

**JUSTICE FOR JANITORS IN ALBERTA:
THE IMPACT OF TEMPORARY FOREIGN
WORKERS ON AN ORGANIZING CAMPAIGN**

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ABSTRACT

This case study explores a union organizing drive that revolved in large part around a group of temporary foreign workers. The impact of this group of workers on the union's organizing strategy and the implications of the workers' limited residence and labour rights are examined. This article also considers the factors that appeared to make the Justice for Janitors organizing model effective in this case as well as the potential risks associated with this approach.

INTRODUCTION

In 2010, the Ontario-based Service Employees International Union (SEIU) Local 2 launched an unexpected and successful organizing drive among cleaning staff working for Bee-Clean Building Maintenance at the University of Alberta campus in Edmonton, Alberta, Canada. This article examines the effectiveness of SEIU's Justice for Janitors (J4J) organizing model in a union-hostile province, in which the labour movement is grappling with questions about how to renew itself. The article also considers how and why the presence of temporary foreign workers (TFWs) affected the campaign. The large number of TFWs in Alberta, the complexities associated with organizing TFWs, and the differential consequences of unionization for TFWs have implications for unions seeking to organize new members.

UNION DECLINE AND RENEWAL

The stagnant and declining union density in industrialized nations since the 1990s (Blanchflower, 2007) has given rise to much discussion about the effects of globalization on the future of unionism (Freeman, 1993; Scruggs & Lange, 2003). While the effects of globalization are uneven and dependent in large part on the strength of labour market institutions in each country (Stephens & Wallerstein, 1991), unions in most countries find themselves facing significant challenges. The rise of globalization, through increased capital mobility, has shifted workplace power in favour of employers to the detriment of workers and their unions (Bieler, Lindberg, & Pillay, 2008). In many respects, it can be said that “capital is more geographically mobile than it was in the past because it now has more proletariats on which to land” (Coates, 2000: 255). Jobs in traditionally highly unionized industries—manufacturing in particular—are more vulnerable to this form of capital mobility, and thus labour markets in many industrialized nations are shifting toward industries with lower unionization levels (Caulfield, 2010; Jackson, 2010). The effect is felt both globally and regionally within trade zones such as that of the North American Free Trade Agreement (NAFTA) (Caulfield, 2010).

One of the factors behind weakened union density is increased labour mobility, including the growth in the numbers of migrant workers and newly arrived immigrant workers. Declining union density in Organization for Economic Cooperation and Development (OECD) nations has been linked to increased international migration (Lee, 2005). This correlation is explained, in part, by the increased economic vulnerability of migrant workers and immigrants, which makes them more difficult to organize (Borjas et al., 1997). Immigrants are also more likely to hold middle-class aspirations, making them less open to considering unionization and less likely to associate their concerns with those of established workers (Clark, 2003). Unions in receiving countries have also tended to be suspicious of immigrants and migrant workers, and thus have not been receptive to reaching out to these new populations (Caulfield, 2010; Hyman, 2001).

Discussion of these challenges has led to consideration of how unions can effectively respond and renew. Much focus has been on constructing new forms of international or cross-border unionism (e.g., Bieler et al., 2008; Bronfenbrenner, 2007). A second path of inquiry explores how unions can adapt to become more inclusive of new groups of workers, including immigrants and migrant workers (Caulfield, 2010; Fairbrother & Yates, 2003). In North America, the J4J model is seen as one potential avenue to the renewal of unions. The details of the model will be discussed further below.

THE CANADIAN AND ALBERTAN CONTEXT

The Canadian labour movement is often perceived as more resilient than that of many other countries, in particular the United States. Union density in Canada

was 31.6% in 2010 (Uppal, 2010) and has remained fairly steady since the late 1990s. Nevertheless, the rate is down from 35.9% in 1988 (Jackson, 2010), and strong public-sector unionization masks a significant decline in private-sector union density (Uppal, 2010). Within Canada, there is significant jurisdictional variation. In 2010, union density in Alberta was at 25%, the lowest in Canada (HRSDC, 2011). The divergence between the Canadian and U.S. unionization experience has been attributed to Canada's relatively more union-friendly legal regime and labour relations climate (e.g., Card & Freeman, 1993). In recent years, however, the climate in Canada has become more similar to that in the United States, as Canada has been subject to the same pressures as other industrialized nations (Godard, 2004).

The province of Alberta is typically considered the least union-friendly jurisdiction in terms of its labour laws (AFL, 2007a; Ponak, Reshef, & Taras, 2003) and ranks 51st among 63 jurisdictions in North America for labour protections (Block, Roberts, & Clarke, 2003). The antiunion atmosphere is due, in part, to the importance of the oil and gas industry in the province and the dominance of ideologically conservative governments since before the Second World War (Harrison, 2005). Over the past 20 years, there have been significant changes in Alberta's labour law that have limited unions' ability to organize and strike in some sectors (Foster, 2012). The 1990s also saw significant reductions in public-sector employment. Among the employees downsized were janitors at the University of Alberta, whose work was contracted out to Bee-Clean Building Maintenance Inc. (Fuller & Hughes-Fuller, 2005; Taylor, 1997).

Union Renewal in Canada

A significant body of literature has arisen exploring avenues for union renewal in Canada. This literature identifies trade liberalization, rising neoliberal sentiment among governments, a loss of class consciousness, and de-industrialization (Arthurs, 2011; Levesque & Murray, 2002; Reshef & Rastin, 2003) as well as a failure by unions to respond to growing gender, ethnic, racial, and cultural diversity (Fairbrother & Yates, 2003; Hunt & Rayside, 2000) as important factors in the decline of the labour movement. Prescriptions include recommendations for greater rank-and-file activism and new models of organizing (Hickey, Kuruvilla, & Lakhani, 2010; Kumar & Schenk, 2006), particularly strategies designed to target traditionally underrepresented populations (C. Yates, 2006; M. Yates, 2009).

The adoption of practices aimed at renewal has been sporadic and uneven (Kumar & Murray, 2006; Schenk, 2003), leading to occasional successes but no change in overall unionization trends. This suggests that renewal strategies are implemented incrementally and more likely to lead to "hybrid" approaches, incorporating elements of innovation with traditional methods (Kumar & Murray, 2006). The complexity of implementing innovations requires further research

into how theoretical approaches to renewal are translated into practice and, more importantly, into new bargaining units and engaged members. The case study examined below contributes to this literature by exploring the importation and implementation of a longstanding American service-sector organizing model.

JUSTICE FOR JANITORS MODEL OF RENEWAL

The Justice for Janitors (J4J) organizing model, adopted by SEIU in the United States in the late 1980s and early 1990s, served as an early pointer to the potential of union renewal. In the United States, SEIU has long represented workers in the cleaning industry, and it experienced significant setbacks and membership loss in the 1980s due to shifting economic and political conditions (Howley, 1990). To regain lost ground, SEIU adopted the Justice for Janitors approach to organizing and has subsequently become the fastest growing union in North America (Aguilar & Ryan, 2009).

The primary goal of J4J is to “remove wages from competition . . . by ensuring that all janitors in a defined area or district are unionized” (Savage, 2006: 654). This entails focusing on building owners (rather than direct employers, among whom price-based competition is fierce) to establish a wage-floor by demanding improvements from their contractors (Milkman, 2006). J4J uses “member-intensive” organizing tactics, such as home visiting and mobilizing within workers’ ethnic community networks (Rudy, 2004). Media coverage and broader community engagement, including protests and street theatre, are a central component of such organizing drives (Erickson et al., 2004), using public opinion and media embarrassment to suppress employer resistance.

A key element of J4J is the conscious effort to eschew traditional framings of labour disputes by linking campaigns to issues of social reproduction and racial inequity (Cranford, 2004). In doing this, J4J campaigns intensify campaign relevance for marginalized groups and broaden the community coalitions. J4J campaigns also often avoid formal union certification processes by targeting building owners and other secondary parties rather than employers (Clawson & Clawson, 1999) and negotiating “voluntary recognition” (VR) agreements rather than seeking formal certification (Howley, 1990). This approach counters the opportunity that employers have during drawn-out legal and voting proceedings to undermine organizing efforts with tactics such as the holding of captive audience meetings (where employees are required by the employer to attend anti-union talks in the workplace) and targeting of organizers, to which low-wage and migrant workers are particularly vulnerable. In contrast to the use of traditional methods of “hot call” follow-up, the central leadership of SEIU strategically determines organizing targets, even if no inside contact has yet been made. Consequently, in both the United States and Canada, the bulk of the organizing efforts have been located in cities where SEIU already has members

and where significant political support exists or extensive community contacts create strategic strength (Rudy, 2004).

J4J is often described as an example of social unionism, community unionism, or “bottom-up” organizing (Clawson, 2003; Erickson et al., 2004; Voss & Sherman, 2003) due to its emphasis on rank-and-file mobilization. While organizing efforts occur locally, it is important to note that union leaders play a central role in all aspects of organizing. The adoption of the J4J approach coincided with a leadership decision to restructure SEIU through mergers and amalgamation (Savage, 2006). This “top-down” leadership within the model (Aguiar & Ryan, 2009) makes classification difficult. Savage (2006: 653) describes the dynamic in J4J as “contradictory desires for the centralization and decentralization of authority.” Theoretically, the contradictions raise questions as to whether J4J should be classified as an example of social unionism. In practical terms, centralized decision making over an activist campaign has the potential to shape our understanding of how the Bee-Clean campaign unfolded and, in particular, how the interests of TFWs fit into SEIU’s broader organizational strategy.

In Canada, SEIU has represented building cleaners since the 1960s, primarily in Toronto and Vancouver (Hearn, 1988). The J4J model was imported into Vancouver in the mid-1990s during a period of trusteeship (a period in which local autonomy is removed by the union leadership) and to Toronto in the early years of the 21st century after significant restructuring mandated by the International Union (Aguiar & Ryan, 2009). The restructuring amalgamated all Ontario locals into two mega-locals, and most J4J activity is now coordinated by Local 2 in Toronto (Aguiar & Ryan, 2009). The J4J model in Canada, according to one Canadian SEIU organizer, features fewer so-called “guerilla tactics” and greater reliance on formal labour relations board processes due to Canada’s “better labor laws and balanced labor relations regimes” (Aguiar & Ryan, 2009: 953).

The bulk of J4J targets, in both Canada and the United States, consist of cleaning contractors in large office complexes. Nevertheless, organizing on a university campus, as in the case examined below, is not unprecedented. A successful 2006 campaign at the University of Miami led to a collective agreement. The campus campaign retained many elements of the traditional J4J model, but it added coalition building with students and university faculty as part of its mobilization efforts, viewing these activists as natural allies of the cleaning staff (Albright, 2008). The activation of the broader university community was an essential element in the campaign’s success.

The case under discussion here marks SEIU’s first J4J foray into Alberta. The decision to launch a campaign in Edmonton is a deviation from traditional J4J strategy. Historically SEIU has had few members in the province and, by the middle of the first decade of the 21st century, possessed only a single certification (Alberta Labour Relations Board, 2011). Further, Alberta has some

of the least inviting labour laws for unions and is the most difficult Canadian province in which to organize, particularly among vulnerable workers. No clear explanation for the decision to enter Alberta is available from SIEU, although the consensus in the broader labour community is that this campaign is an effort to establish an Alberta “toehold” and a test of whether the J4J method works in Alberta.

TEMPORARY FOREIGN WORKERS IN ALBERTA

The presence of migrant workers, called temporary foreign workers (TFWs) in Canada, in the Bee-Clean bargaining unit adds an important dimension to the analysis of the organizing campaign. TFWs, due to their insecure, temporary legal status, have less to gain from unionization and face greater potential consequences (i.e., deportation) due to employer retaliation. TFWs were an inconsequential portion of the workforce when J4J was first imported to Canada. Nevertheless, the rapid expansion of the TFW program since 2002 means TFWs are now an important group in sectors that J4J typically targets (Foster, 2011).

The federal government established the TFW program in the 1970s to offer relief from labour shortages in a small number of high-skill occupations. To hire TFWs, employers seek a Labour Market Opinion (LMO) from the federal Human Resources and Skills Development Canada department. To retain TFWs, employers must maintain their eligibility for an LMO. The TFWs must also apply for and be eligible for a temporary work permit from Immigration Canada (also a federal department). Each temporary work permit specifies the employer for whom the TFW is permitted to work, thereby restricting workers’ freedom to change employment. Permits are given for a maximum period of two years, with one possible renewal. While most of the basic employment protections afforded to permanent residents under provincial law, including the right to organize, are extended to TFWs, there are significant barriers facing foreign workers who attempt to utilize such protections. These barriers, particularly restricted labour mobility (Abella, 2006; Martin, 2003; Wong, 1984), render the basic employment rights inaccessible in any practical way (Nakache & Kinoshita, 2010).

Changes to the TFW program in 2002 and again in 2006 led to a rapid increase in the number of TFWs and an expansion of allowable occupations (Fudge & MacPhail, 2009). Between 2003 and 2009, the “stock” (the term used to describe the number of workers present on December 1 in each year) of foreign workers in Alberta increased from 11,462 to 65,748 (Citizenship and Immigration Canada, 2010). This increase has been much greater than in other Canadian provinces and includes a significant increase in the use of unskilled TFWs (Foster, 2011). This increase was soon followed by complaints of exploitation and violation of worker rights, such as contractual breaches, the payment of illegal broker fees, harassment, and discrimination (AFL, 2007b, 2009).

Precariousness among Canadian workers is often discussed in terms of employment relationships with heightened labour insecurity “characterized by limited social benefits and statutory entitlements, job insecurity, low wages and high risks of ill health” (Vosko, 2006: 4). The status of TFWs (particularly those employed in the service sector) as guest workers exacerbates their precariousness. TFWs cannot access the regular federal immigration process leading toward permanent residency; thus, TFWs are dependent upon their employer for both their livelihood and their right to remain in the country. In addition, foreign workers experience an unusual degree of social isolation and estrangement from the community around them due to the lack of settlement services available to them, to language and cultural barriers, and to their dependency on employer-provided orientation, information, and services (Foster, 2008; Pastor & Alva, 2004). These dynamics reinforce the limited access that precarious workers have to provincial statutory protections (Bernstein et al., 2006).

Low-skilled TFWs cluster in sectors of low union density, both compounding the workers’ vulnerability and posing significant challenges for unions. Precariousness and the lack of citizenship rights afforded TFWs excludes them from traditional union organizing efforts, due to union difficulty in adapting to the nontraditional issues of TFWs and the complex transnational dimensions of TFW programs (Piper, 2010). Traditional methods of organizing workers face serious obstacles when applied to TFWs.

There are no statistics available on the unionization rate among TFWs, and there are no recorded cases of workers under the Canadian TFW program successfully organizing a union. Consequently, the only confirmed examples of unionized TFWs are those who become union members as a requirement of employment through an established collective agreement. Thus, the Bee-Clean campaign may be one of the first organizing drives in Canada to incorporate TFWs.

METHODOLOGY

This study examines the case of a union organizing campaign, among janitorial staff employed by Bee-Clean Building Maintenance Inc under contract to the University of Alberta in Edmonton, Alberta, by the Service Employees International Union Local 2 during 2010. The case was selected because it is the first Canadian instance of a union organizing campaign in which TFWs comprised a significant proportion of the bargaining unit. The growing use of foreign migrant workers in industrialized nations makes understanding their impact upon organizing campaigns important to both employers and trade unionists. Further, this case is a rare instance of a union seeking bargaining-agent status outside of the conventional certification process in the face of significant employer resistance; more often, unions seek voluntary recognition agreements when there is tacit employer support for unionization. Examining the tactics used during a successful voluntary recognition campaign in the face of

employer resistance may provide insight into the opportunities for organizing drives outside of the existing legislative framework.

A case study approach was chosen for reasons set out by Yin (2003). Specifically, the boundaries between the phenomenon (the organizing campaign) and the legal, political, and economic context of the employment relationship are unclear, the contextual conditions are expected to be important to understanding the phenomenon, there is no opportunity for behavioral manipulation, and the research emphasizes how and why questions. As per Stake (1995), this is an instrumental case study; that is to say, it is a single case that is studied in order to gain insight (albeit preliminary) into the implications of foreign migrant workers for union organizing campaigns and vice versa. As Berg (1998) notes, the line between instrumental and intrinsic studies is not clear, and this study may also have intrinsic value as, for example, a teaching case.

The unit of analysis is the organizing drive conducted by SEIU among Bee-Clean employees working on the University of Alberta campus from May to December 2010 (when the union was recognized and a collective agreement signed). The specific research questions are as follows:

1. How did the presence of TFWs affect the organizing campaign's strategy and outcome?
2. Why did the presence of TFWs have these effects?
3. What factors contributed to the success of the J4J organizing model in this case? And what risks are associated with this approach?

The unique nature of this case means the research is largely exploratory. Instead of developing propositions to test during the case study, the case was used to develop propositions about the impact of TFWs on organizing drives that can be tested and refined in analyses of later campaigns.

Baxter and Jack (2008) emphasize the importance of placing boundaries around the case. While a wide variety of factors provide important context in which the organizing campaign occurred, they are not the main focus of the study. Specifically, this case study does not engage the post-campaign relationship between SEIU and Bee-Clean, because that bargaining relationship is relatively embryonic. Also, the case does not engage deeply with the impact of the organizing drive on the workers involved. Information about both of these topics did surface during the research and could profitably be explored at a later date.

Key data sources included observation of the organizing campaign from the outside while it unfolded, analysis of primary documents and media reports, and interviews with key actors. Interview subjects were selected based upon their involvement in developing and executing the organizational strategy for the organizing campaign. Interview subjects were also selected based upon their willingness to participate in the interviews and their continued availability after the campaign ended (some key participants had left the country following the organizing campaign). Two local organizers agreed to be interviewed. All names

have been replaced with pseudonyms. Multiple requests to interview union organizers at the national level were declined for unspecified reasons. After an exchange with the employer (including the submission of a list of questions), the employer also declined to be interviewed.

Interviews were held face-to-face and lasted approximately 90 minutes. The interviews were observed by both researchers. The interviews were not recorded; rather, both of the researchers took notes and independently summarized the relevant information provided before comparing the results. During the interviews, iterative questioning was used to develop an accurate picture of the organizing campaign as well as to verify the accuracy of statements made. A small number of follow-up questions were asked by e-mail. In accordance with Glesne's (2006) concern about both establishing trustworthiness and ensuring that reporting does not create personal or political problems for interviewees, the interview subjects were provided with copies of the final case study to review for accuracy and further comment. This member check led to a small number of revisions and triangulation with additional documentation.

Similar independent analysis of primary and secondary documents also occurred. Primary documents were collected during and after the organizing campaign, both directly by the researchers and by requests for such documents from the participants. These documents included statements of claim and defense filed in court by both the union and the employer and unfair labour practices complaint filed by SEIU, a labour board decision regarding the unfair labour practices complaint, the eventual collective agreement negotiated, union press releases, and employer communications with the workers. Secondary documents comprise media reports regarding the organizing campaign. These secondary documents include a number of quotations from workers who participated in the organizing campaign as well as from the employer and representatives of the university. These quotations are used to flesh out the interviews that were conducted and pseudonyms are used in place of real names

The results of each analysis were then triangulated to identify areas of agreement and divergence as per Berg (1998). This triangulation also reveals slightly different facets of the same symbolic reality, creating a richer picture. The relatively few areas of divergence resulted in further analysis and data collection to facilitate the development of the broadly chronological case narrative presented below. The trustworthiness of this study is addressed according to Guba's (1981) four criteria: credibility, transferability, dependability, and confirmability.

Credibility addresses the congruence between the findings and reality, paralleling positivism's internal validity. Several techniques suggested by Lincoln and Guba (1985), Berg (1998), and Glesne (2006) to enhance credibility were adopted in this study, including the use of well-established research methods (interviews, document analysis), development of familiarity with the culture of the organization under study, triangulation of findings from different data collection

techniques, iterative questioning in interviews, the use of member checks, and the provision of a thick description of the phenomenon.

Transferability addresses the degree to which results can be applied to other situations, thus paralleling positivism's external validity. While many scholars suggest that the ability to generalize is limited, Stake (1994) suggests that each case may be taken as an example within a larger grouping, and thus transferability is possible. The present case allows for such a transfer by providing sufficient detail on the case to allow readers to determine if there are enough similarities for the findings to be applied in their own setting. As per Berg's (1998) comment that few human behaviours are unique, the researchers expect the broad labour-relations dynamics that were important in this case to operate in other Canadian jurisdictions, and thus the findings here may be useful "tin-openers" for researchers elsewhere.

Dependability parallels positivism's reliability to the degree that this is possible in a naturalistic paradigm. By providing a detailed account of the process of the study, this case allows a future researcher to repeat the study and reach similar conclusions. Finally, we have taken some pains to illustrate how the findings emerge from the data (including instances of triangulation) rather than our own predisposition. In this way, we address Guba's confirmability criterion.

CASE STUDY

Bee-Clean Building Maintenance Inc. is a Canada-wide organization specializing in janitorial services. It has over 9,000 employees in seven provinces (Bee-Clean, 2011). In 2010, Bee-Clean held a contract for janitorial services at the main campus of the University of Alberta in Edmonton. According to one union organizer ("Ms. Smith"),

[Bee-Clean had] approximately 150 workers employed at the university. There were 25 working day and afternoon shifts and the remaining 125 working night shifts. Day-shift workers were more likely to be white, while the night shift was made up of a majority of Punjabi workers, as well as Filipino, Guyanese, and East/Central African workers. There were about 20 temporary foreign workers from the Philippines and Guyana who had started to organize amongst themselves before [SEIU] arrived on the scene.

In the first half of 2010, Bee-Clean workers began complaining they were not being paid properly. Night-shift workers often worked shifts of 12 hours and had work weeks in excess of 44 hours but overtime was paid at the straight time rate. According to a second organizer ("Ms. Jones"), "These overtime hours were paid at straight time but were reported as 'additional compensation' on pay stubs and federal source deductions were not made." For example, "Mr. Taylor" was a TFW from the Philippines and worked five 12-hour shifts plus a seven-hour shift on his day off each week. Under Alberta's *Employment*

Standards Code, this arrangement requires 27 hours of overtime pay at 1.5 times the regular rate of pay. Taylor was not paid overtime. When he told his employer he would contact a union or the government, Taylor alleged that his boss threatened to have him deported (Cormier, 2010; B. Gingras Enterprises Ltd., 2010b).

In July 2010, Bee-Clean altered its wage-payment system. According to the employer,

Bee-Clean was first notified by Employment Standards of a concern that, due to an administrative error, some employees were not paid properly for overtime work, some were underpaid and some were overpaid. . . . The overtime pay error was corrected in July. Since that time, everyone has been paid correctly. (Bee-Clean, 2010b: 1)

Some workers continued to dispute that their overtime pay was correct and subsequently filed Employment Standards complaints about improper overtime. Among the concerns alleged by the workers was the fact that that, while Bee-Clean began paying overtime in July, it limited the overtime it recorded so that workers continued to receive pay in an amount equal to the hours they worked calculated at straight time (Belington, 2010b; Coy, 2010b; DeLeon, 2010). This ongoing wage dispute galvanized a group of temporary foreign workers to begin organizing during the summer of 2010. This group approached SEIU for assistance.

According to Smith, SEIU had been in Alberta since February 2010 identifying a target for an organizing campaign. Among the employers considered was Bee-Clean. Beginning in September 2010, SEIU Local 2 began to develop contacts with Bee-Clean workers, including the group of TFWs that had originally come together seeking adequate overtime compensation. This development of contacts included home visits, documenting concerns, and expanding SEIU's contact list within the unit. This work is consistent with SEIU's J4J organizing techniques as well as with its broader strategy of gaining a foothold in a city by creating a small bargaining unit before expanding organizing efforts to eventually take wages out of competition. According to Smith, "[SEIU] needed a toehold victory and a high profile fight. There was more potential at the U of A for client and student leverage campaigns." SEIU had also previously organized Bee-Clean workers in Ontario.

The potential for leverage campaigns included the employer's apparently poor treatment of its TFWs. In addition to the ongoing wage dispute, some workers alleged they were required to perform uncompensated personal services for their supervisors:

Last summer, after working an overnight shift and finishing at 6:30 am, [Taylor] says his supervisor came to him to ask him and a coworker to go to one of the supervisor's house to do work. "He 'asked for help,' but we knew we could not say no." The first time this happened, [Taylor] and

his coworker loaded large and heavy concrete blocks in a vehicle and took them to the manager's house where they had to unload them. The following Friday, they were once again "asked" to help. That day they put grass down all around his house. "He has a very big house—I think the area is more than a hectare," [Taylor] says. [Taylor] and his coworker were not paid for the work—instead they were offered beer and then had to take a taxi home. (SEIU, 2010b, in B. Gingras Enterprises Ltd., 2010b: 4)

Once the organizing campaign began, SEIU focused on the night-shift workers. According to Smith,

All of our support was on the night shift. The day shift was smaller, not really interested, hard to reach, and had no leader. The day-shift issues were also different. They felt they could look after themselves, were heard [by Bee-Clean], and just weren't in the same boat as the night shift. . . . The night-shift workers were most affected by the wage issue and were already organizing among themselves before we arrived.

SEIU had four organizers actively working on the campaign at any one time. This campaign focused on winning a VR agreement from the employer, rather than pursuing certification through application to the Labour Relations Board (which requires an employee vote in Alberta). According to Smith,

[Certification applications] give the employer an opportunity to resist [unionization] via threats, particularly against low-wage workers. [These workers] are less able to resist this sort of pressure. This can put the chill on an organizing campaign. . . . A [voluntary recognition agreement campaign] puts a lot of pressure on the employer very quickly. Labour board applications give the employer more time to threaten workers.

As an example of the delay inherent in formal labour board proceedings, an unfair labour practice complaint over terminations for organizing activity (see below) filed in October 2010 was not scheduled until February 2011.

SEIU made its campaign public at a press conference on October 1, 2010, when it announced that workers were suing Bee-Clean for \$42,435 in unpaid overtime (Gerein, 2010). A review of provincial court records identified five claims (Abdulla, 2010; Belington, 2010a; Bune, 2010; Coy, 2010a; Mahal, 2010), although Smith and media reports suggest that six claims were filed. Each claim was substantively similar, alleging overtime wages owed but unpaid under Alberta's *Employment Standards Code* and seeking payment. The dispute note filed by the employer in response to each claim indicates that the provincial Employment Standards Branch was reviewing the matter and asserts that the plaintiff was barred from pursuing this issue in multiple venues. Further, the employer alleges that

The purpose of filing this claim and other actions by the SEIU, and the Plaintiff is to publicize false information and cause damage to the reputation of the Defendant as outlined in the defamation action #1003-17737 in the

Court of Queen's Bench filed by the Defendant against SEIU on October 15, 2010. This Provincial Court Civil Claim is part of the SEIU's attempts to organize and represent the employees of the Defendant. This Civil Claim, in addition to a press conference, rally, various pamphlets and SEIU websites are an abuse of process. (B. Gingras Enterprises Ltd., 2010a: 2)

According to Smith,

[SEIU's] experience is that framing the fight as one of "employers abusing workers" through unpaid overtime, deportation threats, and terminations is hard for an employer to spin. In this case, workers had tried to work this out with [Bee-Clean] and were met with threats and had no choice but to unionize. . . . This also plays better in the media than "workers want to join a union."

That said, SEIU did make use of both the courts and the labour board when it sued the union. According to Jones,

We filed civil suits because filing complaints under the *Employment Standards Code* only allow us to go back six months for unpaid wages. With a civil suit, you can go back further.

SEIU also assisted workers to file Employment Standards complaints. According to Smith,

We filed employment standards complaints for the temporary foreign workers in the hope of leveraging open visas and open permits for them. We believed Bee-Clean was unlikely to get any more LMOs even before we arrived, because violating employment laws jeopardizes a company's eligibility for LMOs.

Bee-Clean subsequently confirmed that it was unable to acquire further LMOs but did not explain the reason for the refusals (Bee-Clean, 2010c).

Following complaints about overtime wages, Bee-Clean hired an independent accounting firm to review its payroll. Bee-Clean characterized this as a voluntary effort in its communication with its workers (Bee-Clean, 2010a). The government, though, notes that this audit was triggered by Employment Standards complaints (Metro News, 2010).

SEIU also filed an unfair labour practice complaint with the Alberta Labour Relations Board (SEIU, 2010c). The complaint alleged illegal terminations for union activity. "Mr. Miller" claimed that Bee-Clean terminated him for supporting the organizing drive, along with another former Bee-Clean employee, "Ms. Green." According to Miller, "The first time they saw my picture (in a union brochure), my supervisor called me and said 'is this your picture.' I said yes, and he said 'I'll give you time to think a bit, and if I were you, I'd quit the union'" (AFL, 2010: 1). This messaging supported the primary SEIU narrative that workers wanted justice and fair treatment and the employer had responded with a heavy hand.

Bee-Clean disputed this characterization. Bee-Clean manager "Mr. Davis" explained as follows:

"We absolutely did not fire any of our employees for joining a union, [or] for making contact with a union," [Davis] said. ". . . [T]here are two independent reasons that those employees are no longer with us. First, one employee unfortunately was involved in a physical altercation on campus.

"The second employee had only been working with us for two days and didn't show up for work one day. . . . She asked for a different workload at the time and we couldn't offer her one. Unfortunately, we had nothing else to give her, and that's why she no longer works for us." (AFL, 2010: 1)

By contrast, SEIU organizer Smith noted that Green was fired publicly when her name appeared on the leaflet distributed to the workers. "[Bee-Clean] fired her in front of a group of people," Smith said. "They were using scare tactics" (O'Gorman, 2010: 1).

SEIU's (2010a, 2010c) unfair labour practices complaint also alleged employer threats and intimidation designed to stop the organizing drive during the month of September. This included statements by a site manager that unionization would jeopardize Bee-Clean's contract with the university, that unionization was against Bee-Clean's code of conduct, that workers couldn't join unions in Canada, and that the TFWs who had contacted the union would be sent back to the Philippines. The union also alleged that the employer had monitored those who attended a union meeting, sought to bar a union organizer from speaking with workers while the workers were on a break in a public location, and held captive audience meetings.

In its response, Bee-Clean (2010c) denied these allegations. It provided explanations for the allegations of threats, intimidation, and captive audience meetings. Bee-Clean also filed suit against SEIU and its chief organizer for defamation (B. Gingras Enterprises Ltd., 2010b; Cormier, 2010). This suit alleged that various statements made by SEIU were defamatory and sought unspecified damages.

While these legal allegations were being exchanged, SEIU organizers continued to build the campaign, utilizing a mixture of professional staff and grassroots activists. Smith notes that weekly meetings between the on-site organizers and the local's leadership in Ontario directed campaign tactics. Communications strategy and materials were developed by Ontario staff. Four SEIU organizers were flown into Edmonton to assist with the campaign. The local organizer also arranged for the secondment of a Punjabi-speaking union activist from the Edmonton local of the Canadian Union of Postal Workers. These paid organizers worked alongside Bee-Clean workers to reach out to potential members.

The University of Alberta declined to become involved in the dispute. According to a university vice-president, "This is a Bee-Clean issue. This is not a University of Alberta issue. The university does not get involved in the hiring and firing practices of its contractors" (O'Gorman, 2010: 1). A solidarity

committee of university students and faculty and political activists in the city was established to engage the broader community. According to Smith,

The committee booked tables in university buildings, which gave [SEIU] a presence on campus we otherwise wouldn't have had. They also distributed pledge cards of support for the workers and planned to hold a rally of supporters to deliver the cards to the university. As it worked out, we ended up not needing the rally.

The solidarity committee was seen as important, both for organizing and in the public relations campaign. The committee, according to Smith, “let the union maintain the high road while activists, who were members of the U of A community were better positioned to demand accountability from the employer and the U of A.” According to Smith,

We can't prove anything, but we suspect the university quietly told Bee-Clean to fix this issue and that helped us get a settlement. That pressure would have been intensified as a result of the negative media stories.

By late October, 122 former and current Bee-Clean employees received \$155,000 in unpaid overtime accumulated over the previous two years (Omni News, 2010). Bee-Clean indicated that the unpaid overtime was due to an administrative error. “It is important to note that we do take full accountability for this. This has never been something that was going to be tried to be swept under the rug,” Bee-Clean manager Davis told the CBC (2010). Jones suggests an alternative explanation:

Framing unpaid wages as an administrative error may be an attempt by Bee-Clean to maintain its eligibility to receive LMOs, which are necessary for Bee-Clean to gain future TFW permits. If Bee-Clean admitted they had intentionally withheld wages, they would jeopardize their ability to get another LMO.

In early November, SEIU and Bee-Clean began negotiating a resolution to the dispute. Once the employer had agreed to bargain, the director of SEIU Local 2 flew in from Toronto to lead the negotiations. No members of the bargaining unit were at the table, and the lead local organizer was only reluctantly allowed to sit in. By late November, Bee-Clean voluntarily recognized the SEIU bargaining unit for janitors at the University of Alberta, and a collective agreement was negotiated and ratified. Analysis of the agreement shows it to be largely consistent with other Local 2 collective agreements, but it includes specific provisions regarding transparency in TFW permit renewals, extended leaves of absence so workers can visit family in their countries of origin, and prayer breaks during short shifts when no break is required under Alberta law (B. Gingras Enterprises Ltd. & SEIU, 2010). The unfair labour practice complaints, the civil suits, and the defamation suit were all discontinued. The fired workers were reinstated. A number of lingering issues, including wages issues, were held over to

future negotiations to bring the dispute to a conclusion. In turn, SEIU stopped its media campaign against Bee-Clean. According to Smith, the employer also started reducing its use of overtime on the night shift. SEIU refused to comment on whether it intends to continue organizing janitors in Edmonton. Going forward, the campaign organizer will now, in addition to other organizing assignments, be required to service the bargaining unit. Shop steward training began in December 2010. According to Smith, the parties successfully negotiated and ratified a wage increase in the summer of 2011.

DISCUSSION

Returning to the study's research questions, it can be seen that a number of factors led to the success of SEIU's organizing campaign, including the strategic use of public opinion. As intended, media coverage highlighted the issues of unpaid overtime and alleged mistreatment of TFWs by the employer. This coverage embarrassed the employer, the government, and the University of Alberta. This technique is a typical feature of the J4J organizing model and appears to have forced the employer to address the workers' concerns, voluntarily recognize SEIU as the bargaining agent, and negotiate a collective agreement.

Thus, the presence of TFWs directly shaped both the strategy and the outcome of the organizing campaign. TFWs and their ill-treatment provided an avenue for marshaling public opinion, which would have been more difficult to achieve in their absence. The use of the TFWs' issues was a key component in the eventual success of the campaign. However, complicating the victory is the status of the TFWs following the campaign. Jones acknowledges that Bee-Clean's now public transgressions regarding unpaid overtime will likely render the company ineligible for any more LMOs. This means TFWs will now be forced to return home at the expiration of their permits (rather than receive a renewal) or find employment with another employer with an LMO (a difficult task). As the TFW program has no investigative resources, the publicity surrounding the unpaid overtime may have brought Bee-Clean's violations to the attention of TFW program officials, thereby damaging the interests of the TFWs in the new unit. At the time when the interviews for the case study were conducted, some of the TFWs had already returned home.

The union denies that the campaign led to this outcome, suggesting that Bee-Clean's violations of Employment Standards were well known before the organizing campaign. The TFW program never makes public statements regarding its decisions, and so the impact of the organizing campaign on the status of TFWs may never be known. That said, the possibility that the campaign led to further problems for the TFWs highlights the fact that organizing campaigns can have different outcomes for citizens and permanent residents than for nonpermanent residents. TFWs may be denied further employment by a federal agency when they seek to compel their employer to abide by provincial law. Such an outcome

may reflect an underlying relationship of exploitation in the TFW program, in which employer accountability is lacking and the consequences of employer violations of the law are borne by the vulnerable party (AFL, 2009).

More germane to the purpose of this article, the situation also reveals a hazard involved in organizing within migrant worker populations. Not only are TFWs more vulnerable to employer reprisals, due to restricted mobility rights and a high degree of dependence upon the employer, but the benefits of unionization are less likely to reach TFWs, especially over the medium term. The paradox of SEIU's decision to publicize the plight of TFWs was that it offered increased protection in the short term—making it more difficult for the employer to retaliate and allowing the TFWs to recoup some unpaid wages—but imperiled their employment security in the medium term. This is the opposite of what happens to citizens and permanent residents during certifications, in which organizing campaigns often result in temporary vulnerability if the employer fights against the campaign, but in which, in the medium term, union protection reduces the level of arbitrary employer discipline.

It would be useful to know why SEIU chose to publicize the TFW situation, given the TFWs' vulnerable position. Was there an explicit recognition that utilizing the political cachet of TFWs in Alberta to pressurize the employer, the university, and the government entailed significant risks to the TFWs? Did the TFWs understand and consent to this strategy and these risks? To what degree did SEIU and the TFWs feel compelled to take these risks in order to make gains on issues such as overtime payments? The refusal of senior SEIU officials in Toronto to be interviewed makes it difficult to draw a conclusion, and thus it is not possible to clearly answer the second research question.

The strategic use of the TFWs' situation is not the only factor contributing to the success of the campaign. J4J's emphasis on intensive organizing to build a strong bargaining unit also played a role. In this case, the campaign exacerbated existing racial divisions in the workplace. The day shift, while smaller in numbers than the night shift, can be seen as the relatively more privileged shift. Hours are more regular, with less overtime required. The work is conducted when the campus is lively and busy, making the work less invisible. The day shift is also staffed predominantly by Caucasian workers. Support for the union was low among the members of the day shift, and the media coverage of the lawsuit and complaints further antagonized these workers, distancing them from the campaign. Many day-shift workers, who felt more able to address their concerns with supervisors, did not share the concerns raised in the campaign.

The SEIU was aware that its message and tactics would antagonize the day shift, and felt it to be tactically necessary. According to Smith, "The reality is you are going to polarize the workplace. . . . The day shift felt it wasn't in the same boat [as the night shift]." Rather than try to bridge the divide between the two shifts, the campaign focused on winning over the night shift by actively addressing its issues. This decision did not harm the prospects for the campaign's

success, but it may make efforts to build a cohesive bargaining unit more difficult in the immediate future. While many organizing drives result in a degree of division within the new bargaining unit, a clear division along racial and ethnic lines has been relatively uncommon in Alberta to date (although see Foster, 2006).

The decision to establish voluntary recognition as the goal of the campaign is also a factor worth exploring. When the VR was agreed to, there was no outside verification of the union's representational capacity, although SEIU indicated that it did get members to sign membership cards as protection from rival certification applications. Certainly the VR was achieved in a shorter time than would have been involved if there had been a formal vote on certification, and thus SEIU was able to capitalize on the moment of weakness and confusion that employers typically experience in the days immediately following the beginning of a certification campaign. A multiple-week delay before a vote might have afforded the employer the opportunity to organize a campaign against certification. On this level, the tactic of voluntary recognition aided the campaign.

Yet voluntary recognitions are not free of risks. While the VR achieved a quick certification and rapid negotiation of an agreement, potential difficulties may await the union down the road. When the current agreement comes up for renewal in 2015, the employer may serve notice upon the union that it wishes to terminate the VR. This would require the union to seek certification at a time of the employer's choosing. Further, another union can seek to acquire the right to represent (i.e., raid) the bargaining unit during any statutory open period or at any time if it can successfully argue that SEIU's representational capacity was defective. Given the VR, Bee-Clean may find itself in a situation where it can seek the substitution of an employer-friendly union for SEIU. Consequently, the future of the bargaining unit will depend more heavily than in normal circumstances on the strength of member involvement and commitment to SEIU. It is here that the decision to divide the two shifts may prove problematic. It is too soon to be able to predict whether this potential pitfall of voluntary recognition will materialize, and we highlight it as an item for future consideration.

Following recognition, SEIU quickly adopted more traditional approaches to bargaining and servicing. This choice is in stark contrast to the organizing model used in the campaign. The exclusion of bargaining unit members from the bargaining team is particularly noteworthy. Smith indicated that this was due to the need to get an agreement quickly, and that SEIU lacked the time to properly train members for bargaining. Shifting from an inclusive, member-focused organizing model to a business-agent-driven bargaining structure raises a number of interesting questions. How did the members react to their marginalization during the bargaining? How well can a professional staff member from Ontario understand the dynamics and priorities of the members? How are the two approaches bridged in internal union communications? The existing literature on J4J is mostly silent on these questions. This study is unable to provide clear answers, but it highlights the need for further research into the transition period

and the ways in which unions reconcile different organizing and servicing models in their representation of members.

Finally, it is too early to ascertain whether the strategy of establishing a “toehold” in Edmonton from which to build will prove fruitful. The first step of the process was certainly successful. Nevertheless, establishing a presence in the industry sufficient to take wages out of competition will require many further organizing victories. The union, understandably, was unwilling to communicate the details of its next steps, although the authors believe that the most likely path will be to target other Bee-Clean worksites. Whether SEIU will be able to both effectively service the new unit and engage in intensive organizing of other sites is unclear. This, again, suggests the need for further research into how SEIU translates a toehold into a firm dominance of the industry in a region.

POLICY CONSIDERATIONS

The SEIU organizing campaign was, in the short term, successful in gaining union representation for traditionally marginalized workers. The case study highlights several barriers facing precarious workers seeking to improve their terms and conditions of work through unionization, the most important among them being the labour laws. Long delays in certification proceedings and a lack of effective controls on and nonexistent penalties for employer interference do not augur well for such workers being able successfully to pursue formal certification. Among the labour law reforms required to meaningfully realize the right to unionize is card-based certification, expedited hearing of unfair labour practices (akin to the emergency hearings on picketing violations), and the imposition of certification in cases of serious unfair labour practices. Such changes may be politically unrealistic, as governments internationally have generally been moving to constrain worker rights in response to the demands of transnational capital (Bronfenbrenner, 2007).

With that in mind, the voluntary recognition tactics of SEIU combined with selective use of statutory and court processes may provide a more workable approach to unionizing vulnerable groups in industrialized nations. These tactics, however, are not equally applicable across all workplaces. Privately owned firms in sectors with strong antiunion sentiment (e.g., residential construction) may be able to effectively resist such tactics. Other sectors with similar characteristics (e.g., hotel and food services) may be more subject to customer leverage tactics. Yet focusing on tactical issues begs the question of whether unions in industrialized nations are interested in actually organizing marginalized workers.

Many of SEIU’s tactics—such as employing organizers who are members of a specific cultural group, organizing in community settings rather than at the workplace, and ensuring that the interests of these workers remain at the forefront of the organizing campaign and bargaining—can be employed by other unions.

But such efforts entail higher cost, require higher skill, and are higher risk. These factors may limit the utility or perceived desirability of such approaches.

We suggest that the willingness of unions to operate within a clearly ineffective statutory regime is only partly explained by the higher cost and risk of SEIU's tactics. Unions may also be unwilling to destabilize the existing statutory labour regime by acting outside of it for fear of provoking even more repressive amendments that threaten the security of their existing bargaining units. This has been the case in Alberta, where a health care union, the Canadian Union of Public Employees, was punished, for engaging in anti-privatization campaigns aimed at the provincial government, by having most of its bargaining units stripped away in restructuring (Fuller & Hughes-Fuller, 2005). In many jurisdictions, unions' reluctance to challenge existing regimes may reflect their response to the implicit threat of losing what few gains they have made if they protest (Hyman, 1989; Mandel, 1992).

The policy implications for migrant workers are more stark. The contradictions involved in most migrant worker programs, including Canada's TFW program, also create a significant barrier to the most vulnerable workers' realization of the workplace rights they have. The TFW program requirement that work permits stipulate the employer restricts the labour mobility of TFWs, thus further enhancing employers' power in the workplace. Unrestricted work permits would go some distance to prevent the injustice revealed in this case study as well as to allow TFWs to more effectively self-advocate for their rights. Further, TFWs would not face the choice (as seen in this case) of having to accept the contravention of employment standards in order to avoid the suspension of the employer's LMO (and thus the jeopardizing of the TFWs' residency).

This raises the broader question of the TFW program's restricted access to permanent residency streams. Enabling TFWs to more directly and openly become permanent residents may check employers' view of TFWs as "expendable." The growing attention given to TFW issues may also suggest that there is "room" for a public debate on the desirability of a migrant worker program given the injustices found, particularly among migrant agricultural workers (Basok, 2002; Otero & Preibisch, 2010) and low-skill service sector workers (Foster, 2011). Any debate should consider the alternative of expanding the immigration quotas to facilitate higher levels of permanent settlement during periods of labour shortage.

Finally, the complex labour relations dynamics revealed by the case study, particularly those created by the presence of TFWs at the worksite, also operate within a broader economic context. Workers facing a well-resourced employer typically have a difficult time remedying employer violations of contractual or statutory rights due to the lengthy nature of remedial proceedings and workers' need for regular wage payments. Such vulnerability can be exacerbated when workers face additional restrictions on their labour mobility. This may serve as a reminder that piecemeal solutions, such as mitigating some of

the TFW program's excesses, cannot be separated from the structural advantage that employers possess in capitalist economies (Hyman, 1989). Indeed, part of the problem with the migrant worker programs as currently structured is that they do not take into consideration the significant power imbalance that exists between workers and employers.

CONCLUSION

The presence of TFWs facilitated SEIU's success in this organizing campaign by providing the union with a lever with which to intensify public pressure on the employer. The working conditions of TFWs had been a controversial issue in Alberta in the years preceding the drive, and SEIU was able to take advantage of the pre-constructed public image of TFWs as exploited victims. The bulk of the media coverage focused around the TFWs and the unpaid wages, and the negative light in which this cast the employer appears to have been a key factor in the employer's recognition of the union as a bargaining agent.

The organizing campaign led to mixed outcomes for the TFWs. The TFWs did receive back pay they were owed and reinstatement. But such gains appear to have come at the cost of further employment opportunities with Bee-Clean and continued residency in Canada. Even if the organizing campaign did not alter the fate of the TFWs, as the union contends, the case points to complexities regarding the benefits of unionization for TFWs. The irony for the TFWs is that their real and perceived vulnerability was a key factor in the success of the campaign but also reduced their ability to benefit from unionization. This vulnerability arises from a combination of circumstances: TFWs are dependent upon their employer for continued residency, and the operation of the federal TFW program punishes TFWs (via the loss of future employer LMOs and consequent worker deportation) for employer contraventions of provincial employment law.

Setting aside the issue of TFWs, this case suggests that SEIU's J4J model can be successfully used to organize in antiunion jurisdictions. There are, however, some important contextual factors that limit the transferability of this conclusion. In the case discussed here, the employer and its public-sector customer appeared responsive to the client-leverage model used. It is less clear whether private-sector customers would be similarly responsive. It is also unclear whether achieving the longer-term goal of taking wages out of competition by organizing entire sectors of a city is possible. This may require more resources than SEIU has presently deployed, and employers, including Bee-Clean, may be more resistant to further organizing efforts and more prepared to push back.

If we examine the J4J model and how it is affected by TFWs, a two-part conclusion emerges. First, the J4J's emphasis on alternative organizing tactics, including media exposure, encouraging public pressure, and community linkages, affords it a flexibility to capitalize on the specific issues that arise due to the presence of TFWs. It is unlikely that a traditional organizing campaign could

raise public awareness of the unpaid wages and other abuses experienced by TFWs. Nevertheless, the very act of emphasizing the TFWs' vulnerabilities potentially sets off a chain reaction that leads to the TFWs not receiving the benefits of unionization. The union is therefore vulnerable to accusations that it "used" TFWs for the benefit of citizens and permanent residents. That is to say, the very factors that contributed to J4J's success in this case also entailed significant risks for the union and for the new members who were pivotal to the success of the campaign.

The J4J model is designed to reach out to nontraditional communities and address the specific vulnerabilities experienced by immigrant and migrant workers. The case study suggests, however, that even a strategy aimed at the inclusion of such workers can produce unintended consequences for the workers themselves. Union strategies need to carefully consider the delicate legal and economic status of migrant workers. While Alberta is challenging terrain for unions in a Canadian context, from a global perspective it offers a degree of protection not present in many jurisdictions. In addition to basic employment protections, although these are only weakly enforced, Alberta's political climate afforded space for SEIU to shape public opinion, a luxury not necessarily available in all jurisdictions. The way to curb the fall in global union density is not to open the gates of traditional unionism to migrant workers. The complex dynamics that arise due to their vulnerability make unionization a risky business for migrant workers. The case study suggests that unions need to look beyond the organizing drive to new models of protecting migrant workers globally. While in countries like Canada and the United States this may mean advocating for policy changes, in other countries it may mean adopting a more internationalist perspective, and finding ways to protect workers across borders. And for unions in receiving countries, protecting migrant workers may mean reaching out to them before they arrive. And that requires more than a different approach to achieving certification. It requires a new outlook on what unions do.

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