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Board level representation – still an unused resource?

Track 2: Workplace relations and HR – back to collectivism?

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Abstract:

During the 1970ies changes in the legislation in a number of European countries gave way for employee representatives at company boards. In Norway employees may demand representation if the number of employees exceeds 30. However, almost 40 years after the introduction, recent studies show that the representatives are only found in approximately 50 per cent of the companies. Thus, the main question in this paper is simple: **Why do the employees not exercise their right to elect representatives?** And in particular; how to explain that even in companies with collective agreements, approximately 1/3 do not demand representation? The question has important strategic implications for the trade unions in countries with – in a comparative context – strong and comprehensive participation and co-determination rights: should the way forward be to fight for the expansion of rights or to concentrate on making the best possible use of the existing collective agreements and legislation? Our findings indicate that the status of the board, the relationship between the board and the CEO and the relationship between the CEO and the trade union reps are the three most important factors behind representation.

1. Introduction

During the 1970ies legislation on board level employee representatives (BLERs) was introduced in a number of European countries. The arrangement has not attracted much attention from researchers. The knowledge on how the representatives behave, their level of influence and their importance as a part of the different national labour market models and Corporate Governance regimes, is scarce. Even among trade unions little attention was directed towards the representatives in the 1980ies and 1990ies. The arrangement was "just there" and the old debates from the 1960ies and 1970ies fell silent, even if no conclusions was reached on questions like; how to balance the role of being responsible for company matters and at the same time representing a free and strong opposition in the company? How to balance the role of an employee director or representative (BLER) and a trade unionist? And further - what about the social and cultural inferiority and the lack of knowledge that was said to undermine the position of the BLERs?

The different legal systems and the different labour market models in Europe obstructed the attempt to establish a common European legislation on BLERs and to establish a common European company model (Laagland and Zahl 2010). In a number of countries, also the trade union movement was highly critical to this approach to employee participation (Taylor 2005).

However, after the establishment of the European Companies (SE and SCE companies) and later the CMB-directive (Directive 2005/56/EC) BLERs have re-entered the debate on employee participation and co-determination. Co-determination and BLERs are major issues in the present debate on European Private Company (SPE companies) and the attention both among trade unionists and researchers have increased.

The ongoing debate on Corporate Governance (CG- see e.g. Clarke 2004) has also contributed to more attention towards the BLERs. What are the interests of the company and what role do the BLERs have in the different models of CG? A common assumption is that BLERs may be perceived as a token of a stakeholder oriented model. And further, BLERs often occur as one of the variables in comparative analysis of the different labour market models (see Jackson 2005, Vitols 2005 or Hagen 2010a). In these studies BLERs are treated by a dummy-approach at national level, either a country has BLER legislation or not.

However, one very important question is yet to be asked and answered: how many companies and employees are covered by the different arrangements? If BLERs are to make a difference, both at macro level and in the individual company, we need to know how many and where they are; what is the extensiveness or the use of the arrangement? A recent study shows that in only approximately 50 per cent of the Norwegian the companies the employees exercise their right to demand representation (Hagen 2008). In Denmark, 12 per cent of companies with less than 100 employees have employees serving on the board. In companies with more than 500, the proportion increases to 81 (Lavesen and Kragh-Setting 2007). In Sweden, only covering the industry-sector, employee representatives are found in $\frac{3}{4}$ of the companies (Levinson 2006).

The Scandinavian countries are all examples of labour market models where employee participation plays an important part. If looking into the different arrangement and the number of employees needed to implement the privileges in a comparative perspective, Scandinavian employees enjoy the highest level of participation and co-determination.

Even so, as the figures above illustrate, in a substantial part of the labour market the right to board level representation is not exercised.

Using the Norwegian data, in this paper we ask a very simple question: Why not? How can we understand the fact that the Norwegian arrangement, one of the most extensive in the world, is not utilised in more than half of the companies?

The question is important for a number of reasons. If we believe that participation and co-determination is one of the advantages of the Norwegian model, both in international business competition and also as a tool for the improvement of work satisfaction and democracy, we need to know more about the “non-use” of the arrangement. What are the features of the company and the collaboration between the social parties in companies where the arrangement is established? And secondly – the answer to the question has important policy implications for the trade unions: Should they fight for the extension of the arrangement, e.g. lower the number of employees needed to demand representation or should they try to make the most out of the present legislation, e.g. ask the local trade unions to give higher priority to the arrangement? Or both?

The paper is divided into five sections. A snapshot of the Norwegian legislation is given in the next section and also some additional figures of coverage. Then we move on to the third section where we present our research questions and the empirical studies. The main results are given in the fourth section and in the fifth we conclude and draw some further research implications.

2. Background – 50 per cent in 40 years

The fundamental rights and obligations that regulate industrial relations are primarily found in agreements in Norway. The right to participation are found in the “basic agreements”, each a central agreement that are being adapted by the local partners. One of the main points in the Norwegian system is that the trade unions’ representatives constitute the partner with whom management must negotiate at the different levels in the company. The system is upheld and practised by employees who hold office in the national trade unions’ *local branches* and are not linked to elections of representatives where all the employees have the right to vote (cf. the German work council model). Trade union representatives are elected by the members in the company. The density and the legitimacy among members are thus an important power resource. 55 per cent of private sector and 100 per cent of public sector is covered by collective agreements, in total the figure is 70 (Stokke and Løken 2009).

However, contrary to the participation at company level in general, the right to demand representation at board level is found in the legal framework (the Company Acts). There is only one agency with the term “board” in the company laws. The Norwegian (as well as in Sweden and Denmark) legislation does not divide between a management and a supervisory board. The board has both managerial and supervisory tasks; however, the day-to-day running of the company is *delegated* to the CEO. Nørby (2001) uses the expression “one and a half-string system” when outlining the principle. This legislation implies that the role (and thus importance and influence) of the Scandinavian BLERs may differ from e.g. the German, where the representation is limited to the supervisory board.

The laws covering BLERs were adopted during the 1970ies, “the decade of freedom and democracy”, a period when *industrial democracy* was still on the agenda (Bergh

1983, Kluge 2005, Christensen and Westenholz 1999). In 1972 employees in Norwegian companies were given the right to demand representation at board level. If the company is considered a legal entity of its own, it will, with a few exceptions, be covered by the legal framework on employee representatives, irrespectively of sector or ownership. The requirement for demanding one representative is 30 employees. In companies with more than 50 employees, they may demand 1/3 of the board members. If the number of employees exceed 200, representation (1/3) is compulsory. Corporations (mother companies or group companies) are covered by the same rules (see below).

The legislation implies that the company has no obligation to ensure employee representation unless the number of employees exceeds 200. The representation has to be demanded by the majority of the employees. Only employees are eligible, the representatives must be employed by the company. If they choose to take on a new job in a different company, they have to step down.

Table 1 shows the proportion of companies in the different categories where employees are represented at the board (the survey is presented in the next section).

Table 1 Proportion of companies with employees serving at the board by company size and company status.

| | All | Mother companies | Subsidiaries | Independent companies |
|-------------------|------|------------------|--------------|-----------------------|
| 30 - 49 employees | 37 | 26 | 39 | 42 |
| 50 -199 employees | 59 | 65 | 61 | 52 |
| 200+ employees | 74 | 70 | 72 | 81 |
| Total | 53 | 52 | 57 | 51 |
| N | 1000 | 250 | 376 | 374 |

Source: Fafo 2007

Two results may be extracted from table 1. Company size seems to be an important variable, but company status does not make an important difference. In total the proportion is 53. However, particularly when looking at the smaller companies (30-49 employees), note that the proportion in the mother companies is low compared to the others.

More than half of the companies in private sector in Norway are part of a corporate structure (group of companies fully or mainly owned by the same mother - NOU 2010:1). Being part of such a structure imply that the employees are entitled to demand representation at both the company level board and the mother company board. As a member of the "mother-board" the BLER may either represent only the employees in the legal mother entity or all the employees in all of the companies in the group (mother plus all subsidiaries). The same number of employees is needed; if the mother company including subsidiaries have more than 30 employees, representation may be demanded. If representing all of the employees, the arrangement is labelled "group". It is not necessary to be employed by the (legal entity) mother company to be eligible to serve as a group BLER, but if not, you have to be employed by one of the subsidiaries.

Our data indicates that among the 250 mothers/groups in our sample:

- In 48 per cent the employees have no representation at all
- In 14 per cent the BLERs represent (and is elected by) the employees in the mother company only
- In 31 per cent the BLERs represent (and is elected by) all the employees in the group

- In 7 per cent of the cases, the CEO answers “don’t know” to our question. This probably imply that the BLERs is elected by the employees in the mother only, but the CEO is uncertain concerning whether the BLER regard him (or her)self as representing all of the employees or not,

Organising and electing group BLERs require a high level of coordination among the employees in different companies in the group. Thus, we would assume that the number of subsidiaries are important when looking at possible representation from all of the employees in the group, Resent studies (Hagen 2008) indicate that this is not the case, the number of subsidiaries is not important.

There is no official register on BLERs in Norway that may help us answer identifying the feature of companies where representation is established. In table 2, the results from our logistic regression are presented.

Table 2 Logistic regression BLERs. N=885. Source; Fafo 2007.

| | B | St.error | Sign |
|--|--------|----------|-------|
| Constant | -1,6 | 0,377 | 0,000 |
| Collective agreement | 0,879 | 0,168 | 0,000 |
| Number of employees | 0,674 | 0,121 | 0,000 |
| Dominant owner* | | | |
| Norwegian private | -0,676 | 0,221 | 0,002 |
| Norwegian institutional | 0,178 | 0,275 | 0,516 |
| Foreign institutional | 0,109 | 0,306 | 0,721 |
| Norwegian state/municipalities | 1,303 | 0,368 | 0,001 |
| Sector | | | |
| Industry | 0,695 | 0,251 | 0,006 |
| Construction | 0,056 | 0,309 | 0,856 |
| Trade | -0,069 | 0,284 | 0,809 |
| Transport | -0,404 | 0,336 | 0,229 |
| Finance and real estate | 0,113 | 0,283 | 0,689 |
| -2 Log likelihood=1034,406 Nagelkerke R Square=0,259 | | | |

*Dominant owner= First we asked whether or not the company/mother company had any dominant owner(s). If the answer was yes, we asked which category the owner(s) belonged to. In table 2 we only show the results from companies that answered yes on the first question. However, we also made a regression analysis where a dummy variable (dominant versus no dominant owner(s)) was included. This analysis showed no significant result on this variable (see Hagen 2010).

The regression analysis results in significant impact on three different variables in addition to company size; i) collective agreement - if there is a *collective agreement* the likelihood of finding BLERs increase, ii) ownership - if the company has Norwegian private owner(s) the likelihood decreases. This is probably a result of family ownership (see below). If the company is dominated by public ownership (state or municipality) the likelihood increases. iii) sector is important in the sense that the probability of finding BLERs is larger in the industry sector than in the rest of the labour market. The Nagelkerke R Square=0,259, which imply that the analysis has some, if not very large, explanatory power.

In short, if you are employed by a large state (part or wholly) owned industry sector company covered by collective agreement, the probability of being represented at board level is far higher than if you are employed by a small non-organised family company in one of the others sectors. It is worth noticing that foreign ownership do not give a significant result, this might imply that foreign owners adapt to the Norwegian participation model.

Lack of representation might be perceived as what we would label “*the fundamental challenge*” to the trade union movement: employees’ lack of ability or desire to join unions and to collective organisation. Union density is declining all over Europe (with Norway as an exception, see Nergaard and Stokke 2010). The trade union movement is characterised as being on the retreat, not being able to concur the “modern individualized employee” in a globalised world. However, the general problem of collective action is not a subject for this paper. By focusing on companies with a collective agreement, the first step is already taken towards organising the interests of the workers.

Even if an agreement is, as the regression shows, important, employees in a number of companies where trade union(s) are present have not exercised their right to demand representation. The figures are shown in table 3.

Table 3 Proportion on companies with **no employee** representatives at the company board by agreement**, company size and company status. Source: Fafo 2007

| | With collective agreement | | | | No collective agreement | | | |
|-------------------|---------------------------|------------------|--------------|------------------|-------------------------|------------------|--------------|------------------|
| | All | Mother companies | Subsidiaries | Indep. companies | All | Mother companies | Subsidiaries | Indep. companies |
| 30 - 49 employees | 53 | 65 | 54 | 45 | 75 | 86 | 67 | 75 |
| 50 -199 employees | 35 | 31 | 33 | 39 | 56 | 44 | 54 | 67 |
| 200+ employees | 19 | 24 | 18 | 17 | 71 | 67 | 90 | 40 |
| Total | 37 | 40 | 34 | 38 | 66 | 64 | 63 | 70 |
| N | 670 | 169 | 257 | 244 | 330 | 81 | 119 | 130 |

** At mother company level the CEOs were asked if there was any agreement in the subsidiaries, companies as legal entities are part of the agreements and not the groups.

In 37 per cent of companies with a collective agreement and with more than the required number of employees no BLER is found. In the largest (200+) companies, where representation is compulsory, between 17 (independent) and 24 per cent (mother company) no representation is established.

In the next section, different approaches to these findings are presented.

3. Research questions and the empirical studies

The question of why employees are not represented at board level may be approached from different angles: indifference, resistance, lack of resources and strategic considerations. Four different groups of actor are important: Employees, trade unions (both at central and local level), management and shareholders.

Employee indifference

Two forms of indifference might be important: i) “pure” indifference towards collective arrangements in general and ii) indifference towards the BLER-arrangement in particular. This indifference may in turn be connected to a) an attitude stating that “leave the responsible actors alone and let me concentrate on my work, do not force me to take a stand, I don’t really care” and b) experiences or assumptions which imply that the effect or influence of ERs are of no importance. This form of indifference is closely connected to what we label strategic considerations (see below).

Employee and trade union resistance

Employee resistance was a major issue during the debate prior to the adaption of the arrangement in 1972. Several arguments were made:

- BLERs will threaten the free role of employee opposition in the company because board membership implies taking responsibility (economic and legal) of the company.
- Regulation property rights is the duty and responsibility of the political democracy and should not be regulated at local level (that is in the boards)
- ERs will become hostages to board decisions because of the conflict between employee interests and company interests
- ERs will become a contestant or rival to the trade union reps and thus undermine their role in the company

Employer or shareholder resistance

It is important to note that a company with more than 200 employees do not risk or suffer from any legal sanction if representation is not established; the Company laws do not provide any penalty towards the company or the board. However, as the company cannot refuse if a demand is made, management or shareholder resistance must occur prior to the demand¹. The basis for employers’ resistance might be threefold

- ideological resistance based on unwillingness to limit property rights
- stating that BLERs are unnecessary; employee participation is best attended by focusing on the collaboration between the management and the trade union reps.
- All collective arrangements are unnecessary, participation is an issue between the manager and the individual employee
- resistance based on more pragmatic arguments: BLERs represent an unnecessary formalism of the board, the board will be too big, the expenses will rise etc

In relation to increased emphasis on CG and the role and rights of the shareholders, we might expect increased employers resistance in the last decade. Most CG-codes include recommendations concerning “independent” directors, whether or not the BLERs may fall into this category is a matter of debate. However, at least in the Norwegian debate, there is no or few evidence of CG as a foundation for BLER resistance among owners or managers.

Lack of resources and strategic considerations among employees and trade unions

Lack of resources may be connected to several issues. In the “old debate” lack of knowledge, both on the arrangement as such and particularly the board tasks (strategic

¹ If such attempts are made, the employees may apply to a governmental committee (“Bedriftsdemokrati-nemnda”) with the power to impose representation. This committee hardly ever grants the company exception from the regulations (Granden 2005)

knowledge, financial statements, competition and market issues) and social and cultural inferiority was said to undermine the position of the BLERs. Secondly; Norwegian trade unions struggles, as almost any other union everywhere, to make their members take part in union work and to take up positions as trade union reps at company level. In the Norwegian agreements and legislation, a number of positions are found, in addition to trade union reps and BLERs, we also have health and safety reps and members of the health and safety committees. Thus weak trade unions must prioritise and chose among the different positions.

This implies the need to look into the relationship between legal participation and co-determination rights and the right to participation found in the collective agreements. The main hypothesis may be phrased as:

- When resources and man power is scare, the trade unions will prioritize the arrangements found in the collective agreement.

The reason for choosing the agreements rather than the BLER-arrangement is outlined below. In short, demanding representation may be perceived as the “last claim”, if the collaboration between the social partners is in good shape, then the trade unionists will turn to focus on representation at board level.

Searching for the most important level of influence

While asking the question of company ownership might been an easy task in earlier times, trade unions reps today are faced with a far more complicated company structure and nature of ownership. As already mentioned, more than half of the employees in Norway are employed by a company which is a part of a group structure. And obviously, not all of the companies are 100 per cent owned subsidiaries; a number of trade union reps face very complicated structures, with part- and cross-ownership etc.

Two questions become essential when looking for the important decision-making level. i) what is the relationship between the management and the board – do the board actually make the decisive decisions or do they only make the formal confirmation of management decisions, and ii) what is the relationship between the board of the company and the board of the mother (group)? Our data indicate (Hagen 2008) a wide range of different decision-making structures, in some subsidiaries a number of important decisions have been delegated to the company, in others, the group has total control and the board of the subsidiary does not make any important decisions at all. In such cases, a majority of the directors will be senior-managers from the mother-company.

To what extend do employees and trade union reps carry out an “analysis on division of power” before any decision on demanding representation is made? A related part of such an analysis would be to look into the board itself: to what extend do the composition of the board lead to any BLER-influence or will the BLERs always end up as a minority? This is especially important in family businesses and in foreign own companies.

The data

This paper is mainly based on two different studies. I 2007 Fafo conducted a quantitative study financed by the Ministry of Labour (labelled Fafo 2007). 1000 CEOs from a representative sample of Norwegian public and public limited companies with more than 30 employees were interviewed by phone and asked a number of questions on corpo-

rate governance and employee representation. CEOs were chosen because we assumed that they would know whether or not the board did include BLERs. Several studies (see Engelstad et al 2003 or Falkum et al 2009) have showed that a large number of employees are not familiar with the different participation and co-determination arrangement in the company. An important goal was to include a representative sample of mother-companies, subsidiaries and “independent” companies in order to examine employee representation in different setting and with different ownership (see Hagen 2008). The response rate was resp. 37 (mother companies) and 42 (subsidiaries and independent companies). The sample is representative for the number of the different categories of companies used and also by size and sector.

The second study is qualitative and was paid for by the largest trade union federation in Norway (LO – Landsorganisasjonen). A number of trade unionist, both at national and local level, were interviewed and asked for their opinions on Fafos findings. At local level the question was simple: why do you not exercise the right to demand representation². Only trade union reps in companies with no representation were included. At central level we asked for their opinions on the arrangement, on the “old debates” and their efforts to promote and assist BLERs. We also asked for their opinions on the advantages and disadvantages of combining the role as BLER and trade union rep at company level and (if relevant) their view on group BLERs.

4. Results

“Concerning co-determination at board level – we have to admit – the national level has not paid enough attention to the arrangement – we have not done a very good job when it comes to committing the local level” (national level)

Several authors (see Bergh 1983 or Hagen 2010) has emphasised that BLER was an issue among politicians, researcher and a few trade unionists at the topmost level of some of the trade unions prior to the legislative amendment. BLER was not a major issue among local trade union reps or the heart of trade union members. This is an important reminder when looking into the attitudes towards BLER today. Never the less, all of the trade unionist at national level remarked that they were aware of the old ideological debates and dilemmas, but claimed that this debate has been settled:

“The ideological element – no, that debate is long gone. It’s more indifference, people do not care, it becomes to close/intimate and thus difficult, people don’t want to.” (national level)

Also among the local trade reps, it was difficult to trace any ideological resistance against becoming responsible for the company or any fear for ending up as a hostage to the majority of the board. However, it was emphasised that the economic responsibility might be an issue in small companies or in firms that practice undeclared and/or social dumping of the workforce (“gray area”):

² All the quotes below have been translated from Norwegian by the author. The interview at local level was conducted by my Fafo-colleague Jørgen Svalund.

“In some small companies, the legal and thus economic responsibility is a real problem, there are many companies out there where I would refuse to serve on the board.” (national level)

Neither at local or national level feelings of inferiority was used as an explanation. However, concerning knowledge of legislation and board task in general, an interesting disparity between respondents at local and national level emerged; at national level knowledge and information was highly emphasized, but at local level – among those who actually could demand representation in their company, lack of knowledge was rejected as the explanation.

“No, I would be surprised if the answer is found in simplifying the legislation and voting rules.” (local level)

“The main reason is lack of knowledge on the arrangement. People assume that this only apply to the larger companies.” (national level)

Employers resistance

In 2005 91 per cent of the CEOs in the largest Norwegian companies responded by “totally or partially agree” (on a four point scale) to the following statement: Employee right to participation and co-determination found in the legislation and the collective agreement are a major advantage to the Norwegian working life (Engelstad et al 2003). In Fafo’s 2007-study, 92 per cent of CEOs, when asked for any changes in the proportion of BLERs at the board (1/3), responded by claiming status quo. Only 7 per cent wanted to decrease the number of BLERs. In companies with no BLERs, the figure was resp. 84 and 16 per cent. Concerning the BLERs themselves, only 19 per cent wanted to increase the number (see Hagen 2010).

Few of trade unionists we interviewed “blamed” the employers:

“It’s up to us to utilize the legislation; we can hardly blame anyone else. We need to focus on our own work. Does the management resist ... no, I can’t remember any cases where we had to fight for the rights regarding employee reps” (national level)

However, in our quantitative data, the support seems substantially lower, note that only CEOs in companies where no BLER arrangement – either at company or group – has been established is part of the sample.

Table 4 Proportion of CEOs (in companies with no ERs) with negative answers (1-3 on a scale 1-6 where 1=very negative and 6=very positive). The assumed reaction from employees was measured by whether or not they would support the demand, the figures in the table show the proportion of “no support”

| If the employees where to demand board level representation - how would you respond, how do you think the shareholders would respond and do you think the employees in the company would support the demand? | | | | |
|---|--------------|------------------------------------|---------------------------------|-----|
| | Own reaction | Assumed reaction from shareholders | Assumed reaction from employees | N |
| Demand for representation at mother level - answers from <u>group</u> CEOs | 23 | 34 | 54 | 110 |
| Demand for representation at mother level - answers from <u>subsidiary</u> CEOs | 29** | 45 | 45 | 144 |
| Demand for representation at subsidiary level - answers from <u>subsidiary</u> CEOs | 21 | 35 | 35 | 127 |
| Demand for representation at the board - answers from <u>CEOs in independent comp.</u> | 35 | 39 | 39 | 182 |

Source: Fafo 2007 *The CEOs were asked how the group management would respond

Two important findings emerge from table 4. Among CEOs at different levels, between ¼ and 1/3 express negative reactions towards employee representation. Secondly; a large number also assume that both the owners and the employees are sceptical. It is interesting to note that the CEOs seem to portray themselves as more positive than their assumption on both the shareholders and the CEOs. Thus, this might be perceived as a kind of justification – “it’s not me, but...”.

Our results from the CEO may be understood in the context of a free rider-problem. Employers are in favour of the participation system as such and the positive effects of regulation the Norwegian labour market, but they might never the less be characterised by an attitude stating that “it is important, but it doesn’t really fit in our company”. Some might have negative experiences from other companies or some might assume that the administrative consequences or expenses are substantial. It is important to note that CEOs in the smallest companies are more sceptical than CEOs in the larger companies, this strengthens our assumption that the resistance among the CEOs are less ideological and more connected to more pragmatic arguments: we don’t need to bureaucratize the relation to the employees, the collaboration with the trade union reps is functioning well and we do not need an additional channel.

However, not all employers close ranks about the “Norwegian model”:

“There are some villains out there, managers who don’t want to collaborate at any level or by any arrangement. We all know who they are and that trying to establish board level representation is a dead end” (national level)

Also some of the local trade unions reps used obstinate employers as an explanation:

“Establishing any collaboration with the management is more than enough. It took us four years to establish meetings once a month”. (local level)

“More than enough” are the important key words here, the quote no not only refer to employers with a negative attitude to collaboration in general, it also imply an important different in rank between the entitlements found in the company acts and the basic agreement.

Strategic considerations – using your resources at the most important level

Even if we do detect some important differences between national and local trade union reps, they do have one important opinion in common: The basic agreement and the collaboration between the social partners at company level is priority number one among the trade unionist.

”We have to admit – our focus have been concentrated at the Basic Agreement - utilising § 9 (the § in the Basic agreement stating trade union rep rights to information, consultation and the employers duty cooperate with the trade union reps) This is where the management obstruct. § 9 is more important than board level representation, it feels closer, although there is co-determination at board level too”. (national level)

In some of the companies, arguments like this one was based, as the respondent below indicates, on the fact that they were already satisfied with the working conditions, there was no need to be represented at the board.

“We’re doing ok as it is” (local level trade union rep).

The day-to-day collaboration between management and trade union rep provided the employees with the anticipated level of influence. Two features were typical for these companies: either small and the collaboration between the management and the employees did not depend on trade union reps - or larger and the relationship between the CEO and trade union reps was close and covered all important decisions in the company. In these cases we will find a weak or a rubber-stamp board.

The quote below summarize a number of arguments:

“The policy of the shareholders determines whether or not employees want to serve on the board” (local level)

If the board is strong and in control of the company and secondly – if the majority is willing to listen to the BLERs, representation is considered important. Such considerations were particularly important when the companies were either owned by foreigners or employed in family owned companies. However, the arguments were not connected to any fear of becoming hostage, but is mainly based on either i) interpretation of the board as insignificant because the management or the members of the family makes the important decisions outside the board room of ii) an evaluation of possible influence at the board. Some labelled their foreign owners as burdened with a “non-Norwegian attitude towards employee co-determination”. Being constantly on the side-line, never able to influence or alter the decisions of the board was considered a waste of time and resources.

One of them gave this recommendation.

”Step one – think through and analyze the group, at what level do the important decisions take place. Step two – trade union reps in different companies must work together, figure out how to influence on the level which make the important decisions which influence the working conditions of our members – if not, the arrangement makes no sense (local level)

5. Conclusions and further research implications

In short, both at local and national level we find the collective agreement are perceived as more important than the legal right to demand representation. The trade union reps at local level do not, in their own evaluation, claim that they suffer from lack of knowledge or self-esteem, nor do we find any ideological resistance to the arrangement. And further, when asked, the local reps denied the importance of any competition between different trade unions. If anything, the presence of several unions in the same company could possibly result in a “not our responsibility-attitude”.

In our interviews we found an interesting difference between the trade unionist at national and local level. At national level information on rules and regulations and also lack of knowledge on board work was presented as the most important causes behind the lack of demands for representation. At local level these explanations were mainly rejected. Strategic considerations connected to i) lack of resources and priority to the collaboration based on the basic agreements and ii) decision making structure of the company and the group – if they considered the board either as unimportant as a decision making body representation was considered a waste of time. The same logic are used when choosing between representation on subsidiary or group-level, the local union rep will prefer to be represented at the, in their opinion, most important level.

For the national trade unions this is good news, the local representatives know their rights and display a high level of strategic capacity. From a trade union point of view, lack of BLERs based on strategic consideration made by the local reps, might not represent any problems. Support and help from the national to the local level should concentrate on providing the local reps with tools to figure out the real power structure and ownership of the company.

Looking for the “real power structures” brings us back to what we consider the three main factors when representation is demanded:

- the status of the board and their ability to govern the company and control the management
- the relationship between the board and the CEO and
- the relationship between the CEO and the trade union reps

To emphasize the relationship between the social partners makes sense as long as the important power relationship is between the organized workers and the managerial prerogative at company level. Historically the owners or the shareholders have played a passive role in the governance of Norwegian companies (see Trygstad and Hagen 2007, or Falkum 2008). Private ownership was regulated by a number of different institutional regulations limiting their role to “providers of capital”. At macro level the state limited property rights by legislation and taxation. The important decisions were made by the management. Thus, the conflict of labour and capital was found between trade unions reps and the management. This resulted in boards characterised by consensus and collaboration, and not conflict between shareholder and employee representatives. The basic agreements are the most important tool to organise and control this conflict. In this view the priority of the local unions reps – solid and reciprocal practice of the different provisions in the basic agreement must come first – is understandable.

The strategy is dependent on strong management and weak boards. However, deregulation and the “shareholder revolution” imply that owners (at national and international level) play an increasingly more important role and that the need for utilizing the legal right to participate has become more important. If the company is subject to a more or less hostage take-over and the new owners either do not understand or appreciate the “Norwegian model of participation” the employees can no longer rely on the agreement based collaboration between the social partners. Demanding representation after the take-over is important, but the employees have never the less lost the possibility to take part in the prerequisites of the take-over and to influence e.g. election of a new CEO. Paradoxically we have that seen that “a lost cause” is an important reason for demanding representation.

In this paper we have used Norwegian figures and Norwegian data to focus on reasons behind utilization of established workers rights. Our analysis show that comparative studies focusing on BLERs and their importance for both democratization and productivity at different levels, is in need to look into the extensiveness of the arrangement and to map out the feature of companies with and without representation. And further – the connections – both legally and in practice – between company legislation and collective agreements is very important. Non-representation may be a sign of union strength at company level.

Our findings have several important research implications. What are the figures of representation in other countries with extensive rights? Would our analysis stand in countries where works councils constitute the social partner at company level or where the relationship between management and trade unions reps are more formal and infrequent than in Norwegian companies?

The national trade unions receive a fairly clear recommendation from our findings; the local trade union reps need help in figuring out where the real power is found – or hidden. Only then may the different rights and privileges provided by the different agreements and legal acts be fully made use of.

We also need more knowledge on the importance of the board. Weak boards may be an advantage to employees if their representatives have strong relations to the CEO. If the company is run by a CEO strongly committed to the rights of the shareholders and in direct contact with large owners, maybe trying to strengthen the board is the right way forward?

References:

- Bergh, T. (1983), ”Medbestemmelse eller opposisjon? Noen hovedtrekk ved den norske debatten siden 1945 om demokrati i arbeidslivet.” I Bergh, T, (red), *Deltakerdemokratiet. Teori og praksis*. Oslo: Universitetsforlaget .
- Christensen, Søren og Ann Westenholtz, (red 1999), *Medarbejdervalgte i danske virksomheder: fra lønarbejder til borger i virksomhedssamfundet*. København: Handelshøjskolens Forlag.
- Clarke, Thomas (ed. 2004), *Theories of Corporate Governance*. London: Routledge.
- Engelstad, F.J. Svalund, I.M. Hagen og Aa.E. Storvik (2003), *Makt og demokrati i arbeidslivet*. Oslo: Gyldendal.
- Falkum, E, I.M. Hagen og S. Trygstad, *Bedriftsdemokratiets tilstand*. Fafo-rapport 2009:35. Oslo: Fafo.

- Granden, Gro (2005), *Styrearbeid: en håndbok for ansatte i selskap og konsern*. Oslo: Gyldendal Akademiske.
- Hagen, I.M (2010a), *Det mektige mindretallet. Ansatterepresentasjon mellom Corporate Governance og Industrial Relations*. Fafo-rapport 2010:02. Oslo: Fafo.
- Hagen, I.M (2010b), *Employee elected directors on company boards: Stakeholder representatives or the voice of labour?* Paper for the Eight International Conference in Commemoration of Prof. Marco Biagi, Modena March 2010.
- Hagen, Inger Marie (2008), *Ansatte i styret. Statusrapport 2007*. Fafo-rapport 2008:09. Oslo: Fafo.
- Jackson, G (2005), "Towards a Comparative Perspective on Corporate Governance and Labour Management: Enterprise Coalitions and National Trajectories." In Gospel, Howard and Andrew Pendleton (ed. 2005), *Corporate Governance and Labour Management*. Oxford: Oxford University Press.
- Kluge, Norbert (2005). *Corporate governance with co-determination – a key element of the European social model.* , *Transfer* 2/2005. Brussels:ETUI-RHS.
- Laagland Femke and Ilse Zaal (2010), *Employee board-level representation in the European Union: the CBM Directive and its impact in the Netherlands*. Paper for the Eight International Conference in Commemoration of Prof. Marco Biagi, Modena March 2010. :
- Lavesen, Martin og Jesper Kragh-Setting (2007), *Håndbog for medarbejdervalgte bestyrelsesmedlemmer*. København: Erhvervsskolernes Forlag.
- Levinson, Klaus (2006), *Corporate governance and employee board representation in Sweden*. Stockholm: Arbeidslivsinstutet .
- Nergaard, Kristine og Torgeir Aarvaag Stokke (2010), *Organisasjonsgrader og tariffavtaledekning i norsk arbeidsliv 2008*. Fafo-notat 2010:07
- NOU 2010:01 *Medvirkning og medbestemmelse i arbeidslivet*. Oslo: AD.
- Nørby (2001), *Corporate Governance in Denmark - recommendations for good corporate governance in Denmark*. Copenhagen Stock Exchange.
- Stokke, T.A and E. Løken (2009), *Labour Relations in Norway*. Fafo-report 2009:33. Oslo: Fafo
- Taylor, Robert (2005). "Industrial democracy and the European traditions." *Transfer* 2/2005. Brussels: ETUI-RHS
- Vitols, Sigurt (2005), *Co-determination and economic performance in Europe*, Report 92. Brussels: ETUI-RHS.