

Bricolage unionism. Unions' innovative responses to the problems of precarious work in Poland

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Introduction

In macroeconomic terms, Poland was not significantly affected by the global financial crisis that hit Europe in late 2007. Apart from the slowdown in 2009, when GDP per capita dropped from 5.1 per cent in 2008 to 1.6 per cent and the unemployment rate grew from 9.5 per cent in 2008 to 12.1 per cent, the following years have not resembled the previous economic crisis of the years 2001–2004. We have argued elsewhere (Maciejewska *et al.* 2016) that it is difficult to assess the extent to which the increased labour market flexibility resulting from economic reforms in the 2000s and the anti-crisis legislation actually helped in cushioning the employment effects of the slowdown. Indeed, a range of other contributing factors can be mentioned, including low dependency on exports, the resilience of the financial sector, continuing public spending and the high outflow of workers from the labour market through migration.

Nevertheless, one of the negative outcomes of the labour market reforms implemented in the 2000s was the expansion of temporary and civil law contracts. At present, Poland retains its infamous status of the country with the highest share in the European Union of employees on contracts of limited duration (28 per cent in 2015). Moreover, following Latvia, Lithuania and Romania, Poland belongs among those EU countries with the highest proportion of low-wage earners in the total number of employees (excluding apprentices), with 24.7 per cent in 2006 and 24.2 per cent in 2010 (the latest data available, Eurostat LFS). It is also estimated that between 700 000 and 1.35 million workers in Poland performed their jobs in 2014 based on various civil law contracts as their sole form of work, that is, without an additional employment contract (GUS 2015a, GUS 2016). The young are, in particular, facing very precarious conditions of work in terms of low wages, low stability of employment and limited possibilities to unionise.

This chapter aims at exploring trade union responses to precarious work, discussing the tools used by unions to address the problems of precarious workers and assessing the outcomes of trade union actions. Following Kahancová and Martišková (2012), we understand the precarisation of employment as the mechanisms which create, reproduce and possibly extend the disadvantaged segment(s) of labour market in terms of: (1) low wages (two-thirds of median gross hourly wages); (2) limited or no social security entitlements; (3) low job security; and (4) other labour conditions less favourable than in standard regulated employment contracts. In the context of the contemporary trade union movement and employment relations in Poland, we argue that the expansion of precarious employment is one of the most urgent issues for unions to deal with in order to survive and thrive. The problems of precarisation result not only from the economic

and legal changes on the labour market but also from the belated response to labour market dualisation by the majority of trade unions in Poland. The emergent challenges are not restricted to a narrow group of atypical employees, but they also concern those within standard employment, since precarisation creates new benchmarks to assess 'normal employment' (Mrozowicki 2016) and to discipline the 'core' workforce (Dörre 2015: 51). Additionally, if we consider low wage jobs as a form of precarisation, they concern both standard and atypical employment; thus, a part of 'normal employment' also falls into the 'precarious' category.

We also claim that, once they began to emerge in the late 2000s, union responses to precarisation represent an important analytical ground in studying the scope of innovation within the trade union movement. New ideas and practices staged to address the newly-emerging challenge and the needs of new groups of workers fit well into the definition of innovation adopted by Bernaciak and Kahancová in the Introduction to this volume; at the same time, they bring to mind the classic notion of bricolage (Levi-Strauss 1968) due to their experimental and recombinant nature.

Trying to meet the challenge of precarious work in the past several years, trade unions in Poland have combined old and new instruments with novel tactics which have proved, to some extent, to be successful (cf. Bernaciak *et al.* 2014; Czarzasty *et al.* 2014; Kahancová 2015). Mass media campaigns and street protests, as well as national and international pressure for legislative changes to improve union representation of precarious workers, raise the minimum wage and counteract the expansion of civil law and fixed-term employment contracts bring evidence for a re-shaping of unions' strategies towards the problems of the dual labour market. Simultaneously, the biggest unions in Poland are still focused mainly on organising and protecting employees with stable employment contracts, and the process of the gradual decline in union density has been only slowed down, not halted. The result, as in the case of Croatia discussed by Butković (this volume), is that mobilisation and activities in the public sphere do not translate into increases in membership.

Taking into account the rather contradictory outcomes of union approaches, it is legitimate to formulate the key problems of this chapter, namely: (1) What are the drivers which contribute to the emergence of union innovative practices? (2) What are the forms of innovative union instruments used by Polish unions in the context of their established/dominant union strategies? And, finally, (3) What is the impact of these practices on trade unions' capacities, position and influence on improving working conditions in Poland? Addressing these questions, the chapter is structured as follows. The next section presents the analytical framework used to explore innovative union practices in Poland. The subsequent part presents the most important features of trade unionism in the country and serves as a background to understand the innovativeness of unions' recent activities targeting precarious workers, including the drivers that stand behind them. In the third part of the chapter, four types of instruments used by unions to address the problems of precarious workers are explored, together with their innovativeness and related challenges. A discussion of the outcomes and limits of union practices and conclusions follow.

1. Dimensions of trade union innovation

The analytical framework for our chapter refers to the discussion of trade union innovation in the Introduction to the current volume by Bernaciak and Kahancová, supplemented with reference to the various dimensions of workers' power, resources and social agency to understand the drivers of innovative trade union actions (Behrens *et al.* 2004; Wright 2000; Silver 2003). Discussing the notion of social innovation, Mulgan *et al.* (2007: 4) refer to 'new ideas that meet unmet needs'. Bernaciak and Kahancová note that there are three main dimensions of innovative union activities: innovation with regards to organisational structure (restructuring, change in leadership, emergence of new unions, merger of existing organisations); innovation with regards to the choice of strategies (the adoption of new strategies or the reconfiguration of existing ones); and, finally, innovation with respect to the selection of new target groups / audiences, including precarious workers (cf. European Commission 2010). Regarding precarious workers, trade unions might choose among various approaches, ranging from no differentiation between precarious and regular workers (inclusion), through the special treatment of precarious workers (separation), to the exclusion of the issue of precarious work from their agendas (Heery and Abbott 2000; Kahancová *et al.* 2015). In the Polish context, both approaches – treating precarious employees as a special group and strategies for their inclusion – can be seen as innovative as they were very weakly developed in the context of post-socialist unionism.

The forms of union innovation are conditioned, but not determined, by the various factors of workers' power which are shaped by processes both external and internal to trade union organisations. Following Wright (2000) and Silver (2003) we can distinguish between structural power, resulting from workers' location and role within an economic system, a particular sector or a workplace, and thus external to unions; and associational power, reflecting the formation of the collective organisation of workers and its internal features. Union innovation is also influenced by broader elements of the existing opportunity structure related to 'the presence or absence of particular barriers in the institutional, political and social context' (Turner 2007: 1). The concept of bricolage, as developed by Claude Lévi-Strauss (1968), offers an interesting theoretical approach to address some of the characteristics of union innovativeness. A 'bricoleur', according to Lévi-Strauss (1968: 17), is one who is 'adept at performing a large number of diverse tasks', which are not subordinated to 'the availability of raw materials and tools conceived and procured for the purpose of the project'. Bricolage is based on the refusal to accept limitations set by institutional context and the recombination of scarce union resources for new purposes. It points to the relevance of social agency, understood as 'choices and strategies pursued by union leaders and their organisations' (Turner 2007: 1). Turner (2009: 308–309) summarises that 'institutions can facilitate or block innovation depending in part on how actors choose to use institutions'. In this context, the notion of bricolage unionism refers to some of the basic features of social innovation and the use of instruments that are 'are usually new combinations or hybrids of existing elements, rather than being wholly new in themselves' (Mulgan *et al.* 2007: 6).

Czarzasty *et al.* (2014: 128–129) argue that 'having experienced dramatic decline in membership in the 1990s, at the beginning of the new millennium, the Polish trade

unions began to employ whatever “best practices” originated elsewhere that seemed locally applicable’. In this chapter, we focus on both top-down (sectoral and national) and bottom-up (company-level) instruments aimed at transforming trade unions in Poland to better represent those in precarious employment. Referring to the analytical framework outlined by Kahancová and Bernaciak in the Introduction, we propose to focus on four innovative instruments:

- (1) trade union organising and servicing, including the organising of precarious workers, developing new services to attract precarious employees, creating new organisational forms to cover precarious workers and building coalitions with non-union organisations;
- (2) collective bargaining and social dialogue taking up the problems of precarious and non-standard employees;
- (3) political and litigation instruments developed to limit precarious employment in the economy by giving opinions on legislative acts, lobbying, building political coalitions and mounting political campaigns and protests, as well as making use of national and international leverage to influence legislative changes;
- (4) media-oriented instruments, identity politics and benchmarking aimed at influencing social consciousness of the problems of precarious employment and changing the collective identity and perception of trade unions.

The combination of some instruments, such as organising and servicing, might appear contradictory, but it reflects, as we will demonstrate in the next sections, actual union practices in Poland (see also Tomev, this volume). In order to understand the innovative character of union responses to the problems of precarious work, however, it is necessary to focus first on the general features of trade unionism in Poland and the role of the economic, political and institutional-legal changes in the country in conditioning the emergence of innovative union strategies.

2. Background: unionism and drivers of innovation in Poland

The general characteristics of trade unionism in Poland have been discussed extensively in the existing literature (see, for example, Gardawski *et al.* 2012; Trappmann 2012). A systematic decrease in trade union density (Table 1) combined with other indicators of limited union power in industrial relations, politics and society led to the formulation of the hypothesis of multi-faceted labour weakness in Poland and other CEE countries (Ost and Crowley 2001). Its origins included, among others, (1) the erosion of trade union structural and organisational power and resources in the course of restructuring and privatisation; (2) the emergent features of industrial relations being marked by a limited role for tripartite institutions described in terms of ‘illusory corporatism’ (Ost 2011), as well as limited collective bargaining coverage, in particular at the sectoral level, and anti-union employer strategies; (3) ‘competitive pluralism’ manifested into trade union fragmentation and inter-union competition; (4) the loss of unions’ legitimacy as a result of their incapacity to reinvent their identities after the end of socialism, the support granted by some of them for capitalist reforms and their alliances with the political parties which led those reforms.

Table 1 Trade union density in Poland (per cent), 1980–2015

| Year | 1980 | 1987 | 1991 | 2000 | 2002 | 2007 | 2008 | 2010 | 2012 | 2013 | 2014 | 2015 |
|---------|------|------|------|------|------|------|------|------|------|------|------|------|
| Density | 65 | 38 | 28 | 20 | 18 | 14 | 16 | 15 | 11 | 10 | 12 | 11 |

Source: Authors' elaboration of the Public Opinion Research Centre (CBOS) reports BS/55/2003, BS/21/2008, BS/109/2010, BS/52/2012, BS/62/2013, 106/2014, 66/2015 and Wenzel (2009: 504).

The most recent survey data on trade union membership, presented for the first time in 25 years by the Central Statistical Office (GUS 2015b), suggests that in 2014 there were 1.6 million union members in Poland; a tiny proportion of the 6 million estimated for 1987 (Gardawski *et al.* 2012: 51). At the same time, the number of registered union organisations systematically grew in 2001–2014, from 15 200 to 19 500, testifying to the fragmentation of Polish unionism (GUS 2015b: 3).¹ Besides the three nationally-representative trade union organisations, including two confederations (the All-Poland Alliance of Trade Unions, OPZZ; and Trade Union Forum, FZZ) and one unitary union (NSZZ Solidarność), there is a relatively large number of autonomous trade unions, of which 2 000 are not linked to any larger union structure. Based on Central Statistical Office data, membership of non-affiliated unions can be estimated at the level of 270 000 (17 per cent of total union membership).

Trade unions are traditionally better-represented among middle-aged employees, men and public sector workers and those in the manufacturing sector (Gardawski *et al.* 2012: 56–58). Despite the many efforts undertaken since the late 1990s, they have not managed to expand significantly into private services. It has been discussed elsewhere (Trappmann 2011, Czarzasty and Mrozowicki 2014; Maciejewska and Mrozowicki 2016) that trade unions in Poland did not develop systematic approaches to deal with precarious employment until the mid-2000s. In the Polish context, the three major limitations on union participation by precarious workers include: (1) legal barriers, such as the minimum membership threshold needed to establish a union (10 persons) and the exclusion of the self-employed and those with civil law contracts from union rights until the verdict of the Constitutional Tribunal in June 2015; (2) cultural factors, for instance the identification of unions with socialism, the pragmatism of worker strategies and a relative acceptance of temporary employment in society; (3) organisational factors, including 'segmented' union strategies focused on large companies and easy-to-organise professions/occupations or branches, and limited politics of organising beyond enterprises.

We have already mentioned that trade union approaches to the problems of precarious workers began to change by the late 2000s. Several drivers of these changes can be mentioned. Firstly, due to the unprecedented expansion of non-standard employment in Poland, especially civil law contracts and temporary jobs, trade unions could no longer ignore it without risking their legitimacy and organisational resources (including membership fees). In particular, the very limited union membership of young workers,

1. It should be noted that only 12 900 (out of 19 500) unions were active in 2014.

of whom the majority is employed temporarily,² required more decisive actions to secure the intergenerational survival of unions (Mrozowicki *et al.* 2016). Secondly, the impasse in the tripartite social dialogue in 2009–2015, especially in respect of the limited influence of the social partners on the final version of the anti-crisis legislation in 2009, the lack of tripartite agreement on increases to the minimum wage since 2010 and the failed negotiations on the reform of the pension system and changes in the working time regulations, contributed to the withdrawal of unions from the Tripartite Commission for Social and Economic Affairs in 2013–2015. The crisis in the national-level social dialogue, combined with the limited role of sectoral and company-level collective bargaining, made unions search for new topics and instruments for their actions. Thirdly, the worsening labour market situation in many European countries made the option of migration temporarily less attractive to Polish workers. Simultaneously, those who returned home often brought expectations of higher wages and job quality which, in some cases, led to their greater assertiveness in labour relations and the search for collective voice (cf. Karolak 2016). Fourthly, as noted in several other studies (for example, Krzywdzinski 2010), the rather slow, but visible, generational change of union leadership at various levels also played a role in the search for new topics and new tools for union action, including those regarding the precarisation of employment. Fifthly, a gradual change in the political climate of the country has been observed since the mid-2000s, with growing competition between the right-wing liberal party (Civic Platform, governing in 2007–2015) and the right-wing conservative party (Law and Justice, currently in power since 2015), and the increasing role of anti-liberal, nationalist movements. The problems of the precarisation of employment appeared in the anti-government demonstrations of various political forces in 2009–2015, so trade unions made good use of the changing political contexts to emerge as one of the central actors in these protests. Last but not least, the discourse of ‘junk contracts’ – critically describing and naming unstable, temporary contracts not regulated by the Labour Code, for example, civil law contracts – made its way into mainstream trade unionism as a result of the pressure of radical political trade unions, such as the All-Poland Trade Union Workers’ Initiative and the Confederation of Labour OPZZ, which had begun to organise various categories of precarious workers in the 2000s (cf. Mrozowicki *et al.* 2016).

Trade union membership has not increased in recent years, but there are some indicators which suggest that greater union assertiveness has brought the first measurable results. For instance, the proportion of respondents who positively assess union effectiveness in protecting workers’ rights is increasing, even if it is still lower than the share of those who claim that their activities do not bring any outcomes (Table 2). In the next section, we also note a number of incremental legislative, organisational and cultural changes which, at least partially, reflect trade union activities targeting the problems of precarious workers.

2. In 2014, 71.2 per cent of those aged 15–24 were on temporary contracts (Eurostat).

Table 2 Union effectiveness in Poland – survey data. Answers to the question: 'In your opinion, are trade unions in Poland generally effective or ineffective in defending workers' rights?' (per cent), 1999–2015

| | Mar 1999 | May 2000 | Jul 2001 | Jul 2002 | Sept 2007 | Dec 2008 | Jul 2010 | Mar 2012 | Apr 2013 | Sept 2013 | May 2013 | Mar 2015 |
|------------------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|-----------|----------|----------|
| Effective | 23 | 15 | 13 | 15 | 24 | 33 | 26 | 29 | 28 | 25 | 27 | 35 |
| Ineffective | 63 | 66 | 74 | 69 | 50 | 49 | 52 | 48 | 57 | 55 | 55 | 46 |
| Difficult to say | 14 | 19 | 13 | 15 | 26 | 18 | 22 | 23 | 15 | 20 | 18 | 19 |

Source: Own elaboration based on the data of the Public Opinion Research Centre (CBOS) (Feliksiak 2015). Note: Age 18+, representative samples for Poland.

3. Innovative union instruments targeting precarious labour

Addressing the particular dimensions of trade union innovative practices regarding precarious workers, we will predominantly refer to the Polish results of the PRECARIR project carried out in 2014–2016.³ The empirical data in the project consisted of 14 expert, individual and group interviews with 18 national, sectoral- and company-level union leaders, and four interviews with the representatives of four employer associations, across five sectors: public health care; steelworks; construction; temporary work agencies; and the retail sector. These were supplemented by a group interview at the Ministry of Labour and Social Policy (with representatives from the Department of Labour Law, the Department of Economic Analysis and Prognosis and the Department of Social Dialogue and Partnership), two interviews with industrial relations experts and an interview at the Ministry of Health. In addition, we also selectively refer in the chapter to the results of two other research projects: (1) 'Development of trade unions in new member states of the EU' (carried out in 2009–2010 and funded by the ETUI) (cf. Gardawski *et al.* 2012); and (2) 'Negotiating capitalism in Central and Eastern Europe: between marginalisation and revitalisation of organised labour', carried out in 2009–2011 and focused on the retail and automotive sectors (project HOM/2009/8B, funded by the Foundation of Polish Science) (cf. Mrozowski 2014)

In presenting the empirical material, we adapt the classification provided by Bernaciak and Kahancová in the Introduction to the current volume. An overview of the analysed instruments in tackling precarious employment is presented in Table 2.

3. The PRECARIR project ('The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations') has been financially supported by a grant of the European Commission, DG Employment, Social Affairs and Inclusion (project no. VS/2014/0534).

Table 3 Innovative trade union instruments: the case of Poland

| Instruments | Assessing the impact | |
|--|---|---|
| | Achievements | Challenges |
| Trade union organising and servicing | <ul style="list-style-type: none"> – The Anglo-Saxon organising model transferred and adopted (with modifications) by NSZZ Solidarność – Inter-company unions covering temporary agency work – Milieu-based organising by radical unions – Occasional cooperation with non-union employee associations and social movements | <ul style="list-style-type: none"> – Resource-intensive tools – Limited focus of trade union organising of atypical employees – Limited development of social movement unionism – Limited legal services provided to non-members with civil law contracts |
| Collective bargaining and social dialogue | <ul style="list-style-type: none"> – Selective attempts to cover temporary agency workers through collective bargaining and establishing intra-company committees – Development of 'soft' measures/ codes of conduct in some sectors (for example, construction) – Ongoing reforms of the Social Dialogue Council | <ul style="list-style-type: none"> – The crisis in the Tripartite Commission in 2013–2015 – Very limited sectoral level bargaining and declining benefits of collective agreements – Problems with sanctions in codes of conducts/soft regulations |
| Political and litigation instruments | <ul style="list-style-type: none"> – International leverage: acknowledged complaints to the ILO (the limited right to unionise atypical employees) and the European Commission (the regulation of temporary contracts) – Motion to the Constitutional Tribunal regarding the limited right to unionise – Shifting the arena of protest from companies to the streets | <ul style="list-style-type: none"> – The problems of legitimacy and the imbalance of power between unions in the case of political coalitions – Very slow legislative changes, in particular in the Trade Union Act |
| Media-oriented instruments, identity politics and benchmarking | <ul style="list-style-type: none"> – Large-scale media campaigns bringing new concepts to political discourse (for example, 'junk contracts') | <ul style="list-style-type: none"> – Limited political and ideological work on the long-term, strategic, political goals of trade unions regarding precarious work |

Source: Authors' own elaboration.

3.1 Trade union organising and servicing

Dealing with trade union innovation, it seems necessary to start with trade union organising, of which the experience in Poland presents a rather unique phenomenon in the CEE context. In the early 1990s, activists of NSZZ Solidarność were trained by representatives of the Service Employees International Union (SEIU) in US-inspired organising techniques and principles (Gardawski 2001). The international transfer of the 'organising model' proved to be an important source of trade union innovation due to the traditions of rather passive, semi-mechanical membership in the 'official' unions during state socialism (Mrozowicki 2014). The establishment of a Union Development Office (Dział Rozwoju Związku, DRZ) in NSZZ Solidarność in the late 1990s, which

employed around 50 paid union organisers by the end of the 2000s, as well as the emergence of the organising-oriented Confederation of Labour (Konfederacja Pracy, KP within OPZZ), contributed to the unionisation of workers in sectors considered difficult to organise, such as the private security sector and supermarkets and hypermarkets in the retail sector.

However, the limitations of a centralised approach to organising with regard to precarious workers also became visible. Firstly, trade union organising focused on relatively large enterprises in which a rapid increase in membership could have been expected. Secondly, large trade unions have rarely organised workers in atypical employment (self-employed, temporary agency workers, civil law workers) (cf. Czarzasty *et al.* 2014) due to their high turnover, anti-union employer strategies and the legal barriers to unionisation. Thirdly, the quantitative outcomes of organising for union density at the sectoral level proved to be limited. For instance, NSZZ Solidarność managed to unionise some 15 000 employees in the retail sector, but overall union density in the sector is still below 2 per cent. Fourthly, due to the core characteristics of industrial relations in Poland and trade union weakness, trade union organising did not lead to the development of sectoral-level collective agreements that would be extended to non-organised workers.

Yet, in some sectors and nationwide, a few experiments regarding the organisation of non-standard and, more broadly, precarious employees have been observed. In some sectors, company and inter-company union structures are being used by larger unions to represent precarious workers. In our earlier studies, we discussed the instances of the inclusion of temporary agency workers in NSZZ Solidarność company-level structures in large plants in the automotive sector, such as GM Opel or Volkswagen Motors Poland (Mrozowicki 2014). A similar approach was observed in Arcelor Mittal Poland (AMP), in which NSZZ Solidarność managed to organise outsourced workers employed by companies acting as AMP's subcontractors.

The existing legal framework (the Trade Union Act) has still not been changed to allow for the union membership of self-employed and civil law workers (especially in the context of access to all the labour protections provided by union membership), but there are instances of the organising of such groups of employees by some unions. Since the mid-2000s, radical trade unions, such as the All-Poland Trade Union Workers' Initiative (OZZ IP) and the Confederation of Labour OPZZ, experimented with the organising of those on civil law contracts, the self-employed and temporary agency workers by affiliating them in milieu union committees (*komisje środowiskowe*) and inter-company trade union organisations. Similar to the idea of 'community unionism', milieu union committees involve all workers regardless of their employment status, in the form of peer-support groups, and they are also open to students and the unemployed. Inter-company union organisations (*komisje międzyzakładowe*), which cover more than one employer in their activities, were initially considered a means of maintaining union organisation in restructured state-owned companies which had often been divided into smaller entities. However, they are now actively used by some unions to organise atypical employees and workers in micro-companies. OPZZ's Confederation of Labour was active in organising predominantly self-employed street traders, the self-

employed in passenger transport, DJs and party promoters, and call centre workers on civil law contracts. In 2013–2015, Workers' Initiative created an inter-company union committee involving temporary agency workers in Amazon and two milieu committees of particularly precarious groups of workers in Poland – art workers (without permanent employment); and civil law workers and volunteers in NGOs – as well as a committee associating self-employed crane operators. In both cases, trade union statutes allow individual employees, the self-employed and civil law workers to join inter-company union structures. In some instances, organising also involved cooperation with left-wing social movements, for instance the squatter and anarcho-syndicalist movements in the case of Workers' Initiative. However, the scope for such 'social movement unionism' is limited.

Contrary to earlier suggestions by US researchers (Milkman and Voss 2004), the various forms of trade union organising do not necessarily mean abandoning the servicing approach. A combination of efficient servicing and active membership recruitment seems to be typical of the most successful trade unions in the automotive and retail sectors (Mrozowicki 2014). NSZZ Solidarność helps civil law workers in the retail sector by directing them to Labour Inspectorates and non-governmental organisations, such as the Association of Franchise Holders Żabka or the association of the ex-employees of Biedronka discount shops. In the health care sector, in which many nurses are simultaneously employed on standard employment contracts in public health care units and civil law contracts in private firms, trade unions help their members regardless of the contractual basis of their employment. However, union leaders admit that it is rather uncommon that such services are granted to non-members.

Developments in trade union organising in Poland are innovative on all three dimensions discussed in the analytical section. Inter-company and milieu union committees, involving workers in non-standard employment, represent novel approaches with regard to organisational structures. The radical trade unions which have advanced such innovative approaches can deepen union rivalry and, in some cases, crowd out traditional, large unions, but they also create grounds for the development of new ideas and approaches to organising which involve civil law workers and the self-employed even before the (now anticipated) legal changes in the Trade Union Act. Thus, they are also innovative in terms of the selection of new target groups. Finally, the ongoing involvement of NSZZ Solidarność in the centralised organising approach also represents a strategic innovation in the context of the strategies of the dominant and established unions – as there is a regular transfer of a part of union resources for the purpose of the existence of the Union Development Office. Importantly, however, both newly-recruited members and existing ones are also attracted by the range of (rather traditional) services provided by the union, including legal support in the case of problems at work, social benefits and union training.

3.2 Collective bargaining and social dialogue

Due to low collective bargaining coverage and the under-development of tripartite institutions, collective bargaining has not become an important means for improving the situation of precarious workers in Poland. Recent data on collective bargaining coverage suggests that it ranges between 25 per cent (as of 2000) and 15 per cent (as of 2013) (Visser 2015); and that multi-employer agreements cover less than 3 per cent of the workforce. Wratny (2008: 32) points out that the rights of such workers can be represented by unions through collective bargaining agreements (Article 239 §2 of the Labour Code), even if civil law employment is not covered by the existing trade union law. However, our interviews suggest that this possibility is very rarely used in practice by Polish unions.

Important innovations at the level of collective bargaining concern union activities aimed at covering temporary agency workers and the employees of subcontractors. We have already mentioned that, in steelworks (more specifically, Arcelor Mittal Poland), trade unions regularly and successfully attempt to influence the wages and working conditions of outsourced workers in subcontracting firms as well as to organise them in inter-company unions. In Volkswagen Poland in Poznań, the negotiation and signing of the Temporary Work Charter for the Volkswagen Group (2012) by the company's World Works Council, which also included representatives of representatives from Polish locations, enabled unions to secure favourable conditions for temporary agency workers: they can be no more than 5 per cent of the total workforce, they must receive the same remuneration (wages and bonuses) as the core workforce and they have to be treated equally to permanent workers.

Innovative instruments also concern attempts to overcome collective bargaining decentralisation and negotiate wage increases at occupational and sectoral levels. An example of a recent, rather successful campaign to raise the wages of occupational groups experiencing precarious working conditions is the initiative of the All-Poland Trade Union of Nurses and Midwives (OZZPiP). In mid-2015, the union threatened the government with a general strike of nurses and midwives, demanding a PLN 1 500 (EUR 375) wage increase for both groups in order to lower wage differentials between these professions and doctors; and to decrease the intensification of work stemming from the hybrid employment of nurses, who would often have two jobs, one in the public sector with a standard employment contract and the other based on a civil law contract in a private health care facility. The result of lengthy negotiations was that, in the context of upcoming parliamentary elections, the Ministry of Health agreed to a pay rise of PLN 300 (on average) in publicly-financed entities. This, in turn, provoked an angry reaction from other trade unions in the sector who criticised the pay hikes for nurses and midwives only, proposing instead to introduce new wage tariffs and wage increases for all groups in the sector.⁴

4. During the February 2016 meeting of the Tripartite Team on Health Care, the union demand for working conditions in the sector to be regulated by supra-company ('sectoral') collective agreement did not gain the support of the government and employer representatives. Instead, changes in legislation providing for salary increases for other occupational groups than nurses and midwives were proposed (MRPiPS 2016). During the subsequent meetings, the act on minimum wages for medical staff in healthcare units was discussed.

In sectors where the structural power of trade unions is weaker, negotiated instruments to counteract precarious employment tend to take the form of recommendations rather than collective agreements. In this context, the most important tool to tackle precarious employment is the effort to increase wages. An example can be the agreement on the minimum accepted labour costs (*minimalna stawka kosztorysowa*) in construction and in real estate management, concluded between major trade unions and employer associations in 2014 and renewed in 2015. The minimum accepted labour costs encompass all employer costs (PLN 14.83 per hour in 2015) and takes account of elements such as the costs related to various holidays, sick leave and the costs of obligatory medical check-ups and work clothing. Both employer organisations and trade unions view it as a means to counteract unequal competition practices by subcontractors through lowering the costs of employment. However, its impact is limited given that its implementation remains voluntary.

Another case in the emerging social dialogue regarding precarious employment can be observed in the temporary agency sector. In 2014, the employer organisation Lewiatan, together with other employer organisations in the sector, the Ministry of Labour and Social Policy and the Chief Labour Inspector, initiated a Round Table on Temporary Work to start a discussion on a code of conduct and the certification of temporary work agencies. Trade unions officially refused to join the Round Table, but NSZZ Solidarność nevertheless submitted for discussion at the Round Table its earlier proposal for legislative changes. Following the Round Table, in late 2015, a tripartite expert team was established by the Ministry of Labour and Social Policy to discuss desirable regulatory changes. At present, the team is considering several changes to the regulations on temporary work in Poland, among others the need for a reduction in the use of civil law contracts in the sector.

At national level, social dialogue has been in stalemate due to the trade union boycott of the Tripartite Commission for Social and Economic Affairs (2013–2015) reflecting their criticisms of the lack of social dialogue with Civic Platform and the Polish People's Party government. Nevertheless, some collectively-negotiated solutions to the problems of precarious work can be mentioned. A good example is the changes in the Public Procurement Act reflecting the demands of employer organisations and trade unions (especially in the construction sector) for the introduction of non-price related criteria in the choice of contractors by public institutions. Their activities were partially successful. Following the changes, which came into force in October 2014, the choice of offers in public tenders is no longer dependent solely on the price criterion (except for commonly-available services). In addition, a contracting authority has the opportunity to require in its tender that the contractor employs workers on employment contracts that excludes the use of civil law contracts. Most importantly, however, the joint trade union boycott of the Tripartite Commission resulted in reforms being made to the tripartite institutions of social dialogue. In September 2015, a new Social Dialogue Council (SDC) Act came into force as a result of a compromise proposal made by the social partners. The Social Dialogue Council, endowed with additional prerogatives, such as the right to propose legislative changes that have to be looked at by the government, replaced the Tripartite Commission.

Some collective bargaining developments can be assessed as innovative in terms of the selection of new target groups (temporary agency workers and workers employed by subcontractors) as well as the choice of strategy. The latter concerns, in particular, union attempts to counteract the fragmentation of collective bargaining (in the healthcare sector, both at the occupational and the sectoral level) and the shift towards 'soft' agreements to substitute for the lack of sectoral-level collective bargaining (in construction), as well as the lobbying for the legal changes to bring about new tripartite social dialogue institutions. However, it is unclear whether these newly-adopted instruments and tools will be able to address the problems of precarious workers more effectively. Looking at it from a critical perspective, it can be argued that some of the new developments seek to prevent the further weakening of collective bargaining by shifting the focus to 'soft', non-binding agreements and/or making the regulation of the problems of (precarious) workers increasingly dependent on state involvement rather than being resolved through autonomous social dialogue (cf. Kahancová, this volume).

3.3 Political and litigation instruments

Like other CEE countries (Greskovits 2015; Kahancová 2015), due to the protracted crisis in the national-level social dialogue in the country, Poland observed between 2009 and 2015 a visible shift in union approaches to political instruments, based on a combination of union lobbying and pressure to change legislation at national and international levels, as well as various forms of worker mobilisation outside the workplace. Greskovits (2015: 281) has noted that EU and international labour legislation has allowed trade unions to 'frame their demands in European labour rights terms and use such regulations to externalize domestic conflicts'.

The most prominent example of a successful international union campaign concerns changes made to the Labour Code regarding temporary employment. In 2012, NSZZ Solidarność filed a complaint to the European Commission concerning the improper application of Council Directive 99/70/EC in Poland with respect to abuses arising from successive fixed-term employment contracts. The complaint was acknowledged by the Commission in December 2013 and specific recommendations followed (Surdykowska 2014). In March 2014, the European Court of Justice (ECJ) ruled that the provisions of the Polish Labour Code infringed the prohibition of treating fixed-term employees less favourably than permanent employees where the situations of such employees were comparable (as stated in Council Directive 99/70/EC). Acting under the pressure of trade unions, the ECJ and the Commission's recommendations, the government in March 2015 accepted a complex draft amendment to the Labour Code that brought major changes in the use of fixed-term contracts (Czarzasty 2015). The new provisions, which entered into force in February 2016, limited both the duration and the scope of temporary employment contracts. They also expanded the protection of employees employed on fixed-term contracts against dismissal, in practice liquidating some of the crucial differences in notice periods between open-ended and fixed-term contracts.

Another instance of the use of national and international institutions to push through legal changes at national level concerns the struggle for the right to association among

self-employed workers and civil law employees. In 2011, NSZZ Solidarność lodged a complaint with the International Labour Organisation (ILO) concerning the violation of ILO Convention 87 by the existing Trade Union Act. In 2012, the ILO advised the Polish government to change its labour legislation so that all workers, including the self-employed and those on civil law contracts, could join trade unions. In June 2015, following a motion filed in the Constitutional Tribunal of Poland by the All-Poland Alliance of Trade Unions (OPZZ) in 2012, the Tribunal deemed unconstitutional the limitation of union membership to employees. This potentially opened the way to legislative change, not only in the Trade Union Act but also in other legislation that currently excludes from workers' rights those working under non-employment types of contract. At present (November 2016), the government proposal for legal change in this area is being consulted with social partners.

Similar to Croatia (Butković, this volume) and Romania (Trif and Stoiciu, this volume), Polish trade unions have initiated campaigns and collected signatures to organise referenda on labour-related issues. The initiatives proved unsuccessful, however, due to strong government opposition. In 2011, NSZZ Solidarność gathered over 300 000 signatures to support a union legislative proposal progressively to increase the minimum wage to a level of 50 per cent of the national average. The proposal was taken up by Parliament, but no legal changes have followed. In 2012, NSZZ Solidarność managed to collect 1.4 million signatures on its proposal to organise a referendum on the issue of retaining a retirement age of 60 years for women and 65 for men, against the extension to 67 for both men and women being pursued by the government of Civic Platform (PO) and the Polish People's Party (PSL). Despite such substantial support, the referendum initiative was voted down by the Polish Parliament. Both referenda campaigns seem to demonstrate the limits of national-level legal actions in an unfavourable political context. Nevertheless, it has to be noted that the new Law and Justice (PiS) government did address union demands and ultimately lowered the retirement age to 65 years for men and 60 for women in November 2016.

The political pressure for legal changes was reinforced by street protests and media campaigns (discussed in the next section) addressing the problems of precarious workers. The issue of 'junk contracts' featured during anti-austerity protests and union demonstrations in 2011–15. The demand to counteract the extensive use of 'junk contracts' was also raised in the first general strike in Poland since 1989, held in the Upper Silesia region in 2013, and in the so-called Days of Protests in September 2013. In the course of the political mobilisation, the three nationally-representative trade unions stood surprisingly united, which could have been taken as proof of their having overcome the old political divisions. However, the established political alliances have not disappeared. In particular, the linkages between Solidarność and the right-wing conservative PiS became stronger with Solidarność's support for PiS candidates in the presidential and parliamentary elections in 2015.⁵ In the course of the presidential campaign, the PiS candidate and current President, Andrzej Duda, concluded a formal

5. Support for the PiS candidate (and the current President of Poland, Andrzej Duda) took the form of a formal agreement between the Party and NSZZ Solidarność, but trade union backing in the parliamentary elections was not formalised similarly.

agreement with NSZZ Solidarność in which he promised to support union demands, such as lowering the retirement age, raising the minimum wage to 50 per cent of the average wage, retreating from changes to the Labour Code regarding the flexibilisation of working time and counteracting the use of 'junk contracts'. Following the double victory of PiS (in presidential and parliamentary elections) in 2015, PiS introduced a minimum hourly wage for freelance contracts and the solo self-employed at the level of PLN 12, effective as of 1 January 2017, and gave labour inspectorates the right to control the observance of the minimum hourly wage by employers.

The combination of political pressure, mass-media campaigns and collective mobilisation made the trade union voice heard in the public debate, which can be considered as an instance of strategic innovation. The context of the double presidential and parliamentary elections in 2015 certainly aided in fulfilling some of the trade unions' demands. The tangible results of union actions include the changes to the Labour Code regarding temporary employment, the reform of the tripartite institutions and the changes to the Public Procurement Act discussed above, legal changes establishing obligatory social security contributions on all freelance contracts up to the level of the minimum wage as of 2016, lowering the retirement age and introducing the minimum hourly wage for workers with freelance contracts and solo self-employed. However, it is notable that the innovative union approaches in the political sphere have neither undermined old political alliances nor been translated into comprehensive union strategies to address the problems of precarious workers. Moreover, political instruments make unions dependent on the current configurations of political forces. The revival of the political coalition between PiS and NSZZ Solidarność can certainly help in advancing important labour reforms that could improve the situation of precarious workers. However, the alliances between trade unions and political parties need to be seen as a rather traditional tool and cannot be assessed as innovative. First, they may undermine union effectiveness once the Polish political scene changes again unless the union's autonomy regarding the state authorities is retained. Secondly, there is a risk of thwarting the inter-union cooperation developed in opposition to the previous, PO-PSL government unless other unions are granted an equal voice and influence on policy-making.

3.4 Media-oriented instruments, identity politics and benchmarking

The role of media-oriented instruments has been particularly strong in sectors in which the associational power of trade unions remains rather weak. Examples include the activities of the National Section of Trade Workers of NSZZ Solidarność, such as: (1) the 'hyper-exploitation' internet site, which made it possible for retail sector employees to voice their concerns about issues of pay and working conditions in their companies anonymously;⁶ (2) the campaign against Sunday working and shopping on Christmas Eve, including the distribution of leaflets in the front of shops and press releases, which had a partial success in shortening working hours on 24 December in most large-scale retail shops; (3) activities within the framework of the International Day of Decent Work

6. The website (www.hiperwyzysk.pl) was registered in August 2011 but is currently unavailable.

on 6 October 2014, including an event in Warsaw during which MPs were encouraged to help unload a heavy pallet truck, and letter-sending campaigns to the government and MPs. In the construction sector, a 'Campaign for Fair Work' was implemented during preparations for the Euro 2012 football championship in Poland and Ukraine by Budowlani Trade Union (OPZZ), NSZZ Solidarność, the Chief Labour Inspectorate in Poland, the Ukraine building union CBMIWUU, the Building and Wood Workers' International and the Friedrich Ebert Foundation. It aimed at increasing trade union influence on working conditions at large construction sites and infrastructure projects prepared for Euro 2012, and involved press releases and spots in the public media.

At the national level, one of the first initiatives against 'junk contracts' was the Sisyphus campaign. This was carried out by NSZZ Solidarność in 2012 and involved internet sites and spots in the major national media under the slogans 'Stop junk contracts!' and 'I do not want to start every day from zero', which referred to the lack of social and employment security of those employed on civil law contracts. The campaign was mostly addressed to young people and, among others, encouraged them to notify the Labour Inspectorate of instances of the misuse of civil law contracts by employers. In 2015, Workers' Initiative jointly organised a campaign and demonstration called 'We, the Precariat' (<https://myprekariat.wordpress.com>), which aimed to bring precarious workers together, raise their networking and mobilising potential and reinforce a basis for a 'precariat' consciousness. The campaign was present in electronic media and it was also popularised through interviews in leading political magazines with activists from Workers' Initiative. The most recent campaign, 'Poland without Exploitation' (www.polskabezwyzysku.pl) was launched in November 2015 by Social Poland (*Polska Społeczna*), an association originating from urban movements in cooperation with OPZZ's Confederation of Labour and the Małopolska Region of NSZZ Solidarność. Its main demands, included in a complex legal reform proposal, involve the introduction of a minimum hourly wage of PLN 17 for all types of contract (compared to the PLN 12/hour proposed by the PiS government), legal changes enabling the transformation of civil law contracts into standard employment ones, employment to be based on the Labour Code at the initiative of the employee, and increased penalties for employer breaches of the Labour Code. Using online forms and the telephone numbers made available on the campaign website, workers can contact campaign organisers when their rights are breached and seek help by notifying the Labour Inspectorate, filing a case in a labour court, attracting public attention to their problems, joining trade unions and acquiring support for organising protest actions.

The result of trade union activities that have strengthened unions' discursive power (Urbański 2014) is that the term 'junk contracts', connected mostly with civil law contracts, made its way into mainstream political discourse. More generally speaking, trade union public campaigns can be assessed as innovative both with respect to choice of strategy (with a greater emphasis on trade unions' public image and the use of electronic and social media) and the selection of target groups consisting mostly of precarious workers and young people. The role of unions as promoters of new ways of framing the social problems at hand cannot be underestimated. However, successes in the ideological 'battle of ideas' (Hyman 1999: 108) need to be understood in the context of other instruments discussed in this chapter, including unions' rather weak and

uncoordinated efforts to organise and represent precarious employees. We may observe a shift in union approaches, from building on their structural and organisational power to relying more on their capacities to shape ideas and discourses in the public sphere, but the effectiveness of the latter is still largely dependent on the structural position of labour organisations. In addition, the long-term, strategic, political goals of trade unions regarding precarious work, as an inherent part of capitalist labour relations, remain unclear besides the (rather unrealistic) demand to eliminate it as such from the economy.

Conclusions

This chapter explored innovative trade union strategies in addressing the problems of precarious workers and their impact on the position of trade unions in Poland in the context of the country's post-2008 economic slowdown. We have identified several drivers of such strategies, such as the unprecedented growth in non-standard employment since the early 2000s; the crisis in the national-level social dialogue after 2009; the temporary limitation of migration opportunities; generational change within unions; the changing political climate in the country; and the pressure for strategic changes coming from radical unions. In line with earlier observations (for example, Czarzasty and Mrozowicki 2014; Kahancová 2015), the research has allowed us to detect experimental union responses to the problem of precarious work across various sectors. Instead of fully novel, deliberate and planned strategies to include precarious workers in trade unions, we can observe a plethora of various instruments, developed locally or internationally-transferred and adjusted to local, national, sectoral and often company-level circumstances. The novelty of instruments concerned mostly the choice of strategy and target groups/audiences and, to a lesser degree, the development of new organisational structures. More broadly, it has reflected unions' ability to recombine existing tools for new purposes, for instance by linking innovative forms of collective bargaining with mass media campaigns, ad hoc political coalitions, international litigation procedures and the street-level mobilisation of workers as 'angry citizens' demanding that the political elites take their voices into account in the policy-making process (Greskovits 2015: 282). No major 'hard' successes at national level, in terms of reversing the decline in union density, can be identified, but unions' influence on the political discourse is clearly visible, in particular with respect to framing 'junk contracts' as one of the most pertinent social problems in the country.

Despite successful union attempts at developing new, sector-wide regulation in some sectors, such as steelworks, healthcare, construction and temporary agency work, research confirms the earlier observation of Kahancová (2015: 353) concerning the shift in union activity from 'traditional resources, including strong membership and collective bargaining, to exerting union influence through legislation, public protests and political support'. This catalogue can be supplemented by various forms of public campaigning and (new) media-oriented tools. Losing their structural and political power as a result both of the economic slowdown and the protracted crisis in the social dialogue in Poland since the late 2000s, trade unions have begun to rely increasingly on their discursive power. The latter has relied on unions' framing capabilities, understood

as their ability to define problems at work in a way that enables the mobilisation of workers' and public opinion (Lévesque and Murray 2010: 343). The impact of such campaigns has been reinforced by the closer inter-union cooperation visible since the late 2000s, with the three nationally-representative union confederations developing joint statements and actions on a number of issues, including precarious employment. Such a development might indicate a potential breakaway from the established historical divisions and 'competitive pluralism' of the Polish labour movement, but this positive change might now again be challenged by tighter cooperation between PiS and NSZZ Solidarność.

Last but not least, the impact of innovative union strategies on potential changes in industrial relations in Poland can be discussed. On the one hand, new ideas and discourses have helped to frame workers' problems in a new way and have led to tangible changes in the existing legislation, for instance in the expected reforms to the Trade Union Act enabling all workers, including those on civil law contracts and the self-employed, to establish and join trade unions. This might contribute to a far-reaching transformation in trade unions' potential constituency. On the other hand, concrete and sustained actions in the field of membership recruitment require associational and structural power that unions usually lack, while the political discourse is easily captured by various political forces. The result is that the 'hard' outcomes of union actions, in the form of legislative changes, do not translate into membership growth and/or increased support for trade unions because the link between trade union campaigns and legal changes is not always clear to the general public. Thus, we might conclude that trade unions might have successfully joined the 'battle of ideas', but they still seem to lack the structural, organisational and institutional resources to capitalise on their successes and reconstitute themselves as fully autonomous economic and political actors.

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