB was successful in gaining 'worker' status for traditional couriers, a recent ruling from the Central Arbitration Committee stated that Deliveroo couriers were not 'workers' but self-employed (O'Conner, 2017). There are opportunities for appeals, and, given IWGB's history it is likely that they will continue to operate as a minority union and collectively organize couriers irrespective of the outcome.

The New York Taxi Workers Alliance (NYTWA) has also adopted a minority union model. Though registered as a non-profit, it is a membership-based and member-supported organization, the first AFL-CIO affiliate established to represent non-standard workers, and strongly identifies as a union. The primary goal of NYTWA is to improve the working conditions for taxi drivers in New York City. NYTWA has worked extensively to influence the administrative rulemaking process to ensure that drivers have enforceable rights and protections. Through lobbying public authorities such as the New York Taxi and Limousine Commission (TLC), they have successfully won higher wage rates, lowered lease rates, instituted rules that allow drivers who lease vehicles to bring charges against vehicle owners for extraneous overcharges, and proposed and won other regulatory reforms that shift the risk associated with cab driving away from drivers and back onto the shoulders of taxi garages and fleet owners. With the introduction of on-demand car services like Uber and Lyft, NYTWA has seen many of its members enter the online platform and gig economy.

²⁰ Interview notes, interview with Mags Dewhurst, 17 December 2016.

²¹ Ruth Milkman identifies contemporary minority union tactics such as vibrant outreach and direct action emulate labour organizing before the New Deal Era when organized labour turned to lobbying activities, electoral politics, and workplace majority unionism as principle strategies (Milkman, 2013).

The NYTWA's strategy to improve working conditions for platform-based drivers has been first and foremost a legal one. The union's first large win resulted in a favourable ruling in New York City concerning employee-related benefits, in this case a successful unemployment claim against Uber (Rivoli, 2016). While the unemployment claims set a precedent, the court did not address the broader classification questions facing gig work generally and the judgment pertained only to the litigants involved. More recently NYTWA helped uncover and address an unlawful deduction of taxes from drivers' fares, through which it was determined that Uber had underpaid drivers (Scheiber, 2017), which the union uses as an outreach tool and to ensure that drivers are fully compensated for any losses suffered.

IWGB, NYTWA, and other independent unions rely on diversified strategies to bring bargaining counterparts to the table. These groups have shown that legal strategies in conjunction with campaigns and community support can result in substantive gains for workers.

3. Online Forums

The monitoring and surveillance capabilities embedded in digital labour platforms represent a distinct aspect of gig and platform based work. For decades consumer feedback has played an important role in human resource management and has been used as an evaluative and disciplinary tool for workers (Fuller and Smith, 1991). Within the gig economy, consumer feedback mechanisms often appear as worker ‘rating’ systems. Poor ratings – which are posted publicly – can destroy a worker’s online credibility, negatively impact their future job prospects, or result in apps removing workers from the platform altogether (De Stefano, 2015). They also have important implications for the health and well-being of workers (Akhtar and Moore, 2016).

De Stefano examines the disciplinary effect of consumer-based rating systems, where control is exerted through the app which dictates conduct and standards are enforced by consumers who use and rate services to ensure that expectations are being met (De Stefano, 2015). Rosenblat and Stark have similar findings; in a case study of Uber drivers they observe, “in the driver rating system offered to riders, passengers are empowered to act as middle managers over drivers [because their] ratings directly impact [driver] eligibility” (Rosenblat and Stark, 2016, 3772). By developing a system where supervision is offloaded onto customers, these companies simultaneously increase control and limit perceived oversight that could strengthen worker misclassification claims.

The power that rating systems have over app-based workers suggests that workers must either develop strategies for decreasing the influence of these rating tools or must establish mechanisms to navigate rating systems successfully. Though rating tools have primarily been used to monitor and discipline workers, Esther Lynch, Confederal Secretary for the European Trade Union Confederation, is a proponent of workers re-appropriating this technology to rate the apps they work for. She states, “In the same way you have ratings against workers, you have workers who are beginning to provide ratings for employers, and I think that all of those strategies are good because they offer opportunities for engagement with workers”. Lynch contends that rating systems which encourage worker participation provide a potential entry point for subsequent collective organizing and action.²²

Particularly common among crowdworkers, who are often geographically dispersed and work online in isolation, forums help workers to discern between equitable and exploitative requesters in order to maximize earnings and share their experiences. Amazon Mechanical Turk (AMT), an online labour marketplace comprised of computer-based micro-tasks, has spawned numerous online forums created for and by its workers. “Turker²³ Nation” and others worker forums were established largely in light of AMT’s ‘approval’ or ‘rejection’ policy, permitting requesters to pay only for jobs that are completed to their subjective satisfaction. This policy can lead to abuse, such as non-payment for services rendered, and Amazon does not mediate conflict between requesters and workers (Silberman and Irani, 2016). By participating in online forums, AMT workers are better able to avoid abusive requesters and predatory requests.

There is an important structural distinction to be drawn here between crowdworkers, and those who work-on demand via apps. In the latter case, apps like Uber and Lyft expect workers to fulfill a large percentage of requests made, at the threat of being removed from the platform. Under these circumstances, worker feedback about consumers holds little bearing on a worker’s willingness or ability to accept or refuse requests. Crowdworkers such as those working for AMT, on the other hand, may feel economic or competitive pressures, leading them to accept jobs posted by unreliable requesters or to build an online reputation and active online presence in hope of increasing their job prospects (Akhtar and Moore, 2016); however, they have full discretion about whether or not to do so, and their failure to accept tasks does not reflect negatively on them.

²² Interview notes, interview with Esther Lynch, 23 November 2016.

²³ “Turker” is a term commonly used for someone who works on the AMT platform.

Silberman and Irani write that worker participation in forums is a vital step in successfully navigating AMT. They note, “Discovering a forum appears to be a crucial turning point in the ‘careers’ of financially successful Turkers; it is typically that only by connecting to a community of more experienced workers that one can navigate AMT well enough to earn a significant income” (Silberman and Irani, 2016, 521). Similarly, Kristy Milland who runs the TurkerNation forum, believes that “for workers to be financially successful on AMT, they must participate in forums”.²⁴ Given the global nature of the Turker workforce, online forums present one of the only promising tools for worker engagement and skill sharing irrespective of worker location.

Forum participation increases a worker’s ability to choose better jobs with clear expectations and higher remuneration rates (Berg, 2016); nonetheless, there continues to be a substantial power differential between workers and platforms with respect to how rating systems are used. This is further complicated by the triangular nature of platforms, with workers, platforms and requestors involved in the exchange. Whereas apps use rankings to discipline and discharge workers, worker-led forums intent on changing industry standards must build campaigns that compel crowdwork platforms – and requestors – to treat labour fairly. The efficacy of platform rating systems remains largely unknown. There is limited research that suggests that for requestors who know about them, worker forums (specifically Turkopticon, another forum for AMT workers) do impact work rejection behaviour (Silberman and Irani, 2016); rankings of platforms, however, is too new to draw firm conclusions. To the contrary, larger platforms more often appear unfazed by negative feedback from workers. Burgeoning workforces, high turnover, and the ability for platforms to remove workers at will present significant challenges to the development of successful worker forum organizing. Within this context it is clear that although worker forums can create solidarity and community among workers they are presently unable to counterbalance the power of online platforms.

Kristy Milland expressed that workers engaging in online forums are concerned about retribution from requestors or the platforms that they work for. She believes that concerns about retribution from the platform and requestors create barriers to online forum participation. As internet forums continue to be open-access and the power differential remains, mitigation strategies would overwhelmingly depend on worker self-censorship, limiting the efficacy of such forums.

Though forums can assist individuals in navigating their ‘career’ on a platform, there are also opportunities for ‘virtual’ collective action to take place. ‘We Are Dynamo’, was an online community forum specifically designed to facilitate collective action of Mechanical Turk workers (Salehi et al., 2015). The group targeted academic requestors who, according to Milland, comprise roughly 20 per cent of all AMT requests. ‘We Are Dynamo’ developed a list of best practices for academic requestors including payment rates and conduct guidelines that were made public via an open letter signed by Mechanical Turk workers (We Are Dynamo, 2014). The forum provided a site for workers to gather, identify their common interests and collectively draft a list of best practices.

‘We Are Dynamo’ is an interesting example for a number of reasons. Platform workers were able to establish common interests and build collective voice through use of the forum, overcoming pressure to compete. Subsequently the ‘We are Dynamo’ group agglomerated academic researchers as the intended counterpart for addressing their collective claim. Targeting requestors diverges from many gig- and platform-worker organizing approaches which typically target online labour platforms. In most cases the heterogeneity of individual requestors would make it difficult for platform workers to address them, en masse, as the counterpart. In the case of ‘We are Dynamo’, however, grouping academic requestors together was achievable because academics are subject to university internal ethics review boards. These boards provide oversight and approval for academic research projects with the purpose of mitigating risk and minimizing any harmful impact on research participants. We Are Dynamo identified this as a potential point of leverage, and cautioned requestors that in the event of non-payment or poor treatment, ethics review boards would be contacted.

²⁴ Interview notes, interview with Kristy Milland, 21 November 2016.

No firm conclusions have been reached regarding the efficacy of ‘We are Dynamo’s’ actions. Online forums are built to aid workers with a sense of immediacy, not to quantifiably or qualitatively monitor request patterns or worker grievances over time. Nonetheless, the approach demonstrates the capacity of forums to facilitate collective action for a highly dispersed workforce and to identify sites of leverage and creative mechanisms to enforce labour standards. It must be noted, however, that these initiatives grew out of very specific circumstances, which may prove difficult to replicate on a regular basis or harness for organizing purposes.

4. Worker Centres

Over the past two decades, worker centres have emerged as new type of institution advocating for worker rights, mainly in the United States. Operating independently and often within a limited geographical scope, they provide social services and labour resources to wage earners in a variety of sectors (Fine and Gordon, 2010). The emergence of worker centres has helped to fill an organizing void in sectors where non-standard forms of employment predominate, (Peck and Theodore, 2012; Ness, 2010; Cobble and Vosko, 2000; Heery, 2009; Cranford et al., 2005)²⁵ and in industries where workers face barriers to formal unionization, they provide a forum to seek individual support services and to build agency (Rosenfeld, 2006).

Many of the sectors where worker centres are currently active have not yet made the leap to digital labour processes or digital labour marketplaces, however some of the successful approaches that worker centres have adopted to improve the conditions among their members hold promise for potential application in the gig economy. We contend these applications may be particularly helpful for those working for platforms which facilitate work-on demand via apps, and perhaps less so for crowdworkers.

The search for solutions to improve employment and working conditions has led a number of worker centres to develop fair labour certification programmes and standards. In the United States the Coalition of Immokalee Workers (CIW) has taken to lobbying for increases in remuneration and immigration reform for Central Florida's agricultural workers (Walsh, 2005). While unable to push for formal unionization due to legal restrictions, CIW has pursued a multiparty bargaining strategy to bring together farmers, purchasers, and farmworkers to create the Fair Food Program. The programme resulted in fast-food purchasers increasing prices paid for produce, leading to improved farmworker remuneration. While a triangular bargaining model has not yet been used with platform-based work, it presents an interesting approach that could hold promise in that context.

For example, within industries that are overseen by municipal and/or state government the three parties would likely include representatives for gig and platform workers, representatives for the online platforms, and officials from the regulatory authority in the municipality or region where the work takes place. Within this type of arrangement, market access would be dictated by municipalities through their regulatory authorities.

While such an arrangement is inconsistent with the definition of collective bargaining - which takes place bilaterally between "an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other"²⁶ - regulatory regimes in sectors such as the taxi or transport network industries have for many years engaged in broad consultative processes with representatives of employers and trade unions, as discussed elsewhere in the paper. It is not beyond the realm of possibility that some portion of this regulatory space could be ceded, on a pilot basis in a particular locality, to a process of bilateral negotiations between worker and employer representatives. Similarly, a large user-base of on-demand services may provide another opportunity for developing tripartite agreements. Large user groups may include governments (or recipients of government monies directed for particular use), academic institutions or consortiums, or corporations using gig services.

Worker centres are also using technology in innovative ways, another strategy that may prove useful to workers in the gig economy. The National Day Laborers Organizing Network (NDLON) has observed similarities between the work of day labourers, or *Jornaler@s*, and the growing ranks of gig and platform workers. According to Cal Soto, NDLON's Worker's Rights Coordinator, the short-term and impersonal nature of online work is emblematic of the conditions day labourers have faced for decades, as are the limited accountability mechanisms built into the labour market structure.²⁷ NDLON's newest strategy for combatting non-payment of wages has been to employ technology in order to better document the work

²⁵ Some of these sectors are also now a focus of large-scale union organizing efforts.

²⁶ Collective Bargaining Convention, 1981 (No. 154).

²⁷ Interview notes, interview with Cal Soto, 8 February 2016.

experience of people on the job. NDLO created the Jornaler@ app and now finds that its organizing potential far exceeds its original intended purpose.

Soto describes the app's function,

[Jornaler@ collects and stores] information about every job a worker goes out on – in the event that they are not paid their wages, it has all of the important information, like location, name of employer, the amount they are owed, the time and day that they worked, basic information that is really hard to gather after the fact sometimes – now they have right there ready to go. The idea is that they will be able to have a daily check in, a punch card, that is on their phone – that no matter how many phones they go through it will be saved in a safe place so if they do want to make a case or make a claim they can start a report that will go directly to their worker centre to file a claim.²⁸

For organizers, data collected from app use can shed light on industry trends. Soto states, “Information collected gives us more direction as a centre. As an organizer it provides a lot more connection to seeing in real time what is going on with folks who are working – not just at your centre, but also on the corners. It makes organizers aware of other trends that are happening in the area.”

Worker centres affiliated with NDLO also have experimented with creating hiring halls.²⁹ Soto notes that workers who are hired through a hall shows rates of wage violations are cut in half, health and safety violations are reduced, and centres set wage rates that exceed local minima. Although the hiring hall model could be easily digitized, Soto states that moving the hiring hall completely online would come with a cost. He explains, “There are many more resources that we are able to plug in to communities. It is really about building a local community of people who are similarly situated and growing leadership out of that and challenging the power dynamics in the market place and within local politics. It would kind of counter our goals to go fully virtual. That said, I think that there is demand for that.” This could represent an opportunity for gig workers – particularly those in ‘work on-demand via apps’ – to organize, influence terms and conditions, and control labour supply, through some combination of union, worker centre, hiring hall or cooperative.

Increased collaboration between worker centres and unions, the development of industry-specific networks, as well as legislative and regulatory gains offer some indication of capacity of these groups to address macro-issues *while simultaneously* servicing individual members (Fine, 2015). Worker centre networks encourage groups to strategically pool resources and share strategies across geographies, an approach which lends itself well to highly dispersed workers operating under the same corporate platform.

²⁸ Indeed, should regulation of platform work become a reality, the technology itself could facilitate enforcement of tax and labour laws. Multiple interviewees noted that the technological architecture of digital platforms also lends well to tracking activity variety of factors, from worker location and remuneration, working time, and other metrics commonly used in traditional employment regulation.

²⁹ Prevalent in the union construction, maritime and parts of the entertainment industries, in response to the temporary, fluctuating nature of employment in these sectors, hiring halls refer workers to employers which have agreed to abide by specific conditions determined through collective agreement. While some have noted the similarities between the situation giving rise to hiring halls and platforms (Cherry, 2009), others call for the strict rules applied to union hiring halls to be applied to temporary employment agencies (Freeman and Gonos, 2006), and suggested the model be extended to NSE in the logistics sector (Gonos and Martino, 2011), the applicability of this organizing model in the gig economy may warrant further investigation. Worker centre hiring halls are simply locations where workers in search of work can gather and employers can visit for recruitment purposes.

5. Worker Cooperatives

Few organizational models promote worker voice and control more than cooperatives.³⁰ A worker cooperative is a type of cooperative where worker-members, who constitute the majority of membership, are both owners and participate in the operation of the enterprise. Their main mission is to create and maintain sustainable jobs (CICOPA, 2005). Worker cooperatives are being established in all sectors of the economy and have been effective in “address[ing] the deficits in legal and social protections and substandard working conditions” common in nonstandard employment (Esim and Katajamaki, 2017, 2). This section briefly explores themes related to worker-managed and owned cooperative enterprises in the gig economy. Cooperative development in the gig economy has taken two different approaches. The first has been the creation of platform cooperatives; these often operate in competition with standard gig and labour platforms. The second approach is the development of cooperatives so that gig and platform workers can pool resources and for improved services and benefits.

Platform Cooperatives

Cooperatives created by and for gig and platform workers have overwhelmingly embraced technology. Trebor Scholz uses the phrase ‘platform cooperative’ to describe a model that “embraces technology but wants to put it to work with a different ownership model, adhering to democratic values, so as to crack the broken system of the sharing economy/on-demand economy that only benefits a few” (Scholz, 2017, 14). Finding inspiration from the legacy of ‘traditional’ cooperatives, platform coops emulate the services and delivery models of their corporate counterparts, but are designed by, or in conjunction with, workers (Stearn, 2016).

The taxi industry, for example, has given rise to a number of new cooperative firms in recent years. In Denver, Colorado, Union Taxi Cooperative is driver-owned and has built an app that provides passengers with the option to request, monitor, and rate rides in Denver (Union Taxi Cooperative, 2017), similar to major ride hail companies. Cooperative membership has created a unified group where workers can leverage their membership numbers and power as local business owners to influence local regulations governing such issues as meter rates, traffic rules and transportation planning.

When workers are included in the platform development they can build platforms that promote their own interests. Rather than corporations taking a fee for maintaining the site and connecting workers with a gig, many platform cooperatives minimize the cost to workers by removing the intermediary.

Growth opportunities for cooperatives are also determined by their ability to provide sufficient and good-quality employment for cooperative members. This too is a sharp contrast from platform capitalism – where the ability to provide on-demand services is predicated on a large labour pool with flexible work schedules and little guarantee of paid contracts. Providing adequate employment for cooperative members may limit the ability to scale-up the model because membership is ultimately limited by market demand. Income regulation may pose additional barriers to cooperative firm growth in cases where worker-members reside in different jurisdictions or across international borders.

Sharing resources and improving access to social welfare programmes through cooperatives

³⁰ The ILO Promotion of Cooperatives Recommendation, 2002 (No. 193) defines the term cooperative as, “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.” In this section, the authors explore membership-based cooperative enterprises where, “members are also owners of the organization, and decided democratically on the major issues affecting them” (Esim et al. 2017). Marked by social motivation and mutual aid, worker cooperatives differ from Employee Stock Ownership Plans, where workers generally have little control over workplace administration and decisions (Witherell, Cooper, and Peck, 2012).

Within the context of the gig economy, the second function of cooperatives has been as a means for service provision. Using the cooperative model to meet the needs of freelance workers predates the emergence of gig and platform work. Lack of institutionalized services and benefits for gig and platform workers reveals opportunities for cooperative development and expansion in this sector.

For example, SMart, a Belgium-based cooperative operating throughout Europe has used their cooperatives to create an employer where none existed, providing workers who would otherwise be classified as self-employed with the security of a formal employment relationship. As described by Maxime Deschesne, Operations Director (COO) of SMart,

We originated by helping the artistic community to get paid properly and provide employment [benefits] to the otherwise self-employed. We are now active in a broad range of sectors including the platform economy and the model is always the same: there are a lot of situations, including the platform economy where people want you to work for them but they don't want to be your employer. They want you to be self-employed. And as a worker, you want to be an employee. In this case what we suggest is that you can own part of our company - that is the cooperative model. The company will mediate between your client and you, so that the clients become the client for SMart, and you become the employee of SMart. We turn people that have no other choice but being self-employed independent workers into employees of SMart.³¹

Critics assert that the model absolves the employing companies from covering benefits like worker's compensation and pension contributions; benefits they feel should be provided by employers. Indeed, such a service model may be less contentious in an environment where benefits are attributed to a strong public social protection system, accessed through aid of a cooperative. In Belgium, Deschesne mentions that SMart's approach has helped attract new cooperative members working in the gig and platform economy. Gig workers' involvement has propelled the coop to expand its activities beyond service provision, to negotiating with the courier service app Deliveroo about terms and conditions for members. This included a base salary - pro-rated to the number of hours worked - that is equal to Belgium's minimum monthly salary; a guaranteed three hour pay period regardless of the number of deliveries made, and reimbursement for job-related expenses including bicycle and telephone use (SMart, 2016). Deschesne explains that SMart's gains have led to more extensive collaboration with the existing labour movement. The coop's next step is to develop stronger and more formalized, "communication channels with representatives of the bikers' community" to ensure that subsequent negotiations with Deliveroo fully reflect the needs and interests of couriers.

Workers' embrace of platform cooperativism illustrates one way in which a technology that is often criticized as a tool for exploitation can be used to the benefit of workers themselves. Cooperatives like SMart can offer isolated platform-based workers an opportunity to generate new more equitable economic relationships, increase transparency in job hiring and disciplinary structure, stabilize rates of pay, and a framework to develop effective strategies to influence regulation. Furthermore, the ability to manage membership numbers can help ensure that the supply of workers is well matched to the demand. Nothing about the fundamental organization of cooperatives is specific to gig or platform based workers. However, as some posit that full time employment could become a thing of the past (Moody and Brooks, 2016), worker cooperatives offer a promising mechanism to encourage worker voice, representation and influence as these fundamental questions continue to be addressed.

³¹ Interview notes, interview with Maxime Deschesne, 31 March 2017.

6. Employer Initiatives

The proliferation of gig and platform based work has been largely precipitated by new firms in the marketplace. New and established firms that embrace gig work are not expected to be a short-lived phenomenon. Instead, as Denis Pennel, Managing Director of the World Employment Confederation,³² stated in an interview with HR Square magazine: “salaried work is, slowly but surely, ceding its place in favour of a return to task-based work” (Hermant, 2017, 41). Put differently, but by the same organization, “Work is no longer a place to go but more a task to perform!” (World Employment Confederation, 2016: 3).

Employers’ organizations have generally sought to support their members in responding to the gig economy, without necessarily adopting hard-and-fast positions on the phenomenon. The International Organisation of Employers (IOE) has noted the need for more extensive research on the size, scope, and effects of the gig economy prior to developing specific policy recommendations. Remaining open-minded about the potential benefits that gig work may provide firms, suggesting that consideration be given to the fact that traditional and classical schemes of work that we have been operating with for a century are moving toward new realities.³³

A level playing field

IOE frames regulatory overhaul as a way of ‘modernizing’ of existing labour laws to account for new forms of digital work (IOE, 2016). Suarez-Santos, Secretary General of the IOE, does acknowledge that tension can arise between traditional business models and platform corporations, often revolving around the question of fair competition. “Many of these problems [of unfair competition] are being solved at the national level through proper regulation, [or] proper enforcement of existing regulation”. According to DeJardin, Advisor at the IOE, “we call for a level playing field. As a representative of the employers, we would not recommend or support any call for ban of enterprises that work on the net, but definitely we have seen companies that do not follow the same rules and do not abide by the same regulations in terms of tax, occupational health and safety, and others”.³⁴

Creating a “level playing field” can impact a firm’s ability to access markets and to participate in employer federations. Although the membership of most employer associations consists of “traditional” employers, there are cases where platform companies have joined and where their affiliation caused or led to some discord. For instance, in 2016 Denmark’s second largest taxi company, 4x48 TaxiNord withdrew its membership from *Dansk Industri* (the Confederation of Danish Industry) in protest over the latter having admitted Uber to its association (Østergaard Jenssen, 2016).

Sonila Metushi, former manager of mobility of people and taxis in the International Road Transport Union, (IRU) representing private transport employers globally, speaks directly to how variability in state regulation results in different capacities for industry and worker cooperation. “We’ve been working a lot in India and in East Africa. You have a totally different environment there when it comes to transport, in particular when it comes to East Africa. There it is really an informal sector. It is not organized; the employers and employees are not organized. In some areas we have no regulation in place, so there is already the ‘level playing field’ of no rules.”³⁵

While economies in early stages of development can be one reason for limited regulation, employers may promote open and less-regulated digital markets for a variety of reasons. For example, the Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA), the confederation of German Employers’ Associations, contends that digitization necessarily creates and requires more flexible

³² Formerly Eurociett The European Confederation of Private Employment Agencies

³³ Interview notes, interview with Roberto Suarez-Santos, 3 February 2016.

³⁴ Interview notes, interview with Jean DeJardin, 8 February 2016.

³⁵ Interview notes, interview with Sonila Metushi, 13 February 2016.

employment relationships. The organization, which represents employers' associations in a vast array of industries suggests that:

Crowd-working and crowd-sourcing are new forms of freely organised activity and free cooperation in the Internet which cannot be captured in law. Neither are these forms of employment that can be regulated in any way. A need for action in law or negotiated agreement does not appear to be a given, not least because national or even regional provisions would be unenforceable. [...] Anybody who wants to take on such a task in the Internet should not and cannot be impeded either legislatively or in any other way. (BDA Die Arbeitgeber, 2015, 6)

While the BDA recognizes the value of works councils, stating that “[t]rust-based cooperation between employer, works council and workforce is not open to question [,]” it nevertheless suggests that existing dialogue mechanisms may require reform in order to keep pace with the “higher speed in decision-making and implementation processes” faced by business. Dølvik and Jesnes (2017) also focus on maintaining a level playing field, but note the inherent difficulties in balancing the interests of Nordic employers’ organizations’ ‘traditional’ members with an “interest in promoting growth in companies that over time might boost the membership” (45). With respect to collective regulation of the gig economy, the authors conclude that the social partners were unlikely to voluntarily organize and regulate the market without assistance, “credible regulative threats” and guidance from the state (49).

On-demand labour firms themselves are responding collective regulation differently. As outlined earlier, some firms are engaging, albeit selectively and on a limited basis, and at times under the condition that the organization representing drivers does not challenge their status as independent contractors. On the other hand, smaller firms and some employer associations are exploring ways of working with labour to develop procedures and policies that encourage collaboration. Formalized and regulated sectors present workers and employers with an avenue to influence and change the industry. Metushi states, “For me the most important difference between Europe, the US, and other regions is professionalization of the industry”.

Employer-union collaboration

IRU has worked in partnership with the International Transport Workers’ Federation (ITF) to create innovative and professional business growth opportunities in the on-demand economy. Together trade unions and employers have created a smartphone ride-hail app called UpTop. As explained by Metushi,

Two and a half years ago we created UpTop, which is a network of taxi apps globally that comply with a set of quality criteria. The criteria include being legally permitted in the jurisdiction where they operate, following employment legislation, service ratings, and customer feedback. The other pillar of the network is a roaming function. We see the benefit of the local character that the [taxi] industry has, but at the same time there is a huge opportunity to actually ‘glocalize’³⁶ it, in the sense that as a user you have your own taxi app that you trust and use in your own city or region, but then while travelling you can use the same app to order a taxi that is part of a quality network there.

UpTop’s network works seamlessly to tap into approved local platforms that provide similar services across participating regions. This network helps smaller businesses scale-up their operations, a concept that may increase smaller firm’s competitiveness in a field dominated by a handful of global corporations with billion dollar valuations. The initiative is concerned with predictable and standardized quality. “If it is found that a partner is not complying with the rules, there is the possibility to have the partner removal from the network”. IRU has had a steady stream of interested apps approach them to participate; the desire to become and remain part of the network likely creates incentive to abide by established rules and protocols.

³⁶ ‘Glocalize’ comes from a blending of the words globalize and localize.

UpTop represents one of the most developed collaborative gig-economy partnerships between employers and organized labour. It brings together smaller enterprises in a cooperative capacity. This creates cross-border business alliances which bring tangible financial benefit to firms and impact workers across geographies.

UpTop has been pioneered by IRU and corporate interests have been a central pillar from its inception. Additionally, IRU members may already have existing relationships with ITF affiliates. Within the context of this pre-existing working relationships, the ITF is an important ally in the development of the network. Globally, various examples of collective worker action and driver demonstrations show that workers can be successful in barring even the largest gig and platform based firms from market entry; ITF affiliates have spearheaded some of these efforts (International Transport Workers' Federation, 2017a; 2017b; 2016). Whereas large transportation networking firms may be able to withstand social and political pressure, others have opted to work in partnership with organized labour to facilitate app development and market entry.

7. Toward Collective Bargaining

The objective of this research project was to identify and analyze examples of collective bargaining between workers and employers in the platform economy. Our difficulty in locating specific examples of ‘fully fledged’ collective bargaining can be attributed to four factors. First, the platform economy is a recent development; the novelty of digital labour markets suggests that collective bargaining has yet to be fully established in line with the traditional definition, including through the conclusion of collective agreements. Secondly, movement toward collective bargaining may be commensurate with the gig economy’s relative importance in the broader labour market. Despite extensive media coverage, gig and platform work employs a small proportion of the total workforce.

Third, worker efforts toward unionization and collective bargaining have been actively resisted by some labour platforms. For example, in addition to Uber’s opposition to what was deemed the “collective bargaining” ordinance in Seattle (Uber, 2017) Amit Singh, Uber’s Global Lead, Future of Work Policy recently suggested that collective bargaining was incompatible with their business model and worker flexibility. In a Facebook Live event, when asked if Uber would recognize the right of its workers, if they unionized, to engage in collective bargaining, Singh stated,

The actual model that we operate and the way in which we have this flexible model means that there are certain ways in which you can protect yourself, that you typically wouldn’t need certain ways in which you would ordinarily protect yourself in other things. That is the reason why they don’t necessarily exist. So things like collective bargaining and other things, because of the flexible nature of our work, because you can come on and off the platform, the purpose that collective bargaining was originally structured for doesn’t necessarily hold.

Contrary to Singh’s comments, and as Hayter, Fashoyin and Kochan point out, “the institution of collective bargaining is changing and adapting to the multiple developments in the economy and in organizational practices. Rather than create rigidities and obstacles to flexible adjustment as is commonly argued, industrial relations systems have been robust and flexible and are evolving to meet rising demands for microeconomic adaptability” (2011, 240). Despite the extensive research that underpins Hayter et al.’s claim, many platform companies have been unwilling to bargain with workers directly.

The fourth challenge that platform workers face to achieving collective bargaining is rooted in the fact that organized activity undertaken by independent contractors can be considered to be contrary to competition statutes or other anti-trust laws. Platform workers are overwhelmingly treated as independent contractors; this employment status can not only make it difficult to identify their bargaining counterpart, but moreover, and despite the recognition of collective bargaining as a *fundamental right*, it has been argued that their collective agency enacted is illegal, rendering them largely excluded from the ability to participate in fully-fledged collective bargaining and the right to freedom of association.

ILO standards governing freedom of association and the effective right to collective bargaining are based on a definition of ‘worker’ that is interpreted broadly by the ILO supervisory system. Rubiano (2013) points out that cases were taken up by the ILO supervisory system as early as 1983 in relation to temporary, self-employed, domestic and home workers. Given that these groups were not explicitly excluded from Convention 87, all should be covered by the protections it affords.³⁷ He analyzes a number of areas where workers are excluded, in law or practice, from the effective recognition of the right to collective bargaining. These are also germane as regards gig and platform workers, as outlined below.

Challenges to effectively realizing the right to collectively bargain in the gig economy stem from limitations due to employment status, explicit exclusions from protection, outdated regulations, difficulties in identifying the employer, and conflict with competition law. Platform-based work often involves triangular relationships, making it difficult to identify the employer, and consequently, the bargaining counterpart. Meanwhile, competition law restricts the right of *bona fide* self-employed

³⁷ For an updated analysis, see also: ILO, 2016.

workers to join together to negotiate over their terms and conditions of employment and work because such behavior among ‘undertakings’³⁸ is considered ‘price fixing’ to the detriment of consumers.

One of the practical difficulties of organizing in the gig economy is establishing the location of the work. Esther Lynch, Confederal Secretary of the European Trade Union Confederation, advocates for a platform that recognizes that all work is fundamentally place-based. She dismisses the common conceptualization of app-based work is hard to regulate because platforms are placeless and hosted in the virtual cloud. Instead, Lynch believes we should deduce that work exists where the worker is carrying out the task or job at hand. “There is no difference between typing in your kitchen for an online platform and typing in your kitchen for your employer who is located at the end of the road; your place of work is where the worker is. It is not in the cloud simply because it runs some of its operation through there”.³⁹ Determining the appropriate regulatory framework, however, requires some consensus vis-à-vis the jurisdictional boundaries of cloud-based work. Establishing these parameters is integral to the ETUC’s work in this area.

Gig workers seeking to organize new unions have similarly struggled with the ‘boundlessness’ of platform based work. They are geographically dispersed, isolated, and sometimes highly mobile. As a result a firm’s workforce may labour in multiple jurisdictions simultaneously, or workers may move across jurisdictional boundaries while on the job. These facets, in concert with the short-term, task-based, and on-demand nature of platform work, often place gig workers in direct competition with each other. As explored elsewhere in the paper, these trends make it difficult to build collective voice; firms, however, are able to capitalize on the regulatory lacunae concerning worker agency and collective bargaining. Unbounded jurisdictions allow firms to inflate the workforce and create conditions that promote inter worker competition or encourage workers to undercut one another.

The issues outlined by Rubiano are further developed by De Stefano (2017) who looks at the restriction of collective rights – in both law and practice – among non-standard workers. De Stefano considers a number of the above factors, as well as others, such as the ‘implicit threat’ that non-standard workers may lose their job⁴⁰ should they attempt to form or join a union, and that existing mechanisms for resolving a dismissal related dispute may be ineffective due to the very nature of the contract. Like Rubiano, De Stefano’s inquiry reaches beyond a conceptual framework to concrete examples where labour and competition law have collided. De Stefano references two key cases considered by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). These cases, concerning the Netherlands and Ireland, addressed restrictions to the right of independent contractors to participate in collective bargaining. Competition authorities imposed these restrictions on the grounds that collective bargaining by self-employed workers violated anti-trust protections. However, in its observations for both countries the CEACR criticized restrictions of the right to collective bargain for these reasons (De Stefano, 2017).

Anti-trust and collective bargaining in Europe

The Netherlands case, which was also considered through national and European courts (*FNV Kunsten Informatie en Media v. Staat der Nederlanden*, C-413/2013) centred on a claim by a trade union seeking to negotiate remuneration for substitute musicians classified as self-employed workers. When it was

³⁸ The online “Glossary of Competition Terms” defines ‘undertaking’ as follows: For the purpose of EU antitrust law, any entity engaged in an economic activity, that is an activity consisting in offering goods or services on a given market, regardless of its legal status and the way in which it is financed, is considered an undertaking. To qualify, no intention to earn profits is required, nor are public bodies by definition excluded. The rules governing concentrations speak of “undertakings concerned”, that is the direct participants in a merger or in the acquisition of control. (Institute of Competition Law, n.d.) In *FNV Kunsten*, the ECJ held, “It must be held in that regard that, although they perform the same activities as employees, service providers such as the substitutes at issue in the main proceedings, are, in principle, ‘undertakings’ within the meaning of Article 101(1) TFEU, for they offer their services for remuneration on a given market [...] and perform their activities as independent economic operators in relation to their principal [...]” (*FNV Kunsten Informatie en Media v. Staat der Nederlanden*, C-413/2013)

³⁹ Interview notes, interview with Esther Lynch, 23 November 2016.

⁴⁰ See also: Holdcroft, 2013.

brought before the European Court of Justice (ECJ), the Court made a distinction between *bona fide* self-employment – where it deemed that collective bargaining rights could be restricted to avoid cartel behavior, and ‘false’ self-employment – where workers could avail themselves of collective bargaining rights. Unfortunately, the court provided no clear direction on how to distinguish between *bona fide* self-employment and what it called ‘bogus’ self-employment, noting that in the latter case, but not the former, the right to collective bargaining should be upheld (De Stefano, 2017).⁴¹

In the case of Ireland, in 2004 the Irish Competition Authority nullified a collective agreement between a trade union, Irish EQUITY / SIPTU and the Institute of Advertising Practitioners in Ireland. The contract determined pay and conditions of employment for workers in the radio, television, cinema and visual arts including self-employed actors operating as voice-over artists. A commitment from the government, as part of the 2008 social partnership talks, to amend the Competition Act to provide certain categories of vulnerable workers with collective bargaining rights was superseded by a deal struck between the Government and the EU/International Monetary Fund (IMF) (International Monetary Fund, 2012: 65).

Both cases centred on the fact that EU and national competition law dictated that the individuals covered by the collective agreement in question were deemed to be ‘undertakings’ under the Competition Act, rather than workers.

Finally, in the case of Ireland, on 7 June 2017 the Oireachtas enacted the Competition (Amendment) Act (Oireachtas, 2017). The Act not only provides collective bargaining rights for three categories of non-standard workers,⁴² it also provides definitions for a number of key concepts, such as ‘false self-employed worker’,⁴³ and ‘fully dependent self-employed worker’.⁴⁴ Perhaps most importantly for workers in the platform economy, it outlines a process through which the Minister considers applications from trade unions representing a group of either ‘false self-employed’ or ‘fully dependent self-employed’ workers, for the purpose of exempting from competition legislation collective bargaining for qualifying categories of workers.⁴⁵

The need to reform competition laws in order to keep pace with platform-based work is increasingly recognized, including by the OECD which suggests that, “addressing the increasing individualisation of the employment relationship also in the context of the digital transformation and development of the digital platforms, may also require adjusting other rules and practices, such as competition regulations which, in some countries, prevent independent workers from bargaining collectively”(OECD, 2017: 166).

These cases represent the most recent examples of policy-makers, competition authorities, courts, and the ILO supervisory system seeking to balance the necessary evolution in collective labour rights against the rights of consumers to enjoy protection against unfair price-fixing. Non-standard employment and the gig economy represent the latest chapter in a struggle that dates back over a century. As one eminent legal scholar wrote, in 1963, “If we lived in a one-value society, and that value were competition, little more

⁴¹ FNV Kunsten Informatie en Media v Staat der Nederlanden. C-413/13. Judgment of the Court (First Chamber) of 4 December 2014. ECLI:EU:C:2014:2411.

⁴² Actors engaged as voice-over actors, musicians engaged as session musicians, and journalists engaged as freelance journalists.

⁴³ “an individual who— (a) performs for a person (‘other person’), under a contract (whether express or implied and if express, whether orally or in writing), the same activity or service as an employee of the other person, (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship, (c) is required to follow the instructions of the other person regarding the time, place and content of his or her work, (d) does not share in the other person’s commercial risk, (e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her, and (f) for the duration of the contractual relationship, forms an integral part of the other person’s undertaking

⁴⁴ an individual—(a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons;

⁴⁵ For full amendment see: (Oireachtas, 2017).

need, or could, be said. Collective bargaining would be sacrificed in the name of competition. Instead, we opt for pluralism, voluntarism, and consent rather than coercion, we will always be faced with the need to accommodate clashes between competing values and claims at the least cost to the society as a whole” (Winter, 1963). However, despite the “negligible negative impact” (Government of Ireland, 2008) of introducing collective bargaining rights for self-employed workers in the circumstances outlined above, the magnitude of the impact is seldom the only consideration when determining where the line is drawn.

Again, the Irish and Dutch examples are far from the first times that tension between competition and collective labour rights has arisen,⁴⁶ nor is this a particularly modern phenomenon.⁴⁷ Indeed, a useful parallel could be drawn between the “legalization” of organized trade unions in countries such as the United Kingdom and the United States between the mid-19th and early 20th century and the expansion of collective bargaining rights into new areas such as self-employment and the platform economy. In the United States, the first half of the 19th saw trade unions⁴⁸ aiming to improve their conditions branded as illegal, criminal conspiracies in restraint of trade (Tomlins, 1992; Twomey, 2012).

Court judgments provided limited clarity, with some indicating that the simple act of combining – acting as a collective – could render an act illegal, which, if undertaken by an individual, would otherwise be completely legal. A watershed case in Massachusetts, *Commonwealth v. Hunt* changed this conception, noting that the lawfulness of a union would be judged based on the means it used to accomplish its ends; an important step forward.⁴⁹ Legislation was introduced in 1890⁵⁰ and in 1914⁵¹ seeking, *inter alia*, to address the anti-trust-collective activity nexus. Further court challenges continued through the adoption of the National Labour Relations Act in 1935, which itself sought to balance collective labour rights and the uninhibited flow of trade (Shulman, 1940).

Given the parallels between the evolution of labour law at the turn of the 20th century and the situation currently facing gig workers, it should come as little surprise that the evolution of rights is following a very similar pattern: efforts to advance collective labour rights manifest through a combination of collective action, litigation, and – eventually – legislation.

The European Union has also been seeking to ensure that regulation in its Member States keeps pace with rapid changes in the labour market. In June 2017 the European Parliament adopted a *Resolution on a European Agenda for the collaborative economy*. The resolution, “[u]nderlines the paramount importance of safeguarding workers’ rights in the collaborative services – first and foremost the right of workers to organise, the right of collective bargaining and action, in line with national law and practice [...]”. The resolution also makes clear the need for the collaborative economy’s growing self-employed workforce labour to enjoy collective bargaining rights, including over questions of compensation (European Parliament, 2017).

Norway has been proactive in seeking to address work in the gig and platform economy. In 2016, it launched the “Sharing Economy Committee” by Royal Decree. The Committee was made up of academics, legal experts, employers and employer / business organizations, the main trade union Confederation as well as the Norwegian Consumer Council. The Committee was tasked with, *inter alia*, reviewing the challenges, opportunities, and labour market consequences presented by the ‘sharing economy’, and evaluating regulatory provisions, especially in markets, dominated by sharing economy actors. In its report a majority of the Committee proposed “that service providers in the sharing economy

⁴⁶ For a detailed analysis of the interactions between competition rules and collective bargaining agreements in European member States, see (Bruun and Hellsten 2000)

⁴⁷ See, for example, (Primm 1910; Nelles 1932; Shulman 1940; Winter 1963)

⁴⁸ Or rather, using the language of the day, ‘combinations of labour’ which, ironically, more resembled guilds than industrial unions.

⁴⁹ *Commonwealth v. Hunt*, 45 Mass. 111 (1842).

⁵⁰ The Sherman Anti-Trust Law (15 U.S.C. §§ 1-7) was introduced in 1890 to protect against monopolies, as well as contracts or combinations in restraint of interstate commerce. By 1893 the first court cases applying Sherman to labour organizations appeared.

⁵¹ The Clayton Act (15 U.S.C. §§ 12-27), intended to specifically exempt trade unions from anti-trust legislation.

who do not set selling prices directly, and have to comply with prices set by the platform that is used, should have the opportunity to negotiate collective agreements with platform operators, even if they cannot be deemed to be employees” (Gabrielsen et al., 2017: 2).

The fate of the Committee’s report is unclear, given that, soon after its publication, four of the main trade union organizations, namely LO (Norwegian Confederation of Trade Unions), YS (The Confederation of Vocational Unions), Unio (The Confederation of Unions for Professionals) and Akademikerne (Federation of Norwegian Professional Associations), sent a letter to the Minister of Finance, criticizing the report for having underestimated the potential negative impact that the ‘sharing economy’ could have on the Norwegian labour market. As reported by the LO, while careful to note that they were not opposed to the use of technology to create jobs, they felt that the Committee overlooked the need to consider regulations in light of new developments as the economy continued to evolve (Fyen, 2017).

Collective bargaining legislation – and anti-trust litigation – in North America

Seattle, Washington, USA is presently witnessing an interesting case of efforts to extend collective bargaining rights through legislative action at the municipal level. The city passed an ordinance that would enable independent contractors working for Transportation Network Companies (Uber and Lyft among them), to form unions with the purpose of engaging in collective bargaining.

Unlike legal efforts by the GMB and NYTWA that posit workers are already in an employment relationship, the Teamsters, who actively sought the ordinance, are trying to ensure that drivers have access to collective representation and bargaining irrespective of their independent contractor status. Dawn Gearhart, who works for the Teamsters on the project describes it as follows, “It says that if the majority of drivers for a company want to be represented, then those in that company would need to negotiate with their drivers. That is as far as it goes”.⁵²

The Teamsters have worked closely with taxi fleets, drivers, and the city in pushing for the ordinance, which passed unanimously in December 2015. Just one month later, Gearhart states, Uber initiated a massive campaign in opposition.

[Uber] called every single one of their drivers from a call centre with a script that was published online. They would ask you what you thought about unions, what you thought about the company, and based on your answer you’d be routed a few different ways so that they could make assessments. Anti-union drivers were recruited to come and testify about their fears that the Teamsters were going to make them wear uniforms, that the Teamsters were going to set their hours and tell them where they could work, and that has been the message of the company. [...], they took out a two page Sunday ad in the newspaper here about why you don’t need to collectively bargain and how the union is a threat to innovation. [...] Today there are three meetings where you can go learn about the threat of collective bargaining on your life.

Although the ordinance passed with overwhelming political support, implementation of the law has been delayed on a number of fronts. Multiple lawsuits have been filed, one by the U.S. Chamber of Commerce and another by eleven Uber drivers supported by The National Right to Work Legal Defense Foundation, Inc. and the Freedom Foundation. Moreover, the city had difficulty in determining who would be eligible to vote in union elections under the ordinance. Gearhart explains,

The standard is 1/6 of full time to be included in a union election, but because these companies don’t provide any information to drivers or to governments about how often people work, [the city] can’t make a determination. [As a result] the city is using taxi data from before Uber began [to determine driver eligibility]. Drivers only need to compete 52 trips in a 90[-day] window in a one-year period in order to vote. Essentially that is 2 per cent of what a full time driver would work; you can do 52 trips in two days.

⁵² Interview notes, interview with Dawn Gearhart, 3 March 2017.

Organizers attempting to use the ordinance to establish a union may find these new eligibility requirements challenging. With no rules on recruitment the door remains open for efforts to complicate or frustrate organizing efforts. Implementation of the ordinance was hindered by an injunction, which the city appealed⁵³ and eventually won. For its part, the Chamber argued, “Seattle’s unprecedented attempt to permit independent contractors to organize a union is clearly inconsistent with federal antitrust and labour laws. If adopted more broadly, Seattle’s approach would lead to a morass of inconsistent state and local regulations that would stifle innovation and undermine economic growth.”⁵⁴

In dismissing the plaintiffs’ request for a further injunction pending appeal, the judge suggested that a cautious approach had been adopted in granting the preliminary injunction, pending “a more careful and rigorous review” of the case. The judgment notes, “[t]hat review revealed that the antitrust claim lacked merit: the serious questions the Court perceived have been resolved in the City’s favor [...]” and suggests that “the public’s interest in [the enactment of the ordinance] weighs heavily against the requested injunction [...]”.⁵⁵ On the specific anti-trust argument put forward, the judge not only recognized the regulatory authority provided to municipalities by the State Constitution, but went further to note that, “In the specific factual context of this case, an express statutory exemption may also apply. Pursuant to RCW 19.86.170, *‘labor is not an article of commerce for purposes of the [Consumer Protection Act]*. Thus, the collusive organization of labor for purposes of collective bargaining does not violate the Act”. (emphasis added)⁵⁶

The purpose of collective bargaining was summarized by Otto Kahn-Freund in the following terms, “[t]hrough being countervailing forces, management and organized labour are able to create by autonomous action a body of rules, and thus to relieve the law of one of its tasks. More than that, the two sides of industry have at their disposal sanctions to enforce these rules against the other side and against the employers and workers on their own side” (Kahn-Freund, 1977, 69). If this premise remains true, then it is important to examine cases where labour and management have sought to regulate gig and platform-based work – or better to ‘self-regulate’ – through dialogue, even if they have not yet reached binding, enforceable collective bargaining agreements.

Works councils

In Austria, Foodora app-based delivery workers have recently joined together to form a works council with the support of Vida, the Austrian union representing workers in the transport and services sector. Austria is home to one of the longest traditions of works councils in the world, with the first laws issued in 1919, with worker representatives enjoying a wide variety of rights from information, consultation and participation, to special consultation rights in staff and economic matters, as well as to co-determination in social matters. Beyond the information and consultation obligations that are most frequently associated with works councils, in Austria these broad powers extend to the *negotiation* of (or co-determination through) works agreements (Arrigo and Casale, 2010).

Early reporting on the Austrian case suggests the initiative was worker driven, and is aimed at addressing a number of key issues, from surcharges for particularly difficult work (such as night work, or work in winter), provision of insurance for bicycles and phones required for work, and making permanent the

⁵³ For a detailed analysis of the legal obstacles facing the ordinance, including on employment status and anti-trust grounds, see: (Iglitzin and Robbins, 2017).

⁵⁴ Chamber of Commerce of the United States of America vs. The City of Seattle; Seattle Department of Finance and Administrative Services; and Fred Podesta, in his official capacity as Director, Finance and Administrative Services, City of Seattle. U.S. Court of Appeals, Ninth Circuit.

⁵⁵ Chamber of Commerce of the United States of America vs. The City of Seattle. No. C17-0370RSL (W.D. Wash. Aug. 24, 2017). Robert S. Lasnik United States District Judge. Order denying motion for injunction pending appeal.

⁵⁶ Chamber of Commerce of the United States of America et al vs. The City of Seattle et al; 2017c. US District Court, Western District of Washington at Seattle. No. C17-0370RSL. Order granting defendants’ motion to dismiss.

mileage allowance (which reportedly represents some 10-15 per cent of total salary). Of particular importance is the statutory role for a works council in the context of layoffs, which would have been of particular use in Spring 2017 when Foodora reportedly reduced its workforce in Vienna by some 20 per cent (derStandard, 2017). A works council would have the right to consultation over redundancies, and in extreme cases could require a redundancy programme be established.

According to Benjamin Herr, a former Foodora courier at the time the council was formed, many couriers were unclear about the terms and conditions of their own contracts; the venue of a works council has been integral to increasing transparency in the workplace regarding about the working conditions at present.⁵⁷ According to the trade union, Vida, the next steps include a works agreement with Foodora, in order to tackle the numerous issues raised by the new works council. Ultimately, they are seeking to establish a collective agreement with the Chamber of Commerce that will cover all bicycle delivery services (Vida, 2017).

As previously discussed, in New York City, through the agreement struck between the IAM and Uber, the Independent Drivers Guild has gained a “seat at the table”, enabling its members to engage local Uber management in a consultative dialogue forum. Unlike the situation in Austria, in the case of Uber, the present arrangement is a consultative one, and precludes collective bargaining.

The IDG-Uber ‘works council’ is made up of 12 representatives on the driver side, including drivers and IDG staff, and four representatives of Uber management in New York. The agenda is broken into three segments. It begins with an update from management on progress made since the last meeting, as well as other updates and changes being considered by Uber. This is followed by a follow-up by the Guild on previously discussed topics, as well as a priority agenda item for its members (for instance, paid leave). The lion’s share of the meeting is dedicated to what are called “issue conversations” where drivers raise particular issues of their collective choice, and exchange with management.⁵⁸

Preparation for the works council meetings begins with gathering inputs from the stewards, to get an idea of the latest issues, and identifying those that Uber can affect. The determination of which issues are “within Uber’s realm” (as opposed to those which require action from the Department of Transportation or Taxi and Limousine Commission) and more specifically those which fall within the sphere of influence of Uber management in New York, are critical to successful dialogue. The issues identified by the stewards and organizing committee are then sent to a broader mailing list, where drivers are invited to select their top six issues, which are again sent to the entire mailing list to vote on their top three items. These are placed on the works council agenda. Driver representatives meet prior to the Works Council to prepare, and again to debrief following the meeting, all on their own (unremunerated) time. According to Price, Uber never places items on the agenda for formal consultation, to get feedback from worker representatives on planned or potential changes. Nor does management reject or veto agenda items from the side of drivers.

From the point of view of the Guild, results produced by the nascent works council have been mixed. The constant communication with management was seen as effective in getting small issues addressed “that can make the working conditions better.” One early win attributed to the works council was the introduction of a “take me home” option, a destination filter whereby, if a driver wants to go home, or to a specific geographic location, they can pick up rides on the way. “They wanted to be sure that they’re not going to get sent to New Jersey if they’re headed towards Connecticut.” Identifying issues for which local management “are totally in charge”, which “they can just say ‘yes’ to” also influences prioritization on the drivers’ side. Nevertheless, although most things are national, leaving Uber management in New York to advocate for it from the perspective of locals, they do have considerable influence given that New York represents 10 per cent of the national market.

Sometimes even the ‘small wins’ can take considerable time to implement. One such example was the introduction of a ‘wait timer’ onto the app. Drivers saw this as important, so that they know when they’re

⁵⁷ Interview notes, interview with Benjamin Herr, 6 July 2017.

⁵⁸ Interview notes, interview with Ryan Price, 4 April 2017.

going to be getting a cancellation rate. It was expected to be something relatively easy to integrate, as it was simply a matter of giving drivers visual access to information already being tracked “in some computer in San Francisco.” However, Price felt that delays made the issue difficult to organize around. “It was a win: they said yes. It’s just taken forever to get it done.” Presumably due to these challenges, coupled with the stage at which the Guild finds itself organizationally and the rather early development of dialogue between the partners, the Guild has opted to shift from monthly to quarterly works council meetings. But Price remains optimistic, “I imagine once we’re a lot more mature it will be good for it to be monthly. But right now, while we’re still organizing, while we’re still building this thing it’s good enough. So we broke it down to every three months instead of every month.”

Collective agreements?

Airtasker is an Australian job-posting platform which connects households and businesses which require a broad range of services with individuals willing to perform them, was reported to have reached a ‘landmark’ agreement with Unions New South Wales⁵⁹ in May of 2017. Tasks range from garden maintenance to parcel delivery, and IT support to housecleaning and repairs. The agreement establishes working conditions above the minima provided for in award⁶⁰ rates, a commitment to continue engaging with Unions NSW to ensure health and safety standards, provide insurance similar to workers’ compensation, as well as the establishment of an independent dispute resolution system overseen by the Fair Work Commission (Taylor, 2017; Minter, 2017).

However, the agreement has met with skepticism due to its “entirely optional and possibly unenforceable” nature. Despite the new hourly rates being higher, the fact that they are non-binding leaves some critics suggesting that a worker could lawfully bid for work at a level below the award rate. The fact that the details of the new dispute resolution mechanism have yet to be agreed has also raised questions, though Unions NSW secretary stresses, that it will be both independent and binding. UTS (University of Technology Sydney) associate professor Sarah Kaine recognized the effort to “grapple with how to improve working conditions in the gig economy, which, let’s face it, our regulators haven’t done yet.” (Lewis, 2017)

One example of collective bargaining has emerged in Sweden, where a TNC called Bzzt has emerged, using innovative, environmentally-friendly electric vehicles (‘podtaxis’) to provide on-demand, app-facilitated transportation services. In an important departure from other TNCs reviewed, the workers in this case are covered by an industry-wide collective bargaining agreement; enjoying the same terms and conditions as other taxi drivers covered by the contract. As noted by CEO Sven Wolf, “All our drivers are employed with written contracts, which are subject to an agreement with the Swedish Transport Workers union. We don’t need to exploit our staff to be profitable. We do it by keeping our costs low – on our fuel, vehicles and insurance.” (Turula, 2017)

The distinguishing features of the Swedish model of industrial relations – with strong social partners, high levels of trade union membership and collective bargaining coverage, and a long-standing commitment to social dialogue – surely facilitated this development. However, the fact that the agreement was industry-wide is also of crucial importance. Multi-employer agreements not only can deliver the “level playing field” called for by employers and their organizations as noted above, but appear particularly well-suited to the gig economy. The geographically dispersed nature of platform and on-demand work, the rapidity with which new start-ups can enter markets, and the tendency for workers to move in and out of work under one or more platforms (‘coming on and off the platform’) could all benefit from set regulations applying across industries where gig work prevails.

⁵⁹ A peak trade union body in the state of New South Wales.

⁶⁰ In Australia, “Awards provide pay rates and conditions of employment such as leave entitlements, overtime and shift work, amongst other workplace related conditions.” They are maintained and reviewed by the Fair Work Commission. (Fair Work Commission, 2016)

Conclusion

A variety of different organizational structures are helping workers to foster opportunities for agency, voice, representation, and power in the gig and platform economy. Unionization, worker centres, cooperatives, and online forums represent a host of initiatives aimed at encouraging communication and contact between workers, engaging with employers, increasing workers' political and legal consciousness, and improving workplace standards. In an effort to foster collective action and increase representation opportunities for workers, each of these draws on a number of different strategies to provide workers with a voice in the workplace, with a view to defending rights and advancing interests.

Organizing frameworks with high levels of worker-led participation reveal the efficiency of a grass roots, rank-and-file approach. While this has led to strong campaigns, worker centres and small minority and independent unions face significant obstacles related to sustainability. Unpredictable funding renders these organizing models susceptible to external forces that can make long-term strategic planning, and member accountability difficult. Nevertheless, the cases reviewed point to the fact that workers can make substantive gains with respect to employment conditions at either the industry or enterprise level, holding promise for geographically localized on-demand work. Many well-established trade unions have recognized the need to create affiliation opportunities for gig and platform based workers, in line with broader outreach strategies. While engaging in the employee – independent contractor debate through litigation and regulation, structures that permit affiliation by individual workers prior to the establishment of formal union recognition agreements are being, and will continue to be, an important part of a comprehensive strategy.

Servicing independent contractors and self-employed workers has been fairly straightforward for unions and provides an opportunity to increase membership. Unions have had more difficulty bridging the gap from servicing to collective organizing and worker mobilization. In order to overcome these obstacles unions can foster opportunities for all members, regardless of employment classification, to help steer the political and internal trajectory of the union. Esther Lynch of the ETUC acknowledges the merits of organizing by industry but observes also that, “the problems that [gig and platform] workers face are so severe and harsh, and the fact that they are isolated from each other very often, though not always, there is a benefit in a union structure having a particular branch for workers of a [particular industrial] category who are working for an employer that is based online”. Resources directed to the unique challenges of gig and platform based work would allow established organizations to better serve these members and provide both internal and external representation opportunities.

The online and fragmented nature of gig work, both in service provision and also crowdwork, create unique challenges to building collective voice. Online forums have emerged as an important resource for geographically dispersed workers, however they are loosely structured and face challenges fostering collective activity. Nonetheless, the ability for forums and online spaces to attract workers has led unions, worker centres, and other collective representation models to experiment with online forums and apps as part of a broader set of tools to assist in outreach and engagement.

Cooperatives represent a distinct approach for workers to achieve control in the workplace. Platform cooperatives emulate commercial labour platforms while offering an alternate ownership and decision making structure. They are being developed to provide services to gig workers and even, in the case of Belgian cooperative SMart, the protections afforded by an employment relationship.

In all of the initiatives reviewed, it is important to differentiate between advocacy and organizing strategies. Many of the strategies adopted seek to realize policy changes, without necessarily involving, or implying any intention to develop collective bargaining. This can be attributed to any of a number of reasons discussed at length above. Both approaches have value. However they are qualitatively different ends, requiring different strategies to achieve them. Policy change can be won with advocacy power alone, through lobbying, campaigning and influencing; while worker engagement can help build effective campaigns, it is not necessarily a prerequisite to their success. Collective bargaining, on the other hand,

while harder to achieve, represents a process of self-regulation which allows for much greater democratic influence from workers, employers and their organizations.

From the cases analyzed, it would appear that gig workers must face a number of hurdles in achieving bargaining, to include:

- 1) promoting common interests – and overcoming competition – among workers;
- 2) determining a site (or multiple sites) of agglomeration – virtual, or preferably real – so as to overcome isolation;
- 3) identifying the bargaining counterpart, and
- 4) targeting a source of power to make a collective claim.

With regard to the first and second hurdles listed above, Christina Colclough, Senior Advisor at UNI Global Union notes, as commerce and work structures increasingly move online, labour organizations may be well positioned to fulfill some of the social function that workplaces used to. She asks, “Can the trade union movement be the community where people get to meet and they are not competitors? If we think about a future where we are all competing in online jobs, we may need a safe haven where we can come learn, hang out, take a course, which is competition-free. Is that the future? We just don’t know yet. All options are equally valid; what is most important is that unions are exploring these options.”⁶¹

Across all structures and initiatives, workplace gains must be accompanied by some mechanism for enforceability. Some organizations - in particular trade unions - have sought to bring platforms under existing employment legislation, seeking recognition of gig workers’ status as – and the accompanying protection afforded to - employees. To this end, court systems become an important site for interpreting rules and upholding rights, particularly in clear-cut cases of evasion. However, As Miriam Cherry (2016) notes, there seems to be little consensus across jurisdictions whether gig workers are employees, as “the tests that would be applied historically are malleable.” This is further elaborated by Rogers (2016) who finds [in relation to Uber and Lyft drivers] that, “the various factors developed in case law to determine employment status point in different and confusing directions” (496). He goes on to suggest that tests be re-oriented toward concepts of ‘unequal bargaining power’ and ‘economic dependence’ which would more effectively demonstrate where workers were at risk of *domination*; the concept of anti-domination, further justifying the increased recognition of freedom of association and the effective recognition of the right to collective bargaining amongst the panoply of human rights.

Difficulties posed by employment relationship litigation have led to calls for legal and policy reforms from various corners. In addition to proposals to review the criteria used to establish an employment relationship, others are advocating for fundamental changes to how we conceptualize employment by suggesting a third, intermediate category of “independent worker”⁶² (Harris and Krueger, 2015), a broadened definition of employment (Forbath and Rogers, 2017) or employer (Prassl, 2015), or a complete re-conceptualization moving away from the employment relationship toward “personal work relations” (Freedland and Kountouris, 2011).

Beyond classification issues, and as demonstrated in the early 19th and 20th century anti-trust cases that challenged the legality of the mere *existence* of trade unions, history has shown litigation to be an imperfect solution to defend collective rights. Legislation (or legislative reform) must be considered as an avenue to ensure that collective labour rights, as fundamental human rights, exist in concert with market efficiency. Ultimately, whether a ‘collection of tasks’ or a series of ‘gigs’ constitutes a fully-

⁶¹ Interview notes, interview with Christina Colclough, 10 November 2017.

⁶² This is by no means a new idea, with ‘para-subordinate’ workers (*lavoratori parasubordinati*), ‘employee-like persons’ (*arbeitnehmerähnliche personen*), and ‘quasi-employee’ existing, in some cases for decades, in Italy, Germany and Israel respectively, and with other cases found in Spain, Portugal, the United Kingdom and Canada (ILO, 2016) Far from a panacea, it has led Davidov, Freedland and Kountouris (2015) to warn, “it should not be seen as a solution to misclassification (sham self-employment); rather the goal should be to add some (partial) protection to people who are not (even without any sham) within the group of ‘employees.’” Within the current debate of gig worker organizing, we would argue that, given the prevalence of misclassification cases, the development of a third category risks fueling such practices.

fledged employment relationship, work carried out through these platforms is *work*, the people performing said work are *workers*, and as workers, the terms of both Convention 87 and Convention 98 apply. Efforts to achieve this balance are already taking place through legal and regulatory reforms, evidenced by the aforementioned cases of Seattle and Ireland.

Given the nature of gig and platform-based work (isolated, highly dispersed across geographically expansive areas, workers entering and exiting, or moving across platforms in search of tasks), and key workforce characteristics (often lacking basic protections of labour law, classified as independent contractors), we find that the gig economy may be particularly well suited for regulation through sectorial bargaining and extension mechanisms. For this reason we are unsurprised that the most advanced examples of collective bargaining in the gig economy come from places like Sweden and Austria, which boast solid legal and regulatory frameworks, strong social partners, and a prevalence of industry-wide collective agreements.

The surest thing about gig and platform work is that it will continue to evolve. Current players dominating markets (and headlines) may not be permanent fixtures in the gig and platform economy, but the trends and technological innovations that they have introduced are shaping, and will continue to shape the future of work. Workplace models that encourage crowdwork, are competition based, rely on on-demand and other just-in-time services are impacting workers now and we should expect these trends to continue. As the ILO Director-General recently pointed out, “It is fundamentally important that we confront these challenges from the conviction that the future of work is not decided for us in advance. It is a future that we must make according to the values and the preferences that we choose as societies and through the policies that we design and implement” (ILO, 2017).

Worker organizing, the development of agency, voice and representation, and its expression through collective bargaining, are the surest and most democratic way of achieving the future of work we want. When gains are realized through collective bargaining between trade unions and employers or their organizations, and through tripartite dialogue between employers and their organizations, trade unions and the government, we can be sure that achievements are lasting and that the interests of all parties are represented. In the gig economy, just as in Philadelphia in 1944, “freedom of expression and of association are essential to sustained progress.”

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