

Sébastien Chauvin, “Bounded Mobilizations: Informal Unionism and Secondary Shaming Amongst Immigrant Temp Workers in Chicago.” Pp. 72-95 in *Neoliberal Capitalism and Precarious Work*, edited by Rob Lambert and Andy Herod. Northampton, MA: Edward Elgar, 2016.

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Abstract

This work examines the challenges of labor organizing without union rights in the United States. Through a unique account of a tense labor negotiation between a factory and a labor organization over the working conditions of undocumented migrant workers, overwhelmingly women, employed through a contested temp agency, it sheds light on the inner workings of corporate accountability campaigns in the case of precarious workers characterized by bounded rights that constrain their legal access to employment.

The worker center struggled to have itself recognized as a legitimate labor interlocutor in a regulatory context that practically barred temp workers from formal workplace representation. It was thus led to act as an “informal union”, using community pressure – such as bad publicity, media coverage and letters from local civil society – to support its actions and campaigns. The organization deployed a strategy of “secondary shaming”: pressuring the client company to “fire” its abusive agency and transfer its entire temp workforce to what was expected to be a more “ethical” establishment, because it had signed the center’s code of conduct and promised to offer more benefits. Nevertheless, a sizeable minority of workers proved reluctant to transfer. Some feared that the informal favors that they had secured with dispatchers at the “bad” agency and their supervisor at the client company would disappear, even though the new agency offered a fairer reward system as a whole. Some were also concerned that a more “ethical” agency would be more zealous at checking papers.

The discursive tropes of accountability and respectability mobilized by the worker center proved especially tricky. Whereas they carried a clear potential of civic empowerment, the demand for legality and transparency shone the spotlight on business relations that could only maintain themselves whilst in the darkness. In so doing, they tended to harden boundaries and statuses whose previous blurriness sometimes “benefitted” undocumented workers. If ‘the shared stigma and the related experience of racialization reinforce the collectivist worldview as well as the social networks that link immigrant workers together’ (Milkman 2011: 365), this study confirms that “notions of immigrants’ militancy and collectivist orientations that lead to their ‘extraorganizeability’ [are] context-specific and conditional on the nature of social networks and employment structures of the immigrant workers targeted by campaigns” (Camou 2009: 61).

CHAPTER 3

BOUNDED MOBILIZATIONS: INFORMAL UNIONISM AND SECONDARY SHAMING AMONGST IMMIGRANT TEMP WORKERS IN CHICAGO

Sébastien Chauvin

In the United States, the rise of low-waged work, outsourced or temporary labour and other forms of atypical employment arrangements has challenged unionization efforts across a widening array of economic sectors.¹ Although labour unions have made some attempts at organizing precarious workers, struggles at the bottom of the labour market are increasingly being waged outside government-sanctioned formal union representation and collective bargaining systems through a range of techniques falling under the umbrella of what can be called ‘informal unionism’ (Chauvin 2009). Such efforts are typically marked by three characteristics. First, many of these campaigns are carried out by non-union organizations such as worker centres (Fine 2006), whether on their own initiative or with the financial and strategic support of legally constituted unions (typically when the latter make a deliberate decision to ‘outsource’ their campaigns [Greenhouse and Clifford 2012]). Second, due to legal limitations upon their bargaining power, campaigns often use ‘symbolic leverage’ (Chun 2009) to improve working conditions without seeking to unionize workers in the short run. Through appealing to common values or threatening the reputation of their corporate targets, labour rights organizations are thereby sometimes able to circumvent obstacles posed by firms’ geographic dispersion across different political jurisdictions, outsourcing structures and/or franchising systems, for example by attacking a whole brand through one of its subcontractors or franchisees. Third, symbolic leverage commonly involves ‘community pressure’, whereby figures of authority (such as respected community members, clergy, elected officials), the media and, importantly, local or national labour unions are mobilized in support of the campaigns. In the case of the latter unions often provide financial, symbolic and logistical support or national amplification to campaigns whose main activities take place beyond the structures of orthodox

unionism. Informal unionism is one tool for worker organizations within and without the formal labour movement, a tool that it is important to analyse for, as Janice Fine (2011, p.613) reminds us, ‘the increased inability to exercise significant direct economic power over employers [is] not just a weakness of worker centres [but is also] widely shared by labour unions organizing private sector workers’.

In the context of the growth of efforts to use symbolic leverage to improve precarious workers’ situations, this chapter examines one labour rights campaign (conducted without union involvement) amongst immigrant industrial day labourers in Chicago in the mid-2000s. Focusing upon such workers can provide important insights into the nature of precarious work, as day labour agencies have increasingly come to dominate the low end of the temporary staffing sector, which has expanded significantly in recent decades in both Chicago and the broader United States (Peck and Theodore 2001). Thus, in the US as a whole, temporary staffing grew exponentially in the last decades of the 20th century, jumping from 184 000 workers in the early 1970s to one million in 1992, two million in 1996 and reaching three million at the start of the new century. For their part, the number of temp agencies doubled nationally between 1995 and 2001. Although the ‘temp economy’ grew more slowly in the early 2000s than it had done in the 1990s, by this time its character had begun to change significantly compared to what it had been during the temping industry’s early, post-World War Two days (Hatton 2011). Hence, the industry shifted from providing ‘temping’ strategies (playing a peripheral function in providing labour for firms in the very short run) to an active ‘staffing’ approach involving long-term relations with client companies which maintain permanent pools of agency workers within a stratified labour force. This led Peck and Theodore (2007) to claim that temporary staffing agencies are now playing the part of a continuous labour-market intermediary rather than being an industry of last resort. Such intermediation was exemplified in the 2001-2002 jobless recovery, as well as in the impacts of the 2008 global financial crisis, as companies started hiring new temps at the same time that they were still laying off permanent employees. Companies, then, increasingly are not relying upon temp workers to fill in when full-time workers are out sick or when there is a temporary increase in work. Rather, they are more and more viewing temp workers as a central and permanent part of their labour force.

At the same time that many firms have increasingly come to rely upon temps the sectors in which they are sent to work have diversified. Whilst in the temporary staffing industry’s early days temp workers mostly worked in offices, doing jobs such as typing and record filing, by the 1990s

temporary staffing had increasingly begun to penetrate the industrial sector. Thus, whereas in 1989 only 2.3 per cent of US industrial workers were temps, by 2004 temps represented 8.7 per cent of total industrial employment. Equally, the proportion of temps classified as ‘production workers’ increased from 1 per cent in 1989 to 6 per cent in 2000, and amongst warehouse and logistics workers from 6 per cent in 1989 to 16 per cent in 2000 and 18 per cent in 2004. Whereas in 1989 industrial workers made up 28 per cent of temporary staffing employees, by 2004 they constituted 48 per cent (Dey *et al.* 2006). An examination of the situation in Chicago and Illinois reveals similar trends. Although sectoral penetration data are not available at the local level, Illinois Current Employment Statistics figures indicate that the broader employment services industry made incremental inroads during each recovery since 2000, regaining more workers than it had lost when each crisis broke out. Thus in the Chicago-Joliet-Naperville metropolitan area, the sector employed 145 300 workers in September 2000 (4 per cent of total private employment [TPE]), 155 800 in September 2006 (4.6 per cent of TPE), and 165 400 workers in October 2013 (over 5 per cent of TPE).² In 2006, as fieldwork for this study was taking place, the Illinois Department of Labor estimated that across the state about 300 000 low-skilled employees were working for light-industrial day-labour agencies and it counted some 150 registered staffing companies (totalling about 600 agencies) in the day-labour category, amongst which 95 were located in Chicago.³ Significantly, these workers were paid less than permanent employees. Hence, the gross hourly wage of temporary workers in 2004 (all sectors included) was \$12.52, or only 57.9 per cent of the average wage (Kilcoyne 2004). Even controlling for skill levels, the average wage of temp workers’ twenty most-numerous occupational categories remained 82 per cent of the wages of permanent workers in the same occupations. However, amongst occupations earning less than \$10 an hour – those in which day labour agencies concentrate – the hourly wage of temp workers was only 75 per cent that of full-time workers.⁴

Legally speaking, unskilled light-industrial day labourers have the same status as other temporary workers. In most of Chicago’s agencies such workers’ applications stipulate that all contracts will be ‘at will’ by default, whether they end up working somewhere for 4 hours or 10 years with this status.⁵ Their relation to employment is thus marked by insecurity, even when it lasts for years. This insecurity is reinforced for many by the fact that an increasing share of the day labour workforce has been composed of undocumented immigrants from Mexico and Central America. In spite of this insecure context, a sizeable core of day labourers develops loyalty to either agency dispatchers or to

factory managers and benefits from what Nicolas Jounin and I have elsewhere called ‘informal careers’ (Chauvin and Jounin 2011), whereby such loyalty is rewarded with long-term job assignments, wage increases and more accommodating schedules. As we shall see, labour struggles over the rights of precarious workers frequently must confront these pre-existing loyalty relations.

It is important to note that companies resorting to agencies are not just subcontracting the employment of their workers. In addition, they are also outsourcing potential irregularities and looming scandals associated with the exploitation of a workforce that is economically precarious and whose immigration status often makes it statutorily unemployable. In this regard, recent analyses of the ‘precariat’ as a putatively new social class have emphasized the challenges which its low status and employment insecurity pose to its collective mobilization (Castel 2007; Wacquant 2008; Standing 2012). Loïc Wacquant (2008, p. 247), for example, suggests that the precariat

‘is a sort of *stillborn group*, whose gestation is necessarily unfinished since one can work to consolidate it only to help its members flee from it, either by finding a haven in stable wage labor or by escaping from the world of work altogether....Contrary to the proletariat in the Marxist vision of history, which is called upon to abolish itself in the long term by uniting and universalizing itself, the “precariat” can only make itself to immediately unmake itself’.

Precarity thus unites those it divides by instilling in each of them a common desire to escape from it. Yet it is not just workers themselves who face the stigma of employment precarity. Indeed, although there has been much focus placed upon those who are forced to take on precarious jobs it is more rarely noted, however, that this ‘unavoidable and insuperable contradiction’ (Wacquant *ibid*), which touches both precarious and stigmatized groups, also applies in some form to those who hire them. In public space and media representations, the stain of the precarious workforce often extends to its bosses. Not unlike pimps, firms using precarious and stigmatized workers are tarnished at once by those who toil for them and by the evil that they are reputed to inflict upon them. Thus, employers of these workers have a strong reputational stake in symbolically disassociating themselves from both their employees and from each other.

In order to explore how labour activists may use this stigma against employers so as to improve precarious workers’ situations I detail the activities of a worker centre in Chicago: the Santa Maria Worker Center.⁶ What follows is based upon two years of fieldwork (2004-2006) on light industrial, formal day labour in the Chicago area. I regularly applied for assignments in two staffing agencies and was sent to work at various factories around Chicago, including plastic, paper, shampoo and foam production units. In parallel, I worked for sixteen months as a volunteer with two Chicago

community worker centres dealing with the issue of day labour, one of which was the Santa Maria Worker Center. I participated in public and private meetings, direct actions, but also, at times, in face-to-face negotiations with employers. Participant observation was complemented by 30 in-depth interviews with a diverse set of local actors in the light-industrial sector (Chauvin 2010). At this time, Chicago's formal day labour workforce was primarily composed of Hispanic immigrants. Especially when undocumented, many of these would typically work for several months or years in the same factory, even as their official employer – the temporary staffing agency – changed repeatedly, each time taking responsibility for infractions and other possible labour abuses. Using agencies has allowed the final employers (the factory owners) to 'outsource illegality' (Chauvin and Jounin 2011) – the illegality of various kinds of infractions associated with a lowering of employment protection but also with employing undocumented workers – as well as to circumvent stated company regulations against hiring applicants with a criminal background. Nevertheless, it has also generated a major flipside for client companies: by concentrating dishonour upon them, staffing agencies have, in turn, become cumbersome partners that companies prefer to keep at a distance as much as they can. Thus, John Patricks, director of the Graaljobs temp agency located in Chicago's Loop, remembered his disappointment after he asked USBeauty, a very large factory which had been his most important account, for the authorization to use their name and their long-term relation with Graaljobs in an advertising brochure.⁷ As he put it:

USBeauty is a company, for instance, that uses vender-on-premises services extensively. [The agency has a branch located inside the factory.] But they prefer that the world not know about that. For instance, we had trouble where we could get some good P.R. if we could [boast of keeping this account for so long]. You know, we could even make *them* look good. But, no, you know, [they said] 'Leave us out of it!'. And we've been working with them for 20-some years, 22 or 23 years! (Interview, April 2006).

Because it constitutes a key employer weakness within an otherwise solid system of employment precarity, the externalization of bad reputation has become a target for labour rights movements. In the mid-2000s this included the Santa Maria Worker Center, which initiated 'corporate accountability campaigns' aimed at tracing the chain of responsibility and countering the organizational dispersion generated by employers' recourse to labour-market intermediaries like day labour agencies. The strategy was to directly address the real users of these workers: industrial client companies. These campaigns focused upon concluding alliances with distinct agencies that were labelled 'ethical'

because they had signed the worker centre's 'ethical code of conduct'. To use terms commonly heard within the centre at the time, client companies were thus invited to 'fire' their 'bad' intermediaries by transferring their entire day labour workforce to one of the 'good' agencies.

Although some of the worker centre's demands included things like seniority pay or a few paid holidays, most items in its '*código de ética*', such as the commitment to follow safety rules or to refrain from racial discrimination, amounted to reassertions of existing federal and state laws (see Jenkins 2002; Milkman 2011). Such legalistic invocation faced several obstacles, however. First, from the point of view of labour law the worker centre was *not* a formal representative of temporary workers. It was thus not officially entitled to negotiate in their name. Although as a labour-rights NGO it belonged to the 'US immigrant labor movement' (Milkman 2011) broadly speaking, its capacity to represent workers remained informal, mostly based upon its ability to gather community support and media coverage for its protest actions. Second, the workforce which the centre was seeking to protect by demanding that employers abide by the law was, for the most part, undocumented. Respect for the law thus could not extend to laws regulating immigration status without causing workers potentially to get fired or even to be deported, an outcome that would have contradicted the centre's key goal of improving workers' living and labouring conditions. This raises an important issue, namely that because the 'precariat' is often characterized by bounded rights constraining its access to employment (e.g., its lack of citizenship), efforts to collectively mobilize precarious workers face additional legal hurdles (see Moulier-Boutang 1998; Wacquant 2008; Standing 2012). Finally, in the context of an intense competition between agencies within an industry where, in the final analysis, most of the decision-making power in terms of wages and benefits rests with client companies, it was not always clear whether signing a code of conduct would be enough to make some agencies more 'ethical'.

The chapter is organized as follows. After a brief discussion of the relationship between unions and temp workers in the United States I turn to detail a corporate accountability campaign carried out in Chicago in 2006. In so doing I first outline the context of the campaign. I then explore some of the resistance from the managers of a factory when the worker centre organizers tried to encourage temp workers they were using to shift their allegiances from a 'bad' temping agency to a 'good' one. Next I detail how some of the problems the organizers faced resulted from the unwillingness of many temps to shift employers, for various reasons. Finally, I ponder some of the strategic tensions involved in organizing temp workers, especially those who are undocumented.

UNIONS AND TEMPORARY WORKERS IN THE UNITED STATES

Labour law and the decisions issued by the National Labor Relations Board (NLRB) – the federal agency charged with protecting unionized workers’ rights – play a central role in shaping union activities in the United States (for more on the NLRB, see Gross 1974). Hence, thanks to a decision made by an NLRB dominated by appointees of President Bill Clinton, in 2000 unions became legally able to represent temp workers who did not work directly for the employer with whom a collective labour contract had been signed but, instead, for temp agencies who supplied them to work alongside the client company’s personnel in the same workplace.⁸ However, in November 2004 the legal landscape changed when the Board, now dominated by appointees of President George W. Bush, brought the law back to what it had been before 2000 by ruling that temporary staffing agency workers could not, in fact, be represented by a union unless they could secure simultaneous agreements from both their primary employer (the temp agency) and its client company where they actually worked.⁹ Given that recognition with one employer almost always requires a contentious process – one often marked by repression and the firing of union activists – designed to lead to a union representation election under the aegis of the NLRB, the necessity of securing two such agreements amounted to a virtual prohibition of the formal unionization of temp workers in the United States.

The state of legal jurisprudence, then, narrowly constrained what both unions and worker centres may do when it comes to temporary workers. In September 2015, the NLRB, now with a majority of Obama appointees, reversed its stance once again and found in the “Browning Ferris” case that the client company and the temp agency should be considered joint employers for the purposes of union representation.¹⁰ It remains to be seen how this decision, if it holds, will impact unions’ abilities to organize temp workers. However, during the first chronological window when the legal landscape had been more favourable (2000-2004), the unions themselves did not always take advantage of such opportunities. A review of NLRB cases between 2000 and 2002 shows that traditional unions rarely attempted to incorporate these fractions of the unskilled workforce into the formal bargaining circuit, even when permitted to do so (Mehta and Theodore 2003). Moreover, in 50 per cent of the representation elections where temporary workers were involved, labour unions actually demanded not their inclusion in bargaining units but, on the contrary, their exclusion. Indeed, unions often suspected that these workers were in too precarious an employment position

to be able to vote autonomously and considered, instead, that some of them were scabs brought in by a company's management in advance of a representational election so as to defeat the union drive. This suspicion was confirmed for many when, in several cases, it was actually the employers – rather than the temps themselves – who were the ones demanding that temp workers be included within the negotiations to establish an appropriate bargaining unit (in one case by adding thirty of them on the eve of an NLRB election).

Certainly, this hostile relation to temporary workers is not the only one possible and unions such as the Service Employees' International Union (SEIU) and the national leadership of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) have recently made important advocacy efforts towards organizations of day labourers, collaborating with some worker centres. Equally, there have been several attempts to develop local collaboration between unions and temporary workers – for example, by building union-approved self-managed cooperatives that compete with commercial agencies – even as these did not lead to the unionization of day labourers. Nevertheless, because of the legal constraints posed by the NLRB's interpretation of US labour law and the wariness of some unions, until now most campaigns involving temp agency day labourers have been waged by community organizations outside the direct control of the formal labour movement. Many of these have adopted the policy of secondary shaming, to which I now turn.

LAYING THE RATIONALE FOR SECONDARY SHAMING: AN EXAMPLE FROM CHICAGO

Rootcard is a company which owns some two dozen boutiques in the United States. At the time of fieldwork, its production unit was located not far from Chicago's Loop in a largely 'redeveloped' old industrial area, where the few establishments that subsisted faced fashionable restaurants and lofts installed in former factory buildings. Out of a hundred Latino workers (the overwhelming majority of whom were female) at Rootcard, about half were day labourers (*'trabajadoras de oficina'*) provided by the Bob Labor agency. Given that Bob Labor had been regularly accused by the city's workers of committing abuses such as wage theft, sexual harassment and favouritism, it had been targeted by the Santa Maria Worker Center in the past.

Among Rootcard's formally temporary workers, almost thirty were 'permatemps' who had worked on the premises for years but who had never been hired directly by the company as factory employees [*'trabajadoras de planta'*] because of their irregular immigration status. Several of these

permatemps had a tenure in the factory that was longer than that of the oldest of Rootcard's directly hired permanent workers. The other women – also mostly undocumented – were more recent or more occasional workers. Workforce segmentation based upon immigration status was widespread at Rootcard and practically construed as self-evident, as the following field notes illustrate.

At Rootcard's Chicago factory I handed out flyers inviting workers to a meeting at Santa Maria Worker Center on the coming Saturday. It was a little bit after 4pm and women were coming down from the floors in groups. Julie, the organizer of the worker centre, had advised me to give flyers to temporary workers only, not to the others. This was to save time, but also to avoid alerting the group of permanent workers, which she thought would prove closer to the management. As no obvious sign would allow me to distinguish the two categories, I asked for clues from one of the temps who had recognized me at the entrance because she had already seen me at the worker centre. We would talk between the successive group arrivals from the stairs. Regularly I would ask: 'that one who is coming, is she an agency worker?' [*es de oficina?*]. Several times she would reply in a self-evident tone: 'No, she's got papers!'

Rootcard was a 'liberal' company, wishing to be in sync with the young, educated and open-minded clientele that buys its products. Across major cities, its boutiques are usually located in newly gentrified neighbourhoods. The Chicago boutique's windows contained humorous pamphlets against President Bush and booklets celebrating multiculturalism. The factory's director, Sam Francis, a slim man in his early forties, would regularly mention that he had taken part in marches for immigration reform that had marked the first months of the year [2006] (Pallares and Flores-González 2010). It was this 'progressive' image that the worker centre sought to exploit. Hence, by using direct actions to shine a spotlight on the 'shameful' relation that such a modern company (Rootcard) maintained with such a feudalistic agency (Bob Labor), the worker centre would try to persuade the company's management to transfer its entire temp workforce towards a better agency, 'Superstaff', which had signed its code of conduct.

In order to mobilize consumers, the centre organized a series of 'shaming' operations at the juncture between the image-conscious company and its customers, where its reputation was at its most vulnerable: its downtown boutique. Significantly, had the temp workers been represented by a labour union that was formally constituted under the terms of US labour law then any call for the boycott of Rootcard products in the name of its 'dirty' relationship with Bob Labor could have

amounted to an illegal ‘secondary boycott’. However, whereas under the 1947 Taft-Hartley Act labour unions are prohibited from enacting such boycotts, worker centres are not legally recognized as unions and so are not affected by this law. Consequently, although their non-recognition vastly limits their negotiating power within companies it does nevertheless allow them to resort to some strategies that are inaccessible to officially constituted labour unions.¹¹ In the case at hand, the campaign against Rootcard combined the threat of a secondary boycott with what can be termed ‘secondary shaming.’ Indeed, here mostly ‘symbolic leverage’ (Chun 2009) would be used to pressure the client company to shift agencies.

The first stages of the campaign included meetings between the worker centre and the factory management, but also the creation of a ‘community watchdog committee’ listing respected local figures from religious and civil society organizations. ‘Community letters’ were sent, with copies going to several State lawmakers. Following this surge in community pressure, an oral agreement was concluded with Rootcard management, according to which the company would terminate its relationship with Bob Labor and start using Superstaff for the provision of its day labourers. This is because, unlike Bob Labor, Superstaff had signed the ‘code of conduct’ proposed by the worker centre, under which it committed to provide a 25-cent per hour wage increase compared with Bob Labor, transparent seniority pay, one week of paid vacation, six paid holidays per year, and to refrain from practising wage theft, requiring unpaid overtime and engaging in discriminatory hiring practices.¹² After several weeks of negotiation with the factory, however, the process had stalled and the company announced that it had decided to ‘leave the choice’ to its temp workers individually as to whether to change agency or not. In response, the factory supervisor Florencia was accused by Santa Maria Worker Center representatives of intimidating workers by threatening them with retaliation if they shifted companies. In this context, the representatives argued, many workers had grown scared and it was this that had led them to ‘choose’ to remain with Bob Labor. Rumours circulated on both sides and the management organized an internal meeting with the workers, during which two Mexican women who had emerged as leaders – Marlina (in her forties) and Yvonne (in her fifties) – angrily expressed their grievances towards Florencia, which led to their dismissal.

A few weeks later, the worker centre representatives met with Sam Francis and Jeffrey Meyers, the plant’s director and general manager. The purpose of the meeting was to review Rootcard workers’ transition towards Superstaff, which had been going very slowly. At this meeting the worker centre organizer Julie – a white woman in her thirties – decided to include the two laid-off

workers, Marlina and Yvonne, in the discussions. Without warning the factory managers, she invited the two women to the meeting as representatives of the other workers. Also there were Max, an African-American day labourer in his fifties who was then the president of the worker centre, and Donald, a homeless white labourer in his early forties who was also a long-time member of the organization. Julie insisted that I be present as well. I was introduced as a local university scholar whose role was to represent the community (i.e. the network of outside supporters) in exerting pressure on the two industrial managers. Deriding this improvised attribution somewhat, in the days leading to the meeting Donald would repeatedly call me 'Father Sebastian'.

The following sections of the chapter detail the restricted meeting, which took place in the cafeteria of a nearby building. The meeting brought to light the obstacles the worker centre faced in its efforts to function as a quasi-union. The analysis also reveals that the problems connected with the transition towards the new, supposedly more 'ethical' agency were due not only to the company's management but also to the reluctance of the workers themselves, who maintained an ambivalent relationship to some aspects of the so-called 'bad' agency.

THE LIMITS OF INFORMAL WORKER REPRESENTATION

Not formally a labour union, the Santa Maria Worker Center had to use economic weapons and community pressure to impose a logic approaching union representation on the negotiation. In response, Rootcard employers sought to defuse and counter such attempts in several ways. First, they challenged the *persons* involved by questioning the legitimacy of Marlina and Yvonne to represent a group of which they were no longer members, as follows:

Julie: That's one of the reasons we also wanted Marlina to attend, so she could let you know, since she was working inside the company.

Sam: Hum, hum. But we should get somebody else. We should get somebody else who *is* working inside the company, not Marlina. Because Marlina, if anything is gonna be unhappy right now, because she was...not [so much] let go [as simply] not invited to come back! I mean, do you think Marlina, really, and Yvonne, with all due respect to both of you guys, are the appropriate people to [do] this?

A second strategy to discredit the two workers was also used, that of rejecting the *motives* that led them to mobilize against the supervisor Florencia. In order to do this, the managers sought to depoliticize the engagement of the two women by connecting it to the jealousy that they argued they

felt towards a successful woman of the same ethnic origin. These arguments ('playing the gender card', as a member of the centre would later comment) were first and foremost aimed at Julie and myself, whom Sam and Jeffrey perhaps imagined to be more sensitive to the question of discrimination. They seemed to seek in our 'reasonable' reception the knowing complicity of social workers vis-à-vis what they considered to be a pathological and illegitimate reaction by the two Latina women. Thus, Sam asked:

I mean, don't you think they might be a little jealous of Florencia? [Marlina and Yvonne, who speak very little English, are sitting almost right in front of him.] I mean, she's a woman which has risen above in a different way. She has a full-time job, she's a manager, she's a woman. I mean, you know, in a culture that doesn't really encourage women to...I mean, I think there's a lot of pieces to this puzzle. And if you really want to sit down and open the book, I think there was from the beginning a lot of disrespect for a woman who is Latino [sic], who is their boss. I've heard comments to that effect!...If she [Florencia] was a man, would she [Marlina] consider the way Florencia speaks to her disrespectful?

A third strategy involved that of rejecting the *method* by which Marlina and Yvonne expressed their disagreement within the factory. Instead of using the usual channels, those of the management's 'always open door', they had instead employed methods that 'divided the team':

Sam: Cause, right now, this is...[turning to Marlina and Yvonne, whilst letting Julie translate] you guys...you know, what you do is inappropriate. And, you know, there are ways to handle if you're unhappy in a workplace. You know, trying to corral people and bring them together against somebody is just completely inappropriate!...We have an open-door policy. Jeffrey sits in the middle of the floor! He does not have an office with a door that he closes. I mean, he is available, and our Human Resources person, if they have any problems, is available at any time.

The fourth and final strategy to try to discredit efforts to improve conditions for the temp workers did not concern Marlina and Yvonne but, rather, the organization carrying their voice. Hence, although the worker centre could not claim the legal role of a labour union its mode of action did challenge the authority of temp agencies in one respect: the 'representation' of temp workers with final employers (Freeman and Gonos 2005). In spite of its attempt to act as an informal union, the worker centre was not the official voice of Rootcard temp workers concerned by the agency change. That voice was instead that of the owners of both the old and new agencies.

In this regard, Sam Francis repeatedly deplored the absence of the owner of the ‘ethical’ agency Superstaff, Claudio Maros, at that meeting, for in Sam’s eyes he alone was the company’s legitimate interlocutor about workers’ transition to his agency.

Julie: I can speak on behalf of the folks who have spoken to me and told me that basically...

Sam [not paying attention to what Julie says]: Where is Claudio [the owner of Superstaff], or [the manager from Bob Labor] because those guys should be here too, because they’re the appropriate people to be commenting on, I mean, they’re their employers. [...]

Julie: I mean, this is something, I think, about which we can inform the workers.

Sam: We will inform them. Again, Claudio should be here at this meeting, so that he can also inform the workers. Since he is their employer!

Max [worker centre president]: Would it be okay if we were to help these workers transition? For instance, if they felt more comfortable making the transition with us being around versus us *not* being around. Because we don’t want no intimidation going on, we don’t want no problem...

Sam: I think *Claudio* can come. Maybe we should talk about Claudio coming to make a little presentation.

Following up on this a few days later, Sam would explain in an email to Julie that she was ‘respectfully not invited’ to information sessions organized within the factory concerning the transition between the two agencies. Meanwhile, Julie did her best to speak in the name of the ‘community’.

On May 2, 2006, Julie@ wrote:

Sam and Jeffrey, I had already cancelled the meeting with the community members for Wednesday since I didn’t hear back from you in time. The community has two more possible dates to meet: Monday, May 15th from 6:00 -7:00pm or Wednesday, May 17 from 6:00 - 7:00pm. The workers prefer Monday, May 15 if that works for you.

The Superstaff workers are requesting a meeting with you Sam and Jeffrey for tomorrow, Wednesday, May 3rd at 4:30pm at Rootcard. They said since you had a meeting for workers from Bob Labor today [with workers who had not transitioned

to the new agency], they want one tomorrow. The workers have requested for myself and Claudio Maros [the owner of Superstaff] to be present. Please let me and the workers know.

Thanks,

Julie

From: sam@ To: julie@

Sent: Wed, 3 May 2006

Julie,

If the Superstaff workers wish to have a meeting, they should contact Claudio and then Claudio can contact Jeffrey or they can approach Jeffrey directly and we will contact Claudio. I do not see why you would attend a meeting on Rootcard premises for workers that we employ through Superstaff or Bob Labor. I'll have to double check my schedule for those dates.

Best,

Sam

On May 3, 2006, julie@ wrote:

Sam,

The workers have asked for me to attend the meeting to give them support. I am available if that is possible. I spoke with Claudio and he will speak with Jeffrey. Please confirm the date for the upcoming meeting with the community if possible by Friday so I can let people know.

Thanks,

Julie

From: Sam@ to Julie@

Sent: Wed, 3 May 2006

Julie,

Respectfully, you are not invited to attend a meeting on Rootcard premises to discuss matters that concern issues with Superstaff and/or Bob Labor's employees and

Rootcard. To insure [sic] clear communications between Rootcard and its workers, I have spoken to Claudio Maros this morning and informed him that his workers [Superstaff temps] should be reporting to him as their employer any concerns regarding their assignment at Rootcard. We are happy to meet with Claudio and the workers to discuss concerns and have an open dialogue. However, we also informed him that if this procedure cannot be followed that we will not continue to use his services and we will have to transition the workers to another agency. Jeffrey and I will be available to meet with community to listen to their concerns on Wednesday May 17th.

Sam

What the above instances show is that Rootcard managers did not so much oppose changing the agency with which they did business as they resisted the collective nature of the push to do so. Yet such collective transfers are commonplace in Chicago's day labour sector as agencies constantly outbid each other, 'stealing' each other's contracts with client companies and with them the temp workforce employed through those contracts. Upon such changes, it is not rare to see applications for the new agency sent directly to the factory, where permatemps sign it without ever travelling to their 'employer' of the moment (Chauvin 2010). Nevertheless, during the whole negotiation Sam, the factory director, insisted that the transfer to Superstaff should be carried out on a case-by-case basis, in a strictly individual way based upon the particular choice of each worker. Thus, even if, under community pressure, the company eventually conceded to the transfer, for him the change could never appear to be a collective victory of the workers. Hence, he suggested that a collective change might infringe upon the temp workers' ability to choose for themselves.

Julie: So, basically, the workers have been saying that someone has been saying to the workers that they don't have to change to Superstaff, 'don't change to Superstaff'.

Sam: This is the big misunderstanding, because it's just the opposite. We're so concerned about people that if they don't wanna change, they don't have to at this point. Cause if they feel like they have to change and we're gonna draw the line saying 'April 1st, that's it', then they might be very worried about their employment...Wouldn't you rather have the choice? I mean, given the fact that different agencies have different requirements, I think they'd rather have the choice than not have the choice...I think people need options.

Whereas, then, the theme of ‘free choice’ proved crucial to the factory management to depoliticize the change, worker centre representatives Max and Donald found themselves in the uncomfortable position of having to ask for what looked like an authoritarian transfer of all Rootcard’s temporary workers into the new ‘ethical’ agency, referring to a common market practice by local factories.

Max [explaining how collective transfers of temp workers would take place at a newspaper distribution service when one agency would outbid another]: They told the agency: ‘This is the way it’s gonna be. You know, these people have to work. We want these people to come to work. It’s your responsibility to bring your applications over here and transition these people right here, right. Cause we don’t want them losing one day of work. And we don’t want no confusion, we don’t want anything. You come over here and take care of this!’ [...]

Donald: Anyway, that’s also the way it’s always been where I’ve worked, when an agency’s got a new contract, they brought their applications, their applications for the new agency and that sort of thing, you know.

Max: It’s standard practice!

Donald: It just seems a little unorthodox the way you’re all doing it.

WORKER RELUCTANCE: BETWEEN INTEREST AND FEAR

Management attempts to reduce the agency transfer to a purely individual and depoliticized process were ironically echoed by reluctance from workers themselves. Reluctance did not only stem from negative concerns but also originated in the well-understood interests of certain workers. Specifically, due to the structure of informal loyalty and invisible hierarchies differentiating the day labour agencies’ workforces, some workers from Bob Labor working at Rootcard did not see an advantage in transferring to the new agency. This was largely because Bob Labor temps already enjoyed some forms of promotion under a system that did not result from calculations of seniority but, rather, from personal favouritism on the part of Florencia, the factory supervisor, and dispatchers at the agency. Within this system, a minority of women had managed to secure substantial advantages in monetary terms, advantages which they risked losing under the new agency’s inflexible salary grid. In addition, informal arrangements had conferred upon them non-monetary organizational advantages that they feared they would lose with the new establishment,

one of which was tolerance for repeated late arrivals by workers who were mothers of young children.

Perhaps in keeping with his strategy of depoliticizing the agency transfer, the director of the factory (Sam) undertook to spur competition between the two agencies by appealing to a market logic. As a result, Bob Labor eventually did extend Rootcard workers with at least one year of seniority advantages that came close to those offered by Superstaff, an action that was likely the result of the worker centre's actions – it is quite common for an employer to announce new social benefits and pay raises during a unionization campaign (Penney 2004, p. 93). This outcome suggests that, in the context of day labour, the true decider of wages and benefits is the final employer and not agencies who supply the workers and who are in competition with one another. Hence, once forced by community pressure (more 'community letters', media coverage and direct action at the company's downtown boutiques) to pay higher rates for the services of the new agency, the factory could naturally concede a comparable rate to the old agency, which, in turn, could then offer analogous benefits.

If fear of losing the benefits they might access because of the favouritism shown them by Bob Labor managers was one reason some workers were reticent to shift agencies, another more significant one was that related to their immigration status. Specifically, agency workers had heard that before possibly being transferred to Superstaff they would have to first pass through Rootcard's Human Resources office and try to apply for a permanent job. Such passage would have implied a tighter verification of each applicant's identity papers, which were forged for most of them. Indeed, the factory's 'permatemp' women had remained agency workers precisely on this untold basis. Indeed, for their part managers suspected that many workers were undocumented and so refrained from offering them the chance to become permanent whereas the workers themselves did not demand permanent status as they feared being found out. The result was that workers employed by Bob Labor preferred to stay in their old agency rather than to go through a dangerous attempt at direct recruitment by the factory and let formal rejection potentially reveal their illegal status, especially as many were concerned that a more 'ethical' agency would be more zealous when it came to checking work and residency papers. Thus, these workers' immigration status resulted in their remaining a captive labour force, despite the best efforts of the worker centre to encourage their affiliating with Superstaff.

Although it lay at the core of the problems encountered during this negotiation meeting, the migratory status of Rootcard's day labourers was never brought up, either by company representatives or by the worker centre's staff. This was not so much because negotiators ignored the reality of the situation: it was on everybody's minds. Rather, it was because both activists and factory managers were fully aware that the murkiest features of the day labour sector are those that allow it to hire unauthorized workers. Because 'ethics' and 'compliance' stopped at the agencies' doors, the agencies could better turn a blind eye to their workforce's irregular status whilst their client companies could turn a blind eye to irregular practices on the part of agencies.

If exposing workers' immigration status posed issues for employers and workers alike, it was also a major taboo for the worker centre's organizer and leaders, who had to avoid mentioning it in front of managers. There were several reasons for this. First, it would have undermined the worker centre's general discourse of demanding respect for the law and the ability of its members to denounce those 'rogue agencies' that did not abide by it because it would have implicated the temp workers themselves in an infraction (working without lawful authorization). Second, the mere evocation of immigration status would have broken the 'don't ask, don't tell' law of silence and feigned ignorance which had been the default position on the part of those employers who continued to hire undocumented workers after the 1986 passage of the Immigration Reform and Control Act, which required employers to attest to their employees' immigration status and made it illegal to knowingly hire or recruit unauthorized immigrants. Consequently, giving these workers' status a 'common knowledge' quality – that is, publically revealing their status so that the factory management could no longer pretend to ignore it – would have forced the employer to discontinue using them. Following rising community mobilization (including one more media-covered storming of a downtown boutique), Sam Francis was interviewed only a few weeks later in the local press, which reported the following:

[He] declared that the ultimate goal of the company was to have a permanent workforce, adding that, to his knowledge, none of the workers were illegal. 'Bob Labor and Superstaff guarantee us that everyone working here has proper documentation'.¹³

By not demanding permanent jobs but, instead, the transfer of workers to an 'ethical' agency, the worker centre had taken account of the larger juridical constraint that was forcing everyone to leave the question of workers' residency papers in the shadows. Indeed, at the very beginning of the

negotiation meeting, before the two factory executives had arrived, Julie had very clearly explained this to us:

We gotta stay away from that conversation about immigration. I'm not talking about anybody's documentation status. They're trying to bring that up to try to intimidate them or us by saying these people are undocumented. We [will] just say these people are not undocumented. Cause that's just something that they could throw up.

Likewise, Sam Francis could only pretend not to understand why so many workers had not even tried to apply to permanent positions.

Jeffrey: Actually, as a company, we said: 'Please, if you're interested, fill out an application with Rootcard'. Then, it was: 'We're using two agencies. You are free to choose'.

Sam: That is the point there. Did you hear the first comment? 'If you want full-time employment at Rootcard, fill out an application'. Every single person was invited to fill out an application. Our Human Resources person was at the meeting, ready to sign people up, to do formal interviews, to do formal evaluations. That was the first point.

Max: That was a good thing! But...

Sam: That's a *great* thing. But we haven't got one application!

Tellingly, though, as he was leaving the negotiation meeting, the factory director eventually suggested that he was, in fact, aware that the necessity for comprehensive immigration reform was key amongst the tensions that had marked our exchange. He even reminded us that he had participated in a recent demonstration in Chicago against the defunct anti-immigration Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 (the 'Sensenbrenner bill'):

Sam: Good luck for next month, though. [He knew we were going to Washington for a meeting during which we would advocate for immigration reform.] That's the big thing. We need a bigger vision than here. You need to talk to Capitol Hill. You know, I was out there at the march.

Conclusion

This chapter described in detail a corporate accountability campaign in Chicago in the mid-2000s, zooming in on a tense negotiation meeting. The campaign, led by a worker centre, targeted a factory and the day labour agency that provided its casual workers, who were overwhelmingly women. Many of these women had been working at the factory for years through the agency. However, their

undocumented status kept them from applying for permanent positions. As a result, the worker centre opted for a strategy of ‘secondary shaming’: pressuring the client company to ‘fire’ its abusive agency and transfer its entire temp workforce to what they expected would prove to be a more ‘ethical’ establishment, because it had signed the centre’s code of conduct and promised to offer more benefits. Nevertheless, a sizeable minority of workers proved reluctant to transfer. Some feared that the informal favours that they had individually secured with dispatchers at the ‘bad’ agency and their supervisor at the client company would disappear, even though the new agency offered a fairer reward system as a whole. Some were also concerned that a more ‘ethical’ agency would be more zealous at checking papers. Keeping the ‘don’t ask, don’t tell’ rule meant that immigration status could never be mentioned explicitly during negotiations. The worker centre also struggled to have itself recognized as a legitimate labour interlocutor in a legal context that practically barred temp workers from formal workplace representation. It was thus reduced to acting as an ‘informal union’, using community pressure – such as bad publicity, media coverage, letters from local civil society and religious leaders – to support its actions and campaigns.

Ruth Milkman (2011, p. 365) rightfully argues that ‘the shared stigma and the related experience of racialization reinforce the collectivist worldview as well as the social networks that link immigrant workers together’. However, it is likely that ‘notions of immigrants’ militancy and collectivist orientations that lead to their “extraorganizeability” [are] context-specific and conditional on the nature of social networks and employment structures of the immigrant workers targeted by campaigns’ (Camou 2009, p.61). The case study presented here is therefore suggestive of several strategic challenges marking corporate accountability campaigns amongst immigrant day labourers and, more broadly, labour rights campaigns amongst non-unionized precarious workers in the United States. First, these campaigns may overestimate uniformity in the precarious condition. This assumption does not reflect the reality of the informal favouritisms that frequently structure the day labour workforce and the precariat more generally. Such favouritisms and the loyalties they engender need to be taken into account by community organizations working to improve the formal day labour sector because a sizeable core of workers will develop limited but genuine ‘careers’ based upon informal loyalty and clientelistic relationships in the shadow of employment and immigration law and these are likely to make them resistant to challenge their present status.

The discursive tropes of accountability and respectability mobilized by the worker centre also proved especially tricky. Practically speaking, closing up the chain of responsibility is sometimes

impossible when the chain is too long or when client companies are themselves subcontractors for other corporations and thus do not possess direct consumers able to pressure them. More importantly, whereas they carried a clear potential of civic empowerment, the demand for legality and transparency shone the spotlight on business relations that could only maintain themselves whilst in the darkness. In so doing, they tended to harden boundaries and statuses whose previous blurriness sometimes 'benefitted' undocumented temp workers. By forcing Rootcard's undocumented workers to confess that they could not pass the company's HR immigration status test, the transfer process contributed to making their irregular status more official. In a way, through the constraints that it seemed to impose upon workers, the new agency therefore appeared to some to be 'too respectable' to employ *them*.

The experience that immigrant day labourers had of 'disreputable' agencies was thus ambivalent. In the case of the campaign I described, workers were aware that what made the agency disreputable was also partly what allowed it to hire them and a key reason why the client company had segregated them in the agency for years. The workers' immigration status, which has remained in the hands of a remote federal government, thereby limited the types of claims that could be made and made workers ambivalent towards those stressing the importance of ethics and legality, such as the worker centre's representatives. These facts illustrate an important point for understanding precarious employment and the condition of the 'precariat' as a putatively new social group. Precarious, unauthorized and stigmatized workers also share some stigma-induced interdependence with their employers. Such 'solidarity within infraction', in the words of French labour anthropologist Alain Morice (1999, p. 163), sometimes leads to them being rejected collectively and indistinctly, particularly in the media, as they are all seen to belong to the realms of the shady and the illicit. From the point of view of precarious workers themselves, though, those who employ them, however abusive, are thus simultaneously those who accept them as they are (Chauvin 2010). As this acceptance thrives in the darkness, not all members of the 'precariat' will always initially consider progressive attempts at making their industry more ethical and providing more transparent rules as friendly endeavours.

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¹ I am grateful to Gabriella Alberti, Bridget Anderson, Sophie Béroud, Anne Bory, Paul Bouffartigue, Jan Cremers, Chris Forde, Andy Herod, Rob Lambert and Ruth Milkman for their useful comments, criticisms and advice on early versions or presentations of these analyses.

² Current Employment Statistics Program, Illinois Department of Employment Security, 2014.

³ In 2013, the Illinois Department of Labor had registered 868 agencies, amongst which 81 were located in the City of Chicago.

⁴ Unfortunately, more recent data are not available.

⁵ Under US labour law, at-will employment defines a contract that can be breached without prejudice by either party 'for good cause, for no cause, or even for bad cause', to quote the famous formula employed by the Tennessee Supreme Court when it first formulated the at-will doctrine in 1884 (*Payne v. Western & Atlantic Railroad, Tennessee 1884*). The irony

of at-will contracts in terms of employment rights is that they make workers simultaneously ‘permanent’ (in the sense that no duration is specified) and extremely insecure (Chauvin 2010).

⁶ See Fine (2005) for a review of worker centres in the United States and Gordon (2007) for a case study of a worker centre servicing immigrant precarious workers in general.

⁷ All names of persons, agencies and companies used in this chapter are pseudonyms.

⁸ M.B. Sturgis, Inc. and Jeffboat Div., American Commercial Marine Service Co., NLRB decision on review and order, 25th August, 2000.

⁹ In Oakwood Care Center and N&W Agency, Inc., the NLRB (at that time dominated by officials nominated by President George W. Bush) decided that a bargaining unit containing both employees solely employed by Oakwood Care Center and employees jointly employed by Oakwood Care Center and a personnel staffing agency, N&W, constituted a multi-employer bargaining unit that was inappropriate absent the consent of all parties.

¹⁰ See www.nlr.gov/case/32-RC-109684 (accessed 18 September 2015).

¹¹ Worker centres are not the only ones to take (moderate) advantage of their exclusion from federal labour law. Agricultural workers have also been able to exploit the fact that they are not subject to the National Labor Relations Act and its successor, the Taft-Hartley Act. Thus in the mid-2000s the Coalition of Immokalee Workers was able to lead a victorious boycott campaign against Taco Bell restaurants until the company agreed to force its Florida providers to a raise of one cent per pound for their tomato pickers (Drainville 2008). This would not have been possible had such workers been subject to the Taft-Hartley Act. Indeed, US labour unions now sometimes create their own community organizations precisely to carry out such actions beyond the restrictive purview of labour law and NLRB rulings (Greenhouse and Clifford 2012).

¹² The six holidays were: Memorial Day, 4th of July, Labour Day, Thanksgiving, Christmas Day and New Year’s Eve.

¹³ To respect anonymity, it is not possible to provide the name of the local newspaper here.