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10 Preventing Dualization the Hard Way – Regulating the Norwegian Labour Market

Dear customer, we are working on acquiring new customers who want to pay for our services legally (invoice). These customers give us the opportunity to conduct our business in accordance with Norwegian law. Each such customer is valuable to us. We have experience with private cleaning, offices, shops, staircases and other. If You know somebody looking for a cleaning company, we will be very grateful if You can recommend us. For each customer referral by you with whom we can cooperate, we offer you one FREE cleaning. Best regards, “Eva”.

Such was the text message that “Eva” sent to her customers after the Norwegian authorities introduced new “hard” regulations in the cleaning industry. The wage level in the collective agreement was extended to non-unionized workers by law, public approval was required for the cleaning companies and the employees had to carry ID cards. Eva referred to these changes as “a critical moment for business”. She feared even harder competition from companies at odds with the law. In this chapter we discuss the political efforts made to deal with precarious and marginal jobs in the cleaning industry in the period from 2010 to 2013.

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 the cleaning industry many of the elements associated with the Norwegian model of labour relations¹ are missing. After decades of growing concerns, the government and the social partners took several steps to improve the working conditions. Although the outcome was new and unusual, it derived from tripartite negotiations and cooperation. Rather than relying one-sidedly on the voluntary system of collective bargaining or campaigns with a soft and suggestive character,

¹ In this chapter we apply the notion “labour relations” to refer to regulations (legislation, collective agreements, programs) and practices (routines for cooperation) governing the relationship between employers and employees (and sometimes government) at all levels. When we refer to the general analytical characteristics of the national system we apply “the Norwegian model of employment relations”.

hard regulations were introduced to combat illegal practices and to make the working conditions in the cleaning industry more decent.

The term “decent” was launched by the United Nations ILO² in 1999 to promote “opportunities for women and men to obtain decent and productive work, in conditions of freedom, equality, security and human dignity” (ILO, 1999, p. 3). Decent work refers to wages and working conditions. It also refers to employers who follow laws and regulations. The ILO’s “Decent Work Agenda” became a prioritized area for the Norwegian centre-left coalition government in 2009. The government’s effort to promote decent work was one of several factors that created a window of opportunity, a brief period in which opportunity for changes existed. This is, however, not a straightforward case of “soft regulations turning hard”. The regulations have traditionally consisted of a mix of soft and hard, which has been intertwined. The complex and co-dependent relationship between the Working Environment Act and collective agreements is one example (Stokke, 2004). Nevertheless, the emphasis has been on the soft side and the norm that the regulation of the labour market mainly is the domain of the voluntary system of collective bargaining. In this chapter we examine why the emphasis shifted towards harder regulations.

10.1 Dualization of Working Conditions and Labour Relations?

In parts of the growing private sector services in Norway, the rates of organization among employers and employees are low, the coverage of collective agreements patchy and unions and legally proscribed institutions for employee voice and participation are often absent or declining (Longva, 2001; Nergaard & Stokke, 2007, Trygstad et al., 2011; Berge et al., 2013). Internationally, parts of private sector services, such as cleaning, are viewed as arenas where the hollowing out of the standard employment relationship have come furthest (Bosch, 2006, p. 44). In Europe, terms like “working poor” and “socially excluded” are used to characterize those situated in a permanently disadvantaged position in the labour market as well as in other spheres of social activity (Davidson & Naczyk, 2009). Hence, the development in Norway followed the same path as observed in several other European countries, where the rise of the private service sector is seen as one of several features that challenge and intensify the conflict between unions and employers. Sisson (2013) argues that the collective bargaining associated with trade union demands for a common rule for wages, hours of work and other terms and conditions of employment is strongly challenged, especially in the private service sector.

² See the Report of the Director-General to the International Labour Conference meeting in its 87th Session.

When union density and membership in employer associations is concentrated in the public sector and manufacturing, and is in decline elsewhere, collective bargaining institutions will erode as employment shifts to the service sector (Thelen, 2012, p. 9). This process of dualization can be fuelled by an intensified cooperation between labor and management in core firms and industries which may leave other firms and workers “behind”, “outside” and in a dead end (Thelen & Kume, 2006; Palier & Thelen, 2010).

Although immigration has accentuated the focus on bad working conditions in the cleaning industry, the problems have been debated in media and the Parliament since the mid-70s. The conditions in the industry have for decades caused concern due to the poor working standards. The question, however, is how can we explain that the social partner took action and implemented new hard regulations during the period from 2010 to 2012?

10.1.1 Methods and Data

This chapter is based on two studies in the cleaning industry in 2011 and 2012 (Trygstad et al., 2011; Trygstad et al., 2012). In both studies semi-structured interviews were conducted with the social partners at the company level, trade union officials, safety delegates and employers in cleaning companies in Oslo, Bergen and Trondheim and representatives from the police, the tax authorities and the Labour Inspection Authority. A total of 39 interviews were conducted. Moreover, the studies were based on thorough analyses of Statistics Norway’s structural statistics, where we examined company structures as well as employee characteristics. The 2011 study included structured interviews with 40 purchasers of cleaning services in the private and public sectors, while the 2012 study was based on a telephone survey of employers, managing directors or similar in cleaning companies with five or more employees. Key issues for the survey were the companies’ experiences related to the extension of the collective agreement, competition from actors at odds with the law and the instruments established to provide more orderly conditions. Altogether 205 employers/managers responded to the survey, which hereafter we will refer to as “the cleaning-industry company survey” (for further details, see Trygstad et al., 2012).

In the following section we outline the analytical perspectives on institutional change before we address the foundations of the traditional system of Norwegian industrial relations and how the cleaning industry fits into this general picture. In section four we present the institutional measures introduced to combat bad jobs in cleaning and discuss their capacity to prevent further deterioration of working conditions in the sector. In section five we discuss how we can understand the regulative change and why a “window of opportunity” opened in this period. We also discuss whether hard regulations may be seen as a departure from the voluntary system associated with the Norwegian model of labour relations. In this period

industry actors as well as the Ministry of Labour united their political power, resources and will to produce substantial change. Finally, we discuss the findings and arrive at a conclusion in section six.

10.2 Analytical Perspectives on the Prospects of Change

The effort to improve the working conditions in the cleaning industry can be seen as a dramatic institutional change because of the methods used, for example, the extension – by law – of the wage level in the collective agreement to non-unionized workers, in contrast to the traditional emphasis on voluntary collective bargaining.

According to Sisson (2013) legislative initiatives can be tailored to ensure changes. In this case such initiatives were implemented to ensure what Gallie (2007 pp. 17-19) describes as an inclusive employment regime. He argues that *inclusive employment regimes* are designed to extend employment and common employment rights as widely as possible, whereas *dualist regimes* guarantee strong rights to a skilled, core workforce at the expense of the poor conditions and low security of the periphery. A third system, *market employment regimes*, emphasizes minimal employment regulation and assumes that market adjustments will ensure relatively high employment levels. In Norway, a package of *hard* regulation was introduced in the cleaning sector. We define hard regulations as statutory regulations that are enforced and controlled by the Labour Inspection Authority or tax authority. By introducing hard regulations, the development in Norway takes another path than what is registered in several other European countries, where hard regulations have been challenged by soft “framework agreements”. The purpose of such agreements is to establish broad principles and incite negotiations or “joint declarations”. Sisson (2013) describes the last one as advisory and its implementation is not addressed. To simplify we use soft and hard regulations as a starting point in the table below, where we also summarizes possible outcomes on working conditions due to different regulation approaches:

Table 10.1: Quality of working conditions (WC) and different types of regulation

		Quality of working conditions	
		Poor WC	Decent WC
Type of regulation	Soft (voluntary and high level of discretion)	Poor WC because of lack of employment relations and regulations (at the company level)	Decent WC because of high quality employment relations and regulations (at the company level)
	Hard (statutory and low level of discretion)	Poor WC because of lack of enforcement/control	Decent WC because of rigorous enforcement/control

The organized part of the Norwegian labour market is characterized by high quality working conditions regulated primarily by soft measures – a voluntary system of regulations where key features are high coverage of collective agreements, high trade union density and highly organized employers. At the company level shop stewards, safety delegates and managers are involved in tight formal and informal cooperation. The situation is otherwise in the cleaning industry, characterized by weak employment relations and in large parts poor working conditions. The hard regulations introduced are characterized by a low level of discretion and very limited flexibility. The need for hard regulations may be seen as the two parties being unable to solve the challenges by themselves, due to a lack of power resources.

Findings from studies in other industries indicate that the confluence of *different measures* has helped establish an institutional framework that can effectively counteract social dumping and dualization (Eldring et al., 2011). Ignoring a scheme or a provision is more risky if the changes that are introduced pull in the same direction and if their rationale is in accordance with established norms and values (Oliver, 1991, pp. 162-163). Oliver (1991) argues that companies are more likely to ignore a new scheme or structure if the organization can argue that the “likelihood of “getting caught” is very low or that its success is not dependent on government approval and support” (Oliver 1991, p. 156). Moreover, time is an element in institutional change processes (Tolbert & Zucker, 1996). At an initial stage of change *control* will be crucial to enforce new regulations because norms and practices have not yet developed.

The power and interests of the actors involved is another key issue. Several scholars in the field of institutional theory stress that the establishment of viable institutions or institutional structures is a demanding task (Selznick, 1957) that require a form of “collective action” where actors invest material and cultural resources in the new institution (Pierson, 2000, p. 258). The willingness to invest in such action presupposes some level of shared interests. The required collective effort can be impeded if the actors have opposing interests. Institutional transformation is thus dependent on having a critical mass of supporters of the new structure at the 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 and Thelen (2010, p. 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. Mahoney and Thelen (2010) distinguish between 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 institutions/ rules are ambivalent, unclear or contested. There are, moreover, examples of situations completely devoid of rules or where new rules replace existing ones (“displacement”) or where rules “drift” because they are not adjusted to development

in the organizations. The outcome of the various processes of institutional change will depend on different actors' willingness, interests and power to follow the changes introduced, and vice versa – to avoid them. In our context the change capacity of the hard regulations may depend on the permanent provision of statutory regulations, control and enforcement. An alternative route to decent working conditions would be that a regime of voluntary soft regulations emerges and over time reduces the need for hard regulations.

10.3 The Foundation of the Norwegian Industrial Relations Model

The Norwegian model of labour relations 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). 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.

Collective labour relations and collective agreements fulfil a key function in the regulation of wages and working conditions (Nergaard, 2014). *First*, collective agreements play a major role in regulating wages, since Norway has no statutory minimum wage.³ In cases where issues are regulated by law and collective agreements, for example overtime pay and holidays, the latter normally provide more favourable conditions for workers. *Second*, co-determination in the workplace primarily occurs through the 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. In practice, this type of trade union official 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). *Third*, effective implementation of the employees' rights will in many cases rely

³ In the EU, 21 of the member state have a statutory minimum wage. This form of statutory minimum wage is not found in the Nordic countries (Alsos & Eldring, 2012, p. 8).

on the presence of a trade union and cooperation between the local union and the management (Dølvik et al., 2014; 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 and statutory legislation) 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).

10.3.1 The Cleaning Industry – on the Margins of the Norwegian Model of Labour Relations

In the context of the generally well regulated, decent and egalitarian Norwegian working life there has over the last four decades been a growing concern for the cleaning industry. The challenges are partly associated with the structure of the industry and partly with a changed workforce, weak collective labour relations and increased competition.

10.3.2 The Structure

In Norway, as well as in other countries, cleaning it is characterized by many small companies and rapid turnover in terms of companies as well as activities (O’Sullivan & Turner, forthcoming, Trygstad et al., 2012). From 2000 to 2010, the number of registered companies grew by 60 per cent (Trygstad et al., 2012, p. 33). More than half of them did not survive for more than one year (ibid., p. 40). One reason for the rapid turnover is the low start-up costs. Only minimal investment is required to establish a company. The low start-up costs have positive as well as negative aspects. On the positive side, they help create alternative career pathways. On the negative side, the minimal obstacles to establishment make bankruptcy less risky, for example because of non-payment of taxes, duties and/or wages. A reputation as a dishonest operator can easily be bypassed by establishing a new company under another name. These features challenge institutionalization, transparency and control.

10.3.3 The Workforce

Transparency and assertion of interests in the industry are also hindered by the low skill requirements for employers and employees. Moreover, wage-related costs amount to 85 per cent of the costs in cleaning (NHO Service, 2009) and thus affect the recruitment strategy of employers. The cleaning industry was originally dominated by housewives working part-time, most often during afternoons and evenings. During

the last decades, cleaning has been transformed and institutionalized more in line with other parts of the labour market when it comes to standardized working hours. Cleaning is more often characterized by daytime work, and the proportion of part time workers with short hours are decreasing (Trygstad et al., 2012). A further sign of the formalization process is the possibility to take a craft certificate. At the same time, the industry is still characterized by manual work and low skill requirements, which make the cleaning profession a gateway to the labour market for immigrants with limited language skills. The proportion of workers with an immigrant background has increased in the industry through the 2000s, and workers from the new EU countries make up one-quarter of the registered employees whereas almost 40 per cent have an Asian or African background. This group often has very limited knowledge about the formal regulations of Norwegian working life. Nor do they have many career alternatives. Hence, these employees are vulnerable to employers who violate laws and regulations or who wish to minimize the costs of wages and social benefits.

10.3.4 The Labour Relations

A third circumstance that has driven the cleaning industry to the margins of the Norwegian model of labour relations is the absence of strong collective labour organizations. Few employers are organized, and the unionization rate among employees is low. Thirty per cent of all employees work in companies with no or very weak labour organizations, and safety delegates are quite rare (Berge et al., 2013). Even in companies with a collective agreement, recruiting trade union officials may be a problem. Often the companies have no tradition of social partnership or co-determination, and the management and the trade union officials tend to meet only when issues of a negative nature have to be discussed. Moreover, conditions for performing the trade union tasks are poor. The representatives seldom have sufficient time to attend to their elected office, and they do not meet their members on a daily basis since these are dispersed in the client companies. Hence, the capacity of trade union officials and safety delegates to oppose management and act as partners in the development of good-quality workplaces is largely absent.

10.3.5 The Competition

The increasing competition for assignments is the fourth challenge characterizing this industry. The cleaning companies receive many of their assignments through competitive tendering, and through these the clients shape the frameworks of the industry. The client designs the tender, selects the supplier and signs the contract. The client will also monitor compliance with the contractual requirements. However,

the competitive tendering has consequences, and some of the actors in the industry are concerned about the increasing work intensity:

Performance is going up and up. In the 1990s we talked about average performance. Then, 250 square metres per hour was seen as the maximum limit. Today, nobody bats an eyelid if we exceed 500 or approach 1000. For many years, there was a very positive development... it could be defended because of more efficient methods. Competition was healthy. But then we reached a saturation point. (Employer, quoted in Trygstad et al., 2011, p. 109)

This price pressure is partly ascribed to highly price-sensitive clients and partly to suppliers who provide extremely cheap services by cutting corners and/or violating laws and regulations.

10.3.6 Different Degrees of Decency

The companies in the cleaning industry can be simply divided into three groups, where the decent ones are challenged by the companies in the two other categories when it comes to competing over contracts and market shares.

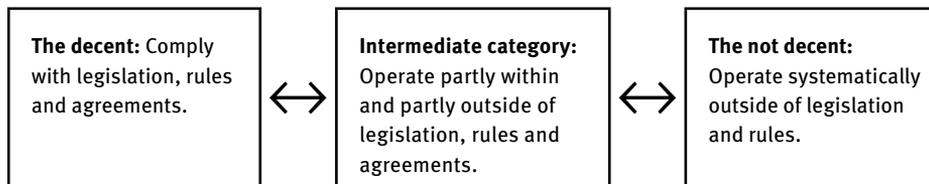


Figure 10.1: Model of the degree of decent working conditions. Source: Trygstad *et al.*, 2011.

The arrows between the boxes illustrate that companies may be pushed in a different direction as a result of changed regulations. Companies in the intermediate category will typically not have a collective agreement, and they will use sub-contractors and self-employed workers and other forms of precarious work extensively to cut costs. They will also increase work intensity by pricing assignments at a low level. Among the not decent operators we will find workers who are grossly exploited and work illegally and companies that systematically violate regulations on taxation and VAT. Furthermore, these companies have established complicated company structures to conceal illegal activities, including money laundering (Trygstad et al., 2011). A critical issue will be whether the measures implemented will be able to push parts of the intermediate category in a more decent direction and to make the situation so untenable for the not decent ones that the number of such companies decreases. The intermediate category will thus comprise a type of actor who more or less deliberately and strategically violates the generally accepted norms of appropriateness that

characterize the Norwegian working life and thus undermines institutions intended to ensure decent conditions in the cleaning industry. According to informants, the intermediate category accounted for most companies prior to the introduction of hard regulations in 2011 and 2012 (Trygstad et al., 2011, 2012). One employer commented on the situation:

Things develop so quickly. The decent companies are forced into a grey zone. If paying below tariff wages is legal and the rest of the industry moves in that direction, we have to do the same in order to survive. I'm afraid that we are moving the boundaries of what is deemed to be acceptable. (Employer, the cleaning industry, quoted in Trygstad et al., 2011, p. 175)

Seen from the perspective of the cleaning industry, dualization can thus be seen as a process transforming both *working conditions* and *industrial relations institutions*. This process differs from the much debated concept of labour market deregulation. According to Thelen (2012, p. 9) deregulation proceeds through a direct assault on traditional institutions, while dualization often proceeds through a process of institutional drift. The way the hard regulation works will affect how the institutionalization process moves forward.

10.4 Measures to Prevent Dualization

The new institutional measures introduced to combat bad jobs in cleaning held a strong focus on customer awareness. Those who procure cleaning services in the private-company market are made more responsible with regard to ensuring that the suppliers operate in line with the regulations in laws and agreements. In the public sector clients have had such a responsibility for years. Pursuant to the Public Procurement Act a set of regulations for wage levels and working conditions was adopted in public contracts, first for government companies in 2005 and from March 2008 in public contracts (the entire public sector). The regulations state:

In their contracts, the commissioning agency shall include the requirement that employees of suppliers and any sub-contractors that are directly involved in fulfilling the contract shall receive wages and have working conditions that are not less favourable than what follows from nationwide collective agreements or what is otherwise normal for the location and profession in question.⁴

Nevertheless, there have been several reports of violations of the ILO convention (Trygstad et al., 2011). Problems have particularly been associated with controlling employees' work conditions when the cleaning companies apply sub-contractors.

⁴ Regulation No. 112/2008 on pay and working conditions in public contracts.

The new measures in the cleaning industry have highlighted the responsibility of the clients. This can be regarded as an admission of the inability of the social partners and the authorities to increase compliance in the industry unless the clients shoulder their share of the responsibility. In the following sections we elaborate on further measures introduced to prevent a “race to the bottom” in this industry.

10.4.1 Extension of Collective Agreements

Norway does not have a general minimum wage, but an equivalent was established in the cleaning industry as the wage level in the collective agreement was extended by law to non-unionized workers on 1 September 2011. The regulations pertain to private companies that sell cleaning services and to employees who perform cleaning work. The wage rates are regulated in line with the revisions of the collective agreement. Self-employed persons are not covered by this extension. This may have substantial consequences as one in four cleaning companies staff assignments with self-employed workers (Trygstad et al., 2012).

10.4.2 Approvals and ID Cards

In September 2012, a system for public approval of cleaning companies was introduced.⁵ This approval system includes ID cards for the employees. Moreover, companies must be approved by the Labour Inspection Authority to obtain legal status, and purchasing cleaning services from non-approved companies is illegal.⁶ Approved companies shall be listed in a registry maintained by the Labour Inspection Authority and are also obliged to issue ID cards for their workers. To obtain approval, the following conditions must be met (cf. Section 5 [1])⁷:

- Provision of approved company health services.
- Provision of a safety organization.⁸
- Written labour contracts.
- Compliance with the wage level in the collective agreements.
- A scheme that ensures financial compensation to workers in case of occupational injury.

⁵ FOR 2012-05-08-408: Authorisation scheme for cleaning companies (Forskrift om offentlig godkjenning av renholdsvirksomheter og om kjøp av renholdstjenester).

⁶ i.e. private individuals are not required to check whether the enterprise is approved if the cleaning services are purchased for private use.

⁷ These requirements do not apply to self-employed workers.

⁸ In enterprises with less than 10 employees, the partners can agree to waive the requirement for a safety delegate.

10.4.3 A Mix of Soft and Hard Regulations

According to Table 1, the new measures introduced could be characterized as hard regulations based on rather extensive control from governmental institutions and harsh sanctions for those who violate the new provisions. To consider the development in the industry as a drift away from the traditional “voluntary system” associated with the Norwegian model of labour relations would, however, be a simplification. As we will elaborate below, the social partners were deeply involved in the establishment of a tripartite industry programme for the cleaning industry. The *process* preceding the introduction of the measures can be described as a typical for Norway; it was “voluntary” and “soft” and characterized by cooperative partners and a great deal of consensus, but the chosen tools were hard. This brings us to examine further the second research question: To what extent do these measures harmonize with the traditional “voluntary system” of industrial relations associated with the Norwegian model, and what enabled the introduction of hard regulations?

10.5 The Introduction of Hard Regulations – A Window of Opportunity

The question raised is why the social partners took action and implemented hard and new measures during the period from 2010 to 2012. The period represented a window of opportunity⁹ where industry actors as well as the Ministry of Labour united their political power, resources and will to produce substantial change. Why did this happen at this time? As already mentioned, concern for the cleaning industry has been on the political agenda more or less since the 1970s. In 1978 the social partners’ agenda was to improve the working environment, create safe and stable workplaces and establish satisfactory wage levels. However, nothing happened (Trygstad et al., 2011). In 1993, a *voluntary* approval scheme was established for companies in the industry. The intention was that “Clean Development” should induce the companies to comply with the provisions of the Working Environment Act and the Taxation Act. The introduction of craft certificates in 1995 was another example of institutional efforts aiming at improving wages and working conditions (Skilbrei, 2009). The introduction of “Clean Development” and craft certificates can be regarded as an attempt to achieve decent working conditions through “soft regulation” (Sisson & Marginson, 2001), but it had few results. The problem of dishonest companies did not abate. There may be several explanations for the window of opportunity that opened up for the introduction of hard regulations during 2010-2012. Key actors had mutual interest in change, something which is a critical factor in a process of

⁹ Concept used to describe a brief time period in which an opportunity exists

institutionalization (Mahoney & Thelen, 2010; Selznick, 1997). At the same time the situation in the cleaning industry reached the public through media, and the lack of control with the business speeded up the recognition that harsh measures, control and sanctions for those violating the rules was needed.

Political willingness and a government which is indebted to the trade union movement: ILO's "Decent Work Agenda" was the basis for the centre-left government's 2009 programme to reinforce and coordinate efforts for workers' rights internationally and at home.¹⁰ The centre-left coalition government's concern with the development in the industry spurred the establishment of a tripartite industry programme for the cleaning industry in the context of the wage bargaining in 2010. The intention was to create a long-term effort to improve working conditions, co-determination, working environment and safety (Melding til Stortinget nr. 1 2010-2011, p. 19). The government's efforts should also be seen in relation to its attempts to combat social dumping in industries characterized by immigrant labour and to avoid growing tendencies of dualization in the labour market at large. At the same time, this programme represents something new. It constitutes a broader and more thorough approach compared to previous programmes that mainly targeted immigrants in short-term and long-term contracts in industries that otherwise were well organized and regulated.

Escalation of problems and public condemnation: From 2007 and onwards, the media intensified its searchlight on the cleaning industry. The number of media search hits for the phrase "social dumping AND cleaning" multiplied (Trygstad et al., 2011, p. 33). A main reason was the increasing labour immigration from Eastern Europe. The proportion of Eastern Europeans in the cleaning industry increased from seven to 22 per cent between the EU enlargement in 2004 and 2007 (Trygstad et al., 2011, p. 82; Trygstad et al., 2013, p. 61). Recurrent headlines were "slave contracts", "human trafficking", "illegal work", "tax evasion" and "inhuman wage levels and working conditions". Many of the reports concerned cleaning companies engaged by public agencies. The demands for better control and a clean-up of the industry grew and were backed up by arguments such as "competition on equal terms", "decent pay and working conditions" and a greater degree of "decency" – key norms and values in Norwegian working life. These are also value-laden concepts that can hardly be opposed. This attention and condemnation in the public stimulated the rather dramatic institutional changes.

Like-minded and willing partners: Over time, the key actors in the cleaning industry have developed a shared understanding of the need for change. Our findings indicated a very positive personal chemistry among central actors. This is one of the factors that made changes possible. Although their motives differed somewhat, the actors also shared an interest in the outcome of change. The trade union

¹⁰ <http://www.regjeringen.no/nb/dep/ad/pressecenter/pressemeldinger/2008/strategi-for-et-ans-tendig-arbeidsliv.html?id=525795>

movement wanted to improve wage levels and working conditions and counteract social dumping. The employers were keen to establish competition on more equal terms and to restrict the number of companies operating at the edge of the law. This situation resulted in a collaboration that survived a number of challenges, including explicit disagreement over certain measures, nationwide strikes in 2010 and 2012 and internal disagreement on the employers' side in regard to how far the service-industry union in the Confederation of Norwegian Companies (NHO) should go in accepting controversial measures.

New instruments had become available: Increasing labour immigration from the new EU countries had already changed working conditions in other industries where the social partners had held a strong position (such as construction work). The trade union movement had pressed for the introduction of new measures. The extension of the wage level in collective agreements was used for the first time in 2005 and was later applied to several industries with a large proportion of migrant labour. Such schemes were previously only applied when it was proven that foreign workers had less favourable conditions than Norwegian workers, but they nevertheless established a minimum wage level in an entire industry. Hence, the partners in the cleaning industry had available a set of institutional instruments that had been partly or fully tested in other industries. The construction industry had issued ID cards to employees for several years, and a registration scheme for man-power suppliers had been introduced to ensure better control and transparency in the companies.

It can be argued that years of (voluntary) soft regulation and self-regulation had failed to counteract a race to the bottom in the cleaning industry. The combination of public attention towards the industry (partly because of increased labour migration) political determination and unified social partners created a pressure for change that was hard to resist. This paved the way for “hard” measures in an industry that was on the verge of collapsing. To curb companies operating at odds with the law, and to prevent drift towards further dualization in working conditions, the parties agreed to unconventional measures. The introduction of new institutional measures, however, brings us to the third research question: How can we understand the new measures' capacity to change working conditions?

10.5.1 The Change Capacity of Hard Regulations – The First Experiences

The ability of these hard regulations to develop into viable institutions depends on sufficient support from the actors. The social partners and the government must be motivated to continue investing in these hard regulations. Their motivation for such conduct probably depends on the initial experiences. A critical factor is whether the hard regulations actually are able to push the intermediate category of companies, as shown in Figure 1, in a more decent direction. These companies operate partly within and partly outside of legislation, rules and agreements. Another question is related to

the more general working conditions in the decent part of the industry where work is often demanding although it is conducted in accordance with the law.

As the changes examined were recently introduced, data and analyses are few and mostly cover the actors' expectations with regard to outcomes. We conducted interviews prior to the implementation of the measures in 2011 and found great expectations in the companies and in the industry in general. The actors had high hopes for the efficiency of the combined measures. Our informants also stressed the need for control and sanctions to ensure compliance. One key reason for the call for control is the increased competition from dishonest suppliers over recent years. In the company survey from 2012, 55 per cent responded that they had often lost tenders to such actors. In the same survey, company managers were asked to rank the measures they believed would be effective. The first two questions addressed expectations for the approval scheme and the ID cards, and the results are shown in Figure 2.

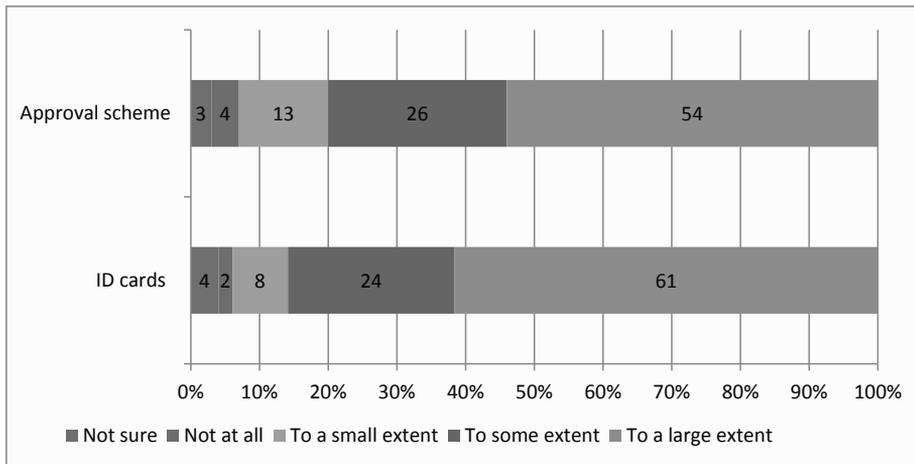


Figure 10.2: To what extent do you believe that the approval scheme for cleaning companies and the requirement to hold ID cards will improve the conditions in the industry? Percentages. N=205.

Eighty per cent of the managers expected the approval scheme to improve the conditions to a great extent or to some extent. Altogether 85 per cent of the managers believed in the introduction of ID cards. Only very few believed that these measures would have no effect and a few were uncertain. There are no significant differences between companies with and without a collective agreement. A key point is that the approval scheme and the ID cards will have a combined effect, since the ID cards are linked to the approval scheme.

The company managers were also asked to assess to which extent other measures would combat dishonest practices. Options included continued extension of the

collective wage agreement to non-unionized workers, more monitoring by clients, more monitoring by the tax authorities and more frequent inspections by the Labour Inspection Authority. The company managers believed that all these measures would be important (between 80 and 90 per cent). However, more monitoring by the tax authorities was ranked at the top of the list.

10.5.2 Something Has Already Worked

The extension of the wage level in the collective agreement to non-unionized workers has been in effect since 1 September 2011, and in the spring of 2013 it was decided to prolong it for another two years.

In our survey of managers in cleaning companies we also asked about their preliminary experience with the extension of the collective agreement. Fully 92 per cent responded that they had good (57 per cent) or fairly good (35 per cent) knowledge about this provision. Managers in large companies (more than 50 employees) are more knowledgeable than others in this respect. The managers were also 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 (not shown). It is interesting to examine whether there are any differences between companies with and without a collective agreement, as shown by Figure 3.

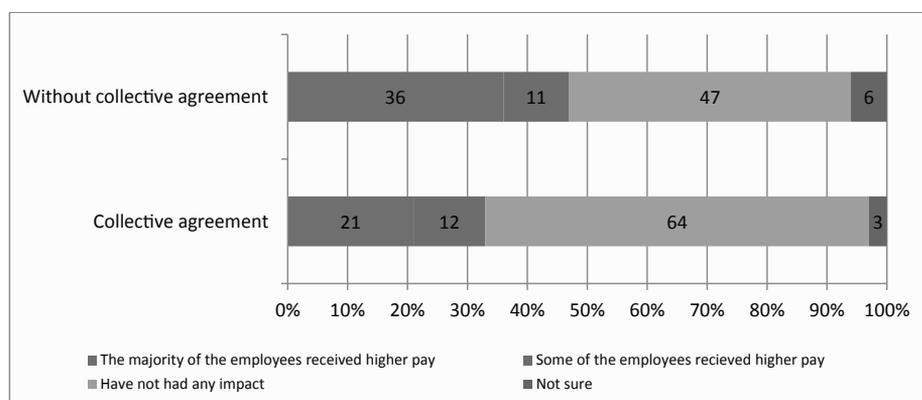


Figure 10.3: Has extension of the collective agreements wage level to non-unionized workers had an impact on the wage level in your company? Percentage. N = 205.

At the outset, one would not assume that the wage level should increase to any great extent in those companies that had a collective agreement, since the extension pertained to tariff wages with 0-2 years of seniority. In total, more than 30 per cent of the companies with an existing collective agreement have needed to raise the pay for the majority of the employees (21 per cent) or for some of them (12 per cent) as a result of the regulations. Unsurprisingly, in companies with no collective agreement the proportion is higher: 36 per cent of these responded that the *majority* of the employees have received a pay rise, and 11 per cent reported that some of their employees now receive better pay.

This survey gives us no information on the size of these pay rises. Our data show, however, that a large proportion of the cleaning companies have been forced to adjust their pay levels since the extension of the collective agreements was enacted. Another potential effect regards client behaviour. A little more than half of our respondents said that the clients to a greater extent requested documentation on wage levels and working conditions in 2012, compared to the situation in 2010 (Trygstad et al., 2012, p. 108). The role of the clients is important to combat poor working conditions and dishonest practices. Client attitudes also play a role in improving working conditions in the legitimate part of the industry (the decent category), although the new regulations were primarily targeted at combating practices at odds with the law.

Thus, our analyses indicate that the introduction of hard regulations has had effects on wage level and the customers' awareness. It is reasonable to believe that these regulations have made it more difficult to operate partly within and partly outside of legislation, rules and agreements. This is important because it may reduce the number of companies operating at odds with the law and also make it much more complicated for those who systematically operate outside of legislation and rules. Moreover, we have argued that a process of institutionalization requires that new measures and regulations be supported. This support is essential, particularly at an early stage. If the companies and the employees in the decent part of industry experience that the regulations actually make a difference, this may extend the support and hence improve working conditions further.

10.6 Discussion and Concluding Remarks

The changes introduced between 2010 and 2012 mark a divide in the approach to combating social dumping and the dualization of working conditions in the Norwegian labour market.

We have defined the new measures as hard regulations, differing from the soft and voluntary regulations that normally characterize the Norwegian model of labour relations. Hard regulations enforce decent pay and working conditions by statutory regulation, limited discretion and intensified controls conducted by tax authorities, the labour inspectorate and other state authorities. Soft regulations, on the other

hand, are based on a voluntary system where decent working conditions are achieved through collective bargaining and cooperation among the social partners at the company and industry levels. In Norway, as well as in the other Nordic countries, soft regulations function well in the organized labour market. But in cleaning, the collective actors are relatively weak. This makes soft regulations insufficient to bring forward more decent working conditions. Soft regulations, which Marginson and Sisson (2004, p. 87) exemplified with “framework agreements”, have a high level of discretion and flexibility, but most sanctions have brought forward necessary changes. However, in the new system soft and hard regulations are tangled in several ways. Hence, it is problematic to characterize the change process as a *shift* from one system to another or as institutional conversion (Mahoney & Thelen, 2010). Several of the new hard regulations derived from tripartite negotiations and cooperation – institutional elements rooted in the Nordic model of labour relations. Rather, the shift in methods to achieve more decent working conditions is a case of institutional displacement, where the partners involved grasped the opportunity to introduce considerable change in methods.

When it comes to the capacity of hard regulations to hinder poor working conditions, we have to include actors, power and interests into the discussion: trade unions, employer organizations, the government, the customers and the companies. Mahoney and Thelen (2010), more than conventional institutional theory, emphasize the role of *strategic* actors. They argue that institutional continuity or change cannot be understood as results of actors who passively reproduce institutional rules. Rather, institutions should be seen as emanating from interest mobilization, power struggles and compromises between strategic actors with partly opposing interests, whose actions continuously undermine, oppose, reproduce or convert the institution. In our case, the viability of the hard regulations depends on the interests and the choices made by the actors involved.

The trade unions and employer organizations are core actors in the social partnership in the cleaning industry. They agreed on hard regulations on slightly different, but related, premises. While the trade unions were motivated primarily by the chance to improve working conditions, the employers were mostly concerned about unfair competition from the indecent companies. The strength and viability of this compromise depend on continuous support from both sides, but there are several challenges. One example is conflicting interests on the employer side. The proposal for extension of parts of the collective agreement to non-unionized workers was met with fierce resistance in the central organization of the Confederation of Norwegian Companies (NHO). On the other hand, the union of service industry employers, of which most of the organized employers in the cleaning industry are members, welcomed the proposal (NHO Service). To the trade unions, the extension of collective agreements is a double-edged sword. On the one hand, this is crucial to combat social dumping. On the other hand, it robs the union of a key argument to raise the unionization rate. The argument that membership in a trade union will give

higher pay is nullified when the employees receive the generally applied wage rates anyway. The Norwegian Confederation of Trade Unions (LO) has been sceptical of the request for an extension of the wage rates in the collective agreement. The union dominant in the industry, *Norsk arbeidsmandsforbund*, did however consider this as a useful means to combat social dumping.

At the same time, both sides – employers’ and employees’ organizations – fear that the extension of collective agreements shall infect the labour market as such. A shift (back??) from hard to soft regulations in the cleaning industry will probably rely on the two parties’ capacity to organize labour and employers in the years to come.

Another core actor is the *government*. Government intervention is important to regulate those parts of the labour market where there is less partnership, since the partners themselves will be unable to compel the actors at the company level to abide by the new rules (Traxler, 2003; Howell & Givan, 2011, p. 251). Continuity in a regime of hard regulations relies on rigorous control by the Labour Inspection Authority and tax authorities, which in turn rests upon the political willingness to invest resources in such control. In this case the government played a crucial role in establishing a regime of hard regulations with the rationale of combating social dumping and further dualization of the Norwegian labour market. Across countries it is observed that the government’s role in regulating working life varies in accordance with shifting political constellations in power (see, e.g., Traxler et al., 2001, pp. 155-156). After the election in autumn of 2013 the “red-green” government was replaced by a “blue-blue” coalition government with the Conservative party and Progress party. So far the new Minister of Labour has flagged a general willingness to continue the line established by his predecessors with regard to regulating and control of the service industries.

The interests and strategies of the *cleaning companies* are also of great importance to understand the change capacity and viability of the hard regulations. The majority of Norwegian companies comply with the institutionalized norms and rules of working life. This cannot be explained by “habit”, but rather as a deliberate and strategic choice to follow institutional guidelines motivated by a desire to ensure availability of resources, predictability and/or social support (Oliver, 1991, p. 153). For companies in the intermediate category, avoiding new rules by buffering themselves from institutional pressures or escaping from institutional rules or expectations may represent a solution (ibid., p. 154). One way to avoid the increased wage costs that follow from the extension of the collective agreement is to reorganize the company into a “service contractor” using self-employed workers instead of regular employees. In doing so, the extension of the collective agreement is circumvented. An increasing number of self-employed workers in this industry may indicate that the change capacity of the hard regulations is low because company actors find ways to “avoid” (Oliver, 1991) or “convert” (Mahoney & Thelen, 2010) the rules by exploiting loopholes in the regulations. The formal rules remain intact, but they are interpreted in an opportunistic manner that undermines them. Another company strategy may be to defy the new rules by ignoring them. Companies that fail to apply for approval

or issue ID cards to their employees, or who deliberately continue to market their services without approval, exemplify such defiance of the rules. The rationale for such conduct may be that the likelihood of getting caught is low, or that the company is independent of government approval and support (Oliver, 1991, p. 156). However, this is conditional on there being no reactions from their environment. Moreover, the decent companies would also have to support the new regulations in order for them to work efficiently. There is, for example, a widespread expectation that the generally applied hourly rates will result in intensification of work. To combat such outcomes at the company level, cooperation between management, safety delegates and trade union officials is crucial. This, however, requires that the trade union officials and safety delegates are allocated sufficient time to attend to their offices and remit and that the employers actively seek consultation with the employee representatives.

The *customer* is the last actor affecting the change capacity of the new hard regulations. It is not unreasonable to assume that some customers still will want to purchase services at the lowest possible price, even illegally if need be. Thus, the change capacity of the hard regulations relies on their ability to change the norms and behaviours of the customers. Customers would have to balance concerns for the quality and working conditions against the price more evenly than have been seen until now (Berge et al., 2013). “Eva”, whom we quoted in the introduction, is an employer who encourages her customers to comply with the new industry rules and Norwegian law. While ideals of decent working conditions seem to enjoy general support on an ideational level, it remains to be seen whether their normative force is strong enough to combat unilateral low-price competition.

The introduction of hard regulations is part of an effort to avoid further dualization of the Norwegian labour market. But, the working conditions and industrial relations in the cleaning industry is not an example of a “good case turning bad”. The industry has for several decades been marked by precarious work and low coverage of collective agreements. One could argue that the labour migration from Eastern Europe only accentuated old and well known problems in the industry. This may be seen as a case where the institutionalized “norms of appropriateness” – deeply rooted in Norwegian labour market – caught up with the social partners and the government and created a window of opportunity.

Although the hard regulations do not harmonize with the preferred methods in Norwegian labour relations, they may succeed in avoiding the industry-specific race to the bottom seen across Europe and foster a more inclusive employment regime. So far, the measures introduced have resulted in a wage increase. However, the changes have not as of yet hugely transformed working conditions in the industry. Rather, we are witnessing an example of quite large and partly transformative institutional change resulting in – so far – small improvements.

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