

CONTRACTORS OR DISGUISED EMPLOYEES? : A CASE STUDY OF COURIERS IN WINNIPEG

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The courier industry in Canada is rapidly expanding. This is due to a number of factors including greater international trade in goods; more use of just-in-time inventory strategies; and the rapid development of internet commerce. Significant technological and organizational developments within the industry have led to greater segmentation of markets. As a result, large national and international parcel delivery firms dominate the international and intercity markets, while there has been a proliferation of smaller firms in the same-city, same-day markets. More business has not resulted in improved wages, benefits and security for workers in the same-day market. Instead greater competition has coincided with an increase in non-standard forms of work that have varying degrees of precariousness, including lack of job security, part-time hours, low paid and no benefits.¹ By standard work we mean a full time, secure job that has reasonable pay and benefits and in the case of the courier industry is unionized.

It is often assumed that standard and non-standard forms of work are different kinds of jobs, found in different sectors of the economy. Generally the research literature points to the business service sector having an increase in non-standard forms of work, whereas the manufacturing sector is thought to produce, in general, traditional standard employment. Clearly there are many exceptions to this and the courier industry is a case in point. While the courier industry is a business service our findings from a case study, that was conducted in Winnipeg, reveal that couriers in certain parts of the industry are relatively well paid with benefits and employment conditions negotiated by their union, while others are independent contractors with low incomes, no benefits and

insecure tenure. In other words, in the case of couriers, very similar work results in very different working conditions depending in which segment of the market the job is found.

The focus of this article is a comparison of the experience of these two types of couriers. Also we examine what is being done to improve the terms and conditions of work for same-day couriers, while giving an indication of the problems encountered and successes achieved by some of these workers who were aided by Winnipeg's Workers' Organizing Resource Centre.²

THE COURIER INDUSTRY IN CANADA: TWO DIFFERENT KINDS OF WORK EXPERIENCE

In the Summer of 2004, the Winnipeg Courier Research Project Working Group, comprised of academic researchers and representatives from the Canadian Union of Postal Workers (CUPW) undertook research on the courier industry in that city. The following story of the working life of a same-day delivery courier is taken from the final report of the group.³

"It is mid-afternoon and the courier/messenger stops at a convenience store to use the restroom. Over the past few hours she has raced across the city of Winnipeg, in a beat up car, delivering a series of letters and packages. Most of these deliveries represent the immediate demands of a just-in-time economy. The last delivery was a batch of hair products she collected from a supplier to deliver to a self-employed hairdresser across town. When we arrive the hairdresser breathes a sigh of relief. She will be able to finish the perm she scheduled later in the day. This hairdresser works out of her home and has no space for inventory. The courier industry acts as the needed link between small businesses and their suppliers.

The courier/messenger stops en route to the restroom to respond to dispatch paging her on her radio. The company has a rush job and her biological duties take a backseat to the letter that must be picked up downtown and delivered to the western outskirts of the city within the hour. Unfortunately we have to run fast as we are in the eastern part of the city. The courier explains that she is happy to have a consistent flow of deliveries. Some days she may have as many as twenty-five deliveries and other days as little as seven. She represents the new class of piece rate worker and only gets paid a percentage of what she delivers. The average price charged to the customer on deliveries is \$5.10, meaning those deliveries that require nearly 40 minutes and cause her to drive across the city will earn her \$3.10.

Of course she will not keep all of this as profit because she has expenses as a self-employed owner operator. She needs to pay for gas, maintain her vehicle, and rent the radio keeping her connected to dispatch. As an "independent contractor" she is not eligible for employment insurance and must

pay both sides of her Canada Pension Plan working out to over \$888.00 per year. At first glance the average car-driving courier's gross income shows an hourly pay rate of \$10.47; however after expenses the average car-driving courier earns only \$6.47 an hour. She explains that many couriers fool themselves by only considering their gross income. In her opinion most do not consider that they earn on average less than minimum wage, considering the expenses they incur as owner-operators and the long hours they must work to recover those costs. Low industry incomes mean many couriers hold multiple jobs to support their families. Another courier at her company works nights, delivering pizza and chicken, to supplement his income that must support a family. She explains that non-union couriers collect no holiday or vacation pay. She also explains she is glad she has already had her children as couriers are not eligible for maternity leave.

Just as we are leaving the convenience store to make the rush delivery, I notice a letter carrier from Canada Post. Mid-afternoon signals the end of his shift. He is a unionized employee of Canada Post and as a result earns more than \$20.00 an hour. He also does not pay for business or operating expenses. Even if he did incur these expenses, he would be better off than the same-day courier as the overnight labour process is organized rationally based on geographical zones. This organized process saves overnight couriers time and money because they do not drive the length of the city for every delivery. It also provides customers with specialized knowledge of each city area. In addition to this wage he is entitled to benefits including employer contributions to C.P.P. He is working a little longer today as there are some carriers who have not made it into work. A fellow letter carrier is ill using company paid sick time to recover, another just began maternity leave, and a third is on disability. He does not mind working longer to deliver more mail because he will be paid an overtime premium. The letter carrier is also looking forward to the following week when he will begin taking the first of five weeks holidays negotiated by the union.

These two illustrations show contrasting differences in the working conditions faced by those workers in precarious self-employment and those in traditional employment. Amazingly both workers are in the same industry doing very similar work. Nonetheless one is considered an employee while the other a contractor, a distinction that makes all the difference in how individuals are treated in their employment. This industry exemplifies the realities of new economy employment. It is an industry that has grown by factors associated with a new economy, including the just-in-time demands of society, liberalized global markets, and technology that allows, with one prompt of a computer, a link between the supply chain and the demands of consumers. The labour market and process have also been organized to support this industry. On the one hand are the same day messengers representing the realities of non-standard precarious employment that has characterized the new economy, and on the

other are overnight couriers holding on to well paid secure employment that characterized the traditional employment contract."⁴

The courier industry in Canada are those business services, both public and private, that deliver letters, parcels and packages, domestically and internationally. These include Canada Post and its subsidiaries as well as private companies. Before the late 1960s the only courier in the industry was Canada Post, the public letter carrier service. By the beginning of the 1970s, however, the development of private courier services was well underway in Canada. Canada Post had failed to develop a rapid courier service that delivered mail at a faster rate than the normal postal service. Also the rise in mail ordering firms during this period increased the demand for courier service. The void in the market began to be filled by small private courier companies. The development of the private courier industry increased after 1981 with the deregulation of Canada Post. This opened the door to the quick delivery of letters and parcels for those willing to pay at least three times as much asked by the Crown Corporation. This together with "just-in-time business strategies and the technology to support those strategies allowed for direct delivery models; and more recently the explosion of e-commerce technology allows consumers and businesses the ability to communicate their demand for goods and services immediately."⁵ With these recent developments the courier industry has grown substantially.

The core of the industry provides overnight or even later shipments of letters, packages and parcels. This represents 85% of the industry revenue and 80% of the volume. Workers in this segment of the industry in general have a standard employment contract with one of the larger courier companies. Besides Canada Post, these include UPS, Purolator, and Federal Express. "Due to the nature of the market, requiring large distribution networks and high levels of technology, the core overnight segment of the market has significant barriers of entry for new business."⁶ This industry has resulted in unionized employment, with relatively good pay and benefits and as a consequence a low turnover of workers. In a few exceptions owner operators also work in the overnight courier business according to union-negotiated rules and regulations.

A study of the same day delivery industry operating within the confines the city of Winnipeg presents a sharp contrast to this core. In this part of the industry, that accounts for only 20% of the industry's volume and an even lower percentage of the revenue, there is a large over supply of labour. Because the deliveries are local there is no need for expensive technology and complicated distribution networks. "Essentially anyone who can walk, has a bike or has access to a vehicle can participate in this segment of the market."⁷ Work is non-standard in that it is owner-operator and independent contractor relationships. The oversupply of this form of labour is fuelled also by the couriers providing an important revenue stream for the courier companies. "The company deducts regular costs from couriers including monies for insurance, radio rental,

company decal rental and uniform purchase.”⁸ In Winnipeg it was found that there is no incentive for these companies to rationalise the industry and make it more efficient as it is the couriers that bear all the costs while at the same time providing revenue to the company through their employment. What this means for the great majority of individual, same day couriers, is job insecurity, low incomes, no benefits, and no access to employment insurance or maternity leave because these workers are not considered to be employees. They are, in fact, employees disguised as independent contractors.

COMMUNITY ORGANIZING AND THE COURIER INDUSTRY

Dynamex is a large multinational courier company active in the same day courier industry in Winnipeg. In 1997 CUPW started to organize the Dynamex workers. The initial impetus for the organizing drive was when some of these couriers had their rates cut. A core group approached CUPW members and asked them for help. As soon as an organizing committee was established, the workers at Dynamex started to act as if they were already a union. They started to monitor and survey the couriers’ grievances, publicizing them through a newsletter that they distributed to the couriers. Essentially the workers organized themselves through “a strong grassroots rank and file organizing committee.”⁹ The Dynamex workers continued to act as a union assisting the couriers with legal issues. They were helped by the Workers Organizing Resource Centre (WORC) with funding from CUPW.¹⁰ The WORC also provided a place for couriers to meet and socialise.

Through the advocacy of WORC and CUPW the independent contractor status of the workers at Dynamex was challenged. Some years later the case of *Dynamex Canada v. Mamona* came before the Supreme Court of Canada.¹¹ The court affirmed the workers’ employee status for the purposes of labour relations. This means couriers are now entitled to vacation and holiday pay and also the right to unionize under the Canada Labour Code. This is an important decision that may open the door for other contractors to unionise. Currently the decision is being used by bicycle couriers in Montreal in their application for union certification.

Courier organizing in Winnipeg has also been supported by the The Delivery Drivers’ Association of Manitoba (DDAM) which was established in 1997 and provides education and advocacy for all delivery drivers in Manitoba, including couriers. The organization provides a vital network for delivery drivers to address common concerns and has successfully won several important improvements for delivery drivers. CUPW, DDAM and WORC have also been active in supporting the rights of non-union courier workers in Winnipeg. DDAM negotiated with Manitoba Public Insurance for vehicle dashboard decals when MPI brought in common carrier insurance for delivery drivers. These

decals allow drivers greater flexibility when parking in loading zones, or no parking areas, and free meter parking when a laneway is not provided to serve the business. DDAM, with the assistance of CUPW volunteer advocates have been successful in winning more than a total of \$50,000 in compensation for dozens of courier workers from 11 same day courier operations who have been denied their rights under employment standards. Also DDAM, CUPW and WORC have worked together to lobby the Employment Standards Branch to ensure couriers were recognized in having access to legal tests determining employee status and protections under the Employment Standards Code.

STRATEGIES FOR ORGANIZING THE INDUSTRY

Currently in Canada the major unions representing workers in the courier industry are the Teamsters, the CAW and the Canadian Union of Postal Workers (CUPW). In most centers it is only the CUPW that is organizing same day courier workers and CUPW's efforts are very uneven and in their formative stages. CUPW recognizes that successful organizing in this sector will require both a long-term commitment and a strategic approach to overcoming the many significant barriers to unionization.

The Winnipeg Courier Research Project Working Group examined the barriers to unionization and identified several major obstacles which exist to organizing workers in the same day courier sector. These are: 1) Easy entry of workers; 2) Lack of fixed costs; 3) Physical segregation of workers; 4) Vulnerability resulting from dependence upon company controlled dispatch; 5) Belief in advantages of self-employment; 6) Lack of regulation; 7) Lack of enforcement of labour standards; 8) Workers belief they are excluded from union rights; 9) Lack of union density in same day courier sector; 10) Lack of belief in union advantage.

Organizing in this sector will be difficult and will require a significant and sustained commitment from the trade unions that undertake the challenge. The labour movement can learn much from previous attempts to organize the banking and retail sectors. In the courier sector, with such easy entry and exit from the industry, there are significant limitations as to what can be achieved by organizing and negotiating with separate employers. Unions must adopt a comprehensive strategy to achieve the degree of union density necessary to alter the balance of power between workers and owners within the industry. A sector-wide, community-based approach is necessary if unions are ever to significantly improve wages and working conditions of courier workers.

The union movement must also address the lack of regulation within the sector. Regulation of the labour market and conditions of employment are essential to create a 'level playing field' where employers will be forced to compete on basis of efficiency as opposed to their ability to exploit workers.

Although in Manitoba, CUPW and DDAM have been successful in pursuing labour standards complaints for courier workers but little has been done elsewhere.

Establishing clear regulations under the Canada Labour Code that resolved the issue of employee status would eliminate the need to pursue individual complaints and would result in a restructuring of the industry in a manner which would be more conducive to union organizing. The decentralized nature of the courier industry requires that unions adopt an approach to organizing which relies heavily on the resources of the community as opposed to focusing on a specific location or workplace. In Winnipeg CUPW was successful with the Dynamex workers because it applied the research of Brofenbrenner and Juravich¹² and Cornish and Spink¹³, implementing a community organizing model. This involved relying on an already established grass roots organizing committee, working with allies and using community resources.

The Winnipeg Courier Research Project Working Group recommended the continuation and further development of this organizing model in the courier sector. This would involve providing sufficient resources to independent organizations such as DDAM to conduct community information campaigns to inform courier workers of their rights and the advantages of employee status and unionization. It would also involve holding regular meetings of courier workers from different companies to discuss common approaches to addressing problems. The unions need to work with allies to campaign for improvements in work-related issues such as parking, insurance, and fuel costs. Also unions need to represent both union and non-union courier workers in complaints over labour standards. Additionally the unions need to work with community allies to organize public campaigns to gain political support for the introduction of regulations to govern the industry and condition of employment for the workers.

The nature of the same day courier industry does not make it an attractive candidate for union organization. The workers are low paid and with few exceptions the employers are ruthless and anti-union. Organizing is difficult and there is no guarantee of success. But unionization is a necessary prerequisite for the improvement of conditions and wages in this growing industry. The union movement, and specifically the unions in this sector must rise to this challenge.

NOTES

- ¹ There is a substantial amount of statistical evidence and literature on the general nature of precarious, non-standard work (Jackson, 2005; Vosko, Zukewich & Cranford 2003; Law Reform Commission of Canada, 2004).
- ² This case study was undertaken by the Winnipeg Courier Research Project Group, that produced the report "Straddling the World of Traditional & Precarious Employment." We gratefully acknowledge funding for this research from Restructuring Work and Labour in the New Economy (RWL - INE), a SSHRC - funded Research Alliance under the Initiatives on the New Economy Program, Principle

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3 “Straddling the World of Traditional & Precarious Employment” forthcoming publication p.5-6.

4 Ibid p.5-6.

5 Ibid p.9.

6 Ibid p.9.

7 Ibid p.10.

8 Ibid p.10.

9 Interview with John Friesen, the Prairie Region Education and Organization Office, CUPW. Report in the Case Study Report, p.46.

10 See Bickerton & Stearns, 2002, in *Just Labour* Volume 1. for an article on the WORC.

11 *Dynamex Canada v. Mamona* (2003) SCR 383.

12 K. Bronfenbrenner & T. Juravich, “It Takes More than House Calls: Organizing to Win with a Comprehensive Union-Building Strategy,” in K. Bronfenbrenner et AL., eds. *Organizing to Win: New research on Union Strategies* (Ithaca, N.Y: Blackwell, 1998).

13 M. Cornish & L. Spink, *Organizing Unions*, (Toronto: Second Story Press, 1994).