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BOOK REVIEW

Self-Employed Workers Organize: Law, Policy and Unions

by Cynthia J. Cranford, Judy Fudge, Eric Tucker, and Leah F. Vosko
Montreal: McGill-Queen's University Press, 2005. 265pp. ISBN: 978-0773529014

REVIEWED BY STEVEN BITTLE¹

If asked to think about types of work, many of us would begin with an image of a full-time employee working for one employer and in one location, whether it be a factory or office worker, urban professional, or public servant. Others might think of the entrepreneur who's broken free from the nine-to-five routine to make it on his own, the individual who employs a few workers and enjoys owning her own business. What might not so readily come to mind is the growing number of self-employed Canadians who work for themselves under difficult conditions, for poor pay, and with little job security. It is these workers who constitute the focus of this impressive collection of original research.

Cynthia Cranford and her colleagues explore the struggles of self-employed workers to organize and bargain collectively to improve their working conditions and gain better remuneration. At its core, it is a book about achieving social and economic justice for some of the most marginalized and precariously situated members of Canada's working class. Four case studies—newspaper carriers, rural route mail couriers, personal-care workers, and freelance editors—provide the empirical basis from which the authors document the legal and policy barriers that self-employed workers face in accessing labour laws, including instances of overcoming these challenges and the lessons learned in terms of possible reforms.

The introduction offers compelling reasons why we should be concerned with law and policy that is related to self-employment. The authors first debunk the myth that we can equate self-employment with entrepreneurship, an ideal that does not exist for those who do not own or control the means of production and do not accumulate capital. The last twenty-five years in Canada have witnessed considerable growth in self-employment, reaching 16 per cent of the employed in 2000. Of particular note is that the largest increase is attributable to own account self-employment—that is, those who do not hire employees. What is more, although self-employed workers are variously located both socially and economically, a growing number occupy the most marginalized end of the socio-economic spectrum, a reality that is particularly acute for self-employed women and visible minorities.

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Intersecting with social location is a legal and policy context that inadequately protects those within the self-employed ranks. This includes a labour law framework that is historically based on the contract of employment, meaning that workers had to establish employee status—that they were not self-employed or independent contractors in a contract for service—for the purpose of organizing and collective bargaining. And a collective bargaining framework is premised on the large industrial workplace, which does not apply to those who work in numerous locations and for multiple employers. Although the personal scope of collective bargaining legislation has been expanded to include some self-employed workers (for example, owner-drivers of dump trucks and taxicabs, couriers, freelance journalists), there are many within this category who still do not enjoy these fundamental rights. Self-employed workers also face challenges in organizing a workforce that is often geographically, linguistically, and culturally fragmented, thereby proving difficult to obtain a majority of votes necessary for union representation. In addition, employers retain the legal right to contract out work (unless there is a collective agreement in place that prohibits such actions), often leaving self-employed workers powerless to resist their employer's decisions. These and other factors, including a lack of political will to address the needs of self-employed workers, particularly in neo-liberal times, provide the backcloth for the different case studies and for exploring new forms of representation.

The first chapter, by Eric Tucker, examines the efforts of *Toronto Star* newspaper carriers to gain employee status and organize. Today's carrier is much different from the teenage boy who saved a bit of money by delivering newspapers before or after school. By the 1990s the *Star's* carriers were "an adult, ethnically diverse, and mixed-gender workforce", one in which delivering newspapers was a primary source of income. Responding to mounting concerns over poor working conditions, the carriers approached the union representing the newspaper's editorial and advertising employees to help organize. Their first hurdle was to establish they were employees for the purpose of collective bargaining—newspaper publishers have historically treated carriers as independent entrepreneurs, a primarily cost-saving strategy. Reason for optimism stemmed from labour board decisions in British Columbia and Manitoba that accorded carriers employee status. It was therefore good news when, in 1998, as organizing efforts were underway, the Ontario Labour Relations Board ruled the *Star* carriers to be more like part-time employees than independent contractors. In reaching this conclusion, the Board cited a range of factors including the carriers' degree of economic dependence and the employer's level of control over the carriers' working conditions.

A key finding of Tucker's analysis is that self-employed workers who struggle to organize (the author also documents efforts to organize a fragmented and linguistically and culturally diverse workforce) face considerable resistance from their employers. For the *Star* carriers, this pushback came in the form of the employer's property rights. Facing an organized workforce, the newspaper publisher outsourced its distribution

services, thereby avoiding questions of the carriers' employment status and effectively undermining their organizing efforts. With little bargaining power remaining, the union was forced to seek compensation packages for those who would be laid off and to try to secure jobs for its members with the new contractors. In this respect, the author reminds us that gaining employee status is insufficient for overcoming the precariousness of self-employment.

In the second chapter, Judy Fudge examines the successful attempts of rural route mail couriers to access labour law. Historically, rural route couriers were deemed independent contractors, and therefore enjoyed few legal rights—no entitlement to workers' compensation benefits, no unemployment insurance if they lost their route, and no collective representation—despite the fact they performed many of the same functions as urban letter carriers. A particular challenge was that their independent contractor status was enshrined in section 13 (5) of the *Canada Post Corporation Act*, which overrode the definition of employee or dependent contractor in the *Canada Labour Code*. This situation changed in January 2004 when the nearly six thousand couriers, most of whom are women, officially gained employee status.

Fudge gleans a number of insights from the considerable legal and political struggles that rural route carriers endured along the road to gaining employee status and union recognition. Of particular note are the multiple strategies employed by the couriers to overcome their independent contractor status. Recognizing the limits of legal battles in relation to section 13 (5) of the *Canada Post Corporation Act*, including a *Charter* challenge and a labour-side agreement complaint under NAFTA, the couriers lobbied the government and other politicians to amend the offending legislation and appeared before a parliamentary committee to argue their case. As a reader I was particularly inspired by the couriers' persistence and commitment—particularly that of one individual, Sue Eybel, who first launched efforts to organize—in planting the seeds of reform. The author also reveals that the ability of the couriers to organize and apply political pressure was in large part due to the union support it received. Following initial and unsuccessful organizing efforts, a grassroots strategy was used in which the Canadian Union of Postal Workers (CUPW) provided the necessary guidance and support for the couriers to build capacity as an association before becoming part of the union. As the author notes, however, despite the success of this tactic, the question remains whether other unions share the necessary knowledge and resources to help self-employed workers similarly organize, particularly given that the outcomes of these efforts are far from certain. Regardless, Fudge's analysis reminds us that the status quo is not inevitable, that with adequate support and political will self-employed workers can enjoy labour law protections.

The third chapter, by Cynthia Cranford, looks at the case of personal-care workers in Ontario. Personal-care workers, most of whom are women and immigrants of colour, perform a range of important tasks including bathing, toileting, feeding, and caring for people with disabilities. Although some personal-care workers have

gained employee status and organized (primarily those working through non-profit agencies and public sector organizations), many continue to work intermittently, on their own, for low pay and under difficult and unregulated conditions.

Cranford notes two key barriers for personal-care workers who attempt to organize. First, because they work for multiple clients, they have difficulty attaining employee status, a reality that is particularly true in an era of self-managed care. Fuelled by neo-liberal political reasoning, the Ontario government has moved towards an individualized and direct funding personal-care model—in essence, the government provides funding to disabled individuals to manage their own personal-care services. While this approach gives some disabled individuals more control over their care environment, for many workers it represents a form of privatization, an opportunity for government to cut costs, leading to poor wages and a more precarious employment status. A second and related challenge is establishing that the household is not the employer. If the household is deemed the employer, then workers are thought to be in a non-institutional setting, a private sphere beyond the government's regulatory bailiwick. This point is particularly concerning, given that personal-care workers experience many occupational health and safety issues, including frequent back injuries and incidents of racism when dealing with clients.

Focusing on the efforts of the Canadian Auto Workers Local 40, Cranford also illuminates some of the challenges of unionism for self-employed workers. For example, unions are built upon the traditional industrial model, making it relatively unfamiliar territory to organize a fragmented group of workers who are employed in multiple sites and by multiple employers. Further, even after successfully organizing, it is not always easy to translate traditional dispute resolution models into the self-employed context. In one situation Local 40 had to rethink its strategy when organizing a strike for personal-care workers. Although they focused on traditional goals such as improved wages and better working conditions, they also had to do outreach work with the disabled community to emphasize that the strike was not aimed at them but at the government's funding structure. This included convincing the disabled community that improving the working conditions of personal-care workers would lead to lower staff turnover and therefore better, more consistent care. Overall, Cranford concludes that the ability of personal-care workers to organize is fundamental for overcoming their precarious working conditions.

The final case study, by Leah Vosko, looks at the organizing efforts of freelance editors. Freelance editors perform a range of functions that include such things as editing, copy editing, proofreading, and fact checking. Most are women who work on their own, often from home, for relatively poor pay and under the stress of meeting the demands of publishers and writers. The work is sporadic and, as a result of its invisible status, undervalued. At the same time, however, freelance editing is uniquely located in the self-employed ranks in that it is highly skilled work. It also has a history of organizing to gain professional recognition and collective representation, dating

back to the 1970s with the formation of the Freelance Editors' Association of Canada, now the Editors' Association of Canada (EAC/ARC).

Historically, freelance editors fell outside the definition of employee or dependent contractor, leaving them without collective bargaining rights. However, this changed in 1992 when the federal government introduced the *Status of the Artist Act*, which empowers professional artists who are independent contractors to "form associations and bargain collectively with federal producers." In addition to negating the requirement of establishing employee status for the purpose of collective bargaining, the new law exempts self-employed professional artists from liability under the *Competition Act* (organizing is not considered to be a prelude to a monopoly) and introduces scale agreements. It also establishes the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) to rule on certification and representation within the arts.

Vosko documents how the EAC/ARC capitalized on the new law by applying to the CAPPRT for certification as the "representative bargaining agent for its sector". While the Association received official certification in January 2004, the author notes it is only a partial victory. From the outset, the EAC/ARC faced resistance from the Writers' Union of Canada (TWUC) and other writers' associations who supported the organizing goals of freelance editors but wanted to protect writers' moral rights and copyrights. In particular, they objected to the EAC/ARC's argument to the tribunal that freelance editors are authors and therefore artists under the new law and eligible for collective representation. The ensuing legal battle resulted in a progressive narrowing of the scope of certification, eventually limiting it to a small proportion of freelance editors who prepare "original works in the forms of compilations of data". Overall, as Vosko notes, while the *Status of the Artist Act* represents an innovative way to extend collective bargaining rights to independent professionals, the case of freelance editors proves that it unnecessarily excludes many of those whose "editing work is positioned squarely within the arts".

The conclusion underscores the fact that the right to organize is vital for self-employed workers to improve their working conditions and gain better wages. The authors identify four key challenges that emerge from the case studies. First, despite some advances, many self-employed workers continue to experience difficulties accessing collective bargaining arrangements, particularly in terms of establishing employee status and organizing. Second, they often face considerable resistance from employers, most importantly via the constant threat of outsourcing. Third, the realities of self-employment do not fit easily within a traditional bargaining structure based upon working for a single employer in one location. Finally, traditional dispute resolution tactics (for example, strikes and lockouts) are not always realistic options for the precarious workers whose job action will bring little economic damage to their employer.

Regardless of these challenges, and what is most impressively relayed by the authors, reform is possible. As a start, the authors argue for giving all workers fundamental rights and freedoms in the workplace (which they refer to as the parity principle), including giving self-employed workers the same legal protections as employees. They also submit that realizing this goal involves transcending industrial unionism to employ a range of representational forms (what they call the plurality principle). In this regard the authors advocate exploring various forms of labour market unionism (for example, organizing at the trade, craft, occupational, or geographic levels) and community unionism, the idea that self-employed workers who fall outside collective bargaining schemes should band together to politicize issues associated with their precarious employment status.

Overall, *Self-Employed Workers Organize: Law, Policy and Unions* is highly recommended reading for anyone interested in better understanding the many and complex issues that self-employed workers face in attempting to access labour law in Canada, as well as for those interested in bringing social and economic justice to the working class. The authors skilfully employ case study research to weave together various accounts of the issues at hand. In this regard their work stands as a testament that giving voice to marginalized individuals can bring important meaning to law and policy reform.