

Title:

Labour mobility to Norway: The trade union's role and policy against social dumping.

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1. Introduction

Parts of the Norwegian labour market have been subject to external shocks during the last ten years. The EU/EEA¹-enlargements in 2004 and 2007 was followed by the largest mass movements of people in Europe since World War 2. People from the former Central- and Eastern-European-countries (CEE-countries) moved across national borders to seek jobs in other parts of Europe. Norway had at this time experienced an economic boom in combination of labour shortage. Good employment opportunities and higher wages were undoubtedly the primary motive for mobile workers coming to the Nordic countries. In the period from 2004 to 2014, almost 400,000 labour migrants from the new EU states registered as residents of the Nordic countries. Add non-resident persons with short-term work engagements and the number almost doubles. More than 700,000 east Europeans worked in the Nordic countries during this period. Norway has been the main destination among the Nordic countries for new labour migrants from Central and Eastern Europe (Friberg et al. 2014; Eldring 2014). Poland and Lithuania are the two most important sending countries to Norway. In 2014, 78 per cent of the migrant workers were from these two countries.

Most of the Eastern-European workers have been and are still recruited to low-skilled jobs in construction, manufacturing and private services, like cleaning and hotels and restaurants. For the most part, the immigration to Norway has been welcomed. Labour migration is positive in many ways for the recipient countries. It stimulates economic growth and employment by expanding the workforce, curbing cost pressures, resolving labour bottlenecks, improving services increasing flexibility for employers and providing grounds for more expansionary economic policies (Dølvik et.al 2015). At the same time the immigration has challenged established norms in the Norwegian labour market, and “social dumping” has become a

¹ Norway is through the EEA, The European Economic Agreement, part of EU’s single market, with free movement of capital, goods, services and persons. Poland, Lithuania, Estonia, Latvia, Hungary, Czech Republic, Slovakia and Slovenia joined the EU in 2004, and Romania and Bulgaria joined in 2007.

highly relevant phenomenon. A growing concern has made the government and the social partners to take several steps to combat social dumping. Rather than relying one-sidedly on the voluntary system of collective bargaining or campaigns with a soft and suggestive character, hard regulations were introduced to combat illegal practices and to make the working conditions in vulnerable industries more decent.

Research questions and methodology

In this paper we elaborate the Norwegian trade union's experiences and policy against social dumping. Our aim is to give input to the following questions:

- What are the shop steward's experiences with the labour migration from the new Member States at the workplaces?
- How do the trade unions assess the different regulations that have been introduced?
- What are the conditions for making these regulations effective tools in combating social dumping?

The paper is based on different studies – involving quantitative as well as qualitative data - among, (Norwegian employees and) shop stewards from different industries. One study was conducted in 2010-2011, among shop stewards from unions under the LO-umbrella. The response rate was 46 percent, a total of 1 700 respondents. In the questionnaire there were a section concerning the shop stewards knowledge about “unacceptable conditions” among employees at their workplace or other workplaces (see Nergaard & Trygstad 2012 for further information). The data from this study is labeled the 2011-study. In 2013, shop stewards were asked about their own experiences with unacceptable wage and working conditions for foreign workers, also referred to as social dumping, at their work-places. In this study, shop

stewards representing all unions in the Norwegian Confederation of Trade Unions (LO) were included. The response rate was 70 per cent, which represents 2201 shop stewards. This study is referred to as the 2013-study. We also use data from an evaluation of different governmental measures to combat “social dumping” (Eldring et.al. 2011).

In the section below we start with a brief overlook of the Norwegian labour market model and discuss the concept of social dumping. In section 3 we present our findings. In section 4 we discuss the conditions for making hard regulations effective tools in combating social dumping, before turning to our conclusion in section 5.

2. The Norwegian labour market model and regulations to combat “social dumping”

Key-elements in the Norwegian model are the cooperation between employers and workers representatives at company level and industry level, relatively high union density and a compressed wage structure.

The Norwegian model of labour relations was shaped in the 1930s, although the first agreement – “Verkstedsoverenskomsten” was reached in 1907 as the first modern collective agreement. The model consists of a combination of regulations embedded in collective agreements (voluntary regulations) and statutory regulations. The model combines “hard” and “soft” dimensions (Marginson & Sisson, 2004, p. 87), where the hard dimensions are regulated in law, and the more soft ones are founded in agreements at industry and company level.

The basic protection of employees is ensured through a comprehensive Working Environment Act (WEA) with provisions for health, working environment and safety, working hours,

hiring and dismissal, etc. The Act signals a high level of ambition as regards the physical and organizational working environment and stipulates that the employer in cooperation with the company's safety organization is responsible for this. A key remit of the monitoring authorities (the Labour Inspection Authority) is to assist the companies in facilitating appropriate routines for improving the working environment and to monitor compliance. Several of the provisions in the Norwegian WEA allow flexibility in implementation through collective agreements. Fundamental rights and duties that regulate company industrial relations are also found in the "basic agreements." In principle each industry is covered by a separate agreement, yet differences in the area of participation are few. The shop steward, elected by the members, constitute the partner with whom management must negotiate at different levels in the company. Hence, the density and the legitimacy among members are an important power resource.

Collective labour relations and collective agreements fulfil a key function in the regulation of wages and working conditions (Nergaard, 2014). Collective agreements play a major role in regulating wages, since Norway has no statutory minimum wage. In cases where issues are regulated by law and collective agreements, for example overtime pay and holidays, the latter normally provide more favorable conditions for workers. Further, co-determination in the workplace primarily occurs through elected trade union officials in the workplace and the rules for provision and consultation of trade union officials are laid down in the collective agreements. The Norwegian representation system is based on so-called single-channel representation, meaning that the representation at the workplace level is based on representatives of the trade union organizations. Shop stewards have a central role in this system. In practice, this type of trade union officials will also be involved in matters pertaining to the working environment and working conditions, and in some cases the safety delegates will be active shop stewards or "dedicated members" of the local trade union

(Falkum et al., 2009). Effective implementation of the employees' rights will in many cases rely on the presence of a trade union and cooperation between the local union and the management (Dølvik et al., 2015; Hagen & Trygstad, 2009). This applies particularly to employees who have a weak bargaining position or are unaware of their rights. Thus, the two sets of regulatory institutions (voluntary regulation (soft) and statutory legislation (hard)) may be seen as co-dependent. It could be argued that decent work is embedded in the Norwegian model of labour relations and constitute a "logic of appropriateness" that affects all actors involved (Scott, 1995, p. 39).

A very important factor in this picture is the level of trade union density and collective bargaining coverage in the Norwegian labour market. Without strong unions at the workplaces, the model is weakened. In total, 52 per cent of the workforce is unionized. This is a high share compared to many European countries, but lower than in the other Nordic countries. In comparison, Sweden, Denmark and Finland have a union density close to 70 per cent. Another challenge in Norway is the huge difference in union density between sectors/industries. Firstly, there is a substantial difference between public and private sector. In the public sector, 79 per cent of the employees are unionized and in private sector, the share is close to 40 per cent. We will also find substantial differences inside private sector, where a bit more than 50 per cent of the workforce in manufacturing is members of a trade union, while the share in construction is 39 per cent. When it comes to hotels, restaurants and cleaning, the share has dropped to around 20 per cent (Nergaard 2014).

The concept of "Social dumping"

There is no general definition of social dumping in Norway, but it usually implies that labour migrants receive unacceptably low wages or standard of work. Long working hours, poor health and safety-conditions and bad housing (lodging provided by the employer) are also part of the term. Some of the major factors triggering social dumping are low skilled service work, short duration of stay, atypical employment and lack of union representation.

The mechanisms are straightforward: employers looking to reduce labour costs can recruit workers from countries with lower living conditions and pay rates undercutting established standards. Migrants from poorer countries may be willing to accept conditions below host country standards, since these are still superior to those back home.

Regulations to combat social dumping

During the last decade, several so-called “hard regulations” have been introduced to prevent social dumping. The hard regulations can be regarded as attempts to prevent a more profound division of the Norwegian labour market between “insiders” and “outsiders”, or a dualization of the labour market.

In Europe, scholars characterize the ongoing changes in working life as shifts towards dualization (Palier & Thelen, 2010; Thelen & Kume, 2006). Instead of total fragmentation and individualization of employment relations, dualization refers to a more polarized change process: Collective bargaining institutions erode in parts of the private service sector, while union density and membership in employer associations are still in place in manufacturing and the public sector. In Norway, a highly organized labour market is considered a cornerstone of working life and a key to maintain its ethos of equality, high-trust relations and inclusion (see, e.g., Gallie, 2003). In parts of construction and the private service sector, which attracts labour migrants, many of the elements associated with the Norwegian model of labour relations are missing.

The Norwegian government and the social partners have during the last decade taken several steps to prevent social dumping in the labour market. Rather than relying one-sidedly on the voluntary system of collective bargaining or campaigns with a soft and suggestive character, hard regulations have been introduced to combat illegal practices and to make the working conditions more decent.

The most important is **statutory extension of collective agreement** (also called general application of collective agreements). This mechanism has so far (2014) been practiced in four branches: construction, shipyards, farming and cleaning.² These industries are different in nature, but the actors (and especially the trade union movement) have a common experience in dealing with hard competition on salaries and working conditions because of the labour immigration. These factors explain why statutory extensions have been implemented in these industries.

A decision for an extension is made following a request from one of the partners, in practice The Confederation of Trade Unions (LO). A government-appointed commission (Tariffnemnda) subsequently makes the decision on the basis of conditions pursuant to the Act relating to general application of wage agreements etc. In order for the commission to extend a collective agreement, documentation must prove that foreign workers undertake, or are suspected of undertaking, work on conditions that are less beneficial than those stipulated by the applicable collective agreement. The commission will decide which of the conditions to extend, in practice minimum wage, food, lodging and travel expenses, in some cases also working hours. The commission consists of five members: one from each of the social partners and three independent members. Decisions are made by simple majority (Eldring & Alsos 2012).

² In 2015, two more branches will be part of the statutory-regime, namely the fishing industry and electrical engineering.

Along with the statutory agreements, several other hard regulations follow: A contracting enterprise is obligated to ensure that sub-contractors abide by the agreements, and the employees of sub-contractors can hold the contractors liable for missing wage payments in areas that fall under the extended collective agreement. In addition, the trade unions have the right to inspect the wages and labour conditions of workers. In Norway, this applies to the employees of sub-contractors in areas comprised by the extended agreements. Furthermore, contractors are joint and severally liable for the wage obligations of sub-contractors like employer's duty to control wages and labour conditions (ibid.).

In addition, the Labour Inspectorate has, in line with the growing inflow of workers from other countries, got new tools and more resources in order to make the inspections more efficient, especially in the areas with statutory extensions of collective agreements. Another regulation introduced after 2004, is the obligation for all construction-workers to wear a special ID-card at the construction sites.

It the new measures shall have any impact, and prevent a "race to the bottom" in vulnerable industries and companies, is dependent on having a sufficient number of supporters of the new structure at the critical initial stage. The success of the measures cannot be taken for granted; the process may grind to a halt or change direction along the way because of failing support and legitimacy. The ability of losers or opponents of an institution to halt, slow down, undermine, openly counteract or in other ways change the process will depend, among other things, on their alternative strategies and power resources. Mahoney & Thelen (2010:23) describe various types of actors: insurrectionaries, symbionts and/or opportunists. In this context, it is crucial to identify the preferences and strategies of the actors. Furthermore, they deduce a typology of four types of gradual institutional change, and this may serve as a useful framework for the analysis of our type of actors and institutions (ibid:15-18). Mahoney & Thelen systematize changes driven by strategic actors, changes in the environment and

changes following from unintended consequences. Moreover, a potential for change may be latent in how a number of situations and institutions (here referred to as rules) can be ambivalent, unclear or contested. Situations completely devoid of rules may also occur. The four variants of change are: 1) “displacement”, which occurs when new rules replace existing ones; 2) “layering”, which occurs when new rules are added to the old ones to change the character of the institution; 3) “drift” occurs when the environment changes without any corresponding change on the part of the actors, while 4) “conversion” is evident when the rules formally remain intact, but are interpreted or applied in new ways. In contrast to “drift”, this type of change is driven forward by actors who actively exploit conflicts inherent in the institution. Layering will in our context mean that the introduced measures to prevent social dumping have succeeded.

3. Shop stewards experiences with labour migration and social dumping

Powerful shop stewards may be regarded as strategic actors able to affect the changes in a significant way. In this section we first look into the shop steward’s experiences with the labour migration from the new member States at the workplaces.

The labour migrants are especially present in construction, manufacturing and private services. But, the challenges with social dumping at company level do differ between branches, i.e. there are other problems in construction than in cleaning. In construction and certain other industries, like shipyards, the use of subcontractors and employment agencies offering international labour has risen sharply (Dølvik et al. 2015). In parts of the Norwegian shipbuilding industry, expatriate workers posted in Norway have been shown to constitute over 50 per cent of the workforce (Ødegård 2014). The increased supply of cheap international labour has strengthened the drift towards outsourcing of projects and more atypical, flexible, short-term work arrangements, while widening the gap between the labour

market's core and periphery. The consequence is greater inequality in wages and working conditions (ibid.). In cleaning, the pressure on prices and working hours challenges the more well established businesses to compete against providers that are violating working hours-rules and/or tax evasion. This might push the prices down to a level that is not consistent with national regulations (Trygstad et.al. 2012).

Low wages and long working hours

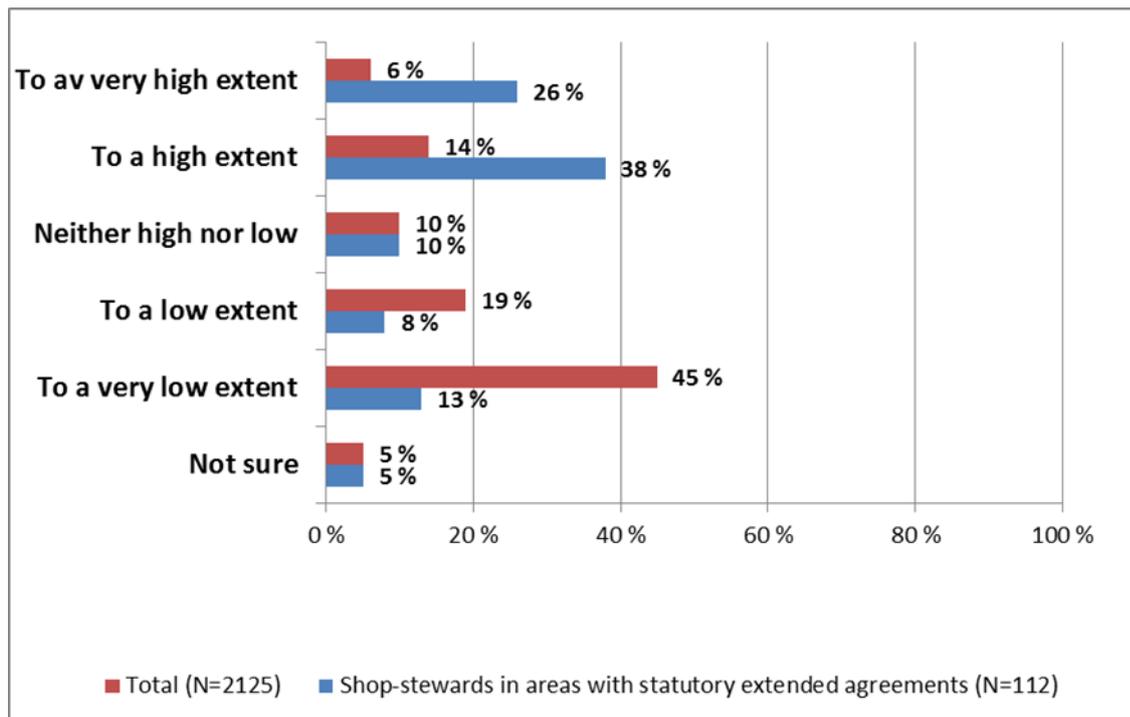
Norwegian registry analyses show that male migrant workers from Poland and the Baltic countries had 34 per cent less income on average than comparable Norwegian men of the same age in 2012, and that the gap had not shrunk in the period 2008–2012 (Bratsberg & Raaum 2014:189). Studies among Polish workers in Oslo in 2006 and 2010, shows that atypical employment give less security and small chances for mobility upwards in the labour market (Friberg & Eldring 2011).

Much of the public attention and debate has been related to wage dumping. We have studied shop stewards' own experiences with unacceptable wage and working conditions for foreign workers, also referred to as social dumping, at their work-places.

In a study among shop stewards representing all unions in the Norwegian Confederation of Trade Unions (LO), we found that a total of 20 per cent considered unacceptable wages and working-conditions among foreign workers to be wide-spread (Ødegård & Andersen 2014).

The results are presented in figure 1.

Figure 1: To what extent do you consider that unacceptable wages and workings conditions are widespread in your industry?



Source: Ødegård & Andersen 2014

These findings are in line with the findings from the 2011-study³ (Nergaard & Trygstad 2012).

The shop stewards were in the 2011-study asked whether their knowledge about “unacceptable conditions” were connected to their own workplace or among hired personnel and/or employees in subcontracting firms. Most of the findings were related to their own workplace. An obvious explanation is that the shop stewards have more intimate knowledge about workers in their own firm than the conditions for the sub-contractor’s employees.

Further, the shop stewards were asked what kind of incidents they regarded as unacceptable. Lower wages than stated in the collective agreements and working hours beyond the limits in the Working Environment Act, are at the top of the list (Nergaard & Trygstad 2012).

Respectively 46 per cent (low wages) and 41 per cent (violation of working hours) of the shop stewards had experienced this. Lack of employment contract is also a violation of the

³ The six unions were: Norwegian United Federation of Trade Unions (FF), Norwegian Union of General Workers (NAF), Norwegian Prison and Probation Officers’ Union (NFF), Norwegian Union of Employees in Commerce and Offices (HK), Norwegian Union of Municipal and General Employees, Norwegian Civil Service Union (NTL).

Working Environment Act, and 23 per cent of the shops stewards had experienced this at their workplace (ibid.). Many of the shop stewards would confirm several of these breaches (the answers were not mutual exclusive). In the first study referred to in this paper (Ødegård & Andersen 2014), we didn't elaborate on the term "unacceptable", so this was up to the shop stewards themselves to define this. But, when talking about working conditions, most employees will tend to consider wages, working hours and health & safety as core elements.

Hard competition is a reality for many companies, both in the export-oriented industries like shipyards, but also in the national-based industries, like cleaning. This might lead to pressure on the working conditions, especially wages and working hours. Quotes from two shop stewards might show the problems and dilemmas the shop stewards have to face on a daily basis:

"There is some disagreement in the local union about how we should relate to Polish workers. Many of our members think that they have good enough wages, and that we should concentrate on securing further production at our shipyard" (shop steward, shipyard) (Ødegård & Andersen, 2011).

"Many firms provide cheap deals, and they win the contracts. The workers are left with very low wages. It is impossible to compete against this" (shop steward, cleaning) (Trygstad et.al. 2011).

Language-problems and health & safety challenges

The health & safety-rules are pursuant to national legislation, i.e. they apply to all who work in Norway, irrespective of where the enterprise is registered in Norway or the nationality of the employees. Foreign workers may also be unfamiliar with the regulations, or they may be accustomed to other types of safety and ways of working. Part of the social dumping concept is also lack of equipment and training, which might lead to poorer safety standards at the workplace. The WEA (2005) states that the employer is responsible for ensuring that the work environment is justifiable in all respects and complies with the rules given in the law and associated regulations.

Studies conducted by Fafo points to hazardous situations in construction and industry as a consequence of poor language skills, inappropriate safety cultures and deficient health & safety-training among Eastern European workers. According to the regional safety representatives, Eastern European workers often lack employment contracts and safety training (Eldring et al. 2011). In these industries, communication and training are vital when it comes to health and safety. The 2011-study shows that 30 per cent of the shop stewards had experienced violations on the health & safety-regulations (30 per cent) (Nergaard & Trygstad 2012).

The Labour Inspectorate is responsible for surveillance of the health & safety situation at the workplaces. In addition to communication problems, the inspectors also have to deal with anxiety among the CEE-workers. In a study among Polish workers living and working in Oslo from 2010, 34 percent of construction workers expected to lose their work or to get serious problems if they spoke with the inspectors. Almost 30 percent had also been forced to do dangerous work (Friberg & Eldring 2011).

Health & safety challenges might also be connected to atypical employment, like hiring. Many of the workers from the CEE-countries, especially in construction and ship-building, are employed through temporary agencies. The combination of atypical employment, language problems and a different safety culture can be dangerous, illustrated with this quote from a shop steward from construction:

“Hired personnel want to perform - to show off. They want to prove that they are capable. Then they might skip safety-procedures to finish the task as quickly as possible. I’ve seen many dangerous situations due to this” (Bråten et. al. 2012).

Differences between industries

The answers from our 2013-study were divided between shop stewards inside and outside areas with statutory extensions of collective agreements, to see whether the industry included in this regime actually can be considered as more exposed to social dumping than others. As mentioned, the precondition for extending the collective agreements is that foreign workers have been treated unfair.

The differences were substantial. Around 60 per cent of the shop stewards inside the areas covered by statutory extended collective agreements (construction, shipyards, farming and cleaning) considered unacceptable wages and working-conditions among foreign workers to be wide-spread in their industry, compared to around 20 per cent of the total. This difference might be a good indication of the need for “hard regulations” in these industries. Partly, it is probably also a consequence of the public debate and attention to problems with social dumping. For many years, the basic regulations in the Norwegian labour market have been taken for granted in most part of the working life. The public discussion about social dumping has brought “old problems” back to the front-page.

How can the regulations become effective tools against social dumping?

The Nordic of model of labour relations is characterized by a relatively high union density and collective agreement coverage. In Norway, minimum-wage regulations have traditionally been left to the autonomy of the social partners. At the same time, we now have a situation where many of the most potent and powerful measures against social dumping are tied to the statutory agreements – also named as hard regulations. The system with statutory extension of collective agreements was applied for the first time in 2004, as a direct consequence of the EU-enlargement. The trade union movement was initially sceptical to statutory extension of collective agreements because of the traditional hegemony for the social partners when it comes to wage-regulations.

However, our data show an overwhelming support for to this measure. More than 80 per cent of the shop stewards regard the statutory extension of collective agreements as a very useful tool against low wage-competition, in both the mentioned studies (2011 and 2013). The shop stewards in industries covered by this regulation are, according to Ødegård & Andersen 2014, even more positive (more than 90 per cent of the affected shop stewards find it useful).

Rights following the statutory extension of collective agreements

There are, as mentioned above, some important regulations connected with the statutory regime: the shop stewards have the right to inspect the wages and labour conditions for the workers. Contractors are joint and severally liable for the wage obligations of sub-contractors and employers have the duty to control wages and labour conditions in subcontracting firms. At the same time, union density varies between the industries. This means that the capacity to monitor and handle problems with low wages and poor working conditions will vary between industries as well as between companies in the same industry. In figure 2 we see what kind of measures shop stewards regard as effective to combat social dumping.

Figure 2: What kind of measure do you find useful to reduce unacceptable conditions concerning wages and working conditions? N=1711



Source: Nergaard & Trygstad 2012

Most of the measures in figure 2 can be considered as hard measures, while training is an example of a soft one. In the 2011-study, we find (see figure 2) that training is considered as the most important condition for combating social dumping among the shop stewards.

Training and knowledge is essential if the shop stewards shall be able to make use of the new measures. And, the shop stewards are, together with the employer, the most important “guards” of decent working condition at the workplaces. The Labour Inspectorate can have an important role in this picture, but it is not possible for the inspectors to be everywhere, all the time.

The shop stewards in areas with extended collective agreements were asked whether or not they had received satisfactory training in order to handle questions about these agreements. About half of the shop-stewards found that they had received proper training to handle questions about statutory extensions of collective agreements. On the other end of the scale, 23 percent said that they did not receive proper training, and a substantial share of 29 per cent answered neither/nor. Inadequate training will affect the shop stewards ability to handle the measures introduced in a proper way.

The suggested measures in figure 2 are, as shown, very welcomed. But, interesting enough; stronger legislation is at bottom of the list. This underlines the assumption that the shop stewards at this time find it more important to implement and use the existing measures. If these shall function, shop stewards have to play an active role. But implementation and effective inspection from the shop stewards might be problematic in sectors where local unions and shop stewards are rare, or non-existing, and the coverage of collective agreements is low. This is the situation in parts of the private service sector, like cleaning and hotels & restaurant. In these industries, the role of the Labour Inspectorate will be even more important. As we can see from figure 2, shop stewards have considerable faith that expanded monitoring

by the tax authorities and the Labour Inspection Authority could help improve conditions in their industries.

What can the shop stewards actually do to prevent social dumping at their workplace? As mentioned above, the shop stewards support the system of statutory extension of collective agreements. Some of the instruments directly connected to the extended agreements are also welcomed.

A very concrete measure for the shop stewards extended collective agreements areas (construction, manufacturing, farming and cleaning) is the right to inspect wages and working conditions for *workers employed by sub-contractors*. A great majority (72 per cent) of the shop stewards regarded this tool as “very good”, and further 21 per cent found it “quite good” (Ødegård & Andersen 2014). However, the evaluation of measures against social dumping (Eldring et al. 2011), showed that half of the shop stewards in construction and manufacturing had carried out such inspections. The main reason for not doing this was that the shop stewards trusted their employer to be decent, and that the workers would get what they were entitled to (ibid).

Another part of the Norwegian regulations in the statutory arrangements and some collective agreements, is the right for shop stewards to inspect wages and working conditions for workers *hired* on a temporary basis. In our 2013-study we found that only two out of ten shop stewards did this on a regular basis.

Our findings indicate that on the one hand, shop stewards find the statutory right to investigate conditions for hired workers or those working for a sub-contractor as a good measure. On the other hand, the measure is not used in an efficient way.

The contractors are joint and severally liable for the wage obligations of sub-contractors. If one employer in the contracting chain fails to pay salary, the worker can claim his or her

rights to another employer in the chain or to the main contractor. This measure was introduced in 2010, and is limited to the areas with statutory extended collective agreements. Again, the shop-stewards are supportive. More than half of them (54 per cent) characterizes this as a “very good measure”, while 25 per cent think it is a “pretty good measure”. Among the directly affected shop-stewards in areas covered by the statutory collective agreements, the attitude is even more positive; 67 per cent considered this as a “very good measure”. However, Eldring & Alsos (2014) conclude that this regulation is rarely in use. Four years after the implementation, very few of the local departments of the most relevant trade union (Fellesforbundet), that organizes workers in construction and manufacturing, had taken use of the regulation. Most of the departments had handled from one to six cases each, but it is important to bear in mind that *one* case can include several workers with an employer. Another conclusion from this report is that system – when used – works for the most parts well (ibid.). In other words, the experience is good, but limited.

To sum up, industries like construction, parts of manufacturing and private service sector like cleaning have after the EU-enlargements in 2004 and 2007 hired labour migrants from the Eastern Europe. In the wake of the enlargement, social dumping has become a phenomenon in the Norwegian labour market. To prevent dualization, several hard measures have been introduced. Shop stewards regard these measures and regulation as effective tools. However, only half of them have been given satisfactory training in order to handle questions about these agreements. Further, although shop stewards find the statutory right to investigate conditions for hired workers or those working for a sub-contractor as accurate, the measure is not used in an efficient way. This brings us to our last research question.

4. Discussion: What are the conditions for making the regulations effective tools in combating social dumping?

The statutory extension of collective agreements has become a key instrument for avoiding unreasonable low-wage competition and distortion of market competition in general (Eldring et al. 2012). But so far, there is limited knowledge about the more concrete effects of these new and hard regulations in the Norwegian labour market. It is reasonable to assume that they will have a normative effect, i.e. that employers automatically will adjust to the regulations, regardless of monitoring and activities from local trade unions. In a study in the cleaning industry, the employers were asked whether the extension of the collective agreement to non-unionized workers has had an impact on the wage level in their company. In four out of 10 companies, the employees received higher pay as a result of the decision. Altogether 29 per cent of the managers responded that the majority of the employees had received a pay rise, and 11 per cent responded that some of the employees now receive more pay (Trygstad et al. 2012). This result is probably an indication of such normative effect.

The measures implemented concur with institutionalized norms and rules of working life. The majority of Norwegian employers comply with these norms and rules, not because of habit, but rather as a deliberate and strategic choice to follow institutional guidelines, for reasons including a concern to ensure availability of resources, predictability and/or social support (Oliver 1991:153). However, some companies will try to avoid new rules by buffering themselves from institutional pressures, or escaping from institutional rules or expectations may represent a solution (ibid:154). One way to avoid the increased wage costs that follow from general application of the collective agreement would be to reorganize the enterprise into a “service contractor”. Instead of having permanent employees, the enterprises use workers who are registered as self-employed and denote the work as contractual assignments. At the same time, an impression of professionalism is maintained, since the clients deal with only a single enterprise that provides them with guarantees of quality, satisfaction etc. In doing so, the general application of the collective agreement is circumvented, since it does not

apply to self-employed workers. Other provisions, such as the requirement for registration, also apply to the self-employed. The phenomenon of “false self-employed” workers, i.e. employees who operate as though they were self-employed, is not new in Norwegian working life, but it will nevertheless remain a challenge if their number increases significantly. Even before the general application of collective agreements was enacted, this was a well-known phenomenon in some industries, because the self-employed are not encompassed by large sections of the Working Environment Act, and the “contractor” is exempt from paying payroll tax, holiday compensation and sickness benefit. An increasing number of self-employed workers in vulnerable industries may be an indication of what Oliver (1991) refers to as “avoidance” or what Mahoney and Thelen describe (2010) as “conversion”: Certain actors deliberately exploit loopholes in the regulations. The formal rules remain intact, but they are interpreted in an opportunistic manner that in the long term may undermine them.

Another strategy may be to defy the new rules by simply ignoring them. Enterprises that fail to follow the new measures will provide examples of such defiance of the rules. An important argument may be that the likelihood of getting caught is so low that the enterprise in fact is running no risk. Another reason could be that the success of the enterprise is independent of government approval and support (Oliver 1991:156), since they supply their services to clients who fail to request documentation that the enterprise is a serious operator.

The Labour Inspectorate will play an important role to monitor that the regulations are followed and punish the employers violating them. But the inspectorate can only cover small parts of the total labour market. In the organised part of the labour market, shop stewards may make a difference. But, as we will argue; an important precondition for the hard regulations to have desired effect, it is necessary for the local trade unions and shop stewards to use the tools that they have asked for, and which they and support. . The trade union movement has been an active advocate of many of the regulations that are introduced in the wake of the EU-

enlargements in 2004 and 2007. And, as we have seen, these instruments are most welcomed by the shop-stewards at the work-places. But, the challenge is to turn these regulations into effective tools against low wages, long working hours and bad health & safety condition. Even after several years with new regulations in place, the practical enforcement is partly missing. Lack of training might be one explanation. Another factor is the shop stewards trust towards the employer. That he or she “will do what’s right”. The shop stewards have got a more demanding role in connection with the large inflow of workers from CEE-countries. Firstly, they have to cope with new regulations, which partly can be quite complicated and involves them in new tasks. Secondly, they tend to be “bridge-builders” between different groups of workers that have problems in communicating. Thirdly, they have to balance a possible conflict of interest between decent employment and working-conditions on the one hand, and the company’s need to reduce costs on the other.

5. Conclusions

During the first decade of this century, the Norwegian labour market was subject to external shocks. The labour immigration that followed the EU-enlargements in 2004 and 2007 challenged the institutions and norms in the Norwegian model of labour relations.

According to McGovern (2007:217), immigration brings the institutional nature of labour market into sharp relief as it exposes, among other things, the influence of the state, processes of labour market segmentation, and the role of trade union policy and practice. There is an underlying fear that segmentation and dualization and as a result, increased inequality can undermine the sustainability and legitimacy of the current regime in Norway. This is why the

EU-enlargements in 2004 and 2007 have revitalized a debate about the significance of collective agreements, trade union representatives and the importance of the Labour Inspectorate. Weaknesses related to the labour market model have surfaced, and the debate Norway never had about the effects of low collective agreement coverage seems now to appear as a debate on social dumping.

Several hard regulations are introduced in the labour market, but still the the informal and illegal activities seem to be persistent. Competing with enterprises that are not hindered from selling their services at a far lower price is an untenable situation for the serious actors in the labour market.

The shop stewards confidence in the implemented measures to combat social dumping rests on the assumption that the authorities will monitor compliance through inspections, and that violations will be penalized. We find a considerable faith that expanded monitoring especially by the Labour Inspection Authority will improve conditions at the workplaces. It does however seem rather obvious that the Labour Inspection Authority will be unable to maintain a sufficient level of control in the labour market. If the chances for getting caught by violate the regulations and thus go unpunished are considerable, the new measures will be of minor importance. Shop stewards may however make a difference.

The main purpose of this paper has been to discuss how the trade unions and shop stewards can be a buffer to a “race to the bottom”. It goes without saying that this correspond with their member’s core interests, an in addition the fact that it is impossible for the Labour Inspectorate to be “everywhere, all the time”.

From our studies, we can conclude that the main challenges – from the shop stewards point of view - are connected with the ability to use the different mechanisms that are made available through the legislation in an effective manner.

We will argue that in industries with relatively high union density, like in construction and manufacturing, the trade union movement can make a difference when it comes to reduce the negative development. The precondition is that the local shop stewards are able and willing to use the new measures that are introduced. As shown, it is still a way to go. More training seems to be an important condition to raise the alertness and activity. It also seems to be a need for the trade unions to discuss their strategy and ability when it comes to recruiting new members (also among the labour migrants) and to enable the shop stewards to fight against social dumping. If not, a possible result of the current development is increased differences between companies/employees with and without collective agreements. The outcome can be a more permanently dualization in the labour market. Low collective agreement coverage in vulnerable sectors and a limited (so far) use of statutory extensions of collective agreements point in this direction.

To conclude, the most important precondition for making the new regulations effective tools in combating social dumping is more empowered and active shop stewards at the work places. In the areas with statutory extended collective agreements, the trade unions and shop stewards have got some important tools that can be effective if used in the right manner.

References:

- Alsos, K. & L. Eldring (2014), Solidaransvar for lønn. Fafo-rapport 2014:15
- Bratsberg, B. & O. Raaum (2012), "Immigration and Wages: Evidence from Construction," *The Economic Journal* 122(565): 1177-1205
- Bråten, Andersen, Ødegård (2012), Samarbeid og HMS-utfordringer i bygg- og anleggsnæringen Fafo-rapport 2012:52
- Dølvik, J.E., T. Fløtten, J. M. Hippe & B. Jordfald (2015), Final report NordMod 2030: The Nordic model towards 2030 A new chapter? Fafo-report 2015:07
- Eldring, L. & K. Alsos (2014), European Minimum Wage: A Nordic Outlook – an update. Fafo-paper 2014:21
- Eldring, Line og Kristin Alsos (2012), Lovfestet minstelønn: Norden og Europa. Fafo-rapport 2012:07
- Eldring, L. I. Fitzgerald, J. Arnholtz (2012), Post-accession migration in construction and trade union responses in Denmark, Norway and the UK. *European Journal of Industrial Relations*, 18 (1) 21-36.
- Eldring, L, A.M. Ødegård, R.K. Andersen, M. Bråten, K. Nergaard, K. Alsos (2011), Evaluering av tiltak mot sosial dumping. Fafo-rapport 2011:09.
- Falkum, E., I.M. Hagen og S.C. Trygstad (2009), Bedriftsdemokratiets tilstand. Medbestemmelse, medvirkning og innflytelse i 2009. Fafo-rapport 2009:35
- Friberg, J.H., J. Arnholtz, L. Eldring, N. W. Hansen, F. Thorarins (2014), Nordic labour market institutions and new migrant workers: Polish migrants in Oslo, Copenhagen and Reykjavik. *European Journal of Industrial Relations* Vol. 20(1): 37-53
- Friberg, J.H. og L. Eldring (2011), Polonia i Oslo 2010. Mobilitet, arbeid og levekår blant polakker i hovedstaden. Fafo-rapport 2011:27
- Gallie, D. (2003). The quality of working life: Is Scandinavia different? *European Sociological Review*, 19(1), 61-79.
- Hagen, I. M & S. C. Trygstad (2009), Local flexicurity: resolving the conflict between direct and representative participation, *Transfer* 3-4/2009. Brussel: ETUI

- Mahoney, J., & K. Thelen (2010). *Explaining institutional change: Ambiguity, agency, and power*. Cambridge: Cambridge University Press.
- Marginson, P. & K. Sisson (2004), *European Integration and Industrial Relations. Multi-level Governance in the Making*. London: Pallgrave Macmillan
- McGovern, P. (2007), Immigration, Labour Markets and Employment Relations: Problems and Prospects. *British Journal of Industrial Relations*, Volume 45, Issue 2: 217–235.
- Nergaard, K. (2014), Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2013, Fafo-notat 2014:14
- Nergaard, K. & S. C. Trygstad (2012) Tillitsvalgtes hverdag... sett fra grasrota i seks LO-forbund. Fafo-rapport 2012:40
- Oliver, C. (1991), “Strategic Responses to Institutional Processes”, in *The Academy of Management Review*, Vol. 16, no. 1 (Jan. 1991), pp. 145-179
- Palier B., & K. Thelen (2010). Institutionalizing dualism: Complementarities and change in France and Germany. *Polit. Soc.*, 38(1), 119- a48.
- Scott, R. (1995). *Institutions and organizations*. California, Sage Publication Inc.
- Thelen K., & I. Kume (2006). Coordination as a political problem in coordinated market economies. *Governance*, 19(1), 11-42.
- Trygstad, S. C., M. Bråten, K. Nergaard & A. M. Ødegård (2012), Vil tiltakene virke? Status i renholdsbransjen 2012. Fafo-rapport 2012:59
- Trygstad, S. C., K. Nergaard, K. Alsos, Ø. M. Berge, M. Bråten & A. M. Ødegård (2011), Til renholdets pris. Fafo-rapport 2011:18
- Ødegård, A.M. & R.K. Andersen (2011), Østeuropeisk arbeidskraft i hotell, verft, fiskeindustri og kjøttindustri. Fafo-notat 2011:21
- Ødegård, A.M. & R.K. Andersen (2014), Om arbeidstid, konkurranseutsetting, innleie av arbeidskraft, tiltak mot sosial dumping, AFP og kontroll og overvåkning på arbeidsplassene. Fafo-notat 2014:04
- Ødegård, A.M. (2014), Arbeidsinnvandring og fleksible bemanningsstrategier i fire bransjer. *Søkelys på arbeidslivet* nr. 1/2 2014: 100-117.